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## *Introduction*

Modern moral, legal, economic and political thought is characterised by an unwarranted glorification of the virtues of justice and welfare at the expense of political participation, democratic sovereignty, and the satisfaction of human needs. This characteristic of contemporary thought is closely associated with the current predominance of very abstract and theoretical approaches to politics as opposed to practical forms of political philosophy: moral principles and technical formulae are developed in lieu of an understanding of politics as collective evaluation and decision as determined by the need to act. For example, Kantian rights theory and prevalent forms of utilitarianism adopt opposing political philosophies that reduce politics to either the security of individual human rights or the aggregation of individual preferences. This has the effect of prioritising and sanctifying individual rights on the one hand, and individual preferences on the other. By contrast, in practice, politics is characterised by the constant accommodation of rights and preferences within a larger framework of collective human action. And this practical accommodation is normally based in considerations of human needs. The prevalent exclusive focus on justice and welfare provides little scope for understanding these central elements of politics. Thus it impoverishes our understanding of liberal democratic politics, and stifles practical proposals for transforming that politics.

In order to overcome these problems I develop and defend an approach to theorising and practising politics that is based on a political understanding and conception of human needs. I propose an account of the normative and causal properties of needs, and advance a framework for the political evaluation of needs. This constitutes a needs-based conceptual framework for critically assessing political institutions and public policy, and a broad, speculative outline for a radically new kind of coercive authority. This conception of human needs delivers a means of overcoming the limitations that derive from taking the concepts of rights and utilitarian preferences as the only two relevant variables in politics. Within the contemporary legal and

political framework rights are legally, coercively enforceable entitlements that are conceived as being objective, abstract and universal. Preferences, on the other hand, are construed as avowed human wants that are subjective and particular to context, agent and time. They complement one another in theory and practice: rights set the legal structure within which preferences are allegedly given free play. This contingent coupling of rights and preferences, or what I call the rights-preferences couple, constitutes the predominant theoretical *and* practical *framework* for politics today. In other words, what I call the rights-preferences couple is a characterisation not of liberal political theory alone but rather of the relationship and edifice of liberal theory and liberal democratic practice. I argue that this theory and practice together form a loose package of institutions and practices that tend to reinforce and legitimise one another.

The rights-preferences couple is normally justified by historical precedent *and* in terms of its alleged universal efficiency in guaranteeing certain valued political objectives (sometimes with the support of a normative moral theory). In other words, it is defended because of how well it fits into and functions within modern politics of a particular pedigree, about which more below. I reject both of these two main justifying claims, the claims based on historical precedent and universal efficiency; but, before I explain why, it is important to note that I am *not* claiming that rights are useless or proposing that they be completely scrapped. They have a role, especially with regard to issues of efficiency surrounding personal property ownership and exchange. I am claiming, though, that it would be more theoretically and practically felicitous to reduce their significance and scope by understanding them within, or at least as secondary to, a theoretical conception that better articulates the larger material and ethical concerns of practical politics. One possible candidate is the political philosophy of needs developed in this book.

# I LIBERALISM'S RIGHTS-PREFERENCES COUPLE

It has become customary amongst the more acute analysts of rights to make a strict distinction between positive, legal rights and natural or human rights; or, in other words, between those rights specified within particular civil codes and those rights whose grounds hold 'by nature' or those rights applicable to all human beings. Jeremy Bentham is a famous modern example, although there have been others since. In making the distinction he dismissed natural rights as 'nonsense upon stilts'.<sup>1</sup> The distinction is

<sup>1</sup> J. Bentham, *Anarchical Fallacies*, in J. Waldron (ed.), *Nonsense Upon Stilts: Bentham, Burke, and Marx on the Rights of Man* (London: Methuen, 1987), p. 53.

