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Rights, needs, and the creation of ethical community

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RIGHTS, NEEDS, AND THE CREATION OF ETHICAL COMMUNITY

A Dissertation
Submitted to the Graduate Faculty of the
Louisiana State University
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy

in

The Department of Political Science

by
Natalie Susan Gaines
B.A., University of Louisville, 2005
M.A., Louisiana State University, 2008
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*To my wonderful parents, Kenneth and Charlotte,
without whose unfaltering love and encouragement
this dissertation never would have been possible*

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ABSTRACT

Despite a half-century of dominance by the rights discourse, the supremacy of rights in theories of human obligation has recently come under attack from political theorists. Though scholars have questioned the ability of rights to explain satisfactorily the responsibility we have for the well-being of others, there are few viable alternatives offered. In this dissertation, I argue that a theory of needs provides a better explanation of the intellectual and moral foundations of obligation. Human need is deeply rooted in subjective potentiality, but studies in human psychology have also provided an increasingly universal picture of the needs human beings experience. Of particular importance is Abraham Maslow's hierarchy of need, which asserts that human beings are motivated to fulfill *physiological needs, safety needs, love needs, esteem needs, and self-actualization needs*. When taken as an understanding of what is required for human flourishing, these needs provide a basis for political considerations. I assert here that legislators, in an effort to secure justice, can base policy on the human needs elaborated upon by Maslow. However, efforts at rationally constructing policy to meet needs, must be complimented by a heightened sense of pathos. By recognizing common human suffering, representatives can better understand the needs of their citizens and they will be more motivated to act on their behalf.

INTRODUCTION

The language of rights is bankrupt. After hundreds of years as the dominant paradigm of human obligation, scholars have begun to question both the intellectual and moral foundations of the discourse. In 1651, Thomas Hobbes published his *Leviathan*, and from its pages emerged a language of rights that has dominated political philosophy ever since. Hobbes wrote that in the state of nature, “it followeth that in such a condition every man has a right to everything, even to one another’s body.”¹ And when individuals chose to exit the state of nature they contracted among themselves and agree “to submit to some man, or assembly of men, voluntarily, on confidence to be protected by him against all others.”² Though Hobbes’s theory of social and political organization was dominated by the negative rights not to be killed or unjustly imprisoned (conversely, the positive rights to life and liberty), theorists over the next several centuries develop increasingly sophisticated and universal systems of individual rights. Most notably, Immanuel Kant endeavored to create a theory of individual rights that was universally applicable and bound others to uphold it out of respect for the universal law. Kant’s attempt at a rationally conceived categorical imperative was quite contrary to Hobbes’s initial impulse, and has shaped the discourse on human obligation ever since. While individuals in the Kantian framework upheld others’ rights by contemplating the rationally intelligible universal law, the Hobbesian framework was driven by the passions. Fear compelled individuals to give up their positive rights to everything in the state of nature, and leaving them only with the

¹ Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett Publishing Company, 1994), I.xiv.4.

² *Ibid.*, II.xvii.15. For the transferring of right, which constitutes the contract, see I.xiv.9-33.

negative rights not to be unjustly killed or imprisoned by the sovereign.³ Contrary to Kant, the Hobbesian transition rests on emotions, or passions, rather than on reason.⁴ Yet, by and large, the Kantian framework of rationalistic foundationalism has been the one adopted by modern and contemporary rights theorists.

Later, writers such as Marx took issue with the notion of rationally intelligible universal human rights, and argued that rights could not be conceived of as universal. Instead he argued that rights were simply rights to be members of civil society—that is, to protect one’s property. Some contemporary writers have argued in sympathy with Marx, stating that universal rights are not the best mode of discussing human fulfillment.⁵ Despite their attempts to provide an alternate framework for discussing the requirements for a complete human existence qua human, most writers tend to fall back on rights. Though these debates will be discussed in greater detail in the subsequent chapters, they do highlight two crucial questions. The first question is, “Do individual rights, as the rationally understood manifestation of the universal law, provide an accurate depiction of the human person and her experience?” The second is, “Does the discourse of rights provide the most effective language for explaining human

³ For a discussion of the limits of sovereign authority regarding individual liberty, see *Leviathan* II.xxii.21-23.

⁴ This is not to deny the presence of rationality in the penumbra of the text, since the decision to exit the state of nature through the formation of the social contract is a sophisticated concept contingent upon the exercise of rationality. However, Hobbes does not address this adequately, preferring to place emphasis on the passions as the force which instigates the move to political order.

⁵ For a discussion of human potentiality, see Christian Bay, *The Structure of Freedom* (New York: Atheneum, 1965). On the capabilities approach, see Amartya Sen, *Development as Freedom* (New York: Anchor Books, 2000); Martha Nussbaum, *Sex and Social Justice* (Oxford: Oxford University Press, 1999), and idem, “Beyond the Social Contract: Capabilities and Global Justice,” in *The Political Philosophy of Cosmopolitanism*, ed. Gillian Brock and Harry Brighouse (Cambridge: Cambridge University Press, 2005), 196-218. For a compilation of thoughts on needs, see Gillian Brock, ed., *Necessary Goods: Our Responsibilities to Meet Others’ Needs* (Lanham, Maryland: Rowman and Littlefield, Inc., 1998).

obligation?” The answer provided here is an emphatic “no.” Yet, if this is the case—if a rights discourse founded upon the rational capability of individuals to perceive the universal law and thereby uphold it in accord with the categorical imperative, is not the best foundation for human obligation—what can replace rights and the foundationalism associated with them?

Two very important points arise here. Rights are insufficient, intellectually and pragmatically. In intellectual terms, they are inadequate because they provide an inaccurate depiction of the human person as a wholly individualistic and unimpeded rational creature. And, if this is the case, pragmatically, rights explain less about human obligation and what motivates us than the theory presented herein. In terms of humanitarian aims, scholars have elaborated upon physical integrity rights, social and economic rights, and civil and political rights in an effort at improving the often dire situations of others. The language of rights seems omnipresent in both domestic and international affairs. There exists a Universal Declaration of Human Rights, an American Bill of Rights, the French Rights of Man, the International Covenant on Economic, Social, and Cultural Rights, and the Geneva Convention which protects civilian rights during times of war. Scholars, activists, judges, politicians, and laymen acknowledge, in addition to those mentioned above, mobility rights, a right to privacy and, in some countries, a right to die, among many other varieties. Scholars are keen to delineate the explanations for upholding rights, citing a variety of different theories to strengthen the rights discourse.⁶ Such undertakings are carried out often, without sufficient attention to the reasons that rights are so

⁶ See Matthew H. Kramer, N.E. Simmonds, and Hillel Steiner, *A Debate Over Rights: Philosophical Enquiries* (Oxford: Oxford University Press, 1998).

glorified in the first place. Instead, rights have become self-justifying and they are assumed to have universal appeal because they are asserted to be universally applicable.

Part of the dominance of this language of rights for the past 500 years has been due, in large part, to the fact that the employment of rights has generally made individual lives better. Certainly the goal of asserting universal human rights is to improve the condition of everyday life, and to ensure that justice is equally disbursed. Yet, rights often do not guarantee freedom from oppression, equality of opportunity, or the ability to choose a particular way of life. For example, despite the assertion of, and subsequent attempts to ensure the protection of, economic and social rights, the levels of global inequality still in existence are staggering. For instance, gross domestic product (GDP) per capita in 2008 in the wealthiest country, Luxembourg, was \$109,903.⁷ Norway was not far behind, with a GDP per capita of \$94,759. In contrast, the two poorest countries, Burundi and the Democratic Republic of Congo had GDPs of \$144 and \$182 in 2008, respectively. In the same year, a total of thirty-seven countries had average GDPs per capita below \$1000, and 123 countries fell below \$10,000. In proportional terms, Luxembourg's GDP per capita was more than 763 times greater than Burundi's.⁸ Such inequalities are not confined to economic concerns. The right to education is mentioned in the Universal Declaration of Human Rights as fundamental to human well-being and the average adult literacy rate was nearly 100% in developed countries in 2008, and even in post-Soviet countries which have undergone huge political, social, and economic transitions over the past

⁷ All statistics are taken from the World Bank database.

⁸ Though GDP per capita is not necessarily a good reflection of whether individual needs are being met or rights being upheld, it can serve to elucidate relative inequalities at a macro-economic level.

few decades.⁹ However, in countries like Sierra Leone, whose literacy rate was a meager 39.8% in 2008, and Burkina Faso, whose 2007 literacy rate was 28.7%, and whose 2006 adult literacy rate was merely 23.6%, the universal right to education is clearly not being fulfilled. Life expectancy varies from age 44 in Afghanistan and Zimbabwe, to 83 in Liechtenstein and Japan. Obviously, it would be disingenuous to insinuate that the rights language is overtly responsible for these inequalities. Yet, with such discrepancies between states, surely the goals of the universal human rights discourse and the subsequent concerns for global justice that it implies have not been fully realized.¹⁰

In academic terms, and as a theory, the rights discourse does not provide an accurate understanding of human experience, nor explain why individuals act to improve the lives of others. Liberal rights theorists from Kant to Rawls, have been concerned with the rational individual as the ultimate unit of moral concern. This treatment gives rise to two primary flaws. First, it treats the individual person as an abstract monad without contingencies or attachments. The person becomes an isolated entity stripped of many of the subjective characteristics and potentialities that make that person unique. The individual, seen as a fixed entity, is left little room for the development of particular human potentialities, thereby

⁹ Education is explicitly outlined as a fundamental human right in Article 26 of the Universal Declaration of Human Rights. See "The Universal Declaration of Human Rights," United Nations, accessed February 12, 2011, <http://www.un.org/en/documents/udhr/>.

¹⁰ Though the goal of this dissertation is not to engage fully with questions of global justice, such statistics provide a frightening picture of the contemporary disparity in well-being between the developed and developing world. However, even within developed countries like the United States, in 1995 the top 1% of earners hold 38.5% of the total wealth, and the top 20% hold nearly 84% of all wealth. See Lisa A. Keister and Stephanie Moller, "Wealth Inequality in the United States," *Annual Review of Sociology* 26 (2000): 68. Likewise, infant mortality, which is often taken as a proxy measure of the overall health of a society varied from a low of 4.93 deaths per 1000 live births in Massachusetts, to 13.09 deaths per 1000 live births in Washington, D.C. See Jiaquan Xu et al. "Deaths: Final Data for 2007," *National Vital Statistics Reports* 58 (2010): 114, accessed March 8, 2011, http://www.cdc.gov/NCHS/data/nvsr/nvsr58/nvsr58_19.pdf.

justifying a universalistic, rights-based discourse. Second, rights, as rooted in Kantian rationalism, strip the individual of feelings and emotions, in favor of rationalism. Thus, rights cannot accurately account for the reasons that individuals choose to act to ease the suffering of others. Given these weaknesses, I attempt to provide an alternative account of human experience and that which motivates individuals to perform obligations. I argue for a needs-based discourse and a theory of pathos to replace rights and rationalism.

Therefore, my aim in this dissertation is, admittedly, ambitious. The overarching objectives are both substantive and epistemological. Substantively, I hope to refute the rationalistic rights discourse as an inadequate depiction of the human person and as an insufficient explanation of human obligation. I argue instead for a theory of human needs, which more fully addresses issues of human potentiality and allows for a greater consideration of subjective characteristics. In support of this theory, I provide a framework by which needs can be assessed and met, either by other individuals, governments, or other groups. The second novel assertion of the dissertation comes with my argument that pathos plays a more important role in meeting the needs of others than does the rational consideration of others as members of the kingdom of ends. Though some scholars have argued for a theory of need in explaining human obligation, and others have asserted that sentiments are more important than rational considerations, I know of no work that unites these hitherto disparate arguments. This is curious, since rights and rationalism have gone hand in hand for several centuries; to reject one means also rejecting the others. Indeed, the Kantian understanding of human rights as grounded in human reason conflates the source of obligation with the motivation for meeting obligations. The rationalistic rights doctrine combines reason and right into one

abstract, rationally driven moral theory. This is a reductionist portrayal, and an oversimplification of human experience. A theory of human need and pathos makes needs the source of obligation and pathos as the experience of the other person when confronted with need. This is not a mere linguistic quibble. The argument herein is not merely about differences in ways of *talking* about human obligation. Though the terms “discourse” and “language” are used throughout to simplify the explanations provided, the shift from rights to needs is really about differences in *thinking*. That is, I am not merely stating that rights and needs are only two interpretations of human obligation. Rather, rights provide a false description of human experience and needs provide a more accurate account of that experience.

Epistemologically, I make the normative claim that an empirical approach to human reality, paired with a sentimentalist account of human experience, can explain more about the content of human experience and the motivations for action. The empiricism used here stems from what we know from the field of clinical psychology about innate human needs. The sentimentalist account, which has been given a fair amount of modern attention, is both intellectually and morally superior in explaining why human beings choose to act on behalf of others. By employing a psychological understanding of the needs of the human person and exploring the possibilities for pathos, it is my belief that the existing rights paradigm can be discarded in favor of a morally preferable theory of need.

Plan of the Dissertation

Given the plethora of contemporary research on the shortcomings of the rights discourse, the first chapter is devoted primarily to outlining the main themes within that critical

framework. However, given the rootedness of the current rights discourse within a Kantian system, the chapter first provides a concise summary of the main facets of Kant's argument about the relationship between reason and right. This link leads Kant to a universal system of rights that can be rationally comprehended and it depicts individuals as rational members of the kingdom of ends. He states, "All respect for a person is properly only respect for the law . . . of which the person provides an example."¹¹ Kant's argument that individuals should be respected and protected only out of a desire to respect and protect the rationally intelligible universal law is reductionist, and ultimately untenable. Yet, modern scholars have happily followed in the footsteps of Kant, arguing for universal human rights based in human rationality. Thus, one of the major criticisms discussed in the first chapter is the propensity of liberal theorists to treat the individual human being as a mere example of a universal type. This treatment strips the individual of her subjective particularities and cultural influences, and reduces her to an instantiation of the universal law. Though some scholars have presented needs-based alternatives to the rights language, they typically end up fashioning their theories around statements like "Individuals have the right to meet their basic needs." I argue that such a theory does little to improve upon the current rights discourse and neglects many of the faults of thinking in terms of rights.

The second chapter asserts the importance of human potentiality. Rights, as overly-deterministic and prescriptive, miss out on much of the human experience. Indeed, rights tend to be concerned with what human beings are, rather than what they may become. Historically,

¹¹ Immanuel Kant, *Grounding for the Metaphysics of Morals*, trans. James W. Ellington (Indianapolis: Hackett Publishing Company, 1981), 14, fn. 14.

several philosophers have espoused the link between potentiality and human need. Most notable among these are Aristotle, Hegel, and Marx. As such, these theorists dominate the second chapter. I argue there, with the support of the three theorists mentioned, that rights do not account for the subjective particularities and potentialities of human existence. The de-emphasizing of potentiality comes, at least initially from Kant's emphasis on the link between actuality and human right. Because potentiality can only occur in Kant's phenomenal realm, it cannot serve to distinguish human beings from any other creature, and thus serves no purpose in establishing a universal moral theory. Aristotle, Hegel and Marx were all deeply concerned with human potential, and it shapes their respective understanding of human need. Following from these theories of potentiality, I argue that need provides both a universal and particular theory of human experience, thereby making it more suited to establishing a theory of human obligation than right allows.

Having considered the superiority of need over right, in terms of its ability to accurately describe human reality and experience, I examine more closely the content of a theory of needs. Rooting my theory of need in Abraham Maslow's hierarchy of need, which is based in clinical and experimental psychology, provides a strong basis for the discussion of universal and subjective need. Likewise, Maslow's hierarchy explicitly acknowledge the innate need for some form of self-actualization—that is, for fulfilling one's subjective potential. While Maslow's hierarchy has been used in a few different forms in political science and philosophy, it has not been applied in the service of a broad theory of need which incorporates both individual and government obligation. Its basis in psychology explains both the empirical content of human need and a theoretical framework for broader considerations of human needs.

From Maslow's hierarchy, in the fourth chapter, I proceed to outline a novel (and analytical) theory of the way in which a political theory of human obligation might be based in human need. I first outline the process through which government can determine which individual and social needs should be met. I also elaborate upon how those criteria can be used to evaluate the legitimacy of individual need claims. Additionally, the chapter considers how government action can be limited so as to avoid paternalism. Finally, I discuss the limits of using a theory of need to describe human obligation and relate need to contemporary considerations of justice. The most prominent voice on justice is John Rawls, whose theory of justice has maintained the Kantian connection and has considered individuals as abstracted from their personal contingencies and affiliations. I argue that this understanding of the human being as a rational actor behind a veil of ignorance does not do justice to the emotional attachments and considerations that actual human beings possess. Thus, I present a preliminary analytical theory of need as a counterpoint to Rawls' analytical theory of right.

Finally, the last chapter pairs the theory of need with a sentimentalist theory of human action on behalf of others. A variety of historical and contemporary scholars have elaborated upon sentimentalism of one form or another, but none of these has been paired with a theory of need. I have employed the term pathos for its connotation of shared suffering, or recognition of that which is common to individuals, rather than that which divides them. Pathos, as the mind-state given expression in the presence of need has the potential to increase responsiveness on the part of individuals and government. Specifically, I argue that pathos can prompt action on behalf of others in a way that a rationalistic understanding of human motivation cannot. Ultimately, rejecting rights, and its overly rationalistic perspective, in favor

of need and pathos has the potential to build a more ethical community responsive to human suffering in all its forms.

CHAPTER ONE

THE PROBLEMS WITH THE RIGHTS DISCOURSE AND THE PREEXISTING NEEDS-BASED ALTERNATIVES

In contemporary ethical debates regarding human well-being and efforts at improving global justice, the language of human rights has dominated efforts to realize a more equitable global community. Particularly prevalent in neo-Kantian endeavors, the assertion of universal human rights is well-entrenched in the scholarly literature, the practice of domestic and international law, and issues of international public policy. The popularity of rights talk has arisen in large part because of its perceived success in preventing governments from abridging the rights of their citizens, and for allowing those citizens to demand equal treatment and personal freedom.¹ However, the emphasis on rights is far from unopposed in the academic literature. There are a variety of alternative approaches, including an emphasis on the priority of need, the role of justification in limiting government, feminist calls for an ethic of care, and the capabilities approach, though more often than not, the language of rights still creeps into these arguments.

Various scholars have focused their attention on different aspects of human rights that they deem to be problematic. Some have asserted that human rights can “confound the consequences of legal systems, which give people certain defined rights, with pre-legal

¹ It should be noted that despite the general assumption that acknowledging human rights makes lives better, there is also ample empirical work, particularly by Emilie Hafner-Burton and James Raymond Vreeland, that countries who agree to international human rights agreements do not necessarily have improved records on respecting human rights. See James Raymond Vreeland, “Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture,” *International Organization* 62 (2008): 65-101; Emilie M. Hafner-Burton and Kiyoteru Tsutsui, “Human Rights in a Globalizing World: The Paradox of Empty Promises,” *American Journal of Sociology* 110 (2005): 1373-1411; and idem., “Justice Lost! The Failure of International Human Rights Law to Matter where Needed Most,” *Journal of Peace Research* 44 (2007): 407-425. Throughout the dissertation, I use the terms freedom and liberty interchangeably.

principles that cannot really give one a justiciable right.”² Simply stated, rights have no authority outside a state legal system. Others have argued that rights require derivative duties, and if it is unclear who should perform the duty to uphold a specific right, then duties go unfulfilled. Some opponents argue that there is no universal claim to human rights, as the notion is essentially Western and undeveloped in other cultures.³ This final critique is hotly debated, for while scholars are keen to assert the universality of human rights, there are others who note that rights are the result of the unique development of the occidental tradition. Communitarian theorists have also argued against rights, stating that they are unreflective of actual human development and experience. These communitarians believe that individual nature is rooted in community culture and social organizations as much as in any individual philosophical anthropology. Thus, for communitarians, the rights discourse makes false assumptions about human beings, and it provides individuals with inappropriate claims over and against society. Still other scholars have criticized the language of rights as one that ends discussions rather than fostering them, since rights can act as trumps in political debates.

In response to some of these critiques, alternative theories of limiting government and/or empowering individuals have been furthered by both legal scholars and political theorists. One such attempt to limit government through something other than the rights language comes from Sonu Bedi’s emphasis on justification as the only necessary principle for government action. Alternately, Amartya Sen and Martha Nussbaum have been successful at offering a language of capability, though they fall short of fully detailing how a capabilities

² Sen, *Development as Freedom*, 227.

³ For Sen’s interpretation of these themes in the human rights dialogue, see *Development as Freedom* pp.227-48.

approach is to be carried out through government and social organizations. Sen sees rights as a potential supplement to capabilities, while Nussbaum is explicit in some texts about the necessity of rights in upholding capabilities. Likewise, David Copp outlines the “basic needs principle,” but he too succumbs to theorizing the fulfillment of only those needs that are deemed “essential enough,” and sufficiently socially applicable, to be undertaken by government. Furthermore, he never clearly explains why or how the basic needs principle manages to supersede, enhance, or complement the rights discourse already in place and accepted by the scholarly and political communities.⁴ Finally, feminist theorists such as Joan Tronto and Carol Gilligan have put forth arguments for an emphasis on care rather than the overly-rationalistic rights discourse, though Tronto deliberately attempts to reconcile her ethic of care with rights theory.⁵

This chapter will review some of these pre-existing critiques and alternatives to a language of human rights, both from the history of political thought as well as the contemporary discourse. Given that the broader aim of this dissertation is to offer a viable alternative to both rights and rationalism, an account of Kant will be crucial. Most scholars, even when speaking about something other than rights, fail to adequately consider the implications of Kant’s rationalistic rights project. Though the language of rights was in existence before the time of Kant, Kant’s insistence on the rationally intelligible and categorical nature of right still influences scholars of rights, ethics, and distributive justice. Any discourse on human needs must succeed in supplementing both the rights discourse and the basic needs

⁴ Similar efforts have been made by those such as Alan Gewirth who states that individuals have a *right* to have their needs met. See Alan Gewirth, *The Community of Rights* (Chicago: University of Chicago Press, 1996).

⁵ Tronto’s ethic of care will be dealt with in greater detail in later chapters.

principle, beyond their current formulations. To do so, the elements of both discussions that fail to provide for human flourishing must be clearly articulated. Thus, this chapter will examine the pathologies of the rights language, paying particular attention to the potential for the recurrent emphasis on a rationalist approach and the resultant narrowing uniformity of interests based in equality and right. Rather than focusing solely on the current critiques of the rights language, an enterprise thoroughly conducted by a variety of other scholars, the chapter will also elucidate some preexisting alternatives to rights offered by contemporary thinkers. Using these theories as a point of departure, the chapter will investigate the shortcomings of those alternative efforts before investigating the possibility for a language of needs to replace the current dominance of rights.

Kant and the Dominance of Rights and Rationalism

The philosophical foundations of human rights are important when delineating theories of rights or alternatives to them. As Michael Freeman notes, “[R]ights without reasons are vulnerable to denial and abuse. The human rights struggle is certainly motivated by passion, but it is also influenced by argument. Evading the task of finding the best grounding for human rights, in the face of philosophical skeptics and political opponents, demonstrates a lack of intellectual responsibility.”⁶ In the case of this dissertation, understanding the philosophical foundations of human rights provides the background necessary for a legitimate discussion of their refutation. Though human rights have become part of the everyday language of politics, philosophy, and activism, many people underestimate the influence of the foundations of the rights discourse on contemporary understanding. Some facets of the rights discourse are taken

⁶ Michael Freeman, “The Philosophical Foundations of Human Rights,” *Human Rights Quarterly* 16 (1994): 493.

for granted without due consideration to the origins and validity of the claims—namely that rights are universal, that only rights can impose duty on other individuals, and that ultimately rights are grounded in, and understood through, human rationality.

Discussions of rights emerged en force in the 17th century in conjunction with the social contract theorists. However, the most lasting and influential statements on the application of rights to ethical endeavors reached their fulfillment in Kant.⁷ Kant borrowed heavily from the Stoics and modern thinkers, and like them, emphasized the importance of reason as the fundamental, distinguishing facet of human existence. The passions (*pathê*, pity, emotion, compassion) had no place in Kant's ethical theory. Instead, he favored an emphasis on right and law, discernable through the Cartesian *cogito*. In order to fully comprehend the place of right within the Kantian framework, one must first understand the metaphysical principles that underlie his political thought. Kant's philosophy attempted to establish a set of universal, *a priori* principles to govern human action and to make sense of the external world. These principles, Kant believed, would ground the philosophical understanding of reality and provide the basis for a properly moral philosophy—for moral conduct was only intelligible through the discovery of principles independent of experience. This desire to explain reality, politics, and morality in terms of absolute, universal principles lead Kant to a rights discourse that is often abstract in its attempt to explain the motivations for human action on behalf of others. The emphasis on right and law begins in Kant's critical philosophy, and thus deserves some attention here.

⁷ Indeed, it is unclear whether some scholars realize their indebtedness to Kant. Many thinkers assume human rationality as the defining characteristic of human experience without sufficient consideration of Kant's work.

Kant divides reality into the noumenal and phenomenal. Kant states, "Now in this way our understanding acquires a negative expansion. I.e., it is not limited by sensibility; rather, it limits sensibility by calling things in themselves (things not regarded as appearances) noumena. But it immediately sets bounds for itself also: it acknowledges not cognizing things in themselves through any categories, and hence only thinking them under the name of an unknown something."⁸ The noumenal realm is that facet of reality in which the will and its autonomy define the subjective self. The noumenal realm is necessitated by the human capacity to reason, and is completely unknowable.⁹ The person's body, as well as other individuals, is merely an accidental, phenomenal "thing." Only the will (and the freedom to exercise it) is subject; all else is object. As Jean Bethke Elshtain states,

Kant divides a realm of reality which he defines as the noumenal realm of freedom from a realm of appearance understood as the phenomenal sphere of determinism and natural causality. This division, in turn, requires that Kant divide the 'self' into an undetermined being-in-itself, real and noumenal, and a determined, phenomenal self located in the realm of appearance in whose empirically grounded consciousness alone lies diversity of perception and feeling.¹⁰

Thus, the reasoning capacity alone serves a noumenal function in humans, while every other experiential element of human existence occurs in the phenomenal realm. The *a priori* principles that Kant hopes to elaborate upon exist in the noumenal world, and are accessible

⁸ Immanuel Kant, *Critique of Pure Reason*, trans. Werner S. Pluhar (Indianapolis: Hackett Publishing Company, Inc, 1996), 320.

⁹ To be clear, Kant argues that the individual capacity for rational inquiry points to the existence of the noumenal realm, not dissimilar from Plato's world of the forms, and is defined by freedom and truth. The noumenal is accessible only through the rational exercise that necessitates its existence.

¹⁰ Jean Bethke Elshtain, "Kant, Politics, and Persons: The Implications of His Moral Philosophy," *Polity* 14 (1981): 207.

through reason alone. Human beings are distinguished from animals too by their capacity for, specifically, moral reasoning, which is also a noumenal enterprise.

In his effort to regulate, through universal principles, the exercise of the human will, Kant famously develops the categorical imperative, in which “I can never act except in such a way that I can also will that my maxim should become a universal law.”¹¹ The second formulation of the categorical imperative compels humans to treat other human beings always as ends and never as means, and the third formulation demands that individuals act always as though they were law-making members of the kingdom of ends.¹² “This last formulation of the categorical imperative also implies an affinity between morals and politics, for man’s actions, it suggests, do not take place in a vacuum, but always in relation to other men—thus implicitly suggesting a theory of politics, a system of principles governing organised human relations.”¹³ While the political theory of Kant’s ethics is implicit, he is clear that the primary principle of politics is right. Reiss states, “The philosophical enquiry into politics must establish which political actions are just or unjust.”¹⁴ The effort of deciding upon just actions upholds right, and thus, which actions are moral. And, if right is the basis of moral action and the principle of politics, law is that which enforces just behavior. So, the “universal principle of right is basically only an application of the universal principle of morality, as laid down in the categorical

¹¹ James Ellington, Introduction to Immanuel Kant, *Grounding for the Metaphysics of Morals*, trans. James W. Ellington (Indianapolis, Indiana: Hackett Publishing Company, 1981), 14.

¹² These formulations can be found in Kant, *Grounding*, 30 ff.

¹³ Hans Reiss, Introduction to Immanuel Kant, *Political Writings*, ed. Hans Reiss, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 2006), 19.

¹⁴ *Ibid.*, 21.

imperative, to the sphere of law, and thus also to the sphere of politics.”¹⁵ Because freedom is a constituent facet of human nature, any attempt to abridge freedom outside of right is a corrupt action. However, law may be used to constrain any person who violates the freedom of another, and such constraint is right. “The principle of right implies analytically the authorisation to use coercion by means of or on the basis of law against anyone who violates freedom illegitimately.”¹⁶

From these principles of right and law, Kant can elaborate on civil society and the commonality that provides the basis for political action in concert with others. If Kant’s theory of right is correct, then the individual human being is compelled to enter a civil society, whose constitution should allow the most human freedom possible under the law, as long as that freedom can be reconciled with the freedom of others. Reiss explains,

Acquired rights do not, however, belong to us merely by virtue of our humanity. They can be regulated or even curtailed by law. The act of acquisition establishes the right to property. It does not necessarily mean physical possession, but rather an intelligible or noumenal possession independent of time. In order to distinguish my possession from that of others, it is necessary that the choice of others should agree with my own. This condition is only possible under a law regulating possessions. But such a law is not possible in a state of nature, only in a civil society. From the principle that everyone has a right to acquire external possessions, therefore, there arises the command that everyone ought to act in such a way that everyone is able to acquire the external ‘His’ (or his external possessions). This in turn amounts to a command to enter civil society, to become a member of the state. Or, in other words, when a conflict about external possessions arises, as it inevitably does, a right exists to compel the other person to enter civil society.¹⁷

¹⁵ Ibid., 23.

¹⁶ Ibid.

¹⁷ Ibid., 22.

Right of acquisition is a noumenal endeavor, irrespective of time, and requires civil society to enforce respect for that noumenal property.¹⁸ Kant's solution for the problem of property acquisition rests in public consent. He believes that the will of the people is sovereign, even if a monarch represents them, and, ultimately, only those laws to which individuals agree, or would agree, are considered right. It is a sovereign's "(moral) duty to give just laws and to introduce constitutional reforms so that a republican constitution can be established."¹⁹ Kant states, "A republican constitution is founded on three principles: firstly, the principle of *freedom* for all members of a society (as men); secondly, the principle of the *dependence* of everyone upon a single common legislation (as subjects); and thirdly, the principle of legal *equality* for everyone (as citizens)."²⁰ Kant argues that a republican form of government "springs from the pure concept of right."²¹

However, Kant's theory of right does not stop with the nation-state. Rather, he recognizes some form of cosmopolitanism, today embodied in institutions like the United Nations, as crucial for upholding universal rights. Though cosmopolitanism is not the overt focus of the current project, it is one of the aims of Kant's work, and is necessitated by his emphasis on the universal application of the categorical imperative. The categorical imperative is universal and applies to all men, everywhere. Likewise, the discussion of needs in the

¹⁸ This "noumenal property" seems to mean a sort of inalienable rights, which he discusses explicitly when referring to republican constitutions. See Kant's footnote in "Perpetual Peace," *Political Writings*, p. 99. It should be noted that Kant seems to wrestle with the same issues of property rights with which Hobbes had dealt. However, as Reiss notes, Kant has a different solution. Immanuel Kant, *Perpetual Peace* in *Political Writings*, ed. Hans Reiss, trans. H.B. Nisbet (Cambridge: Cambridge University Press, 2006).

¹⁹ Reiss, 25.

²⁰ Kant, *Perpetual Peace*, 99.

²¹ *Ibid.*, 100.

following pages is not limited to domestic affairs. Instead, a needs-based discourse, if it is to be successful, must address issues of global justice at least as well as the current rights discourse. As the first systematic proponent of global interconnectedness, Kant's philosophy of cosmopolitanism deserves some attention here.²² Just as people may come together to form a civil society, Kant recognizes that those civil societies constitute a sort of international state of nature. He writes, "Peoples who have grouped themselves into nation states may be judged in the same way as individual men living in a state of nature, independent of external laws; for they are a standing offence to one another by the very fact that they are neighbours."²³ However, like the Stoic thinkers before him, Kant does not advocate a purely political cosmopolitanism. "Stoics like Marcus Aurelius, who passionately believed themselves to be citizens of the world, would have found it inconceivable to propound the need for a world state, of which they would be citizens."²⁴ Taking the lead from Stoic thinkers, Kant is not a political cosmopolitan but does argue for some interconnectedness between nation-states, proposing an international federation of states. "But a federation of this sort would not be the same thing as an international state. For the idea of an international state is contradictory, since every state involves a relationship between a superior power (the legislator) and an

²² To put it differently, since rights have been successfully extended to the global public sphere, needs should also be capable of that extension. If they are not, then there would be obvious reason to prefer Kantian right. However, in order to make the claim that needs can be extended globally, it is crucial to understand the theoretical argument for why rights can be successfully incorporated at the global level. It will be argued later that Kant's attempt to argue for the universality, or cosmopolitan nature, of right is not, in fact globally applicable in practice, even if it is in theory.

²³ Kant, *Perpetual Peace*, 102.

²⁴ Derek Heater, *A Brief History of Citizenship* (New York: New York University Press, 2004), 40. To be sure, Stoics like Marcus Aurelius would have seen themselves as member of an empire that truly represented an all-encompassing realm. However, the notion of a world state would have been less important than the moral cosmopolitanism with which the Stoics were most concerned.

inferior power (the people obeying the law), whereas a number of nations forming one state would constitute a single nation.”²⁵ Thus, Kant’s theory of international relations falls short of a pure political cosmopolitanism, although it does call for states to work cooperatively. Kant’s true cosmopolitanism is moral, and this provides its relevance for the current discussion.

The basis for this moral cosmopolitanism, embodied in universal right, comes from his belief in the fundamental similarity of human beings as rational creatures. He writes in the *Grounding*,

Furthermore, the idea of a pure intelligible world regarded as a whole of all intelligences to which we ourselves belong as rational beings (even though we are from another standpoint also members of the world of sense) remains always a useful and permissible idea for the purpose of a rational belief, although knowledge ends at its boundary. This idea produces in us a lively interest in the moral law by means of the splendid ideal of a universal kingdom of ends in themselves (rational beings), to which we can belong as members only if we carefully conduct ourselves according to maxims of freedom as if they were laws of nature.²⁶

Martha Nussbaum argues that this emphasis on a collective of rational humans stems from the influence of the Stoics, in that the “first form of moral affiliation for the citizen should be her affiliation with rational humanity; and this, above all, should define the purposes of her conduct.”²⁷ Both the Stoics and Kant contend that “Male or female, slave or free, king or peasant, all are alike of boundless moral value, and the dignity of reason is worthy of respect wherever it is found. Reason, the Stoics held, makes us fellow citizens.”²⁸ In Kant’s terms, our ability to reason, particularly about those *a priori* principles underlying universal law, makes us

²⁵ Ibid.

²⁶ Kant, *Grounding*, 61.

²⁷ Martha C. Nussbaum, “Kant and Stoic Cosmopolitanism,” *Journal of Political Philosophy* 5 (1997): 5.

²⁸ Ibid., 7.

part of the universal kingdom of ends. In the Stoic sense, “One should always behave so as to treat with equal respect the dignity of reason and moral choice in each and every human being.”²⁹ For Kant, the world had become sufficiently linked such that isolationism by states was no longer feasible. He states, “The peoples of earth have thus entered in varying degrees into a universal community, and it has developed to the point where a violation of rights in *one* part of the world is felt *everywhere*.”³⁰

Kant’s insistence on the upholding of the universal law laid out in the categorical imperative is based in reason, but what does it look like in practice? First, individual obligations to others, whether at home or elsewhere, are not based upon considerations of consequence.

Rather,

the basic value for Kantian ethics is not a state of affairs but the dignity or absolute worth of rational nature as an *end in itself*. It is this which opens up the possibility that certain actions can be required or forbidden in themselves, irrespective of their consequences, whether an action respects the worth of rational nature in persons need not depend, at least in principle, on its consequences or on whether it achieves some end to be produced.³¹

Instead of consequences, Kant’s moral theory tells us that we should reason about which actions promote the dignity of human beings as rational creatures. Within the cosmopolitan context, this should extend to all individuals everywhere. To further this end, Kant introduces the notion of cosmopolitan law to replace international law and to complement the internal civil law of the various nation-states. As Jürgen Habermas notes, “The point of cosmopolitan law is, rather, that it goes over the heads of the collective subjects of international law to give

²⁹ Ibid., 8.

³⁰ Kant, *Perpetual Peace*, 107.

³¹ Allen W. Wood, *Kantian Ethics* (Cambridge: Cambridge University Press, 2008), 259.

legal status to the individual subjects and justifies their unmediated membership in the association of free and equal world citizens.”³² Therefore, individuals are citizens of the immediate state, but they are also citizens of the world, protected by cosmopolitan law. To this end, Kant provides three definite articles of perpetual peace. First, the constitution of each state must be republican in nature. Second, rather than a single governing entity, Kant argues that nations shall form a federation of free states, and thus, implicitly, nation-states. Third, he states that cosmopolitan right should be limited to providing the conditions of universal hospitality.³³

While he is adamant that such global endeavors are possible, and that nature is “aimed at a perfect civil union of mankind,” Kant recognizes that most individuals only practice morality insofar as it extends to the desire for honor and social propriety.³⁴ Kant indicates that humans are not yet morally mature, primarily because the states in which they reside continue to insist upon applying their resources to expansion of power, territory, and influence.

For a long internal process of careful work on the part of each commonwealth is necessary for the education of its citizens. But all good enterprises which are not grafted on to a morally good attitude of mind are nothing but illusion and outwardly glittering misery. The human race will no doubt remain in this condition until it has worked itself out of the chaotic state of its political relations in the way I have described.³⁵

³² Jürgen Habermas, “Kant’s Idea of Perpetual Peace, with the Benefit of Two Hundred Years’ Hindsight,” in *Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal* ed. James Bohman and Matthias Lutz-Bachmann (Cambridge, Massachusetts: The MIT Press, 1997), 128.

³³ See Kant, *Perpetual Peace*, 98-108.

³⁴ Immanuel Kant, *Idea for a Universal History in Political Writing*, ed. Hans Reiss, trans. H.B. Nisbet (Cambridge: Cambridge University Press, 2006), 51.

³⁵ *Ibid.*, 49. Brackets are the author’s addition.

“Moral men treat one another as ends and thereby act only on maxims that can serve as universal laws for all men.”³⁶ Kant’s emphasis on moral maturity, based in reason, right, and law, was a response, in large part, to Rousseau. Kant states, “Rousseau’s preference for the state of savagery does not appear so very mistaken if only we leave out of consideration this last stage [moral maturity] which our species still has to surmount.”³⁷ Kant clearly makes a distinction between his own thought and Rousseau’s, drawing particular attention to the power of right, as a sign of moral maturity, that surpasses the capacities of philanthropy, or in Rousseau’s terms, pity and compassion. Kant writes of his third article on universal hospitality, “As in the foregoing articles, we are here concerned not with philanthropy, but with *right*.” The emphasis is understandable, as right seems, *prima facie*, to have more force than the encouragement of philanthropy. Yet, Kant’s argument sounds somewhat hollow and minimalistic.

In this context, *hospitality* means the right of a stranger not to be treated with hostility when he arrives on someone else’s territory. He can indeed be turned away, if this can be done without causing his death, but he must not be treated with hostility, so long as he behaves in a peaceable manner in the place he happens to be in. The stranger cannot claim the *right of a guest* to be entertained, for this would require a special friendly agreement whereby he might become a member of the native household for a certain time. He may only claim a *right of resort*, for all men are entitled to present themselves in the society of others by virtue of their right to communal possession of the earth’s surface.³⁸

While Kant’s aim here is admirable, the argument falls short of upholding the conditions for human flourishing. He acknowledges that the earth is common to all, and therefore individuals

³⁶ Mary P. Nichols, “Kant’s Teaching of Historical Progress and Its Cosmopolitan Goal,” *Polity* 19 (1986): 194-212.

³⁷ Kant, *Idea for a Universal History*, 49.

³⁸ Kant, *Perpetual Peace*, 105-6.

have a claim to it. However, the negative language of the excerpt lacks respect for the dignity of the human being. The traveler has the right *not* to be treated unfavorably, but can easily be refused assistance as long as that refusal does not result in her death. Thus, the threshold for providing assistance is extremely low, and assumes that the householder can anticipate whether her actions will result in the death of the stranger. For a theorist so concerned with treating other human beings as ends, the rights mentioned in the third definitive article of perpetual peace do little to enforce that goal. As such, the purpose here is to examine alternatives to Kant's hollow account of hospitality.

Two important themes have been thus far considered. First, Kant's emphasis on universal right was one of the most developed attempts to extend rights universally. Any needs discourse must also be universally applicable. In the following two chapters it will be argued that a needs language is applicable to a greater universal degree than rights, since needs do not admit of the same cultural and legal limitations. However, needs also allow for greater subjectivity and ample consideration of human potentiality. Second, Kant's emphasis on human rationality does not adequately deal with the experience individuals have of others when choosing to act on their behalf, or when compelling government to do so. Kant's rationalism, and the subsequent dominance of it in contemporary thought, neglects more fundamental aspects of human experience, but because right and rationalism go hand-in-hand, rationalism has been difficult to discard. Both of these difficulties will be addressed in subsequent chapters. However, at present it is sufficient to have outlined Kant's understanding of the rootedness of universal rights in rationalism before exploring contemporary voices on the topic.

The Constraints and Conundrums of Human Rights

The literature on human rights is so varied and broad as to render a concise summary of competing positions on the topic nearly impossible. Given this, an exhaustive summary is not presented here.³⁹ The critiques can be divided into the aforementioned categories, the most important of which are the universal applicability of rights and the correlation of rights and duties. Regardless of the categorization, the most important considerations, those of the universality of human rights and the real-world duties imposed on individuals by the human rights discourse, are essential for the purposes of this project. These two concepts, universality and the derivative imposition of duty, are extracted from the discussion of Kant's framework above, and deserve some considerable attention since they are the primary concepts of concern for most theorists who both oppose and support the rights language.⁴⁰ Contemporary scholars are keen to uphold the rights discourse in its current form and they tend to uphold the Kantian relationship between right, duty, and justice. Such undertakings are carried out often, without sufficient attention to the reasons why rights are so glorified in the first place. Instead, rights have become self-justifying and they are assumed to have universal appeal because they are asserted to be universally applicable. Furthermore, rights are assumed to be the only language that foists a moral duty upon individuals and states, evidenced by the work of respected voices such as Thomas Pogge and Jeremy Waldron. Yet, duties exist because of the

³⁹ Likewise, the dissertation assumes some knowledge of rights at the outset, since it seems unnecessary for the current purposes to rehash the definitions, debates and concepts within the rights discourse. For an introduction to the concepts within human rights, see William A. Edmundson, *An Introduction to Rights* (Cambridge: Cambridge University Press, 2004); Tom Campbell, *Rights: A Critical Introduction* (London: Routledge, 2005), and Duncan Ivison, *Rights* (Montreal: McGill-Queen's University Press, 2007).

⁴⁰ The discussion of human potentiality, highlighted in the introduction to the dissertation, will be thoroughly dealt with in the second chapter.

authority given, originally, to Kant's argument for them, and theorists today are reluctant to question the rights language because they see no other way to impose duties on individuals. Traditional critiques of rights along these lines have tended to focus on how duties can go unfulfilled when it is unclear on whom the duty to uphold a particular right falls. Indeed, this may be a weakness of a rights language. However, those who avidly support rights-talk see no way of imposing duty without relating them to rights, and they therefore reject any theories that do not specifically uphold the rights language.

