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Thresholds and the Good: A Program of Political Evaluation

A Dissertation submitted in partial satisfaction of the requirements for the degree

Doctor of Philosophy

in

Philosophy

by

Dale Edward Dorsey

Committee in Charge:

Professor Richard Arneson, Chair  
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Professor Samuel Rickless

2007

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Chair

University of California, San Diego

2007

*To my Mother:*

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ABSTRACT OF THE DISSERTATION

Thresholds and the Good: A Program of Political Evaluation

by

Dale Edward Dorsey

Doctor of Philosophy in Philosophy

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Professor Richard Arneson, Chair

Morality requires not only an account of the right, but also of the good. This is well-understood. In this dissertation, I argue that plausible concerns of political morality merit reconsideration of the proper account of the good. Many people believe that political morality ought to take an interest in a basic social minimum, a standard below which no citizens should be allowed to fall. Concern for the welfare of the poorest, however, is well captured by an axiological theory that itself is independently plausible. In this dissertation, I argue that the good displays three features. First, the evaluation of states of affairs ought to reflect strong concern for the achievement of a basic minimum. Second, this basic minimum is part of an independently plausible account of human well-being that grants heavy axiological weight to certain *threshold* achievements. Third, in evaluating the distribution of threshold achievements, including the basic minimum, the least well-off ought to be given absolute axiological priority. If my account of the good can adequately capture firm intuitions

concerning the world's poorest, this is a significant result.

However, the interest of this theory goes beyond the political interest in a basic social minimum. I argue that a threshold-laden axiology can solve persistent and troubling worries for any account of value including *Lives for Headaches*, a troubling conclusion I discuss in Chapter Two. The theory of well-being proposed in Chapter Three is also plausible in the face of popular rival accounts.

## INTRODUCTION AND POLEMICAL REMARKS

The topic of this thesis is value theory. In the following four chapters I argue for an account of the good. I will not argue that this view of the good is complete. It is possible that there are additional things that are good, that improve the value of states of affairs, that are not dealt with in the following pages. I will also not answer some interesting questions about the structure of the value theory I defend here. I will not answer, for instance, questions concerning variable populations, i.e., when adding an additional person to the state of affairs improves that state of affairs. Nevertheless, the two major questions I propose to answer in this thesis are important and enduring: 1) what is the nature of human well-being? 2) what is the best distribution of human well-being? These two questions will frame the content of this thesis.

I believe there are strong reasons to believe that an account of the good will include *thresholds*: particular welfare states that take strong priority to states that differ in kind. One reason for believing that there is at least one threshold is developed in the first two chapters. I argue that one feature of states of affairs, indeed, one feature of states of affairs that is extremely relevant to political justice, is the achievement of a basic minimum. It not only appears that states of affairs improve when this basic minimum is achieved, but that the justice of a given political society is improved as well. In Chapter One, I argue that previous attempts to characterize the basic minimum fail. In particular, I argue that Martha Nussbaum's capabilities approach - though it is itself a beautifully articulated view - cannot capture the basic minimum in either its construction or in the way political society is obligated to respond to it. My argument in Chapter One will bleed together issues of the good and the right. The

lessons learned in examining Nussbaum's view, however, will motivate the construction of an alternative interpretation of the basic minimum, one that places it squarely in the domain of human well-being and the good: not only is my alternative construction of the basic minimum more plausible, but a straightforward act-consequentialist interpretation of political obligation as it concerns the basic minimum is more plausible than Nussbaum's view. If so, I argue, we should regard the proper treatment of the basic minimum as falling squarely in the domain of value theory.

In Chapter Two, I argue that the best interpretation of the basic minimum is what I call "minimal autonomy". There are two crucial features of a life that achieves minimal autonomy. The first feature is the ability to choose one's life from some set of options - that the agent in question is not constrained to pick *this* life, rather than any other life. The second requirement for minimal autonomy is that an agent live a life that achieves some *global element of value* or *deliberative project*. This second requirement establishes that whatever life the agent ends up living, it maintains some element of value that tracks at the very least major segments of the life. The second requirement entails that a person who had options to choose only lives that were equally hellish would not achieve the basic minimum. The basic minimum requires some *global* element of value, i.e., some plan or project that tracks the agent's life as a whole (or some major segment of the agent's life), and is properly valued by that agent.

This account of the basic minimum is plausible in itself and accommodates all points in favor of Nussbaum's approach without the troubling consequences of her position. In Chapter Three, I proceed to show how, as a bit of value theory, the basic minimum is not *ad hoc*. Minimal autonomy is not an idiosyncratic approach to the problem of the basic minimum. In fact, the achievement of the basic minimum is commensurate with a plausible story about the nature of human well-being, generally - a story I tell in Chapter Three. Welfare, I argue, is itself threshold-laden. I argue that well-being is made up of two elements. The first (major) element is made up of an agent's deliberative projects. Deliberative projects

just are those global elements of an agent's life that they value (or would value with suitable reflection and full information). The second element of human well-being are various momentary achievements, i.e., hedonic goods or momentary desires satisfied. Each of these elements improves the life of the person who achieves them. Nevertheless, I argue, there is a strict priority relation between the elements. Deliberative projects are *lexically prior* to these various minor elements of human welfare. This, again, is of a piece with the basic minimum. In Chapter Two, I argue that the achievement of the basic minimum ought to be lexically prior to the welfare improvements one could maintain without maintaining the basic minimum. Chapter Three places this view in the larger context of an account of human welfare.

Finally, Chapter Four defends a view about the distribution of well-being and its value. When rank-ordering states of affairs, my view is that the *lowest achievable threshold* has absolute priority. Whenever there is a question concerning how to rank states of affairs that contain threshold improvements, the state of affairs that improves by the lowest threshold wins. This priority is absolute. Thus what results is a slight restatement of *leximin*. The way in which my view differs from traditional accounts of *leximin* is a point in its favor, I argue. *Leximin* is an extreme view. My argument in Chapter Four attempts to show that my version is less extreme than *leximin* is often thought to be and whatever counterintuitive implications are left over are fully justified as a view about the good.

The account of the good I defend here rests on no explicitly "political" arguments. My account of the good is meant to apply to any context for which evaluation is relevant. So it might be thought that I have chosen an odd title for my thesis. What is *political* about the program of evaluation defended here? A few polemical remarks might suffice to answer this question. In part, I think, the political nature of this thesis is to be found in considering the questions I use to motivate my account of the good, generally. The program of evaluation is political in the sense that this account of evaluation is desperately needed by political institutions that are confronted by the phenomenon of serious and enduring destitution in the

world. The basic minimum is a crucial part of political morality. Insofar as this is true, it is important to get the basic minimum right. Though there is nothing explicitly political *in* my account of the good, the thesis itself might be said to have a *political* motivation. Though this is debatable in the non-political case, political morality ought to be most concerned about the poorest, not only in the domestic context, but also globally. And political morality cannot adequately be so concerned without a full account of the proper target achievements. Thus, even if an act-consequentialist account of morality is ruled out in the interpersonal moral context, even if the interpersonal context makes *no reference whatsoever* to value, the account of the basic minimum here remains essential for an account of the morality of responses to extreme destitution. Though I place the basic minimum in the context of a wider account of the nature of the good, the wider account is intended to serve my account of the basic minimum by showing how the basic minimum is continuous with a plausible story about the nature of, and the value of the distribution of, well-being generally. This program of evaluation is political in that sense alone.



## CHAPTER ONE: TOWARD A BASIC MINIMUM

I begin this chapter with an examination of a set of intuitions. It seems that, especially in the context of tragic circumstances, some standard approaches to the evaluation of states of affairs appear to break down. In such cases it appears that it is better to have fewer people rather than more suffering the fate of horribly bad lives. This particular intuition, however, causes some problems for traditional accounts of intrinsic value including, e.g., prioritarianism and egalitarianism. I argue that these intuitions are best taken seriously by setting a basic minimum: a living standard that is very strongly weighted against competing achievements.

I am not the first to notice the importance of the basic minimum. Indeed, there have been various alternative attempts to characterize the nature and importance of the social minimum. I will discuss a cross-section of such attempts here, including those by Henry Shue and Amartya Sen. I argue that these theories don't provide compelling answers to the question of how one ought to characterize the basic minimum. My most important target in this chapter, however, is Martha Nussbaum's human capabilities approach. Though Nussbaum's view is not a straightforward account of political axiology (though it certainly has axiological elements), the ways in which her account fails will be instructive for my account that I develop and argue for beginning in the next chapter.

This chapter, and indeed this thesis, is on the topic of value theory. I seek to provide an account of the betterness of states of affairs. By itself, an account of the good is silent on matters of the right, i.e., what political society or moral agents generally ought to do. Though I will not defend this view here, I find a straightforwardly consequentialist account of the right roughly plausible; the principle of right action just *is* to maximize the achievement of the

good, or promote the best state of affairs possible. Occasionally I will slip into an act-consequentialist account of justice in an effort to more clearly contrast my account of the good with the various commitments of other theories. But I needn't be committed to act-consequentialism. My account of value, it seems to me, should be taken seriously no matter what one's account of the right involves (whether this involves rights, duties, side-constraints, options, etc.).

In section 1.1, I note an intuition about tragic circumstances, and the ways in which traditional accounts of evaluation run afoul of that intuition. If the intuitions I note are, in fact, sensible and plausible, political evaluation is incomplete without some sort of a basic minimum. Beginning in §1.2, I consider various accounts of the basic minimum. In that section I discuss Henry Shue's account of the basic minimum as human subsistence. In §1.3 I discuss two relativistic approaches to understanding the basic minimum, one suggested by economist Peter Townsend, the other posed (partly in response to Townsend) by Amartya Sen. I argue that a basic minimum cannot be understood relativistically, and instead must be fixed to an account of a minimally decent living standard for individuals. Finally, in §1.4, I discuss Nussbaum's approach. Nussbaum's approach is a complex yet intuitive account of the basic minimum. The ways in which Nussbaum's view goes wrong (in both normative and evaluative respects) will inform my account of the basic minimum beginning in Chapter Two.

### *1.1. The Need for a Basic Minimum - or - a Puzzle About Food*

Imagine that a society is in the midst of a famine. There is not enough food to go around. There is, however, enough food such that political society has some choices to make with regard to how to distribute it. What should a sensible policy be with regard to the distribution of food? I submit that it is plausible that the best state of affairs is created when food is distributed in such a way that the highest possible number of people have "enough". Of course, the reference of the term "enough" is vague here and intentionally so. (I thus will keep the scare-quotes to emphasize the flexibility of the notion.) By "enough" I do not mean

enough for a muscle-building regimen. Rather, I mean something quite basic - enough to live a life of at least basic value. I will begin to explore how one might determine what “enough” is in the following section. But leave this aside. Assume that there is some plausible referent of “enough” when it comes to food. My intuition is that the best state of affairs is one in which the most persons have “enough”.

This is a sensible and straightforward judgment and is supported by additional considerations. For example, food is essential to the maintenance of a life worth living - it is certainly true that in most cases, for citizens to live any kind of valuable life, they must have access to some range of nourishment. Thus in having *fewer* people, rather than more, with access to adequate nourishment, there are fewer people that will be able to live any sort of life of even the most basic value. In cases in which life decency is in play in the evaluation of various states of affairs, it is surely better that *more* people live tolerable lives rather than fewer, leaving aside the proper account of a “decent” or “tolerable” life for now.

Of course, stated in this way the intuition looks like it borders on triviality. Clearly it is better if more rather than fewer have “enough”. But this intuition, it seems to me, is stable when the achievement of “enough” is non-trivial, perhaps even costly to those who might be *worse-off*. Consider such trade-offs on a *micro* level. Each small bit of food is good for the person who possesses it, if only for a temporary reprieve from hunger. Nevertheless, having “enough” food is crucially important to the person who can get it in a way that the achievement of one bit of food is not. The person who stands to lose their possession of enough food stands to lose out on far more than the person who loses out only on one small bit. But this is an important claim. At the very least, the possession of enough food must be weighed very heavily against achievements (such as the temporary reprieve from hunger) that are in competition with it. This is true interpersonally as well as intrapersonally. If it would require failing to give *many* persons a small bit of food in order to grant “enough” to another, it seems clear that this course should be adopted. Or, at the very least, it is the *better* course.

Without “enough,” food is of comparatively little value.

This particular intuition is reflected not only in the distribution of food, but also, for instance, in crisis cases in which medical resources are scarce. Consider the practice of *triage*. In cases in which resources are stretched, such as on the battlefield, some must be left behind for the sake of a crucial target goal. In deciding how to allocate scarce medical resources during a time of emergency it would seem a ridiculous waste to allocate that medical care to those who have no chance of surviving (or surviving at whatever sufficient level of well-being, or whatever the target goal is). Rather, in *triage* cases, resources are best allocated such that the most possible survive. Though it is clearly true that spending medical resources on those who could not survive would benefit them, in cases of scarce medical resources, the betterness of alternatives is determined by the crucial target goal - survival, or some threshold of life quality. Once this has been maximized, we can then begin to ask questions about those who suffer, but who could not reach the target - but *only* once this target has been reached.

Indeed, this intuition appears to be quite strong. It seems as though the extent to which trade-offs between the achievement of “enough” and other sorts of achievements might improve a state of affairs is severely curtailed, if not eliminated. Take, for example, states of affairs A and B. In A, one person obtains “enough”, but many possess no food at all. In B, no one obtains “enough”, but everyone has at least some food - perhaps even just slightly below “enough”. Though it is certainly better for the worse-off to get some rather than no food, why should we believe that this trades off against the achievement of “enough”? After all, whatever “enough” is, the many *still* don’t achieve it! Though we should not be strictly indifferent to the worst-off, it is implausible to sacrifice the achievement of “enough” when someone could have obtained it. Doing so appears to be a serious waste of resources, just as attending to those who have no chance to survive in *triage* cases is a serious waste of medical resources. Thus the presumption in favor of “enough” over other competing achievements appears to be quite strong, indeed.

Some may disagree with my assessment. Why couldn't it be better in some cases to grant at least *some* food to many people (even though it would not be "enough"), at cost to only one, especially if the number of persons who might be assisted is quite large? I don't wish to commit myself firmly to a particular axiologic weight of "enough" just yet - though I will do so in Chapter Two. But I wish to issue a few considerations in favor of a "no" answer to this question. "Enough" is not meant to be very high. Whatever "enough" is it amounts to the level that is necessary for a life of even the most basic value. But people can do better or worse when failing to live a life of the most basic value. I can be tortured and be given a lollypop. I fail even the most basic value, but my life with the lollypop is better than the life without it. But it is surely better to trade *any* amount of lollypops in order to benefit a single individual such that that person could *escape torture*, or achieve a life of even basic value. It appears that lollypops just don't trade-off against a life of basic value, minimal adequacy, or whatever. For that matter, neither do small morsels of food.

This is especially clear when we consider cases framed slightly differently. Assume that I possess "enough". Political society now has two alternatives. It can bring about A, such that I continue to possess "enough". Or it can bring about B, which strips me of "enough", in order to grant those who are unable to achieve even a life of the most basic value a small morsel of food. My intuition - and at this point it is an intuition only - is that B is worse, even *far* worse, than A. It is a waste of my resources. It is a waste of "enough".

This is a sensible intuition, but it runs up against a traditional presumption about the evaluation of states of affairs: aggregation (at least when it comes to food). Call the following suggestion "the aggregation thesis": for some good  $x$ , a state of affairs is better with more  $x$ , rather than less. The intuition above violates the aggregation thesis, because more food is not necessarily better, if that food is distributed to those who could not achieve "enough". Though I will push off a discussion of aggregation versus anti-aggregation until the following chapter, I merely wish to note here that our intuitions with regard to food - the intuition that suggests

that “enough” trumps small morsels of food - cause some problems for the aggregation thesis. (In point of fact, it seems to me that the aggregation thesis can and should be saved, but at the price of rejecting the *continuity* of values; though I leave this until the following chapter.) Though there are certainly worries about the philosophic sustainability of a view that rejects aggregation or continuity, in this chapter at least, I want to give this intuition a run for its money.

Crucially, however, traditional accounts of evaluation, including the aggregative *and* anti-aggregative, cannot accommodate this intuition. I will consider two broad families of accounts of the good: egalitarianism and prioritarianism. Begin with egalitarianism. I understand egalitarianism as a principle of evaluation that implies that equality in the distribution of the proper distributive index (welfare, resources, etc.) adds value to a state of affairs. The weight of equality might be higher or lower, depending on the view. Nevertheless, the value of equality has at least some power to outweigh achievements in welfare.

But in cases that surround the achievement of “enough”, the value of equality is dubious indeed. Consider, for example, the following case. A and B are unequal. They could be made more equal, and the difference between their current inequality (which is pronounced) and the possible equality is high; in other words, there is much to be gained in terms of equality by distributing. Not only does it achieve perfect equality, the difference in terms of equality between the previous state and the achieved state is great (i.e., from pronounced inequality to perfect equality). It seems, then, that an egalitarian might be tempted in this case to claim that fewer people achieving “enough” is better: the equality score is much higher when fewer people have “enough”. But this is implausible. The level of equality might, in fact, be below “enough”.

Larry Temkin responds on behalf of egalitarians. He notes that equality, for egalitarians, is only *one* aspect of the way in which states of affairs might be ranked.

Arguments like the foregoing are popular. This is unfortunate. Such arguments fail because they fall into the trap...of confusing two separate questions: When is one situation worse than another regarding inequality? and When is one situation worse than another *all things considered*? Such arguments...merely remind us that inequality is not all that matters.<sup>1</sup>

According to Temkin, one might rank the achievement of “enough” as better, even though the value of equality points in the other direction. The value of “enough” simply outweighs the value of equality. But this solution to the problem is not enough to get egalitarianism off the hook. Given that any egalitarian theory must say that equality is worth something as opposed to nothing, there must be some instances in which the value of equality will defeat the interest in “enough”. Assume that A and B are two open alternatives. Assume that A is *terribly* unequal, in whatever sense that is most plausible.<sup>2</sup> Now assume that B is *perfectly* equal. It just so happens that B’s level of equality is below the point of “enough”. A does not have this problem. Some are below “enough”, but some are above. If the difference in equality between A and B is great enough, surely there must be some point at which egalitarians claim that the value of equality trumps the achievement of “enough”. But, as I suggested above, this is implausible. It does not matter how *equally* - to continue with the example that started this section - food is distributed. It matters only how many people can achieve *enough* food.

Temkin provides a counter-response (A: one lives and one dies; B: both die):

[A’s being better than B all things considered does not] mean A’s inequality doesn’t matter. Surely, the egalitarian would say, A’s worse-off person has a significant complaint regarding inequality. He is much worse-off than the other person through no fault of his own and this is unfair and unjust. Moreover, the difference between the quality of their lives is most significant. It is a difference measured in terms of the necessities of life - a difference, quite literally, between who lives and dies. To suggest such inequality doesn’t matter is ludicrous.<sup>3</sup>

But Temkin is wrong. His error is readily apparent *via* a careful analysis of his own case.

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<sup>1</sup> Larry Temkin, *Inequality* (Oxford: Oxford University Press, 1993), 161.

<sup>2</sup> Temkin suggests that inequality is a complex notion, comprised of various different factors. Assume this is true. For the purposes of this example, however, the unequal scenario need only be very unequal, however that inequality is characterized.

<sup>3</sup> Temkin, 161.

That equality does not matter in comparison to the achievement of “enough” is easily seen by looking carefully at his construction of A and B. The mere fact that the worse-off person in A (Person 1) is worse-off relative to the better-off person (Person 2) has nothing to do with the badness of the situation for Person 1. Rather, the problem is that, as Temkin suggests, Person 1 *cannot obtain “enough”* (in this context, who lives and who dies). What Temkin is, rightly, focusing on here is the achievement of “enough”, *not* the inequality that obtains between persons who obtain “enough” and those who don’t. Person 1 would take it as genuinely cold comfort, if comfort at all, that Person 2 *also* does not have “enough” - though their failure is equal.

Perhaps an egalitarian could adopt and embrace the suggestion that the achievement of “enough” always takes priority to the value of equality. This is, perhaps, the only way out for a committed egalitarian. Nevertheless, this suggestion leaves egalitarianism somewhat impotent, at least when it comes to the cases we have been considering. This suggestion, as stated by Harry Brighouse and Adam Swift, leaves “egalitarianism without much bite.”<sup>4</sup> It seems that the only way to save egalitarianism in such cases is to give up on it.

Now consider prioritarianism. Prioritarianism as a term is used to categorize a wide variety of views about the nature of the good. The best way to explain prioritarianism is to compare it with a classical utilitarian analysis. Utilitarianism claims that the value of a state of affairs is determined entirely by the value of the well-being score, where the well-being score is determined simply by the overall sum of well-being across persons. According to prioritarianism, the best state of affairs is the one that maintains the highest well-being value score. However, unlike utilitarianism, the value score of each bit of well-being is different depending on whose well-being it is. The worse-off an individual is, the higher the value score of each well-being improvement.<sup>5</sup> Like egalitarianism, there are stronger and weaker

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<sup>4</sup> Harry Brighouse and Adam Swift, “Equality, Priority, and Positional Goods” in *Ethics* 116 (2006), 472.

<sup>5</sup> Derek Parfit, “Equality or Priority?”, Lindley Lecture, University of Kansas, 1991.



forms of prioritarianism. At one limit is a form of *leximin* - the *absolute* priority of the worse-off. At the other is utilitarianism (or *near* utilitarianism) - a very weak weighting in favor of the worse-off.<sup>6</sup> I begin with the lexical version.<sup>7</sup>

It seems as though such a strong version of prioritarianism has a straightforward problem accommodating the puzzle about food distribution. For if the worse-off are given absolute priority, no set of achievements for those *not* worse-off could trade off against even very small achievements for the worst-off. But assume these worst-off are below the level of “enough”, and that furthermore they could not get “enough” - they could get, merely, the minor benefit of a small morsel of food. On a version of *leximin* prioritarianism, this minor benefit would be worth any gain for the better-off, including the achievement of “enough”. Once again, this is unacceptable. In cases in which the worse-off would not achieve the crucial target - “enough” - it is implausible to suggest that the worse-off should be given priority. Like the case of medical *triage*, doing so would be a tremendous waste of resources.

Weaker versions of prioritarianism also feature such a problem (though a problem, with the right account of well-being, that can be overcome; see Chapter Two). Even if *sometimes* the achievements of the better-off could outweigh the worse-off, one need only multiply the number of worse-off achieving only a small morsel of food. Alternatively, one need only make those who receive a small morsel *much worse-off*. Given that the value of benefits for the worse-off is worth more, one would need only to stipulate that those people who are worse-off and cannot even achieve “enough” are *extremely* poorly off. Eventually, no matter what weighting is set, the achievement of a small morsel will outweigh the achievement of “enough”. But, at least *prima facie*, this sounds implausible.

However, there is an additional problem with prioritarianism. I have so far been

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<sup>6</sup> Richard Arneson, “Perfectionism and Politics” in *Ethics* 111 (2000), 58.

<sup>7</sup> The most famous form of *leximin* prioritarianism (though he doesn’t label it as an account of the good) is John Rawls’s “difference principle.” See *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

concentrating on crisis cases: cases in which there are several who are below the level of “enough” and choices must be made with regard to whom to bring to that level - if any. But there are surely intuitions with regard to non-crisis cases. Assume a relatively weak account of prioritarianism. In certain cases, people who are *above* the level of “enough” - in other words, people who have *more* than “enough” - will take priority over other persons who could achieve “enough”. Assume that morsels of food are beneficial. If *many* people could be granted small beneficial morsels of food, even though they already possess “enough”, this could, in principle, outweigh the achievement of “enough” for someone who does not already possess it. This strikes me as immediately implausible. Though I do not wish to commit myself to any *particular* evaluative weighting of “enough” until later chapters, I merely note this intuition: it seems as though, at least in the case of food distribution, “enough” ought to take strong priority over the beneficial morsels for those who have “enough”, even more than “enough” - perhaps a stronger priority than weak prioritarianism can license.

The problems with egalitarianism and prioritarianism (in both strong and weak versions) are instructive. Food must be distributed with an eye to the achievement of “enough,” rather than, say, the greatest total food achievement or the number of persons who could be benefited perhaps a small amount. But “enough” must be linked to some *other* notion of value. Without some governing notion of value, such as a life of minimal decency, or survival, or whatever, determining what “enough” food is is impossible. “Enough” food must be enough to give you something else of value such that that amount of food reasonably constitutes *enough*, rather than almost enough, or more than enough. Thus the distribution of food is linked to some basic notion of value: whether it is basic human subsistence, some notion of a minimally adequate life, etc.

But food is not the only resource that can affect whether or not someone lives a life, say, of minimal adequacy. If “enough” food is determined by a minimally adequate life, surely *any* resource that can affect whether or not someone lives a minimally adequate life

should also be controlled by the value of minimal adequacy - or whatever “enough” is linked to. Otherwise food looks as though it has some idiosyncratic axiological structure. But why should we believe this? There is nothing evaluatively special about food such that *it* is governed by the notion of a minimally adequate life and nothing else is. Rather, it is more plausible to believe the intuitions about food generalize. It seems as though *everything* that can affect a minimally adequate life should be governed by it. And if so, it looks as though the responsibility for the intuitive judgments issued earlier is not food, *per se*, but rather the achievement of a minimally adequate life. Distributing resources (whatever they are) in such a way as to maximize the achievement of minimally adequate lives is better. Distributing those resources to people who might be benefited, but could not achieve minimal adequacy, is a waste of resources in precisely the way that exchanging “enough” for an array of small benefits is a waste of resources. In crisis cases, rather than evaluating states of affairs based on how well-off the benefited persons are, we need a “line in the sand,” so to speak. We need a welfare level that is itself crucial to achieve, and is heavily weighted.

This thought is suggested by a wide range of political theorists. Ronald Dworkin, for instance, writes that “it is important, from an objective point of view, that human lives be successful rather than wasted, and this is equally important, from that objective point of view, for each human life.”<sup>8</sup> A reasonable gloss on Dworkin’s intuition, it seems to me, is that there is some notion of a wasted life for a person and that this notion of a wasted life should be a target - of political distribution in Dworkin’s case. If disaster strikes and we must make decisions about to whom to grant a non-wasted life, surely it is better - other things being equal - to grant non-wasted lives to more rather than fewer people. Failing to do so runs afoul of the manifest importance of a non-wasted life.

Of course, though this intuition is, it seems to me, robust and sensible, it is nearly empty. In order to determine a fundamental aspect of the evaluation of states of affairs, at

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<sup>8</sup> Ronald Dworkin, *Sovereign Virtue* (Cambridge, MA: Harvard University Press, 2000), 5.

least in the political context, we must know what it means to have “enough” - or what it means to live something like a minimally adequate human life such that that minimally adequate life would be enough to outweigh competing distributions, especially to the least well-off. We need an account of some minimally decent human life such that it would be worse, or at least worse in most cases, for people to fall below such a standard. In other words, we need a *basic minimum*.

### 1.2. *The Basic Minimum as Subsistence*

There are a number of different accounts of the basic minimum. One prominent and plausible option is that “enough” should be characterized as basic human subsistence. A state of affairs is worse, this suggestion goes, when there are more rather than fewer people failing to subsist. This axiological suggestion is meant to be merely schematic: it is possible that whatever the basic minimum is, it is not lexically weighted. But nevertheless, on this view, there should be at least a strong presumption that the achievement of human subsistence makes a state of affairs better.

Subsistence *qua* basic minimum is argued for by, among others, Henry Shue. Shue argues that subsistence ought to be characterized as a basic right of persons. However, his reasons for believing that subsistence should be a basic right are also reasons for believing that its achievement should be heavily weighted in the best theory of value:

Why, then, according to the argument so far, are security and subsistence basic rights? Each is essential to a normal healthy life. Because the actual deprivation of either can be so very serious - potentially incapacitating, crippling, or fatal - even threatened deprivation of either can be a powerful weapon against anyone whose security and subsistence is not in fact socially guaranteed. People who cannot provide for their own security and subsistence and who lack social guarantees for both are very weak, possibly helpless, against any individual or institution in a position to deprive them of anything else they value by means of threatening their security or subsistence. A fundamental purpose of acknowledging any basic rights at all is to prevent, or to eliminate, insofar as possible the degree of vulnerability that leaves people at the mercy of others. Social guarantees of security and subsistence would go a long way toward accomplishing this purpose.<sup>9</sup>

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<sup>9</sup> Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, NJ: Princeton University Press, 1981), 29-30.

Shue argues for a social guarantee, by noting the extreme cost to individuals of the failure of subsistence, in particular, their resultant vulnerability. This is certainly a plausible reason for believing that subsistence should form a plausible approximation of a minimally adequate human life, or the target “enough”. Someone who possesses subsistence can stand up for themselves in living a normal healthy life. Subsistence, as Shue understands it, is thus extremely valuable for individuals.

But a question arises. “Human subsistence” sounds like a concept that itself stands in need of a theory. Defining a minimally adequate human life, or a basic minimum, in terms of human subsistence threatens emptiness without an account of what subsistence *is*. Shue’s account, however, leaves something to be desired.

By...subsistence, I mean unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and minimal preventive public health care. Many complications about exactly how to specify the boundaries of what is necessary for subsistence would be interesting to explore. But the basic idea is to have available for consumption what is needed for a decent chance at a reasonably healthy and active life of more or less normal length, barring tragic interventions. This central idea is clear enough to work with, even though disputes can occur over exactly where to draw its outer boundaries. A right to subsistence would not mean, at one extreme, that every baby born with a need for open-heart surgery has a right to have it, but it also would not count as adequate food a diet that produces a life expectancy of 35 years of fever-laden, parasite-ridden listlessness.<sup>10</sup>

There are several problems with this account, some noted by Shue himself. First, a minor point. It is unclear why Shue writes that a right to subsistence would not mean that every child born with a need for open-heart surgery should get it. After all, if subsistence is to mean *anything* it should at the very least mean a chance at a life of at least reasonably long length. If a child stands in need of open-heart surgery, that child fails to subsist. Shue’s point here, presumably, concerns the structure of the right in question: though you may not actually subsist, your right to subsistence can be satisfied even if you are not granted open heart surgery. (Shue believes that “standard threats” are those that are protected by rights; presumably the need for open-heart surgery is not a “standard threat”.) But it is unclear why,

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<sup>10</sup> Shue, 23.

then, the need for open heart surgery is not recognized as a requirement - as it surely is in some cases - for *subsistence*.

This is a minor point, however. The major point is that on Shue's own account, subsistence is indeterminate, and threatens circularity if treated as an account of the basic minimum. Recall that Shue writes that subsistence amounts to "adequate" food, "adequate" clothing, etc. But *how much is adequate?* If we are wondering how to specify the relevant distributive target for things like food distribution, i.e., if we are wondering what constitutes for any given individual enough food, it is unsatisfying to be told that enough food amounts to "adequate" food.

I do not mean to criticize Shue, for his purposes are not mine. Nevertheless, my suspicions about the notion of subsistence are confirmed by Shue's own account. Subsistence is a concept in need of a theory. Of course, subsistence is a term with clear evaluative resonance and is a natural answer to the question of the sufficient level of certain resources. The thought that the achievement of subsistent lives for citizens makes a state of affairs better is a strong, straightforward, and plausible intuition. Nevertheless, in order to provide an account of the basic minimum, we must look elsewhere. But I should note one way in which Shue's intuitions with regard to subsistence ought to be taken seriously. Shue underscores the importance of avoiding vulnerability, or the susceptibility of one's life being controlled by others, or forces external. It seems to me that Shue's intuition is on the money - my account of the basic minimum offered in the following chapter will seek to capture this intuition.

### *1.3. The Basic Minimum as Relative*

Though subsistence stands in need of a theory, subsistence applies in the same way to all individuals - if subsistence includes a basket of fruit, that basket of fruit will be required for the subsistence of all. But perhaps the basic minimum is not that way. Perhaps "enough" is not indexed to some universal notion of a minimally adequate life, but is rather relative to the society in which one lives. This might be intuitively motivated in the following way. Assume

that for some societies, the level of minimal adequacy is rather low-level - the avoidance of 35 years of parasite-ridden listlessness, for example. It might seem that this is appropriate in societies in which citizens don't reasonably expect a level of welfare that is radically higher. In other words, in societies that are generally poor in which the standard expectations of any given individual are not radically different than *mere* avoidance of parasite-ridden listlessness, perhaps it is plausible that *this* ought to be a basic minimum. In other words, for someone who achieved that basic minimum, they could not complain that they were somehow left behind: the basic minimum is indexed to their most basic life expectations.

But there is a contrast between poor and rich societies in this case. For instance, it might be thought radically inappropriate to insist *merely* on the avoidance of 35 years of parasite-ridden listlessness when the resources available in a society entail that individual citizens' general expectations for their lives are much higher. In an incredibly rich society, for example, merely avoiding such listlessness might be radically bad - "enough" might be indexed not to some universal characteristic of persons (i.e., subsistence), but rather to some set of general societal expectations given various factors, including available resources, cultural expectations, etc.

There are two theories of this type worth considering here. Though they both discuss the proper definition of "poverty", which is not my topic here, the considerations they offer in favor of a relativist definition of poverty might be thought to apply also to the proper account of the basic minimum. The argument for relativism takes a cue from an understanding of human needs. Roughly, because the basic minimum really is a *basic* minimum, it's going to make reference in some sense or other to a conception of what people *need* - to survive, or to achieve some sort of basic status, or to live a life of their choosing, or whatever. Surely, if there is some conception of the basic minimum, it is, in some way or other, going to be tied to the truly basic needs of humans, in some sense or other. But Peter Townsend has challenged the idea that any needs-based criterion could be applied universally. Townsend:

Poverty can be defined objectively and applied consistently only in terms of the concept of relative deprivation... Individuals, families and groups in the population can be said to be in poverty when they lack the resources to obtain the types of diet, participate in the activities and have the living conditions and amenities which are customary, or are at least widely encouraged or approved, in the societies to which they belong. Their resources are so seriously below those commanded by the average individual or family that they are, in effect, excluded from ordinary living patterns, customs and activities.<sup>11</sup>

Further, in order to determine whether any particular person is impoverished,

[a] lot will depend on local variations in social integration, association and exchange as well as local variations in prices, especially costs of housing, in relation to facilities gained, including vocational facilities. But in any society and not only British society, the level of resources available to the local community, the family and the individual (note that I do not refer just to the individual) seems in the end to govern whether or not individuals within that community can satisfy social obligations, expectations and customs and hence need.<sup>12</sup>

Such an understanding of poverty is clearly rooted to the social facts in place for a given agent or community. Whether one is poor depends, according to Townsend, on the sort of expectations that any member of (that) society must fulfill given the standards set by the social structure or custom.

Townsend's conclusion here depends in large measure on his remarkable confidence that *needs* vary according to social structure. "For as members of society (and hence of a network of sub-groups) people have needs which can only be defined by virtue of the obligations, associations and customs of such membership."<sup>13</sup> The basic minimum, assuming - quite naturally, I think - that it is tied in some way to basic needs, must be dependent upon the structure of needs in any given society. Therefore whether someone is poor given their standard of living will depend on whether that level is sufficient for the satisfaction of needs as defined by that society.

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<sup>11</sup> Peter Townsend, *Poverty in the United Kingdom* (Los Angeles: University of California Press, 1979), 31.

<sup>12</sup> Peter Townsend, "A Sociological Approach to the Measurement of Poverty - A Rejoinder to Professor Amartya Sen" in *Oxford Economic Papers* 37 (1985), 661-2.

<sup>13</sup> Townsend, "A Sociological Approach to the Measurement of Poverty," 662.



Notice, however, that not all relativity to social circumstance entails that poverty must be specified in a way that is thoroughgoingly relativist. This thought is captured by Amartya Sen: included in his list of capabilities that constitute a life lived without poverty is the absolute ability to live a social life without shame. Sen writes:

The temptation to think of poverty as being altogether relative arises partly from the fact that the *absolute* satisfaction of some of the needs might depend on a person's *relative* position vis-à-vis others...The point was very well caught by Adam Smith when he was discussing the concept of necessities in *The Wealth of Nations*:

By necessities I understand not only the commodities which are indispensably necessary for the support of life, but what ever the custom of the country renders it indecent for creditable people, even the lowest order, to be without...Custom...has rendered leather shoes a necessary of life in England. The poorest creditable person of either sex would be ashamed to appear in public without them.

In this view to be able to avoid shame, an eighteenth century Englishman has to have leather shoes. It may be true that this situation has come to pass precisely because the typical members of that a community happen to possess leather shoes, but the person in question needs leather shoes not so much to be *less ashamed* than others - that relative question is not even posed by Adam Smith - but simply not to be ashamed, which as an achievement is an absolute one.<sup>14</sup>

To be sure, Sen's notion is more absolutist than Townsend's. (Townsend's view is the "altogether relative" one - the target of Sen's criticism.) Sen believes that there is an absolute need - the avoidance of shame, or social stigma, or whatever - that applies to all persons. Of course, the avoidance of social stigma is going to require different things in different places. Call Sen's criterion "quasi-relative". There are two claims made in Sen's account of poverty above, one of which is surely correct, the other not so. Sen claims that certain absolute achievements or capabilities, such as the ability to walk in public without shame, contain relativistic elements, i.e., walking without shame means something different from place to place. This is surely correct. The material conditions of absolute achievements are surely variable from place to place and from context to context. To be adequately nourished might require less in the Caribbean than it does in Tierra del Fuego. However, Sen's suggestion that

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<sup>14</sup> Sen, "Poor, Relatively Speaking" in *Oxford Economics Papers* 35 (1983), 159. The Smith quote is taken from *An Inquiry into the Nature and Causes of the Wealth of Nations* (London: Home University Library, 1776), 351-2.

to walk in public without shame is a crucial aspect of poverty avoidance is surely incorrect. The reason applies both to the theories of Sen and Townsend.

Surely it is the case that there are some welfare states that correspond to, say, avoiding shame or fulfilling societal expectations. In fact, it is surely a nontrivial achievement to avoid social stigma, or to maintain the particular welfare state of “shame avoidance.” However, to understand whether the basic minimum must be relative, we must determine whether the social needs to which Townsend and Sen appeal are properly thought important to a proper understanding of *the basic minimum*. Though, one might think, a life lived in shame as a result of certain social expectations is impoverished relative to a life that is not similarly shamed, this concept is not essential to an analysis of the minimum. First, that whether one can appear “without shame” is clearly relative to social circumstance causes problems at a *macro* level: the possibility is left open that a country could be *riddled* with failures of the minimum, assuming high enough social standards, even though this country might have a reasonable provision for all its citizens, its citizens might possess reasonable life-spans, nutrition, health outcomes, etc. Townsend explicitly accepts this conclusion: “research studies might find more poverty, according to [my] definition, in certain wealthy than in certain less wealthy societies, although the poor in the former might be better off, according to some criteria, than the poor in the latter.”<sup>15</sup> More than this, the poor in the wealthy society might be better off than the *wealthy* in the poor society.