real and important, but it can sometimes cloud the fact that even the most basic of legal rights, like certain civil liberties, are constitutive parts of civil codes that have historical and ideological links to broader philosophies of rights. The link may be opaque in the most pared-down of civil codes, but it has become more obvious where legal rights have been expanded beyond civil liberties to include 'social', 'welfare', and 'labour' rights. And it is manifest in those systems of law that have incorporated the doctrine of human rights into their civil codes, something common to countries as constitutionally diverse as Britain and South Africa. In the contemporary world, the doctrine of human rights is in the process of changing from being a set of moral demands erratically upheld by international law to a central element or supplement of civil codes. Hence, in what follows, I do not always stick to the distinction between natural and legal rights. When I do not specify the kinds of rights I am talking about, I mean rights as they are encountered within modern *liberal* discourse and political practice; that is, as part of an overarching political philosophy and practice founded on individual rights justified by nature, reason or extant civil code.<sup>2</sup>

A political philosophy founded on rights is illusory, and in practice it often acts counter to some of its own intended goals. This is the case because thinking about modern politics in terms of rights is a crude means of political explanation or ethical assessment and proposal, not least of all because rights, I claim, are in fact retrospective and impede change and evaluation. This is partly due to the fact that rights are *meta*-political: they naturalise and hierarchise political and ethical means and ends prior to any contextual political process of evaluation. They are the outcome of an attempt to provide secure conditions for a particular kind of political rule and order, but when stipulated in the form of rights these conditions depoliticise politics. They entrench the status quo and undermine the need for political participation. But this rigidity and inherent conservatism is also due to the fact that rights have their historical source in, and have developed alongside, institutions and practices that are ill suited to modern

<sup>2</sup> A distinction of some kind is still important: one way of proceeding might be to begin with a more general distinction between rights as they appear within particular civil codes and those found in philosophies of rights, rather than the customary one between legal and natural rights. One could then move on to make distinctions between the various theories of rights and investigate their overlap with, and influences upon, particular civil codes. This is no simple task. Modern (broadly) liberal political philosophy now parades a varied array of rights theories. Just for starters, there is a distinction between 'will' or 'choice' theories of rights and 'interest' or 'welfare' theories of rights. For examples of the former see W. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (Westport, CT: Greenwood Press, 1978); and H. L. A. Hart, 'Are There Any Natural Rights', *The Philosophical Review*, 64. 2 (April 1955), pp. 175–9. And for examples of the latter, see J. Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986); J. Feinberg, *Rights, Justice and the Bounds of Liberty* (Princeton: Princeton University Press, 1980).

politics, for example, the institutions and practices of the seventeenth- and eighteenth-century European occupation, exploitation and enslavement of non-European (and non-Christian) land and peoples. The forerunners of modern liberal rights-discourse and the modern notion of human rights, the natural rights theories of early modern Europe, in their Grotian, Hobbesian and Lockian forms, provided the overarching ideological framework that legitimised the colonial exploits of countries like Spain, France, Holland and England. As in the case of modern human rights and the discourse of globalisation, natural rights were both a universal moral guide for how isolated sovereign agents should treat the inhabitants of the 'new world' and a means to guide imperial powers and sovereign individual *conquistadores* in their colonial land grab.<sup>3</sup> Moreover, this intellectual history suggests that the origin of the modern notions of individual rights, autonomy and sovereignty is the outcome of an analogy between the sovereign state in a condition of perpetual war (in a state of nature) and the condition of the modern individual.<sup>4</sup> The fact that the mainstays of western freedom, and individual autonomy (or sovereignty), are supported by an analogy forged in an era of colonial violence and exploitation casts serious doubt on the suitability and significance of the analogy and its concomitant notion of individual rights for contemporary political understanding and prescription. However, in order to provide a full defence of these claims concerning rights, I would require (at least) an account of the social, historical and ideological links between these antecedent institutions, practices and ideas and the present predominance of rights-discourse. That long and complicated history will not be recounted here.<sup>5</sup> But if that historical record is

<sup>3</sup> The difference between natural rights and human rights is that natural law draws on the idea of a single deity (Christian God) as the creator of general, universal *static* laws of human nature and reason, an idea that ultimately depends on the claim that this deity can 'enforce' these natural, pre- or meta-political rights. Without recourse to God, human rights must create its own secular (human) version – we have rights by virtue of being human and once we institute a global, legal order we have a kind of Global God. Witness the current 'globalisation' debate and the willingness of western powers to 'defend' human rights as they intervene in the internal affairs of other countries of whose regimes they disapprove. Thus this difference between natural and human rights is in fact immaterial; monotheistic imperialism lives on healthy and secure. See my 'Needs, States, and Markets: democratic sovereignty against imperialism', *Theoria*, 102 (December 2003). For the significance of colonial conquest in the political theories of Grotius, Hobbes and Locke, see R. Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999); D. Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000).

