October 22, 2008

Happy to be Equal

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Abstract
The public discourses regarding happiness are burgeoning in current times, especially in the fields of positive psychology and philosophy. However, policy oriented disciplines, such as economics and law, seem to almost suspiciously, avoid this discussion, leaving one of life’s most important aspects, academically and politically, unexplored. This paper tries to fill this void by offering an explanation to why humans beings are equally happy and how does this provide us with a rational basis for human equality and a corresponding perception of human rights.

The explanation offered in this paper of why people are equally happy lies greatly on the human tendency to maintain an emotional equilibrium, through a process of constant adaptation, regardless of life’s changing circumstances. This process is both individual and group driven, but contingent upon certain minimal conditions.

In light of that, it is suggested that universal human rights could be perceived as derived from each person’s right to take part in the social process that leads to the equality in happiness. This proposed approach to human rights, views these rights as a legal instrument that assures the fulfillment of the minimal conditions necessary in order to participate in that process. These universal human rights are the right to life and the right to freedom from ongoing physical pain.
Preface

In recent years there has been ever-increasing interest in the term “happiness”. Both academic and general discussions of the topic constantly flow. Popular books on psychology, sociology and biology try to persuade their readers that happiness depends solely on them and describe the shortest, easiest or best way to achieve happiness. Courses and workshops are part of the search for the best recipe for a life full of smiles and laughter. Religions translate their tenets in terms of happiness compared with sadness. That which was once a solely rational decision making process, is now an equation that factors in emotional content.

However, along with this florescence, happiness does not constitute almost any recognized yardstick used to measure the success of a lifestyle, culture, group choices or in the determination of policies. Happiness remains a term alien to public and political life and retains relevance only in terms of the individual’s private life. A comparison between societies around the world will refer to almost any imaginable parameter: Wealth, resources, education, grades, culture, height, consumption – the list is endless; but it almost never includes a serious comparison of their happiness. The meaningful gap between the growing importance given to the term happiness alongside the disregard of happiness as a parameter in legal, economic or social decisions is brought into sharper focus by globalization and the multi-cultural approach that bring together disparate ways of life.

It is therefore nothing less than obvious that we must consider the important questions that stand out against the background of the sparse social and public discourse on comparative happiness. In terms of quantifiable human happiness, is there any difference between the various cultures? Does living in the Indian culture contribute more to the individual’s happiness than living in Germany or Holland? Is it reasonable to assume that a Muslim woman is less happy than her western counterpart? In the name

* I would like to thank Eyal Benvenisti, Daphna Barak Erez, Tomer Schoyerman and Guy Lotem for their insightful comments and great help. I would also like to Thanks Yona Lutan for inspiring the idea.

† There are some surveys comparing national happiness ratings, but generally, they are granted no serious credence by decision makers around the world.
of their happiness, would it be right to impose western human rights on those women? Are liberal civil rights the standard path towards freedom and therefore provide more joy for those that benefit from such rights? The most important question must surely be: Are some of us happier than others?

There is one simple answer to all these questions and others like them – No.

The reasons for that answer will be explored as this review study develops and special attention will be given to the policies that must be derived from the answers and explanations given. The argument to be made is that the vast majority of human beings benefit from equality in happiness. A significant part of that argument suggests that there are few conditions to the existence of that equality and minimum range of human rights required to ensure maintenance of that equality is far narrower than the rights currently defined as universal human rights.

The first section of this paper reviews the historical development of the term happiness and its current definition. The second section deals with the individual’s adaptation to changing circumstances as the central, common component in all the factors comprising the process that brings about equality in happiness. This section also explains how various social and psychological factors regularly and consistently guide the individual towards a common emotional point of equilibrium. The central argument is that in view of internal regulation processes and social processes encouraging the individual to adapt, the emotions of the individual in society are funneled towards a routine experience which is characteristically, emotionally neutral with a slight leaning towards the positive. This section aims to show how equality is relatively easy to achieve and why it exists in almost every human society. The description of the vital role taken by society in the process through which the individual adapts to reality is designed on the one hand, to emphasize every individual’s right to be part of that process and on the other hand, to explain that the process is natural and an integral part of human behavior in all societies and cultures. This view of the equality in happiness is the basis for the approach to human rights propounded below, which considers human rights as
the right to be part of that equality in happiness granted to all human beings. Only through an understanding of the social and individual mechanisms that lead to equality in happiness, can we formulate policies able to enforce every person’s right to enjoy those mechanisms and become part of the equality in happiness.

The third section presents an approach to human rights, which does not view equality in the same light as other human rights and instead, treats it as a reality in which the purpose of human rights is to expand that equality to the extent possible. Equality in happiness is not a defined quantifiable situation. It is a process common to the vast majority of human beings and only excludes those that do not enjoy even the most minimal conditions for human existence. Those minimal conditions, the existence of which human rights must ensure in order to make it possible for an individual to be part of the equality in happiness process, are the rights to life and freedom from ongoing physical suffering. An individual denied those minimal conditions to existence changes from a being able to adapt to change, into a being only able to focus efforts on surviving the reality and therefore, has no part in the equality in happiness. When individuals constantly suffer, they focus all their efforts on bodily survival and not on functioning within a society, the very existence of which creates the equality of happiness process. The section also explains why the new definition of human rights, which does not rely on liberal principles or a social agenda, can instill those rights with universal values and institutionalized infrastructures, which until now, has not been an effort crowned with success.
Section One: What is Happiness?

A. The Development of the Concept of Happiness

As it was understood in ancient Greece, happiness was firmly identified as a positive virtue, because in intellectual, spiritual and moral terms, happiness is a reflection of the supreme good and a symbol of an ideal, just life. This approach is expressed most fervently in Aristotle’s writings and in particular in his book “Ethics”, in which Aristotle refers to happiness as an active way of life that includes all the different types and manners of deed with integral value and significance for human life and relinquishes nothing that can enrich or better a life. Thus, an individual’s happiness derives from their deeds, which are those deeds that can properly sustain the positive virtue. Through those deeds, individuals reach the limits of their abilities, while striving towards excellence of spirit, soul, ethics, thought and way of life. In contrast, Plato claimed that happiness is first and foremost, the accumulated benefit resulting from "a love of living through passion for learning". Therefore, it can only be attained by philosophers.

Another approach to happiness in ancient Greece is found in the doctrine of hedonism propounded by Epicurus, who linked the positive virtue to pleasure in a manner that views them as dependent one upon the other.

“[I]t is not possible to live pleasantly without living prudently and honourably and justly, nor, again, to live a life of prudence, honour, and justice without living pleasantly”.

In Epicurus’ view, pleasure is the ultimate goal, or the supreme good in life. Epicurus defines pleasure as the absence of pain or abstention from fleeting pleasures that will lead to more pain in the future. Thus, the supreme good makes it possible for the

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2 ARISTOTLE, THE NICOMACHEAN ETHICS 14-17 (Filiquarian 2007).
4 Epicurus, Letter to Menoeceus, in HAPPINESS CLASSIC AND CONTEMPORARY READINGS IN PHILOSOPHY 36 (Steven M. Cahn & Christine Vitarno eds., 2008).
individual to be free of bodily disturbance and benefit from piece of mind and serenity\(^5\). Epicurus’s understanding of positive virtue was influenced by the philosophers who came before him and the concepts they coined during their discussion of happiness. It is reasonable to consider Epicurus’s doctrines as the link between the classic schools of thought originated by Socrates, Plato and Aristotle and the more modern theories put forward in the 18\(^{th}\) and 19\(^{th}\) centuries, such as the utilitarianism propounded by Bentham and Mill, when the latter constitutes the source for today’s definitions of happiness.

In 1780, Jeremy Bentham, the father of utilitarianism, argued that: “Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do as well as to determine what we shall do\(^6\). Consequently, Bentham formulated the simple rule for decision making, which he believed should be used as the yardstick to measure public activities such as legislation: Maximize happiness for the maximum number of people. Bentham also went so far as to suggest ways to measure pleasure, for example in terms of its intensity, duration, certainty and more... Bentham was the subject of much criticism for the simplicity of this doctrine, both in theoretical terms and in its moral – normative aspects\(^7\). One of his foremost critics was John Stuart Mill, one of the most important utilitarianism thinkers, who believed that Bentham’s ideas did not provide a sufficiently sensitive account of pleasure and pain. Mill believed that pleasure and pain are not homogenous ideas, quantifiable according to intensity or duration and he preferred to describe them as but complex ideas containing considerable conceptual variety, which must be considered when they are defined\(^8\).

In recent decades, modern psychology, which relies very heavily on that propounded by Bentham and Mill, also has its say on the proper approach to the term happiness. As a rule, in scientific experiments examining happiness in different groups, researchers

\(^{5}\) HOLOWCHAC, supra note 3, at 66.
\(^{8}\) *Id.* at 65.
employ a number of key terms designed to measure happiness, such as “positive effect”\textsuperscript{9}; “subjective well being”\textsuperscript{10} and “satisfaction with life as a whole”\textsuperscript{11}. Currently, due to the progress made in the investigation of happiness by psychological research, the more common term used to measure happiness\textsuperscript{12} is “subjective well-being”.

Given that the argument made here is that there is equality in happiness, it is important to emphasize at this early juncture that psychological studies measuring happiness usually assume non-equality of happiness between individuals. That assumption is demonstrated in any number of studies examining the influence of various factors such as income, quality of life, family status, culture and other variables, on subjective well-being. These studies are clearly based on the assumption (usually not stated explicitly) that people differentiated according to those variables will indeed report varying levels of subjective well-being quality\textsuperscript{13}. This is also true in reference to studies such as those conducted by Brickman et.al.\textsuperscript{14}, which show much smaller than expected differences between the who would be perceived as the luckless and the lucky, in the happiness stakes. A number of researchers have made considerable efforts to refute and qualify their results, evidently on the basis of their primary assumption\textsuperscript{15}.

\textsuperscript{10} Ed Diener, \textit{Assessing Subjective Well-Being: Progress and Opportunities}, 31 SOCIAL INDICATORS RESEARCH 103, 103 (1994).
\textsuperscript{11} Angela Grigg, Harvey V. Thommasoen, Hugh Tildesley & Alex C. Michalos, \textit{Comparing Self-Rated Health, Satisfaction and Quality of life Scores Between Diabetics and others Living in the Bella Coola Valley}, 76 SOCIAL INDICATORS RESEARCH 263, 263 (2006).
\textsuperscript{12} It must be emphasized that there is a significant difference between the way psychology defines the term happiness and philosophers’ definition of the term. The difference arises from the different nature of these two disciplines. See: D. M. Haybron, \textit{Two Philosophical problems in the Study of Happiness}, 1 JOURNAL OF HAPPINESS STUDIES 207, 214 (2000).
\textsuperscript{13} See, e.g., Dimitris Ballas, Danny Dorling & Mary Shaw, \textit{Societal Inequality, Health and Well-Being, in WELL-BEING: INDIVIDUAL, COMMUNITY, AND SOCIAL PERSPECTIVES} 163, 163-186 (John Haworth & Graham Hart eds., 2007); Ed Diener & Eunkook M. Suh, \textit{Measuring Subjective Well-Being to Compare the Quality of Life of Cultures, in CULTURE AND SUBJECTIVE WELL-BEING} 3, 3-9 (Ed Diener & Eunkook M. Suh eds., 2000).
\textsuperscript{14} Philip Brickman, Dan Coates & Ronnie Janoff-Bulman, \textit{Lottery winners and accident victims: Is happiness relative?}, 36 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 917, 917-927 (1978). The results of this study would be elaborated in Section 2, Subsection A.
\textsuperscript{15} See, e.g., David A. Schkade & Daniele Kahneman, \textit{Does Living in California Make People Happy? a Focusing Illusion in Judgments of Life Satisfaction}, 9 PSYCHOLOGICAL SCIENCE 340, 340 (1998) (Stating that studies that proved that paraplegics and lottery winners are more or less equally happy were: “deeply
Notwithstanding the concealed assumptions on which many psychological studies are founded, this work draws much from empirical psychological research conducted to date in the field of happiness and demonstrates different phenomena, such as adaptation, as such are reflected in empirical research. However, no decisive importance is attributed to the statistical data in research pretending in one way or another, to be able to measure research subjects’ happiness with numerical accuracy. It is also important to emphasize that this type of research does not indicate large happiness gaps. In fact, a substantial number of studies indicate that more privileged and advantaged groups (which are for example, wealthier or healthier), are only slightly happier than the other research subjects. There are two principal reasons why the numbers produced by this research has not been credited with any decisive significance. The first is that this work understands happiness as a continuous, dynamic process and momentary or point in time measurements cannot grasp the substance of that happiness. Therefore numbers cannot measure happiness accurately. The second is the enormous difficulty and the multiplicity of assumptions associated with the execution of point measurements, which will inevitably result in bias and an inadequate reflection of the individuals’ happiness.

B. The Definition of Happiness
The previous chapter presented the two principal approaches in the definition of happiness – the standard definition, which views happiness as a sublime ideal attained
only by the chosen few and the practical utilitarian definition, which views happiness as resulting from maximum pleasure and minimum pain.

For the purposes of the argument, which shall be put forward later, the most appropriate definition of happiness shall be based on Bentham’s later approach, with additions providing answers for the criticisms railed against it as a far too simple definition of the term. The definition, which on the one hand is based on the accepted utilitarian definition and on the other, does not suffer from over simplicity, can only be based on happiness as a subjective experience\(^{18}\). By defining happiness as an experience, it is possible to relate to the different dimensions in which happiness is felt and expressed. This provides a definition solution, encompassing the complexities of the term. To provide the definition with tangible content, four principal levels can be considered, which together, constitute the subjective experience: The rational, the sensual, the emotional\(^{19}\) and the ethical – conscience levels\(^{20}\). Each level on its own, or a number of levels together at a specific point in time, molds the entire, complicated experience that is happiness. Thereby, this definition in fact expands the term pleasure as defined by Bentham and Mill, which in my opinion unnecessarily limited the definition of the happiness experience to just the sensual and emotional levels.