This implication of a relativist basic minimum is certainly unintuitive, but perhaps this intuition can be laid aside. The more important consideration here relies upon the logic of the basic minimum discussed earlier. The basic minimum is the proper account of “enough” - enough food, enough clothing, enough shelter, etc. But recall the importance of “enough”. At least in the case of food, getting “enough” is very heavily weighted against not getting “enough”. Though a small morsel of food is, perhaps, good for someone who cannot get

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<sup>15</sup> Townsend, *Poverty in the United Kingdom*, 31.

“enough”, the getting of “enough” is surely worth a *significant* number of small morsels. Thus whatever the basic minimum is, it must support the judgment that benefits below the minimum are weakly weighted, if weighted at all, against the basic minimum. But surely it is not the case that all achievements of social needs discussed here trump welfare achievements *below* such social needs. It seems clear that, given the possibility suggested above (i.e., that a particularly opulent society might have a very high standard of stigma-avoidance), the avoidance of social stigma cannot be so heavily weighted against achievements below. Surely it is reasonable to trade-off one’s avoidance of stigma for, say, decent health outcomes or basic nutrition. Thus there appear to be relevant questions of tradeoffs between the social needs that Townsend and Sen insist upon and welfare levels below. This disqualifies many of the needs insisted upon by Townsend and Sen (specifically, those that are relative to social circumstance). It is implausible to think of a specific social need that doesn’t also qualify as a basic human need that trumps the human needs below the achievement of that social need.

Thus the problem with relativism (and with Sen’s proposal that to walk in public without shame is important in avoidance of poverty) is not relativity *per se*, but rather when one insists on needs that are relative to social circumstance as part of the basic minimum, one is committed to problematic implications when it comes to needs that are *not* relative to social circumstance. The problem with relativity is not an ontological problem - surely such needs exist, in some form or other. Rather, it is an axiological problem. These needs aren’t worth what Townsend and Sen think they are.

Of course, a natural response might be that *nothing* is non-negotiable in the way I require the basic minimum to be, least of all something that might be universal. Townsend, for example, stresses (in his defense of the socially-relative poverty line) the lack of acceptable alternatives. I hope to offer an acceptable alternative, though this must wait until the following chapter.

#### *1.4. Nussbaum’s Capabilities Approach*

Perhaps the most important account of the basic minimum is Martha Nussbaum's capabilities approach. Her view is simple, plausible, and intuitive. Her account of "enough" - ten basic human capabilities - is allied with a universally applicable account of human dignity. In this way, Nussbaum's view is able to accommodate one of the intuitions that began this chapter. Resources, including food, medical care, etc., need to be indexed to some account of "enough". Nussbaum's view suggests that "enough" is determined by the content of her list of basic human capabilities.

Before I go on I should note that Nussbaum's view is composed not only of axiological elements - her account of the basic social minimum - but also normative elements (including the inviolability of persons). It is worthwhile to consider all aspects of Nussbaum's view here. In discovering problems with her normative elements, we will uncover judgments that any account of the axiological structure of the basic minimum - in both its intrapersonal and interpersonal dimensions - must respect.

#### 1.4.1. THE BASIC CAPABILITIES

According to Martha Nussbaum's "human capabilities approach", there are ten basic human capabilities, the achievement of each (or, more specifically, a threshold level of each) is required for a life worthy of human dignity. Nussbaum has articulated many different versions of the list, which she maintains is a work in progress. As of the time of this writing, the latest version is as follows (the parentheticals are paraphrased from Nussbaum's own descriptions):

1. Life (of normal length).
2. Bodily Health (adequate nourishment, shelter).
3. Bodily Integrity (freedom of movement, sexual satisfaction, and the like; freedom from assault).
4. Senses, Imagination, and Thought (literacy, education, religious exercise).
5. Emotions (emotional attachment and development not blighted by fear or anxiety).
6. Practical Reason (ability to form a conception of the good, engage in critical reflection).
7. Affiliation
  - A. Being able to "live with and toward others".
  - B. Having the social bases of self-respect.
8. Other Species (ability to live in a relationship with nature).

9. Play (“Being able to laugh, to play, to enjoy recreational activities.”)
10. Control over One’s Environment
  - A. Political participation.
  - B. Property and land rights.<sup>16</sup>

Further questions can be asked of any member of this list (which Nussbaum fully admits).

But the intuitive idea behind each facet is clear enough. In order to fulfill the basic minimum we are to have at least a threshold level of each basic capability. We do not need to have maximal ability to, for instance, exercise our capacity for imagination - but we need to be able to do so to at least some basic degree, commensurate with a fully human life. In addition, Nussbaum believes that the obligation to provide for the basic capabilities is an obligation of all governments, not simply of governments with reasonably abundant resources from which to draw.<sup>17</sup>

Nussbaum’s view is admittedly tentative, and open to revision based on circumstances, as it were, “on the ground”. Nevertheless, she does insist on five crucial elements. The first element, *Expansive List*, is clear from the content of the ten basic capabilities. Nussbaum does not merely suggest that some baseline of life and freedom from slavery are required for the achievement of a basic minimum. She provides additional elements that she believes are essential to basic human dignity, and that are firmly rooted in a “global overlapping consensus”, i.e., that are universal values found in every cultural tradition. Not simply life and bodily integrity, but also political participation, recreation, affiliation with other species and the world of nature, etc., are included in the list of basic requirements. The second element, *Capabilities Not Welfare*, is also clear: Nussbaum does not believe that in order to satisfy the basic minimum one must actually *possess* these given welfare states (i.e., imagination, sexual fulfillment, and the like). Rather, it is enough that one has the threshold *capability* to do so. This is clearly intuitive in the case of sexual fulfillment. The state should

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<sup>16</sup> Adapted from Martha Nussbaum, *Frontiers of Justice* (Cambridge, MA: Harvard University Press, 2006), 76-78. Hereafter: *FJ*.

<sup>17</sup> *FJ*, 401-2.

not be in the business of guaranteeing that everyone has had some threshold level of sexual satisfaction (including those who wish to remain celibate). In addition, however, Nussbaum believes that this is also crucial for more basic elements of the list, such as life and bodily health. Those who wish to fast for political or religious purposes should be able to give up being adequately nourished if they so choose.

*Expansive List* and *Capabilities Not Welfare* are features of the list of basic capabilities itself - of Nussbaum's account of "enough". But there are three other features of Nussbaum's understanding of the basic minimum, as concerns the associated governmental obligation. The third crucial element is *Guarantee*. According to Nussbaum, it is a requirement of justice that everyone have a crucial threshold level of basic capabilities. Nussbaum writes: "[I]n some form all are held to be part of a minimum account of social justice: a society that does not guarantee these to all its citizens, at some appropriate threshold level, falls short of being a fully just society, whatever its level of opulence."<sup>18</sup> Notice that Nussbaum does not suggest that it fails to be the *best* society, or fails to be an *ideal* society. Rather, such a society is *unjust*. Somewhere along the line, if the ten basic capabilities are not granted to every citizen, the political society has failed its obligations of social justice. This is true even in extreme cases. "In desperate circumstances, it may not be possible for a nation to secure them all up to the threshold level, but then it becomes a purely practical question what to do next, not a question of justice. The question of justice is already answered: justice has not been fully done here."<sup>19</sup>

The fourth element is *No Trade-offs*. The threshold level of each capability is a discrete requirement. It is unjust to trade off one element of the list for gains to another element. It would be unjust, according to Nussbaum, to refuse to grant the opportunity for play, but make this up in a greater ability to form friendships, or to participate politically.

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<sup>18</sup> *FJ*, 75.

<sup>19</sup> *FJ*, 175.

“What the theory says is: *all ten of these plural and diverse ends are minimum requirements of justice*, at least up to the threshold level. In other words, the theory does *not* countenance intuitionistic balancing or trade-offs among them.”<sup>20</sup> Again, “This account entails that the capabilities are radically nonfungible: lacks in one area cannot be made up simply by giving people a larger amount of another capability.”<sup>21</sup> *No Trade-offs* has both an intrapersonal and interpersonal feature: capabilities cannot be traded *within* a given individual, nor *across* individuals (i.e., not providing for one person’s voting rights for the heightened opportunity for play for another).

A further element, which is not explicitly stated in Nussbaum, but is instead related to *Guarantee* is *Inviolability*. Because “each and every person has an infeasible entitlement to come up above a threshold on certain key goods,”<sup>22</sup> it would be unjust to remove one person’s possession of the basic minimum in favor of others, possibly many others. Given that it is unjust for *anyone* not to have them, it would surely be unjust to create such a state of affairs by moving someone below the basic minimum. Though this is implied by *Guarantee*, the reverse does not hold. One could accept *Inviolability* and reject *Guarantee*. Thus it is worth our while to consider it as a separate element of Nussbaum’s view, though it is not explicitly stated.<sup>23</sup>

Though some of these principles cover some of the same territory, Nussbaum’s view is roughly captured by these five elements. Her view is clear, powerful, and intuitive. She suggests, which I have every reason to believe, that it could be accepted as part of a global overlapping consensus. In addition, though Nussbaum’s view is a view of justice, or what

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<sup>20</sup> *FJ*, 175.

<sup>21</sup> *FJ*, 166-7.

<sup>22</sup> *FJ*, 342.

<sup>23</sup> It is likely that Nussbaum believes that the cases in which *Guarantee* would come apart from *Inviolability* are moot: simply circumstances of injustice. I hope to show this assumption is misguided. Nussbaum does mention the importance of the “inviolability of persons,” on p. 342 of *FJ*, but means something slightly different in this context.

people must be granted by social institutions, the intuitions that she elicits for each element are just as powerful in the evaluative domain. For instance, if the ten basic capabilities are truly a basic minimum, one might think that *No Trade-offs* is a plausible principle of betterness: it is better *not* to trade-off rather than *to* trade-off. Stated clearly, however, each element looks suspect. Furthermore, when considered together, they cannot be salvaged as part of a theory of the basic minimum. (I will discuss *Guarantee*, *Inviolability*, *Expansive List*, and *No Trade-offs* by themselves in §1.4.2, combined in §1.4.3. I will save *Capabilities Not Welfare* until §1.4.4.)

#### 1.4.2. PROBLEMS WITH INDIVIDUAL ELEMENTS

First, consider *Guarantee*. *Guarantee* reflects, more or less, the intuition that began this chapter. Whatever the basic minimum is, it should have extremely heavy weight, if not lexical weight. Though Nussbaum's *Guarantee* is a principle of justice, rather than a principle of evaluation, the intuition is roughly the same. Any basic minimum, whether normative or evaluative, should insist on *some* form of *Guarantee*. The devil is in the details. Nussbaum's *Guarantee* as stated is an implausible principle - taken literally, no just society could ever exist. *Guarantee*, recall, states that it is a steadfast right of every individual to possess the basic capabilities. Any failure in their possession is a failure of justice. But taken literally, this cannot be what Nussbaum means. For *any* society will have persons who, for one reason or another, cannot maintain even the most basic of the basic capabilities. Any society will have people with adolescent cancers, say, who have no capability to live a life of normal length. But this is not a failure of justice. Sometimes the battle to get some to the basic minimum is simply beyond political agency - and insofar as justice is ascribed to political decisions and the actions and intentions of political actors, it is simply a mistake to say that these cases are failures of justice. No political agency was involved.

Nussbaum suggests an alternative line. Given that many people will have mental and physical disabilities, Nussbaum suggests, it is enough that they have the "social conditions" of



the basic capabilities. Society cannot guarantee that all persons actually have the capability to live a life of reasonable length, but it can guarantee that no one has their life interfered with and that when society *can* do something to bring the capabilities closer to fruition for these persons, it is done. This implies a counterfactual test: when someone fails the ten basic capabilities, we ask if they *would* have obtained them if some natural impairment would not have intervened. If the answer is yes, this is not a failure of justice.<sup>24</sup>

But the division of failures of the basic capabilities into natural and social impairments is complicated. According to Nussbaum, there are roughly two types of capability failure. The first type involves conditions of certain *individuals* that make them unable to fulfill some bundle of central capabilities (like, for instance, some severely mentally disabled people) that social engineering could not correct. (This last clause is important: anytime someone could be granted the basic capabilities they should be - even if this means correcting certain natural impairments, such as physical or mental illness.) Call these “natural failures”. “Social failures” are failures that do not involve such conditions of particular individuals. Thus, on Nussbaum’s understanding, *Guarantee* yields two paths to injustice. In the first case, if a failure of the basic minimum obtains without an associated natural impairment, this is a failure of justice. However, in cases where citizens fail the basic minimum in ways that do not involve political agency, i.e., natural failures, we ask: “[h]as the public political arrangement in which she lives extended to her the *social basis of* all the capabilities on the list,”<sup>25</sup> to the extent that if she were not suffering from natural failure, she would obtain the ten basic capabilities? If the answer is no, the society is to that extent unjust.

Nussbaum’s division may be adequate for those who are suffering from severe illness. But given Nussbaum’s specification of natural and social failures, *Guarantee* is an unsuitable requirement on political justice. Assume that in some flood, the farms of ten people are

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<sup>24</sup> *FJ*, 193-4.

<sup>25</sup> *FJ*, 193.

destroyed, leaving them unable to be adequately nourished. The society's only option is to raid the pantry of X, which will feed the rest, but leave X to starve. In this case, assuming that these are the only two options, there is *no option available* consistent with justice. Political society is unjust no matter what it decides to do. This sounds like a failure of justice of the first type: there are persons in either case that will fail the basic minimum and there are no *natural* impairments involved. However, even if Nussbaum wishes to characterize this example as a natural failure, it *remains* unjust: the social conditions *for* the capabilities are not in place (i.e., there is no food, no resources, etc.). But why, we may ask, should such a flood turn a just society into an unjust one? It seems that on Nussbaum's view, no matter what it decides, this society is unjust. But something has gone wrong here. This conclusion turns a single tragedy, that of a flood and associated deaths, into a double tragedy: not just a flood, but a subsequent guaranteed failure of justice. Such a radical rejection of "ought implies can" is too much to ask any political society to bear. We should reject this conclusion.

Nussbaum's *Guarantee* is implausible and should be rejected as an account of justice. But its failure is also instructive for an account of axiology. The reason *Guarantee* cannot work as a principle of distribution involves her declaration that when some agent fails to obtain the basic minimum, this is a failure of justice. This implication should, as I suggested above, be rejected. But an account of political axiology, rather than an account of justice, has an easy answer. The question of justice simply doesn't come up. An account of the good can merely say that the achievement of the basic minimum is always better. Rather than a normative *Guarantee*, we adopt a weaker, axiological version: it is always better to maximize the achievement of the basic minimum. This captures the same intuition that helped to motivate Nussbaum's *Guarantee*, without the problematic normative commitments of Nussbaum's version (even if, on a purely normative playing field, we should reject her account of *Guarantee*).

The important axiological conclusions are buttressed by the resulting normative

superiority of an act-consequentialist interpretation of the right, taking seriously the axiological points raised above. Such a theory would suggest that in cases in which not all can be brought to the level of the basic minimum, the most possible should be - doing so is necessary and sufficient for justice. If the problem with Nussbaum's view is that it doesn't allow a society to be just if and when it is in the midst of tragic circumstances, an act-consequentialist version of the axiological conclusion brought forth here does. This, it seems to me, should be good reason for accepting this conclusion.

Nussbaum's strong specification of *Guarantee* fails. Nevertheless, we could reject *Guarantee* and keep its close cousin, *Inviolability*. Should we? *Inviolability* states that no person will be dispossessed of a basic minimum. As regards our possession of the basic minimum, we are inviolable. This is a generally intuitive requirement, but unfortunately its applicability is stretched in certain cases.

Reconsider the flood. In this case (leaving aside *Guarantee*), Nussbaum's view would suggest that X's crop cannot be redistributed. But is this the correct decision? I think the answer is no. Assume that the reason X survived had nothing to do with some special preparations on the part of X, nor special negligence on the part of the others. Assume the flooding happened merely based on whose farms were rained upon. X's farm could just have easily been flooded. In this case, I think there is very little reason for believing that X's possession of sufficient food should be treated as inviolable. The fact that he is able to feed himself is pure accident. Why not, when the survival of many is up for grabs, redistribute resources to benefit the most possible? If this were a case of some special negligence on the part of the others, we might reconsider. But in this case it would surely have been better if only X's farm was rained upon. I think it is intuitive to say, then, that if political society can make it *as if* only X's farm was rained upon, it is licensed in this case to do so.

This is a normative conclusion and might be disputed. Perhaps this sounds a bit too much like the dreaded "Transplant" case - in which we must cut up one healthy individual and

redistribute his organs to save ten. I don't wish to wade into this debate here except to say that if it is plausible to redistribute X's resources to the others, simply because cosmic circumstances struck down the many but not the one, perhaps there is some reason to rethink - *other things being equal* - the Transplant case. In my view, the power of human agency to alter that happenstance for the better is a power that ought to be cherished, revered, and used. But leaving this conclusion aside, however, it would clearly have been *better* were X's farm to have been rained on. This conclusion seems to be indisputable. If so, perhaps there is some intuitive reason for rejecting one corollary of Nussbaum's basic capabilities approach, *Inviolability*, not only from the perspective of a theory of justice, but also from an account of the good.

Next up is *Expansive List*. Any theory of the basic minimum must imply, or at least be informed by, an account of a minimally decent human life, as is Nussbaum's view. On her understanding, the ten basic capabilities constitute a life of basic dignity. Given this, there are a number of choices we could make concerning what should be included on the list. However, there is a crucial distinction between what we think is required for a life of even the most basic human dignity and what we think is required for a life of the most basic human dignity *and then some*. In other words, we can admit that all or many of Nussbaum's ten basic capabilities are worthwhile and good for their bearers. A state of affairs in which people possessed more capabilities might in fact be a much better world than a world in which everyone possessed fewer. To disagree with *Expansive List*, one needn't deny this. All one need deny is that the ten basic capabilities should form the *basic minimum*, rather than part of a more developed account of the good life. Indeed, Nussbaum's own methodological process is neutral between these two interpretations of the value of the basic capabilities. It is quite plausible that these capabilities are valued universally, across cultures, as part of a global overlapping consensus. But this does not settle the question of which capabilities should be part of the basic *minimum* - construed by Nussbaum as a life of basic human dignity.

Though I will not present my alternative account until the next chapter, I wish to note a slight tension in Nussbaum's understanding of basic human dignity and her account of the basic capabilities. She notes that "certain functions are particularly central in human life, in the sense that their presence or absence is typically understood to be a mark of the presence or absence of human life."<sup>26</sup> But consider the capabilities that fall under number 10 on the capabilities list, i.e., political participation and property and land use rights. It is difficult to see how these are essential to marking the presence or absence of a truly human life, or a life that is not worthwhile *as* a human life. Certainly it is more expansive than a more parsimonious account of a non-worthy human life inspired by John Stuart Mill in *On Liberty*:

He who lets the world, or his own portion of it, choose his plan of life for him has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself employs all his faculties. He must use observation to see, reasoning and judgment to foresee, activity to gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold to his deliberate decision. And these qualities he requires and exercises exactly in proportion as the part of his conduct which he determines according to his own judgment and feelings is a large one. It is possible that he might be guided in some good path, and kept out of harm's way, without any of these things. But what will be his comparative worth as a human being?<sup>27</sup>

Though Mill is making a claim of necessity, rather than of sufficiency, why not accept a claim inspired by Mill, viz., that a truly human life is one that need only minimally engage human capacities and live according to some life plan or other? This would require neither political participation or land use rights - though perhaps good, these would be unnecessary for such an account of the basic minimum. Indeed, Mill's rejection of refusing to choose one's life plan appeals to values that might be thought to constitute an account of human dignity - an avoidance of beastliness, the engagement of faculties that are distinctly and clearly human, the ability to conform one's life to a conception of value. It is unclear that a life that is comprised

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<sup>26</sup> Nussbaum, *Women and Human Development: The Capabilities Approach* (Oxford: Oxford University Press, 2000), 71-2. Hereafter: *WHD*.

<sup>27</sup> J. S. Mill, *On Liberty*, III, 4.

of human dignity need require private property or the capacity to participate politically. Thus, as a matter of pure intuition, I believe Mill's account is more plausible. (Indeed, my positive account will bear a striking resemblance.)

Now consider *No Trade-offs*. Nussbaum steadfastly denies that any elements of the list can legitimately be traded off against other elements. This applies not only intrapersonally, i.e., a single person could not legitimately trade-off their capacity for practical reason, say, for more bodily integrity, but also interpersonally, i.e., we could not trade-off one person's political participation for the enhanced opportunities of others. This applies only when the threshold level of each capability is in play, however. Nussbaum supports trade-offs *above* the threshold (i.e., when threshold levels of each is guaranteed).<sup>28</sup>

Concentrate on the intrapersonal case. It does not seem simply *obvious* to me that a capability like political participation could not be reasonably traded off against gains in other areas, at least for a single person, whether we are interested in justice *or* the good (or both). Consider two choices: the first choice would allow someone to develop the capacities and capabilities of Leonardo da Vinci, but with no opportunity for political participation. The second alternative would allow a threshold of each basic capability but just *barely* above the threshold level. It is not simply obvious that the second alternative should be chosen, or is somehow closer to a life of basic human dignity, especially if the da Vinci life is one the agent values more than the alternative. Even if we do not think that the right choice would be to forego political participation in favor of a da Vinci-like life, surely it is not simply *obvious* - it is not clear that these capabilities, in Nussbaum's terminology, should be radically nonfungible. Political participation seems to be (at least in most cases) a *good thing*, but perhaps not of the same weight as one's ability to reason in practical and theoretical ways, or to live a life one values living. I submit that it would not be implausible to choose against political participation in this case, and in favor of a life the agent finds valuable.

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<sup>28</sup> *WHD*, 211.

The interpersonal version of *No Trade-offs* is also problematic. Imagine a case in which A has only the bare human subsistence, but could get a significant range of the central capabilities (i.e., everything but number 10); to do this, one would have to redistribute from B, who has all ten, but would end up also lacking number 10. It seems plausible at first glance to redistribute, i.e., if we could get A who is *very* badly off everything but political participation, and this would cost only B's political participation, this seems not only like the sensible course of action to take, but also the course of action that would produce the better state of affairs. It is unclear, however, given the interpersonal clause of *No Trade-offs* that Nussbaum could fit this sensible strategy into her account.

Of course, whether *No Trade-offs* is a plausible principle with regard to the basic minimum will depend on the content of the ten basic capabilities. So far, I have assumed Nussbaum's list. But there are other ways of specifying the list, which might make *No Trade-offs* seem more plausible. For example, a list that consisted merely of life and bodily integrity might be able to hold on to *No Trade-offs* more plausibly than Nussbaum's list. So my suggestion here really runs afoul only of *No Trade-offs* in light of *Expansive List*.

#### 1.4.3. PROBLEMS WITH COMBINED ELEMENTS

In rejecting *Guarantee*, I suggested that there is a serious worry about Nussbaum's supposition that if a given individual *ever* fails the ten basic capabilities, this is a failure of justice. It turns single tragedies into double tragedies, in unwarranted ways. However, even if we concentrate on my axiological reinterpretation of *Guarantee* (by claiming that the achievement of a basic minimum is always better), we run into problems when combining *Expansive List* and *No Trade-offs*. An illustration runs as follows.

Assume that a society has the following tragic choice. A and B are both below the basic minimum, at the same level. Assume that they maintain the same range of basic capabilities, but fail some of the others - they maintain everything but the religious exercise clause of 4, and all of 10. Also assume the distribution scheme is such that in order to benefit

one, the other must be reduced *significantly*, i.e., they must be stripped of nearly every possible capability. We should ask, consistent with the ten basic capabilities *qua* basic minimum, what is the *best* thing to do? One could keep the status quo, or one could redistribute. If the ten basic capabilities are to be any kind of guarantee at all, the answer appears to be that the *best* thing to do would be to redistribute. Otherwise you have *two* people who fail the basic minimum rather than one. It seems clear in this case that if *Guarantee* is a plausible principle of betterness, it should rank the achievement of the basic minimum as better, at least in most cases.

But doing so would violate the interpersonal clause of *No Trade-offs*. It would involve trading the threshold level of almost all the capabilities for one person, for the achievement of the threshold level of all ten for another. So it would appear that the best thing to do in this case would be *not* to trade one person's capabilities for the other's, i.e., not to redistribute. But this would straightforwardly violate even the weakening of *Guarantee* (i.e., neither is to achieve the basic minimum). Which is it? In an account of the basic minimum, we cannot both keep *No Trade-offs* and *Guarantee*. But which should we keep? Should we follow *Guarantee* more closely than *No Trade-offs*? In this case, Nussbaum's theory can provide no practical guidance, whether it comes to her normative domain or our axiologic domain.

So if we want to keep *Guarantee*, we should weaken *No Trade-offs*. If we wish to keep *No Trade-offs*, we should weaken *Guarantee*. However, we *could* keep both if we revised *Expansive List*, so as to include only one crucial basic capability, or some minimal range of them. Recall the case at hand: *some* of the capabilities are achieved equally, but not all. If there is a smaller list in the way I describe, this possibility is ruled out. Thus these three elements are in tense conflict. Of *Guarantee*, *No Trade-offs*, and *Expansive List*, one must be jettisoned.

Leaving aside *No Trade-offs*, however, *Expansive List* looks particularly problematic



when viewed in light of *Guarantee*. Consider A and B. A is far below the basic minimum, with mere life and nutritional adequacy. B, however, possesses almost everything, except for the land use clause of number 10. Political society can either raise A to the level of B (i.e., by granting almost everything beyond land use rights), or it can grant B land-use rights. If Nussbaum's list really is to be a basic minimum (given *Guarantee*), it seems as though distributing to A would be better. But this is implausible. Land use rights, though perhaps important, are surely not of the same importance as the range of capabilities that could be granted to A.

The above dilemma exploits a peculiar feature of any basic minimum. Call the proposal that a basic minimum should license the occasional priority of the better-off in order to achieve the basic minimum "upward distribution." Upward distribution is a crucial feature of the crisis cases I suggested earlier: it is plausible to grant the better-off priority if that priority means achieving "enough". In the basic minimum literature, upward distribution is a little-noted feature, but it cannot be avoided. Any view that posits a basic minimum that has normative or evaluative strength must confront it. In ruling out such upward transfers, i.e., if distributions to the worst-off trump the achievement of the basic minimum, the basic minimum has no real normative force over a view that merely suggests that the least well-off are to be given distributional priority. In order for a basic minimum to have any normative, rather than merely heuristic, value, the basic minimum must in at least some cases trade-off against benefits below the minimum. Indeed, the stronger the minimum - in Nussbaum's case, *very* strong given *Guarantee* - the more cases in which upward distribution is licensed. The problem for views that posit a basic minimum is to make this implication plausible. In light of *Expansive List*, Nussbaum's basic minimum fails this test.

Now combine *Guarantee* with *Inviolability*. Imagine that A and B fail the basic minimum, but C maintains it. In order to grant the basic minimum to A and B, resources must be diverted from C, leaving C without the basic capabilities. If the basic minimum is really a

guarantee of justice (or, leaving the question of justice aside, if *Guarantee* is to be used in making the best practical decisions), what are we to do? Offhand, it might seem better to distribute to A and B, given that the basic minimum failure in this case would be less overall - if basic minimum achievement is really a guarantee, this decision, though non-optimal, is certainly the best open option. But this runs into problems with *Inviolability*. C cannot be dispossessed of his basic standard. If so, we are again at an impasse. Which principle is to have greater weight? Which are we to follow? If we simply do nothing, we are admitting that *Guarantee* has lesser weight against *Inviolability* - but there is a reasonable question whether or not this should be true, given the importance of the basic minimum. In any event, on Nussbaum's own account, the right answer is indeterminate - whether we are asking moral, practical, or purely axiological questions.

Nussbaum's view is clear, straightforward, and powerful. However, the failure of her account of justice to provide reasonable answers informs the axiological structure of the basic minimum. Expansive lists should be avoided. Principles of inviolability should be avoided. The guarantee implicit in any basic minimum should take a maximizing form. All of these conclusions should be respected by an account of political axiology. However, I have not yet addressed one of the straightforward axiological conclusions for which Nussbaum argues: the insistence on *Capabilities Not Welfare*.

#### 1.4.4. AGAINST CAPABILITIES

The capabilities approach is the result of the perceived failures of two competing alternatives. The first is *resourcist*: this view suggests that state distributive mechanisms ought to be committed to distributing resources and resources alone. If egalitarianism is the correct distributive model, for example, people ought to be equal in the amount of resources available to them. The second is *welfarism*, which suggests that, again assuming egalitarianism, people ought to be equal in the level of welfare achievement.

We have already seen reasons why a purely resourcist view is inadequate. For any

particular resource, it is important (in certain choice scenarios) to insist on the achievement of “enough”. But an amount of resources itself cannot determine what is “enough” - resources must thus be indexed to some other notion: a minimally decent human life, say, or human subsistence, or some other such notion. But there is a similar argument against resourcist views it is worth noting here. Amartya Sen famously criticized Rawls’s resourcist account of the distributive index by suggesting, reasonably enough, that the same amount of resources do different things for different people.<sup>29</sup> Take a simple example. Distribute \$50 to two David Bowie fans, one of which is a Type-1 diabetic, and the other will be much better off: he can afford to buy the three Bowie records he needs to complete his collection while the diabetic must spend her \$50 on medical care and prescriptions. Through no fault of her own, the diabetic is already worse-off. She strongly wanted to listen to *Diamond Dogs*, but merely because she is diabetic, she does not have the resources to do so. Not so for the other. One natural answer to this worry presented by Sen is that the proper distributive index should be capabilities rather than resources. Imagine that rather than distributing \$50 equally, the state is now obligated to make it the case that David Bowie fans have the equal capability to listen to *Diamond Dogs* - this would entail distributing more resources to the diabetic - enough to afford prescriptions and medical care in addition to said record.

If this is the case, it seems that a pure resourcist theory is inferior in comparison to the capabilities approach. The capabilities approach places both persons on an equal level with regard to what might actually matter to them, which is closer to what was intended in the original distributive program. Resources do different things for different people and thus must be measured against some other, more fundamental, index. For this purpose, capabilities are attractive.<sup>30</sup>

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<sup>29</sup> Sen’s criticism appears in numerous places, most clearly stated in *Inequality Reexamined* (Cambridge, MA: Harvard University Press, 1993).

<sup>30</sup> These are more compelling arguments for a resourcist understanding of the basic minimum. I do not wish to engage this literature here.

However, welfarism can also solve this concern. Welfarism suggests that the proper distributive index should not be the capability to do  $x$ , but the actual doing or achievement of  $x$ , whatever the relevant welfare target is. Thus, looking back at the previous example, if the relevant target is the fulfillment of the preference to listen to *Diamond Dogs* (assume this is plausible), a welfarist approach will distribute resources such that the diabetic has access to such a listen. But the welfarist theory goes further. It says that not only should she have *access* - she should listen! To this, Nussbaum is opposed. Nussbaum considers the suggestion that capabilities should be supplanted with what she dubs “functionings,” in other words, the *actual* achievement of those goods to which the basic minimum is supposed to grant capabilities. Nussbaum writes:

I have spoken both of functioning and of capability. How are they related? Becoming clear about this is crucial to defining the relation of the “capabilities approach” both to Rawlsian liberalism and to our concerns about paternalism and pluralism. For if we were to take functioning in a single determinate matter, the liberal pluralist would rightly judge that we were precluding many choices that citizens may make in accordance with their own conceptions of the good, and perhaps violating their rights. A deeply religious person may prefer not to be well nourished, but to engage in strenuous fasting. Whether for religious or for other reasons, a person may prefer a celibate life to one containing sexual expression. A person may prefer to work with an intense dedication that precludes recreation and play.<sup>31</sup>

Nussbaum’s motivation for a capabilities metric, then, involves pluralist concerns: that people may strongly desire to live a certain kind of life that interferes with elements on the list of ten basic capabilities. Of course, the capabilities must be present for all - but the actual achievements or welfare states should not be insisted upon, lest we interfere with a form of Rawlsian or liberal pluralism about the good life.

My view is that Nussbaum’s point here is surely right. We should not be insisting that persons achieve sexual satisfaction. We should not be insisting that people achieve play if they do not wish to. Such a view would be perverse. But *why*? What is motivating the thought that a religious person ought to be able to fast? One possible motivation is the

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<sup>31</sup> *WHD*, 86-7.

concern for pluralism about the good life. In other words, given the inevitability of conflict regarding the good, we should not be in the business of endorsing a vision of the good life not valued by all reasonable persons or designing political institutions that adopt premises reasonable persons could not accept. This position has been questioned. One plausible criticism is made by noting the required asymmetry between a conception of the good and a conception of the right.<sup>32</sup> Why believe that all citizens would agree on a conception of the right, but not the good? Wouldn't a consistent application of the principle of neutrality render political morality impossible? For our purposes here, the concern about neutrality and pluralism is a red herring. What is driving Nussbaum's intuition, it seems to me, is a general interest in citizens leading *autonomous*, rather than *non-autonomous* lives. If a religious person is force-fed, that person is to that extent living a non-autonomous life, a life that does not reflect his most basic values. Political institutions, then, should refrain from forcing citizens to live non-autonomous lives - lives they do not choose and do not value.<sup>33</sup> This is clear from Nussbaum herself: insisting on functionings precludes "many choices that citizens may make in accordance with their own conceptions of the good."

But this is perfectly compatible with a theory of welfare. Indeed, it *is* a theory of welfare. On this view, the best life for a person to lead is one that is the product of autonomous choice, or choice that reflects in some way or other the person's basic values and concerns.<sup>34</sup> Furthermore, such a suggestion best explains the cases in which Nussbaum herself declares that functionings, rather than capabilities, are important to enforce. Nussbaum

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<sup>32</sup> See George Sher, *Beyond Neutrality: Perfectionism and Politics* (Cambridge: Cambridge University Press, 1997), 142-5. See also Richard Arneson, "The Priority of the Right over the Good Rides Again" in *Ethics* 108 (1997), 187-8.

<sup>33</sup> Richard Arneson notes this implication of Nussbaum's examples in "Perfectionism and Politics", 61. Arneson comes to a different conclusion, however, claiming that "freedom can be seen to be intrinsically, not just instrumentally, valuable. ... But none of these perfectly reasonable claims is of the right type to justify the position that the fundamental concern of justice is to provide freedom and not achieved good." In my view, living an autonomous life (or living a "free" life) *is* the achieved good.

<sup>34</sup> "Autonomy" is a term with a long history and therefore indeterminate reference. My use of the term is to some extent technical, though it explains Nussbaum's concerns plausibly. Autonomy, in my sense, is living a life that one values living in light of one's conception of the good.

says that in children, for instance, functionings are crucial because they are required to produce adults who can possess the ten basic capabilities. Furthermore, even in adults, certain basic functionings are required because

Even where adults are concerned, we may feel that some of the capabilities are so important, so crucial to the development or maintenance of all the others, that we are sometimes justified in promoting functioning rather than simply capability, within limits set by an appropriate concern for liberty. Thus most modern nations treat health and safety as things not to be left altogether to people's choices: building codes, regulation of food, medicine, and environmental contaminants, all these restrict liberty in a sense. They are understood to be justified because of the difficulty of making informed choices in all these areas, and the burden of inquiry such choices would impose on citizens, *as well as by the thought that health and safety are simply too basic to be left entirely to people's choices...*<sup>35</sup>

But a strong and plausible explanation for why health and safety are too important to be left to people's choices is that health and safety are things that radically affect the possibility of living an autonomous life. It is *autonomy*, rather than mere capability, that explains Nussbaum's quite sensible judgments in these cases. Take Evel Knievel. Given the capabilities approach as stated by Nussbaum, it would surely be unjust for political institutions to enforce a safety norm against Knievel. However, Nussbaum does insist on enforced safety in some cases - but her own view on this matter supports the *autonomy* view, rather than the capability view. Her examples clearly involve cases in which the loss of safety is, for most people, a hinderance to their autonomy (building codes, food, medicine, etc.). For Evel Knievel, on the other hand, his safety risk is the product of his autonomy - it is part of a life he values living. This thought also explains the requirement of functionings for children. Without certain functionings Nussbaum describes, children cannot live autonomous lives.

Thus, it seems to me, Nussbaum's motivation for *Capabilities Not Welfare* boils down to an insistence on autonomy - construed as living a life one values living - rather than non-autonomy (or *best* boils down to autonomy). But this is a theory of welfare, and a plausible one. In the face of such an account of welfare, capabilities are an idle wheel. The insistence

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<sup>35</sup> *WHD*, 91, my emphasis.

on an autonomous life can give precisely the answers Nussbaum requires: living a good life does not require sexual satisfaction if it is not part of a life one values living. From the point of view of autonomy, forcing someone to achieve such satisfaction would be bad indeed.

Nussbaum would insist, however, that such a welfarist account is incomplete *without* additional capabilities. Even if the religious faster prefers not to eat, it is better if political society grants him at least the *capability* for adequate nourishment. I am suspicious. Political institutions should not be obligated to grant capabilities to people that they would not use and do not value. This is *especially* clear in cases where granting capabilities would be costly. Assume that A is missing only the capability for adequate nourishment. Assume B has all ten basic capabilities and then some: a heightened education, opportunity for play, etc. B values these additional capabilities and makes use of them. However, in order to grant A the capability for adequate nourishment, you must strip *additional* achievements from B - stripping him to the bare level of the basic minimum. This, I think, is a plausible result *only if* the capability for adequate nourishment is something that A actually values as most do. But assume that he is a religious faster. Nussbaum's view would require that we strip all additional capabilities - which are actually being made use of and are enhancing the life of B to grant the capability for adequate nourishment to A, who does not value them and would not make use of them. This implication is unacceptable. Insisting on the capability - whether for the purposes of justice, or the good, or both - even when this capability would have no effect on the extent to which A might live a life he values living, is fetishistic.

### 1.5. Conclusion

I began this chapter by noting an intuition when it comes to food distribution in crisis cases. There is some notion of "enough", such that the achievement of "enough" is strong enough to outweigh egalitarian and prioritarian distributions, distributions that would favor the worse-off against the achievement of "enough". The intuition pointed to the thought that the achievement of a life of minimal adequacy ought to have axiological priority to achievements,

at the very least, for the worse-off (and achievements for the better-off).