<sup>4</sup> Tuck, *War and Peace*.

<sup>5</sup> For more on this particular intellectual and political history, see Tuck, *War and Peace*; A. Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France c.1500–c.1800* (New Haven and London: Yale University Press, 1995). And for the contemporary importance of the early modern period, see R. Tuck, *Natural Rights Theories: Their origin and development* (Cambridge: Cambridge

correct, the first claim – historical precedence – in the usual defence of the rights-preferences couple is very seriously challenged. This is the claim that, based on its allegedly long and creditable pedigree in the history of western political thought and politics, the rights-preferences couple is the natural basic category to use in understanding politics.

If the historical argument I have given is not persuasive enough, there are two more related and important historical facts that together throw doubt on the claim of historical precedence. The first is that rights-discourse antedated by several centuries anything that could be called 'liberalism' in its modern theory and practice. The relationship between rights and liberalism is a purely contingent one. Second, the idea that a whole series of rights could be the free-standing and universal framework for politics is a very recent idea that arose partly from the fact that today's rights were developed under the aegis of, and are now irrevocably linked to, the relatively efficient operation of a legal apparatus (of the kind that has developed in western European countries in the past hundred years or so).<sup>6</sup> That is, in contrast to the lean moral philosophy of natural rights, the modern legal and political practices and theories surrounding rights are now able to justify rights without much recourse to nature (or God).<sup>7</sup> It is under these modern procedural constraints that rights in the form of privileges have become rights as the *objective* property of political subjects who are *universally* equal before the law.<sup>8</sup> Hence, modern rights are *not* free-standing, self-evident, universally accepted material requirements or moral elements of universal human nature or existence. Rather, I suggest, the ascription of rights to individuals is better seen as dependent on a wider social framework and certain extant kinds of political formations.

As regards the second claim in the usual defence of the rights-preferences couple, the universal efficiency justification, it is argued that a properly instituted and enforced objective rights-structure guarantees human life and

University Press, 1979); A. S. Brett, *Liberty, Right and Nature: Individual rights in later scholastic thought* (Cambridge: Cambridge University Press, 1997); R. Dagger, 'Rights', in T. Ball, J. Farr and R. L. Hanson (eds.), *Political Innovation and Conceptual Change* (Cambridge: Cambridge University Press, 1989); J. Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980).

<sup>6</sup> R. Geuss, *History and Illusion in Politics* (Cambridge: Cambridge University Press, 2001).

<sup>7</sup> I say without *much* recourse to nature (or God) because within this literature and practice, and within liberalism more generally, the idea of natural human rights is understood as a legitimate and legitimising given. For examples, see R. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977, repr. 1991), p. vi; J. Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1973), pp. 28, 30–3, 505n; Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), pp. xlv–xlvi, 6, 16, 77, 108–9n, 180.

<sup>8</sup> For an account of the historical transformations of privileges into rights, see M. Mann, *The Sources of Social Power*, 2 vols. (Cambridge: Cambridge University Press, 1986–92); J. A. Hall, *Powers and Liberties: The Causes and Consequences of the Rise of the West* (Oxford: Basil Blackwell, 1984).

liberty, and provides equal 'freedom' for all with regard to their preferences and choices.<sup>9</sup> This is an appealing image of politics in which rights act as safeguards or guarantees that the state must honour: at least in theory, it escapes the uncertainties of consequentialist ethics and practices. But this claim lacks empirical support on three separate fronts. First, an abstract, universal code of rights often inhibits the attainment of the valued ideals and guarantees found within particular civil codes. There are a number of cases in which these rights *weaken* the civil liberties embedded in the legal system of a society. For instance, the suspension in Northern Ireland of trial by jury in terrorism cases is a classic example of how civil liberties can be suspended under the auspices of arguments concerning the state's obligation to secure the lives (natural right) of its citizens.<sup>10</sup>

