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## Can Utilitarianism Ground Human Rights?

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The moral theory of utilitarianism is generally considered in opposition to universal human rights. In this essay, Leslie Allan endeavours to demonstrate that far from human rights being problematic for utilitarian theory, utilitarianism is the best theory for justifying human rights. After introducing the concept of a human right, he goes on to outline what an adequate theory of rights must do. Using case studies of historical and contemporary human rights conventions and recent psychological research, Allan argues how our concept of human rights is founded on the satisfaction of fundamental human needs and the consequences for human happiness. A further advantage he highlights is how such grounding allows us to adjudicate rationally between competing rights. Allan concludes by considering other proposed justifications, such as autonomy, dignity and justice, and answers some common objections.

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# 1. Introduction

## 1.1 Essay Objectives

Some prominent philosophers consider a fundamental flaw of utilitarianism is that it cannot account for our acceptance of universal human rights. More than that, these philosophers argue that adopting utilitarianism as a moral theory of right and wrong require denying some basic human rights we all take for granted.<sup>1</sup> In this essay, my aim is to show that, to the contrary, utilitarianism is the most adequate moral theory for grounding human rights. My key objectives are threefold. I will attempt to establish how:

1. Human rights are justified by appeal to the minimal set of social conditions required for the prevention of human suffering and the enabling of human flourishing.
2. Considering consequences for human suffering and happiness provides a rational method for adjudicating when rights conflict in particular situations.
3. All other appeals for grounding human rights (e.g., to autonomy, dignity, justice) are simply elaborations of those fundamental requirements for satisfying fundamental human needs.

The resources I will draw upon for satisfying my first key objective are select historical case studies on the origin of human rights covenants and recent psychological research on human needs and the enablers for human happiness. For my second objective, I will call to attention how actual human rights instruments lean on utilitarian considerations to adjudicate when rights conflict. Finally, to answer my critics, I will examine the claims that utilitarianism neglects the importance of human freedom and dignity and that it leads to unjust outcomes in contravention of human rights. For the latter claim, I will look more closely at the objection that utilitarianism allows for the persecution of minorities. I also respond to the general charge that human happiness cannot be measured.

In the next sub-section, I will begin by making some preliminary remarks about the nature of human rights, what we expect from a theory of rights and how utilitarianism differs as a moral theory from its main rival.

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<sup>1</sup>See, for example, Williams' classic critique of utilitarianism in Smart and Williams [1973].

## 1.2 Human Rights: What Are They and Why?

Let me first set the scene for this discussion by answering three basic questions:

1. What are human rights, their kinds and why ought we pay attention to them?
2. How ought we evaluate competing theories of human rights?
3. What are the basic tenets of utilitarianism?

So, to answer the first question: what are human rights and why are they important?

Moral philosophers working in human rights theory seem to agree largely on these six basic features of universal rights:

1. Human rights are claims on others; that is, a moral obligation of others to protect a freedom or to provide a benefit.
2. Human rights are of high priority and overriding importance in deciding how we relate to and impact others.
3. Human rights are inalienable (cannot be taken away).
4. Human rights are not absolute; they are defeasible and can be overridden by other rights or obligations.
5. Human rights are universal; owned by all human beings and can be expanded to include all sentient creatures.
6. Human rights are moral rights that can be exemplified in legal systems.

Also agreed, following Berlin [1969], is the notion that there are essentially two kinds of moral rights:

1. liberty rights, seen as negative rights (e.g., right to life, liberty, security)
2. social rights, seen as positive rights (e.g., right to work, education, housing)

I will say more on this in §3 on Human Rights and Human Consequences.

Finally, human rights can be defined by their domain or scope. Rights that transcend national borders (transnational rights) are properly referred to as 'human rights'. On the other hand, rights that are localized to a particular country or region are known as constitutional rights or civil rights. In this essay, I will be dealing with both liberty and social rights and with both international human rights and the rights enshrined in particular nations' constitutions. Specifically, I will not be addressing person- or situation-specific rights (e.g., Mary's right to be paid by George under a law of contracts). To simplify nomenclature, I will refer to civil and constitutional rights that are also mirrored in international covenants as 'human rights'.

A fundamental question raised is why we ought to be concerned with identifying human rights in the first place and enshrining them in particular covenants. I think there are two answers here. First, human rights instruments are inward facing. What I mean by that is

that they provide checks and balances on a legislature for framing state legislation. In addition, they are also outward facing. They apply moral and legal pressure on despotic nation states in the international sphere. I hope to show that a utilitarian justification of rights promotes and satisfies both these requirements.

### *1.3 Theories of Human Rights: How Do We Evaluate?*

The second question I raised in these preliminaries is: how do we evaluate theories of human rights? How ought we judge competing systems of rights on their merits? I think that an adequate theory of human rights must do two things.

Firstly, it must provide a sufficient grounding for the rights claimed. It must answer the question of where each particular right proposed comes from. Are human rights bestowed on us by a divine being? Or are they the result of a contractual arrangement between humans? Or do they derive from our essential nature? And who in particular has these rights? Landowners? Males? Caucasians? Children? Foetuses? All human beings? Do these rights extend to members of non-human species? Which ones in particular? Dolphins? Chimpanzees? Chickens? Microbes?

If human rights are not grounded in a more general moral theory, they can appear capricious and with self-serving bias. For example, without a reasoned justification, the following rights claims can be rightly seen as pulled out of thin air for the sole purpose of serving the aggrieved's parochial interests:

- the right to a government 'base grant' for a private school education<sup>2</sup>
- the right to not pay land tax<sup>3</sup>
- the right to not wear a mask during a pandemic<sup>4</sup>

Secondly, a convincing theory of human rights must include a system of rules and their rationale for adjudicating between rights when they conflict. How do we adjudicate when the right to free association conflicts with the right to health in times of pandemic? How do we decide between the right of a person to practice their religion when it conflicts with a lesbian's right to purchase goods and services?

An adequate theory of human rights must provide convincing answers to these questions based on a credible view of the nature of human beings and society and on a persuasive broader moral theory, such as consequentialism or Kantian Rationalism. Here again, I will argue that it is only utilitarian moral theory that best satisfies these two requirements.

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<sup>2</sup>The Catholic Church, on the issue of state aid to private schools, proclaimed that 'Every child, simply because it is a human being, is entitled to expect a state-assisted education where the assistance is expressed in terms of a "base grant" which can be topped up according to the "needs" principle'. Reported in *The Age*, February 10, 1983: 1.

<sup>3</sup>Such a claim was made by a couple in Tasmania, Australia, and reported in *The West Australian* [2017].

<sup>4</sup>During the COVID-19 pandemic, many objectors to the mask mandates claimed their moral right not to wear a mask. See, for example, *Palmer* [2021].

### *1.4 What Is Utilitarianism?*

To complete these preliminary remarks, I will say a little about utilitarian moral theory. Utilitarianism is one of a set of theories known more broadly as 'consequentialism'. Consequentialist theories regard the rightness or wrongness of an action solely on the basis of its consequences for producing some moral good. That good may be friendship or knowledge or beauty, or some other good regarded as valuable in itself. Utilitarianism, as a form of consequentialism, regards only goods expressed as some kind of psychological state, such as happiness, satisfaction, well-being or flourishing, as valuable in themselves. Similarly, for a utilitarian, the only thing that is morally bad in itself is another distinct psychological state, such as pain, suffering or dissatisfaction. (There are non-mental state versions of utilitarianism, viz., preference utilitarianism and objective list theories. I think these, in the end, collapse to mental state utilitarianism, so I will not say more about these other theories in this essay.)

Consequentialism in general and utilitarianism in particular can be contrasted with another moral schema known as 'deontological' ethics (from 'deon' [Greek] = duty). This class of theories judge the rightness and wrongness of an action according to the extent to which it is in accordance with or transgresses a moral rule, completely or somewhat independently of the act's good or bad consequences. Immanuel Kant's Categorical Imperative is a good example of such a theory. Two other kinds of well-known moral theories in opposition to consequentialist theories are Virtue Ethics and Stoicism. I shall not say more about those in this essay.

As a way of illustrating the contrast between utilitarianism and a deontological approach, consider the vexed moral issue of voluntary assisted dying. On a utilitarian approach, the act of assisting a person to terminate their life is justified in cases where the person is suffering intolerably with no end and there is no possibility of improper influence on or abuse of the person suffering. On a deontological approach, on the other hand, such termination of a life is generally considered wrong without exception as it breaks the moral rule, 'Never intentionally kill an innocent human being'.

One thing to keep in mind as we consider human rights is that there are various versions of utilitarian theory. I point this out as perhaps not all versions can adequately ground human rights. An important consideration here is the object of the moral evaluation. The most basic version of utilitarianism asks us to judge morally each individual act, such as whether I should visit my sick grandmother in hospital. 'Act utilitarianism' judges each act in isolation according to its consequences. At the next level of abstraction, 'rule utilitarianism' asks us to morally judge whether an individual act is in accordance with a rule that, on balance, leads to good consequences when followed. Here, rules are treated as 'rules of thumb', determined to be useful or not by experience. For example, whether I should be rude to bigots on social media depends on whether doing so, on balance, leads to better consequences than if people do not.

The most abstract form of utilitarianism is known as 'public acceptance rule consequentialism'. I prefer to use the simpler name of 'rules in practice' utilitarianism. This form of utilitarianism sees most moral rules not as 'rules of thumb', but as rules decided by social groups beforehand as a way of gaining mutual benefit from coordinating behaviours.

For example, this form of utilitarianism sees keeping promises as morally obligatory not because we found out by observing many instances over a long period of time that the practice has good consequences overall. This version recognizes that the obligation to keep promises enshrined in the rule as preceding the actual practice of keeping promises. That which is justified principally, on this version, is not the individual act, but the predesigned social practice of promise keeping. Much like how the rules of chess are not discovered by induction (observing individual instances over time), but by people coming together to decide the set of rules by fiat. (For more on the types of utilitarianism, see MacAskill *et al* [2023].)

## 2. Historical Case Studies

In this section, I will examine briefly the historical circumstances leading to the birth of five key human rights declarations and conventions. I will extract the major social and political drivers for their origin and their hoped-for impact on the social and legal developments in the societies in which they were formulated. These five case studies are by no means exhaustive of the field of research. In Appendix 1, I list 11 human rights declarations and conventions with their key historical markers.

My aim with these five case studies is to draw out the conclusion that actual human rights instruments throughout the ages arose in political contexts in which whole classes of people were suffering and how these instruments explicitly served the purpose of alleviating these hardships. Human rights, it turns out, are framework principles specifying the minimum socio-political requirements for increasing the likelihood of human beings avoiding misery and leading happy, satisfying lives.

### *2.1 Magna Carta (1215)*

The Magna Carta Libertatum (Medieval Latin for ‘Great Charter of Freedoms’) is widely regarded as a seminal document in the history of human rights. It was the culmination of a long-running dispute between the capricious King John of England and a group of rebel barons, whose grievances included arbitrary royal demands, illegal imprisonment, extrajudicial punishments and debilitating taxes. Although focusing on the grievances of the barons, the rights of serfs were codified in three of its articles. It enshrined the principle of *habeas corpus*, the right to due legal process, a principle we take for granted today. (For a brief history, see Wikipedia contributors [2023a].)

### *2.2 Bill of Rights 1689 (England)*

The Bill of Rights 1689 was signed by William III of Orange-Nassau and his wife following their dethroning of the unpopular King James II of England as a way for the Parliament to inoculate against the excesses of the previous king. The excesses protected against included illegally dispensing parliamentary laws and levying taxes, ignoring petitions to the King, constraining elections, restricting freedom of speech, levying of excessive bail and fines and inflicting cruel and unusual punishments. The Bill of Rights 1689 served as a model for later bills of rights and continues to be cited in legal proceedings in the United Kingdom and the broader Commonwealth. (For a brief history, see Wikipedia contributors [2023b].)

### *2.3 U.S. Declaration of Independence (1776)*

The Declaration of Independence, as a statement of the United States’ sovereign independence from the Kingdom of Great Britain, included a list of 27 colonial grievances against King George III. These grievances included ignoring the public good, withdrawing



political representation, exposing the U.S. to foreign invasion, obstructing the administration of justice, corrupting the judiciary, conducting mock trials, imposing excessive taxes and restricting trade, waging war and inciting insurrection. Pushing back against the misery wreaked by the British Empire, it declared the universalist ethos that ‘all men are created equal’ with the unalienable right to ‘Life, Liberty and the pursuit of Happiness’ [U.S. 1776]. (For a brief history, see Wikipedia contributors [2023c].)

The Declaration was instrumental to later advocacy for the abolition of slavery. For example, voicing the utilitarians’ concern for universal human welfare, Abraham Lincoln<sup>5</sup> said in a speech at Springfield, Illinois, in 1857, ‘I had thought the Declaration contemplated the progressive improvement in the condition of all men everywhere’. This (partial) universalist sentiment in the Declaration of Independence was also appealed to by the first suffragists campaigning to alleviate the suffering of women. An early example is the Declaration of Sentiments emanating from the Seneca Falls Convention in 1848. Echoing the Declaration of Independence, the activists appealed to the right of all women to ‘life, liberty, and the pursuit of happiness’ and railed against the ‘history of repeated injuries and usurpations on the part of man toward woman’ [Halsall 1997].

It may be thought that these declarations were driven by the supernatural beliefs of the writers that a ‘Creator’ endowed humans with these ‘inalienable rights’. That is no doubt part of the story of the birth of rights. However, as the history of these covenants reveal, they are born out of the misery of people suffering under tyranny. When such a naturalist explanation suffices for what ensued historically, any supposed supernatural explanation becomes superfluous. The situation is similar to appealing to Zeus as the originator of lightning when an explanation in terms of electricity generation from the motions of clouds explains all that requires explanation.

## 2.4 Declaration of the Rights of Man (1789)

Historians attribute the French Revolution and the enshrining of the Declaration of the Rights of Man in 1789 to

the failure of the *Ancien Régime* to respond to increasing social and economic inequality. Rapid population growth and restrictions caused by the inability to adequately finance government debt resulted in economic depression, unemployment and high food prices. Combined with a regressive tax system and resistance to reform by the ruling elite, the result was a crisis Louis XVI proved unable to manage.

[Wikipedia contributors 2023d]

The preamble to the Declaration of the Rights of Man [National Constituent Assembly 1789] expressed its motivating force, linking ‘ignorance, neglect, or contempt of the rights of man’ to ‘the sole cause of public calamities and of the corruption of governments’. The authors proclaim that among their reasons for setting forth the declaration is that adhering to citizens’ rights will ‘redound to the happiness of all’.

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<sup>5</sup>Reproduced in Arbor [2001].

When in 1793 the Assembly determined that King Louis XVI failed in respecting these rights, it condemned him to death for ‘conspiracy against public liberty and general safety’ [Wikipedia contributors 2023d].

### *2.5 U.N. Universal Declaration of Human Rights (1948)*

The final declaration I will point to takes us into the twentieth century. I use the U.N. Universal Declaration of Human Rights as my final case study as it has international importance and acceptance. It was adopted by the U.N. General Assembly as U.N. Resolution A/RES/217(III)[A], with 48 representatives voting in favour, none against and eight abstaining. Although not legally binding on member states, the rights enunciated in the Universal Declaration of Human Rights have been incorporated into a number of other international and national legal instruments.

Based on the first general international human rights instrument adopted some eight months earlier, the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights also adopted a universalist language. The motivation to define rights more clearly than the preceding Charter of the United Nations had come after the end of the Second World War with the full realization of the horrors of the Holocaust by the international community. Focusing the minds of the delegates at the General Assembly were the atrocities committed by the murderous Nazi regime. (For a brief history, see Wikipedia contributors [2023e].)

Morsink [2010: 28] points out the words in the preamble that refer to Nazi crimes: ‘Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind . . .’ [United Nations (General Assembly) 1948]. This text stemmed from the words proposed by a committee delegate who was a victim of the Nazis:

ignorance and contempt of human rights have been among the principle causes of the suffering of humanity and of the massacres and barbarities which have outraged the conscience of mankind before and especially during the last world war . . .

[Quoted by Morsink 2010: 28]

Morsink [2010: 28] further traces the thinking of the drafters, linking the inclusion of Article 3 (right ‘to life, liberty and security of person’) to the deaths of Jews in concentration camps and on the deportation trains. Articles 2, 7, 16 and 23 (right not to be discriminated against) were responses to the Nazis’ extreme racism. Article 4 (right to be free of ‘slavery or servitude’) was a reaction to the Nazis’ deportation for forced domestic, agricultural and factory labour. Article 5 (right to be free of ‘torture or to cruel, inhuman or degrading treatment and punishment’) was a reaction against cruel Nazi medical experiments. Article 6 (right ‘to recognition as a person before the law’) was a reaction against the Nazi regime’s legal exclusion of the Jews. Article 16 (right to ‘full and free consent’ to marriage) was a response to the Nazi’s racist 1933 marriage laws. Articles 18 to 21 were a response to the Nazis’ suspension of civil liberties. Articles 23 and 24 (rights to ‘work’, to ‘just and favourable

remuneration' and to 'rest and leisure') were motivated by the cruel working conditions in camp factories. Article 26 (right to education for the 'full development of the human personality') was a reaction to the Nazi indoctrination of German youth.