I then examined various accounts of “enough” - accounts of a reasonable basic minimum. The account that came closest to the truth, however, remained problematic. The failure of Nussbaum’s capabilities approach brought the following points to the fore. First, that crucial in attaining a life of basic human dignity is not the extent to which one’s basic capabilities are fulfilled, but rather the extent to which one can live a life that reflects in some way a person’s values. In other words, it is a life that is to some degree autonomous. The basic minimum should not be expansive. It should be a level at which upward distribution is plausible. Furthermore, though Nussbaum’s strong specification of *Guarantee* goes wrong on a normative level, some sort of guarantee is in order in specifying the axiological structure of the basic minimum. It is *better* when more people, rather than fewer, have enough. And this is true regardless of the trade-offs that could be made between the achievement of the basic minimum and the achievement of other goods. These intuitions are important for the theory of value. I shall attempt to accommodate them, beginning in the following chapter.



## CHAPTER TWO: A WELFARIST BASIC MINIMUM

In the previous chapter I discussed various interpretations of the intuition that a proper account of the betterness of states of affairs requires a basic minimum - some proper index of “enough”. In this chapter, I argue for my account of the basic minimum. When conjoined to an act-consequentialist account of the right, my view is superior to the most plausible candidate discussed in Chapter One, i.e., Nussbaum’s ten basic capabilities, and takes seriously the lessons learned during that discussion.

There are two crucial questions that must be answered in this chapter. The first is where the “line in the sand” is to be drawn: what *constitutes* a basic minimum. The second concerns the weighting of the basic minimum, i.e., how strongly weighted the basic minimum must be against competing welfare states. The second question is one that must be answered in stages. In this chapter I will discuss trade-offs between the basic minimum and welfare states below the basic minimum, i.e., between “enough” and less than “enough”. Later chapters (specifically chapters Three and Four) will fill out the weight of the basic minimum against welfare states above. Insofar as the argument concerning welfare states above concerns not only the basic minimum but additional threshold goods, the existence of which I will defend in Chapter 3, I must wait until the complete account of human well-being is on the table to defend the overall priority of the basic minimum.

In section 2.1, I will give my account of the basic minimum. In this section, I argue that the basic minimum should be set at what I call “minimal autonomy” - roughly speaking, living a life of some value with a range of open options. Following this, beginning in section 2.2, I will sketch two arguments in favor of my account of the basic minimum. First, I

compare my account of axiology to Nussbaum's by conjoining my view to act-consequentialism and comparing these proposals in the realm of the right. I argue that even if one simply adopts this straightforward translation of my claims about the good into the right, my view succeeds where Nussbaum's fails. Given that Nussbaum's view is a view of justice, rather than betterness, when comparing my view to Nussbaum's I simply assume an act-consequentialist account of the right for the purposes of such comparisons. Whether or not act-consequentialism is, in the end, true or even plausible all-things-considered, I leave to the side. It is, at the very least, more plausible than Nussbaum's account (when conjoined with the theory of value I support here). Second (in §2.3), I argue that my view captures the importance of the value of basic human dignity in an account of the basic minimum. In §2.4, I consider the strength of the basic minimum. In that section, I argue that there is good evidence that the basic minimum should take lexical priority to welfare states with which it is in competition, concentrating on welfare states *below* the basic minimum. Following this, I will respond to a variety of objections, including objections to my construal of the basic minimum as lexically dominant.

### *2.1. Minimal Autonomy*

Recall Nussbaum's motivation for advocating capabilities rather than functionings or welfare states. Nussbaum believes that persons ought to be free to determine their own course of life as they see fit. I agree with Nussbaum's motivation, but this need not cause problems for a welfarist construal of the basic minimum. We can give a welfarist and axiological account of the value of this form of autonomy. On my view, a person achieves the basic minimum when they live a life that is to some minimal degree autonomous. Call this state "minimal autonomy." If this suggestion is plausible, we can reformulate the notion of "enough" to mean "enough for a minimally autonomous life." "Enough" food means enough for a minimally autonomous life. "Enough" resources means enough for a minimally autonomous life, and so forth.

“Autonomy” has become a rather common catch-phrase in moral and political philosophy and has different uses in various areas of inquiry. Someone is autonomous, it might be said, when they possess free will. Someone is autonomous, it might be said, when it is proper to ascribe them responsibility for their actions. Someone whose life is free, as opposed to constrained by the political or social will of others, for instance, might be described as autonomous. Kant believes that moral agents are autonomous when they have the power of self-legislation, or giving one’s self the law - the law is thereby autonomously, rather than heteronomously, given.<sup>1</sup> T. H. Green claims that one’s freedom is found in “seeking the satisfaction of himself in objects in which he believes it *should* be found, and seeking it in them *because* he believes it should be found in them.”<sup>2</sup> These concepts are certainly related. In addition, these different notions of autonomy are certainly plausible for the domains in which they are used. My aim here is not to criticize other accounts of autonomy. If my notion of ‘autonomy’ is thought implausible *qua* account of autonomy, the reader is free to substitute, say, “autonomy\*”. I use ‘autonomy’ merely as a designator for a concept crucial to the personal good of agents that, it seems to me, bears more than a superficial connection to the notion of autonomy as it is used by various moral philosophers. But this, at least minimal, connection with autonomy is important. As we saw in the previous chapter, autonomy is important in characterizing an adequate welfarist basic minimum. Without it, Nussbaum’s motivation for adopting a capabilities approach rather than a welfarist approach reappears. As a starting point, one clear strand that seems to run through discussions of the notion of autonomy is the idea of choice or control over the activities of one’s life. So one natural starting point in understanding the welfare state of minimal autonomy is to characterize it as some minimal range of choice in one’s life.

a) One’s life is minimally autonomous if and only if that life is chosen by the

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<sup>1</sup> Immanuel Kant, *Groundwork of the Metaphysics of Morals*, Ak, 4: 433.

<sup>2</sup> T. H. Green, “The Senses of ‘Freedom’” in *The Political Theory of T. H. Green*, ed. John R. Rodman (New York, NY: Meredith Publishing Company, 1964), 76.

agent from a range of available options, and is not wholly the product of external coercion.

(a) is supported by the general intuition that a life of minimal autonomy really ought to be a life that is in some sense the agent's own. For instance, there is no reason derived from the basic minimum itself to force-feed the religious faster.<sup>3</sup> It need not be entirely free of external coercion (for instance, being under a system of laws would not entail a lack of minimal autonomy), nor need the opportunities to choose one's life be particularly robust, but there must be some chance for the agent to choose his or her life. Furthermore, this account of minimal autonomy seems plausible *qua* basic minimum. It would not be sufficient for the achievement of the basic minimum that a life *merely* be chosen by the agent. One could, for example, have only two options that are marginally different: a life of farming sorghum on twelve acres, versus a life of farming sorghum on twelve *different* acres. However, this problem is avoided by noting the options requirement: the life that one actually lives must be chosen from a reasonable range of options that characterize the *whole* of an agent's life. (I will return to the notion of choice below.)

But this proposal, though intuitive, is not adequate as an account of the basic minimum. Mere choice is implausible as a characterization of the basic minimum, for two reasons. First, choice from a range of options is not sufficient for a life of sufficient goodness or a life of "enough": one could have *millions* of opportunities for choice, all horrible. Furthermore, it does not seem that this form of choice is necessary for a life of "enough". Imagine that I live my life by luck and instinct. Nevertheless, on reflection, I end up achieving many important goals and (when I bother to think about my life) I rank it as a good one. Some may draw the line and suggest that this sort of choice involved in autonomy is

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<sup>3</sup> Though this proposal might itself be quite extreme. It's not intuitively obvious to me that mere choice of a life that includes fasting until death - or at least choice of the kind specified in (a) - shouldn't be prohibited, although my view will allow a wide range of tolerance for people like religious fasters. It depends, in my view, on the nature of the choice.

crucial for the good life of an agent.<sup>4</sup> I do not wish to close this possibility (I will discuss this issue more in the following chapter). Nevertheless, there is a reasonable intuition that suggests that a life of luck and instinct is a perfectly good life even though the sense in which I could be said to have chosen it is, at best, extremely thin.

This motivates an alternative account of minimal autonomy:

b) A life is minimally autonomous if the agent judges that life to be of sufficient value.

Again, this proposal has some connection to the original notion of autonomy. This does not require the choice of one's life, but it does require that the evaluation of a given life be of the agent's own making: the agent *herself* regards that life as having some value. Again, this solves the case of the religious faster: this sort of religious devotion would be seen, by the faster, as valuable.<sup>5</sup>

But this account suffers from a pernicious problem of underspecification. What does it mean for the agent to judge a life to be of sufficient value? Must they reflect with their current cognitive state? An ideal cognitive state? Must the judgement be actual or hypothetical? What is this notion of "sufficient value"? If I live a life of torture, but get one minute of respite, is that a life of *sufficient* value? First, it seems clearly required that some cognitive idealizations be placed on an agent's endorsement of his or her life in order for such a characterization of minimal autonomy to count as a basic minimum. Assume that an agent endorses her life to be of value but only on a set of false beliefs, or without knowledge of the consequences of adopting a particular life or other. That endorsement, it seems clear, is not genuine. It does not *actually* reflect the agent's conception of the good (i.e., if those beliefs were true rather than false, or complete rather than incomplete, the agent might have endorsed something different altogether). But there is a deeper problem when it comes to the proper

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<sup>4</sup> Perfectionists, generally speaking, fall into this tradition. For a good introduction to the reasoning behind this view, see David O. Brink, "The Significance of Desire", in *Oxford Studies in Metaethics*, v. 3, forthcoming.

<sup>5</sup> See note #3.

account of an agent's endorsement. A given agent might be deluded into endorsing some particular mode of life through a variety of means: drug addiction, extreme circumstances of deprivation, or false information about consequences. Actual endorsement of the agent seems neither necessary nor sufficient for a given  $x$  to be good for that agent: the agent's own endorsements might not track his or her conception of the good.

In my view, the proper cognitive idealization must be sufficient to reveal an agent's conception of the good. I provisionally adopt the following specification, which I call "genuine endorsement": an agent genuinely values or endorses  $x$  if she endorses that object, life, plan, project, etc., as good or valuable when she is of sound mind and fully aware of all relevant information, including all information about the consequences of adopting it. I leave the "sound mind" modifier unanalyzed here. I mean it to leave out endorsement that results from addiction or other forms of mental pathology, such as Alzheimer's disease or various kinds of socio- or psychopathologies. Many kinds of actual endorsement might not count as genuine endorsement. Actual endorsement will approximate genuine endorsement to the extent that an agent possesses full awareness of the information and the consequences of adopting some plan, project, or living some life  $x$  or  $y$ .

"Genuine endorsement" reflects both the notion of "deliberative rationality" in Rawls, and "cognitive psychotherapy" in Brandt. According to Brandt, "rational desires" must survive (or be produced by) a process of full information and vivid awareness that he calls "cognitive psychotherapy". Brandt writes:

[The] process of confronting desires with relevant information, by repeatedly representing it, in an ideally vivid way, and at an appropriate time, I call *cognitive psychotherapy*. I call it so because the process relies simply upon reflection on available information, without influence by prestige of someone, use of evaluative language, extrinsic reward or punishment, or use of artificially induced feeling-states like relaxation. It is *value-free* reflection.

I shall call a person's desire, aversion, or pleasure 'rational' if it would survive or be produced by careful 'cognitive psychotherapy' for that person. I shall call a desire 'irrational' if it cannot survive compatibly with clear and repeated judgments about established facts. What this means is that rational desire (etc.) can confront, or will even be produced by, awareness of the truth; irrational desire cannot. It is obvious, of course, that desires do not

logically follow from the awareness which supports them; the relation is causal and sometimes involves other desires, aversions, or pleasures.<sup>6</sup>

Rawls writes, of deliberative rationality:

At this point I introduce the notion of deliberative rationality following an idea of Sidgwick's. He characterizes a person's future good on the whole as what he would now desire and seek if the consequences of all the various courses of conduct open to him were, at the present point of time, accurately foreseen by him and adequately realized in imagination. An individual's good is the hypothetical composition of impulsive forces that results from deliberative reflection meeting certain conditions. Adjusting Sidgwick's notion to the choice of plans, we can say that the rational plan for a person is the one (among those consistent with the counting principles and other principles of rational choice once these are established) which he would choose with deliberative rationality. It is the plan that would be decided upon as the outcome of careful reflecting in which the agent reviewed, in light of all the relevant facts, what it would be like to carry out these plans and thereby ascertained the course of action that would best realize his more fundamental desires.<sup>7</sup>

The Rawls/Brandt strategy is appropriate to my understanding of genuine endorsement, at least in rough outline. It seems to me plausible to believe that under conditions of cognitive psychotherapy that Brandt describes, or under the conditions described by Rawls, an agent will endorse objects that conform to his or her conception of the good. Or, at the very least, if *ever* an agent is to choose in a way that is reflective of his or her conception of the good, it is under Rawlsian/Brandtian conditions. Of course, the Rawls/Brandt strategy has been the subject of skepticism. I wish to table objections for the current chapter, however; I will respond to worries after the full use of the full information condition is on the table in Chapter 3. Thus I accept the following provisional specification of genuine endorsement. An agent genuinely endorses some object *x* (a plan, project, goal, etc.) if *x* is something the agent endorses as part of a life that agent values living with full information about the consequences of adopting *x*, and full awareness of that information.

However, one way to forestall objections to the full-information theory I accept should be noted here. The key aspect I borrow from Rawls and Brandt is not the importance

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<sup>6</sup> Richard B. Brandt, *A Theory of the Good and the Right* (Oxford: Oxford University Press, 1979), 113.

<sup>7</sup> Rawls, 366.

of desires *per se*, but rather the notion of cognitive psychotherapy/deliberative rationality in assessing one's value set. *Contra* Brandt, it is not value-free reflection. It may be that valuing something as good for me is strictly cognitive and that desire has a necessary affective component, for instance. Perhaps it is also possible to desire something from with deliberative rationality that I judge to be bad for me. (I leave this conceptual possibility open.) This might drive apart the notions of valuing and desiring. Whether or not valuing is prior to desiring, or vice versa, does not concern me.<sup>8</sup> What is crucial for me is that an agent's genuine endorsement corresponds to the life she values living with full information and awareness. However, I do not mean to alienate those who maintain a desiderative account of the good. Those who are committed to a desiderative view might put my proposal in the following way. A life is genuinely endorsed when the agent, with full information and full awareness, would desire that life *as good*, or when the agent's desire for that life is good-dependent.<sup>9</sup> (This would rule out the possibility that an element of someone's good is desired by them *as bad* - surely an unacceptable result.) If someone wishes to reject desiderative conceptions of the good, my view is also ecumenical: they are invited to give whatever analysis they please of "valuing".

I should note one further question that might be raised about (b). The notion of a judgment of sufficient value can be specified in one of two ways. First, one might claim that the judgment *must* be actual; in other words, the specific agent in question must judge that the life lived is of value in addition to that judgment surviving ideal reflection given the Rawls/Brandt strategy. Second, it might be that the agent in question need make no such judgment; it

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<sup>8</sup> James Griffin, for instance, insists that valuing is not prior to desiring, nor is desiring prior to valuing. There is no priority, according to Griffin. No such account of the relationship of value to desire is presupposed here, and my account is unaffected by the proper relationship between value and desire. See Griffin, *Well-Being: Its Meaning, Measurement, and Moral Importance* (Oxford: Oxford University Press, 1989), ch. 2.

<sup>9</sup> Dennis Stampe believes that desires *are* essentially good-dependent. Perhaps they are. However, if they are *not* (i.e., if it's possible to desire something with full information under the guise of the bad), it is only those desires that are good-dependent that form part of an agent's good, or form part of the conception of genuine endorsement. See Stampe, "The Authority of Desire" in *The Philosophical Review* 96 (1987), 335-381.



is sufficient for the basic minimum if the agent *would* have judged such a life to be of sufficient value under the constraints given in the Rawls/Brandt strategy. It seems to me that the latter is the right option; the judgment need only be hypothetical. The key point of contention here is whether a person might live according to the basic minimum without *actually* judging her life to be of sufficient value - might someone believe her life to be horribly flawed, and yet maintain the basic minimum? It seems to me the answer is yes. Our own evaluations of the extent to which our lives conform to our good are subject to biases and mistakes of all kinds. Imagine the following case. A very rich man loses his fabulous wealth, and is forced to live life as a chicken farm hand. The loss of his wealth is shocking and, understandably, upsetting - so much so that he judges his life as a chicken farmer to be of no value at all. But, with sound mind and full information and awareness, he might have noticed that life as a chicken farmer allows him leisure time to engage a hobby. Though his actual assessments are colored by his loss, with full information, he values at the very least maintaining this hobby. If so, it seems to me, this should count as an instance of basic minimum achievement.

But problems with (b) are not yet solved. First, we have no account of “sufficient value”. In my view, a life is of “sufficient value” when there is at least some global element that the agent genuinely endorses. I mean by “global elements,” those major plans and projects that unify the whole of our lives and its pursuits: maintaining a successful marriage, being a philosopher, being a successful farmer, etc. A single moment of hedonic achievement would not be sufficient, for instance. Rather, there has to be some *global* element of one’s life - some project, goal, achievement, or other such feature that unifies one’s life as a whole (or a significant part of one’s life) - that the agent genuinely endorses, i.e., endorses as valuable

under full information and awareness.<sup>10</sup>

Second, and more importantly, leaving aside the choice requirement wholeheartedly seems unintuitive. Imagine the following case. My life is decided for me on the wholesale, I have no options whatsoever for living my life. It's planned out from the moment I am born until the moment I die, and I have no opportunity to deviate from this path whatsoever. However, it just so happens that this life *barely* passes the test of "sufficient value". My intuition is that we should not count this life as one that satisfies the basic minimum. A life of sufficient goodness at the very least ought to be reflective in some way or other of the agent's self-direction. One might, for instance, be a favored slave rather than a disfavored slave. It is perhaps the case that the favored slave is able to maintain some global element of value, for instance, maintaining a successful love relationship with a fellow slave, that would be genuinely endorsed. Nevertheless, this seems insufficient for the basic minimum.

Thus someone whose life was dictated purely externally by others, even though it might contain some element of value, is not a plausible candidate for the basic minimum. However, given that choice in a robust sense also doesn't seem to be required for a good life, i.e., someone who lives according to luck and instinct might live a perfectly good life, the extent of this choice need not be expansive. There must be *some* agential self-direction, but this does not require choice *per se*. Rather, what the slave example shows above is that what is essentially required is not deliberation and choice, but a range of *options* that concern the agent's life as a whole.

The availability of options implies some degree of agential self-direction in one's life, i.e., living according to this option rather than this one. But this need not require choice in a "thick" sense, i.e., the choice of the particular plans and projects. Rather, it is enough that the

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<sup>10</sup> One possible way of giving some further content to the notion of a global plan or project might be to note Derek Parfit's distinction between global and summative desires (*Reasons and Persons*, (Oxford: Oxford University Press, 1984), 496-8). Another possibility is by noting that these global projects and plans provide unity to an agent's life, unity in the sense defined by Hurka in *Perfectionism* (Oxford: Oxford University Press, 1993), 121-3). The notion of a global element is certainly vague (in the same way "heap" and "bald" are vague), but the intuitive idea is clear enough, it seems to me, to work with.

agent, like the protagonist in Kansas' progressive rock epic, "Carry On Wayward Son", "set a course for winds of fortune," so long as the course the agent sets is one available course among options. The agent need not actually deliberate and choose some particular life or life plan and its contents. With this in mind, I offer the following account of minimal autonomy as a hybrid between (a) and (b):

c: A life is minimally autonomous if and only if a) the life lived is available from some set of options, and b) features *some* global element that the agent genuinely endorses.

(c) appears to be a plausible candidate for minimal autonomy *qua* basic minimum. Roughly speaking, it solves some of the worries that were noted about (a) and (b). It is a life of minimal choice and minimal value. (c) appears to capture what we want in a basic minimum: some level of agential self-direction, and the requirement that the life lived must be of at least some minimal value.

My discussion of human well-being in Chapter 3 will shed additional light on the notion of minimal autonomy. However, given what has been said so far, it seems to me that minimal autonomy, as I describe it, is *prima facie* plausible as an account of the basic minimum. Minimal autonomy rules out paradigmatically awful circumstances. Crippling destitution, for instance, unacceptably limits people's options. When one's deliberations are taken up with acquiring the next meal, for instance, this is incompatible with minimal autonomy. The direction of one's life is handed down externally: the activities of one's life are determined just by what would procure the next meal. Furthermore, at least some level of basic education is required (though it does not require expansive education); without any level of education or ability to confront the world and think critically, it is difficult to form a conception of the good, let alone engage activities that are consistent with what would be genuinely endorsed by one's conception of the good. Minimal autonomy does not guarantee all features of a life that an agent would find valuable. But it does guarantee that the life an agent leads is to some extent representative of her conception of the good.

## 2.2. *Minimal Autonomy versus Capabilities*

It is worthwhile to consider the various strengths of Nussbaum's and my account of the axiology of the basic minimum by considering the relative plausibility of the normative views in which they are embedded. Again, I do not wish to wed my account of the good to act-consequentialism, but the simplest way to compare my approach and Nussbaum's is to adopt a simple act-consequentialist translation of my axiological account. Recall that one crucial problem with Nussbaum's approach was her insistence on *Expansive List*. This caused problems with upward distribution. Any view that posits a basic minimum must accept the implication of upward distribution in at least some cases. However, Nussbaum's *Expansive List* makes this implication especially implausible. It is not plausible that we should bring about A rather than B, when B contains two individuals failing only political participation, and A contains one person with all ten basic capabilities (by merely adding political participation), but a second with a life of 37 years of parasite-ridden listlessness. My view is more successful along this dimension. Because minimal autonomy is less expansive, it is more plausible to believe that we ought to transfer from a person who is below minimal autonomy to a person who would thereby achieve it. Minimal autonomy as I have defined it (and as I will argue in more detail in the following section) is a baseline value. Without it, agents' lives do not reflect the agents themselves, even to any minimal extent: their activities are determined externally. Surely, at least on an intuitive level, it is better to have more people at the level of minimal autonomy rather than fewer, even if this might require upward distribution. Or, at the very least, even if it is not successful all-things-considered, it is more successful than Nussbaum's ten basic capabilities. (I will discuss upward distribution *vis-a-vis* minimal autonomy in §2.5.1.)

Minimal autonomy can also capture the intuitions that drove Nussbaum to a hybrid functionings/capabilities view. Nussbaum believes that, in general, capabilities and not functionings are the proper index of political distribution. As she writes: "Where adult

citizens are concerned, *capability, not functioning, is the appropriate political goal*....For political purposes it is appropriate that we shoot for capabilities and those alone. Citizens must be free to determine their own course after that.”<sup>11</sup> If a deeply religious person prefers to fast rather than to be adequately nourished and this preference finds its way into that person’s conception of the good, and is hence *genuinely* endorsed, it would be illegitimate for state institutions to force-feed that person. But this intuition is well perfectly captured by treating the basic minimum as minimal autonomy - even if one’s view of the *right* is a straightforward act-consequentialism. If a religious person has the option to be or not to be a religious faster, but fasting is genuinely endorsed by one’s conception of the good, fasting is *compatible* with minimal autonomy. Fasting is an expression of the autonomy of the religious, in this case, and thus satisfies the basic minimum. (Indeed, I will argue in Chapter 3 that developments in one’s autonomy by way of the achievement of global projects ought - assuming we’re act-consequentialists - to be respected by political institutions.)

But Nussbaum also believes that functionings must be insisted upon in some cases, i.e., education for children, for instance, and basic health and safety for adults. Just speaking from within an act-consequentialist paradigm, my view of the basic minimum might not require expansive education, but it would require some form of education; education must be sufficient to enable the agent to develop a conception of the good and to select options that are in some way reflective of that conception of the good. Basic health and safety for adults are also requirements. Without it, adults cannot successfully maintain autonomous lives. (Of course, the degree of health and safety that is required might vary. Minimal autonomy might not require expansive safety protections. It would, however, require safety and health protections that were sufficient to guarantee that a person has sufficient options with regard to the formulation of their lives without, say, living in fear of being killed.)

The success of minimal autonomy as compared to Nussbaum’s capabilities approach

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<sup>11</sup> *WHD*, 87.

is a strong argument in favor of my version of a welfarist basic minimum. However, my view can be independently motivated by consideration of a value that Nussbaum herself regards as essential: the value of basic human dignity.

### 2.3. *Minimal Autonomy and Basic Human Dignity*

One intuition driving Nussbaum's acceptance of her list of ten basic capabilities is her Aristotelian-inspired account of the axiological importance of basic human dignity.

Nussbaum writes: "The basic intuitive idea of my version of the capabilities approach is that we begin with a conception of the dignity of the human being, and of a life that is worthy of that dignity."<sup>12</sup> According to Nussbaum's analysis, her list of basic capabilities is related to the evaluative importance, for persons, of living a truly *human* life, as opposed to a life that is characterized by beastliness - or is in some other way inappropriate given the sort of being one is.

It seems to me that this thought is extremely plausible, though, as I have argued, Nussbaum misidentifies the notion of a life of basic human dignity. We should accept the importance of human dignity in helping to determine a reasonable level for the basic minimum. Recall that given the phenomenon of upward distribution, the basic minimum must be set as low as is plausible - lest we trade-off crucially important goods for the worse-off for comparatively less significant goods for the better-off. But once this is taken into account, we should not allow the basic minimum to allow a life any worse than the level of basic human dignity. Consider two views of the basic minimum, one that grants human dignity, the other that does not, i.e., that grant *goods* (such as food-morsels) but not enough to avoid beastliness. It is strongly unintuitive, it seems to me, to accept the second even considering the phenomenon of upward distribution. This thought is reflected in common sense thinking: one powerful complaint often lodged on behalf of the very poor is the *inhumanity* of their condition. If the achievement of the basic minimum cannot guarantee that someone lives a

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<sup>12</sup> *FJ*, 74.

life that is *at least* appropriate to a human being, this basic minimum ought to be seriously reexamined.

The question now becomes: “what is a life of basic human dignity?” If it is not captured by Nussbaum’s ten capabilities, what *is* it captured by? I wish to argue here that minimal autonomy is necessary and sufficient to maintain human dignity *or*, if it is not necessary and sufficient for maintaining basic human dignity, it is necessary and sufficient for a life that is *just as good* as a life of basic human dignity. On my view, living a life of minimal autonomy grants a life with paradigmatically human *powers*; failing minimal autonomy means being constrained to powers that are paradigmatically non-human. First, consider the various ways in which someone might fail to live a life of minimal autonomy. Minimal autonomy is living a life that maintains some global element of value (plan, project, goal, etc.), and that is open among options, i.e., not dictated externally. Thus someone could fail minimal autonomy by failing either of these possibilities, either the agent has no options to choose the global structure of his or her life, i.e., *this* life rather than *that* one, or the life the agent lives is in no way reflective of an agent’s conception of the good. It seems to me that the loss of *either* of these conditions entails a loss of one’s basic human dignity.

Having one’s life determined externally, i.e., given a lack of significant options is paradigmatically beastly. A cat has the power to choose and to value momentary segments of its life, but does not have options in the global sense: options that characterize the global plans and projects of one’s life. The cat has no power to live according to global projects or plans - the cat lives a life directed only to the most immediate desires. Insofar as a cat has options at all, they are of the merely momentary - they do not involve significant options for the whole of one’s life. Failure of minimal autonomy through lack of options condemns someone to precisely this limited set of powers, one that paradigmatically limits feline, as opposed to human, lives without the powers that paradigmatically characterize human lives, i.e., of control over the *global* aspects of his or her life. Thus, it seems to me, that failing to maintain

some set of options is a life lacking in human dignity - it is a life that is limited to the paradigmatic powers of non-human animals.

My thesis here does not require any form of Aristotelian essentialism, or any other such metaphysical view. Perhaps there are some humans who live cat-like lives, or whose capacities are limited in this way. Nonetheless, the notion of *human dignity* is best characterized by the paradigmatic powers and capacities of human lives *versus* the paradigmatic powers and capacities of the lives of non-human animals. With that in mind, consider the second way in which one's life might fail minimal autonomy - that the global features of such a life are not genuinely endorsed. The first thing to be said is that there are two possible ways the global features of one's life might not reflect one's conception of the good, i.e., that *none* of the features of one's life are valued or genuinely endorsed by the agent. Of course, though this need not be explained in terms of human dignity, *surely* a basic minimum must entail that *that* state is avoided (whether or not this is a function of human dignity, such a life seems not worth living). On the other hand, one could fail to value the global features of their life by *only* valuing the moment-to-moment features, rather than endorsing or genuinely endorsing global elements. And *this* state is accurately described as a failure of human dignity. Again, recall the cat. The cat has the power to desire those individual moments (i.e., a bite to eat, a nap in the sun, etc.) of the life the cat leads. But nevertheless, the cat has *no* capacity to value the global elements of that life - the elements that unify a life over time. (One obvious difference is that the cat has the power to desire, but not to desire *as good*.) Thus in order to live a life that is valuable from a paradigmatically human perspective, that value must not simply be confined to the moment by moment, but rather must stretch over extended periods, must form a major part of a whole life. This is what it means to value one's life in a paradigmatically human way: one that is characterized by one's *global*, not merely momentary, conception of the good. Failure to achieve this is a failure of basic human dignity.



Furthermore, *having* options from which a life could be chosen, and engaging in projects that are genuinely endorsed does avoid a life of beastliness. Maintaining minimal autonomy means living an entire life that is in conformity (in at least some minimal degree) with one's conception of the good. It means that one's life is not determined by external forces. All of these features are, it seems to me, are at least a reasonable approximation of the notion of human dignity, insofar as human dignity is relevant to the basic minimum. It is *specifically* the lack of the features of minimal autonomy that condemns human lives to beastliness.

One might think that my account of human dignity is too permissive. For instance, it might be the case that a person has options, but nevertheless endorses a life of the lower, as opposed to the higher pleasures. In other words, someone might have the option to live a piggish, rather than a human life, values the piggish life and thereby lives it. This person maintains the paradigmatic human powers that I note above. It might be said, however, that this person lacks human dignity in living according to piggish or beastly *activities*.

This is a compelling objection, but I disagree. My account suggests a more minimal construal of human dignity, i.e., the possession of paradigmatic human powers. The alternative suggestion (embraced, e.g., by Mill<sup>13</sup>), is more robust. Not only must someone maintain paradigmatic human powers, but she must also use those powers in developing paradigmatic human activities. I am tempted to believe that my construal of the basic minimum simply refers to a different thing, or a different evaluative realm than Mill's: Mill takes it for granted that an agent will have the paradigmatic human powers, and *then* asks the question: given such powers, how ought someone to use them in a way that is commensurate with paradigmatic human activities? My construal is more general. I ask the question: what about human lives is unique from lives non-human animals? Insofar as we're worried about the nature of human dignity as an important axiological notion to the basic minimum, my

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<sup>13</sup> *Utilitarianism*, ii 6.

question is more relevant. Questions that surround the basic minimum are questions that ask about the very limits of human value - the most minimal acceptable value for persons. If so, it is asking too much of the basic minimum to require paradigmatically human activities rather than simply paradigmatic human powers that distinguish human lives from non-human lives. Both accounts of human dignity are important. I do not wish to claim that Mill's area of inquiry is nonsensical or worthless. Rather, it seems to me, my more general question, with a more minimal answer, is more appropriate to the sense in which human dignity is tied to the basic minimum.

#### 2.4. *How Important is Minimal Autonomy?*

Recall the intuition that began this thesis. Whatever "enough" is, "enough" ought to be heavily weighted against other welfare achievements. "Enough," here characterized by minimal autonomy, should be very heavily weighted against, e.g., hedonic achievements that themselves do not guarantee minimal autonomy. For instance, though we could distribute to a wider range of people *some* food, enough for them to have a momentary reprieve of hunger, for instance, this interest is surely outweighed by the interest in getting enough food. To put this another way, in distributing food, what we appear to be interested in is maximizing the achievement of minimal autonomy.

But this statement requires some finessing. Is it the case that minimal autonomy *always* outweighs other goods? Could there be, instead, some sufficiently large gain in the welfare of individuals below minimal autonomy that outweighs minimal autonomy itself? We have choices when formulating the strength of the basic minimum, or the relative importance of minimal autonomy.

A Weak Basic Minimum: Assume welfare level  $x$  is the basic minimum. The achievement of  $x$  will, in many cases, outweigh any welfare level  $y$  with which it is in competition.

A Moderate Basic Minimum: Assume welfare level  $x$  is the basic minimum. The achievement of  $x$  will be *very strongly weighted* against, and will almost always outweigh, any welfare level  $y$ , with which it is in competition.

A Strong Basic Minimum: Assume welfare level  $x$  is the basic minimum. The achievement of  $x$  will be lexically prior to any welfare level  $y$ , with which it is in competition.

A Very Strong Basic Minimum: Assume welfare level  $x$  is the basic minimum. It is the first relevant welfare state. There are no relevant welfare achievements that fail  $x$ .

Each of these options provides some weight to a particular welfare level - this welfare state will then stand out as an achievement that, at least in many cases, will outweigh achievements in competition with it, i.e., welfare states that in some way or another *fail* the basic minimum. A very strong basic minimum is somewhat distinct in this regard. A theory of the good that posited a very strong basic minimum would *deny* that there are welfare states in competition with the basic minimum - in other words, there is no such thing as a state of a person that is better or worse without accommodating the basic minimum. On this account, the basic minimum is the value-floor.

It seems to me that we ought to rule out a weak basic minimum and a very strong basic minimum. A weak basic minimum is surely too weak. After all, if there *is* to be a basic minimum, that minimum forms a “line in the sand,” so to speak - a welfare state below which should not be tolerated. This point was evident in the discussion of “enough” in the previous chapter. It must surely be the case that minimal autonomy is worth substantial improvements below minimal autonomy. Otherwise it seems as though there is very little substance to the intuition that, for instance, the achievement of “enough” ought to outweigh the mere momentary relief of hunger for many others. This intuition seems clear enough. We should thus reject a weak basic minimum. Though the specification of the weak basic minimum is quite vague, the basic minimum surely requires political society to value the achievement of this basic minimum at a significant cost to improvements that fail it; to outweigh the basic minimum would require a strong countervailing value or set of values. Though this need not stretch to a strong basic minimum, it should at least require a *moderate* basic minimum.

Furthermore, just as there are reasons for rejecting a *weak* basic minimum, there is

reason to reject a *very* strong basic minimum. It is surely not the case that those morsels of food for those who could not achieve enough are worth something for them. Perhaps not much in relation to minimal autonomy, but they are surely worth *something*. It is difficult to sustain a view that suggests these possible achievements if only momentary hedonic goods are not of some intrinsic value. Assume that there are two persons, both below minimal autonomy. One is whipped daily, the other not. It seems to me undeniable that the person who is whipped daily is worse-off than the person who isn't. My specification of the basic minimum leaves open the possibility that states below the minimum count for something. In other words, it is good for a given individual to go from 1% of the basic minimum to 90%. Though the difference between a moderate basic minimum and a strong basic minimum is perhaps significant, I believe they are the only plausible options, rather than a weak or very strong version.

Which, then, is the more plausible weighting? Should we accept a moderate basic minimum by claiming that minimal autonomy, though it is very heavily weighted against competing achievements, can, at some point, be outweighed by welfare achievements below the basic minimum? It seems to me that the answer is no. A lexical priority set at the line of minimal autonomy fulfills a dire need in the theory of value. To see why, consider the following proposition:

*Lives for Headaches*: There is some number of mild headaches that, if relieved, would be worth the cost of the death of someone who lives a good life.

This is a general statement of value. "Good life" is left unanalyzed here. It need not be maximally fulfilling. The only requirement is that a good life is set at or above minimal autonomy.

*Lives for Headaches* is implausible and should be avoided as a claim about value. But this entails the need for lexical priority. If there are no lexical priorities in value, all are *continuous*.  $x$  is continuous with  $y$  if and only if there is some amount of  $y$  that would outweigh

some amount of  $x$ . But accepting the continuity of values commits you to *Lives for Headaches*.<sup>14</sup> Why? Assume that there is a scale of descending values ( $x, x_1, \dots, x_n$ ). Assume that  $x$  is a good life,  $x_n$  is the relief of a mild headache. Now assume that every predecessor in this range is heavily weighted, but not lexically weighted, against its successor. This entails that  $x$  can be outweighed by a sufficiently large number of  $x_1$ .  $x_1$  can be outweighed by a sufficient number of  $x_2$ , and so forth. Assuming that “betterness” is transitive, this means that eventually, there is some finite number, sufficiently large, of headaches that will outweigh a good life. Thus *Lives for Headaches*.

Some have responded to this proposal by denying the transitivity of “all-things-considered better-than”.<sup>15</sup> This proposal entails that in any sequence of values,  $a$  might be better than  $b$ , and  $b$  better than  $c$ , and  $c$  better than  $d$ , but  $a$  worse than  $d$ . Thus one could accept the continuity of values yet deny *Lives for Headaches*, because even though  $x$  can be outweighed by  $x_1$  and  $x_1$  can be outweighed by a sufficient amount of  $x_2$ , etc., whatever amount of  $x_n$  that is sufficient to outweigh  $x_{n-1}$  will *not* outweigh the original  $x$ . This proposal is too extreme. A wealth of puzzles surround the intransitivity of betterness, only one of which I will mention here. On virtually any moral theory, betterness impacts rightness: *sometimes* it is morally required to promote the good. But if betterness is intransitive, this means that at least

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<sup>14</sup> Gustaf Arrhenius proves, in “Superiorities in Value,” in *Philosophical Studies* 123 (2005), that one could have a lexical priority between two values, say  $x$  and  $x_5$ , and also accept continuity. It could just so happen that each value in this sequence displays a diminishing marginal returns feature. The asymptote of each successor is set higher than the value of a single instance of the predecessor value, but  $x_5$ 's asymptote is set at a line that is less than the value of a single instance of  $x$ . Thus it need not be the case that  $x_4$  or any other value is lexically prior to its immediate successor. But Arrhenius' conditions are implausible. If some object  $x$  has some value benefit  $q$ , I see no reason for suggestion that  $2x$  is not worth  $2q$ . To take one example, the amount of pain that is caused by the  $n$ th headache is likely to be less than the amount of pain caused by the first. Nevertheless, the amount of pain caused by the first is surely worth the same no matter how much pain is in a given life. Even if one lives with a large amount of pain, increasing that person's pain by the amount of a headache makes that person's life worth by precisely the amount of the disvalue of a single headache, no matter what level of pain is already maintained.

