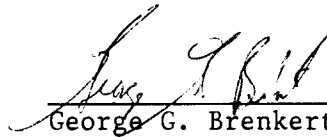


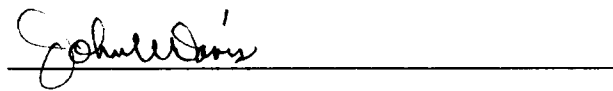
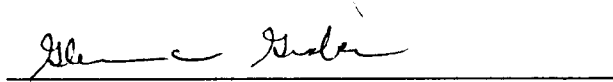
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A PHILOSOPHICAL ANALYSIS OF NEEDS AS A
FOUNDATION OF RIGHTS

A Thesis
Presented for the
Master of Arts
Degree
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Anita Marie Superson

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Any problems that remain in this thesis are a result of my own oversight.

ABSTRACT

That some rights should be founded upon needs is an issue that has been addressed most recently in terms of the right to health care. Unfortunately, an adequate study of the concept of needs has not been given. As a result, many things could be included as needs, thereby rendering a needs-based theory of rights implausible. In order to prevent this result and thus to make such a theory of rights most plausible, a careful analysis of the concept of need must be undertaken. Such an analysis, drawn from the literature on needs and rights, is given in Chapter II.

Chapter III focuses on several main problems related to this analysis. In particular, the notion of well-being raises many problems associated with three kinds of relativism: over time, across cultures, and among individuals, the latter being the most problematic. To avoid the problems associated with relativism, most needs-rights theorists restrict the theory to universal needs, those needs shared by all humans. The problem is then to determine on what basis kinds of needs are distinguished. In Chapter IV, several bases are examined, and each is found to be problematic. The basis of survival connected with quality of life is probably the most plausible, yet it is still problematic. Since the distinction among needs cannot be made in a morally significant, unproblematic way, quite a long and varied list of things can be subsumed under the concept of need. Thus, a needs-based theory

of rights faces the same problem as it did initially. It is concluded that needs-based theories of rights are implausible, unless certain major problems can be resolved.

Chapter V addresses some major problems in connection with the concept of need for a right to health care based on needs. More specifically, problems associated with allocation of resources, as well as sexism, are discussed. It is concluded that though grounding a right to health care on needs is quite problematic, perhaps that right could be defended in another, more plausible way.

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CHAPTER I

INTRODUCTION

That moral philosophers have recently shown a great interest in the topic of rights cannot be doubted. A quick survey of the literature reveals that most discussions are concerned with one or more of three major issues: (1) what persons have rights to; (2) what values are promoted by the satisfaction of our rights; and (3) the foundation of rights, what they are grounded in or based upon. It is this last issue that is most fundamental, and many philosophers have turned their attention to it.

More specifically, many of them have argued for basing rights upon some aspect of human nature. Of these, quite a few, especially those of a socialist bent, have argued that rights are based on needs. And it is this view that I wish to explore in this thesis. Indeed, I wish to show that the view suffers many conceptual difficulties, sufficient to render it implausible.

One point of clarification is needed. I will often speak of rights based upon needs. This phrase is ambiguous. It could mean that (1) rights are founded on needs, or (2) there are rights to the satisfaction of needs. On the former interpretation, the statement "X has a need" logically implies that X has a right. On the latter interpretation, if X has a need, it is only possible, not necessary,

that X has a right to the satisfaction of that need. This is because the right may not be founded on the need, but on something else. For example, the right may be based on the principle of equality. It may be the case that in order to guarantee equality, persons must have rights to the satisfaction of some of their needs. It also might be the case that having needs entails having a right to their satisfaction only insofar as this brings about equality. In these cases, it may not be the needs themselves that constitute the basis of rights, but the principle of equality.

As we shall see, some theorists who link rights with needs favor the first interpretation, while others favor the second. The first interpretation links needs with rights more strongly than the second in that it means that having a need logically implies having a right to its satisfaction. Since the second interpretation is the weaker one, it seems likely that certain objections brought against needs-based theories of rights can be met on this interpretation but not on the first. However, to show that certain objections can be met by theories that favor the second, weaker interpretation, one must examine those theories in terms of the larger context in which they are set, what other moral principles, rules, etc., are involved, and so on. It is not my intention to examine any such theory in detail. Instead, I wish merely to examine the conceptual issue of what a need is in order to see whether or not the kinds of things that have been claimed to be needs really do fit under that definition. Only then should we be concerned with making the move from needs to rights.

Thus, the claims I make in this thesis, since they deal mainly with the conceptual issue, do not depend on adopting one or the other interpretation described above. For this reason I shall often use the ambiguous expression "rights based on needs," without designating one of its possible interpretations.

The issue of rights linked with needs can be seen most clearly in contemporary debates concerning the right to health care. Some philosophers have argued that individuals have a right to health care, other things being equal. Some of them have argued that the most plausible way to defend this right is to base it upon health care needs. Gene Outka and Norman Daniels each hold this position. I shall refer to their arguments later.

In fact, my initial interest in the topic of needs and rights was generated by an interest in the right to health care, which was to be the focus of this thesis. However, since any defense of a right to health care would involve examining complex social and political issues, I found that the least complex and most fundamental way to approach the issue would be on a theoretical level, the level of needs and rights. Approaching the issue on this level is in fact necessary in that certain concepts must be clarified before complex application discussions can get very far. The conclusions I draw will ultimately reflect my initial interest in the right to health care, and will say something important to grounding such a right. In the last chapter I will examine some implications of those conclusions for the right to health care.

Although it was my original intention to be concerned only with health care needs, I will here be concerned also with other needs that we as humans may have. After all, unless health care needs can be distinguished from other human needs in a morally relevant way, any theory that bases rights on needs ought to be more inclusive and deal with all human needs, at least until the focus can be narrowed. For this reason, in this thesis I will be concerned with all human needs until I try to make some distinctions among needs in Chapter IV.

It should be noted here that some attempt has been made to distinguish health care needs from other needs. The President's Commission, for example, mentions that health care is considered by many persons to be special, and that it raises special ethical concerns not raised by other needs. This is so for three reasons: (1) good health is by definition important to well-being, and that health care by ensuring good health (when successful) allows an individual to function and to pursue a life plan; (2) many health care needs are the result of things a person did or failed to do (aside from health problems that are a result of genetics, environment, and chance), but often the individual could not choose to do otherwise, or even did not have the relevant knowledge as to what to do to protect her or his health, undeserved; and (3) health care needs are often unpredictable, striking democratically, whereas other needs such as for housing and food, are often much more predictable.¹

¹President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Securing Access to Health Care: The Ethical Implications of Differences in the Availability of Health Services, vol. 1, Report, March, 1983, pp. 11-12.

The first and third reasons are mentioned also by Camenisch in his article on the right to health care.² The first two reasons will be treated in different contexts at later points in this thesis. Here I merely wish to mention that some attempt to distinguish health care needs from other needs has been made.

In any event, there are at least two reasons to explore a needs-based theory of rights. First though, it is a popular topic in recent philosophical discussion, with arguments both for and against the view; unfortunately, no indepth examination of such a theory has been given, at least not to my knowledge. Thus, by exploring the theory in more conceptual detail, I hope to shed light on which side of the debate is more plausible. And second, the theory has at least initial plausibility in that it conforms to some major features of right in general. I shall discuss both of these reasons.

First, that at least some rights are based on needs is an issue that has been given due attention recently. Usually the talk of needs and rights arises in the context of distributive justice. Writers who argue in favor of some sort of welfare state often invoke the concept of needs and their satisfaction as the primary goal of such a state. They usually speak of a "decent minimum," a floor of well-being to which all persons in that state have a right. The arguments are generally cast in terms of goods and on what basis to distribute them. For

²Paul F. Camenisch, "The Right to Health Care: A Contractual Approach," Soundings: An Interdisciplinary Journal 62 (Fall 1979):307-308.

example, Robert Veatch argues that since health care needs vary enormously from person to person, " . . . the resources devoted to the health care institutions ought to be distributed so that members of the society have an opportunity to have access to health care necessary to produce health insofar as possible equal to the health of others."³ In other words, health care goods and services ought to be distributed in accord with some principle of justice.

Many moral philosophers have argued for a theory of rights based on needs, on either interpretation of this ambiguous expression. Their reasons are many and varied, some of which include the following: that one purpose of society is to satisfy the needs of its members, and so far as some needs are created by society, its members incur an obligation to satisfy them on behalf of the others in need;⁴ that the "ultimate foundation of human rights is constituted by those essential needs of each individual to the fulfillment of which is, under given historical conditions, a necessary condition of social survival and development";⁵ that humans have the basic rights to well-being, stemming from the concept of human worth and involving guaranteed satisfaction of basic human needs, the satisfaction of which is necessary

³Robert M. Veatch, "Just Social Institutions and the Right to Health Care," The Journal of Medicine and Philosophy 4 (1979):172.

⁴Peter Ingram, "Natural Rights: A Reappraisal," Journal of Value Inquiry 15 (1975):15.

⁵Miahilo Markovic, "Philosophical Foundations of Human Rights," Praxis International 1 (January 1982):391.

for survival and a life worth living;⁶ that we have rights to the satisfaction of our needs because needs must be met for human health and well-being;⁷ that we have a right to what we need as opposed to what we want because there is much more agreement as to what needs are, and thus, a wider recognition that we have obligations to satisfy needs;⁸ that needs give rise to rights because satisfaction of those needs is necessary for a minimum human existence, what meaningful lives are and presuppose;⁹ that without our needs being satisfied, the " . . . impairments of normal species functioning reduce the range of opportunity we have within which to construct life-plans. . . ." ¹⁰ These are just some of the positions that defend a needs-based theory of rights.

Equally popular, however, is the view that a needs-based theory of rights is too problematic to warrant serious consideration. Here too, a number of different reasons have been offered in defense of the theory's implausibility. H. J. McCloskey, though he admits that we have a prima facie right to the satisfaction of our basic needs, argues

⁶Rodney Peffer, "A Defense of Rights to Well-Being," Philosophy and Public Affairs 8 (1978):71.

⁷Christian Bay, "Peace and Critical Political Knowledge as Human Rights," Political Theory 8 (August 1980):299.

⁸Evan Simpson, "The Priority of Needs over Wants," Social Theory and Practice 8 (Spring 1982):95.

⁹Knut Erik Tranoy, "'Ought' Implies 'Can': A Bridge from Fact to Norm?" Ratio, 16 (Part II) (Dec. 1975):160-161.

¹⁰Norman Daniels, "Health Care Needs and Distributive Justice," Philosophy and Public Affairs 10 (1981):154.

against such a theory for three reasons: (1) reference to needs entails a notion of what is good for a particular species and a particular individual of that species, and it is doubtful that there can be much agreement as to what this good is; (2) rights cannot be fully explained in terms of needs; that is, we have rights to more important goods relating to interests, ideals, and values which conflict with and override rights based upon needs; and (3) a theory of rights based upon needs would claim too few rights, and the impossible and the absurd. What McCloskey means by this last point will become clearer later when I discuss his arguments in more detail.

Donald Van de Veer attacks the theory from another angle. He questions the move from a dire need to a right because counterexamples of the theory show it to be counterintuitive in some cases. For example, if a person's extreme sexual deprivation leads to his or her being chronically depressed, that person, on this theory, has a moral right to the goods and services necessary to prevent that depression. And if rights are correlative with obligations, this leads to the counterintuitive result that someone has an obligation to satisfy this person's sexual needs.¹¹

Richard Flathman raises another question with the needs-rights theory. He claims that talk about needs involves appeal to some norm of ailing and recovery. Only those who know and accept this norm are

¹¹Donald Van de Veer, "A Right to be Saved From Starvation," The Personalist 60 (April 1979):217.

in a position to judge that the entity in question is in needs, and therefore as having a right to the satisfaction of his need, regardless of whether he knows it, likes or dislikes it, approves or disapproves of it, and so on.¹² Flathman's point may be interpreted to mean that a needs-based theory of rights runs the risk of neglecting personal autonomy.

These are some of the objections that can be raised against such a theory. Unfortunately, not all of the defenders of the theory respond to these objections. In Chapter II, I shall attempt to analyze the concept of 'need' in the hopes that the analysis will clear up or take care of most of these objections. That is, I shall offer certain necessary and sufficient criteria that must be met by all needs. I shall attempt to make the criteria as strict as possible without losing distinctive features of the concept of 'need,' but at the same time to avoid the objections raised above. Here my point was to mention them only to show that the debate is indeed a lively one.

The second reason to explore this theory of rights is that, at least on the surface, it appears to be to some extent a plausible theory. Its plausibility lies in the fact that it meets the general criteria that adequate theories of rights must meet. I will explain this by way of a brief digression.

¹²Richard E. Flathman, "Rights, Needs, and Liberalism: A Comment on Bay," Political Theory 8 (August 1980):323-324.

After surveying the literature on rights, I have found there to be three general features that are common to most, if not all, purported rights. Rights are: (1) value-reflective, (2) persuasive, and (3) demanding.

First, rights are reflective in that they are claims involving things we value or wish to protect. Thus, rights reflect values. Rights have been claimed to many things such as, traditionally, to life, liberty, the pursuit of happiness, property, security, and more currently, to the unborn fetus' life, to die with dignity, to employment, to health care, not to be discriminated against on the basis of creed, race, or sex, and so on. Even though this list is long and varied, a unifying feature exists among those things to which persons claim rights. It is that the content of rights are things that are valued. So, for example, when one speaks of a fetus' right to life, she or he is in effect saying that innocent human life is valuable even at this undeveloped stage and that one ought to protect it from being terminated by abortion. Similarly, when one speaks of having a right to the wages one has earned, she or he is saying that it is only fair that one gets what one deserves and no other person or persons should take what is one's due. What is valued may not be the wages themselves, but the fact that one should be given what one has justly earned by one's efforts. If fairness were not valued, and persons were indifferent as to whether they received wages justly earned, they probably would not claim rights to those wages (at least not on the basis of fairness). Of course, just as the underlying values may

conflict, so, too, may rights. When this happens, a decision must be made as to which right is most important to satisfy. My point is simply that rights are claimed to things we value and consider important.

One problem raised by the claim that rights are reflective of values is of the so-called "chicken and egg" sort. That is, is the value independent of the right, or is it an acknowledgment of its being a right? Put in the context of a fetus' right to life, do some persons value fetal life, and based on this value, claim a right to protection of that life; or, by claiming a right to protection of a fetus' life, do these persons acknowledge the fact that fetal life is valued? Phrased differently, do persons who argue for a fetus' right to life first value that life, then claim a right to it, or claim a right to it, and by doing so, acknowledge that it is valued? What comes first, the value for fetal life, or the right claimed to its protection? It seems that when one claims a right to something, that something is already valued, for one probably would not claim a right to something toward which one was indifferent. Yet at the same time, the rights claim itself is expressive of the value. So, if one valued fetal life (in itself, or for what it might potentially become), one might claim a right to its protection. If one were indifferent to fetal life, one probably would not claim a right to its protection. And, by claiming a right to its protection, one seems to be acknowledging that one values fetal life. The point is that if a right is

claimed to something (or to its protection), that is something that is valued by the rights-claimer.

Second, rights are persuasive in that they are claimed by some persons in order to convince others that they ought to recognize and respect those rights. Of course, one can have rights that one does not claim. Sometimes persons are unable to claim rights on their behalf (e.g., the comatose, fetuses, etc.). Sometimes persons do not claim rights that they may have, perhaps for fear of the consequences. The point here is that if a right is claimed, the claim is made to convince others to respect the right in question. The importance of persuading others of one's rights lies in the fact that oftentimes rights are claimed by someone who is in a position of disadvantage and cannot satisfy her or his rights by herself or himself. Indeed, rights are usually claimed by persons who were, are, or think it possible that they may be in a position of disadvantage, which may take many forms. For example, many persons now agree that slaves in precivil war days had their rights to freedom violated. They were in a position of disadvantage, and slave owners were not convinced that the slaves had such rights. By the same token, we often claim rights because we find ourselves in a position of disadvantage at the present. So, if a madman assails me with a deadly weapon, I am likely to claim to have a right not to be harmed. I, being unarmed and innocent, am in a position of disadvantage. My claim, I hope, will persuade my assailant of my rights. Similarly, we often posit rights because we expect to be, or imagine it possible to be, in a position of disadvantage at some time

in the future. For example, we may claim that if all our possessions were to be destroyed in a natural disaster we would then have a right to the satisfaction of at least our basic needs, if these can be determined. In each case, the point is that rights seem to be claimed because the claimer was, is, or thinks it possible to be in a position of disadvantage, and wants to persuade others that she or he has these rights.

Note that this feature of persuasiveness is not unique to rights. Some persons have claimed that moral judgments, too, have a persuasive element. For example, Stevenson claims that statements such as, "This is good" mean, "I approve; do so as well." The statement both describes the speaker's feelings, and has the persuasive feature included in the imperative. But because persuasiveness is not unique to rights, but may be shared by other moral judgments, claims, and the like, in no way undercuts my point. The fact, if it indeed be a fact, that rights are persuasive only puts them alongside other aspects of morality that share this feature.

Third, rights are demanding in that they are often (or perhaps always) correlated with obligations on the part of certain persons other than the rights claimers. Though it is still debated, many moralists have argued that rights are correlated with obligations. The obligation takes one of two forms: (1) it is an obligation to refrain from interfering with the rights-claimer's seeking to obtain satisfaction of the right in question, or (2) it is an obligation to aid the rights-claimer actively in achieving that to which she or he claims a right.

Obligations or noninterference are correlated with what are usually called 'negative rights,' and obligations to satisfy rights actively are correlated with what have been termed 'positive rights.' In either case, the right in question places some kind of demand upon others in the sense that their liberty to act may be justifiably limited. I will not take up the issue of whether or not all rights are correlated with obligations. I do think, however, that rights to the satisfaction of needs are often best thought of as positive rights, rights that make demands on others to aid those in a disadvantaged position, that is, those with unmet needs. The reason is that when persons are in a state of need, they are often unable to satisfy their own needs and require the assistance of others. In fact, at least sometimes the reason needs are unmet is due to some sort of interference--e.g., starvation in the face of hoarding by others. To say they had a right to mere noninterference in satisfying their own needs often will be of no comfort to them, and, indeed, even pointless. Thus, I think it is best to think of rights based on needs as positive rights. They, then, are demanding of others, as are most rights.

Thus, the three general features of rights are that they are reflective, persuasive, and demanding. As we shall see next, rights based on needs have these general features. And since rights based on needs fit into the general scheme of rights, this is a further reason to think that they are plausible candidates for "legitimate" rights.

First, rights based on needs are reflective. The claim that persons have rights to the satisfaction of at least some of their needs

reflects an underlying value often construed in terms of well-being or welfare. That is, the satisfaction of needs promotes, and is carried out for the sake of, an individual's well-being. Though some writers construe the value at stake as human dignity or worth, or some similar concept, most of them construe it as well-being. I shall discuss this concept at many points throughout this thesis.

Second, rights based on needs fulfill the function of being persuasive. Needy persons, or others speaking on their behalf, claim rights to the satisfaction of their needs in order to persuade others that satisfaction of these needs is very important and sometimes cannot be achieved by the needs person herself or himself. The purpose of persuading others is to elicit their willingly given aid. Consider the following examples. An elderly person who is no longer employed begins to develop a series of illnesses that befall many persons in that age group. Since he has no income, he cannot afford health care to take care of his medical needs. Consider also the case of a person whose home has been totally destroyed in some natural disaster. The person is then in need of at least food, clothing, and shelter until he is able to get his life back together. Consider a third case of an infant whose parents have died. The infant is incapable of caring for her or himself, yet she or he has many needs that must be satisfied in order merely to survive. Indeed, in each case, the person is in a position of disadvantage through little or no fault of her or his own, and is unable for the most part to better her or his condition. In order for these needs to be met, they, or others who speak on their

behalf, try to persuade others that they have rights to the satisfaction of those needs.

And third, a needs-based theory of rights fulfills the function of being demanding. Situations such as those described above imply an obligation on the part of those in a position to help to aid their needy neighbors. Of course, the obligation to help is at least in part dependent upon how much effort it takes, and what sacrifices must be made, by those who incur the obligation. So, even though others may be persuaded that the needy persons have rights to the satisfaction of their needs, merely persuading them will not in itself help the needy; others must also recognize an obligation to help those in need, and, in turn, fulfill that obligation.