## *2.6 Key Lessons from History*

This brief review of five human rights declarations and conventions reveals, I think, three key insights into the origin and nature of human rights.

Firstly, that our conceptions of human rights and their encapsulation in the various historical documents did not appear from on high, from some divine source revealed to humans on the ground. Where such metaphysical claims are made, history shows otherwise. The revealing of the Decalogue to Moses by Yahweh, for example, may be an inspirational story to millions of people. However, the obligations enshrined in the 10 Commandments have historical precedents in the written norms of previous empires located far from the ancient kingdoms of Israel and Judah.

Secondly, human rights thinking evolved over many centuries of social and political turmoil. Of course, philosophers and lawyers have laboured over the theoretical underpinnings of our conceptions of human rights, especially since the birth of the Enlightenment. However, history shows our conceptions of human rights did not appear fully formed, as the result of intuition or a god-given conscience. Their evolving details were thrashed out as responses to the particular real deprivations and sufferings of real people in real social situations. Grave sufferings from the earliest times that prompted the push for rights included onerous taxes, high food prices, capricious royal imprisonments and other cruel punishments, disenfranchisement and restriction of trade. Later, the eradication of other miseries was fought for, including the cruelty of slavery, the actions of corrupt judges and the suppression of women. The Second World War brought other kinds of miseries to human consciousness: genocide on a continental scale, a modern form of slavery, deprivation of livelihoods and cruel medical experimentation.

Thirdly, as human societies developed and laws and regulations became more complex, the content of human rights instruments became more detailed as a result. Coupled with this increasing sophistication was the dawning realisation that the rights arguments advanced for some members of society (barons, land owners, males) could not, in principle, be denied to other subjugated social groupings. In the space of several centuries, other oppressed groups demanded the alleviation of their sufferings using the same principled reasonings. Over time, rights were extended to alleviate the sufferings of serfs, labourers, foreigners, women, slaves, homosexuals, children and other subjugated minorities.

### 3. Human Rights and Human Consequences

From our five case studies, it seems clear that our national and international human rights declarations and conventions were borne out of the need to prevent future human suffering. These agreements are the practical result of resistance to abuses by various forms of government; from monarchies to theocracies to fascist dictatorships. We can see each of these rights instruments as articulating the foundational principles upon which to build societies where individuals may attain maximal happiness. These principles constitute the minimum requirements that any society must meet if it is to enable human flourishing.

Now, for what I mean by ‘happiness’, you are free to substitute your own preferred term here for the sense of human fulfilment I am referring to. You may prefer to refer to ‘satisfaction’ or ‘welfare’ or ‘well-being’ or ‘flourishing’ or other such similar term.<sup>6</sup> All of these terms are broadly consonant with the way goods are defined in relation to utilitarian principle that what counts is the sum total of human well-being for all of a nation’s citizens, as well as globally. Whichever term you use, the key idea here is the same. The moral significance of human rights rests upon the good consequence of recognizing and enforcing these rights. And that is that recognizing human rights and abiding by them enables to the greatest extent possible the opportunity for human beings to lead satisfying lives. On the flip side, the consequence of *not* recognizing and enforcing these rights is the diminishing of human happiness and the increase in human suffering.

How does enforcing rights do that? I think it accomplishes that noble aim in two ways. Firstly, by preventing the active thwarting of basic human needs (negative rights) for various kinds of freedom. And secondly, by fostering the social conditions for satisfying basic human needs (positive rights) for growth and fulfilment. (Here, I refer readers back to the two basic kinds of rights mentioned in the Introduction.)

Let me illustrate this needs-based approach to human rights by referring again to the Universal Declaration of Human Rights [United Nations (General Assembly) 1948]. It consists of 30 Articles. Each stipulated right enables the satisfaction of at least one of these two types of needs. So, for example, the following Articles articulate the negative rights to freedom:

Article 3: right to life, liberty and security of person

Article 4: prohibition against slavery and servitude

Article 5: prohibition against torture and cruel, inhuman or degrading punishment

Article 9: prohibition against arbitrary arrest, detention and exile

Article 13: right to freedom of movement and residence

These Articles prevent the state and other citizens from interfering in a citizen’s activities.

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<sup>6</sup>Researchers have identified three separable components of happiness (or subjective well-being): life evaluation, positive feelings and negative feelings. See, for example, Tay and Diener [2011: 355] and Helliwell [2023: 25].

Other Articles require the state to enable the satisfaction of positive rights for growth and fulfilment. These Articles include the following:

Article 22: right to social security and development of personality

Article 23: right to work, fair pay and conditions

Article 24: right to rest and leisure

Article 25: right to adequate food, clothing, housing, medical care and social security

Article 26: right to free and compulsory education for the full development of the human personality

So, my claim here is that enforcing human rights fulfils the minimum necessary conditions for any state to enable the satisfaction of the basic human needs of its citizens.

Our current system of human rights is a human construction analogous to how the game of chess was thought up and developed over time to meet certain human needs. Each of the two practices is defined by a set of objectives and a system of rules, roles and penalties. For the game of chess, the objectives were to create interest for fans, to be challenging for the players and for the rules to be comprehensible. For our human rights instruments, the central motivations, as I have tried to show, are to minimize suffering, to maximize the potential for human flourishing and for the specification of each right to be easily understandable. While the game of chess has undergone significant revisions throughout the centuries, as with our human rights practices, the central core of the game is constant. What remains fixed throughout the changes is that the game is played by two opponents in a segmented geometrical space and with discrete pieces, each with their own permitted moves within the space. Changes in the game of chess came about because the revisers thought the new rules would better achieve the shared objectives. So, over time, new rules were introduced to make the game more relatable, faster, more dynamic and fairer for both opponents. (For a brief history of chess, see Soltis [2023].) Likewise, with our human rights practices, our conception of specific rights develops as our knowledge of what minimizes suffering and enhances human welfare changes and grows.

Lest anyone misconstrue what I am saying, I'm not suggesting our system of human rights is a game. Far from it. I'm simply proposing that our system of rights is socially constructed with certain human aims in mind. As with the history of the game of chess, there is no metaphysical mystery to our shared understanding and development of human rights. We see the development of the game of chess as a human-driven process. Our understanding of that development neither requires us believing that the rules of chess have a divine source or that there is some 'natural law' to which the game fulfils or that in determining the rules of chess we are using some special 'intuition' to peer into some realm of non-natural properties. In fact, all of these metaphysical theories only cloud our understanding of our basic humanity. They shroud in mystery what we all have in common; our universal regard for each other. And where human rights proponents (and their opponents) subscribe to a different deity or appeal to different supernatural 'intuitions' or discern a different 'natural law', unresolvable divisions are created between people of good

will. Our recognition of human rights is simply borne from the basic human needs that are common to us all and that are an indispensable part of our human nature.

Let me put to bed another potential misunderstanding of my argument. In proposing that our human rights instruments arose historically from the desire to avoid suffering borne of repression, I am not saying that the people who developed and fought for the notion of human rights were card-carrying utilitarians. Of course, not all of them were. Many of them acted in their own interests and in the interests of their partisan group in fighting to remove the shackles of domination. What I am saying is that their focus on alleviating suffering and promoting well-being on the one hand and the progressive expansion of the circle of concern to all peoples, no matter their situation, attributes or class, are key characteristics of the utilitarian outlook.

On this account, we can more formally define a human right as follows:

A human right is a basic human need (physiological, psychological, social) potentially borne by all human beings, the satisfaction of which minimizes the chance of suffering while maximizing the chance of happiness and well-being, and expressed in the form of a moral obligation on others to act or desist from acting in ways that thwart their satisfaction.

Furthermore, on this account, human rights declarations and covenants are seen as institutional arrangements for the recognition and enforcement of a class of human rights. They set the minimal set of obligations on governments for the establishment and maintenance of social and legal institutions that guarantee a set of rights for the purpose of preventing human suffering and the furtherance of human happiness and well-being for all. I shall develop this idea further in the next section.

## 4. Human Rights and Human Needs

From the previous sections, I concluded that human rights are grounded in the fundamental needs of human beings. Our national and international declarations and covenants specify in various ways the fundamental obligations that a state has to its citizens and that we have to each other that must be satisfied if people's basic human needs are to be met. It is the satisfaction of these needs that guarantees that a person will lead a happy, contented and satisfying life. Or at least to the maximum extent possible within the reach of any state's governors and institutions.<sup>7</sup> No state can guarantee that an earthquake, meteor strike, flood or other such natural calamity will not impact its citizens. However, by recognizing citizens' basic rights and acting on them, a state can do all that is possible to minimize the suffering of its citizens in such catastrophic circumstances.

To be clear, this utilitarian justification for human rights is not claiming that acting in accord with human rights will guarantee that all citizens will be maximally happy. It only suggests that states satisfying human rights will increase the happiness of its citizens and decrease their misery to the maximum extent possible under the circumstances they find themselves.<sup>8</sup> My claim here is that no further justification for human rights is required or can be given over and above the desire to maximize the well-being of citizens.

I've linked the happiness of people to the satisfaction of their fundamental human needs. But what are these fundamental human needs that require satisfaction and that acting on human rights can help with? There are two sources of credible information on what these basic human needs are that require satisfaction. These are, firstly, long-standing psychological research on human needs and, secondly, world-wide happiness surveys. I shall explore each in turn.

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<sup>7</sup>In fact, states have a special obligation here. As Tay and Diener [2011: 363] report from their analysis of the world wide data on happiness, 'Country-level need fulfillment, especially country basic need fulfillment, had a sizeable association with life evaluations'. In other words, at least basic needs require to be satisfied by governments at the societal level before individuals achieve higher life satisfaction.

<sup>8</sup>As Tay and Diener's [2011: 359] analysis of the Gallup World Poll data shows, satisfying all needs is a necessary requirement for a high life evaluation, but not a sufficient condition.

## 4.1 Psychological Research

Robust psychological models can assist us in determining basic human needs. I'll refer to three prominent models coming out of decades of research in this area: Maslow's Hierarchy of Needs, Alderfer's ERG Theory and Carl Rogers' Humanistic Theory of Personality Development.

### Maslow's Hierarchy of Needs

Abraham Maslow [1943] proposed that human beings are motivated by a hierarchy of needs, with those at the lowest levels requiring satisfaction before a human being strives to satisfy the need at the next level up. Maslow classified the various needs into two major categories: deficiency needs and growth needs. The diagram below shows where each type of need is located in the hierarchy and gives examples of each kind.

**Diagram 1 – Maslow's Hierarchy of Needs**

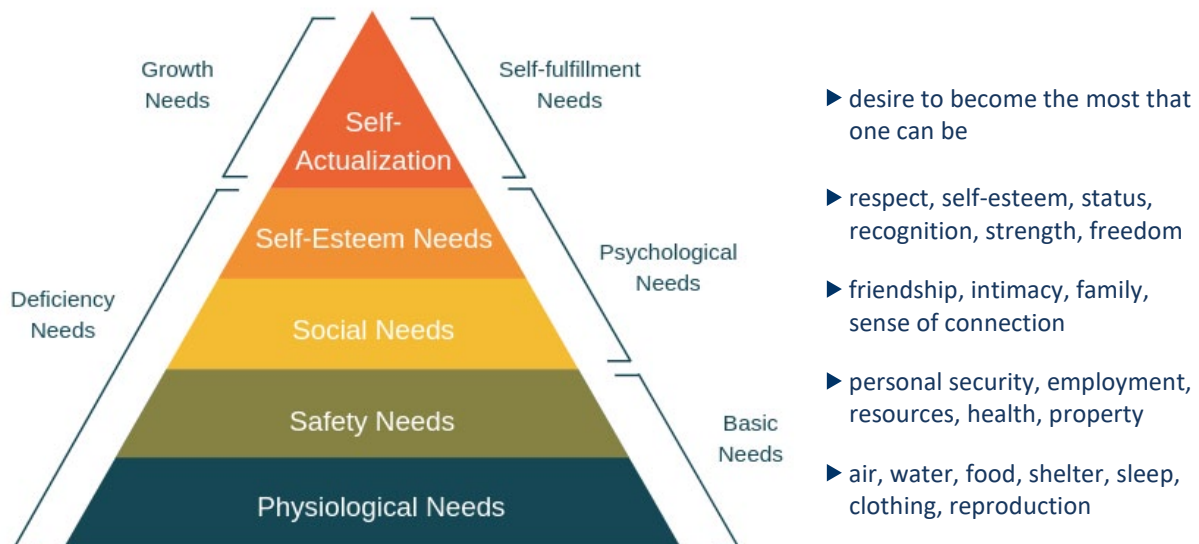


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Following later research, Maslow's model was modified to reflect the finding that the levels overlap to some extent. In reality, people pursue satisfaction at the higher levels before having their needs at the lower levels completely satisfied. (See, for example, Tay and Diener [2011: 355].) Other influences on happiness are genetics via temperament and culture, where a culture might emphasize some needs more than others [362]. None the less, the correlation between the satisfaction of needs and happiness is fairly uniform across cultures [358].



## Alderfer's ERG Theory

An alternative theory of motivation to Maslow's Hierarchy of Needs model is Clayton Alderfer's ERG Theory. It is both a simplification in some respects and a refinement of Maslow's model. Alderfer [1969] proposed that human beings are motivated by three different kinds of needs, Existence (E), Relatedness (R) and Growth (G), as illustrated in the diagram below.

**Diagram 2 – Alderfer's ERG Theory**

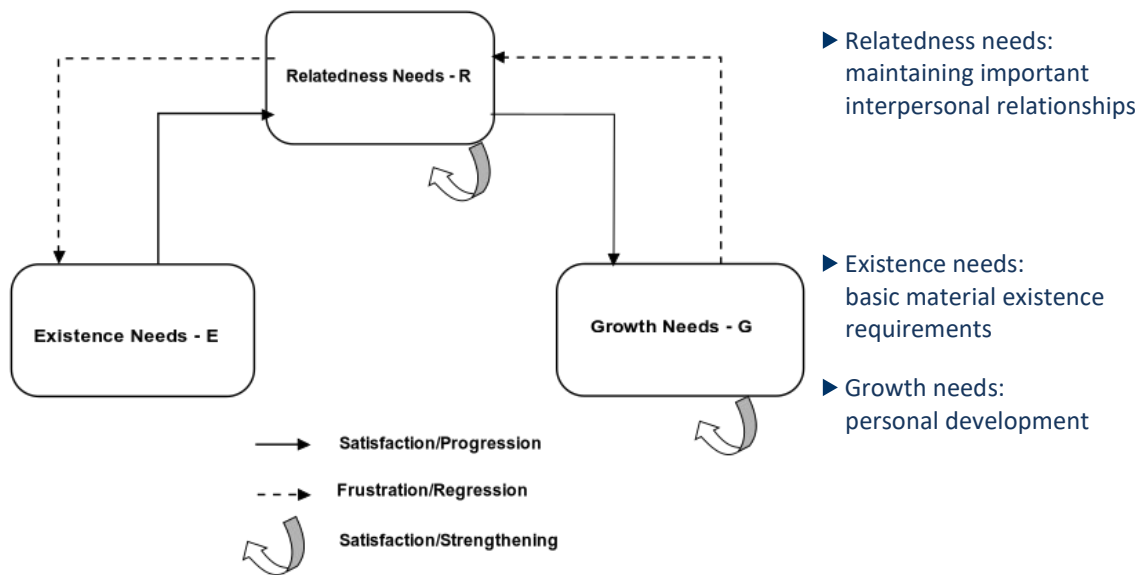


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The needs identified by Maslow can be mapped onto Alderfer's model. In addition, according to Alderfer's model, once a person's needs at a lower level are satisfied, they then expend more effort on satisfying the needs at the higher level. Conversely, if satisfaction at a higher level is thwarted, the individual will invest more effort at the lower level.

## Carl Rogers' Theory of Personality Development

Another prominent theory of motivation based on needs is that of humanist psychologist, Carl Rogers. His Humanistic Theory of Personality Development emphasized how a person's growth in self-actualizing requires an environment in which the person is treated with genuineness, acceptance and empathy. Building on Maslow, Rogers [1959, 1961] considered the basic needs driving human behaviour are safety, belongingness, self-esteem and freedom.

For the purposes of this essay and for the sake of simplicity, I will draw on Maslow's Hierarchy of Needs to show how the fundamental human needs he identified map neatly to the basic human rights advocated in our various human rights covenants and instruments.

## 4.2 Happiness Surveys

The second source I mentioned for information on the basic human needs that require satisfaction for us to lead happy and contented lives is the national and international happiness surveys that have been conducted over the past couple of decades by independent survey bureaus.

On an international scale, one prominent example is the World Values Survey [Haerpfer *et al* 2022]. The latest results are from 2021 after surveying people in 64 countries and territories, ranging from very poor to very rich. Along with a range of questions on the respondent's values, goals, attitudes, sense of agency, health, wealth, trust and security, they were asked about their happiness and well-being. Two findings are pertinent to the subject of this essay. Firstly, moving from the twentieth century to the twenty-first, levels of happiness rose in almost all of the countries surveyed. Secondly, the survey highlighted the causal link between economic prosperity, forms of government, personal autonomy and levels of happiness. As the survey authors conclude:

Since 1981, economic development, democratization, and rising social tolerance have increased the extent to which people perceive that they have free choice, which in turn has led to higher levels of happiness around the world.