<sup>15</sup> See, e.g., Temkin, “A Continuum Argument for Intransitivity” in *Philosophy and Public Affairs* 25 (1996). Temkin would insist on transitivity even given my solution to the problem of *Lives for Headaches*. It seems to me, however, that Temkin's sequence, shorn of all value-pluralist implications is not a plausible candidate for intransitivity. It seems to me that his version of *Lives for Headaches* is one we should accept, not reject.

in some cases, “ought to do rather than” is intransitive. But this is puzzling! Assume that I ought to do A rather than B, B rather than C, and C rather than A. Assume I have all three options, A, B, or C. A is morally illegitimate, because one ought to do C rather than A. B is morally illegitimate, because you ought to do A rather than B. C is also morally illegitimate because you ought to do B rather than C. There may be some sense to be made of the suggestion that in certain circumstances, there is no right or wrong thing to do. Perhaps brushing one’s teeth is like this. But we are assuming in this case that the moral question is one we are right in asking. And the intransitivity of betterness implies an extremely puzzling result - surely it is a defect of moral/evaluative theory that in a given morally relevant choice scenario, *everything* you do is morally wrong.<sup>16</sup> Though I leave open the Quinean possibility that transitivity might have to be revised, it is surely a last resort. The costs of accepting it are not worth the benefits achieved, especially given that there is another way out, i.e., the denial of continuity. On my view, minimal autonomy breaks the chain between lives and headaches. Its loss cannot be made up for by *any* gains that do not entail gains in minimal autonomy itself.

Thus in order for *Lives for Headaches* to be avoided, there must be, at some point, a lexical priority. A merely heavy weighting is not enough. But this does not yet establish the claim that minimal autonomy should be the point at which the lexical priority should be inserted. Perhaps there is some *other* achievement such that *that* achievement is lexically prior to its successor. But, I argue, this suggestion is implausible and should be rejected. I wish to note the intuitive appeal of setting a line of lexical priority, assuming we must set such a line, at minimal autonomy.

As I argued in the previous section, minimal autonomy should be at least heavily weighted as part of an account of the basic minimum. If a basic minimum does not *at least* capture the importance of basic human dignity it is wildly implausible as an account of the

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<sup>16</sup> For various other puzzles concerning the intransitivity of “ought to do rather than”, see Alistair Norcross, “Contractualism and Aggregation” in *Social Theory and Practice* 28 (2002), 308-9.

basic minimum. If so, it seems to me, minimal autonomy should be at least strongly weighted. But if this is correct, it seems quite plausible to put the sought-after line of lexical priority *there* - a line below which no reasonable basic minimum should be set.

Setting the line of lexical priority lower than minimal autonomy without *also* setting a line of lexical priority at minimal autonomy undermines the importance of minimal autonomy as a basic minimum. Why? Imagine the following case. Assume that there is some line below minimal autonomy, call it  $x$ , which has lexical priority. Now we must assess the following two options. First, we could bring one person above  $x$ . Second, we could bring billions who are already above  $x$  above minimal autonomy, but with one more person below  $x$ . Just in terms of the raw welfare benefit score, the first option is better. Why? Because there is a *lexical* value gain in bringing one person above  $x$  - the achievement of  $x$  is worth any amount of the goods that fail  $x$ . This is not so (*ex hypothesi*) for minimal autonomy. Minimal autonomy is merely worth *a large, though finite, amount* compared with its competitor state (above  $x$ , below minimal autonomy). But this suggestion wrecks the plausible supposition that minimal autonomy and basic human dignity are plausible *qua* basic minimum. If there is to be some basic minimum at all, it should be the target of welfare distribution. This suggestion mandates a different target.

The same applies if we attempt to set the line of lexical priority higher. Imagine that we could bring billions to the line of minimal autonomy, but only one to a slightly higher line,  $y$ , which takes lexical priority to its competitors. The single distribution of  $y$  will outweigh the value of minimal autonomy. Again, this wrecks the importance of minimal autonomy *qua* basic human dignity *qua* basic minimum. In addition, it is straightforwardly implausible. If we can get many persons to live a life that is at least minimally autonomous, composed of their own choice and reflective, at least in some way, of their basic conception of the good, this is an extremely good thing. Trading it off against a very small number of higher achievements (such as, for instance, the completing of additional projects or goals for one

individual) is radically implausible.

We should reject *Lives for Headaches*. We should also keep transitivity. If we do this, we must accept a line of lexical priority somewhere. If we set a line of lexical priority anywhere besides minimal autonomy without *also* setting a line of lexical priority at minimal autonomy, this wrecks the importance of minimal autonomy as a heavily weighted basic minimum. But minimal autonomy is important as a heavily weighted basic minimum. Thus minimal autonomy should be at least one place at which a line of lexical priority is set. Thus, it seems to me, we should accept a strong basic minimum, as opposed to its moderate counterpart. Doing so is the only way to maintain two important features of the good: minimal autonomy as a plausible basic minimum, and the rejection of *Lives for Headaches*.

However, the strength of the basic minimum set at minimal autonomy is not idiosyncratic to my view. I have already noted the extent to which Mill believes that minimal autonomy (or something darn close) should be the line at which basic human dignity is achieved. Nonetheless, Mill himself endorses lexical priorities when he notes the general statement of the value relation between higher and lower pleasures:

Of two pleasures, if there be one to which all or almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it, that is the more desirable pleasure. If one of the two is, by those who are competently acquainted with both, placed so far above the other that they prefer it, even though knowing it to be attended with a greater amount of discontent, and would not resign it for any quantity of the other pleasure which their nature is capable of, we are justified in ascribing to the preferred enjoyment a superiority in quality, so far out-weighting quantity as to render it, in comparison, of small account.<sup>17</sup>

Higher pleasures are thus “superior” to lower pleasures in value, outweighing them such that the others are “of small account.” But this is neutral between a moderate weighting and a strong weighting. However, in the following paragraph Mill makes his intentions more clear. He discusses various examples of individuals living “higher modes of existence”, and declares that those who live a higher mode

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<sup>17</sup> *Utilitarianism*, ii 5.



would not resign what they possess more than he for the most complete satisfaction of all the desires which they have in common with him[, i.e., the fool, the dunce, the “lower” existence]. If they ever fancy they would, it is only in cases of unhappiness so extreme, that to escape from it they would exchange their lot for almost any other, however undesirable in their own eyes. A being of higher faculties requires more to make him happy, is capable probably of more acute suffering, and certainly more accessible to it at more points, than one of an inferior type; but in spite of these liabilities, he can never really wish to sink into what he feels to be a lower grade of existence.<sup>18</sup>

Though Mill is almost assuredly not thinking in these terms, and though we should attempt to avoid value-theoretic anachronism, it seems to me that suggesting that Mill is committed to the lexical priority of higher to lower pleasures is not attempting to fit a clearly square peg into a decidedly round hole. Mill claims that the competent judges could “never really wish” to sink into a lower grade of existence, even in the face of extreme happiness in competition with the “most complete satisfaction” of not only the desires of the fool, but also the desires that one has *in common* with the fool, i.e., even complete unhappiness would never be enough to sink into a lower grade of existence even if many of *your actual desires* will be fulfilled (rather than the desires you would have *qua* fool).

I differ with Mill on many of his value-theoretic claims. But nonetheless, his statement of something like a lexical priority is significant. Though I disagree about what ought to have lexical priority, my insistence on such a priority relation is not only plausible, it is also not idiosyncratic.

## 2.5. *Objections*

There are general objections to my account of the basic minimum. The first brings up a unintuitive consequence of a *lexically* prior basic minimum. The second, third, and fourth attempt to show that the mere concept of lexical priorities are axiologically incoherent, unintuitive, of based on faulty intuitions.

### 2.5.1. A LEXICAL BASIC MINIMUM AS ABSURD

Consider the following choice scenario made up of 1000 persons. In A, all 1000

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<sup>18</sup> *Utilitarianism*, ii 6.

barely fail minimal autonomy. In B, one maintains minimal autonomy but the rest are much worse-off: they are brutally whipped daily in a way that they are not in A. On my view, it must be the case that B is better. But, the objection runs, this is absurd. If 999 lives of daily whippings is not enough to render it absurd, simply multiply the number; ten thousand? one million? etc. My view is committed to saying that there is no number of whippings relieved that would outweigh the achievement of minimal autonomy.

Indeed, this implication *does* sound absurd. But, it seems to me, there are two things that could be said to motivate its acceptance. The first simply repeats the primary motivation for the lexical basic minimum. Without lexical priority, the shadow of *Lives for Headaches* returns. Imagine the following sequence, each step of which is plausible. Speaking interpersonally, one whipping is better than some number of punches (whatever that number is). One punch is better than some number of slappings. One slapping is better than some number of pinchings. One pinching is better than a further number of mild headaches. By the transitivity of betterness, there is some number of mild headaches that would outweigh a whipping, and again by the transitivity of betterness, if there is some number of whippings that would outweigh minimal autonomy, there is some number of headaches that would outweigh the value of minimal autonomy. And given that minimal autonomy is crucially important for the basic minimum, it is the most plausible stopping point between lives and headaches. If so, rejecting this view means accepting *Lives for Headaches*. But *Lives for Headaches* should be rejected. So, it seems to me, we should accept the view that a life of minimal autonomy outweighs all improvements that could be made in lives that do not possess minimal autonomy. The value of minimal autonomy provides a plausible stopping point on the sequence from lives to headaches.

But this might not seem like enough by way of justification for a lexically prior basic minimum. All this establishes, the critic suggests, is that there are *two* implausible theses, the existence of a lexical basic minimum (and its associated implausibility), and *Lives for*

*Headaches*. We must swallow one. Why swallow the lexical basic minimum? Why not swallow *Lives for Headaches*? Indeed, perhaps we should reconsider whether or not the supposedly embarrassing conclusion, i.e., that some number of headaches could be enough to morally outweigh a human life, is really all that embarrassing. Alistair Norcross suggests that perhaps we accept such trade-offs every day.

If there were a national speed limit of 50 mph, it is overwhelmingly likely that many lives would be saved each year, as compared with the current situation. One of the costs of the failure to impose such a speed limit is a significant number of deaths. The benefits of higher speed limits are increased convenience for many. Despite this, it is far from obvious that the failure to impose a 50 mph speed limit is wrong.<sup>19</sup>

Norcross is soliciting an intuition that he believes many people accept, i.e., that it is not wrong to fail to impose a national speed limit of 50 mph, even though this would save many lives. In fact, he suggests, the reason for this is the overwhelming cost in convenience for many people. Not just convenience, but also avoidance of annoyance: driving slower on the freeway would certainly cause a great deal of annoyance for a great many people. Though this would certainly not affect the extent to which they genuinely endorse the major features of their lives, perhaps it is not morally required to have a lower speed limit. And if convenience for many at the moral cost of human lives is plausible, Norcross argues, there seems to be very little stopping the suggestion that headaches ought to trade off against human lives, in at least some cases.

The first thing to note is that Norcross' argument is not a claim about value theory, but rather a claim about the right: it would not be *wrong* to fail to impose a low speed limit. However, there could be many intuitions that are getting in our way here. It could be the case that we believe that we should not lower speed limits on anti-paternalist grounds, i.e., that people have a right to assume greater risk on freeways should they choose to do so. Of course, this might morally mandate alternatives such as low-cost public transportation for

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<sup>19</sup> Norcross, "Comparing Harms: Headaches and Human Lives" in *Philosophy and Public Affairs* 26 (1997), 159.

those who must rely on freeway travel for daily essentials and for those who are transporting children and others who do not have the opportunity to assume such risk. None of this seems beyond the moral pale. However, leaving aside questions of the right, the value theory question is different. Regardless of whether we believe it would be morally required to lower the speed limit, do we think it would improve the state of affairs if the speed limit were lowered? Or, leaving aside the legal question, do we think it would be *better* if people travelled a little slower at a cost of some annoyance and inconvenience in order to save lives? Absolutely! It seems to me that this scenario is *clearly* better than sacrificing lives for the sake of convenience. This intuition can more clearly be brought out by considering an alternative suggestion. Suppose that I could greatly increase the convenience and speed of freeway travel by murdering Jane. Would this be morally permitted? The answer is surely not. Of course, in terms of the right we might explain the asymmetrical responses to these cases by appealing to the do/allow distinction or some other such distinction (intended/foreseen, say). But the theory of *value* has no such distinction at its disposal. Would it be better or worse to murder Jane to increase the convenience and speed of freeway travel? The answer, it seems quite clear, is worse. I see no reason to accept the evaluative version of *Lives for Headaches*.

Furthermore, however, there is reason for believing that a lexical basic minimum is not as unintuitive as it is cracked up to be. It seems to me that we find daily whippings, for instance, bad because these whippings have a tendency to ruin the extent to which one can live a life composed of projects and achievements that one values. Of course, we should not deny that whippings are bad, extremely bad, even. But when no such projects are at stake, when someone does not live a life of minimal autonomy nor could they, it seems to me that the badness of whippings is seriously diminished. Suppose that we could save  $n$  people from daily whippings at the cost of minimal autonomy for Jane. Suppose we do this. What are these  $n$  people left with, assuming they are not granted minimal autonomy? They still live a

life that in no way conforms to their conception of the good or is a result of their own choice and agency. They still live a life that is not their own, that does not achieve even the most basic human dignity. However, in robbing Jane of her minimal autonomy, one robs her of precisely these abilities. It seems to me that though this is not a particularly intuitive conclusion, it is a far more acceptable one than *Lives for Headaches*, and far less unintuitive than is originally thought.

To shift gears slightly, I want to consider whether a merely moderate, as opposed to strong, basic minimum does any better along these lines. A weak basic minimum is unpalatable, so we must at least be willing to grant *strong* priority, if not lexical, to the basic minimum. Assume that the strong basic minimum says that 100 whippings are enough to outweigh one person's possession of minimal autonomy. (We might first ask the question: "why 100?", but leave this aside.) Assume now that we could save 99 people from daily whippings at a cost of one person's minimal autonomy. In itself, this seems implausible. Though it is perhaps more plausible than the implications of a *lexical* basic minimum, it remains implausible nonetheless. A *strong* basic minimum still licenses trade-offs that strike us as unintuitive. The point at which it improves the state of affairs to whip persons in exchange for minimal autonomy, it seems to me, is quite small, though even this seems high, say ten or twenty. But this, it seems to me, is an unacceptably weak priority for the basic minimum. Suppose we could use our medical resources to end the extreme pain of ten, or twenty, people (but only by putting them into a state of persistent vegetation, say) instead of using those medical resources to grant a single person a life that is at least consistent with minimal autonomy. This also seems remarkably unintuitive from the perspective of value theory. It seems our intuitions pull in different directions. They are not fully consistent on matters such as this. I am not claiming that a moderate basic minimum is *as* unintuitive as a lexical basic minimum - merely that no view captures all of our intuitions along these lines.

And indeed, we should not be surprised that they are not fully consistent as concerns

the best state of affairs in such tragic, horrific circumstances. Any view that seeks to deal with such tragic cases is bound to find implausibility somewhere. It seems to me, however, that the least acceptable strength of the basic minimum is to be found, given the constraints of the basic minimum detailed previously, is at a level at which it would be unintuitive to cause extreme pain to persons below the basic minimum for a single instance of basic minimum achievement. But if that's the case, why settle for a view that *also* includes the problematic implications of *Lives for Headaches*? If both views deliver implausible judgments, surely the implausibility of *Lives for Headaches* tips the scales in favor of a lexical basic minimum.

### 2.5.2. BARE SKEPTICISM

Lexical priority has a chorus of critics. Also known as “trumping”, this relation between two goods has been cast aside almost out of hand by, for example, James Griffin,

The next strongest form of incommensurability allows comparability, but with one value outranking the others as strongly as possible. It takes the form: *any* amount of *A*, no matter how small, is more valuable than *any* amount of *B*, no matter how large. In short *A* trumps *B*; *A* is lexically prior to *B*. ... Even that, though, would be far too strong. How do we rank, say autonomy or liberty on the one hand, and prosperity or freedom from pain on the other? Nearly all of us would sacrifice some liberty to avert a catastrophe, or surrender some autonomy to avoid great pain. So people who would call certain values ‘trumps’ or give them ‘lexical priority’ probably do not mean these terms entirely seriously. What they have in mind is some weaker form of incommensurability.<sup>20</sup>

John Broome,

I think nothing is lost by ruling out the lexical view[, i.e., the trumping view], because it is so implausible. Indeed, it is implausible that any value lexically dominates any other. Since I shall soon be ruling out other lexical views, I shall use this example to emphasize their implausibility...The view that is not consistent with the discrete-time model is the view that *any* extension of a person's life, however short, is better than improving the life by letting the person see the Northern Lights. This lexical view is the extreme limit of progressively more extreme views. These views become implausible before they reach the limit, and we need give no credence to the limiting, lexical view. *This is true of any view that gives lexical priority to any value.*<sup>21</sup>

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<sup>20</sup> Griffin, 83. It is worth noting, however, that Griffin supports something more like *pretty* strong superiority.

<sup>21</sup> John Broome, *Weighing Lives* (Oxford: Oxford University Press, 2004), 24-5. My emphasis.

and Richard Arneson, who has described one form of trumping as “worse than dubious,”<sup>22</sup> - the trouble springing from the relation’s implication that the A good is worth any amount of B goods. As an aside, one wonders if the examples suggested by Griffin and Broome are the most plausible. Surely any remotely plausible view - even one that believed in lexical priority - would reject the conclusion that a second of extra life would outweigh, e.g., Northern Lights viewing. Though these worries amount to little more than what I shall call “bare skepticism,” their point is well-taken: lexical priority relations are worthy of a healthy dose of skepticism, given the size of the claim being made. Is it really plausible to believe that there is *no finite number* of small food morsels, no matter how large, that would outweigh the badness of the failure of minimal autonomy? *No number at all?* Perhaps it is more plausible to believe that our values are not fixed so rigidly: that there is some point, perhaps beyond human comprehension, such that a finite number of headaches prevented might trade off against one death.

Bare skepticism, however, strikes me as implausible given the stakes involved. For reasons cited above, I find it far more implausible to believe that values are continuous. Accepting continuity implies that there will be some finite number of mild headaches that outweigh a human life. *At some point*, every continuous theory must say that *that* number of headaches trades off against a human life. If so, we should reject continuity. If one weighting leads to the view that headaches can be traded off against human lives this weighting is seriously problematic. Bare skepticism should not be applied simply to those who believe that values display lexical priorities. Any claim that implies headaches can be traded off against lives is worthy of a long, hard, incredulous stare of its own.

### 2.5.3. THE SEQUENCE

The most powerful argument against lexical priorities takes as its first premise the existence of a sequence of marginal values from the “big” value (minimal autonomy, say, or a

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<sup>22</sup> Richard Arneson, "Egalitarianism", *The Stanford Encyclopedia of Philosophy (Fall 2002 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2002/entries/egalitarianism/>>.

good life) to the “small” value (a small morsel of food or the relief of a headache). Mightn’t the existence of a sequence of values from a good life to the relief of a mild headache reveal that lexical priorities are implausible? There are two versions of this argument I wish to consider here. Alistair Norcross runs a version of this argument (where “*Less*” the statement of a lexical priority relation):

For each misfortune short of the worst possible one, there is a worse misfortune that can be individually outweighed by a sufficient number of the lesser one. In particular, it seems plausible that there is some misfortune short of death, perhaps some kind of mutilation, that can, if suffered by enough people, outweigh one death. Consider now a sequence of judgments, *S*, that begins as follows: one death is better than  $n^1$  mutilations;  $n^1$  mutilations are better than  $n^2$  *x*s (where *x* is some misfortune less bad than mutilation). *S* continues with the first term of each comparison being identical to the second term of the previous comparison, until we reach the last two comparisons:  $n^{m-2}$  broken ankles are better than  $n^{m-1}$  mild ankle sprains;  $n^{m-1}$  mild ankle sprains are better than  $n^m$  mild headaches. If we have *S*, we can conclude, by the transitivity of ‘better than’ that one death is better than  $n^m$  mild headaches. In which case, we must reject *Less*.<sup>23</sup>

One way to object to Norcross’ sequence is to reason by analogy with the infamous *sorites* sequences. For Norcross’ sequence to go through, each step must be intuitively plausible. It must be the case that there is some number of mutilations that outweigh one death. Indeed, Norcross could claim, this is easily established. If you don’t believe that 1000 mutilations outweigh one death, multiply that number: 10,000, 1,000,000. So long as *some* finite number of successors outweigh predecessors, the sequence holds. Of course, this argument might work for predicates like “bald”: if you don’t agree that one less hair doesn’t change whether someone is bald, cut the hair in half: does the loss of half a hair ever entail a move from hairy to bald? A thousandth of a hair? A millionth? Surely there is some point at which it is intuitive to claim that the loss of some finite but miniscule bit of hair cannot change someone from hairy to bald. But this entails the absurd conclusion that no one is bald.<sup>24</sup> Why shouldn’t we respond to Norcross’ sequence in the same way?

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<sup>23</sup> Norcross, “Comparing Harms”, 138-9.

<sup>24</sup> I owe this response to conversations with Dick Arneson.



This argument is compelling, but Norcross has a plausible response. “Better-than” is a comparative rather than a predicate. This is significant. It is not supposed to be the case that some miniscule change in value entails the move from an application of the predicate “good” to an application of the predicate “bad”, say, but only that the successor is better than the predecessor. If we made the switch from a predicate to a comparative in the standard *sorites*, the puzzle seems to disappear. Remove one hair from a man’s head. Is he *balder* than he was with the hair? Of course. Similarly for any finite amount of hair lost (no matter how miniscule). The analogy with the standard *sorites*, therefore, doesn’t go through. Comparatives do not yield the same implausible judgment in standard *sorites* arguments.

I want to shift gears. The question is this. Is the sequence, as Norcross presents it, enough to establish that there is no stopping point such that a lexical priority could exist between adjacent values? The answer is no. Indeed, the mistake is easy to spot. It seems to me that Norcross’ sequence seems plausible only on the tacit assumption of value monism. Broken ankles, mutilations, sprains, are all most plausibly interpreted along a hedonist dimension: pain and the deprivation of pleasure. If so, it is difficult to claim that there is a reasonable stopping point on the sequence, i.e., at point at which one inserts a lexical priority. There surely isn’t if one wishes to be a value monist. Take, for example, hedonism. If pain and pleasure are measured by its intensity and duration, and death is the deprivation of a finite amount of pleasure (given that humans are mortal - everyone is going to die sooner or later), surely that finite amount of pleasure could be outweighed by some finite number of headaches relieved. If there is only one index of value, more of that index is better. Your two seconds of pain is worse than my one. If so, my death - which involves the deprivation of some finite number of seconds of pleasure is better than the sum-total of many people’s headaches, the number of seconds of pleasure deprivation of which is greater (depending on the number of headaches involved).

But my view is not value-monist. There are two distinct elements of the personal

good that I have so far defended: first, the momentary hedonic achievements that correspond to the relief of a headache, or the achievement of a small morsel of food while starving. (More on the disparate elements in the following chapter.) Second, minimal autonomy. Minimal autonomy is different in kind from these various momentary achievements: minimal autonomy entails a global element that is genuinely endorsed from among open options. Hedonic achievements are what they are, momentary goods that are certainly desirable, but that do not figure in anything like the picture of an agent's whole life. Minimal autonomy grants the agent *some* degree of autonomy, of self-reflection in his or her life. Momentary achievements do not do this.

Thus, it seems to me, the force of Norcross' argument is nullified. Assume now (contrary to fact) that a broken ankle carries with it a certain degree of pain, while the next point in the sequence carries with it *slightly more* pain, but that a broken ankle *and not the very next point in the sequence* is compatible with the achievement of minimal autonomy. We have here a perfectly plausible place to insert a lexical priority. Though on the *hedonist* dimension, the two points look as though they could clearly be traded off against each other, when we import the value of other states of persons, such as minimal autonomy, this becomes far less plausible.

Of course, we might translate Norcross' argument in an attempt to construct a sequence in the value-pluralist domain. But this is difficult. Any loss of minimal autonomy will be lacking an obviously large aspect of the good life for an individual. If one wishes to construct a sequence running from minimal autonomy to headaches, the sequence goes wrong in its very first step: trading minimal autonomy for hedonic goods is not allowed. Of course, minimal autonomy is characterized by a number of terms that are vague - the notion of a global project, for instance, the idea of "some range of options". But this does not mean that the loss of minimal autonomy, whatever it is, isn't a significant loss. All this means is that there are some vague cases in which the determination of whether someone maintains minimal

autonomy will be difficult and will involve judgment and intuition.

A variation on Norcross' argument has been offered by Gustaf Arrhenius. This argument seeks to combine intuitive general principles with the importance of the transitivity of betterness to generate a *reductio* of lexical dominance. Arrhenius' suggestion, in paraphrase, is as follows. Assume that there is a continuum of marginal differences in welfare. Consider three intrapersonal alternatives, A, B, and C, each with some level of three goods each,  $g_1$ ,  $g_2$ , and  $g_3$ .  $g_1$  is strongly superior to  $g_3$  and  $g_2$ ;  $g_2$  is weighed very heavily against, but is not strongly superior to,  $g_3$ . The difference between  $g_1$  and  $g_2$  is marginal (more on this below). Now consider alternative A, which contains an amount of  $g_1$ , but none of  $g_2$  or  $g_3$ . B has the same level of  $g_1$  as A, but an additional amount of  $g_3$ . C, however, has a *very* large amount of  $g_2$ . If so, Arrhenius suggests, the claim that  $g_1$  is strongly superior to the others is seriously problematic.

Which one of life B and C has the highest welfare? There is a marginal loss for each  $g_1$ -component that has been exchanged for a  $g_2$ -component since  $g_2$  is marginally worse than  $g_1$ . However, there is a bigger gain for each  $g_3$ -component that has been exchanged for a  $g_2$ -component. It is hard to deny that there is some  $m$  such that the smaller number of smaller losses is compensated for by the greater number of greater gains, and that in such cases, life C has higher welfare than life B. What about A and C? Since  $g_1$  is superior to  $g_2$ , it follows that life A has higher welfare than life C. Since C has higher welfare than B, and B has higher welfare than A, it follows by transitivity that C has higher welfare than A. Hence, we now have a contradiction: A has higher welfare than C and C has higher welfare than A.<sup>25</sup>

Arrhenius' argument takes the form of a *reductio*. Given the value relations as stated, we have a contradiction, or so he thinks. Arrhenius believes that the proper way to avoid the contradiction is to deny the strong superiority relation between  $g_1$  and the others. But this argument fails. There is a more plausible way to avoid the contradiction, i.e., to deny that the value difference between  $g_1$  and  $g_2$  is marginal. Because we have assumed that  $g_1$  is strongly superior to  $g_2$ , it cannot be the case that B obtains  $g_1$  and C does not, and C is better than B. This simply follows from the strong superiority relation.

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<sup>25</sup> Arrhenius, 109.

However, Arrhenius might claim, if we have assumed that there is a continuum of marginal value differences. If so, at any point of lexical priority there must be a state that is marginally worse. What sense does it make to say, then, that  $g_1$  could be strongly superior to  $g_2$ ? But it is not enough simply to *say* that the difference is marginal. This claim must be argued for. And Arrhenius' argument for marginal differences in welfare tacitly makes the same problematic assumption that felled Norcross' sequence: value monism. (Or, at least, Arrhenius does not discuss the way in which value pluralism might cause problems for the thesis that the differences in welfare might be marginal):

Assume that there are days of different qualities and that these can be arranged in a descending sequence of goodness or how much they would contribute to the well-being of a life. It seems plausible that there can be such a sequence where the difference in quality of any two adjacent days in the sequence is marginal. For example, consider two days of a life that only differ in respect to one pin-prick in the left thumb.<sup>26</sup>

This sequence is obviously possible. But what Arrhenius fails to consider is the extent to which the index of pin-pricks might affect another index, i.e., the extent to which one obtains minimal autonomy. We now see that Arrhenius' argument fails for precisely the same reason Norcross' fails. Any old pin-prick is going to be worse by a marginal amount. But consider minimal autonomy. There *may* be some sequence of added pin-pricks such that *one more* pin-prick loses an agent her minimally autonomous life (i.e., by closing off all options for the global structure of one's life). But if *that pin-prick* comes at the cost of minimal autonomy, it is clear that the value loss of *that* pin-prick is huge: it costs the agent a project that they value living, one that forms a significant chunk of a valued life plan. Thus, if we are only considering pin-pricks of themselves, the value difference seems obviously marginal. But when we consider what those pin-pricks might mean on a value-pluralist account, we come to realize that the sequence of marginal differences Arrhenius tries to construct is implausible. The lexical priority of  $g_1$  to the others is not defeated by reductio. And, indeed, Arrhenius seems to understand this point: "Consequently, a believer in Strong or Weak Superiority must

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<sup>26</sup> Arrhenius, 107.

deny one of the two compelling intuitions invoked in the reasoning above.”<sup>27</sup> And, if I’m reading Arrhenius correctly, one of the two “compelling intuitions” is the *intuition* that *C* is better than *B* - or, if you like, the intuition that the difference between *g*<sub>1</sub> and *g*<sub>2</sub> is only marginal. But this intuition should be rejected. If *g*<sub>1</sub> is minimal autonomy and *g*<sub>2</sub> it’s lack, the difference is large, indeed.

#### 2.5.4. LARGE NUMBERS

I have defended lexical priorities by reference to the implausibility of *Lives for Headaches*. But another argument against the view that headaches should never trade off against human lives concerns the validity of the evaluative intuition. There is always some skepticism about strong superiority when it comes to our intuitions about large numbers. In order for trumping to be adequately defended, we would have to believe that no amount of headaches could outweigh minimal autonomy. But *no amount*? Can we actually have such intuitions? Are such intuitions trustworthy? John Broome suggests they are not:

[W]e have no reason to trust anyone’s intuitions about very large numbers, however excellent their philosophy. Even the best philosophers cannot get an intuitive grasp of, say, tens of billions of people. That is no criticism; these numbers are beyond intuition. But these philosophers ought not to think their intuition can tell them the truth about such large numbers of people.<sup>28</sup>

Further, Broome writes with specific reference to lexical priorities:

The intuition has the form: for all numbers *n*, *A* is better than *B*(*n*). An intuition of this form is exposed to doubt because the goodness of *B*(*n*) may increase with increasing *n*. It does so in this case. The intuition is that, although *B*(*n*) gets better and better with increasing *n*, it never gets better than *A*, however large *n* may be. This sort of intuition particularly depends on our intuitive grasp of large numbers. So it is unreliable.<sup>29</sup>

Broome’s point is quite reasonable. How can we have intuitions about billions and billions of headaches? Isn’t there some point at which our understanding of such large numbers gives out, and our intuitions should simply be treated as subject to strong suspicion?

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<sup>27</sup> Arrhenius, 109.

<sup>28</sup> Broome, 57.

<sup>29</sup> Broome, 58-9.

It seems to me that this argument is inconclusive. I doubt that the concern about large numbers cuts against only the lexical priority view. For instance, why accept the view that all values are fungible, especially if we're dealing with large numbers in both cases? If our intuitions about large numbers are simply thrown out, this should cut neither the no-lexical priorities way, *nor* the lexical priorities way. It is indeterminate, unless there is strong theoretic reason for going one way or the other. Of course, Broome believes he has some axiological reason for thinking that all values are fungible from a theoretic standpoint. In particular, he is confident that goods are continuous.<sup>30</sup> But his only evidence for continuity is the rejection of lexical priorities on the basis of faulty intuitions. Continuity thus cannot be used as a theoretic reason for rejecting lexical priorities. Merely rejecting suspect intuitions about large numbers does not cut against a view that posits strong superiority as opposed to a view that rejects strong superiority. So if Broome wishes to defend continuity, he *has* to embrace intuitions about large numbers, i.e., specifically intuitions that at some point, somewhere, all values are fungible. And if so, the *Lives for Headaches* intuition is admissible, and provides strong reason for believing that the debate between continuity on the one hand and lexicality on the other ought to be decided in favor of the defender of lexical priorities.

## 2.6. Conclusion

In this chapter, I have defended the claim that minimal autonomy, as opposed to Martha Nussbaum's ten basic capabilities, or some other basket of welfare achievements, is plausible as an account of the basic minimum. There are two main arguments for this claim. First, minimal autonomy captures Nussbaum's intuitions in a way that is more coherent than Nussbaum's own view. I can accept her plausible suggestion that, e.g., religious fasters need not be force-fed without the unpalatable consequences of the capabilities approach in either its normative or evaluative dimensions. Second, it is roughly compatible with an interest in having the basic minimum establish some level of basic human dignity.

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<sup>30</sup> Broome, 27-28.

Furthermore, I have defended the basic minimum as lexically dominant. This lexical dominance fulfills a crucial need in value theory: the need to avoid *Lives for Headaches*. Some may dispute the original motivation, i.e., they might, in fact, claim that *Lives for Headaches* is not as implausible as I claim here. Though I believe the intuition against *Lives for Headaches* is robust, I have no argument against such views here. If this intuition is robust, the priority of the basic minimum could be weakened, although I believe the antecedent of this conditional is false.

## CHAPTER THREE: THRESHOLDS AND HUMAN WELL-BEING

In Chapter Two, I argued that minimal autonomy is lexically prior to welfare achievements with which it is in competition, especially those welfare achievements below the line of minimal autonomy. In responding to objections, I noted that this conclusion relied on a pluralist account of human well-being, i.e., an account that features both hedonic elements (including the relief of a mild headache), and more significant elements, including minimal autonomy. In this chapter, I wish to more fully develop this account of human well-being. I argue here that welfare is threshold-laden. So far I have shown that minimal autonomy forms a significant threshold in human well-being. I hope to show in this chapter that this is not the only threshold out there.

My account of welfare as articulated here is roughly compatible with accounts of the personal good proposed, for example, by John Rawls, Joseph Raz, T. M. Scanlon, and Simon Keller. In addition, I wish to show that this account of welfare is not *thoroughly* out of congruence with both idealized desiderative accounts of welfare and traditional perfectionist accounts. However, my main argument for my account of well-being, beyond its intuitive plausibility, will be its solution to worries that surround traditional accounts of perfectionism and traditional subjective welfarist accounts, including desiderative accounts. My view is a strong middle ground between a fully objective view and a fully subjective view.

In section 3.1, I will argue that “deliberative projects,” as I call them, are constitutive of the major elements of one’s good. In section 3.2, I will compare my view with a form of perfectionism. My view shares much in common with this particular brand of perfectionism but departs, it seems to me, in intuitive ways. In section 3.3, I consider my view in relation to



desiderative accounts of the human good specifically with an eye toward the problem of desire adaptation. I argue that my view succeeds in ways that the most popular forms of desiderative accounts fail. Section 3.4 discusses what I call “insignificant” goods, or goods that improve an agent’s life without rising to the level of a deliberative project, and in 3.5, I offer an account of the weight of deliberative projects *vis-a-vis* insignificant goods. I argue that the weight should be absolute: it always makes someone’s life worse for him to lose a deliberative project, no matter how many insignificant goods are on offer. In the final section, I defend myself from objections, including problematic distributive implications, problematic content implications (in other words, that my view is committed to the value of evil, base, or otherwise mischievous projects), and a series of objections to the account of genuine endorsement upon which I rely here, and in the previous chapter.

### 3.1. *Gus’s Friend Lee*

Imagine the following scenario. Gus’s friend Lee has been drinking heavily every night for the past several years. It is slowly causing serious health problems and causing Lee’s once devoted friends to seek companionship elsewhere. There is an immediate inclination to believe that Lee’s drinking is bad for him. Gus decided to confront Lee about his drinking. “Lee,” Gus says, “your drinking is bad for you.” Replies Lee, “No it isn’t. It’s good for me. It’s precisely what I want.”

How might Gus respond? There are, of course, a variety of tactics that are employed by philosophers and others when there is a dispute between a person who believes  $x$  is in her interest when it seems that  $x$  is actually quite bad for her. For instance, Gus might try to convince Lee that his desire to drink is just momentary, fleeting. “Don’t you wake up the next morning feeling awful?” asks Gus. It turns out, however, that the high Lee gets from drinking actually outweighs the bad effects of hangovers. In short, he desires the drink more than he is averse to hangovers. Gus tries a different tack. “But Lee,” says Gus, “you’re becoming a drunk. Do you really want to be an alcoholic?” This time Lee responds by citing something

somewhat different. Rather than suggest that he isn't becoming an alcoholic, Lee insists that becoming an alcoholic is *precisely* what he wants. Both his father and grandfather were alcoholics, says Lee, and he wishes to experience life exactly as they did, as a sort of tribute. It is an effort to understand two men he believes were fascinating and had a profound effect on his own life and development. The high from the alcohol is nice, but the value of drunkenness, for Lee, is by way of modeling his life on two men he admires and by whom he is fascinated.

Flabbergasted, Gus responds by noting that becoming an alcoholic is cutting himself off from his friends and relationships. His work is suffering. And, notes Gus, this is only going to get worse. "Your health is deteriorating. You're going to end up dead before long. Didn't you ever consider the consequences?" But, in a way that does not surprise Gus given everything said before, Lee declares that he studied all the effects and the probability that various bad things might occur. He understands the consequences, and knows it's going to get quite bad. Nevertheless, drunkenness is important to him. "This is the way I want my life to go. If I die as a result, it will have been worth it to me."

There is perhaps one more thing Gus could claim - that the project of learning about one's alcoholic father and grandfather is not worth very much, at least in comparison to one's health - but I wish to leave that aside for now (I will return to that suggestion in §3.6.2). In this chapter, I want to consider the possibility that if everything Lee has said so far is true, drunkenness really *is* good for him. Or, rather, it is good for him to the extent that his predictions of future consequences are accurate. It is possible that Lee has wildly underestimated the costs of nightly drinking, and that were he to be more fully aware, he would reconsider the extent to which he values his project of modeling his life on his father's. But assume that he is in full possession of the facts, along with all possible consequences. It seems to me that his undertaking with regard to knowledge of his father and grandfather forms a crucial project around which Lee is organizing his life. And, given Lee's knowledge and

awareness of the various consequences, such a project can sensibly be said to be part of Lee's conception of the good. It seems to me, then, that the fulfillment of this project is good for Lee.

As agents, we maintain various projects and seek after various goals in our lifetime. On my view, the major aspect of one's welfare is made up of what I call "deliberative projects," or the global (as opposed to momentary) elements of a life one values living, as characterized by an individual's conception of the good. These will include projects that are extended over time (including, say, becoming a professor) or might include goals that are momentary, but that are the project of long-term planning and effort by the agent (i.e., reaching the summit of Everest). These elements are good for an agent if and only if they are a part of the agent's conception of the good, which - as I speculated in the previous chapter - is reasonably captured by my understanding of *genuine endorsement*, i.e., endorsement with full information about the various lives one might lead and projects one might fulfill, and full awareness of that information. Here the general thought is that full information and full awareness will correct incoherence and inconsistency in one's conception of the good. Full information will reveal conflicts in one's value set that might not have been ascertainable by agents themselves. At heart, the full information strategy will allow value revision given information about various alternative lives one might lead. Of course, the full information strategy has been thought subject to serious objections. I leave open the possibility that my version of the Rawls/Brandt strategy might require tinkering to achieve the task to which it is put. I'll save this potential tinkering until section 3.6.2.