The various levels are not different types of the happiness experience. They are its component parts and each separate mixture of those components creates a different type of experience. The experience at the level of conscience is usually accompanied

\(^{18}\) As it is used in this paper, the word happiness, which seemingly only refers to positive aspects, does in fact refer to both the positive (pleasure) and the negative (pain) and the entire spectrum between the two.

\(^{19}\) The experience at the rational level is an intellectual matter, an exercise in curiosity in view of new knowledge, new understanding, or the lack of interest (the negative experience) caused by boredom. The experience at the sensual level is a stimulus received by any of the five senses, for example: An odor or touch. The experience at the emotional level is any emotion such as joy, sadness, pride, etc.

\(^{20}\) The experience at the ethical – conscience level is the compliance with a personal dictate of conscience, if by act or omission. There are three types of experiences at the ethical – conscience level, separated by the dimension of time –the experience during the time in which it is possible to comply with the dictates of conscience; the experience after the act was performed or avoided and the experience during that period in which the act dictated by conscience is performed, which is typically accompanied by a sense of mission. Usually, the individual has a sense of mission in the service of something greater and more important than himself. This is the type of sensation experienced during battle, when saving a soul from a burning building and in daily life, when helping another or when doing volunteer or humanitarian work.
by a particular emotional experience and the same is true for the experience at the sensual level. Detailed analysis of the component levels serves to emphasize the complexity of the experience, which is often judged by the onlooker as a one-dimensional picture. For example: Individuals that appear to sacrifice themselves for others might seem to be unhappy, when in fact, they achieve happiness by satisfying the needs of their conscience.

In the chapters discussing equality in happiness, the discussion focuses on the experiences expressed principally at the emotional level. Emotion is the core level that shapes the subjective experience primarily as a more long lasting experience. The three remaining levels create experiences which are usually temporary and transient. Therefore they exert less influence on the individual's happiness. The moral level is a more dominant level, but it is in close contact with the emotional level. Therefore, most of the experiences created by the moral level also exhibit a strong expression of emotion. The attempt is made to describe the dynamics of the individual's experience along a time line and therefore, the emphasis will be on those phenomena that influence the experience over time. Moreover, the third section discusses the influence of extreme, determining, negative sensual experiences such as hunger or failing health and how they influence the human experience to the point that it is removed from the happiness equilibrium and as such, it shall be described below.

It should be further noted that an experience is not necessarily momentary. It is a process happening in the present. In the same way that the present, as it is understood by all, is not necessarily limited to a specific time frame and typically it has some flexibility. The same is true for an experience delineated within a time dimension to the extent that the present has no borders. Thus, experiences can continue across essentially different time frames – from the sting of a bee or a stab by a needle, to the celebration of a birthday or an outing to the cinema. It can be a prolonged period of work or a long journey through a foreign country. It is also important to note that the level at which the experience occurs, contains the retrospective and prospective
experiential influences, expressed principally as positive or negative memories from the past along with hopes and fears about the future\textsuperscript{21}.

Even though that up to this point, happiness has been presented as an experience occurring solely at the level of the present. To prove the equality in happiness later on, it shall be necessary to broaden the canvas somewhat by taking a wider view of happiness within the time dimension. For many centuries this has been the traditional view as it was even mentioned in the writings of the ancient Greek philosophers. Aristotle, for instance, suggested that happiness should be examined relative to life as a whole and not a single moment therein\textsuperscript{22}. Additionally, many modern thinkers and researchers have pondered on the time dimension in happiness. Ed Diener, one of the outstanding researchers in the field of happiness as part of psychological science, notes that “life satisfaction” is one of the most important components of subjective well being. Diener defines life satisfaction as the way in which man consciously, judges his life as whole\textsuperscript{23}.

By examining happiness through the perspective of time, it is possible to look at the influencing factors both in societal and personal terms. Examination of those factors reveals that happiness is under the gravitational influence exerted by social and psychological forces pulling the individual towards the normative experience of happiness, which shall be reviewed in greater detail in the next section.

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\textsuperscript{22} “[A]s Aristotle sometime suggests, happiness is better understood as an attribute, not of a present moment of one’s life, but of a whole life – the wisdom in the ancient Greek saying that we should call no man happy until he is dead.” Jefrie G. Murphy, \textit{The Unhappy Immoralist} 35 \textit{Journal of Social Philosophy} 11, 12 (2004).
\textsuperscript{23} Diener, \textit{Assessing Subjective Well-Being} \textit{supra} note 10, at 427-428.
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Section Two: Adaptation and the Equality in Happiness

There are three factors that generate the equality in happiness process. The three factors are divided into two groups with a common characteristic – adaptation. The first sub-section describes adaptation as an individual’s psychological propensity to remain at or to return to the emotional base line. The second sub-section discusses the ways in which society encourages and even helps the individual adapt and return to the same point of equilibrium. It is important to emphasize that the description of equilibrium in happiness contains an integral description of a specific ideal, in which there is perfect equality of happiness amongst all. The discussion over the equilibrium has two purposes. One is to describe where the equilibrium does in fact exist and the other is in the third section of this work, which describes how it is possible to define human rights in a way that prevents and does away with failures.

A. Independent Adaptation

Equality in happiness cannot be understood without considering the most basic component in the understanding of the dynamics of happiness – adaptation. The adaptation process is the diminution over time in an individual’s reaction to an event or external stimulus. The end of this process is the return of the individual to the normal experience of happiness, as shall be defined below.

The normal happiness experience is the common\textsuperscript{24}, normative\textsuperscript{25}, experiential base line, which typically prevails in routine times\textsuperscript{26}. Examples of such could be, presence at work, presence at a particular place, etc.

\textsuperscript{24} Typically, the base line is neutral, with a slight tendency towards the positive. As previously mentioned, this work centers around the type of experience and therefore, numerical values produced by empirical research are of less relevance to the equality discussed later. For further discussion of this point, see Ed Diener, Eunkook M. Suh, Richard E. Lucas & Heidi L. Smith, \textit{Subjective Well Being: Three Decades of Progress}, 125 \textit{Psychological Bulletin} 276, 279-280 (1999); Bruce Headey, Happiness: Revising Set Point Theory and Dynamic Equilibrium Theory to Account for Long Term Change, SOEPpapers 55, DIW Berlin, The German Socio-Economic Panel.

\textsuperscript{25} This subject is expanded in the sub-section discussing adaptation as a social phenomenon.

\textsuperscript{26} Given the dynamic nature of the human way of life, the normal happiness experience is not a static experience. It includes slight fluctuations, which are part of the experience and they represent a more or less fixed level of happiness.
a standard family outing, watching television, reading a newspaper and all the other unexceptional, day to day activities that are soon forgotten. In his elucidation of human existence, Heidegger pithily described day-to-day activities as those activities which have to do with something, producing something, attending to something and looking after it; etc.27. Typically, the normal happiness experience is generally mild and lacks pronounced expression on any of the four levels used to define the happiness experience. In other words, given that this is the normal, standard, common situation in the life of an individual within society, it would be better to define that situation through that which it lacks, such as clear feelings (not necessarily extreme emotions) of joy or sadness; anger, pain and the like. It is important to note that the normal happiness experience is not neutral. It has a slight bias towards the positive, which means that essentially, it is not characteristically apathetic and it can be viewed as a mildly positive experience28. It is also an important factor in human survival, which shall be discussed further on in this chapter.

The principle of adaptation is defined in the psychological literature as the “hedonic treadmill”29. This mechanism describes human beings’ natural propensity to adapt to negative changes and to get used to positive changes. The significance of this propensity lies in the fact that for every deviation from the emotional base line, there is a regulatory mechanism, which is the principle of adaptation. The mechanism moderates the individual’s experience and brings back the happiness level to the base line. This principle is similar to the principle of homeostasis, which ensures dynamic biological equilibrium30. Examples of biological regulation mechanisms also mentioned in

27 “[T]o concern oneself with...having to do with something, producing something, attending to something and looking after it, making use of something, giving something up and letting it go, undertaking, accomplishing, evincing, interrogating, considering, discussing, determining....” MARTIN HEIDEGGER, BEING AND TIME 83 (John Macquarrie & Edward Robinson trans., 1962) (1927).

28 Diener, Subjective Well Being supra note 24, at 286.

29 Kahneman, Experienced Utility, supra note 17, at 686-687; Philip Brickman & Donald T. Campbell, Hedonic relativism and planning the good society, in ADAPTATION LEVEL THEORY: A SYMPOSIUM 287, 287-302 (Mortimer H. Appley ed., 1971). The term compares people’s desires to be happier to a person on a treadmill, who puts a lot of effort, just to stay in the same place.

30 Homeostatic status is also maintained by regulation of the biological variables in order to maintain stability within the body, while dealing with changing environmental conditions. See generally WALTER B. CANNON, THE WISDOM OF THE BODY (The Norton Library. 1963) (1932).
psychological research include the body getting used to hot or cold water\textsuperscript{31}, the adaptation of eyesight to changes in light levels in the environment\textsuperscript{32} and the sweating mechanism, used to remove excess heat from the body\textsuperscript{33}.

The principle significance of emotional regulation is that it is a deliberate or automatic attempt by individuals to control which emotions they have, their time and place and how these emotions are experienced and expressed\textsuperscript{34}. Different strategies are used for emotional regulation, such as: Prior choice of situations; changes to given situations; focus of attention and cognitive change\textsuperscript{35}, thus independent emotional regulation occurs at all three points of time: As a reaction to an event, during the preparation for an event or during the occurrence of the event. Regulation at the social level can be viewed as a separate phenomenon\textsuperscript{36}, even though this form of adaptation sometimes guides the individual towards using the strategies mentioned previously, for example: personal activity that changes the situation. Regulation strategies can be implemented consciously, such as when abstaining from certain situations, or when diverting thoughts towards alternative directions\textsuperscript{37}; or unconsciously, such as by automatically turning the head when seeing a terrifying scene.

\textsuperscript{31} Kahneman, *Experienced Utility*, supra note 17, at 687.
\textsuperscript{32} Shane Frederick & George Loewenstein, *Hedonic adaptation*, in *Scientific Perspectives on Enjoyment, Suffering, and Well-Being* 302, 303 (Daniele Kahneman, Ed Diener & Norbert Schwartz eds., 1999).
\textsuperscript{33} See id.
Beyond the adaptation to emotions, the emotions themselves have potential value in the process through which the individual adapts to the environment\textsuperscript{38}. The emotion itself serves as the signal for the individual to prepare for a prospective situation or to react in a particular way to a life situation by means of preparing the individual for reaction, granting priority to particular activities or informing others of the individual’s condition.

"Emotions are not disruptive, maladaptive states, but rather act to stabilize the internal state of the organism. They represent transitory adjustments reactions that function to return the organism to a stable, effective relationship with its environment when that relationship is disrupted...Emotions may be conceptualized as homeostatic devices designed to maintain a relatively steady (or "normal") state in the face of interpersonal challenges\textsuperscript{39}" (emphasis added).

The previous selection of biological mechanisms demonstrating adaptation was not made by chance. The purpose of adaptation, both in the biological sense and the emotional – psychological sense, is a matter of the individual’s survival in changing environmental circumstances. It is important to note that these adaptation mechanisms, the biological and the psychological, are not necessarily different from each other. Extensive research conducted in recent years has proven the high correlation between biological and psychological processes\textsuperscript{40}. That correlation is obvious when observing the physical responses that accompany emotions as stress: accelerated heart rate, dryness in certain parts of the body or muscular tension.

As a rule, physiological reactions accompanying a powerful emotional experience do not contribute towards an individual’s chances of survival. Furthermore, emotional experiences accompanying these reactions might even weaken an individual’s survival


\textsuperscript{39} Robert Plutchick, The Circumflex as a General Model of the Structure of Emotions and Personality, in Circumplex Models of Personality and Emotions 17, 20 (Robert Plutchik & Hope R. Conte eds., 1997).

capabilities. In general, a sad or dejected person will function less well when asked to perform a mission or complete a task. Similarly, an ecstatic or euphoric person might be lackadaisical and more easily distracted into acting irresponsibly.\(^{41}\)

There are a number of possible explanations why the normal happiness experience is the preferred condition for survival. Such explanations refer to the two pillars supporting the individual’s ability to survive: The ability to identify positive or negative events and the ability to react to or deal with the events as identified.\(^{42}\) The first explanation is the sharper perception, which is typical of the normal happiness experience situation and allows the individual to identify with greater ease, the threats and opportunities in his immediate surroundings and life circumstances.\(^{43}\) According to the second explanation, a positive attitude is an essential component in the approaches that stimulate the individual to achieve and chase after existential needs such as finding food, shelter, social support, etc. They also constitute the driving force behind creativity, inventiveness, breaking down barriers and thinking outside the box. A third reason involves a robust physiological constitution, linked to the presence of a healthy soul.\(^{44}\)

Psychological research into happiness conducted to date also provides a great deal of empirical proof of the adaptation phenomena. The outstanding example is the research conducted by Brickman et al.; who examined the differences in subjective well-being between subjects paralyzed from the waist down and those that won lottery prizes, only a short time after that life changing event (the date when they were paralyzed or won the lottery). The results from this study revealed that both groups experienced a rapid, stage by stage return to their original levels of satisfaction with their lives.\(^{45}\) A study

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\(^{41}\) Examples of such might be people accidentally breaking objects or harming others, when overexcited; or generally any situation in which human joy detracts from awareness or caution vis-à-vis the environment and thereby exposes the individual to greater danger.


\(^{43}\) See, *Id.*

\(^{44}\) *Id.* at 184.

looking at people with deformities\textsuperscript{46} conducted by Cameron et.al, and a study of people with long term spinal injuries conducted by Schulz and Decker\textsuperscript{47} gave similar results. The principal conclusion reached from the results of these studies is that people experiencing very difficult and significant changes in their lives, successfully return quite rapidly to the levels of happiness that they enjoyed before the crisis.