Considering universality first, it is nearly impossible to deny the importance of making universally applicable claims. If statements about the human condition are not universally applicable, then there is a risk for the exclusion of some individuals or groups based on arbitrary characteristics or considerations.⁴¹ However, it is debatable whether the claims to rights are truly universal, at least in practice, if not in theory.⁴² Though most scholars desperately want them to be considered universal, others argue that the concept of human rights cannot easily be inserted into all societies. These scholars are not necessarily themselves cultural relativists, in that they typically are not making normative claims about the rightness or wrongness of different cultural standards.⁴³ Rather, they recognize some incoherence in

⁴¹ Hence the emphasis on rationality as a truly universal characteristic upon which the appeal to universal human rights can rest.

⁴² That is, perhaps rights *should* be considered universal, and perhaps they do hint at some universal commonality. However, whether they can be universally employed in uplifting the underprivileged and oppressed is unclear and questionable.

⁴³ However, there is no shortness of research that does endeavor to make normative claims. For a statement in support of cultural relativism, see Melville J. Herskovits, *Cultural Relativism: Perspectives in Cultural Pluralism* (New York: Random House, 1972); for a good critique of both relativists and anti-relativists see John W. Cook, *Morality and Cultural Differences* (Oxford: Oxford University Press, 1999); and for an argument against moral relativism, see David Lyons, "Ethical Relativism and the Problem of Incoherence," *Ethics* 86 (1976): 107-121.

discussing issues of human rights in states or regions in which rights do not have a tradition of such ideas. This is not to insinuate that those states or regions have no interest in providing for human dignity and flourishing, merely that such efforts are not conceived of in terms of human rights. “‘Traditional’ societies—Western and non-Western alike—typically have had elaborate systems of duties. Many of those duties even correspond to values and obligations that we associate with human rights today. But such societies had conceptions of justice, political legitimacy, and human flourishing that sought to realize human dignity, flourishing, or well-being entirely independent of human rights.”⁴⁴ The question then becomes whether those societies, whose understanding of human flourishing takes place outside the rights discourse, can fit into the universal framework espoused by some rights advocates.⁴⁵

If non-Western countries have no established experience with rights, as such, then how can they be expected to be fluent in that language and adept at the practice of upholding them? Neither governments nor individuals typically react well to the outside enforcement of new standards with which they have no first-hand experience. Such attempts are often perceived by governments as patronizing since they implicitly assume the superiority of the Western mode of securing equality and protecting the vulnerable. Donnelly attempts to uphold

⁴⁴ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2003), 71.

⁴⁵ For arguments in support of the idea of human rights in various cultures see Sultanhussein Tabandeh, *A Muslim Commentary on the Universal Declaration of Human Rights* (Guildford: F.J. Goulding, 1970); Raul Mangalpus, “Human Rights are not a Western Discovery,” *Worldview* 4 (1978): 4-6. Adamantia Pollis and Peter Schwab, “Human Rights: A Western Construct with Limited Applicability,” in *Human Rights: Cultural and Ideological Perspectives*, ed. Adamantia Pollis and Peter Schwab (New York: Praeger, 1980); Dunstan Wai, “Human Rights in Sub-Saharan Africa,” in *Human Rights: Cultural and Ideological Perspectives* ed. Adamantia Pollis and Peter Schwab (New York: Praeger, 1980); Radhika Coomaraswamy, “Human Rights Research and Education: An Asian Perspective,” in *International Congress on the Teaching of Human Rights: Working Documents and Recommendations* (Paris: UNESCO, 1980); and Pauline Kolenda, *Caste in Contemporary India: Beyond Organic Solidarity* (Menlo Park, California: Benjamin/Cummings Publishing, 1978).

the applicability of human rights to traditions that have no familiarity with them. He writes, “There are no objective standards of relevance or applicability. Even demonstrating that most people in a country have been and continue to be unaware of the concept, or that they have adopted alternative mechanisms to realize human dignity, will not establish that human rights are objectively irrelevant.”⁴⁶ However, Donnelly’s own argument that a variety of other traditions have no conception of rights does little to bolster his claim. Take, for example, his description of the Islamic tradition.

The scriptural passages cited as establishing a “right to protection of life” are in fact divine injunctions not to kill and to consider life inviolable. The “right to justice” proves to be instead a duty of rulers to establish justice. The “right to freedom” is a duty not to enslave unjustly (not even a general duty not to enslave). “Economic rights” turn out to be duties to help provide for the needy.⁴⁷

While Donnelly’s statements are accurate, they do not appear to support his claim that rights are readily applicable in all cultures. To be sure, this is not to argue that there are not universal qualities possessed by all individuals, regardless of the culture in which they live. However, rights, as the language for upholding dignity, are not universally accepted, understood, or applicable.⁴⁸

Donnelly defends rights on different grounds than many theorists. Rather than provide a philosophical or metaphysical underpinning to human rights, he is concerned with how human rights are actually employed in the world. “Just as Burke looked at the rights that

⁴⁶ Donnelly, 84.

⁴⁷ Ibid., 72. Donnelly also outlines the absence of rights in Africa, Asia, India, and the pre-modern West. His arguments in each case are similar.

⁴⁸ It may be that the same statement can be made about needs. Perhaps some would argue that needs, as a concept, should not be considered universal either. It will be argued that needs can be considered universal, not because they are grounded in universal human rationality, but because research in clinical psychology tells us that needs are an innate part of the human experience.

existed within any given society, he looks at the rights practices that already exist at the international level and accepts them—or at least those that he finds acceptable—without the application of any other criteria.”⁴⁹ Donnelly’s argument for *consensus theory* is an important one. He states that human rights exist, not because of their grounding in abstract human rationality as Kant would have it—they may or may not be—but because of their enumeration in the various human rights’ documents that have been agreed upon by most of the international community. Rights are “imbedded in the concept of human dignity and what is required to live a life of dignity, and in social practices within culture, politics, and economies.”⁵⁰ Donnelly writes that his “Universal Declaration model is rooted in an attractive moral vision of human beings as equal and autonomous agents living in states that treat each citizen with equal concern and respect.”⁵¹ Rather than arguing for specific rights, he argues for non-substantive rights that are justified by an overlapping international consensus about them, thus “consensus theory.” He does so by examining, experientially, that which is common, politically, among those doctrines that uphold universal human rights.⁵²

However, his arguments fail to consider the importance of philosophical considerations in whether or not rights can be considered universal. Yet, Donnelly himself recognizes that

⁴⁹ A. Belden Fields, *Rethinking Human Rights for the New Millennium* (New York: Palgrave Macmillan, 2003), 50.

⁵⁰ Ibid.

⁵¹ Donnelly, 38.

⁵² Donnelly argues for individual rights, basing his position in Locke, but he simultaneously denies Locke’s rationalism, arguing solely for consensus about the nature of human rights. This rationalism, exalted and employed by Kant, is almost impossible to divorce from the language of rights and Donnelly’s predicament is common among rights theorists. These scholars seek to affirm rights while rejecting the rationalistic dogma underpinning them. Joan Tronto is another example, though her effort will be discussed in detail in the fourth chapter.

cultural-relativists have reason to object to the universal claims of human rights theorists. In an attempt to remedy this flaw in his argument, Donnelly argues that “the moral beliefs of large majorities are binding on dissenting minorities. This is inconsistent with the view usually held by human rights theorists,” and it is a dangerous standard to support, since it lends its self to a sort of moral tyranny of the majority.⁵³ Freeman notes that different cultures may have different understandings of human nature and thereby disagree on whether or not human rights are universal.

All moralities may seek to protect certain fundamental interests such as personal security by prohibiting, for example, murder and rape. Not all moralities, however, condemn racial discrimination or respect freedom of conscience. Underlying the supposed consensus on which Donnelly relies, are those ‘decisive’ issues of the philosophical anthropology. There is certainly no consensus on these decisive issues. Human rights activists might be able to ignore the disagreement among philosophers, if the philosophical doubts about universal human rights were not available to violators of human rights.⁵⁴

One need only consider examples such as the Indian caste system to see Freeman’s point borne out in practice. Historically, in the Indian formulation, human nature was not constant across individuals, and the *pariahs* of the caste system were considered less than human and “untouchable.”

Other authors have made similar arguments about the institutional universality of the rights discourse. As Fernando R. Tesón states, “The human rights movement has resisted the relativist attack by emphasizing that social institutions, including international law, are created by and for the individual. Consequently, as far as rights are concerned, governments serve as but the agents of the people. International norms aim to protect individuals, not governments,

⁵³ Freeman, 492.

⁵⁴ Ibid., 493.

by creating concrete limits on how human beings may be treated.”⁵⁵ That is, human rights are universal because people have been granted them by international institutions, whether their societies, cultures, or governments recognize them or not. Then, international institutions attempt to ensure that governments are upholding those rights. However, rights do not inhere in the individual, but are constructs developed to express the notion of the individual as the ultimate unit of moral concern, and therefore worthy of being protected by some sovereign power. Martha Nussbaum writes, “Many attacks on universalism suppose that any universalist project must rely on truths eternally fixed in the nature of things, outside human action and human history. Because some people believe in such truths and some do not, the objector holds that a normative view so grounded is bound to be biased in favor of some religious/metaphysical conceptions against others.”⁵⁶ Regardless of whether the adherence to rights is biased in favor of particular moral vision, it must be, at least marginally, foreign to those who have no history of rights.

The argument against universalism is also echoed by a variety of communitarian thinkers such as Alastair MacIntyre and Michael Sandel, among others, who disagree that humans are predetermined, individualistic, rational creatures who possess rights over the society of which they are a part.⁵⁷ MacIntyre famously argues that our rights-based language of morality has become obsolete, such that we must choose between Nietzsche’s will to power or

⁵⁵ Fernando R. Tesón, “International Human Rights and Cultural Relativism,” in *The Philosophy of Human Rights*, ed. Patrick Hayden (St. Paul: Paragon House, 2001), 392.

⁵⁶ Nussbaum, *Sex and Social Justice*, 37-8.

⁵⁷ In addition to the four thinkers mentioned, see also, Roberto Mangabeira Unger, *Knowledge and Politics* (New York: Free Press, 1975); Charles Taylor, “The Diversity of Goods,” in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (New York: Cambridge University Press, 1982): 129-44; and Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age* (Berkeley: University of California Press, 1984).

Aristotle's community-oriented virtue ethics. MacIntyre believes his conclusion is obvious. "It is that on the one hand we still, in spite of the efforts of three centuries of moral philosophy and one of sociology, lack any coherent rationally defensible statement of a liberal individualist point of view; and that, on the other hand, the Aristotelian tradition can be restated in a way that restores intelligibility and rationality to our moral and social attitudes and commitments."⁵⁸

Sandel takes issue with the notion that individual rights are the ultimate concern of liberal societies, and that they cannot be challenged. He argues that theorists should abandon rights talk in favor of a "politics of the common good," though the common good can be discerned at the community-level only.⁵⁹ In both cases, these communitarians argue that asserting universal rights is tantamount to obliterating the importance of the community and cultural norms in establishing individual identities and understandings of the good life. That is, "According to Sandel, the problem is that liberalism has faulty foundations: in order to achieve absolute priority for principles of justice, liberals must hold a set of implausible metaphysical views about the self. They cannot admit, for example, that our personal identities are partly defined by our communal attachments."⁶⁰ The liberal insistence on a rights discourse hinges on this metaphysical view of the self as an autonomous being constituted by her rationality. Again, this may be a partially accurate philosophical anthropology, but its universal application across

⁵⁸ Alasdair MacIntyre, *After Virtue* (Notre Dame: University of Notre Dame Press, 1984), 259. It is argued here that Nietzsche and Aristotle are not the only options, and that there is a third option, based in what we know about human psychology rather than in metaphysical assumptions about the nature of man.

⁵⁹ Michael Sandel, "Morality and the Liberal Idea," *The New Republic*, May 7, 1984: 16. For a detailed account of Sandel's argument regarding the flaws of liberalism and its rootedness in justice, see Michael Sandel, *Limits of Justice* (Cambridge: Cambridge University Press, 1982).

⁶⁰ Amy Gutmann, "Communitarian Critics of Liberalism," *Philosophy and Public Affairs* 14 (1985): 309.

cultures that have no such understanding of the self is problematic—an issue recognized by communitarians.⁶¹

Another primary reason that scholars tend to be critical of the rights discourse stems, again, from Kant's assertion of the relationship between duties and rights. If an individual claims that her rights are being violated, there must be a corresponding duty, incumbent upon another person, to prevent that right from being abridged. If it is unclear whose duty it is to enforce the rights of the claimant, then the duty may go unfulfilled. Particularly in terms of political and civil rights, duty is often couched in negative terms. That is, individuals may not be discriminated against before the law and they must not be prevented from exercising their political voice where appropriate. Likewise, Individuals (and groups) have a right *not to be* treated unfairly through legislation, discriminated against, physically harmed by others or institutions.⁶² While, in true Kantian form, it is argued that there are subsequent positive duties that follow from such rights, these are often unclear. Because the rights are meant to be sufficiently broad so as to encompass wide swathes of the population, so too the duties incumbent upon institutions and individuals tend to be unspecific as well.⁶³ While the reason for this lies in the attempt at broad application, one should ask whether there are individualized

⁶¹ For a succinct defense of deontological liberalism in the face of the communitarian critique, see Robert B. Thigpen and Lyle A. Downing, "Liberalism and the Communitarian Critique," *American Journal of Political Science* 31 (1987): 637-655.

⁶² For some arguments outlining negative duties, see Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, ed. Walter Wheeler Cook (Union, New Jersey: Lawbook Exchange Ltd., 2010) and Carl Wellman, *A Theory of Rights: Persons Under Laws, Institutions, and Morals* (Totowa: Rowman and Allanheld, 1985).

⁶³ For an account of standardized versus institutional rights and the subsequent duties, see Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002) and Zofia Stemplowska, "On the Real World Duties Imposed on Us by Human Rights," *Journal of Social Philosophy* 40 (2009): 466-87.

needs that are not being met and duties that aren't being performed because of the broad nature of the duties derivative of rights. This is not to say that negative rights can provide nothing. As Zofia Stemplowska notes, "we can see why simply asking institutions to observe the negative right not to harm will correlate with asking them to expand people's access to basic necessities."⁶⁴ However, the link is tenuous, and it certainly does little to provide for flourishing, even if it does allow some measure of dignity.

Generally, benevolently motivated actions are rejected by most theorists because they do not meet the requirements of a moral duty elaborated upon by Kant. Waldron argues, "Rights are necessarily correlative to duties: even the person who says she has a right to be left alone is implying the existence of a corresponding responsibility on others."⁶⁵ Yet, the notion of duty is surely applicable in other situations and has certainly entered into everyday language (a defense Waldron is quite happy to use when considering rights to have an extra-legal, moral imperative). As Joel Feinberg notes, "Etymologically, the word "duty" is associated with actions that are *due* someone else, the payments of debts *to* creditors, the keeping of agreements with promises, the payment of club dues, or legal fees, or tariff levies to appropriate authorities or their representatives. In this original sense of "duty," all duties are correlated with the rights of those *to* whom the duty is owed."⁶⁶ That is, in these instances, duty is indicative of another's rights, and another's rights indicate a duty for that right to be upheld. However, this is not the only understanding of the way duty can be conceived. Feinberg continues,

⁶⁴ Stemplowska, 469.

⁶⁵ Jeremy Waldron, "The Role of Rights in Practical Reasoning: 'Rights' versus 'Needs,'" *The Journal of Ethics* 4 (2000): 124.

⁶⁶ Joel Feinberg, "The Nature and Value of Rights," *The Journal of Value Inquiry* 4 (1970): 244.

On the other hand, there seem to be numerous classes of duties, both of a legal and a non-legal kind, that are *not* logically correlated with the rights of other persons. This seems to be a consequence of the fact that the word “duty” has come to be used for any action understood to be *required*, whether by the rights of others, or by law, or by higher authority, or by conscience, or whatever. When the notion of requirement is in clear focus it is likely to seem the only element in the idea of duty that is essential, and the other component notion—that a duty is something *due* someone else—drops off.⁶⁷

Feinberg prefers to establish a link between rights and claims rather than rights and duties. He writes, “All rights seem to merge *entitlements to do, have, omit, or be something with claims against* others to act or refrain from acting in certain ways.”⁶⁸ For most scholars, duties cannot be performed unless there are corresponding rights preceding them. While Feinberg disagrees, most scholars are less sanguine about replacing the notion of duty, preferring to maintain firmly the Kantian connection so central to modern rights theories. Conversely, some have asserted that there are duties that cannot be derived from any rights, such as duties of beneficence, or virtues such as courage.⁶⁹ The largely undeveloped argument that duties (here termed responsibilities) can be performed via a non-rights based discourse is one of the main concerns of this dissertation.

Another routinely-mentioned problem with rights-based discussions is their ability to act as trump cards in any disagreement. Ronald Dworkin has famously argued that rights serve as trumps because any time a policy initiative comes into conflict with a perceived right, the right may be used to nullify the policy.⁷⁰ Likewise, Mary Ann Glendon argues that rights, at

⁶⁷ Ibid.

⁶⁸ Ibid., 256.

⁶⁹ See Onora O’Neill, *Towards Justice and Virtue*, (Cambridge: Cambridge University Press, 1996), 136ff.

⁷⁰ Ronald Dworkin, “Rights as Trumps,” in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984).

least in developed countries, and most particularly in the United States, have a tendency to squelch discussion rather than foster it. She states,

By indulging in excessively simple forms of rights talk in our pluralistic society, we needlessly multiply occasions for civil discord. We make it difficult for persons and groups with conflicting interests and views to build coalitions and achieve compromise, or even to acquire that minimal degree of mutual forbearance and understanding that promotes peaceful coexistence and keeps the door open to further communication. Our simplistic rights talk regularly promotes the short-run over the long-term, sporadic crisis intervention over systemic preventive measures, and particular interests over the common good.⁷¹

Her point here is that rights do little to foster discussion and that those engaged in political debate often use rights as a way to end arguments when their own defenses are deconstructed. The claim is at least partially accurate, since one need only listen to school-yard debates and town hall meetings to hear the types of rights being asserted without justification. Surely such evidence is anecdotal, but it points to the type of simplistic argumentation Glendon is attempting to underscore. Scholars such as Richard H. Pildes have vehemently argued that rights are not “trumps,” but instead serve to “police the kinds of justifications governments can act on in different spheres rather than protecting atomistic interests in autonomy, or liberty, or dignity.”⁷² In the face of these criticisms, many attempts have been made to use different languages and doctrines by which to measure human well-being and make normative claims.

Some Alternatives to Rights – Justification, Needs, and Capabilities

A variety of scholars have recognized the importance of providing for something other than rights and duties, though, more often than not, these efforts end up reverting

⁷¹ Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1991), 15.

⁷² Richard H. Pildes, “Why Rights are not Trumps: Social Meanings, Expressive Harms, and Constitutionalism,” *The Journal of Legal Studies* 27 (1998): 725.

unnecessarily to a rights language. Those who have attempted to elucidate a theory of needs, have typically met with great resistance. Needs-based arguments for social or moral obligation are at least as old as Aristotle, though in contemporary discussions they originated with critical theorists in the Frankfurt School and with the Critical Legal Studies movement (CLS).⁷³ These legal scholars have argued that appeals to the courts on the grounds of rights violations should be eschewed in favor of dealing with such issues in duly elected representative institutions. Jeremy Waldron argues that such a claim is plausible, but that in the larger context, those who espouse needs as a more appropriate form of language for upholding human dignity are misguided. He writes,

The fact is, however, that the language of rights has now become the normal currency (or at least *a* normal currency) of ordinary political discussion. It is commonly used without prejudice to the question of whether views expressed in these terms should be embodied in a constitution, or made justiciable at the hands of courts empowered to strike down legislation. People use the language of rights to express their vision of the good society, or their conception of the respect we owe each other.⁷⁴

Such an argument justifies the language of rights based on the prevalence of the rights language in contemporary discourse, and the use of rights to express views about the good.

The first assertion is horribly short-sighted. That rationale would have rejected the Copernican

⁷³ It should be noted that some neo-Aristotelians like Philippa Foot and Elisabeth Anscombe have also contributed to the resurrection of Aristotelian ideas. See Philippa Foot, "Moral Beliefs," *Proceedings of the Aristotelian Society* 59 (1958-1959): 83-104, and G.E.M. Anscombe, "Modern Moral Philosophy," *Philosophy* 33 (1958): 1-19. Those critical theorists associated loosely with the Frankfurt School include predominantly leftist academics who sought to resurrect some aspects of Marxist philosophy. The best known of those theorists were Max Horkheimer, Theodor Adorno, Herbert Marcuse, and Jürgen Habermas. Based more firmly in philosophy than political thought, these scholars often attempted to resurrect a form of Hegelian dialectic and aimed at social change independent of ideology. For a summary of such theories, see David Held, *Introduction to Critical Theory* (Berkeley: University of California Press, 1980). The Critical Legal Studies movement sought to apply the ideas of the Frankfurt School particularly to American legal concerns. For a concise description of this movement see, Roberto Mangabeira Unger, "The Critical Legal Studies Movement," *Harvard Law Review* 96 (1983): 561-675. Descriptions of these particular movements are not the purpose of this paper, since a variety of theorists and philosophers have since espoused similar ideas not explicitly subsumed in either movement.

⁷⁴ Waldron, 116.

Revolution and maintained the established paradigm of a heliocentric universe on the basis that heliocentrism was the “normal currency.”⁷⁵ The second justification is not unique to rights and offers nothing exceptional, at least nothing that needs cannot also offer. In fact, it seems to undermine itself in some ways, since legal scholars often appeal to the problem of conflicting visions of “the good society” when trying to establish whether something can be considered a right.

However, in one respect, despite the flaws in some of his claims, Waldron is justified in drawing attention to the shortcomings of solely legal critiques of the rights language. The CLS movement focused primarily on the discussion of rights in constitutional systems, by litigators and judges, and in legal appeals. Waldron is correct to note that rights have infiltrated our everyday language and particularly the language of politics. “Today, it is natural to resort to rights-talk whenever one is advancing or opposing a political claim.”⁷⁶ While Waldron uses this to oppose the CLS movement, this dissertation asserts that critical theorists have often not taken their condemnation far enough. If rights are to be rejected in favor of a language of needs, this cannot be done solely in the legal realm; and the fact that rights are the “normal currency” or that they can express views of the “good society” should not place them on an untouchable pedestal. To the contrary, perhaps their infiltration into everyday language, their overuse, and their need to be established through law before implementation, detracts from their power as means of social change.

⁷⁵ While this dissertation is concerned with moral philosophy, and the example is from science, the Copernican Revolution has precedent in the philosophy of science for outlining ontological and epistemological shifts. See Thomas S. Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1996).

⁷⁶ *Ibid.*, 118.

Within the CLS tradition, Sonu Bedi has argued from the perspective of justification in limiting government action, and has managed to avoid reverting to rights. Bedi writes, “By simply holding that the democratic polity may only seek to minimize demonstrable, non-consensual harm, rights turn out to be obsolete. We should confidently reject them.”⁷⁷ Bedi argues that by accepting his “theory of Justification, we bypass the need to connect liberty with the question of ‘who governs’ us. We need not struggle over getting the square peg in the round hole. Our normative attention is rightly just on the democratic state.”⁷⁸ Thus, in Bedi’s formulation, the courts need not determine whether something is a right or whether it violates someone else’s rights. Instead, decision-making would be left with the *demos* or their representatives. Representative institutions need only act so as to minimize demonstrable, non-consensual harm. Rights need not be considered in Bedi’s formulation. While this particular argument is applied primarily to the United States, the extension of Bedi’s theory of justification certainly has possibilities elsewhere, although it presupposes a democratic system, thereby neglecting much of the world.

David Copp argues, though not explicitly against rights, for a basic needs principle in which “justice requires a state in favorable circumstances to enable its members to meet their basic needs throughout a normal lifespan.”⁷⁹ In Copp’s formulation, the basic needs principle can be extended from the domestic arena to the international one, and “issues of global

⁷⁷ Sonu Bedi, *Rejecting Rights* (Cambridge: Cambridge University Press, 2009), 93.

⁷⁸ *Ibid.*

⁷⁹ David Copp, “Equality, Justice and the Basic Needs,” in *Necessary Goods: Our Responsibilities to Meet Others’ Needs*, ed. Gillian Brock (Oxford: Rowman and Littlefield Publishers, Inc., 1998), 39.

distributive justice could arise even in a world in which every state is internally just.”⁸⁰ The basic needs principle stipulates that when there are injustices, in which some people cannot meet their basic needs, then “only the state, or the society acting through the state as its agent, is appropriately held responsible for discharging the duty regarding basic needs.”⁸¹ Thus, individuals and small groups typically have no duty to others, except where they can collectively organize a state or similar social structure to meet basic needs. Individuals only have duties in specific situations, namely, parenting, rescue scenarios, and in instances of climatological disasters such as famine. Ultimately, to deal with global concerns, Copp advocates a worldwide application of the basic needs principle, though he acknowledges that it is unclear how states can be held accountable for their actions and corruption stamped out.

In laying out his definition of what is just and unjust, Copp uses the example of Robert Nozick’s stranded Robinson Crusoes.⁸²

If some of the Crusoes have surplus resources while others are unable to meet their needs, the situation is perhaps tragic, but I submit that it is not *unjust* because, I assume, no one violated any duty in bringing it about, and no one has a duty to correct it. There are unhappy states of affairs that *would* be matters of injustice if they had been wrongly brought about or wrongly allowed to continue, and one could *call* them unjust. The term is not of any importance. But I work with a conception of an injustice as a state of affairs that is something to be *corrected*, and that is some agent’s *responsibility*, in that either the agent brought it about and is responsible for doing so, or the agent can correct it and ought to correct it and will otherwise be responsible.⁸³

⁸⁰ Ibid., 53.

⁸¹ Ibid., 44.

⁸² For the original account of the shipwrecked Crusoes, see Robert Nozick, *Anarchy, State, Utopia* (Oxford: Blackwell Publishing, 1974), 185ff.

⁸³ Copp, 43.

Here again, the problem of duty arises. Even though some of the Crusoes' have surplus and others are unable to meet their own needs, Copp assumes that no duty has been violated because the term duty has such rights-oriented connotations. While Copp's point is taken, his account is problematic in several ways. First, Copp asserts that inequality of resources is not unjust because no one violated any duty to bring it about, and because no one has a duty to correct it. Even if one were to accept the first reason for its lack of injustice, how could the latter be true? By Copp's own admission, individuals have duties to rectify catastrophes such as famine, presumably because they are urgent and because such a situation occurs through no fault of those suffering the famine. Yet, he denies inequality of resources the same standing, even though he has already acknowledged that it could have occurred through luck (or unluckiness). Second, it seems unclear what constitutes whether an agent "can and ought" to correct some (non)-injustice. Certainly some of the Crusoes could assist the others, regardless of whether it fits into Copp's definition of justice, which he claims is unimportant. If a state existed to assist the foundering Crusoes, then perhaps action by the state would be preferable. However, under Copp's formulation, the Crusoes should first form some sort of societal structure before helping the other Crusoes. Certainly, the reasons for this are to equitably distribute resources according to the contract drawn up by the Crusoes. Curiously, Copp tries to avoid using rights language, while still providing duties with the same force they have obtained in the rights discourse.⁸⁴

⁸⁴ It might be beneficial here to think of Locke's insistence upon the limits of property acquisition in the state of nature. If some of the Crusoes have a surplus of resources on a deserted island, their unwillingness to assist the others makes little sense, given that they cannot consume all their extra resources (the limit of spoilage). Likewise, Locke asserts that they *should* leave enough behind for others. Not doing so within that framework could be considered unjust.

Another strong proponent of needs over and above rights is Onora O’Neill, and her comments speak to those made by Copp about what should be considered a duty. She states, “Most of the ethical theories we commonly discuss pay little attention to needs. In utilitarian thinking, needs may be considered as they are reflected in desires or preferences; but we know that this is an imperfect reflection. Discussions of human rights often do not consider needs at all.”⁸⁵ Her assessment is an accurate one, and she attempts to start with a theory of human obligations, as opposed to rights, in order to address more fully the issue of human need. Her problem with the current rights discourse stems from its inability to discuss unspecified obligation, hearkening back to the earlier discussion of duty.

When obligations are unallocated, it is indeed right that they should be met, but nobody can have a right—an enforceable and claimable right—to their being met. As a result, in discussions of rights, it is *standardly* claimed that requirements to help others (or to be generous or sympathetic) are not owed to all others or to specified bearers of rights and that there thus can be no rights to receive help (or generous or sympathetic treatment).⁸⁶

Put more succinctly, since the claim to need assistance is not universal, and since it does not qualify as a special, individualized right, theorists do not give it the same force that they provide to rights claims. Concretely, “[o]thers’ need, even their hunger and destitution, will be thought injustice only if we can show either that there is a universal right to be fed, to which a perfect obligation corresponds, or that each hungry person has a special right to have his or her material needs met.”⁸⁷ Special rights are those, for example, claimed by the poor against the

⁸⁵ Onora O’Neill, “Rights, Obligations, and Needs,” in *Necessary Goods: Our Responsibilities to Meet Other’s Needs*, ed. Gillian Brock (Lanham, Maryland: Rowman and Littlefield Publishers, Inc., 1998), 95.

⁸⁶ *Ibid.*, 97.

⁸⁷ *Ibid.*, 99.

rich, as reparations for some past injustice or present wrongdoing. Again, the emphasis in the rights discourse insists that the claimant provide the burden of proof that her suffering is the result of some transgression by an outside power. O'Neill attempts to push obligation into the Kantian system of duties, forgetting that, for Kant, such duties are derivative of universal human right, and she admits that her conclusions are hasty and not well cited.⁸⁸ However, O'Neill's inclination toward obligations to meet needs, instead of duties to uphold rights is not dissimilar from the argument herein.

In those arguments for human need, few systematically identify needs that all human beings possess. And even among authors that have attempted to develop indicators representing needs or quality of life, very few attempt to address those needs that are deemed to be rooted in our understanding of the human psyche, in human psychology. Sen and Nussbaum argue for a capabilities approach, though only Nussbaum provides a specific list of capabilities. Deepa Narayan and her team provide a set of dimensions that indicate individual well-being and Robert Cummins develops quality of life domains.⁸⁹ Authors who have dubbed their indicators or indexes in terms of need include Doyal and Gough who outline basic human needs, and Maureen Ramsey, who attempts to delineate universal psychological needs by employing Maslow's hierarchy, among others.⁹⁰ Importantly, Doyal and Gough outline a theory

⁸⁸ This is not intended as a swipe at O'Neill. She states, "All of this is said in some haste and without detailed reference to the Kantian texts" (110).

⁸⁹ Deepa Narayan, Robert Chambers, Meera Kaul Shah, and Patti Petesch, *Voices of the Poor: Crying out for Change* (Oxford: Oxford University Press for the World Bank, 2000); Robert E Cummins, *Representations, Targets, and Attitudes* (Cambridge, Mass.: MIT Press, 1996); and Elleanora Gullone and Robert E. Cummins, *The Universality of Subjective Wellbeing Indicators: A Multi-Disciplinary and Multi-National Perspective* (Dordrecht, The Netherlands: Kluwer Academic Publishers, 2002).

⁹⁰ Len Doyal and Ian Gough, *A Theory of Human Need* (Basingstoke, UK: Palgrave Macmillan, 1991) and Maureen Ramsay, *Human Needs and the Market* (Aldershot, UK: Avebury, 1992).

of human need that emphasizes the most basic needs for health and autonomy and asserts individual rights to meet those needs. Maureen Ramsey comes close to replicating Abraham Maslow's hierarchy of needs, though she specifies a separate category for the fulfillment of sexual needs.⁹¹

Finally, Michael Ignatieff seems aware of problems of rights, but also the potential drawbacks of discussing need, though he presents an argument for needs as the basis of social discussion. In *The Needs of Strangers*, Ignatieff writes that "In the attempt to defend the principle that needs do make rights, it is possible to forget about the range of needs which cannot be specified as rights and to let them slip out of the language of politics."⁹² As Ignatieff accurately notes, "The disadvantage is that many essential requirements of a decent life—love, respect, solidarity with others—cannot be sensibly justified as necessary for personal freedom."⁹³ Ignatieff makes some improvement on the typical needs-based arguments, by recognizing the broad swath of needs that cannot be classified as rights. Most other thinkers seem inclined to recognize needs, and then proceed to compartmentalize needs into the language of rights. While Ignatieff attempts to combat this impulse, he too slips back into the rights language. Such discussions beg the question, what is the added benefit of debating needs, if the language of their implementation should be rights? The impulse exhibited by Ignatieff is the correct one. He recognizes that there are some human needs that just do not

⁹¹ For a concise summary of these arguments and other attempts at developing indicators of need or well-being, see Sabina Alkire, "Dimensions of Human Development," *World Development* 38 (2002): 181-205.

⁹² Michael Ignatieff, *The Needs of Strangers*, (New York: Picador Metropolitan Books, 1984), 13.

⁹³ *Ibid.*

lend themselves to being called rights, but he does not offer a satisfactory, or fully developed, alternative to a rights-based discourse.

In most cases, those scholars who advocate some form of a needs-based discourse do not seem to reject the language of rights entirely. This is understandable, since teasing out both the bases and the implications of a new discourse for providing justice requires rejecting what has been a stable, if flawed, system of thought. It seems much more defensible to begin with a needs-basis and attempt to place it neatly into the pre-existing rights language. The problems mentioned above, those of universality, correlative duties, and rights as trumps are serious flaws in the intellectual foundation and the practical applicability of rights. However, perhaps the most damning criticism of rights comes from their emphasis on what human beings *are*. Purveyors of the rights language make the Kantian claim that human beings *are* free and rational creatures, and they therefore deserve to be granted certain universal rights. Again, while the aim of this statement is admirable, it neglects what human beings qua human can *become*. Not all scholars are oblivious to this line of argument, and they recognize that the rights language is not the best tool for addressing issues of potentiality. The most famous attempt to deal with what humans may *become* is found in the work of Amartya Sen and Martha Nussbaum and in the form of human capabilities.

Rights and the Absence of Potentiality

Perhaps the most studied complement to rights has been the capabilities approach advocated in two slightly different ways by Sen and Nussbaum. The term alternative is avoided

here, for capabilities are not incompatible with rights.⁹⁴ At the very least, however, they do de-emphasize the rights discourse in favor of human functioning and capabilities. While the concerns of each author are slightly different, it is clear that both are attempting to account for human potentiality, particularly Nussbaum, who is more sympathetic to teleological concerns. For Sen, in his seminal work, *Development as Freedom*, the importance of wealth in determining various levels of (un)freedom and the capabilities it provides cannot be underestimated. The great inequality in wealth among nations and peoples generates various levels of unfreedom, “denying to millions the basic freedom to survive.”⁹⁵ The thrust of the argument rests in both process and actual opportunity. That is,

[i]t is necessary to avoid confining attention only to appropriate procedures (as so-called libertarians sometimes do, without worrying at all about whether some disadvantaged people suffer from systematic deprivation of substantive opportunities), or, alternatively, only to adequate opportunities (as so-called consequentialists sometimes do, without worrying about the nature of the processes that bring the opportunities about or the freedom of choice that people have). Both processes and opportunities have importance of their own, and each aspect relates to seeing development as freedom.⁹⁶

While Sen is an economist, and thus his primary concern rests with the distribution of wealth to underdeveloped regions for the promotion of freedom and equality, the emphasis in the above excerpt on both the process for ensuring freedom and the actual opportunities that people

⁹⁴ Neither author presents the capabilities approach as opposed to rights, but the very structure and content of the arguments suggest that rights lack the ability to address certain issues. However, Nussbaum, particularly, attempts to fit her approach into a rights discourse. Essentially, she claims that capabilities can act as a basis for expanding the list of rights governments and international organizations should uphold.

⁹⁵ Sen, *Development as Freedom*, 15.

⁹⁶ *Ibid.*, 17.

have is crucial. For Sen, freedom serves as both the end of developmental enterprises, and process for engaging in such undertakings.⁹⁷

Freedom and capabilities are nearly synonymous for Sen, as he argues that “in analyzing social justice, there is a strong case for judging individual advantage in terms of the capabilities that a person has, that is the substantive freedoms he or she enjoys to lead the kind of life he or she has reason to value. On this perspective, poverty must be seen as the deprivation of the basic capabilities rather than merely as lowness of incomes.”⁹⁸ Sen makes an important advancement here by acknowledging that low income is merely an instrumental component of poverty, not something intrinsically negative. However, the lack of capability (freedom) can be considered intrinsically bad because it denies to individuals the free agency that is considered a constituent facet of what it means to be human. These freedoms typically become formulated in terms of rights. That is, if a person should have the capability for *life* or for *bodily health and integrity*, then there will be a corresponding right to uphold these things. Sen, by asserting that individuals need the capability to make choices about their life, is implicitly addressing issues of potentiality, since he leaves it up to individuals to decide which course in life is appropriate for their goals and desires. Yet, merely providing the opportunity to exercise capabilities seems to fall short of guaranteeing that each person is in a position to exercise potentiality.

Nussbaum improves on Sen by providing a specific list of capabilities. Her advancement of capabilities is not dissimilar from Sen’s but it is more dependent upon Aristotelian teleology and is deeply concerned with the particular plight of women in the developing world. Her list

⁹⁷ See especially chapter 2.

⁹⁸ Sen, *Development as Freedom*, 87.

includes the following set of capabilities: 1) life, 2) bodily health, 3) bodily integrity, 4) senses, imagination, thought, 5) emotions, 6) practical reason, 7) affiliation, 8) concern for other species 9) play, and 10) political and material control of one's environment.⁹⁹ Nussbaum is clear to point out that the list is one of "capabilities rather than of actual functionings, because [she argues] that capability, not actual functioning, should be the goal of public policy."¹⁰⁰ The list she produces is helpful in some regards. First, using common sense, government cannot force human beings to experience all capabilities, such as, emotion. Therefore, her stipulation that policy should only be concerned with capability, not functioning, makes sense in this light. If policy becomes concerned with functioning itself, instead of merely providing the circumstances through which an individual can actualize her potential, then it will have taken away the individual autonomy under which these choices should be made. Thus, the justification for such an approach is understandable, but it is also lacking in some respects. Is it true that governments must only provide an individual with the capability to live? Surely representatives are more beholden to their constituents than that, and surely government must ensure that life is actively protected and cultivated.

Sen and Nussbaum are never clear about what providing a capability means, specifically. Surely such a vague approach is adopted to avoid the possibility of an endlessly expanding list of particulars that government should provide. However, the amorphous nature of capabilities (as freedom) leaves many unanswered questions. For example, an examination of Nussbaum's

⁹⁹ For a clearer enumeration of these capabilities, see her chapter "Women and Cultural Universals," in *Sex and Social Justice*. The second and third capabilities can be a source of confusion. She distinguishes between bodily health, which requires adequate nourishment and shelter, and bodily integrity, which ensures free movement from place to place and choice in reproductive concerns.

¹⁰⁰ Nussbaum, *Sex and Social Justice*, 41.

third capability, bodily integrity, presents problems. She defines this capability as “[b]eing able to move freely from place to place; being able to be secure against violent assault, including sexual assault, marital rape, and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.”¹⁰¹ Since, Nussbaum’s focus is primarily the plight of women, and this effort is not concerned with a particular gender, an assessment of the first point will suffice. Given this definition, policy should be directed toward providing the capability for people to move freely. This could mean constructing adequate infrastructure so as to allow individuals to transport themselves, and potentially their goods, from place to place. So, presumably, government (or possibly some other non-governmental organization) would be responsible for building roads. However, what if an individual has a low income, and cannot afford transportation? Would the government be responsible for providing public transport? If the government deems public transportation necessary for functioning, what is to be done if that same person lives sufficiently far from transport links so as to practically disallow the possibility for free movement? The government would have to provide some other mechanism for travel, or, it would have to insist that the individual move from his or her current location. However, this seems counterintuitive, since it removes the individual’s ability to choose where to live.

Problematically, for Sen and Nussbaum, because they do not make material claims about the content of capabilities and the subsequent functioning of individuals, they leave the capabilities approach lacking in its ability to address actual human well-being and functioning. It seems that capabilities are severely limited in their capacity to proceed beyond the often

¹⁰¹ Ibid.

vague list provided by Nussbaum, and this, as much as any other reason, accounts for why rights must remain the language of capabilities' implementation. So, if rights are the language through which capabilities are realized, then what is the added advantage of referring to capabilities at all? What do capabilities address that rights do not? Why should the rights language not be expanded and cultivated in place of capabilities? It seems, in part, that simply converting capabilities to rights is difficult because the claim to a "right to play" or a "right to be angry" does not resonate, as Nussbaum undoubtedly recognizes. These are literal and mundane examples taken from Nussbaum's list of capabilities, but the point stands. Yet, precisely because of these mundane examples, the advantage of capabilities becomes evident, despite its drawbacks. The ability of the approach to address issues of potentiality, above and beyond what individuals ontologically are perceived to be, is its great strength.

Conclusion

The interminable link between rights and rationalism established in the writing of Kant is alive and well in contemporary scholarship on ethics and politics. The deontological notion that individuals and states must perform their duty to uphold right, while perhaps universal in its noumenal character, cannot be considered universally experienced. It is worth acknowledging that since rights may make lives better, they should not be flippantly discarded. Yet, rights and the rationalist doctrines that uphold their necessity, are also severely limited in their ability to address human potentiality, subjective aims, and the full range of human experiences. Scholars, such as Dworkin acknowledge the drawbacks of rights in fostering community discussion of the goods necessary for individuals to experience a more fully-flourishing life. Likewise, MacIntyre seems to realize the importance of potentiality, but

neglects other elements of human-being. And, feminist theorists such as Tronto and Gilligan have successfully developed alternatives to Kant's rationalism.

Among those theorists who propose needs in some form, most do not recognize the importance of potentiality to their arguments, nor do they note the limitations of the rights discourse in dealing with issues of potentiality. Nussbaum and Sen, whose efforts to address potentiality are an improvement on most alternatives to rights, both fail to address the inability of the rights language to adequately account for the variety of things human beings may become. That is, they use capabilities to address potentiality, but simultaneously try to implement rights as capability's mode of implementation, even though the language of rights is not conducive to discussions of potential. It is, perhaps, the issue of human potential that most lends itself to a discussion of needs instead of rights. Historically, great emphasis was placed on potentiality, or possibility, but in contemporary political theory, what *may be* is often suppressed by the desire of liberal rights theorists to address solely what *is*. This is due in large part to the legacy of Kant, and so the heritage of need and potentiality deserves further attention. In his effort to find universal moral principles, Kant was keen to employ that which already had been deemed universal—human rationality. Since reason became the primary constitutive element of human nature, its universal character allowed for a rights discourse that was increasingly uniform and narrow in its approach. Potentiality has the ability to allow for infinite possibility, and historically, has a strong relationship to discussions of need. This is particularly true in Aristotle, though the link was also examined closely by Hegel and Marx. Thus, these thinkers provide the opportunity for resurrecting the importance of potentiality and human need.

CHAPTER TWO

HUMAN POTENTIALITY AND THE ADVANTAGE OF NEEDS

The most serious flaw of the human rights discourse is its inability to adequately deal with the innumerable particularities of human existence and human potentiality in all its forms.¹ Potentiality, as both universal and radically subjective, serves to illustrate commonality, while allowing for a plethora of individual goals and objectives. Rights, though they emphasize universality, do little to deal with particular experiences, interests, and needs. As David Kennedy notes, “A one-size-fits-all emancipatory practice underrecognizes and reduces the instance and possibility for particularity and variation.”² Although, historically, concern for human potentiality was of utmost importance, in contemporary discourse it receives less attention, in part because of the dominance of rights.³ Even those who do attempt to address potentiality often employ rights, which, it is argued here, do not sufficiently account for human potential. For example, Martha Nussbaum asserts that the capabilities approach should be considered “a species of a human rights approach.”⁴ She recognizes that, historically, writers, such as Aristotle, who have addressed potentiality have seen no need for the concept of rights,

¹ In some ways, the term possibility, offered by Martin Heidegger, is more appropriate, since some postmodern thinkers object to the term potentiality as suggesting a predetermined end for all human beings. This critique is not entirely convincing, and I have maintained the term potentiality since it is more widely accepted in the literature, both historical and contemporary, and less esoteric. For Heidegger’s consideration of possibility, see Martin Heidegger, *Introduction to Metaphysics* (New Haven: Yale University Press, 2000), 32, and idem., *Being and Time*, trans. John Macquarrie and Edward Robinson (New York: Harper and Row, 1962), 264ff.