This leads to two possible ways of failing to achieve a deliberative project. One could, for instance, simply not achieve one's goal. Alternatively, one could fail to genuinely endorse the projects one is pursuing - the world might be such that the *consequences* of one's project are deemed enough to outweigh the value of the project itself. For instance, suppose I have the deliberative project to become lead guitarist for the heavy metal band Iron Maiden.

However, in achieving this goal, I realize that doing caused severe ear damage that I did not anticipate. *Had* I known about this damage, I would not have endorsed the project in the way that I actually endorsed it (in other words, I do not genuinely endorse that project). In this case, I lose out on a deliberative project because the world is such that I would not endorse the project I am actually fulfilling.

Certain deliberative projects might be better or worse for an agent. Again, this depends on the agent's conception of the good. If the agent would genuinely rank deliberative project  $x$  as more valuable, or more important to a life the agent values living than  $y$ , then  $x$  is a more valuable project for the agent than  $y$ . Again, however, the endorsement must be genuine - it must clearly capture the agent's conception of the good. Thus, on my view, there is a hierarchy of deliberative projects; certain projects are better than others, depending on the agent's rank-ordering of those projects. Many projects will be shared by many, if not all, agents. Given the goals of any individual, most will claim that literacy, a primary education, a secondary education, loving relationships, etc., are high-value deliberative projects. As goals get more sophisticated and specialized, there will be more variation; someone might wish to be a philosopher, another an economist, another a chef, etc. The weight of these various deliberative projects for the life of an individual, however, is determined solely by that individual's conception of the good, whether living *that* sort of life would be better than living *that* sort of life.

This view thus suggests one way of making interpersonal comparisons of well-being. How do we know when one person is better-off than another? We might do it numerically, i.e., by adding up the deliberative projects according to which they might live. But this seems implausible, given that I might achieve many deliberative projects, none of which form the ones that are centrally important to my life, while you might live only a few, but ones on which your heart has always been set. Rather, it seems to me, in making such interpersonal comparisons, we compare the value of the life I lead given my conception of the good to the

life you lead given *your* conception of the good. Though I might achieve many goals and live according to many projects, the life I lead may fall far short of my ideal in a way that your life does not. We thus have an understanding of what makes someone worse-off: the overall distance from the maximal fulfillment of her valued deliberative projects or, to put this in another way, the evaluative shortfall between the actual global features of her life, and those that find their way into a fully realized conception of the good as genuinely endorsed.

How do I react when conceptions of the good shift? In other words, what happens when I decide that my trombone playing project is no longer valuable (not because of any new information, but rather a change in my conception of the good)? It seems to me that there are two relevant questions that might come up when considering a shift in one's values: first, whether I have a reason now to fulfill projects I no longer value, but once did; second, how, in cases of value shift, we understand the notion of well-being at a time and well-being across an entire life. The answer to these questions depends in part on the precise nature of the difference between "global" projects and mere momentary goods. In addition, any account of value change over time is going to require a firm command of the facts of personal identity. These are topics too large to take up here. Though I cannot give a complete account, I suggest the following.

With regard to the second question, in order to successfully live according to deliberative projects, one must actually maintain that project or goal over some suitable period of time - say, the "minimum" for project fulfillment.<sup>1</sup> If I decide to take up philosophy today, and surfing tomorrow, philosophy does not count as a project and does not contribute to my well-being *qua* project. Thus when discussing well-being at a time, there is a limit to the extent to which a life can be broken down into momentary segments - the smallest segment is

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<sup>1</sup> This will probably vary from project to project. However, for the purposes of evaluating one's project achievement, one's life cannot be divided into smaller segments: temporal segments that meet the minimum is as fine-grained as intra-life analyses of project achievement get.

one that maintains the temporal minimum for project achievement; call this a “chunk.”<sup>2</sup> However, we can say that a chunk is valuable insofar as that chunk is less distant from the ideal life that one believes ideal *during that chunk*. When my values shift, I no longer live according to projects I value and must adopt new projects and live according to them (satisfying the minimum, as it were). How then do we tell when someone has lived a good life *qua whole life*? It seems to me that the proper answer is aggregative: we do not aggregate individual moments, but rather *chunks*. With regard to the second question, then, when my values shift, I have no reason to continue projects I no longer value. My well-being is determined by the conception of the good I maintain at that chunk. However, this story seems to me best suited for only minor changes in one’s conception of the good. Major shifts call into question whether that person ought to be considered the same person, suitable for an all-things-considered lifetime judgment of well-being. I leave this topic for another time, however.

I think this account of human well-being is straightforwardly plausible. But I wish to mount two arguments in favor of it. It seems to me that this account is a plausible middle ground between a perfectionist account of human well-being, and a desiderative account of human well-being. Or, put another way, this account can function both as a perfectionist account of value that takes seriously the insights of desiderative views, *and* as a desiderative account that takes seriously the insights of perfectionism. My view is thus broadly ecumenical; by finding a middle ground between these extremes, it incorporates what is best about both genres. I will take up this task in the following section, by comparing my view to a plausible account of perfectionism.

### 3.2. *Perfectionism and Deliberative Projects*

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<sup>2</sup> This entails that it is not possible, at any given moment, to determine what a person’s well-being is *at that moment* (besides, for instance, discussing the various momentary goods possessed by that individual during that moment). However, this does not strike me as unintuitive. With regard to the major projects of our lives, it seems reasonable to adopt a “wait-and-see” approach - evaluating chunks, rather than moments.

Given the vignette starring Gus and Lee, it is reasonable to believe that there is a substantial distance between my account of the good and a perfectionist account. Nevertheless, it seems to me that there is more in common than in divergence. However, noting both points of contact and points of disagreement will help to make clear some of the points in favor of treating the global aspects of one's conception of the good as centrally important to human well-being. There are many styles of perfectionism, each with a somewhat different twist. Speaking strictly schematically, on most versions of perfectionism, there is some "core" account of what it means to be an  $x$ , and the development of the things that form that "core" account of  $x$ -hood form the account of that which is good for an  $x$ . Theories differ in both the account of "core" capacities and the account of the relevant  $x$ . For instance, for Aristotle and Thomas Hurka, the relevant  $x$  is "being human." In other words, the account of the good for a human is developing those things that are "essentially" or "necessarily" human.<sup>3</sup> For George Sher, the relevant  $x$  is also human-ness, but the "core" account is not what is essentially human, but rather what nearly universal and nearly unavoidable goals are involved in being human.<sup>4</sup> Thus, on Sher's account, if some goal is nearly universal - a goal possessed by almost all of humanity, and nearly unavoidable - some goal that almost all of humanity can't help having, it is part of the account of what is good for a human.

Other accounts of perfectionism stray from the identification of  $x$ -hood as membership in a particular species, and rather adopt narrower accounts of the relevant  $x$ . For instance, J. S. Mill suggests in *On Liberty* that the proper account of utility will apply to humankind considered "as a progressive being."<sup>5</sup> T. H. Green suggests that the  $x$  property is one's status as a normative and deliberative agent. Thus the account of deliberative agency carries with it

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<sup>3</sup> Aristotle, *Nicomachean Ethics*, trans. T. H. Irwin (Indianapolis, IN: Hackett Publishing Company, 2nd ed., 1999), 1097a-1100a; Hurka, ch. 1.

<sup>4</sup> Sher, ch. 9.

<sup>5</sup> *On Liberty*, i 11.

certain properties and capacities: the ability to revise desires in light of additional evidence and concerns about the good, the capacity to deliberate about ends and to successfully follow the result of one's deliberations, etc. Thus on Green's "agential" account, the "core" account of the *x* (normative agency) is the capacity for successful deliberation. Thus the development of these rational capacities will form the good for normative agents (what Green calls "self-realization").<sup>6</sup> Here, I'm going to focus on the style of perfectionism articulated by T. H. Green, which, it seems to me, gets much right.

Green issues a quasi-transcendental argument for his account of the personal good. He claims that the ultimate ground of the good is to be found in the characteristics of moral responsibility and moral personality. Moral personality, according to Green, reproduces and is expressive of an individual's self - thus, according to Green, the realization of this self forms an ideal for all moral persons and/or morally responsible agents.<sup>7</sup> From this, Green writes, follows an ideal of self-realization:

The reason and will of man have their common ground in that characteristic of being an object to himself which, as we have said, belongs to him in so far as the eternal mind, through the medium of an animal organism and under limitations arising from the employment of such a medium, reproduces itself in him. It is in virtue of this self-objectifying principle that he is determined, not simply by natural wants according to natural laws, but by the thought of himself as existing under certain conditions, and as having ends that may be attained and capabilities that may be realised under those conditions. ... It is thus, again, that he has the impulse to make himself what he has the possibility of becoming but actually is not, and hence not merely, like the plant or animal, undergoes a process of development, but seeks to, and does, develop himself.<sup>8</sup>

One helpful supplement to Green's understanding of self-realization above is by comparing his account of freedom or autonomy. As I noted in the previous chapter, Green's account of freedom runs as follows: "From this bondage he emerges into real freedom, not by overcoming the law of his being, not by getting the better of its necessity, ... but by making its

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<sup>6</sup> T. H. Green, *Prolegomena to Ethics*, ed. Brink (Oxford: Oxford University Press, 2003 [1883]), §175-6.

<sup>7</sup> Green, *Prolegomena*, §174.

<sup>8</sup> Green, *Prolegomena*, §175.



fulfillment the object of his will; by seeking the satisfaction of himself in objects in which he believes it *should be* found, and seeking it in them *because* he believes it should be found in them.”<sup>9</sup> Thus, for Green, self-realization entails conforming one’s desires to a conception of the good that is independent of out mere desires, i.e., “what he has the possibility of becoming.” David Brink writes:

[Green] suggests that it is the very capacities that make moral responsibility possible in the first place that determine the proper end of deliberation. Responsible action involves self-consciousness and is expressive of the self. The self is not to be identified with any desire or any series or set of desires; moral personality consists in the ability to subject appetites and desires to a process of deliberative endorsement. So the self essentially includes deliberative capacities, and if responsible action expresses the self, it must exercise these deliberative capacities. This explains why Green thinks that the proper aim of deliberation is a life of activities that embody rational or deliberative control of thought and action.<sup>10</sup>

There are several things right with Green’s perfectionism, especially when one compares it to a straightforward desire account. It is not enough for something to be in one’s good simply to be a desire. That desire must, at the very least, survive some process of deliberative endorsement or other. In particular, the desires that one fulfills must be desires that would be endorsed *as good* by the agent in question (as Green writes that freedom is found in achievement of objects the agent believes *should* be achieved). It would certainly be an impoverished notion of someone’s good to count desires that are neutral with respect to an agent’s deliberative endorsement or are otherwise opposed to that endorsement altogether. This might provide a reasonable interpretation of Green’s notion of what an agent has it in her to be - one’s life must conform to a life that the agent recognizes is not simply a product of natural desires or brute forces from which it is impossible to escape, but one that is actually *good* - in this way, an agent becomes what she has it in her to become, i.e., the participant in a life of value. (I will note in the following section an additional way in which my view solves a serious and lasting worry for desiderative accounts.)

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<sup>9</sup> Green, “The Senses of Freedom”, 76.

<sup>10</sup> David O. Brink, “Editor’s Introduction” in *Prolegomena to Ethics*, op. cit., xxxix-xl.

I excitedly follow Green's account on these points. However, my account differs from this form of perfectionism in two ways. The first way is noted by Brink in defending a Greenian account of perfectionism:

This perfectionist conception of the significance of choice or post-deliberative desire may sound remarkably like an informed desire conception of practical reason or the good. But notice some important differences. First, an informed desire conception defines normatively significant desire by appeal to a *counterfactual* condition. Is the desire one which *would* emerge from some suitable idealization of the agent's current desires? By contrast, the perfectionist conception appeals to an *historical* condition. Is the desire one which was produced or sustained by a suitable kind of deliberation?<sup>11</sup>

This sort of perfectionism requires that the agent actually follow through on deliberative process, the end of which is the conforming of one's desires to the agent's conception of the good. Green insists that this is a crucial element in moral agency - not only that one's plans and projects are those that *would* survive deliberative endorsement, but rather that those plans and projects are the ones that one *actually* deliberatively endorsed - the deliberative process must actually be carried out. Of course, for the majority of humankind this requirement is trivially true. It is surely impossible - or only rarely possible - to simply hit upon those plans and projects that one would endorse as valuable under the proper deliberative conditions. As a contingent truth about humankind, this deliberative endorsement is surely necessary to the achievement of the good.

But in the further claim that this form of deliberation is intrinsically important to a person's good, my view differs. Rather, I am more inclined to the position taken by Rawls:

The hypothetical nature of the definition must be kept in mind. A happy life is not one taken up with deciding whether to do this or that. From the definition alone very little can be said about the content of a rational plan, or the particular activities that comprise it. It is not inconceivable that an individual, or even a whole society, should achieve happiness moved entirely by spontaneous inclination. With great luck and good fortune some men might by nature just happen to hit upon the way of living that they would adopt with deliberative rationality. For the most part, though, we are not so blessed, and without taking thought and seeing ourselves as one person with a

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<sup>11</sup> Brink, "The Significance of Desire", §10.

life over time, we shall almost certainly regret our course of action.<sup>12</sup> Green's insistence upon the requirement of deliberative rationality is dependent upon the connection between agency and deliberation. As an aside, in my view this connection requires too much of responsible agents - surely it would be plausible to declare that the agent who lives according to luck and instinct is a morally responsible agent. But I will not press this view here. If it is essential for moral agents to deliberate (rather than merely having the *capacity* to deliberate - which seems to me a more straightforward account of moral personality and/or responsibility), my view thus departs from the claim that there is an essential connection between rational agency and the good for a person. Nevertheless, I think there is much to be said for either downgrading the requirements of moral personality, or, if the requirements are kept high, severing the connection to the good.

Imagine two lives, Jack's and Roy's. Jack lives the perfectionist life of deliberation and actively conforms his desires to his conception of value. Roy, however, is cast about by the winds of fortune. Nevertheless, they live identical lives. Furthermore, the extent to which Roy *would* genuinely endorse his life is identical to the extent that Jack *actually* endorses his life. Put another way, Jack and Roy's value sets are identical, and the circumstances of their lives are identical. The only difference involves Jack's deliberation concerning the worth of his desires.

It seems to me that Jack's and Roy's lives are of identical quality for Jack and Roy. But even if you don't agree, surely it is implausible to say that Roy's life is *of no value*. Green is committed to this claim. There was no *actual* deliberation that took place regarding Roy's desires: it was thus not expressive of the self to any degree. Roy, on this view, was not a moral agent, and hence could not achieve self-realization. But this suggestion is too extreme. By insisting that Roy actually deliberate and actually endorse the life he leads, which he would have endorsed anyway, these rational capacities look very much like the subject of

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<sup>12</sup> Rawls, 372.

fetishization. Rather than suggesting that in order to live a good life one must deliberate concerning the worth of one's desires, it is more plausible to suggest that in order to live a good life, one must achieve the major contents of one's values - what someone *would have* endorsed had they been in the proper cognitive conditions. This suggestion leaves open the possibility that one could live a life with identical content - could live a life that conforms to her values - but lacking deliberation in a way that is identically valuable to the deliberative life. This suggestion is far more plausible. Deliberation is instrumentally valuable. It assists us in achieving what we regard as valuable. It does not form a necessary condition on the achievement of what is valuable. Achieving those major projects that find their way into our conception of the good *is* what is valuable. Deliberation *helps* us to achieve those projects.

I differ with perfectionism on a further point. Perfectionism as a claim about the good is *content-specific*, rather than *content-neutral*. Green suggests that given the nature of moral agency and the requirement of deliberation, not only must an agent deliberate and conform her desires to any old conception of the good, she must also organize her conception of the good such that the exercise of her rational capacities are given pride of place. Rather than spending one's life developing the world's largest collection of lint, the perfectionist insists that projects must be, in some way, reflective of the development of one's rational and deliberative capacities. It seems to me that this argument is implausible as a claim about the nature of rational or moral agency, generally. Even if we agreed with the previous step, i.e., that rational agency requires one to deliberate and conform one's desires to the good, this is perfectly compatible with any range of possibilities concerning the content of the good. It is certainly not inconsistent to say that the value of one's life is contingent upon using one's rational capacities to conform one's desires to the good, but that the good consists entirely of lint collecting. Thus, a rational agent would be required to conform his or her desires to the general set of lint collecting desires. It is a further step to suggest that the content of the good must include these rational capacities and their exercise.

Perfectionists will claim that the necessary connection is provided by the “core” account of *x*-hood: because moral agents are defined by the rational endorsement of their desires, *this* form of rational exercise forms the crucial notion of their good. Because it is the nature of moral agents to perform rational activity (i.e., by subjecting one’s desires to rational endorsement), that form of rational activity will form the agent’s good. Content-specificity of the kind embraced by this form of perfectionism is, again, too extreme. Assume that a committed subsistence farmer, a person who desires to live close to the soil, etc., is offered the opportunity to become (and would be successful as) a theoretical physicist. But the subsistence farmer does not engage in his profession as a result of lack of options; the subsistence farmer is strongly committed to the value of living close to the soil, of evading the trappings of an industrial society. Furthermore, he is wary of the overwhelming drive of humanity to understand the deepest secrets of the universe. He regards it, and the development of the capacities that might lead to it, as a form of hubris in the face of the almighty. Even with full information, this person might value the deliberative project of subsistence farming as opposed to theoretical physics. So he remains a farmer. This person may maintain some rational activities, of course. But assume, plausibly, that the extent to which the subsistence farmer’s life would be reflective of his rational capacities would be heightened as a theoretical physicist. Nevertheless, it is plausible to believe that life as a subsistence farmer is better for this person than the life of a theoretical physicist.

But why? What could possibly be the explanation for this? One might posit that being a subsistence farmer itself, for these reasons, is of objective or perfectionist value. But this seems false as a description of our intuitive reaction to this case. The subsistence farmer life is better because it is a life that the agent values living. Indeed, looked at a certain way, this is compatible with Green’s account of autonomy: deliberative projects are those projects that, were an agent to come to grasp her conception of the good, she would endorse *as* good, or projects that *should* be fulfilled. In this case, the subsistence farmer lives an autonomous

life in precisely Green's way. Of course, there are examples and examples. The lint-collector, for instance, seems to be a clear example of a bad life, no matter what the agent's desires. I dissent, though I will explore this case in more detail in §3.6.2.

Furthermore, the claim that deliberative projects form the major element of human well-being can go some distance toward a plausible interpretation of the central tenets of a Green-style perfectionism. First, living according to one's deliberative projects establishes that the life the agent leads conforms to what she has it in her to be - it conforms to her conception of the good, shorn of incoherence or reliance on false beliefs. It is one that expresses the deliberation of the agent: it fulfills the requirements of genuine endorsement. Second, my view might also lend an interpretation of the notion of the "self", stressed by Brink and Green. The self, Brink writes: "is not to be identified with any desire or set of desires," but rather consists in the process of deliberative endorsement. My view simply translates this talk of the "self" into the realm of the Rawls/Brandt strategy: the self is realized when the life someone leads is one that would be genuinely endorsed - that conforms to that agent's conception of the good free of cognitive distortions or false or incomplete beliefs. But, furthermore, the Rawls/Brandt strategy does not insist on the *actual* deliberative process. Nor does it take a stand (except in a thin way - no pathological desires, for instance) on the content of an agent's value set. We should embrace these conclusions. The Rawls/Brandt strategy provides a helpful "moderate" perfectionism, one that gives plausible content to the notion of self-realization in a way that better conforms to our considered judgments of the good life.

### 3.3. *Genuine Endorsement and Adaptive Preferences*

In comparing my view with perfectionism, I tried to give some motivation for adopting a content-neutral account of the good as opposed to perfectionism's stern content-specificity. This, it seems to me, is the most plausible way of construing human well-being. There are, however, other views that embrace content-neutrality, including traditional desiderative accounts: what is good for me is given by the content of my desires.

Nevertheless, my view also solves a serious worry for desiderative views, including some more sophisticated such views. In borrowing from perfectionism, and adopting a full-information and full-awareness account of genuine endorsement, my account of the value of deliberative projects solves a serious worry for traditional desire satisfaction accounts of the good: the problem of adaptation.<sup>13</sup> This problem, stressed by Sen,<sup>14</sup> Nussbaum,<sup>15</sup> Jon Elster,<sup>16</sup> and others, purports to cause difficulty for any desiderative account of welfare. It seems to me, however, that my account of the genuine endorsement of deliberative projects is helpful in this regard. In broad brushstrokes the problem runs like this, stated by Sen.

In situations of persistent adversity and deprivation, the victims do not go on grieving and grumbling all the time, and may even lack the motivation to desire a radical change of circumstances. Indeed, in terms of a strategy for living, it may make a lot of sense to come to terms with an ineradicable adversity, to try to appreciate small breaks, and to resist pining for the impossible or the improbable. Such a person, even though thoroughly deprived and confined to a very reduced life, may not appear quite so badly off in terms of the mental metric of desire and its fulfillment.<sup>17</sup>

Sen's complaint runs as follows. Many of those who live extremely intolerable lives will fail to desire, or to actively desire, those things that entail the avoidance of crippling destitution. Perhaps this is a result of a lifetime of disappointment or, perhaps, social inculcation: one's parents or elders may resist imparting the desire to escape from conditions of extreme deprivation in order to improve one's psychological state, i.e., so that the person doesn't suffer frustration of basic desires *as well as* an intolerable life. In fact, this might seem the

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<sup>13</sup> It is worth noting, of course, that my view could be put in terms that are more or less congenial to views that embrace the significance of desire for well-being. However, even if one embraces the *more* congenial option, my view solves serious worries for *other* views that are so congenial.

<sup>14</sup> This phenomenon has been noted by Sen in numerous places, most notably *On Ethics and Economics* (Oxford: Blackwell, 1987), 45-6. See also *The Standard of Living* (Cambridge: Cambridge University Press, 1987), and *Inequality Reexamined* (Cambridge, MA: Harvard University Press, 1993).

<sup>15</sup> See "American Women: Preferences, Feminism, and Democracy" in *Sex and Social Justice* (Oxford: Oxford University Press, 1999), and *WHD*, esp. ch. 2.

<sup>16</sup> "Sour Grapes: Utilitarianism and the Genesis of Wants" in *Utilitarianism and Beyond*, ed. Sen and Williams (Cambridge: Cambridge University Press, 1982).

<sup>17</sup> Sen, *Inequality Reexamined*, 6-7.

paradigmatic instance of rational desire revision: just as I should revise my desire to become a starting power pitcher for the Kansas City Royals (which, given that my fastball tops out at 50 m.p.h. and is poorly located, will surely be frustrated), those who live in circumstances of extreme deprivation might also revise their desires to conform to the sort of life they are likely to lead. Thus adaptation is a *strategic* move, made to avoid desire frustration. For preference-based accounts of the good, this fact is a challenge. The challenge is not that certain lives might end up being good which we think should not count as, on reflection, good for the agent who lives it. The problem of adaptation is not simply an insistence on content-specificity. Rather, the concern is that one's desires may be formed in ways that are a product of mere contingency of circumstance, and that relying on these desires for an account of an agent's good might reflect a radical status-quo bias: that the agent's mere circumstances are in control of her well-being. But this violates a common-sense platitude about the nature of human well-being: our circumstances often do not reflect the states of affairs that are in our best interest. Failure to deal with this problem adequately wrecks any candidate for the proper account of human well-being, no matter how plausible otherwise.

The phenomenon of adaptation causes most serious problems for a simple, unrestricted desiderative account. Nevertheless, even certain idealized forms of desire-satisfaction views face this problem. Take, for example the account offered by Railton.

The proposal I would make, then, is the following: an individual's good consists in what he would want himself to want, or to pursue, were he to contemplate his present situation from a standpoint fully and vividly informed about himself and his circumstances, and entirely free of cognitive error and lapses of instrumental rationality. The wants in question, then, are wants regarding what he would seek were he to assume the place of his actual, incompletely informed and imperfectly rational self, taking into account the changes that self is capable of, the costs of those changes, and so on. A fully informed and rational individual would, for example, have no use or desire for psychological strategies suited to circumstances of limited knowledge and rationality; but he no doubt would want his incompletely informed and imperfectly rational actual self to develop and deploy such strategies.<sup>18</sup>

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<sup>18</sup> Peter Railton, "Facts and Values" in *Facts, Values, and Norms* (Cambridge, Cambridge University Press, 2003), 54.



David Lewis proposes a similar view: “to be a value - to be good, near enough - means to be that which we are disposed, under ideal conditions, to desire to desire.”<sup>19</sup>

Railton’s account of the good involves what we might call a “second-order agent”, one that possesses all relevant information and is fully instrumentally rational - in other words, an agent that has full command of the relevant circumstances and has full command of the rational response to those circumstances for the given agent. Whatever this second-order agent would want the first-order agent to want given the first-order agent’s *actual* circumstances is thus good for the first-order agent. However, in the midst of deep and permanent destitution, it is unclear that a fully informed and fully rational agent would *want* the first-order agent to develop desires that could not be satisfied or have a low chance of satisfaction. If we had a desire that was impossible to satisfy, it certainly seems plausible that we would not desire to desire it. But then both Lewis’s and Railton’s accounts imply that in every such case, avoiding destitution is not *good* for the agent, given that the second-order agent would not want the first order agent to desire it, given its low chance of satisfaction. But then the platitude noted earlier is violated: the agent’s circumstances are in control of his good. A reasonable strategy to be deployed in this case is to desire only those things that could possibly be satisfied, or at least not to desire those things that are quite unlikely to be satisfied. But the rational strategy is not exhaustive of the agent’s good. At least in this case, it is not rational to desire what is good for the agent, given that what is good has such a low chance of satisfaction.<sup>20</sup> I would certainly want to desire only those things that could be satisfied by me in my life; this strategy is perfectly rational. Nevertheless, it is not exhaustive of the things that are or would be good for me.

A further case, not specifically a worry about adaptation, might illustrate this problem

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<sup>19</sup> David Lewis, “Dispositional Theories of Value” in *Papers in Ethics and Social Philosophy* (Cambridge: Cambridge University Press, 2000), 71.

<sup>20</sup> For additional problems with a full information view’s ability to handle the adaptive preferences phenomenon, see Mozaffar Qizilbash, “Well-Being, Adaptation, and Human Limitations” in *Preferences and Well-Being*, ed. Olsaretti (Cambridge: Cambridge University Press, 2006), 84-90.

more clearly. Assume that I am in prison, and that I strongly value escaping from prison. Nevertheless, my desire to escape from prison is very likely to be counter-productive. Assume that desiring would cause me to attempt a prison break, only to be caught and sentenced to solitary confinement. However, if I fail to actively desire escaping, my cellmate (who is more adept at prison breaks than me), will spring me with very little effort on my own. Had I tried myself, I would have been in solitary confinement before my cellmate could have helped. Would a second-order agent want me to desire to leave prison? Would I desire to desire to leave prison? Certainly not! Desiring to leave prison, in this case, would be crazy, irrational. But that does not mean that *escaping prison* is not good for me. A similar conclusion is warranted in cases of adaptation or straightened circumstances. Would I desire to desire something that I could not accomplish? Certainly not. But that does not entail that so accomplishing it would not be good for me.

Of course, both the ideal advisor account in Railton, and the dispositional account given by Lewis, might claim that his view is perfectly coherent with our considered judgments when the possibility of a life that avoids persistent deprivation is available. In this case, the second-order agent would cause no such problem. When everything is possible, it is surely rational to desire all and only those things that would make my life better. But for my purposes, this suggestion is irrelevant. Assuming that an agent would genuinely endorse a life of poverty avoidance, it is clearly in the good of the agent *now*, despite his circumstances, that he avoid deprivation. The views on offer confuse an account of rational desiring with an account of an agent's good. Often it is not rational to desire what would be in one's own good. This does not mean, however, that the mere fact that it is not rational to desire it does not mean that it is not in the agent's good. Appraised of the facts, most agents will value destitution avoidance. If so, it is good for such agents, whether or not avoiding destitution is possible or likely.

I submit that genuine endorsement goes a long distance toward solving the problem of

adaptive preferences. First, genuine endorsement requires only a valuation, not a rational recommendation. There is force in this modification. The rational recommendation requirement entails that, as a matter of conceptual truth, it is always rational to desire what is in one's good. But this implication should be rejected. Assuming that I knew the truth of various lives that are not open to me or are open to me only under very unlikely circumstances, I might come to desire them - as I sometimes desire to be a major league pitcher. Confronted with vivid awareness of the information concerning their circumstances and circumstances of others not similarly impoverished, most people in destitute conditions will desire to avoid them - or, leaving aside the question of desire, will value avoiding them. However, there is a somewhat deeper reason that my account of the good avoids the problem of adaptation. Worries about adaptation are compatible with content-neutrality; that someone desires, say, to be poor or to be oppressed need not always signal problematic forms of adaptation. Rather, adaptation is a *process* - someone is forced, given their circumstances, to develop *these* desires. The Rawls/Brandt strategy as I understand it avoids this problematic "coercive" desiring; it allows the agent to have full knowledge of what living *other sorts of lives* would be like - filling in the gaps in an agent's conception of the good left by preference adaptation. The rationality constraint imposes on the good an implausible requirement: that what is good is what is rational to adopt as a desire. But it seems to me that the good is what it is; what it is rational to desire is another thing altogether.

My view allows the content-neutrality of the good. That someone values being poor or oppressed does not signal that the fulfillment of that goal would necessarily be bad for them. However, it does signal that the fulfillment of that goal would be bad for them when such a goal is held merely because of adaptation, or the inability to get to know other ways of living. The full information and full awareness constraint allows, for the purposes of evaluation of different forms of life, an individual to do precisely this sort of sampling. Included in the information at an agent's disposal is information concerning what different

sorts of lives would be like, were she to live them. For the purposes of ascertaining what is good for me, it is reasonably important to know what my life as a major league pitcher would be like for me. Though it would not be rational to desire such a life, nevertheless, such a life is or would be clearly good for me given my genuine endorsement (assuming that my understanding of what it would be like to be in the major leagues is roughly accurate).

It seems to me, then, that my view, i.e., that deliberative projects form the major component of one's well-being is an independently plausible middle-ground between perfectionism and desiderative accounts. It can give some accommodation of the importance of the "self" as found in Green, without succumbing to the stern content-specificity found in most perfectionisms. It can also embrace content-neutrality so important to desiderative views without falling into the problem of adaptation. These are significant results, and should be points in favor of my view.

#### 3.4. *Non-Global Value*

As I noted in my response to Alistair Norcross' sequence argument in the previous chapter, my account of human well-being is pluralist. It does not say, merely, that well-being is composed of the achievement of one's deliberative projects and those alone. This view is subject to problems noted already. In suggesting that deliberative projects are the only measure of value, one is committed to a *very* strong basic minimum. But the very strong version should be rejected. Surely it is implausible to say that, even though no deliberative project is at issue, the achievement of a small, momentary respite from hunger is good for the person whose achievement it is. To deny that headaches are bad for the person who has them is surely an untenable position, even if these headaches do not form a story regarding one's deliberative projects.

In my view, the account of human well-being as one's *global* plans and projects should be supplemented with an additional realm of value. Call the set of values that find their place in this additional realm, "insignificant goods." I wish to remain uncommitted on

the various things that might find their way into a proper description of insignificant goods. As far as I'm concerned, all that is required for them to be insignificant is that they not rise to the level of a deliberative project. Headaches are surely bad, but they are insignificantly bad. Relieving a single headache does not form a deliberative project for the agent whose headache it is. (Though the relief of chronic headaches or chronic suffering might, see the following section.) Rather than attempting to give a theoretic account of insignificant goods, I wish to use hedonic goods as the paradigmatic example of such insignificant goods in the same way that Rawls uses income and wealth as paradigmatic instances of primary goods.<sup>21</sup> I do not regard hedonic achievements as the full story regarding insignificant goods. Rather, it seems to me that hedonic goods display all the characteristic features of the class of insignificant goods. First, hedonic goods (for the most part, see below), are momentary rather than global. Second, hedonic achievements can make someone's life better even when his or her projects are settled. Surely it is better for someone to live according to some deliberative project while living a pleasant existence than while dissatisfied. Though they do not perhaps stretch to some level of significant value, "cheap thrills" certainly improve lives.<sup>22</sup> Perhaps there are other insignificant goods. But I will concentrate on hedonic goods for the remainder of the thesis, with the caveat in mind that increasing the size of the class of significant goods is a possibility to which I am open.

### 3.5. *Deliberative Projects and their Value*

The notion of deliberative projects should be familiar from my discussion of minimal autonomy. Minimal autonomy, in its (c) characterization, reads as follows:

A life is minimally autonomous if and only if a) the life lived is available from some set of options, and b) features *some* global element that the agent genuinely endorses.

I mean the idea of a deliberative project to provide content to the notion of an endorsed global

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<sup>21</sup> Rawls, §16.

<sup>22</sup> Cf. Richard Arneson, "Human Flourishing versus Desire Satisfaction" in *Social Philosophy and Policy* 16 (1999).

element of one's life. Someone's life is minimally autonomous when they have some range of options and when they fulfill *some* deliberative project. Minimal autonomy is thus continuous with the wider story of human well-being that I favor: the fundamental unit of value in minimal autonomy is a deliberative project. It makes sense, then, to think about deliberative projects as forming the major element of human well-being for further states above minimal autonomy.

Thus deliberative projects form the major elements of one's well-being. This proposal follows, roughly speaking, the accounts of welfare given by John Rawls<sup>23</sup>, Joseph Raz<sup>24</sup>, Scanlon<sup>25</sup>, and Simon Keller<sup>26</sup>. The question now before us is what the weight of deliberative projects ought to be against insignificant goods. A key is found in the value of minimal autonomy. Minimal autonomy is lexically weighted against achievements with which it is in competition. However, the achievements with which it is in competition are insignificant goods, e.g., the momentary hedonic achievement involved in a small morsel of food, for instance, or the relief of a mild headache. Note, however, that the lexical priority of minimal autonomy relied, in large measure, on the desire to avoid *Lives for Headaches*. Once this is in place, there is little need, at least with regard to *Lives for Headaches*, for insisting upon additional lexically prior welfare states set at one's deliberative projects.

However, I do wish to propose that deliberative projects are lexically weighted against insignificant goods. Ultimately, such a weighting is, at least intrapersonally, quite intuitive: treating one's deliberative projects as lexically weighty will, in every case, lead to a life that better conforms to an agent's own conception of the good, better conforms to a life the agent

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<sup>23</sup> Rawls, ch. 7.

<sup>24</sup> *The Morality of Freedom* (Oxford: Oxford University Press, 1987), ch. 12.

<sup>25</sup> *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1999), ch. 3.

<sup>26</sup> "Welfare and the Achievement of Goals" in *Philosophical Studies* 121 (2004). Keller's account is similar to mine in many respects, except that he refuses to take a stand on the relative weight between one's goals and various other, momentary, achievements. Furthermore, he seems to accept the value of certain projects that would get ruled out *via* my "sound mind" requirement.

values living. After all, deliberative projects are those projects that are genuinely endorsed: valued *with* full information available at the time and full information about the consequences of adopting some project or other. Knowing all this, if I endorse some project *x*, with full information about its consequences, as part of a life I value living, it is incoherent to say that my life better conforms to a life I value leading (in the global sense) if I *give up* *x*. Here the full information constraints are important. It is possible that I endorse some project *x* without full information, but only come to realize that *x* will lead to several days of blinding torture. In this case, it might seem plausible to claim that giving up *x* might be better for me. But assume that I know about the several days of blinding torture up front: it is part of the information set I use to genuinely endorse *x*. If I understand that I will be tortured but *still* value fulfilling *x*, it seems to me quite clear that giving up *x*, at whatever actual cost, would be worse for me.

Thus there is reason for believing that our own genuine endorsement of deliberative projects points (roughly speaking) toward something like lexical priority. From our own perspective, deliberative projects are worth whatever the cost. This does not yet establish lexical priority, but neither does it point away from lexical priority. It seems to me, however, that treating the basic minimum as lexically prior has established that there is something *special* about the fulfillment of projects, at least from an intrapersonal perspective. And if so, why should they be special only as concerns the basic minimum? It seems to me more plausible to believe that that which makes deliberative projects special as concerns the basic minimum also makes them special any old time: the achievement of global projects according to which one values living *are* the dominant element of human well-being. Though its denial is not incoherent, such a view seems to me plausible. I propose, then, to take it seriously here.

One objection to this understanding of welfare might seek to exploit my reliance on the notion of genuine endorsement. After all, one way in which we might decide whether a project is worth pursuing is whether a byproduct or consequence of that project involves

headaches. If so, it seems that headaches do become one of the central aspects of human well-being, and hence might in certain cases trade off against deliberative projects. Of course, headaches can influence the extent to which I value living some project or other - they are certainly an aspect of the consequences *of* that deliberative project that I have assumed full access to and awareness of. For instance, if I knew that becoming a trombone player would cause persistent headaches, this feature of the project might be relevant to my belief that that global feature of my life is valuable. But this does not show that headaches trade off against one's valued projects. All this shows is that sometimes pain - if included among the consequences of a particular project - can influence the extent to which I value living according to some project or other. Thus headaches can be instrumentally injurious to the achievement of deliberative projects in two ways. First, because pain sometimes makes us unable to function in certain ways, they may simply deprive us of our ability to live according to our deliberative projects. Second, because they are included as a consequence of global projects we may live according to, they may cause some global project to fail to achieve the status of a deliberative project. But living according to deliberative projects is lexically prior to headaches, even if sometimes headaches can influence the extent to which one achieves deliberative projects (in either way). Headaches, on this view, might affect the extent to which we value living according to a given activity or project if those headaches are a consequence of that activity. Nevertheless, the *intrinsic* value of headaches do not trade off against the long-term, global projects according to which one values living. This seems to me a plausible view.