The second front on which the universal efficiency claim lacks empirical support is that the enforcement of rights is *de facto* too fragile and distorted to achieve the goal of guaranteeing human life and liberty. The supposed inviolability and unconditionality of rights are constantly belied by the actual practice of their enforcement, determined as it is by conditions that cannot be forced to fit the rigid framework of objective, legal rights. Think how often actual individuals' rights are overridden by their governments. The right to life is weak in the face of capital punishment; the right to freedom of movement is restricted by incarceration and national boundaries; and no state on the globe would allow free movement around, and information about, its army bases.<sup>11</sup> But even if we discount these 'special' cases, rights have become so prolific in practice that not only have they lost any significant relationship to institutional or individual responsibility, but also their proliferation entrenches an already over-legalistic approach to political evaluation. Rights proliferation creates increased conflicts over rights, and the resolution of these conflicts reduces political evaluation

<sup>9</sup> E.g. Rawls, *Political Liberalism*, pp. xli, xlvi. In Rawls' case, as with many liberals, another condition is the provision of 'all-purpose means' ('primary goods' or 'basic needs') to make effective use of these rights (p. 6). See chapter 1, section 5, and chapter 4, section 3, for why it is misguided to understand the necessary conditions for freedom in terms of 'all-purpose means'.

<sup>10</sup> The British government at the time justified this move by arguing that trial by jury was setting free too many 'terrorists' and thereby endangering the population. There was no consideration at all of weighing up other outcomes against that risk, for example the consequence of removing an important instance of citizen participation in the structures of government (which is the underlying reason Britain has trial by jury), because rights trumped any consequentialist considerations. R. Tuck, 'The Dangers of Natural Rights', *Harvard Journal of Law & Public Policy*, 20. 13 (1997), pp. 683–93. As Tuck notes, this kind of justification and move is reminiscent of Hobbes' absolutist account, which is not the kind of association that would please modern liberal theorists, politicians and commentators – the cheerleaders of 'democracy'.

<sup>11</sup> Geuss, *History and Illusion in Politics*, p. 148.

to the legal adjudication of *individual* rights claims.<sup>12</sup> This kind of evaluation occurs within unelected administrative bodies rather than elected institutions and is therefore neither political nor accountable. Thus rights-based politics reinforces judicial sovereignty and makes a mockery of the idea of accountability. These consequences of the legalisation of politics reduce rather than enhance equality of freedom over preferences and choice because they make one's freedom dependent on one's educational and financial ability to access legal advice and support. And they tend to create the illusion of political power while undermining real individual political agency. When we defend our rights we naturally feel better about our power within the existing political framework, but this diverts our attention away from evaluating the way our governments govern, and the broader political questions of who is governing whom and how. This legalisation of politics under the auspices of rights is no accident, for rights create problems not because of their individualistic character so much as their jural character. They conceive of persons as legal rather than political agents.

An objective rights structure therefore does not provide equal 'freedom' for all with regard to their preferences and choices. This problem is reinforced by the third manner in which the claim concerning the universal efficiency justification lacks empirical support. In practice, rights are associated with the unconditional prioritisation of an individual's preferences, independent of any assessment of the material conditions under which the preferences were formed or of the effects on the lives of other individuals on satisfying the avowed preferences. In other words, rights-based political theory and practice provides the conditions for the theoretical defence of, and practical dependence on, avowed and unevaluated individual preferences. More specifically, this theory and practice engenders and legitimises the *idea* of the inviolability of utilitarian preferences. And thinking about politics in utilitarian terms generally provides a ready, though artificially restricted, means of defending the prioritisation of preferences: preferences are deemed important for reasons that relate to their epistemological importance in *calculating* individual welfare or as a consequence of the moral imperative to respect individuals' judgement about the 'good life' and how it relates to the living of their lives. Both of these concerns are important and retain a place in my account of needs. However, in their present rights-preferences mould they tend to generate the *unconditional* prioritisation of subjective preferences despite the acknowledged fact that preferences are determined (at least in part) by sources beyond the individuals who avow