² David Kennedy, “The International Human Rights Movement: Part of the Problem?” *Harvard Human Rights Journal* 3 (2001): 111.

³ The turn in modern philosophy, from discussions of what individuals “ought” to be, or “may” be, to discussions of what they “are” is partly responsible for this shift away from considerations of human potentiality and other teleological concerns.

⁴ Martha Nussbaum, “Human Rights and Human Capabilities,” *Harvard Human Rights Journal* 20 (2007): 21.

and that the absence of rights, in her opinion, is a great weakness in Aristotle. Of course, one might ask whether the notion of potentiality should be considered important for political philosophers today. The answer here is a resounding “yes.” As such, this chapter will first consider the failure of a rights discourse to account for human potentiality. The turn away from potentiality comes from the modern attempt to examine what *is* rather than what *may be*. Unsurprisingly, this turning away from potentiality is due in large part to Kant, and contemporary rights scholars are typically not bothered by the undue consideration given to issues of human potential. In an effort to combat the Kantian impulse, and deemphasize the separation of the noumenal and phenomenal realms, the chapter will emphasize the importance of potentiality and its role in Aristotle’s work, noting the departure of Martha Nussbaum’s capabilities approach from his original account. In the attempt to make his understanding of potentiality and virtue applicable both universally and subjectively, Aristotle also provides an important account of how characteristics can be both universal and particular. This reconciliation of subjective and universal ends is important, as it provides a framework for discussing the universal and subjective nature of potentiality and need. The chapter then will examine the ways in which Hegel and Marx resurrect the notions of human potentiality and need, so prominent in Aristotle’s work, to modern moral and political concerns.⁵

Rights and the Absence of Potentiality

One of the first thinkers to address questions of human potential systematically was Aristotle. Aristotle was clear to distinguish between the actual, *energeia*, and that which is

⁵ This is not an attempt to be disingenuously selective, so as to include only those philosophers who support the theory herein. Rather, the choice of authors is due mainly to the amount of attention each gives to issues of need or potentiality. Their vast chronological disparity is not a concern since the idea of need is not particularly time dependent.

possible, *dynamis*, and the distinction was continued through the scholastic tradition as *potentia* and *actus*. When Thomas Hobbes composed the *Leviathan*, he eliminated *dynamis*, Hobbes replaced the *summum bonum* with the *summum malum*, thereby negating the final cause discussed by Aristotle in favor of mere descriptions of the actual.⁶ For Kant, the notion of potentiality, or possibility, was not considered a characteristic of an object. That is, potentiality was not a way of being, but merely referred to the perceived relationship between that object and some subject. Just as Kant's strict deontological doctrine has permeated contemporary ethical scholarship in the form of duties and correlative rights, so too has his de-emphasis of potentiality led to its under-representation in both the rights and the needs discourses. As such, contemporary rights scholars rarely address issues of human potentiality, and when they do, the relationship between the concepts is often unclear. For example, scholars such as Jack Donnelly have argued that the human rights regime articulates "the choice of a particular moral vision of human potentiality and the institutions for realizing that vision."⁷ Likewise, the Universal Declaration on Human Rights states, "Everyone has duties to the community in which alone the free and full development of his personality is possible."⁸ This statement from the Declaration is curious, since it implies that individual duty to community is for one's own

⁶ For Aristotle's discussion of the four causes of movement and change, see Aristotle, *Metaphysics: Books I-IX*, trans. Hugh Tredennick, Loeb Classical Library (Cambridge, Mass.: Harvard University Press, 1996), 1013a. The four causes are also discussed in Book II of the *Physics*. See Aristotle, *Physics I-IV*, trans. P.H. Wicksteed and F. M. Cornford, Loeb Classical Library (Cambridge, Mass.: Harvard University Press, 1989). For the Hobbesian account of the fear of death as the *summum malum*, see Hobbes, *Leviathan*, I.xiii.6-14. For a concise description of Hobbes's refutation of the Aristotelian final cause, the adoption of a *summum malum*, and the effect of these on the social and political order, see James L. Wiser, "Thomas Hobbes," *Political Philosophy: A History of the Search for Order* (Upper Saddle River, NJ: Prentice-Hall, Inc., 1983), 193-208.

⁷ Jack Donnelly, *The Concept of Human Rights* (New York: St. Martin's Press, 1985), 31.

⁸ See "The Universal Declaration of Human Rights"

development. There is no explicit right mentioned here, but the use of the term duty still implies Kant's deontology. Likewise, it insinuates that one's service to community is for one's own self-fulfillment, and the statement mentions nothing of the fulfillment of others. So, while community is involved, this section of the Declaration affirms an egoistic vision of man as striving for his own self-fulfillment—a vision to which modern philosophical inquiry has often been sympathetic and supportive.

Donnelly's statement about potentiality more directly relates the specific notion of potentiality to the language of human rights. Unfortunately, he does not adequately demonstrate how rights address questions of potential. Rights, in both their theoretical and historical foundations, as well as their practical applications, are concerned primarily with *energeia* at the expense of *dynamis*, *actus* to the possible detriment of *potentia*. Donnelly's attempt, and failure, to adequately address potentiality through right is rooted in Kantian metaphysical assumptions. Importantly, these metaphysical assumptions account for Kant's neglect of potentiality as a way of being. Kant understood potentiality and actuality only as modal categories, though he argued that from his logical propositions flowed metaphysical principles. Kant states,

For when we deal with appearance, the objects, and indeed even the properties that we ascribe to them, are always regarded as something actually given—except that insofar as the object's character depends only on the subject's way of intuiting this given object in its relation to him, we do also distinguish this object as *appearance* from the same object as object *in itself*. Thus when I posit both bodies and my soul as being in accordance with the quality of space and time, as condition of their existence, I do indeed assert that this quality lies in my way of intuiting and not in those objects in themselves.⁹

⁹ Kant, *Critique of Pure Reason*, 101.

In his formulation, potentiality, or possibility, merely indicated a sub-category (to mimic Aristotle's categories) of intuiting, or conceptual knowledge.¹⁰ Kant maintained the subject-object distinction in his understanding of human potentiality. For the sake of clarity, a short restatement of Kant's metaphysical assumptions is necessary.

Kant divides the self into the noumenal and the phenomenal, in which only the noumenal realm is indicative of true reality. The noumenal is the realm of freedom, the being-in-itself, that which is considered real, free, and universal. "The will is thought of as a faculty of determining itself into action in accordance with the representation of certain laws, and such a faculty can be found only in rational beings. Now what serves the will as the objective ground of its self determination is an end; and if this end is given by reason alone, then it must be equally valid for all rational beings."¹¹ Kant's emphasis on the freedom of the will means that understanding is based in the autonomy of the will and its ability to legislate that which is equally applicable to all others. "Autonomy of the will is the property that the will has of being a law to itself (independently of any property of the objects of volition)."¹² Kant continues, "The moral imperative must therefore abstract from every object to such an extent that no object has any influence at all on the will, so that practical reason (the will) may not merely

¹⁰ The Aristotelian categories were substance, quantity, quality, relation, place, time, action, passion, position, and state. Aristotle, who created these categories of being from observations of the world and then derived their logical equivalents, speaks most extensively of potentiality and actuality within the *Categories*. See Aristotle, *Categories and De Interpretatione*, trans. J. L. Ackrill (Oxford: Clarendon Press, 1963), 1b25ff. Kant, on the other hand, revised Aristotle's categories of being into categories of understanding, or logic. His twelve categories occur in four groupings, or moments: quality with categories reality, negation, limitation; quantity with categories unity, plurality, totality; modality with categories existence, possibility, necessity; and relation with categories inherence and subsistence, causality and dependence, community. See Kant, *Critique of Pure Reason*, 102-69.

¹¹ Kant, *Grounding*, 35.

¹² *Ibid.*, 44.

minister to an interest not belonging to it but may merely show its own commanding authority as the supreme legislation."¹³

The phenomenal is the determined realm of appearance, and, crucially, only in the phenomenal realm is there diversity of opinions, feelings, needs and desires. Indeed, even other individuals occur in the phenomenal realm. Likewise, human potentiality is relegated to the realm of the phenomenal, and thus legislation should not be constructed with a view to particularity, possibility, or potentiality. Kant asserts,

On the other hand, what contains merely the ground of the possibility of the action, whose effect is an end, is called the means. The subjective ground of desire is the incentive; the objective ground of volition is the motive. Hence there arises the distinction between subjective ends, which rest on incentives, and objective ends, which depend on motives valid for every rational being. Practical principles are formal when they abstract from all subjective ends; they are material, however, when they are founded upon subjective ends, and hence upon certain incentives.¹⁴

Kant is clear that subjective ends are not valid for all beings and therefore cannot be considered when making claims about the rightness of moral actions. The reasoning for this surely rests on the idea of equality for all rational creatures, but it neglects much of what it means to be human. Indeed, Kant argues that individuals should wish to be free from such subjective ends, since they cannot contribute to our moral reasoning and they do not distinguish us from other non-rational creatures.

Kant argues that through moral reasoning, individuals distinguish themselves from other life forms, and can come to some conclusions about the rightness or wrongness of moral actions. This moral reasoning occurs in the noumenal realm, and provides individuals with

¹³ Ibid., 45.

¹⁴ Ibid., 35.

some understanding of the categorical imperative. Thus, rights, as evident through rational comprehension of the universal law, aim to protect freedom. And, since freedom, specifically freedom to exercise one's will, is the constituent facet of the noumenal realm, it is also the primary concern of right. Therefore, rights are aimed at protecting the rational being-in-itself that is claimed to be indicative of the true reality and are not concerned with the phenomenal realm in which particular opinions, feelings, needs and desires become manifest. Kant's placement of rights solely in the noumenal realm is necessitated by his Cartesian understanding of the human experience as dual in nature.¹⁵ The noumenal, as the realm of truth and freedom becomes both the source and the placement of moral concerns, conceptualized in terms of right. And, because the noumenal and phenomenal are perpetually distinct, there is an insufficient melding of phenomenal concerns and noumenal ones.

Scholars today, who are concerned with maintaining the strict universality of rights (though perhaps correct in their intentions), perpetuate the Kantian focus on the noumenal, though they generally do not reference it directly. In part, the emphasis on rights comes from Kant's equating of needs and desires, and his insistence that needs are based on inclinations that have no inherent value. He argues that individuals should strive to banish these sense-inclinations from their lives and pursue only objectively valuable actions. He writes,

¹⁵ For a concise summary of Descartes on this matter, see Rene Descartes, *Discourse on Method and Meditations on First Philosophy*, trans. Donald A. Cress (Indianapolis: Hackett Publishing Company, 1998). Just as Descartes posited the realms of subject and object, in which only the cogito was subjective and even the individual's body was object, so too does Kant divide experience into a duality. For both Descartes and Kant, the true reality is accessible only through reason and the experienced world of the senses is entirely separate from the subjective realm of truth. For example, Descartes describes himself as a "thinking thing." Descartes writes, "From this I knew that I was a substance the whole essence or nature of which is simply to think, and which, in order to exist, has no need of any place nor depends on any material thing" (19). If human potentiality is to be addressed properly, then moral philosophers must take care to consider the implications of Descartes' subject-object distinction when describing human experience.

All the objects of inclinations have only a conditioned value; for if there were not these inclinations and the needs founded on them, then their object would be without value. But the inclinations themselves, being sources of needs, are so far from having an absolute value such as to render them desirable for their own sake that the universal wish of every rational being must be, rather, to be wholly free from them.¹⁶

Perhaps owing largely to this conflation of need and desire, inclination and necessary action, most contemporary theorists reject need as a legitimate source of obligation. Ultimately, as has been shown, Kant argues that potentiality, or possibility, lies in the phenomenal realm of uncertainty and cannot, therefore, be addressed through government. As such, only pure actuality may be considered in establishing deontological principles, of duty, law, and right.

The insistence on addressing only the actualized noumenal realm is understandable, since Kant was reacting to an understanding of law established differently in different cultures. Kant's insistence on *a priori* rules of morality, independent of culture and history, reflects his reaction to Rousseau and is, in turn, criticized in Marx's assertion of the importance of historical understanding. Kateb states of Marx, "Historical understanding is required to make vivid our sense of human potentiality, which first and last depends on the human mind or psyche. As Rousseau says, humanity's unique capacity for general ideas makes its perfectibility, its realization of potentialities, possible."¹⁷ Yet, Kant hoped to avoid linking potentiality with historical understanding, opting instead for actuality and principles knowable outside empirical observation or historical knowledge. Considering Kant's influence on contemporary scholarship, it is not surprising that most political philosophers are preoccupied with ensuring that freedom of thought and action is universally guaranteed, and that individuals are granted

¹⁶ Kant, *Grounding*, 35.

¹⁷ George Kateb, *Human Dignity* (Cambridge, Mass.: Harvard University Press, 2011), 124.

universal rights to the greatest extent possible, often at the expense of some of the more mundane considerations for life. Moreover, as was addressed in the previous chapter, it explains the desire to avoid culturally relative doctrines. Likewise, many liberal rights theorists today are concerned with rights to the extent that they are civil rights, and that the exercise of such entitlements promotes popular sovereignty and democratic regimes. As Christian Bay notes, these theorists and practitioners "tend to focus unduly, in both their domestic and international perspectives, on purely political liberties dear to the affluent or the articulate, rather than on the liberties most basic for elementary human well-being."¹⁸ Given Kant's enduring influence, this focus makes sense, since liberty, as akin to freedom, provides for the exercise of the autonomous will in accord with universal law.

However, the phenomenal realm, as the realm of uncertainty, accident, and change is not addressed in the Kantian emphasis on the noumenal.¹⁹ For Kant, potentiality was merely a mode of thought, and not a category of being. If potentiality is considered as the latter, it must be addressed across the entire spectrum of human action, not just the contemplative elements. Indeed, the Cartesian framework of subject and object, and Kant's understanding of noumenal and phenomenal, present an inaccurate picture of the human person and her relation to other people and objects. Thus, the goal of addressing need herein is to consider both the universal aspects of human existence, and also the particularities and potentialities of distinct individuals. That is, theorists must discard their unintentional preoccupation with noumenal considerations and examine human experience in a more holistic manner. Needs perform this function to a

¹⁸ Christian Bay, "Needs, Wants, and Political Legitimacy," *Canadian Journal of Political Science/Revue canadienne de science politique* 1 (1968): 241.

¹⁹ More appropriately, the distinction between the noumenal and the phenomenal should be discarded in favor of a more holistic understanding of the human person and her motivations.

greater extent than rights do. Needs, discussed by Aristotle, Hegel, and Marx, occur at the most basic of human levels, including the vegetative and animalistic, as well as the highest levels of human functioning. Need has not typically been considered a legitimate force upon which to act within the Kantian understanding; need belongs within the realm of uncertainty and change. Individuals may have a plethora of different and distinct needs; thus constructing an overarching theory of needs may be impossible. Conversely, needs may also be too abstract, which renders them nearly incapable of being met or sufficiently classified. Part of the problem resides with the assumption that needs, as quite subjective and particularistic, admit of no discernable, universally applicable characteristics. Yet, this problem can be, and should be, addressed through a more nuanced reflection on how universal needs can be experienced in a subjective and particular way. Additionally, by discarding the notion of a separation between the noumenal and phenomenal, theorists can begin to appreciate the entirety of human experience. An examination of Aristotle's understanding of potentiality and human need, as well as his reconciliation of the universal and the particular will be especially productive in addressing these concerns. Likewise, Hegel and Marx both provide a modern reinterpretation of Aristotle's focus on human potentiality and need.

Capability, Potentiality, and the Priority of Actual Functioning

Before outlining the relationship between potentiality and need, it is important to understand, first, precisely what potentiality means in philosophical discourse. The earliest and most extensive treatment of potentiality came from Aristotle. In Aristotle's formulation, potentiality signified a type of being indicative of the many possible types of actualization in which an individual or object could engage. Actualization was merely a realized potential. It is

the Aristotelian understanding of potential that Kant neglects, and that is lamentably lost in most of the literature on rights and needs. As Aristotle states, “We must, however, distinguish when a particular thing exists potentially, and when it does not; for it does not so exist at any and every time.”²⁰ Aristotle’s definition of potentiality rests on whether or not something is capable of being something else. He writes,

[J]ust as not *everything* can be healed by medicine, or even by chance, but there is some definite kind of thing which is capable of it, and this is that which is potentially healthy. The definition of that which as a result of thought comes, from existing potentially, to exist actually, is that, when it has been willed, if no external influence hinders it, it comes to pass; and the condition in the case of the patient, *i.e.* in the person who is being healed, is that nothing in him should hinder the process. Similarly a house exists potentially if there is nothing in X, the matter, to prevent it from becoming a house, *i.e.*, if there is nothing which must be added or removed or changed; then X is potentially a house; and similarly in all other case where the generative principle is external. And in all cases where the generative principle is contained in the thing itself, one thing is potentially another when, if nothing external hinders, it will of itself become the other.²¹

So, there are internal and external forms of potentiality, for both objects and humans. He considers some thing, or some person, to have potentiality if it could become otherwise, without hindrance from any external force, and without the addition of something external to its matter. In this way, an outside force may act on a block of bronze to transform its potentiality into actually being a statue, causing it to come-to-be from without.

As is typical of Aristotle, he further divides and categorizes the concept of potentiality. Aristotle notes that either potentiality may be innate in a person or thing, or, in the case of people, it may be learned. The ability to walk, for example, is an innate potentiality characteristic of a baby. The ability to philosophize or paint portraits, is a potentiality that

²⁰ Aristotle, *Metaphysics*, 1048b38.

²¹ *Ibid.*, 1049a5.

individuals have, but that must also be learned and cultivated. Despite needing to be learned, these abilities count as potentialities in humans. Aristotle asserts, “Since some of these principles are inherent in inanimate things, and others in animate things and in the soul and in the rational part of the soul, it is clear that some of the potencies also will be irrational and some rational. Hence all arts, *i.e.* the productive sciences are potencies; because they are principles of change in another thing, or in the artist himself *qua* other.”²² He continues, “Since all potencies are either innate, like the senses, or acquired by practice, like flute-playing, or by study, as in the arts, some—such as are acquired by practice or rational formulation—we can only possess when we have first exercised them; in the case of others which are not of this kind and which imply passivity, this is not necessary.”²³ This understanding of potentiality justifies Aristotle’s argument that potentiality is either something innate in things or humans. Crucially for Aristotle, and for the present task, needing to learn a trade or a method still constitutes potentiality. The process of learning, then, constitutes the progression from potentiality to actualization of those previously unused faculties.

Importantly, Sen, and to a greater extent Nussbaum, owe much of their work on capabilities to Aristotle’s insights. Yet, they also deviate from his understanding of the relationship between potentiality and actuality, to the detriment of the capabilities approach. Nussbaum emphasizes that the capabilities approach does not, and should not, deal with actual functioning, but Aristotle’s theory recognizes the interminable link between the two, and the importance of the priority of actualization. He grounds his understanding in the notion that

²² *Ibid.*, 1046a36.

²³ *Ibid.*, 1047b31.

potentiality may or may not become actualized. Actualizing one's potential is important because nothing potential is constant or everlasting. Defending his claims, Aristotle writes, "The argument is as follows. Every potentiality is at the same time a potentiality for the opposite. For whereas that which is incapable of happening cannot happen to anything, everything which is capable may fail to be actualized. Therefore that which is capable of being may both be and not be."²⁴ Thus, Nussbaum's emphasis on only capability and not actual functioning means that it is possible for any of the listed capabilities to *not be*, as well as for them to be actualized. That is, the problem with addressing potentiality, or capability, absent a concern for actual functioning, is that it can lend itself to both functioning and non-functioning.

The explicit neglect of actual functioning is an incongruous deviation from Aristotle, who argues that actuality is prior, in part, to potentiality. Without detailing Aristotle's entire theory of the priority of actuality, he states that individuals know what is potentially true based on what is known about actuality, and in that way actuality is prior. However, chronologically it is not. Aristotle states that nothing can become actual unless it has the potential to be so first. He asserts, "Thus, it is evident that the potential constructions are discovered by being actualized. The reason for this is that the actualization is an act of thinking. Thus, potentiality comes from actuality (and therefore it is by constructive action that we acquire knowledge). <But this is true only in the abstract>, for the individual actuality is posterior in generation to its potentiality."²⁵ Restated, individuals can only become aware of potentiality through the exercise of their reasoning capacity, and that act itself is already actuality. Based on their

²⁴ Ibid., 1050b8.

²⁵ Ibid., 1051a29.

experience of actualized potential in other objects and people, individuals can know better the potentialities of objects and individuals. Actuality, then, can be considered prior in its importance to human functioning, but posterior in its generation from potentiality.

Despite the emphasis on the priority of actual functioning, potentiality is indispensable. Potentiality is necessary for any capacity or possibility to come-to-be in actuality. Aristotle states, "But since something of that which is being generated is already generated, and something of that which is being moved as a whole is already moved (this is demonstrated in our discussion on Motion), presumably the learner too must possess something of the science."²⁶ He indicates here that an individual who is potentially a musician has some potential to understand the musical, prior to his actually becoming a musician. The same could be said of the farmer, the craftsman, the artist, or the philosopher. Given this understanding of the relationship between potentiality and actuality, it is clear that the capabilities approach is lacking because it does not deal adequately with actual functioning. Likewise, many modern theorists do the opposite, neglecting potentiality in favor of addressing those forms of actuality that are readily apparent. Dealing with immediate displays of actual functioning is the typical path for rights theorists. Thus, a twofold objective emerges. First, potentiality must be considered, since it is the building-block for actual flourishing. For, "if something arises in us by nature, we first have the capacity for it, and later perform the activity."²⁷ Second, however, actual functioning must not be neglected in favor of a theory that deals only with human capability and not the realization of those capacities. While understanding the role of

²⁶ Ibid., 1049b35. Aristotle references the reader to his own discussion of motion in Book VI of the *Physics*.

²⁷ Aristotle, *Nicomachean Ethics*, trans. Terence Irwin (Indianapolis: Hackett Publishing, 1999), 1103a26.

potentiality is important, scrutinizing potentiality does not deal with the related issue of need. Whether or not an individual can pursue some potentiality that requires other things *from without*, indicates that there exists some other external requirements for actualizing potential. And, if rights do not account for potentiality, as is argued here, then some other conceptual language must be employed in order to address both potentiality and actualization; that conceptual language is a discourse on needs.

Aristotle on Need and the Reconciliation of the Universal and Particular

Aristotle's understanding of human need provides a rich resource for exploring the connection between potentiality and human needs. Nussbaum has always "stressed from the start that Aristotle's theory was grossly defective because it lacked a theory of the basic human rights, especially rights to be free from government interference in certain areas of choice."²⁸ Yet, Aristotle stressed the role of justice in the political order without advocating the necessity of rights. Aristotle's understanding of justice, of course, relied upon the general exercise of all virtues as prescribed by law.²⁹ For Aristotle, rights were not required in the form which they exist today. The Greek work *dein* can be translated as need, right, require, or must, though the translation to right is not directly comparable with right as it is thought of today. Instead, Aristotle uses *dein* within his doctrine of means to denote actions that are considered appropriate behaviour and that are directed to the proper ends.

²⁸ Martha C. Nussbaum, "Capabilities and Human Rights," *Fordham Law Review* 66 (1997): 276. In some ways, this statement by Nussbaum is puzzling, since the concept of rights is diachronically incompatible with ancient Greek philosophy. Her insistence on freedom of choice has modern resonance, but does not seem to be a fair critique, since the contemporary understanding of human rights was not part of the Greek consciousness.

²⁹ See Aristotle, *Ethics*, 1129b25 and 1134b18.

By virtue I mean virtue of character; for this is about feelings and actions, and these admit of excess, deficiency, and an intermediate condition. We can be afraid, for instance, or be confident, or have appetites, or get angry, or feel pity, and in general have pleasure or pain, both too much and too little and in both ways not well. But having these feelings at the *right* times, about the *right* things, toward the *right* people, for the *right* end, and in the *right* way, is the intermediate and best condition, and this is proper to virtue.³⁰

Right, then, has the connotation of correctness of action, rather than claims made by individuals, as is the case with the modern sense of the word.

In Aristotle, when an individual makes a claim, the natural language is one of need.³¹ Aristotle employs the verb *dein* to indicate that “one needs X” and the noun *chreia* to designate “some X as a basic need.”³² Deeply tied to his concept of need are those things necessary for fulfillment of individual potentiality, or the *telos* of the species. Aristotle’s metaphysical undertaking in the *Nicomachean Ethics* is to show that happiness is an end in itself, and to elucidate the necessary components of a happy life. Here the phrase “fully-flourishing” is preferred to happiness, because in contemporary language happiness implies a potentially non-rational feeling. Fully-flourishing, though not as literal a translation of *eudaimonia*, implies utilization of the entire metaphysical hierarchy that Aristotle espouses as necessary for realizing one’s *telos* qua human.³³ That metaphysical hierarchy consists of basic material existence like that of stones or earth, vegetative existence, which is a life of nutrition and growth, and the

³⁰ Ibid., 1106b17, emphasis added.

³¹ As Irwin notes, it is not always clear whether need, or *dein*, refers to a person’s actual need of some thing, or whether the it refers merely to a claim that one needs something. For the purposes of this dissertation, the distinction is less relevant, since a criteria for distinguishing between legitimate need and mere claims of need is provided in the fourth chapter.

³² For the use of the former, see Aristotle, *Ethics*, 1169b3, and for the use of need as a noun, see 1133a28.

³³ The notion of a fully-flourishing being also fits properly into the theories considered in the following chapters.

sense perceptions associated with animals.³⁴ However, the uniquely human life is one of reason, as well as action, or functioning. Aristotle states that human existence is “some sort of life of action of the [part of the soul] that has reason. One [part] of it has reason as obeying reason; the other has it as itself having reason and thinking. Moreover, life is also spoken of in two ways [as capacity and as activity], and we must take [a human being’s special function to be] life as activity, since this seems to be called life more fully.”³⁵ Interestingly, and as emphasized above, Nussbaum specifically avoids directing her approach toward functioning, and instead frames her approach in terms of capabilities, which address capacity, not action. Aristotle is careful to note that the life of action must be considered a fuller life than one of mere capacity, or capability, indicating that any theory of needs must account for action, not merely capacity.

To investigate Aristotle’s emphasis on need and necessity more fully, one could look to nearly every volume of his corpus. He defines necessity generally as that which must be, or that which cannot be otherwise. Within this broad, primary definition, Aristotle recognizes four subsidiary forms of need. “The first sense is of being required for life or existence. The second is of being required to achieve a good or avoid an evil. The third is of being coerced against will or nature. And the fourth is of being logically compelled, as in demonstration.”³⁶ The current investigation is concerned primarily with the first two senses of need. For Aristotle, the

³⁴ Aristotle, *Ethics*, 1097b35-1098a3.

³⁵ *Ibid.*, 1098a3. The brackets are part of the cited translation from this point forward, unless otherwise noted.

³⁶ Soran Reader, “Aristotle on Necessities and Needs,” *The Philosophy of Need*, ed. Soran Reader (Cambridge: Cambridge University Press, 2005), 114. For these types of needs in Aristotle, see the following: for the first type, 1095b13, 1102b27, and 1169b3; for the second type, 1099a29, 1104b10; for the third type, 1110a26; for the fourth type, 1139b20.

excellent individual must fulfill the entire hierarchy of being, particularly the highest function of noetic reasoning. However, this hierarchy also includes those needs that occur lower on this ladder, such as food and shelter and reproduction. Aristotle is keenly aware of the necessity of the mundane and material possessions necessary for human existence. He writes within his discussion of the household, “[F]or without the necessary things it is impossible either to live or to live well.”³⁷ As Soran Reader notes, “There can be no human life unless these needs are met—even the contemplative life, which is the highest, most God-like life for man, and which has fewer and simpler practical requirements than other excellent ways of life, still depends on bodily needs being met.”³⁸ For Aristotle, the existence of slaves provided one conduit through which excellent men could find time for leisure and still have their bodily needs met. Their leisure time could then be devoted to philosophy, politics, religion, or war.

Although Aristotle emphasizes reason, the life of excellence may involve other activities than contemplation, though reasoning well is the ultimate mark of an excellent man.

“Now we say that the function of a [kind of thing]—of a harpist, for instance—is the same kind as the function of an excellent individual of the kind—of an excellent harpist, for instance. And the same is true without qualification in every case, if we add to the function the superior achievement in accord with the virtue; for the function of a harpist is to play the harp, and the function of a good harpist is to play it well.”³⁹

This is to say, that while all individuals are constituted and differentiated by their capacity for reason, those individuals may seek excellence in other crafts appropriate to their skills and interests. However, being excellent at one’s craft requires access to appropriate resources, and

³⁷ Aristotle, *Politics*, trans. Carnes Lord (Chicago: University of Chicago Press, 1984), 1253b23.

³⁸ Reader, 118.

³⁹ Aristotle, *Ethics*, 1098a8.

without such access, the individual can be said to be in need, or lacking in the necessary prerequisites. He writes, “Nonetheless, happiness evidently also needs external goods to be added, as we said, since we cannot, or cannot easily, do fine actions if we lack the resources.”⁴⁰ Therefore, each person does need certain external goods to achieve a fully-flourishing life. For human nature cannot provide everything necessary for a life of contemplation. Rather, those who are members of the laboring element should provide many bodily needs conducive to a life of leisure. Aristotle writes, “Farmers, artisans, and the entire laboring element must necessarily be present in cities.”⁴¹ However, he also notes that those who attempt to lead a life of virtue should not engage in manual activities. He asserts: “Nor, indeed, should those who are going to be [citizens in such a regime] be farmers; for there is a need for leisure both with a view to the creation of virtue and with a view to political activities.”⁴² Likewise, women should provide household necessities in order to relinquish yet more time for the excellent man to practice leisure and engage in the business of politics.⁴³

Obviously, Aristotle leaves much to be desired on the matter of social equality. While he acknowledges that women have the capacity for reason, he also rightly recognizes that in Greek culture they have no authority by which to exercise it. Those who are slaves by nature have only the capacity for calculative reason and are more akin to animals than humans.⁴⁴ Today, most of the developed world has provided women with the authority to exercise their

⁴⁰ Ibid., 1099a28.

⁴¹ Aristotle, *Politics*, 1329a35.

⁴² Ibid., 1328b40.

⁴³ Ibid., 1259a38, 1260a10, 1260a30

⁴⁴ Ibid., 1252a30, 1254b16 ff.

rational capacity, and international law outlaws slavery in all its forms. As such, there is some question as to whether Aristotle's understanding of what is necessary for human existence, and what needs individuals should meet through their own efforts is still valid. For Aristotle, everyday activities such as farming or craftsmanship are not sufficient for leading an excellent life, but they are necessary. In fact, Aristotle argues that performing such activities detracts from the excellent life.⁴⁵ He writes, "For many of the necessary things should be present for it to be open to them to be at leisure."⁴⁶ As has been mentioned, Aristotle's solution to this conundrum requires others to carry out such activities on behalf of the excellent man, such that he has the basic necessities required for a life of leisure and contemplation. Aristotle is wrong in his assumptions here. Reader attempts to address this inconsistency by questioning "whether a life without the ordinary necessities of food, art and craft, labour, work and trade would be better than a life that contained these things."⁴⁷ She articulates an argument against Aristotle that emphasizes the judgment required to perform such "everyday" tasks and draws a parallel between those tasks and the activities that Aristotle considers "higher." She asserts,

We can cite examples to show that ordinary necessities can provide plenty of opportunity for the exercise of judgment and the expression of human excellence. A farmer has to judge what to farm, how much, with whose help and when. He has to watch over his crop, tend it, harvest it, and market it. All of these activities can be done well or badly, as part of human life well lived or mindless of their noble role. They can be done in a leisurely way, with thought and for the sake of the good, or they can be done rapidly and carelessly.⁴⁸

⁴⁵ Ibid., 1329a27, 1333a30.

⁴⁶ Ibid., 1334a16.

⁴⁷ Reader, 124.

⁴⁸ Ibid.

Reader continues, “If war, politics and religion can fill leisure without destroying it, why can a reasonable amount of manual labour or care-work not do the same?”⁴⁹ While I am sympathetic to the ends of this line of argument, Reader’s understanding seems flawed. The decisions about what crops to grow and how much to harvest, exercise only the calculative aspect of individual rational capacity. Aristotle is concerned for the contemplative life precisely because it can extend beyond the merely calculative, dianoetic capacity, to the noetic capacity. It is the noetic capacity that human beings share in common with Aristotle’s divine *nous*.

The most problematic aspect of Aristotle’s argument is not that activities such as farming or ironmongery allow us to fulfill our rational capacities, since they do not, but that individuals, in Aristotle’s formulation, are constituted by the entire hierarchy of being. Individuals may differ from sophisticated animals through their capacity for reason, in Aristotle’s understanding, but they must also participate in the lower levels of the hierarchy, including sense perceptions, emotive expression, and lower level functioning like reproduction, consumption and excretion. Aristotle recognizes this, noting that children, that is, successful reproduction, are external goods necessary (though not sufficient) for our happiness. He states, “Further, deprivation of certain [externals]—for instance, good birth, good children, beauty—mars our blessedness. For we do not altogether have the character of happiness if we look utterly repulsive or are ill-born, solitary, or childless.”⁵⁰ Thus, Reader’s argument should have considered what Aristotle himself considers necessary to achieve a fully-flourishing life,

⁴⁹ Ibid.

⁵⁰ Aristotle, *Ethics*, 1099b2.

that is, to reach *eudaimonia*.⁵¹ And, for a traditional interpretation of *eudaimonia*, as happiness, some other basic externals are required. So, in this understanding, it may be perfectly acceptable for an individual to spend some time performing manual tasks, as long as she still also has time to engage in higher functions, such as contemplation, not because the manual task itself allows for the exercise of judgment as Reader suggests, but because it helps the individual fulfill the entire hierarchy of being.

It is clear that such reasoning also underlies Nussbaum's insistence on capabilities rather than functioning, since she wants to allow individuals to be autonomous and self-sufficient. Her argument (and Sen's) entails that government provide assistance only in the form of making individuals capable of providing for themselves. By concerning herself with capability, not functioning, Nussbaum puts herself in a precarious position. Aristotle is clear that functioning, not just capacity or capability, is prior. "Moreover, we take the human function to be a certain kind of life, and take this life to be activity and actions of the soul that involve reason; hence the function of the excellent man is to do this well and finely."⁵² Yet, reasoning well is not as simple as merely fulfilling that most human of potentials. Aristotle is clear that many external necessities are required for an individual to function excellently, that is, to his full potential. So, actualizing one's telos as a human being, can occur only with the provision of

⁵¹ Eudaimonia has the connotation of happiness, though the literal translation would mean something akin to well-spirited. I prefer the term fully-functioning, since happiness, on the Aristotelian account requires virtue, contemplation and fulfillment of human function as elucidated in the hierarchy of being. To be reached, in Aristotle's terminology, happiness can only be pursued in accord with the virtues. Since virtue is composed, in part, of reasoning well, then happiness too is somewhat dependent upon contemplation. However, the virtues, particularly contemplative acts cannot be pursued without other external necessities that allow for the leisure time necessary for contemplation. For a brief discussion of the Aristotelian notion of happiness, see Terrence Irwin's introduction to the *Nicomachean Ethics*, xxiii-xxv.

⁵² Aristotle, *Ethics*, 1098a13. The emphasis here is on the human capacity for reason, based in the notion that the noetic capacity is the defining characteristic of human beings. However, considering the statement absent the emphasis on rationality still highlights the importance of actual functioning.

certain needs required to realize one's potential. Nussbaum recognizes this potentiality, in the form of capabilities, but does not insist on the satisfaction of the needs requisite for full-functioning, or a fully-flourishing life. Again, though this tack is taken to avoid overly-paternalistic provision of goods and services, it also ignores Aristotle's emphasis on the ontological priority of actuality.

While Aristotle is clear that actualizing potential should be the goal of all things, he also emphasizes the role of potentiality in determining which actions to take and which needs are crucial to realizing that potential. He writes that *eudaimonia* requires certain external goods in order to be achieved, "for our nature is not self-sufficient for study, but we need a healthy body, and need to have food and the other services provided."⁵³ However, Aristotle also makes clear that individuals do not need excessive external goods. As long as certain thresholds are met, individuals can attempt to lead lives of happiness. He states, "Still, even though no one can be blessedly happy without external goods, we must not think that to be happy we will need many large goods. For self-sufficiency and action do not depend on excess." Thus, individuals who are serious about obtaining the good life should have their health looked after, should have food provided, and should be guaranteed other services and provisions. If, in the absence of slaves, Aristotle is to be taken at face value, then surely some other agent, or agents, would be responsible for ensuring that external necessities are met. The most logical provider of these externalities would be government or some other organization.

Finally, Aristotle also provides a convenient example of how the universal and particular can be reconciled within a moral framework. As was mentioned above, one of the concerns

⁵³ Ibid., 1178b34.

regarding needs has been their subjective, particularistic nature, and the level of abstraction with which such needs are often expressed. However, the problem of reconciling the universal and the subjective, or particular, can be confronted. For Kant, those things considered subjective could not serve as a basis for morality. Thus, the approach adopted here is not Kant's. Instead, the process for considering both universal and subjective interests harkens back to the Aristotelian understanding of universality. Though Aristotle's understanding of the universal and the particular was elucidated most clearly when he wrote on the doctrine of the mean in the pursuit of virtue, the basic premises of his argument are useful. He writes, "Virtue, then, is a state that decides, consisting in a mean, the mean relative to us, which is defined by reference to reason, that is to say, to the reason by reference to which the prudent person would define it."⁵⁴ Aristotle notes that there are universal virtues and that there is a universal doctrine through which to obtain them. As universal, "there is only one way to be correct" in being virtuous.⁵⁵ The notions of courage, temperance, wit, and others are all universal goals toward which individuals should strive in everyday life and which the political life should help cultivate. For each of these virtues, individuals should aim for the mean between two extremes; this is the universal element of the doctrine of the mean. Yet, Aristotle recognizes that each person will strive for these virtues in different ways, proportionate to his preexisting character traits, dependent upon his propensities, and relative to his actions and inclinations. Likewise, individual attempts to realize each of the virtues is undertaken in different ways, in different orders, and with varying levels of success, again depending upon the inherent

⁵⁴ Ibid., 1107a1.

⁵⁵ Ibid., 1106b31.

characteristics of the individual concerned. Not only must an individual be aware of the universal method for arriving at a virtuous life, but also of his or her own inclinations. Aristotle states, "We must also examine what we ourselves drift into easily. For different people have different natural tendencies toward different goals, and we shall come to know our own tendencies from the pleasure or pain that arises in us."⁵⁶ In this way, Aristotle reconciles the universal and the particular.

Actualizing one's potential can be considered in much the same way as the universal and particular of Aristotle's *Nicomachean Ethics*. By establishing the presence of certain universal needs, which each individual experiences, but in different orders and magnitudes, a better attempt can be made at assisting individuals in meeting those needs, and thereby actualizing their individual potentialities. Rights scholars, with their prescriptive theories, and their preoccupation with political and civil rights of equality and liberty, fail to realize the possibilities of considering needs. Their predominant dependence upon Kantian rationalism means that, historically, rights have been formulated to protect those abstract, universal characteristics of individuals that are fixed and unchanging, at the expense of addressing those subjective needs that vary from person to person and from one point in time to another. While the effort to protect faculties that are typically deemed uniquely human is an admirable one, that effort does not always succeed in protecting human dignity. Needs, as outlined by Aristotle, are more directly related to human potentiality and therefore offer the possibility of addressing both the transient and the perpetual needs of individuals.

⁵⁶ Ibid., 1109b1.

In sum, Aristotle saw human needs as a natural facet of human existence, and believed that those needs should be fulfilled in order that certain individuals might actualize the *telos* of the species. In Aristotle's formulation, exercise of the contemplative life allowed for the actualization of the uniquely human potential. The meeting of certain needs is a prerequisite for contemplation, and the exercise of reason is itself a need of excellent individuals. The emphasis on the contemplative life is also important for modern scholars of need, such as Hegel and Marx. However, in the modern interpretation, particularly the Marxian one, individuals are not directed toward a particular understanding of happiness, but toward self-actualization in many forms. He thus provides the famous edict that one must be able to "do one thing today and another tomorrow, to hunt in the morning, fish in the afternoon, rear cattle in the evening, criticize after dinner, just as [she has] a mind, without ever becoming hunter, fisherman, cowherd, or critic."⁵⁷ Likewise, many contemporary psychological theories of need recognize such abstract needs as self-actualization to be necessary components of a fulfilled life.

Modern theorists keen on expropriating Aristotle have included all individuals (not just white, property-holding men) in the process of actualizing potential. Obviously, slavery is no longer acceptable, and the current means of production in Western societies ensure that most people are not required to labor from dawn until dusk to provide adequate food and shelter for their families. Unfortunately, this is not true in large parts of the world. Is it not incumbent upon government to ensure the basic necessities that Aristotle mentions for the attainment of

⁵⁷ Karl Marx, *The German Ideology in Selected Writings* ed. David McLellan (Oxford: Oxford University Press, 2000), 185.

the good life? Indeed, individuals must still have a level of autonomy that guarantees their self-sufficient functioning within the whole of the hierarchy of being. However, individuals should also be guaranteed, to some extent, the ability to exercise their higher faculties. Aristotle recognizes that individuals need not possess extravagant amounts of goods, merely enough to maintain well-being to the extent that leisure activity, engagement in politics, and contemplative study is minimally possible. Moreover, since individuals reside in communities with one another, they must seek to habituate the virtues of generosity and friendliness, in addition to those that are more egoistic.⁵⁸

Thus, Aristotelian ideas may be adapted for the modern world. Such a task is not without precedent, and as Thomas Hill Green notes, societies and individuals must continuously attempt to increase their sphere of human obligation. Green writes, "Indeed, if habit is strengthened by exercise, it would seem that the habit on which the fulfilment of known duties depends, once partially formed, must be strengthened rather than otherwise by that more constant call for the practice of duty which naturally arises from recognition of a wider range of persons to whom duties are due."⁵⁹ He continues,

And if the dutiful disposition must thus gain rather than lose in strength from the enlightenment before which the exclusive dependence of moral claims on relations of family, status, or citizenship disappears, it would seem that with this disappearance its effect in furthering the social realisation of human capabilities must greatly increase. Faculties which social repression and separation prevent from development, take new life from the enlarged co-operation which the recognition of equal claims in all men brings with it.⁶⁰

⁵⁸ Aristotle, *Ethics*, 1119b23 and 1126b11.

⁵⁹ Thomas Hill Green, *Prolegomena to Ethics*, ed. A.C. Bradley (Oxford: Clarendon Press, 1906), 241.

⁶⁰ *Ibid.*

Both Hegel and Marx recognize that repression and separation can squelch the development of some human potentialities, as Green notes. As such, both thinkers are concerned about the development of human potential and its relation to need. Yet, for modern theorists, the examination of needs is crucially related to resources. Thus, the relationship of potentiality and need to resource scarcity and the role of labor are of greater concern for Hegel and Marx.