And indeed in contemporary American society we do provide goods and/or services to persons we find in these situations. That is, for elderly persons who are at a high risk for developing certain severe illnesses, our government has established the Medicare system. For those persons who lose a great deal of their property in natural disasters, insurance programs, government aid, and volunteer services such as Red Cross, will temporarily help them to regain their losses. And for infants who are abandoned, neglected, abused, and so on, foster homes and adoption agencies provide for them to some extent until, hopefully, they are placed in a permanent home. My point is that in our society at least we do recognize the needs of the unfortunate and do go so far as to provide goods and services for them. Though some persons would say that the needy do not have a right to these goods and services,

but that these are the works of charity which the needy cannot claim as their due, others would argue just the opposite. Joel Feinberg has suggested in "The Nature and Value of Rights" that the distinctive feature of rights is that they are claims made by persons to what is their due [cf. Feinberg, pp. 84-86]. This could be a fourth general feature of rights, or it could be subsumed under the "demanding" aspect. They claim that provision of such services is just one indication that society is beginning to recognize that at least some needs give rise to, or provide the foundation of, rights, and that these rights are correlated with obligations of those in a position to help. In short, they maintain that at least some rights are based upon needs. It is exactly this position whose plausibility I wish to examine in this thesis.

I begin, then, in Chapter II, with an analysis of the term 'need.' The point of this analysis is to clarify the concept in order to facilitate the process of determining just what legitimately can be subsumed under the concept of need. Once we know what can be considered a need we can then proceed to determine which needs are the foundation of rights, according to what needs-rights theorists are saying. We shall see that many of them try to base rights upon what they say are 'basic needs.' So, in the analysis, I draw upon what such theorists have said concerning the definition of 'need.' Of course, and unfortunately, not one theorist has defined it as extensively as I shall do. However, I draw from a number of theorists, and many of their views overlap. All I wish to accomplish with the analysis is to clarify and

narrow the concept so as to make it most plausible as a basis for rights-claims.

In Chapter III I show that this is not enough. That is, the concept is still too broad, leading to many problems. The breadth of the concept of need is due mainly to the breadth of the notion of well-being. Since there are good reasons favoring the breadth of the latter notion, to narrow it down would not solve the problem. But if it is kept broad, it leads to a difficulty in determining when one's well-being is at stake. Indeed, three kinds of relativism arise: over time, across cultures, and among individuals. Each kind of relativism of needs has its own problems, but the last is the most problematic. So, to avoid the problems associated with relativism, most needs-rights theorists argue for rights based on universal needs, those needs shared by all humans. The problem then is how to determine what these needs are.

Thus in Chapter IV I address this issue. Since these theorists usually equate universal with basic needs, I am here concerned with how they distinguish basic from nonbasic needs. I examine several bases for distinction, and conclude that none is morally significant so as to justify the distinction. And since the distinction among needs cannot be made, at least not in a way that is morally significant, we are left with quite a long list of things that can be subsumed under that concept. The definition given in Chapter II which once seemed tight, is really quite broad. Thus, H. J. McCloskey was probably correct when he remarked that theories of rights based on needs would be claiming "the absurd and the impossible."

Finally, Chapter IV raises some problems for the theory as it applies to the right of health care. Since this was my initial interest, I found it both helpful and enlightening to see how a defense of this right fares. I discuss several problems in connection with the criteria of 'need' outlined in Chapter II, as well as some problems in connection with the issue of relativism. I conclude that though grounding the right to health care in terms of health needs is too problematic to be plausible, this does not negate the possibility that such a right may be defended in another, plausible way.

CHAPTER II

ANALYSIS OF THE CONCEPT 'NEED'

In this chapter I am concerned to analyze the concept of need in the hopes of ascertaining just what needs-rights theorists have in mind when they either claim rights to the satisfaction of needs, or base rights upon needs. First, I will argue that such an analysis is necessary if we are to be able to assess the plausibility of needs-rights theories. I will show that seeing how the term is used in ordinary language does not help. Second, I shall try to define the term 'need' as it is used by needs-rights theorists. In the course of the discussion, I will attempt to distinguish needs from positive attitudes such as wants, desires, and interests, since these are often confused with needs. Briefly, wants, desires, and interests are positive attitudes in the sense that they are subjective psychological states directed at some particular goal which the person believes will be beneficial to herself or himself if achieved. I will elaborate on this point throughout this chapter.

Function of 'Need' in Ordinary Language

Before proceeding with the analysis, I wish to respond to and reject an objection to this analysis that might be raised by some philosophers. The objection is that such an analysis is not profitable, and indeed may even be impossible. Those who might raise this sort of

objection usually think that we know what we mean when we use the term 'need' in ordinary language, and that any detailed analysis of the term will cause us to lose sight of its meaning. Analysis will result in confusion, they might say, because we will be uncertain as to when and how to use the term. It will also result in frustration because at a certain point distinctions between needs and wants, desires, and interests become too cloudy to be drawn, and distinctions between these terms seem to collapse. Further, such an analysis is not necessary, for we can determine the meaning of 'need' by its use in ordinary language, a much less detailed and less difficult process of analysis.

In response to this objection, I shall show below that uses of the term 'need' in ordinary language are many and varied. Certainly not all the senses of the term are what needs-rights theorists have in mind. Since use of the term 'need' is so varied, simply resorting to ordinary language does not seem to be the best approach. Instead, we should analyze the term so as to be able to determine which of its uses in ordinary language are appropriate to needs-rights theorists' intentions. Indeed, the only way to make a needs-rights theory plausible, or even to be able to raise objections to it, is first to know what it is that such a theory proposes. So, we should at least examine some features common to all needs. As for dealing with the frustration that may result if and when the analysis breaks down and distinctions can no longer be made, we can only hope that this does not happen. Though it may be true that needs have features in common with wants, desires, and interests, we should try to keep the terms as distinct as

possible. So, at the appropriate points in the analysis that follows, I shall draw some distinctions.

In everyday parlance, there are many uses of the term 'need.' Needs-rights theorists do not wish to link rights and needs in all these senses of the term. This would lead to too many rights, and would lead to the claiming of rights which were absurd, thus falling prey to McCloskey's objections. In short, it would destroy the persuasiveness and plausibility of the theory. Let us explore some of the different senses of 'need' to see which one(s) is (are) the most plausible candidate(s) for the theory in question.

In his article entitled "'Need' Statements," Paul Taylor very nicely outlines four senses of the term 'need.' Two of these senses obviously are not what needs-rights theorists are concerned with, and I shall therefore treat them very briefly. First, there is a sense of 'need' which I take to be equivalent to 'must have.' Statements such as: "One needs a license to go fishing here," "You need a membership card to enter the clubhouse,"¹³ convey the meaning that you must have these things (the license, the card) because of some rule, and without possession of these things you are not permitted to perform certain actions (fish in this spot, enter the clubhouse). Similarly, statements such as, "He needs the jack of spades to have a straight flush" and "We need to draw this conclusion if we accept those

¹³Paul W. Taylor, "'Need' Statements," Analysis 19 (1959):107.

premises,"¹⁴ point to conditions that must be met in order to apply certain rules (of the game, of logic). If rights were to be based upon such senses of 'need,' we would have rights to fishing licenses, membership cards, jacks of spades, and to drawing a certain conclusion. This sense of 'need' I suspect would be implausible to needs-rights theorists for at least two reasons. First, regarding the needs that they have in mind, it is not a question of being permitted to perform certain actions when those needs are met, but of being able to do certain things that significantly affect one's well-being. Consider the person who has a license to fish in a certain spot. This person is permitted legally, by way of possession of a license, to fish in that spot. There never was a question about the person's being physically able to fish. Satisfaction of needs that needs-rights theorists are concerned with is tied to being physically or mentally able to perform some function, not legally permitted to do so. A second reason this sense of 'need' would be implausible to needs-rights theorists is that the kinds of needs that Taylor describes in these statements do not concern morality. Needs-rights theorists, however, being concerned with rights as a feature of morality, would want to base (some) rights on only those needs the satisfaction of which can constitute a legitimate moral claim against others.

¹⁴Taylor, 1959, p. 107.

¹⁵Taylor, 1959, p. 110.

A second sense of 'need' mentioned by Taylor is what is meant by 'ought.' Statements such as, "We need leaders who cannot be bribed,"¹⁵ are what Taylor refers to as "purely normative need statements." Such statements recommend actions. Thus we can substitute for 'need,' 'ought to have' without changing the meaning of the statement. If rights were to be based upon this sense of 'need,' we would have a right to leaders who could not be bribed, and other such things.

Now, both these kinds of needs statements as indicated by Taylor do not seem to be what needs-rights theorists have in mind when they speak of rights to the satisfaction of needs. This is so because having these needs probably would not affect a person as a person. That is, these needs do not relate to any dimension of a person's well-being. A person could do without a fishing license, a jack of spades, a leader who cannot be bribed and the like, in a way that she could not do without food, or health care. Of course, we could imagine a case where, say, a jack of spades is needed to win a poker game in which a player has her or his life, or something very important, at stake. In this case the term 'need' in the statement "I need a jack of spades" would have two meanings. It would mean that the person must have that card in order to have a straight, and it would mean that the person needs that card to win and to live, or to live securely since something very important is at stake. It is with this latter sense of 'need' that needs-rights theorists are concerned. This kind of need, like the need for food and health care, if unmet, would most likely result in the person's well-being being at stake. I will say much more about

the notion of well-being and its relation to needs later in this chapter and in the next.

There are two other senses of the term 'need' that Taylor describes, both of which are closer to what needs-rights theorists have in mind. The third sense shows that the thing needed is a necessary means to the achievement of some goal of the person in need. This sense is conveyed by statements such as, "I need a watch," "He needs a doctor," and "The student needs a dictionary."¹⁵ Each statement demonstrates that the person in need is in need of some good or service and that once this good or service has been provided, some goals will be achieved (I will be able to tell time, he can function without impairment, the student will know how to use the word she plans to use in her thesis). But not all of these statements point to the use of the term that needs-rights theorists have in mind. One way to distinguish the statements is to show what effect the goal, when achieved, has in the individual. Statements such as, "I need a watch" and "I need to see that ball game" convey the fact that the speaker has a positive attitude toward achieving the goal in question. Further, if the speaker fails to achieve his or her goals, it is highly unlikely that he or she will be (seriously) harmed as a result. More realistically, she or he will be unhappy. Thus the term 'need' in these statements can often be substituted with 'want' or 'would like to' or 'am interested in.' I will make some distinctions between needs and wants and interests at various points in the analysis.

¹⁶Taylor, 1959, p. 107.

A fourth sense of the term 'need' described by Taylor is synonymous with what he calls the "conative dispositions of human beings or animals."¹⁷ It, too, is goal-directed. Here 'need' is synonymous with 'drive,' 'wish,' or 'motive,' and these are either conscious or unconscious. Taylor's examples include the unconscious need of a person with inferiority feelings to boast, the conscious need of a drug, or an outraged man's need for revenge.¹⁸ In each case the need is similar to a drive or wish and is directed toward a goal (building up one's ego, satisfying a craving for drugs, venting anger). These uses of 'need,' on the one hand, are somewhat like what needs-rights theorists have in mind in that if the need goes unfulfilled, the person may be harmed, albeit psychologically. This is most clear in the example of the outraged man's need for revenge. If he does not vent it, his anger may build up to the point that he is psychologically harmed. This harm is more than mere unhappiness; it may manifest itself in one form or another of mental illness. On the other hand, the use of 'need' in these statements is not what theorists have in mind in that the need's satisfaction may result in harm either to the person or to others, or both. Many needs-rights theorists build into the definition of 'need' the qualification that its satisfaction promotes a good end. Indeed, some have referred to alleged needs whose satisfaction brings about harm as false needs, as we shall see.

¹⁷Taylor, 1959, p. 108.

¹⁸Taylor, 1959, p. 109.

Though these last two senses of 'need' best approximate what theorists wish to ground rights on, the mere use of the term on any particular occasion does not fully show its meaning. More specific criteria must be given in order to show just what is included as a need on such theories. Only when this is accomplished can we begin to assess the theory. So, although the linguistic analysis is helpful, it does not go far enough.

Analysis of the Concept 'Need'

Two points of clarification must be made concerning the analysis. First, most of the theorists I draw from do not provide much analysis of the term 'need.' Their reasons for neglecting to do so may be many and varied. They may not have been aware of the confusion that other writers of a more analytic breed have recognized. They may have found it more important to distinguish different kinds of needs (e.g., basic as opposed to nonbasic, societal-created as opposed to natural, etc.), rather than to analyze the term itself. Or, most likely, they may have been concerned with other issues and viewed the issue of rights based on needs as secondary to their major intention.

This is not to imply, however, that all such theorists, at least those I have come across, neglect any analysis of the term. Rather, some of them do provide some sort of analysis. None, however, analyze the term in as much depth as I shall. Thus, it might be the case that my analysis will yield results different from those intended by proponents of a needs-based theory of rights. This can be a problem in the

sense that the objections I raise later might not apply to all, or any, of their theories. I can only hope that this problem will not result. In fact, my goal is to clarify the concept more than other theorists have done, so as to avoid certain objections. Thus I think that the analysis treats those views in a fair way. Further, given the limited analysis done by these theorists, my only recourse is to draw from other helpful sources, bearing in mind what I think such theorists would accept. Indeed, perhaps the neglect on their part to analyze or provide some definition of 'need' is one serious flaw in their theory. For if the analysis reveals major conceptual problems with the theory, then the oversight was a big mistake. I shall try to show that this is the case.

The second point I must make is that there is a lot of confusion between needs and positive attitudes such as wants, interests, and desires. This issue has been given due attention in the literature. For these reasons, I will distinguish needs from these positive attitudes at the appropriate points. However, I do not wish, and make no attempt, to distinguish between interests, wants and desires. These terms are used in many different ways. Other times it seems as if they are all used interchangeably. My purpose is merely to distinguish them all from needs at appropriate points so as to clarify further the concept of 'need.'

Based on the literature on needs, then, there seem to be several features of needs that both define them and distinguish them from other things with which they are often confused. These features include the

following: (1) that needs indicate a lack which (2) in some way harms the individual in need; (3) that satisfaction of a need is necessary for the individual's well-being; (4) that satisfaction of a need is aimed at bringing about some form of recovery; (5) that a level of urgency to satisfy the need is entailed; (6) that needs, though they may involve attitudes, such as wants, desires, or interests, are not attitudes, but are conditions or states an organism may be in; (7) that consciousness of being in a state of need is not required for one to be in that state; (8) that some claims of needs are false; (9) that needs are objective states; and (10) that needs involve values.

Admittedly, these may not be all the features common to needs. I do think, however, that each one is necessary, and that together they are sufficient to characterize a given condition of the individual as a need. That is, in order for something to be considered a need in the sense required by those seeking to found rights on needs, it must meet all of these criteria, and if all these criteria are met, then that thing could be considered a need. This is precisely how wants, interests, and desires will be shown to be different from needs; they will fail to meet at least one of these necessary conditions.

Or the opposite problem may occur, namely, that these features may be too encompassing, for no particular theorist has attributed all of them to the concept. In my defense I must say that I am not interested in any one particular person's views. Rather, I am interested in the more general use of the term. And I found there to be enough overlap of these criteria to add credence to my analysis. Thus, the

format I shall follow is to discuss each of these features and to draw upon the literature in places where I find it helpful to do so. In this regard, this chapter serves two purposes: to analyze the term 'need,' and to organize and summarize what the literature offers on the topic.

Needs, lacks, and harms. First, to say that one is in need of something is to say that one either lacks it now or may lack it at some time in the future. To say that I need a filling for my cavity is to say that I lack the filling. But not all needs are for things I currently lack: that is, I can have a need for something that I already have. For example, my need for security may be satisfied right now, but I still have the need for it. Usually, we hear persons speak of their needs when they are unmet. This, however, does not rule out the fact that they may have certain needs for a long time, perhaps throughout their lives, but that at least most of the time those needs are satisfied.

Tranoy, for example, makes this point in the following passage:

Any unfulfilled need generates (or is generated by?) some kind of lack or deficiency. There is no awkwardness in saying: I have a great need for love although it is at present satisfied. It's nonsense to say that I have a great vitamin A deficiency which is now satisfied.¹⁹

Tranoy's point, I think, is that we can have needs that are fulfilled or unfulfilled. When a need goes unfulfilled, it creates a deficiency.

¹⁹Tranoy, 1975, p. 150.

The problem is how to decide whether, or why, one still has a need even when it has been fulfilled. If one's need for love is at present satisfied, there is no lack, so why call it a need? The answer, I believe, is tied to the effect on the person if her need were to be unsatisfied. If one's need for love were to go unsatisfied, a lack or deficiency would result. So, one can have certain needs, and though they may always be satisfied during one's lifetime, we can still refer to them as needs because in the hypothetical situation, their lack of satisfaction results in a lack or deficiency just the same. Indeed, Braybrooke speaks of such needs as "course of life needs"; these needs exist throughout one's life even if deficiencies never appear.²⁰ I have in mind needs like that for food. Thus, we can link needs with lacks, whether or not the lack occurs in actuality or only in a hypothetical situation. Note that needs can be contrasted with wants, desires, wishes, etc., on this point. It would be incorrect to speak of having a want or wish or desire that is met. If I want a Master's degree, and I get it, it would be inappropriate for me to say that I still want it.

One other minor point on the relation between needs and lacks is that lacks may come in degrees. That is, one may need something and lack it, but once the need is being met, the lack, in turn, is being filled. For example, my lack of food is partially fulfilled

²⁰David Braybrooke, "Let Needs Diminish That Preferences May Prosper," American Philosophical Quarterly, Monograph Series No. 1, Oxford, 1968, 86-107.

about halfway through my meal, and at the end of the meal the lack no longer exists and the need is satisfied. Wollheim makes this point (i.e., that lacks come in degrees) when he speaks about one cycle of a plant's needs. This cycle begins with the plant lacking something and ends with its having that something.²¹ The lack is filled as the cycle progresses. So, needs are associated with lacks at the present time, with lacks that may occur in the future, and with lacks as they are being filled.

The importance of associating needs with lacking is seen in terms of their relation to harm. Almost all of the theorists I will be dealing with in this thesis relate an organism's needing something to its being harmed when its needs are unmet. Simpson, for one, nicely relates needs, lack, and harm when he claims that it is only when one is in danger of lacking something one needs that the lack results in harm. He mentions human needs for security, food, and shelter. We all have these needs, he says, but if we lived in a benign environment with food always available, we would not be said to lack these things and would not fear the danger that lack of such things would put us in, or the harm the lack could bring to us.²² So, for Simpson, we fear the harm that may result from an unfulfilled need.

²¹Richard Wollheim, "Needs, Desires and Moral Turpitude," in Nature and Conduct, Ed. R. S. Peters. London: The Royal Institute of Philosophy, 1975, p. 162.

²²Simpson, 1982, p. 104.

Benn and Peters relate the three concepts of lack, harm and need in the following way: To attribute to anyone a need, "It is first, to indicate the lack of something which it would be injurious or detrimental to the subject not to supply; alternatively, a lack which frustrates some end envisaged on his account. 'X needs food' implies that not having it is detrimental to him."²³ Flathman, too, defines the harm in terms of the lack when he says that "At the core of the concept of need is the notion that some (usually) animate entity ails because it lacks some X and that it recovers if X become available to it . . . "²⁴ And Wollheim, as a third representative from the literature, relates harm to lacking. He claims that the entity in need, when it lacks what it needs, ails because it lacks.²⁵ Thus he writes: "For the man who needs X ails because he lacks X: it is his lacking X that causes him to ail."²⁶ However, he denies Tranoy's helpful distinction between fulfilled and unfulfilled needs and their relation to lacking. Instead, he claims that whenever a man needs X he necessarily lacks X. I prefer, though, to adopt Tranoy's position as I have shown previously that one can still have a need even though that need be satisfied.

²³S. I. Benn and R. S. Peters, Social Principles and the Democratic State (London: George Allen & Unwin Ltd., 1959), p. 143.

²⁴Flathman, 1980, p. 321.

²⁵Wollheim, 1975, pp. 162, 171, 175.

²⁶Wollheim, 1975, p. 175.

Wollheim does draw two important distinctions between needs and desires in relation to harm.²⁷ First, he claims that desires are unlike needs in that one does not have to lack X if one desires X; all that is necessary is that one believe that one lacks X. So, although needs necessarily entail lacking (whether now or in the future), desires do not. And second, if one desires X, it is not necessary that he should ail, either at present or in the future. This is unlike the situation with needs which necessarily entail ailment or some sort of harm.

But what kind of harm, and what degree of harm, do these and other theorists wish to link with unfulfilled needs? The answer must be specified lest we run the risk of being either too inclusive or too exclusive in regard to what is considered a need. Harm could, for example, include anything from a few moments of happiness (e.g., from taking the baby's candy away from him), to a lifetime of physical impairment (e.g., as a result of an improperly set bone), or even to death (e.g., from starvation). Surely needs-rights theorists would not want to extend the notion of harm too far in either direction, thereby including too much or too little. Thus, what is meant by 'harm' or 'detriment' or such similar terms must be clarified.

