Individual Moral Rights
Delineated Within the Modern State

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Introduction.

The Universal Declaration of Human Rights adopted in 1948 by the United Nations set forth a common understanding of human rights as freedoms that all humans ought to be free to realize. Broadly understood it is a set of international norms that United Nation member countries abide by and aim to provide to all humans—particularly their own populations. Yet there is often news of abhorrent violations of these “universal” rights and no international enforcement mechanism to provide certain protection. As such, the claim that human rights are universally held is, practically speaking, a limited reality. Therefore, I find it appropriate to examine the concept of human rights as functioning against the backdrop of a particular governmental structure that is handled and shaped by its own public. I will focus on the liberal constitutional democracy that exists in the United States. I will interchangeably use the term modern state when referring to this system of governance. These terms describe a secular system of government elected of, by, and for its people following the supreme law of an amendable constitution. I am focusing on the realities of human rights within the United States in part due to my invested interest in robust rights domestically; and in part due to the United States’ standing in the world as a developed country.

Within this system, human rights are roughly understood as an individual’s legally codified moral rights against others, which are protected and enforced by the state. An individual’s moral rights safeguard her well-being. In their legally codified form in the United States, these liberties stem from the Constitution and were, in large part, made explicit in the passing of The Bill of Rights. Coupled with this notion of legally codified moral rights that we hold against others is the idea of similarly codified

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2 The Preamble to The Bill of Rights states its purpose is to “prevent misconstruction or abuse of [the Constitution’s] powers.” In other words, for the anti-Federalists it was a safeguard against the federal government’s power. These are the first ten amendments to the Constitution that were ratified three years afterwards (1791).
moral duties that we owe to others. If I desire certain protections for my right to free speech then I ought to grant these same protections to other citizen groups—even those I may not agree with. If I desire certain protections for my right against unreasonable search and seizure then, too, I ought to grant these same protections to other citizens.

Individual moral rights and duties expand and contract relative to private institutions and the state itself (among other actors), both of which can be seen as subsets of the public. Governmental and private institutions, both run by citizens, drive the (interconnected) political and economic agenda of the nation and its people. And so the public is, at base, charged with governing itself and determining its own rights and duties. Problematically, many citizens are unaware of even their most basic individual rights and duties as a member of the community. Even more remote, then, must be the general awareness for legal rulings. Consider, for instance, a few moral rights questions based on recent landmark cases that the Supreme Court ruled on: Does a private organization’s expulsion of members based on sexual orientation constitute a right of expressive association under the First Amendment? See Boy Scouts of America v. Dales, 530 U.S. 640 (2000). Do the Establishment and Free Exercise Clauses of the First Amendment nullify the rights of ministers to sue the church on the grounds of discriminatory termination? See Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 132 S.Ct. 694 (2012). Does the federal government have the power to mandate individual health insurance under the

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3 One survey conducted December 2010 among over 2,000 adults found that “55 percent of Americans don’t recognize that education is not a First Amendment right, while nearly 1 in 5 mistakenly excludes from the First Amendment one of the five rights it actually does guarantee,” Bill of Rights Institute (2010). Do you think teens know the difference between Madison and Marx? Retrieved December 2, 2013 from http://blog.billofrightsinstitute.org/blog/2010/12/15/do-you-think-teens-know-the-difference-between-madison-and-marx/. A second study by the McCormick Tribune Freedom Museum found that “only one in four Americans can name more than one of the five freedoms guaranteed by the First Amendment...[and] that one in 1,000 people [can] name all five First Amendment freedoms.” The Associated Press (2006). D’oh! More know Simpsons than Constitution. Retrieved December 2, 2013 from http://www.nbcnews.com/id/11611015/#.UpzUlM9kIlg. *note: the five First Amendment rights are speech, religion, press, assembly, and petition for redress of grievances.
Taxing and Spending Clause⁴? See National Federation of Independent Businesses v. Sebelius, 132 S.Ct. 603 (2012). In each instance, the court ruled in the affirmative.⁵ Each ruling is essentially the resolution of a controversy about the proper way to interpret the constitution. As such, these rulings ought to shift our collective understanding of how our moral rights and duties are legally codified in the United States. Yet as a population we are largely unaware of these rulings and therefore unaware of the current state of our rights and duties.

The purpose of my essay is not to argue so ardently any one position; rather, it is to create a starting point for further discussion on important topics such as how we define our moral rights within the modern state, how we determine, as a state, when and why to change the legal expression of our collective compromises regarding conceptions of morality that can be minimally shared and backed by law, and the purposes of education and civic engagement. In order to make plain our system of rights, I will re-examine the basic foundations and current-day workings of individual rights within the modern state.

**Summary of arguments.**

I will construct my paper in four major sections so as to expose: [1] the origins of legally codified moral rights and [2] their current-day meanings in a diverse modern state as well as within a political theory which provides a rational process for [3] modifying these rights and [4] preserving the democratic system that makes moral rights, as we know them, possible. In so doing, I hope to shed light on the need for democratic education and engagement.

In order to understand individual moral rights within the modern state, we must first look to its origins—namely, natural law by way of Saint Thomas Aquinas and then natural rights by way of H.L.A.

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⁴ Article I, section 8, clause 1 of the Constitution states: “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.”

⁵ Held in the first case, private organizations are not subject to the same anti-discrimination legislation as public organizations—even if such legislation exists. Held in the second case, the church may choose its own ministers and the state may not involve itself in that process. Held in the third case, the government may require so-called universal healthcare due to its power to lay uniform taxes.
Hart. I will explain the shared history of rights, how they each function in theory, and how—more basically, if—they each function within the modern state. I argue that human rights provide the only coherent grounding for the many different moral beliefs of a diverse modern state.

Human rights presuppose the existence of social institutions of authority and narrow, necessarily, the claims of a right-holder. Accordingly we may now look past the minimalist-maximalist debate. The focus of human rights is protecting individuals against wrongs stemming from the state structure and those individuals representing it. By making this move in moral rights, there is a focus not on being wronged by an individual—for example, if I am walking down the street and an individual robs me at gunpoint, there is nothing the state could have feasibly done at that instance—but on being mishandled and wronged by (the officials representing) the state—to carry this example on, then, once I go to the police station to file a police report after the event, if the police are unwilling to hear my tribulation and send me on my way, effectively depriving me of my right of liberty, there is an institutionally-minded aspect to this. This not only deprives me of my objects but depreciates the very value of justice. This will be termed an institutional understanding of moral rights.

How, then, ought (the officials representing) the state determine what is or is not an institutionally secured moral right? This is dependent upon our definition of morality. Ought we to determine the moral goodness or moral badness of some action based upon its outcome alone (consequentialism) or upon the intention of the individual (non-consequentialism)? I will present both possibilities in the ensuing essay. On the one hand, the classical utilitarian would argue that we must

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6 "... human-rights violations, to count as such, must be in some sense official, and that human rights thus protect persons only against violations from certain sources... human-rights postulates are addressed, in the first instance at least, to those who occupy positions of authority within a society," (Pogge, 63-64).
7 Still, subscribing to institutional rights does not “let off” individual duties held against other individuals. I will show this at a later point in the paper. For now it is enough to flag this by stating that it is the individual that is, at base, charged with (re)organization of the state and thus has a duty at a personal level to effect change.
8 I understand that this essay is by no means an exhaustive overview of consequentialist moral theory and non-consequentialist moral theory; rather, two approaches to moral theory that I find to be two of the main contenders. I believe utilitarianism is worth viewing insofar as it provides (an attempt at) a singular, measurable theory of
judge the morality of our actions only by its consequence(s). An action is morally good if its state of affairs brings about the greatest net social utility. J.S. Mill provides certain refinements to this classical framework. I will take his theory of utilitarianism as the most practical consequentialist theory. On the other hand, the deontologist would argue that we must judge morality by way of our acting in accordance with our duties as individuals within a shared state. I will take Habermas’s Discourse Ethics as the most practical non-consequentialist theory. According to his theory, an action is morally good if an individual follows certain ethics of discourse, which he sets forth by way of a number of principles.