Hegel and Marx on Need Satisfaction

Clearly, concerns for issues of human potential are not confined to Aristotle and neo-Aristotelians. For both Hegel and Marx, potentiality, and its relationship to need, was of utmost importance in understanding human nature, responsibility to others, and the purpose of community. Hegel's emphasis on the ethical community was based on the freedom to act morally. For Marx, the presence of a variety of human potentialities leads to new and infinite needs, and because of this understanding, his theory shifted away from the Aristotelian focus on virtue to the modern exchange economy. Instead, each thinker considers the possibilities and drawbacks of the modern world in efforts to meet need and actualize potential. Hegel and Marx recognize that societies lack the ability to continuously address potentiality and fulfill all needs perpetually. That is, "Scarcities, their satisfaction, and their re-creation in new forms (that is, as new specific needs) are recurring and necessary features of modern civilization. At the same time, according to Hegel and Marx, the growth of new needs guarantees the inability to satisfy all needs and hence assures the continued existence of scarcity."⁶¹ However, the emergence of new needs also serves to promote further human development. As one set of

⁶¹ Peter G. Stillman, "Scarcity, Sufficiency, and Abundance: Hegel and Marx on Material Needs and Satisfactions," *International Political Science Review/Revue internationale de science politique* 4 (1983): 296.

needs is met, new needs materialize, and though attempts must be made to meet those needs, they also allow individuals to fulfill different capacities. Marx is particularly critical of the rights discourse and its ability to address potentiality, since all rights are ultimately the rights of property and, as such, they serve to limit individuals rather than promote flourishing. Though he is not so preoccupied with the effects of private property, Hegel too emphasizes the importance and necessity of community in both creating and meeting needs. For both, the interplay between human potentiality and needs, individual and community, serves as a basis for discussing individual and state responsibility for human welfare. Thus, some consideration of Hegel's and Marx's emphasis on potentiality, need, and community deserves emphasis.

Given that Hegel wrote extensively on "right" it is important to address some points regarding abstract right and ethical life. Hegel is often known as a post-Kantian idealist. Though he is concerned with right, the discussion comes in a different form than it does in Kant and the social contract theorists. He begins *Philosophy of Right* with the singular willing subject as the bearer of "abstract right." Though this does place him in the tradition of the social contract theorists, it does not necessarily mean that he views the individual as the "atom" upon which rights are realized. Instead, it is just the nearest starting point and when Hegel discusses the "common will" of individuals, it is not the same as Rousseau's "general will." While Rousseau bases the general will on that which individuals in a society have in common, Hegel's common will is based specifically on the differences in what individuals want when they enter into a contractual agreement. For example, two individuals in a contractual agreement might both will the contract, but they will it for different reasons and with different ends in mind. Thus, akin to Aristotle, the common will refers to the universality among individuals while still

allowing for the exercise of the will for particular, subjective ends. Rather than focus solely on right, Hegel is ultimately focused upon the progression from this sort of contractual right to ethical life. Hegel is concerned with the development of “free-willing individuals.” Yet, his understanding of what it means to be a “free-willing individual” is acutely concerned with actualizing one’s potential and having the ability to create and meet one’s own needs and the needs of others. At the same time, though freedom is a necessary condition of civil society, it is not sufficient.

For Hegel, like Aristotle, and contrary to Nussbaum’s assertions, actual functioning of the will, not just its capability, is important to human flourishing. It is not merely the capacity for certain activities that remains the proper concern of human beings, but the actual exercise of one’s potentialities. He writes,

It is the will whose potentialities have become fully explicit which is truly infinite, because its object is itself and so is not in its eyes an 'other' or a barrier; on the contrary, in its object this will has simply turned backward into itself. Further this will is not mere potentiality, capacity, potency (*potentia*), but the infinite in activity (*infinitum actu*), since the concept's existence or its objective externality is inwardness itself.⁶²

The human will, whose difference from animal will makes individuals distinctly human, should not be considered mere potentiality, but also as infinite activity. Contrary to the Kantian perspective discussed in the previous chapter, and from which so much of the rights discourse is drawn, Hegel recognizes the development of both mind and body as crucial for individual development. Both the noumenal and the phenomenal are of consequence, and for Hegel, that formal distinction disintegrates. Hegel states, “Man, pursuant to his *immediate* existence within himself, is something natural, external to his concept. It is only through the development

⁶² G.W.F. Hegel, *Philosophy of Right*, trans. T. M. Knox (Oxford: Oxford University Press), 30.

of his own body and mind, essentially through his self-consciousness's apprehension of itself as free, that he takes possession of himself and becomes his own property and no one else's."⁶³

For Hegel, as is also true for Marx, the concept of oneself as property means that an individual must have sole possession of herself, though this is not enough for the full realization of her potential.

For Hegel the emphasis on community is of utmost importance, since the lone individual cannot hope to fully flourish outside community. Hegel arrives at this conclusion through the description he offers of the civil society. Hegel identifies three moments of civil society, the first of which is the system of needs. "Particularity [as individual will] is in the first instance characterized in general by its contrast with the universal principle of the will and thus is subjective need."⁶⁴ Therefore, one of the first distinguishing characteristics of individual existence in civil society is the experience of subjective need. In his discussion of civil society, Hegel writes,

Particularity [as the individual will] by itself, given free rein in every direction to satisfy its needs, accidental caprices, and subjective desires, destroys itself and its substantive concept in this process of gratification. At the same time, the satisfaction of need, necessary and accidental alike, is accidental because it breeds new desires without end, is in thoroughgoing dependence on caprice and external accident, and is held in check by the power of universality.⁶⁵

⁶³ Ibid., 47.

⁶⁴ Ibid., 126. The text in brackets is the author's addition.

⁶⁵ Ibid., 123. The text in brackets is the author's addition. It is important to note that Hegel distinguishes here between need and desire. Those things that are truly *needed* are termed necessary, and those objects which are desired are dubbed accidental. An operational definition of need, as distinct from desire, will be provided in the following chapter.

Hegel notes of the ancient world, that individual desire for independence served to destroy ethical community. “The development of particularity to self-subsistence is the moment which appeared in the ancient world as an invasion of ethical corruption and as the ultimate cause of that world's downfall.”⁶⁶ This is not to say that the individual, as a singular human being is not of great moral concern, indeed, she may be the ultimate unit of moral concern, but rather that individual flourishing requires more than self-subsistence. It requires also the presence of a community through which needs can be met and a life of flourishing led in conjunction with others.⁶⁷

Community is important to Hegel because it is community that creates some needs, but also helps individuals meet needs. The presence of needs, their multiplication, their satisfaction, and their existence in the social order is a defining characteristic of man. Likewise, those particularly human needs serve to distinguish human nature from animal nature. For, according to Hegel, man satisfies his needs in ways different to those of animals.

An animal's needs and it's ways and means of satisfying them are both alike restricted in scope. Though man is subject to this restriction too, yet at the same time he evinces his transcendence of it and his universality, first by the multiplication of needs and means of satisfying them, and secondly by the differentiation and division of concrete need into single parts and aspects which in turn become different needs, particularized and so more abstract.⁶⁸

⁶⁶ Ibid.

⁶⁷ Again, to be clear, the argument herein is not a communitarian one. It recognizes the individual as a unit of moral consideration, but not, in Marx's terms, as a monad. The first experiences of the individual are carried out in conjunction with others. And, as Hegel and Marx note, all individual decisions implicitly incorporate others. Human needs are both created and met, in large part, through community.

⁶⁸ Hegel, 127.

For Hegel, like Marx after him, need is part of what it means to be man qua man. “Here at the standpoint of needs what we have before us is the composite idea that we call *man*. Thus this is the first time, and indeed properly the only time, to speak of *man* in this sense.”⁶⁹ Thus, the ability of individuals to create and meet a plethora of needs, and to do so within civil society is the definition of what it means to be human. However, the process of need formation does not begin solely with the individual, nor does it end there. Individualized needs come in an infinite number of subjective forms, and so “the means to particularized needs and all the various ways of satisfying these are themselves divided and multiplied and so in turn become proximate ends and abstract needs. This multiplication goes on *ad infinitum*; taken as a whole, it is refinement, i.e. a discrimination between these multiplied needs, and judgment on the suitability of means to their ends.”⁷⁰ When individual needs become abstract needs, that is, universal needs, the importance of social interaction comes to the fore. Hegel argues, “When needs and means become abstract in quality, abstraction is also a character of the reciprocal relation of individuals to one another. This abstract character, universality, is the character of being recognized and is the moment which makes concrete, i.e. social, the isolated and abstract needs and their ways and means of satisfaction.”⁷¹

Thus, the first moment of civil society, the system of needs, serves as the basis for social development, and Hegel recognizes that humans experience their needs as predominantly social creatures.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

Since in social needs, as the conjunction of immediate or natural needs with mental needs arising from ideas, it is needs of the latter type which because of their universality make themselves preponderant, this social moment has in it the aspect of liberation, i.e. the strict natural necessity of need is obscured and man is concerned with his own opinion, indeed with an opinion which is universal, and with a necessity of his own making alone, instead of with an external necessity, an inner contingency, and mere caprice.⁷²

And because so many needs are social needs created through civil society, there exist duties to assist other members of that social unit in meeting their needs, since each individual is interdependent, and therefore, their needs are also. Hegel “discerns an interplay among needs and work whereby individuals are liberated from a natural and unconscious manner to a thoughtful and social way of life.”⁷³ Because humans are social creatures, each is responsible for meeting the needs of others, much in the same way that Locke posits that human beings, even in the state of nature are not just concerned with self-preservation but with other-preservation as well. And, for Hegel, “In the modern interdependent exchange economy, the needs that individuals develop and the means to satisfy them depend on others—their needs, means, and work.”⁷⁴ Whereas an individual is bound to uphold the rights of another only to the extent that there is a corresponding (Kantian) duty of obligation incumbent upon her, Hegel reveals that needs inherently imply human interconnectedness. “Consequently, individuals recognize the value of every other individual as equal contributors to society.”⁷⁵

⁷² Ibid., 128.

⁷³ Stillman, 297.

⁷⁴ Ibid.

⁷⁵ Ibid., 298. This notion is particularly important in contemporary politics, since the global economy means that individuals within a society, as well as outside it, place duties upon others.

Membership in the same social order foists duty upon others and upon the state. “So, for Hegel, the needs of modern man are not simply natural needs given by nature; they are intersubjective and result from society, opinion, and thought.”⁷⁶ And, “because individuals work to satisfy needs in an interdependent system, through work an individual joins the community of all workers, each of whom produces to satisfy the needs of others.”⁷⁷ Hegel understands this as one’s duty to society, though the duties are not merely economic in nature, even though they are, in part, based in economic concerns. As Hegel notes, upon initial consideration, the notion of duty, or responsibility, can seem like a restriction on human action.

The truth is, however, that in duty the individual finds his liberation: first, liberation from dependence on mere natural impulse and from the depression which as a particular subject he cannot escape in his moral reflections on what ought to be and what might be; secondly, liberation from the indeterminate subjectivity which, never reaching reality or the objective determinacy of action, remains self-enclosed and devoid of actuality. In duty the individual acquires his substantive freedom.⁷⁸

Thus, the presence of need, far from limiting an individual provides the opportunity for the exercise of duty by another. Likewise, that other individual also has abstract and particular needs that should be met through work and duty of the first person. Needs are mutually experienced, and the duty to meet them is equally incumbent upon each member of the state.

Marx, too, recognizes need as a fundamental facet of human nature, but he also understands need as contributing, in a capitalist economy, to the exploitation of one individual by another for selfish gain. For this reason, Marx is careful to acknowledge that, while fundamental, need can also contribute to strife within society. He understands the first

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Hegel, 107.

“moment” of human history to be one in which individuals realize their needs and develop the means to meet them while simultaneously creating new ones.⁷⁹ However, in a capitalist economy of scarcity, the natural human propensity to meet one’s needs turns others into objects. In a statement similar to one Hegel makes in *Philosophy of Right*, Marx writes,

In reality I produce another object, the object of your production that I count on exchanging for my surplus, an exchange that I have already completed in my thought. The social relationship in which I stand to you, my work for your need, is also a mere appearance and similarly our mutual completion is a mere appearance for which mutual plundering serves as a basis. An intention to plunder and deceive is necessarily in the background, for since our exchange is a selfish one both on your side and on mine, and since each selfishness tries to overcome the other person's, of necessity we try to deceive each other.⁸⁰

From this assessment, it is clear that meeting needs is far from utopian, since it compels individuals to use others as means of meeting one’s own needs. It is not the needs themselves that cause such problems, but the conditions under which individuals can satisfy their needs in a capitalist economy. Through the process of exchange and trade, not only does the individual turn others into means, but that individual turns herself into a means as well. Moreover, Marx understands all of this—the exploitation of others and the devaluing of the self—as related to human rights.

Thus, one of the primary distinctions between Hegel and Marx come with their respective views of property. Hegel saw property as necessary for the full development of the individual personality. He states,

⁷⁹ For a description of the four moments of human history see Karl Marx and Friedrich Engels, *The German Ideology* (Amherst, New York: Prometheus Books, 1998), I.ii.3 and ff.

⁸⁰ Karl Marx, “On James Mill,” in *Selected Writings*, ed. David McLellan (Oxford: Oxford University Press, 2000), 130. For Hegel’s approach to the treatment of others as objects, see *Philosophy of Right*, 128ff. See also, Alexandre Kojève, *Introduction to the Reading of Hegel*, trans. James H. Nichols, Jr., ed. Allan Bloom (New York: Basic Books, Inc., Publishers, 1969), 23-30.

To have power over a thing *ab extra* constitutes possession. The particular aspect of the matter, the fact that I make something my own as a result of my natural need, impulse, and caprice, is the particular interest satisfied by possession. But I as free will am an object to myself in what I possess and thereby also for the first time am an actual will, and this is the aspect which constitutes the category of *property*, the true and right factor in possession.⁸¹

For Hegel, the possession of property (private property) constitutes the method through which the will is actualized. When meeting needs, holding property assists in meeting needs, but also fulfills the human potential to freely exercise one's subjective will. "If emphasis is placed on my needs, then the possession of property appears as a means to their satisfaction, but the true position is that, from the standpoint of freedom, property is the first embodiment of freedom and so is in itself a substantive end."⁸²

Marx viewed property as identical to the division of labor. For him, since individuals are inextricably bound to one another, their property must be also.

Division of labour and private property are, moreover, identical expressions: in the one the same thing is affirmed with reference to activity as is affirmed in the other with reference to the product of the activity. Further, the division of labour implies the contradiction between the interests of the separate individual or the individual family and the communal interest of all individuals who have intercourse with one another. And indeed, this communal interest does not exist merely in the imagination, as the 'general interest', but first of all in reality, as the mutual interdependence of the individuals among whom labour is divided. And finally, the division of labour offers us the first example of how, as long as man remains in natural society, that is, as long as a cleavage exists between the particular and the common interests, as long, therefore, as activity is not voluntary, but naturally, divided, man's own deed becomes an alien power apposed to him, which enslaves him instead of being controlled by him.⁸³

⁸¹ Hegel, *Philosophy of Right*, 42.

⁸² Ibid.

⁸³ Marx, *The German Ideology, Selected Writings*, 185.

Thus, Marx understands property as that which oppresses, not that which provides for actualizing the will. Though he might grant to Hegel that property provides for individual autonomy, Marx seems less sanguine about the necessity and benefit of that autonomy. Like Hegel, Marx sees property and right as inextricably linked, but given his position on private property, right also becomes an oppressive construct.

Marx is critical of human rights most obviously when he writes on the question of religious freedom for Jews. Though religion is not the focus of this discussion, his points are applicable to other realms of freedom as well. Marx considers human rights to be distinct from those he dubs the rights of the citizen. The special rights of citizens come from membership in a political state, while distinct human rights belong to all members of civil society. The Hegelian influence is obvious here, and man's rights as a member of civil society, as distinguished from the rights of a citizen in a state, are those of equality, liberty, security, and property. According to Marx, liberty can be equated with freedom, and "freedom is the right to do and perform what does not harm others."⁸⁴ Marx essentially provides a utilitarian understanding of freedom as the ability to do whatever one wishes as long as it does not encroach upon the freedom of others. He continues, "The limits within which each person can move without harming others is defined by the law, just as the boundary between two fields is defined by the fence. The freedom in question is that of a man treated as an isolated monad and withdrawn into himself."⁸⁵ It is with this singular existence of man that Marx has such problems. For, "the right of man to freedom is not based on the union of man with man, but on the separation of man

⁸⁴ Marx, "On the Jewish Question," 60.

⁸⁵ Ibid.

from man. It is the right to this separation, the rights of the limited individual who is limited to himself."⁸⁶ Thus, the right to freedom is merely the isolating of oneself from others to ensure one's ability to act as she pleases, with little regard for the well-being of others. Rather than freedom as it is typically conceived, Marx asserts that the "practical application of the rights of man to freedom is the right of man to private property."⁸⁷ And that "the right of man to property is the right to enjoy his possessions and dispose of the same arbitrarily, without regard for other men, independently from society, the right of selfishness."⁸⁸ Ultimately, for Marx, claiming a right to freedom is really just claiming the right to be selfish.

The rights of equality and security are subsidiary rights within civil society, and in each instance, they ultimately amount to the further protection of selfishness and the ability to use others as means. "Equality, here in its non-political sense, is simply the counterpart of the liberty described above, namely that each man shall without discrimination be treated as a self-sufficient monad."⁸⁹ Marx is similarly critical of the right to security. "Security is the highest social concept of civil society, the concept of the police. The whole of society is merely there to guarantee to each of its members the preservation of his person, rights, and property. It is in this sense that Hegel calls civil society the 'state of need and reason'."⁹⁰ Marx continues: "The concept of security does not allow civil society to raise itself above its egoism. Security is more

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid., 61.

⁹⁰ Ibid.

the assurance of egoism.”⁹¹ To be sure, for a social contract theorist, particularly Hobbes, speaking of security in such a way would be foreign, since Hobbes would have been adamantly in favor of any secure means necessary to preserve one's life. Likewise, the preservation of all egoistic men is precisely the point of liberal contractarian doctrines. For Marx, however, the preservation of rights in civil society erodes community at the expense of individual self-centeredness.

Marx is critical of the Hegelian civil society on the grounds that human needs are essentially economic, and that individuals are bound to one another based solely on their private interests. For Marx, human need may be conceived of as “the desire to be human, to strive for all that is possible under particular historical conditions” though he recognizes that such needs and potentialities are perverted in a capitalist economy.⁹² He blames the capitalist free market for turning natural human needs into private interests that do not account for the welfare of others. He writes,

Thus none of the so-called rights of man goes beyond egoistic man, man as he is in civil society, namely an individual withdrawn behind his private interests and whims and separated from the community. Far from the rights of man conceiving of man as a species-being, species-life itself, society, appears as a framework exterior to individuals, a limitation of their original self-sufficiency. The only bond that holds them together is natural necessity, need and private interest, the conservation of their property and egoistic person.⁹³

For Marx, the political state, with its emphasis on rights, results in an extrication of man from that inherent community and results in his becoming the aforementioned isolated monad.

⁹¹ Ibid.

⁹² Bradley J. Macdonald, *Performing Marx: Contemporary Negotiations of a Living Traditions* (Albany, New York: SUNY Press, 2006), 37.

⁹³ Ibid.

Thus, Marx makes a point that Hegel advances in a less straightforward way. Marx is aware that individuals cannot function as social beings until certain needs are met. While communitarian critics of rights argue that human beings cannot accurately be considered outside the social order, their argument is flawed. Though human beings exist only within social units of some kind, whether family, tribe, or town, they cannot be full participants, nor sufficiently socially-oriented creatures, until they have fulfilled certain other person-specific needs. Marx asserts,

Like every animal, they begin by *eating, drinking*, etc. that is, not by 'finding themselves' in a relationship, but by behaving actively, gaining possession of certain things in the external world by their actions, thus satisfying their needs. (They thus begin by production.) By repetition of this process, the property that those things have of 'satisfying their needs' is impressed on their brain; men, like animals, also learn to distinguish 'theoretically' the external things which, above all others, serve to satisfy their needs.⁹⁴

It is only after this first 'moment' of human history that individuals can be concerned with social life. Rights, far from promoting potentiality, actually hinder the ability of some to meet their own needs, exercise autonomy, and engage in self-creation. In the understanding of Hegel and Marx, this is due primarily to the relatedness of rights to the free-market ideology of wealth creation. Aristotle instructed individuals to accrue only moderate amounts of wealth in their attempts to actualize their *telos*. "Affluence and abundance, then, do not solve and only exacerbate the problems of civil society. Indeed, free, rights-holding individuals, acting in a free market and producing great wealth, create intractable problems insoluble within civil

⁹⁴ Marx, "Comments on Adolph Wagner," in *Selected Writings*, ed. David McLellan (Oxford: Oxford University Press, 2000), 629. Specifically, Marx is noting that human beings have the ability to generalize in a way that animals do not, though their most basic needs are very similar.

society.”⁹⁵ Marx clearly understood this problem because he identified rights as, ultimately, the rights to obtain and expand one’s property holdings. Because rights, in general, denote property rights, specifically, they inevitably lead to an amassing of wealth. In Marx’s formulation, these rights create isolated monads. While there may be theoretical and ideological disagreement with Marx’s interpretation of the relationship between property and rights, the typical liberal focus on the individual as the primary unit through which moral concerns and obligations are addressed seems to confirm, at least some of, Marx’s suspicions regarding the rights discourse.

Conclusion

Though it seems clear that addressing human potentiality is important, a rights discourse seems inadequate for such an endeavor. The Kantian emphasis on the separation of the noumenal and phenomenal place rights in a position only intelligible through abstract reason. Kant neglects the phenomenal as the realm of uncertainty and change, and focuses only on the absolute and unchanging noumenal realm, thereby neglecting potentiality. This preoccupation with the distinction of noumenal and phenomenal is not productive in addressing human potential. Potentiality, in the understanding of Aristotle, must be realized across all levels of the hierarchy of being. Likewise, for Hegel and Marx, there is a deemphasizing of these two realms, and need of both mundane resources and higher activities are considered crucial to human flourishing. The well-established link between potentiality and need serves as a promising avenue for assisting individuals in actualizing their potential and for elevating the importance of need. Though there have been some attempts among political

⁹⁵ Stillman, 300.

philosophers to use need as a basis for ethical and political decisions, most of these theories are underdeveloped and they tend to neglect the relevance of potentiality. It seems clear that a theory of need, which surpasses the current discourses on need satisfaction in their various forms, must address both potential and actual functioning, as outlined by Aristotle, and as developed by Hegel and Marx. An adequate theory of meeting needs should not only consider those capacities and capabilities that people possess, but assist individuals in their attempts to actualize those capabilities. Potentiality, as varying and particular, is problematic for universal theories of rights for the reasons expounded upon above. The theory of needs elucidated herein employs Aristotle's understanding of the universal and the particular when considering individual potentialities and propensities. These considerations allow for the cultivation of universal attributes that contribute to the human experience, but they also provide greater nuance when considering those experiences in the phenomenal realm that have traditionally not lent themselves to universal applicability through right. Examining potentiality in conjunction with human need provides a basis for an alternative language of human flourishing.

Most attempts to discuss the importance of needs are typically met with resistance, in part, on the grounds that such discussions are utopian and lack an understanding of the conflict that inevitably arises between individuals who are attempting to meet their needs. These critics often see those who support discussions of need as "bleeding-hearts" who do not properly comprehend human nature. Yet, rights theorists must surely be guilty of similar offences. The notion that an individual who asserts her rights will be heard and, in turn, responded to, must certainly be as naïve as discussing human need. Indeed, rights theorists seem to consider human rights as an answer to conflicts over resources and their distribution,

and they see rationalism as the method by which those resources may be justly distributed. It is the argument of this dissertation that a needs discourse is no more utopian, nor less rational, than the prevailing rights discourse. Indeed, the process of addressing both basic and higher order human needs contributes greatly to fulfilling individual potentiality, and promoting individual conceptions of the good, or fully-flourishing, life. Though this chapter has investigated the relationship between potentiality and need, and the emergence of new needs, the content of need has yet to be considered. That is, what specific needs are universally experienced, and how do they present themselves to individuals? One of the best answers to that question comes through Abraham Maslow's hierarchy of needs.

CHAPTER THREE

TOWARD A THEORY OF NEEDS

The link between fulfilling human potential and the meeting of human needs is crucially important. Whereas the current emphasis on rights discourse discounts potentiality, rights also emphasize the wrong sorts of freedoms and requirements. Many liberal rights theorists today are concerned with rights to the extent that they are civil rights, and to the extent that the exercise of such entitlements promotes popular sovereignty and assists in the formation of democratic regimes. They say very little of economic and social rights, or more accurately, the various human needs that are actually more fundamental to meeting human potential. Many proponents of need only advocate meeting needs insofar as they represent the necessities for survival. It is no wonder, then, that many rights theorists see them as inadequate—"sheer survival is not enough."¹ Others argue for needs on the basis that individuals should live a life of dignity. Though that may be true, if dignity is taken to mean a life fitting for a human being, or a life that surpasses the level of comfort provided animals, then dignity is not sufficient either, though it may be necessary. Rather, governments, and other individuals, should meet needs in an attempt to provide lives of flourishing for all people everywhere. As Christian Bay asserts "the one basic value adopted here, then, is a commitment to the sanctity of every human life, physical and personal; not only to its sheer preservation but to its freedom, within

¹ Bay, "Needs, Wants, and Political Legitimacy," 241.

empirically necessary and ascertainable limits, to grow and develop according to inner propensities and potentialities.”²

In an effort to outline how such a goal may be ascertained, this chapter will first examine the substance and meaning of human need, in relation, particularly, to Abraham Maslow’s hierarchy of needs. Given its basis in empirical, clinical research, and its attempt to address the entire gamut of human need, it serves as an excellent starting place for the development of an alternative to the rationalistic rights doctrine. Bay, as a strong proponent of Maslow’s hierarchy, still succumbs to the modern propensity to fit all theories into the preexisting rights context. “I suggest that Maslow's need-priorities be tentatively adopted for the purpose of indicating more precisely what the priorities among basic rights ought to be, assuming that a psychologically prior need must legitimate a politically prior right.”³ Bay makes the point that needs should be used as a basis for right, “*assuming*” that psychological needs legitimate rights talk at all. The presence of human needs should not have to be legitimated by any language, but rather, accepted and met wherever possible. In addition to surpassing the rights discussion, it allows for a theory that surpasses most of the contemporary scholarship on needs, which typically asserts an individual’s right to meet her basic needs, or only affirms the needs required for survival. Maslow’s hierarchy also speaks to issues of potentiality, often neglected by rights and needs theorists alike. To be sure, Maslow’s theory, though imperfect, is probably the best needs-based theory that lends itself to moral and political decision-making. Thus, it is a rich resource for reinvigorating the needs discourse. As such, this chapter will

² Ibid.

³ Ibid., 248.

address the potential criticisms of Maslow's hierarchy. Though the focus here is not on reiterating the weaknesses of the rights discourse elaborated upon in the first chapter, some consideration must be given to critics of need. And, because these detractors typically critique theories of need in relation to rights, this approach must be addressed, specifically citing why rights-based critiques of need are inappropriate and unfounded. Ultimately, it will be argued that despite its improvement over most preexisting moral theories, the hierarchy, and its use within political science, is too individualistic. Rather than perpetually assert those things that individuals require, needs theorists should consider how meeting needs can assist in the creation of ethical community.

The Meaning of Need

Before engaging with Maslow's hierarchy, it is important to articulate precisely what is meant by need. Most often, need is conflated with desire, or interest and many authors imply that distinguishing between need and desire is an onerous and unproductive task. For example, H.J. McCloskey makes the argument that many people may claim certain goods as needs when they cannot be justifiably considered such. He writes of a hypothetical football player, Smith,

Similarly, as a footballer, Smith may need boots which allow various arrangements of stops to be used according to the state of the ground, but he cannot be said to have a need for such boots, although *qua* footballer (and not *qua* the person Smith) he may need them, and even have a need for them, but as a person he would have a need for them only if his life or well-being in certain specific respects depended on his being a footballer and his playing well.⁴

Such an understanding of need prompts individual needs to be seen as frivolous claims for desires or interests. McCloskey confirms this when he states, "Rather we should speak of his

⁴ H. J. McCloskey, "Human Needs, Rights and Political Values," *American Philosophical Quarterly* 13 (1976): 2.

interests, and say that it was in his interests as the person Smith in so far as his interests as a footballer contributed to his interests as a person.”⁵ Since he notes that such an interest should not properly be dubbed a need, it seems unfair to discredit an account of human need on the basis of such an example. Yet, because individualized needs can be so subjective, this attack is common among those seeking to question needs-based theories.

Yet, McClosky’s comments highlight an important facet of providing a theory based in need. That is, any advancement of a theory of needs must provide a definition of need so that need may be sufficiently distinguished from desire. Bay offers a fairly suitable definition of need, though both he and Maslow examine need in terms of human motivation, not what is required by individuals. Of course, these two concepts are related, but providing a definition related to motivational tendencies creates some problems for the current project. In Bay’s formulation, “‘Need’ refers to *any behaviour tendency whose continued denial or frustration leads to pathological responses.*”⁶ However, Bay’s understanding is couched in negative terms, as though a need can only be recognized when it is not being met. While Bay’s definition may be accurate, a more positive statement of need is preferable to one that relies on “continued denial or frustration” as a point of departure. Likewise, pathology is a nebulous concept, though Bay attempts to define it as suicidal behavior, psychosis, severe neurosis, and addiction to drugs or alcohol.⁷ Again, as is often the trouble with rights, the bar has been set unimaginably low. Bay has mentioned life-threatening conditions as the result of need-

⁵ Ibid.

⁶ Bay, “Needs, Wants, and Political Legitimacy,” 242.

⁷ Ibid., 244.

deprivation, but surely one's needs may go unfulfilled and result in any variety of other problems, ranging from aggression or depression, to habitual unemployment, unhealthy relationships and attraction to extreme ideologies of one sort or another.⁸ Again, this points to the insufficiency of Bay's definition of need. Here, the concept of need is defined as *any requirement necessary for the attainment of one's potentials or possibilities, qua human.*⁹ The definition of need provided here is designed to be sufficiently subjective as to allow for the variety of "propensities and potentialities" that may be constitutive of different individuals. Rather than provide a "one size fits all" doctrine of universal need, which would mimic the rights discourse, this understanding of need, paired with the hierarchy provided in the following section, melds the universal and the particular.

To ensure that needs do not become mere desires, it is argued here that a doctrine of minimal sufficiency be adopted. This requirement is one designed to avoid excessive claims, relative to the specific good needed. External necessities, as Aristotle explained, are required for a life of flourishing. However, he also noted that excess was not necessary for satisfying need, and that approach is adopted here. Desire indicates any perceived longing that is not essential in striving to meet one's potential qua human. While the above definition of need

⁸ To be sure, psychosis is a fairly general term used in psychiatry and psychology, it typically refers to any perceived loss of touch with reality. Though psychosis can often be used in more banal cases, it is typically reserved for those suffering from hallucinations or delusional tendencies. See Michael Gelder, *Psychiatry* (New York: Oxford University Press, 2005). This point is raised here because some may argue that the term psychosis is often used in relatively trivial instances, and therefore should not be dubbed "life-threatening." However, given the thought disorders Gelder describes, psychosis is certainly serious, and thus serves as a very low threshold for what may be considered need-deprivation.

⁹ It should be noted that need may be any requirement for human subsistence, flourishing, or self-creation. Thus, striving to reach one's potential requires mundane daily necessities as well as higher goods, and the understanding of need included here provides human growth and development over and above what is required for basic subsistence, or even what is required for a life of "dignity."

makes clear that need may be subjective, needs cannot be so specific that they degenerate into desires. That is, the goods needed to actively seek employment may come in the form of shelter and transportation. Minimal sufficiency might require basic subsidized housing or shelter housing, and perhaps public transport. Importantly the necessities for job-seeking cannot become one's "need" for a Porsche and a mansion. Intellectual pursuits are similar. A non-essential desire might be one's wanting a first-edition copy of *To Kill a Mockingbird* for intellectual pursuit. Yet, the nature of the desire does not qualify it as a need, since a sufficiently similar intellectual pursuit could be undertaken without the book being a first edition copy. Such discussions, when taken the in abstract, seem complicated and inapplicable. However, when applied to the human experience of needs, desires, motivations, and deterrents, defining need proves crucial.

The above definitions are basic attempts to provide some context for a discussion of needs. In the preceding discussion, need is referred to from the perspective of what an individual would recognize herself as needing when attempting to exercise her possibilities as a human being. While the goal of this work is not to engage in full-fledged political psychology, but rather, to provide a new understanding of ethical responsibility within a framework of need, the literature in psychology has much to say about need.¹⁰ With assistance from clinical psychology, the understanding of need can be further refined from the definition offered above. Though Abraham Maslow is probably the most famous proponent of need based theories, others have attempted to order and group human needs in terms of the different

¹⁰ For an early attempt of this sort, see Jeanne Nickell Knutson, *The Human Basis of the Polity: A Psychological Study of Political Men* (Chicago: Aldine-Atherton, Inc., 1972).

elements of fulfillment required for a complete human existence. The goals of the following section are to use Maslow's psychologically based theory to form a broader conversation about the political relevance of meeting needs.

The Content of Needs: Abraham Maslow's Hierarchy of Needs

Probably the best starting point for discussing the variety of human needs is Abraham Maslow's hierarchy, which serves as the basis for human motivation in life endeavors.

Maslow's attempt at ordering human motivations is probably the most famous attempt of the sort, though writers such as Aldous Huxley have posited similar theories.¹¹ Huxley writes of his own theory of needs,

At the lower end of the scale are the basic physical needs – the need for food, the need for bodily safety. A stage higher we find the basic psychological needs – the need for love, received and given; the need for belongingness, for acceptance within a community; the need for respect and status. And finally, at the upper end of the scale, there are the least urgent but most specifically human of our needs – the need to satisfy curiosity and acquire knowledge; the need for meaning, order and comprehensibility in terms of a symbol-system; the need for self-expression through the manipulation of symbols; the need for self-transcending development (in other words, the felt urge to actualize more potentialities).¹²

As is emphasized here, Huxley discusses these needs in terms of human potentialities, capacities, and possibilities. Whereas Huxley distinguishes between physical needs, higher order needs, and psychological needs, Maslow considers all needs psychological, though the results of their fulfillment may go beyond psychological satisfaction. An advantage of Maslow's approach compared to Huxley's results from Maslow's research being derived from clinical experience, which allows it to "conform to the known facts, clinical and observational as well as

¹¹ In addition to Huxley, see the scholars mentioned in the first chapter.

¹² Aldous Huxley, "Human Potentialities," in *The Human Frame*, ed. Julian Huxley (New York: Harper & Brothers Publishers, 1961), 417-18.

experimental.”¹³ Thus, the hierarchy that he presents is not derived from abstract speculation about what is needed by individuals, for even if such speculation is analytically sound, it may neglect many experiential facts.

Maslow asserts that human needs occur at different levels, with the most fundamental needs occurring at the bottom of the hierarchy. Once the lower levels of need are met, new needs emerge and “these, rather than physiological hungers, dominate the organism. And when these in turn are satisfied, again new (and still 'higher') needs emerge and so on. This is what we mean by saying that the basic human needs are organized into a hierarchy of relative prepotency.”¹⁴ To begin, at the lowest level of Maslow’s hierarchy are *physiological needs*. These encompass the minimal requirements for animalistic functioning, such as homeostasis, i.e., hunger, thirst, excretion and sex. These needs dominate the human psyche until they are satisfied. Maslow is clear here (and throughout) on the distinct difference between desire and need. For most individuals in Western societies, hunger does not exist, though individuals may claim they are hungry if they haven’t had lunch at their regular time. The social order, Maslow argues, is able to make the physiological needs rarer and less severe. He writes that “culture itself is an adaptive tool, one of whose main functions is to make the physiological emergencies come less and less often.”¹⁵ In the United States, he argues, “chronic extreme hunger of the emergency type is rare, rather than common. Average American citizens are experiencing appetite rather than hunger when they say, ‘I am hungry.’ They are apt to experience sheer

¹³ Abraham Maslow, “A Theory of Human Motivation,” *Psychological Review* 50 (1943): 371.

¹⁴ *Ibid.*, 375.

¹⁵ Abraham Maslow, *Motivation and Personality* (New York: Harper & Row Publishers, Inc., 1970), 17.

life-and-death hunger only by accident and then only a few times through their entire lives.”¹⁶

Clearly, these are the most basic forms of human needs, without which no other needs will emerge. Maslow recognizes the importance of gratification, particularly over time, since the physiological needs, when they are “chronically gratified cease to exist as active determinants or organizers of behavior. They now only exist in a potential fashion in the sense that they may emerge again to dominate the organism if they are thwarted.”¹⁷

If the physiological needs are satisfied sufficiently, then the individual will experience higher order needs. The next level of Maslow’s hierarchy is the *safety needs*. Though the physiological needs are more urgent when they are not being met, the safety needs too can come to dominate everyday life if they are not adequately satisfied.

Again, as in the hungry human, we find that the dominating goal is a strong determinant not only of their current world outlook and philosophy but also of their philosophy of the future and of values. Practically everything looks less important than safety and protection (even sometimes the physiological needs, which, being satisfied, are now underestimated). A person in this state, if it is extreme enough and chronic enough, may be characterized as living almost for safety alone.¹⁸

However, within a secure and stable society, the safety needs are typically satisfied. Of the safety needs Maslow writes, “The peaceful, smoothly running, 'good' society ordinarily makes its members feel safe enough from wild animals, extremes of temperature, criminals, assault and murder, tyranny, etc. Therefore, in a very real sense, he no longer has any safety needs as active motivators. Just as a sated man no longer feels hungry, a safe man no longer feels

¹⁶ Ibid.

¹⁷ Ibid., 18.

¹⁸ Ibid.

endangered.”¹⁹ However, in times of natural disaster, disease, and war, among other catastrophes, an individual might have the safety needs aroused in a way that they normally are not. Interestingly, for Maslow, safety may also pertain to one’s preference for comfort and for familiar things over unfamiliar ones, things known over those things unknown.²⁰ Maslow elaborates, “The tendency to have some religion or world philosophy that organizes the universe and the people in it into some sort of satisfactorily coherent, meaningful whole is also in part motivated by safety seeking. Here too we may list science and philosophy in general as partially motivated by the safety needs (we shall see later that there are also other motivations to scientific, philosophical, or religious endeavor).”²¹

If both the *physiological* and the *safety needs* are reasonably well satisfied, then the next two, related levels of the hierarchy of needs will emerge.²² The *love needs* indicate a person’s need for belonging, love, and kinship in some form, and preferably a variety of forms. They involve giving one’s affection to others just as much as receiving it. The individual “will hunger for affectionate relations with people in general, namely, for a place in his group, and he will strive with great intensity to achieve this goal.”²³ These needs would not have occurred to the starving individual, or one fearful of tyranny, but living in a stable environment produces

¹⁹ Maslow, “Theory of Motivation,” 378-9.

²⁰ See Abraham Maslow, “The Comparative Approach to Social Behavior,” *Social Forces* 15 (1937): 487-90.

²¹ Maslow, *Motivation and Personality*, 19. It should be noted here that this level of need essentially exhausts the traditionally accepted content of human rights.

²² I mention these two levels together because these, more so than any of the other levels of the hierarchy, are subject to inversion with one another. While it is virtually impossible to seek esteem in the face of starvation or pestilence or widespread war, it may be possible, or even likely, that some individuals will place love needs lower on their personal needs hierarchy and elevate esteem needs.

²³ Maslow, “Theory of Motivation,” 381.

ardent need of a place in life, and of acting in communion with others. "Attaining such a place will matter more than anything else in the world and he or she may even forget that once, when hunger was foremost, love seemed unreal, unnecessary, and unimportant. Now the pangs of loneliness, ostracism, rejection, friendlessness, and rootlessness are preeminent."²⁴ It becomes obvious that ascending the hierarchy produces less tangible needs. Indeed, the love needs are most easily recognizable because of the effects of their having not been met, as Bay suggests in his definition of needs at-large. Maslow writes, "In our society the thwarting of these needs is the most commonly found core in cases of maladjustment and more severe pathology. Love and affection, as well as their possible expression in sexuality, are generally looked upon with ambivalence and are customarily hedged about with many restrictions and inhibitions. Practically all theorists of psychopathology have stressed thwarting of the love needs as basic in the picture of maladjustment."²⁵

If the individual is able to achieve some sense of love and belonging, *esteem needs* will surface.²⁶ Maslow classifies these as the needs for self-esteem based in one's own capacity and achievement, as well as respect from others. Maslow further subdivides these sorts of needs into two basic typologies. "There are, first, the desire for strength, achievement, adequacy, mastery and competence, confidence in the face of the world, and independence and freedom. Second, we have what we may call the desire for reputation or prestige (defining it as respect or esteem from other people), status, fame and glory, dominance, recognition, attention,

²⁴ Maslow, *Motivation and Personality*, 20.

²⁵ *Ibid.*, 21.

²⁶ Again, these could arise prior to love needs and thereby their fulfillment could allow love needs to come to the fore.

importance, dignity, or appreciation.”²⁷ At first glance, the esteem needs appear to lend themselves to the possibility of hubris and desire for attention, rather than honor. The example mentioned above, of a Porsche for job-seeking, illustrates this point. One may desire a Porsche and claim that such an automobile would help meet esteem needs, on the basis that it would provide recognition from others, thereby fulfilling the second typology of esteem needs. However, such a desire or claim would not rest on an accurate interpretation of these needs. That is, the *desire* for a Porsche to gain recognition is not the same as a *need* for self-esteem, properly conceived. Maslow is aware of this when he states that scholars have learned much of “the dangers of basing self-esteem on the opinions of others rather than on real capacity, competence, and adequacy to the task. The most stable and therefore most healthy self-esteem is based on *deserved* respect from others rather than on external fame or celebrity and unwarranted adulation.”²⁸

At the top of the hierarchy of needs, is the need for *self-actualization*. In short, this need requires that an artist be capable of creating, or that a farmer be able to grow and tend. “The specific form that these needs will take will of course vary greatly from person to person. In one individual it may take the form of the desire to be an ideal mother, in another it may be expressed athletically, and in still another it may be expressed in painting pictures or in inventions. It is not necessarily a creative urge although in people who have any capacities for

²⁷ Maslow, *Motivation and Personality*, 21. It is worth noting that Maslow uses the terms “need” and “desire” interchangeably here. Whether this was intentional is unclear. However, in his other work, he is very clear not to do so, which makes this use all the more puzzling.

²⁸ *Ibid.*, 21-2.

creation it will take this form.”²⁹ Maslow says very little about these needs, perhaps because they are so abstract. Or, perhaps he is more taciturn on the topic because these needs take a huge variety of forms; they are so subjective and particular that providing a definition of them is difficult. Maslow admits as much when he states, “At this level, individual differences are greatest. However, the common feature of the needs for self-actualization is that their emergence usually rests upon some prior satisfaction of the physiological, safety, love, and esteem needs.”³⁰ Indeed, as M. Brewster Smith notes, echoing Maslow,

The first four groups [of the hierarchy] Maslow regards as ‘deficiency needs.’ The person driven by lacks in these areas is short of full humanity or mental health; he or she *is* driven. When a person’s deficiency needs are satisfied, a variety of further potentialities for self-actualization open out, which emerge in what Maslow calls B-motives (for Being, in contrast with D-motives for Deficiency). It is his elaboration on these ‘farther reaches of human nature’ that has made Maslow the patron saint of the humanistic movement in psychology.³¹

Though “patron saint” may be overstating the case, Maslow’s identification of the self-actualization needs is important because it provides a framework for those abstract, but crucially important, needs that rights scholars have typically had trouble fitting into their language.

Though difficult to conceptualize, the self-actualization needs are crucial because they serve to unite the other fulfilled needs toward a subjective purpose. According to Maslow, the self-actualization needs represent individual fulfillment, and both the theoretical and empirical wisdom on the subject has verified their importance to human well-being.

²⁹ Maslow, “Theory of Motivation,” 383.

³⁰ Maslow, *Motivation and Personality*, 22.

³¹ M. Brewster Smith, *Values, Self, and Society: Toward a Humanist Social Psychology* (New Brunswick, New Jersey: Transaction Publishers, 1991), 123.

We can certainly now assert that at least a reasonable, theoretical, and empirical case has been made for the presence within the human being of a tendency toward, or need for growing in a direction that can be summarized in general as self-actualization, or psychological health, and specifically as growth toward each and all of the sub-aspects of self-actualization, i.e., he has within him a pressure toward unity of personality, toward spontaneous expressiveness, toward full individuality and identity, toward seeing the truth rather than being blind, toward being creative, toward being good, and a lot else. That is, the human being is so constructed that he presses toward fuller and fuller being.³²

In this statement of the human person as perpetually pressing toward fuller being, Aristotle, Hegel, and Marx can be heard. And, conversely, through this conception of the individual, the liabilities of the capabilities approach become evident. Rather than merely requiring the freedom to engage in certain activities, Maslow's understanding of self-actualization implies the necessity of engaging in activities that further one's subjective need for creativity, or seeking truth, or self-creation.