Many theorists, fortunately, address this issue. Of those, most of them tend to construe in a very strict sense the harm brought about by the lack associated with having one's needs unsatisfied. That is,

²⁷Wollheim, 1975, p. 174.

they imply that the nature of the harm (1) must be rather severe, and (2) need not be restricted to only physical harm. Since this issue is rather important, I will cite a number of views about it.

Feinberg refers to the harm brought about from unfulfillment of a basic need as something that affects the person "in some crucial and fundamental way, such as suffering injury, malnutrition, illness, madness, or premature death."²⁸ And Van de Veer, though he rejects the needs-rights theory on the grounds that it leads to counterintuitive results, speaks of dire needs of either a physical or a psychological base as causing "significant impairment" when they are not alleviated.²⁹ Daniels tells us that when we speak of claims and needs and distribution of goods, we usually are referring to basic needs. Further, the harm caused by unfulfillment of these basic needs "threatens normal species-functioning" and diminishes our capacities and abilities resulting in impaired opportunity for action.³⁰ Braybrooke makes a similar point when he says that course-of-life needs (similar to Daniels' basic needs), when not satisfied, endanger the normal functioning of the entity in need. And when the entity is human, the deficiency endangers health and sanity, and ultimately survival.³¹ Kurtz

²⁸ Joel Feinberg, Social Justice, (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1973), p. 111.

²⁹ Van de Veer, 1979, p. 218.

³⁰ Daniels, 1981, p. 160.

³¹ Braybrooke, 1968, pp. 90-91.

refers to needs as "states of tension-disequilibrium." When they are not satisfied, tension or anxiety results, and if ignored too long, peril to the organism.³² Finally, and in union with these theorists, McCloskey suggests that unmet needs "relate to what it would be detrimental to us to lack, where the detrimental is explained by reference to our natures as men and specific persons."³³ Further, it is clear from his article that McCloskey wants to restrict the term 'detriment' to apply to harm incurred only to one's person. Thus he speaks of things harmful to our health, in all its dimensions. This point is an important one, as we shall see, so I will return to it in the discussion on well-being.

It seems, then, that those who do address the problem of the nature of harm incurred by the dissatisfaction of needs want to limit the term so as to involve only a significant degree of harm but at the same time to broaden it so as to include at least physical and mental harm. The danger in limiting the notion, as suggested by McCloskey, is that only a limited number of things would be considered needs, and that if we want to base rights on needs, the number of rights, too, would be very limited. This objection, I think, cannot be raised against the theorists I have addressed above. Not one of them makes any suggestion that rights are based only on needs. Admittedly they

³²Paul W. Kurtz, "Need Reduction and Normal Value," The Journal of Philosophy 55 (1958):557, 559, 560.

³³H. J. McCloskey, "Human Needs, Rights, and Political Values," American Philosophical Quarterly 13 (January 1976):6.

are not at all clear about what else rights can and should be based upon. But they make no attempt to rule out the possibility that persons have rights to things other than to what they need. And I think there is less danger in erring on the side of having too few rights (based on needs) because terms such as 'harm' are defined so strictly, than there is danger in erring on the side of having too many rights (based on needs) and absurd ones because such terms are defined too broadly. Theorists run into this problem since they include physical, psychological, etc., harm in their use of the term 'need.' I shall discuss this problem in much more depth in Chapter II.

Needs, well-being, and recovery. If many theorists relate needs to harm, then many more focus on the opposite, more positive side of the coin and related needs to well-being. Here it is said that satisfaction of needs intends to promote or achieve the well-being of the individual in need. Thus we hear Bay, for example, say that "Needs must be met if human health and well-being are to be assured."³⁴ Others are more specific about what is entailed by the notion of well-being. Outka suggests that an individual's welfare includes both a psychological aspect (e.g., needs for food, drink, shelter, and health) as well as a psychological aspect (e.g., needs for continuous human affection and support).³⁵ Similarly,

³⁴Christian Bay, "Peace and Critical Political Knowledge as Human Rights," Political Theory, 8 (August, 1980):299.

³⁵Gene Outka, "Social Justice and Equal Access to Health Care," Journal of Religious Ethics, 2 (1978): 21.

Wollheim claims that the norm of well-being "Will in part rest on physical or neurophysiological considerations: in part it will rest on social or what are called cultural considerations."³⁶

Finally, in his book on welfare, Nicholar Rescher provides a fairly extensive analysis of the concept of welfare. Since what he has to say about welfare is very similar to, if not the same as, what others say about well-being, I will treat the terms as synonomous. So, Rescher says that any person's welfare has three dimensions: physical welfare (health), material welfare (prosperity), and spiritual or psychological welfare (state of mind or mental health).³⁷ For our purposes, we might wish to ignore material welfare as this does not directly relate to a person as a person, to borrow McCloskey's notion. In any event, Rescher's analysis is helpful because he views the concept as a complex one. He elaborates on these dimensions³⁸ and mentions that a person's welfare often includes needs for social interaction, education, and related needs whose satisfaction will bring about happiness. But despite its complexity, the notion of welfare, Rescher says, deals only with the basic essentials.³⁹ Welfare relates only to minimal needs, and satisfaction thereof is aimed toward only the beginnings of "the good life." Thus Rescher wants to restrict

³⁶Wollheim, 1975, p. 171.

³⁷Nicholas Rescher, Welfare: The Social Issues in Philosophical Perspective. Pittsburgh: University of Pittsburgh Press, 1972, p. 4.

³⁸Rescher, 1972, pp. 12-13.

³⁹Rescher, 1972, p. 8.

welfare to basic, or essential, needs as do many other needs-rights theorists. I will treat this in the next chapter.

My point here is just to mention that well-being has been linked to needs, and that well-being is a broad concept. In the next chapter I will raise some problems with the breadth of this concept, and go into much more detail about it.

It is on the topic of well-being that several writers in a helpful way contrast needs with either wants or interests. First, Benn and Peters contrast needs with wants. They claim that while needs entail a standard of well-being, wants do not. On this point, they write: "To say that a man wants food is simply to describe his state of mind; to say that he needs food is to say that he will not measure up to an understood standard unless he gets it."⁴⁰ This seems to me to be a plausible distinction between needs and wants. To lack something that you merely want but do not need most likely will not bring about the degree of harm that many theorists associate with that brought about from lacking what one needs. When one wants something, there is no standard of well-being that one falls short of; wanting is merely a psychological state.

This is not to rule out the possibility that one can want what one needs. Nor is it to deny the possibility that a want can become a need, at least on the basis of this criterion. That is, if all that distinguished a need from a want was that the former was related to

⁴⁰ Benn & Peters, 1959, p. 143.

well-being in such a way that if the need was unmet, the needy individual's well-being was jeopardized, then we could easily imagine that the satisfaction of a want would have a similar effect on an individual's well-being. For example, consider the case of an individual who desperately wants to travel around the world simply for the sake of observing different cultures and how people interact with each other. We might say that if well-being were the only distinguishing factor between needs and wants, this person's wanting to travel could conceivably become so intense as to have a significant detrimental effect on his well-being. That is, his want could be conceived as a need. Of course, we might say that he did not need to travel, but instead that he needs therapy to temper the intensity of this desire. If we are to avoid allowing the collapse of wants into needs, we must provide further criteria of the concept of need, criteria that wants do not meet. For as I have pointed out, all the criteria I will outline here are necessary to needs. So if one is not met, we are not dealing with a need, but perhaps with a positive attitude such as a want.

Though Benn and Peters contrast needs with wants on the basis of well-being, both McCloskey and Frey contrast needs with interests on that same basis. McCloskey gives some examples that illustrate one difference between needs and interests. A person does not need a ticket for the Grand Finale, he says, unless in some real way his well-being as a person depends on his attending it. Likewise, a football player, though he has a need for a certain kind of boot as a football player, does not have such a need as a person. The ticket and the

shoes, says McCloskey, are properly spoken of as interests rather than needs.⁴¹ They are interests precisely because they are not related to a person's well-being as a person.

Frey makes a similar point when he contrasts "being in one's interests" with "having an interest in." The former is related to one's well-being, and seems to be what I would call a need, though Frey does not use that terminology. The latter, on the other hand, seems to be related to wanting, or some other positive attitude. To this end, Frey writes:

To say that "Good health is in John's interests" is not at all the same thing as to say that "John has an interest in good health." . . . That these two notions of 'interest' are logically distinct is readily apparent: good health may well be in John's interests, in the sense of being conducive to his good or well-being, even if John does not want good health. . . . In other words, something can be in John's interests without John's having an interest in it, and John can have an interest in something without its being in his interests.⁴²

Thus Frey seems to think, and I believe rightly so, that interests are attitudes and may not relate to a person's well-being. Yet needs do. I will return to the point about attitudes shortly.

Thus, most theorists who analyze the term 'need' and relate it to some notion of well-being or welfare, tend to speak of unfulfilled needs as having a detrimental effect on the needy individual's

⁴¹McCloskey, 1976, p. 2.

⁴²R. G. Frey, "Rights, Interests, Desires and Beliefs," American Philosophical Quarterly 16 (July, 1979):234.

well-being. Just as they want to restrict the harms associated with a lack to those which are significant, they by parity of reasoning seem to restrict the effects on one's well-being to those of a significant nature.

The purpose of relating needs to well-being, it seems, is to show that satisfaction of a need will promote, if not achieved, a certain desired level of well-being. Many theorists, infact, think that this is the purpose of satisfying needs. Thus we hear Kurtz, for example, say that satisfaction of needs will restore organic harmony.⁴³ And Flathman, drawing together a number of points I have made, says that when whatever is lacking is made available to the entity in need, the result is recovery.⁴⁴ Similarly, Wollheim suggests that it is essential to needing that recovery should be possible⁴⁵ This is an important point because it is not the case that each time one's needs are met that one's condition or state of well-being improved to the point of recovery. If it does not improve to this point, and if this can be predicted with reasonable accuracy before the satisfaction of needs is attempted, we may wonder why we should satisfy those needs to begin with. McCloskey makes this point very nicely in the following passage:

⁴³Kurtz, 1958, p. 537.

⁴⁴Flathman, 1980, p. 321.

⁴⁵Wollheim, 1975, p. 163.

A gravely ill person who is suffering excruciating pain has a need for treatment and medicines to restore his health. We should have no hesitation in speaking of needs in such cases. Yet, if the medicine can simply prolong life pointlessly for two weeks, and this at a cost of intensifying the suffering, and if the dying person has no wish to continue to live, and cannot achieve anything worthwhile by having his life prolonged, we should be wrong to speak of his need for the relevant medicines and treatment. This is because we do not see the prolongation of his life under these conditions as a good.⁴⁶

McCloskey's point is that if there is no good that would come from satisfying these needs, and that good is in part defined by the level of recovery achieved, there is no point in satisfying the needs. His point has important implications for those theorists who argue for rights to health care on the basis of needs. For many cases arise in which the patient is doing so poorly both mentally and physically, there is no hope of recovery, and to achieve a maintenance level of well-being only prolongs a significantly impaired existence. These patients could be considered with regard to needs in two ways: as being in need or as not being in need. If we choose the former, we must ask what it is that they are in need of. If the answer is that they need certain medicines and treatments, neither of which will help them recover, why say they are in need of them? In fact, if we accept the point made earlier that needs are linked with harms, we could argue that satisfying the "needs" of these patients actually harms them. Further, since satisfaction of needs is aimed at the promotion of

⁴⁶McCloskey, 1976, p. 7.

well-being, and that the satisfaction of the needs of these patients would not in any way promote their well-being, this is a further reason to say that they were not in need. If anything, they are in need of medical services, medicines, and the like that will promote recovery, but these are not available. For this reason, I, like McCloskey, prefer to think of these patients and others in similar positions as not being in need. So, needs necessarily entail at least some degree of potential recovery.

Needs and urgency. One further point must be made on the subject of needs and well-being, and which is another criterion of a need. It concerns the notion of urgency. Needs are often associated with the notion of urgency. Lomasky, for example, defines needs in terms of interest: "Needs are interests that possess a high degree of urgency" ⁴⁷ Certainly, if the criteria I have already discussed are accurate, needs are indeed urgent matters. And, they are more than interests simply pressed with urgency, for reasons I have already outlined.

Scanlon perhaps sheds light on Lomasky's statement by relating urgency to the notion of well-being. We might say, he tells us, that health is more important to one's well-being than amusement, but it does not follow that an acceptable social policy would always favor

⁴⁷ Loren E. Lomasky, "Medical Progress and National Health Care," Philosophy and Public Affairs 10 (1980):69

health over amusement. Rather, he says, we should say that we have both of these concerns, and that

Associated with each of these there is a scale of the various levels or degrees to which the concern might be fulfilled at a given time. Various combinations of such levels represent different levels of well-being. The relation of urgency, then, will be a relation between various increments or decrements along one or more of these scales.⁴⁸

Scanlon's point seems to be that the more urgent a concern is, the greater the effect on the individual's well-being. The implication is that if one's needs are not met with urgency, great harm may be incurred. Still, on his account, we can imagine that anything, so long as it was pressed with urgency and affected one's well-being, and meets the other criteria, could be considered a need.

Perhaps the greatest benefit of relating needs to the notion of urgency is that it helps distinguish needs from wants and other positive attitudes. Willard points this out in his discussion on the motivational use of the term 'need.' He says, and I think rightly so, that persons often use the term 'need' in order to persuade others "to do something, believe something, or take a certain attitude."⁴⁹ They use the term 'need' instead of 'want,' 'desire,' or 'wish' because it "connotes more urgency and importance: it has a flavor akin to the

⁴⁸T. M. Scanlon, "Preference and Urgency," The Journal of Philosophy 72 (Nov. 6, 1975):660.

⁴⁹L. Duane Willard, "Needs and Medicine," The Journal of Medicine and Philosophy 7 (August, 1982):263.

compelling character of a categorical imperative, a prescriptive function at least similar to moral appraisal."⁵⁰ I am in agreement with Willard that use of the term 'need' connotes urgency. But I would take it a step further and say that it is not simply use of the term, but the fact that someone is in need that connotes urgency. That is, it is usually urgent that someone's needs be met because of the harm which may be incurred if they go unmet. This harm may be more or less immediate, but usually more. And usually urgency is not associated with wants, desires, and interests.

Needs as states of well-being. Another feature of needs, one which distinguishes them from wants, interests, etc., and one that has been alluded to somewhat in this chapter, is that needs are conditions or states an organism may be in, while wants, interests, and so on, are considered by most persons writing on the subject to be attitudes. An attitude is a subjective state of mind that is not intrinsically related to one's well-being in the way that a need is. Contrasting 'having an interest in' with 'being in one's interests,' Frey, as we have seen, claims that the former is bound up with wanting, while the latter (a need) is tied to well-being of the individual. Having an interest in is merely an attitude and is not related to one's well-being. Frey speaks of John's interest in taking hard drugs even though John knows that doing so is not

⁵⁰Willard, 1982, p. 263.

conducive to his well-being. His suggestion is that John has a positive attitude--an interest--in taking drugs, yet doing so will negatively affect the (physical) state that he is in. John does not need the drugs; they are not in his interests.

Wollheim contrasts needs with desires on this point. He says that desires, unlike needs, are mere attitudes. This is demonstrated by the effect of satisfying one's desires. The satisfaction of a need affects one's state of well-being, whereas satisfaction of a desire does not necessarily do the same. Wollheim claims that when a man has what he desires, his desire is satisfied but he is not necessarily satisfied. When a man's needs are met, by contrast, he is satisfied; he reaches some standard of well-being.⁵¹ His point seems to be similar to that of McCloskey whom I cited earlier, namely, that needs are intrinsically tied to a person and her or his state of well-being. Desires, on the other hand, are not. One can satisfy one's desires and not affect one's level of well-being, or even affect it detrimentally. Thus Wollheim suggests that desires are merely attitudes while needs are states of well-being an organism may be in.

A third contrast is made between needs and wants with the latter construed as attitudes. Outka, Benn and Peters, and McCloskey speak to this point. Outka writes: " . . . that basic needs are distinguishable from felt needs or wants . . . For the latter may encompass expressions of personal preference unrelated to considerations of

⁵¹Wollheim, 1975, p. 176.

survival or subsistence"52 Benn and Peters make a similar point when they say that "To say that a man wants food is simply to describe his state of mind,"53 while to say that he needs food implies a standard of well-being. Finally, McCloskey tells us that while it may be possible, though strange and unusual not to know what you want, this is not so with needs. In order to know what one needs, we have to inquire as to what these needs are.54 His point is that wants are positive attitudes which we take toward certain things we happen to like. Most of the time we do know what we want. Concerning needs, though, we may be mistaken. To know one is in need is to know what one lacks and how this lack affects one's well-being as a person. Thus, needs are more than simply positive attitudes.

One brief explanatory note must be made at this point. This is that we may have a positive attitude toward what we need, though the need itself is not an attitude. We may, for example, want what we need. The above analysis does not rule this out. I do not wish to deny that needs and these positive attitudes can, and often do, go hand-in-hand. In fact, I think it is desirable that one have a positive attitude toward that which one needs. It is desirable because if another person is going to be the judge of one's needs, it will avoid

⁵²Outka, 1974, p. 22.

⁵³Benn & Peters, 1959, p. 143.

⁵⁴McCloskey, 1976, p. 4.

disagreement if one agrees that those are one's needs, and has a positive attitude toward their fulfillment.

Awareness of needs. Along these lines is another criterion of needs, namely, that in order for one to be in need, one does not have to be aware or conscious that one is in need. And, again, a number of theorists argue in this way. Tranoy says in the following passage that one may be in need though in some sense unaware of it:

I want to note that I can have needs of which I am not aware or conscious. I may have unsatisfied and frustrated needs without knowing it. I may even protest when told that I have them. If any need for oxygen is frustrated beyond a certain point, I become unconscious. But this is not to say that I no longer have the need for oxygen. The point is that it is possible (and reasonable) to have a concept of need which does not necessarily entail anything about the owner's awareness or knowledge of it.⁵⁵

I find Tranoy's example unproblematic. It concerns a person who is capable of being conscious that he has a need for oxygen and who once was conscious of that need, is now, though unconscious, temporarily in need of oxygen. Presumably he would want to have the oxygen if he were conscious to make this choice. Given these considerations, most of us would agree that such a person was truly in need of the oxygen, though unaware of his need. And if it were to make sense to base rights on needs, this would be an ideal situation (assuming the availability of oxygen and the means to administer it).

⁵⁵Tranoy, 1975, pp. 151-152.

Certainly there will be cases like this one where a person's unawareness of being in need does not detract from the fact that the person is in need. And those who base rights on needs may favor this view because it will accord rights to certain entities who are in need yet who are unaware of their state for various reasons. Such entities include fetuses, mentally ill persons, the comatose (either temporary or permanent), sleeping persons, and perhaps even infants and young children. Many of us would agree that such organisms have needs, perhaps even rights, though they may be unaware of them.

According rights to some of these entities on the basis of needs may be somewhat problematic. But even more problematic is according rights to other entities that are unaware of their needs, such as lower order animals, plants, and inanimate objects. Both Braybrooke and Flathman point out that these kinds of entities do indeed have needs. Braybrooke suggests that needs and desires can occur independently of each other, witnessed by the following examples: watches needing winding, plants needing watering, forest needing rain, lakes needing sources of water.⁵⁶ Similarly, Flathman notes that gardens and their plants have needs as do zoos and their animals, and, indeed, that the least problematic cases of assigning needs are those involving nonselfconscious, nonreflective, animate entities.⁵⁷ Of course some of these needs, especially those cited by Braybrooke, are not what needs-rights

⁵⁶Braybrooke, 1968, p. 89.

⁵⁷Flathman, 1980, p. 323.

theorists have in mind, given my earlier discussion on the linguistic uses of the term 'need.' The danger, however, for needs-rights theorists, is that perhaps their theory will have to include inanimate objects, a view which on the surface seems counterintuitive. One solution is to see whether the other criteria of needs will be met for inanimate objects. One obvious criterion that is not met is how needs relate to well-being. We usually think it incorrect to speak of an inanimate object's well-being; it itself does not have a well-being. The only sense in which we speak of its well-being is for human purposes. We might wonder if, say, a table is in good condition only because we want to use it for something, not for its own sake. The table itself does not care if its well-being is achieved, or even if it has a well-being, which I think it does not. Regarding plants, lower order animals, and even higher order animals, the issue becomes more complex. Fore surely such entities, being alive, have a certain degree of well-being. Perhaps the more self-reflective they are, the greater the tendency for us to think they have a standard of well-being which can be achieved by the satisfaction of their needs. The problem with this view, if indeed it is a problem, is that it might exclude fetuses, the comatose, etc. Needs-rights theorists must decide if such entities should have rights to the satisfaction of their needs. I do not pretend to give any answers to this issue here or at any place else in this thesis.