I argue that when comparing these two options Discourse Ethics provides the most agreeable theory for defining standards of legally codified moral rights. Yet Discourse Ethics has an important hitch. It effectively secures (institutional) moral rights within the modern state provided that there is a robust educational system and vibrant civic engagement. Problematically, as a nation we experience imbalance in our educational system and tepid levels of civic engagement. Habermas’s system, then, must either sustainably function within our weak structural realities or provide the foundations for practical, robust re-organization. I determine that Habermas’s Discourse Ethics has sufficient grounding to modify our institutional moral rights within our current structures if we take democratic education seriously. A democratic education at both primary and secondary levels proves the key to preserving our moral rights and the democratic system. In closing, I will show why a democratic education provides for both the robust education and vibrant civic engagement the modern state needs in order that human morality. This theory spells out what is to be “morally right” (and goes as far as calling these actions obligatory) or “morally wrong” (and goes as far as calling these actions forbidden). This is a useful theory, then, in the sense that it is socially-guiding—but this is also its potential downfall. I have chosen Discourse Ethics because of its broad, practical application. It provides a system of discourse that allows the people of a modern state to come to differing yet agreeable outcomes.

9 This will be explained in detail in the last section of this paper. In brief, by way of Gutmann, it is understood as a style of education that provides a balanced platform for “considering ways of resolving [social issues] that are compatible with a commitment to democratic values,” (11). This platform finds its balance between state needs, family values, and individual values.
rights are representative of, democratically determined by, and secured for the people of the modern state.

A. Origins.

The origins of moral rights are natural law and natural rights law. I will present both theories and show that neither can function effectively within the modern state. What is required is a narrower reading of natural rights law. The solution is human rights law. Human rights law allows for a more practical, universal theory of moral rights within the state. Before I work through the progression from natural law to natural rights to moral rights proper, I must explain their shared structure “(SS)”:

(SS) [natural law and natural rights law each] express a special class of moral concerns, namely ones that are among the most weighty of all as well as unrestricted and broadly sharable. 10

This structure elevates moral claims as universal rights within a state. Moral concerns are those demands made upon the social organization and practices of individuals and institutions. Made more precise, weighty moral demands are those that out-weigh or supersede other conflicting moral demands of an individual or group. An unrestricted moral demand are those that are not dependent upon a certain situational standing (particular to an epoch, culture, religion, moral tradition, or philosophy11) of citizens. Finally, broadly sharable moral demands are those that are accessible to a wide range of individuals—both in its unrestrictive nature and in terms of its location, that all individuals may have access to each moral demand.

Natural law theory, understood by Saint Thomas Aquinas, binds morality with divine providence—God’s (apparent) will for us. On such a model, the right action is that action which realizes some good in terms of certain religious ideals. Insofar as natural law theory understands the rightness of an action in terms of its ability to effect good, it is understood as a consequentialist theory. Natural law theory does not simply aim at the maximization of good as strains of utilitarianism do. Rather, actions

10 Pogge 60.
11 Pogge 60. Cf fn. 82 (p. 274).
are intrinsically valuable and are not decided by cardinal scale. Aquinas states, "...‘good is that which all things seek after.’ Hence this is the first precept of law that ‘good is to be done and pursued, and evil to be avoided.’" Understanding Aquinas’ variant of natural law as Christian theory, the first precept refers to pursuing set, divine good(s) and avoiding set, worldly evil(s). What is good is the word of God; what is evil is marked, most basically, by God’s Ten Commandments. The Commandments outline absolute moral prohibitions. Actions may be flawed (evil; against the will of God) such that no good consequences may make it the right action.

In the modern state natural law of this kind is ineffective and out of place. While it is functional in a homogenous, religious system based upon the will of God (or multiple Gods), it loses its claim to being an unrestricted and broadly sharable moral theory of rights amidst any (even minimally) pluralistic polity. Its notion of morality is restricted to those followers of a certain religion or way of life and its moral demands are thus only sharable to—or readily accepted by—this one religious group, namely, Christians (and even then, Christians of a very particular type). In a modern state there is a diverse population with many religious—and non-religious—beliefs. Practically speaking, then, the state must provide a secular framework that provides for these many religious (non-religious) beliefs to be realized.

Natural rights are, rather than religiously-based demands, rights held by an individual subject (a right-holder). Moral judgments and legal judgments are distinct categories. By way of H.L.A. Hart, law is understood as the combining of socially-regulated primary and secondary rules. Primary rules are rules of conduct that allow, require, or proscribe an action. Secondary rules are the rules by which conduct is implemented and enforced. On this reading, a law is understood as such if and only if it follows both primary and secondary rules. In other words, there must be a commonly recognized body

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13 Altman, CLS 32.
formulating rules of conduct and duties must have an enforcement mechanism in order to function as law. Hart still holds that there is a minimum content of natural law that can be saved and used by legal positivists in that the legal system has certain “good” end(s) in mind. For instance, upholding and/or pragmatically reforming social standards are a positive effect of the legal system that Hart prescribes.

The theoretical debate between natural law and natural rights comes down to “whether legal authority is at bottom purely a matter of convention and whether there is a significant degree of indeterminacy in our law.”\(^{14}\) Hart argues that the legal authority of a law is based upon convention (although there are certain social goods that come from upholding social standards) and “a significant degree of indeterminacy would [is present in the legal system] because the relevant underlying principles will often be insufficiently precise or will be in conflict with other equally authoritative underlying principles.”\(^{15}\) In a diverse, modern state the law must be understood as a fluid set of principles (“The character of every act depends upon the circumstances in which it is done,”). See *Schenck v. United States*, 249 U.S. 47 (1919). This notion of expansion and contraction of an individual’s rights both relative to others and relative to the circumstances in which an act is done debunks the practicality of natural law’s normative and determinate conception of the law. Each moral claim and consequent ruling is relative to other members and the overall background context.

Right-holders claim a legally codified moral right to protection against any and all actors who infringe upon their well-being. This fundamental attitude can make it superficially appear that moral rights must be taken as *interactional* moral rights. However, this is not necessarily the case because interactional moral rights, in practice, will provide either unattainable or insufficient levels of protection for members of the state. Nevertheless, a brief overview of this approach will be instructive insofar as it allows us to see where it goes wrong. Interactional moral rights are based on an inter-personal level:

\(^{14}\) Altman, CLS 37.  
\(^{15}\) Altman, CLS 40.
individual A's right X corresponds to individual B's duty Y. There is dispute regarding what exactly is owed to individual A by individual B. This debate divides minimalists, who believe a negative duty is owed, and maximalists, who believe both a negative duty and positive duty is owed. For the minimalist, individual B’s negative duty Y is to refrain from actively engaging in the deprivation of individual A’s right X. For the maximalist, it is individual B’s negative duty $Y_1$ to avoid depriving individual A’s right X and additionally her positive duty $Y_2$ to aid in individual A’s achievement X.

Minimalist and maximalist theories both prove inadequate within the modern state. Strictly understood, minimalist theories do not provide basic levels of security for the individual.\textsuperscript{16} Acting only in accordance to negative duties is insufficient protection for citizens in the modern state. For example, in order for both individuals and the state to effectively secure freedoms of speech and assembly—two guaranteed rights against the state provided for by the First Amendment—it is necessary that the state take positive actions (a police force, a court and jail system) that protect against dissenting violence. If the state does not take such action, one may feel insecure about his or her safety. And thus, negative duties cannot be the sole liability of a strong modern state. On the other hand, the most extreme version of a maximalist position holds individuals responsible for "all deprivations whatever, regardless of the nature of our causal relation to them."\textsuperscript{17} This is problematic so far as maximalists hold that the state and individuals owe each individual—even those individuals that we have no connection with—a broad, positive notion of their rights. According to this (broadly utilitarian) view, both individuals and the state must provide aid for those individuals (within the state) who have the right not to be poor. Aid takes the form of one’s own pay, government funds, crafting government structures, etc. Taken to its logical

\textsuperscript{16} "Some rights may be impaired or effectively annulled not only by government’s direct interference with them (torture, preventing a citizen from expressing ideas or voting), but also by its failure to put in place the institutional machinery essential for the realization or practice of the right." The second portion of this sentence describes the need for a greater duty than refraining from infringing upon one’s right X. At times, there must be steps taken to ensure one’s attainment of X. (From Steiner 187-188).