...

Emancipative values change people's life strategy from an emphasis on securing a decent subsistence level to enhancing human agency. As the shift from subsistence to agency affects entire societies, the overall level of subjective well-being rises.

[World Values Survey Association 2023]

Ortiz-Ospina and Roser [2013] have collated and analyzed a wealth of happiness data from a variety of reliable sources. These sources included the World Happiness Report, the European Commission – Eurobarometer Interactive, the World Values Survey and the Pew Global Attitudes Survey, among others. Their collation is perhaps the most comprehensive and up-to-date meta-study of happiness and life satisfaction. For their analysis, they pulled out the key contributors to happiness and life satisfaction. The factors identified were:

- national income
- personal income
- life expectancy at birth
- mental health
- stable employment
- lack of disability
- freedom

Ortiz-Ospina and Roser also conclude that happiness measures used in the analysis are generally reliable and that 'life satisfaction' scores and 'happiness' scores are closely related.

As mentioned, one important source of data used by Ortiz-Ospina and Roser is the World Happiness Report, which compiles data from the Gallup World Poll. This Poll is a set of nationally representative surveys undertaken in more than 160 countries and in over 140 languages. The latest version of the report publishes the results of the poll up to 2023. The key question asked in the poll is: 'Please imagine a ladder, with steps numbered from 0 at the bottom to 10 at the top. The top of the ladder represents the best possible life for you and the bottom of the ladder represents the worst possible life for you. On which step of the ladder would you say you personally feel you stand at this time?' This style of question asks respondents to evaluate their lives *in toto* and so best captures the intent of universal human rights declarations and covenants. As such, this style of question avoids the simple focus on the subjective feeling of the respondent at the time of asking. For that reason, I will cast my attention to this report for the purposes of this essay.

In their 2023 report, the authors draw attention to the main point I have been making. They directly attribute a key function of the Universal Declaration of Human Rights as bringing about the alleviation of human suffering. They advise: 'To prevent misery, governments and international organisations should establish rights such as those in the United Nations' Universal Declaration of Human Rights (UDHR)' [Helliwell *et al* 2023: 2]. The authors go on to say how 'the UN's Universal Declaration of Human Rights is an integral component of the happiness agenda. Without such basic human rights, there would today be many more people living in misery' [Helliwell *et al* 2023: 19].

From surveying millions of people around the world, the authors identify these key factors as among the determinants of happiness and well-being:

- physical and mental health
- human relationships (in the family, at work and in the community)
- income and employment
- character virtues, including pro-sociality and trust
- social support
- personal freedom
- lack of corruption
- effective government

[Helliwell *et al* 2023: 19, 38]

I've reviewed both types of data (psychological research and happiness surveys) that contribute to our knowledge of the factors determining life satisfaction and well-being. Notice the strong congruence between their conclusions. I illustrate these common findings in *Table 1* below. The left column lists the factors contributing to happiness identified in the

*World Happiness Report 2023*. The right column pairs those items in the left column with the basic needs identified in Maslow's Hierarchy of Needs.

**Table 1 – Mapping World Happiness Report to Maslow's Hierarchy of Needs**

Happiness Survey Indicator	Needs in Maslow's Model
physical and mental health	physiological/safety
human relationships	social/self-esteem
income and employment	social/self-esteem/self-actualization
character virtues	social/self-esteem/self-actualization
social support	physiological/safety
personal freedom	self-esteem/self-actualization
lack of corruption	physiological/safety/social
effective government	physiological/safety/social

With this unanimity of sources on the drivers for happiness, I now want to show how the rights enunciated in human rights agreements and legal instruments are the institutional blockers of human misery and the enablers of the overall happiness level of citizens. For this exercise, I will map each of the Articles in the International Covenant on Civil and Political Rights [United Nations (General Assembly) 1966] to the following:

- (a) specific needs identified by Maslow, and
- (b) specific preconditions for happiness identified in the *World Happiness Report 2023* (WHR)

The International Covenant on Civil and Political Rights is the legally binding enactment of the Universal Declaration of Human Rights and was ratified by the U.N. General Assembly in 1966. The mapping for the first seven Articles is as follows. For the full mapping, refer to the list in Appendix 2.

**Article 1 – right of self-determination**

Maslow: safety/social/self-esteem/self-actualization

WHR: physical and mental health/human relationships/income and employment/  
personal freedom

**Article 2 – right to non-discrimination and legal remedy**

Maslow: physiological/safety/social/self-esteem/self-actualization

WHR: physical and mental health/human relationships/income and physical and  
mental health/human relationships/lack of corruption/effective government

**Article 3** – right of men and women to equal enjoyment of rights

Maslow: physiological/safety/social/self-esteem/self-actualization

WHR: physical and mental health/human relationships/effective government

**Article 4** – rights derogated in time of public emergency

Maslow: physiological/safety

WHR: physical and mental health

**Article 5** – no right to destroy rights and freedoms

Maslow: physiological/safety/social/self-esteem/self-actualization

WHR: physical and mental health/human relationships/personal freedom/  
lack of corruption/effective government**Article 6** – right to life; freedom from genocide

Maslow: physiological/safety

WHR: physical and mental health/effective government

**Article 7** – freedom from torture, cruel, inhuman or degrading punishment

Maslow: physiological/safety/self-esteem

WHR: physical and mental health/effective government

Note how the right enunciated in each Article is both mapped to multiple levels in Maslow's hierarchy of needs and to multiple preconditions identified in the *World Happiness Report 2023* (WHR). This is because denying a fundamental right can impact multiple dimensions in a citizen's life. To reduce complexity with the mapping, I have been conservative in the number of Maslow's levels and the WHR's preconditions for happiness that I mapped to each Article. For example, I mapped the right to life and freedom from genocide expressed in Article 6 to Maslow's Physiological Needs and Safety Needs levels only. However, as we know from the Holocaust and other genocides, many family and social relationships are torn apart for the survivors. So, a mapping of Article 6 to Maslow's Social Needs is also appropriate. The situation is the same with the mapping to the *World Happiness Report 2023* (WHR) preconditions. In the list above and in Appendix 2, I mapped Article 6 to physical and mental health and effective government. But clearly, the genocide committed by the Nazi regime also impacted human relationships and personal freedom.

In this section, I have endeavoured to show how the specific human rights advocated in actual human rights declarations and covenants have as their primary purpose the enabling of the satisfaction of basic human needs, the fulfilment of which prevents misery and promotes human happiness and well-being. I illustrated this connection with one case study. I encourage the reader to complete a similar mapping of needs from Maslow's hierarchy or from Alderfer's ERG model coupled with other international happiness surveys to human rights covenants that I have ignored here (See Appendix 1 for the most important human rights documents.)

What you should not find remarkable is that not only is each human right you examine in the various declarations and covenants directly linked to a basic human need and happiness prerequisite, but also that there is not one that is not so linked. If human

rights were not solely grounded in human needs and happiness, but also in, say, intuited non-natural properties or in the other-worldly commands of a deity, then this fact would be a remarkable coincidence. If the happiness and well-being of humans is not the *raison d'être* of respecting human rights, then we would expect at least some human rights to be out of place with basic human needs. We would expect a codified human right such as the 'right to wear odd-coloured socks' or the 'right to blow a trumpet at the end of the day'. That we do not find such odd rights is not remarkable once we reflect on how our human rights instruments originated and evolved historically. In the next section, I will give some examples of how the preambles of the most important human rights declarations and covenants make clear this exact connection between human rights and the satisfaction of basic human needs for the promotion of human happiness.

## 5. Happiness and Human Rights

In the previous section, using the International Covenant on Civil and Political Rights as a case study, I showed how the human rights identified in our national and international human rights instruments are designed to enable the satisfaction of basic human needs that then lead to happiness. In this section, drawing on four case studies I will go on to establish how this essential function of human rights instruments is recognized by the instruments' authors themselves. That is, I will make evident how actual human rights declarations and covenants justify human rights by an appeal to fundamental human needs and human happiness.

The four examples I will draw on are:

1. U.S. Declaration of Independence (1776)
2. Declaration of the Rights of Man (1789)
3. International Covenant on Civil and Political Rights (1966)
4. American Convention on Human Rights (1969)

### *5.1. U.S. Declaration of Independence (1776)*

The drafters of the U.S. Declaration of Independence [U.S. 1776], John Adams, Benjamin Franklin, Thomas Jefferson, Robert R. Livingston and Roger Sherman, included as a Preamble the following:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are **Life, Liberty and the pursuit of Happiness**.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their **Safety and Happiness**. [emphasis mine]

For the authors, the purpose of the rights principles enunciated is 'to effect' citizens' safety and happiness. In addition, and congruent with our knowledge of fundamental human needs, the Declaration authors also expressly link 'the pursuit of Happiness' with 'Life' and 'Liberty'.

Some critics will point out that human needs and happiness cannot be the whole story about what motivated the authors as they explicitly reference a 'Creator' as the originator of human rights. It is true that the authors appeal to a divine source for human rights. However, we need to recognize fully the social and political circumstances giving rise to the revolt against the British Empire (as summarized in §2 above). As was customary, appeal to a divine being to advance a group's cause was a favoured method of giving credence to that group's interests. If the development and implementation of the notion of

human rights can be fully explained by natural means and without recourse to supernatural explanations, then those supernatural explanations are moot.

### *5.2 Declaration of the Rights of Man (1789)*

Following long and bloody battles with the French monarchy and drawing upon the U.S. Declaration of Independence, the revolutionaries penned the following Preamble to the Declaration of the Rights of Man [National Constituent Assembly 1789]:

The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the **sole cause of public calamities and of the corruption of governments**, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the objects and purposes of all political institutions and may thus be more respected, and, lastly, in order that the **grievances of the citizens**, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and **redound to the happiness of all**. Therefore the National Assembly recognizes and proclaims, in the presence and under the auspices of the Supreme Being, the following rights of man and of the citizen: [emphasis mine]

The motivations of the French revolutionaries in 1789 is made clear in the Preamble to the Declaration, its explicit purpose being to prevent future ‘public calamities and of the corruption of governments’. Congruent with modern studies in psychology and the results of world-wide happiness surveys, the authors recognized how preventing the corruption of governments and acting on the ‘grievances of the citizens’ leads to ‘the happiness of all’. This insistence that the role of government is the securing of the happiness of all is, of course, a mirroring of the utilitarian principle of universal regard for all peoples.

### *5.3 International Covenant on Civil and Political Rights (1966)*

The International Covenant on Civil and Political Rights [United Nations (General Assembly) 1966] is the instrument that legally binds all United Nations signatories to the human rights enshrined in it. The fourth paragraph of the Preamble to the Covenant states:

Recognizing that, in accordance with the Universal Declaration of Human Rights, the **ideal of free human beings enjoying civil and political freedom and freedom from fear and want** can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights . . . [emphasis mine]

Here again, the authors emphasize the purpose of recognizing human rights as the practical prevention of human misery in the form of ‘fear and want’. In addition and



congruent with our knowledge of human needs and of the factors that promote happiness, the authors identify how essential human freedom is to the successful pursuit of happiness.

#### *5.4 American Convention on Human Rights (1969)*

The American Convention on Human Rights [Organization of American States (OAS) 1969] is legally binding on most North, Central and South American states. The second and fourth paragraphs of the Preamble read as follows:

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are **based upon attributes of the human personality**, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;

...

Reiterating that, in accordance with the Universal Declaration of Human Rights, the **ideal of free men enjoying freedom from fear and want** can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights . . . [emphasis mine]

Especially noteworthy here is the recognition that human rights are grounded in human nature, echoing the utilitarian's focus on satisfying basic human needs. As with the International Covenant on Civil and Political Rights referenced above, the authors similarly attribute the purpose of the Convention to achieving 'freedom from fear and want', a central goal of the utilitarian ethic.

\*\*\*

From these four case studies, we can see how the authors of the declarations and covenants were not only prompted by the desire to minimize suffering and promote happiness, but that they expressly recognized that motivation in the documents themselves. This is manifest even though on occasion they supplemented this basic grounding with the religious or metaphysical language that was the custom of the day.

To bring this section to a close, I offer a fundamental objective of the international organization that gave us the Universal Declaration of Human Rights that encapsulates succinctly the guiding role of the pursuit of happiness. In 2011, the United Nations General Assembly passed Resolution 65/309 [United Nations (General Assembly) 2011] recommending the search for 'a more inclusive, equitable and balanced approach to economic growth that promotes sustainable development, poverty eradication, happiness and well-being of all peoples'. The Resolution emphasized how the General Assembly is 'Conscious that the pursuit of happiness is a fundamental human goal'. (For a review of how one country is incorporating subjective well-being data into a broader suite of measures of economic prosperity, see Lancy and Gruen [2013]. For measures and reports on national well-being, see International Institute of Management [2018]; OECD [2020]; Social Progress Imperative [2022]; Centre for Bhutan and GNH Studies [2023].)

This concludes my support for the first of my key objectives for this essay. That is, to demonstrate how human rights are justified by appeal to the minimal set of social conditions required for the prevention of human suffering and the enabling of human flourishing.

## 6. Resolving Conflicts between Human Rights

So far, I've attempted to show how human rights are grounded in the value of human well-being. More particularly, I've endeavoured to demonstrate how appeals to fundamental human rights are justified by their consequences for minimizing human suffering and for maximizing the opportunity for human happiness, both of which are the result of satisfying some fundamental human needs.

This appeal to the utility of adhering to human rights is attractive for another important reason. The appeal to the consequences of an act, policy or practice for human suffering and happiness provides a practical and convincing method for adjudicating between human rights when they conflict in specific circumstances.

There are many situations in which basic human rights come into conflict. Here are three examples:

- The right to meet at a cafe during a pandemic highlights where a right to free movement conflicts with the right to health.
- The right to avoid conscription for military service highlights where a right to conscientious objection conflicts with the right to safety.
- The right to deny a commercial service to a homosexual couple highlights where a right to religious observance conflicts with the right to not be discriminated against.

Another common case of conflict is restrictions on the right to freedom of movement due to respect for public and private property rights, or from restraining orders related to domestic violence, or from incarceration as a legal punishment for a crime committed. Restriction of the right to freedom of movement also occurs following a natural disaster in order to prevent looting, allow easy access to emergency vehicles and to stop holdups from curious crowds.

When we try to resolve these conflicts by recourse to the supposed commands of a deity or to moral intuition, we run into a problem. Different people, all equally intelligent and acting with good will, consult different deities who purportedly make different judgments. Or if, on the other hand, we consult our moral intuitions for the truth, different people, who are equally reflective, give contrary insights. A significant challenge here in practice is that appealing to one's religious lights or to one's intuitions is prone to personal bias.

On the other hand, the utilitarian's principle of utility gives us a reasonably objective method for adjudicating conflicts when they arise. It seems most humane to count the overriding human right in times of conflict as that whose prevalence leads to preventing considerable misery while least sacrificing the happiness of others. In fact, that is how national and international human rights declarations and covenants are framed.

I will illustrate how considerations of utility determine the overriding right in such instruments with four case studies. These four examples are drawn from the following:

1. European Convention on Human Rights (1950)
2. International Covenant on Civil and Political Rights (1966)
3. American Convention on Human Rights (1969)
4. African Charter on Human and Peoples' Rights (1981)

### *6.1 European Convention on Human Rights (1950)*

In the Convention for the Protection of Human Rights and Fundamental Freedoms [Council of Europe 1950], signed by Members of the Council of Europe in 1950 as a legally binding enactment of the Universal Declaration of Human Rights, the right to privacy, freedom of thought, conscience and religion, and the right to freedom of expression are stipulated to be overridden during those times when national security, public safety, economic well-being, health or public order are threatened. The relevant parts of Articles 8 to 10 state:

**ARTICLE 8** [right to respect for private and family life, home and correspondence]

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society **in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.**

**ARTICLE 9** [right to freedom of thought, conscience and religion]

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society **in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.**

**ARTICLE 10** [right to freedom of expression]

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, **in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.** [emphasis mine]

In addition, the right to possessions is stipulated to be overridden when the public interest, the general interest or the collection of taxes and penalties is threatened. The relevant part of Protocol 1 states:

**Protocol 1. ARTICLE 1** [right to possessions]

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions **except in the public interest** and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property **in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.** [emphasis mine]

One final example for this case study will suffice. Protocol 4 stipulates that the right to freedom of movement and choice of residence will be overridden when national security, public safety, public order or the public interest is threatened.

**Protocol 4. ARTICLE 2** [right to freedom of movement and choice of residence]

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society **in the interests of national security or public safety** for the maintenance of 'ordre public', for the prevention of crime, for the protection of rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified **by the public interest** in a democratic society. [emphasis mine]

## 6.2 *International Covenant on Civil and Political Rights (1966)*

The International Covenant on Civil and Political Rights [United Nations (General Assembly) 1966] is also a legally binding enactment of the Universal Declaration of Human Rights. Ratified in 1966, it stipulates that certain rights are overridden in times of public emergency when national security is threatened. The relevant part of Article 4.1 states:

**Article 4.1.** [derogation from responsibilities under Covenant]

In time of **public emergency which threatens the life of the nation** and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

More particularly, Article 12 goes on to limit the right to freedom of movement and choice of residence when national security, public order or public health is threatened.