Finally, distinct from the rest of these hierarchical needs, Maslow identifies cognitive needs, of which the human need to *know and understand* is paramount. These needs are necessary for the satisfaction of the other needs, but are also a distinct subset of needs that do not fit neatly at any level of Maslow's hierarchy. Maslow states, "Acquiring knowledge and systematizing the universe have been considered as, in part, techniques for the achievement of basic safety in the world, or, for the intelligent man, expressions of self-actualization. Also, freedom of inquiry and expression have been discussed as preconditions of satisfactions of the basic needs."³³ Because of its unique ability to act as a precondition for the satisfaction of

³² Abraham Maslow, *Toward a Psychology of Being* (Mansfield Centre, Connecticut: Martino Publishing, 2010), 147. Maslow cites the clinical and/or philosophical work of Rogers, Fromm, Goldstein, Angyal, Murray, Moustakas, Jung and others to support the presence self-actualization needs in the psyche.

³³ Maslow, "Theory of Motivation," 384.

needs, as well as a need in and of itself, this cognitive need is distinct from the rest of the hierarchy. Whereas Aristotle emphasized understanding as part of the rational capacity at the pinnacle of a hierarchy of being, Maslow argues that it undergirds all other forms of need. “Studies of psychologically healthy people indicate that they are, as a defining characteristic, attracted to the mysterious, to the unknown, to the chaotic, unorganized, and unexplained. This seems to be a per se attractiveness; these areas are in themselves and of their own right interesting.”³⁴ The need to know and understand, like the other needs of the hierarchy, continue perpetually in different forms. “Even after we know, we are impelled to know more and more minutely and microscopically on the one hand, and on the other, more and more extensively in the direction of a world philosophy, theology, and so on.”³⁵ Taken with the above hierarchy, the basic psychological needs and the cognitive needs are “synergic rather than antagonistic,” and “are as much personality needs as the basic needs” within the hierarchy.³⁶

Maslow also briefly identifies aesthetic needs “for order, for symmetry, for closure, for completion of the act, for system, and for structure” which “may be indiscriminately assigned to cognitive, conative, aesthetic, or even to neurotic needs.”³⁷ These will not be dealt with in detail here, but the aesthetic needs further illustrate Maslow’s emphasis on the overlapping nature of some of the needs he describes. Maslow’s emphasis on the variability of needs from

³⁴ Maslow, *Motivation and Personality*, 24.

³⁵ *Ibid.*, 25.

³⁶ *Ibid.*

³⁷ *Ibid.*, 26.

person to person is important, as it represents advancement on the absolute and universal tendencies of the rights discourse. As Smith states,

Maslow's classification of needs is loose, and the claim for any strict hierarchy lacks support. It is easy to imagine circumstances in which a need for safety takes priority over physiological needs, at least in the short run; or instances in which needs for affection or for esteem become modes of 'self-actualization' and at the same time may eclipse physiological and safety needs. Maslow's proposal has the appeal of satisfying simplicity, but facts of human motivation are surely less orderly.³⁸

Although Smith is right in some ways, his critiques are largely already answered in Maslow's work. Maslow recognizes an occasional reordering of the hierarchy, and leaves self-actualization sufficiently vague as to allow for a plethora of subjective needs to fall under its umbrella. Moreover, while it is plausible that a threat to one's bodily integrity by animals or other individuals (experienced as a safety need) could momentarily supersede the physiological needs of food and shelter, such a reordering would be temporary and would not serve as a general theory of human motivation. In fact, Maslow is careful to note that in some individuals the order of some needs could be reversed. For example, someone highly motivated to run for political office might value the esteem needs before the love needs, or the painter might value self-actualization before esteem needs. Likewise, some people may have low levels of aspiration, while some people may be so accustomed to having their safety insured that they devalue that particular set of needs. The other aspect of this variability in the needs hierarchy rests on the varying levels of deprivation people experience. Those who cannot meet even the most basic needs do not experience the upper levels of the hierarchy at all. In these cases, individuals do not feel deprived if they are not respected by others or have little confidence in

³⁸ Smith, 123.

themselves. For those without the barest necessities, the notion of esteem has almost no meaning, though, for a person whose physiological and safety needs have been fulfilled, esteem may be vitally important. The emphasis on subjective experience of need is extremely important for the application of a needs discourse. It notes the presence of certain universal needs, while recognizing that those needs come in different forms, orders, and quantities, and that these needs depend upon some minimal satisfaction of the most basic animalistic needs.³⁹

Maslow clearly accounts for issues of inversion and deprivation within his theory. With regards to potential inversions in the hierarchy, Maslow writes, “There are other apparently innately creative people in whom the drive to creativeness seems to be more important than any other counter determinant. Their creativeness might appear not as self-actualization released by basic satisfaction, but in spite of lack of basic satisfaction.”⁴⁰ He states that the most common inversion takes place between esteem needs and love needs. “There are some people in whom, for instance, self-esteem seems to be more important than love. This most common reversal in the hierarchy is usually due to the development of the notion that the person who is most likely to be loved is a strong or powerful person, one who inspires respect or fear and who is self-confident or aggressive.”⁴¹ In addition to this inversion, Maslow also recognizes the prominence of hunger and thirst, the primary physiological needs, in all aspects of life if they are not being fulfilled.

If all the needs are unsatisfied, and the organism is then dominated by the physiological needs, all other needs may become simply non-existent or be pushed into the

³⁹ Recall the discussion in the previous chapter of Aristotle’s reconciliation of the universal and particular.

⁴⁰ Maslow, *Motivation and Personality*, 26.

⁴¹ *Ibid.*

background. It is then fair to characterize the whole organism by saying simply that it is hungry, for consciousness is almost completely preempted by hunger. All capacities are put into the service of hunger-satisfaction, and the organization of these capacities is almost entirely determined by the one purpose of satisfying hunger. The receptors and effectors, the intelligence, memory, habits, all may now be defined simply as hunger-gratifying tools. Capacities that are not useful for this purpose lie dormant, or are pushed into the background. The urge to write poetry, the desire to acquire an automobile, the interest in American history, the desire for a new pair of shoes are, in the extreme case, forgotten or become of secondary importance. For the man who is extremely and dangerously hungry, no other interests exist but food. He dreams food, he remembers food, he thinks about food, he emotes only about food, he perceives only food and he wants only food. The more subtle determinants that ordinarily fuse with the physiological drives in organizing even feeding, drinking or sexual behavior, may now be so completely overwhelmed as to allow us to speak at this time (but only at this time) of pure hunger drive and behavior, with the one unqualified aim of relief.⁴²

Sadly, there are vast numbers of people around the world who are incapable of fulfilling even these most basic needs, and therefore all their potentialities are directed toward finding food. And, as Maslow notes, those potentialities that are not useful in the pursuit of food become almost completely submerged.

In addition to directing all one's efforts toward satisfying the most basic human needs. Maslow also notes that individuals will view the world from an entirely different perspective if these lower level needs are not being fulfilled. When attempting to satisfy those deficiency needs, individuals have a different frame of reference than a psychologically healthy person. Though those in the developed world are quite accustomed to having their deficiency needs largely met, and they can therefore focus on the so-called being needs, namely self-actualization. However, vast numbers of individuals around the world are struggling simply to meet the requirements of an animalistic existence; they are unable to fulfill even the physiological needs. For those who are unable to satiate their hunger, or provide for their own

⁴² Maslow, "Theory of Motivation," 373-4.

bodily integrity, cannot adequately consider the possibilities for education, for self-government, or for more philosophical or scientific aims. Maslow states,

Another peculiar characteristic of the human organism when it is dominated by a certain need is that the whole philosophy of the future tends also to change. For our chronically and extremely hungry man, Utopia can be defined very simply as a place where there is plenty of food. He tends to think that, if only he is guaranteed food for the rest of his life, he will be perfectly happy and will never want anything more. Life itself tends to be defined in terms of eating. Anything else will be defined as unimportant. Freedom, love, community feeling, respect, philosophy, may all be waved aside as fripperies which are useless since they fail to fill the stomach. Such a man may fairly be said to live by bread alone.⁴³

The same could be said of safety. But the logic also applies to the higher-order needs. If an individual cannot find employment when seeking it, for example, and thereby feels little sense of self-worth (an esteem need), then that subject can hardly be expected to engage in self-actualization, through creative enterprises, philosophizing, or partaking in athletic endeavors. As such, meeting each level of needs, including the need to know and understand, all of which Maslow refers to as “basic,” is a vital task.⁴⁴ A prescriptive, fixed approach to addressing need in the form of rights does not adequately address this variability.

Though many scholars are tempted to critique a language of need based on this subjectivity, it is argued here that needs are powerful for precisely that reason. Because Maslow provides a fairly simple framework of needs, particular expressions of these needs are dependent upon the subject. While the types of needs are universal, the particular manifestation of those types will vary from person to person. This allows for greater fulfillment

⁴³ Ibid., 374.

⁴⁴ Contrast this with David Copp’s understanding of basic needs as truly spartan requirements for rights against the state and for the assurance of rational autonomy. See especially David Copp, “Equality, Justice, and the Basic Needs.”

of human potential according to subjective needs. However, not everyone is convinced. Those who see rights as the best way forward often dismiss discussions of need without adequately considering the ability of a language of need to address potentiality and the variety of human experiences associated with it. The major critiques of need-based theories typically consider need juxtaposed to right. However, a closer look at those critiques unveils several false assumptions and misleading statements. Some of the criticisms of a need-based discourse are considered below, along with refutations of those critiques.

Critiques of Need: The Shadow of Rights

Attempts at elevating the notion of need, even in psychological terms, have been heavily criticized by several scholars, notably Jeremy Waldron. He makes several arguments about the appropriateness of rights-talk, rather than needs-talk, for both the legal and moral spheres. The most important of those arguments are included here. Recalling Plato, Waldron argues that “the abstract idea of rights is the duty to *mind one’s own business*.”⁴⁵ By minding one’s own business, that is, not concerning oneself with the affairs and enterprises of others, then the individual can engage in her own projects. First, it seems unclear why “minding one’s own business” is seen in such a positive light. While it is clear that Waldron is supporting the concept of non-interference, and perhaps rightly so, providing for human dignity and flourishing surely requires that individuals and government, at least sometimes, do not

⁴⁵ Waldron, 125. Plato’s argument centered around the tripartite division of the soul, reflected in the polis through the anthropological principle. The argument presented by Waldron here also mimics Strauss’s assertion that rights in the ancient world were reflected as duty. See Leo Strauss, *Natural Right and History* (Chicago: Chicago University Press, 1965).

completely mind their own business.⁴⁶ For Waldron, this non-interference is the basis of right, since it provides for liberty. However, he argues that need cannot be framed in this way. “By contrast, it is commonly thought that *if* the idea of needs generates responsibilities at all, it generates active responsibilities: duties to give, duties to assist, duties to rescue. Instead of a responsibility to mind my own business, the duties generated by needs require me to *go out of my way* to help you.”⁴⁷ Waldron treats this as a drawback of the needs language without fully explaining why giving, assisting, and rescuing are undesirable actions. Presumably, for him, the needs discourse is undesirable because it does not imply autonomy and self-sufficiency. He writes, “Need-based responsibilities, then connote, our lack of self-sufficiency, the implication of our lives with others, our being at the mercy of each other’s care and empathy.”⁴⁸ Momentarily laying aside his oversimplification of what needs entail, and his biased denial of care and empathy as legitimate motivating capacities, there are further problems with his argument.

When taken in conjunction with his assertion that individuals, as the bearers of rights, are empowered through their ability to stand up for their own rights, the argument becomes even more problematic. Waldron argues that “there is something especially appropriate about a person standing up for her own rights. Rights are the claims a person can put forward for her own sake and on her own behalf without the moral embarrassment usually associated with

⁴⁶ Even in Plato’s understanding of the anthropological principle, included in the province of government was the requirement to look after the subsidiary elements of society.

⁴⁷ Waldron, 125.

⁴⁸ Ibid.

assertions of self-interest.”⁴⁹ Thus, because rights are empowering, and indicate an individual’s self-sufficiency as a rational actor, they are to be preferred over needs. “Talk of the *rights* of an oppressed people comes most naturally from their own lips, and it will sound disconcerting to those who think it wiser or more politic for the oppressed to keep quiet. Talk of needs has no such connotation: it sounds as natural in the mouth of a detached observer as in that of the needy person himself.”⁵⁰ For needing, Waldron argues, “is *not* a psychological state, but rather a condition which is ascribed ‘objectively’ to the person who is its subject.”⁵¹ And here are several giant missteps. First, Waldron assumes that individuals will be empowered enough to stand up for their own rights. Second, Waldron clearly states that need is not a psychological state, without consulting *any* literature within psychology. And third, Waldron makes the argument that needs are somehow foisted upon the subject from the outside.

The first assumption is extremely naïve. It seems likely that individuals who live in abject poverty are far too concerned with feeding and sheltering themselves and their families to be concerned with voicing their desire for their rights to be upheld. As the excerpt from Bay earlier in this chapter indicated, modern liberal rights theorists are far too preoccupied with political and civil rights, which they deem necessary for the free exercise of individual autonomy. While their motives may be admirable, this fixation on specific, higher-order rights may do little to improve lives if the individuals in question are in such abject poverty that such liberties cannot be exercised. As Amartya Sen notes, rights theorists such as Waldron neglect

⁴⁹ Ibid., 130.

⁵⁰ Ibid., 129.

⁵¹ Ibid., fn.

“the effect of extreme impoverishment in making people too debilitated even to protest and rebel.”⁵² He aptly states, “Indeed, destitution can be accompanied not only by economic debility, but also by political impotence.”⁵³ The assertion that oppressed individuals need only stand up and voice their concerns disregards the fact that without a certain level of basic need satisfaction, individuals will be little concerned with whether their polity is a democratic one, or whether minorities are treated equally. To be sure, the relationship between the political order and need fulfillment is not unidirectional. As Aristotle noted, some measure of stability is provided through the political order, and this stability allows for the pursuit of self-actualization. Likewise, engagement in politics itself could also offer fulfillment of esteem needs and self-actualization needs. However, as Maslow has illustrated, the physiological needs and safety needs must be met before the higher order needs can be considered. Both Aristotle and contemporary rights theorists forget this simple fact. Thus, simply assuming that rights allow for a more autonomous assertion of one’s rights completely forgets the fact that millions (if not billions) of people are in such dire need that rights become a luxury they can’t afford.

Waldron also wrongly asserts that needs are not psychological. Rather, he argues that need is merely a linguistic term applied to others from a detached observer. Waldron seems to be addressing only the quibbles of language rather than wrestling with the underlying reality of human experience. In fact, arguments about need are prominent in the extant psychological literature. Need is discussed in psychological terms in contexts as disparate as needs in the

⁵² Amartya Sen, “Violence, Identity, and Poverty,” *Journal of Peace Research* 45 (2008): 11.

⁵³ Ibid.

workplace, to the social construction of children's needs, to needs and self-determination.⁵⁴

The ridiculous criticism that needs are not based in psychology and are therefore an unproductive alternative to rights is completely unfounded. The summary of Maslow's clinical observations indicate that needs are properly psychological experiences, and contemporary scholarship in psychology confirms his initial findings from six decades ago. The psychological roots of need are important since they indicate some commonality among the things required for human existence while still allowing for subjectivity. While Maslow's hierarchy still admits of some metaphysical assumptions and connotations, it also rests on facts of human experience, rather than conjectures about it.

Perhaps the most baffling criticism comes with Waldron's attempt to argue that need is ascribed from an objective moral standpoint to an unsuspecting other. This critique is clearly linked to the notion that rights are somehow only expressed by an individual whose rights are being abridged. Yet, surely rights admit of being objectively prescribed from the outside. Waldron levels this criticism at needs without any consideration of whether the same criticism applies to rights. Indeed, it is argued here that rights are far more offensive than needs, since they address individual propensities and potentialities to a lesser degree than needs, and they claim to be universal with little empirical support for such claims. While there certainly is an objective element to any ethical discourse, barring pure relativism, needs are also subjective

⁵⁴ On the psychology of workplace needs, see Richard M. Steers and Daniel N. Braunstein, "A Behaviorally-Based Measure of Manifest Needs in Work Settings," *Journal of Vocational Behavior* 9 (1976): 251-66; on the cultural construction of child needs, see Martin Woodhead, "Psychology and the Cultural Construction of Children's Needs," in *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood*, ed. Allison James and Alan Prout (New York: RoutledgeFalmer, Taylor and Francis, Inc., 1997); on need and self-determination, see Edward L. Deci and Richard M. Ryan, "The 'What' and 'Why' of Goal Pursuits: Human Needs and the Self-Determination of Behavior," *Psychological Inquiry* 11 (2000): 227-68.

enough to dodge the critique put forward by Waldron. His criticism that needs sound appropriate when spoken by a detached observer is not unique to talk of needs. Rights, with their codification in international law, their application in courts and tribunals to a variety of unrelated crimes, and their elaboration in academic circles are nothing if not detached. Indeed, the point of making moral statements is, in most cases, to consider the ways in which human beings should act, and therefore they are almost certainly made by outside observers. This is not an argument that needs are not often addressed from a detached perspective. However, even in their detachment, those who advocate needs attempt to apply them in both a universal and particular manner, accounting for commonality and difference. Rights, in their absolutism and their universal application do not provide the empowerment they are reputed to provide. In their narrowing uniformity, rights do not provide an impetus to act in the face of oppression as Waldron would have it. Rather, as Amartya Sen notes, “The more general point here is that an understanding of multiplicity of our identities can be a huge force in combating the instigation of violence based on a singular identity.”⁵⁵

Waldron’s arguments are not only naïve, but are also either intentionally or unintentionally ill-informed. The refutation of Waldron does not rest on the philosophical arguments here alone. The description of Maslow’s hierarchy in the first half of this chapter provides evidence from clinical psychology that, contrary to Waldron’s statements, needs are felt psychologically, and that a psychological examination of need can act as a basis for understanding broader commonalities in human experience.⁵⁶ While little work has been

⁵⁵ Amartya Sen, “Violence, Identity, and Poverty,” 11.

⁵⁶ To be clear, Maslow does not only discuss these needs in terms of psychological well-being. Rather, he notes that the needs included here are psychological-based in all humans, though they may sometimes appear in

devoted to applying Maslow's work to political phenomena, there are a few exceptions. As this dissertation does, James Chowning Davies makes use of Maslow's hierarchy of needs, though, as is typical, in relation to right. He argues that not only does Maslow's clinical research show that needs are, indeed, psychological, but that some needs are more fundamental than others. That is, if the physical needs for survival are not met, then individuals will not pursue their esteem needs nor their self-actualization needs, much less resist infringements upon their human rights. In Davies's words,

If the need hierarchy and a wide range of philosophical and moral writing and preaching are right, then indeed the *need* for equality, for dignity, is in some complex way innate and therefore a natural right, a birthright. But, to repeat, the innate need cannot become active until people have become reasonably secure, knowledgeable, and efficacious about the satisfaction of their physical and social needs. Hungry people will surrender power to get food; they will surrender group solidarity to get food; they will surrender their dignity and accept humiliation to get food.⁵⁷

To assume, as Waldron does, that someone simply seeking to stay alive and belong to a community will be able to stand up and state in a strong voice that her rights deserve to be upheld, is naïve in the most extreme way.⁵⁸ Likewise, if needs are psychological in nature (contrary to Waldron's assertion), then they are innate, entrenched, and deserving of attention to at least the same degree, if not a greater degree, as rights. One might argue that needs are

different orders and combinations. When met, these psychological needs serve to create a more complete life for the individual involved, including healthy relationships, self-esteem, and the exercise of creativity.

⁵⁷ James Chowning Davies, "Maslow and Theory of Political Development: Getting to Fundamentals," *Political Psychology* 12 (1991), 405. I would disagree with Davies that we need to consider the innate needs for equality and dignity as any type of right, it is sufficient merely to recognize them as needs and therefore seek to meet them. Despite this quibble, the larger point stands.

⁵⁸ One need only look at the history of revolution to see that this is not the case. The French Revolution, the Bolshevik Revolution, and even the contemporary uprisings in the Middle East and North Africa have been predominantly led by those who are relatively well off. It is extremely rare to see uprising originate from the most oppressed people demanding their rights be upheld as Waldron would lead us to believe.

important, but that such dire needs as those alluded to above only apply in the developing world, and therefore are not to be considered in a universal framework, as rights are.

However, the work of scholars such as Ronald Inglehart calls this claim into question. He found that even in highly developed countries, those who were better-off, that is, wealthier and more materially satisfied, were significantly more likely to be engaged in political discussions and debates.⁵⁹

Additionally, Waldron's argument completely ignores the observations of scholars like Hannah Arendt who note that authoritarian and totalitarian regimes destroy juridical man. For, even if an individual felt that her rights, or the rights of others were being violated, such regimes make attempts at protest futile, since the dissidents will simply be killed or imprisoned. In these cases, the physical needs of food, clothing, and shelter may be met, but the need for safety and physical security remains horribly uncertain. For individuals within these regimes, Hobbes's *summum malum* remains a facet of everyday life. One need only look to countries like Myanmar and North Korea, among others, to see the destruction of juridical man.⁶⁰ How can Waldron expect individuals to proclaim their innate human rights when doing so not only means death, but also does nothing to bring about change? This is not to assert that needs are the ultimate remedy to such problems. Rather, it is to reassert the importance of treating these moral statements equally. That is, there may be legitimate criticisms of need, but simply attempting to reaffirm rights is not an intellectually honest undertaking.

⁵⁹ See Ronald Inglehart, *The Silent Revolution* (Princeton: Princeton University Press, 1977).

⁶⁰ See Hannah Arendt, *Origins of Totalitarianism* (New York: Harvest Books, 1973), especially Part 3. Arendt argues that totalitarian regimes are able to obtain submission from their citizens, in part, because they destroy the juridical element in individuals. That is, resistance to injustice becomes futile since it typically results in the death of those resisting, and does not alter outcomes.

Another potential criticism might question whether needs are not Western constructs. It is true that, at least etymologically, psychology is rooted in Greek thought. However, other cultures most certainly have concepts of mind, or soul, or thinking, and emotive capacities.⁶¹ Additionally, the universality of needs is not an either/or concept. There are gradations of universality, and need (unlike right) is not dependent upon culture, even if specific subjective needs are not experienced universally. Maslow recognizes these difficulties by noting that needs will vary across cultures, particularly the specifics within any level of the hierarchy. He writes,

This classification of basic needs makes some attempt to take account of the relative unity behind the superficial differences in specific desires from one culture to another. Certainly in any particular culture an individual's conscious motivational content will usually be extremely different from the conscious motivational content of an individual in another society. However, it is the common experience of anthropologists that people, even in different societies, are much more alike than we would think from our first contact with them, and that as we know them better we seem to find more and more of this commonness.⁶²

Thus, while the individual psychological content of need will vary, an account of this variation is built into Maslow's understanding of need. The theoretical basis for need does not begin and end with universality, but with the subjectivity of need and the overarching commonality of the needs felt by all people. Again, Aristotle's reconciliation of the universal and particular serves as a model for the understanding of universal and subjective needs.

⁶¹ For example, the Indian understanding of the mind (*manas*) equates with the soul. See Natalia Isayeva, *Shankara and Indian Philosophy* (Albany, NY: State University of New York Press, 1993). Likewise, there is an ancient Chinese understanding of the mind or soul, particularly through Chinese folk religions. See Stevan Harrell, "The Concept of the Soul in Chinese Folk Religion," *Journal of Asian Studies* 38 (1979): 519-528. Finally, for the relationship of African concepts to Western philosophy, see Henry Olela, "The African Foundations of Greek Philosophy," in *African Philosophy: An Anthology*, ed. Emmanuel Chukwudi Eze (Oxford: Blackwell Publishing, 1998).

⁶² Maslow, "Theory of Motivation," 389.

However, one particular criticism of Maslow by Smith seems relevant. He asserts that Maslow's hierarchy is overly-individualistic. "Maslow's individualistic assumptions are evident even at the level of his Deficiency needs. Take, for example, parental care and love, or 'altruistic' concern for the safety of one's family, band, or in-group, not represented by Maslow's theory."⁶³ Though altruistic concern can, and does, extend beyond the narrow subset that Smith offers, his point illustrates the inadvertent propensity of Western thinkers to retain the liberal tradition of what Marx dubbed the "isolated monad" that is individualism. Smith continues, "Mother love and paternal aggressive defense of family may get integrated into motivation elaborations that are in some sense self-actualizing, but to place such fundamentals at a rarified level of the hierarchy seems dead wrong."⁶⁴ However, Maslow is clear that the love needs can only be fulfilled through both receiving and giving love. The greater issue, though, rests with the overall individualistic focus of Maslow's need hierarchy. For the purposes of his clinical research, this focus was appropriate since his aim was to investigate need and individual motivation. Yet, a theory of needs applied to politics, which focuses entirely upon the individual's needs, would be little better than other modern undertakings. Individual needs are often tied, both positively and negatively, to the needs of others. Likewise, thinking of individual needs in isolation reaffirms man as a Marxian monad concerned with her own fulfillment, potentially at the expense of others. In addition to the normative questions this raises, it also does not seem to be an entirely accurate depiction of reality, since individuals often act in ways that do nothing to fulfill their own needs, but do a great deal to fulfill the

⁶³ Smith, 124.

⁶⁴ Ibid.

needs of others. The motivations for such actions will be examined more closely in the following two chapters, though it is sufficient to note here that a theory of needs must incorporate more than Maslow's hierarchy in isolation. The question of how to consider these needs in conjunction with real world problems requires, therefore, a political understanding of human needs.

Human Needs and Politics

If needs are to be a legitimate force in moral and political theory, then obviously they must be considered within a political framework. If the political order is designed to help its citizens live-well, as Aristotle asserted, then the role of needs is somewhat apparent. If politics exists to determine who gets what, when, and how, as Harold Laswell proclaimed, then need must be related to considerations of justice.⁶⁵ The latter concern will be dealt with in the following chapter, but some basic outline of the relationship between need and politics is important here. A theory of needs has a vital role to play in several different ways. First, though needs have been studied primarily at the individual level, contrary to Smith's assertion, Maslow's hierarchy "assumes that human beings have fundamental shared needs."⁶⁶ Ervin Straub continues,

Obviously, the fulfillment of basic needs is not just an individual matter. Even apart from societal crises constituted by difficult life conditions or group conflict, in everyday life the nature of culture, relations between groups, the institutions of society, and the existence and nature of local communities provide the frame in which families and

⁶⁵ See Aristotle, *Politics*, Bk. 3, Ch. 9, and Harold D. Lasswell, *Politics: Who gets What, When, How* (New York: McGraw-Hill, 1936).

⁶⁶ Ervin Staub, "Notes on Cultures of Violence, Cultures of Caring and Peace, and the Fulfillment of Basic Human Needs," *Political Psychology* 24 (2003): 2.

individuals live. They greatly affect the extent to which basic needs are fulfilled under normal, everyday conditions.⁶⁷

This understanding of needs, even those that at first seem individualistic, as shared and inherently tied to society is important. The integration of individual need into a broader social framework creates a space for politics. Likewise, Maslow's hierarchy "offers an attractive compromise between the requirement to fully specify the widest variety of human motives, and the practical theoretical necessity to have a useful framework for political analysis."⁶⁸ Maslow himself notes the relevance of his theory for political and social concerns when he states that "a good or healthy society would be defined as one that permitted man's highest purposes to emerge by satisfying all his basic needs."⁶⁹

It is argued here that, in the effort to ensure fully-flourishing lives for its citizens, government must be responsible for explicitly ensuring some needs, such as physiological and safety needs. It must also ensure an environment in which other needs can be fulfilled by individuals, sometimes with the assistance of that government. Likewise, in the Hegelian view, autonomy of will must still be upheld so as to avoid an overly-paternalistic government. Such an understanding is not dissimilar from those of Sen and Nussbaum, as outlined in the first chapter. However, beyond mere capability, government must be concerned for actual functioning, as illustrated by Aristotle, while not encroaching upon the ability of the individual to meet her own needs. In practice, Sen has been particularly involved in the politics of

⁶⁷ Ibid., 3.

⁶⁸ Stanley Allen Renshon, "Human Needs and Political Analysis: An Examination of a Framework," *Human Needs and Politics*, ed. Ross Fitzgerald (Oxford: Pergamon Press, 1977), 57.

⁶⁹ Maslow, *Motivation and Personality*, 58.

development, and contributed to the creation of the Human Development Index.⁷⁰ John O'Manique has linked development to the human need for self-actualization, arguing that "the problems of political development today arise from the frustration of the process of self-actualization."⁷¹ However, this link to political development has been the primary attempt to relate human needs to politics, and though such attempts are important for improving lives, they do little to provide a framework through which needs can be met.

The dearth of research on the relationship of human needs to politics, beyond issues of development, has been one of the reasons that rights remain the dominant paradigm of political obligation. As Cecil L. Eubanks notes, "All too often, the consequences of [framing questions of human dignity in terms of rights] are to privatize need."⁷² Yet, as Maslow and others have noted, needs are social in nature, and thus require public engagement. When attempts have been made to establish a political theory of needs, the efforts are often riddled with problems. Scholars of need tend to focus on establishing a shared language of the good, but modern liberal sensibilities are more concerned with meta-ethical endeavors than prescribing formulas for pursuing the good.⁷³ As such, attempts to apply need to politics come

⁷⁰ In addition to *Development as Freedom*, see Amartya Sen, *Resources, Values, and Development* (Cambridge, Mass.: Harvard University Press, 1997). For an account of Sen's work in the creation of the United Nations Human Development Index see the UN website "The Human Development Concept," United Nations, accessed July 17, 2011, <http://hdr.undp.org/en/humandev/>.

⁷¹ John O'Manique, "A Marxian View of the Fundamentals of Political Development," *Political Psychology* 15 (1994): 280.

⁷² Cecil L. Eubanks, "Subject and Substance: Hegel on Modernity," *Loyal Journal of Public Interest Law* 6 (2005): 150.

⁷³ That is, particularly in analytical circles, which dominate the discourse on moral obligation, approaches that prescribe "how" to think about political problems are preferred. An example might be the modern liberal preference for a secularist society that simply illustrates how people should act in the public sphere, but does not establish any normative theories of what obligations are demanded. See Cecile Laborde, "On Republican Toleration," *Constellations* 9 (2002): 167-183.

under scrutiny from several directions. It is argued here that there are three primary reasons for the hitherto unsuccessful melding of needs and politics. First, the increasing popularity of economic and social rights has displaced needs as a theory of obligation to provide for less tangible needs. Second, some scholars have argued that government attempts to meet needs is bound to result in paternalism, in less serious situations, and authoritarianism, in more nefarious ones. Third, theories of need and politics, when they are attempted, provide no method of deciding whether needs are legitimate, how to decide between competing needs, or what motivates individuals to act on behalf of others or compel their representatives to do so. These points deserve some further consideration.

Most of the prominent research on human needs and politics took place in the 1970's and 1980's. During that time, the consideration of economic and social rights became increasingly important, though theories of such rights were on the periphery in previous decades. It is possible that economic and social rights absorbed some of the interest in needs. C. Wilfred Jenks attempted to outline five basic economic and social rights, and many of them have a familiar ring. He names education, work, proper working conditions, food and housing, and social security.⁷⁴ Certainly each of these is reflected in Maslow's hierarchy. Education may contribute to esteem needs and self-actualization needs and work may contribute to esteem needs and self-actualization. Food and housing and social security are associated more strongly with the physiological and safety needs. But these 'rights' raise questions. What about the person who sees little value in education because she has grown up on a rural farm and knows

⁷⁴ C. Wilfred Jenks, "Five Economic and Social Rights," *Annals of the American Academy of Political and Social Science* 243 (1946): 40-46.

that she wants to farm? Perhaps for this individual, her esteem and self-actualization come, not from reading books, but from tilling the land. Indeed, as William James has so eloquently elaborated upon, individuals often find fulfilment in the otherwise mundane matters of life and nature. He writes, "It is the terror and beauty of phenomena, the 'promise' of the dawn and of the rainbow, and the 'voice' of the thunder, the 'gentleness' of the summer rain . . . and just as of yore, the devout man tells you that in the solitude of his room or of the fields he still feels the divine presence."⁷⁵ This sort of experience may contribute mightily to her self-actualization. Does, then, this hypothetical person have a "right to farm"? Surely such a need is not conducive to being discussed as a right, even in terms of economic and social rights. However, most scholars seem to have neglected this scenario and maintained an adherence to rights above needs.

Another possible reason for the lack of success in political discussions of need is the argument that meeting needs leads to authoritarianism. Ross Fitzgerald argues that the place of needs in politics is dangerous and unproductive. He states that self-actualization needs, particularly, are problematic because they end up equating simply to a realization of the good. He writes,

Human selves have many potentialities; we have many things in us. This raises the problem of which selves and which potentialities are to be realized. The answer to the question 'What sort of self does [Christian] Bay want actualized or realized' is simple: It is good self. Similarly, it is good potentialities that he wants to be developed or expressed. Likewise, the answer to the often unasked question: 'What are the needs that ought to be satisfied, fulfilled, or promoted' as good needs. This is precisely why it sounds strange to talk about a need for destruction or punishment or a need to be sadistic, while talk in terms of a need for love, affection, or knowledge sounds fine. And

⁷⁵ William James, *The Varieties of Religious Experience: A Study in Human Nature*, ed. Martin E. Marty (New York: Penguin Books, 1985), 498.

this is why Bay and Marcuse are compelled to distinguish between 'real' needs and mere 'wants' (Bay) or 'false' or 'artificial' needs (Marcuse). It hardly has to be pointed out that 'real needs' or 'genuine needs' come to equal 'good needs.'⁷⁶

Fitzgerald is correct that individuals have many different potentialities and possibilities, and attempts to realize a good society have prescribed the types of actions that are deemed good. However, his assumption that a value judgment is necessarily involved when considering needs misses the point. He states, "Fundamentally, the notion of 'need' itself simply substitutes for 'good' or for 'what ought to be.' Any talk about human needs must involve value-judgments about which of our many propensities it is desirable to foster and which forms of human development are good."⁷⁷ Fitzgerald oversimplifies the points made by Maslow, Bay and Marcuse. Most moral statements, includes those made in rights theory, involve value judgments of one sort or another, and this is not an inherently negative thing, as Fitzgerald insinuates. Furthermore, one of the interesting aspect of Maslow's approach is that it comes from the perspective of empirical psychological study. Objective determination of which behaviors are healthy and which are not is precisely the point of psychology and psychoanalysis—a concept of which Maslow would have certainly been aware. Yet this also raises questions about whether individual needs would then be left up to a board of psychologists who would deem some needs valid and other not. As Fitzgerald notes, "Despite its current appeal, need theory in relation to politics, as exemplified by Marcuse and Bay, has profoundly authoritarian, even totalitarian implications."⁷⁸

⁷⁶ Ross Fitzgerald, "Human Needs and Politics: The Ideas of Christian Bay and Herbert Marcuse," *Political Psychology* 6 (1985): 101.

⁷⁷ *Ibid.*, 102

⁷⁸ *Ibid.*, 107.

Bay's response regarding how to decide on which needs should be met (that is, which needs are legitimate) through government intervention is, admittedly, unsatisfactory. Bay seems to advocate some measure of simple 'common sense' in deciding which needs should be met.⁷⁹ This flimsy appeal to common sense is, in part, responsible for the concerns of other political theorists about the applicability of needs to politics. Wojciech Sadurski makes the argument that trying to determine which needs are legitimate results in paternalism, similar to the authoritarianism Fitzgerald posits. Sadurski states,

Even if analytically Bay's view is true, the practical conclusions of such a philosophy of needs and human nature are extremely dangerous when applied to distributive justice. If the opposition of true or genuine needs and actual but false needs is to be one of the pillars of this conception of justice, then it obviously advocates or at least gives a justification for a disregard for what people actually want, seek, and demand.⁸⁰

However, Sadurski's criticisms rest in an inaccurate assumption about needs and desires. As this chapter attempted to outline, need is taken to be something vital for a fully-flourishing life, beyond the mere dignity of a life that is human.

These concerns point to the importance of some level of democratic control. Certainly decisions about need, particularly broad-based social needs, cannot be decided upon by a board of psychologists who directly influence policy. However, the role of research into psychology and sociology and their relation to political matters would be of utmost importance. Throughout history, the work of academics has informed decision-making in the real world.⁸¹

⁷⁹ See Christian Bay, "Human Needs and Political Education," *Human Needs and Politics*, ed. Ross Fitzgerald (Oxford: Pergamon Press, 1977), 2.

⁸⁰ Wojciech Sadurski, "To Each According to His (Genuine?) Needs," *Political Theory* 11 (1983): 423.

⁸¹ Many political philosophers have argued directly that the philosopher should participate in the political order. Those who have not argued for the participation of the philosopher have often watched their own work influence the happenings in politics. Plato argued for the philosopher-king. See Plato, *The Republic* in *Great Dialogues of*

Why should the understanding of human need be any different? Though Maslow's hierarchy is vague enough to allow for a plethora of subjective needs, if, at some point, there was consensus among scholars that the hierarchy was outmoded, or unreflective of the human experience, then political decision-making regarding human needs would certainly need to take such research into account. However, this differs little from many other efforts to establish policy. There is no reason to assume that democratic societies cannot have rational and constructive debate about which needs are being met (or not) by their policies. Indeed, such debates could do a great deal to improve the effectiveness of policy and to enhance the language of needs. Though politics cannot meet all of our needs, those that politics can meet should be a component of the broader democratic debate.

The final reason for the lack of success in needs-based endeavors stems from the absence of a genuine theory of action, both in terms of policy and in terms of individual motivation. Most theories of needs take great pains to outline the content of needs and why needs are morally relevant. However, these theories do little to explain how governments can act to meet them, without degenerating into paternalism. Nor do they provide an explanation of what would prompt another individual to meet a need, or to compel her representatives to do so. This is vitally important. Needs-based theories may be perfectly legitimate, but without some consideration of how concerns like those of Fitzgerald, above, can be addressed, needs-

Plato trans. W.H.D. Rouse, ed. Eric H. Warmington and W.H.D. Rouse (New York: Penguin Classics, 1956). Aristotle argued that the philosopher should educate the legislator, and the legislator should habituate the citizens in the ways of virtue. See Aristotle's *Nicomachean Ethics* and *The Politics*. John Locke argued for the importance of self-rule, Montesquieu was horrified by despotism, and Jean-Jacques Rousseau implicitly argued that citizens should demand their freedom, and their work created an intellectual environment that influenced politics. See John Locke, *Second Treatise of Government*, ed. C.B. Macpherson (Indianapolis: Hackett Publishing, 1980); Montesquieu, *The Spirit of the Laws*, trans and ed. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (Cambridge: Cambridge University Press, 1989), and Jean-Jacques Rousseau, *The Social Contract*, trans. Christopher Betts (Oxford: Oxford University Press, 1994).

based theories of political action (of which there are few) are doomed to fail at the outset. If liberal rights theorists are to relinquish their attachment to rights, they must know more than merely *what* needs are. They must know *how* to meet them. Without some consideration of how needs can be translated into policy, and of what prompts individuals to be concerned for needs, needs-based theories are doomed to remain nothing more than interesting artifacts with little applicability.

Conclusion

Abraham Maslow's hierarchy of needs has been examined closely by scholars since its initial publication more than a half-century ago. Despite the variety of research, in both psychology and political theory, that makes use of Maslow's need-hierarchy, almost no research has provided a political application for theories of need. While scholars, such as Waldron, look upon the individual as the bearer of rights, and assert that only from her lips can rights be obtained and properly exercised, these scholars neglect very important facets of human experience. As Michael Ignatieff notes, looking upon the individual as an autonomous, rational creature does not provide an accurate reflection of the human person, since we are more than rights-bearing creatures, and there is more to respect in a person than his rights.⁸² Waldron's concern that individuals will become "needy" if they are not asserting their rights ignores the fact that individuals are already needy. When individuals' human rights are being abridged, despite their country's assertion that it supports rights, then perhaps it is time to do something other than "mind one's own business." When individuals have no voice of their own, perhaps it is time for others to speak for them. If the words cannot come from the

⁸² Ignatieff, *Needs of Strangers*, 13.

mouths of the needy, then what is wrong with those words coming from the mouths of “detached observers?” Does the observer’s effort to assist the needy invalidate the role of need? As Ignatieff points out, “Our needs are made of words: they come to us in speech, and they can die for lack of expression. Without a public language to help us find our own words, our needs will dry up in silence. . . . Without the light of language, we risk becoming strangers to our better selves.”⁸³

Thus, the argument presented here is that the language most reflective of the human experience must be one of need. A theory of human need provides a language that allows for both the universal and the particular needs of human beings, and addresses their subjective potential. Indeed, Aristotle, Hegel, and Marx all recognized potentiality as a guiding force in ethical and political life, and they each elucidated the importance of addressing need in an effort to fulfill that potential. Abraham Maslow furthered the discussion of need a great deal by extracting common needs across individuals from clinical studies. His understanding of what is required for human flourishing incorporates potentiality, and allows for subjective capacities to be realized within a general framework. By using his theory in the service of politics, many of the intellectual and moral pitfalls of a rights discourse can be avoided. Scholars are often reluctant to adopt new theories, and since needs-based theories, to this point, have not provided a basis for deciding between needs or described human motivations for meeting them, political theories of need have not progressed much in the last few decades.

This section has explained Maslow’s hierarchy as the psychological basis for judging what is required for the flourishing of human beings qua human. However, the drawback to

⁸³ Ibid., 142.

most theories of need has typically been their lack of application. As Eubanks notes, “The consequence of the dominance of a language of rights is that policy matters in . . . liberal culture, from poverty to war, are framed in terms of those rights and not, as Ignatieff or Hegel would insist, in terms of the human needs beyond those rights.”⁸⁴ However, framing policy in terms of need is difficult, since there must be some effort to distinguish legitimate need from mere desire, to give force to needs, and to counter prejudices in meeting them. This is no small task. However, any attempt at ethical community must rest on some shared understanding of the values that should be upheld and the needs that should be met. The following chapter will attempt to further develop the substantive account of needs elaborated upon in this chapter. Given the content of needs, how can political organizations and individuals better meet the needs of others? Toward that end, the fourth chapter develops some preliminary, analytical criteria for assisting individuals in meeting needs that they cannot meet themselves, ascertaining the validity of voiced need-claims, and deciding which needs take priority over others in the pursuit of justice.

⁸⁴ Eubanks, 150.

CHAPTER FOUR

HUMAN NEEDS AND POTENTIALITY IN THE PUBLIC SPHERE

To this point, the dissertation has argued that an emphasis on human needs better addresses subjective human potentiality than an emphasis on human rights. A rights discourse does not provide sufficient breadth or depth to questions of justice, neither in the recognition of the breadth of human experience, nor in the depth of human need. A political theory of needs is better suited to the task of constructing a just order and that task begins with the fundamental needs of the body. The lower two levels of Abraham Maslow's hierarchy, the physiological and safety needs, have traditionally been considered part of governmental responsibility. Indeed, a quick glance at the preamble to the United States Constitution reveals an emphasis on general safety and general welfare.¹ However, while these requirements are fundamental to a just order, they are merely the preconditions to the development of human potential. The real challenge for any democratic society is how to fulfill the higher order needs that are vital to human flourishing—the love needs, esteem needs, and the abstract self-actualization needs. In this way, when considering the love needs and esteem needs, the government has a responsibility to promote justice by ensuring, at the very least, the prerequisites for the individual experience of love and esteem. In terms of policy, this may come in the form of policies that ensure the well-being of the family and the children thereof or in assuring that citizens have adequate educational and employment opportunities, among other things. In this manner, though self-actualization needs cannot be directly met by

¹ The Preamble indicates that the purpose of the Constitution is to “establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty.”

government, the conditions under which they can be realized are within the province of government, the beginnings of an understanding of human potential may be within reach.