False needs. I find it helpful here to say something about the notion of false needs. In general, false needs are needs persons think they have but really do not. This is so because, as we have seen, needs are associated with well-being. False needs, or the satisfaction thereof, do not relate to an individual's well-being, and often, when they are met, bring harm to that individual.

Herbert Marcuse, who prominently uses the concept, defines false needs as those needs "which are superimposed upon the individual by particular social interests in his repression: the needs which perpetrate toil, aggressiveness, misery, and injustice."⁵⁸ Further, though the satisfaction of false needs may be gratifying to the individual, "This happiness is not a condition which has to be maintained and protected if it serves to arrest the development of the ability (his own and others) to recognize the disease of the whole and grasp the chances of curing the disease."⁵⁹ Marcuse's definition of false needs shows that the individual may be mistaken about what his or her needs are, and that if these false needs are met, the individual's happiness may be promoted at the cost of his or her well-being. In short, the individual's happiness will be only short-term, and

⁵⁸ Herbert Marcuse. One Dimensional Man. Boston: Beacon Press, 1964, p. 5.

⁵⁹ Marcuse, 1964, p. 5.

satisfaction of false needs, though it may bring about short-term happiness, will ultimately endanger the individual's well-being.

Several other writers also relate false needs to well-being. Kaufman speaks of false needs as wants not associated with needs, and which, unless eliminated, prevent that individual from being able "to glimpse the possibility of a truly human existence."⁶⁰ A person's having false needs is generally incompatible with his living a good life.⁶¹ And Tranoy speaks of 'pathological needs' including needs for tobacco, alcohol, drugs, for exploiting and repressing others, and so on.⁶² Such needs nobody is required to satisfy, he says. And McCloskey, too, speaks of false needs as those needs that when satisfied will result in harm to the individual in the form of physical and/or mental impairment, or even death.⁶³ Thus the drug addict's need for his drug, heroin, alcohol, cocaine, or whatever, is a false need, as is the alcoholic's desperate need for his daily slug of whiskey or quart of beer. If such apparent needs are met--and the owner of the alleged need really wants them to be--harm will result.⁶⁴ Of course, certain drugs may promote recovery of certain lacks--as the

⁶⁰ Arnold S. Kaufman, "Wants, Needs, and Liberalism," Inquiry 14 (Autumn, 1971):3.

⁶¹ Kaufman, 1971, p. 4.

⁶² Tranoy, 1975, p. 161.

⁶³ McCloskey, 1976, p. 8.

⁶⁴ McCloskey, 1976, p. 7.

performer who takes a belt of whiskey to give him the courage to go on stage. However, if the shot of whiskey is taken frequently so as to harm the person's physical well-being, we would say that the need for the shot to perform is a false need. Apparently the harm McCloskey speaks of is harm to the individual's person, including at least both physical and psychological aspects. For McCloskey, the need is false because it does not promote what is good for the individual when it is met. Thus, false needs do not promote well-being when they are met, and, in fact, their satisfaction harms the individual. They ought not be confused with real needs.

Needs as objective states. Now, the reason we may be able to say that a person's needs are false is that we often think that we are better judges of another's state of well-being, and thus of her needs. We think this way because we think of needs as objective states an entity may be in. Two senses of 'objective' can be found in the literature relating to this issue. One sense is that needs are empirically verifiable states. A second sense is that there is widespread agreement as to what (at least some) needs are. I will discuss the first, and the second I shall treat in the next chapter as it fits in more appropriately there.

Several theorists suggest that needs are, at least in part, objective in that they are empirically verifiable states an organism may be in. Indeed, such a view is likely to be favored by needs-rights theorists for the reason that if a state of need can be empirically

verified, it may be fairly easy to determine when someone is in need, and thus when they have a right to the satisfaction of those needs. In short, for practical purposes, the view that needs are empirically verifiable states may lend credence to a needs-rights theory. This is probably why we find many of these theorists in support of this view.

So we hear Bowie and Simon, for example, contrast needs with wants by claiming that the former are subject to empirical verification while the latter are mere matters of taste, varying among different individuals. They claim that the truth of statements such as "Smith needs the blood plasma more than Jones" and "Smith needs the medicine more than Jones needs food" is subject to empirical verification, while statements such as "Smith needs a holiday in Florida more than Jones," and "Smith needs a holiday in Florida more than Jones needs to see the symphony" are not objective in that sense, but are statements about the psychological desires of Smith and Jones.⁶⁵ Of course, care must be taken not to confuse psychological desires with psychological needs. The latter, as we have seen by our account of well-being as a very complex notion, are possible, and may be difficult to determine empirically. This issue will be discussed in the next chapter.

Daniels, speaking of health care needs, observes that needs are associated with an objective criterion of well-being. He says that telling a friend you need money for a root-canal is likely to elicit a

⁶⁵Norman E. Bowie and Robert L. Simon. The Individual and the Political Order. Englewood Cliffs, NJ: Prentice-Hall, Inc, 1977, p. 202.

response different from that if you tell him you need money to go to the Brooklyn neighborhood of your childhood to smell pickles in a barrel.⁶⁶ The reason the responses are likely to differ is that the first incident concerns a real need, empirically verifiable by, say, a dentist. The second, however, is only a desire, and therefore is not an empirically verifiable state one may be in. The need for the root-canal is empirically verified by a dentist, independent of the individual's awareness of her need.

Perhaps the most emphatic view on this issue comes from Nicholas Rescher. He claims in the following passage that an individual's welfare is objectively determined witnessed by the fact that others besides that individual are often better judges of whether or not the person is in need:

A person's welfare is a matter of objective conditions and circumstances, not of his subjective state. His material prosperity, his mental health, his physical condition--all these are objective facts that can be as well (or better) known to others as to himself; his family doctor, his financial counselor, his legal advisor, etc. For the state of his welfare--unlike any fleeting feelings of contentment or happiness or elation--is not a transient mental state of subjective psychological mood that the subject himself is, in the very nature of things, best fitted to judge. A person's welfare is determined by his state and condition in certain specifiable and overt respects: health, financial status, and the like. Judgments of welfare are matters of (objective) knowledge and not matters of (subjective) feeling . . . Welfare hinges upon objectively determinable circumstances, and a sphere of

⁶⁶ Daniels, 1981, p. 151.

action is consequently opened up for the effective workings of "outside" expertise.⁶⁷

Now certainly there is something persuasive about Rescher's view. If needs are in fact objective states, it is likely that others may be better judges of our needs. It is true that oftentimes we seek the advice of knowledgeable experts who, if they are as expert as they claim to be, are able to assess what we lack, what causes our ailing, and what it is we need to bring about a desired level of recovery. So, for example, we seek the advice of a dentist when we have a toothache, a general practitioner when we catch a virus, a psychologist when we suffer from emotional problems. These and other professionals are trained to assess our needs and to prescribe treatments that have as their aim the satisfaction of those needs. Thus if needs are objective states, it is likely that others may be more accurate in their assessment than we are ourselves.

Needs and values. The opposite view about needs, however, sometimes held. This view holds that needs are not objective states that are empirically verifiable; rather, needs are subjective "states," or values, and the individual who is in need is the best judge of what are her or his needs.* Perhaps the most radical view along these lines comes from L. Willard. Willard is of the opinion that human needs are not facts but are values. He relates his view

*Of course, values are sometimes claimed to be objective. I think Willard refers to them as subjective because he believes that they are not discovered or known by observation, as are objective facts.

to medical needs and claims that these, too, are values and if viewed as facts, they raise certain difficulties about treatment. I will spend some time on his position because it provides a direct counter to the objectivity thesis.

Willard gives several reasons for rejecting the view that needs are objective facts. By objective facts he means some quality or property a person possesses, some state he is in, some process he is undergoing, some event he is part of, or some relationship in which he stands, in short, some fact about him that can be discovered or known by observation.⁶⁷ The first reason he gives for rejecting the objectivity theory is that needs are really values, not facts. The only reason to claim that we have a need for, say, food, he says, is that the food will bring about some good, or promote some value--e.g., satisfying hunger, ensuring survival. Needs, according to Willard, are much more bound up with values than they are objective facts.

I do not have a problem with this view, and neither should anyone who espouses the objectivity view of needs. Certainly needs can and do involve values.* But this is independent of the fact that once we know what value(s) we are trying to promote by satisfying a particular need, we can still assess by empirical observation to what extent

⁶⁷Willard, 1982, p. 261.

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Unfortunately, since I do not think that "value" is any more clear as a concept than is "need," introducing the notion that values are associated with needs only muddles the task of clarifying "need." Some problems associated with values and needs will be addressed in Chapter III.

one falls short of that norm. So, though satisfying hunger may promote some value (e.g., survival), this says nothing about whether or not we are able to verify empirically someone's need for food. Thus, that needs are objective states does not negate the possibility that they involve values. And I do not think that theorists who favor the objectivist view would reject the view that needs presuppose values.

Second, Willard attacks the view that needs are means to ends. Instead, he says, it is "that which is said to be needed" which is a means to an end.⁶⁸ So if I need a filling for a cavity, it is the filling, not my need for it, that is a means to the goal I desire (e.g., to be free from pain, to have a healthy tooth). Again, I do not find this problematic, nor do I think it refutes anything the objectivist view proposes. Nowhere does the objectivist view seem to claim that it is the needs, rather than that which is used to satisfy them, which are the means to the desired end. So far as I can tell, Willard has set up a strawman argument.

Willard's third argument against the objectivist view of needs misses the mark as much as the first two. He claims that even though people often use the term 'need' instead of 'want,' 'wish,' etc., because the former connotes more urgency and importance, this does nothing to establish that needs are fact referring.⁶⁹ With this I must agree, but I fail to see how it in any way refutes the objectivist

⁶⁸Willard, 1982, p. 263.

⁶⁹Willard, 1982, p. 263.

view. Indeed, I think we can and do use these other terms to connote just as much urgency and importance as does the term 'need.' What distinguishes needs as fact referring from wants, etc., that are not fact referring is the former's effect on a person's well-being. And this effect can in some way be empirically established; it is not just a psychological state that has no significant effect on one's well-being. True enough, then, the way in which the term 'need' is used does not establish that needs are fact referring. But this does not mean that needs are not fact referring, at least in part.

Willard's fourth and final objection is that dispute over needs is really dispute over values, and it is ridiculous to think otherwise. Thus he claims that since there is frequent disagreement about what we as humans need (e.g., air conditioning, cars, liberal education, face-lifts, etc.), it is incredible to think that these are disagreements over facts instead of over values.⁷⁰ Instead, he writes: "Disagreements about human needs are . . . differences in attitude toward, and emotional attachment to, things variously believed to be valuable."⁷¹ Again, I, and most needs-rights theorists, have not denied that needs involve values. And I think there is more agreement over values than Willard is willing to admit. For example, most of us value our well-being. There is little disagreement about that. However, the disagreement usually concerns things such as what means will

⁷⁰Willard, 1982, p. 263.

⁷¹Willard, 1982, p. 264.

promote one's well-being, whether or not one's well-being is really at stake, whether or not one is really in need, and so on. Disagreements, then, are often about the facts.

An example may help clarify the view that needs can involve values though they are objective states which are empirically verifiable. Consider a medical need such as the need for an appendectomy. Now most persons value their being in a state free from pain and risk of death. This value is generally agreed upon. The disagreement, if any, lies over the question of whether or not the appendectomy for this particular patient will promote her or his well-being, and, over whether or not she or he really is in need of it. The latter can be in part determined by a gamut of medical tests which reveal the level of disease in the organ. But it is also in part determined by the patient's chances of recovery, that is, whether or not her or his well-being is best promoted by the operation. Compare two patients: (1) an individual who is young, in excellent health except for the diseased appendix, has an excellent chance of recovering from surgery, and whose prospects for leading a good life after surgery are in all relevant respects very good; and (2) an individual whose physical and mental states are so deteriorated from other illnesses and old age that the surgery most likely will not improve his state of well-being, and in fact, may bring about more damage to his physical state than if he did not have the surgery. In the first case, we would probably all agree that the individual was in need of the surgery, while in the second case, it is at least debatable whether the surgery is needed.

In both cases an empirical assessment of the patient's condition will help decide whether she or he is in need of the surgery. Indeed, if antibiotic treatment would remove the danger with less trauma and risk, we might also say that the patient does not need the surgery. But in both cases also values will play some role. This can be and indeed is admitted by most needs-rights theorists.

Summary

To summarize the major points of this chapter: it is only by examining the foundation of rights that the plausibility of a theory of rights can be assessed. I have chosen to examine that which is claimed to be the foundation of needs-rights theories. In my analysis of the term 'need,' I have shown that though the term is used in a variety of ways in ordinary language, it is used in a much more limited sense by those who analyze the term to some degree and especially by those who argue for rights based upon needs. I have distinguished and elaborated on several features common to all needs. My analysis was drawn from current sources in the literature on the topic. These features include the following: that needs imply a lack; that this lack results in harm which is rather severe; that satisfaction of needs promotes the needy organism's well-being; that needs are associated with urgency; that needs are conditions or states an organism may be in, rather than attitudes the subject may take; that one does not have to be aware or conscious that one is in need; that some needs are really false needs; that needs are objective in the sense that they

are empirically verifiable states; and that needs involve values. These features are not necessarily all ones that I would agree with. At various points I have expressed my views concerning these points. However, the intent of this chapter was to outline what most needs-rights theorists argue for in the hopes of making their theory most plausible. In the next two chapters I will criticize certain points of such a theory of rights. Though there are a number of problems with the theory, including bridging the gap between theory and practice, the problem of individual responsibility for acquiring needs as well as for satisfying them, the problem of who decides when someone is in need, the problem of deciding who or what can have needs, and so on, I choose to address only a few conceptual problems. More specifically, I will be concerned to establish what can be included as a need as it has been defined in the present chapter, as well as with how to distinguish among kinds of needs, if this be possible.

CHAPTER III

NEEDS: RELATIVE V. ABSOLUTE

In the previous chapter I have attempted to analyze what is meant by the term 'need' in light of how needs-rights theorists use, or would want to use, the term. I have noted that the analysis, because it is based upon a number of sources whose primary focus is not to link needs with rights, may seem inapplicable to needs-rights theories in that it is too broad since it includes more aspects than what any one particular theorist does include. However, I have defended the analysis by attempting to define the term 'need' in as strict a sense as possible, including only those elements that have been traditionally associated with needs, so that not too many things will be included as needs. The virtue in doing this lies in the fact that if some rights are to be based upon needs, the claims to such rights will not be overabundant. Practically speaking, this will make it more likely for these rights to be satisfied and as a result will increase the plausibility of any such theory. Since sacrifices will have to be made in the way of money, time, or whatever it takes to restructure society and its policies so that it adequately meets the needs of its members, it will be difficult to satisfy a needs-rights theory. For example, ensuring adequate health care, food, and clothing and shelter for all, promises to be a quite difficult task. So, the more we limit

what is included as a need, and thus what rights persons have, the more likely it will be to meet those needs and their associated rights. Morally speaking, if we limit the number of needs to those that meet a strict definition, it will reduce the demands made on others to satisfy those needs. This may indirectly lead to development of good character in that an individual will have to meet her or his own needs that fail to meet the strict definition. One might think that a person ought to be responsible for satisfying all of her or his needs for even better character. However, this is impractical, if not impossible, for the satisfaction of needs such as health care needs often requires the knowledge and skills of a professional.

What remains to be determined then, in light of the previous analysis, is exactly what can be classified as being a need. It is my intention in this chapter as well as in the next to examine this issue. In connection with deciding what needs humans do have, I will discuss the problem of relativism of needs versus absolutism, and the implications both have for a theory of rights. And in connection with the absolutist view, that is, that there are some needs, commonly referred to as the basic needs, all humans share by virtue of being human, I will, in the following chapter, explicate the cases that some theorists offer which supposedly allow a distinction among needs to be made.

Since the point of this chapter is to clarify exactly what can be considered a need which can serve as the basis for rights, let me here summarize the major points of the definition from the previous chapter. As we have seen, a person A is in need of X when the following

conditions are met: when, without X, A's person will be harmed in some significant way, thereby resulting in loss of functioning or even death; that supplying A with X will achieve at least some level of recovery so as to promote one or more dimensions of A's well-being; that A's being in need of X is a state or condition that A is in, rather than merely an attitude A has toward X, and in fact, that A does not have to be conscious or aware that A is in a state of need (A may even deny it); that A's being in a state of need is subject to empirical verification and as such is an objective state; and, that even though being in a state of need is an objective condition, it involves values in that the satisfaction of needs is assumed to promote what the needy individual does, or would, value, that is, her or his well-being.

What then is included as a need? Logically, anything that meets these criteria can be a need. And though these criteria may appear to be strict, some of them are fairly loose. The criterion I find most problematic concerns the last one mentioned above, viz., that satisfaction of needs promotes an individual's well-being which is tied to valuing. One problem is how to define this standard of well-being, and who, in fact, should define it. Should it be the individual? The society? Experts in the various branches of health sciences?

Since different persons may set the standard of well-being, it seems likely that there will be a variety of these standards. Indeed, such different standards of well-being result in varied conceptions of

what humans, or particular persons, need. In this way, relativism of needs can result.

In the literature on needs, three kinds of relativism have been mentioned. First, there is relativism of needs over time. This can be seen in terms of one particular society from one point in history to the next. This kind of relativism comes about as a result of our changing conceptions of humans, what their needs are, and what is the standard of well-being by which we assess a person's needs. Our conception of humans and their needs changes over time due to advancements made in health sciences, technology, and studies in psychology, and so on. Second, there is relativism of needs across cultures. This kind of relativism arises as a result of differing conceptions of human nature and differing standards of person's well-being among various cultures or societies. And third, there is relativism of needs among individuals within a particular society at a given time in history. This kind of relativism results mainly because different individuals have different standards of well-being. Thus they have different conceptions of what needs they have, the satisfaction of which promotes their well-being.

It will be beneficial to examine each kind of relativism and the implications each has for a theory of rights. The third kind, that of relativism among individuals, poses the most difficult problems for the theory. Thus, it will be discussed at greater length than the other two. But first the notion of well-being deserves discussion, since this seems to be a major source of the relativism and the problems associated with it.

The Breadth of the Concept of Well-Being

That persons have different standards of well-being is, I think, in large part due to the breadth of the definition of 'well-being.' As we have seen, many writers who make any attempt to analyze the concept do so in order to include the physical, psychological, social, and so on, dimensions of a person (cf., Rescher 1972, and Outka 1974). A common tendency, and I think mistake, is to focus only on the physical dimension, and to talk in terms of a person's physiological needs. It is much more plausible, though, to consider a person's well-being in all its dimensions. And, in fact, most persons writing on the subject do so. Two reasons favor the broadened concept of well-being.

First, a deficiency in any one dimension can affect the individual's level of functioning just as much as a deficiency in another dimension. Consider, for example, the following three individuals: (1) a professional ballet dancer who suffers from a broken leg; (2) a college professor who suffers from severe manic depression; and (3) a teenager who is incapable of forming any friendships at all because of his extreme shyness and as a result is very lonely. All three individuals, though different dimensions of their person have been detrimentally affected, incur a similar loss of functioning in that important aspects of each one's life are affected. The dancer, whose life in large part revolves around his career, is unable to dance with a broken leg; the college professor, whose life in large part revolves around teaching and research, cannot maintain her concentration because of the

depression; and the teenager, whose primary concern at this point in his life is to become "a part of the group," is unable to do so because of his inability to relate to others. All three persons have had important aspects of their lives affected as a result of being harmed in one dimension of their well-being. And I would maintain that the harm incurred to each is comparable, though, of course, difficult to measure. A deficiency in a person's physical functioning may be no more important than a deficiency in her or his psychological functioning which may be no more important than a deficiency in her or his social functioning. All dimensions of one's well-being are important, and hence must be taken into account, insofar as one's ability to function.

A stronger example helps to reinforce the point. Consider a person who has a very serious physical illness such as terminal cancer, and who is in a constant state of pain. Compare this person to another who has a severe mental disorder, such as severe manic depression along with other psychoses, leaving the person in a state of anxiety, and almost completely out of touch with reality. It strikes me as implausible to say that one of these persons was better off in terms of her or his well-being, than the other. When examples such as these are placed side by side, it becomes clear that well-being should not be defined solely in terms of one's physical state, but instead must incorporate other dimensions of a person.

A second reason favoring such a broad concept of well-being is that all dimensions of a person seem to be integrated in such a way that a deficiency in one can, and often does, affect another dimension.

That is, a person is constituted by all these dimensions which are integrated with one another instead of being separate and without interaction. In order to speak correctly of an individual's well-being, many persons now wish to include all aspects for the reason that they all affect each other, and, in conjunction, determine the individual's level of well-being. This becomes clear when we consider some actual examples.