**Article 12.** [freedom of movement and choice of residence for lawful residents]

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are **necessary to protect national security, public order (ordre public), public health** or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. [emphasis mine]

Articles 14 and 18 further restrict the right to public access to the courts, freedom of thought, conscience and religion. These are overridden when national security, public safety, order, health, privacy or juvenile interests are threatened.

**Article 14.** [equality before courts, tribunals and right to fair trial]

The press and the public may be excluded from all or part of a trial for reasons of morals, **public order (ordre public) or national security** in a democratic society, or when the **interest of the private lives of the parties** so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the **interest of juvenile persons** otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

**Article 18.** [right to freedom of thought, conscience and religion]

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are **necessary to protect public safety, order, health**, or morals or the fundamental rights and freedoms of others. [emphasis mine]

The final example for this case study is the restriction of the right to opinions, freedom of assembly and of association. These are overridden when national security, public safety, public order, public health or private reputations are threatened. The relevant parts of Articles 19, 21 and 22 state:

**Article 19.** [right to hold opinions without interference]

It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or **reputations of others**;
- (b) For the **protection of national security or of public order (ordre public), or of public health** or morals.

**Article 21.** [right of peaceful assembly]

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society **in the interests of national security or public safety, public order (ordre public), the protection of public health** or morals or the protection of the rights and freedoms of others.

**Article 22.** [right to freedom of association with others]

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society **in the interests of national security or public safety, public order (ordre public), the protection of public health** or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. [emphasis mine]

### *6.3 American Convention on Human Rights (1969)*

The American Convention on Human Rights [Organization of American States (OAS) 1969] that was adopted by many countries in the Western Hemisphere in 1966 stipulates that the right to freedom of conscience and religion, and freedom of thought and expression are overridden when national security, public safety, health, public order or reputations are threatened. The relevant Articles state:

#### **Article 12. Freedom of Conscience and Religion**

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are **necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.**

#### **Article 13. Freedom of Thought and Expression**

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- (a) respect for the rights or **reputations of others**; or
- (b) the protection of **national security, public order, or public health** or morals. [emphasis mine]

In addition, the right of assembly and of free association, to property, freedom of movement and choice of residence are overridden when national security, public safety, public order, public health, public utility, public interest or social interest are threatened. The relevant Articles stipulate:

#### **Article 15. Right of Assembly**

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society **in the interest of national security, public safety or public order, or to protect public health** or morals or the rights or freedom of others

#### **Article 16. Freedom of Association**

2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, **in the interest of national security, public safety or public order, or to protect public health** or morals or the rights and freedoms of others.



**Article 21. Right to Property**

2. No one shall be deprived of his property except upon payment of just compensation, **for reasons of public utility or social interest**, and in the cases and according to the forms established by law.

**Article 22. Freedom of Movement and Residence**

3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society **to prevent crime or to protect national security, public safety, public order**, public morals, **public health**, or the rights or freedoms of others.

4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones **for reasons of public interest**. [emphasis mine]

This Convention also stipulates a general override on the rights described in times of war and public danger, and when security of the state and the general interest are threatened.

**Article 27. Suspension of Guarantees**

1. In time of **war, public danger, or other emergency that threatens the independence or security of a State Party**, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

**Article 30. Scope of Restrictions**

The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted **for reasons of general interest** and in accordance with the purpose for which such restrictions have been established.

**CHAPTER V - PERSONAL RESPONSIBILITIES****Article 32. Relationship between Duties and Rights**

2. The rights of each person are limited by the rights of others, **by the security of all**, and by the **just demands of the general welfare**, in a democratic society. [emphasis mine]

### *6.4 African Charter on Human and Peoples' Rights (1981)*

The African Charter on Human and Peoples' Rights [Organization of African Unity (OAU) 1982], adopted by members of the Organization of African Unity in 1981, restricts the right to property and other rights and freedoms when such restriction is in the interest of public need, in the general interest of the community, in the common interest or if collective security is threatened. The relevant Articles stipulate:

**Article 14:** The right to property shall be guaranteed. It may only be encroached upon in the **interest of public need** or in the **general interest of the community** and in accordance with the provisions of appropriate laws.

**Article 27: 1.2.** The rights and freedoms of each individual shall be exercised with due regard to the rights of others, **collective security**, morality and **common interest**. [emphasis mine]

The upshot of this section of my essay is that international covenants on human rights do not leave the settling of conflicts between rights to controversial subjective inclinations, such as consulting the dictates of a posited deity or to personal moral intuitions. Appeals to general welfare—to public safety, security, health, order, and so on—provide the objective criteria on which to decide when individual rights are to be set aside. Utilitarian considerations of preventing gross amounts of misery while least compromising the happiness of citizens are central to how our modern human rights instruments adjudicate between competing rights based on fundamental needs.

This section satisfies the second of my three key objectives for this essay. That is, to show how considering consequences for human suffering and happiness provides a rational method for adjudicating when rights conflict in particular situations. In the next sections, I will respond to particular criticisms that an appeal to utility is insufficient for grounding human rights and is fundamentally mistaken.

## 7. Objection: Autonomy

In these final sections, I will address the most common objections to the idea that the notion of fundamental human rights is grounded in the minimum socio-political structures required for a society to minimize the suffering of its citizens and to enable their happiness. The five objections I will deal with here are that considering only consequences:

1. ignores the importance of autonomy
2. ignores the importance of respect for persons and human dignity
3. ignores the importance of justice and fairness
4. supports the persecution of minorities in some cases
5. mistakenly assumes that happiness can be measured

So, dealing with the first objection, it can be phrased as: 'Sure. Considering the consequences for misery and happiness is important for identifying human rights and deciding between conflicting rights, but that's not the whole story. The autonomy of each individual is a good in itself, independently of whatever balance of misery and happiness may ensue from allowing them to make their own decisions. We think it good to allow each person to make their own decisions about their life even when they are likely to make mistakes.'

Freedom to do as we choose and self-determination figure prominently in the human rights instruments considered in this essay. The International Covenant on Civil and Political Rights [United Nations (General Assembly) 1966] has as its first Article 'the right of self-determination'. Articles 1 and 3 of the Universal Declaration of Human Rights [United Nations (General Assembly) 1948] profess the same liberty. This focus on the moral significance of autonomy is admirable and I have argued for its importance in many places and times. The question, however, is this: Is autonomy a good in itself, or is it only good to the extent that it contributes to happiness and human welfare?

From our previous explorations, we have seen that autonomy and human happiness are not divorced from each other. Firstly, the psychological theories of human needs evidence how the need for freedom to make one's own life choices is a basic human need. When this need is left unfulfilled, a person does not reach their full potential for life satisfaction. The self-esteem and self-actualization needs identified by Maslow require this freedom for them to be satisfied. In Alderfer's ERG Theory, his growth needs follow suit. Carl Rogers' Theory of Personality Development likewise considered self-actualizing and freedom a basic human need driving our behaviours. Other research psychologists who I have not included in this essay (because their focus was on behaviour in organizational settings) came to the same conclusion. Psychologists such as David McClelland and Frederick Herzberg investigated how employees given autonomy over how they do their jobs experience higher levels of engagement and work satisfaction. The clear message from decades of research is that without autonomy, human beings do not achieve their optimal well-being.

Secondly, the international happiness surveys summarized in this essay draw the same conclusion. The World Values Survey Association's 2021 survey [World Values Survey

Association 2023] linked the level of people's perceived 'free choice' to their 'levels of happiness'. The World Happiness Report [Helliwell *et al* 2023: 17] arrives at the same conclusion that people being 'free to make important life decisions' contributes to 'higher well-being'. The report [Helliwell *et al* 2023: 19] goes on to emphasize that 'to guarantee minimum human rights (including food, shelter, freedom, and civil rights) . . . is an integral component of the happiness agenda'. (See also Ortiz-Ospina and Roser [2013].)

As a final point on the relation between autonomy and happiness, I ask you to reflect on your own personal experience. Think back to those times in your life when you had little control over your work or your social environment or your life overall. How did you feel during those times? I suspect that your sense of life satisfaction suffered under those circumstances.

The conclusion here is that autonomy is a key enabler of human happiness. Without some control over how we live our lives, dissatisfaction is the result. So, far from autonomy being a problem for an attempted utilitarian grounding of human rights, it seems utilitarianism explains simply and neatly why human freedom figures so prominently in human rights instruments.

## 8. Objection: Dignity

The second objection I want to consider to the view I am advancing is that thinking that considerations of human misery and happiness underpin all aspects of human rights misses out on the important dimension of human dignity and respect for persons. Here again, the Preamble to the Universal Declaration of Human Rights [United Nations (General Assembly) 1948] recognizes the 'inherent dignity' of all humans. Articles 1, 22 and 23 make further appeals to 'human dignity'. Similarly, the International Covenant on Civil and Political Rights [United Nations (General Assembly) 1966] recognizes the 'inherent dignity of the human person' in its Preamble and Article 10. Protocol No. 13 of the European Convention on Human Rights [Council of Europe 1950] also refers to the 'inherent dignity of all human beings', as do many other human rights instruments.

Basing human rights on some naturalized sense of 'human dignity' is admirable and I am partial to doing so. In other places, I speak about valuing 'autonomy and dignity' as being central to a moral outlook. But is it the case that the notion of 'human dignity' referred to time and again is unable to be captured by our disdain for human misery and want for human happiness?

The term 'dignity' has been borrowed from an earlier religious age, with some philosophers and ethicists recently striving to repackage the term in more secular garb. Thinkers such as Ashcroft [2005] and Macklin [2003] illustrate well the challenges. Is 'dignity' inalienable or can it be surrendered? Is it a metaphysical attribute of human beings or can it be understood in natural terms? These questions are still being debated and as such, 'dignity' as a foundational concept is an insecure foundation for universal human rights.

With a view to unpacking 'dignity', it is instructive to examine ordinary uses of the term. Doing so, it seems that appeals to a person's dignity translate to admonitions to respect the person, especially their privacy and autonomy. From my synopsis of contemporary theories of motivation based on human needs (see §4.1 above), we saw how the need for autonomy (and privacy as a precondition) is a basic drive in human beings. Both Maslow [1943] and Alderfer [1969] highlighted well that aspect of the human personality. For Rogers [1959, 1961], granting people autonomy and treating them with respect were central to his theory of human development.

Where respect for human dignity matters on the ground, one nursing credentialing organization put the components of 'dignity' very succinctly:

Human dignity, simply put, is when one believes in their own worth, pride in oneself or a conscious sense of one's own worth as a human being living a meaningful life that is worthy of respect from others. In the healthcare environment, human dignity is more focused on aspects of privacy, respect, and autonomy.

[Nursing CE Central 2023]

When we see appeals to human dignity understood in this sense of respect, autonomy and privacy, then there remains no barrier to accommodating fully such appeals within a utilitarian grounding of human rights. This notion of the inherent worth of every human being is also central to utilitarian thinking. John Stuart Mill [1863: ch. 5: 60] (putting it in the mouth of Jeremy Bentham) expressed it as 'everybody to count for one, nobody for more than one'. A little later, that other classical utilitarian, Henry Sidgwick [1874: 186], stated this principle of equal worth as:

I obtain the self-evident principle that the good of any one person is no more important from the point of view (if I may put it like this) of the universe than the good of any other

In conclusion, the view that human rights presuppose the inherent dignity of all human beings is congruent with a utilitarian framing of rights. As we saw in the case of autonomy above, it is this utilitarian framing that makes best practical sense of our universal regard for human dignity.

## 9. Objection: Justice

The third objection to my argument that the idea that underpins universal human rights is the value we give to human happiness and the disvalue we give to human misery is that I have ignored the problem of justice. The claim here is that the demands of justice sometimes outweigh the simple summing of pleasures and pains. What is just figures importantly in prescribing the various rights in our human rights instruments and utilitarians, so the objection goes, disregard this central requirement.

For example, the Universal Declaration of Human Rights [United Nations (General Assembly) 1948] appeals to the value of justice in the Preamble and in Articles 23 and 29. The International Covenant on Civil and Political Rights [United Nations (General Assembly) 1966] does likewise in its Preamble and Article 14. Similarly, the American Convention on Human Rights [Organization of American States (OAS) 1969] refers to justice in its Preamble and in Articles 8, 10, 21 and 32. If utilitarianism flouts the demands of justice, critics insist, it cannot underpin human rights.

Critics of utilitarianism often repeat three popular and intuitively plausible scenarios that purport to disprove utilitarian moral theory. The three most used counterexamples are probably these:

1. **Transplant Case:** In a hypothetical hospital, there are five patients, each of whom will soon die unless they receive an appropriate transplanted organ (heart, two kidneys, liver, lungs). A healthy patient arrives at the hospital for a routine check-up and the doctor finds that she is a perfect match as a donor for all five patients. Utilitarian moral theory demands the doctor kill the healthy patient and use her organs to save the five others. (See, for example, Chappell *et al* [2023].)

2. **Sheriff Case:** In a hypothetical town, a series of murders have been committed. The townspeople are convinced that Joe committed the most recent murder. They demand the sheriff use his powers to hang Joe, but the sheriff knows for certain that Joe is innocent. The townspeople will not listen to reason and will lynch Joe and riot if the sheriff resists the demand. Utilitarianism requires the sheriff to hang Joe in order to prevent a worse situation. (See, for example, Smart and Williams [1973: 69f] and Danaher [2011].)

3. **Rationing Case:** In a hypothetical war, the government imposes a ration on electricity usage to conserve energy for the war effort. A utilitarian-minded citizen figures that if he uses more electricity than his allowance to have a longer hot shower, happiness overall will be increased with no discernible impact on the rest of the population. He knows he will not be caught breaking the ration. Utilitarianism justifies his deceitful breaking of the ration. (See, for example, Smart and Williams [1973: 57f])

As I mentioned earlier in this essay in §1.4 What Is Utilitarianism?, it's important to recognize the different versions of utilitarian moral theory. One version advocates that what is to be judged morally is the individual act, such as one person giving a gift to another. This version is known as act utilitarianism (or direct utilitarianism). Another version, known as rule utilitarianism (or indirect utilitarianism), sees what is to be appraised morally as the general rule. These moral rules are built up inductively over time from seeing which kinds of

acts lead to the most happiness. So, for example, rule utilitarians may advocate the rule, visit sick relatives whenever convenient.

I think an act utilitarian can respond adequately to the Transplant Case by pointing to the fear in the general population that would ensue once it becomes known that one may be divested of one's organs even when well. On the other hand, I think an act utilitarian defence fails in the Sheriff Case and the Rationing Case. Rule utilitarianism fares somewhat better with the counterexamples, although the appeal to rules does not get to the heart of our feeling of injustice as the fact that a particular rule leads to greater happiness is merely contingent on the social circumstances of the day. Moreso, why should the usefulness of a general rule override the usefulness of a particular act where the act is a more fine-grained application of the principle of utility?

A larger shortcoming of rule utilitarianism and one that exposes the heart of the inadequacy of its responses to the latter two scenarios is that it mischaracterizes how social rules are in fact created. John Rawls [1955] shows how our civil laws and rationing rules are not built up piecemeal by keeping track of instances and noting their impacts on levels of happiness. In fact, the rules of justice and of rationing in particular are logically prior to the acts regulated by the rules. Moral and legal rules are stipulated and agreed in advance, along with specified roles, responsibilities, rewards and punishments.

For example, take the practice of promising. That practice did not gain acceptance following a lengthy period in which citizens logged over time the effects of keeping and breaking a promise and finally concluding from the tally that the balance of good effects over bad justify the rule of promise-keeping. In this case, the design of the practice preceded the particular acts of promising. It makes no sense to even speak of judging the effects of promising without first specifying the practice, with its rules, responsibilities and sanctions. Importantly, one of those predefined rules is the barring of act utilitarian defences for breaking a promise. Even though my breaking my promise to a friend to help him clean up his house may result in overall greater happiness, my making the promise in the first place is my avowed commitment to *not* use act utilitarian excuses for breaking the promise. By making a promise, I am buying into the pre-established social practice of promising with its defined rules, responsibilities and sanctions.

Once we recognize how the practice of promising originated and is maintained, we can see that utilitarianism principally justifies the social practice of promising. That justification is that the practice of promising has high social utility in allowing people to rely on others to co-ordinate actions for mutual benefit. What holds for the practice of promising holds even moreso for the system of rationing in wartime and for the criminal justice system more generally. Individual acts of using more electricity than one is entitled to in the former case and condemning an innocent man in the latter case transgress the rules of a system that is enforced for everyone's benefit. As the best form of utilitarianism warrants a social practice, the fact that on occasion an individual act transgressing the practice increases the total amount of happiness does not count as a legitimate excuse for disobeying the rules of the practice.