In order to establish a preliminary sketch of how policy might be promulgated to further the meeting of human needs and addressing human potentiality, this chapter provides a somewhat analytical, needs-based alternative to Rawls's rights-based theory of justice. First, the theory of needs herein addresses the prerequisites for government action in meeting needs by positing some preliminary *justificatory criteria*, which would aid lawmakers in separating need from desire. The criteria, which outline the importance of **demonstrability** and the **presence of some individual or social good**, are to act as a first step in reasoned debate about how best to meet needs. In addition to analyzing how government might go about meeting needs, and which needs are within the scope of government action, this chapter will also recognize the importance of placing limits on government action, so that meeting needs does not dissolve into the paternalism that Ross Fitzgerald was so concerned about, or spiral into the authoritarian behavior that he warns against. These limits, best recognized through a constitutional, democratic republic, are devised primarily to ensure that government does not encroach on individual autonomy. The chapter will also examine how governments can deal with the problem of conflicting needs. Finally, there are limitations to needs fulfillment by government. Thus, the chapter will investigate the limitations that may prompt government to refrain from meeting needs, labeled here the *accountability axiom* and the *abuse axiom*.

Ultimately, this theory of needs is one concerned for the promotion of justice, beyond the understanding of justice that the rights discourse has been able to provide. The Rawlsian understanding of justice, for example, presupposes that individuals can reason behind a veil of

ignorance, about which ends are valuable to pursue. Yet, such a conception of justice is not an accurate reflection of the human experience. Individuals are not only rational creatures, but also emotional ones with many outside attachments and contingencies. Indeed, the role of passion, or emotion, is particularly important in the case of self-actualization needs, and a political theory of human needs is vital in initiating a conversation regarding the expression of these needs. Additionally, I hope to indicate that the confluence of reason and passion contributes both to the recognition of needs and to our understanding of obligation to others. However, before discussing need in the above manner, let us first consider the political order in which such decisions regarding need should, ideally, take place.

The Constitutional, Democratic Republic

Before addressing need satisfaction through the political order, some brief consideration must be given to the type of government best equipped to consider and act on this needs theory of justice. There are two primary methods by which needs can be recognized. First, broad-based needs may be acknowledged through the established institutions of governance. Certainly, as has been the concern from the outset, care must be taken to avoid paternalistic dogmas that enforce a particular way of thinking upon other individuals, groups, or cultures. Yet, Maslow's hierarchy is vague enough to allow for a plethora of individual needs, while still providing an outline for the types of needs that are vital for human flourishing. The other method by which needs can be recognized rests on private individual and group appeals for particular needs to be met. In the absence of appeals for these needs to be met, it can be reasonably deduced that such needs should be provided for anyway, since they underpin any attempt at leading a fully flourishing human existence. The provision of needs in the absence of

appeals is important, since without it, such an endeavor would merely replicate some of the shortcomings of the rights discourse. This is particularly true if one thinks back to Jeremy Waldron's unsatisfactory statements about rights, which indicated that the rights language is most appropriately uttered when it comes from the mouth of one whose rights are being violated, disregarding whether they have the efficacy to do so. For both of these methods of recognizing need, some form of democratic or republican government is best equipped to help individuals fulfill their potentialities through the meeting of needs, and its scope of action is also inherently limited. Additionally, though a variety of other organizations can act to meet needs, including international organization, charities, and religious groups, these will not be considered in the scope of this dissertation. Rather, the focus will remain on the process that government may take to determine which needs to meet and how to meet them.

It also may be true that individuals are often inclined to meet the needs of others, but more often than not, they will lack the requisite capacity to do so. When they do act, it is often done on a one-to-one basis, as when the city commuter purchases a sandwich for the beggar outside her office. This type of individualistic action, though it merits praise, is not sufficient for broad social action to meet needs. As such, government must be responsible for meeting the needs of its citizens, and this is, therefore, the focus of the current chapter. Yet, to avoid the many brands of authoritarianism, about which Fitzgerald is so concerned, the theory of needs herein supposes some form of constitutional, democratic framework. Thus, if government encroaches too far on the ability of individuals to meet their own needs, or if it acts too paternal, then individuals possess the mechanisms through which the government can be altered and/or replaced. Likewise, democratic government, which is constitutional in nature,

provides some necessary latitude among individuals and groups vying for their needs to be met. Within a constitutional system, individual and group appeals to government are protected, thus allowing citizens to express their needs for a variety of goods or services. An appeal is considered any individual or group act of expressing an explicit need for some good or service, and could come in the form of a petition, a letter to a representative, or a large protest. I make no distinction here between individual versus group appeals, as would parallel the rights discourse. The justificatory criteria provided shortly are relevant and applicable to either an individual or a group.²

Thus, constitutional, republican forms of government, in which people have a strong voice are best equipped both to deliberate about the needs for which they are responsible, to decide how best to meet them, and to protect the ability of citizens to voice their needs in the public sphere. I am not naive to the vast number of countries without a constitutional, democratic system of governance. Though not all countries have a democratic system of government, this does not affect the theory of needs itself any more than it currently affects the making of laws regarding issues of rights. If governments are currently meant to be prevented from making decisions that would violate a right, then the inability to justify meeting a need, as presented in this theory, would act as a restraint on government decision-making regarding needs, and those governments who violate the justificatory criteria would face international criticism, just as they currently do for violating rights. In sum, there is no inherent reason that needs cannot have the same force that is currently afforded to rights. The needs

² For a good discussion of group versus individual rights, see Peter Jones, "Human Rights, Group Rights, and Peoples' Rights," *Human Rights Quarterly* 21(1999): 80-107 and Nathan Glazer, "Individual Rights against Group Rights," in *The Rights of Minority Cultures*, ed. Will Kymlicka (Oxford: Oxford University Press, 1995).

theory of justice presented here requires that considerable attention be given to the matrix of needs, and prompts us to think differently about the “general welfare” and its relation to individual flourishing. Though the physiological and safety needs seem to be firmly entrenched in the responsibilities of government, the question of how to best meet, or optimize, the love and esteem needs is less clear. Moreover, it may be the case that some needs cannot logically be met through government action, and in such cases government must consider how to provide the conditions necessary for meeting those particular needs. Yet, democracy, itself, would seem to meet esteem needs through its inclusion of individuals in the political process. As Christian Bay notes, “To be treated as an equal, at least politically, would seem a prerequisite for dignity and self-esteem in countries committed to democracy. And that means having the vote—a sense of having equal say in shaping the rules under which one lives.”³ The self-actualization needs are the most obvious example of government impotence in the ability to provide directly for its citizens’ needs. However, given the importance of individual autonomy to human flourishing, both for Aristotle and Maslow, direct government action to meet these needs is not desirably. Fundamentally, the constitutional, democratic republic recognizes the individual worth of each citizen. As Kant so ably recognized, that worth is captured in the human capacity for moral reasoning; but, so, too, is it grounded in the recognition of human potential and the needs on which that potential are based. For those needs within the purview of government action, some basic structure for how to distinguish needs from wants must be devised.

³ Bay, *Needs, Wants, and Political Legitimacy*, 250.

The Justification for Meeting Needs

Before delving into the requirements for legitimating a need, some consideration must first be given to the terms used herein. I have already described an appeal for need satisfaction as one that can come from either an individual or a group, and that takes the form of a petition, of some sort, to representatives, or government more broadly.⁴ Whether government chooses to meet a need before receiving social pressure to do so, or whether the consideration of some need is the result of citizens' appeals, the institutions in place must have a mechanism for deliberating about needs. A government decision to consider meeting a need is not automatic validation of that need, nor are appeals immediately considered legitimate and worthy of being met simply through the act of being expressed. The consideration of a need, by government, without it having first been an appeal, and the expression of an appeal that has not yet been validated will be called *potential needs*. Thus, potential needs shall not be considered valid unless they fulfill the two justificatory criteria listed below. When a potential need meets those criteria, it can be considered a legitimate need, not a potential need. Let us examine these components more closely.

First, government must determine which needs are legitimate needs and which are not. The term legitimate need is not dissimilar to the "true" needs of Marcuse, or needs as distinct from wants, as Bay has stated. However, in this case, a set of criteria for assessing needs is provided, which goes beyond Bay's assertion of common-sense. However, it is still only a preliminary framework for the consideration of need in the realm of policy. While government

⁴ Again, a petition can mean a traditional petition with signed names, or a letter writing campaign, or a staged protest or rally.

is responsible for determining which broad social needs are within its scope, there may also be situations in which individuals make specific appeals to their representatives. This is an important safeguard in ensuring individual autonomy. In cases of individual appeals, it is still incumbent upon government to determine whether that need is legitimate before meeting it. Until the need has met the justificatory criteria below, it can only be considered a potential need. The goal of these criteria is to make the burden of proof for legitimating a need relatively light; otherwise, the advancement of this theory beyond current theories of obligation would be minimal. Government may provide for and individuals may request essentially anything deemed necessary for the individual's flourishing. That being said, there are two requirements for those potential needs to be considered legitimate needs. These will be referred to as *justificatory criteria*. The requirements for legitimating a potential need are:

- 1) The need must be demonstrable
- 2) The need must provide some social or individual good

Certainly, these requirements need more explanation. The first requirement is intended to provide some minimal evidence of need, so that potential needs are not being met when they are actually just desires as conceived in the previous chapter.⁵ The second requirement ensures that need claims are not frivolous requests for the fulfillment of desires, when taken in conjunction with the other requirement and the *limiting criteria* discussed above. By allowing for such a particularistic understanding of what constitutes an individual ideal of flourishing, the discussion of universal rights becomes unnecessary. Instead, if an individual or social group

⁵ See Herbert Marcuse, *One Dimensional Man* (Boston: Beacon Press, 1964). However, Robert Goodin has argued that in order to achieve more egalitarian outcomes, desires should be considered just as valid as needs, though that suggestion is not adopted here. See Robert Goodin, "The Priority of Needs," *Philosophy and Phenomenological Research* 45 (1985): 615-625.

professes a need, assuming it meets the requirements of the justificatory criteria, it is considered legitimate. The ability of government to affirm the presence of a need in accordance with the justificatory criteria is, in itself, the legitimizing force. It is this process of deeming a need legitimate that requires prudent debate and that results in an obligation on the part of government to either meet the need, or provide the conditions necessary for meeting the need. Certainly, Maslow's list of needs serves as a the rudimentary framework for considering the vital facets of human potentiality, but legitimizing human needs requires more than simply fitting that need into Maslow's hierarchy without further consideration. That being said, Maslow's hierarchy serves as a guideline for thinking about those things that psychologically motivate people, and thus, those appeals that are likely to be made. And, because Maslow's theory of need is not based in conjecture or opinion, but in empirically-driven clinical psychology, it serves as a sound basis for the consideration of legitimate need. Nonetheless, the two justificatory criteria deserve closer attention.

It is important for the theory elucidated here that governments must only consider a few criteria when assessing the legitimacy of meeting a need, and individuals must only provide minimal support if they make an appeal. The first criterion for deeming a need legitimate states that a need must be demonstrable. This criterion is included to avoid the possibility of unnecessary paternalism, and of individuals making frivolous appeals to government. In the presence of frivolous appeals, representatives should be able to employ the criterion of demonstrability to reject the legitimacy of a potential need. To be considered demonstrable, there should be minimal evidence that a need is present and that citizens would be unable to meet the need on their own. This mandate requires some further stipulations. Demonstrability

must occur on two levels. First, the need must be demonstrable in that representatives must be able to ascertain obvious privation if the need is not met.⁶ Evidence of privation if a need is not met is required only to the extent that an empathetic person would consider sufficient. The concept of the empathetic person is an important one, and will be discussed in the following chapter in greater detail. For the current purposes, the empathetic person is meant to serve as an alternative to the Rawlsian “reasonable person.” Reasonable persons are defined by Rawls as those who are,

not moved by the general good as such but desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept. They insist that reciprocity should hold within that world so that each benefits along with others. By contrast, people are unreasonable in the same basic aspect when they plan to engage in cooperative schemes but are unwilling to honor, or even to propose, except as a necessary public pretense, any general principles or standards for specifying fair terms of cooperation. They are ready to violate such terms as suits their interests when circumstances allow.⁷

In the formulation presented here, a reasonable person may decide to validate the demonstrability of potential need in order to obtain cooperation or as a principle of contract. However, it might also be possible for a reasonable person to deny an otherwise legitimate claim based on their rational self-interest. On the contrary, an empathetic person would, by definition, be predisposed to recognize the need of another as legitimate. However, if the potential need did not meet the justificatory criteria, then the empathetic person would, of course, still be permitted to deny the potential need’s legitimacy. Empathy merely provides a

⁶ The notion of privation relates back to Christian Bay’s definition of genuine need as those whose “continued denial or frustration leads to pathological responses” (242). See Bay, *Needs, Wants, and Political Legitimacy*.

⁷ See John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), 50.

positive predisposition from which to begin judgment of a need's legitimacy, but it is crucially important to a needs theory of justice.

In conjunction with the understanding of minimal sufficiency mentioned in the previous chapter, this requirement should restrict frivolous claims or unnecessary action by government to meet needs. Minimal sufficiency, drawn from Aristotle's emphasis on modest wealth, means that legitimate needs are not driven by the desire for extravagance. In most cases, a need will be obvious. For example, if individuals need some educational facility in order to learn to read, such a facility can surely be understood as obvious to fulfill a variety of needs in Maslow's hierarchy. The ability to read is crucial to esteem, self-actualization, and the need to know and understand. Legislators must also determine whether the citizens are capable of meeting needs on their own. If the individuals in question are capable of meeting the need on their own, they should be allowed to do so. As before, the representatives should begin from the perspective of an empathetic person, so as to initiate debate from a positive disposition. However, this stipulation of demonstrability does raise problems, despite its necessity. The stipulation resurrects old social and political cleavages about what can be considered within an individual's responsibility and what is not. This theory of need is not a remedy for that sort of political debate, and it is important for democracy that its representatives engage in deliberation about these very issues. However, beginning a debate from the perspective of empathy provides a complement to reason in such debates about human need. Moreover, the requirements herein place only a small burden on those making decisions about need, or those making appeals, while avoiding completely unfounded and undeserved entitlements. For example, if the individual has all the necessary skills, education, and transportation to seek her

own employment opportunities, to meet an esteem need, then the potential need regarding employment would have to rest on availability of jobs, or some other criteria not within the control of the jobseeker.

Given the emphasis here on the demonstrability of a potential need, there is one particularly important distinction to make. Though a need should be demonstrable, one thing that need not be demonstrable, at least not by those in need, is the reason that the need has arisen. This refinement is critical, for though issues of accountability will be dealt with later in this chapter, a needy person should not be required to produce any information as to why a particular need has occurred. If the claimant is forced to show that a need is the result of chance or a past injustice, then the power of needs subsides. Opponents of meeting an otherwise legitimate need would attempt to show that the need was a result of the shortcomings or mishandling of a situation or resources by the needy. Do all those who are suffering in countries like Uganda, Sudan, and the Ivory Coast understand the entire minutia of the African colonial heritage? Does the teenager in Gary, Indiana know that her family is impoverished, in part, because of the flight of the steel industry? It seems doubtful. In some cases, dire need may arise because of poor choices on the part of the government in which the needy live. In other cases, some particular need might be created by the mistakes of the needy themselves. The theory presented here is not blind to the fact that people often make poor choices. However, more often than not, such distinctions are not easily made. In a world in which individual, cultural, social, governmental, and international factors interact to contribute to individual decision-making, how can the citizen in need determine which of those factors caused her to stop her education or to buy a home in an undesirable location? How can an

individual in Pakistan be forced to prove whether an unsuccessful farm is the result of poor farming, or the destruction of infrastructure by government, or the misfortune of living on a flood plain? Such requirements amount to the apportionment of blame, which typically does not rest with just one agent, and only serves to slow the process of improving lives. Likewise, forcing any citizen to prove that a need is not the result of her own shortcomings provides fodder for factions looking to avoid providing government assistance to those in need.

The second requirement for a legitimate need-claim is difficult to conceptualize, but is a fixture, in one form or another, of most theories of need.⁸ The theory states that meeting a need must provide some social or individual good. A social good might come from the building of a road, or a school, or a community well, for example, while an individual good might be the need for a bicycle to travel on that road, assistance in buying the books for school, or the ability to access the well for one's own advantage. Individual goods are typically less powerful than social ones, since they do not necessarily benefit broad swathes of society. Likewise, there is an inclination to believe that individual goods can more easily dissolve into desires, since few people are directly, as opposed to derivatively, benefited by the good. Thus, individual-level goods are often more likely to be neglected by other individuals, governments, and international organizations. However, this does not mean that individual goods are not legitimate. A social good can be either a singular social need, like a schoolhouse, or it could stem from the expression, by many individuals, of their own specific individual needs. The example of one child needing books for school may be a need shared by many children in a

⁸ See Ignatieff, *The Needs of Strangers*; Bay, "Needs, Wants, and Political Legitimacy"; and Fitzgerald, "To Each according to his (Genuine) Need."

village or town. Taken alone, such a need is legitimate when it is also shown to be demonstrable, and provides the individual child with some good. When the need is widespread, despite being a collection of individual needs, it can be considered social, since the books necessary for improving the education of many children would most certainly result in a social good, as education levels rise. Even if an individual-level need is not expressed by many citizens, it should not necessarily be considered invalid. An individual might truly need shoes in order to walk to and from the nearest village to sell her wares. Even if most of the other villagers, or individuals from the surrounding area, have access to shoes already, and therefore the need is not widely expressed, that alone, does not invalidate the need-claim.

A met need that provides some social good would be one such as the irrigation system mentioned earlier. Social needs can be professed by citizens to provide for the greater good, or organized groups can make them. The emphasis on the resulting social good is not determined by who raises the issue of need, but rather, the provision of some good when meeting the need. Certainly, an irrigation system would benefit specific individuals, but it also has the singular capability of benefiting broad swathes of society directly. The same could be said of the construction of a school in a remote village. While the immediate impact of education is at the individual level, its greatest impact comes from the ability of education to increase group awareness of civics, mathematics, language, and other subjects. This awareness can lead both to greater technical skill in everyday life, and also to greater intellectual skill, which can contribute to a plethora of different interests and goals. In general, it would seem that the goods obtained through meeting individual-level needs only derivatively benefit the larger society. On the other hand, societal-level needs have a direct impact on the “general welfare.”

As such, if a social good and an individual good come into conflict, the social good takes precedent. This requirement should not be used to invalidate an individual-level need in the face of a social one, and if both needs can be met simultaneously then they should be. However, in a situation in which a societal-level good would contradict the possibility of also meeting some specific individual-level good, the societal-level good should be met.

Additionally, the question of what can be considered a good must be addressed. This question is, of course, at least as old a philosophy itself, and therefore will not be resolved here. Yet, to provide for the greatest inclusion, and in the spirit of Maslow's hierarchy, a good is that which assists in fulfilling an individual's potential qua human. Such an understanding is universal, but also based in the subjective morality and customs of the person in question. Aristotle's reconciliation of the universal and particular is also relevant here. Aristotle's doctrine of the mean is an example of how all individuals seek the same ends, but do so in radically subjective ways. In Maslow's understanding, all individuals are attempting to fulfill their potential through self-actualization. Though the need for self-actualization is universal, it is experienced in different forms by different individuals. As Maslow notes,

By taking [the clinical] data into account, we can solve many value problems that philosophers have struggled with ineffectually for centuries. For one thing, it looks as if *there were* a single ultimate value for mankind, a far goal toward which all men strive. This is called variously by different authors self-actualization, self-realization, integration, psychological health, individuation, autonomy, creativity, productivity, but they all agree that this amounts to realizing the potentialities of the person, that is to say, becoming fully human, everything that the person *can* become.⁹

⁹ Maslow, *Psychology of Being*, 145.

However, Maslow also notes that the individual “person himself does not know this.”¹⁰ This lack of recognition helps provide a place for a political theory that incorporates some of the knowledge from the field of psychology in attempting to help individuals meet their needs with as much autonomy as possible.

One restriction on the individual conception of the good is that it should not induce non-consensual harm. When governments make decisions about whose needs to meet and how to redistribute resources, non-consensual harm is a perpetual problem. If individual-level goods are taken to be those that further one’s potential for self-actualization, government cannot be expected to provide the conditions necessary for a form of self-actualization that might harm others without their consent. Harm is here taken to mean irreparable harm, or harm that cannot be reversed or compensated for through goods and services. More specifically, within the theory of needs presented here, harm entails the deprivation of another’s needs.¹¹ This will typically result in the encroachment by one person upon another’s ability to actualize her potential. In the domestic sphere, the example of a drug user suffices to illustrate the point. While the individual may believe that she is furthering her understanding of the good life by experimenting with drugs, the harm she inflicts upon herself will also interfere with the ability of others to meet their needs. Many growers, smugglers, dealers, and their families, among others, are negatively affected by individual drug habits. As such, though government may

¹⁰ Ibid.

¹¹ Though the emphasis here is on depriving others of their needs in an attempt to fulfill one’s own needs, it seems entirely possible that a person can unknowingly cause themselves harm (though considering it non-consensual isn’t logical). Indeed, many consenting adults attempt to satisfy their needs in psychologically unhealthy ways, as Maslow notes when discussing the love needs, particularly. Part of the value of psychological analysis comes with its ability to reveal to people that actions they believe to be the product of their own free will may fail to address their underlying needs.

typically adopt a practice of non-interference when considering love needs and self-actualization needs, in this case, non-interference would result in indirect harm of others. Government may then feel compelled to make drug use illegal and to provide rehabilitation programs for drug users so, both their own needs, and the needs of others, are not negatively impacted. So, while this theory prescribes little in terms of the content of individual goods, any perceived good that would harm another and thereby prevent that other person from fulfilling her own needs for self-actualization or esteem, could not be considered a legitimate good. However, even if the individual conception of the good avoids causing another person harm, there is still a problem of conflicting goods, or derivatively conflicting needs.

This section has attempted to provide a brief and introductory framework for how government might decide which needs are worthy of its attention. All deliberations regarding which needs to meet must determine whether the need is demonstrable and whether the need, when met, would provide some individual or social good. When attempting to make these decisions, representatives should begin from an empathetic perspective, not the Rawlsian perspective of unencumbered rationalism. Though representatives should have measured and reasoned debate, some level of empathy is also crucial to meeting needs, since needs encompass the whole range of human potential. Even when carrying out deliberation about need according to the criteria provided above, representatives are bound to encounter situations in which needs conflict. If one need provides social goods and another provides individual goods, the need that benefits the broader society should be met first. However, there may also be situations in which two social, or two individual needs conflict. As such,

these possible scenarios must be considered. Likewise, government action to address the different levels of Maslow's hierarchy must also be discussed.

Assigning Responsibility and the Problem of Conflicting Needs

Unsurprisingly, in any democratic regime, the state is typically charged with ensuring the well-being and safety of its citizens. This most clearly encompasses the physiological and safety needs highlighted by Maslow as fundamental to any higher order need fulfillment. Though providing for well-being and safety is essential, that does not prevent us from considering these responsibilities differently in light of the discourse on potential and need. The physiological and safety needs should always be met by government. The impulse is to ground this obligation in the social contract, established to remove individuals from a violent state of nature in which resources were not guaranteed. Yet, using this logic actually reverts one to the rights discourse, since individuals exit the state of nature by transferring their rights to the sovereign.¹² Likewise, Hobbes's third law of nature secures order in that men are obliged to uphold their contracts, and is given the name justice. However, Hobbes bestows the name rights on what is little more than the passionate desire to have one's basic needs fulfilled. Those in the state of nature are driven by their passionate fear of violent death and their desire to have their basic safety and livelihood protected. Plenty of other philosophers have recognized the same basic point as Hobbes, without creating a rights-based contractual language upon which to base government obligation and justice. Aristotle and Augustine, for example, argued that the political order was required for the provision of basic human

¹² See Hobbes, *Leviathan*, XIV.

necessities and safety.¹³ As has already been discussed, Hegel and Marx have both elaborated upon the importance of government for meeting needs. Thus, in any formulation, whether rights-based or needs-based, government is responsible for providing the basic necessities for survival and safety.

The most basic attempts to meet these needs would include adequate food and shelter for those incapable of providing these things for themselves. Likewise, the safety needs entail some provision for security from wild animals, other people, tyranny, and other threats. It was argued above that the theory of needs presented here works best through a process of democratic decision-making to guard against paternalism when meeting needs. The insistence on democratic government is reinforced by Maslow's explicit reference to safety from tyranny. Being free from tyranny does not necessarily imply democracy, though democracy is one likely possibility. However, the physiological and safety needs might also imply further provisions. For example, social security is crucial in assisting many elderly individuals live a more secure existence. Or, adequate health insurance might even be considered an important provision in making sure that the physiological needs of citizens are properly fulfilled. Indeed, in the United States, much of the disagreement over healthcare reform might be sidestepped if the arguments about whether or not healthcare is a right were left aside. Surely citizens *need* healthcare to ensure that their physiological needs are being met. That does not mean that legislators would not continue to debate how best to provide healthcare, but merely that the

¹³ For Aristotle the political order was meant to allow individuals to pursue a virtuous life, and for Augustine safety was necessary for the unhindered worship of God. In Aristotle, happiness is achieved through a life of complete virtue and through the fulfillment of the entire hierarchy of being. Happiness is also only possible within the political order, since several of the virtues of character require a life in community. See Aristotle, *Ethics*, 1097b8, 1094b, 1178b34. In Augustine, see Augustine, *City of God*, trans. Henry Bettenson (New York: Penguin Classics, 2003), XIX.21-25.

unproductive argument over rights could be avoided.¹⁴ In short, the physiological and safety needs may require a variety of different programs or initiatives, dependent upon what individuals and their representatives deem necessary for adequately fulfilling those needs. Though the physiological and safety needs should quite obviously be met by government, the role of government in meeting higher order needs is less clear.

The question of how to meet the second tier needs of love and esteem is a difficult one. Rather than explicitly provide for these needs, government must be responsible for optimizing the conditions under which these needs can be fulfilled. For example, it makes little sense to argue that government must provide individuals with someone to love or be loved by. Yet, even in this situation, the existence of love needs foists some responsibility upon governments. For example, a child in an abusive home would certainly not be having her love needs met, and this would also impact her ability to actualize her potential. In such situations, and as is common practice, the child may need to be removed from such a situation and placed into a home where she can have her love needs fulfilled properly. The other governmental responsibility regarding love needs is non-interference in situations in which individuals are exercising their love needs. Insofar as the exercise of these needs is not preventing anyone else from fulfilling his or her needs, then governments must not be permitted to abridge the meeting of these needs. And, again, the prerequisites for fulfilling one's love needs must be insured by governments through the meeting of lower order needs.

¹⁴ This issue is a good example of Dworkin's assertion that rights often serve to squelch debate rather than foster it. See Dworkin, *Rights as Trumps*.

Similar arguments can be made about the meeting of esteem needs, which some individuals will value above love needs. Maslow's esteem needs require individuals to be praised by others, but also for individuals to feel a sense of pride or accomplishment in themselves. As was mentioned earlier, such a need might be partially fulfilled through access to education and to proper employment. Moreover, it is within the purview of government to help direct business and industry to areas in which jobs are scarce, and not just to areas where they are likely to profit most. As Bay questions, "Should not a government be able to direct industries to where people are, rather than *visa versa*, and to obligate corporations to respect . . . the public welfare?"¹⁵ His points are well made, since the provision of social conditions which allow for the fulfillment of potential should presumably take precedence over the profits of a single business. Finally, as was noted, democracy allows for the fulfillment of esteem needs through its inculcation of public participation. The ability to participate in the election of representatives not only places a check on government, but also gives citizens a sense of control, and as Bay notes, "there is a great symbolic and psychological value in having this *power in principle*."¹⁶

The most problematic needs are the self-actualization needs, for which government can only provide the capacity for their realization. Government should provide the conditions necessary for the meeting of these needs by upholding physiological and safety needs, and by ensuring resources for self-actualization. This may be in the form of education, creative outlets, or athletic facilities. Additionally, government should take care not to interfere with individual

¹⁵ Bay, *Needs, Wants, and Political Legitimacy*, 250.

¹⁶ *Ibid.*

autonomy as citizens attempt to actualize their own potential. In most instances, individuals will be able to strive for their own self-actualization. In attempts to foster self-actualization, providing specific policies or initiatives is difficult. As Maslow states,

A teacher or a culture doesn't create a human being. It doesn't implant within him the ability to love, or to be curious, or to philosophize, or to symbolize, or to be creative. Rather it permits, or fosters, or encourages or helps what exists in embryo to become real and actual. The same mother or the same culture, treating a kitten or a puppy in exactly the same way, cannot make it into a human being. The culture is sun and food and water: it is not the seed.¹⁷

Thus, the role of politics, and policy, must be to foster the individual ability to do the aforementioned things – to love, to be creative, to philosophize. The society which best promotes these innate potentialities is one in which individuals can be educated if they choose to be, practice religion if they prefer to, engage in artistic endeavors, and love freely. Again, democracy can be beneficial for self-actualization in that it allows for the exercise of individual decision-making capacities and engagement in topics of interest. However, in many instances, particularly as it concerns self-actualization, other individuals, groups, or organizations may have a role in meeting these needs. This does not absolve the government of any responsibility, but it recognizes the variety of individuals and groups that interact to meet our needs, particularly those needs for self-actualization which are very subjective. Indeed, emphasis on the government-level creation of a needs based discourse, will elevate the discourse in all endeavors, including these private individual and group endeavors.

While government should do its utmost to meet its citizens needs, there is bound to be conflict among needs, particularly in light of resource scarcity. The issue of conflicting needs is

¹⁷ Maslow, *Psychology of Being*, 152.

also an important one, since such situations may arise often. Though societal-level needs can be considered more important because they affect more people, one could ask what course to take if two societal-level needs conflict, or two individual-level needs conflict. Using Maslow's hierarchy, the physiological and safety needs must be met first, whether they occur at the societal or individual-level. Again, this is not because they have more inherent or intrinsic value, but because meeting other, higher order needs cannot occur without first meeting these two more fundamental needs. And, since Maslow is clear to note that these needs cannot be reordered among the others in the way that, say, love needs, can be, then it is essentially impossible for an individual to value an esteem need above a physiological need, for example. When two other needs conflict however, some system for deciding which needs to meet first must be devised. For the rest of Maslow's hierarchy—the love needs, esteem needs, and self-actualization needs—there is not necessarily a set order to these human motivations. In this way, government is charged with making tough choices about which needs to meet first.

Since Maslow separates the self-actualization needs into a separate category—Being needs—they are also not likely to be reordered among the love needs and esteem needs, though this would not be impossible. Thus, his ordering of need leaves physiological and safety needs at the bottom of the hierarchy, meriting constant consideration by government, and the self-actualization needs at the top, requiring only minimal support from government. Conflict, then, is most likely to occur between love needs and esteem needs. Though it is somewhat unsatisfactory, there seems to be no absolute rule for deciding between needs. Though one might devise a utilitarian calculation, or attempt rigidly to follow Maslow's hierarchy, these are both unsatisfactory methods for meeting needs. Ultimately, democratic conversation must

play a vital role in determining how these needs might be translated into public policy, as well as resolving the questions that might arise when love needs and esteem needs conflict. Clearly, such choices are never simple; however, with any theory of obligation, including a rights-based one, interests conflict, and rarely is there a calculus for arriving at the “correct” answer.

When attempting to meet needs, governments have a variety of difficult choices to make. I have attempted to outline the different levels of need and their relationship to the possibility for policy. By placing need in the political realm, we can reconsider some of the governmental obligations we take for granted in a new light. While government should be perpetually responsible for ensuring that individuals have their physiological and safety needs met, its role in providing for esteem needs and love needs is more ambiguous. Certainly, government must consider social programs that can ensure the requisite environment for the fulfillment of these needs. In terms of self-actualization needs, government must practice non-interference, but again, it can optimize the possibilities for individuals to realize their potentials. When needs conflict, though there are no easy solutions, physiological and safety needs must take precedent over all other needs, since they are the foundation upon which the needs hierarchy is built. When attempting to meet other needs, good institutions and prudent debate play a vital role in determining which needs must be met first. However, this assumes that representatives and citizens will be ready and willing and able to meet needs once they are legitimized and ordered in terms of importance. There are some limitations to this theory in terms of government willingness to meet needs, and the next section will examine these more closely.

The Limitations of Needs: Accountability and Abuse

While needs seem to be capable of providing a wide variety of individual and social goods, the theory does admit of some difficulties. When governments are charged with meeting needs, there typically exist two primary obstacles. These are labeled here the *accountability axiom* and the *abuse axiom*. When upholding rights these drawbacks typically do not exist, since rights are assigned on the basis of eliminating discrimination that might occur regarding something outside subjective control. The most obvious example is race and gender discrimination. Political and civil rights are guaranteed to these groups because race is something that is not the responsibility of the subject and is outside of the individual's control. The debate over gay rights in America is similar because individuals from opposite viewpoints disagree about whether one being gay or lesbian is biological or a chosen lifestyle. Potential needs are problematic because they cannot be said to inhere in a person biologically, though they may do so psychologically.¹⁸ As has been discussed, the needs of citizens might come as the result of subjective negligence, cultural practices, societal issues, or government restriction. Representatives will be unlikely to meet needs if they believe those needs have occurred as the result of subjective negligence. The other potential drawback to needs comes with what individuals and their representatives perceive to occur after the need is met. If a need is met, and the subject who benefits from government aid or individual charity then abuses the resources or services provided, then others typically react with anger. If the right to vote is guaranteed to a previously disenfranchised group, and an individual from that group then chooses not to vote, the choice might be considered unfortunate, but it does not harm the

¹⁸ The exception might be the physiological needs.

subject nor does it strip the subject of resources and thereby reverse the right that was granted. The same cannot always be said of needs.

These two concerns lead to two axioms. They restate these concerns regarding why individuals or their representatives may be reluctant to meet another's needs.

- 1) *Accountability Axiom* – government is unlikely to meet needs that appear to be a result of poor subjective decision-making
- 2) *Abuse Axiom* – government is unlikely meet needs if they believe the group that benefits will misuse the resources provided

Examples of these axioms can easily be observed in everyday life. In the United States in the 1990's, much of the opposition to social welfare was driven by the belief that women were making poor life choices, and therefore did not deserve to receive child benefits. These so-called "welfare queens" were responsible for their own actions and they therefore deserved no sympathy or assistance.¹⁹ Any individual who is deemed to be accountable for her present circumstances should not, according to many others, receive any assistance from other individuals, government or international organizations. Likewise, the beggar on the street in New York City or London is unlikely to receive much assistance because other individuals have a tendency to believe that the beggar will misuse the money on alcohol or drugs. These are not necessarily illegitimate concerns, and such views are particularly common in the developed world, since individuals in those countries are perceived to have better opportunities and, if

¹⁹ For further information on the nature of the welfare debate in America, see Sanford F. Schram, "Introduction to Welfare Reform: A Race to the Bottom?" *Publius* 28 (1998): 1-7; Yvonne Zylan and Sarah A. Soule, "Ending Welfare As We Know It (Again): Welfare State Retrenchment, 1989-1995," *Social Forces* 79 (2000): 623-52; Sandra K. Schneider and William G. Jacoby, "Elite Discourse and American Public Opinion: The Case of Welfare Spending," *Political Research Quarterly* 58 (2005): 367-79.

they fail to take advantage of those opportunities, it is often assumed that they have not worked hard enough, or are misusing their resources. Indeed, in a private meeting with former U.S. Secretary of Labor, Elaine Chao, Secretary Chao expressed the view that individuals who are homeless and who beg on the street are in their predicament for three reasons—they are mentally unstable, they are addicted to drugs or alcohol, or they want to be on the streets.²⁰ While such a view seems extreme, it points to the underlying problem of the *abuse axiom*. Likewise, when donating money to overseas aid organizations, governments, rightly, want to insure that their money, and the money of their citizens, is not being misused by the organization or by the governments or individuals receiving the charity. Unfortunately, redistribution schemes such as those sponsored by the World Bank often end up assisting corrupt governments in maintaining power and thereby worsening individual conditions, when their goal is to help develop economies in underprivileged countries.²¹ The 2010 floods in Pakistan, which left huge swathes of the country underwater, did not generate the expected amount of international donations, partly because individuals perceived the Pakistani government to be corrupt. It was widely assumed that those in power would misuse the funds.

The remedy for such problems is not easily devised. To some extent, providing more information can remedy some of the distrust, and an inclination toward compassion may prove useful, as will be argued in the next chapter. In part, however, the structure of this theory of needs attempts to curb the impact of the *accountability axiom*, at least to the extent that

²⁰ Personal correspondence at the Department of Labor, Washington, D.C., 22 March 2004.

²¹ For discussions of why loan programs fail and the ways in which they can worsen conditions, see Randall W. Stone, "The Political Economy of IMF Lending in Africa," *American Political Science Review* 98 (2004): 577-91; M. Rodwan Abouharb and David L. Cingranelli, *Human Rights and Structural Adjustment* (Cambridge: Cambridge University Press, 2007).

individuals are not be required to disclose the reason behind their need. A drug addict, living on the streets, likely has needs for many things. Perhaps, over time, others have attempted to meet some of those needs and the individual has squandered the opportunity. What is to be made of this person? Should she be left to make her own way on the streets until she succumbs to prostitution to feed her drug habit, or dies of an overdose? Would such a scenario be justified if she had already entered a treatment facility once, and left early of her own accord? Such hypothetical situations are difficult to remedy, all the more so because they are not simply hypothetical, but reflective of real events. Maslow's psychological profile would suggest that no individual can truly deny that their needs be met (though it is possible that an individual could suffer some psychosis that renders her incapable of determining what her own needs are). In such cases, it is always the obligation of government to see that the physiological and safety needs are met. Since the goal of needs is to make individual lives better, that end should not be ignored because an individual is partly responsible for her own need remaining unmet.²² Regardless of the source of the need, obligation remains. Unmet needs are the foundation of obligation, since the fulfillment of potential, or self-actualization as the good to be pursued, requires that basic needs be upheld.²³

There are many who argue that obligation is contingent upon whether the individual is responsible for the situation in which he or she finds himself or herself. In an interesting

²² And, as was mentioned earlier, it is impossible to discern all the factors that would have contributed to such a situation, particularly since addictive behavior is typically associated with other deep-seeded issues, such as having been abused as a child, or being genetically predisposed to substance abuse.

²³ To elaborate, Aristotle, Hegel, and Marx, as discussed in the second chapter, each recognized the role of meeting needs in fulfilling one's potential. Likewise, Maslow has explained that the universal good that people seek to realize is self-actualization in some form. Thus, if moral responsibility comes from helping others realize that shared good, then the child will clearly not have the opportunity to actualize his potential if he drowns.

example of responsibility in the face of a potential violation of accountability, Len Doyal hypothesizes a day at the beach in which a child is swept under by strong currents and is drowning at sea.²⁴ He then asks whose responsibility it is to save the child.

Would it make sense, for example, for everyone to shout, 'We're not going to do anything until it is clear that his father and mother—who also have a special responsibility for his welfare—will do nothing'? Hardly. The child has a right to help not because of his contractual relationship with anyone else but because of his 'dire need.' Everyone else who is in a position to intervene to satisfy his need for survival has a moral responsibility to do so—everyone, that is, who takes her vision of the good seriously.²⁵

Doyal does not address whether the child was wearing a flotation device, or whether he senselessly swam too far from shore. Regardless of the circumstances under which the child's dire need came about, all those who may feasibly assist him are morally obligated to do so. Their questioning of the circumstances do nothing to counter the obligation itself. Though this is an example of individual obligation, the same logic applies to government responsibility. The accountability axiom is a critical roadblock to meeting needs, but it does nothing to impact the obligation of external agents to meet subjective needs; the responsibility remains. When governments are reluctant to meet a need because they believe citizens to be accountable for their own situations, a consideration of the relevant factors that contributed to creating the

²⁴ Though this example lends itself to the criticism of paternalism, for a child cannot be considered fully aware of the necessary precautions to take, the example could easily be one of husband and wife, or siblings. Likewise, Doyal falls into the language of rights, but the example still holds. See Len Doyal, "A Theory of Human Need" in *Necessary Goods: Our Responsibilities to Meet Others' Needs*, ed. Gillian Brock (Oxford: Rowman and Littlefield Publishers, Inc., 1998).

²⁵ Doyal, 168.

need may aid in easing fears about accountability. However, most important is instilling a sense of compassion in individuals and representatives, who are most in a position to act.²⁶

The abuse axiom indicates the fear, on the part of external agents, that the need they attempt to provide for will be somehow misused. That is, an expressed need should be for a particular good, and not, for example, a general need for money. Governments already use this logic in some situations, such as the provision of food stamps rather than monetary support. Food stamps might still be misused, but the chances of that are significantly reduced by providing a particular, indirect and regulated form of assistance and not simple monetary assistance. Likewise, a school built in rural Paraguay, is unlikely to be misused as easily as monetary support could be. However, in the international realm, governments can minimize the risk of abuse by assisting only reputable charities and organizations, or by providing only particular types of aid, such as bottled water, food, or by building infrastructure. The possibility for abuse does not negate the source of obligation as the existence of need, nor does it mean that a government is exempt from action based on the potential for abuse. If the potential is sufficiently high, then some other means of meeting a need must be sought. However, in most cases, particularly when monetary assistance is not involved, the potential for abuse will be quite low. Though accountability and abuse are important considerations in government

²⁶ I recognize that calling for more compassion does not solve the problem of accountability. Accountability is a matter of social influence *and* individual choice. However, the purpose of government should not be to hand out retributive justice. Rather, if meeting needs contributes to justice, then needs should be met. It certainly doesn't seem just to blame a young woman for becoming pregnant and refusing to provide her with government assistance in raising a child that might otherwise grow up in poverty. Of course, this means a tradeoff somewhere else, and funding from other taxpayers. However, this tradeoff merely reemphasizes the importance of republican government and some minimal level of compassion.

attempts to meet needs, particularly when redistribution is involved, they do not alter the needs theory of justice.²⁷

The Problem of Justice

For moral and political theorists, needs and the motivations for meeting them, are important because there are situations in which a person may be motivated to fulfill the needs elucidated by Maslow, but does not have the resources to do so. Though not Maslow's concern, the inability to meet needs becomes a problem of justice. Given the number of people around the globe lacking simple necessities such as potable water, nutritious food, and minimal shelter, the obligation to provide assistance should not be underestimated. And, since those who have little access to food and water can hardly be expected to provide for themselves, then the "promotion of justice—that is, the removal of misery and oppression—falls more heavily on the rich and powerful than it does on the poor, the oppressed, and the subaltern."²⁸ In David Copp's version of needs, because it is reliant on right, there is no injustice in a state's failing to provide for the needs of its citizens. "If The Right exists, it demands nontrivial resources for its fulfillment, and sufficient resources are not always available. Because of this, a state that fails to give some of its citizens the ability to meet their needs has not by that very fact failed to meet a requirement of justice."²⁹ In the formulation

²⁷ For a review of the importance of these matters in contemporary American politics, see Mark J. Hetherington, *Why Trust Matters: Declining Political Trust and the Demise of American Liberalism* (Princeton: Princeton University Press, 2005).

²⁸ Fred Dallmayr, "Cosmopolitanism: Moral and Political," *Political Theory* 31 (2003): 438.

²⁹ *Ibid.*, 117. Copp argues for "The Right" as the right of individuals to meet their basic needs. Copp claims that The Right is similar to other rights. His example is the right to a fair trial, which is incumbent upon the existence of a free and independent legal system. Copp wants to claim that such an inadequacy is not unjust because the government may not have the necessary prerequisites.

presented here, the failure of a government to provide for some of its citizens' needs when they cannot meet those needs on their own is the very definition of injustice. Surely, situations of poverty and conflict must be considered relatively unjust, when considering the high living standards of others around the world. Even if, recalling Copp's illustration of Nozick's Crusoes, no one violated a duty in bringing such situations about or is not meeting duty in refusing to provide assistance, circumstances under which an individual living a life no better than that of an animal cannot be considered just. Individuals in such situations are unable to pursue higher goods because of abject poverty or fear of their bodily integrity being compromised. In the theory of needs presented here, an injustice occurs any time the first two levels of Maslow's hierarchy are not explicitly fulfilled and the prerequisites for fulfilling the higher levels are not guaranteed. This means that justice is inextricably linked to human potentiality. When governments succeed in fulfilling lower order needs and promoting the fulfillment of their citizen's needs, they are just; to the extent that they do not promote actualization of potential, they are relatively unjust. This understanding of justice makes use of the classical interpretation in a modern way.