\textsuperscript{17} Pogge, 72.
extreme, this leveling effect could conceivably continue until an individual’s right not to be poor is then equal with my right not to be poor—when we are at the same standard of living. And thus, a maximalist conception of rights is impractical given the economic realities of our capitalist democracy and in light of the fact that we find many other principles apart from the maximalist commitment to collective welfare to be valuable as well: being rewarded for hard work, the right to enjoy the fruits of one’s own labor, competition that spurs innovation, and so on. Instead, our basic moral rights are best held, primarily, as rights against the state. In order to flesh out this notion of rights, I will shift the focus from natural rights to human rights.

B. Current-day meanings.

Human rights narrow the scope of (Hart’s notion of) natural rights: “through the language of natural rights, one can demand protection of persons against any threats to their well-being and agency; through the language of human rights, one demands protection only against certain ‘official’ threats.”

While ordinary criminals infringing upon our moral rights is a marked out as an individual wrong, a government committing a moral wrong is a concern at the level of state structure itself. This shift in one’s notion of his or her legally codified moral rights and duties aims at side-stepping the abovementioned downfalls from both minimalist and maximalist conceptions of justice.

By postulating a [moral] right to X, one is asserting that any society or other social system, insofar as this is reasonably possible, ought to be so (re)organized that all its members have secure access to X, with ‘security’ always understood as especially sensitive to persons’ risk of being denied X or deprived of X officially: by the government or its agents or officials.

Human rights understood within the state are moral rights that protect against wrongs stemming from the state structure and those individuals representing it. These moral wrongs are instances of official

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18 Pogge, 64.
19 Pogge 70.
disrespect. Official disrespect is defined by a particular flaw in the government—taken as a representative system and absolute power—that is leading to some wrong. For instance, an official disrespect arises when (the officials representing) the government uphold(s) unjust laws or allow manifestly unjust readings of current law. These official moral wrongs “do not merely deprive their victims of the objects of their rights but attack those very rights themselves; they do not merely subvert what is right, but the very idea of right and justice.” There is something particularly abhorrent about official disrespect. Injustice at such a systematic level is what makes human rights violations within the modern state everyone’s concern.

The government is a malleable construct run in short-term spurts by officials with differing ideologies. To provide a characterization of the two-party governmental system, there are cyclical periods of conservatism followed by periods of more liberally-minded policy (and vice versa) as parties gain and lose office due to their party’s perceived success (or the other party’s perceived failure). Understood as a long-term system, it requires all citizens buying into, securing, and sustaining its most basic democratic ideals and principles. The government in a liberal constitutional democracy is run of, by, and for the people and so we are each, in part, responsible for the government’s passivity during, or active engagement in, the persecution or culpable neglect of certain citizens. In the modern state, the political apparatus is a joint venture which requires the buying-into by all citizens. As citizens, then, we must find common ground on our collective identity as politically active individuals. It is only with this shared ideology that a governmental system as diverse as our own may flourish. It must follow that regardless of the party currently in power, it is each individual’s collective duty to “(re)organize” her social system so that it does not deprive or deny individual A right X, individual B right Y, and so on.

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20 The term “government” will, for the purposes of this paper, also include its official representatives. These include but are not limited to: police officers, border patrol officers, intelligence agency officials, members of Congress, the president and cabinet members, and judges.

21 Pogge, 65.
This is what is required of citizens in order that the modern state continually respects and reshapes its institutions in a democratic light.

The institutional notion of rights provides that the government must only take action insofar as it is reasonably possible for the state. In effect, existing deprivations may not be required to be aided if there is, for example, no proven, cost-effective solution. Yet this is a broad notion of duty for the individual. Being that the rights are had against the state, this does not get to the very real notion of how an individual treats another individual.\textsuperscript{22} If individual A sees that sub-group B is wrongly deprived of fundamental right X by individual C and there is no government mechanism in place which acts against individual C or in aid of sub-group B, individual A has no duty to take direct action against individual C or in aid of sub-group B. Rather, individual A and individual C ought to put forth—or re-organize existing—social, economic, civil, and/or political mechanisms for reasonable protection as a government.

Still, I find that the institutional notion of human rights is the most workable framework for moral rights within a modern state. Most precisely put, "human agents are not to collaborate in upholding a coercive institutional order that avoidably restricts the freedom of some so as to render their access to basic necessities insecure without compensation for their collaboration by protecting its victims or by working for its reform."\textsuperscript{23, 24} The institutional understanding is a superior model for the contemporary world insofar as it provides, at once, a secular notion of morality and stresses the security of citizens by way of a citizen-driven, responsive institutional order.

\textsuperscript{22} I do admit that there is an imperfect moral duty to be had on an individual level but this is a normative claim and provides no enforcement mechanism.

\textsuperscript{23} Pogge 76.

\textsuperscript{24} It is interesting to note that an institutional understanding of rights allows for a broad notion and development of moral rights. In emphasizing negative duties of \textit{either} protection or reform we mend the debate between classical liberal ideologies (subjective freedoms: i.e. economic and cultural rights) and classical republican ideologies (community freedoms: i.e. civil and political rights).
Now it is necessary to determine how we ought, as a collective, to decide upon what constitutes a legally codified moral right. In order to determine this I will focus on two separate theories. The first bases our judgment upon an action’s outcome (consequentialism). The second weighs the morality of each different part of an action and the individual’s intended outcome (non-consequentialism).

C. Two theories that shape human rights.

I. Consequentialism: Millian utilitarianism.

There are three central claims that classical utilitarianism stands by. Firstly, classical utilitarians are to assess actions and policies exclusively by their consequences. Secondly, classical utilitarians measure the “goodness” or “badness” of an action’s consequences in terms of pleasure. This is on a cardinal scale—it can be added across individuals and by way of different elements. In more contemporary versions of utilitarianism pleasure takes the form of happiness, well-being, preferences, or social utility. Thirdly, classical utilitarians aim to maximize net pleasure of all people. In more contemporary versions of utilitarianism the focus is shifted to the minimization of suffering rather than the optimization of pleasure. This is a minor shift that aims for more reasonable ends within the diverse, modern state. While I will not argue this, or any other contemporary versions of utilitarianism in this essay, I believe its orientation—and the orientation of each of the abovementioned versions (preference utilitarianism, welfarism, etc.)—falls to the same objections I will raise to both classical and Millian utilitarianism.

In order to understand how classical utilitarians achieve the abovementioned three claims, I will first look into these central claims individually; second, I will speak to Bernard Williams’ famous integrity objection and various issues that crop up with respect to the notion of justice; third, I will supplant a number of classical utilitarianism’s shortcomings with J.S. Mill’s redevelopments; and fourth,

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25 Note: while I will not stress this fact in this paper, classical utilitarians (and Millian utilitarians) are concerned with the net pleasure of all sentient beings. This, therefore, includes many animals.
I will determine whether classical or Millian utilitarianism puts forth a plausible moral theory within the modern state.

The consequentialist nature of utilitarianism leads the theory to conclude that the right action is that which brings about the highest degree of pleasure to all affected parties. However, actions do not have intrinsic value. They must be viewed and valued by way of their causal function: actions are not an end but a means to an end ("a state of affairs"). A state of affairs is valued as "morally good" or "morally bad" based upon its resulting net pleasure or net pain. According to Bentham, there are seven factors to be considered in order to value net pleasure or net pain: "intensity," "duration," "certainty," "propinquity," "fecundity," "purity," and "extent." For example, an act is valued in part by its fecundity (its likelihood to be followed by the same sensation), in part by its propinquity (its nearness in time), etc. By summing up these values for every being affected, utilitarians find the general balance of a specific state of affairs or end. If, after summing up these factors, the general balance is on the side of pleasure, it has a general good tendency. If this balance is on the side of pain, it has a general bad tendency. Classical utilitarians must aim for the state of affairs valued with the greatest good tendency. Most famously put, classical utilitarianism seeks the "greatest happiness for the greatest number."26

At first glance, utilitarianism looks like a rather straight-forward, attractive theory. However, there are inherent structural problems with utilitarianism. I shine light on issues of individual integrity by way of Bernard Williams’s famous hypothetical situations and issues of justice more generally. Then, I will put forth J.S. Mill’s redevelopments of classical utilitarianism in order to see if his theoretical shifts address these issues of integrity and justice.