It is also true that dealing with and relieving pain need not only enter into our evaluation of deliberative projects *via* the consequences of adopting some project or other. Sometimes pain relief can itself *constitute* a deliberative project. Take, by analogy, a type-1 diabetic. A valued deliberative project might be, for this person, controlling his blood sugars, i.e., being a "good diabetic". Similarly, if pain is a chronic feature of one's life a global



project might involve the relief of such pain. Assume that someone is a chronic sufferer - the relief of this suffering might itself form a global, unifying project in the way that the relief of a single headache would not. Sometimes pain does become a global element - the relief of chronic suffering can certainly count, in my sense, as a deliberative project, just as being a diabetic with controlled blood sugars can be a project for type-1 diabetics. In this case, pain avoidance can compete with one's other deliberative projects, but only insofar as pain avoidance is itself a valued global element of one's life. This choice is not between mere momentary hedonic achievements and deliberative projects, but is rather a choice *among* projects and their relative value. However, in cases in which this pain neither affects a project I pursue and value, nor does it form a global feature of my life plan, I believe it is quite intuitive to suggest that giving up such projects for relief of pain would be a worse life for me no matter how much pain could be relieved. Such a life would fulfill fewer of my genuine aims and goals, it would be a life, considered as a whole, that I value less than open alternatives. And if the middle ground between perfectionism and desiderative accounts of well-being is plausible, i.e., if living according to one's coherent conception of the good in the global sense, as ascertained by the practice of genuine endorsement, is plausible, we should accept this lexical weight. Refusing this weight leads to a life that conforms to my conception of the good to a lesser degree. This, it seems to me, is perfectly plausible.

One might object, however, that the suggestion that avoidance of pain can form a global project wrecks the supposed strong superiority supposed to be granted to those achievements. Strong superiority says that there is *no finite number* of mild headaches such that they would trade off against a such a project. But suggesting that relief of headaches can eventually form a deliberative project entails that eventually relief of headaches (and some finite number, at that), will trade off against other deliberative projects. This objection is surely correct. It is difficult to conceive of any lexical priority thesis in an intrapersonal perspective because that perspective is always finitely bound. (We could think of science

fiction cases, for instance, in which someone has an infinite number of headaches, but these never form a global feature of one's life because with each addition headache, one's life is extended for one week.) But even if in the intrapersonal case there is always some finite number of headaches that form a global aspect of one's life, the lexical priority holds in the interpersonal case. No matter how many mild headaches you have, across persons, their relief is never enough to trade off against the fulfillment of a genuinely endorsed deliberative project. It seems to me that this is a plausible result.

So plausible, in fact, that I might be accused of triviality. On my view, pain can count as a consequence of a deliberative project that could thereby affect the extent to which one values that project. Pain can also form a *global* element of one's life plan. If so, where is the bite in the suggestion that deliberative projects are lexically prior to insignificant goods? The only case in which a choice scenario comes up between insignificant goods and deliberative projects is a case in which I can trade off some project for an increase in insignificant goods, say the relief of mild headaches. But then the failure to obtain such an increase in insignificant goods counts as a consequence of adopting that project: it is included in the information upon which I can rely in making a judgment about the value of the project. If so, from an intrapersonal perspective, I can perfectly well trade off hedonic achievements for deliberative projects by simply considering the extent to which some deliberative project would end up costing me hedonic achievements. Thus, from my own perspective, insignificant goods perfectly well trade off against deliberative projects by affecting the extent to which those projects are valued.

The first thing I should note is that even if this account displayed this form of triviality, the thesis still stands. The *intrinsic* value of insignificant goods is lexically prior to the achievement of deliberative projects one values. The only thing this objection notes is that sometimes insignificant goods can be *instrumentally* important to the extent to which we value our projects. Nevertheless, it is the *projects*, rather than the insignificant goods, that are

intrinsically dominant in these comparisons. If someone were to declare a project not worth living on the basis of a single accompanying headache, it stands to reason that such a project does not form a major chunk of that individual's conception of the good. Nevertheless, the lexical priority of the intrinsic value of deliberative projects to insignificant goods still stands tall. However, I should also note that even though this particular thesis might look trivial in the *intrapersonal* case, it is certainly anything but when the story about welfare is translated into the interpersonal context. No matter how many headaches one might relieve, these headaches do not trade off against the achievement of valued deliberative projects. Assume that you could grant some deliberative project *x* to an agent at the cost of mild pain for others, pain that is not instrumentally harmful for the deliberative projects of others. No matter how much pain of this sort you have, this trade-off is always justified. The achievement of the project is lexically prior to the value of headaches. Though, once again, this thesis might sound trivial in the intrapersonal case, it is anything but in the interpersonal case.

Thus the bite of the claim here is most easily seen in the interpersonal context. But intuitions might change between contexts. Though it might seem clear that for any given individual, it is always better to live according to some project he or she values living with full information, but is this really plausible across persons? For instance, suppose I could give up some project I value living in order to grant extensive momentary hedonic goods to millions (billions!). Perhaps doing so is, in fact, better than the achievement of one project for a single individual. But my hunch is that it is not. Any trade-off intended to better a state of affairs involves costs for some and benefits to others. But if so, why not confine those costs to the class of goods that do not affect the long-term features of a life one values living (as stipulated in the example)? It seems precisely backwards to impose a cost on a single individual such that that person lives a less worthwhile life from their own perspective when we *could* have taken another route: we *could* have imposed only a comparatively minor cost (albeit on a huge number of people) in order to preserve what is truly important for the value of human life: the

extent to which that life conforms to the agent's conception of the good. It seems to me that in so doing, more people rather than fewer achieve what really matters in terms of human well-being: the achievement of projects according to which agents value living; what agents have it in them to be.

At this point, however, there is surely an additional objection that can be leveled at my account of the lexical priority of deliberative projects. I have so far relied on the notion of genuine endorsement in defining what one's deliberative projects are: those global projects that would be genuinely endorsed with full information of the relevant consequences of adopting it. But perhaps the subjectivity of my account is in tension with the lexical priority of deliberative projects. Suppose that I believe that my life shouldn't be made up entirely of deliberative projects in this way. Or, at the very least, I believe that some number of non-project cheap thrills will improve my life more than the projects I could have fulfilled while engaging those cheap thrills. Fewer projects, for me, is a life closer to my ideal: under full information, I rank a life with fewer projects as better than a life with more. Does this not show, then, that the account of genuine endorsement is in tension with the lexical priority of deliberative projects?

The answer is no, and the foundation for a response has already been laid. However, there are two objections in this arena that I should deal with here. The first posits an individual whose best life consists in *no projects at all*. There are *no* global projects that he would value with full information because this individual is a cheap-thrill seeker (imagine that this cheap thrill seeker is such in a way that does not entail cheap thrill seeking *qua* deliberative project). The second posits an individual who values some projects, but refuses to value additional projects because those would cut into his cheap thrills. I'll take the second point first. The extent to which this person is troubling for my account depends upon an equivocation in the notion of "project" between *global* project and *deliberative* project. A global project is just any old project that might take up a significant chunk of the agent's life.

A deliberative project is a global project that is valued with all information about the consequences *including the consequent loss of cheap thrills*. If we are imagining that the person doesn't value additional global projects in favor of cheap thrills, this is perfectly imaginable, but doesn't cause problems for my account, because my account suggests that *deliberative* projects are lexically prior. If we are imagining, however, that the person prefers cheap thrills to her deliberative project, we should not think that this choice reflects that agent's coherent conception of the good: this preference is inconsistent. The person is saying (in declaring *x* a deliberative project) that that project is valuable even with the loss of cheap thrills. In saying she prefers cheap thrills, she is saying it is not valuable even with the loss of cheap thrills. Thus in order to be imagining a coherent agent, we must be imagining the first case. But this causes no problems; deliberative projects and not global projects are lexically prior.

But perhaps this does not get me out of the worry. One might think that *every* agent has a disposition to give up *any* project if it comes along with *enough* pain, say, or loss of cheap thrills. I have been relying on the actual consequences of adopting some project or other: knowing what I know about just how much pain being a trombone player will cause, I endorse it. However, *if* it were to come with significantly more pain, I might reject it. Virtually no one will actually endorse the lexical priority of any global project. The only thing that the agent's endorsement guarantees is that that project is worth *some finite* amount of headaches (whatever headaches happen to come along with living according to that project) - not that that project is worth *any* amount of headaches.

It is worth noting again what a *fully* subjectivist view can and cannot plausibly claim about the weight of deliberative projects. It *can* claim that deliberative projects are worth whatever the cost in other goods - these projects have been endorsed with full knowledge of the consequences of adopting that project. However, as I noted above, it cannot make the further claim, essential to a lexical priority thesis, that further deliberative project achievement

is always better than any finite number of headaches - this latter claim involves reference to counterfactual cases under which we may be less sure of the value of said global project. If so, given that it is likely that everyone has a breaking point, strict lexical priority cannot be established on a *purely* subjectivist view. But my view is not purely subjectivist. I embrace the plausible claim that sometimes people can be wrong about the nature of their own good. On my view, the *content* of deliberative projects is given subjectively. But once their content is given, I maintain the claim that these projects are always better than any amount of insignificant goods. And, it seems to me, this departure from subjectivism is plausible - we generally determine how well a person's life went by the extent to which he fulfilled those global projects according to which he valued living. If so, these projects are always better. Indeed, as has been noted before, in the strictly *intrapersonal* case, the subjective weight and the lexical weight come together. Any *actual* headaches against which a project might trade off are not sufficient to outweigh a deliberative project. It is only in the counterfactual intrapersonal, or actual interpersonal, where strict lexical priority requires a departure from wholesale subjectivism.

But this limit in the subjectivity of the account is not *ad hoc*. It is found in the weight of the basic minimum. As established in the previous chapter, the weight of minimal autonomy is lexical. And this leads us to my response to the first permutation of this objection: one must maintain *at least some project or other*. But this is not unintuitive; if there is *no global feature of your life that you value*, surely we should say that life, as a whole, is not worth living. Perhaps an agent would be happy to be a non-project possessing cheap thrill seeker. But we should reject this *qua* good life; it leads to serious problems *vis-a-vis* the basic minimum (see the previous chapter). And it is unintuitive besides - if there is any coherent conception of basic human dignity that enters into our understanding of human welfare, it surely excludes such a disunified cheap thrill seeker. Thus, as I said before, my view should be thought a plausible middle ground between subjectivist accounts and objectivist (like

perfectionist) accounts. My account retains ground for much subjectivity - while insisting that one at least possess minimal autonomy.

What results from this view, together with my account of minimal autonomy, is an account of human well-being that has not simply one threshold, set at the level of the basic minimum, but rather a hierarchy of thresholds. The achievement of each deliberative project constitutes a threshold that is lexically prior on non-threshold goods. It is *always* better to achieve threshold goods when one can, no matter the cost in terms of non-threshold goods. Furthermore, these thresholds are not idiosyncratic, nor are they some grab bag of associated goods. They are theoretically unified. Thresholds simply are the achievement of one's deliberative projects.

### 3.6. *Objections*

Deliberative projects, on my view, are lexically prior in value to the intrinsic value of insignificant goods. This view faces a number of objections. The first wonders whether projects for the better-off are really lexically prior to insignificant achievements for the very worst-off. The second attempts to show that my construal of deliberative projects is too permissive; on my view, base and otherwise vile projects count as part of an agent's major good. Third, and finally, I discuss whether my full-information construal of genuine endorsement is adequate to the task of an account of human well-being. In this section, I defend my account against criticisms offered by Velleman, Gibbard, Rosati, and Sobel.

#### 3.6.1. INSIGNIFICANT ACHIEVEMENTS FOR THE WORST-OFF

My view suggests that insignificant goods are always trumped by the achievement of deliberative projects. This particular claim has no distributive restrictions (unlike the distribution of threshold goods themselves, see the following chapter). Thus if someone who is extremely poorly-off could obtain the only possible good obtainable by her, say, some insignificant achievement, this achievement is trumped by the achievement of any deliberative project, no matter whose they are, for instance, the deliberative projects of those already

reasonably well-off.

This might strike some as implausibly extreme. After all, it is one thing to say that a small morsel of food for a starving individual does not trade off against a life that maintains the basic minimum, i.e., a life of minimal autonomy. But it is surely another thing altogether to say that those small morsels do not trade off against the deliberative projects of the very well-off, people who have already achieved significant levels of threshold goods.

First, I should say that it seems to me that this objection is most forceful when we consider the insignificant goods of those who cannot maintain even minimal autonomy. It does not seem plausible to me to claim that a person who might already maintain some global element of value in their lives might also garner insignificant achievements at the cost of deliberative projects, no matter whose projects they are. After all, the loss of such goods does not affect the global sense in which the worse-off individual values her life. And though the better-off person might already have a reasonably valuable life, the loss of a project that could have been granted seems to me to be a significant loss. But we might reconsider when it comes to persons who do not maintain any global element of value at all, nor could they. The only thing relevant to the value of their lives is whether to grant them some collection of insignificant goods or other. Perhaps in *this* case it is more plausible to allow that insignificant goods might outweigh deliberative projects for the very well-off.

Speaking honestly, I am torn. On the one hand, even those people who are very well-off might stand to gain significantly with only an extremely minor cost to those people who fail minimal autonomy. The individuals who might have to bear a burden are worse off, clearly, but a burden that is insignificant in comparison to the burden that is borne by someone who is denied a deliberative project in favor of a small morsel of food for an individual or a momentary respite from hunger. But not simply insignificant in *comparison*, the burden that must be borne is also absolutely insignificant. Though a momentary respite from hunger might be valuable for a person, it is surely not of any truly significant value for the person's



life. She still fails basic human dignity. She still fails to live a life of any minimal global value. The mere fact that she can obtain no other benefit should not mask the fact that the benefit she could get is absolutely insignificant concerning the all-things-considered value of her life.

On the other hand, such a dictum seems a bit cruel and unusual. There may be a range of things we could do to make the lives of those people who might not be able to achieve minimal autonomy better. And even though they are both absolutely insignificant and comparatively insignificant, it might be that the fact that they are *so* poorly off gives us some reason to believe that their relief of suffering is worth more than the deliberative projects of those who already maintain a life of reasonable value.

My bare intuition tells me that these momentary achievements are too insignificant to compete against the deliberative projects even for those who are already well-off. But I have little argument to offer beyond a simple intuition. Therefore, I will leave the possibility open that the insignificant goods for those persons who fail minimal autonomy might, depending on the amount, outweigh the deliberative projects of the reasonably well-off. I will leave it to others to give an account of “reasonably well-off”. It should be set high enough to avoid the suggestion that such basic projects as an education or success at a career can trade off against momentary hedonic achievements for the worst-off, but not so high that those people who have lived lives of tremendous value are insulated from such trade-offs. As I said, my intuition is that they are so insulated, but my intuition is weak and subject to revision.

### 3.6.2. THE BASE, THE SADISTIC, AND THE VILLAINOUS

In my view, there are no set constraints on the content of one’s deliberative projects. Recall Gus’s friend Lee. The only requirement is that they appear in an agent’s conception of the good, or would be genuinely endorsed when comprised of all relevant information. Thus my view embraces *content-neutrality*: there are no constraints on the sort of life that can be good for an agent. But this form of content-neutrality might be regarded as unintuitive. In

particular, there are three examples that might be provided to motivate the rejection of content neutrality: a project that is decidedly base, one that is sadistic, and one that renders the agent something of a minor villain. I will take these possibilities in turn.

Consider Stan, whose ultimate desire in life is to become the world's most prodigious laundromat lint-collector. We might initially react to Stan as though he were insane or somehow didn't understand what is actually involved in a life of lint collecting. But suppose that with full information, etc., Stan really does endorse such a project. Strange though it may seem, this project ends up in his coherent conception of the good. Do we really wish to say that the fulfillment of such a project contributes to that person's well-being? Perhaps not. I quote David Brink: "most of us think that people can be satisfying their deepest desires and yet lead impoverished lives if their desires are for unimportant or inappropriate things. For instance, we are unlikely to view a life of someone devoted to collecting lint as a richly valuable life, no matter how successful a lint collector he is. What I would want for my son for his own sake is not content-neutral in this way."<sup>27</sup>

I disagree. First, it seems to me that the suggestion that I might not want lint-collecting for my son is somewhat misleading. People have a tendency to want for their offspring the sorts of lives that *they* find valuable. I wouldn't want my son to be a lint-collector, because I see no value in such a project. Someone who found fulfillment in lint-collecting might be more open to the possibility for his or her progeny. But leave this aside. It seems to me that what I *should* want for my offspring is a life they would find ultimately fulfilling. And if it is the case that some person *finds* fulfilling (after suitable reflection, etc.) the pursuit of lint-collecting, I ought to want that for them. Perhaps I simply wouldn't be convinced that such a person really *could* value lint-collecting. But this is just bull-headedness on my part; I should remain open to the possibility and embrace it if and when it arises. Similarly for Lee. Perhaps it simply doesn't occur to me that anyone, had they

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<sup>27</sup> "The Significance of Desire".

undergone the proper deliberation, would believe that Lee's alcoholism is good for him. But given Lee's testimony, I find it very difficult to believe that Lee's life as it is is not, all things considered, good for him.

However, I wish to propose an ecumenical suggestion. Assume that the content of well-being isn't content-neutral in this way. Nevertheless, I claim, a content-specific view of the personal good must at least embrace the value of conforming one's life to his or her conception of the good. Take Stan again. Stan simply does not believe that any non-lint-collecting life would be worthwhile for them. If so, living a life that is out of conformity with their own conception of value, *even if it is in greater conformity with the content-specific conception of the personal good*, should be ranked as bad *by* that non-content-neutral approach. Why? Surely it is bad even by the standards of a content-specific view that someone live a life they do not endorse as valuable. Such a person is incontinent - they choose *away* from the good (even though their beliefs concerning the good might not reflect the content-specific conception). In Green's sense, they are the paradigmatic example of a failure of freedom or autonomy: they seek satisfaction in objects in which they believe it *shouldn't* be found. Incontinence in this way should surely be rejected. Whatever else I might want for my son, I certainly would not want him to live a life he himself believed was bad, or less worthwhile for himself.

But this is compatible with suggesting that there are better and worse ways of living continent lives. We might agree that Stan's lint-collecting life might be the best such a person can do, given his mistaken understanding of the good. But we might also say that it would have been better for him had he endorsed different projects, such as stamp collecting, or coin collecting. But this does not entail that once one's conception of the good is fixed, they ought to choose stamp collecting. Choosing stamp collecting in such circumstances would be a display of the problematic form of incontinence suggested earlier. It represents the choice of a life Stan believes worse than he is capable of. This is compatible with many of the goals of

parenthood, looked at in a certain way. I'd prefer to instill in my child desires and values that might conform to this more content-specific understanding of value. But this does not entail that living a life in conformity to this content-specific standard, when the agent truly believes that the content-specific standard is incorrect is better. It only entails that one wishes, as a parent, to engineer values insofar as is possible in conformity with the content-specific approach.<sup>28</sup> (Perhaps on this suggestion, the interpersonal comparability of threshold goods might be revised by discounting the value of goods that would not be endorsed by this content-specific standard, though they remain of positive prudential value, given their genuine endorsement.)

Alternatively, one might make a stronger claim in favor of a quasi-objective account. One might suggest that it is a *necessary*, but not sufficient, feature for value that one's projects have either objective or perfectionist value. While a life of great objective achievement that is not endorsed would not be valuable, perhaps any *endorsed* project must have some form of objective value. This would be a considerably stronger ecumenical suggestion - and one to which I am opposed - but I leave it open as a possibility, consistent with my account of thresholds offered here.

It does seem to me, however, that base projects such as lint-collecting should really count as a threshold good for the individuals concerned to develop such projects. However, there are cases and cases. The lint-collector is one thing. How about, instead, a sadistic project, or worse; the life of, e.g., John Dillinger, Adolf Hitler, Josef Stalin, etc.? Are these projects really compatible with the welfare of the agent in question? Is it better to live like John Dillinger? Don't we want to say that no matter how intensely the Dillinger-like life is valued, that life is worse for the agent in question?

Again, it is compatible with my suggestions here that the quasi-Dillinger might have lived a better life had the quasi-Dillinger had a different value set. Nevertheless, it seems

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<sup>28</sup> Cf. Richard Arneson, "Desire Formation and Human Good" in *Preferences and Well-Being*, op. cit.

plausible to me that for the quasi-Dillinger, a Dillinger-like life is better than a non-Dillinger-like life. Why believe this? Simon Keller is helpful in this regard:

Roger is a horrible person with a heinous goal. Perhaps he wants to torture a certain number of kittens, or destroy those who oppose his tyrannical regime, or whatever. After some hard work, he achieves his goal....Barry is another horrible person with a heinous goal - the same goal, in fact, as Roger. Unlike Roger, Barry fails in his attempts to achieve his heinous goal. Along the way, though, Barry carries out some further gratuitous, evil acts, acts that make him just as detestable a person as he would have been if he had achieved his heinous goal - just as detestable, indeed, as Roger. The lives of Roger and Barry are blighted equally. Still, it seems as though Roger's life, in comparison with Barry's, goes well. Roger is detestable, but Barry is both detestable and a failure. At least Roger lives a life that goes well on his own (perverted) terms; not even that can be said of Barry.<sup>29</sup>

I agree with Keller. Though we might think that, all things considered, the quasi-Dillinger is a moral monster, the question is not whether he is a moral monster, but whether his life is successful, contributes to his own well-being. And it seems to me the answer to this question is that it does. Of course, as rational social planners we would try our very best to make sure that the quasi-Dillinger lived as bad a life as possible; his achievement of his goals is not something compatible with our overall goals vis-a-vis justice or moral theory. Frustrating the quasi-Dillinger's goals is likely to make the state of affairs better overall. It is, however, a sacrifice on the part of the quasi-Dillinger.

This sort of a sadistic project is adequately dealt with by my view. Dillinger is a major villain, someone who would disrupt the projects of many other people; in our world, it would be much worse to allow him to live such projects. Nevertheless, there is a problem with a less major villain. Call this person the *minor* villain. This person's project is to cause momentary headaches in as many people as possible. The minor villain doesn't want to destroy anyone's projects, *per se*, but is content to be an annoyance. His most important project is causing this sort of minor suffering in people. Given the lexical priority of deliberative projects to minor headaches (and associated annoyances), *if* we were to say that such a project improves the well-being of the minor villain, we do not have the option of

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<sup>29</sup> Keller, 31-32.

saying that the minor villain ought to be stopped or that his fulfilling such a project would make the overall state of affairs worse. His project entails only that some people will lose out on momentary pleasures that do not trade-off against the fulfillment of projects. Given my schema, the minor villain's fulfillment of his life aims would make the overall state of affairs *better*.

It seems to me, however, that the minor villain is dealt with reasonably adequately by the "sound mind" constraint on genuine endorsement. Being of sound mind requires that one not be socio- or psychopathic. The minor villain seems to me to fall at least into the sociopathic category, if not the psychopathic. Though this positive diagnosis would have to wait for a full psychological work-up of the minor villain, that such a project might be blocked by the sound mind modifier seems a reasonable working assumption.

However, we might imagine a different case. Take, for example, the free jazz trombonist. This trombonist's most deeply held project is to be played regularly on radios across the world. Nevertheless, the nature of his free jazz causes headaches in almost all persons who hear his music.<sup>30</sup> But now assume that such headaches would not interfere with anyone else's projects. Can it really be the case that the fulfillment of this project makes the state of affairs better? I answer this question in the affirmative. After all, the benefit accrued by the player is tremendous, it is a project of clear value, one around which he has organized his life. The loss to others is extremely minor, mild headaches every once in a while, but not sufficient to render any of their projects unavailable. This seems like a paradigmatically beneficial transfer: in terms of the extent to which agents value their lives as a whole, this entails virtually no burden at all for a major and significant benefit. Headaches are annoying, surely. But at the cost of mere headaches, we could significantly improve the extent to which the free jazz trombonist's life conforms to his conception of the good. It seems to me that this trade-off is efficient.

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<sup>30</sup> For a demonstration, see Albert Mangelsdorf's "Global Unity Orchestra".

### 3.6.3. THE RAWLS/BRANDT STRATEGY

The following objections seek to cast doubt on the notion of genuine endorsement as I articulated it in Chapter Two, and made use of it here. On my view, a life or life plan or set of activities are genuinely endorsed if and only if they would be endorsed by the agent *as good if* that agent had full information about the consequences of the life plan or activity. It is worth recalling, however, that I proposed the full information constraint as one schematic possibility. What is essential in genuine endorsement is that a particular plan or project appear in a life an agent values living, that adequately reflects his or her conception of the good in the absence of various forms of cognitive distortion and incoherence. The Rawls/Brandt strategy, it seems to me, is one reasonable way to capture this sense in which genuine endorsement is reflective of an agent's conception of the good: strip away false beliefs, insist on the knowledge of all relevant facts concerning a course of action, and assure that the agent is aware of those facts seems to me the best method to ensure that genuine endorsement reflects an agent's coherent conception of the good as it is, free of various forms of distortion. If there are other, better, ways of understanding endorsement from the point of view of one's coherent conception of the good, I am open to this possibility.

That being said, my account of genuine endorsement is able to escape some standard criticisms of the Rawls/Brandt strategy. David Velleman, for instance, notes that Brandt's account leaves the implausible conclusion that desires are rational if and only if they are endorsed from the agent's first-person perspective if he or she had vivid awareness of all available information. Surely there are *other* ways that we criticize desires or seek to refine our own good. For instance, Velleman writes:

[C]ognitive psychotherapy is not the only kind of motivational therapy there is. We can alter our desires, not only by exposing ourselves to the facts, but also by exposing ourselves to other kinds of influence - to the influence of other people, of literature, of prayer, or of our own self-censure and self-praise. And the possibility of such motivational therapy is often the theme of our evaluative discourse. When we ask what to desire, we're often asking, in effect, which persons to emulate, which regimen of self-discipline to

undertake, or which influences to succumb to.<sup>31</sup>

It seems as though Brandt's definition of the good, i.e., desires that are endorsed *via* cognitive psychotherapy, lacks the resources to note these sorts of desire revision, desire revision that, on an intuitive level, we think is important and contributes to an agent's good.

But my account is importantly different from Brandt's as he states it. There are three crucial differences. First, on my view, a life plan is a good one for a person if and *only if* that person would *value* living it. In other words, genuine endorsement must be genuine endorsement *as* good. Second, Brandt's view is of *rational* desires, or desires that it is rational to endorse (in an action-guiding sense). My view is that Brandt's account helps us get more clear on the notion of a life plan one values living, which in turn reflects an agent's good. Third, what is genuinely endorsed on my view are not individual plans at a given time, but rather a person's life as a whole. Someone is living a good life, in my view, when he or she lives a life he or she values living, considering the life and its activities as a whole. This second clause helps to alleviate the worry noted by Velleman. It is possible when considering "which persons to emulate," that doing so will alter the structure of my desires. But the question of which person to emulate is in large measure just the question of what sort of life, on the whole, would I value living. It seems to me perfectly plausible that the question is best answered by providing the agent the most appropriate cognitive tools by which to endorse some life or activity as good, namely, full information about various alternative lives. Brandt's own conception of rational desires might be felled by Velleman's complaint, but it seems to me mine is not. The important questions that get asked and answered with full information and full awareness of that information are precisely the questions that Velleman insists upon, i.e., what sort of life ought I to lead? Would I value leading a life suggested by pieces of literature or the Bible? These questions are strongly relevant to the procedure I describe here.

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<sup>31</sup> J. David Velleman, "Brandt's Definition of 'Good'" in *The Philosophical Review* 97 (1988), 357.



But this account of genuine endorsement is susceptible to a further objection. Allan Gibbard writes:

Suppose an egoist achieves happiness by keeping his mind off the joys and sorrows of others, but he thinks that if he fully realized what suffering he could alleviate and what joy he could spread by a life of self-sacrifice in the service of others, he would sadly forsake his life of self-centered enjoyment, and take on an irksome burden of service to humanity. Must he find that a recommendation for self-sacrifice? Why is it not instead a reason to shield himself from the facts? Can he not say without linguistic error, “It’s crazy to dwell on the effects one can have on the lives of others. For if you do, then next thing you know, you will be making all sorts of sacrifices for others at the expense of your own enjoyment. Why deliberately take a path that leads to sorrow?”<sup>32</sup>

Gibbard’s worry is powerful. I’ll take the liberty of translating it into my preferred scheme here. Were the egoist’s conception of the good to be filled in in light of the various facts about the world, he would value a life of self-sacrifice<sup>33</sup> with its associated irksomeness more than the self-centered existence as is his now. Why, then, is this not a reason to *avoid* full information, to *avoid* making one’s conception of the good coherent rather than a reason *to* live such a self-sacrificial or other-regarding lifestyle? Living according to one’s conception of the good, in this case, might be worse for the agent, or so it seems.

I wish to hold firm. We should be concerned to insist that the other-regarding life is better for the egoist. The alternative suggestion leads to worries about adaptation. Allowing that someone’s good could be determined by an incomplete or incoherent conception of the good, as the egoist’s is, allows that in some circumstances the good of someone whose desires are formed in coercive or adaptive ways fully captures *her* good. Avoiding confrontation with the facts of the world or the possibility of other sorts of lives in light of those facts is one powerful way in which adaptive or coercive preferences are entrenched and maintained. Refusing to consider the information about one’s existence or the world outside one’s own circumstances might, in many cases, lead to desire adaptation: a desire only for the

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<sup>32</sup> Allan Gibbard, *Wise Choices, Apt Feelings* (Cambridge, MA: Harvard University Press, 1990), 21.

<sup>33</sup> “Self-sacrifice” is misleading. It suggests neglecting one’s own good for the benefit of others. On the proposal I’m advancing, what is described here as “self-sacrifice” is in an agent’s good.

circumstances as they are, or the associated “small breaks” that are reasonable to expect given one’s circumstances.

However, even if refusing the full-information constraint leads to worries about adaptation, there is positive reason to accept the Rawls/Brandt strategy as I understand it here. The deliverances of the fully informed agent are plausibly in the egoist’s good. The fully informed agent, as Gibbard imagines her, is not *actually* fully informed. Gibbard imagines a person who possesses all the information about the world, and then must make a judgment about what life would be best in light of the knowledge of those facts. But this strips the fully informed agent’s ability to evaluate another possible life, i.e., the life in *ignorance* of such facts. The Rawls/Brandt strategy requires the agent to have knowledge of all possible lives an agent might live, *including* the life of egoist’s ignorance. And with that knowledge at hand, if the fully informed agent values living an other-regarding life more than the life of blissful ignorance, we should accept this life as better. Fully informed, it would be regarded as more valuable from the perspective of an agent’s conception of the good. Once again, though Gibbard’s worry might cause problems for a straightforward interpretation of Brandt’s account, my own view survives such criticism.

Recently, there have been a number of powerful critiques of the use the full-information constraint on the personal good. Connie Rosati<sup>34</sup> and David Sobel<sup>35</sup> have questioned the applicability of *any* full-information constraint, whether this is seen as part of a Railtonian Ideal Advisor strategy, or whether it is part of a simpler Brandtian/Rawlsian full-information strategy. Rosati sees a dual pull hanging over the full-information strategy. The first is the pull of internalism, or the *resonance* constraint:

A plausible internalist requirement must be understood to hold not only that an adequate account of a person’s good must effect a motivational connection between a person and her good, but that it must satisfy a “double motivational link.” The first link effects a motivational connection between the individual

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<sup>34</sup> “Persons, Perspectives, and Full Information Accounts of the Good” in *Ethics* 105 (1995), 296-325.

<sup>35</sup> “Full Information Accounts of Well-Being” in *Ethics* 104 (1994), 784-810.

and her good under counterfactual or “ideal” conditions. ... The need for a second link to motivation arises because there are many possible sets of “ideal” conditions. What a person cares about for her actual self will depend upon which conditions she is under, but not just any counterfactual conditions are relevant to determining her good. *Surely conditions can be relevant only if the actual person would care about the fact that something would prompt her concern under those conditions.* Thus, a second link to motivation must be satisfied, one that effects a motivational connection between an individual and information about her counterfactual desires or concerns.<sup>36</sup>

An agent must *care* about the deliverances of his or her informed or idealized self. If I have no interest in what my informed self would care about, my informed self is, under this form of internalism, an idle wheel. My good must have some connection to what I actually value or care about or desire. Once this premise is established, Rosati goes on to suggest why we should believe that an informed version of myself is a self I would not care about. “A person will have to change markedly to become fully informed, and Ideal Advisor views lack the resources to guarantee that the fully informed person, though purportedly oneself, is someone whose reactions an individual either will or should regard as authoritative.”<sup>37</sup>

Rosati claims that it would be insufficient to determine whether some life or other would be of value to simply know all the facts about the individual’s existence in that life. Rather, the fully informed agent must actually *live* those various lives in order to get a full sense of whether that life would be a valuable one for the agent. If so, this particular agent must have superhuman capacities for memory, information processing, and awareness. This particular agent must avoid the standard cognitive distortions in valuation that come from presentation effects: it must not be the case that the agent’s assessment of the value of a rich life versus a poor life is influenced by whether the rich life or poor life came first. The fully informed agent must also be free of other standard cognitive problems that confront actual agents.

The question for Rosati, however, is not whether such an agent is incoherent or

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<sup>36</sup> Rosati, 300-301.

<sup>37</sup> Rosati, 307. Rosati focuses on ideal advisor views, but her criticisms are equally worrying for a full information view, à la Rawls/Brandt.

inconceivable, but rather whether such an agent is one whose valuations *we should care about*. If the fully informed agent is so different from me, why would I care what that agent's valuations are? Why would what that agent has to say resonate with me at all, especially since that agent appears to resemble me in very few ways?

Leaving aside Rosati for the moment, Sobel's criticism of the Rawls/Brandt strategy implies that the fully informed agent is actually incoherent. Sobel considers two broad strategies for fully informing agents, the first a "report" model, the second an "experiential" model. The *report* model is supposed to inform an agent by giving her the facts about what a sort of life is like and what various alternative lives would be like. This account is criticized by Rosati above, and by Sobel when he claims that: "the report model does not offer a reliable method of determining our well-being because we have had explained to us no trustworthy method of consistently and across a wide range of contexts conveying to our idealized self an adequate understanding of what the lives would be like that she is choosing between."<sup>38</sup> In point of fact, I am ambivalent on this criticism of the report model. It seems to me perfectly plausible that an agent could have a coherent and complete ordering of various lives without actually experiencing them - without succumbing to the problem of adaptation. If I decide that having a Mercedes-Benz is not any good, after all (because I cannot afford one), I am likely to change my mind when confronted with the facts of living a life with a Mercedes (assuming, of course, that having a Mercedes would appear in my coherent conception of the good). Of course, one might think - as do Sobel and Rosati - that in order to fully order these various lives, one actually has to get inside them - to *see* what being a theoretical physicist or a subsistence farmer would be like. This strikes me as strong - but for the purposes of argument, I follow Sobel and Rosati's lead by disallowing the report model.

Thus assume that this criticism of the report model is correct. Sobel now considers the *experiential* model, in which agents are supposed to have first-hand experience at living

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<sup>38</sup> Sobel, 798.

the sort of life the value of which is in question. But the experiential model, according to Sobel, comes in two varieties, the “serial” version, and the “amnesia” version. In the *serial* version, “our idealized self is expected to achieve full information by acquiring firsthand knowledge of what one of the lives we could live would be like, retaining this knowledge, and moving on to experience the next life we could lead.”<sup>39</sup> The *amnesia* version, just as it sounds, bans the information about previous lives a person has experienced firsthand, and then makes comparative judgments after all alternatives are explored.<sup>40</sup>

According to Sobel, there are serious problems with the serial version. The first such problem is that, just as Rosati notes, one’s perspective on one’s experiences change depending on what one has experienced in the past. Many of Sobel’s examples concern individual moments in one’s life, rather than global plans or projects, but his points could be translated into my account. For example, the second, or third, life experienced serially might not be appreciated especially if many of the activities are substantially similar. For instance, the thrill one might have had being admitted to graduate school in philosophy might diminish the second life’s thrill at getting admitted into graduate school in economics, just to give one example. The life of being a philosopher of science might diminish in value after one has spent a life being a metaphysician, for instance; not specifically because philosophy of science isn’t less valuable *per se*, but merely because the experience of having already lived life as a metaphysician might make life as a philosopher of science somewhat stale.

One response by which I am tempted is to simply stipulate the proper psychological state of the agent. After all, the full information perspective is an idealization anyway - no one could ever have such information. Why not idealize further? Why not idealize the psychological state of the fully informed agent to say instead that rather than being subject to these distortion effects, the fully informed agent can confront each life anew? This suggestion

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<sup>39</sup> Sobel, 801.

<sup>40</sup> Sobel, 805

appears to be the *amnesia* version, posited by Sobel: “The agent must have an experience of what some life would be like, then forget this and be ready to learn what some other life would be like without the latter process being affected by its position in the series. Then at the end of the learning and forgetting process we would have to remove (serially or all at once) each instance of amnesia while, on some views, adding factual information and immunity to blunders of instrumental rationality somewhere along the way.”<sup>41</sup> Though Sobel appears to treat this view with some skepticism, I am attracted to this picture. For one thing, it seems to capture the sense in which genuine endorsement is or should be endorsement from within an agent’s complete and coherent conception of the good. No conception of the good can be complete without valuations of various alternative lives. And no conception of the good can be coherent without the actual facts concerning how those lives might go. The amnesia version seems to provide the requisite prescription.

But by suggesting such a psychologically weird agent, we return to the original worry that motivated Rosati. The amnesia version seems particularly susceptible to the problem of internalism. How am I to respond, when the fully informed agent might be so different from a given individual that that individual would not be motivated to care about what the fully informed agent values? Why should I care about the valuations of a virtually immortal amnesiac? Of course, there are stronger and weaker versions of internalism. It seems to me that the version of internalism insisted upon by Rosati is surely too strong. It shouldn’t be the case that a given individual must care about what the fully informed person, or whatever person whose evaluations are relevant, might say. Consider an example slightly modified from Sobel. Consider an Amish person who is exposed to a very small variety of options. But assume that with full information this person would come to see that the Amish lifestyle is not as valuable as she believes. Given her circumstances, however, leaving the Amish is not a feasible option, whether financially, socially, educationally, or whatever. We should certainly

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<sup>41</sup> Sobel, 805.

say that it is a better life for this person to live a non-Amish lifestyle. If she *knew* about various alternatives, she would value them over her Amish lifestyle. But given that this is unavailable, it is certainly *irrational* for the Amish woman to get such information. It is in her best interests *not* to care about what the fully informed person would value, precisely because these options are not available to her. But this should not entail that the Amish life is the best life for her, or that leading a different life would not be good for her. Rather, it entails that we needn't hold an account of the Amish woman's good to what her actual self would or should be motivated to care about - sometimes caring about things that would be good for us gets us into trouble.

However, there is one way in which my view can capture something in at least the same ballpark as the internalist constraint. The Rawls/Brandt strategy I pursue here takes an individual's conception of the good and fills in gaps (say, from lack of information about alternatives), and corrects places at which that conception might be incoherent, inconsistent, or incompatible with available data (say, for instance, by granting full information which will then bring conflicts between various values to light). Nevertheless, the end product of the Rawls/Brandt strategy is clearly and decidedly the *agent's* conception of the good. Not, perhaps, as she recognizes it now, but as it would be rid of incompleteness, incoherence, or reliance on faulty data or predictions. This is, perhaps, a less robust account of internalism than Rosati demands. Nevertheless, Rosati's internalism is implausible. But my view maintains at least some connection to the agent in question: the end product is *her* conception of the good.