Psychological problems, for one, often affect a person's physical state. For example, anxiety, tension, and stress commonly bring about physical abnormalities such as digestive disorders, headaches, and ulcers. The opposite holds true, too; that is, it is not unusual for physical abnormalities to affect a person's mental state. For example, a toothache can result in loss of concentration, fear of going to the dentist, and so on. Severe injuries such as paralysis brought about by an accident of some sort can result in severe depression because the injured person is no longer able to do the things she or he was capable of doing prior to the accident. These and other such examples show that different dimensions of a person are highly integrated, and, indeed, often inseparable. For this reason it would be a mistake to dwell on just the physical dimension of a person when considering her or his level of well-being, and what needs she or he has. That would be incomplete.

So, since it would be quite difficult to say that harms in one dimension (most often the physical) of a person had a greater effect on well-being than harms in another dimension, as is shown when

considering harms of equivalent seriousness, and because all the dimensions of a person are integrated, indeed, often inseparable, it makes sense to consider well-being in general as a very broad concept. This becomes problematic, though.

As soon as the concept of well-being is extended so as to include dimensions other than physical, namely, the psychological, social, and so forth, it becomes more difficult to judge when a person's well-being is at stake. By far, the physical dimension is the easiest to assess, though, of course, not entirely free from problems. That is, if a person has suffered some sort of physical impairment, this is easier to assess in most cases than, say, a mental impairment. This is so for several reasons. First, many times physical impairments are directly observable (e.g., a broken leg, abrasions, and so on). Sometimes they are not observable externally, but surgery will reveal the diseased organ (e.g., the infected gall bladder, tumor on the spine, and so on). And sometimes physical abnormalities are indirectly observable by various tests (e.g., blood tests, x-rays, and so on). Because physical ailments are so readily observable, they tend to be easily recognized. Two individuals can observe the broken leg, the infected gall bladder, or whatever, and both will likely assess the person as being in need of physical treatment.

A second reason physical ailments are easiest to assess is that this aspect of medical science, though not entirely perfected, is fairly well-developed, much more so than the psychological realm of the health sciences. Tests for physical abnormalities have been worked out in

great detail. The causes of many such abnormalities have been ascertained. And since medical researchers know some of the causes, they are able to predict with reasonable certainty who is a likely candidate for a particular ailment. They also have ascertained the course of many physical ailments. In short, the branch of medicine dealing with human's physical constitution has been fairly extensively developed, or, at least, it is thought to be so.

A third reason physical abnormalities are easiest to diagnose is that there seems to be much agreement among health professionals as to when a person has suffered physical trauma. There is often agreement on test results, on the accuracy of the tests themselves, on the standard of physical health necessary for physical functioning, and so on. This is not to say that there is agreement on what constitutes a physical abnormality, one that requires treatment. Sterility and premenstrual syndrome are two examples that come to mind. Traditionally, these have not been considered physical impairments. Recently, however, they have been classified as such, perhaps due to changing attitudes of health care practitioners in particular, and the population in general. But determining what constitutes an impairment is another issue, one related to relativism of needs, to which I shall shortly turn.

Such clarity and precision found in the physical realm of the health sciences is not altogether paralleled in the psychological realm. Here it becomes much more nebulous as to when a person has been harmed psychologically. One reason is that mental illnesses are

not nearly as observable as physical illnesses (though, of course, some bizarre behaviors are readily observable). We cannot observe, say, schizophrenia as easily as we can observe, say, a cut on one's arm. In fact, the way we "observe" mental illness is to observe a person's behavior and/or talk with that person in psychotherapy. Of course there are some tests (e.g., personality profiles, etc.) that may help assess the person's mental status. But the tests are not as accurate as those testing for physical illnesses. In part this is due to reliance on the patient's responses, which may be highly inaccurate.

Second, the sciences dealing with mental health are not as well developed as those concerned with physical health. There are many theories about how mental illness develops, what the best method of treatment is, and so on. Different professionals subscribe to different theories, which leads me to a third contrast. That is, the amount of agreement among professionals in mental health is much less than in physical health, since there is less agreement on the causes of mental illness, the testing methods, methods of treatment, the standard from which deviation is measured, and so on. The result is that mental illness is much more difficult to assess than physical illness. Thus, it often becomes difficult to assess whether someone's mental health has been harmed.

To summarize the points made in this section: there are good reasons to consider the concept of well-being very broadly, including physical, psychological, social, etc., dimensions. Yet there are

problems with doing so, especially that often it becomes quite difficult to assess whether and to what extent one's well-being is at stake. Since the mental and physical dimensions of a person interact and affect each other, and since it is often quite difficult to assess psychological harms especially, it is often difficult to determine the effect on well-being in general.

The relevance of the broadened concept of well-being and its resultant problems to theories of rights based on needs can be seen in terms of each of the three kinds of relativism. Next each kind of relativism will be examined, and problems for needs-rights theories in terms of them will be addressed.

Relativism of Needs Over Time

One kind of relativism of needs is that over time. As a particular society becomes more advanced in its technology, sciences, and studies on the nature of persons, it is likely that its assessment of what persons need will change, too. As an example, contemporary American society would probably include among people's needs, self-realization, psychological security, self-respect, creative expression, and so on (cf., Kurtz, 1958, pp. 563ff). But long before developments in psychological theories had been worked out, such things probably were not included on the list of human needs. And before the need for particular vitamins had been determined, this, too, was not considered a need. Thus, as a society becomes more knowledgeable about what affects a person's well-being, it is likely to change its assessment of people's needs.

A number of theorists recognize this kind of relativism of needs. Tranoy, for one, shows the relativism of needs by relating them to a changing conception of human nature. He reports that needs are relative because they are subject to cultural and historical change and that "to change (one's idea of) human needs, is to change (one's idea of) human nature."⁷² As our technology and science develop, he thinks, we learn more and more about what humans need. By the time we reach current day societies such as America, what is considered to be a need is fairly different from what was a need centuries ago. This is not to say that needs are very objective states which we seek to discover, and which will be revealed once our sciences have advanced to a certain stage. Rather, the point is that our conception of needs is likely to change corresponding to changes in science and technology, which in turn reflect the changing values of persons in a particular society. And this is because our conception of human nature has changed.

Braybrooke makes a similar point. He mentions that in middle class, present day America, people claim to need a certain level of education, certain skills, and certain material possessions (e.g., refrigerators, cars, and the like). And even though such needs are not so closely associated with health and sanity, he says, not meeting them may result in a loss of social status which, for some persons, can make life not worth living.⁷³ These needs, restricted to certain

⁷²Tranoy, 1975, p. 164.

⁷³Braybrooke, 1968, pp. 98-99.

advanced societies though they may be, can, if unfulfilled, have just as detrimental an effect on the individual as, say, an unmet need for food, a need which appears to be present in all individuals in all cultures at all times.

What implications does relativism of needs over time have for theories of rights based on needs? This kind of relativism is problematic in the following way. It seems odd that persons are said not to have some needs at one time in history but are said to have those needs at another time simply because persons in the more contemporary society have discovered more about human nature and what person's needs are. This would imply, for needs-based theories of rights, that persons at one time would have rights that persons at another time in history would not, even though the reason may be somewhat filippant (i.e., just because certain advancements and discoveries were not yet made). So, we may have two persons with the same needs (e.g., the need for self-realization), yet only one has a right to the satisfaction of the need. This seems counterintuitive.

One solution to this problem is as follows. We could simply admit that all these people had the same needs, and that if some rights are to be based upon needs, then such persons should have the same rights, other things being equal. In other words, we would not deny that persons in less historically advanced societies had the same needs, on the grounds that their well-being is equally at stake. Indeed, if all that has been discovered about persons and their needs to date was known years ago, we would have recognized that persons had such needs

at that time. So, if what is deemed as a need varies from time to time simply due to lack of knowledge instead of any morally blameworthy reason, I do not think this has any negative implications for theories of rights. We may simply conclude that it is unfortunate that we did not gain this knowledge sooner. Thus, relativism of needs over time is for the most part unproblematic.

Relativism of Needs Across Cultures

This brings us to a second kind of relativism, namely, that across cultures at a particular time in history. The differences between two societies that assess people's needs differently can be attributed to each one's views about the nature of human beings, the standard of well-being that persons must achieve in order to function properly, and what people's needs are. In short, the two societies disagree on their conception of human nature.

Many theorists recognize relativism of needs across cultures. McCloskey, though he admits that there is a common human nature shared by most, says that to some extent human nature as well as person's needs are relative. This relativity occurs because humans develop in different physical and social environments. So, he says, a European child may have a need for reading, while a tribal aborigine child will have a need for tracking. Both have the common need of mastery of a language, though the satisfaction of the need takes various forms.⁷⁴

⁷⁴McCloskey, 1976, p. 8.

Indeed, it could be argued that it is not only that satisfaction of the need takes various forms; it is that new subsidiary needs are created. I will return to this point in the section on needs and irreplaceability of the means to their satisfaction.

Benn and Peters also speak to the issue of cultural relativism, although the example they provide also incorporates relativism over time. In discussing what they call "basic needs," they argue that these are relative to norms set by different cultures. They compare English society a century and a half ago with Chinese society today. While we would be shocked to find people in England who could not afford a bed, they claim, we would not have this reaction if we found such people in China. This is because the norm of well-being in China is set much lower than in England.⁷⁵

Finally, Ingram claims that human nature changes by the development of man in a physical, psychological, and cultural sense.⁷⁶ Thus, if rights are linked to needs, he tells us, what appeared as an absolute, inalienable right in one society does not appear so in another. Human nature, defined by behaviors that appear natural for humans, is always viewed from within a particular society. So, too, are conceptions of human needs since human nature will reveal to us what people's needs are.⁷⁷ Thus, some needs, and hence some rights, are relative among cultures.

⁷⁵Benn and Peters, 1959, p. 145.

⁷⁶Ingram, 1975, p. 9.

⁷⁷Ingram, 1975, p. 9.

There are both positive and negative points to be made about the relativity of needs across cultures. On the positive side, it seems in large part to be true. Obvious examples include those cited by McCloskey, and Benn and Peters. Consider the following, too. In contemporary America, we would probably all agree that persons had a need for at least a high school education in order to better her or his chances of getting a decent paying job. Without this level of education, a person's chance of getting such a job are greatly reduced. And if she or he has a very low income, it becomes difficult to purchase the necessities of life (e.g., food, clothing, health care), let alone any luxuries (e.g., forms of entertainment) that may be very important to the individual's mental health. So, in America today, we could legitimately claim to have a need for education assuming it fits under the strict definition of 'need' outlined in the previous chapter. By contrast, consider an Indian tribe that rejects the modern, urban way of life, and interacts only minimally with members of modern society. Members of the Indian tribe would not have a need for high school education, but would perhaps have a need to acquire a particular skill, such as hunting, fishing, and so on. So, at least some of the needs of the members of these two societies are quite different.

But perhaps these are just differences in the way needs are to be satisfied. That is, in common with both needs is the need for survival, which for the most part, is transcultural. Though this may be true, it could be shown that the subsidiary needs--those for education and acquisition of a skill--are indeed needs themselves, not simply

ways the common need may be met. One could argue that such subsidiary needs may have been created by that particular society in which they occur. If this be the case, we might argue that that society ought to satisfy those needs. This important issue will not be addressed in this thesis. The issue of subsidiary needs will be addressed again in the section on needs and the irreplaceability of the means to their satisfaction. For now, the point is that if we can show that needs for education and acquisition of a skill fit the definition of 'need' offered in the last chapter, then they ought to be considered as needs and not just the means to satisfy some other need.

Though there is this positive side to relativism of needs among cultures, there are some problems with it. One problem arises if we assume that all needs are relative in this way. If all needs are culturally relative, and if at least some rights are based upon needs, then these rights will not be absolute (i.e., will not be shared by all humans). This becomes problematic to those persons who wish to argue for absolute rights. Many liberals, among them Locke and Mill, argue this way. Also, many theorists who argue in favor of natural rights, rights that persons have in virtue of being persons, invoke the notion of absolute rights (e.g., Locke 1960, Ritchie 1894). Further, most needs-rights theorists, as we shall soon see, adhere to the notion of at least some rights as absolute based upon some absolute needs. In any event, if we assume that all needs are culturally relative, this will present a problem for those who staunchly defend a theory of absolute rights. It could be the case that those who defend

absolute rights based upon needs that are common to persons in all culture do so because the idea that all needs are relative seems counterintuitive. At least initially, this view (i.e., the denial of the view that all needs are relative) seems plausible. Do not all humans no matter what society they live in, require food of some sort? Do not all of them require rest and exercise? Do they not all have psychological needs for respect, love and affection? It would seem that there are some needs that all humans have simply by virtue of being human, independent of what society or culture they find themselves in. Indeed, this is the view of most needs-rights theorists. The problem might be solved by appeasing both absolutists and relativists and simply admitting that some needs are transcultural while others are relative among societies.

If we opt for this solution, though, we encounter another problem. That is, if persons in different cultures or societies have different needs, and have rights to the satisfaction of these needs, then at least some rights will be different across cultures. This in itself will be problematic only to those who endorse a theory of absolute rights. However, a different sort of problem arises in connection with morally assessing societies. It may very well happen that persons in society A deem society B as being morally deficient because its members do not have certain rights. But is A's assessment of B legitimate, and if so, on what grounds? Assessing another society as to what needs (and rights) its members have is always done from within a particular society. So, one society is likely to be biased in favor of

what it has deemed to be the needs and rights of its members and may assess other societies as being morally deficient on the grounds that its assessment of the needs and rights of its members is different. This relativism is similar to Kuhn's view of epistemological relativism in science, namely, that what constitutes knowledge is dependent upon the paradigm within which scientists are working, and that there is no absolute knowledge according to which we can assess the scientific community as falling short of. This problem is also similar to Gilbert Harman's view of morality (though Harman does not speak of paradigms, per se), that is, that moral codes and standards are relative to societies and individuals, there being no true absolute moral code by which we can assess societies. So, if some needs and rights based upon them are relative to societies or cultures, the problem is how to assess certain societies as being morally deficient on the grounds that they fail to grant rights to their members on the basis of needs. Of course, one following Kuhn or Harman would argue that this assessment is inappropriate. But needs-rights theorists who invoke the notion of absolute rights will be unsatisfied with this reply.

One possible solution to this problem is to assess other societies on the basis of the longevity of their members, the quality of lives they lead, whether or not they are generally happy, and so on. Again, with any of these criteria we must consider all the dimensions of a person--physical, psychological, social, and so on. And since, as I have shown, the physical dimension is easiest to assess, it is likely that there be more agreement across cultures as to what physical

needs are and when a person had some of her or his physical needs unmet. But when the dimensions other than physical are considered, it is likely that there not be as much agreement across cultures. For example, societies whose members espouse stoicism probably would not include among human needs all the psychological needs that Kurtz includes⁷⁸ and to which I have referred above. Standards of well-being, quality of life, and the like, are likely to differ across cultures simply because such standards involve values, and these values often differ across cultures. Thus the problem becomes that of moral relativism.

There will be no easy solution to the problem of assessing societies. I do think that we must admit to some relativity of needs among societies since there are some obvious examples. At the same time I am willing to admit that some needs are transcultural. These are species needs--needs that all humans have qua human. I will discuss this point in a section entitled "Absolute Needs,"

Relativism of Needs Among Individuals

This brings us to a third and most problematic kind of relativism of needs, that is, relativism among individuals in a particular society. This kind of relativism arises mainly because individuals have different standards of well-being; that is, what one person considers to be an adequate level of well-being for her or himself may differ from what another considers as adequate for her or himself.

⁷⁸Kurtz, 1958, pp. 563ff

And since their standards of well-being are different, most likely the assessment of their own needs will be different.

A number of theorists recognize this kind of relativism, too. Scanlon, for example, suggests that there is a subjective criterion according to which an individual assesses his or her own well-being in accord with personal tastes and interests.⁷⁹ Though an objective criterion, one upon which most persons agree, is used to make moral appraisal of institutions and policies, he tells us, the subjective criterion is attractive since it accounts for an individual's preferences and favors the view that the individual is often the best judge of his or her own well-being. I will return to this point shortly.

Braybrooke, too, mentions the relativity of needs among individuals. He admits that "some people may need peace and quiet and opportunities for solitude, while others do not; that if some people can make do with celibacy, other people need sexual outlets. . . ."⁸⁰ Such differences in needs he attributes to differences in physical and mental constitution, social influences, and the persuasion of others.

Both Scanlon and Braybrooke raise the issue of how this third kind of relativism comes about. Needs will likely differ among persons if they are allowed to be the judge of their own needs. The issue then is whether or not persons should be the judges of their own needs.

⁷⁹Scanlon, 1975, pp. 656-657.

⁸⁰Braybrooke, 1968, p. 98.

There are both advantages and disadvantages with each view. Basically, the two horns of the dilemma are as follows: (1) if we allow needs to be determined by others, it results in paternalism; and (2) if we allow the individual to be the judge of her or his own needs, (a) she or he may be mistaken about these needs, (b) many other persons may not agree with the assessment, and (c) this may lead to an abundance of needs, and hence, rights. What follows is a discussion of both advantages and disadvantages.

As a point of clarification, it must first be noted that needs may vary among individuals in an unproblematic way. For example, I may need more food than you due to physiological differences. Or a diabetic may need a diet different from that of someone with normal blood sugar levels. This kind of relativism is for the most part unproblematic because it stems from individuals having different constitutions. In such cases, the need in question may be recognized by all as a need (e.g., for food, for a certain blood sugar level). It is just that different individuals require more or less of the means to satisfy the need. Thus, this is not the kind of relativism I have in mind in this section. Rather, the relativism I am considering is the kind that is likely to result from allowing individuals to be the judge of their own needs.

The main advantage with allowing the individual to be the judge of her or his own needs is that she or he may be best able to do so. That is, the individual often knows best how she or he feels, when her or his well-being is at stake, what it is she or he needs that

will promote well-being, etc. (cf., Scanlon, 1975, p. 657, for this view). Indeed, we often hear individuals vehemently claim that they need X, and that without it, they in some way will be harmed. They claim to know how they feel without X, and what better state they would be in if their needs were met. Sometimes other persons are doubtful and may disagree just as strongly. Other times they are in agreement.

Another advantage with allowing one to be the judge of one's own needs is that this promotes autonomy at least on some views of autonomy. Suppose that individuals judge when they are in need. Suppose further that rights are granted to the satisfaction of some of those needs and that obligations are correlated with those rights. This would allow individuals to determine when others had an obligation in some way to meet their needs. For example, one may decide to forego lifesaving treatment because one does not think that one has a need for it (perhaps because it will only prolong agony). Medical personnel may then have an obligation to honor one's wishes, thereby respecting autonomy.

If we take this position, however, several problems arise. First, an individual may be mistaken as to what her or his own needs are. In the previous chapter I discussed the notion of false needs. Recall that false needs are needs that individual thinks she or he has but really does not. Often it is because satisfaction of a false need does not promote well-being, or, in fact, harms the individual, which precludes classification of a false need as a need. We know that an individual is mistaken about her or his needs because of the existence

of objective tests used to determine when a person has suffered harm and therefore is in need, and will have her or his well-being promoted by satisfaction of that need. So, for example, the drug addict's claim to satisfaction of a false need, since heroin will not promote the addict's well-being, and indeed will bring about harm.

This is not to say that the tests we use to assess whether or not someone is in need are entirely accurate. Indeed, as I have mentioned, determining psychological harm is quite difficult. If tests are not very reliable, or not even available, this justifies giving more credence to an individual's own assessment of her or his well-being and needs, at least in the nebulous area of mental health. This is not to say that we can clearly separate psychological and physical dimensions of a person, either. In fact, if there is a considerable degree of interaction between the two dimensions, this might justify allowing individuals to assess their own physical needs, too.

In any event, the relevance of the problem of false needs for rights theories is this. If a person wrongly judges her or himself to be in need of something, and she or he is accorded a right to the satisfaction of that need, that right is mistakenly granted since it rests on a false judgment. Put simply, the person ought not to have that right. For example, many persons would object on both practical and moral grounds to having an obligation to satisfy the addict's alleged need for heroin. So allowing persons to be the judge of their own needs might present a problem for needs-rights theorists.

If we allow the individual to be the judge of her or his own needs, at least one other problem results. The number and kind of needs that the individual assesses for her or himself is likely to differ from what others would assess. Consider Van de Veer's example that was mentioned earlier. He discusses a person whose extreme sexual deprivation leads to her or his being chronically depressed. Thus the person needs a certain level of sexual activity to achieve well-being. Now if such needs are to ground rights, this person would have a right to the satisfaction of her or his sexual needs. Two things may result. Either the individual's claim to such rights may go unheard simply because she or he will be unable to convince others of her or his being in need. And since others may not be convinced that she or he has this right to satisfaction of the need, it will be difficult for them to recognize that they have an obligation to satisfy the right. Thus, the persuasive and demanding features of rights will not be fulfilled.