So, for the three supposed counterexamples discussed above, on this more sophisticated form of utilitarianism, the doctor is not morally obligated to kill the healthy patient to save the other five, the sheriff is not morally required to hang Joe in order to



prevent a riot and it is not morally permissible for the wartime citizen to use more electricity than what his rations allow. On this form of utilitarianism, all three acts are morally wrong. In addition, this form of utilitarianism explains in naturalistic terms exactly why these three acts are wrong. This form of utilitarianism is known as 'public acceptance rules consequentialism' or, more simply, 'rules in practice' utilitarianism. (For more, see my Allan [2020].)

Just as our social practice of promising and our civil justice system are social systems, our international human rights instruments and institutions, likewise, constitute a broad system of social practice. Consider a typical civil justice system that has utilitarian warrant. It consists of rules for behaviour (e.g., traffic rules), designated roles (e.g., licensee, traffic infringement officer, judge), assigned responsibilities (e.g., obtain licence, patrol streets, adjudicate cases) and rewards and punishments (e.g., fine, imprisonment). In the same manner, our systems of universal and civil rights are also so composed.

Consider, for example, the International Covenant on Civil and Political Rights [United Nations (General Assembly) 1966]. The Articles in Part IV specify the following:

#### **Rules for Behaviour**

- Give effect to the rights stipulated in the Covenant.
- Perform Committee functions impartially and conscientiously.
- Share Commission expenses equally among the States Parties.

#### **Roles**

- State Party
- U.N. Secretary-General
- Human Rights Committee member
- Conciliation Commission member
- Conciliation Commission Chairman

#### **Responsibilities**

- Conduct election.
- Make a solemn declaration.
- Vote at Committee meetings.
- Submit reports on the measures adopted.
- Appoint Conciliation Commission.

#### **Rewards and Punishments**

- Declare a Committee member seat vacant on abrogation of duties.
- Appoint an *ad hoc* Conciliation Commission if a dispute is not resolved.

The above list of rules, roles, responsibilities and sanctions is far from exhaustive. It gives you a flavour of the various components of the system of practice regulating international human rights. The key point here is that utilitarianism warrants the complete and integrated system governing the assent to and implementation of human rights, including those components regulating the just application of human rights norms. Moral judgments resulting from the application of those norms apply even in those instances in which the transgressions of a right leads to an increase in happiness or to a decrease in unhappiness.

Another kind of response to the critic's objection is to point to the utilitarian's principle of impartiality. The core of utilitarianism is often summarized as 'the greatest happiness of the greatest number' principle. This simplification can be misleading to many who come across this moral theory for the first time. It is the utilitarian principle of impartiality that is perhaps less prone to misinterpretation and that clearly encapsulates the principle of justice. I already alluded to the principle of impartiality in the previous section on dignity. Mill [1863: ch. 5: 60] put the principle most succinctly when he advised 'everybody to count for one, nobody for more than one'. Sidgwick [1874: 186] expressed the principle as 'the good of any one person is no more important from the point of view (if I may put it like this) of the universe than the good of any other'. Lying at the heart of the utilitarian ethic is this notion of justice as fairness, equal consideration and proportionality. Whether you are rich or poor, black or white, male or female, Hindu or atheist, socialist or libertarian, you are to count for one, no more and no less.

## 10. Objection: Minorities

The fourth objection to the view that the striving for happiness and the minimization of misery lies at the root of our concern for human rights is that this focus on maximizing utility licenses the abuse of minorities in some cases. In my response, I will draw on two paradigmatic historical cases of persecution: the Roman torture of the Christian minority and the Nazi's forced sterilization programme. I will try to show that when we sum the satisfactions and dissatisfactions of all the persons in these two cases, it turns out that the pain and suffering borne by the persecuted immensely outweighs the gains in pleasure and happiness of the persecutors. If I am right, the upshot is that the utilitarian agrees with the judgment that these acts of persecution are egregious abuse of the rights of the victims.

### 10.1 Roman Empire Persecution of Christian Minority

The first oft-quoted paradigm case I will deal with is the Roman Empire's punishment of the early Christians from the second to the fourth century BCE. Sandel [2009: 37] gives voice to this kind of criticism:

In ancient Rome, they threw Christians to the lions in the Coliseum for the amusement of the crowd. Imagine how the utilitarian calculus would go: Yes, the Christian suffers excruciating pain as the lion mauls and devours him. But think of the collective ecstasy of the cheering spectators packing the Coliseum. If enough Romans derive enough pleasure from the violent spectacle, are there any grounds on which a utilitarian can condemn it?

The Romans punished the Christians in amphitheatres located around the Empire by *damnatio ad bestias* (Latin: condemnation to beasts). A purported eye-witness account in *The Passion of Saints Perpetua and Felicity* (Wikipedia contributors [2023f]) gives the flavour of what happened at one of these spectacles:

On the day of the games, the martyrs are led into the amphitheatre (xviii). At the demand of the crowd they were first scourged before a line of gladiators; then a boar, a bear, and a leopard were set on the men, and a wild cow on the women (xix). Wounded by the wild animals, they gave each other the kiss of peace and were then put to the sword (xix).

First, if we are to sum the pleasures of the persecutors (Romans) and the sufferings of the persecuted (Christians) so that we may compare the two, we will need a method of quantifying pleasures and pains.

The method I will use for this case study is the following:

1. Set one standard unit of pleasure as the typical amount of pleasure experienced by one Roman spectator at one event.
2. Quantify the number of standard units of pleasure a typical person is willing to trade for avoiding suffering *damnatio ad bestias*.
3. Take the number of standard units of pleasure as representing the comparative value of the suffering over the pleasure.

Let me illustrate the application of the method with the familiar case of toothache. Reflect on how much enjoyment you get from seeing your favourite live performer (or from doing some other activity you enjoy). Set that amount of enjoyment to the value: +1 (Step 1).

Now ask yourself: How many instances of pleasure from seeing your favourite live performer (or from doing some other activity you enjoy) are you willing to trade for avoiding a painful extraction of a tooth without the use of an anaesthetic? Let's say your answer is 10 (Step 2).

Then the disvalue of one painful tooth extraction is equal to the value of 10 enjoyments from a live performance (or whatever). That is, your suffering from the tooth extraction is 10 times as bad as the live performance (or whatever) is enjoyable. Since we fixed the value of the enjoyment as a standard amount of +1, the value of the painful experience is -10 (Step 3).

Now that we have the measurement method in place, we can move on to evaluating and tabulating the amount of pleasure experienced by the Romans during one event and the various corollary sufferings experienced by the Christian and animal victims. For completeness, we will also need to include on the negative utility side of the ledger the lost utilities consequent to organizing the event. My estimates are shown in the table below.

**Table 2 – Pleasures and pains inventory from Roman damnatio ad bestias**

	No.	Unit Value	Unit Disvalue	Total Value	Total Disvalue
Beast's suffering during capture	1		-100		-100
Beast's suffering in captivity	1		-1,000		-1,000
Beast's suffering during spectacle	1		-100		-100
Beast's lost years of pleasure	1		-1,000		-1,000
Lost utility from maintaining beast	1		-100		-100
Lost utility from taming beast	1		-200		-200
Lost utility from feeding beast	1		-100		-100
Lost utility from training trainer	1		-200		-200
Lost utility from administration of guards	3		-200		-600
Lost utility from administration of prisoners	5		-200		-1,000
Prisoner's anticipatory suffering <sup>9</sup>	5		-10,000		-50,000
Prisoner's family's anticipatory suffering <sup>10</sup>	10		-2,500		-25,000
Prisoner's friend's anticipatory suffering <sup>11</sup>	50		-100		-5,000
Christian's anticipatory suffering <sup>12</sup>	100		-25		-2,500
Prisoner's suffering from scourging	5		-500		-2,500
Prisoner's suffering from attack by beast	5		-10,000		-50,000
Prisoner's suffering seeing others tortured	5		-1,000		-5,000
Prisoner's lost years of satisfaction <sup>13</sup>	5		-20,000		-100,000
Prisoner's surviving family's suffering <sup>14</sup>	10		-1,000		-10,000
Prisoner's surviving friend's suffering <sup>15</sup>	50		-200		-10,000
Surviving Christian's suffering <sup>16</sup>	100		-50		-5,000
Visitor's pleasure from spectacle	20,000	1		20,000	
Visitor's displeasure from attending <sup>17</sup>	20,000		-0.1		-2,000
<b>TOTAL:</b>				<b>20,000</b>	<b>-271,400</b>

<sup>9</sup>100 instances; each instance equivalent to 100 units of misery

<sup>10</sup>50 instances; each instance equivalent to 50 units of misery

<sup>11</sup>10 instances; each instance equivalent to 10 units of misery

<sup>12</sup>5 instances; each instance equivalent to 5 units of misery

<sup>13</sup>20 years of lost life; each year equivalent to 1,000 pleasure episodes

<sup>14</sup>10 years suffering; each year equivalent to 100 pain episodes

<sup>15</sup>10 years suffering; each year equivalent to 20 pain episodes

<sup>16</sup>Surviving Christians are Christians not in the spectacle but may be in the future; 10 years suffering; each year equivalent to 5 pain episodes

<sup>17</sup>Dealing with crowds, poor weather and violence from other spectators

For the purposes of performing the above calculations for a typically large *damnatio ad bestias* event, I've assumed the following:

- 20,000 amphitheatre visitors
- 5 Christian victims tortured
- 20 years average age of the tortured Christian victims
- 40 years life expectancy of the tortured Christian victims

(For background information on Roman amphitheatres and the torture of Christians, see Cartwright [2016] and Wikipedia contributors [2023g]).

The leftmost column in *Table 2* itemizes the key items of pleasure and suffering experienced by the various parties to the spectacle. The second column (No.) indicates the number of instances of pleasure or suffering. For example, '5' being the number for 'Prisoner's anticipatory suffering' indicates five Christian prisoners suffered during the event. The third column (Unit Value) indicates the amount of pleasure experienced by one entity during the event. For example, '1' being the amount of pleasure for 'Visitor's pleasure from spectacle' indicates that each Roman spectator experienced one unit of pleasure from the spectacle. The fourth column (Unit Disvalue) indicates the amount of suffering experienced by one entity during the event or the opportunity cost from holding the event. As an example of the former, '-10,000' being the number for 'Prisoner's anticipatory suffering' indicates that each Christian prisoner experienced 10,000 units of suffering during the event. As an example of opportunity cost, '-200' being the number for 'Lost utility from administration of prisoners' indicates that for each prisoner handled for the event, the labour expended could have been used to raise positive utility (pleasure/happiness/well-being) by 200 units. The fifth column (Total Value) indicates the total amount of pleasure resulting from the spectacle. This value is arrived at by multiplying the number of instances of pleasure (No.) with the Unit Value. The sixth column (Total Disvalue) indicates the total amount of suffering or total opportunity cost resulting from the spectacle. This value is arrived at by multiplying the number of instances of suffering or lost opportunity (No.) with the Unit Disvalue. Positive values are indicated in blue font while negative values are indicated in red font throughout.

The 'Total' row sums all of the value and disvalue accrued from holding the event. At a total disvalue of 271,400 resulting from the event, it is clear that the total amount of suffering and lost opportunity for positive value exceeds the total amount of pleasure experienced by the Romans (20,000) by a factor of more than 13:1. The conclusion reached from completing this exercise is that the critic's evaluation of the balance of bad effects over good effects is seriously mistaken. It is not true to say that the misery resulting from the torture of the minority in this case is outweighed by the pleasure of the torturing Romans.

Of course, the values I have entered in *Table 2* are indicative only. However, I think the values I have chosen for the amounts of suffering experienced by the minority are very conservative. Even so, the balance of suffering over pleasure is pronounced. Now, a critic may dispute my estimated values. As it is the critic making the objection to utilitarianism, I think it fair to say that the onus is on the critic to provide their own quantitative analysis demonstrating that the balance of bad over good weighs against the utilitarian.

## 10.2 Summing Pleasures and Sufferings

One line of attack from a critic of my evaluation of the *damnatio ad bestias* case study is to question how the amounts of suffering I attribute to the Christian prisoners and their family and friends are so astronomically high compared with the single unit of pleasure I attribute to each Roman spectator. The answer lies in two aspects of human nature. These two features involve:

1. the law of diminishing marginal utility (principle of economics)
2. the asymmetry between pleasure and suffering (principle of psychology)

Dealing with the first attribute, the law of diminishing marginal utility is a well-established principle in economics that states that the more and more a person receives something of value to them, the less and less value that extra amount becomes. (For an introduction, see University of Minnesota [2011].) That extra amount accepted each time is the amount at the margin and its value diminishes each time it is received. So, for example, the first cup of rice given to a starving person is of immense value. The next cup is of a little less value. Once the person receives their 100th cup, the value to them is minimal. If you had a cup of rice to give away, giving it to a starving person increases total utility very much more compared with giving it to a well-fed person.

For our *damnatio ad bestias* case study, the upshot from the application of this principle is that the labour and funds expended to increase the pleasure of the Roman spectators would have been used much more beneficially by decreasing the misery of the persecuted Christians. Being deprived of these resources impacts the Christian victims much more negatively compared with the slight benefit accrued to the comfortable Roman spectators.

The second feature of human nature relevant to this case study, the asymmetry between how human beings react to events that cause pleasure and the events that bring about suffering, is now a well-established principle of psychology. This aspect is in two parts. Firstly, the strength and duration of the dissatisfaction and suffering resulting from negative events is more and longer than the strength and duration of the satisfaction and pleasure brought about by positive events. Baumeister *et al* [2001: 326], for example, report:

In testing the hedonic treadmill, however, it emerged that bad events wear off more slowly than good events. . . . After a short peak in happiness, people become accustomed to the new situation and are no more happy than they were before the improvement. After a serious misfortune, however, people adjust less quickly, even though many victims ultimately do recover (Taylor, 1983).

From their extensive meta-analysis of many and varied psychological studies, they conclude that undesirable, harmful or unpleasant outcomes had much greater negative impact on emotion and reports of well-being compared with desirable, beneficial or pleasant outcomes of the same magnitude. In their words, 'When equal measures of good and bad are present, however, the psychological effects of bad ones outweigh those of the good ones' [Baumeister *et al* 2001: 323].

Shriver [2014: 8] concurs with what the research is telling us: ‘Equal amounts of positive and negative experiences do not balance out to neutrality; in fact, negative experience has “more weight” and drags one down faster than positive experience picks one up.’ On the subjective perception of human well-being in particular, Shriver [2014: 7] summarizes the psychological research as showing that ‘negative affect has a much greater influence on subjective reports of well-being than does positive affect’.

So, even if the Roman spectators had the same quantity of positive stimuli as their Christian victims had negative, the Christian victims would feel a much greater quantity of displeasure than the Roman spectators would experience pleasure. This psychological principle supports the relative weighting I gave to the Christians’ sufferings compared with the Romans’ enjoyments.

As we know all too well, the Christian victims were subjected to immensely more negative effects than the much smaller quantity of positive effects impacting the Roman spectators. This fact brings in the second aspect of the asymmetry between pleasure and suffering. This feature of human psychology concerns the extremities of the pleasure-suffering axis. To illustrate, put the most ecstatic experience you can imagine (e.g., birth of your child, religious bliss) at one end of the pleasure-suffering scale and the worst imaginable suffering at the other end (e.g., being tortured, burned alive). Assign an arbitrary number to signify the amount of pleasure for your most pleasurable experience. Let’s say: 100. What number would you assign to indicate the amount of your worst imaginable suffering?<sup>18</sup> To help you answer that question, think about the upper limit of the amount of pleasure you would be willing to give up to escape the worst imaginable suffering; say, to escape being burned alive. Would you give up 1,000 units of pleasure? What about 100,000 units of pleasure? Or would you say there is no upper limit to how much pleasure you would trade to escape the worst suffering? Would you be like Dax Cowart who pleaded to be killed in order to escape the suffering resulting from a gas explosion? As he recounts:

I was burned so severely and in so much pain that I did not want to live even in the early moments following the explosion. A man who heard my shouts for help came running down the road, I asked him for a gun.

[Wikipedia contributors 2023h]

The immeasurable intensities of these worst kinds of sufferings raises the question of whether any amount of pleasure experienced by the Roman spectators can compensate for or override the amount of suffering experienced by their Christian victims.

Shriver [2014: 15] states the ethical conclusion from this asymmetry and what it means for an adequate utilitarian theory succinctly:

The difference between the standard account and the asymmetrical view, however, is that on the latter view one might think that no amount of pleasure for one person, or indeed even many people, (where that pleasure is not itself preventing suffering) could even in principle justify causing intense suffering in another being.

<sup>18</sup>For a brief account of this approach, see de Lazari-Radek and Singer [2017: 99].



This utilitarian ethical imperative to focus our attention on alleviating suffering is also well-put by Tomasik [2015]:

Another motivation for focusing on suffering is that suffering seems more severe. In the life of a given organism, the most intense negative experiences typically outweigh the most intense positive ones.

This second aspect of the asymmetry between pleasure and suffering even more reinforces how conservative the values are that I assigned to the sufferings of the Christian victims.