Perhaps, however, I'm wrong. It might be that the notion of a life one values living is poorly articulated by the full information strategy pursued here. When all is said and done, however, this is not a tragedy for my view. The locus of value is to be found in living according to those global aspects of a life one values living, that would be found in an agent's conception of the good as complete. If there are better ways of analyzing genuine

endorsement that meet the conditions set down here, I am open. I have not, however, seen reason to doubt my version of the Rawls/Brandt approach.



## CHAPTER FOUR: THRESHOLDS AND LEXIMIN

In the previous three chapters of this thesis I have argued that human well-being is threshold-laden. I have also argued that one of these thresholds is crucially important to the evaluation of states of affairs as a whole: the basic minimum. When evaluating states of affairs, the basic minimum ought to take lexical priority to the various momentary or hedonic achievements that one could grant to individuals who cannot achieve the basic minimum. Questions remain, specifically with regard to the relationship between the basic minimum and additional thresholds. So far, however, the question of additional thresholds, which I defended in the previous chapter, is a bit mysterious. How does the achievement of these thresholds affect our evaluation of states of affairs? Should these higher thresholds trade off against the achievement of the basic minimum?

These are questions about the value of the distribution of threshold goods. In this chapter, I will mount a case for *leximin*: the absolute priority for the worst-off when it comes, strictly speaking, to threshold distribution or, what comes to the same thing, the absolute priority of the lowest achievable threshold. Though *leximin* is a strong view, I shall argue that it has advantages over alternative accounts that should not be ignored. In particular, *leximin* is the distributional scheme that would be adopted by an effective political institution that treats all citizens as first-class. And if so, I argue, this forms an important reason for treating *leximin* as a serious candidate *qua* account of the betterness of various distributions of well-being.

In the first section of this chapter, I will consider various alternative accounts of the value of the distribution of well-being. Following this, I will marshal an important

consideration in favor of a leximin or leximin-style distributive scheme. This argument, however, will not single out leximin as the only possibility. At least one other survives. In section 4.3, I argue that leximin is supported by a plausible claim about value: that if an ideal legislator would seek to promote it, there are good reasons for regarding it as better than alternatives. In section 4.4, I consider objections to leximin, of which there are several. The first such objection tries to show that leximin is too extreme to be seriously considered. The second, from Larry Temkin, seeks to commit leximin to an implausible consequence when considering variable population cases. Third, I consider an argument that is specific to *my* defense of leximin: perhaps it is the case that the justification for leximin is incompatible with the threshold-laden account of well-being I propose. Finally, I consider an objection of behalf of Martha Nussbaum: claiming that the basic minimum trumps above and below is implausible if the basic minimum is set as low as minimal autonomy (if this objection is correct, perhaps there is reason for reconsidering *Expansive List*).

#### 4.1. *The Options*

There are a number of ways the distribution of threshold goods might affect the value of states of affairs. In this section, I provide a (perhaps less than comprehensive and relatively coarse-grained) rundown. In the following section, I will rule out certain options. This section, however, provides a menu. An important note: when I discuss different distributive options here, I wish to confine the alternatives to *threshold* distribution *only*. I do not wish to presume that non-threshold goods permit of the same distributive scheme as threshold goods. Perhaps they do. Nevertheless, a distinction between the proper distributive scheme for threshold goods and non-threshold goods is certainly coherent, so I will leave this possibility open until later in the chapter, at which point I will issue a few motivational remarks in favor of one possibility for non-threshold goods.

##### 4.1.1. UTILITARIANISM

The distributive scheme that I'll simply call "utilitarianism" suggests that the

distribution of goods affects the value of states of affairs *in no way at all*. Put more precisely, utilitarianism argues that the best state of affairs is the one that contains the largest total amount of human well-being, aggregated across persons. How that well-being is distributed is neither here nor there. Perhaps the most perspicuous statement of this view is from the grandfather of utilitarians himself, Jeremy Bentham:

The interest of the community is one of the most general expressions that can occur in the phraseology of morals: no wonder that the meaning of it is often lost. When it has a meaning, it is this. The community is a fictitious *body*, composed of the individual persons who are considered as constituting as it were its *members*. The interest of the community then is, what? - the sum of the interests of the several members who compose it.<sup>1</sup>

The “interest of the community,” then, is Bentham’s entrée into the goodness or badness of a state of affairs - that which the “principle of utility” declares moral actions promote. The interest of the community, then, is a simple *sum* of the interests of individuals that make up the community. Thus, for Bentham, the best state of affairs is the one with the greatest sum total well-being.

In terms of the threshold-laden account of well-being we are considering here, however, the utilitarian proposal runs something like this: the best state of affairs in any set of alternatives is the one with the greatest number of thresholds achieved. Assuming a set of alternatives with a fixed population, trading thresholds between people is neutral concerning the value of states of affairs. If a very poorly-off individual lost a threshold good only to be gained by a very well-off individual, the state of affairs would remain of the same value (assuming that non-threshold goods are held constant). Non-threshold goods would then add value to the total - but, given my account of the relationship between threshold and non-threshold goods, the value of the non-threshold goods would be trumped by increases in threshold goods. Of course, not all threshold goods are of equal value. Some decrease the distance between an individual’s life and her ideal only by a slight amount. Put more precisely, utilitarianism seeks the lowest total distance between ideal lives and actual lives (in

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<sup>1</sup> Jeremy Bentham, *Introduction to the Principles of Morals and Legislation*, I iv.

terms of thresholds), summed over individuals (see the discussion of interpersonal comparison, Chapter 3).

This deflationary feature of utilitarianism, however, has been thought extremely problematic. Many people have an intuition that, other things being equal, a benefit to a better-off person is not as good as that same benefit to a worse-off person. Utilitarians, generally speaking, have tried to offer some reason why their view might be in favor of progressive taxation, for instance, or the distribution of social resources to the worst-off. Most often, utilitarians cite the well-known phenomenon of *diminishing marginal utility*: that improving the stock of resources for a person who is already well-off is going to increase total well-being less than giving those same resources to a worse-off person. R. M. Hare, for example, writes:

Almost always, if money or goods are taken away from someone who has a lot of them already, and given to someone who has little, total utility is increased, other things being equal. As we shall see, they hardly ever are equal; but the principle is all right. Its ground is that the poor man will get more utility out of what he is given than the rich man from whom it is taken would have got. A millionaire minds less about the gain or loss of a dollar than I do, and I than a pauper. ... Diminishing marginal utility is the firmest support for policies of progressive taxation of the rich and other egalitarian measures.<sup>2</sup>

Nevertheless, this particular point, even if *true*, can only give an account of the proper distribution of *resources* - that in order to increase the total sum of well-being, resources (rather than well-being) ought to go to the least well-off. But if we are considering well-being benefits, or threshold goods, say, of themselves, utilitarianism has no such mechanism at its disposal. And there seems to be broad agreement that, other things being equal, a threshold good granted to a worse-off individual is better than a threshold good granted to a better-off individual. Utilitarianism cannot deliver this result.

#### 4.1.2. EGALITARIANISM

Utilitarianism has serious distributive worries. Perhaps the cure is some form of

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<sup>2</sup> R. M. Hare, "Justice and Equality" in *Essays on Political Morality* (Oxford: Oxford University Press, 1989), 193-4.

egalitarianism. The suggestion is that the closer one gets to an equal distribution of threshold achievements, the better the state of affairs becomes. Of course, clarity concerning how/when two states of affairs compare vis-a-vis inequality is hard to come by, as Larry Temkin insists. Nevertheless, I leave these important issues to the side here.<sup>3</sup> Assume that there is a relatively clear understanding of what equality is and when one state of affairs is better than another in terms of inequality. A state of affairs is better, on this view, when there is less inequality among threshold distribution.

I propose to refrain from a detailed discussion of egalitarianism in this chapter. Though egalitarianism has been championed by some, the view has serious challenges. One challenge is the *leveling-down* objection. Egalitarianism is committed to the value of an equal distribution. However, assume that the only way we can achieve an equal distribution is to impose burdens on some, but benefits on *none*. In other words, equality is achieved only by leveling one group down to the level of the other, without benefiting the second group at all. Temkin is committed to the claim that this state of affairs has an element of value that is missing in the previous scenario: the value of equality. Of course, it is important to note that Temkin does not believe that equality is a *trumping* value. In other words, a more equal state of affairs need not imply an all-things-considered better state of affairs. Occasionally the goodness of welfare improvements for people - which are surely good if anything is - can outweigh the value of equality. I propose, without argument, to leave these suggestions to the side. For the purposes of this chapter, I will assume that evaluation must conform to strong Pareto-efficiency, or the claim that “if at least one person is better off in Social State 2 than in Social State 1, and neither is worse off, then State 2 is socially preferred to State 1.”<sup>4</sup> I will content if my argument here establishes the best *Pareto-efficient* view.

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<sup>3</sup> It seems to me that the most plausible specification is Temkin’s “relative to the least well-off person” account. Though Temkin believes there are problems assigning this account the status of the clearest account of the badness of inequality, I believe these problems can be overcome. The argument, however, must wait for another day.

<sup>4</sup> John Roemer, “Eclectic Distributional Ethics” in *Politics, Philosophy, and Economics* 3 (2004), 273.

#### 4.1.3. PRIORITARIANISM

Prioritarianism has traditionally been contrasted with egalitarianism. Rather than suggesting that equality *per se* has value - often out of concern for the leveling-down objection - prioritarianism suggests that benefits to the least well-off are to be given priority. In other words, assume you can grant an equal welfare benefit to a better-off or a worse-off individual. In terms of the value of the respective states of affairs, granting that benefit to the worse-off individual is better. Prioritarianism is compatible with strong Pareto-efficiency. Any benefit makes the state of affairs better.

Prioritarianism as such is a rather underspecified view. There are a number of reasonable questions that could be asked. The most important such question concerns the level of priority for benefits for the worse-off. Are these benefits to have absolute priority? Some weaker form of priority? In principle, prioritarianism could give any answer. In practice, however, most forms of prioritarianism do not grant absolute priority to benefits to the worse-off, merely some form of weaker priority. There is some level of benefit for the better-off that could outweigh benefits to the worse-off.<sup>5</sup>

There is an additional view in the prioritarian family, however, that is worth distinguishing from its weaker cousins. *Leximin* claims that the priority for benefits to the worst-off are, in fact, absolute. Consider two possible alternatives. If X's least well-off improving individual is worse-off than Y's least well-off improving individual, X is better than Y. Given the threshold-laden account of well-being, it is important to specify that the form of leximin under discussion here departs in a notable way from standard accounts. According to traditional leximin, the least well-off person has absolute priority in a leximin distribution (if the least well-off cannot be helped, the second least well-off, third, fourth, etc.). However, this is not quite right on my view: the least well-off person might improve only insignificantly. The account under consideration here assumes threshold distribution only;

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<sup>5</sup> See Arneson, "Perfectionism and Politics", 58.

thus absolute priority is given to the least well-off *threshold improving* individual or, what comes to the same thing, absolute priority is given to the lowest achievable threshold in the distribution.

Leximin is an extreme view, and is thought (I must say, quite reasonably) to be implausible by many. After all, at first glance *absolute priority* for the worst-off means that the  *tiniest* benefit to the worst-off would outweigh *massive* benefits to those better-off - perhaps many more better-off. Furthermore, though leximin does not justify *mere* leveling-down, i.e., reducing the better-off merely for the sake of equality, it justifies something in the same ballpark: reducing the better-off to *just above* the position of the worst-off, assuming that the worst-off person is benefited even a tiny amount. Even more implausible is the implication that a tiny benefit for the worst-off outweighs a massive benefit for the person who is *next* to worst-off. Given such counter-intuitive implications, many persons in favor of some form of priority for the least well-off have naturally gravitated toward the weaker forms.

For what it's worth, I think there are good reasons for preferring the leximin version of prioritarianism to the weaker version. My arguments for this conclusion, however, will have to wait until the following section.

#### 4.1.4. SUFFICIENTARIANISM

In addition to the leveling-down objection, there is a further argument against egalitarianism that motivates a fourth possible view. It is surely not the case that equality between the super-rich and the ultra-rich is truly important for the evaluation of states of affairs. Here, both groups have all they need. Perhaps, then, the notion of "having what you need" is important from the point of view of justice or of the evaluation of states of affairs. Someone who is badly-off, to whom we believe political society has an obligation to help, lacks certain basic goods; perhaps the lack of those goods is what makes the state of affairs bad, or unjust. A better state of affairs, then, is one that grants those goods that the least well-off lack. This rough thought guides much of the theory of *sufficientarianism*.

Sufficientarianism comes in both normative and evaluative versions. I'll concentrate on the evaluative version here. Roughly speaking, sufficientarianism says that a state of affairs improves when more individuals achieve a "sufficient level." This level might be set at different places. For instance, Harry Frankfurt writes:

To say that a person has enough money means that he is content, or that it is reasonable for him to be content, with having no more money than he has. And to say this is, in turn, to say something like the following: the person does not (or cannot reasonably) regard whatever (if anything) is unsatisfying or distressing about his life as due to his having too little money. In other words, if a person is (or ought reasonably to be) content with the amount of money he has, then insofar as he is or has reason to be unhappy with the way his life is going, he does not (or cannot reasonably) suppose that money would - either as a sufficient or necessary condition - enable him to become (or to have reason to be) significantly less unhappy with it.<sup>6</sup>

Frankfurt suggests that, at least in terms of the distribution of resources like money, the state of affairs gets better when more people are content (or cannot reasonably be discontented) with their amount of money. The level of *contentment* thus provides the sufficient level. A state of affairs, on this proposal, is better than another when it has more people achieving contentment than the other. Though the level of reasonable contentment is perhaps rather vague, one might pick some threshold or number of thresholds achieved that qualifies as reasonable contentment - in terms of the distribution of thresholds, then, this level becomes the target of evaluative judgment.

As an account of the betterness of states of affairs, Frankfurt's sufficientarianism is rather spartan. He gives no account of the justice or betterness of alternative distributions strictly *above* the threshold. To take a cheap example, let's say that in order for one super-rich individual to have one additional threshold good, all other super-rich individuals (let's say, in the millions), must be lowered to *just above* the sufficient level. Frankfurt gives no account of the justice or betterness of these alternatives, but at least on an intuitive level, such a trade-off would worsen the state of affairs. Though all achieve contentment in either case, the burdens imposed on many for the relatively small benefit for one seems paradigmatically inefficient: a

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<sup>6</sup> Harry Frankfurt, "Equality as a Moral Ideal" in *Ethics* 98 (1987), 37-8.



feature of a worse state of affairs. Frankfurt's spartan sufficientarianism simply does not have the power to give us the proper answer in this case. To be fair to Frankfurt, his goal is negative (he seeks to criticize egalitarianism) rather than the advancement of a positive view. Nonetheless, his stated alternative needs fleshing out - as it stands (and as Frankfurt would surely agree) it is inadequate.

Indeed, there are a number of skeptical questions one could ask about *any* Frankfurtian sufficientarian proposals. Setting the distributive target at the level of something like reasonable contentment seems to specify a line of evaluation rather like a basic minimum. In other words, it is crucially important in terms of the value of states of affairs for citizens to achieve this particular line. This proposal has, however, Nussbaumian problems. This view runs up against the problem of upward distribution *with a vengeance*. After all, the line is set rather high: reasonable contentment. How are we to evaluate alternatives in which not all persons below that line can achieve it? Should we sacrifice some for the benefit of others who can? Should some be lowered, perhaps to bare minimal autonomy, for the sake of a single person who can achieve reasonable contentment? If not, why not? Suggesting that reasonable contentment forms an evaluatively significant line, just like any basic minimum view, requires the occasional implication of upward distribution. But with a line set so high, such a view generates absurd implications.

Roger Crisp has suggested an alternative with wider resources than Frankfurt's alternative to egalitarianism. Crisp suggests that the sufficient level should not be construed as a distributive target, but rather something like a heuristic: below this line, one form of distribution forms the evaluative index, above it another. Roughly speaking, Crisp's view runs as follows. The sufficient line is a demarcation between the worse-off and the better-off. Benefits to the class of worse-off persons (those people below the line) take absolute priority to benefits to the better-off. Whenever a trade-off can be made from better-off to worse-off, this improves the state of affairs. However, benefits *among* the worse-off also require a

distributive model. Here, Crisp suggests prioritarianism:

*The Compassion Principle:* absolute priority is to be given to benefits to those below the threshold at which compassion enters. Below the threshold, benefiting people matters more the worse-off those people are, and the more of those people there are, and the greater the size of the benefit in question. Above the threshold, or in cases concerning only trivial benefits below the threshold, no priority is to be given.<sup>7</sup>

Crisp also wonders: “[w]hat is to happen above the threshold? One plausible view is utilitarianism above the threshold, but it is important to note that basing distribution on compassion below the threshold has no implication for what should happen above.”<sup>8</sup> So, for Crisp, the threshold of “compassion” acts as a sort of division between those people who are to have absolute priority in the distribution (and prioritarianism among *them*), and those whose benefits we are merely to aggregate and maximize (insofar as we are required to benefit them at all). Put in terms of the threshold view under consideration, then, whenever additional thresholds can be granted those below the level of compassion, they ought to be so granted - this improves the value of the state of affairs. In addition, it improves the value of the state of affairs when the worse-off are given priority in a distribution among only those below the line. So, for instance, assume that there are five people below the line, ranked in descending well-being order: A-E. Any transfer from the better-off to *any* member of the worse-off will improve the state of affairs, no matter how large the cost is for the better-off, and no matter how small the benefit is among A-E (assuming that we’re talking about threshold goods). Other things being equal, however, transferred benefits are better if they go to E rather than to D, D rather than to C, C rather than to B, and B rather than to A, even though a benefit to A is worth whatever the cost to the better-off. This weight for E rather than A is not absolute, however. E’s benefit could be outweighed by large benefits for persons closer to the line of compassion.

Crisp’s view, it seems to me, is rather sensible. I will not endeavor to criticize it until

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<sup>7</sup> Roger Crisp, “Equality, Priority, and Compassion” in *Ethics* 113 (July 2003), 758.

<sup>8</sup> Crisp, 758.

later in the chapter. Nevertheless, my criticism will be pitched at a rather intuitive level. I will not be surprised, nor particularly disappointed, if some embrace Crisp's view rather than the view I think, ultimately, most plausible.

#### 4.2. *The Super-Rich, the Ultra-Rich, and Priority for the Worst-off*

I think there are good reasons for whittling down the range of options still open to us. In particular, I seek (in this section) to provide reason for rejecting a non-leximin version of prioritarianism. This argument will still leave options open. Further whittling will occur in the following section.

Consider:

*Lives for the Ultra-Rich:* There is some number of super-rich persons such that, if they could be made ultra-rich, this would outweigh the value of a life of minimal autonomy for an innocent person.

Of course, it should be specified that we are interested in distributions of well-being. Thus it is important to construe the notions of "super-rich" and "ultra-rich" in terms of the achievement of threshold goods. In other words, we might suggest that an ultra-rich person lives a life that in no way deviates from his or her conception of the good. She lives the best possible life for her. A super-rich person, on the other hand, lives a life that is, perhaps, one minor threshold good away from the best life. Perhaps this person lives according to his ideal but for his occasional, and not very strong, desire to be a rare coin collector. This person already maintains a life of tremendous success. Being a rare coin collector would entail that his life could not have gone any better.

It seems to me that *Lives for the Ultra-Rich*, no less than *Lives for Headaches*, is an implausible suggestion. Its implausibility is not isomorphic to *Lives for Headaches*, however. *Lives for Headaches* was implausible because very small burdens diffused over many people, no matter how well-off they are, simply do not add up to the achievement of minimal autonomy. *Lives for the Ultra-Rich* is implausible for a different reason. If I may venture a suggestion, it seems to me that this principle is implausible because benefits for those who are

*already* extremely well-off should not trade-off against benefits to those who might achieve even basic minimal autonomy. This is a common-sense principle: when people are already doing extremely well, there is no reason to believe that benefits to them will ever outweigh benefits to the worst-off. Of course, benefits to the super-rich are still good; they remain threshold goods that better the lives of their bearers. Nonetheless, as a matter of common-sense evaluative thinking, *Lives for the Ultra-Rich* is implausible and should be ruled out.

However, if *Lives for the Ultra-Rich* is implausible, this causes serious problems for a weaker-than-leximin priority view. Weak prioritarianism suggests that threshold benefits to the better-off and to the worse-off are eventually fungible: assuming that enough super-rich could be rendered ultra-rich, this is sufficient to outweigh the value of minimal autonomy. But an upshot of this view is *Lives for the Ultra-Rich*. If that upshot should be rejected, so should weak prioritarianism. It is worth noting here again that prioritarianism as a view is underspecified; the priority for the worst-off might be *very heavy*. Indeed, as John Roemer notes, prioritarianism might be combined with various distinct views (such as utilitarianism, sufficientarianism, and maximin) to generate a quite complicated, and perhaps more plausible, account of the value of welfare distribution.<sup>9</sup> But in order to preserve the intuition against *Lives for the Ultra-Rich*, prioritarianism must not be *very heavy* only, it must allow for at least one line of *lexical* priority.

Respecting the intuition against *Lives for the Ultra-Rich* requires that one deny that all threshold goods, no matter whose they are, will eventually be fungible. It requires the denial of a form of continuity, in other words, that for every threshold benefit for some person, there is *some* amount of threshold benefit for a better-off person against which that benefit trades-off. (Roemer's view accepts this form of continuity, and thus cannot accommodate the intuition against *Lives for the Ultra-Rich*.) *Lives for the Ultra-Rich* requires that there be no line of lexical priority between the ultra-rich and those persons who might be granted minimal

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<sup>9</sup> Roemer, esp. 279-281.

autonomy. But we should deny *Lives for the Ultra-Rich*. Hence, we should accept that there *is* such a line of lexical priority.

However, rejecting *Lives for the Ultra-Rich* does not mean that any one particular view should be accepted. Rejecting *Lives for the Ultra-Rich* requires only *some point of absolute priority*. Sufficiency remains on the table. Roger Crisp's account solves *Lives for the Ultra-Rich* given its line of absolute priority (as, indeed, it was designed to). Leximin also remains. How to decide between these views?

#### 4.3. *Leximin, First-Class Citizenship, and the Ideal Legislator*

In this section, I wish to mount an argument for leximin against egalitarianism and Crisp's sophisticated sufficientarianism, i.e., views that survive *Lives for the Ultra-Rich*. I argue in this section that leximin is a plausible approach to rank-ordering states of affairs, because as one approaches leximin, one approaches a state of affairs that would obtain were all persons to be treated as first-class citizens by effective state agencies. This, it seems to me, is a virtue of a leximin account. I will delve further into the notion of first-class citizenship below.

##### 4.3.1. FIRST-CLASS CITIZENSHIP AND THE IDEAL LEGISLATOR

What is first-class citizenship? Roughly speaking, it seems to me, to be treated as a first-class citizen is to be given an equal place in the moral and normative deliberation of political agents. To put this another way, consider *second-class citizenship*. Second-class citizenship occurs when *other* citizens are part of a favored class, from the point of view of political agents. Second-class citizenship means that others are treated preferentially to you. My favored statement of the nature of first-class citizenship runs as follows: *someone cannot be a first-class citizen if others are granted preferential treatment by political institutions*.

Understood in this way, preferential treatment is dependent on certain features of behavior and normative deliberation on the part of political agents and institutions, features

that are often thought to be prerequisites of political legitimacy.<sup>10</sup> I will make this assumption here. Political systems *always have overriding reason* to treat citizens as first-class, if first-class citizenship is understood as the avoidance of preferential treatment. And, I shall claim, this fact is strongly relevant in determining which distributive arrangement is best.

Preferential treatment as stated appears to be a feature of the normative dispositions of state agencies. But the proper disposition need not yield any particular state of the world. Humans are fallible. Political agents, in particular, might be inept. They might grant precisely the same sort of deliberative weight to all citizens, and yet because of some sort of incompetence or gross inefficiency, transfer all resources to a single individual. In addition, some incompetent, malevolent dictator might deliberate in a way that seeks to cut all resources for some group. Nevertheless, because he is incompetent, the actions he puts in place might yield the same distributive pattern as an effective political system, deliberating properly. But if first-class citizenship tracks the deliberative disposition and the deliberative disposition *only*, valuing first-class citizenship need not yield the value of *any* particular distributive scheme, given that many distributive schemes are compatible with first-class citizenship (given enough incompetence).

How, then, is first-class citizenship relevant to evaluation? Consider the following claim:

*Value and the Ideal Legislator:* If a particular distributive arrangement would be created by a state agency that treats all citizens as first-class and is fully competent and efficient, there is good reason for regarding this distributive arrangement as the best among open alternatives.

Why believe *Value and the Ideal Legislator*? On reflection, it strikes me as a generally plausible claim about value. However, there are two additional reasons why we should adopt *Value and the Ideal Legislator* as a methodological point. First, on certain claims about the nature of intrinsic value, *Value and the Ideal Legislator* is analytic. Consider, for instance, the “buck-passing” account of value, i.e., something *x* is of value *if and only if* there are reasons to

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<sup>10</sup> Cf. Dworkin, 6.

promote (or respond positively to, or establish, etc.)  $x$ .<sup>11</sup> It follows, then, that if there is a reason to promote distributive scheme  $x$  rather than distributive scheme  $y$ ,  $x$  is better than  $y$ . On the buck-passing account, this is what it *means* for some distributive scheme to be better than another. But the ideal legislator is constructed to respond specifically to those reasons that are *most weighty* in the development of a political institution (*ex hypothesi*). If so, it appears that, in responding effectively to these reasons, the ideal legislator will promote what the ideal legislator has most weighty reason to promote. (Some might argue that the ideal legislator determines no unique distributive scheme. I shall argue below that this is false.)

But notice, this claim is ecumenical between different accounts of value. Even if the “buck-passing” account of value is false, there appears to be at least an intuitive connection between what effective and reasonable political institutions would bring about and the state of affairs that is itself best. The point might be simply evidentiary: we have good reason, though perhaps defatigable, to regard what the distributive scheme picked out by the ideal legislator as the best distributive scheme. Why should this be? First, the structure of the ideal legislator is reflective of intuitive claims about the first-order nature of goodness. The goodness of states of affairs does not take up any given individual’s perspective, but rather is impartial between persons. No one person should count for more in terms of all-things-considered betterness. This feature of evaluation is captured by the ideal legislator by insisting on first-class citizenship for all citizens. If first-class citizenship is understood in terms of the avoidance of preferential treatment, it appears that first-class citizenship expresses the requirement of impartiality. First-class citizenship for all *requires* impartiality in the way that evaluation does.

Second, given that value appears to be relevant *at least some of the time* in providing reasons to political institutions, we should regard the state of affairs promoted by the most

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<sup>11</sup> This is a general characterization of the view, and will do for our purposes here. For a detailed examination (and criticism) of the view, see Ulrike Heuer, “Explaining Reasons: Where Does the Buck Stop?” in the *Journal of Ethics and Social Philosophy*, [www.jesp.org](http://www.jesp.org), 1 (2006).

effective of these political institutions as having *some* claim to being the best. What might cause us to believe otherwise? One point might be that an ideal legislator is bound not to create the best state of affairs in certain cases, but is instead bound by requirements of morality that have nothing to do with the value of resulting states, i.e., rights, or side-constraints. The state of affairs that is created by an ideal legislator, after all, might be one in which more die rather than fewer, given that those fewer had a right to live that could not be overridden by the greater number of potential survivors. Indeed, side-constraints appear to be a potentially important aspect of political morality, not to be shunted aside. However this should not give us reason to rethink *Value and the Ideal Legislator*. Why? Most importantly, *Value and the Ideal Legislator* makes reference to the distributive arrangement the ideal legislator would promote *qua* distributive arrangement. In other words, it makes reference to the distributive arrangement that the ideal legislator would create, as it were, out of thin air. In making these sorts of the decisions, side-constraints appear to be irrelevant. (One might think of *Value and the Ideal Legislator* as picking out the distributive arrangement most favored by the ideal legislator when the distributive arrangement and *only* the distributive arrangement is of any moral importance. Side-constraints enter, if in fact they enter, into the discussion at a later stage, perhaps preventing the ideal legislator from realizing the distributive scheme she most favors.) Second, the characterization of the importance of first-class citizenship I offer here will make no reference to side-constraints of various kinds. The ideal legislator, as I conceive her, is responding only to the importance of first-class citizenship for all. But, as I argued above, this rider lends support to *Value and the Ideal Legislator*. The requirement of first-class citizenship appears to be isomorphic to the general impartiality found in plausible claims about value. Though the evidence provided by the ideal legislator is, again, defeasible, it provides good evidence. In determining the value of distributive arrangements, we ought to treat the ideal legislator as certainly not authoritative, but as a darn good starting point.

An implication of *Value and the Ideal Legislator* is that evaluation can be contextual.



For any given collection of persons, the best state of affairs is the one an ideal legislator who was concerned to treat these citizens as first-class would adopt. This is the right result. We often talk about evaluation as it occurs in different contexts: what is good for *us*, what is good for *the country*, what is good *for all persons overall*, etc. Though the language of first-class citizenship appears to assume the context of an actual state, this need not be so. Because the best state of affairs is the one that *would* be adopted by an ideal legislator, this can occur in any context, even contexts where there is no *actual* state present. (We might think of an “unrestricted mereology” of contexts: it surely makes sense to talk of what is best for the collection of me, Wade Boggs, Kim Jong Il, and Sarah, Duchess of York; it is how an ideal legislator who sought to promote first-class citizenship would distribute welfare between us.) I will assume, unless otherwise noted, however, that the context under discussion is the context of an actual state, rather than a wider or narrower context (though the same points will apply in any case).

An objection is worth dealing with here. One reason *Value and the Ideal Legislator* might be thought so plausible, it seems to me, is that it borders on formality - i.e., the distributive scheme created by the ideal legislator just is the distributive scheme that is best, i.e., that ranks all persons’ interests appropriately. Thus the ideal legislator does no epistemic work, because in ascertaining what the ideal legislator would do, we already have to know what the best distributive scheme is! But the key is the notion of first-class citizenship understood in terms of preferential treatment. There should be an immediate skepticism about the philosophical cutting power of the idea of first-class citizenship if it is understood in terms of preferential treatment. Avoiding preferential treatment, as a philosophical notion, is simply empty: even utilitarianism has a claim to avoid preferential treatment, in weighing the interests of all citizens equally. But this strict formality is misleading. Though the notion of preferential treatment (and hence first-class citizenship) is to some extent open to interpretation, there are a few fixed points. I do not seek to offer a substantive *account* of

preferential treatment here. Rather, I want to explore some intuitive judgments. These intuitive judgments, it seems to me, establish the case that preferential treatment is not strictly formal. Surprisingly, avoiding preferential treatment entails treating the worst-off with absolute priority. This entails that the ideal legislator would seek to create distributive arrangements in which the least well-off are given absolute priority rather than alternative distributive arrangements, in which the priority for the least well-off is weaker. (I wish to insist that my account of preferential treatment here need not be construed as complete. Perhaps there are other ways of failing first-class citizenship. I am exploring questions of first-class citizenship when the distribution of goods and *only* the distribution of goods is at issue.)

To begin, not every difference in benefit yields preferential treatment. For example, if Bob has insurance from hurricane damage that Joe does not have, but I could not have altered that state of affairs, this difference in benefit does not yield preferential treatment (my normative deliberation was simply not active). Furthermore, not every difference in *treatment* entails *preferential* treatment. Imagine that I can distribute one insurance policy against hurricane damage to Joe or Bob. If I give it to Bob, I do not treat him preferentially if, for example, Bob lives on the Florida Keys and Joe lives in Lawrence, Kansas. Joe is not protected from hurricane damage, but he stands in no need of that protection. Joe could use tornado insurance - but I have none of that to give. I thus I have no option to benefit Joe. There is no preferential treatment if the only open option is to benefit Bob. They are not treated equally; but neither is Bob treated *preferentially*. I am *disposed* to benefit Joe, but am unable to. I've taken the greatest possible interest in Joe's interests it is possible to take. If so, it seems unintuitive to suggest that I grant preferential treatment to Bob given that I could not have done more for Joe. (Hence, it seems that the requirement of strong Pareto-efficiency does not violate preferential treatment.)

But even when I could have done more for Joe, it is not always the case that a

difference in benefit yields preferential treatment. Assume I have but only one insurance policy to pass out and have to choose among my friends, both living in the Florida Keys. Though giving the policy to Bob in this case does (in some sense, i.e., I *could* have given it to Joe) affect Joe, it does not grant preferential treatment to Bob. On my view, Bob is treated preferentially only if I can distribute a *second* policy, or an additional level of coverage and distribute it to Bob *again*. For example, if Bob possesses a \$100,000 insurance policy, and Joe none, I treat Bob preferentially if I distribute an extra \$100,000 of coverage to Bob rather than Joe, giving him \$200,000. *Mere* inequality does not necessarily signal preferential treatment, but benefiting those who are already benefited unequally *does*. (This point will be discussed further in §4.3.5) This is intuitive. I treat no one preferentially when I have an equal disposition toward benefiting all. This is not ruled out by distributing to Bob when the choice is Bob or Joe (but not both). But it is ruled out when the choice is Bob (*again*) or Joe. In distributing to Bob again, I take a greater interest in his interests than in Joe's.

Take, for example, a case in which a college education could be distributed to either one of two high-school graduates. Giving it to *neither* seems unnecessarily cruel. Furthermore, it seems to me that giving the education to one rather than another - though it is an unequal benefit - is not preferential treatment. It would be quite reasonable to say to the deprived individual that "as soon as I can send you to college, I will". (Or, at the very least, it would be compatible with treating them with equal deliberative weight). However, distributing additional levels of education (say, graduate school) for the college-educated person instead of giving them *both* a college education seems to treat that one preferentially, at least on a level of simple intuition.

However, how we *explain* the preferential treatment in these various instances of it is crucial. Our intuitive reactions might permit of different possible explanations. One explanation might simply be that the worse-off person in these cases gets more out of the distribution (i.e., there is more benefit to be had by granting the college education, rather than

graduate school). In other words, overall aggregate benefit is maximized by distributing to the worst-off. This is one possible analysis, but it seems to me the wrong one (I will tackle this possibility in more detail below). Rather, a plausible analysis of why Bob and the college-bound child are treated preferentially when extra benefits are distributed to them rather than the worse-off person is via talk of a disposition. In distributing to them, the state displays an unequal disposition toward benefiting each citizen. Unlike the decision to benefit one or the other, the state cannot plausibly claim to be equally disposed toward benefiting both citizens: it had the opportunity to benefit both, and did not.

One perspicuous way of interpreting this talk of dispositions is *via* a counterfactual: in cases in which I allow a move away from *distributive* equality, I avoid preferential treatment if, *were I able* to benefit both, I would have. We need not ascribe preferential treatment in cases of *actual* inequality when the counterfactual holds. (I treat the interests of the high-school graduates if, when granting a college education to one, I say to the other: if I could have benefited you as well, I would have.) But in cases when one is deciding whether to benefit the better-off or the worse-off, the counterfactual is made actual. The antecedent is true: I now have the means to benefit both. (I can now grant the other high-school graduate a college education.) I actually have the option to do what I claimed, when avoiding preferential treatment in a case of inequality, I *would have* done. Thus choosing the better-off in this case yields that the crucial condition - an equal disposition toward each person's interests - is not met. One doesn't have an equal disposition toward each person's interests, because the conditional (made actual rather than counterfactual) is false: when I could have made it the case that both were benefited, I did not. Thus, when the better-off are favored twice over, in preference to benefits to the worse-off, this treats the better-off preferentially. It seems plausible that the normative disposition not to favor the worse-off in cases of inequality *explains* the preferential treatment in these cases.

The preceding argument is not a proof. Nor have I offered an exhaustive account of

preferential treatment. However, it seems to me that these judgments are plausible. If so, a *prima facie* case for leximin emerges given an interest in first-class citizenship. A system that avoids second-class citizenship requires the avoidance of a system of preferential treatment. The avoidance of preferential treatment requires a disposition to benefit the worse-off when possible. But so far this suggestion is merely schematic. The most important element of leximin is open to serious counter-suggestions. I will break this discussion into two parts: absolute priority for the worst-off in the distribution of costless improvements, and absolute priority for the worst-off in the distribution of costly improvements.

#### 4.3.2. DISTRIBUTION OF COSTLESS IMPROVEMENTS

Take the following example:

David, Jerry, Chris, and Tina are members of a political society. Chris and Tina are much better-off than David and Jerry - Chris and Tina possess significant goods that the others do not. In addition, political society has a bundle of resources sufficient to costlessly grant further significant goods to either David and Jerry or Chris and Tina. The relevant political institution elects to benefit Chris and Tina rather than David and Jerry.

Other things being equal, I maintain that such a distribution is incompatible with first-class citizenship for David and Jerry.<sup>12</sup> The improvement is costless; either distribution would accommodate Pareto-efficiency. Nevertheless, it is a requirement for members of worse-off groups to be first-class citizens that their interests have priority in these cases. Why?

Recall my account of preferential treatment. On my view, departure from equality does not entail preferential treatment. However, it is not compatible with first-class citizenship to benefit those who are already benefiting from departures from equality *a second time* when those benefits could have gone to others. Thus, it seems to me, the interest in first-class citizenship rules out such transfers. Chris and Tina are already benefited by the departure from equality. Thus to be benefited a second time in preference to David and Jerry is incompatible with the avoidance of second-class citizenship. To put my claim in a

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<sup>12</sup> “Other things” might include David and Jerry’s responsibility for their position, whether they have renounced the potential distribution of significant goods, etc. I hereby abstract from such conditions, though I by no means intend my view here to be incompatible with their moral significance.

somewhat different way, consider the stance political society takes to Chris and Tina: it does not tolerate the status quo *vis-a-vis* the condition of their lives - it assists them to the next level of significant goods. For David and Jerry, however, the status quo is tolerated. David and Jerry are allowed to languish at a level that is in fact *lower* than the level society refuses to let Chris and Tina endure any longer in a way that could have been corrected. But if that isn't bad enough, Chris and Tina's status quo is not tolerated, and they're *better-off than David and Jerry already!* If status quo intolerance should apply to any one at all, consistent with the avoidance of preferential treatment, surely it ought to apply to the worse-off. For them, the status-quo tolerance is a far larger burden to bear. Providing an "extra cushion" for the interests of Chris and Tina as opposed to David and Jerry signals an unequal disposition toward citizens: Chris and Tina, and not David and Jerry, have this extra cushion from the practical deliberative perspective of political agents.