However, the contemporary rights discourse on justice does not allow for such an interpretation. Justice, derived from Kant and the social contract thinkers, is bound up with rights and duty. These deontological theories provide for injustice only in situations in which a duty has been neglected. Thus, it is often presumed, or argued, that something that occurs because of poor choices by an individual or simple bad luck, does not create an injustice for that individual. As Frederick Rosen notes,

If someone goes hiking for recreation and becomes lost and hungry, we could agree that his basic needs are not being met, but no one could be said to have treated him

unjustly. He is placed in this predicament by chance and efforts to assist him would be considered more acts of charity than justice. Similarly, in areas of the world where drought or disease leaves many in need, we think in terms of charity in assisting them and do not usually weigh up the justice of their need to receive aid.³⁰

Rosen goes on to assert that in situations of natural disaster, injustice can only really occur if the government of a country fails to organize properly the relief efforts. And in still other contexts, “the question of justice arises, not in meeting needs in the formation of society itself, but rather in the distribution of the surplus in a society which is already formed.”³¹ But, Rosen seems to miss the point that even among relatively well-organized institutions, the means for assistance simply may not be available. Likewise, his account fails to address what scholars know about many developing countries—that their post-colonial heritages have often rendered them incapacitated. In many cases, the power vacuum created by the sudden departure of a colonial power still has nefarious effects on the population.³² Thus, questions of justice cannot be limited to issues of distribution and relative deprivation. If justice is a question of responsibility, or injustice a question of neglected responsibility, then the post-colonial heritage, paired with increasing levels of global economic, political, and social interaction makes most governments at least marginally responsible for the welfare of those in other places. Even setting aside cosmopolitan impulses, one need only reference Hegel’s concern for

³⁰ Frederick Rosen, “Basic Needs and Justice,” *Mind* 86 (1977): 90.

³¹ *Ibid.*

³² For a few accounts of the effects of power vacuums, see John H. Herz, “The Problem of Successorship in Dictatorial Regimes; A Study in Comparative Law and Institutions,” *The Journal of Politics* 14 (1952): 19-40; Max A. Sesay, “Civil War and Collective Intervention in Liberia,” *Review of African Political Economy* 67 (1996): 35-52; Stergios Skaperdas, “An Economic Approach to Analyzing Civil Wars,” *Economics of Governance* 9 (2008)25-44.

the interdependence of the modern exchange economy to see such links elaborated upon elsewhere.

In the example of Rosen's hiker, one may be inclined to agree that no injustice has occurred in the hiker's being lost. The problem with the justice of the situation rests on the sticky language of rights. According to many rights theorists, no injustice would have occurred because no duty would have been violated in bringing about the situation. Rather, the hiker is merely unlucky, since no individual, group, or representative body has violated or neglected any positive or negative duty that resulted in the hiker being lost. It may be true that luck plays a role in the physical act of the hiker's being lost, but his needs to be safe, to eat, to have shelter, to see loved ones are left unfulfilled as long as he is lost. Given that these are necessities of all human beings, as evidenced by Maslow's hierarchy, surely an injustice has occurred if they are not being met. As was elucidated above, the injustice should not be defined by how it comes to be, but with the situation that results. Though the example of the hiker seems trite, by the same logic, hurricane victims would be victims of luck as well. And, as victims of chance, in which no duty was violated in bringing about a situation, the hurricane survivors would have suffered no injustice and would have no claim to rights. It follows that it would be completely acceptable in such situations to do nothing, since no injustice has occurred.

These examples represent cases in which duty and right, in their entrenched rationalism, do nothing to help those who are suffering. The discussion of justice included here is not particularly directed toward showing how and why needs conform to the deontological standards of justice, but rather, why such standards are not productive in improving lives and grounding obligation in an authentic understanding of human experience. The contemporary

principles of justice are based in Rawls's account, in which "each person must decide by rational reflection what constitutes his good, that is, the system of ends which it is rational for him to pursue, so a group of persons must decide once and for all what is to count among them as just and unjust. The choice that rational men would make in this hypothetical situation of equal liberty . . . determines the principles of justice."³³ This understanding highlights the shortcomings of the current framework of justice, which are twofold. First, as is true of the language of rights, this Rawlsian form of justice does not offer an accurate reflection of the reality of human experience. That is, individuals are not solely rational creatures seeking to decide upon their own good within an abstract setting free from external considerations. Second, this understanding of justice places individuals, as rights-holders, in a position isolated from others, theorizing about the individualistic ends they should pursue. This transforms individuals from people with attachments and contingencies, to isolated monads. The Rawlsian discussion of justice, with its roots in Kant, and its inextricable links to the rights language reduces individuals to only one part of their constitution.

While philosophers have focused on the rational element of human beings for centuries, this faculty has taken on a more prominent role in the modern era, particularly in the heirs of Kant. As Rawls indicates, the individual must decide upon his or her particular ends through abstract rational consideration alone. Is it true that individuals must discover their own good through rational reflection in a vacuum in which their own bodies, their friends, their family, and their social surroundings are unimportant? This dissertation does not take issue with the

³³ John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 11-12. Rawls correctly bases his own theory in Locke, Rousseau, and Kant, arguing that their work is "definitive of the contract tradition" (fn. 4). However, as will be developed in the final chapter, Rousseau offers far more than just a rationalistic theory of contracts.

assertion that human beings are rational creatures. Indeed, Maslow is clear that rational endeavors are part of the need for self-actualization in those who are more inclined toward philosophical and mathematical enterprises. Rationality is clearly a component of the need to know and understand—vital components of self-actualization. Yet, as Maslow recognizes, rationality is far from being the most important, or even defining, characteristics of human beings. The experience of love and praise are just as fundamental to human flourishing and the need for self-actualization can be expressed in an array of ways, not just through philosophical activity. “So to see ourselves as deontology would see us is to deprive us of those qualities of character, reflectiveness, and friendship that depend on the possibility of constitutive projects and attachments.”³⁴ The rights and duty-based account of justice provided by Kant and later, Rawls, neglects these other factors that constitute the human being, to the detriment of human flourishing.

In addition, the deontological understanding of justice as linked to rationalism and rights, isolates the individual from all phenomenal contingencies, including others. In the Rawlsian formulation, contrary to traditional social contract theories, individuals do not use rational decision-making to decide whether they should enter into a contract allowing for self-government, but to decide which moral principles to accept. As Michael Sandel notes, “The result of the agreement is not a set of obligations applying to individuals, at least not directly, but principles of justice applying to the basic structure of society.”³⁵ Without a direct link between justice and personal obligation, responsibility for the welfare of others is pushed to

³⁴ Sandel, *Limits of Justice*, 181.

³⁵ *Ibid.*, 123.

the side. Likewise, the principle of justice espoused by Rawls further isolates the individual, as Marx feared. The emphasis on right and its relationship to justice assumes that individuals are isolated monads. Each individual must reason alone about the good that is best for her to pursue, alone. Each person must rationally decide upon her own good, and which ends are *rational* for her to pursue. Needs are not based upon the rational calculation about what should be deemed good for oneself. Rather, all individuals are constituted by needs that are simultaneously universal and particular. Needs do not require rational reflection behind a veil of ignorance in which individuals are separated from all contingencies. Instead, needs account for the fact that individuals are inextricably linked through the system of needs that emphasize the essentially the social character of human existence. As Sandel eloquently notes,

Where the morality of right corresponds to the bounds of the self and speaks that which distinguishes us, the morality of good corresponds to the unity of persons and speaks to that which connects us. On a deontological ethic, where the right is prior to the good, this means that what separates us is in some important sense prior to what connects us—epistemologically prior as well as morally prior. We are distinct individuals first, and *then* we form relationships and engage in co-operative arrangements with others; hence the priority of plurality over unity. We are barren subjects of possession first, and *then* we choose the ends we would possess; hence the priority of the self over its ends.³⁶

However, assuming that we are *only* social creatures with little sense of self would also be erroneous. As Hegel teaches, we are simultaneously autonomous and abstract will, and engaged in ethical life with family, and in civil society.³⁷ The elevation of human needs above rights, not to their exclusion, allows for the inclusion of those things that unite individuals as well as distinguish them from one another. The theory of fulfilling needs elucidated above attempts to address the possibility for government to meet the needs of its citizens. However,

³⁶ Ibid., 133.

³⁷ See Hegel's Introduction to *Philosophy of Right* for a concise summary of these different elements.

that account, too, neglects an important facet of human experience and what motivates individuals to accept responsibility for others when the rights-based form of justice would dictate that there is no such responsibility. Though government should be responsible for initiating programs that assist its citizens in fulfilling their needs, and subsequently in promoting justice, excessive social welfare cannot substitute for an ethical community. As Christian Bay states, "Yet 'welfarism' will not lead to a reduction in social pathologies unless there exist stable communities, in which individuals have a sense of belonging."³⁸

Conclusion

This chapter has attempted to provide a preliminary, or potential, analytical framework for meeting needs, not simply talking about them. Though it certainly does not answer all the possible questions relating human need to government responsibility, it is an improvement on many theories of need that fail to address political concerns. I hope that this effort can begin a wider conversation about why it is important for government to attempt to meet needs where they are found. Toward this end, strong democratic institutions are important. Though needs may provide a greater sense of community than rights, it is also important to allow for the individual expression of need. Thus, the outline for meeting needs is useful for both government attempts at alleviating suffering and for assessing the validity of individual needs. Yet, to stop here would be to commit an error similar to rights theorists. Though there may be rational rules for meeting needs, simply outlining those rules would neglect the typical motivation for meeting those needs in the first place. Human experience, subjective and intersubjective, is shaped by feelings, desires, and emotions. As Rosen noted in his example of

³⁸ Bay, "Needs, Wants, and Political Legitimacy," 250.

the hiker, aid given in the absence of duty implies charity. Yet this assumes a deontological understanding of justice. If that understanding of justice is not an accurate reflection of human experience and obligation, then considering need outside of it is appropriate. Thus, understanding actions to meet need, whether within or outside the traditional bounds of justice, is crucial for the full development of a needs-based theory. Rather than incorporating Kant's dictum on justice, that "[a]ll respect for a person is properly only respect for the law . . . of which the person provides an example,"³⁹ a theory of needs recognizes concern for others that is less linked to right and that particular form of duty.

As Michael Sandel notes, "Not egoists but strangers, sometimes benevolent, make for citizens of the deontological republic; justice finds its occasion because we cannot know each other, or our ends well enough to govern by the common good alone."⁴⁰ Yet, Maslow's hierarchy provides ample and initial direction about what individuals can know of one another. All individuals need to eat, sleep and procreate. They need keenly to feel safe from outside threat. They need love—both given and received. They need to feel some sense of self-esteem and to be praised. They need to pursue those things to which they are suited and that they enjoy; and they need to make sense of the world around them. As Maslow notes, and as Aristotle noted before him, each of these needs is required for full human flourishing. Maslow states, "These basic needs or basic values therefore may be treated *both* as ends and as steps toward a single end-goal. It is true that there is a single, ultimate value or end of life"—namely,

³⁹ Kant, *Groundwork*, fn. 14.

⁴⁰ Sandel, *Limits of Justice*, 183.

self-actualization.⁴¹ However, Maslow also departs from Aristotle by recognizing a synergy between the rational and the emotional. He writes,

Another advantage that we have over Aristotle is that we have learned... that self-realization cannot be attained by intellect or rationality alone. You remember that Aristotle had a hierarchy of human capacities in which reason took the top place. Along with this went inevitably the notion that reason contrasted with, struggled with, and was at odds with human emotional and instinctive nature. But we have learned . . . that we must modify considerably our picture of the psychological organism to respect equally rationality, emotionality, and the conative or wishing and driving side of our nature. Furthermore . . . we have learned these are definitely not at odds with each other, that these sides of human nature are not necessarily antagonistic but can be cooperative and synergic.⁴²

By understanding human need, individuals can recognize commonality among one another, despite the subjective experience of each of these needs. Yet, as was noted in the previous section, the impetus to act on behalf of others can be thwarted by the possibility of abuse and questions of accountability. In addition to rational considerations, the needs theory of justice presented in this chapter can be complemented with some attention to the power of emotion. Though there have been some attempts to apply concepts such as sympathy or care to issues of human obligation, these typically are forced to fit into the rights framework. Yet, a strict rights-based understanding of duty would not allow for care or pathos, or indeed, any emotional feeling, as legitimate motivation for upholding right. However, if a rational theory of need is paired with a view of the passions as a possibility for accepting responsibility for others, then a more complete understanding of human obligation comes forth. The experience of pathos is not meant to replace reason. Rather, pathos, serves as a complement to human rationality, and equally importantly, is vital in meeting needs. The next chapter will examine the

⁴¹ Maslow, *Psychology of Being*, 145.

⁴² Maslow, *Motivation and Personality*, 116.

possibilities for meeting needs and fulfilling potential in conjunction with an understanding of pathos as that which serves to create a greater sense of community, thereby promoting an environment in which individuals can flourish.

CHAPTER FIVE

THE EXPERIENCE OF NEEDS: PATHOS AND THE IMPETUS TO ACT

The understanding of the individual as a rational, abstract person without contingencies or attachments has become the theoretical norm. However, it neglects important questions about what motivates individuals to assist others, or to charge their representatives with doing so. It is argued here that feelings and passions are the driving force behind meeting others' needs, not solely rational considerations. Such talk has been mostly avoided, because political theory is suffocated under the yoke of rationalism. Though rationally conducted inquiry may be the proper focus of political philosophy, when attempting to understand what motivates individuals to protect both themselves and others, it should not be assumed that rational considerations are the only ones of merit. Justice and right are the *modus operandi* of Kantian rationalism. Within this framework, justice via right implies that moral concerns are solely rational decisions, based in respect for law and derived from one's obligation in the form of duty. As Kant writes,

For the pure thought of duty and of the moral law generally, unmixed with any extraneous addition of empirical inducements, has by the way of reason alone (which first becomes aware hereby that it can of itself be practical) an influence on the human heart so much more powerful than all other incentives which may be derived from the empirical field that reason in the consciousness of its dignity despises such incentives and is able gradually to become their master.¹

Yet, as the last chapter concluded, this understanding of what constitutes individual experience and action misses much of the intellectual and moral picture.

¹ Kant, *Grounding*, 22.

As Hume has observed, there are only two methods by which individuals' rationality affects their decision to act. He writes, "It has been observ'd, that reason, in a strict and philosophical sense, can have an influence on our conduct only after two ways: Either when it excites a passion by informing us of the existence of something which is a proper object of it; or when it discovers the connexion of causes and effects, so as to afford us means of exerting any passion."² The theory of needs presented here accounts for both of these considerations. First, this dissertation has attempted to reveal the proper object of the passions as the presence of human need. Thus, this chapter will examine the passion aroused when reason signals the presence of a need. As to Hume's second assertion, the use of Maslow's hierarchy in informing policy has attempted to provide a framework for exerting the passions felt in the presence of another's need. If, as has been argued, actualizing one's potential would be furthered more successfully through a needs based discourse, then any ensuing discussion must concern how a needs discourse would be experienced, and subsequently implemented. That is, what faculty or experience would prompt individuals, and their representatives, to meet needs? Stated differently, in David Hume's anatomist terminology, what mind-state is given expression when people are confronted with other-need?

For several hundred years, the Kantian framework has been the dominant discourse through which to consider human obligation (duty, in the Kantian terminology). Within that framework, the mind-state given expression, if it can be called a mind-state in Kantian endeavors, is duty to uphold the universal law as manifest through rational humanity. As Hume

² David Hume, *A Treatise of Human Nature in Moral Philosophy*, ed. Geoffrey Sayre-McCord (Indianapolis: Hackett Publishing Company, Inc., 2006), 70.

rightly notes, the emphasis on human rationality as a motivating factor in human action for others misses the point. In Book III of his *A Treatise on Human Nature*, Hume makes the specific argument that reason is not the source of moral obligation, nor does it adequately express the experience of one who responds to a moral obligation. While his contemporary, Jean-Jacques Rousseau, had elaborated upon the power of compassion and pity in the state of nature, Rousseau did not develop a full theory of compassion as the experience of moral obligation. In contemporary thought, the language of sympathy, compassion and emotion has taken form primarily in the work of feminist theorists who argue for an inculcation of more emotional approaches to moral and political theory. Other contemporary scholars have argued from a sentimentalist perspective, akin to Hume's, that human beings react to suffering based on emotion and not primarily upon reason.³ Though Rousseau's emphasis on compassion, Hume's advocacy of sympathy, and Joan Tronto's feminist assertion of care ethics may seem somewhat disparate, they are all considered here as sentimentalist approaches to moral and political theory.⁴ In part, this is due to each author's attempt to offer an alternative to rationally driven moral obligation, which has been so characteristic of the rights language.

³ To some, the term sentimentalism seems almost pejorative. It is certainly not used here in that way. I use sentimentalism here for three primary reasons. First, it provides both historical and contemporary context, since Hume asserted the primacy of sentiment in moral decision-making, and Richard Rorty has used the term to discuss the problems with right and rationalism. Second, sentimentalism does not carry some of the connotations of emotivism, which indicates a complete lack of objectivity in ethical considerations. Paired with a language of need, which implies objective, empirical needs, emotivism seems less appropriate. Finally, sentimentalism acts as an umbrella term to describe a variety of similar theories of human experience, including sympathy, an ethic of care, compassion, and pathos, among others. For a concise commentary on emotivism and objectivity, see Carl Wellman, "Emotivism and Ethical Objectivity," *American Philosophical Quarterly* 5 (1968): 90-99.

⁴ See Jean-Jacques Rousseau, *Second Discourse* in *The Discourses and Other Early Political Writings*, ed. and trans. Victor Gourevitch (Cambridge: Cambridge University Press, 2004); David Hume, *An Inquiry Concerning the Principles of Morals with a Supplement: A Dialogue*, ed. Charles W. Hendell (Upper Saddle River, New Jersey: Prentice Hall, 1957), and Joan Tronto, *Moral Boundaries: A Political Argument for an Ethic of Care* (New York: Routledge, 1993).

Likewise, in each case, the theory is driven by an appeal to some form of feeling, above appeals to reason.

While the argument herein is not dissimilar from the aforementioned theories, it is coupled with an original theory of need and an explicit critique of rights. Additionally, it has been framed in such a way as to accurately reflect the mind-state given expression. The objective of this chapter is to assert, like other political philosophers such as Hume, Tronto, Richard Rorty, Simon Blackburn, and a host of phenomenological philosophers, most prominently Emmanuel Levinas, that a fundamentally passionate experience, not primarily a rational one, prompts individuals to uphold needs.⁵ It will be argued in this chapter that these efforts at elevating a sentimentalist approach are appropriate, but that they neglect to adequately deal with the sources of obligation. Having outlined a need-based alternative to rights in previous chapters, this portion of the dissertation will endeavor to explain *pathos* as the sentiment aroused in situations of other-need, and will argue that this experience provides the basis for a successful transition to a needs-based discourse. While the obligations themselves are derived from the presence of the need itself, as elaborated upon in the previous chapters, the experience through which individuals recognize an obligation to act are pathos, compassion, sympathy, care, sentiment, as espoused in Greek thought, Rousseau, Hume, Tronto, and Rorty, respectively. Ultimately, the chapter will put forth a theory of obligation

⁵ See Richard Rorty, "Human Rights, Rationality, and Sentimentalism," in *The Politics of Human Rights* ed. The Belgrade Circle (London: Verso, 1999); Simon Blackburn, *Ruling Passions: A Theory of Practical Reasoning* (Oxford: Clarendon Press, 1998), and Emmanuel Levinas, *Otherwise than Being: Or Beyond Essence*, trans. Alphonso Lingis (Pittsburgh: Duquesne University Press, 1998).

that is grounded in need and motivated by sentiment, to complement the rational decision-making regarding need, which was described in previous chapters.

A Defense of Sentimentalism

It has been argued herein that need, properly conceived, is the source of human obligation, not right. However, the dissertation has not yet examined the mode of experience associated with need. For, if the rationalist discussion of justice and right neglect crucial elements of the human experience, then it becomes important to consider those neglected facets of human experience.⁶ David Hume provides a valuable framework for such considerations when he elaborates upon the anatomist perspective. For Hume, the anatomist project attempts to investigate the states of mind that are given expression in moral thinking. Hume asks what the sources of obligation are, and what mind-state is given expression when the decision is made to meet, or not meet, an obligation. That is, what is the source of obligation and what facets of the human being qua human are aroused when considering moral issues?⁷ As has been stated, the presence of genuine need is the source of human obligation. Thus, the sources of moral action are other-centered, whereas the mind-state given expression in moral thinking is the experience of pathos.⁸ The previous chapters were concerned with the former, that is, the source of moral obligation. The lack of desire to meet a need, or the

⁶ To be sure, this is not to insinuate that there is no place for reason. As Hume has noted, reason helps individuals recognize their sentiments and discover how to best act on them. Additionally, making a rational argument is not the same as arguing that reason is the sole motivation for action. I am attempting to do the former.

⁷ Though the term “anatomist” has come from commentator’s on Hume, Hume’s description of this perspective can be found in Hume’s *An Inquiry Concerning the Principles of Morals*, Section V. Therein Hume describes the utility of actions and why individuals are prompted to act morally. The “why” element refers to the source of obligation and the “prompted” element refers to the mind-state given precedence in such instances.

⁸ For a similar account of this dichotomy, see Simon Blackburn, “Must We Weep for Sentimentalism?” in *Contemporary Debates in Moral Theory*, ed. James Dreier (Malden, Massachusetts: Blackwell Publishing, 2006).

inability to meet a need does not negate the obligation; it merely means that the obligation will go unmet by that individual or government. To be clear, discussing right and reason as forces opposed to need and *pathos* is a somewhat false juxtaposition of ideas. It is possible that an individual or government could choose to uphold a right based on the movement of their passionate impulses. Likewise, a person could choose to meet a need based upon rational considerations, though it seems such considerations would not be the first impulse in the decision to do so. However, at the theoretical level, and within the history of political thought, individual right was inextricably linked to the person as a rational creature, and in the Kantian formulation, as a rational member of the kingdom of ends. So, to truly pursue needs, the application of reason must be paired with an emphasis on the power of sentiment. This is not to assert that human beings are *unrational* creatures. Rather, it is an assertion that reason is not the primary motivation for meeting needs—it is not the Humean mind-state given expression when individuals make the decision to meet another's need, or compel their government to do so. Instead, the empathetic recognition of other suffering prompts individuals to act on another's behalf.

However, such claims in political thought have had their detractors. For most political theorists and moral philosophers, the centrality of reason to any theory of moral behavior is still the dominant framework. Thinkers such as Richard Boyd criticize philosophers who have asserted that pity, compassion, or sympathy are essential to moral decision-making. Boyd states that any theory that emphasizes pity or compassion or *pathos*, “underscores the moral discrepancies between compassion—conjured up by the sentiments of the heart—and liberal

democratic demands for equal treatment and willful agency.”⁹ Likewise, Samuel J. Kerstein is unconvinced by sentimentalist appeals, primarily because most sentimentalist accounts “do not explain how moral obligations stem from moral sentiments.”¹⁰ And, as has been discussed already, Kant responded to Rousseau and Hume because he was convinced that only an appeal to universal right as manifest in rational humanity’s membership in the kingdom of ends was sufficient for moral action. However, need is a more universal language than that of human rights, though the needs themselves may be subjective; and sentimentalist accounts provide a more accurate depiction of the mind-state given expression when individuals fulfill obligations, or prompt their representatives to do so. This is where Hume’s distinction between the source of obligation and the mind-state that prompts one to meet the obligation becomes crucial. Kerstein is correct in his assertion that the experience of a particular sentiment or passion cannot provide, by itself, for moral obligations—this is undisputed here. However, Kerstein does not adequately recognize the difference between the experience of a sentiment and the preexisting source of obligation. It is argued here that particular sentiments are merely a individual experience of the source of the obligation—other-need. More specifically, individuals experience pathos and feel compelled to meet needs, or ask their governments to do so if their individual effort is unlikely to provide the support necessary to meet that need. Once again, discussions of sentimentalism are not arguments against all forms of rationality, nor the wisdom and utility of reasoned debate. In the case of this project, reason may be used,

⁹ Richard Boyd, “Pity’s Pathologies Portrayed: Rousseau and the Limits of Democratic Compassion,” *Political Theory* 32 (2004): 521.

¹⁰ Samuel J. Kerstein, “Reason, Sentiment, and Categorical Imperatives,” in *Contemporary Debates in Moral Theory*, ed. James Dreier (Oxford: Blackwell Publishing Ltd, 2006), 136.

and indeed, should be used, when meeting needs. However, a rational undertaking regarding the content of justice does not reflect the individual experience of the needs of others or what is required for their well-being. It may be necessary to engage in rational decision-making or reasoned debate when deciding upon a course of action to meet needs, but reason is not the basis for moral obligation (need is) and reason is not the mind-state present when an individual feels obligation to meet a need. Rather, as is being argued here, the initial impulse to act to meet needs is typically felt through the experience of *pathos*.¹¹

Many thinkers, such as Kerstein, seem to presuppose that sentimentalism is inadequate on the basis that only some people will experience the sentiments necessary for fulfilling obligations to meet needs (in the language used here), or uphold rights (in the Kantian framework). In the case of this dissertation, Kerstein would insinuate that if a sentiment, or *pathos*, is variable, that is, if it is felt in different levels and it is the result of different experiences in different people, then it cannot offer a solution to moral action. However, such a claim “can be directed not only against sentimentalism, but against any theory that seeks to explain our moral capacities in terms of contingent and potentially variable facets of human nature: language, culture, upbringing, acquired ‘second nature,’ and so on. Even reason, insofar as it is empirically variable, or leaves its possessors liable to partial and self-serving policies, will not be enough.”¹² Certainly this has been the goal of rationalist inquiry—to place the onus of moral action upon a faculty considered to be universal. However, though human

¹¹ The decision to use the term *pathos* will be discussed in greater detail later in the chapter. For now, suffice it to say that *pathos* describes the primordial experience of shared suffering and thus provides a more accurate depiction of the mind-state given expression in situations of need. Additionally, it does not admit of some of the same drawbacks as Rousseau’s understanding of compassion or Hume’s concept of sympathy.

¹² Blackburn, “Sentimentalism,” 145.

beings qua human may possess the rational capacity in a way that is qualitatively different from other beings, it is surely true that each person, for any variety of explanations, also possess the ability to use that reason to varying degrees. To assume that somehow sentiment, or pathos, which may also be experienced and cultivated to varying degrees is fundamentally different than other human capacities is an inaccurate stance. This account does not deny that people will respond to pathos in diverse ways and at different levels. However, this criticism can be made of any criteria for moral action, and cannot be considered unique to the theory presented here.

More importantly, some would argue that many people may not experience pathos in situations in which one might normally expect them to, and as such, the need will not be fulfilled because the person has not experienced the mind-state that leads to the fulfillment of obligation. Stated more simply, some like to “suppose that people without the sentiments are free of the obligation: the ‘basis’ of her obligation is a sentiment, so that ‘if an agent does not have this sentiment, then she has no obligation’”¹³ Such an objection deserves a two-part response. First, just because a person does not react with compassion toward a suffering other does not mean that the need of that other fails to exist, nor does it mean that the duty incumbent upon the agent ceases to be important. As Blackburn asks, “Do you escape a debt if you do not care about it?”¹⁴ He replies, “The obligations you lie under, like the debts you owe, don’t decrease or disappear when you stop caring about them.”¹⁵ So, simply because an

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid., 146.

individual does not experience pathos, or refuses to acknowledge it, does not mean that the person's obligation is diminished, or does not exist. Second, as has been discussed, the assumption Kerstein makes would fail to recognize the proper source of obligation. In the theory presented here, the source of obligation is not pathos, but other-need. The presence of the need creates an obligation upon the part of every other external agent to fulfill that need. Again, pathos is simply the mind-state given expression when a subject is confronted with need. Thus, a lack of sentiment negates neither the obligation nor the actual source of the obligation, but instead means that the individual who lacks such sentiments has not fulfilled her obligations and is still morally accountable.

One of the central concerns regarding similar sentimentalist theories is that such moral theories serve to undermine universal laws of morality, and ultimately, justice. Kant rejected the guidance of feeling for this reason. Considering physical and moral feelings as empirical principles, Kant writes, "Empirical principles are wholly unsuited to serve as the foundation for moral laws. The universality with which such laws ought to hold for all rational beings without exception . . . is lost if the basis of these laws is taken from the particular constitution of human nature or from the accidental circumstances in which such nature is placed."¹⁶ Kant's objection sheds further light on his justification for providing the universal framework that was discussed in previous chapters. As Boyd sympathetically notes, "Reading Rousseau apparently convinced Kant that while the sentimentalist allows that we have duties of charity to the dispossessed of the world, this is not enough. The poor or excluded have a right to more than charity. It is not charity they want or need, but justice. If sentimentalism cannot deliver that, then it delivers an

¹⁶ Kant, *Grounding*, 46.

inadequate account of the actual nature of our moral thought.”¹⁷ However, whether sentimentalism delivers justice depends upon an inaccurate grasp of sentimentalism and a nominalist understanding of justice. If justice can only be properly conceived in Kantian or Rawlsian terms, then perhaps need and sentiment do not meet the criteria of justice. The project herein is not to redefine justice but to provide a theory of obligation that succeeds in fulfilling human needs. If justice and right are neither intellectually nor morally sufficient in explaining human experience and obligation, then whether the theory of needs presented here conforms to the neo-Kantian conception of justice becomes far less important. And, again, Boyd’s comments indicate a lack of understanding about the distinction between the source of obligation and the mind-state given precedence when experiencing suffering. Though, to be sure, theorists who have espoused some form of need, have typically not been clear about the way need is experienced. Indeed, this is one of the contributions of this dissertation—to merge a theory of need with one that relays the mind-state given expression in experiencing need.

There have been a variety of attempts at sentimentalist accounts of obligation, but for the most part, they have been lacking an alternative source of obligation to rights. One of the earliest attempts to outline a sentimentalist approach to politics came from Jean-Jacques Rousseau. Rousseau, who described his sentimentalism as pity, recognizes that capacity as innate in human beings. In contrast to other social contract thinkers, for Rousseau, “[t]he picture of human nature so described is not one, then, that is formed out of natural social experience but one that seeks to capture the essence of man, unsullied by what [he] regards as

¹⁷ Blackburn, “Sentimentalism,” 154.

the unnecessary ephemera of civil society.”¹⁸ The picture of man in the state of nature is one in which man may be considered “savage,” but not one in which every man makes war on every other, as Hobbes would have it. Rousseau claims that both animals and people are naturally averse to seeing another of their species suffer. “Such is the pure movement of Nature prior to all reflection: such is the force of natural pity, which the most depraved morals still have difficulty destroying.”¹⁹ So, though an individual may be driven to preserve herself, she is also driven to ease the suffering of others. “It is therefore quite certain that pity is a natural sentiment which, by moderating in every individual the activity of self-love, contributes to the mutual preservation of the entire species.”²⁰

However, Rousseau is also clear to note that an attachment to rationality undermines the ability to act compassionately. Through identifying with other members of the state of nature, an individual can experience pity and attempt to halt suffering. But, in civil society, that same individual finds that her natural inclinations to pity have been subdued by reason.

Rousseau writes,

Indeed commiseration will be all the more energetic in proportion as the Onlooking animal identifies more intimately with the suffering animal: Now this identification must, clearly, have been infinitely closer in the state of Nature than in the state of reasoning. It is reason that engenders amour propre, and reflection that reinforces it; reason that turns man back upon himself; reason that separates him from everything that troubles and afflicts him: It is Philosophy that isolates him; by means of Philosophy he secretly says, at the sight of a suffering man, perish if you wish, I am safe. Only

¹⁸ Norman Barry, “Hume, Smith, and Rousseau on Freedom,” in *Rousseau and Liberty*, ed. Robert Wolker (Manchester, UK: Manchester University Press, 1995), 33.

¹⁹ Rousseau, *Second Discourse*, 152.

²⁰ *Ibid.*, 154.

dangers that threaten the entire society still disturb the Philosopher's tranquil slumber, and rouse him from his bed.²¹

So, according to Rousseau, the feelings of pity and compassion that reside in the human heart are countered by reason, and can typically only be roused through dangers so great as to affect the whole of society. Such a statement raises questions about the possibilities for compassion in a political theory and political practice dominated by rationalism. For according to Rousseau, the pursuit of rational inquiry is one reason for the lack of emphasis on compassion within society.

Some, such as Boyd, have argued that Rousseau's insistence on pity as a fundamental facet of human nature may not provide the basis for political action. He interprets Rousseau's argument in terms of difference; that is, the strong pity the weak because the weak are beneath them, and a democratic society cannot, therefore, foster pity and compassion because such societies must be based on the assertion of fundamental equality. He goes on to state, "It is unclear how an ultimately private virtue like pity might be generalized into the imaginary realm of the public sphere without surrendering the intensely personal sensibilities that gave it its original force."²² While his points are well-made, the notion that private and public virtues are somehow mutually exclusive realms of ethical behavior sets up a false dichotomy. At least as far back as Aristotle, it was recognized that most virtues are, ultimately, social in nature, in that they must be exercised in the social sphere in order to be realized by the individual. Pity is no different. How could one be expected to cultivate the "private" virtue of pity without the involvement of others? Rousseau writes, "[M]en would never have been anything but

²¹ Ibid., 153.

²² Boyd, 538.

monsters if Nature had not given them pity in support of reason: but he [Mandeville] did not see that from this single attribute flow all the social virtues he wants to deny men. Indeed, what are generosity, Clemency, Humanity, if not Pity applied to the weak, the guilty, or the species in general?"²³ Here, Rousseau explicitly notes that, far from undermining pity in the private realm, pity is the source of social virtues. Likewise, insinuating that compassion, as a recognition of difference (if that is even what compassion entails) is somehow incompatible with the more fundamental notion of general, qualitative, and intrinsic human dignity, and therefore equality, seems absurd. In fact, Rousseau notes that compassion is experienced primarily between individuals who see themselves as equals. If that is the case, then pity or compassion cannot be solely a principle of difference.

Rousseau's contemporary, Hume, further developed the initial impulse toward sentimentalism that permeated Rousseau's thought. Though he does not discuss it in terms of recognizing common human suffering, Hume clearly argues that individuals are motivated by their passions, specifically, their sympathy for others, and not primarily by reason. While Hume elaborates upon the sentiments in an effort to support his theory of utility, his work is relevant here. Contra Kant and Rawls, Hume argues that individuals cannot be separated so easily from their attachments and contingencies, and as such the notion of a rational actor devoid of personal affections and characteristics is unrealistic. In Hume's theory, all individuals are moved by their passions.²⁴ He states,

²³ Rousseau, *Second Discourse*, 153.

²⁴ This emphasis in Hume has similarities to Hobbes's understanding of human nature as driven by its appetites and aversions. Hume however, does not see individuals as primarily self-interested, and so argues that people should embrace their passionate impulses rather than squelch them.

If we consider the principles of the human make, such as they appear to daily experience and observation, we must, *a priori*, conclude it impossible for such a creature as man to be totally indifferent to the well or ill-being of his fellow creatures, and not readily, of himself, to pronounce, where nothing gives him any particular bias, that what promotes their happiness is good, what tends to their misery evil, without any further regard or consideration.²⁵

Hume's denial of indifference also answers the concerns of some, such as Kerstein, regarding the supposed lack of sentiment in some individuals. Just as need itself is both universal and particular, so too do individual sentiments occur to everyone, but in different quantities and at different times. "We enter, to be sure, more readily into sentiments which resemble those we feel every day; but no passion, when well represented, can be entirely indifferent to us, because there is none of which every man has not within him at least the seeds and first principles."²⁶

Some might go further and argue that not only are human beings indifferent to the suffering of others, but that sometimes individuals actually revel in the discontents of others. Hume directly addresses this concern. He asks, "Would any man who is walking alone tread as willingly on another's gouty toes, whom he has no quarrel with, as on the hard flint and pavement?"²⁷ He continues,

We surely take into consideration the happiness and misery of others in weighing the several motives of action, and incline to the former where no private regards draw us to seek our own promotion or advantages by the injury of our fellow creatures. And if the principles of humanity are capable, in many instances, of influencing our actions, they must, at all times, have *some* authority over our sentiments and give us a general approbation of what is useful to society, and blame of what is dangerous or pernicious.

²⁵ Hume, *Principles of Morals*, 56.

²⁶ *Ibid.*, 50.

²⁷ *Ibid.*, 53.

The degrees of these sentiments may be the subject of controversy, but the reality of their existence, one should think, must be admitted in every theory or system.²⁸

Hume argues that imagining a person who was completely full of spite and wished only ill on others would be a perverted member of the human species. He states, "A creature absolutely malicious and spiteful, were there any such in nature, must be worse than indifferent to the images of vice and virtue. All his sentiments must be inverted, and directly opposite to those which prevail in the human species."²⁹ While one could imagine that there are some who adhere to a Thrasymachian understanding of human relationships, those who actively enjoy the suffering of others must surely be considered to have some sort of psychopathology.³⁰ Though the problem of treating individuals of a different race, or gender, or religion as non-humans will be dealt with shortly, in general, such ill-will must be the exception, not the rule. Similarly, Hume counters those who would insinuate that individuals are solely self-interested creatures and, therefore, even when feeling a passionate impulse to aid others would first consider their rational self-interest. He writes,

It appears also that in our general approbation of characters and manners the useful tendency of the social virtues moves us not by any regards to self-interest, but has an influence much more universal and extensive. It appears that a tendency to public good and to the promoting of peace, harmony, and order in society does always, by affecting the benevolent principles of our frame, engage us on the side of the social virtues. And

²⁸ Ibid.

²⁹ Ibid.

³⁰ In the first book of *The Republic*, Thrasymachus famously argues that justice is the will of the stronger and that individuals should wish well for their friends, and wish evil on their enemies. Maslow makes some interesting comments on psychopathology in *Toward a Psychology of Being*. He writes that philosophers seek to understand virtue and goodness without adequate knowledge of those elements of the human being that are likely to push her away from seeking the good, or being virtuous. He states, "We know much about *why* men do wrong things, *why* they bring about their own unhappiness and their self-destruction, *why* they are perverted and sick. And out of this has come the insight that human evil is largely (though not altogether) human weakness or ignorance, forgivable, understandable and also curable" (155).

it appears, as an additional confirmation, that these principles of humanity and sympathy enter so deeply into all our sentiments and have so powerful an influence as may enable them to excite the strongest censure and applause.³¹

Modern considerations of sentiment are not markedly different from the arguments made by Hume. Richard Rorty, in the tradition of Hume has directly attacked the foundationalism of the Kantian philosophical stance (and therefore neo-Kantian endeavors of scholars like Rawls) in an effort to overcome the tyranny of rights and rationalism. He asserts that academics have been all too happy to consider man a rational animal. He states, “The residual popularity of this answer accounts for the residual popularity of Kant’s astonishing claim that sentimentality has nothing to do with morality, that there is something distinctively and transculturally human called ‘the sense of moral obligation’ which has nothing to do with love, friendship, trust, or social solidarity.”³² Rorty is careful to note that what distinguishes humans from animals is not the rationality of the former, but their ability to feel to a much greater extent.

Yet, in the contemporary world, Rorty notes, the Kantian doctrine has failed woefully. Both Plato and Kant believed that instructing people to recognize their common rationality would lead to more humane relations between individuals and groups. But as Rorty notes, it does not “do much good to get such people to read Kant, and agree that one should not treat rational agents simply as means. For everything turns on who counts as a fellow human being, as a rational agent in the only relevant sense—the sense in which rational agency is

³¹ Ibid., 57.

³² Rorty, “Sentimentalism,” 73.

synonymous with membership in *our* moral community.”³³ Thus, as is the claim herein, individuals are not easily persuaded by arguments of the commonality of rational humanity. As Rorty bluntly and forcefully writes,

For the people we are trying to convince will rejoin that they notice nothing of the sort. Such people are morally offended by the suggestion that they should treat someone who is not kin as if he were a brother, or a nigger as if he were white, or a queer as if he were normal, or an infidel as if she were a believer. They are offended by the suggestion that they treat people whom they do not think of as human as if they were human.³⁴

Such claims are unnerving. If it is true that some individuals do not think of members of other groups as human beings, how can they possibly uphold the rational kingdom of ends? Equally problematic, how can they be expected to feel compassion or pity for the suffering of another? In part, Rorty argues, we must turn to sentimentalism, and that “Hume is a better advisor than Kant about how we intellectuals can hasten the coming of the Enlightenment utopia for which both men yearned.”³⁵ Rorty’s claims are based in his pragmatism, since he argues that rather than addressing questions of human nature, scholars should be considering how best to remedy practical problems. In such an effort, there are two primary concerns—security and sympathy.

Within the previous two chapters, the issue of security has recurred often, as it is one of the fundamental needs in Maslow’s hierarchy. If safety needs can be met, then the process of engendering sympathy can commence. Rorty defines security as “conditions of life sufficiently risk-free as to make one’s difference from others inessential to one’s self-respect, one’s sense

³³ Ibid., 75.

³⁴ Ibid.

³⁵ Ibid., 77.

of worth.”³⁶ Maslow’s definition, which identified these needs as freedom from animal attacks, the violence of others, and tyranny, is not dissimilar, though it is not applied by Maslow to issues of self-respect. However, security, in Maslow’s understanding is a prerequisite for any form of self-worth and respect from others. As Rorty notes, once these needs are fulfilled, the sentiment of sympathy may serve to unite individuals. Rorty defines sympathy as “the sort of reaction that the Athenians had more of after seeing Aeschylus’ *The Persians* than before, the sort that white Americans had more of after reading *Uncle Tom’s Cabin* than before, the sort that we have more of after watching TV programmes about the genocide in Bosnia.”³⁷ He continues,

Security and sympathy go together, for the same reasons that peace and economic productivity go together. The tougher things are, the more you have to be afraid of, the more dangerous your situation, the less you can afford the time or effort to think about what things might be like for people with whom you do not immediately identify. Sentimental education only works on people who can relax long enough to listen.³⁸

Though Rorty does not mention need, his understanding of the relationship between security and sympathy underscores the relationship presented here between need and pathos. If the first two levels of need (the physiological and safety needs) can be met by government, then the wider populace can thereby act on the experience of pathos and perform obligations to others.

From Hume to Rorty, those who have argued for some sort of sentimentalism have done so with varying degrees of success. In any case, none of these scholars have applied their

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

arguments to need. Joan Tronto perhaps comes closest to advocating a sentimentalist approach based in need, since she proposes asking questions of need and implementing an ethic of care. Her approach therefore considers need, and argues for a more empathetic response, as opposed to a rational one, when discussing moral, and subsequently, political, questions. While the effort presented here owes much to Tronto, her attempt is, in some ways, limited in scope, and she erroneously conceives of the relationship between care and right. As she accurately notes, “While there are some notable exceptions, for the most part, questions of natality, mortality, and the *needs of humans* to be cared for as they grow up, live, and die, have not informed the central questions of philosophers.”³⁹ While she later fails to develop it, Tronto is here recognizing the lack of emphasis on need, in favor of right, though she argues for upholding right without addressing the implications. While she criticizes the tradition of moral philosophy, she simultaneously upholds it.

First, Tronto accurately asserts, “Since the eighteenth century, most philosophers have accepted Immanuel Kant’s view of what a moral theory should be: it should arise not out of the concrete circumstances of any given society, but out of the requirements of reason. Moral theory, above all, must be from ‘the moral point of view,’ which means from a standpoint of disinterested and disengaged moral actors.”⁴⁰ And, because of this view of moral behavior as rooted in detached beings upholding a rationally intelligible universal law, “morality becomes a

³⁹ Tronto, 3, emphasis added. For a similar, but perhaps less relevant example, see Carol Gilligan, *In a Different Voice* (Cambridge, Massachusetts: Harvard University Press, 1982) and Annette Baier, *A Progress of Sentiments: A Reflection on Hume’s Treatise* (Cambridge, Mass.: Harvard University Press, 1991).