In conclusion, whether we limit the extreme end of the 'suffering' side of the pleasure-suffering scale to a value of 100,000 (compared with the value of 100 at the extreme end of the 'pleasure' side of the scale) or to the value of 10 million or to the value of infinity (indicating no trade off is too great), the above considerations of the law of diminishing marginal utility and the two aspects of the asymmetry between pleasure and suffering diffuse the critic's objection that my relative weightings of the sufferings of the Christian minority and the pleasures of the Roman spectators is not credible.

### *10.3 Other Utilitarian Defences*

The defence of my analysis of the immorality of the Roman Empire's persecution of the Christians is one that can be made by an act utilitarian. It's not the only successful defence that can be put, and I don't think that the act utilitarian's method of considering each act of persecution in isolation is the best method of justification. A rule utilitarian will advance their own defence. Rules in practice utilitarianism, I think, provides the most robust reasons for why the Romans acted immorally. (For a brief discussion of the types of utilitarianism on offer, see §9 Objection: Justice above.)

Rules in practice utilitarianism is the view that what morally justifies an act by a particular agent is whether their action conforms to the rules, roles and responsibilities enshrined in an accepted social practice that has utilitarian warrant. Principally, it is the social practice designed as an integrated system that is judged on its consequences. The question for the rules in practice utilitarian is not whether this act or that act of persecution is morally justified considered in isolation. For our *damnatio ad bestias* case study, the relevant question is whether the system that supports and regulates the legal condemnation of Christians, their imprisonment and final torture for punishment and entertainment is morally justifiable on the grounds of its good consequences overall.

Each particular feature of the enforcement, judicial and penal aspects of the system of persecution must be shown to support the good consequences of the system overall. However, if the entire system is without utilitarian warrant, then attempting to justify each element becomes moot.

Imagine you are sitting in the legislature of your home country and you were tasked with providing reasons, grounded in the overall good consequences (increase in happiness and decrease in misery) for everyone affected, for implementing such a Roman-style enforcement, judicial and penal system. What reasons would you put before your fellow

legislators for implementing such a system on utilitarian grounds, all things considered impartially? As with John Rawls' [1955: 10–13] unjust 'torture' institution, the proposed system, if implemented, will endow certain office holders with the discretionary power of the state to identify members of a religious minority for torture.

How would you counter the key objections to such a system by your fellow legislators? On the political level, the ruling class singling out adherents to a religion for torture breeds resentment, sabotage and potential war with other states, all leading to an increase in misery. The diversion of considerable valuable state resources to implementing and maintaining this system of torture for entertainment robs other more socially beneficial projects. In addition, the religious argument that the Christians are undermining the health of the state by angering the gods is simply false. If, on the other hand, the minority religion and its adherents are chosen for persecution by the office holders randomly or arbitrarily, then on the social level, citizens will live in constant anxiety knowing that their religion could be targeted next. Again, this general anxiety constitutes a decrease in utility. On the level of the individual, the suffering of the victims and their families and friends grossly exceeds the ephemeral pleasure experienced by the spectators. At the systems level, it seems impossible to justify the practice of *damnatio ad bestias* on utilitarian grounds.

It is important to note here that the justification for the persecution of the Christians under Roman law was not utilitarian in nature. The proto-utilitarianism of the Epicureans was very much a minority view that had no sway with the Roman Emperors. Christians were persecuted and sentenced to death for a number of reasons, including atheism, for not revering the Emperor and for not worshipping the Roman gods (see Lyes [1998]; Wikipedia contributors [2023g]). Members of this religious minority were sentenced to an excruciating death not because it would on balance lead to greater happiness, but because they were criminals due the full weight of the law. The practice of *damnatio ad bestias* was justified by Emperors and governors essentially on religious grounds. Clearly, with the aim of inflicting the maximum pain and suffering on the victims and of terrorizing the remaining Christians in their communities, their happiness and well-being was the very antithesis of what the Romans wanted.

Roman Emperors and governors organized *damnatio ad bestias* as a public spectacle in order to maintain the favour of the Roman commoners. However, this was seen as a side benefit gained from inflicting lawful punishment on the Christians. As seems clear, the interests that were served by the public spectacle were the interests of the ruling class and not, as is required by the application of utilitarian principles, the general welfare of the entire population.

A critic may object that even though the Roman ruling class did not justify the torture and death of Christians on utilitarian grounds, such utilitarian reasons could be given. I hope to have shown in this section that such a justification cannot be given, neither on act utilitarian grounds nor on rules in practice utilitarian grounds.

### *10.4 Nazi Eugenics Programme*

In the previous sub-section, I considered the objection that a utilitarian grounding for human rights would have permitted the Roman Empire's persecution of the Christian minority. I now want to consider another paradigm case of the persecution of minorities that is sometimes claimed to be a counterexample to utilitarianism's respect for human rights. This case is the aggressive eugenics programme started in the United States in the early decades of the twentieth century and picked up by the Nazi regime in Germany in the 1930s. The philosophy underpinning the Nazi programme was that physically, mentally and socially undesirable traits (such as epilepsy, blindness, schizophrenia, homosexuality, poverty and delinquency) were due to a bad genetic constitution. Furthermore, they considered races other than Aryan as genetically inferior. In the U.S. and Germany, thousands of citizens were compulsorily sterilized, with the Nazis regressing later to the wholesale murder of those considered genetically weak. (For a brief overview, see Wikipedia contributors [2023i].)

Here, I will deal with two such criticisms of the role of utilitarian thinking in this horror episode in history. First, I will consider the commentary from physicians Chelouche and Brahmer, and then the critique of Catholic theologian LaChat.

#### **Chelouche and Brahmer**

Chelouche and Brahmer [2013: 24] draw the link from utilitarianism to the Nazi horrors as follows.

Utilitarian reasoning was the basis of the Nazi eugenic policies. The Nazi physicians in particular, and the Nazi community in general, did not hold to the view that human life should be respected in all cases. Rather the conviction was that only if human life was one of value to society then it should be respected. Such utilitarian arguments are sometimes evident today.

This criticism is a fundamental misconstrual of utilitarian theory and is repeated throughout their piece. For a utilitarian, all human life ought to be respected in the sense that living humans are the possessors of what is intrinsically good (happiness/well-being). Without a life, there is no happiness and well-being. Secondly, the respect for human life derives not from its value to society, but principally from the value it has for the human being living it. If a human life has value for other members of a society, then that just adds to the value it already has in virtue of it being a happy life.

The Nazi regime judged each human being's usefulness to not just any 'society', but to the German state only. Their eugenics programme was driven by a fanatical nationalism masked in the language of pseudo-scientific Social Darwinism. Chelouche and Brahmer [2013: 9–10] indicate early on how 'German physicians began to elevate service to the state above medical ethics well before the Holocaust' and how they 'promoted policies of racial hygiene'.

Chelouche and Brahmer's confusing usefulness to the state in the service of 'producing a pure Aryan race' with the utilitarian's concern for the welfare of all continues [2013: 10]:

German medicine became an arm of state policy. Nazi physicians failed to see themselves as physicians first, with a calling and an ethic dedicated to healing and caring for the well-being of human beings. Instead, they were seduced into believing that the welfare of the state was to take precedence over their patients, and that the extermination of millions of people was considered as "treatment" for the state.

The 'healing and caring for the well-being of human beings', each one of them considered equally worthy of compassion, lies at the heart of the utilitarian ethic. And yet here the authors portray the opposite, an ultimate concern for the disembodied 'welfare of the state', to encapsulate utilitarian values.

This Nazi concept of 'useful' as 'useful to society' is captured well by Chelouche and Brahmer [2013: 21] in their recounting of Dr. Hermann Pfannmuller's 1939 report, which refers to the institutionalized as 'perfectly useless for social membership in the human community by virtue of their illness'.

Let me make the distinction clear. In utilitarian theory, 'utility' is the sum of the intrinsic values of pleasure (or happiness or welfare or well-being) resulting from an act, practice or institution (see Bentham [1823: ch. 1: III]; University of Minnesota [2011]). The usefulness of the latter is the extent to which it enables and promotes pleasure (or happiness or welfare or well-being) for all. For the Nazis, on the other hand, they considered the usefulness of a human being as the extent to which the person promoted or added to the supremacy of the Aryan race over all others. This ultra-nationalist focus on the health of one nation to the detriment of all others is the antithesis of the universalism inherent in utilitarian moral theory. So, it is perplexing how Chelouche and Brahmer can claim the utilitarian ethic of reducing suffering to the maximum extent possible to be the rationale behind the Nazi's 'perverse ideology of death and suffering' [2013: 11].

The Nazi eugenics programme was modelled on the notions of 'racial hygiene', 'purity' and 'disease'; ideas antithetical to the universal welfarist core of utilitarian thinking. That the Nazis were against universal welfarism is again made clear by Chelouche and Brahmer [2013: 23] in their tracing the eugenics programme's guiding philosophy back to developments after the Great War:

After Germany's defeat in World War I, German scientists and policy makers increasingly began to link eugenics with nationalism and the social "health of the nation." Many research centers were founded to study the field of racial hygiene.

There is no doubt that Hitler was completely deaf and blind to the utilitarians' goal of maximizing well-being for everyone. His anti-utilitarian approach is brought to focus in the dying days of the war. As the Allies were fast approaching his bunker, he issued the order (Nero Decree) to destroy Germany's entire infrastructure, leaving its citizens without transport, food, water and power.

That the Nazis saw ‘utility’ as that which could be put into the service of their cruel, racist ultra-nationalism and not as the ‘utility’ defined in utilitarian moral theory should now be clear. Chelouche and Brahmer’s critique avoided the relevant task of arguing the case that the involuntary sterilizations and killings of thousands of people who the Nazis deemed degenerate resulted in a net increase in utility; that is, that the increase in misery was outweighed by the increase in happiness. Not even the Nazis believed that fiction. As these authors’ account [2013: 18] reveals, the Nazis kept the killings secret:

More than 5,000 children were killed in this first phase of the “euthanasia” program. The program, later expanded to include the murder of adults, was known as Operation T-4. . . . This whole operation was to be kept secret. Death certificates were sent to relatives noting causes of death that were in effect fictitious and chosen from a preselected list. . . . Inevitably such an elaborate system of deceit resulted in human errors which were discovered by the families and their priests.

Whatever state resources were saved in giving up care for the institutionalized was either spent on the administration of the killing machine or went into the war effort to bring death and destruction to Hitler’s enemies. Here, I will not attempt to draw the ledger on the sufferings on one side and the benefits on the other of the Nazi eugenics programme. One could start with the future happiness lost for those killed, the sufferings endured by the victims before and during the killings, the anticipatory and realized sufferings of the victims’ families and friends. I ask that you do those sums also for those involuntarily sterilized. Add the opportunity cost for the vast resources wasted on planning the implementation and managing the administration of the industrial killing and sterilizing machine. And don’t neglect to factor in the multipliers discussed earlier: the law of diminishing marginal utility and the asymmetry between pleasure and suffering (see §10.2 above).

Most significant of all, listen to the stories of the victims of forced sterilization and the murdered victims’ families as these are now being heard. (See, for example, Weindling [2020].) Weigh the benefits of the Nazi eugenics programme against their pains and sufferings and the loss of their loved ones.

Chelouche and Brahmer [2013: 11] appeal to the ‘principle of autonomy’ and the ‘right of informed consent’, as it is enshrined in modern codes of medical ethics, to act as a bulwark against the possibility of the same crimes repeating. Here, we stand together in promoting the basic human right to life and bodily autonomy. In my earlier review of the history of the development of human rights instruments, the psychology of human needs and the results of international happiness surveys, I showed how the need for freedom to make one’s own life choices is an essential ingredient of a happy life well lived.

Chelouche and Brahmer [2013: 28] cite how:

The World Medical Association and the International Federation of Health and Human Rights Organizations (IFHHRO) condemned the practice of coerced sterilization as a form of violence that severely harms the physical and mental health of patients and infringes on their human rights.

A utilitarian can add here that it is an infringement of human rights precisely because it is a form of violence that severely harms the physical and mental health of patients. It is important to note here that Chelouche and Brahmer do not advocate a total prohibition on involuntary sterilizations. Along with contemporary utilitarians, they allow it when it is in ‘the best interests of the patient’ [2013: 28] and where ‘the person is unable to make the decision, or has not made prior statements concerning such eventualities’. The evaluation ‘should be made by the family or surrogate with input, if requested, from the physician’ [2013: 25].

The patient rights enshrined in The Nuremberg Code (1947) (see British Medical Journal [1996]) and the later biomedical rights declarations deriving from this seminal document set the institutional ground rules for the prevention of the egregious harms that eugenics programmes can inflict when they ignore the fundamental needs of human beings.

In summary, Chelouche and Brahmer’s critique of the utilitarian ethic mistakenly conflates the Nazi reverence for the German state and anything that furthers its supremacy with the universalist and welfarist moral philosophy of utilitarianism. Their case that the utilitarian ethic permits the wholesale sterilization and killing of the socially and genetically unfit therefore fails.

### LaChat

The second critique I will consider advancing the case that utilitarian thinking is insufficient to defend against the persecution of minorities is from Catholic theologian LaChat. LaChat [1975: 15] describes his purpose thus: ‘In this essay we wish to show the extent to which utilitarian reasoning, particularly in its cost-benefits formulation, was incorporated into Nazi medical policy.’

LaChat [1975: 22–3] makes the following strong claim for his historical review of the Nazi racial and eugenic laws debated and legislated in the 1930s:

What they do demonstrate is that utilitarian reasoning, especially in its cost-benefits form, was used extensively to justify the legislation . . . But certainly it can be assumed that many of the listeners and perhaps some of the legislators were people of good will who took the utilitarian calculus to be the most reasonable moral track to take.

Now, what does LaChat take ‘utilitarian reasoning’ to be? After telling us that the ‘origins of the philosophical definition of the term, attributed mainly to Bentham and J. S. Mill, have become obscured to such an extent as to make the word almost vacuous in common parlance’ [1975: 15], he gives us a ‘working definition’:

utilitarianism means that right action is determined solely on the basis of the consequences of the action — that is to say, right action is that which produces the greatest balance of good over bad, or “the greatest good for the greatest number.”

What LaChat does not tell us is how it is that the classical utilitarians, Bentham and J. S. Mill, wrote so much only some 200 years before to develop the philosophical theory of utilitarianism and yet the origins have become so ‘obscured’ that the term is now virtually

meaningless. What is this ‘good’ that utilitarians aim for and this ‘bad’ that they avoid? LaChat neglects to say that it is pleasure and happiness for the former and pain and suffering for the latter. The classical utilitarians further developed the earlier hedonist tradition in value theory. For the classical utilitarians, what is intrinsically ‘good’ and intrinsically ‘bad’ is not an optional add-on in the theory, to be filled in with whatever takes the moralist’s fancy. This value theory and the principle of universalisation form a core part of classical utilitarianism and its modern revisions. MacAskill *et al* [2023] identify clearly the four key elements of utilitarianism: consequentialism, welfarism, impartiality and aggregationism. LaChat, singling out in his ‘working definition’ only the first of these four elements, hands us but a caricature of what is meant by the theory of ‘utilitarianism’.

LaChat’s obfuscation of the philosophical term, ‘utilitarian’, will serve LaChat’s purpose well as he moulds the meaning of the term to suit his own ends. It is here that we see LaChat adopting the same strategy of equivocation as Chelouche and Brahmer above. LaChat [1975: 17] quotes approvingly of Gasman’s summarising of Nazi influencer Haeckel’s emphasis on ‘the absolute subordination of the individual to the interest and use of the group’:

Conversely, the survival of the individual was of no importance. Life itself was only of relative value and depended solely on the usefulness of the individual organism to its own species and to the evolution of life in general. No individual was of unique value in himself . . .

[Gasman 1971]

The utilitarian’s principle of impartiality and their upholding of the intrinsic value of each individual’s happiness is the direct antithesis of Haeckel’s Social Darwinism. The game is given away only a few lines down where LaChat recounts how Haeckel ‘raved against bourgeois democratic egalitarianism and liberalism’. Haeckel here is referring to the exact same bourgeois democratic egalitarians and liberals in the likes of Bentham and J. S. Mill, who LaChat [1975: 15] earlier correctly identified as the originators of what they termed ‘utilitarianism’.

On the next page, LaChat [1975: 18–19] calls into service the classical utilitarian’s appeal to the greatest good to equate it with what he takes to be an example of ‘Utilitarian ethical reasoning’: ‘The Nazis and the proto-Nazis before them were in pursuit, as Gasman noticed, of the “greatest possible biological fitness of the nation . . .”’ Again, maximizing the biological fitness of the nation is the principle aim of fanatical ultra-nationalists holding to a ‘hygiene’ theory of morality, and not that of utilitarians, especially if achieving this ‘fitness’ entails a world of pain and misery for all except the super race.

This obfuscation continues to the end where LaChat [1975: 29] tries to draw the link between contemporary contributions of utilitarians to modern bioethics to the Nazi eugenics programme. He asks:

Does a purely utilitarian calculus carry within it something akin to a conception of a “perfect man” (or woman) — that is, one of “greatest use” to the community — by which “defectives” are measured and found lacking and therefore unworthy of living?