<sup>12</sup> R. A. Primus, *The American Language of Rights* (Cambridge: Cambridge University Press, 1999).



them. Amongst other things, this *a priori* principle of priority excludes any systematic political process of evaluation or transformation of preferences, that is, any account of how preferences are and ought to be transformed. And this indiscriminate exclusion impoverishes our understanding of and control over the institutions and practices that do in fact determine, influence and transform our preferences, for example, existing state institutions and practices such as constitutions, legal practices and welfare provision, and extant market-related institutions and practices, such as consumption practices.

These problems emerge because preference-based political theory tends to reinforce subjectivist understandings of politics. In artificially isolating individual concerns and preferences, it engenders the idea that preferences are unaffected by larger societal structures, and that the satisfaction of individual preferences has little effect beyond the individual concerned. Moreover, it tends to exclude from political analysis and politics the evaluation of objective human goods. Hence, preference-based political theory not only generates acknowledged difficulties in specifying how preferences should be aggregated in social decision contexts,<sup>13</sup> it also undermines the political significance of objective human goods. And a political philosophy founded on the aggregation of human preferences only reinforces (and sometimes even disguises) these shortcomings.

In sum, the rights-preferences couple is either too abstracted from normal human motivation for action, or too subjective and particular in its analysis of how human drives, preferences and attitudes relate to human goods and the means to their attainment. It bifurcates and impoverishes political theory; and theorists who adopt it tend to exclude a large domain of modern politics. This domain, arguably the central domain of politics, is concerned with the urgent distribution of resources and requirements for human functioning under conditions of non-agreement. Concomitantly, any attempted *analysis* of this domain in terms of rights or preferences

<sup>13</sup> These difficulties have been the objects of intense theoretical study and debate, the original modern account of which is Arrow's General Impossibility Theorem: K. J. Arrow, *Social Choice and Individual Values*, 2nd edn (New Haven: Yale University Press, 1963 [1st edn 1952]). But Sen provides the best introduction to the context and formal elements of the theory: A. K. Sen, *Collective Choice and Social Welfare* (San Francisco: Holden-Day, 1970). The problems concerning social choice have their basis in utilitarian-inspired philosophies of economics, like those developed by Walras and Pareto, which turned on the impossibility of making interpersonal comparisons of manifest preferences. As Tuck notes, in 'The Dangers of Natural Rights', p. 690, this rests on a scepticism about whether anything worthwhile can be said about the mental processes that might underlie manifest preferences, a scepticism with its origins in the work of Hobbes. The notion of 'revealed preference' simply systematised this basic thought. For more on these issues, see my discussion of Davidson's response to the problem in chapter 2, section 5.



*Beyond the rights-preferences couple*

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results in a tendency to underplay the motivational and conflictual elements of everyday politics.

2 BEYOND THE RIGHTS-PREFERENCES COUPLE

The political philosophy of needs I develop here elucidates and rehabilitates a concern with this rejected domain of politics. This political philosophy stresses the central significance of conflict and evaluation in politics, especially conflict over power and value and the evaluation of needs and institutions. It develops and defends a method of political evaluation that connects avowed preferences with more objective and often divisive human concerns and interests. And it shows why these conflicts cannot be resolved or overcome by means of theoretical, *meta*-political diktat. Rather they are inherently practical problems that require contextual evaluative and ultimately coercive ‘resolution’ within specified structures of authority and participation. Thus the political philosophy of needs proposed here involves a conception of needs and a specification of these need-disclosing structures. This conception of needs is at once more motivational than the current conception of rights and more objective than the prevalent utilitarian conception of preference, but it is developed within a framework that proposes constant recourse to individual preferences. It clarifies why preferences are indispensable in the everyday evaluation of needs and why they have ontological and epistemological significance, and it clears a path between the abstract objectivity of rights on one side and the particular subjectivity of preferences on the other. Furthermore, in retaining a significant motivational element, this approach to needs provides an improved means of capturing some of the claims people bring to the political arena, and of understanding and explaining a common language of politics. For it is an empirical fact that the terms ‘need’ and ‘needs’ are constantly employed in practical politics: the notion of need is a mainstay in policy-oriented discourse, analysis and legislation.<sup>14</sup>