Or, alternatively (and more problematic for needs-rights theorists, I believe) society may somehow decide to satisfy all needs a person has (going by the strict definition of the term outlined in the previous chapter), even though some of its members might not be convinced that they have an obligation to do so. So, if things such as sexual deprivation are included as needs, and persons had rights to the satisfaction of their needs corresponding to obligations on the part of others, certain persons would have to satisfy another's need for sex (assuming, of course, that masturbation will not satisfy the

need). I think most of us would find this problematic. Of course, the response to this objection is that persons would not incur such obligations if these obligations in some way harmed their state of well-being. True, we would have to strike a balance. But so long as the possibility remains that one's needs will outweigh another's, it is likely that such problems will arise.

Not only are the kinds of needs that individuals assess themselves as having likely to differ from that which others assess, but the number of needs are likely to differ as well. That is, if a particular society guaranteed its members satisfaction of their needs (so long as these met the relevant criteria), this might encourage persons to claim to have a number of needs. A practical problem is that if there are too many rights claims based on these needs, it will be difficult, if not impossible, to satisfy all of them. A moral problem is that persons may in some way stifle the moral development of their character by not taking responsibility for satisfying some of their own needs. It could be argued that persons ought to satisfy certain of their own needs, such as those they are responsible for incurring, those they are able to satisfy, and so on. This is an interesting and important issue, though beyond the scope of this thesis.

Braybrooke, to whom I have referred earlier, recognizes the problems associated with the variety and large number of things being considered as needs. Thus he argues for "restraint in enlarging our conception of needs."⁸¹ The concept of need has been enlarged for

⁸¹Braybrooke, 1968, p. 87.

several reasons, he claims. First, there is a variation of needs ascribed to different persons at any given moment, including the need for peace and quiet, for sexual outlets, drugs, etc. Second, "The struggle to keep one's place in society . . . seems to entail various needs or supposed needs."⁸² Mentioned are the need to have certain skills, belonging to certain organizations, and having certain material possessions, none of which are intimately connected with health and sanity. Third, needs differ from role to role and class to class at any given time. Thus he writes:

People whose fathers walked to work, or commuted by train, now (so they say) need cars to get there, because they live so far away, and outside the reach of public transportation; maybe (so they say) they need second cars, because otherwise their wives cannot do the shopping, or visit friends. People who once got along with iceboxes now - without extravagance - say they need refrigerators, and not merely refrigerators, refrigerators that are half freezers.⁸³

Braybrooke's concern is over conflating needs and preferences, each of which play different roles in policy-making.

The problems associated with the number and kinds of needs claimed by individuals might be solved if there was a consensus among members of a particular society, or among its professionals, as to when someone was in need. This is a second sense of 'objectivity' of needs. The first one was that there is empirical verification of one's being

⁸² Braybrooke, 1968, p. 98.

⁸³ Braybrooke, 1968, p. 97.

in need, as determined by some sort of test, and this was discussed in Chapter II. By 'objectivity' here I mean general agreement as to what is a need. If needs are objective in this latter sense, allowing individuals to assess their own needs might be less problematic for needs-rights theorists than if needs were not objective. That is, if there is agreement as to when a person is in need, and thus when they have a right to the satisfaction of their needs, it would be more likely that others will be persuaded of their obligation to satisfy the right/need in question. Thus the theory will have appeal even to internalists such as Harman who argue that obligations necessarily entail motivations to fulfill those obligations. I think that relativists about needs would be unconvinced that a high degree of consensus could be reached.

In any event, if we allow the individual to be the judge of her or his own state of well-being, and of what her or his needs are, such problems are likely to result. We could, however, favor the other horn of the dilemma that needs ought to be assessed by professionals in the various branches of health care, independent of the individual's input. Nicholas Rescher, for one, espouses this view. He claims that though a person is best qualified to judge his own likings and preferences, others usually are the best judges of his welfare.* For example,

*Rescher uses the term 'well-being' to be more inclusive than 'welfare.' (p. 4) Thus, well-being has many dimensions, including physical welfare (health), material welfare (prosperity), and spiritual or psychological welfare (mental health). Use of 'well-being' in this thesis corresponds to Rescher's use of physical and psychological welfare.

though a person has a greater stake in and is more concerned about his health than his physician, his physician usually knows more about the person's health.⁸⁴ This is because a person's welfare is a matter of objective conditions which are best judged by experts such as physicians, counselors, etc., as opposed to subjective factors such as one's liking and preferences, which are best judged by the person her or himself. So, Rescher's reasons for saying that others are often better judges of an individual's welfare than the individual her or himself is that these others are often better informed about the person's condition since they are experts or professionals.

Rescher's suggestion is good in that it avoids the problems of relativism generated by an individual's assessing her or his own needs. However, if we embrace Rescher's view we are faced with the problem of paternalism, though perhaps of a restricted sort. That is, professionals will be the ones to decide whether or not a person is in need. Rescher's view implies that the person her or himself will have no say in the matter, or at least that a professional's opinion will outweigh that of the person in cases of conflict because Rescher claims that welfare is a matter of objective conditions, not of one's subjective state. And, as we have seen, objective conditions are best judged by experts. This view is problematic. It violates a commonly accepted liberal notion of a right to control over one's own body. The problem lies with the fact that Rescher view needs solely as objective states,

⁸⁴Rescher, 1972, p. 16.

without recognizing that they do involve values. It would certainly be unfair always to favor the health care professional's assessment over that of the individual, since needs are not entirely objective states and giving precedence to one person's values over those of another often cannot be justified.

Perhaps the two horns of the dilemma can be escaped by including both the individual's input as well as the professional's in the assessment of needs. This may be difficult to accomplish in practice, but at least some of these problems may be avoided. And if the assessments conflict, a needs-rights theorist will have to decide whether to favor either individual autonomy at the risk of too many needs and needs too difficult to meet, or health care professional assessments of needs at the risk of paternalism.* The issue will not be decided in this thesis.

Let us then bring back the problem of relativism to the main concern of what can be included as a need, and summarize the direction of the discussion. We have seen that relativism of needs over time is fairly unproblematic. Different things may be thought of as needs just because a society has developed and knows more about human nature, and its values have changed. Relativism across cultures, though, presents the problem of assessing different societies as to what they consider to be a need. So different societies may include different things as

*The issue of competence arises here, too. We would not allow, for example, a diabetic acting erratically due to insulin shock to decide whether she or he needs insulin.

needs and it is difficult to tell which societies (if any) might be morally deficient in this way. Finally, relativism of needs among individuals arises mainly because the individual is the judge of her or his own well-being and, thus, what her or his needs are. We have seen the problems with both sides (the one side being that the individual judges her or his own needs, and the other being that health care professionals or other experts assess the person's needs). If we opt for the view that the individual is the best judge of her or his own needs and well-being--and there are good reasons for holding this view--the likely result is that just about anything, assuming that it fits the criteria outlined in the previous chapter, could be included as a need. Thus, the list of needs conceivably could be quite long.

Absolute Needs

In order to avoid the problems associated with any kind of relativism, several theorists have suggested that at least some needs are absolute--that is, that all humans have such needs regardless of age, sex, race, social or economic status, and so on, or of what society they are a member. And, in fact, most of the theorists who argue for rights based on needs favor this view and base rights only on such absolute needs. Before examining some of the views of theorists who endorse this position, a brief explanatory note must be made.

The reader may wonder what is the point of examining relative needs when needs-rights theorists seem to deal mainly with absolute needs. The reason for exploring the relativism of needs at such length

is twofold: First, it is unclear to me that needs-rights theorists want to limit rights to the satisfaction of absolute needs only. As we shall see below, Blackstone holds this view, that is, that needs-based rights are limited to the satisfaction of absolute needs. But McCloskey, though his view is not clearly stated, seems to recognize rights based on relative as well as on absolute needs. He at one point seems to reject the view that rights ought to be based on needs by claiming that this view would claim "the impossible and the absurd."⁸⁵ However, at other points he suggests that needs-based theories of rights do not go far enough because they claim too few rights.⁸⁶ This implies that for such theories to be plausible they must be more inclusive. If the latter is McCloskey's view, and he accepts some version of a needs-based theory of rights, he seems to include both absolute and relative needs. This is so because he links needs to human nature: somehow he speaks of a common human nature shared by most persons,⁸⁷ and other times he speaks of needs and human nature as relating to a "particular person with the specific nature he has as that unique person."⁸⁸ So McCloskey, and perhaps others, speak of rights to the satisfaction of absolute as well as relative needs.

⁸⁵ McCloskey, 1976, p. 25.

⁸⁶ McCloskey, 1976, p. 12.

⁸⁷ McCloskey, 1976, p. 8.

⁸⁸ McCloskey, 1976, p. 7.

The second reason for exploring relativism of needs at length is that it is not clear that all needs-rights theorists want to limit rights to the satisfaction of absolute rights; maybe some want to base rights instead of relative needs. To my knowledge no needs-rights theorist holds this position. However, and unfortunately, most theorists do not specify their position. Thus, exploring relativism in such detail seems justified.

Return then to the issue of absolute needs. Blackstone, one theorist who argues for basing rights on absolute needs, argues that "The most desirable system of rights would be that which permitted the maximum possible fulfillment of the needs and capacities of each and every human being in a society."⁸⁹ He admits that rights are in reality relative to societies or cultures, but that those societies which do not respect all persons by according rights to the satisfaction and fulfillment of their needs and capacities, rights which all persons possess qua being human, are morally deficient.⁹⁰ In other words, his is a normative claim--that all societies ought to recognize these rights for all persons even though they, in fact, do not. The reason such rights ought to be transcultural is that the needs (and capacities) upon which they are based are universal."⁹¹

⁸⁹ William T. Blackstone. Human Dignity: This Century and the Next. Eds. Rubin Gotesky and Ervin Laszlo. New York: Gordon and Breach, Science Publishers, Inc., 1970, p. 24.

⁹⁰ Blackstone, 1970, pp. 25-26.

⁹¹ Blackstone, 1970, p. 28.

Tranoy argues in similar fashion. He claims that all persons share a set of what he calls 'vital needs.'⁹² By vital needs he means those needs which (1) if not met, kill or seriously disable the person; (2) that the means to satisfy those needs cannot be replaced by other means; and (3) that satisfaction of those needs brings pleasure and/or cessation/prevention of harm or pain and does not necessarily hurt either the person in need or any other person.⁹³ Further, he argues that for any vital need there corresponds a right to obtain satisfaction of that need (i.e., a positive right).⁹⁴ So he, too, argues for rights based upon universal needs.

Markovic does so as well. He claims that since human beings are defined by their praxis, their needs evolve through history. Yet there are some needs that have permanently evolved. These essential needs of each individual are the ultimate foundation of human rights. Thus, "human rights are determined by the very fact that an individual belongs to the human species."⁹⁵

Ingram, though he claims that needs (and rights) are viewed in terms of, and not created by, a particular society and in that sense are relative, argues that still some needs are universal. Such needs are absolute because we cannot conceive of any alternative possibilities

⁹²Tranoy, 1975, p. 161.

⁹³Tranoy, 1975, p. 155.

⁹⁴Tranoy, 1975, pp. 160-161.

⁹⁵Markovic, 1982, p. 391.

to them, even for persons in other societies. The absolute needs are related to that portion of human nature that remains constant over time and all cultures. Further, these species needs are the basis for the natural rights of persons. Societies which do not guarantee the satisfaction of such rights/needs are misguided and require reform.⁹⁶ So Ingram disputes the relativist claim that it is inappropriate to assess other societies as to whether or not they meet certain needs of their members.

These and other theorists favor the view that all humans, by the very fact that they are members of the human species, have some needs in common. And it is these absolute or universal needs upon which many theorists base rights. Indeed, most, if not all, of the theorists dealt with in this thesis tend to argue for rights based on universal needs. They do so, I think, because they want the moral claims they make to be universal. That is, if all humans have certain needs in common, and if rights are based upon such needs, then all humans should be ascribed these rights. Satisfying these rights will be independent of a person's race, sex, social position, and so on. This view of rights has the further implication that we can assess societies which fail to recognize such rights as being morally deficient, as assessment that is inappropriate on most, if not all, relativist accounts of needs.

⁹⁶Ingram, 1975, pp. 13-14.

By endorsing an absolutist account of needs, theorists avoid the problems associated with relativism. However, they encounter a new problem: deciding which human needs are universal, and on what basis.

What needs-rights theorists tend to do is to describe several needs as basic needs. That is, they seem to treat needs that all humans have in common as being the basic needs, though this is defined in different ways, as we shall see in the next chapter. Indeed, to cite an example, Feinberg remarks at one point that "what everyone in a given society regards as 'necessary' tends to become an actual, basic need."⁹⁷ In attempting to define what he means by 'basic need,' he lists "foodstuffs of a certain quantity and variety, fuel to heat our dwellings, a roof over our heads, clothing to keep us warm, and so on."⁹⁸

Initially, the idea that some needs, and hence some rights, are universal, seems plausible. Certain survival needs such as those mentioned by Feinberg, seem to be shared by all humans qua humans. We might be able to determine which needs these are by observing survival rates, mortality figures, standards of living, and so on, across cultures. And if it is true that some needs are universal, this would be favorable to those who base rights on the satisfaction of these needs. That is, if we all have certain needs, and we recognize this, it might

⁹⁷Feinberg, 1973, p. 112.

⁹⁸Feinberg, 1973, p. 111.

be more likely that we are motivated to satisfy the needs of others at least when they are unable to do so by themselves. We might take a somewhat Kantian position and argue that the maxim that "everyone's universal needs ought to be satisfied" should be universalized. That is, if we were in the position of having those needs unmet, we would like to be aided in satisfying them. This position could also be connected with a Rawlsian position that behind a veil of ignorance persons do not know what needs may be unfulfilled. And most persons would favor a principle that ensured satisfaction of these needs. To put the point differently, we might accept the egalitarian premise that satisfaction of everyone's universal needs puts all on an equal footing. Only after that is done can we tolerate inequality among persons.

Though the view that some needs and rights are universal (or basic) seems plausible at the outset, what remains to be determined is what can be included as a basic need and how (if at all) basic needs are to be distinguished from other nonbasic needs. The next chapter examines (1) the kinds of needs theorists have described, (2) the basis they give for distinguishing among needs, and (3) whether or not this basis is a legitimate and morally significant one so as to allow some needs to ground rights while others remain less plausible candidates for doing so.

CHAPTER IV

DISTINGUISHING BASIC AND NONBASIC NEEDS

In this chapter I will explicate the bases which some theorists offer that, they claim, allow a distinction among needs to be made. I will argue that what appears to be a clear demarcation of kinds of needs is not--at least for most bases. Also, I will examine some problems for needs-rights theories that arise in connection with the bases which are said to distinguish needs. Finally, I conclude that due to the problems involved in distinguishing among needs--basic needs--only upon which rights are based. Thus, the needs-rights theorist, unless she or he can provide a relatively unproblematic basis for distinguishing among needs, must face the problems of assigning rights to all needs that fit the definition offered in Chapter II.

At the outset, it must be mentioned that not all needs-rights theorists dealt with here explicitly link universal with basic needs. On some view, it is perfectly compatible to have universal needs, i.e., those shared by all humans, which are nonbasic. The reverse is generally not true, though. In other words, theorists who speak of basic needs often claim that these are universal, shared by all humans qua humans. What is important for the discussion is that theorists distinguish among kinds of needs, though the basis for this distinction is not always entirely clear. So, most needs-rights theorists argue

for rights to the satisfaction of basic, sometimes referred to as fundamental, or vital, needs, rather than to the satisfaction of all needs persons may have. We hear, for example, that rights ought to be based on: basic general needs intrinsic to all men;⁹⁹ basic needs the satisfaction of which is necessary for being human;¹⁰⁰ basic human needs which, when satisfied, promote human worth and dignity;¹⁰¹ basic human needs including survival needs, protection of health, and freedom needs;¹⁰² human needs that are tied to prospects for living a good life;¹⁰³ vital needs the satisfaction of which is prior to satisfaction of other needs;¹⁰⁴ essential needs the satisfaction of which is necessary for social survival and development;¹⁰⁵ essential needs which come about as a result of the natural lottery;¹⁰⁶ course-of-life needs which all persons have during their entire lives or at certain stages

⁹⁹Kurtz, 1958, p. 561.

¹⁰⁰D. D. Raphael. "The Rights of Man and the Rights of the Citizen," in Political Theory and the Rights of Man, ed. D. D. Raphael. Bloomington, IN: Indiana University Press, 1967, p. 115.

¹⁰¹Peffer, 1978, p. 79.

¹⁰²Bay, 1980, p. 298.

¹⁰³Rescher, 1972, p. 8.

¹⁰⁴Marcuse, 1964, p. 8.

¹⁰⁵Markovic, 1982, p. 391.

¹⁰⁶Outka, 1974, p. 21.

in their lives;¹⁰⁷ and vital needs which can kill or seriously disable a person if not satisfied.¹⁰⁸

These are just some examples of the kinds of needs that theorists claim ground rights. They have limited their claims to basic needs for different reasons. Some of these reasons include the practical issue that it will be easier to satisfy only basic needs rather than all needs; the moral issue that individuals ought to satisfy some of their own needs to promote development of moral character; that these needs, once satisfied, will promote basic equality, a good life, social survival and development, human worth and dignity, and so on. Thus, the reasons for limiting rights to basic needs are varied. Some of these will be explored later in the chapter, as they constitute the basis for distinguishing basic from nonbasic needs. Indeed, this is the problem that deserves treatment first, for it is quite important to determine which needs are basic if those are the ones that ground rights.

Though not all needs-rights theorists who base rights on basic needs provide any grounds distinguishing kinds of needs, those who do independently offer four different, though related, bases upon which needs are to be distinguished. They are as follows: (1) basic needs are needs which we are not responsible for incurring; (2) that the means by which basic needs are satisfied are irreplaceable by other

¹⁰⁷Braybrooke, 1968, p. 90.

¹⁰⁸Tranoy, 1975, p. 155.

means; (3) that the satisfaction of basic needs is necessary for survival; and (4) that the satisfaction of basic needs is necessary for having a life worth living. Each will be discussed and critically analyzed.

Needs and Responsibility

It has been claimed by Gene Outka that the main distinguishing factor that separates basic, or what he calls 'essential,' from non-basic needs, is that the former are needs for whose acquisition we are not responsible. Thus he writes:

Essential needs are also typically assumed to be given rather than acquired. They are not constituted by any action for which the person is responsible by virtue of his or her distinctively greater effort. It is almost as if the designation 'innocent' may be linked illuminatingly to need, as retribution, punishment, and so on, are to desert, and in complex ways, to freedom. Thus essential needs are likewise distinguishable from deserts. Where needs are unequal, one thinks of them as fortuitously distributed; as part, perhaps, of a kind of 'natural lottery.'¹⁰⁹

Outka cites as examples of essential needs those that we are born with, and health care needs that "strike one as arbitrary effects of the lottery" in the course of one's life.¹¹⁰ Essential or basic needs then are those for which we take no responsibility in regard to their acquisition. Thus, for needs-rights theorists, though this goes

¹⁰⁹ Outka, 1974, p. 22.

¹¹⁰ Outka, 1974, p. 22.

beyond Outka's claims, rights should be based on those needs that persons can take no responsibility for acquiring. How plausible is Outka's basis for distinction among needs?

There are several problems with his view, all concerning the nebulous notion of responsibility.

First, since Outka does not define what he means by being responsible for the acquisition of one's needs, it will be difficult to tell which needs fall into this category and which do not. Perhaps by claiming that an individual is not responsible for the acquisition of basic needs, Outka means that she or he did not deliberately place her or himself in a particular situation in which certain needs might be acquired. So, a baby born with the need for food, shelter, sleep, and so on, did not deliberately put itself in a position to acquire those needs. In this sense of responsibility, it would be accurate to say that needs we are born with we are not responsible for acquiring.

However, particularly when we consider competent adults, determining whether one is responsible for the acquisition of one's needs is no longer a black and white issue. We might think that certain health care needs that are incurred due to some genetic condition would be good candidates. We do not choose to be born with certain genetic conditions in the same way we do not choose to be born. However, until the interaction between genes and environment has been fully worked out, it might be the case that we do play a role in the acquisition of such needs, and thus are in some sense responsible for their acquisition.

Further, other needs will be confusing on the issue of responsibility. For example, if one incurs health care needs in a sporting accident, is one responsible for acquisition of that need? What if the same injury occurs as a result of hazardous working conditions? Or, if one has the need for medical treatment of ulcers, is one responsible for incurring that need? Or consider smokers' needs for treatment of lung cancer: are smokers responsible for the acquisition of these needs? I suspect that these questions will be debated for some time.

So, one objection to Outka's view is that it will be difficult in many cases to tell whether one is responsible for the acquisition of one's needs. It might leave only those needs that humans are born with, if that can be determined.