Another characteristic of the principle of adaptation is the different speed of adaptation to different events. Levenstein and Frederick reported that people adapt relatively rapidly to events such as a rise in income, but adapt in a slower pace to events such as the death of a loved one\textsuperscript{48} and it is almost impossible to adapt to events such as a loud noise\textsuperscript{49}. There are extreme circumstances in which adaptation is not enough to return the individual to the routine experience and therefore, it is employed just to ensure survival. Circumstances in which an individual is in existential danger, expressed as ongoing physical suffering, do not permit adaptation. The pain in such circumstances is the distress call transmitted by the body and therefore, that call will not stop until the danger threatening that person has passed, be such following nutrition, treatment or any other activity that can alleviate the problematic circumstances from which the individual suffers. In the third section of this paper, such instances and the role played by the Law in preventing them shall be discussed at greater length.

\textsuperscript{46} See \textit{Cameron} at 641-642.
\textsuperscript{47} Schultz, \textit{supra} note 45, at 1170.
\textsuperscript{49} Frederick, \textit{supra} note 25, at 311. It should be noted that there is a very individual aspect to this phenomena, or in other words, notwithstanding the general differentiation classifying events according to the average speed of adjustment to them; different people have different adaptation capabilities in different circumstances.
B. Adaptation as a Social Phenomenon

In addition to the internal mechanism, which causes the individual to adapt and the pull towards the normal happiness experience, there is another broad, social mechanism, which also has an effect on adaptation. The social arena is a place where individuals exert influence and correspondingly, they are under the influence of other individuals and society as a whole to adapt. The rights to life and freedom from ongoing physical suffering are the threshold conditions to that social activity, because individuals suffering from ongoing physical pain or actual threat to their lives are individuals attempting to survive that reality; they are not trying to adapt to that reality.

The social mechanism, which will be described in the two following sub-sections, exerts influence on adaptation in two principal ways. The first and simpler way is to improve the individual's adaptation capabilities by providing support at those points when individuals find it difficult to adapt by themselves. The second way is the social mechanism, which guides individuals towards a common happiness experience through both open and hidden processes. The first sub-section discusses the individual's tendency to merge emotionally as happens within groups or communities. The second sub-section discusses social and cultural guidance towards a common happiness experience through a normative system of values and codes applied to behaviors and emotions.

B1: Normalization at the Micro-social Level

Emotions have an enormous influence on the fabric of human life. Beyond their effects on individual development, the formation of personality and the way in which the individual deals with life circumstances; emotions fulfill a key role in the consolidation and unification of a society and throughout each individual’s social life. Emotions are used as the building blocks for all social interaction between individuals; they assist in the integration of individuals into society and in the broader sense, they constitute an
important foundation in the construction of a solid, strong, social framework. This chapter will discuss two emotional / social phenomena, which contribute much towards equality in happiness. The first is emotional contagion, which in fact occurs each time there is contact between one individual and others or with a grouping in society. The second is the emotion of empathy, which reinforces the links between individuals and strengthens their resolve to help each other and adapt.

**B1a: Emotional Contagion**

Emotional contagion is a psychological – social phenomenon, through which the individual is infected by the emotions felt by another, to the point where there is a process of emotional convergence within a group of individuals. The process is similar to infection by a bacteria or virus, but it is different from the one-time infection by disease in that emotional contagion recurs each time that an individual comes into any contact with a human environment. Emotional contagion changes according to a number of factors such as: The period of exposure, the type of situation and the nature of the individuals. It is also divided up according to its cognitive components: Conscious, not conscious or automatic.

The non-conscious emotional contagion process is also defined as primitive emotional contagion. This is an automatic process comprising two main stages: Mimicry and feedback. The first stage is the individual’s unconscious mimicry of the facial expressions, body movements, expression patterns and vocal intonations of those with whom the individual comes into contact. The second stage is the individual’s feedback to these mimicry

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52 *See Hatfield, Emotional Contagion* at 7-10.
on the mimicking behavior\textsuperscript{54}. For example: In a conversation between A and B: A smiles and then B smiles, because B is unconsciously mimicking A’s behavior. Consequently, in B’s consciousness, the smile is interpreted as a joyful emotional state. However, there is an intuitive difficulty in recognizing that emotions can begin on the outside and work themselves inwards, or alternatively, that they do not necessarily evolve from inside to out\textsuperscript{55}. Nevertheless, research investigating emotional contagion has proven that there is also a reverse link, or in other words, the body’s external behaviors also have an effect on emotional experiences.

In addition to unconscious emotional contagion, there is also a process of conscious emotional contagion. This process occurs when individuals compare their emotional state with those around them (both as a process of group interaction or as interactions between just two individuals) and they change their emotions to accord with those in their surroundings\textsuperscript{56}. One masterly piece of psychological research, dealing with the components of emotion and among other things, emotional contagion is that conducted by Singer and Schachter\textsuperscript{57}. Their research proved that in fact, it is possible to divide human emotions into two stages: The first is the stimulus stage and the second is the cognitive stage, which provides emotional interpretation of the stimulus. Some of that study proved how the emotions of the individual in the group are matched to emotions displayed by all the other members of the group. Following on from the previous example, an individual entering a room containing people in a joyful mood, will adjust to the ambience and will also feel happy\textsuperscript{58}. Similarly, when the group is in a mundane mood\textsuperscript{59}, the effect of the group\textsuperscript{60} can be described as waves of emotion\textsuperscript{61}, which pull other individuals into the same mood\textsuperscript{62}.

\textsuperscript{54} HATFIELD, supra note 51, at 16-78.
\textsuperscript{56} Hsee, supra note 51, at 119-128.
\textsuperscript{58} Contagion strength varies according to the person and the situation. As explained, emotional contagion is not full emotional adjustment.
\textsuperscript{59} See Sigal G. Barsade, The Ripple Effect: Emotional Contagion and Its Influence on Group Behavior, 47 ADMINISTRATIVE SCIENCE QUARTERLY 644, 646-675 (2002). The study, conducted by Barsade, focuses specifically on the emotional contagion of “every day moods” in working groups.
Emotional contagion, notwithstanding the fact that it is essentially an unconscious psychological tendency, indirectly contributes to individuals’ adaptation and their happiness experience. Given that most human beings are in workaday ordinary mood most of the time and such is defined as the normal happiness experience, the convergence of emotions will be mostly in the direction of the normal experience and therein is its contribution to the explanation of the equality of happiness. This phenomenon, when added to the list of mechanisms active within inter-personal interactions, augments its influence and even contributes on its own merits.

B1b: Empathy.

The two key terms in the normalization process at the micro-social level, which make a decisive contribution towards the understanding of the equality in happiness, are empathy and sympathy. Today, it is difficult to find uniform, agreed definitions of those terms, because they required a certain amount of interpretation by the researchers, with emphasis on this or that aspect (for example: cognitive or emotional empathy) of these terms in each separate piece of research. In addition to the existing differences in the definition of the terms themselves, there is also great variance in the attitudes towards the difference between empathy and sympathy, as such is demonstrated in the

60 For further discussion of the ability to discern group moods, See Caroline A. Bartel & Richard Saavedra, The Collective Construction of Work Group Moods, 45 ADMINISTRATIVE SCIENCE QUARTERLY, 197, 197-231 (2000) (Their study proved that group moods can be observable both to the individual members and outside observers).
61 Barsade, supra note 59, at 670.
62 The effects created by those waves are not uniform and they depend on a large number of factors, for instance: People with finely honed verbal expression skills will have more effect on those with weaker verbal expression skills than vice versa. Another important factor is the degree of closeness – the closer people are physically and emotionally (the degree of intimacy), the greater the chance that there will be emotional contagion. See Ellen S. Sullins, Emotional Contagion Revisited: Effects of Social Comparison and Expressive Style Mood Convergence, 17 PERSONALITY AND SOCIAL PSYCHOLOGY BULLETIN 166, 166-174 (1991).
63 Lauren Wispe, The distinction between sympathy and empathy: To Call Forth a Concept, A Word is Needed, 50 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 314, 314-321 (1986); Lauren Wispe, History of the Concept of Empathy in, EMPATHY AND ITS DEVELOPMENT 17, 17 ( Nancy Eisenberg & Janet Strayer eds., 1987). In reference to the lack of a clear, uniform definition of the term empathy, See Kenneth Clark, Empathy: A Neglected Topic in Psychological Research, 55 AMERICAN PSYCHOLOGIST 187, 187-190 (1980); Nancy Eisenberg & R. Lennon, Sex Differences in Empathy and Related Capacities, 94 Psychological Bulletin 100, 103 (1983).
sociological and psychological literature, even though it is possible to discern that the issue is a social phenomenon with similar or linked characteristics.\(^{64}\)

One of the current, accepted definitions for the term sympathy is as given by Lauren Wispe. She defined sympathy as the heightened awareness of another’s suffering and recognition of that suffering as something that must be alleviated. There are two facets to this definition: Heightened sensitivity to another’s feelings and the need to take the action required to alleviate that suffering. According to Wispe, the difference between sympathy and empathy is that the term sympathy refers to the process through which another’s pain is internalized by the person extending the sympathy and creates an unselfish caring for the other person. Contrastingly, empathy is a process through which one side tries to understand in full and without judging, the subjective feelings of another.\(^ {65}\) Another well known definition of sympathy was given by Candace Clark, which says that sympathy means to reach out to help another in a cognitive, emotional or physical manner.\(^ {66}\)

Candace Clark believes that sympathy is one of the phenomena that links together individuals in society and provides a social glue that holds individuals in relationships, groups and communities.\(^ {67}\) Thereby, it helps maintain a society as such. According to Clark, sympathy is subject to cultural feeling rules and social logic, which dictate the manners in which social life is conducted, including the outcome, demonstration and receipt of sympathy. Given that the person extending the sympathy and the person receiving sympathy act in accordance with the feeling rules, the result is mutual benefit for both sides (and not just the person receiving the sympathy). It reinforces the links between them and on a broader scale; it strengthens the overall social fabric. The rules

\(^{64}\) The issue of the similar and dissimilar between these two terms is exemplified in the article by Wispe. See Wispe, *The distinction between sympathy and empathy* at 314-321.


\(^{67}\) Id. at 5.

\(^{68}\) Beyond that mentioned in this paragraph, the discussion of feeling rules shall be extended in the next sub-section, which deals with normalization as it occurs at the macro-social level.
of feeling mentioned above indicate the role played by sympathy in normal interactions and in more unusual circumstances, such as the demonstration of sympathy for any who have lost someone close; which is itself a custom that is known in almost every human society\textsuperscript{69}. It must be noted that these rules, as feeling rules, also influence internal mental processes, which although understood as natural by the individual, they do in fact result from social guidance\textsuperscript{70}.

The greatest contribution made by the emotions of sympathy and empathy to the equality in happiness is in the way that they encourage pro-societal behaviors or behaviors beneficial to society\textsuperscript{71} in a manner that helps the individuals adapt. One of the most distinct findings from the research dealing with empathy teaches us that empathetic concern, by one individual for another, increases that individual's propensity to help the other individual\textsuperscript{72}. Furthermore, the tendency towards empathy can also be transferred between individuals in society and thus the benefit is even greater\textsuperscript{73}. According to some approaches, which view empathy as an emotion subject to a cost / benefit calculation\textsuperscript{74}, it is also possible to ascribe greater efficiency to the emotion of empathy, because it is used in a controlled manner within society, leading to certain individuals' improved welfare, without exhausting those extending the empathy either physically or psychologically\textsuperscript{75}.

\textsuperscript{69} CLARK, supra note 66, at 5-14; JONATHAN H. TURNER, THE SOCIOLOGY OF EMOTIONS 56-64 (2005).
\textsuperscript{70} CLARK, supra note 66, at 5.
\textsuperscript{73} SALLY PLANALP, COMMUNICATING EMOTION: SOCIAL, MORAL, AND CULTURAL PROCESSES 66 (1999).
\textsuperscript{74} The benefit is in the form of a good feeling when providing relief for the person who is the object of that empathy, when weighed up against resources expended by empathetic behavior. See MARK H. DAVIS, EMPATHY: A SOCIAL PSYCHOLOGICAL APPROACH 131 (1994).
\textsuperscript{75} Id. Empathy is affected by cost/benefit considerations and thus empathic related actions are controled by their costs.
To summarize: Normalization at the micro-social level is expressed as the tendency of individuals in a group, community or another interpersonal relationship framework to converge emotionally, if by emotional contagion or if by developing feelings such as empathy, which encourage individuals to actively help each other. Convergence into a similar emotional state is a process that unfolds over time and naturally, one interaction is not enough to ensure the reversion of an individual’s negative happiness experience back into the normal range. In other words, a single interaction constitutes part of the dynamic social system that constantly narrows down the gaps between an individual’s happiness experiences and the joint, normal experience. The individual’s return to that experience is a gradual process, implemented through a series of uncoordinated interactions. Thereby, over time and in an uncoordinated and unplanned manner, other individuals or groups participating in the interaction with the individual, help that individual return to the normal happiness experience over that period of time. Following an event that derogates from the individual’s happiness experience, the deviation from the accepted state of mind can be expected to grow smaller as time passes and the number of interactions rises.
B2. Normalization at the Macro-social Level

Beyond those processes that stimulate emotional convergence at the micro-social level, there are other, macro-social processes, which guide the individual towards the common experience, which is the normal happiness experience. Macro-social processes have two important tasks: First, they shape an individual’s feelings, thorough a social and cultural system of feeling rules. Furthermore, those processes encourage the establishment of social structures and the individual’s involvement in those structures. The structures serve as the basis for the micro-social phenomena mentioned in the previous section by providing fertile ground for the development of social interaction. The first part of this section explains the feeling rules and how they can generate immediate change in an individual’s subjective emotions and lead that individual towards the common happiness experience. The second part discusses the system of social values, which guides towards socialization processes and helps both create the conditions necessary for micro-social phenomena and provides direct support for individuals helping each other to adapt to different events.