One might complain that the above example is misleading. The example is even, the numbers on either side are equal. But what if there were more, as it were, Chris and Tinas? This would, perhaps, provide a principled justification for distributing to the better-off: more persons could be assisted. But this is not adequate to accommodate deliberative equality.

The issue is whether *more* benefited better-off individuals are sufficient to tip the balance away from preferential treatment. Thus suggestion would require aggregation across persons in determining the comparative deliberative status of individuals. But it seems to me that judgments of preferential treatment simply don't permit of this form of aggregation.

Judgments of preferential treatment are non-aggregative by their very nature.<sup>13</sup> To see this,

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<sup>13</sup> This claim, i.e., that preferential treatment cannot be reversed by aggregation might be thought to lead into something like "numbers skepticism," i.e., the claim that in, say, saving 1 versus saving 5, one is not required to save the five (cf. John Taurek, "Should the Numbers Count?" in *Philosophy and Public Affairs* 6 (1977)). The *numbers* cannot make it the case that saving one group is better. But my suggestions here are perfectly compatible with the common-sense claim that saving the 5 is better. In such a case, preferential treatment is not at issue. There is no question about favoring anyone who is better-off *twice*: it is a question of preventing similar calamities. In the case in which preferential treatment is not involved, I say, and those in favor of leximin should say, the state of affairs with more survival is better.

consider the following possibility. Imagine a two-person case, Tina and David. Tina is better-off, and is benefited. Given everything that has gone before, this seems like a straightforward instance of preferential treatment of Tina. Imagine now, however, that exactly the same situation occurs, only the class of benefited better-offs include Tina *and* Chris. Is it still true that Tina is treated preferentially over David? Surely. The mere presence of an additional person seems unlikely to alter the deliberative relationship between David and Tina. To put this another way, merely having Chris in the picture does not mean that I am now disposed equally to the interests of Tina and David. And if Tina is treated preferentially, given that her situation is identical to Chris's, it seems obvious that Chris is *also* treated preferentially. Merely multiplying the number of better-off who are benefited does not change the fact that individually, each member of the better-off group is treated preferentially to David.

Perhaps, however, the overall aggregate benefit defeats any claim of preferential treatment. Perhaps it's the case that because the gain for the better-off is greater than the gain for the worse-off (perhaps including sufficient priority for the worse-off), it no longer is true that Tina is treated preferentially to David. But this seems *ad hoc* and unmotivated. Benefits can be spread out over persons or concentrated into one. Assume that the better-off class consists of one hundred individuals, each with a net gain of +10, whereas David's potential gain is only +2. This same differential can be expressed in a single individual: assume that Tina's gain is +1000. Even in this case, it seems to me, if Tina is better-off and is benefited, she is treated preferentially. Take the case of insurance distribution. If I can give Bob, who already has \$100,000 in coverage a one *billion* dollar insurance policy, rather than giving Joe a \$100,000 policy, are we inclined to say that I treat Bob any less preferentially in doing so than if the choice were between Bob's current level and a \$200,000 policy? No. *Mere* additional benefits cannot defeat the facts of preferential treatment.

#### 4.3.3. DISTRIBUTION OF COSTLY IMPROVEMENTS

Unhappily, improvements for some almost always come at a cost for others. Indeed,

one of the crucial arguments against leximin appeals to the costs that might be incurred by the better-off for a *slight raise* in the fortunes of the worst-off. Richard Arneson, for example, objects (Arneson's objection is to a maximin rule, but his objection also applies to leximin rules):

A maximin principle is entirely insensitive to the numbers of the worst-off who gain or lose, by comparison with the numbers of the other members of society who might be asked to sacrifice for the benefit of the worst-off. Maximin is also utterly insensitive to the amount of benefit that is gained or lost by the worst-off, by comparison with the amount that others stand to lose. This means that maximin would prefer the outcome in which a single worst-off person gains a penny's worth of benefit at the cost of a loss of thousands of dollars for each of thousands of the better-off. A maximin rule introduces a strict lexical priority for the interests of the worst-off, however slight, when they conflict with the interests, however great, of the next worst-off. Lexical priority relations among moral values are strong medicine and perhaps are very rarely, if ever, justifiable. They are especially difficult to justify if the value given lexically lower priority really has value at all. In the context of the distribution of social benefits as assessed by social justice principles, lexical priority for the worst-off is implausibly extreme.<sup>14</sup>

Of course, Arneson is right in saying that leximin is strong medicine. But it remains a requirement on first-class citizenship. Take the following case:

Jerry, Chris, and Tina are all extremely well-off. David, however, is much worse-off (let's say he's merely an everyday, average, middle-class Joe). David could be made better-off as a result of transfers from the better-off members. Nevertheless, in order to raise David's share of significant goods, this would cost Jerry, Chris, and Tina quite a bit. It would be very costly (let's say they are dropped from "Rich" to "Average-Joe+1").

The question becomes whether David is adequately described as a first-class citizen if the transfers are not adopted. I think the answer is no. This can be seen, once again, by considering the difference between the stance society takes to one set of interests (the Rich), and another (David). In this scenario, refusing to assist David because of the costs involved grants preferential treatment to Jerry, Chris, and Tina - recall, they would not be reduced below, or even to, David's original starting point. A key perspective here is what political society would *tolerate* for each citizen. Rather than having the disposition to benefit David in

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<sup>14</sup> Richard J. Arneson, "Rawls versus Utilitarianism in the Light of *Political Liberalism*" in *The Idea of a Political Liberalism*, ed. Davion and Wolf (Lanham, MD: Rowman and Littlefield, 2000), 237-8.



the way the Rich are *already* benefited, political society refuses to tolerate a state of affairs in which the better-off are reduced to a position that is, in fact, *better* than the one society tolerates *now* for David. Surely this is incompatible with a level deliberative playing field. Taking an example from a previous section, it seems out of congruence with first-class citizenship to say to someone with no college education that another person's graduate education outweighs her interest in achieving a college education, even though the education *could* be distributed equally (i.e., they could both be given a college education).

Return to the above case. Imagine that, instead of a Rich group and an Average-Joe group, there is an Average-Joe+1 group and an Average-Joe group. Political society *now* has the power to either move the second group to a position of equality with the first, or has the power to make the Average-Joe+1 group *Rich*. Intuitively, latter is a straightforward violation of the worse-off group's first-class status. But this alternative is analogous in all relevant respects to the original case. If so, the absolute priority of David is mandated *in the original case*. This might be objected to. Perhaps this case is not isomorphic to the original. Perhaps, there is at least one morally relevant difference between a case in which the Rich have resources taken from them to give to David, and a case in which the Rich are *made* rich with goods that otherwise could have gone to benefit David. In the first case, *they already possessed the resources*. This might give rise to what we might call a "possession complaint": a moral interest in goods resulting from their possession, powerful enough to influence our judgments of preferential treatment. There are at least two ways such a claim might be understood. The first might be that there is a claim of responsibility or desert that is unaddressed: if the possessor deserves the benefits she maintains, it is reasonable to think of her as having such a possession complaint. In addition, one might construe possession complaints in terms of "entitlements," which themselves do not reduce to claims of desert. I will discuss the first permutation in a later section. I will assume that various "entitlements" that might back an account of a possession complaint do not justifiably impact our

understanding of preferential treatment.<sup>15</sup>

If I am correct, leximin is required by a crucial aspect of the avoidance of second-class citizenship: the avoidance of preferential treatment *qua* equal disposition toward citizens. I will consider three objections here. The first seeks to reject my suggestion that preferential treatment requires leximin, and instead proposes an alternative criteria: the equal disposition toward *interests*, rather than an equal disposition toward *citizens*. The second objection insists that without a proviso for individual responsibility, leximin does not avoid preferential treatment. The third objection insists that my reliance on *Value and the Ideal Legislator* leads to an unduly constraining account of global justice obligations.

#### 4.3.4. OBJECTION: PREFERENTIAL TREATMENT

So far I have claimed that in order to avoid preferential treatment one must adopt leximin. But this might be challenged. My opponent might suggest that, in the example from the previous section, David is a citizen of the same class as the others - he has exactly the same consideration when the moral point of view is adopted. His interests merely happen to be outweighed by the strong potential benefits for Chris, Tina, and Jerry. After all, if we refuse to make the transfer, isn't that taking *David's* interests into much greater account than the interests of the others? Isn't his loss inflated? Doesn't this yield an unequal disposition toward the interests of David?

This account of preferential treatment is more congenial to utilitarianism than mine. Nevertheless, this account of preferential treatment is surely too thin to be the sense in which avoidance of preferential treatment is important for first-class citizenship. Notice that so long as the gains and losses balance properly, this theory of respect can meaningfully attribute the proper citizenship class to any person suffering any amount of costs so long as those costs are outweighed. Perhaps a decent sized class of persons could have access to a top-notch art

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<sup>15</sup> Thus it is likely that Lockean or Nozickean libertarianism might have a reasonable claim to make. It is a limitation in the argument of this thesis - I restrict my discussion to those who hold that such entitlements are unjustified.

museum, on the requirement that a single individual be brutally tortured. Without prejudging whether it could be morally permissible, if we are to be true to the concepts we are using, *she* is not a first-class citizen. The avoidance of preferential treatment cannot be interpreted in such a thin way and adequately capture the proper understanding of first-class citizenship. Other things are required: not only equal weighting of interests, but also an equal disposition toward the persons whose interests they are.

In addition, it might be claimed on behalf of a weaker form of prioritarianism that though there should be some preference for the worse-off in order to avoid preferential treatment, that preference should not be absolute. Assume that a single poorly-off person (the one) could achieve an additional threshold only at the cost of, many threshold achievements for many people (the many) who are better-off, but who are not among the Super or Ultra-Rich. Is the state not being unreasonable in distributing to the worse-off person, passing up huge gains for the better-off? Isn't this a form of preferential treatment?

Again, I demur. Assume that all are at a position of equality, but the one's welfare level must be reduced in order to grant additional benefits to the many. Absent possession complaints, I see no reason to believe that this is *not* preferential treatment. Pick out a single person out of the many - say, "the two". If we eliminate all additional members of the many and consider only the moral relation between the one and the two, it appears clear that the two is treated preferentially. But - as argued before, it shouldn't be that additional persons change the facts of preferential treatment between the one and the two. This is true of any given member of the many (the two, the three, the four, etc.). If this is correct, we ought to accept that an effective political system, granting first-class citizenship to all, would embrace *leximin*.

#### 4.3.5. OBJECTION: DESERT AND RESPONSIBILITY

I mentioned above the notion of a "possession complaint". Though I left aside "entitlement"-style views, perhaps there is another way of getting traction on the notion of a

possession complaint. It might be the case that a possession complaint can be justified and in this way might impact preferential treatment if that which is possessed is *deserved*. Perhaps it's plausible in this case to suggest that those people who already maintain a particular set of goods have an extra moral interest in keeping those goods. However, even if put in this way, it seems to me that the notion of a possession complaint is a bit of a moral red herring.

Whether or not someone's possession of something influences the extent to which they can be adequately described as a second-class citizen by having it transferred to others surely varies depending on the facts of desert involved in the possession complaint. If I don't deserve the car I stole, the fact that I possess it is of no moral weight at all. The car can be taken from me consistent with the avoidance of preferential treatment. (Facts of desert are notoriously controversial. It seems to me, however, that these facts must be insisted on by those who seek to defend possession complaints. If there are no such facts, so much the worse for the moral weightiness of possession complaints.<sup>16</sup> For the sake of charity, I assume that there is some non-vacuous notion of desert to be had.)

However, the desert of the possessor is not the only thing that affects the importance of possession complaints. In order for such complaints to make a difference, it seems as though the desert of the person whose resource or good it is must be *more favorable* than the worse-off person who stands to be benefited by the transfer. If two people both deserve some object, the *mere* fact that I have possession strikes me as irrelevant in determining who should get it. Other factors must be considered to determine the best distribution. (Clearly, one relevant aspect of the decision will be who is *worse-off*.) It seems clear that my mere possession of the item is irrelevant - the possessor does not deserve the good. However, if the worse-off person *does not* deserve it, and the possessor does, perhaps that might be a relevant

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<sup>16</sup> This might be denied, but not plausibly. It seems to me that mere possession cannot be the fact that underwrites the moral legitimacy of possession: there has to be something additional in operation (like desert). Perhaps a Lockean or some form of libertarian might claim that possession complaints are underwritten by the inviolability of the person (and violations of property are violations of the person). Again, I find such a view implausible, but will leave such a discussion aside here.

reason for treating the possession complaint as weighty *vis-a-vis* first-class citizenship. But if this is correct, possession complaints, of themselves, are doing no real moral work. It is only the desert or lack of desert of the potential transferee that matters.

Thus (absent entitlements) possession complaints are weighty only in the case in which the possessor deserves the good and the transferee does not. But the validity of this sort of complaint depends entirely on the resolution of a further objection. From another corner, it might be objected that my account of first-class citizenship does not take seriously the extent to which desert and responsibility affect distributive justice. Assume, for the moment, that the least well-off are poorly-off as a result of their own imprudent, or foolish, actions. Say, for example, Tina, rather than prudently saving, decided to put her life savings on Red 27 at the MGM Grand. Is she really a second-class citizen when the state, intuitively enough, says: “Sorry. You blew it.”? Of course, there are some distinctions to be made. Without trying to accommodate the intrinsic importance of desert, I could quite rightly say that past actions play a role in justified future assistance: if Tina is likely to head back to Vegas after receiving her assistance check, the assistance is wasted - she failed to achieve the threshold goods that were intended by the transfer and thus the transfer would not have succeeded in being a significant improvement for Tina. But abstract from these considerations. Assume that Tina has gone straight - given up gambling. Surely, the objection runs, it is implausible to say that Tina is a citizen of the second-class if the state refrains from assisting her, given her history of irresponsibility.

This suggestion has various proponents and detractors. Among its proponents are Dworkin<sup>17</sup>, Arneson<sup>18</sup>, G. A. Cohen<sup>19</sup>, and others. Its detractors include Elizabeth Anderson<sup>20</sup>

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<sup>17</sup> Dworkin, *Sovereign Virtue*, ch. 2.

<sup>18</sup> Arneson, “Equality and Equal Opportunity for Welfare” in *Philosophical Studies* 56 (1989), 77-93.

<sup>19</sup> G. A. Cohen, “On the Currency of Egalitarian Justice” in *Ethics* 99 (1989), 906-44.

<sup>20</sup> Elizabeth Anderson, “What is the Point of Equality?” in *Ethics* 109 (1999), 287-337.

and Samuel Scheffler<sup>21</sup>. I do not wish to enter into this long standing debate here. It seems to me that my view is perfectly compatible with either answer to the problem concerning the desert of the worse-off. Assume that the detractors are correct. This causes no problems for my account: leximin remains a prerequisite of the avoidance of second-class citizenship.

However, if the proponents are correct, my view can accommodate this intuition by modifying slightly the index of evaluation. I have argued in a previous chapter that a capabilities account of the basic minimum should be rejected. Perhaps, however, there is reason to reconsider that stance. I have shown that one argument for the capabilities approach - driven by an interest in autonomy - is not plausible as an argument for the capabilities approach in the face of a welfarist alternative. Nevertheless, it might be that there is another reason in favor of a capabilities approach: desert concerns. Perhaps the suggestion might be, then, that first-class citizenship is not determined by the possession of *actual* welfare states, but rather by *ex-ante* opportunities for those welfare states - indexed, of course, to the various threshold goods I defend. Perhaps the proper standpoint to evaluate one's share of goods is not what one *actually* has, but what one has the lifetime *opportunity* for. The "lifetime" rider is important. All are guaranteed a certain lifetime opportunity (distributed in a leximin way) that does not alter with desert. However, as one "accrues" responsibility, the state does not intervene in order to alter welfare distribution. Whatever welfare achievements there are are deserved by agents. This might result in an "opportunity for welfare" view that some have embraced. This suggestion will accommodate the cases detailed above that are driving an interest in so-called possession complaints. Granting lifetime opportunities in a leximin way starts, as it were, with a blank slate *qua* responsibility. No one deserves their initial starting place (i.e., the *ex ante*), so possession cannot be an objection to *ex ante* leximin. If some do less than others with those opportunities, there are no mandated transfers: they are worse-off in a way that is deserved (and thus the worse-off do not deserve the benefits that might accrue

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<sup>21</sup> Samuel Scheffler, "What is Egalitarianism?" in *Philosophy and Public Affairs* 31 (2003), 5-39.

to the better-off), and in a way that does not affect the relevant goods that are leximin: *ex ante* capabilities. (Failing to achieve *x* is neither here nor there vis-a-vis *ex ante* capabilities.) One might be counted as a first-class citizen if his or her lifetime opportunity is distributed in a leximin way, but chooses instead to gamble it away, or commit suicide, or fast for political purposes. (Thus, a possession complaint, in this case, might be justified.) In establishing a leximin distributive structure for *ex ante* capabilities - so this story goes - the state avoids preferential treatment. The status of citizens after this distribution is thus entirely deserved.<sup>22</sup>

My own view is that this argument in favor of the capabilities approach is at best of limited value (it seems to me that, for instance, the basic minimum requires any political society to take an interest in welfare, rather than capabilities), but I shall not press this argument here. My approach is compatible with either the rejection of the importance of responsibility and desert or its acceptance.

#### 4.3.6. OBJECTION: GLOBAL JUSTICE

There is one way of understanding my claims about first-class citizenship that might be thought to cause troubling (or, perhaps unduly restrictive) consequences for inquiry into the nature of global justice. It might be thought to restrict the scope of global justice duties in ways that have been denied by, for instance, Thomas Pogge, Charles Beitz, Martha Nussbaum, and others.<sup>23</sup> The thought runs as follows. Assume that global justice obligations occasionally involve the promotion of the good. If it's the case that we value first-class citizenship, we ought to seek to promote first-class citizenship. Assuming that the best way of promoting first-class citizenship is to adopt leximin, we ought to do so. *However*, the promotion of first-class citizenship is only the sort of thing that political institutions can do,

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<sup>22</sup> It is worth noting that this view is not universally ecumenical with all responsibility-catering views. Nonetheless, it seems to me to provide at least a plausible response within the framework I set forth here.

<sup>23</sup> Thomas Pogge, "An Egalitarian Law of Peoples" in *Philosophy and Public Affairs* 23 (1994); Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979), esp. pt. 3; Martha Nussbaum, "Patriotism and Cosmopolitanism" in *For Love of Country?* (Boston, MA: Beacon Press, 1996).

and can do only within their own borders. It thus might be thought that a very wealthy society ought to give preference to its *own* worst-off, even if they are extremely well-off in comparison to members of other societies who, perhaps, do not maintain even minimal autonomy.

Some believe that priority for one's own worst-off is plausible. Given, for example, that citizens are bound together by the coercive mechanism of the state, the state owes partial obligations to its citizens first.<sup>24</sup> Nevertheless, I think my view is compatible with *either* a form of global egalitarianism *or* a more restricted account of the duties of global justice, even if the duties of global justice are strictly determined by the promotion of the best state of affairs.

My arguments here will be truncated and largely suggestive. However, recall that my argument for leximin does not require that *actual first-class citizenship* be treated as an independent value. Rather, there is reason for believing that a leximin distributive arrangement is better than alternatives, because this arrangement would be favored by an ideal legislator, concerned to promote first-class citizenship and avoid preferential treatment. And *this*, it seems to me, lends support to leximin *qua* account of evaluation. But notice that this state of affairs could obtain without a political institution present at all: leximin is valued because it is the account of distribution that *would* be favored *by* such a political institution. Indeed, such a state of affairs could be promoted simply between persons in the absence of any state involvement. This is the key to the (possibly) wide scope of global justice. If we believe that the scope of global justice is, in fact, wide, we ought to value the state of affairs that would be created by a political institution that governed globally, effectively, treating all persons as first-class - in fact, a leximin distribution. This does not mean that there must *be* this form of government to determine facts about value. But if we believe that political

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<sup>24</sup> Richard Miller, "Moral Closeness and World Community" in *The Ethics of Assistance*, ed. Chatterjee (Cambridge: Cambridge University Press, 2004); Thomas Nagel, "The Problem of Global Justice" in *Philosophy and Public Affairs* 33 (2005); John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2000).



institutions owe duties of global justice to citizens in different nations, surely we ought to value a state of affairs that such a political institution would create *were* it to be appropriate for such a context. (Those who believe, like Thomas Nagel and John Rawls, that an actual state would be required for global justice duties might simply believe that the wider - global - context of evaluation is irrelevant to moral obligation in the absence of a state.)

As a conclusion to this section, I want to recap very briefly what I have argued. I have assumed that *Value and the Ideal Legislator* is a plausible principle of assessing value claims. I have also argued that the ideal legislator, because of the connection between first-class citizenship and preferential treatment, would choose alternative states of affairs by treating the worst-off with absolute priority. If so, it seems to me, there should be good reason for rank-ordering states of affairs in a leximin way. Though there are reasons one might doubt *Value and the Ideal Legislator*'s authority, it seems to me that it at least provides a *prima facie* case for leximin. And with that, I am happy.

#### 4.4. *Objections*

There are four important objections to leximin *qua* distributive scheme I want to address here. The first is analogous to the bare skepticism objection against which I argued in Chapter Two. Perhaps leximin is simply too extreme a view to be considered. In contrast with the response I gave in Chapter Two, however, my version of leximin is slightly less extreme than is often thought, and for good reason. The second objection notes a particularly unintuitive consequence of leximin - that a society can go from perfectly just to unjust just by adding a small number of worse-off individuals. Perhaps this is an implausible consequence. Third, I argue that my account of leximin, which relies on the badness of second-class citizenship and preferential treatment does *not* cause problems for the threshold-laden account of well-being I offer in this thesis. Fourth, I argue that my leximin account does not add ammunition to Nussbaum's account of the basic minimum. Leximin is no cause to raise the level of the minimum above minimal autonomy.

#### 4.4.1. LEXIMIN AS TOO EXTREME

Leximin is an extreme doctrine. To repeat Arneson's diagnosis: strong medicine. But there are ways in which my understanding of leximin differs from traditional accounts of leximin, for the better (and for the less extreme).

Traditionally, leximin is a doctrine that gives absolute priority to the least well-off  $x$ : where  $x$  is some person or group of people. However, the focus on persons or groups is a source of problems for leximin. Traditionally construed, the least well-off person might improve only by a fraction of a hair of well-being - leximin implies that this improvement, perhaps for a single individual, trumps all other improvements. If we can grant that improvement to the single individual, it is worth *whatever the cost* in welfare benefits to those above. This seems absurd and implausible. Perhaps one way of alleviating this problem is to make the move from the least well-off individual to the least well-off group of individuals (and, perhaps, judge that group by a "representative").<sup>25</sup> Thus a single hairline improvement for a single individual will not register for the "group". But this is problematic still, and can be seen more clearly by considering the problem with which I started this thesis. Assume, first, that the least well-off group of individuals is well-defined (this is a rather decent sized assumption). Now assume that the least well-off group of persons is below the basic minimum, but might only be improved by a fraction of a hair of well-being (considered as a full group, rather than a single individual). Doing so, of course, would mean that everyone else would be lowered below the basic minimum. This also seems unintuitive, extreme, rejectable.

It might be pointed out immediately, however, that my view has the power to avoid this conclusion: threshold goods. Trading off threshold goods for *non*-threshold good distribution is ruled out. Threshold goods are lexically prior. Thus the above implication is no danger for my view: because thresholds are lexically prior, leximin applies to the distribution

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<sup>25</sup> Cf. Rawls.

of threshold goods only. A fraction of a hair of a benefit is not enough to outweigh any threshold. Leximin as I construe it is not focused on the worst-off group of persons or worst-off individual. Rather, it is focused on the *lowest achievable threshold*, whether achievable for one person or for many. It seems to me that this is a substantially less extreme formulation of leximin - one which satisfies an interest in the achievement of the basic minimum for the most people.

This, of course, leaves it open what the account of non-threshold distribution is to be. Non-threshold distribution involves a host of questions. Assume, for instance, that a leximin story is correct for insignificant goods. How, then, do we determine who the least well-off person is? Do we look at the index of total well-being, i.e., including the index of threshold goods? Or do we consider only the index of non-threshold goods? Any position has pluses and minuses. For instance, assume that we consider the index of total well-being. This would allow additional non-threshold goods to go to a person who is already *extremely well-off in terms of those non-threshold goods*, instead of a person who is better-off all things considered, but has very few non-threshold goods. Assume that the insignificant goods we are considering are hedonic goods. This might mean that a person who is poorly-off all things considered, though *flush* with hedonic goods is given absolute priority in the distribution of additional hedonic goods to a person who has very few, if any, but does better along the index of completed deliberative projects. This might be thought unintuitive. On the other hand, the better-off person *is better-off!* It might seem strange to distribute any goods at all to the Ultra-Rich, even though the Ultra-Rich might fare poorly along the dimension of hedonic goods, in preference to those who are very poorly-off all things considered. My official position *vis-a-vis* the distribution of non-threshold goods is something more akin to a straightforward utilitarianism, rather than a priority view. But my intuitions in favor of such a view are weak, and I see potential virtues of other possible accounts.

#### 4.4.2. TEMKIN'S PRINCIPLE

An additional argument by Larry Temkin seeks to shed doubt on any leximin view, whether construed as priority for the least well-off persons, or priority for the lowest possible thresholds, or whatever. Temkin's argument considers two possible examples. First, Temkin asks us to consider three alternatives to our current alternative (S), which contains three groups - a well-off group, a badly-off group, and a *very* badly-off single individual. Temkin writes:

A, B, and C are alternatives to S. In A, the worst-off person would remain unchanged, the better-off group would be slightly lowered, and everyone else would be dramatically raised [such that the better-off groups are equal]. In B, the worst-off person would be slightly raised, but everyone else would be lowered, and while the others who initially fared poorly would still not be as badly off as the worst-off person, each of them would lose more than the worst-off person gained. In C, the worst-off person would be raised slightly more than in B, the better-off people would be raised significantly, and the others would be lowered to the worst-off person's new level, each (again) losing more than the worst-off person gained. On a Maximin Principle of justice focusing on the worst-off person, B and C would both be more just than A, with C the most just. Many find this unacceptable.<sup>26</sup>

It is important to note, first, that though Temkin argues against focusing on the least well-off person, this argument applies to focusing on the lowest achievable threshold, as well. The only required modification of Temkin's examples are to imagine that the least well-off person could achieve a threshold good, as opposed to a non-threshold good. That being said, as an argument against leximin, this example simply restates the extreme nature of leximin that many might find implausible. I have given reason for believing that my account of leximin is not as extreme and is, indeed, required for the trumping value of first-class citizenship. Of course, Temkin might still find my view rather extreme - but this amounts to little more than an incredulous stare. Rather than pounding the table right back at Temkin, I wish to consider the next example, in which the bite of Temkin's argument is found.

The second reason for not only focusing on the worst-off person is important but rarely articulated. It can be illustrated as follows. Let A\* and C\* be large populations, say, two billion each. Let A\* be perfectly equal with everyone faring very well, C\* very unequal with the worst-off group faring very poorly. ... Clearly, the committed judgment of Rawlsians, and many others,

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<sup>26</sup> Temkin, 104.

would be that regarding justice A\* would be much better than C\*. But notice, A\* and C\* might be represented by A and C of [the previous example], except for the worst-off person. Yet, as already noted, focusing on the worst-off person, maximin would rank A and C the exact reverse of A\* and C\*. This seems implausible. Absent special explanation, it does not seem the mere presence or absence of two extra people among billions could require a complete reversal in our firm assessment about the relative justness of the situations.<sup>27</sup>

Temkin here argues that adopting a leximin view (such as mine) requires that one believe that “the mere presence or absence of two extra people among billions” would alter our otherwise firm judgment about the justice of states of affairs. One could put this in terms of evaluation rather than justice. Temkin’s view might be that it is surely implausible that the mere presence or absence of two extra persons among billions is insufficient to radically alter our assessment of the value of a state of affairs.

But as a general principle about the nature of evaluation, indeed, about the nature of justice, Temkin’s intuition (i.e., that some small number of extra people in a scenario is insufficient to reverse our judgments) is surely false. There are many instances in which we believe some small number of people *can* make a significant difference. Imagine the following two scenarios. The first contains everyone at a reasonably high level, distributed equally. Presumably any evaluative theory would suggest that that state of affairs, other things being equal, has some reasonable high value level. However, consider the second scenario, which has the same number of persons at a reasonably high level, equally distributed, but adds a small number of people living lives of avarice - the completely ideal life, as good as human life can possibly get. Of course, goods could be redistributed to improve the lives of those less well-off (assume that in this case, the goods could make *everyone just shy* of the completely ideal life). Surely the addition of some small number of people makes a moral difference here - whether normative or evaluative. Adding the small number of people means that the state of affairs could be made *considerably better* than it currently is.

Or imagine another case, more akin to Temkin’s. First scenario: all people live the

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<sup>27</sup> Temkin, 104-5.

completely ideal life. Second scenario: same as the first, but with some small number of people horribly suffering, living wretched lives. Third scenario: all are equal at a reasonably high level of well-being. It seems to me that the addition of persons in the second case does make a significant moral difference. Though we would say that the first case is clearly better than the third, we would also say that the second case is clearly *worse*. If so, two additional persons *do* make a serious evaluative difference.

It seems to me that we should reject Temkin's general principle. And if we reject Temkin's general principle, there is no substantial argument against leximin. Temkin's argument was that leximin *violated* the intuitive presupposition that some small number of people added cannot make a clear difference in evaluation or normative assessment. Leximin does violate this principle, but so does common-sense judgment. Of course, Temkin might insist that in *his* cases, the principle still applies. It seems that in consideration of A and C, and A\* and C\*, we really *don't* believe that the addition of some small number of persons makes a large difference. But this is nothing more than an implicit intuition that leximin is implausible as a distributive principle. It is nothing more than saying that it is implausible to grant absolute priority to the least well-off (or lowest thresholds). I have given arguments that, I believe, provide some intuitive support for leximin. If so, we should move past this form of bare skepticism.

#### 4.4.3. IS SECOND-CLASS CITIZENSHIP *QUA* PREFERENTIAL TREATMENT COMPATIBLE WITH THRESHOLDS?

The next objection might be put in the following way. The avoidance of preferential treatment, on my account, requires the absolute priority of the lowest achievable threshold. But why construe it in this way? Preferential treatment itself seems to have no index to thresholds, but rather to *persons*. If so, why shouldn't a theory concerned with the badness of second-class citizenship eschew thresholds? Put another way, my view licenses (because of the importance of threshold goods) upward distribution among the those who could not

achieve threshold goods, for the sake of the achievement of those threshold goods themselves. Isn't this preferential treatment of the better-off who could achieve threshold goods? Why doesn't the concern about avoidance of preferential treatment wreck the lexical priority of threshold goods?

My answer, in a nutshell, is that our judgments of preferential treatment are coarse-grained in a way that is accommodated by the threshold-laden account of well-being defended here. By way of illustration, consider the following case:

David is slightly better-off, but has achieved the same level of threshold goods as Jerry, Chris, and Tina - David is better-off only among the index of non-threshold goods. David could be granted a college education (unlike the others) thus helping him achieve an additional threshold good, but this would require taking some of Jerry, Chris, and Tina's movie rental gift cards. This will cause dissatisfaction for them, but will not affect any of their threshold goods.

In this case, redistribution is intuitively compatible with the avoidance of preferential treatment. The explanation seems to be something along the lines of: movie rental gift cards do not compare with the value of a college education for a person. The gift cards are insignificant in a way that the education is significant.

However, the notion of "significance" appealed to here is subject to at least two interpretations. Perhaps a natural interpretation is "comparative significance." In other words, the gift cards are *comparatively* insignificant to the good that could be granted by giving David a college education. However, if interpreted this way, the avoidance of preferential treatment (and hence second-class citizenship) is compatible with, e.g., a weakened prioritarianism. For instance, let's assume that David could be granted the basic minimum, or *many* better-off could be granted many additional threshold achievements. In this case, strictly as a matter of *comparison*, David's potential good looks insignificant: *far more good* could be done by distributing to others. If determining who is treated preferentially is in some sense a measure of the comparative insignificance of goods, the avoidance of preferential treatment is perfectly compatible with a weakened priority relation - massive benefits to the

better-off entail a more significant good. A rejoinder might be that judgments of comparability are not aggregative across persons (i.e., the comparison must always be 1:1).<sup>28</sup> We might imagine, however, that the benefits going to the many are conglomerated into a single individual. (Say, a person who is *barely* above the basic minimum being given the absolutely ideal life.) Perhaps David's basic minimum is comparatively insignificant to this potential benefit to a single better-off person. In which case, the avoidance of preferential treatment is compatible with a weakened priority relation.

There is some reason for resisting a "comparative insignificance" reading of the gift-card *v* college case, however. Consider, for instance, the following case:

Jerry, Chris, and Tina (and all their buddies), can be given a fabulous life, if only David (who maintains, at the very least, the basic minimum) is sold into slavery.

It seems to me that this is *clearly* an example of preferential treatment for Jerry, Chris, and Tina (if one wishes to avoid aggregation, simply conglomerate the goods into a single individual). However, we might still believe that there is some level of benefit one could grant the better-off that would make David's slavery *comparatively* insignificant. If this is true, it cannot be *comparative* significance that is important for understanding the account of preferential treatment. It seems to me, then, the operative understanding of significance in the gift-card *v* college case is *absolute* significance, or *significance for the life of a given individual*. This seems to be confirmed on reflection. We don't think that granting the better-off an education at the cost of gift-cards for the worse-off is a violation of preferential treatment, because the gift cards are *absolutely* insignificant for the life of the gift-card holders. It makes their lives worse, but to a very small degree. And if this is the case, far from being incompatible with my account of preferential treatment and defense of *leximin*, a threshold-laden account of well-being is congenial. It provides a helpful way of categorizing goods that are significant and insignificant in the sense required by our ordinary judgments of

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<sup>28</sup> Offhand, this strikes me as an implausible suggestion; nevertheless, it makes no difference to the argument here.



preferential treatment. Perhaps it is not the only way - but it is at least one way that has the principled support of a plausible account of well-being.

#### 4.4.4. DOES LEXIMIN SUPPORT A HIGHER BASIC MINIMUM?

In conclusion, there remains one important objection. This objection returns to the discussion I undertook in Chapter One regarding Martha Nussbaum's placement of the basic minimum. If you recall, I objected to Nussbaum's insistence on *Expansive List*: a basic minimum set so high that the consequences of upward distribution (an implication on any distinctive basic minimum view) seem implausible. But given that I have tried to defend leximin (or something very much like it), Nussbaum might respond by suggesting that my view is just as implausible: here the consequences of *downward* distribution sound unacceptable. If the basic minimum is dominant, this will involve resource distributions from the better-off, perhaps in some cases extremely costly distributions from the better-off, perhaps even reducing them to the point at which they are *just above* the basic minimum. This is far more plausible when there is a higher minimum than when the minimum is set as low as minimal autonomy. If the basic minimum is given *lexical priority* (and, as the lowest threshold, it always has lexical priority to any other welfare achievement), this might involve distributions from the better-off leaving them *all* just above the basic minimum for the sake of only a single individual's achievement of minimal autonomy. Perhaps leximin is correct. But if leximin is correct, surely we should modify our basic minimum so that the implications of leximin are palatable.

I should first note that I cannot establish that my view is free of unintuitive consequences. As a claim about moral theory, generally speaking, no view is free of unintuitive consequences. This is especially true of views that attempt to deal with the serious and difficult problems surrounding the very poor. Still, it seems to me, we should give up neither leximin nor a low basic minimum. Though this perhaps requires biting the bullets noted in this objection, there are reasons to do so. With regard to the placement of the basic

minimum, it is worth asking, as one sets the basic minimum high or low, who is favored by such a decision? Clearly, as one sets the bar higher, the better-off are benefited. Not only are those who are *above* the basic minimum benefited (because they are given extra assurance that they will not suffer the fate of a lower basic minimum), but the best-off among those who are *below* the basic minimum are benefited (with a high basic minimum there are now *more people* who could not obtain it, thus increasing those who are subject to upward distribution for the benefit of those higher up). Furthermore, in setting a basic minimum high the worse-off are harmed. Assume that X could have achieved minimal autonomy, but could not have achieved a higher basic minimum. X now must face the prospect of upwards redistribution for persons who are already better-off - *including* persons who already maintain minimal autonomy.

This would, perhaps, be plausible if minimal autonomy was of little value in comparison to a higher basic minimum, but this is not the case. I submit that minimal autonomy meets a plausible threshold of human dignity. It is a life that conforms to the agent's own conception of value, thus avoiding the "ape-like" lives - to borrow Mill's term - of those who fail minimal autonomy, whose lives are dictated externally, or whose lives, from their own perspective, are not worth living. Though upward distribution is required for any basic minimum, setting the bar higher favors the better-off in a way that is counterintuitive: it grants them distributional priority at the cost of a life of basic value for others who are already worse-off. In making a basic minimum plausible, it should be set low enough such that the implication of upward distribution is palatable. And it is palatable in the case of minimal autonomy.

Reflection on the nature of minimal autonomy should deflect some criticism of a leximin distributive scheme, as well. As I tried to argue in Chapter Two, and as has been borne out in subsequent discussions, minimal autonomy, as an achievement in human well-being, is *different*. It is the mark of a life that, at least in some global sense or other, conforms

to an agent's conception of the good, in its most coherent form. It is an achievement that guarantees that the life the agent lived could in principle have been the subject of choice, rather than external coercion. The achievement of minimal autonomy is a non-trivial achievement. Though it is, perhaps, not as high as Nussbaum's set of basic capabilities, it is nonetheless a life that conforms to that which the agent has it in her to be; some major element of that life is genuinely valuable. Though this is hardly argument, my own view is that this achievement is remarkable in its power. Not only is it lexically prior to welfare states below, it is also sufficient to anchor an account of leximin: a life of minimal autonomy is surely worth living.

Perhaps this does not convince. Perhaps, even given everything that has been said before, leximin remains implausible. At this point, we have reached the limits of moral argument; we have arrived at bare skepticism. I have given reasons for believing that leximin is the most plausible account of the way in which the distribution of well-being affect our judgment of the value of states of affairs. But no argument for leximin can overcome this form of skepticism. I only note that there are other possible views concerning the proper evaluation of well-being distribution that I leave open. Though my own intuitions are aligned with the trumping value of first-class citizenship, if leximin is not to your liking, you are free to select Crisp's more modest sufficientarianism, or perhaps some other view that is compatible with the rejection of *Lives for the Ultra-Rich*.

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