The answer is: No. Not if one means by ‘utilitarian’ what is meant in the literature on moral theory from the time of the classical utilitarians in the seventeenth century. Even Chelouche and Brahmmer [2013: 12] are careful not to associate any current-day bioethicists with Nazi thinking when they write:

However, we want to emphasize that by analyzing the moral arguments that can be learned by studying the lessons of the Nazi medicine, we are not suggesting that any moral or ethical present day bioethics discourse, or opinion, is in any way morally equivalent to the Nazi doctors.

LaChat has a problem in that the Nazis adopted the commonly accepted philosophical meaning of ‘utilitarianism’ and expressly rejected it as a moral theory. This does not sit at all well with LeChat’s mission to show that the Nazi eugenics programme was motivated by utilitarian thinking.

How does he deal with this problem? LaChat [1975: 16] recognized that ‘the Nazis themselves condemned utilitarianism as a rule (usually as being “bourgeois”) but had the remarkable and somewhat paradoxical habit of appealing to it fairly often in justifying their own thought’. I suggest that the paradox disappears once one accepts that the Nazis used the term ‘utilitarianism’ correctly as generally understood.

Further on, LaChat [1975: 23] quotes Nazi Kurt Gauger fuming against ‘the liberalistic-materialistic world-view, with its goal of the “greatest happiness for the greatest possible number”’. For this, LaChat [1975: 23] poses a quandary:

If one were not to consider that the Nazis were in some part motivated by utilitarian reasoning one would have to explain a paradoxical fact — namely, that many Nazis who condemned implicitly or explicitly the “Utilitarianism” of the western democracies themselves used the form of ethical reasoning extensively.

Again, there is no paradox to worry over if one does not accept LeChat’s mistaken thesis that the Nazis relied on utilitarian reasoning to justify their programme of eugenics and wholesale murder. It only becomes a paradox for LaChat because he wants to appropriate and warp the term ‘utilitarianism’ for his own agenda against contemporary utilitarians.

If one were to look for which moral theory lay at the base of the Nazi eugenics programme, there are more fruitful places to look than to utilitarianism.<sup>19</sup> Those familiar with the history of Nazism recognize how central the notions of absolute obedience to the German state and racial purity are in Nazi propaganda. Using Haidt and Joseph’s [Haidt 2012: ch. 5] moral foundations theory as a schemata, then, one could easily argue that the Nazi’s moral sentiments were much more bedded in the ‘loyalty/betrayal’,

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<sup>19</sup>I grant LaChat credit for pointing to the sins of many high-ranking Catholics in supporting the Nazi eugenics and racial purity programme on cost-benefit grounds (LaChat [1975: 18]) and to the easing of restrictions on Catholic nuns assisting in sterilizations on grounds of “expedience” [1975: 27]). However, this Catholic expediency went right to the top with Pope Pius XII’s Concordat with Hitler to save the power base of the Vatican and the helping with safe passage to South America of many Nazi war criminals at the end of the war (see, for example, University of Nebraska at Omaha [2023]). I can’t help but note the hypocrisy in LaChat’s attempts to link Nazi thinking with utilitarian theory.



‘authority/subversion’ and ‘sanctity/degradation’ foundations. In the Nazi universe, loyalty to the state and to Hitler is paramount. For support, one can point to Hitler’s [1925: 127f] pronouncement that ‘the most essential condition for the establishment and maintenance of a State is a certain feeling of solidarity, wounded in an identity of character and race and in a resolute readiness to defend these at all costs’.

Nazi propaganda is replete with references to sanctity and cleansing. On eugenics in particular, Hitler urged that the ‘germs’ of the ‘physically degenerate or mentally diseased’ must be eliminated through sterilization [1925: 315] in order to perform the ‘most sacred duty’ to preserve the ‘purity of the racial blood’ [1925: 313]. The least significant moral aspect one ought to associate the Nazi eugenics programme with is the utilitarian concern for care expressed in Haidt and Joseph’s ‘care/harm’ foundation. This foundation is far too ‘bourgeois’, ‘liberal’ and ‘weak’ for the Nazi purifying machine.

Nazism is also strong on the moral centrality of duty; the citizen’s uncompromising duty to the German State, the duty of parents to bear racially pure children, and so on. With this emphasis on duty, perhaps there is a stronger case for linking the Nazi eugenics programme to deontological ethics than to utilitarianism. In riling against the right of the ‘most depraved degenerates to propagate themselves’, Hitler appealed to Germans to do their ‘most sacred duty [so] that the purity of the racial blood should be guarded’ [1925: 313]. He further emphasized the pre-eminence of duty: ‘The right to personal freedom comes second in importance to the duty of maintaining the race’ [1925: 201]. Again, Hitler makes the duty to produce fit offspring a religious imperative when he appeals to every German citizen’s ‘bounden duty to give to the Almighty Creator beings such as He himself made to His own image’ [1925: 316].

Hitler and the Nazi regime very much emphasized the importance of developing the right virtues in youth through proper education. So, one could also make the case that the Nazi eugenics programme relied on virtue ethics. Again, the inculcation of virtues is placed within a religious frame. Hitler appealed to ‘heroic virtues’ in ridding the state of ‘parasites’ [1925: 127f, 323f] and invoked the ‘Divine Will’ against the ‘sin’ of allowing the ‘weaker’ to live [1925: 113, 223f]. Where a Nazi leader expressly complains about one of the moral philosophies I’ve offered here (deontology, virtue ethics, religious ethics), the critic, in LaChat fashion, can simply generate a ‘paradox’ requiring more research.

LaChat’s favoured moral philosophy is Natural Law theory. Now, one could repeat the above method of analysis to show how the Nazi eugenics programme was driven by this moral theory. One could point to how Hitler emphasized the ‘obligations imposed on them by Nature’ [1925: 312] and how it is ‘the natural law . . . that the stronger must overcome the weaker’ and ‘be destined to fulfil the great mission’ [1925: 274]. Any counterexamples to this conclusion could be deflected again by generating a ‘paradox’ requiring a future solution.

If LaChat objects that the Nazi notion of ‘Natural Law’ is very different to LaChat’s Thomistic notion, one could retort that the ‘origins of the philosophical definition of the term . . . have become obscured to such an extent as to make the word almost vacuous in common parlance’ [LaChat 1975: 15]. To remedy this increasing obscurity from the time of Aquinas, one could offer a new ‘working definition’ that easily encompasses the Nazi’s use of the term.

Now, I'm not saying that the Nazi eugenics programme was founded on deontological ethics or virtue ethics or Natural Law theory. What I am trying to show is that it is all too easy for a critic to focus on some central concept in a moral theory, such as 'usefulness', 'duty', 'virtue' or 'natural law', pick out instances where that same term is used in some Nazi speeches and writings and then claim that the classical or modern versions of the moral theory are implicated in Nazi horrors.

What I was expecting in LaChat's essay was some work in showing how applying one or more of the classical or contemporary versions of the utilitarian calculus vindicates the Nazi eugenics programme on a utilitarian's own terms. LaChat [1975: 20] refers to the work of Nazi Professor Fetscher, writing in 1933 of 'a family in which five out of eight children were idiots. They have cost the community more than 58;000 marks (\$13,804)'. And in a section titled, Sterilization: The Cost-Benefit Analysis [1975: 21], LaChat recounts how in 1934 the Nazi Federal Bureau of Statistics 'gave an estimate of expenses and savings for the sterilization of men and of women'.

However, LaChat makes no attempt to add into the calculation what any classical or contemporary utilitarian would add in in order to demonstrate the utility or disutility of the Nazi programme. LaChat fails to mention, let alone attempt to quantify, the various significant disbenefits of the programme. He fails to account for the value of the murdered people's lives to themselves, their family and all others impacted. Nor does he attempt to count the significant costs of mistakes, premature deaths, corruption and general fear among the population over whether they will be counted next as genetically or socially unfit. LaChat [1975: 25] does make reference to this general fear of the population, but appears to think it of no relevance to a utilitarian. The omission of these significant disbenefits by LaChat is akin to counting the savings won from the federal government halting its printing of money while ignoring the significant disbenefits accruing from taking money out of the economy.

These overriding disbenefits highlight why the right to life and liberty and the right to bodily autonomy are so crucial to recognize. Once a government can decide who is socially unfit for life and procreation, corruption creeps in with other social groups targeted; political opponents, criminals, sexual 'deviants', and so on. Here again, LaChat [1975: 26] recognizes this scope for corruption and yet does not include this inescapable risk as a disbenefit that utilitarians factor in.

Both Chelouche and Brahmer on the one hand, and LaChat on the other, make no real attempt to link philosophically or ideologically the 'utilitarianism' of the Nazis to what is understood by 'utilitarian' moral philosophy since well before the rise of the Nazi regime. Chelouche, Brahmer and LaChat commit, I think, a serious error of equivocation. In their own ways, they put up a straw man of 'utilitarianism' that they can easily knock down.

Far from utilitarian moral theory encouraging the persecution of minorities, I have tried to show that utilitarianism can provide a thoroughgoing defence of the rights of minorities to the full set of freedoms and social benefits owed everyone else. Historically, utilitarians were at the forefront of campaigning for the rights of minorities and other persecuted groups. As examples, Bentham advocated decriminalizing homosexuality, abolishing slavery and banning the cruel treatment of prisoners and animals. J. S. Mill campaigned resolutely for women's equality and for social welfare for the poor. Sidgwick,

another prominent utilitarian, advocated against religious tests for public office and for the admission of women into universities.

J. S. Mill [1863: ch. 5: 60] can be regarded as presaging and pushing back against the Nazi notion of racial priority while appealing to history's longer march towards greater inclusion when he wrote:

The entire history of social improvement has been a series of transitions, by which one custom or institution after another, from being a supposed primary necessity of social existence, has passed into the rank of a universally stigmatised injustice and tyranny. So it has been with the distinctions of slaves and freemen, nobles and serfs, patricians and plebeians; and so it will be, and in part already is, with the aristocracies of colour, race, and sex.

This tradition of advocating for equal consideration for the disenfranchised continues today with many utilitarians campaigning for penal reform, wage justice for the poor, abolition of factory farms and mitigating the corruption of democracies by populists.

## 11. Objection: Happiness Can't Be Measured

The final critique against the prospect of utilitarianism grounding human rights is that happiness cannot be measured. If we cannot at least roughly quantify the extent to which satisfying a basic human need contributes to a person's happiness and life satisfaction, then my argument based on happiness fails.

Ingelström and van der Deijl [2021] offer a substantial methodological critique while Baggini [2018] makes a different kind of complaint. For my purpose here, I will restrict my response to Knutsson's [2016] criticisms. Knutsson objects on a number of fronts. One criticism is that happiness and suffering are so different in nature that they are incommensurable. As Knutsson puts it:

One can believe that because happiness and suffering are so different, it does not make sense to compare magnitudes of happiness and suffering on the same scale.

My response to this criticism is that Knutsson's contention belies our everyday experience. We put up with the discomfort of waiting in a queue for two hours for the pleasure of experiencing a great concert. Women bear the pain of childbirth for the many satisfactions gained from parenthood. Our legislators levy taxes even on begrudgers in order to build roads, schools and power utilities. We often trade a discomfort for a later happiness and most times without much effort we evaluate how much future happiness is worth the trade.

A second objection is that it is highly doubtful that happiness and suffering 'are (in principle) measurable to the required degree in an objective, non-arbitrary, scientific way that does not involve value judgements on the part of the person doing the measurement' [Knutsson 2016]. Knutsson explains:

I try to avoid saying that the magnitude of an instance of happiness is equal to, greater than, or smaller than an instance of suffering, but if I would say that, I would think of my statement as being partly a value judgement. It would be colored by how bad I believe that the suffering is compared to how good I believe that the happiness is.

What we need to appreciate here is that all of our statements about how happy or how sad we feel with something are expressions of the value we put on that thing. By their nature, happiness and sadness are our affective responses to situations. This expression of value does not mitigate against the objectivity of a scientific description of the degree of value that a person puts on a situation evoking the happy or sad response. An observer can remain entirely objective in reporting a subject who experiences the elation from winning a marathon as twice as significant as the discomfort from stubbing their toe. The subject themselves, likewise, can maintain the same objectivity in self-reporting their valuations, as long as they are not lying, not deceiving themselves, and so on.

The situation is akin to reporting on someone's likes and dislikes. Mary says, 'I like live theatre a lot'. She is expressing the high positive value she places on live theatre. When John reports Mary's high regard for live theatre, he is objectively reporting Mary's

psychological state. Likewise, there is no impediment to Mary reporting objectively on her own psychological state of valuation. That they are, in both cases, reports of valuations makes them no less objective than reporting that Mary is very tall or that Mary is seeing a friend.

I shall deal here with one final objection from Knutsson. On the psychometric approach to measuring happiness, Knutsson [2016] writes:

The third approach is to postulate the existence of something unobservable such as anxiety, satisfaction or intelligence, and propose a way to measure it. One then checks how the measure covaries with, for instance, behavior, others' judgments, different circumstances and measures of other things. If the measure behaves as expected, that is taken to be good news for the postulate and the measure. . . . With this approach, it seems that happiness and suffering could be measured, perhaps even on a ratio scale, but I find the approach unattractive, partly for the following reason: regardless of whether the approach is used to establish the existence and structure of the postulated unobserved thing, or the approach is used to make a suggestion of how one ought to measure morally relevant things such as suffering for the purpose of making decisions, I do not see that it helps much that the measure behaves as expected. Perhaps the correct measure (if there is one), does not behave as we expect, and perhaps a different postulated entity and measure is more ethically attractive, regardless of whether that measure behaves as expected.

It is hard to fathom how a 'correct measure' of happiness and suffering could 'not behave as we expect', and Knutsson fails to tell us how he thinks this is possible. I suspect he does not understand how model-based approaches work and the role they play in the advancement of scientific knowledge (even though he refers to Eran's [2017] description of how this kind of explanation works). Knutsson does recognize how, with this approach, the researcher tracks the variation of the 'unobservable' against variations of known observables, such as 'behavior, others' judgments, different circumstances and measures of other things'. The key here is that the researcher's theoretical model explains *how* the 'unobservable' and the observables covary. The model is confirmed when it is tested against variations of observables that have so far not been observed. If the model's predictions of degree of covariance are confirmed, that constitutes independent confirmation of the model. If the values of the two variables turn out not 'as we expect', then that is evidence that the model is *incorrect*.

What progress has been made in objectively measuring happiness? Answering the question, 'Can "happiness" really be measured?', world-wide happiness data collators, Ortiz-Ospina and Roser [2013] note the following:

Self-reports about happiness and life satisfaction are known to correlate with things that people typically associate with contentment, such as cheerfulness and smiling. [Here, the authors provide a scatter plot correlating countries in which people self-report higher life satisfaction with countries in which people tend to smile more.]

Experimental psychologists have also shown that self reports of well-being from surveys turn out to correlate with activity in the parts of the brain associated with pleasure and satisfaction. And various surveys have confirmed that people who say they are happy also tend to sleep better and express positive emotions verbally more frequently.

Ortiz-Ospina and Roser [2013] also provide a table, adapted from psychologists Kahneman and Krueger, listing a set of variables 'that researchers have found to be related to self-reported happiness and life satisfaction'. They conclude from the evidence 'that survey-based measures of happiness and life satisfaction do provide a reasonably consistent and reliable picture of subjective well-being'.

Drawing on a wealth of research in many countries and over decades, the Organization for Economic Cooperation and Development released a set of comprehensive guidelines for collecting, publishing and analysing subjective well-being data. The authors of the report [OECD 2013: 10] state confidently that in the past two decades 'an increasing body of evidence has shown that subjective well-being can be measured in surveys, that such measures are valid and reliable, and that they can inform policy making'. The results of national and international research on happiness and well-being I reported in §4 above is but a snapshot of the data being uncovered.

This now concludes my support for the final of my three objectives for this essay. Here, I sought to demonstrate that all other appeals for grounding human rights other than to the satisfaction of basic human needs (e.g., to autonomy, dignity, justice) are simply elaborations of those fundamental requirements for satisfying human needs. I also aimed to answer more general criticisms of utilitarianism where relevant to the question of human rights.

## 12. Conclusion

A common criticism of utilitarianism is that it does not do justice to human rights. The complaint is that utilitarian moral theory validates the persecution of minorities and the sacrificing of innocent individuals where the interests of the majority are better served. In this essay, I have tried to turn the tables on these critiques. Far from utilitarianism ignoring transgressions against basic human rights, I have argued that utilitarianism is the best moral theory for explaining our support of human rights and the content of our various human rights instruments.

I began this essay outlining what different human rights theorists agree on: human rights are claims on others, characterized by their high priority, inalienability, defeasibility and universality. Also, human rights are of two kinds; liberty rights (negative rights) and social rights (positive rights). I offered two criteria for evaluating the adequacy of any theory of human rights. First, that it adequately grounds human rights, and second, that it can adjudicate in a principled way between conflicting rights. I ended the opening section with the contrast between utilitarianism, as a consequentialist theory, and deontological theories of rights based on principal duties. I also mentioned 'act' and 'rule' variants of utilitarianism that affect how human rights are seen.