B2a: The Normal Happiness Norm

The normal happiness norm is not a specific norm such as a code of dress or behavior. It is a less exactly defined norm differentiated principally against the background of events that norm categorizes as abnormal. It can be discerned as such by examining at how society looks at situations of euphoria or depression, particularly when they continue over time. They are not normal situations in society’s view and therefore, they are considered and treated as such by it. The non-explicit facet of this norm is the lack of discussion or the discernment of the normal situation; it is the deviation from the norm which is more pellucidly abnormal. The functional value of this norm could be its contribution to the individual, who can function better and to society, which benefits from the fruits of the individual’s productivity.

76 This does not refer to a specific, clinical definition of depression; it refers to the way society relates to it in general as an undesirable problem.
In day-to-day conversation, it is possible to discern a verbal expression for this norm, which guides towards the normal happiness experience, for instance, in the way people respond to questions such as: How are you? In most societies, this question is answered using standard, formulaic responses such as: Ok, good, everything’s normal, etc. Obviously, there are also answers that somewhat exceed this range, such as: Excellent, not so good and the like. However, the fact that they are exceptions is itself proof of the norm, according to which the answer that should be given is a slightly positive verbal expression such as: Good. In other words, the very expectation of a particular answer or an answer from within a specific spectrum of answers could help to prove the existence of the norm that directs human beings in the direction of a normal mood. However, one must differentiate between the norm that requires answering a question about well being in a positive manner and another norm, which is to feel “ok”. That norm, as different from others, which are linked to the rules of external behavior, refers to the laws of internal feelings. The next sub-section describes the way in which feeling rules in general and the normal happiness norm in particular, influence the subjective experience.

**B2b: Feeling Rules**

Feeling rules have an effect on the individual because the individual actively adjusts to what society considers as normal emotions. This effect is mentioned in the well-known book by Russel-Hochschild – The Managed Heart\textsuperscript{77}, in which she refers to feeling rules, which in practice, create the informal rule system that does not dictates the individual how to behave, but rather how to feel in the different circumstances in which individuals find themselves\textsuperscript{78}. Whereas the feeling rules are mentioned when individuals talk spontaneously about their personal emotional situation or the emotional situation of

\textsuperscript{77} ARLIE RUSSEL-HOCHSCHILD, THE MANAGED HEART 56-76 (1983).

\textsuperscript{78} In Chapter 4 (pp. 63 – 76) in Russel-Hochschild’s book, she discusses the link between the feelings sensed by individuals and what are considered to be the normal feelings in the specific circumstances of the individual’s life, such as a funeral, wedding, regular work day, social event, etc.
others\textsuperscript{79}, they are not explicit norms or known values. Feeling rules are more concealed values, revealed only when examined specifically\textsuperscript{80}. Hochschild was one of the outstanding\textsuperscript{81} writers dealing with the social element of human feeling and was one of the pioneering researchers in the sociology of emotions, which is an entire field of research describing the human ability, if not the habit, to format feelings\textsuperscript{82}.

Beyond the discussion of the existence of emotional norms, another tier in her research are those findings proving that the individual has the ability to adapt to an emotional pattern expected of that individual in different situations. This is not a false emotion; it is the establishment of an emotional experience that matches the norm\textsuperscript{83}. Russel-Hochschild identified three techniques used by individuals to manage their emotions when their emotional state deviates from the norm. The first technique is cognitive: A change in ideas and thoughts, such as choosing to think about something else. The second technique is body based and it constitutes an attempt to change the physical manifestations of emotions; for example, by breathing slowly, or trying not to shake. The third technique is to change facial expression, for instance, by trying to smile or cry\textsuperscript{84}.

Thoits provided a broader perspective on feeling rules, when she explained the internal mechanism used to manage emotions\textsuperscript{85}. The picture that illustrates the emotion

\textsuperscript{80} Gretchen Peterson, \textit{Cultural Theory and Emotion}, in \textsc{Handbook of the Sociology of Emotions} 114, 122 (Jan E. Stets & Jonathan H. Turner eds., 2006); \textsc{David Mechanic, Students Under Stress: A Study in Social Psychology of Adaptation} (1978); \textsc{Russel-Hochschild, supra} note 77, at 563.
\textsuperscript{82} Arlie Russel Hochschiel, \textit{Emotion work, Feeling Rules and Social Structure}, 85 \textsc{American Journal of Sociology} 551, 557 (1985).
\textsuperscript{83} Peterson, \textit{supra} note 80, at 122.
\textsuperscript{84} \textsc{Russel-Hochschild, supra} note 77, at 562.
\textsuperscript{85} The theory propounded by Thoits is based on the division of subjective feelings into four component parts: A. Situational Clues – which stimulate the feeling. B. Physiological changes accompanying the stimulus. C. Changes to facial expressions that match the feeling. D. Cognitive tagging of the specific configuration created by the combination of the first three components. The four components are inter-dependent and therefore, changes in one will result in changes to the others and the formation of a different emotional experience.
management process that matches Thoits’ analysis is described in the research conducted by Cahil and Eggleston, which shows that disabled people confined to wheelchairs exploit a number of techniques such as humor, to manage their emotions in public places.\(^{86}\)

In view of those findings, it is also possible to view the norm of normal happiness as a feeling rule, which guides the individual towards adaptation to each event and to return to their regular emotional base line after every deviation from that basis. Each individual in society knows that it is not acceptable to be depressed for a long time or that after a celebration, the return to routine is inevitable. These thought patterns and others similar to them are an expression of the norm described and they are the reason why the individual moderates emotion and returns to day-to-day routine, in terms of both behavior and emotion.

**B2c: Bedrock Social Values**

The indirect, less obvious aspect of the normal happiness norm is the support provided by social values used by society to guide and manage matters between individuals. This underpinning includes values such as mutual responsibility and contribution to the

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Thoits illustrates the idea using the example of the feeling of romantic love. The stimulus is the presence of a member of the opposite sex. The psychological change is the awareness of blushing and the flow of adrenalin. The behavior includes looks and smiles directed at the member of the opposite sex (facial expressions), and awareness of those behaviors (the cognitive correlates). See Thoits, surpa note 83, at 191-193.

Cahil and Eggleston found that the disabled employ three principal techniques for managing emotions. The first technique is to use humor to reduce embarrassment in situations when that feeling surfaces. An example of such would be if a young child points at the disabled person and loudly asks the child's mother why the disabled person is moving around in a wheelchair. Humorous responses to this type of situation, which is the source of embarrassment for the disabled person and the adults caught up in it, were the most efficient responses and the most often used to neutralize the resulting embarrassment. The second technique is “embarrassing anger”, which can be summed up as the abstention from displaying that anger, which sometimes builds up in the disabled when they are treated as non-persons. That abstention is because of the potential embarrassment that might be caused by the expression of anger. The third technique is “ingratiating sympathy”, which is a reaction to situations in which members of the public reach out to help the disabled. The sympathetic reaction and thanks from the disabled person, even when they had not expressed any request or wish for that help, positions the disabled person within a social interaction. In contrast, not thanking would result in the disabled person seeming to be lacking in manners. See Spencer E. Cahil & Robin Eggleston, *Managing Emotions in Public: The Case of wheelchair Users*, 62 SOCIAL PSYCHOLOGICAL QUARTERLY 300, 300-312 (1994).
community, friendship, mutual respect, manners and politeness. Such values are
different from, for instance, values primarily designed to maintain the social framework
or the institutional integument, such as patriotism or loyalty to the state. These bedrock
values break down adaptation into operating codes for the behaviors required for the
purposes of their implementation. In other words, even if not stated explicitly, society
guides the individuals in society towards helping each other to adapt. For example: A
man getting up to give his seat on a bus to an elderly man, as is proscribed by society:
“Thou shallt rise up before a hoary head and honor the face of the old man…” (Leviticus
19:32); is in fact helping that elderly man adapt to the difficulties caused by the
depredatory effects of old age.

In addition to the values that indirectly guide the individual towards helping others, there
are a number of values that encourage the individual to belong to social frameworks
and function within them pro-actively (contributing to the community, loyalty, friendship,
etc.). Belonging to and involvement in social frameworks are in fact, the most basic pre-
conditions to the individual’s experience of normalization at the micro-social level and
therein lies the importance of those values for the equality of happiness and the
existence of society.

Values such as solidarity, friendship and caring for family have exceptionally high
importance in all human societies. The factor common to those values is that they all
guide the individual towards the creation and maintenance of social frameworks. In
contrast with friendship and family values, which characteristically, provide a more
rigorous delineation of the social framework; solidarity refers to the society as a whole

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87 Other writers position the content of social values as part of the more basic idea of help and caring for
others. In the field of Law: JOHN RAWLS, A THEORY OF JUSTICE 105 (1971). The second principle in the
Rawls’ theory of justice is the “principle of difference”, according to which an act is judged according to its
degree of benefit to the weaker parts of society. In the field of sociology determines that one of the
universally accepted principles is caring for the good of others, see Martin L. Hoffman, The Contribution
of Empathy to Justice and Moral Judgment, in EMPATHY AND ITS DEVELOPMENTS 47, 47-80 (Nancy
Eisenberg & Janet Strayer eds., 1987). In the field of philosophy David Hume also suggests that state
laws and values such as modesty and manners were invented by humans for the benefit of society, see
propounded by Mills and Bentham is also an expression of that principle in that it judges every act
according to its relative benefit for the individual and the human environment.
and that is its intrinsic importance. Durkheim emphasized the importance of social solidarity in the existence of a nation as a whole. In Durkheim’s view, between the national level and the level of the individual citizen, there is an entire spectrum of intermediate frameworks with individually differentiated scope and character. Such frameworks attract the individual and lead the individual to visit them regularly. Thereby, the framework integrates the individual into a normal social life\textsuperscript{88}. This routing of the individual into social frameworks is accompanied by the creation of social links between one individual and another, which are one of the more important elements connecting the individual with society.

There are any number of examples of intermediate frameworks in societies: Houses of prayer, clubs, committees, organizations, groups of friends and acquaintances, even the simplest friendship between two individuals, which constitutes the smallest intermediate framework within the spectrum\textsuperscript{89}. Family frameworks also constitute a type of intermediate framework and indeed, Durkheim defined the family as a type of complete society in miniature\textsuperscript{90}. An example of a direct, unequivocal expression in Law of the solidarity in society is found in the proposed constitution for the newly united Germany, which states, that: “All are called upon to display good will and work together for the public good\textsuperscript{91}.” Another illustration of solidarity as a social value is the Good Samaritan Law, enacted in many American States and in other countries\textsuperscript{92}.

Another social value, worthy of discussion, but sadly only briefly, is friendship. It is reasonable to say that friendship promotes general happiness in society,

\textsuperscript{88} \textsc{Emile Durkheim}, \textit{The Division of Labor in Society} 28 (George Simpson trans., The Free Press 1964) (1893).
\textsuperscript{89} Framework size provides no indication of its importance because friendship has great importance, as shall be discussed later on in this section and as is also true for the micro-normalization processes, explained above.
\textsuperscript{90} \textsc{Durkheim}, supra note 88, at 16.
\textsuperscript{91} In the original: “Jedermann ist zu Mitmenschlichkeit und Gemeinsinn aufgerufen”. Michael Buarmann, \textit{Solidarity as a Social Norm and as a Constitutional Norm}, in \textit{Solidarity} 243, 259 (Kurt Bayertz eds., 1999).
\textsuperscript{92} The Law is in place in a large number of US states and in Canada: Pennsylvania (42 Pa.C.S.A. § 8332); Delaware (DEL. CODE ANN. tit. 16, §§ 6801-6802 (Supp. 1980)); Florida, (Ann.Cal.Bus. & Prof.Code §2395) and many others.
notwithstanding the fact that different people have different numbers of friends. Aristotle, for instance, claimed that the happy person needs friends, both to provide help when necessary and as the objects for his good deeds, when he prospers. In this way, friendship becomes in fact, a nurturing substrate for the interaction between individuals in society and a significant expanse in which normalization at the various aspects of the micro-social level can occur.

C. The Importance of Equality

Does the process as described indeed prove the perfect equality of happiness? In other words; is the happiness felt by every individual in society equal to the extent that it is identical at every point in time, or even through the perspective of an entire life? Naturally, the answer to that question is no. There are no two things in the world that are entirely identical. Even when balancing weighing scales, it will always be possible to find an even more delicate scale able to prove the difference in weight between two bodies. The significance of that idea is that equality is not necessarily identity. Instead, it is the process of continuous convergence towards a particular center of gravity, which is the normal happiness experience. Equality is expressed as a certain balance, which is not devoid of deviation or differences, but in which there are continuing processes of convergence to within the same range.

It is important to emphasize that equality in happiness, as such has been presented bellow, is not absolute equality. There are extreme circumstances, to which it is very difficult to adjust, such as for instance, ongoing physical suffering caused by torture or failing health. Ongoing physical suffering changes the person undergoing the experience from a social creature into a creature with a single purpose – survival. The individual ceases to adapt to reality and instead, is swept along by the exigencies of

94 JOHN WILSON, EQUALITY 82 (1966)
existence and therefore, is no longer a part of the process that results in equality in happiness. In response to those situations, the legal system must act.

Another characteristic of equality is the contribution it makes to the survival of a group as a group. As previously mentioned in Chapter B in the first section, where micro-social processes were described as having the ability to infer emotional convergence between individuals within frameworks or social groupings, that same convergence contributes to the creation of a joint, group mood displayed to a lesser or greater degree by all members of the group. In a relatively obvious way, such a display of mood can be seen, for example, when examining the dynamics affecting sports teams, as they share the sensation of achievement and common competitiveness or alternatively, suffer from lack of confidence and motivation. Therefore, to the extent that the individual employs specific mechanisms to adapt and function optimally when that individual experiences the normal happiness experience; the same is true for groups, which will function optimally when they are in the same emotional state. Groups sharing a common feeling with characteristics similar to the normal happiness experience will enjoy greater creativity and effectiveness and in exactly the same way as an individual in the same circumstances, the group will have a better chance of survival.