<sup>14</sup> I have chosen four random everyday examples. (a) According to Senator George Mitchell in a speech on Northern Ireland (2/12/1998), ‘Peace and stability are the minimum needs for a caring society’. (b) As current Mayor of London, Ken Livingstone believes he ‘would be bringing the needs of Londoners to the government’ (Channel 4 News, 15/11/1999). (c) For Thabo Mbeki, the South African President at the time of writing, ‘The question is: Do we as political leaders have the will to permit the fundamental national imperative of addressing the people’s needs to take precedence over narrow partisan interests?’. Mbeki speech, Budget vote, National Assembly, Cape Town, 6 June 1995, in T. Mbeki, *Africa: The Time Has Come* (Cape Town/Johannesburg: Tafelberg/Mafube, 1998), p. 144. (d) Clause 2 of the 1978 Transport Act (of Parliament) requires County Councils in England and Wales to review existing services ‘in relation to need’ – the White Paper, *Transport Policy 1977 Cmnd. 6836*, ‘lays it down as one objective of official policy to “meet social needs by

There is, therefore, an urgent practical imperative for theorists to clarify what people feel and mean when they use the concept of need and related terms and concepts in modern politics. However, most recent attempts at theoretical elucidation have struggled against a common misperception that need-based political theory *necessarily* provides theoretical support for the overriding of people's preferences because it tends to condone paternalist politics and *dirigisme*.<sup>15</sup> This has been reinforced not only by the history of Soviet communism, which in practice lived up to its billing as the 'dictatorship over needs',<sup>16</sup> but also by an unhelpful polarisation that has taken place in the broadly liberal theoretical analysis of needs. On one side, theorists tend to stick devotedly to the rights-preferences couple, ruling out of court any mention of needs. At the other extreme, most modern theorists who have been concerned with needs have developed static, purely normative conceptions that conceive of needs as universal basic requirements of human existence that 'ought' to be met by the state and whose evaluation can safely ignore preferences and the evaluation of how needs are formed.<sup>17</sup> This theoretical disregard for preferences has created a strong association between the concept of need and paternalism (about which more below).

Yet the common idea of a stark theoretical *impasse* or dichotomy with regard to needs, especially with regard to how Marxism and liberalism conceive of needs, shrouds a greater degree of intricacy and overlap. Although liberal theorists are avowed devotees of the rights-preferences couple, in practice liberalism employs needs at every level of policy and politics.<sup>18</sup> Since the theoretical problems inherent in the aggregation of individuals' preferences for social policy are also practical ones, policy-makers and politicians have no option but to make constant recourse to the notion of need. In any case, as is discussed below, needs creep in even at the level of theory, though admittedly in a warped form. Liberal theorists like Rawls and Dworkin tend to champion the priority of individual preference while at the same time developing theoretical systems that attempt to provide the *conditions* for the heeding of 'freely' formed preferences. Their theoretical

securing a reasonable level of mobility". D. Wiggins, 'Claims of Need', in *Needs, Values, Truth: Essays in the Philosophy of Value*, 3rd edn (Oxford: Clarendon Press, 1998), p. 4n.

<sup>15</sup> For an example of the misperception concerning *dirigisme*, see A. Flew, *The Politics of Procrustes* (London: Temple Smith, 1981), pp. 115–18.

<sup>16</sup> F. Fehér, A. Heller and G. Márkus, *The Dictatorship Over Needs* (Oxford: Basil Blackwell, 1983).

<sup>17</sup> Rather than give a selective list of the theorists I have in mind here, I refer the reader to chapter 1.

<sup>18</sup> Wiggins captures the situation with aplomb: 'In practice — and to an extent that could not be predicted or even suspected on the basis of an examination of present day political theory — the political-cum-administrative process as we know it in Europe and North America could scarcely continue (could scarcely even conclude an argument) without constant recourse to the idea of need.' Wiggins, 'Claims of Need', p. 4.