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Bernard Williams puts forth two famous hypothetical situations\textsuperscript{27} to showcase negative responsibilities coupled with utilitarianism and the subsequent integrity problem. We may understand these situations in their abstracted form: “it is inherent in consequentialism that it offers a strong doctrine of negative responsibility: if I know that if I do X, O\textsubscript{1} will eventuate, and if I refrain from doing X, O\textsubscript{2} will, and that O\textsubscript{2} is worse than O\textsubscript{1}, then I am responsible for O\textsubscript{2} if I refrain voluntarily from doing X.”\textsuperscript{28} In both of Williams’ cases, action X is one that goes against both individuals’ own personal moral judgments and principled commitments. Yet, the individual’s action X effects a markedly better situation (potentially or expressly saving multiple lives) and so, from the classical utilitarian point of view, refusing to do action X is irrational and immoral. In this sense, “the projects of others, to an indeterminately great extent determine [her] decision.” She is obligated or ought to do what she believes to be immoral and view the situation as though she is no longer the primary decision-maker. All that morally matters is raising net utility. Thus, classical utilitarians cannot aim for, or even believe in, individual rights, beliefs, religions, feelings, and principles that are at variance with the overarching goal or raising net utility. Williams concludes this is “an attack on [her] integrity.”\textsuperscript{29}

The notion of justice makes for, similarly, situations where the classical utilitarian must concede that her theory takes a route tangential to modern societal norms. Justice, properly understood within the modern state, is the idea that those individuals that are wronged by (the officials representing) the state receive a right to have their individual grievances be heard and fairly assessed by an impartial adjudicator. This is in contradistinction to the classical utilitarian position. Rather than protecting an

\textsuperscript{27} These are known as “Jim’s case” and “George’s case.” I will not get into the specifics of these cases for this paper. Rather, I will use his abstracted form of each case. cf. Smart, J.J.C. and Williams, Bernard “utilitarianism for and against” 97-99.

\textsuperscript{28} It should be noted that there is a clear issue with utility calculations. Must an individual research which action or inaction is the most beneficial? Mill believes that we must follow that action which, depending on its \textit{foreseeable consequences}, brings about the highest good balance. Thus, there is a sense that situations where it is quite clear that one’s action or inaction will bring about the most beneficial end, one must do that action or inaction. Other situations must be subjectively judged if there is no other reference point.

\textsuperscript{29} Smart, J.J.C. and Williams, Bernard “utilitarianism for and against” 115-117.
individual’s security of her own well-being and reputation, what is “just” and, therefore, what determines “justice” is simply whichever action which brings about the most net social utility. Thus, its definition is solely a community-oriented one. J.C.C. Smart states, “however unhappy about it [she] may be, the utilitarian must admit that [she] draws the consequence that [she] might find [herself] in circumstances where [she] ought to be unjust.”30 Utilitarians may require an individual to take great negative measures (unjust measures as understood by way of social norms) against the few in order to bring about the most good and least amount of disutility for all concerned. Thus, justice is not an individual notion of security within the state. Instead, it protects net social utility—potentially even at the cost of individual security.

To recapitulate: I am entertaining the possibility of classical utilitarianism as providing practical foundation for both the modification and up-keep of our notion of legally codified moral rights within the modern state. Moral rights, based in a state-based viewpoint of human rights, provide, at once, a secular notion of morality and stress the security of citizens by way of a citizen-driven, responsive institutional order. Individuals have moral claims against the (officials representing) institutions of perceived state authority. Utilitarianism, then, determines what is or is not an individual’s moral right based upon the amount of potential utility achieved by the either re-organizing (the state actively protecting individual A’s right X or providing for individual A’s right X) or not re-organizing (the state not protecting individual A’s right X or not providing for individual A’s right X) state institutions. If the outcome of protecting or providing an individual with her moral claim to X increases net social utility, it is a valid claim against the state. More specifically, classical utilitarianism concludes that the “just” and “valid” claim is that which brings about the highest degree of net, social utility. Classical utilitarianism fails to provide a realistic, exhaustive model to live by because there is no room for multiculturalism and diversity in the modern state. Said differently, if we weigh the utility from two separate outcomes, we

30 Smart, J.J.C. and Williams, Bernard “utilitarianism for and against” 71.
must follow that outcome. It is incompatible with how we commonly conceive multiculturalism. As I have shown above, justice is solely determined by a weighing of utility; integrity too is based upon following through that sequence of events and seeing that outcome which brings about the highest level of utility. While I conced that this is good in this in extreme cases, it should not write the rule.\footnote{For example, if an individual has an opportunity to break the law in order to save many lives, I believe that individual is right to break the law. In such a clear situation, utilitarianism would arrive at this answer and I agree with it. However, in a situation where utility is much harder to quantify—a situation where an individual has the opportunity to break the law and the measure of utility only slightly outweighs its being broken, it does not so readily follow then.}

If we take classical utilitarianism seriously, we are required to reprogram our ideology to instrumentally raise net utility.

J.S. Mill provides a more complex version of utilitarianism. I will turn to his re-developments of classical utilitarianism to see whether he addresses its shortcomings and puts forth a model which proves compatible with the notion of institutional human rights within the modern state.

First, Mill puts forth the notion of \textit{perfect} and \textit{imperfect} duties. Imperfect duties are non-specific behaviors that carry no claim to a right or violation of a right. We have a duty to be generous or benevolent; however, we do not have a moral right to receive a specific other’s generosity or benevolence. Perfect duties are decided behaviors you owe toward everyone\footnote{Interestingly, there is no sharp distinction between what is owed to humans and what is owed to animals. Utilitarianism aims to bring about the greatest net pleasure (and more contemporary versions aim to bring about the lowest net pain). Because both humans and animals experience pleasure and pain, we may not discount completely the feelings of certain non-human entities.}. Examples of perfect duties are the right to life and the right to liberty. These are unalienable rights that can be enforced by our system of law. The state is just insofar as an individual may enforce his or her perfect duties against (the officials representing) the state. Mill’s conception of justice is defined, then, by an individual’s ability to enforce his or her perfect duty against (the officials representing) the state. How does Mill determine whether (and the extent) the officials representing the state must re-organize and/or provide compensation or security for the individual who was wronged or in fear of being wronged?
Mill provides the notion of perfect duties that may override simple calculations of net social utility. A perfect duty is a binding force on everyone and at all times that has intrinsic value insofar as it upholds the spirit and letter of the law. Perfect duties are a guarded social good separate from pleasures. For example, a sheriff may have a perfect duty to not murder an innocent person even if this murder would allow him or her keep the peace and stop a riot. Thus, perfect duties are not wholly determined by net social utility as it could have been in this example that keeping the peace leads to a higher level of social utility. In his theory, the extent to which perfect duties must be followed by officials representing the state is unclear. Based in a consequentialist theory that calls even those actions that are merely suboptimal “immoral” and makes optimal actions “obligatory,” how do we make sense of the extent to which officials representing the state must re-organize its institutions? Providing no determination for the breadth of perfect duties, two potential problems arise due to what the 1975 Trilateral Commission terms the Law of Political Inertia. On the one hand, justice may only be marginally more important than net social utility. In this case, the Law of Political Inertia may prove too strong a resistance for those affected by injustice. Individuals will see a slow and tedious process to social change. On the other hand, the alternative may prove true. This would be mean that perfect duties such as justice may be of tremendous importance above and beyond net social utility that the officials representing the state must re-organize institutions, without limitation, with the end goal of obtaining a form of strict egalitarianism. This pragmatic oversight makes Mill’s notion of perfect duties such as justice, at best, a promissory note which requires committed social movement; at worst, either unattainable or overly attainable.