In addition to the contribution made by the normal happiness experience as a group feeling to the chances of survival, the actual social processes that cause equality in happiness are also contributing factors. For example: As part of the normalization process at the micro-social level, empathy and sympathy are feelings that contribute to and reinforce society. This is a benefit arising from the type of activities encouraged by those feelings, such as working for the good of the group, or other individuals in the community in need of help. Moreover, the micro and macro social processes bring

95 See Seung-Yoon Rhee, Shared Group Emotions and Group Effectiveness The Role of Broadening-and Building-Interactions (Korea Advanced Institute of Science and Technology business school working papers series 2007) (This study showed that how positive group emotions, compared to neutral, can influence the group's effectiveness and creativity).
about the creation of social links, which of themselves contribute to the survival of the society as the natural consequence to the survival of the individuals within that society. This occurs because a collective entity acts in many regards as a single unit and therefore, social links are necessary for the coordination and implementation of the group’s activities and goals.

To summarize the second section: Equality in happiness is a dynamic process that occurs consequentially to the activities of individuals in society as social creatures. Psychological adaptation mechanisms and social adaptation mechanisms act in concert and complement each other. Thereby, when the individual’s adaptation is insufficient for the return to the normal happiness experience, there are different social mechanisms that bridge the gaps created and help the individual to return to that experience. Equality is therefore a dynamic balance and does not exist at every point in time. It is the result of a constant process through which the individual happiness experience is gathered into the common social happiness experience.

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97 JONATHAN H. TURNER, FACE TO FACE: TOWARD A SOCIOLOGICAL THEORY OF INTERPERSONAL BEHAVIOR 41 (2002).
Section Three: The Legal Significance of the Equality in Happiness Process

Society and its underpinning values are integral components in the equality in happiness process. It is society that completes the personal adaptation process and causes the convergence towards that type of experience defined as the normal happiness experience. The social importance of the process and its influence on the manner in which individuals understand the relationships between them, give rise to questions about the manner in which the legal system should be characterized, as the framework for society’s normative values and as a body that shapes awareness. The normative significances of equality in happiness will be discussed in the last sub-chapter and the core significance presented there is that equality in happiness is the rational basis for the actual equality that exists between people. The second chapter will provide the justification for the consideration of human rights from a new perspective, based on the rights of each person to be part of the equality process. The ability to be part of this process is granted to each individual with the ability to adapt and unattainable by individuals investing all their energies in their attempts to survive.

A. Happiness as the Rational Basis for the Equality of Man

Before discussing the significance of the equality in happiness between individuals, it is important to discuss the relative value of happiness for each individual, compared with the importance of other variables affecting the individual’s life. One of the central questions on this subject is whether happiness is an end purpose containing all human aspirations, or is it perhaps a separate, independent purpose with status similar to all other end purposes.

If so, is there for this or that individual, any purpose more important that happiness? The answer to that question is absolutely obvious – no. Happiness, as Aristotle
suggested more than two thousand years ago, is in fact the only final purpose and it serves no other purposes. Happiness is sufficient by itself or in other words: “That which when isolated makes life desirable and lacking in nothing” Money, honor, appreciation, a loving relationship and all other ambition in an individual’s private life are in practical terms, designated to provide that individual with the happiness experience at all its various levels.

The conclusion that happiness is the sole, final aim in an individual’s private life has resulted in some modern jurists changing their attitude to the question of what is equality and how it can be achieved. Until the second half of the 20th century, equality was identified principally with economic equality. Beginning with the French Revolution, which brought equality to center stage in world politics, equality and the gaps in society were usually analyzed as a function of wealth and resources. However, after the end of the Second World War, writers began to formulate the approach that views subjective personal welfare as the goal for the ideology of equality. One of the outstanding personalities in the world of philosophy dealing with this issue was Ronald Dworkin. The element of personal welfare was at the center of his approach to equality:

“There is an immediate appeal in the idea that insofar as equality is important, it must ultimately be equality of welfare that counts. For the concept of welfare was invented or at least adopted by economists precisely to describe what is fundamental in life rather than what is merely instrumental.”

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99 In those times, the definition of happiness was different, as mentioned in the preface, but Aristotle’s comments are still true in terms of the subjective definition for happiness.

100 ARISTOTLE, supra note 2, at 15.


If so, what is the significance of the existence of equality in happiness? What is the role played by happiness as the basis for comparison between individuals as part of the ongoing discussion by philosophers in recent years, concerning the question: Equality of What\textsuperscript{103}? It is possible to invent a mental exercise to answer that question and solve the dilemma about the identity of the variable or the situation that must exist in the equality between individuals in society.

The experiment is conducted in an imaginary world, in which all variables can be divided up equally among the entire population. Every Monday in every week, a variable or another resource is distributed to the world’s population. Each week, the population is given the opportunity to continue with the equal distribution they received the previous week. During the first week, beauty was given out in equal proportions; during the second week, wisdom was distributed evenly and during the third week, wealth is divided up equally and so on and so forth. This world has two rules: The first – All distributions leave the world equal in only one variable and unequal in all other variables. The second – One individual unhappy with his lot will suffice to cause redistribution based on a different resource.

After the distribution in the first week, everyone will be equally beautiful, but at the end of the week, the unhappy ones ask for redistribution. After the second week, during which everyone was equally wise, the newly unhappy ask for redistribution and so on and so forth. The distribution that leaves all of one opinion is the distribution of happiness in society, because as mentioned earlier, happiness is the most important element and in fact, the only element with intrinsic importance. Therefore, only the equality of happiness is the arch symbol of equality in society\textsuperscript{104}.

\textsuperscript{103} See Id.

\textsuperscript{104} The claim made that some individuals, whose happiness comes in part from happiness with an advantage over their fellows, can be answered as follows: If they have the choice to risk being less happy than everyone else, or to choose with absolute certainty to be as happy as everyone else, they would surely choose the second alternative. Moreover, the assumption made is that the happiness of most individuals in society does not comprise their relative advantage in this field and therefore, most if not all individuals would choose this equality as the social equality.
The exercise therefore proves that the factual existence of equality in happiness between individuals in society is understood as the most desirable actual equality, when compared with all other possible equality situations. Nevertheless, the existence of equality in a society refers to its existence in practical terms and does not refer to the ideological meaning ascribed to the term equality. The term equality has two separate meanings. One refers to the actual existence of equality between individuals in society and answers the question about the reasons why people are equal one to the other. The second refers to equality as a value in society\textsuperscript{105} and that value is no different from any other value such as friendship or freedom\textsuperscript{106}.

Equality in happiness as a fact is not an intuitive concept and the common basic assumption in the academic world is that such equality does not exist. Empirical psychological research conducted to date in the field of happiness assumes that in the majority of instances there is an inequality of happiness between people. This assumption is demonstrated by innumerable studies examining the effects of a range of factors such as income, quality of life, marital status, culture and other influences on subjective well being, with the intention of empirically showing how people differentiated by those variables will indeed report different levels of subjective well being\textsuperscript{107}. Furthermore, even in the reactions to research such as that conducted by Brickman et.al.\textsuperscript{108}, showing much smaller than expected differences between the luckless and the lucky in the field of happiness, researchers make an obvious attempt to refute and qualify their results because they contrast with those researchers' basic intuition\textsuperscript{109}. Similar intuitions presuming inequality in happiness also arise in the letters of prominent philosophers such as John Rawls and Ronald Dworkin. According to Rawls, there are

\textsuperscript{105} Despite the differences between these two terms, there is still a strong connection between them, because society believes in the value of equality and derives behavior patterns from that belief such as: honoring all as they are found or equal treatment for all. Such behaviors cause individuals in society to expand their circles of solidarity and thereby, increase social interaction. As mentioned earlier social interaction is the backdrop for the process that leads to equality in happiness.

\textsuperscript{106} See, e.g., DAVID MILLER, PRINCIPLES OF SOCIAL JUSTICE 231-232 (1999).

\textsuperscript{107} Dimitris Ballas, Danny Dorling & Mary Shaw, Societal Inequality, Health and Well-Being, in WELL-BEING: INDIVIDUAL, COMMUNITY, AND SOCIAL PERSPECTIVES 163, 163-186 (John Haworth & Graham Hart eds., 2007); Diener, Measuring Subjective supra note 13, at 3-9.

\textsuperscript{108} Brickman, supra note 14, at 917-927.

\textsuperscript{109} Schkade, supra note 15, at 340.
no natural characteristics or traits in which all or most individuals are equal to the same degree\footnote{RAWLS, supra note 87, at 507.}. Similarly, Dworkin claims that there are very considerable differences between individuals in terms of their abilities to reach happiness, because of their wealth, personality, ambitions, choices, sensitivities to the suffering of others and the like. Dworkin thinks that the task of the government is to ensure that the only gaps in happiness will be consequential to the individual’s choices and personality and not because of an unfair distribution of the resources required in order to achieve happiness\footnote{RONALD DWORIN, SOVEREIGN VIRTUE: THE THEORY AND PRACTICE OF EQUALITY 301-303 (2000).}.

The academic assumption of inequality in happiness does not necessarily reflect the public’s intuition on the subject. A brief look at the quality of day-to-day conversation teaches us that people tend to compare almost everything: wealth, fame, beauty and wisdom. Notwithstanding those traits, comparative happiness is an issue absent from day-to-day conversation or in other words, individuals in society do not compare their private happiness with the happiness of others. Perhaps this can teach us that the intuition on which this phenomenon relies is the exact same process of equality in happiness and the understanding that at the end of the day, most people are equally happy. Nevertheless, these are merely hypotheses, the proof and discussion of which requires a broader canvas than that available. One of the core purposes of this section is to show that happiness is the most relevant variable for the purposes of the discussion on equality and it is the specific variable that exists in the equality between human beings.
B. Human Rights in Light of the Equality in Happiness Process

Despite the differentiation between equality as a fact and equality as a value, there is a correlation between the two and one of the Law's important tasks is to bridge the gap between them. The Law translates the desirable relationships between people into laws, norms and rules, which preserve or try to change the relationships extant, in an attempt to create the ideal system of relationships\textsuperscript{112}. The Law, if as a mechanism to maintain public order; as a tool used for normative expression or as a tool used to guide behaviors, will be on the one hand, a reflection of a particular system of relationships between individuals and on the other, will strive to reach a different or similar system of relationships. One of the questions arising in this context is how can the Law integrate positively with the idea of equality in happiness as a mechanism for the regulation of relationships between individuals in society and between individuals and the government. The Law's adoption of the concept that all men are equal, based on the equality in happiness is commensurate with the Law's duty to reflect the relationships between individuals; but in turn that leads to the question of the meaning of the concept vis-à-vis the Law's role as the shaper of the relationship system.

Before answering that question, we must first ask if there is any reason to deduce normative significance from a theoretical approach, which views humans as equal. Any affirmative answer to that question must contain a certain normative quotient, which assumes that equality in happiness is a desirable thing and not just extant. As noted in the beginning of the second section of this paper, the assumption is that this equality is both a desirable and an idyllic equality and therefore, the normative derivation is natural and logical.

It is important to remember that even from the theoretical perspective, the Law as a social tool, serves many functions in the system that creates equality in happiness. The Law creates and maintains social frameworks, such as the education system or local

\textsuperscript{112} Gustav Radbruch, \textit{Legal Philosophy}, in \textsc{Legal Philosophies of Lask, Radbruch and Dabin 43, 73 (Ass'n of Am. Law Sch. ed., Kurt Wilk trans., 1950)}. 

community frameworks. The Law ensures the instilling of social values through legislation. The Law is responsible for the mechanisms, which promote social solidarity\textsuperscript{113}. The Law establishes various welfare mechanisms that allow the individual to adapt more efficiently to economic or social travails. The Law is responsible for the creation of incentives to take part in social and volunteer activities. The Law is also important in the provision of the symbolic stamp of approval for particular values, for example, through constitutions or other legal texts with substantial public importance\textsuperscript{114}.

Thus, the Law is an integral part of the system that creates equality in happiness. The Law, for as long as it serves its function as the pro-community tool and does not seek to dismantle communities or societies, will contribute towards the success of the process, even if only as a passive component within the system. Every society chooses and characterizes the Law in a different way. Some societies are more liberal and some are less. Some are more socialist and some lean towards capitalism; but as common to all societies, the Law is the tool designated to achieve specific social objectives. For as long as it is still possible to characterize the Law as a tool for the achievement of those types of aims, it continues to contribute towards equality in happiness. Naturally, the achievement of a social objective can also be expressed as the minimal intercession by the Law in the building of social frameworks and the provision of alternative encouragement for the organic, autonomous growth of those frameworks.

Notwithstanding the fact that most of the functions fulfilled by the Law in the equality in happiness process are passive; the Law also has active roles to play in the very existence of equality in happiness. The Law has the power to create normative conditions able to prevent the extreme situations, to which individuals are unable to adjust and thereby, equality will expand to cover the maximum number of people. Extreme situations turn the individual experiencing them into a creature struggling for the most basic needs and in turn, they deny that individual the opportunity to realize the basic human experience as a social creature. Therefore, one of the tasks of the Law is

\textsuperscript{113} Durkheim \textit{supra} note 88, at 65-66.
to prevent the occurrence of such extreme circumstances and to aspire to transform equality into the rightful due for all individuals in society.