To support the first of three aims for this essay, showing that human rights instruments arose from the need to prevent human suffering and promote well-being, I provided historical case studies of five key human rights declarations and conventions, examining their origins and social impact. First, I showed how the Magna Carta (1215) addressed grievances of barons against a capricious king and codified the rights of serfs. The Bill of Rights 1689 (England) protected against the painful excesses of King James II. The U.S. Declaration of Independence (1776) served as an antidote against the miseries wrought by the British Empire, influencing the later abolition of slavery and the women's rights movements. The Declaration of the Rights of Man (1789) arose from increasing social and economic inequality during the French Revolution. Finally, the U.N. Universal Declaration of Human Rights (1948) emerged as a response to Nazi atrocities during WWII. These historical documents reflect evolving human rights thinking, rooted in real deprivations and sufferings of people. The content of human rights instruments became more comprehensive over time, extending rights to newly recognized subjugated groups.

These instruments articulate foundational principles upon which societies minimize suffering and enable human flourishing. I likened the social construction of human rights to the development over time of the game of chess. Both are a natural system of rules, roles and penalties devised to meet certain human objectives.

On this account, I formally defined a human right as:

A human right is a basic human need (physiological, psychological, social) potentially borne by all human beings, the satisfaction of which minimizes the chance of suffering while maximizing the chance of happiness and well-being, and expressed in the form of a moral obligation on others to act or desist from acting in ways that thwart their satisfaction.

In the next section, I turned our attention to identifying those needs that human rights instruments serve to satisfy. I summarized how modern research on psychological models, such as Maslow's Hierarchy of Needs, Alderfer's ERG Theory and Carl Rogers' Theory of Personality Development, support the identification of physiological, safety, social, self-esteem and self-actualization needs as basic to human beings. Furthermore, happiness surveys, such as the World Values Survey and the World Happiness Report, corroborate these findings, identifying factors such as physical and mental health, human relationships, income, personal freedom and lack of corruption as determinants of happiness and well-being. To demonstrate an example of the intrinsic connection between human rights and human well-being, I mapped the specific human rights enunciated in the International Covenant on Civil and Political Rights to these fundamental needs. This alignment underscores the notion that human rights are inherently tied to promoting happiness, thereby minimizing misery and enhancing overall human well-being.

Moving to my second key objective for this essay, I argued for a key advantage of a utilitarian justification for human rights. This needs-based approach allows for a rational method of decision-making when individual rights clash, ensuring the greatest overall well-being. Working through four case studies, I provided numerous examples of conflicting rights in situations where public safety, security, health and order are under threat and illustrate how international covenants address these conflicts based on the principle of utility. Despite occasional references to a divine source, the authors acknowledged the importance of satisfying human needs and promoting well-being in their pursuit of establishing human rights. The UN General Assembly Resolution emphasizing happiness as a fundamental human goal makes this objective even clearer.

My final aim was to respond to some key objections to the idea that human rights are grounded in minimizing suffering and promoting happiness. To the objection that considerations of utility alone overlook the significance of autonomy, I showed how autonomy and happiness are interconnected. Psychological theories highlight autonomy as a basic human need, essential for self-esteem and self-actualization. International happiness surveys also link autonomy to well-being.

To the second objection that focusing solely on human happiness and suffering neglects the dimension of human dignity inherent in the notion of 'human rights', I noted that while the definition of 'dignity' is complex, it aligns with respecting privacy, autonomy, and worth. These three elements are integral with utilitarian principles, thereby bridging the gap between the utilitarian ethic and the importance of human dignity in framing human rights.

The third objection I considered is that utilitarianism overlooks the requirements of justice in the formulation of human rights. To this, I showed how act utilitarians and rule utilitarians can respond with some success to commonly offered counterexamples, such as the Transplant Case, Sheriff Case and Rationing Case. The best response is from the most nuanced form of utilitarianism—rules in practice utilitarianism—that explains how pre-established broader social systems, such as human rights instruments, are evaluated in terms of their overall utility. A second kind of response to this objection is to point out that a fundamental principle of justice—equal consideration of interests or the principle of impartiality—lies at the heart of the utilitarian ethic.



For the fourth objection concerning utilitarianism permitting the persecution of minorities, I examined two historical case studies. Against the first case study involving the Roman torture of Christians, I applied a standard method for quantifying pleasure and suffering to conclude that the suffering of the persecuted Christians far outweighed the pleasure of the Roman persecutors. In dealing with potential objections to my calculations, I drew upon the well-established economic law of diminishing marginal utility and the psychological asymmetry between pleasure and suffering. Rules in practice utilitarianism provides an additional barrier to any system that arbitrarily abuses minorities for the sake of the majority, further establishing utilitarians' credentials for underpinning the notion of human rights.

In response to the second case study highlighting the purported role of utilitarian thinking in the Nazi eugenics programme, I exposed how the critics wrongly confused utilitarian universalism and welfarism with the Nazi's fanatical nationalism and disregard for human life. The Nazi's consequentialist 'usefulness to society' criterion starkly contradicts utilitarians' prioritizing the well-being of every person for itself.

The final objection, that happiness cannot be measured, is multi-faceted. To the claim that happiness and suffering are too different to be compared on the same scale, I pointed out how we all routinely make trade-offs between discomfort and future happiness. Responding to the criticism that assigning degrees of happiness cannot be objective as these judgments are coloured by valuations, I noted how reports of subjective valuations can still be objective. On the positive side, I cited research showing how self-reports of happiness align with outward, objectively discernible indicators, demonstrating that happiness can be measured.

Utilitarian theory not only has the resources to answer objections convincingly, it can help us further articulate human rights and moral rights more broadly moving forward. From the classical period in the seventeenth century, utilitarians have been at the forefront of expanding the boundaries that limited who is afforded basic human rights. As we have seen, utilitarians historically advocated for expanding rights to slaves, children, women, the poor, homosexuals and prisoners. Today, utilitarian thinking is pushing us even further in granting rights. Some notable examples include conferring rights on the terminally ill (right to voluntary assisted dying), homosexuals (right to marry), prisoners (right to humane treatment), indigenous peoples (right to land, treaty), immigrants (right to refugee asylum) and to non-human sentient creatures (right against suffering, factory farming, medical experimentation).

The utilitarian frame of mind also continues to help us adjudicate on an objective basis when rights conflict, prompting us to weigh risks to public health, order, safety and security against personal rights to privacy and autonomy. Restrictions on movement during the corona virus pandemic and on government and social media gathering of personal digital data are recent examples.

As our scientific understanding and technology advance, utilitarian thinking will also assist us in granting new moral rights to previously ignored life forms. With the advance of neuroscience and ethology, we are gaining a greater understanding of which species on the ladder of evolution have the capacity to suffer, and therefore fall within our circle of moral concern. At the other end of the spectrum, our development of Artificial Intelligence (AI) is

advancing rapidly. At what point in this technological progress will machines be owed moral rights? The utilitarians' criterion of moral worth hinging on the capacity to experience dissatisfaction gives us an objective yardstick. Although, at this stage in our understanding of consciousness and of neural networks, it remains an inordinately difficult question of just when this capacity will arise in artificial intelligences.

Into the future, the utilitarian moral framework will continue to give us the most illuminating and productive way of understanding universal human rights and moral rights more generally. The objectivity of the utilitarian view continues to demonstrate substantial advantages over the more idiosyncratic methods of intuition and appeals to a divine realm in determining which human rights we have and how we resolve conflicts between them.

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## Appendix 1

Listed below are 11 key human rights declarations and conventions that served as important marking points in the theoretical and socio-political development of human rights thinking. I have added some brief notes and references to each. The first reference is to an online source for the content of the document while the second reference is to a brief online history of its development.

### 1. Magna Carta (1215 – England)

- medieval Latin for ‘Great Charter of Freedoms’
- settled dispute between King John of England and rebel barons
- reaction against King’s arbitrary demands, extrajudicial punishments and debilitating taxes
- established the right to due legal process

Text: <https://www.archives.gov/exhibits/featured-documents/magna-carta/translation.html>

History: [https://en.wikipedia.org/wiki/Magna\\_Carta](https://en.wikipedia.org/wiki/Magna_Carta)

### 2. Bill of Rights (1689 – England)

- King James II of England dethroned
- William III of Orange-Nassau (William of Orange) and wife, Mary, proclaimed King and Queen of England, France and Ireland
- reaction against the King’s cruel punishments, abuse of courts and parliamentary representation
- model for the later Bill of Rights
- still cited in legal proceedings in United Kingdom and broader Commonwealth

Text: <https://www.legislation.gov.uk/aep/WillandMarSess2/1/2>

History: [https://en.wikipedia.org/wiki/Bill\\_of\\_Rights\\_1689](https://en.wikipedia.org/wiki/Bill_of_Rights_1689)

### 3. U.S. Declaration of Independence (1776)

- reaction against colonialist Great Britain’s excessive taxes and punishments, judicial overreach, lack of political representation
- played a key role in the later abolition of slavery

Text: <https://www.archives.gov/founding-docs/declaration-transcript>

History: [https://en.wikipedia.org/wiki/United\\_States\\_Declaration\\_of\\_Independence](https://en.wikipedia.org/wiki/United_States_Declaration_of_Independence)

#### 4. U.S. Bill of Rights (1791)

- constitute the first ten amendments to the United States Constitution
- guarantees personal freedoms and rights, limitations on federal government's judicial powers and the deferring of non-declared powers to states

Text: <https://www.archives.gov/founding-docs/bill-of-rights-transcript>

History: [https://en.wikipedia.org/wiki/United\\_States\\_Bill\\_of\\_Rights](https://en.wikipedia.org/wiki/United_States_Bill_of_Rights)

#### 5. Declaration of the Rights of Man (1789 – France)

- reaction to King Louis XVI with rising social and economic inequality, ballooning government debt, economic depression, unemployment, high food prices, regressive tax system
- in 1793, the Assembly condemned King Louis XVI to death for 'conspiracy against public liberty and general safety'

Text: [https://avalon.law.yale.edu/18th\\_century/rightsof.asp](https://avalon.law.yale.edu/18th_century/rightsof.asp)

History: [https://en.wikipedia.org/wiki/Declaration\\_of\\_the\\_Rights\\_of\\_Man\\_and\\_of\\_the\\_Citizen](https://en.wikipedia.org/wiki/Declaration_of_the_Rights_of_Man_and_of_the_Citizen)

#### 6. American Declaration of the Rights and Duties of Man (1948)

- first general international human rights instrument
- United Nations adopts Universal Declaration of Human Rights eight months later

Text: <http://hrlibrary.umn.edu/oasinstr/zoas2dec.htm>

History: [https://en.wikipedia.org/wiki/American\\_Declaration\\_of\\_the\\_Rights\\_and\\_Duties\\_of\\_Man](https://en.wikipedia.org/wiki/American_Declaration_of_the_Rights_and_Duties_of_Man)

#### 7. U.N. Universal Declaration of Human Rights (1948)

- adopted by the General Assembly as UN Resolution A/RES/217(III)[A]
- 48 voted in favour, none against, 8 abstained
- reaction to atrocities committed by the Nazis
- adopted universalist language

Text: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

History: [https://en.wikipedia.org/wiki/Universal\\_Declaration\\_of\\_Human\\_Rights](https://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights)

### **8. European Convention on Human Rights (1950)**

- signed by Members of the Council of Europe
- legally binding enactment of the Universal Declaration of Human Rights

Text: [https://www.echr.coe.int/documents/d/echr/convention\\_eng](https://www.echr.coe.int/documents/d/echr/convention_eng)

History: [https://en.wikipedia.org/wiki/European\\_Convention\\_on\\_Human\\_Rights](https://en.wikipedia.org/wiki/European_Convention_on_Human_Rights)

### **9 International Covenant on Civil and Political Rights (1966)**

- adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI)
- legally binding enactment of Universal Declaration of Human Rights

Text: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

History: [https://en.wikipedia.org/wiki/International\\_Covenant\\_on\\_Civil\\_and\\_Political\\_Rights](https://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights)

### **10. American Convention on Human Rights (1969)**

- adopted by many countries in the Western Hemisphere

Text: [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm)

History: [https://en.wikipedia.org/wiki/American\\_Convention\\_on\\_Human\\_Rights](https://en.wikipedia.org/wiki/American_Convention_on_Human_Rights)

### **11. African Charter on Human and Peoples' Rights (1982)**

- adopted by members of the Organization of African Unity

Text: <http://www1.umn.edu/humanrts/instree/z1afchar.htm>

History: [https://en.wikipedia.org/wiki/African\\_Charter\\_on\\_Human\\_and\\_Peoples'\\_Rights](https://en.wikipedia.org/wiki/African_Charter_on_Human_and_Peoples'_Rights)

## Appendix 2

Listed below is the mapping of each of the Articles in the International Covenant on Civil and Political Rights [United Nations (General Assembly) 1966] to the following:

- (a) specific needs identified in Maslow's Hierarchy of Needs, and
- (b) specific preconditions for happiness identified in the *World Happiness Report 2023* (WHR)

For a discussion of the mapping, see §4.2 Happiness Surveys.

### **Article 1** – right of self-determination

Maslow: safety/social/self-esteem/self-actualization

WHR: physical and mental health/human relationships/income and employment/  
personal freedom

### **Article 2** – right to non-discrimination and legal remedy

Maslow: physiological/safety/social/self-esteem/self-actualization

WHR: physical and mental health/human relationships/income and physical and  
mental health/human relationships/lack of corruption/effective government

### **Article 3** – right of men and women to equal enjoyment of rights

Maslow: physiological/safety/social/self-esteem/self-actualization

WHR: physical and mental health/human relationships/effective government

### **Article 4** – rights derogated in time of public emergency

Maslow: physiological/safety

WHR: physical and mental health

### **Article 5** – no right to destroy rights and freedoms

Maslow: physiological/safety/social/self-esteem/self-actualization

WHR: physical and mental health/human relationships/personal freedom/  
lack of corruption/effective government

### **Article 6** – right to life; freedom from genocide

Maslow: physiological/safety

WHR: physical and mental health/effective government

### **Article 7** – freedom from torture, cruel, inhuman or degrading punishment

Maslow: physiological/safety/self-esteem

WHR: physical and mental health/effective government

### **Article 8** – freedom from slavery or forced labour

Maslow: physiological/safety/social/self-esteem/self-actualization

WHR: physical and mental health/personal freedom/income and employment

**Article 9** – right to liberty, security of person, arrest in accordance with law

Maslow: safety

WHR: personal freedom/lack of corruption/effective government

**Article 10** – right of accused to humane treatment

Maslow: safety/self-esteem

WHR: physical and mental health/lack of corruption/effective government

**Article 11** – freedom from imprisonment on ground of inability to fulfil contract

Maslow: self-esteem/self-actualization

WHR: physical and mental health/personal freedom

**Article 12** – freedom of movement and choice of residence

Maslow: social/self-esteem/self-actualization

WHR: human relationships/personal freedom

**Article 13** – freedom of aliens from unlawful expulsion and right to review

Maslow: social/self-esteem/self-actualization

WHR: human relationships/personal freedom/lack of corruption/effective government

**Article 14** – right to equal treatment before law, fair trial, presumption of innocence

Maslow: self-esteem/self-actualization

WHR: physical and mental health/lack of corruption/effective government

**Article 15** – freedom from backdating criminal law and severity of penalty

Maslow: self-esteem/self-actualization

WHR: physical and mental health/lack of corruption/effective government

**Article 16** – right to recognition as person before the law

Maslow: self-esteem/self-actualization

WHR: physical and mental health/lack of corruption/effective government

**Article 17** – freedom from arbitrary interference with privacy, family and from libel

Maslow: social/self-esteem/self-actualization

WHR: physical and mental health/human relationships/effective government

**Article 18** – right to freedom of thought, conscience and religion

Maslow: social/self-esteem/self-actualization

WHR: human relationships/character virtues/personal freedom

**Article 19** – right to hold opinions, freedom of expression

Maslow: self-esteem/self-actualization

WHR: physical and mental health/personal freedom

**Article 20** – freedom from war propaganda, incitement to discrimination, hostility

Maslow: physiological/safety/social/self-esteem/self-actualization

WHR: physical and mental health/human relationships/personal freedom

**Article 21** – right of peaceful assembly

Maslow: social/self-esteem/self-actualization

WHR: human relationships/personal freedom

**Article 22** – right to freedom of association

Maslow: social/self-esteem/self-actualization

WHR: human relationships/income and employment/personal freedom

**Article 23** – right to marry, found a family free of coercion

Maslow: social/self-esteem

WHR: human relationships/personal freedom

**Article 24** – right of children to non-discriminatory protection, name and nationality

Maslow: social/self-esteem

WHR: physical and mental health/human relationships

**Article 25** – right to political participation without discrimination

Maslow: social/self-esteem/self-actualization

WHR: human relationships/personal freedom/lack of corruption/effective government

**Article 26** – right to equal protection of the law

Maslow: self-esteem/self-actualization

WHR: lack of corruption/effective government

**Article 27** – right of minorities to their culture, religion and language

Maslow: social/self-esteem/self-actualization

WHR: human relationships/character virtues/personal freedom



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