33 The Trilateral Commission is a non-governmental organization that seeks to improve upon and coordinate joint strategies aimed at handling common economic, social, and political problems between Japan, Western Europe, and North America.
34 The Law of Political Inertia states that “all regimes, including democratic ones... [tend to continue functioning in their current state] until some external force imposes itself,” From A Report on the Governability of Democracies to the Trilateral Commision: The Crisis of Democracy (4).
Second, Mill argues that there are differences in pleasures. Mill puts this notion forth, in large part, to aid with the integrity. Whereas classical utilitarianism would determine, basically, that the right action is that which brings the most pleasure with no weight given to intrinsic value, Mill claims that there is an intrinsic superiority of certain higher actions. Rather than measuring, on a cardinal scale, levels of pleasure, Mill states that we may experience high and low pleasures and we that ought to aim for high pleasures. High pleasures are those noble experiences that are determined by their standing in the intellectual community. These pleasures pursue mental rather than bodily pleasure. Some interpretations of Millian philosophy hold that high pleasures consistently and over time provide us with more pleasure in the long run; and thus, believe this is their added-benefit and why they outweigh low pleasures. On the other hand, low pleasures are the actions that pursue bodily pleasure. The pleasure that comes from doing drugs, for instance, is a low pleasure while the pleasure that comes from writing poetry is a high pleasure.

In effect, classical utilitarianism may, based upon empirical evidence, determine that doing drugs brings about more pleasure than writing poetry. It follows that, then, writing poetry is an immoral use of an individual's time. While this example may seem extreme, a more practical example may shed light on this point. If, in the modern state, we equate an individual’s spending habits with what is most pleasurable for that individual, as I believe we must, we find fascinating results. Although many

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35 "Men lose their high aspirations as they lose their intellectual tastes, because they are either the only ones to which they have access, or the only ones which they are any longer capable of enjoying." From J.S. Mill’s “Utilitarianism” [Ed. Roger Crisp] (1998 Oxford University Press, New York) 58.

36 This is based upon the assumption that consumers are basically rational consumers. This, however, is not exactly the case for a number of reasons. Two of these reasons are: imperfect information and an uneducated public. A characterized definition of imperfect information is that, in game theory, consumers do not have access to full information of the market. Because goods and services are priced relative to (perceived) market demand, consumers cannot know what his or her move will bring about from other consumers or producers. This means that consumers cannot perfectly determine his or her move in the market (to purchase goods, etc.) because he or she cannot use backward deduction in order to determine his or her payoffs without knowing every individual’s move and the observable outcome possibilities. An uneducated public is, in part due to the effects of imperfect information, both easily duped by advertisement and subject to miscalculate long-run versus short-run costs (and benefits). While consumers are not wholly rational (as the two reasons, among others, show) I believe economics—taken to be the
individuals believe that art museums are more culturally beneficial—that is, art museums provide the modern state with a more valuable representation of culture—than movies, the market tells a different story. Most Americans spend more on movie tickets than on art museums. From this we see that pleasure (measured by monetary spending) is not had in proportion to perceived cultural value. If money is a useful measure of utility, this begs the question, in a consequentialist framework, as to the state funds museums rather than simply funding the production of more movies. Classical utilitarianism may not be able to provide the modern state with any (culturally desirable) check in order to continuing funding the museums on this empirical data. Rather, it may do away with museums and, instead, put the money towards the production of movies because of the net increase in utility. Yet Mill believes this to be the wrong conclusion. He may argue, why ought we to do away with culturally beneficial artworks simply because of the misinformed public opinion? Millian utilitarianism may likely submit that the museums are, in fact, more important and pleasurable—the public opinion is simply deluded. While Mill is most likely right that the modern state is better off with its citizens partaking in poetry and enjoying art museums rather than partaking in drugs and defunding art museums, he bases this on an abstract, intellectual ideal that does not necessarily express the voice and feelings of the population of the modern state. Thus, differing pleasures do not bring about individual integrity; rather, only a more culturally-beneficial action set. Classical utilitarianism determines individual integrity on those actions that bring about the highest social utility; Millian utilitarianism elevates those actions that cultivate higher mental capacities.

Shifting back to the issues J.S. Mill has originally aimed his theory to solving, have his redevelopments of perfect and imperfect duties as well as high and low pleasure made good of classical utilitarianism’s issues of integrity and justice? Like classical utilitarianism, Millian utilitarianism is a study of cost-benefit analysis—is a useful (necessary) empirical tool in describing trends of utility within the modern state.

Gutmann, 262.
unable to provide individual notions of rights, beliefs, religion, feeling, and principle. An intellectual ideal (high and low pleasures) is no more a personal choice than classical utilitarianism’s determination based upon net social utility. In terms of an individual’s integrity, then, the individual still loses her notion of individuality within the modern state. In terms of justice, Mill elevates this perfect duty over imperfect duties and even utility itself; however, there is a gap in his logic within a consequentialist theory. Mill cannot sufficiently answer the extent to which officials representing the state must provide for those individuals who feel an injustice has been done to them. Therefore, both integrity and justice remain biased on the one hand and unclear on the other. Before agreeing to condemn our notion of individuality for net pleasure and notion of justice to an unclear, elevated greatest social good, we ought to analyze an approach that is more than the ends justifying the means.

II. Non-consequentialism: Discourse Ethics.

Habermas’s Discourse Ethics takes a deontological (duty-based) approach to moral theory. Deontology is a non-consequentialist theory that judges the morality of one’s choice separate from its outcome. It is not the states of affairs that an individual brings about; but rather, whether the process through which an individual acts is legitimate. In contrast to a consequentialist theory such as utilitarianism where the individual loses his or her ability to act upon their individuality and principled commitments, Discourse Ethics holds that, “only the agent [herself], who knows [her] own preferences and purposes, has the final epistemic authority to judge [pragmatic reasons].”38 Yet this notion of individuality alone cannot function effectively within the diverse, modern state. Practical reflection which “critically appropriates this intuitive knowledge requires a social perspective that goes beyond the first person singular perspective of somebody acting on his preferences.”39 Habermas distinguishes, then, between the evaluative, first-person perspective (value-orientations) and the impartial, dutiful perspective (obligations).

38 JH, 25.
Value-orientations are understood from the ethical point of view. The ethical point of view is what is subjectively right for an individual. Value-orientations, then, are those opinions, feelings, or actions that I deemed rational for me insofar as I take it to be relatively appropriate or appealing. What I take to be the “norm” is universally neither true nor false but rather truthful for me or untruthful for me. Because this is subjective based upon my given situation and feelings, how do we come to agreement on norms when individual ideals are unsupportable at least in a unifying fashion? The short answer is that we cannot. Viewing discourse solely as ethically-understood value-orientations is impractical. Because of this personal-level/social level separation in language, the creation, application and modification of both moral obligation and positive law raise hermeneutic concerns. Textual determinations of the constitution of the modern state as well as textual determinations on past legal application and practices of moral rights have an ever-changing, ambiguous, and never-perfect standing. For instance, if I hold freedom of speech to be maximally important—that value which I define all truths and untruths by—I cannot assume that every other individual believes this too. It is only from my relative, ethical point of view that this is the case. Practically speaking, it is not absolutely true that freedom of speech grounds every other individual’s value-orientation. It is only one value among many within interpersonal relations. In order to provide justice, then, “the abstract question of what is equally in the interest of all goes beyond the context-bound ethical question of what is best for me or us.” What is subjectively right (ethical) for the individual must be connected to what is good for all those concerned (moral). Thus, value-orientations “[must] not imply an egocentric restriction to sheer preferences; rather, it [must point] to an individual life history that is always already embedded in inter-subjectively shared traditions

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40 I should note that Habermas’s notion of the ethical life (Sittlichkeit) is loosely stemming from Hegel’s socially-oriented interpretation of normativity with attention paid to democracy. Said differently, what is subjectively right for the individual is bound to society and its fundamental values of democracy.
41 From JH 9, rational society
42 JH, 28.
and forms of life.” This intersubjectively shared form of life is Habermas’s impartial, dutiful perspective termed obligation.