Expansion of the equality to the most absolute state can be achieved if all individuals in society benefit from the minimum level of conditions that will allow them to adapt to and deal with the realities in which they live. As explained in the first and second chapters, a person can adapt naturally to almost any situation in life, except a situation, which threats that person’s very existence. The human body reacts to life threatening situations with warning signs that do not cease until the danger has passed. Physical pain, hunger and thirst are bodily reactions that do not disappear and it is impossible to adapt to them because they are signals that warn a human being of the dangers threatening the body. The struggle to survive is not an activity aimed at achieving human needs; it is an instinctive battle for existence\textsuperscript{115} and therefore, it is not part of the equality in happiness process\textsuperscript{116}. When an individual lives a life without any threat to existence, he or she focuses on providing this or that solution for the range of day to day needs, which are ignored in life threatening situations, in which the individual focuses solely on survival. Life threatening situations typically involve pain\textsuperscript{117}, which is the warning signal transmitted by the human body in existential danger. Pain is common to the sensations of hunger, thirst, disease or suffering caused by an external factor and it is pain that prevents the individual from living a routine life. Therefore, the threshold condition for participation in the equality of happiness process is the freedom from ongoing pain.

Thus, the definition of basic needs in terms of the equality of happiness process does not derive from specific human traits. Its source is the situations in which the individual lives. Human dignity is realized only while the individual is above the level of existence

\textsuperscript{115} Of course, hunger or thirst is not always part of a struggle to survive. The meaning here is ongoing hunger or thirst and not the usual sensation, which has the principal purposes of telling the human being that he or she needs food or fluids.

\textsuperscript{116} Survival is of course also a need, but it is different from other needs because its purpose is to ensure the continuation of human existence and not the quality of that existence.

\textsuperscript{117} There are life threatening experiences that do not involve pain, such as being chased by a murderer. However, these kind of experiences are both less common and usually only temporal.
focusing on survival. In reference to the equality in happiness process, humanity is defined in terms of the individual as a social creature functioning within a social interaction. All existence below that level is defined as derogating from that individual’s human nature. In other words, the basic condition to minimal human existence is the adaptation to reality rather than the survival thereof.

The appropriate, normative framework for the discussion of the role of the Law as responsible for the existence of those conditions is that of human rights. It is appropriate because human rights maintain the existence of basic human needs within the social and political context. In accordance with the concept of equality in happiness, the purpose of human rights should be to ensure that every individual in society is part of the equality in happiness process. Therefore, the core, most basic rights in human society are the rights that help achieve that objective. They are the rights that lift the individual above the struggle for existence and enable the individual to reach a level of social awareness, rationality and morality. Such rights are necessary because they create the definition of the minimum required in order to be a dignified human being in any society with a “tolerable” legal system in terms of its morals.

The purpose of the defense of those rights is to allow an individual freedom from ongoing physical suffering, which a state has the power and reasonable ability to prevent. A person free from repeated, significant, bodily suffering is a person with an involvement and a routine focusing on the realization of social functioning and the range of social needs as part of the equality in happiness process. A person suffering from constant physical pain is unable to be part of social interactions because that person’s entire purpose is to overcome that suffering in order to survive. Therefore, the core

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118 See PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 153 (1991). ("For the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity: rights imply a respect that places one in the referential range of self and others, that elevates one’s status from human being to social being.")

119 The same rationale that serves as the basis for a human being as a purpose and not a means as explained in IMMANUEL KANT, THE MORAL LAW: GROUNDWORK OF THE METAPHYSIC OF MORALS 35 (H.J Paton trans., 2000) (1948).

120 In accordance with the human need as explained by Rawls. See Rawls, supra note 87, at 504-513.

rights of man are the rights to life and freedom from the consistent repetition of physical suffering; assuming that the suffering can be prevented or stopped\textsuperscript{122}. Such rights are differentiated from other rights and values in society in that they are not derived from the foundation stone values that encourage the individual to adapt. They constitute the threshold level at which benefit from those rights is available under the influence of the equality in happiness.

The right to life is the most basic human right\textsuperscript{123}. It ensures the presence of the most basic parameters for every perspective attributing value to human life, which is human existence. Preserving human life is the threshold demand for any system of rights that seeks to promote this or that view of the human being. Accordingly, the equality in happiness is also an equality among the living and it is every individual’s right to be part of that equality.

The basic right to freedom from repeated physical suffering is a general right and it is difficult to derive any concrete legal expression from that right. For the purposes of translating that right into a right that can be realized in a practical way, it is important to examine the situations to which it is impossible to adapt and which can be prevented or terminated. Two main derivations from this right can be suggested and they are designated to prevent the principal situations meeting the two conditions, but by necessity, those two rights do not constitute a final list. Other situations, that answer the two conditions of the basic right and have not been included as part of the derivative rights are naturally, also worthy of appropriate investigation and prevention.

The first derived right is the freedom from torture. For the purposes of the definition of this right, torture shall be any acute physical pain, caused repeatedly with the aim of

\textsuperscript{122} Naturally, diseases, which modern medical science has no means to alleviate the suffering they cause and the investment of reasonable efforts can find no way to treat or prevent, along with other similar examples, cannot be included within the definition of freedom from constant suffering.

torturing\textsuperscript{124}. The implications deriving from this right are first and foremost, that all government bodies are forbidden from applying ongoing torture\textsuperscript{125} and that it is the duty of any governing body to actively prevent torture applied by any individual to another. The second right deriving from the basic right is the freedom from hunger, or the right to basic nutrition. This right refers to the basic human need for elementary nutrition and all humans; wherever they might be, have the right to that nutrition. This is a right that derives from the basic right to freedom from ongoing suffering, in view of the fact that constant hunger transforms the individual into a creature struggling for existence through the search for food. For the purposes of this definition, hunger is any situation of ongoing malnutrition and therefore, the intention of this definition is to include exactly those situations in which food is a necessity for survival and not for the purposes of pleasure or as the expression of a facet of a culture\textsuperscript{126}.

Another right, which can be defined as deriving from the basic right to relief from prolonged physical suffering, is the right to health\textsuperscript{127}. Its recognition as a universal basic right is based on the intrinsic potential of health conditions to bring the individual down to a state in which the individual is shackled to a Procrustean bed, without the individual or relatives having any real ability to improve his conditions. People suffering from acute

\textsuperscript{124} In contrast, for example, with the pain that is part of a healing process. Compare Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1(1), Dec. 10, 1984, 1465 U.N.T.S. 85. (Defining torture as “[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”)

\textsuperscript{125} Torture for the purposes of extracting information in what is defined as a “ticking bomb” situation, does not fall under the prohibition imposed by this right. Moreover, the issue of which rights can be harmed for the purpose of criminal punishment, national security or other public interests would not be addressed in the following discussion because space is limited.

\textsuperscript{126} Therefore, a situation in which there is little, or reaches the point of no variety in food, does not constitute hunger.

disease are denied almost entirely, any ability to function as part of community life because of the intensity of their physical suffering and that positions the alleviation of the condition as their basic right. This right should not be interpreted as the state’s duty to provide comprehensive health services for all its citizens. It is the state’s duty to provide health care for those patients suffering from diseases or health problems that cause ongoing physical suffering. For example: Eyesight or hearing problems might not cause ongoing physical suffering and therefore, treatment of those problems will be beyond that encompassed by the right. However, diseases causing ongoing suffering, from influenza to serious diseases such as cancer, will incur the right to health care.

Therefore, in accordance with the proposed definition, based on the equilibrium of happiness, the basic right to freedom from ongoing suffering and the two rights derived from it, are in fact core, universal human rights. They are rights accruing to all who are members of human society. Given that these rights are the required basic minimum for human existence under the wing of equality in happiness, their enforcement must be ensured before any other right and as a rule. The source for these rights is the perspective examining the social reality and deriving from it the justice equilibrium\textsuperscript{128}, which is beyond the economic and moral interests of time and place\textsuperscript{129}. However, in contrast with other, sociological sources for human rights, which in the most part analyze human interests and fail to provide a normative, philosophical foundation for human rights; this definition does provide a normative, philosophical definition\textsuperscript{130}. The purpose and the normative foundations rely on the desire to achieve absolute equality between citizens and that equality relies on the understanding of happiness as the desirable and extant basis for equality between human beings.

\textsuperscript{128} The term justice refers to the mechanism that preserves or leads to the creation of a certain equality between citizens. As even Aristotle noted: “All men hold that justice is some kind of equality”. See Aristotle, \textit{Equality and Inequality}, in \textit{POLITICAL THOUGHT} 226, 226-27 (Michael Rosen & Jonathan Wolff eds., 1999).

\textsuperscript{129} In contrast with other definitions of what is just, this equality is an equality understood as such by the citizens, based on the most important element in human thinking – happiness.

\textsuperscript{130} \textit{Id.} at 42.
Beyond those two rights, which are in fact required for the existence of equality in happiness, it is possible to consider a second tier of human rights designed to improve process efficiency and reduce the band of variance in the equality in happiness\(^{131}\). Such rights are not required for the existence of equality; but a society that wishes to create a rapid equilibrium process for its entire population, will achieve that aim by promoting those rights. A rapid process means that the adaptation processes occur automatically to the extent possible and thereby, both the positive and negative temporary fluctuations from the happiness norm are shorter. In general, this can be achieved by allowing the population to be permanent, long term members of social groupings. The assumption made for these rights is that permanent, stable membership of social groupings is the most efficient way to create permanent emotional convergence and exposure to maximum help from others during the adaptation process. These rights can be: The right of assembly, which is designed to ensure the individuals’ abilities to build and belong to the social frameworks that suit them; the right to worship freely, which is a right that enables the individuals to belong to religious organizations according to their beliefs and choices.

An example of a right used successfully to narrow down the range of a band of variance, is the right to permanent housing\(^{132}\), or in other words, the right to possession of a property asset\(^{133}\) for residential purposes. This right makes it possible for the individual to develop long term community life, based on the idea that long term, permanent membership of social frameworks is the most efficient way to enable an

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\(^{131}\) Beyond that, second tier human rights can grant additional significance to other rights and can contribute towards the development of the awareness of equality, which shall be discussed later. The comments made by Cooney are very appropriate in this context and notwithstanding the fact that he refers to the rights derived from other basic rights, it is still possible to infer from his comments on the second tier rights in general: “Implied Rights are not only founded upon foundational rights, but can often provide some instrumental value and additional meaning to them” William Cooney, Rights Theory, in 3 ENCYCLOPEDIA OF APPLIED ETHICS 878 (Ruth Chadwick, Peter Singer, & Daniel Callahan eds., 1998).


\(^{133}\) The precise nature of ownership status is of less importance for the purposes of this right.
individual to rapidly and efficiently adapt to different life events. The significance of this right lies in a state’s duty to provide all its citizens with an opportunity to take part in long term community life through permanent housing, without any link to the citizen’s economic wherewithal.\textsuperscript{134}

C. The Proposed Definition, Compared with the Accepted Definition of Universal Human Rights

After laying the jurisprudential foundations for the new definition of universal human rights, it is important to examine what advantages are provided by the new definition, based on the equality in happiness process, compared with the accepted definitions currently in use. The comparison between the proposed approach and the existing approach is important principally in view of the ramified discussions that cross continents and cultures with the question of whether there are universal human rights and if so, what are their contents? Therefore, this, the last section of the study, will try to explain the problems associated with the current definition of universal human rights, which are inter alia, against the background of the United Nations' Universal Declaration of Human Rights and how changes to that definition will be able to solve those problems.

The importance ascribed to the Declaration, which was adopted and proclaimed by the General Assembly of the United Nations in 1948, is due to on the one hand, the universal value attached to the document and on the other hand, the acknowledgment that it has received from a not inconsiderable number of countries, as a document that

\textsuperscript{134} If this right is recognized globally, one of the main problems will be the need to allocate resources to solve refugee problems. Intuitively, from the manner in which the world currently deals with refugee problems and the serious consideration given to them, it is reasonable to conclude that the right to a permanent dwelling is an elementary right and the world recognizes the need to allocate resources for its implementation. Beyond the contribution made by this right to the narrowing down of the band of variance for equality in happiness, permanent dwelling is also an efficient catalyst for growth and an investment in the environment, because possession or permanent ownership changes behaviors; leads to the internalization of costs and the wish to invest and develop.
expresses those universal rights. However, the criticisms do not focus on the Declaration itself. They focus mainly on the regime and the understanding of human rights that developed after the Declaration was accepted. Most of the problems arise from the accepted differentiation between political rights and crimes against humanity and economic rights as pursuant to the definition of what constitutes a breach of human rights, and the abstract formulation of well-known rights, which make it difficult to set up the regime that will be duty bound to uphold those rights.

C1 – The Difficulties in the Current Perception of Human Rights

The accepted view of human rights today, both by governments and international organizations, is that political rights and crimes against humanity are the benchmarks for basic human rights, which must be maintained and there is less emphasis on economic and social rights. The most obvious difficulty arising from the selective, firm insistence on political rights and crimes against humanity and the less stringent insistence on economic and social rights is the lack of correspondence between the gamut of rights a person holds and the rights that person needs in order to provide a solution for his or her minimum needs. Assuming that the purpose of human rights is to

137 The academic view of those rights, which grants them much expression and space, is different from the approach commonly employed by the national institutions and international organizations, actually fighting against the contravention of human rights.
138 Gordon, supra note 135, at 701-721. Gordon researches the sources for this approach by examining inter alia, the development of the international attempts to define human rights and the enforcement mechanism accompanying those attempts. Gordon starts at the Nuremberg Trials, which recognized a very narrow definition of human rights, principally as crimes against humanity. His second historical landmark is the 1948 Declaration of Universal Human Rights, which provided a very broad definition which, but contained no enforcement mechanism. Therefore, it can be considered of more symbolic value. The last two treaties discussed by Gordon are the treaty on economic and social rights and the treaty on civil and political rights, signed in the middle of the 1960s. In contrast with the treaty on economic and social rights, which contains no enforcement mechanism, the treaty on economic and political rights does offer an enforcement mechanism (found in the additional protocol signed close to the treaty). Further on in the article, Gordon shows how that difference also exists in the way non-profit organizations, national governments and international finance organizations relate to the treaties.
elevate an individual beyond a certain minimum point\textsuperscript{139}, or alternatively, to provide an individual with the very minimum needs, some of the political human rights might well prove beneficial but they are not an essential condition. On the other hand some of the essential rights, which are also rights essential for human existence, such as food or medical care, are not recognized as basic human rights, at least to the degree that political rights are considered as such\textsuperscript{140}. For the purposes of the matter, when an individual lives in a country with just one political party, that person’s rights are impinged. In contrast, when a person freezes to death or dies from complications in a simple illness, there was no infringement of that person’s human rights\textsuperscript{141}. Therefore, the common approach, which is liberal towards on the one hand, political rights, while on the other, deterred from recognizing economic and cultural rights, does not fulfill the aim that was supposed to have been attained by the recognition of the rights of man, which was to enable all human beings to benefit from a minimum standard of human existence.