⁴⁰ Tronto, 9, quoting Thomas Nagel, *The Moral Point of View: The Rational Basis of Ethics* (New York: Random House, 1965).

realm beyond the world of emotions and feelings, and thus part of reason only.”⁴¹ However, Tronto blunders here. First, she presupposes that emotion and feeling are the absolute antithesis of reason and, second, she claims throughout the book that the former are the mind-states present in females, while the latter is given emphasis in the male psyche. As far back as Plato, reason and emotion have been seen as part of a whole, and while Tronto is not explicit in her dichotomy, the juxtaposition of the two faculties is always just under the surface of her text. Likewise, to assume that one mind-state inherently dominates the female mind and one dominates the male mind misses the plethora of “in-betweens.” Setting aside the variety of arguments about gender as a social construction, it seems unfair to insinuate that men are not possessed of emotions to potentially the same degree as women and women are potentially possessed of reason to the same degree as men. Her desire to further a feminist objective creates problems for her overall theory, and it seems ultimately to undermine her own aims. It also completely neglects Hume’s treatment of the relationship between reason and passion mentioned above. That is, while sentiments are that which prompt individuals to act, reason can assist in discerning whether something is the proper concern of the passions, and how to best act on the sentiment experienced.

Given her proposition that reason and emotion are antithetical, one would assume that Tronto would make the link between reason and right, especially in the context of her recognition of Kant’s influence on moral theory. However, she upholds right. Likewise, given the inherent differences she proposes between the male and female experience of the world, one would suppose that Tronto would be careful to address the more subjective needs of

⁴¹ Ibid.

different individuals, particularly women. Unfortunately, she fails to do so, instead arguing, like Kant, for a universalistic conception of abstract right. She states, “Without strong conceptions of rights, care-givers are apt to see the world only from their own perspective and to stifle diversity and otherness.”⁴² While she insinuates that an ethic of care is a quality possessed by democratic citizens, problematically, she is unable to divorce care from rights. Tronto fails to recognize, or perhaps chooses not to recognize, the rootedness of rights in rationality. At the broad theoretical level, to accept one is to accept the other. She, like many other political philosophers, fears the rejection of rights as the death knell of Western liberal ideals. And, though she claims that including caring as a liberal value complements other rights, it seems more likely that the emphasis on right would crush any burgeoning emphasis on care. Instead, rights should be supplemented with needs, and the emphasis on rationality should be complemented with pathos. Presumably, Tronto fears the rejection of rights because she believes that “otherness” will be squelched. This stems from her incorrectly conceived notion that care, or the attempt to meet needs, originates with the care-giver or the person meeting the need. Quite to the contrary, as will be illustrated shortly, actions to meet needs are radically other-centered. Tronto sees no way forward except through right because she does not recognize the origin of need in the other, not the self. Thus, her aim to elevate women and their language, is contradicted by her insistence upon the use of universal right.

Though it may seem contrary to what one might first think, right and reason have always been centered on the subjective self. One might ask, “How can this be, since the upholding of right is the upholding of another’s right?” That is a valid question. However,

⁴² Tronto, 161.

considering the Kantian impulse again reveals the echoes of Descartes. Kant conceived of reality as twofold, with only the subjective will being indicative of reality. The person's body, as well as other individuals, was merely an accidental, phenomenal "thing." Only the will (and the freedom to exercise it) was subject; all else was object. "Kant's account requires that each person insofar as he is a 'real, atemporal, noumenal self' outside the causal order of nature, and thereby free and autonomous by definition, represent himself as a thinking subject in noncorporeal terms, for reason 'belongs to the inner sense only.' Other human beings, as phenomenal objects, are 'mere appearances.'"⁴³

It is quite obvious then that, for Kant, morality is derived solely from the subjective self and that one's duty to uphold it is merely a result of the duty to act in accord with the categorical imperative as understood in the noumenal realm of subjective reason. For Kant, though each person should be treated as a member of the kingdom of ends, universal right arises from the categorical imperative, which makes quite clear that *I* should act only in such a way as *I* would want to become universal maxim. The Kantian categorical imperative, from which so much current ethical theory, moral philosophy, and political thought is ultimately derived, is, in its most basic form, still concerned with the Cartesian *cogito*. It is a continuation of the modern project that emphasizes the self above the other. The obligation to meet needs, which does not have the same heritage as the language of rights, is not self-centered, but is essentially other-centered. While it is true that Maslow's hierarchy identifies subjective needs, he also notes that these needs are deeply social and they require recognition by others. Perhaps the best discussion of the actual experience that occurs when a person is confronted

⁴³ Elshtain, "Kant, Politics, and Persons," 207.

with other-need comes through Emmanuel Levinas's explanation of human relations.⁴⁴ Though his approach is decidedly phenomenological, and his efforts come from a desire to express the transcendent in interpersonal terms, his work is valuable in understanding the mind-state that occurs when one is confronted with the suffering of another. And, if the process by which an individual experiences another's need and is motivated to act can be better understood, then perhaps it can be cultivated.

The Experience of Pathos

At first glance, a theory of obligation that incorporates a language of need and the experience of pathos may seem far-flung and idealistic. Quite to the contrary, as this section will explore, the experience of pathos is grounded in the everydayness of human occurrences. Pathos incorporates the notion of suffering together and provides the basis for the commonality necessary for action on behalf of another.⁴⁵ Individuals within humanity may not experience pathos to the same degree, but the same could be said of a variety of other human characteristics—not least of all, reason. Again, pathos is not being used to qualitatively distinguish a person's humanity, or to ground the source of human obligation. Expression of legitimate need is the source of obligation. Pathos is the mind-state given emphasis in the presence of needs. While a variety of terms might be used to describe this sentiment, pathos,

⁴⁴ It should be briefly noted that Levinas's project is to revitalize transcendence in the face of the totalizing philosophies of the twentieth century. Yet, despite the different aim espoused here, his work is important in understanding the process that occurs when a person experiences the suffering of another and feels compelled toward responsibility to that other person.

⁴⁵ Consulting Liddell and Scott, one finds that *pathos* can be translated as "anything that befalls one, an incident, accident" from Herodotus and Sophocles, or "what one has suffered, one's experience" from Aeschylus. Alternately, *eleos* is the Greek word for pity, which also gets translated as sympathy or compassion. In the Aristotelian formulation, to be discussed later, pity (*eleos*) is aroused through suffering (*pathos*). In the modern usage, pathos implies not just the act of suffering, but the feeling aroused when one is confronted with suffering. It is the modern usage that is intended here.

which implies the common condition of human beings, indicates greater shared meaning than a term like pity can convey. As a more primordial description of shared suffering, pathos provides a richer meaning than sympathy or pity, which imply concern, but not a shared experience, since one may pity another with whom she identifies few common characteristics.⁴⁶ Likewise, the term sentiment, though it is employed here because of its preexisting use within the discipline, only really indicates emotion or feeling, and does not convey any type of experiential bond between individuals. Nonetheless, some might argue that the experience of pathos is nothing more than feeling sorry for someone else, without any involvement of the self in the suffering of another. Thus, the way in which pathos is experienced deserves further attention.

Pathos, as the experience that occurs when one individual is confronted with the suffering of another, is a passive incident, but can turn to action on behalf of the other.⁴⁷ The passive experience of pathos is described nicely by Eric Voegelin, when he states, “Pathos is what men have in common, however variable it may be in its aspects and intensities. Pathos designates a passive experience, not an action; it is what happens to man, what he suffers, what befalls him fatefully, and what touches him in his existential core.”⁴⁸ In Levinasian terms,

⁴⁶ Though linguistically, words like sympathy and compassion are typical translations of the Greek *pathe*, they tend to denote a type of paternalistic concern. As such, pathos is argued to be the more appropriate and essential word to convey that mind-state given expression when one is confronted with the suffering other.

⁴⁷ It is argued here that the passive experience of *pathos* can serve to prompt action. Admittedly, this may not in every case, as has been previously discussed, since a person may choose to ignore that impulse. However, this is no more likely than it is with the rational revelation of responsibility espoused elsewhere. Indeed, any moral theory does not require absolute adherence and acceptance, only that some people accept the terms of the theory and act on them.

⁴⁸ Eric Voegelin, *Order and History, Volume III: Plato and Aristotle*, ed. Dante Germino (Columbia, Missouri: University of Missouri Press, 2000), 83. Voegelin’s understanding is useful here, though his definition of pathos as

the initial confrontation with a suffering other occurs as a conversation with the *face* of another.⁴⁹ This conversation, either actual or metaphorical, provides the first impetus to responsibility, even if the subject is initially unaware of it. “All encounter begins with a benediction, contained in the word ‘hello’; that ‘hello’ that all *cogito*, all reflection on oneself already presupposes.”⁵⁰ That is, the relation to the other person underlies any assertion of subjectivity. Far from the notion of rights theorists that rights are ultimately individual characteristics, Levinas argues that if rights exist, it is the right of the other over the self.⁵¹ He states, “Conversation, from the very fact that it maintains the distance between me and the Other . . . cannot renounce the egoism of its existence; but the very fact of being in a conversation consists in recognizing in the Other a *right* over this egoism, and hence in justifying oneself.”⁵² The power of the Other over the self seems to cause an awakening within the self that leads to one’s willingness to sacrifice for an-Other, and to the recognition of some sort of commonality. Of course, in the formulation presented here, discussions of need replace considerations of right for the reasons mentioned in previous chapters. Yet, the simple fact of sharing a relationship with another person creates a sort of responsibility of one for the other.

a passive experience only encompasses one of the four possible definitions of *pathos* provided by Liddell and Scott as “any passive state, a condition, state” from Plato.

⁴⁹ Levinas’s terminology deserves some attention here. When discussing human interaction, Levinas refers to the interaction of one person with another as a confrontation with the face of the other. This is due in part to the phenomenological method that Levinas is employing, since the face serves as a clearly identifiable and experiential conduit for interaction between individuals.

⁵⁰ Emmanuel Levinas, *Alterity and Transcendence*, trans. Michael B. Smith (New York: Columbia University Press, 1999), 98.

⁵¹ Though the current project rejects the majority of the rights discourse, the point that the other has fundamental power over the self is important for the recognition of *pathos* as an influencing factor in human responsibility.

⁵² Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority*, trans. Alphonso Lingis (Pittsburgh: Duquesne University Press, 1969), 40.

Through this conversation, the recognition of pathos occurs, and, importantly, the identification of commonality provides a basis for action. Instead of servicing the self, the face has the ability to awaken the pathetic impulse. “The expression the face introduces into the world does not defy the feebleness of my powers, but my ability for power. The face, still a thing among things, breaks through the form that nevertheless delimits it. This means concretely: the face speaks to me and thereby invites me to a relation incommensurate with a power exercised, be it enjoyment or knowledge.”⁵³ Levinas conceives of responsibility as “to give, to-be-for-another, despite oneself, but in interrupting the for-oneself, is to take the bread out of one’s mouth, to nourish the hunger of another with one’s own fasting.”⁵⁴ This ethic, the responsibility to the Other, is instigated by the simple confrontation and conversation with the Other. Indeed, in his formulation, which is radically individualistic and yet, “for-the-other,” each individual is called to meet the needs of others—importantly, even strangers. It is within this understanding of each person as responsible for alleviating the suffering of every other person that the current undertaking is concerned. This is far from the Kantian understanding that the stranger merely must not be harmed.

In his terminology, the other is often referred to as a neighbor, which implies a closeness, even between strangers. He writes,

Before the neighbor I am summoned and do not just appear; from the first I am answering to an assignation. Already the stony core of my substance is dislodged. But the responsibility to which I am exposed in such a passivity does not apprehend me as an interchangeable thing, for here no one can be substituted for me, in calling upon me

⁵³ Ibid., 198.

⁵⁴ Levinas, *Otherwise than Being*, 56.

as someone accused who cannot reject the accusation, it obliges me as someone unreplaceable and unique, someone chosen.⁵⁵

This excerpt would not seemingly imply a necessary proximity with those to whom an individual is responsible. However, Levinas also refers to the strangeness of a neighbor, and it is through the recognition of a responsibility to the stranger that a sense of the possibilities for interpersonal relations, even with strangers, can emerge. He states that the stranger “has no other place, is not autochthonous, is uprooted, without a country, not an inhabitant, exposed to the cold and the heat of the seasons. To be reduced to having recourse to me is the homelessness or strangeness of the neighbor. It is incumbent on me.”⁵⁶ Thus, the responsibility of the subject exists by the mere fact of being confronted with other need.

Levinas’s account of responsibility to the other illustrates how pathos can influence individual action in meeting other-needs. Though some would argue that such an account of the giving of oneself for the other is not reflective of actual human motivations, it is argued here that one’s experience is not solely biased in favor of the cogito and, “[a]ccording to Levinas . . . these egocentric views [cannot do] justice to our original experience of the other person.”⁵⁷ This is not to insinuate that individuals are not self-interested creatures. Indeed, even Levinas recognizes, “My primary experience is definitely biased and egocentric. I take precedence over the various objects I find around me, and in so far as my experience is normal, I learn to

⁵⁵ Emmanuel Levinas, “God and Philosophy,” trans. R.A. Cohen and Alphonso Lingis, in *The Levinas Reader* ed. Scan Hand (Oxford: Basil Blackwell, 1989), 167.

⁵⁶ Levinas, *Otherwise than Being*, 91.

⁵⁷ Alphonso Lingis, Introduction to Emmanuel Levinas, *Totality and Infinity*, trans. Alphonso Lingis (Pittsburgh: Duquesne University Press, 1969), 12.

manipulate and control them to my advantage.”⁵⁸ However, this egocentrism does not explain the full scope of individual experience. While one’s experience is subjective, it is also mediated through exteriority. Though individuals are to act on pathos in a radically other-centered way, they are not compelled simply to denounce the subjective self in favor of that which is outside it. “Such a conception would in the end destroy exteriority, since subjectivity itself would be absorbed into exteriority, revealing itself to be a moment of a panoramic play. Exteriority would then no longer mean anything, since it would encompass the very interiority that justified this appellation.”⁵⁹ However, neither is exteriority solely that which is outside the self. If this were the case, “exteriority would acquire a relative meaning, as the great by relation to the small.”⁶⁰ Levinas writes, “Exteriority, or if one prefers, alterity, would be converted into the same.”⁶¹ He comes to the following conclusion about exteriority:

Being is exteriority: the very exercise of its being consists in exteriority, and no thought could better obey being than by allowing itself to be dominated by this exteriority. Exteriority is true not in a lateral view apperceiving it in its opposition to interiority; it is true in a face to face that is no longer entirely vision, but goes further than vision. The face to face is established starting with a point separated from exteriority so radically that it maintains itself of itself, is me; every other relation that would not part from this separated and therefore arbitrary point . . . , would miss the—necessarily subjective—field of truth.⁶²

In other words, being as exteriority does not destroy the self, nor does it exalt all things outside the self as the only basis for alterity. The subject and the other are connected as part of a

⁵⁸ Ibid.

⁵⁹ Levinas, *Totality and Infinity*, 290.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

whole. But individuals are not absorbed into that whole. Instead, “Levinasian responsibility is radically for-the-Other, but it does not annihilate the ego. Without the ego, without separation, responsibility is meaningless. The self is two parts of a unicity. It is both for-itself and for-the-Other, but in Levinas’s formulation, the for-the-Other is primordial.”⁶³ Thus, through this experience of another’s suffering, and in spite of the potential for egocentrism of the self, individuals can be impelled to meet needs when they recognize pathos. The experience of pathos is fundamental. As Hume notes and as Rorty confirms, one cannot help but be moved, to some extent, by the needs of others, since individuals are both rational and passionate, both self-interested and other-interested.

However, within the primordial experience of the Other, a place for justice also emerges. Levinas provides a basis for justice and action on behalf of others when confronted with pathos. He understands the individual awakening to justice as a result of the being confronted, not just with the other, but also with the Third. As William Paul Simmons notes, “Levinas’ philosophy champions the ethical relationship with the Other, but this is not the end of his philosophy.”⁶⁴ Levinas asserts that while one is engrossed in an experience of the other, a “third party introduces a contradiction in the saying whose signification before the other until then went in one direction.”⁶⁵ When confronted experientially with a third party, the individual, who up until this point would have seen herself in relation only to the original Other, now stands in relation to the other of the Other. That is, “The third party is other than the

⁶³ William Paul Simmons, “The Third: Levinas’ Theoretical Move from An-Archical Ethics to the Realm of Justice and Politics,” *Philosophy and Social Criticism* 25 (1999): 126.

⁶⁴ Simmons, 92.

⁶⁵ Levinas, *Otherwise than Being*, 157.

neighbor, but also another neighbor, and also a neighbor of the other, and not simply his fellow.”⁶⁶ Because of this initial confrontation with a third, the individual first assesses her relationship to justice. She asks, “What do I have to do with justice?”⁶⁷ In attempting to answer this question, the individual recognizes that the “neighbor that obsesses me is already a face, both comparable and incomparable, a unique face and in relationship with faces, which are visible in the concern for justice.”⁶⁸ Simmons sums up this understanding of ethics and justice nicely when he states,

[T]he Third both extends and limits the responsibility for the Other. The ego’s responsibility must be extended beyond the Other, to the Third, even to all of humanity. Further, the Third necessitates an extension of the ego’s anarchical responsibility into the realm of the said, that is, responsibility must be made concrete in language, justice, and politics. Conversely, the Third also limits the responsibility for the Other. Since the Third forces the ego to choose between Others, the ego’s responsibility for the Other must be tempered by its responsibility for others.⁶⁹

Thus, the recognition of the original Other means that the individual cannot retreat into herself. Likewise, the emergence of the Third means that her responsibility cannot only be toward the Other, but must also account for the infinite number of others. In this experience, one sees a place for politics and the importance of justice.

Need and Appeals to Pathos

Levinas provides a detailed description of the experience of pathos, or compassion and sympathy as outlined by theorists like Rousseau, Hume, Rorty and Tronto. While those thinkers

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid., 158.

⁶⁹ Simmons, 96.

define and describe sentiments, Levinas illustrates the phenomenal experience of those sentiments. However, one might argue that a gulf exists between the experience of pathos and the concrete action of one person, or a government, on behalf of others. If the possibilities for pathos to act as a catalyst in meeting other-need seem unlikely, one should again consider the same weakness present in arguments for rationality as a motivating factor in upholding rights. While it may be possible for rationality to assist individuals in meeting needs or upholding rights, it is not the primary mind-state present when confronted with suffering. Additionally, rationality may prompt individuals to reason why they cannot or should not meet a need or uphold a right. Recognition of pathos does not suffer from this flaw, since, as Hume made clear, it cannot induce avoidance of meeting a need. Of course one might ignore the presence of pathos, but such an act would occur *despite* the experience of pathos, not *because* of it. And again, ignoring the plea in the face of another does not negate the obligation itself, but merely means that the individual does not perform her obligation in easing suffering. Yet, how pathos might serve to prompt action is important for this project. Obviously, the experience of pathos cannot be legislated, and perhaps this has been one reason for its scarcity as an important concept in political theory.

Though the express legislation of pathos may not be possible, the previous chapter has described the possibility for creating legislation based on need. One of the requirements therein was that individuals and legislators begin from the perspective of an empathetic person. Thus, implicit in deciding upon which needs are demonstrable, pathos plays a part. As was indicated by Hume, reason does still play a part in these decisions through informing individuals and legislators of which events or things are the proper concern of the impulse to

pathos, and how to best act on that sentiment. However, starting from the perspective of the empathetic person helps avoid over-rationalization, both intellectually and morally. The absence of, or ignoring, the impulse toward pathos would not relinquish the individual or government from the responsibility to meet the appropriate needs, but would make the inaction wrong. And as scholars as diverse as Plato, Hobbes, Hume, and Rorty have noted, individuals are naturally moved by their appetites and aversions, their emotions and feelings, their sentiments and care for others. The natural inclination to be moved by one's feelings should be developed and cultivated, not merely disregarded as too subjective, or too unsophisticated compared with supposedly universal rationality. Both individuals and their representatives should begin from the empathetic perspective when assessing the needs of others.

There are a few ways in which the inclination toward pathos may be experienced and used in situations of genuine need. Individuals may be faced with the plight of another individual and therefore be expected to respond to pathos. Legislators may be faced with social needs (and possibly individual needs) and be asked to begin from the empathetic perspective when considering legislation to remedy the need. Or, individuals might recognize some broader social need which they cannot remedy alone, and thereby request that their representatives be sensitive to and respond to pathos. An example might be the protests in the United States and Europe regarding the treatment of Chinese citizens during the months before the Beijing Olympics in 2008. The most obvious and frequently experienced form of arousing pathos comes from aid organizations who request donations from individuals. Such organizations have been very successful at awakening pathos in the general public, and indeed,

the field of psychology has shown that appeals to pathos facilitate attitude change.⁷⁰ However, if individuals and governments are going to further incorporate pathos into the public sphere in an effort to meet need and help individuals fulfill their potentials, what steps must be taken?

Even that quintessential champion of reason, Aristotle, illustrates how to incorporate pathos into legal and political discourse.⁷¹ In *The Art of Rhetoric*, Aristotle outlines the ways in which reason and pathos should interact to produce action in particular circumstances. Though the exercise of rational decision-making is one of the most important facets of politics, as Aristotle understood it, he is aware that reason alone is insufficient for making normative decisions. As Arash Abizadeh notes, “[T]he answer to the practical question of what ought to be done in particular circumstances can never, for Aristotle, be fully codified in human speech or writing as a series of abstract antecedently specified rules—there is always a remainder not captured in or by abstract *logos*.”⁷² That is, while Aristotle recognizes rational judgment as important, he also understands its shortcomings. In abstract law lies some indeterminacy regarding what should be done. Abizadeh writes, “This indeterminacy refers both to (a) the fact that abstract reason is insufficient to issue in determinate normative injunctions in particular circumstances, and (b) the parallel fact that practical philosophy, whether ethical or political,

⁷⁰ Mary Lou Shelton and Ronald W. Rogers, “Fear-Arousing and Empathy-Arousing Appeals to Help: The Pathos of Persuasion,” *Journal of Applied Social Psychology* 11 (1981): 366-378. As the title suggests, Shelton and Rogers make appeals to fear, in the form of self-preservation, as well as to pathos. Both have a positive effect on attitudes and willingness to act. This should not be surprising, since, as Locke noted, individuals are concerned with self-preservation and other-preservation.

⁷¹ Though the argument herein differs from Aristotle’s in that Aristotle does not consider sentiment as the primary motivating factor in human actions. However, his comments about *pathe*, or pathos, are instructive.

⁷² Arash Abizadeh, “The Passion of the Wise: ‘Phronesis’, Rhetoric, and Aristotle’s Passionate Practical Deliberation,” *Review of Metaphysics* 56 (2002): 268.

can never be fully codified in language as a series of antecedently specified set of general practical principles.”⁷³

Aristotle supplements the engagement in reason with the use of emotions, which he defines as “those things by the alteration of which men differ with regard to those judgements which pain and pleasure accompany, such as anger, pity, fear and all other such and their opposites.”⁷⁴ Importantly, pity is aroused by pathos, though pathos may also be considered an experiential quality. In fact, pity is so important to persuasion that Aristotle spends a good deal of time describing it. For Aristotle,

[A]ll painful and bitter things that are destructive are pitiable, and those that are annihilatory and those great evils for which chance is responsible. The painful and destructive things are death, bodily tortures and injuries, old age, disease and shortage of food, and the evils for which chance is responsible are having few or no friends (hence is it also pitiable to be torn from friends and comrades), ugliness, weakness, deformity and the occurrence of an ill from a source from which a good thing come only after suffering . . . and either nothing good’s occurring or, when it does, there being no enjoyment of it.⁷⁵

In this statement, most of Maslow’s hierarchy is reflected, and both destructive forces and chance events are included. Perhaps most importantly is the experience of pity and its ability to link one individual to another. Aristotle writes that pity is aroused “in general whenever [men] should be in a state to remember such things having happened either to themselves or

⁷³ Abizadeh, 268-9.

⁷⁴ Aristotle, *The Art of Rhetoric*, trans. H. C. Lawson-Tancred (New York: Penguin Books, 2004), 1378a19. The term pity here, and throughout Aristotle’s *Rhetoric*, is from the Greek word *eleos* and is not directly synonymous with *pathos*. However, Aristotle is clear that individuals should feel pity (*eleos*) for those who have suffered (*pathos*). Thus the two terms are interminably linked. And again, the modern usage of the word *pathos* implies a feeling experience from witnessing suffering. Additionally, Liddell and Scott identify *pathos* in Aristotle as denoting “a pathetic mode of expression.”

⁷⁵ *Ibid.*, 1386a4.

to one of their friends or to expect these things to happen.”⁷⁶ When confronted with pathos, individuals recall their own misfortune or that of their friends, and are thereby moved to pity those who are currently suffering.

Thus, the use of appeals to pathos are at least as old as the Greek tragedians whom Aristotle cites. Therefore, in many ways, the argument that pathos be used to prompt action on behalf of others is not altogether novel. There is no method by which to guarantee that beginning a decision-making process from an empathetic perspective, or appealing to the commonality of pathos, will be effective or acted upon appropriately. Yet, the same is true of most theories of obligation. However, awakening a heightened sense of pathos in citizens has the possibility of creating a more ethical community than would be possible through the Kantian assertion that individuals should recognize each other as rational members of the kingdom of ends and upholders of the rationally intelligible universal law. But is it possible to make people care? After all, this is the essential claim herein—by appealing to pathos, people will *care more* about meeting needs. The answer, in short, is no. No law can make people care. However, as Tronto emphasized, care can be a more central part of political discourse. It has been argued here that to reap the results of greater care without forcing people to care for others, academics and those who practice politics should adopt human need as the source of moral obligation. In an effort to make needs more recognizable and more likely to be met, these same agents should appeal to natural inclinations toward pathos.

⁷⁶ Ibid., 1386a1.

Human needs, as rooted in psychology, provide a firmer basis for acting on behalf of others. As the existential basis of the individual experience of reality, feelings, emotions, passions, serve as the best way toward a more ethical society. As Rollo May notes,

The new basis for care is shown by the interest of psychologists and philosophers in emphasizing *feeling* as the basis of human existence. We now need to establish feeling as a legitimate aspect of our way of relating to reality. When William James says, 'Feeling is everything,' he means not that there is nothing *more* than feeling, but that everything starts there. Feeling commits one, ties one to the object, and ensures action. But in the decades after James made this 'existential' statement, feeling[s] became demoted and were disparaged as merely subjective. Reason or, more accurately, technical reason was the guide to the way issues were to be settled. We said 'I feel' as a synonym for 'I vaguely believe,' when we didn't *know*—little realizing that we cannot *know* except as we *feel*.⁷⁷

This notion, that to feel is the antithesis of knowledge, has been detrimental to alternative explanations of human obligation. However the "development of psychoanalysis has led to a resurgence of the primacy of feeling."⁷⁸ No scholar to date has examined the possibility of psychological understanding in providing a basis for human obligation *and* the motivation for acting on behalf of others. One's own needs are rooted in psychological determined categories, and the psychological experience of pathos forces the individual to recognize similar needs in others. Our own needs and sufferings provide us with an understanding of the needs and suffering of others. As May notes,

Care is given power by nature's sense of pain; if we do not care for ourselves, we are hurt, burned, injured. This is the source of identification: we can feel in our own bodies the pain of the child or the hurt of the adult. But our responsibility is to cease letting care be solely a matter of nerve endings. I do not deny the biological phenomena, but care must become a conscious psychological fact. *Life* comes from physical survival; but the *good life* comes from what we care about.⁷⁹

⁷⁷ Rollo May, *Love and Will* (New York: W.W. Norton and Company, 1969), 303.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, 289-90.

While no amount of rationally conceived legislation and persuasion can make individuals care for one another, employing pathos in the service of needs can heighten the feeling of community and thereby prompt individuals and their representatives to act on behalf of others in the hope that they reach their potential.

Conclusion

This chapter has attempted to provide a framework through which needs can be better recognized. If needs are distinct from rights, and rationalism is the language of the latter, then, it has been argued, pathos is the language of the former. The notions of pathos, pity, compassion, and sympathy have been huddled together beneath the umbrella term of sentimentalism, due in large part to Hume's use of the term and Rorty's continuation of it. Rollo May would quibble with the use of this term. He states, "Sentimentality is thinking *about sentiment* rather than genuinely *experiencing* the object of it. Tolstoy tells of the Russian ladies who cry at the theater but are oblivious to their own coachman sitting outside in the freezing cold. Sentimentality glories in the fact that I *have* this emotion; it begins subjectively and ends there."⁸⁰ May prefers the term "care," writing that "care is always caring *about* something. We are caught up in our experience of the objective thing or event we care about. In care one must, by involvement with the objective fact, do something about the situation; one must make some decisions."⁸¹ By employing pathos, some of the difficulties of sentimentality are left aside. Though May is correct that the mere experience of some sentiment is not sufficient; one must act on that experience as well. The concluding section will explore some of the

⁸⁰ Ibid., 291.

⁸¹ Ibid.

possibilities for cultivating pathos in the attempt to help individuals reach their potential through meeting their needs.

CONCLUSION

TOWARD ETHICAL COMMUNITY

In many ways, this conclusion could just as easily be an introduction. This dissertation has argued for a turn away from the abstract individualism of the modern rights discourse, toward an understanding of human need and potentiality that is rooted in the experience of pathos. A society in which government is empathetic to the needs of its citizens, and individuals feel compelled to help ease the suffering of others, is the epitome of ethical community. Hegel conceived of ethical community as one in which “it is easy to say what man must do, what are the duties he has to fulfil in order to be virtuous: he has simply to follow the well-known and simple rules of his own situation.”¹ Yet, rights, both theoretically and practically, do little to help ethical communities emerge. As Cecil L. Eubanks notes of Hegel’s stance, “What is missing from both Hobbes and Kant—indeed from the entire discourse on rights—is a philosophy of virtue adequate to the formation and sustenance of an ethical community.”² It has been argued herein that a fuller understanding of subjective propensities and potentialities, paired with the empirical evidence on the content of human need, can better identify the duties of government and individuals. Additionally, by comprehending the full scope of human experience, as inclusive of both reason and emotion, we have the ability to educate young people in the sentiments that motivate individuals and their representatives to act on behalf of others.

¹ Hegel, *Philosophy of Right*, 107.

² Eubanks, “Subject and Substance,” 149.

While the ethical community requires the involvement of individuals in the activities of state, it also requires them to be interested in, and concerned for, the life of those with whom they live. Yet, surely, the state cannot force its citizens to be concerned for others. In an attempt to remedy this problem, Hegel unites the autonomous will of the individual with the responsibility to assist others in meeting their needs. “Self-determined determination is a very abstract way to describe the ethical life and Hegel was necessarily compelled to illustrate, analyze, and critique various manifestations of ethical life in the modern world.”³ Through family, civil society, and state, individuals can act in morally correct ways. So, though governments may not be able to legislate sentiment or pathos, they can, according to Hegel, through law or custom, demand rectitude of their citizens. However, Hegel notes, “[F]rom the standpoint of *morality*, rectitude often seems to be something comparatively inferior, something beyond which still higher demands must be made on oneself and others, because the craving to be something special is not satisfied with what is absolute and universal; it finds consciousness of peculiarity only in what is exceptional.”⁴ Thus, virtue, or rectitude in the ethical order emerges only in those special circumstances that allow individuals to act morally within the ethical community. Importantly, this allows the individual subject to exercise autonomy while still acting in accord with moral principles.

Z.A. Pelczynski asserts that, in his effort to link subject and obligation, Hegel provides a wonderful reinterpretation of both the Greek and the modern understanding of duty and subjective individualism. Hegel was attracted to the Platonic and Aristotelian understanding of

³ Eubanks, 141.

⁴ Hegel, *Philosophy of Right*, 107.

the duty of the individual to the community. Indeed, Aristotle has played a prominent part in this dissertation. Yet, as was mentioned in the third chapter, the Platonic notion of each person “minding his own business” is insufficient for creating ethical life with others while also recognizing individual subjectivity. In the *Philosophy of Right*, Hegel argues that Plato stripped individuals of their subjectivity by eliminating private property and by creating the class system. He states of property, “The general principle that underlies Plato’s ideal state violates the right of personality by forbidding the holding of private property.”⁵ He writes later, “[T]he division of the whole into classes came about objectively of itself, because it is inherently rational; but the principle of subjective particularity was at the same time denied its rights, in that for, example the allotment of individuals to classes was left to the ruling class, as in Plato’s *Republic*.”⁶ For Hegel, the answer to this problem was Rousseau, who argued for the completely free exercise of subjective autonomy. As Pelczynski notes, through civil society, Hegel argues that “the ‘abstract’ freedom of the individual, conceived by Rousseau in complete isolation from all ethical, social and political context, is made ‘concrete’. The individual finds a scope both for his personal interests and subjective choices and for the disinterested service to the ethical ideals and public interests of the community.”⁷ But, for Hegel, Rousseau’s account of absolute freedom lacks sufficient attention to the obligation of the self to the other. And thus, the

⁵ Hegel, *Philosophy of Right*, 42.

⁶ *Ibid.*, 133.

⁷ Z.A. Pelczynski, “Political Community and Individual Freedom in Hegel’s Philosophy of State,” in *The State and Civil Society: Studies in Hegel’s Political Philosophy*, ed. Z.A. Pelczynski (Cambridge: Cambridge University Press, 1984), 62.

ancient understanding of duty is just as important to Rousseau's account, as Rousseau's emphasis on the individual is to the ancients.

Though Hegel's explicit references to "ethical community" are rare, it is telling that in his understanding, the state cannot be accurately dubbed a state unless it possesses the characteristics of an ethical community. That is, in Hegel's understanding, the state must allow for the subjective expression of individuality by its citizens, while also ensuring an understanding of shared responsibility for the well-being of the collective. For Hegel, this was accomplished by melding the theories of Plato and Rousseau with his own phenomenology. Though I cannot claim to make a contribution as valuable as Hegel's, this dissertation has attempted a similar feat through conceptual, not historical, means. I have argued that by uniting our understanding of need and potentiality, with a renewed understanding of sentimentalism, we can better perform our obligations. The ancient and modern understanding of human potentiality can help us respond to subjective needs, and better unite communities through the experience of pathos. Need, though primarily individualistic in its origins, does not end with the isolated monad, but rather imparts a sense of obligation to others. As the experience of need, pathos connotes the image of shared suffering, and thus provides commonality between individuals.

Sentimental Education

If we are to arrive at the sort of ethical community that Hegel envisioned, then it is incumbent upon scholars and practitioners of politics to place need and pathos at the forefront of intellectual and humanitarian concerns. If the ethical life involves some sort of active engagement with others, then rights, in their insularity and narrowing uniformity, do little to

involve one individual in the life of another. As Michael Ignatieff states, "Rights language offers a rich vernacular for the claims an individual may make on or against the collectivity, but it is relatively impoverished as a means of expressing individuals' needs for the collectivity."⁸ Placing need at the forefront of discussions about obligation automatically negates the narrowing uniformity and prescriptive approach of rights, by recognizing the infinite potentialities of human beings. Pathos, as the primary experience of another's need makes it incumbent upon me to act on behalf of the other, or compel my representatives to do so. In the longer run, the goal of needs and pathos in fulfilling human obligation should be a more ethical community, sensitive to the needs of others and responsive to individual potentialities. But this is easier said than done. Richard Rorty argues for a sentimental education so that students of such a system would recognize fewer and fewer individual traits as morally relevant. However progressive this goal may be, Rorty is never very clear on what curriculum such an education would entail. In fact, his only suggestion comes with a brief refutation of foundationalism. He states,

The best, and probably the only, argument for putting foundationalism behind us is the one I have already suggested: it would be more efficient to do so, because it would let us concentrate our energies on manipulating sentiments, on sentimental education. That sort of education sufficiently acquaints people of different kinds with one another so that they are less tempted to think of those different from themselves as only quasi-human. The goal of this manipulation of sentiment is to expand the reference of the terms 'our kind of people' and 'people like us.'⁹

This excerpt deserves further attention, since it is one of the only places where Rorty offers any information on the content of a sentimental education.

⁸ Ignatieff, *Needs of Strangers*, 13.

⁹ Rorty, "Sentimentality," 73-4.

First, a sentimental education seems altogether different from “manipulating sentiments.” Manipulation seems less like an education and more like indoctrination. If we truly are to provide a more sentimental education, surely views forcefully imposed from the outside would lead to rebellion against those views just as often as acceptance of them. Second, it is unclear how expanding a reference category is related to amplifying sentiments. For example, to show how much all human beings genuinely have in common, would Rorty advocate a course in human genetics? Recent science has shown not only that all human beings are related, but that every human being can be traced to one “mitochondrial Eve” who lived as little as 200,000 years ago.¹⁰ Yet, is there any guarantee that knowledge of a common biology would alter opinions? And, such an approach, though accurate and compelling, hardly seems to fall under the heading of a sentimental education. However, Rorty’s emphasis on finding some commonality is important. As Brock and Atkinson note, there is no self-evident reason to assume that individuals are naturally inclined to support their own group and reject members of other groups. They cite a variety of studies in the field of psychology to show that there is no necessary connection between ‘common meaning’ and rejection of those who do not share that meaning. They insinuate, as has been done here, that the creation of new common identities can lead to intergroup commonalities, instead of acknowledging only intragroup similarities. They find that “intergroup cooperation can engender social

¹⁰ See Rebecca L. Cann, Mark Stoneking, and Allan C. Wilson, “Mitochondrial DNA and Human Evolution,” *Nature* 325(1987): 31-36.

recategorization—an overarching sense of common identity between groups can be created—and this can lead to reduction in intergroup bias.”¹¹

The common meaning presented here is the shared understanding of pathos. So, rather than the overt presentation of biological fact, though that may also be valuable, it seems that an education that awakens pathos has the possibility of furthering the aim of an ethical community and helping individuals recognize that which they have in common. The constituent facets of such an education are difficult to articulate. The use of narratives that stir pathos or prompt empathy is one obvious choice.¹² As Ervin Staub notes,

Education in these realms must consist of more than instruction. To the extent that it consists of information, it must engage people’s experience. At the very least, it must combine information and discussion and bring about what seems like *experiential understanding*. By this I mean a joining and integration of facts and ideas with life experiences, thus creating a deep, “organismic” understanding that reaches beyond thought to feelings.¹³

Yet, how can an individual who has never been chronically hungry, or felt perpetually unsafe, or been neglected and unloved, ever come to this experiential understanding? To what extent can feelings of pathos be aroused in individuals who have only suffered minor ailments? I have argued to this point that recognizing suffering and remedying it depends, in part, on a shared language of potential, need, and pathos. However, it also seems to require an education in understanding how to feel. Probably the best way to engender feelings of shared suffering is to

¹¹ Gillian Brock and Quentin D. Atkinson, “What can Examining the Psychology of Nationalism Tell Us about our Prospects for Aiming at the Cosmopolitan Vision,” *Ethical Theory and Moral Practice* 11 (2008): 175.

¹² The most obvious inclination would certainly be religious narratives that teach brotherhood or the participation of all individuals in the divine. Yet, for many of these narratives, the possibility for further division seems greater than the possibility for unification. I omit them here for that reason.

¹³ Staub, 15.

educate people, from a young age, in the experience of pathos. To that end, reading and performing tragedies, ancient and modern, may be helpful.¹⁴ I emphasize performing here, because of Staub's insistence that such an education must come as close as possible to actual experience. By placing a young person in the shoes of one whom tragedy has befallen, such as Philoctetes, who suffers great ills and isolation, but finds joy in kinship, it seems possible that a greater sense of pathos and a greater emphasis on community might emerge for young students.¹⁵

However, it is not enough to be educated in pathos and not act on it. Rollo May is correct that individuals must do more than reflect on the sentiments they have. While it is the individual who must autonomously choose to act, governments also must be more active in assisting their citizens when they choose to do so. Programs such as PeaceCorps and AmeriCorps are wonderful programs, but they require two-year and one-year commitments, respectively. Likewise, the miniscule living stipends for these programs often mean that they are accessible only to the wealthy. While this is understandable in many ways, it also limits the number of people who are able to take part in such endeavors. Similarly, programs such as Habitat for Humanity rely entirely on volunteer labor, and often, those who would be willing to volunteer are not in financial positions to do so. If individuals are to act on their empathetic impulses, government and individuals must broaden the pool of individuals who can take

¹⁴ The immediate reaction might be that tragedies are a decidedly Western phenomena, and therefore any education in tragic drama is little better than imposing rights from the outside. However, ancient Chinese dramas such as *The Orphan of Zhao*, or the Sanskrit plays of Kalidasa in India, also fall into the category of tragic drama. For scholarly analysis of these particular plays, see Wilt L. Idema, "The Orphan of Zhao: Self-Sacrifice, Tragic Choice and Revenge, and the Confucianization of Mongol Drama at the Ming Court," *Cina* 21 (1988): 159-190 and S.C. Bhatt, *Drama in Ancient India* (New Delhi: Amrit Book Company, 1961).

¹⁵ Sophocles, *Philoctetes*, trans. Judith Affleck (Cambridge: Cambridge University Press, 2001).

advantage of such opportunities. Additionally, many people are not aware of such opportunities, so as part of their education, individuals should be presented with the possibilities for acting to assist those in need.

There is a renewed emphasis in contemporary universities on service education and increasing its scope could potentially have an impact on the lives of students. Interest in it has increased precisely because there is a need on the part of young people, indeed, all people, to be part of a larger community. After they graduate from high school or college, there are precious few opportunities to engage and participate in the betterment of their community. By this time, individuals begin raising families and working long hours. This is not to say that people cannot benefit their communities after they graduate, but high school and college campuses provide a wonderful opportunity for service in the context of a sentimental education. Certainly, these are very preliminary ideas about increasing individual-level assistance to the needy. The theory of needs presented in previous chapters was designed to outline how government can attempt to meet the needs of its citizens, and the ideas in this conclusion are designed merely to supplement those arguments. However, if young people are provided with a sentimental education, some of them will grow up to become activists, judges, and lawmakers. Therefore, the process of sentimental education has benefits for legislation on need as well.

It is not uncommon to hear politicians make appeals to pathos while on the campaign trail, or during a State of the Union address. However, pathos has yet to be instituted systematically into policy decisions. Paired with a rational theory of human need, and an emphasis on potentiality, pathos has the ability to truly prompt individuals to help others.

Some might argue that the experience of suffering does not guarantee action. This may be true, but as Albert Camus notes it is not likely “that [suffering] can come and go without changing anything in men’s hearts.”¹⁶ Indeed, as Hegel attempted to do in his uniting of subject and duty, and as Rollo May advocates in his insistence on united love and will, the individual must be able to reconcile her own ends with those of the community. A deeper understanding of human needs and a recognition of pathos permits this possibility. Though the task is daunting, it is not impossible. As Eubanks states, we must accept the “challenge by insisting that the human need most inadequately expressed by a language of rights is the need for ‘fraternity, social solidarity, for civic belonging,’ not the ‘mass mobilization’ of belonging or the renewed voice of modern tribalism, but the belonging of citizenship that respects the autonomy of the subject and yet reminds us of the pathos and joy we share and have in common.”¹⁷ We need not be reminded of our need for kinship and love, for, as Maslow has taught us, these needs are innate. What we do need, is a better understanding of those needs and the potentialities they may help us actualize. Each of us is charged, and we thereby charge our representatives, with ensuring that those potentialities are not forgotten amidst the modern liberal concern for the atomistic individual. For as Camus eloquently writes, “[A] loveless world is a dead world, and always there comes an hour when one is weary of prisons, of one’s work, and of devotion to duty, and all one craves for is a loved face, the warmth and wonder of a loving heart.”¹⁸

¹⁶ Albert Camus, *The Plague*, trans. Stuart Gilbert (New York: Vintage International, 1991), 295.

¹⁷ Eubanks, 151, quoting Ignatieff, 138-9.

¹⁸ Camus, 261.

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