Obligations are understood from the moral point of view. From this point of view, an individual’s preferences are no longer particular to what is relatively appealing for that individual given their particular life history and background in a particular community. Opinions, feelings, or actions must be open to discussion and change for us in accordance with those views of the moral community. This moral community—having shared notions of what is good for social coordination—creates what Habermas terms the life-world. Broadly understood, the life-world is defined as that shared sphere of existence that all humans belong to where social coordination takes place in order to obtain a shared understanding with one another about things in the world. Each individual’s (ethical) self-understanding finds grounding within the moral community of the life-world in terms of one’s own life-project. One’s life-project is understood as the one’s actions and perceptions that dispose this individual to his or her (ethical) self-understanding. This is defined by his or her beliefs through socialization (family values, media, primary and secondary education, etc.) and critical thought (primary and secondary education, etc.). Importantly, this means that our moral framework is dependent upon individual, ethical value orientations writ large. Habermas writes, “once the self-determination of the will takes the form of self-legislation, reason and the will completely interpenetrate.” What are these individual obligations but one’s rationally-derived preexisting interests and subjective self-determination? And so we must understand our moral reasoning as inter-related with our ethical reasoning. In order to provide solid grounding for individual belief and identity formation (and for a

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43 JH, 26.
44 From JH’s BFN, 14.
45 JH, 28.
46 JH, 31.
responsible public), we must have a stable legal, scholarly, political, and social community that upholds individual expectations of justice.

Justice is understood as a protected, equal footing for each individual to substantiate her own ethical point of view and to participate in the shared moral point of view. Said differently, we share moral duties and have a right to our own ethical beliefs (to the extent our rights are not superseded by duties). Given this shared structure, “each person participates in the role of co-legislator in a cooperative enterprise and thereby adopts an inter-subjectively extended perspective from which it can be determined whether a controversial norm can count as generalizable from the point of view of each participant.”

A discursive agreement takes both aspects of individual justice (ethical questions) and community solidarity (moral questions) into account.

When a modern state attempts to find a shared ethics (which is interwoven with moral reasoning) this inevitably leads to competing conceptions of moral good. If society is to both respect each individual and come to moral agreement, the moral point of view must be both justified and universal:

From the fact that persons can only be individuated through socialization it follows that moral concern is owed equally to persons both as irreplaceable individuals and as members of the community, and hence it connects justice with solidarity.

In order to find agreement, Habermas puts forth three steps for (an idealized system of) moral justification: First, we must determine how we come to an agreement about moral norms. We deliberate (through discourse) what moral norms may be held as universal. This is understood by way of Habermas’s discourse principle “(D)”: (D) only those norms can claim validity that could meet with acceptance of all concerned in practical discourse.

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47 JH, 31.
48 JH, 35.
49 JH, 39.
50 JH, 40.
51 JH, 41.
This leaves open the question of how we justify moral acceptance. Habermas puts forth the principle of universalization “(U)”: 

(U) a norm is valid when the foreseeable consequences and side effects of its general observance for the interests and value-orientations of each individual could be jointly accepted by all concerned without coercion.\(^2\)

This move by Habermas clarifies the sharability of moral norms, its universality, and its un-coercive acceptance.

Now, what exactly is practical discourse? Insofar as practical discourse follows the following four major features, it is the functional and shared (agreed) process of argumentation. These four features are: (i) that nobody who may make a relevant contribution may be excluded; (ii) that all participants are granted equal opportunity to make contributions; (iii) that all participants must mean what they say; and (iv) that communication must be freed from external and internal coercion.\(^3\)

Presupposing these features of argumentation, only reason may sway an individual’s judgment.

I will now show an ideal-typical scenario in which Discourse Ethics may be used in order to shed light on its practicality. In a given situation, two individuals have differing subjective, ethical viewpoints. Given their contra-positioning, coming to some shared ethical agreement is unlikely. Neither party wishes to compromise yet neither party wishes to resort to violence to resolve their subjective dispute. In this case, they must resort to communication. After some time it becomes apparent that the two parties have competing conceptions of the good. In other words, each is entitled to her opinion and neither may be judged to be a better good than the other, when dealing with two subjective understandings. At this point there could well be a modus vivendi which side-steps this situation all together. Yet assuming the parties do not want to do this, there must be a neutral way of mediation. Thus there must be a point of connection between subjective notions of justice and objective notions of

\(^2\) JH, 42.
\(^3\) JH, 44.
community solidarity. In order to avoid mere subjective arguments (and in order to avoid mere community voice and pride,) Habermas treats individuals, at once, as *irreplaceable individuals* and *members of the community*. Inasmuch, “the equal respect for everyone else demanded by a moral universalism sensitive to difference thus takes the form of a *non-leveling* and *non-appropriating* inclusion of the other *in his otherness*.” These individuals share a common ground, and this is what Habermas calls upon. Both individuals are a part of the *cooperative enterprise of rational discourse*. At this point, then, principle (D) specifies what norms would be taken as valid in communicative discourse, which is justified by principle (U). Finally, if these two parties agree to Habermas’s shared process of argumentation (which has four conditions), then each individual is effectively putting forth reasoned argument that holds sway in universal, moral debate.

To recapitulate: I have shown that human rights, taken within a modern state, are best understood as moral rights had against the (officials representing) the state. I then explained why it is that the consequentialist framework fails to provide the individual with her *own* moral viewpoint and am now deciphering a non-consequentialist framework. Habermas’s Discourse Ethics aims to de-problematize non-confrontational moral judgments and establishes both community solidarity and individual justice through its rules of discourse ethics. And so, if functional, the individual ought to realize both her *own* conception of morality and universal moral rights against the state.

I argue that this is a functional system. Still, in a different light than utilitarianism, Discourse Ethics asks much of each individual. Whereas utilitarianism is interested in valuations of net social utility, implicit in Habermas’s Discourse Ethics is a dependence upon a population that is both [1] educated and [2] committed to the democratic process. I believe these are two fundamental relations within the modern state and therefore it is sensible to think it possible to attain high levels of education

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54 JH, 40.
55 The democratic process is defined as the process by which the population of a modern state’s rational discourse—by way of *civic engagement*—determines governmental course of action, norms, rights, duties, etc.
and a commitment to the democratic process. These are necessary because, on the first count, holding one’s own in discourse—protection against getting duped by the morally-charged discourse of others—requires critical thought. On the second count, in order for a democracy to live up to its ideal and be taken as legitimate, every citizen must believe that his or her say in the process is heard and is valued the same as the say of any other citizen. In order that critical thinking and democratic ideals proliferate and secure the future of the democratic state, the state must generate a population that is committed to democratic values.

D. Preserving the system.

Every individual comes to his or her core moral values and understandings through socialization. It is evident that socialization is not limited to a classroom education. There are certain institutions that may benefit an individual’s development such as libraries and museums. Yet there are many institutions that may undermine or lessen an individual’s development. For example, many television programs and video games provide entertainment that is either useless or counter-productive to the needs of the state, family, and/or individual. The fact that each individual’s social development is determined by so many and such far-reaching influences means that the principled, democratic educational system is increasingly important. Thus, the state must implement an educational system that forms critical thought and democratically-minded wills. In order for Habermas’s Discourse Ethics to function as a democratically-minded system, it is dependent upon a robust theory of education and vibrant levels of civic engagement. In the writing below I will answer three questions, namely: [1] what is the purpose of both the educational system and civic engagement? [2] What is the current state of both of these structures? And [3] do the current states provide sufficient foundation for seeing through each purpose? I should note again that, because I am focusing my essay on idealized models, I aim merely to bring awareness to, and create a platform of debate for, morality for individuals within the modern state. Included in the topic of morality is how it ought to be justified, its personal and/or institutional
requirements, its discursive purpose and structure, and how it is determined and changed in the modern state. I will first focus on the current state of the educational system. Whether it has sufficient foundation as it stands will only be covered in brief.