Another objection is that Outka fails to bring in responsibility on the other side--that is, responsibility for satisfying one's own needs. Granted, the point of his article was not to explore the notion of responsibility in depth. However, if one relates the notion of responsibility to needs, one must consider different kinds of responsibility if only for the sake of completeness. Perhaps Outka could account for responsibility for satisfaction of needs. It would be odd if he were to conclude that if one were not responsible for the acquisition of one's needs, the one would not be responsible for his satisfaction. The latter claim does not follow necessarily from the former. It might be the case that a plausible theory of rights, one

accepted by needs-rights theorists, would not demand that rights be based on all needs which individuals were not responsible for acquiring.

Peter Steinfelds, in a co-authored article entitled "Who Should Pay for Smokers' Medical Care?" addresses the issue of responsibility for acquiring health care needs, especially in regard to those of smokers. He points out that it is quite difficult to assign responsibility to individuals for health-damaging activity. Such assignment would have to take into account social conditioning for activities such as smoking. Also, a policy granting rights to the satisfaction of needs would have to be consistent: if it were to rule out health care needs that are the result of smoking, it would have to be extended to include those incurred as a result of failure to exercise, failure to have preventive routine check-ups, and so on. It would be a quite difficult task to assign responsibility regarding these activities.

A very interesting and important point made by Steinfelds is that the committee responsible for deciding whether or not to place a health tax on cigarettes should not make its decision on the basis of the nebulous notion of individual responsibility. Thus he writes:

Modern medicine has tended to place the question of responsibility in suspension. The Committee believes that medicine should be seen as a response to incapacity and suffering, regardless of cause, and not as an obligation because a victim has somehow 'paid his dues.' In the Committee's view, measures which seem to premise one's claim to health care on previous behavior or payment are corrosive of one of the more admirable characteristics

of medicine, one which should be strengthened rather than weakened.¹¹¹ [my emphasis]

Steinfels's last point could be pushed even further to the claim that it would be immoral to grant rights to the satisfaction of only those needs for whose acquisition we are not responsible, especially for the reason that responsibility is difficult to assign. Even without extending his point this far, Steinfel's view is very socially oriented in that it views individuals as so to speak "being in it together," who take responsibility for satisfying each other's needs, rather than the more individualistic view that persons should claim needs-rights against their neighbors only when they have acquired needs through no fault of their own. This is a difficult issue that is worth examining, but is beyond the scope of this thesis. Indeed it would probably involve solving the centuries-old tension between socialism and capitalism and the ideology created and espoused by each. The point here simply is that such a socialist view provides a counter-example to Outka's position that basic needs are those we are not responsible for acquiring, with the implication that persons have rights to the satisfaction of only those needs. Because of the problems associated with Outka's basis for distinguishing among needs, perhaps it is best to consider a different basis in the hopes that it is more plausible.

¹¹¹Peter Steinfels. "Who Should Pay for Smokers' Medical Care?" Hastings Center Report (Part II) 4 (Nov., 1974), p. 10.

Needs and Irreplaceability of the Means to Their Satisfaction

Consider then a second basis for distinguishing among needs. It has been claimed by Tranoy (and implied by Benn and Peters, and Braybrooke as well) that one factor that allows a distinction to be made among needs is that the means to satisfy basic, or what he calls 'vital' needs, are irreplaceable, while those which aim to satisfy nonbasic needs are replaceable. By this he means that a vital need can be satisfied only by certain means. Other means, though they may fulfill nonbasic needs, will not satisfy any vital need.

Vital needs, according to Tranoy, include the need for oxygen, food, water, sleep, health, self-respect, security, love, and education.¹¹² His view is that the means to satisfy these needs are irreplaceable. This view seems more plausible regarding some of these needs than others. For example, if one is overcome by smoke inhalation, one's well-being will not be promoted with eight hours of sleep, or with a grand meal. Instead, one needs oxygen, and this is the only means to bring about recovery. Similarly, if one has just crossed a desert on foot and is dehydrated, one needs water, not oxygen, self-respect, and so on.

Concerning other needs, though, it is difficult to ascertain whether or not the means to their satisfaction are irreplaceable. Tranoy himself recognizes this problem. He gives the example of the need for sexual activity and says that it is a controversial issue on

¹¹²Tranoy, 1975, p. 156.

this point. After all, celibate monks do not die or become disabled. One wonders whether their need for sex has been satisfied in some other way. If so, then this need is not a vital one. If not, then the need is a vital one and ought to be included on the list assuming, of course, that it meets the other criteria. His point is that it will be difficult to decide whether some needs can be met by different means.¹¹³ Surprisingly enough, Tranoy still maintains that the irreplaceability factor determines at least part of the basis for distinguishing among needs. This is problematic for those theorists who want to base rights only on vital needs, for they will not know which needs are included. Tranoy himself argues for rights correlated with obligations on the behalf of others to meet vital needs, but rights only to noninterference with the satisfaction of nonbasic needs.

Still, even if we limit ourselves to the list of needs mentioned by Tranoy, it is not so clear in some cases whether the means to satisfaction are irreplaceable. Consider the need for education. This might mean that in contemporary America one needs a high school education consisting of basic courses in English, mathematics, history, and so on. But for a person in a tribal community this might mean the need for learning basic skills such as hunting, fishing, and so on. Thus, in both communities the need for education can be met by quite different means.

¹¹³ Tranoy, 1975, pp. 158-159.

Further, consider the need for health. It seems likely that though we all may have a need for health, the means to achieve health might be very different for different persons, or even for the same person at different times. Consider an example discussed by McCloskey. Suppose a child potentially may be a world class swimmer only if she has access to an Olympic pool which neither her parents nor the state can afford. Suppose further that she is better at swimming than at anything else, and that if she did not have this pool, it would lead to a nervous breakdown, deep depression, or even insanity.¹¹⁴

McCloskey, and I believe rightly so though there are problems with his view, still does not want to admit that the child has a need for the pool. Instead, she would have a need for medical care if she were to reach that extreme mental state. The pool is not a need, but a luxury. McCloskey's reason for saying that the child has a need for psychological help but not for the pool is that his view of needs relates them to the well-being of a person as a person. This point was discussed briefly in Chapter II. What he means is that in order to speak correctly of a person needing X, it must be true that without X, that person as a person will be significantly harmed. That is, some aspect of her or his person, whether it be the psychological, physical, or emotional state, or whatever, will be threatened. This view of needs makes sense and is consistent with the definition of 'need' offered in the previous chapter. Criteria (6) and (9) would

¹¹⁴McCloskey, 1976, p. 6.

rule out the need for the pool, and not the need for psychological help. Criterion (6) is that needs are conditions or states an organism may be in, and criterion (9) is that needs are objective states. The need for a pool is not an objective state or condition, (in both senses of 'objective'), but the need for psychological help is.

Further, if we say that the child has a need for the pool, this extends the concept of 'need' quite far. Consider the following hierarchy of needs. Above all, there is the general need for well-being. Subsumed under this need are more specific needs that persons have qua persons. These are needs that are integrated with some aspect of a person's well-being, physical, psychological, and so on. Next, some persons may wish to subsume subsidiary needs, such as the need for access to a pool in this example. But this would extend the concept of 'need' so broadly that we would be faced with the problems associated with relativism that were mentioned earlier. This is exactly what we were trying to avoid. So, I propose to stay with the second level of needs, those related to persons qua persons, and refer to these subsidiary needs as being different means by which one can meet needs.

But the main issue here is not what the need is, but whether the means to satisfy it are irreplaceable. Suppose then that the child has a need for psychological help. Can this need be met by means other than, say, counseling? More to the point, will giving the child the pool meet her needs? If so, then the need for mental health is not a vital need on Tranoy's definition, since the means to achieve it are replaceable.

Wollheim mentions an interesting distinction between satisfying and alleviating or removing a need. Though his example refers to plants, perhaps the same points will apply to the pool example above. Wollheim claims that the need for X can be met by, say Y. Suppose, he says, that a plant ails because it has been placed in too light a soil. If not transplanted to heavier soil it will die. However, a new treatment has been developed that will produce the same effect on the plant as will the heavier soil. Both will bring about recovery. Are we then to say, he asks, that the need for the soil can be fulfilled by the new treatment? Wollheim claims that, yes, we can have a substitute that would bring about the same degree of recovery. However, he says that we must be careful to distinguish between satisfying a need, and removing or alleviating it. He says:

Once a plant ails in a certain respect and hence needs something, there are ways in which it might recover - recover, I mean, in that respect - and yet its need goes unsatisfied. If its need is to be satisfied, this, I maintain, can be only if it recovers through having either that whose lack brought about its ailing or some substitute for this.¹¹⁵

What distinguishes satisfying a need from alleviating it is based on the cause of the ailment. The cause in this example of the plant's ailment is the lack of heavy soil; so, giving it heavy soil satisfies its need, whereas giving the treatment simply removes or alleviates the need. With both, the same result is achieved.

¹¹⁵Wollheim, 1975, p. 164.

Return to the pool example. Can the child's need for psychological help be satisfied by means other than psychological help? Can it be satisfied by giving her the pool? If we take Wollheim's position, we must identify the cause of her need. Is her need caused by her wanting the pool? Or is it caused by some psychological problem, such as a compulsive desire to be the world's best swimmer? The answer will depend partly on empirical information. Also, what is meant by 'caused' will have to be clarified. It seems likely that the strong desire to be the world's best swimmer is more fundamental than, and temporally prior to, wanting an Olympic size pool. If this is true, then the desire is the cause of the need for psychological help, and it is what must be "treated" in order to satisfy the need. Giving the child the pool will only alleviate the need. With either the pool or psychological help, the child may recover mental health. One would satisfy the need, the other would merely alleviate it.

If this argument is plausible, then the pool is not a means to satisfy the need. So, the need for psychological help may in fact be met only by irreplaceable means. So, Tranoy may have been correct to list health as a vital need whose means to satisfaction are irreplaceable. But, if we consider all the possible means for meeting psychological needs, we should see that classification of health as a vital need is mistaken. For example, psychotherapy, drug therapy, psychosurgery (though outdated) and electroshock are some of the major forms of "treatment" for psychological problems. Indeed, these so-called treatments may just alleviate the need, not satisfy it, since the

causes of mental illness have not been precisely identified. These "treatments" may simply remove only the symptoms of mental illness, though they might bring about recovery. If, however, we do consider these to be means for satisfying psychological needs, they certainly are varied and often replaceable. Thus, Tranoy ought not to include the need for psychological health as a vital need.

One further point. Suppose that the child in the pool example could have her need for psychological help alleviated by giving her the pool. Is there any reason a needs-rights theory should base rights on the satisfaction of needs rather than on the alleviation of needs, or on both, especially since the result might be the same-- achievement of well-being? Aside from the fact that needs-rights theorists speak only of rights to the satisfaction, and not the alleviation of needs, there does seem to be at least one reason they would prefer talk of the former to the latter. It concerns a policy issue. It seems likely that persons would favor a rights policy that granted to individuals the right to psychological help by means of counseling, and so on, to a policy that granted that same right but, in our example, taxed citizens to cover the costs of a pool. Perhaps the reasoning behind this, though it may be mistaken, is the fear that the concept of need and all the points associated with it that have been discussed here, would collapse into the wants of individuals. This is not to say that needs are associated with satisfaction, and wants with alleviation. Needs are associated also with alleviation. The point is that it needs-rights theorists argue for rights to the alleviation of needs as well

as to their satisfaction, they run the risk of meeting needs with swimming pools and other such things that many taxpayers would not agree to. This result, destructive for needs-rights theories, might come about simply by extending rights to the alleviation of needs. This is less obvious with other examples. If the need for food could be alleviated by means of a nutrition pill, not many persons would object. This issue seems to come down to what means to satisfy needs persons would agree to fund. Perhaps then it would be best for such theories to limit rights to the satisfaction of needs.

In any event, Tranoy's basis for distinguishing among needs, namely, that the means for satisfaction of vital needs are irreplaceable, is indeed problematic. For some needs it is difficult to tell whether the means for satisfaction are irreplaceable; for others which he thinks it is obvious to classify as vital needs, he seems to be mistaken, as the discussion hopefully has shown. Thus, I propose to examine yet another basis for distinguishing among needs in the hopes of limiting those to whose satisfaction rights can be claimed.

Needs, Survival, and Quality of Life

Several theorists distinguish basic from nonbasic needs on the grounds that satisfaction of the former is necessary for a person's survival, though satisfaction of the latter is not. A number of theorists distinguish needs on this basis. As mentioned, Tranoy distinguishes vital from legitimate needs on several bases, one of which was discussed in the previous section. Another is that vital needs,

if not fulfilled, will result in death or serious disability; or, put positively, the satisfaction of such needs is necessary for survival (and health).¹¹⁶ As we have seen, he includes as vital needs the need for food, oxygen, water, sleep, health, self-respect, security, love, and education. Similarly, Bowie and Simon define a basic need as one which is "a biological need necessary for survival and physical health."¹¹⁷ Rosen mentions that though distributive justice has little to do with basic needs at the level of survival, some needs--those related to survival--are more or less equal. Included are needs for food, clothing, and shelter.¹¹⁸ Braybrooke discussed basic, or what he calls 'course-of-life' needs as those, which when unmet, endanger normal species functioning,* health and sanity, and ultimately survival.¹¹⁹ He includes the need for food, shelter, clothing, exercise, rest, companionship, and a mate in one's prime.

*By mentioning "normal species functioning" as the goal of need satisfaction, Braybrooke raises an interesting issue. This is: Why not base the test for need on survival of society or species rather than persons considered as individuals, not collectively? This thesis has focused on individuals and their needs, satisfaction of which brings about an individual's well-being, not societal or species well-being. I have chosen to focus on the former based on the assumption that many persons value their own well-being more than survival of the species or society.

¹¹⁶Tranoy, 1975, p. 155.

¹¹⁷Norman E. Bowie and Robert L. Simon. The Individual and the Political Order. Englewood Cliffs, NJ: Prentice-Hall, 1977, p. 201.

¹¹⁸Frederick Rosen, "Basic Needs and Justice," Mind 86 (Jan. 1977, 88-94.

¹¹⁹Braybrooke, 1968, pp. 90-91.

or society. [Braybrooke includes the need for food, shelter, clothing, exercise, rest, companionship, and a mate in one's prime.] Finally, Bay ranks basic needs from more to less basic: "Survival needs come first, followed by the need for protection of health, followed by the freedom needs, including the need for social solidarity, for options of choice, and for self-development."¹²⁰ From these and other examples it is clear that distinguishing basic from nonbasic needs on the grounds that satisfaction of the former is necessary for survival seems to be the most frequently cited basis in the literature. Is it plausible, and what implications does it have for a needs-rights theory?

One problem similar to the problems associated with the two grounds for distinction already discussed, is how to determine whether or not satisfaction of a particular need is necessary for survival. Obviously there will be some clear-cut examples. Food is one. Without food an individual will in time die. Perhaps it is not even a need for food per se, but a need for nourishment. This is because our need for nourishment could probably be met by vitamins and intravenous solutions. Another example is shelter from the environment. This may take many forms, including clothing and/or a certain kind of housing. Thus a person living near the equator may need some form of shelter from the hot sun, and perhaps little or no clothing. A person living near the north pole, by contrast,

¹²⁰ Bay, 1980, p. 298.

will need well-insulated housing as well as very heavy clothing for protection against bitter cold and snow. And a person who never leaves her or his temperature-controlled house may have no need for clothing, at least not for survival purposes, but perhaps for social or aesthetic reasons. A third example of a need tied to survival is the need for oxygen, which, if unmet, will eventually result in the individual's death. Depending upon an individual's lung capacity, she or he may need more or less oxygen, but the point is that all humans need oxygen to survive.

Concerning other needs that the theorists cited above include among basic needs, the situation is more complicated. Consider two examples to illustrate the point. First, Tranoy classifies the need for education as a basic need. Is education necessary for a person's survival? On the one hand we might agree with Tranoy because in many contemporary societies it is very difficult for a person who does not have at least a high school education to secure a job which will bring income sufficient to purchase goods and services necessary to meet other needs (e.g., for health care, food, etc.). On the other hand, it seems as if these other needs are more directly tied to one's survival than is the need for education. That is, if people were given food, health care, and so on, whenever they had needs for those things, they would not have a need for education unless it could be established that education itself was needed for achievement of a person's well-being as a person. Put another way, is education itself necessary for survival, or is it necessary to guarantee a certain income that could

be used toward the purchase of goods and services which are directly related to survival? The latter seems more likely to be the case. Consider a second case. Braybrooke includes on his list of basic needs one's need for a mate in one's prime. Again we can ask whether or not our survival is dependent upon having a mate. I am not convinced that it does. Many people go through life without a mate, and seem to get along perfectly well, let alone have their survival jeopardized. Perhaps if studies showed that persons who had mates lived longer than those without mates, we might take Braybrooke's point more seriously.

If, however, we go along with Tranoy and Braybrooke and include such needs such as education and mates during our prime, this opens the field for many other needs to be included among the basic ones. Psychological and emotional needs could very well be considered as needs whose satisfaction is necessary for survival. The claim could be made that we need to be emotionally secure in order to benefit from our education--for example, that we need to be loved by our family if we are to be able to concentrate on our studies. Without love our ability to learn is lessened, our chances of securing a decent job are then decreased, and our survival is threatened. The result is that other needs seem to be related to survival, and are thus considered as basic. Then we run the risk of too many and too varied basic needs, too many rights, and too many obligations to satisfy those rights. The whole point of narrowing the theory to basic needs was to avoid these very problems.

Suppose we put aside the problem of how to determine which needs satisfaction of which is necessary to survival, and consider just those needs that are obviously related to survival. These might include the need for nourishment, protection from the environment, oxygen, and some forms of health care. Fulfillment of these needs is necessary for mere survival. Then we can ask what is the advantage to ensuring mere survival. For ultimately, at least for some needs-rights theorists, rights will be based only on basic needs whose satisfaction is necessary for survival.

Several theorists suggest different reasons for ensuring mere survival. D. D. Raphael writes that " . . . one cannot exercise the initiative of a human being . . . , or indeed remain a human being at all, unless the basic needs of life are satisfied."¹²¹ So, on his view, a basic need is one that, when satisfied, allows a person to exercise the initiative of a human being. Unfortunately, Raphael does not spell out what he means by this phrase. One can assume since he stresses 'human being' as opposed to other animals that he wants to focus on what is unique to humans. That is, perhaps he wants to include actions that humans are capable of and that involve their capacity for rationality (e.g., to make decisions, communicate in intelligent ways with other members of the species, and so on).

Daniels suggests something along these lines. Using Braybrooke's terminology, he says that course-of-life (i.e., basic) needs are

¹²¹Raphael, 1967, p. 115.

distinguished from other needs because when they are not satisfied, they impair normal species functioning which in turn reduces the range of opportunity we have within which to construct life-plans.¹²²

Another reason for ensuring mere survival by satisfying basic needs is that the satisfaction of basic needs is a prerequisite for the satisfaction of nonbasic needs. So whatever needs are considered as being in some sense prior to others are said to be basic. Several theorists make this point. Marcuse says that vital needs such as for nourishment, clothing, and lodging are basic needs--that satisfaction of these needs is the prerequisite for the realization of all needs.¹²³ Benn and Peters also say that the need for food, clothing, and shelter ought to be satisfied before other needs because they are basic--dead men cannot be free.¹²⁴ And Bowie and Simon claim that "The fulfillment of basic needs is a necessary condition for the satisfaction of other needs."¹²⁵ Thus, the reason for satisfying some needs before others is that they relate more directly to a person's survival. Once this has been achieved, other needs can be met.

What emerges from these two reasons for satisfying mere survival needs is that there is something beyond mere survival that is the ultimate goal to be achieved by satisfying mere survival needs. In other

¹²²Daniels, 1981, p. 154.

¹²³Marcuse, 1964, p. 5.

¹²⁴Benn and Peters, 1959, p. 142.

¹²⁵Bowie and Simon, 1977, p. 201.

words, survival itself is not the good to be achieved, but rather it is good for the sake of some other good. This other good is something along the lines of promoting the good life, or life worth living which can be achieved only when needs beyond mere survival needs are met. In fact, several theorists distinguish basic from nonbasic needs on the basis that satisfaction of the former leads to a life worth living. So they want to include more than mere survival needs on the list of basic needs. This is a fourth basis for distinguishing among needs, but since it ties in well with certain points concerning the third basis (i.e., survival), it will be discussed here rather than in a separate section.

The theorists who distinguish needs on this fourth basis include the following. Kaufman, for example, espouses this view when he claims that basic needs "are tied to prospects for living a good life."¹²⁶ Peffer, in similar fashion, says that satisfaction of basic needs are related to what we require "to survive and to have any sort of life worth living."¹²⁷ And Rescher, though he has such a broad concept of well-being with the result that there are many needs, claims that welfare deals only with the basic essentials which "furnish only the beginnings of 'the good life.'"¹²⁸ Thus, these theorists go beyond mere survival needs so as to include others' needs as being basic.