Another serious problem common to all human rights is the abstract, broad nature of their definition: People are born equal or people are born free\textsuperscript{142}. Appropriately, the rights are worded using the present and not the future tense. They describe an ideal world in which every citizen enjoys a broad spectrum of rights in a manner that the real world, which is distant from the theories intrinsic to the various declarations and treaties on human rights, appears to be entirely imaginary\textsuperscript{143}. Human rights therefore, are far closer to being a moral obligation, in keeping with the theories of Gerwirth\textsuperscript{144}, or in other words, they are moral commands on how states and people must behave and they are less about concrete legal possession, which human beings experience as having real

\textsuperscript{139} Id. at 704.
\textsuperscript{140} Id. at 701-724.
\textsuperscript{141} Id. at 720-721.
\textsuperscript{142} Id. at 761.
\textsuperscript{143} Id. at 762.
\textsuperscript{144} Id. at 752-753. That distinction is part of Gordon's discusses of Gerwith's idea of the "existence" of rights, as explained in The Epistemology of Human Rights. See Alan Gerwirth, The Epistemology of Human Rights, in HUMAN RIGHTS 1, 1-3 (Ellen Frankel Paul, Fred D. Miller, Jr., & Jeffrey Paul eds, 1984).
significance\textsuperscript{145}. The lack of substance and the abstract wording makes it difficult for them to constitute a simple, understandable menu of the rights accruing to all.

For example, rights such as the right to own property\textsuperscript{146}, freedom of opinion and expression\textsuperscript{147} and freedom of movement\textsuperscript{148} are not implemented in full in any country in the world and are limited to this or that degree by other interests or rights. Their abstract wording, particularly in view of their complex implementation, makes it very difficult to translate these rights into rights that individuals in each society can understand and feel that they possess. The many questions that arise from each of them, due to their apparently abstract wording, such as whether the right to freedom of opinion and expression includes the right to harm the public’s sentiments, or the security of the state; or if freedom of expression includes the right to perpetrate a slander, all shape those rights as the idyllic foundation stones for a healthy, liberal democracy and not as a clear right that all people in the world can benefit from on a practical level.

The selective understanding and abstract definition of universal human rights is also accompanied by a sporadic, unstructured enforcement mechanism, assuming that it is even possible to claim that an enforcement mechanism, based on the current approach, can actually exist. The international body responsible for the worldwide upholding of human rights is the United Nations\textsuperscript{149} and in practice, the two organizations within the United Nations are the UN Commission on Human Rights and its Human Rights Committee, with the Commission as the more important of the two. The practical expression of the Commission on Human Right’s responsibilities constitutes inspections of countries’ behaviors as pertaining to human rights and the conducting of public

\footnotesize{\textsuperscript{145} For Bentham’s criticism of rights and their meanings, See Jeremy Bentham, \textit{Anarchical Fallacies; Being an Examination of the Declaration of Rights Issued During the French Revolution}, in \textit{Nonsense Upon Stilts: Bentham, Burke and Marx on the Rights of Man} 46, 53 (Jeremy Waldron ed., 1987).  
\textsuperscript{147} G.A. Res. 217A. id. ¶ 19.  
\textsuperscript{148} G.A. Res. 217A. id. ¶ 13.  
\textsuperscript{149} Additionally, there are regional institutions which are responsible to achieve that goal such as the Council of Europe or the Inter-American Court of Human Rights.}
forums discussing the subject in general\textsuperscript{150}. Nevertheless, it must be emphasized that public criticism by this body is drawn up in an unstructured manner and refers only to a small number of human rights violations\textsuperscript{151}. Moreover, the executive branch of the United Nations with the authority to act economically or militarily is the Security Council, however, it can exercise that authority only for the purposes of maintaining world peace and not specifically in order to protect human rights\textsuperscript{152}. In addition to the problem of legal authority, the composition of the Security Council and the veto rights granted to all permanent members of the council, make it difficult to consolidate the necessary authority, and it certainly does not have the ability to ensure international intercession in each case of violation of human rights\textsuperscript{153}. Therefore, in view of the current international regime, most enforcement of human rights is declarative and even that is sporadic and refers only to a small proportion of the human rights violations around the world. In addition, the body that does have non-declarative powers lacks the authority to apply its power for the benefit of protection of human rights, unless a threat to world peace exists and for that reason, it can act to protect human rights in only rare instances\textsuperscript{154}.

Beyond the difficulties encountered by institutions in the enforcement of human rights, there is also a lack of agreement about the substance and justification of human rights. One of the more obvious claims made against such rights is that they are not appropriate for every culture and that they camouflage the western nations’ cultural imperialism. This claim focuses on the rights based on ideals of liberalism and

\textsuperscript{150} \textit{JACK DONNELLY, UNIVERSAL HUMAN RIGHTS: IN THEORY AND IN PRACTICE} 133-135 (2\textsuperscript{nd} ed. 2003)


\textsuperscript{152} U.N. Charter chapter VII: Action With Respect To Threats To The Peace, Breaches Of The Peace, And Acts Of Aggression.


\textsuperscript{154} Notwithstanding the fact that the body has no obligation, the Security Council does now increasingly viewes human rights violations as a danger to world peace and security, See Christopher J. Le Mon \\& Rachel S. Taylor, \textit{Security Council Action in the Name of Human Rights: From Rhodesia to the Congo} 10 U.C. Davis J. Int’l L. \\& Pol’y 197, 197-228 (2004) (Le Mon and Taylor analyze a number of human rights violations and examine the Security Council’s willingness to see them as possible threats to international peace and security).
individualism, which are therefore likely to strike a discordant note when clashing with the ideas in societies with no such traditions. A striking example of such claims is the discussion of Asian values that began at the beginning of the 1990s. This discussion was initiated by Asian leaders and intellectuals claiming that Asian cultures are significantly different from western cultures and that difference is enough to justify deviation from the accepted norms for human rights based on western principles\(^\text{155}\). It must be emphasized that these principles are not the sole preserve of Asian nations and they are expressed in a variety of places around the world and most stridently, from the direction of the Muslim cultures\(^\text{156}\).

Indeed, the world stage has begun to provide answers to these claims and has also started formulating different approaches attempting to settle the issue of human rights within the context of non-western cultures\(^\text{157}\). But the other side of that coin is that the definition of those human rights continues to expand, which both contributes to the amorphous nature of those rights\(^\text{158}\) and distances them from the idea that they are

\(^{155}\) In his book: THE POLITICS OF JUSTICE AND HUMAN RIGHTS (2001), ANTHONY J. LANGLOIS, provides a full, detailed review of this discussion. The outstanding advantage of Langlois’ work is the attempt to separate between the claims based on real cultural differences and the claims based on Asian regimes’ political interests. This separation is based on the most important counter claims in the discussion, referring to the relative nature of cultures, which is designed to justify the non-democratic nature of some Asian regimes and is not based on the real cultural differences. For further discussion of this issue, See generally Karen Engle, Culture and Human Rights: The Asian Values Debate in Context, 32 N.Y.U. J. Int’l L. & Pol. 291, 291-333 (2000); Joanne R. Bauer & Daniel A. Bell, The East Asian Challenge for Human Rights (1999); Peter Van Ness and Nikhill Aziz, Debating Human Rights: Critical Essays from the United States and Asia (1999); Fried van Hoof, Asian Challenges to the Concept of Universality: Afterthoughts on the Vienna Conference on Human Rights in, HUMAN RIGHTS: CHINESE AND DUTCH PERSPECTIVES 1, 1-16 (Peter R. Bacher, Fried van Hoof & Liu Nanlai eds., 1996).


\(^{157}\) See Id. Schooley for example, focuses on the communitarian approach, which views group rights as the way to bridge the gap between cultural sovereignty and universal human rights. See also Khaled Abou El Fadl, Islam and The Challenge of Democratic Commitment, 27 FORDHAM INT’L J. 4, 4-71 (2003).

\(^{158}\) See Meron, On a Hierarchy of International Human Rights, 80 AM. J. INT’L L. 1, 1-23 (1986) (describing the formation of a new legal order in which some human rights could be almost spontaneously invoked as both legally and morally binding. Meron points out to the lack of due consideration with regards to the labeling process and the shortcomings of identifying human rights, without any agreed upon criteria as jus
universal and not specifically western. The proposal to expand the reservoir of rights and their interpretations does indeed contribute towards progress in human rights in some western nations, but it is also true that in some of those nations the rate of progress sometimes seems to be too rapid and results in the withdrawal of support for the ideas from ever growing numbers in the population.

C2 – The New Approach and its Advantages

The universal approach to human rights, as defined along these past lines, is based on a definition of human rights with a more concrete nature and therefore it will be easier to create a consensual international atmosphere, compared to the dominant approach today, which is characteristically too abstract, lacks balance in terms of the policies that it is intended to serve and lacks reliable international enforcement mechanisms authority. Those advantages stand alongside another advantage, which is perhaps the most important in the proposed definition of human rights – the development and instilling in all of the conscious awareness of equality. The conceptual advantage of equilibrium in happiness and legal standing consequential to that advantage lies in the practical and understandable answers it provides for the question of why humans are equal. Education and instilling of this approach can answer a most essential question in modern times, which is – How can we generate the widely held understanding that all humans are equal, without any need to shed the differences between them.

At the national level, adoption of this approach will lead on the one hand, to each culture’s recognition of its importance as a social framework both at the micro-social and macro-social levels for the purpose of the equality in happiness process. On the other hand, internalization of the idea will bring into sharper focus, the equality between cultures and the lack of value in any cultural battle or any attempt to impose a culture. In

other words, the idea will help people internalize the importance of the social mechanism to which they belong and how the cultural mechanism to which they belong shapes them as human beings equal to the other members in that framework, on the assumption that they have been granted their basic rights. Nevertheless, the new approach will also soften the feeling of superiority in many cultures or the resultant protection mechanisms responsible for the distancing of one culture from another. Therefore, preserving the existing cultural structure and its re-assessment as a structure generating equality, without the concurrent development of separatist feelings to protect or attack, is a vital advantage of the approach, principally in the context of multi-cultural countries and the challenges they must face.

Similarly, the development of a sense of equality can change the existing discussion of the differences between cultures, their advantages and disadvantages. The recognition of different cultures’ equal value and the commensurate implications for the happiness of their members will generate a more open dialogue between cultures. The freedom to discuss relies upon the fact that in a world where there is no significant advantage to one culture as such over any other culture, cultures will be more confident regarding their value and worth and less apprehensive about exposure and possibly change. The freedom to discuss these issues as part of a dialogue less overshadowed by fear and defensiveness will be able to serve as more fertile soil for the nurturing of a multi-cultural way of life and interpersonal relationships. For example: Many European countries, which are for the first time facing their shaping as multi-cultural societies will be able to profit greatly from the existence of an open discussion of the advantages of both the liberal culture and the Islamic culture and how each culture can learn from the other. Furthermore, by allaying fear and defensiveness, the two cultures can create a shared society based more on fruitful dialogue and less on drawing borders.

Another important advantage of the new definition is the transition of the issue of human rights from “medical treatment” to “prophylactic medicine”. Human rights, as they are defined today touch more upon what governments are forbidden to do and how states
must be run politically. Human rights, notwithstanding the fact that they definitely serve many functions, are very often used as bargaining chips in political struggles, or between blocs and the human values they are meant to represent, often merely bring up the rear. The proposed definition makes it possible to develop an approach, which along with its institutional implications will have a positive influence on the political and cultural concepts supporting the governmental and civil systems. Thereby, there will be preemptive prevention of human rights violations. It is reasonable to say that the approach contributes more significant educational value to the idea of human rights and thereby, tries to create a legal system, the success of which shall be judged in accordance with the extent of willing observance and recognition of human rights, when compared with the current situation, which relies mainly on a system of sanctions and incentives.

Another reason why the new definition could more actively prevent some human rights violations lies in the fact that the adoption of the equality approach pulls the carpet out from under the justifications for activities designed to impose on social groupings, an oppressor’s way of life. In view of the fact that the basic common denominator for whatever type of oppression, persecution or discrimination is employed, is the belief that one particular type of collective way of life is better than that of the collective suffering the discrimination; internalization of the understanding that no one way of life is in every way better than another will help prevent oppression, persecution or discrimination. Persecution such as that suffered by the Falong Gong in China, the discrimination against homosexuals in many countries, tribal disputes in Africa, persecution based on religious beliefs in many places around the world and numerous other instances of discrimination will be mitigated and would fade away as the concept of equality attains greater recognition. It is almost superfluous to mention that not all persecution is based on unequal beliefs and a very significant proportion is based on the struggle between the opposing interests of different groups. Whereas this type of

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160 A collective is not necessarily an integrated group and it can be any grouping of people, which can be discriminated against, such as: political groups, groups based on a common sexual orientation, religious groupings, groups choosing a particular separatist lifestyle, etc.
persecution shall not cease as the new concept strikes deeper roots, nevertheless, internalization of the idea of equality will probably have a greater influence reaching beyond the simplistic belief in equality, which might well have an influence on the understanding of others and the way to deal with the struggles between opposing interests.