I have determined that Habermas’s Discourse Ethics requires a robust educational system and vibrant civic engagement but why must these structures be robust and vibrant? To answer that there is a more primary question of the purpose of the educational system and civic engagement. In order to determine their purposes, I must first understand their moving (interchangeable) parts and the ways we may position and engage these parts within the modern state. These moving parts will, in large part, determine the desired purposes of these systems. And so it is necessary to have the proper parts in place in order for the educational system and civic engagement to function as required for both Habermas’s Discourse Ethics and the modern state to be practical and sustainable. After outlining the structure and purpose of the educational system, I will speak to the role of civic engagement in the modern state. I am writing about the educational system before civic engagement because I believe that the educational system, when properly positioned and engaged, teaches about the need for civic engagement—which is key to a sustainable and robust modern state and Discourse Ethics.

What are the moving parts at play in the educational system? Most basically, we may determine the distributional range and authority of a given educational system. Distributional range is defined as the measure of inclusivity of educational lessons and functions. Authority is defined as those individuals who decide the curriculum. These two parts of educational system may determine the purpose—or, more basically the proper functionality—of the system given those pieces. This is because the curriculum determinations made by the person(s) of authority correlate with politically-desirable outcomes given whatever system of government is charged with running the educational system. There are three major political theories that Gutmann provides which explain possible extremes of the educational system. Her
three political characterizations take the form of [1] Plato, [2] Locke, and [3] J.S. Mill. I will briefly speak to each, explain why none are appealing for the individual within the modern state, and provide Gutmann’s democratic theory of education, which I take as the most coherent account.

Plato is the figure-head philosopher representing Gutmann calls the family state. This political structure is understood most simply as state needs trumping individual values in order to procure social harmony. Provided our society is just, the good life is understood as the individual contributing to, and taking part in, social order. The purpose of education, then, is to craft a youth that will see what has been agreed as the most harmonious social order. The state has full reins to do as it must to construct, and allow for the continued uptake of, the good life. Yet there is a sense that, “as long as we differ not just in our opinions but in our moral convictions about the good life, the state’s educational role cannot be defined as realizing the good life, objectively defined, for each of its citizens.” The family state places social reproduction in the hands of the state. And so the state defines the moral identity of each citizen—no longer do individuals have their own moral identity or do individuals have the right to influence the moral identity of their children.

Gutmann’s state of families is best characterized by Lockean liberalism. This political structure is understood as parents having the sole authority to exercise their own influences on their children. Through this form of liberalism, the state has given up its authority over the educational system. This has problematic normative implications. The educational system is the state’s “most effective and justifiable instrument” for securing certain values such as mutual respect. Without state intervention, parents may exclusively determine, regardless of the consequences on society as a whole, the measure of

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56 I will take special care to speak to Gutmann’s characterization of a Millian conception of education. Although I have disproven utilitarianism because we lose our individuality, if an educational system can make good of this by way of a practical and inclusive (if each agent wills the same end) system of socialization, then a consequentialist moral theory may yet hold weight in a modern society.
57 Gutmann, 23.
58 Gutmann, 28.
59 Gutmann, 28.
60 Gutmann, 33.
morality that they teach their children. By this reading, it is agreeable for parents to raise a child to be intolerant of religions or races other than their own. Moreover it negatively affects the state. If the state is made up of a multiplicity of intolerant groups—and each subgroup is unwilling to recognize the agency of “other” groups—segregation and other morally abhorrent happenings become an unsolvable reality.

Gutmann’s characterization of J.S. Mill represents the state of individuals. This political structure elevates individual values over state or family values. Authority is shared by all adults. Educators, parents, and the state will neutrally teach conceptions of the good life for the student to decide her own morality.61 Mill writes,

All attempts by the State to bias the conclusions of its citizens on disputed subjects, are evil; but it may very properly offer to ascertain and certify that a person possesses the knowledge requisite to make his conclusions, on any given subject, worth attending to. A student of philosophy would be the better for being able to stand an examination both in Locke and in Kant, whichever of the two he takes up with, or even if with neither: and there is no reasonable objection to examining an atheist in the evidences of Christianity, provided he is not required to profess a belief in them.62

An individual’s education now presents an opportunity for choice (unlike the family state) and neutrality of choice (unlike the state of families). Properly understood, “a just educational authority must not bias children’s choices among good lives, but it must provide every child with an opportunity to choose freely and rationally among the widest range of lives.”63 Yet there is a limitation to this education. There must be some limit to the opportunity of individuals and therefore neutrality is simply unrealizable. The

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61 “It [is] an illegitimate pretension to educational authority on anyone’s part to deprive any child of the capacities necessary for choice among good lives,” (Gutmann, 40).
62 Mill, J.S., On Liberty, ch. 5, para. 14
63 Gutmann, 34.
state, educators, and parents provide those culturally coherent\textsuperscript{64} opportunities that maximize a student's future freedom of choice.

Why must students be educated for culturally coherent freedoms and not, rather, virtues (or scientific excellence or to provide the highest levels of welfare, etc.)? Because some individuals may value virtue or scientific excellence over future freedom of choice, the state of individual's educational aim is subject to similar challenge as the family state's educational aim for harmonious social order.\textsuperscript{65} We cannot easily run empirical tests which determine what is best for the net social utility of the state. And so, we must look to find another (necessarily non-neutral and inclusive) aim for the educational system.

Each end we may test—measured IQ scores, social welfare, athletic excellence, musical ability—falls prey to this same problem. None are wholly inclusive and therefore each is a competing interest that cannot claim, without being subjected to impractical empirical analysis, a privileged position above any other end. Understanding this, we must aim to find an inclusive end for primary and secondary educational system that justifies non-neutral lessons.

Most broadly understood, although we disagree upon which ends is the most important—freedom, virtue, intelligence, etc.—we may agree that we desire our educational system to have certain aim(s). Thus, we share a commitment to desiring justification for certain aims of the educational system. Most simply, this is a commitment to the process of conscious social reproduction\textsuperscript{66}—regardless of its other, exclusive ends. Therefore an educational system must create citizens that are capable of this

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\item[64] Opportunities must be limited to culturally coherent opportunities because they must assume functionality—bring an individual's chosen good—within the constructs of the state one finds herself.
\item[65] Gutmann writes, "assuming that some citizens value virtue, others freedom, and the two aims do not support identical pedagogical practices, the more liberal aim cannot claim a privileged political position. Educators need not be bound to maximize the future choices of children if freedom is not the only value," 38.
\item[66] Conscious social reproduction is the process whereby citizens collectively agree and disagree with cultural norms and practices based upon their own moral values. It must be noted that Gutmann does not hold conscious social reproduction as a "self-evidently correct or uncontroversial [educational end]. But it is a minimally problematical end insofar as it leaves maximum room for citizens collectively to shape education in their society." Thus it takes an interesting place in educational debate. It will be further explained in the next section of this paper.
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collective process. Before shifting to an ideal-typical educational system that provides an inclusive end—namely, teaching of conscious social reproduction\textsuperscript{67}—I will recapitulate the moving parts (characterized authority figures) and political purposes of each of the abovementioned educational systems.

The three theories above fail to provide practical authority figures. The family state cultivates civic virtue. Yet it gives no weight to the right of parents and to individual choice. The state of families cultivates family values that make a strong (yet separate) building block for individual growth. Yet it does not make for a cohesive notion of individual rights within the state and the individual child has little say in her disposition. The state of individuals functions to allow for a multiplicity of “good lives” that individuals choose. Yet it may not cultivate individuals who are willing to uphold the democratic state. Unlike the three theories I have characterized above which gives moral authority to one of either [1] the state, [2] parents, [3] or is neutral, Gutmann’s \textit{democratic theory of education} looks more broadly to each:

A democratic state is... committed to allocating educational authority in such a way as to provide its members with an education adequate to participating in democratic politics, to choosing among (a limited range of) good lives, and to sharing in the several sub communities, such as families, that impart identity to the lives of its citizens.\textsuperscript{68}

Understood by way of Habermas’s Discourse Ethics, differing ethical viewpoints find relative equilibrium by way of rational discourse to determine what moral laws we have and the aims of our institutions. This is the basis of democratic government. And so the state needs citizens who may effective participate in this discourse. This is, in large part, the aim of Gutmann’s \textit{democratic theory of education}.