¹²⁶Kaufman, 1971, p. 3.

¹²⁷Peffer, 1978, p. 80.

¹²⁸Rescher, 1972, p. 8.

The point that Kaufman, Peffer, and Rescher wish to make is crucial. The claim is that we satisfy needs not for the sake of merely promoting someone's survival, but rather for the sake of (hopefully) promoting a person's chances of having a good life, a life with a certain degree of quality. Their point is well-taken: It provides a counterargument to the view that survival is good in and of itself, not only for the sake of some other good.

Consider the following example. Suppose that a person is in a permanent vegetative state, with little or no brain functioning above brain stem activity. Suppose, too, that basic needs include only mere survival needs--oxygen, food, water, and so on, and that we had rights to the satisfaction of these needs only. Would we admit that such a person benefits from the satisfaction of her or his mere survival needs? So far as I can tell, the only benefit, if it indeed be so called, is that the person's survival is promoted. But what is the point in promoting mere survival if there is no hope that the person will have any sort of a decent life? McCloskey, for one, argues that such a person does not even have these needs because, on his view, in order to be in need, the satisfaction of the need must promote some good for that person. Indeed, this was one criterion we adopted in Chapter II. Even if one does not accept McCloskey's position, it is still clear in this case that mere survival in itself is not a good. We could admit that the person in this example does have survival needs, but that there was little or no point in satisfying them, save for mere sustenance of life in the strict biological sense of the term. The

example shows that it is not mere survival that we wish to promote by satisfying needs; instead it is something like a life worth living. And when there is no possibility of achieving that, there is no point in promoting mere survival. Two points must be made. First, this argument is not conclusive, for one might quite plausibly hold the opposite view, namely, that survival is good in and of itself. Different examples might pull our intuitions in that direction. But the view that survival (or need satisfaction in general) is good in and of itself is equally inconclusive.

Second, an objection has been raised that survival itself may be a good because of a positive feeling associated with the satisfaction of needs necessary for survival. The objection is that life is always worth living if there is positive feeling. This is not problematic if by well-being one includes some sort of positive feeling. That is, if satisfaction of needs brings about a positive feeling, and this contributes to well-being, then we could admit that positive feeling, to some extent, made life worth living. In any case, in the example given here, the individual has no positive feeling when needs are met because of limited mental activity.

So, sometimes promoting mere survival will not achieve any good for the needy person. There may also be cases where a person does not want to survive. It could be argued that in at least some of these cases, satisfying the person's survival needs will only harm the person. In these two kinds of cases, distinguishing needs on the basis of survival, and thus basing rights only on survival needs, might not seem plausible.

What about cases involving persons who have a survival need, want it fulfilled, and will have a good quality of life if that need is met? Here I find the basis of survival to be most plausible, and certainly more plausible than the two bases discussed earlier. It seems plausible in this kind of case to base rights in the satisfaction of mere survival needs. Of course, there is the problem already mentioned of deciding which needs promote survival. Also, we must be able to predict roughly what the person's quality of life would be if her or his survival needs were to be met, whether the person wanted these needs to be met, and so on. Further, insofar as rights theorists are concerned, granting rights to the satisfaction of survival needs might presuppose an entire social and economic structure whereby an individual, once her or his survival needs had been met, could then satisfy other needs. So, for example, if starving children in Ethiopia had a right to nourishment, the theory might guarantee this right only in cases when it could bring the persons to a level of well-being where they could then meet their own needs. The point is that many details would have to be worked out for a rights theory to be plausible.

Still, some relatively unproblematic cases lend plausibility to this basis. For example, if the president of the United States is trapped in a burning building and is in need of oxygen in order to survive, it is reasonable to classify the need for oxygen as a basic need, one to which satisfaction of can be claimed as a right. Of course, other details would have to be worked out in the policy of rights, including who is to satisfy the need, and so on. These details

I leave for the rights theorists and policy-makers. But concerning all that has been discussed in this thesis, distinguishing among needs on the basis of survival, together with some notion of a life worth living, would be the least problematic way to go. The problems that remain, of course, would have to be worked out.

Chapter Summary

Recall that the initial problem was, in light of the analysis given in Chapter II, to ascertain what exactly could be included as a need that could serve as the basis for a right, for determining this will help determine what persons have rights to, so far as needs-rights theorists are concerned. The attempt has been largely unsuccessful.

In order to avoid the problems associated with relativism, which were discussed in Chapter III, most needs-rights theorists argue that rights ought to be based on universal needs, that is, those shared by all humans. These needs are often described as the basic needs. The topic of absolute (universal, basic) needs was taken up in this chapter. The main problem with it was determining which needs are basic. I discussed several bases for distinction, including individual responsibility for acquisition, irreplaceability of the means for satisfaction, and the related notions of survival and quality of life. Some of the main problems both with the bases themselves as well as with the implication for rights theories, were discussed. The most plausible basis seemed to be survival in connection with a life worth

living, though it, too, was problematic. Unless these problems are worked out, it will be difficult to distinguish needs on this basis. If this cannot be done, then it would be illegitimate to claim rights to the satisfaction of basic needs, since needs could not be separated. Further, the attempt to narrow down the number and kinds of needs to which rights can be claimed, the original intent of this and the last chapter, has failed. We are left with a long list of needs. This, of course, in no way entails that needs could not be distinguished into basic and nonbasic, thereby reducing the list. Theorists have yet to offer a plausible basis for distinction.

CHAPTER V

CONCLUSION: SOME IMPLICATIONS FOR THE RIGHT TO HEALTH CARE

By way of conclusion, this last chapter will address some of the implications of both the analysis of the concept of need as well as the distinction among needs as applied to the issue of health care. The first section addresses the issue of allocation when a distinction among needs cannot be made. The second section examines some problems associated with rights based only on universal needs, assuming that a distinction among needs can be drawn in a relatively unproblematic way.

The reasons for pursuing one particular need, namely, the need for health care, are twofold. First, the issue of a right to health care generated this entire project, as mentioned earlier. Several proponents of a right to health care argue that such a right is based upon needs (e.g., Daniels, 1981, Outka, 1974). Sometimes it is argued that the right is founded on the need for health care, meaning that if one has a need for health care, one has a right to the satisfaction of that need. Alternatively, it is argued that there are rights to the satisfaction of health care needs, in the sense that the right may not be entailed necessarily by the need, but instead may be founded on some principle such as equality, or justice. Usually the arguments in favor of such a right are discussed within the context of distributive

justice. Often the claim is made that it is just to distribute health care goods and services to those who need them, as opposed to only those who can afford to pay for them or to those who do not need them. The main problems, then, lie in connection with determining needs, especially what is included as being a need, or more specifically, a need that is linked in some way with a right to its satisfaction. Some of these problems were discussed earlier. Others will be treated here.

A second reason for pursuing the issue of health care needs and rights is that an examination of one specific need in light of the analysis given earlier nicely ties things together and shows in a concrete way the implications of that analysis. It also shows in a non-abstract way, in relation to the distinction among needs. Since this thesis deals for the most part with the conceptual issue of needs, and some of the problems that arise at the conceptual level as well, it is helpful to move from that level to a more practical level. The hope is that this might shed light on the plausibility of a theory that bases rights on the satisfaction of health care needs.

The Failure to Distinguish Needs: Implications for a Right to Health Care

In Chapter IV it has been argued that basic needs could not be distinguished from other needs due to the many and serious problems surrounding the bases for distinction that have been cited by several needs-rights theorists. If this is true, and if no problem-free basis

for distinction can be given, then health care needs legitimately cannot be claimed to be basic needs, contrary to what advocates of the right to health care often claim. That is, health care needs rank among the list of all needs persons might have, and can be given no special status as basic needs. Probably no society will be able to satisfy all the needs of its members. More specifically, probably no society will be able to satisfy even all the health care needs of its members. Since it is very likely that any particular society will be unable to meet all the health care needs of all its members, it somehow will have to decide which areas of medicine it will allocate resources towards--research, funding of medical professionals' education and salary, new equipment, and so on. A problem that arises is how to determine for which health care needs to allocate resources. One possible solution is to let citizens who pay income tax (hereafter referred to as taxpayers) decide. This solution applies to societies wherein health care is largely funded by taxation. Another solution is to rank health care needs according to one or more criteria of needs. Both solutions are examined below.

Allocation in accord with taxpayer's wishes. First, recall that most theorists who argue for a right to health care usually describe it as a positive right. Briefly, a positive right is one which entails an obligation on behalf of some party actively to promote satisfaction of that right. By contrast, a negative right is one that entails an obligation on behalf of another party not to interfere with one's own

satisfaction of the right. Thus, positive rights generally are more demanding in terms of what persons other than the rights-bearer must do. Presumably a right to health care is deemed a positive right because of the needy individual's helplessness in satisfying such needs. The person is often helpless in at least two senses: one, she or he may be so disabled that she or he cannot secure the funds necessary to purchase medical goods and services; and, two, she or he is often unable to provide such services by her or himself due to lack of knowledge and skills, and thus must seek the advice of a professional. Granting persons a negative right to health care will not in many or most cases be beneficial. Thus, the right is construed as a positive one.

Discussions concerning a right to health care and obligations corresponding to that right are usually set in the context of how health care services, programs, etc., are to be funded. A typical response is that health care needs ultimately will be met by some form of taxation of the general public. Thus, the obligation to satisfy health care needs, though the actual satisfaction will be brought about by professionals who provide health care services, in the end lies with all the taxpaying citizens in a particular society. The reasons for taxation are threefold: (1) illness is often very unpredictable; (2) treatment is often very costly; and (3) almost everyone requires some form of health care at one time or another. Reasons (1) and (3) together, a natural lottery notion, constitute a stronger claim, for some persons have enough money to pay for all predictable needs.

Taxation will distribute the costs fairly evenly throughout the population, so that the burden will not be so heavy on those who incur costly illnesses.

Presumably all persons should benefit from such a system. And if persons cannot predict which illnesses will befall them, as is often the case, they are likely to agree to allocate portions of their incomes only if this money is to be spent on funding services that are not unreasonable. For example, many persons might not agree to funding plastic surgery for entertainers, but might agree to funding it for accident victims who are grossly disfigured.

Agreement is important in the following way. Often the relationship between those who fund health care and those who benefit from it is viewed as being a contractual one (cf., Camenisch, 1979). That is, one party agrees to fund services from which another party benefits. There is a general consensus in moral philosophy that contracts are morally binding only if the agreement is made freely and that all parties to the agreement have the relevant knowledge. Agreements made between two parties, one of which was coerced into the agreement, are not morally binding. Coercion, of course, can take many forms, including physical force, mental pressure, and so on. In the words of Charles Fried: "A promise given under duress, though knowingly made, is not freely made."¹²⁹ If a contract, which is a form of promising, is not freely made, or, in other words, if the obligation to fund certain

¹²⁹ Charles Fried. Contract As Promise. Cambridge: Oxford University Press, 1981, p. 92.

kinds of health care is not willingly accepted, it can be argued that those who do not comply, though they may be legally culpable, are not morally culpable. So, if persons do not agree to fund certain kinds of health care, then they are not morally culpable if they refuse to do so.

Is there likely to be agreement as to which health care needs a society ought to allocate its funds? Several quite problematic kinds of health care good and/or service which, due in part to its expense, is not available to all persons. The artificial heart is one such example. One can certainly imagine a good deal of debate over whether or not society should fund research and human experimentation associated with the artificial heart, especially since not all persons who might be in need of this heart will have it made available to them.

Consider second the case of abortion. This is certainly, insofar as many persons are concerned, a health care need, and one that ought to be funded. However, probably nearly as many other persons are opposed to abortion on moral grounds. Indeed, they may not even consider it to be a health care need, but instead, the taking of an innocent life. And they, of course, most likely would be opposed to funding abortion. In contemporary America, for example, Medicaid funding is no longer allocated for abortions, thereby denying many poor women the right to an abortion. The debate over funding abortion will undoubtedly continue for some time.

The point made by these two examples is that often it will be difficult to reach agreement as to which health care needs society

ought to satisfy. This does not mean that nothing could ever be funded, since agreement is unlikely. If resources are allocated for health care then some areas of health care will be funded. The question is how to decide which ones will be funded. Undoubtedly, certain needs of some persons will go unmet. And depending on how agreement is reached (e.g., by majority vote, by decisions of elected officials, etc.), it is likely that cries of injustice will be heard. We will be faced with the problem of deciding which needs, in general, or health care needs, in particular, ought to be funded if we fail to distinguish basic from nonbasic needs. For if this distinction could be made, funding could be directed to the satisfaction of basic needs, as many needs-rights theorists urge.

Allocation in accord with ranking needs. A second possible solution to the problem of determining which health care needs a society ought to meet is to rank health care needs according to one or more of the criteria of needs discussed in Chapter II. Since Chapter III has focused largely on the notion of well-being and problems associated with it, that criterion will not be treated here.

Instead, consider first the criterion of harm; that is, that being in need constitutes lacking something which leads to harm. It was mentioned in the section entitled "Needs, Lacks, and Harms" that most theorists tend to construe the harm to one's person incurred when a need is unmet, in a very strict sense meaning that it must be rather severe.

Health care needs certainly affect one's person, but what remains to be seen is to what degree. Perhaps health care needs could be ranked according to the degree of harm they bring about. Then those health care needs which bring about the greatest degree of harm might be satisfied before other health care needs that bring about a less significant degree of harm. So, the need for a filling in one's cavity might rank lower than the need for heart surgery in one who has chronic heart disease. Similarly, the need for a cast for one's broken ankle might rank lower than the need for psychotherapy and lithium for one who has severe manic depression. But where would the need for an abortion rank in comparison to a need for a cast for one's broken ankle? Or the need for psychological help for one who has severe psychoses in comparison to the need for open heart surgery for one who has severe heart problems? Not only will it be difficult to rank many health care needs according to this criterion, but it may lead to an unjust distribution of resources, at least according to those whose needs are not met by public funding. The problem hinges on who decides which health care needs, if unmet, result in what degree of harm.

Consider a second criterion, namely, that of urgency. It was claimed in the section on "Needs and Urgency" that needs, as opposed to wants, desires, and so on, are urgent matters. Suppose needs were ranked according to urgency, and resources were allocated to the satisfaction of these needs that were more urgent than others. Again, problems arise over what constitutes an urgent matter, and which needs are more urgent than others. In order for a need to be urgent, does

this imply that it ought to be met immediately, or within days, or within several years? Also, satisfaction of some so-called "traditional" health care needs might go unfunded because they are less urgent than others. We might all agree that heart attacks which are more serious than mild ones are urgent matters, for one undoubtedly will be harmed if one's needs are not attended to quickly. So, too, are ruptured appendixes. But what about pulled muscles? Or slow spreading cancers? Or eye ulcers? Will such health matters be excluded from the list of needs whose satisfaction is publicly funded? It would seem odd, perhaps unfair, not to allocate resources for satisfaction of needs such as cancer treatment simply because the disease might take a long time to reach a stage where it severely harms a person.

The notions of harm and urgency are the most appropriate of the criteria listed in Chapter II according to which needs can be ranked. However, as the discussion has shown, ranking health care needs according to these criteria will be far from easy. Due to the problems associated with ranking needs as well as with allocating resources in accord with taxpayer's assessment of which health care services ought to be funded, it will be difficult--but perhaps not impossible--for a particular society to decide for which areas of health care it will allocate resources. The problem of allocation resulted mainly because needs could not be distinguished so as to guarantee rights to the satisfaction of only some of them. But this is not to say that if needs could be distinguished, there would be no problems with allocation of resources.

Rights Based on Universal Needs: Implications for a Right to Health Care

Suppose that needs can be distinguished as being either basic or nonbasic, and that the basis for this distinction is relatively unproblematic. Suppose further, as many needs-rights theorists have claimed, that health care needs are basic. Moreover, suppose that persons have positive rights to the satisfaction of their basic needs, including health care needs. Recall that universal needs are often defined as the basic needs; that is, needs that all persons have (or may have at some point in their lives) are considered basic needs. Examples often cited are the needs for food, clothing, shelter, and health care. Sometimes, however, health care is not included. The question then is: Is health care a universal need?

In some sense it could be considered universal. This is because all persons will need some form of health care during their lives. In another sense health care needs are not universal in that not all persons will have the same health care needs. For example, some persons will have needs for cancer treatment, others will have needs for insulin, still others will have needs for eye glasses, and so on. Since these needs are not shared by all, they are not universal.

If the first interpretation is favored, and health care needs are considered to be universal, and if there are rights to the satisfaction of only universal (basic) needs, then persons will have rights to the satisfaction of anything that can be included as a health care

need. Then the problem of allocation is the same as that discussed in the previous section, namely, which health care needs will be funded when not all can be.

If the second interpretation is favored, namely, that health care needs in general are not universal because not the same ones are shared by all persons, then health care needs would not constitute the basis of rights, at least for those theories that base rights on universal needs.

Perhaps the two horns of the dilemma can be escaped by granting rights to the satisfaction of those health care needs that are universal, if indeed there are any, or to those which are shared by most persons. But if this solution is opted for, a major problem results. That is, the needs of the minority will be ignored. This could mean, for example, that certain segments of the population which are more prone to particular genetic diseases will not have their needs met by public funding. Tay Sachs disease common in the Ashkenazic Jewish population comes to mind. Similarly, segments of the population that are more susceptible to certain illnesses associated with working conditions also may not have their needs met by public funding. Coal miner's black lung disease is an example that comes to mind. Since these kinds of needs are not shared by all or even most persons in society, they will be excluded from decisions about allocation of public funding.

While these cases are indeed problematic, another example seems even more problematic in that it shows that a theory of rights which grants satisfaction to only universal needs justifies discrimination

against women, thereby reinforcing sexism. This can be explained as follows.

Alison Jaggar, in Feminist Politics and Human Nature, argues that women in all different cultures have some needs that are different from those of men. Though Jaggar in no way defends biological determinism, and indeed strongly denies it, she does claim that these needs that only women have are those related to reproductive capacities. Such needs include the need for abortion, for safe and effective contraception, to health care services during and after pregnancy, and even to provision of shelter and medical care for battered women. Jaggar ultimately defends what she calls socialist feminism, a sort of combination of what she takes to be the merits of both Marxist and radical feminism. Thus she writes:

The most immediate aim of radical feminist enterprises is to fulfill women's needs since, on the radical feminist view, women's needs are not being met adequately by the patriarchy. Either women's needs are being ignored entirely or they are being exploited for male profit. For instance, until feminists opened shelters for battered women, there was simply nowhere for such women to go. Women's need to prevent pregnancy is not ignored by the patriarchy in the same way (perhaps because men have an interest in preventing pregnancy too), but the need is answered by the male medical profession with expensive and life-threatening contraceptives. Similarly, women's anger and despair are met with tranquilizers and incarceration. Radical feminist enterprises offer goods and services to women that are less expensive than those offered by patriarchy and that, in many cases, are simply not available through patriarchal institutions. . . . For radical feminists, only the creation of a womanculture can fulfill women's true needs.¹³⁰

¹³⁰ Alison Jaggar. Feminist Politics and Human Nature, New Jersey: Rowman & Manheld, 1983, p. 276.

If Jaggar is correct in assuming that women have some needs that men do not have--and there is good reason to believe that she is correct--then these needs will not ground rights for theories in which rights are based only on universal needs, or on needs that almost all persons share. In practice, this might mean that abortions, contraceptive measures, childbearing needs, and so on, are not publicly funded. And insofar as public funding supports research and health care professional's income, perhaps these goods and services will not be available. This, for feminists and others, is a most dangerous and unjust consequence. Basically, women will be denied funding for these goods and services, or even be denied the goods and services themselves, simply because they are needs of women in particular, and not needs of all or even most persons. In order to avoid this sexist consequence, needs-rights theorists who base rights on universal needs, must amend their theories.

Conclusion

In conclusion, this thesis has attempted to examine in Chapters II, III, and IV, some of the major conceptual issues and problems concerning needs, as well as, in the present chapter, some of the practical issues and problems concerning the need for and right to health care. The arguments throughout have often led to negative conclusions. Much more attention has been given to the problems associated with some of the major claims and arguments given by those who write about needs and/or rights, than to offering new and better positions. This does not

mean that these problems cannot be overcome, though this would be a most difficult project. Further, since this thesis was generated out of an interest in defending a right to health care based on needs, and since the conclusions to arguments often were negative, this might lead one to think that such a right could not be defended. But this is not so; talk of a right to health care is in no way nonsensical talk. Such a right could be defended on grounds other than needs. Or, perhaps the major problems concerning needs and rights could be solved. That task, however, will be left for the more adventurous.

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