Along with those advantages, there are institutional advantages in the proposed approach. The blatant, most important advantage is that this approach can serve as the basis for the construction of a more effective system for protecting human rights. Based on the right to life and the right to freedom from ongoing suffering, expressed as the freedom from hunger and torture and the right to medical care, it shall be possible to construct an international enforcement system, which shall be duty bound to uphold these and only these rights and the discretion given to the system not to act shall be limited. This duty does not exist in the current system, which has the right (not the duty) to act only in those instances in which violations are part of the threat to world peace\textsuperscript{161}. It is important to clarify that in light of the currently broad, abstract definition of human rights; there must be doubt if it is at all possible to think of an international mechanism with the ability, in terms of cost and political will, to establish a obligation to enforce universal human rights.

In contrast with the existing definition, the proposed definition, which is more focused and practical, will make it possible to establish an international mechanism based on existing institutions (with less preference for the establishment of new international institutions\textsuperscript{162}), which shall be obliged to enforce human rights around the world. The mechanism will forge new, practical content for the term human rights and will instill it with the proprietary character that the existing term lacks altogether. The mechanism will guarantee medical care for all, basic nutrition, freedom from physical suffering and

\textsuperscript{161} International Commission, \textit{supra} note 153, at 49.

\textsuperscript{162} It is doubtful if there is sufficient political momentum, as was true after the Second World War, to support the establishment of new international institutions. In reference to the preference of the Security Council as the body responsible for intervention in cases of human rights violation and how its running can be changed to become more effective, \textit{See} International Commission, \textit{supra} note 158, at 47-52.
torture. As a result, instead of a divisive ideal, the term human rights will become a basic right that all human beings shall be entitled to demand and the the international community shall be obliged to accede to that demand. Moreover, human rights with a practical significance achieved by orderly enforcement of those rights will also help to instill the concept behind the definition; the concept that views all men as equal. The moment all human beings will be able to demand the enforcement of their human rights and their demands for such are answered appropriately, the theory behind the concept will permeate deeper and will encompass ever larger parts of the world. In other words, greater awareness of the rights and the trustworthiness of their enforcement will help provide a larger stage for the concept of equality that underpins those rights.

Furthermore, it must be emphasized that changes to the human rights enforcement mechanism are at the heart of the discussion regarding the justification of humanitarian intervention and the questions of what are the Security Council’s responsibilities\(^{163}\). Both these discussions are generally based on the premise that such interventions should be limited to eradicate crimes against humanity\(^{164}\). We can only hope that these lines will provide a different perspective, which shall be able to broaden the parameters for humanitarian intervention to the extent that they will encompass a larger view of minimum human rights, justifying intervention in nations’ sovereign interests when they show no will to enforce or cannot guarantee the enforcement of those rights.

**C3 – The Future of the Rights Currently Recognized as Human Rights**

After presenting the approach to human rights based on the process leading to the equality in happiness and its advantages over the commonly accepted approach today, it is important to confront another important question: What shall be the fate of the other human rights not defined in accordance with the proposed approach, as universal human rights? In principle, the answer to this question must be that universal human


rights are only one element in each normative system and they do not negate the existence of other elements. Universal human rights are the solution for the most basic rights accruing to each and every individual in human society. However, rights such as the freedom to elect and be elected, freedom of expression and the right to a fair trial are part of the normative structure in every democracy and they are directly derived from democratic culture. It might be worthwhile to differentiate between universal human rights and political or social human rights; but in all circumstances, democracies shall continue to stay loyal to human rights as they have been understood to date, because that is democratic culture. In general, political and social human rights are expressions of the culture deeply rooted in the history, psychology, economics and theologies in democratic, liberal countries; Human rights touch upon all aspects of the democratic life. Human rights glorifying the individual are the single most important achievement of western culture. The idea of equality is merely one more reason to persist in developing this idea, which views every individual in society as an end per se and supports the further development of the political – social environment complementing that view.

As aforementioned, the definition of universal human rights based on the idea of equality in happiness does not negate parallel definitions based on the foundations of human autonomy, the ability to make free choices\textsuperscript{165}, the ability to think\textsuperscript{166} and even religious definitions or those based on natural law\textsuperscript{167}. Countries will continue to abide by both universal rights and those rights they have defined for themselves as human rights, in a manner similar to that currently employed in the different democratic nations’ legal systems, which define human rights differently in each country\textsuperscript{168}. It is also

\textsuperscript{165} BLAISE PASCAL, PASCAL’S PENSEES 97 (Everyman’s library 1956).
\textsuperscript{166} Id. at 34-35; PIERRE TEILHARD DE CHARDIN, THE PHENOMENON OF MAN 181-193 (1975); J. COTTINGHAM, ON THE MEANING OF LIFE 61 (2003)
\textsuperscript{167} ROGER TRIGG, MORALITY MATTERS 9-21 (2005); JACQUES. MARTINIAN, CHRISTIANITY AND DEMOCRACY AND THE RIGHTS OF MAN AND NATURAL LAW 140-144 (1986); MAURICE CRASTON, WHAT ARE HUMAN RIGHTS 95 (1975).
\textsuperscript{168} Even international institutions recognize the differences between different countries’ interpretations of human rights. In order to deal with those differences, the European Court has developed the Margin of Appreciation doctrine. See generally Oren Gross & Fionnuala Ni Aoláin, \textit{From Discretion to Scrutiny: Revisiting the Application of the Margin of Appreciation doctrine in the Context of Article 15 of the European Convention on Human Rights},
possible to make an educated guess that in a liberal democracy, serious violations of human rights, as they are recognized today, will cause civil unrest. In turn the sturm and drang will force authorities choosing to continue those violations, to put down that unrest which will probably lead to their violation of universal rights in the attempt to achieve that objective. Obviously, violation of universal human rights would be illegal.

 Appropriately, other regimes will not and cannot be expected to change their very nature. The specific objective in instilling equality in happiness is to provide the perspective that recognizes the value of each culture and most forms of government and not necessarily the singular value of liberal democracy. Furthermore, it is important to mention a number of additional reasons why change in the understanding of human rights will not lead to significant change in existing regimes, beyond that which can be expected of them in view of the new approach. The first reason is that under the aegis of Law, individuals and groups adapt to changing social and economic realities. Existing legal arrangements reflect economic and social processes, which are the harvest gathered by society’s adaptation to its current and historical characteristics. For the purposes of this matter, in liberal democratic societies, the current matrix of rights and their accompanying philosophy and politics are the corollary to political processes underway for hundreds of years. They express those societies’ adaptations to different regimes and the effects those regimes have on their lives. Because of the specific characteristics and conditions that comprise their realities, those societies have dealt with the political changes they have experienced by adopting democratic principles and liberal attitudes towards government and the citizen. These values are the manner in which liberal societies adapt to realities and therefore, unless the reality changes in an extreme way, there is no danger that they shall be abandoned. Similarly, it is


169 Dean E. Peachey & Melvin J. Lerner, Law as a Social Trap, in THE JUSTICE MOTIVE IN SOCIAL BEHAVIOR: ADAPTING TO TIMES OF SCARCITY AND CHANGE 439, 440-441 (Melvin J Lerner & Sally C. Lerner ed., 1981). For the description of an ideal legal system according to Thomas Aquinas see also ST. THOMAS AQUINAS, TREATISE ON LAW 6 (Gateway Editions 1996): “[W]e call those legal matters just, which are adapted to produce and preserve happiness and its parts for the body politic; since the state is a perfect community.”
unreasonable to expect that the more conservative regimes will abandon their paths in favor of the establishment of entirely different political systems.

Together with the adaptations to changing external circumstances, the legal system also reflects how individuals within society adapt to the extant social structure. The legal systems can be viewed as a point of equilibrium in the division of power within the social structure\(^{170}\) and therefore, for as long as the distribution of power within society does not change significantly, there is no danger that the legal system will change significantly. Naturally, there is always the possibility that recognition of equality in happiness will bring about change in the approach to the distribution of power within society, but such change, which involves the adoption of the concept of equality across the board by almost all members of the group, cannot lead to unwelcome results as shall be explained further below.

Moreover, the answer to the question of why there is no danger to the existing system of rights also lies in one of the most basic tasks undertaken by the Law: The Law is a tool to preserve social order\(^{171}\). The Law in every society and the legal system derived from it, constitute the tool used to safeguard the society and its composite internal and external order. The fabric of human rights, as it exists today in democratic societies, is the bedrock for the beliefs of the citizens in those societies. Therefore, any harm to it will undermine that order\(^{172}\) and the trust placed in the legal system. In more general terms, it is reasonable to say that social order relies upon the balance between the individual’s rights and obligations to the society. Even though at first glance, duties might be seen as more important to the existence of order, those duties are accompanied by a series of rights, which together constitute the give and take


\(^{172}\) On the links between trust and social order, See BERNARD BARBER, *THE LOGIC AND LIMITS OF TRUST* 166 (1983).
relationships between the individual and society. Therefore, human rights are integral, in the sense that they are part of the normative infrastructure of rights and obligations that is responsible for the existence of order in society.

Beyond the existing human rights, there is another source of concern that arises from the public acceptance of equality in happiness as the basis for human equality. In view of the fact that the basis for equality between individuals in society is their happiness, a range of claims can be made based on the fear of the development of nihilistic concepts. Such claims raise concerns about three possible effects incurred by the idea of equality in happiness: Individuals within a society can develop apathy towards other individuals or alternatively, apathy towards the society’s legal – political status; conservative policies will be justified and the most acute consequence might be justification for the regime’s repressive policies against its citizens. These concerns are indeed weighty and therefore, it is important to emphasize a number of characteristics in this process, which by their very definition, reduce the possibilities that such effects might appear.

The most important, principled answer refers to the chapter on social adaptation, which explained how individuals behave in a society and how the social fabric influences the equality in happiness process. In that context, it is important to emphasize that people behave as social and political creatures, not because of any political intent, but because that is their nature. Therefore, there is no danger that awareness of equality will harm or change that human behavior. Human beings in every society and throughout all ages have belonged to different types of communities and some of that belonging is the attempt to influence the social structure in those communities. It is possible to view effects of the utilitarian idea on society in a similar way: Despite the fact that the idea was adopted by many all over the world, it cannot be said that the age of altruistic behavior has passed and it continues until today, notwithstanding the popularity of utilitarian thinking. One of the claims made in this context, which is also very appropriate to the matter at hand, is that altruistic behavior is a positive factor in terms
of the altruist’s personal interests, in a manner similar to the contribution made to human beings’ social and political behaviors\textsuperscript{173}.

In reference to the fear of justification for repressive policies, as has been said, adoption of the equality in happiness concept negates through its very definition, any prejudicial policy considering another as more or less worthy. A government adopting the equality concept will first and foremost bridle its ability to justify any policy opposing the principle of equality.

Therefore, adoption of the definition will not significantly change regimes around the world; not in the liberal direction and not in a more conservative direction. The intention behind the proposed approach to human rights is that through the definition of human rights in keeping with equality in happiness, the understanding of the existence of equality will permeate through into the different legal systems. Because the equality in happiness perception is not contingent upon one kind of ruling or another, it can be utilized, via different political contexts to, persuade governments or leaders to adopt policies, which are more and more equalitarian vis-à-vis the population. Therefore, it is important to emphasize that one of the objectives when discussing the subject of equality in happiness, is the wish to mitigate the fear of other regimes and other political cultures.

\textbf{Summary}

The first and second parts of this study describe the term happiness and the process that leads to equality in happiness for individuals in society. The idea is based on human beings’ psychological and social propensity to adapt to changing environmental conditions and after each change in their subjective experience, to return rapidly to the normal, routine experience. Adaptation is one of the most important facets in this process and it is an almost constant thread throughout each of the chapters explaining

the equality in happiness process. After the explanations of the characteristics of this phenomenon, the discussion moved on to the implications of the equilibrium, which as described, influences the legal concepts of equality and the manner in which the legal system must be re-shaped to suit this process and its component parts. The central, most important point made in this paper, is that the rational basis for equality between people is their happiness and the task imposed on the legal system is to ensure that the equality is absolute to the extent possible. The legal system can push towards that objective by justifying universal human rights as the human right to be part of the process that brings about equality. Those rights were defined as the right to life and freedom from ongoing physical suffering. Such suffering forces human beings to invest their primary efforts in the fight to survive and thus lose the most elemental building block in their humanity: The very fact that humans are social creatures. Only when a person is part of the social fabric, can he or she take a role in the process that causes individuals to be equal in happiness. The freedom from suffering is therefore, the most basic and the most important right accruing to an individual in society and it is beholden upon the international community and the Law in general to ensure first and foremost, that it is implemented.

The subjects discussed stimulate further discussion and thought on the significance of the individual within society; the role played by the individual in society and the role of society in the life of the individual. These quandaries are more acute in the context of a liberal culture, which often tends to forget the importance of the collective. As is true for all cultures, liberal culture does ensure the preservation of the adaptation process and even maintains welfare and care mechanisms established to solve these problems in particular. However, liberal culture does not place enough emphasis on the critical importance of the collective in the life of the individual. Therefore, the discussion of the collective as the generator of the individual's experience should be expanded beyond the confines of the current discussion, which focuses on the individual's rights as an independent factor within the collective.
Moreover, there is also a personal value in the examination of the environment through this cognitive prism. Human beings always tend to compare people using the easily measureable parameters: Salary, grades, where we live, height, or any other quantitative variable. The understanding that in the end and in terms of the really important parameters, we are all equal is knowledge that inspires a certain sensation of satisfaction that there is indeed a form of harmony in this world, which so often seems to be chaotic and illogical. The feeling of satisfaction which will certainly vanish a moment later as we return to day-to-day business in the always dominant routine, is perhaps the most real, tangible expression of the existence of justice or a certain harmony in the world.

Therefore, if we are all equal in happiness, perhaps the essential purpose of this paper is to provide each and every one of us, equally, with a moment of pleasurable satisfaction.