\textsuperscript{67} This is defined by Gutmann as “a minimally problematical end insofar as it leaves the maximum room for citizens collectively to shape education in their society... The virtues and moral character [a democratic theory of education cultivates]... are necessary to give children the chance collectively to shape society.” Gutmann, 39.

\textsuperscript{68} Gutmann, 42.
From the moment an individual is thrown into the world her educational process begins. Therefore the youth is dependent upon those outside of education to impart knowledge. Once a generation matures it then becomes their job to impart knowledge on the now-youth. Borrowing from Aristotle, Gutmann explains this phenomenon: “because being a democratic citizen entails ruling, the ideal of democratic education is being ruled, then ruling. Education not only sets the stage for democratic politics, it plays a central role in it.” The scope of education, then, must provide and elevate each citizen’s democratic ideals and the democratic process. In order that each generation of rulers carries on the democratic state, education, as both a means and an end, must function democratically:

A democratic theory of education recognizes the importance of empowering citizens to make educational policy and also of constraining their choices among policies in accordance with those principles—of non-repression and non-discrimination—that preserve the intellectual and social foundations of democratic deliberations. A society that empowers citizens to make educational policy, moderated by these two principled constraints, realizes the democratic ideal of education.

The primary schooling system must cultivate character that contributes to the democratic state and its political processes. Thus one of its necessary ends is to provide critical, yet politically conscious (democratically-minded) citizens. How do the moving parts of Gutmann’s democratic theory of education function in order to craft this (and other) ends? I will very briefly focus on the aspects of primary schooling. Its purpose is to craft citizens who may effectively participate in rational discourse and function as members of society. After fleshing out primary schooling, I will shift my focus to secondary schooling. In brief, too, I show its purpose is two-fold. It must first provide academic

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69 Broadly understood, an education is every social influence that weighs on each person’s disposition.
70 In The Politics of Aristotle {trans. Ernest Barker (London: Oxford University Press, 1971), p. 105 (1277b)}, he writes “you cannot be a ruler unless you have first been ruled.”
71 Gutmann, 3.
72 Gutmann, 14.
freedom for students and educators; and second, it must develop the culture of professionalism so as to ensure that students are prepared for political and professional positions post-graduation.

Students who do not want to participate nor learn add force to the argument for a disciplinary method of teaching. In a disciplinary method, teachers assert their authority in order to effect order and teach lessons. This does well, generally, to keep those students who do not want to be educated in the classroom and in order. It cultivates humility and order. Yet, this does not achieve the desired democratic education. In order to cultivate self-esteem and social commitment, a participatory approach is necessary. In a participatory method, teachers give a priority to these democratic needs. A participatory approach is defined by internal democratization of schools with authority figures weighing the voices of students, staff, and parents. It allows for more critical, active lesson plans that may change due to student questions, wants, or needs. Yet, this priority is not to be absolute. Gutmann writes,

> The question of how much democracy within schools is democratically desirable remains doubly difficult to answer, therefore, because we have incomplete data on educative effects of more democratic methods and because we rightly value the disciplinary as well as the participatory purposes of primary education.

If the primary schooling’s social purpose is to develop democratic character in all citizens, it is necessary to cultivate critical thought, democratic ideals, and political efficacy, among other values in order for a democratic system of the modern state to be sustainable. A wholly participatory approach or a wholly disciplinary approach may not realize these needs. For instance, if a participatory approach in the schools achieves levels of political criticism but does not effect a need for political participation, the approach has failed to teach those skills that are essential to a democratic government. And so we must work toward equilibrium between a disciplinary and participatory approach in order to cultivate the virtues necessary for the effective governing of the modern state.

73 Gutmann, 90.
74 Gutmann, 90.
75 Gutmann, 91.
While the purposes of the primary educational system are, in large part, to educate all citizens to a democratic form of governance and to moral, politically-minded discourse, secondary schooling’s purpose is, most basically, to “serve democracy as sanctuaries of non-repression.” Its function is two-fold. Firstly, it must first provide academic freedom for students and educators. Secondly, it must develop the culture of professionalism so as to ensure students are qualified for professional and political positions. In the first instance, its non-repressive force protects scholarly autonomy against the state. In the second instance, universities ensure that scholars have the minimum qualifications for the extra-functional requirements of professional and political offices. I will speak to both of these purposes, beginning with academic freedom.

Academic freedom serves a necessary function in the modern state. In the modern state, scholars have a right to an environment conducive to scholarly autonomy which protects the liberally-minded (or not liberally-minded) university against the narrowing power of harsh state regulation. Academic freedom is the freedom of students and professors to entertain and assess existing theories, institutions, and widely held beliefs without fear of sanction by anyone if they arrive at unpopular conclusions. This, in effect, allows scholars to test the strength and viability of our existing structures. This systematic, scholarly check on the functionality of the state is not only beneficial for scholars but for all citizens.

Besides developing the political consciousness, the educational system must “transmit, interpret, and develop” the culture of a society and, especially at the university level, “[ensure] that its graduates are equipped, no matter how indirectly, with a minimum of qualifications in the area of extra-functional

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76 Gutmann, 174.
77 Gutmann, 176-179. Yet this is not an absolute right. Academic freedom is not a defense against governmental regulation that is compatible with preserving scholarly autonomy.
78 Gutmann, 175.
abilities." Plainly explained through example, this function of the secondary school system takes form in professional settings: a doctor must project certainty during an uncertain situation; an economics professor must refocus class after a tangential question during lecture. The extra-functional abilities are where a professional’s technical and practical skills are both required at once. Doctors must express scientific results in terms of the life-world; economics professors must express their respective subject in terms of the concerns and practices of the life-world. Remember, broadly understood, the life-world is defined as that shared sphere of existence that all humans belong where social coordination takes place in order to obtain a shared understanding with one another about things in the world. It differs, then, from the scientific or scholarly community insofar as both scientific and scholarly communities do not have a “common” orientation of knowledge. Rather, these communities have new and technical information and findings separated from the general public. Thus, technical knowledge requires mediation in order to express these claims in literature and to the life-world. So too, economic theories require mediation in order to express these mathematical equations and theorems in literature and to the social life-world. In order to effectively handle situations in the modern state, a professional must have partaken in critical reflection within their field of practice to become “critically aware of their own presuppositions.” A doctor or economics professor must understand the life-world connections at play in their field; the way their field attaches to the general public’s understanding of medicine or economics. Most basically, the university must provide for the critical thought to determine the way an individual’s professional field is applied within the social life-world.

Conclusions.

80 From JH’s BFN, 14.
81 JH’s TRS., 52.
82 Ibid., 7-9, quotation from 8.
The modern state we find ourselves traversing is a relatively new experiment. Today, there are levels of diversity that showcase the real power of a functional, multicultural democracy. The United States’s future as a democracy is not certain, however. In order that the state proliferates with ever-increasing levels (and subsequently, broader definitions) of diversity, critical thinking and democratic ideals must be the focus of our education system. A population must be committed to democratic values; and a population must be committed to these values by their own determination. In a diverse, modern state group identity will never be directly corresponding with all other groups. Said differently, while groups are malleable and allow for sub-group formations, it will never be—or ought not be—the case that we each share the same viewpoint with every other citizen. Although we will not have a shared identity in this sense, we must work together as citizens in order that these identities do not clash; but rather, benefit each other.

Because of this differing moral viewpoint, I found utilitarianism to be an inhospitable theory for the modern state. I conclude that Habermas’s Discourse Ethics provides a democratically-oriented platform for considering individual, legal moral rights. This theory had social requirements that had to be met—namely, a robust educational system and an engaged public. I showed that Gutmann’s democratic theory of education is the answer to these social requirements in order that human rights are representative of, democratically determined by, and secured for the people of the modern state.

More basically, I worked to decipher the origins of individual, legal moral rights and their current-day meanings in a diverse modern state. This groundwork shows, to my eye, the most important notions of rights and duties that every citizen ought to acclimatize himself or herself to before functioning within the state. I believe that this is a system that may pragmatically work in the diverse modern state we share today. In order that this system proves effective, though, is a matter for the public to discuss and decide.