

Chapter One: On the Concept (and Some Conceptions) of the Basic Minimum

Stated in the most general way, and leaving aside the nitty-gritty, that political morality should include a commitment to a *basic minimum* is plausible. Sentiments that point in this direction range from the following, by Ronald Dworkin: “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,”¹ to Martha Nussbaum: “moving all citizens above a basic threshold. . . should be taken as a central social goal,”² to Stuart White, who notes that there “is a widespread intuition that in a just society citizens must have access on reasonable terms to the resources necessary to meet their basic needs.”³ These sentiments are popular, and it is easy to see why. When any particular person fails to maintain a minimally decent life, or fails to obtain their basic needs, it is tempting to say that this fact *by itself* provides a moral reason for assistance. Political institutions should be concerned, it would appear, not just with equality, overall well-being, or the plight of the worst-off. They should *also* be concerned to see that people obtain a life that maintains a minimal, basic threshold.

Like all philosophical matters, however, the devil is in the details. How should a basic minimum be understood? What must a person fail to maintain to fail to maintain the basic minimum? What is the relative moral importance of a basic minimum against other social goals? The project of this book is to answer these questions in some detail and to support an underexplored welfarist answer to them. To this end, the first chapter sets the stage. First, I draw some conceptual blueprints—including what, at the most general level, a basic minimum *is*. In §1.1, I offer an account of the *concept* of a basic minimum: what any view must accept to qualify as a view that accepts a basic minimum. Very roughly, I conclude that a view is committed to a basic minimum only insofar as this view is committed to the (at least) weak moral priority of a valuable absolute state of persons. With this conceptual groundwork laid, the second task of this chapter is to critically evaluate particular theories of the basic minimum. As it turns out, this chapter concludes on a down note (at least for those who find a basic minimum plausible). In §§1.2-1.8, I show that five accounts of the basic

¹Dworkin (2000), 5.

²Nussbaum, “Women and Cultural Universals” in Nussbaum (1999), 43.

³White (2003), 131.

minimum fail, while a sixth faces a powerful dilemma.

1.1. *The Concept of a Basic Minimum*

So what is a basic minimum? It seems to me that the place to begin is by regimenting the intuitions that began this chapter and that, I hope, the reader will recognize. As stated by Nussbaum and White, the basic minimum appears to be a particular state of persons that should be a “central social goal”, or that is a demand of a “just society”. Of course, different conceptions of the basic minimum will differ concerning which state forms this central goal. But for now, we might hold that any basic minimum-accepting political theory will conform to:

BM1: a basic minimum is a state of persons below which political institutions must not allow citizens to fall.

Is BM1 adequate to the concept of the basic minimum? Perhaps so. Consider, for instance, a case in which reference to a basic minimum has moral pull:

Famine: Group A and group B live in an extremely stratified society. Group A has very little access to material resources, and has fallen into a disastrous famine, leaving a substantial percentage of its members in conditions of severe starvation and malnutrition. Group B, on the other hand, though not living in the lap of luxury, and is in no danger of falling into famine conditions. This society has the opportunity to promote the living standards of either group A or group B (but not both).

In *Famine*, and cases like it, it seems correct to say that political society, individual moral agents, etc., have a moral obligation to alleviate the starvation of group A rather than improving the living standards of group B. Offhand, this seems morally obvious. But why? Of course, one explanation for this might appeal to the fact that this society, on the whole, is *unequal*, or that this particular society fails to do all it can for *the least well-off*. But though these may be important reasons to assist group A rather than group B, an appeal to equality or to the moral priority of the worst-off doesn't seem to say it all. Rather, group A's interests seem to take moral priority here because the members of group A are *starving*. Any failure to correct the starvation of group A would seem to be a gross miscarriage of justice. Our considered judgment here seems to conform to BM1. The avoidance of

starvation appears to be the sort of “state of persons” that many will find morally important to establish for all. But more than this: that its members are starving seemed to be sufficient reason, by itself, to require political institutions to address the needs of group A. Hence a basic minimum seems to be the sort of thing that, should anyone fall below it, political institutions have failed.

However, BM1 is inadequate for two reasons. First, BM1 seems to dictate, at a conceptual level, that the basic minimum will have a *very* strong connection to moral obligations of political institutions. In particular, it appears to indicate that the achievement of the basic minimum is a *requirement* of justice; when a citizen, indeed any citizen, fails the basic minimum, political institutions responsible have failed. But though the minimum will be *a* factor in determining the justice of social institutions (assuming such a minimum exists), the weight of this factor, at least at a conceptual level, is certainly up for grabs. Surely one might accept a basic minimum, but also believe that justice can obtain when some fail to meet this threshold. Achievement of the basic minimum is surely one among many social, political, and moral goals worth promoting. If and when such goals come into conflict, we need not insist that the basic minimum should take priority simply as a matter of *concept*.

Second, it is not clear that the interest in a basic minimum is confined to the political. Non-political morality need not be excluded from making moral use of a basic minimum. For instance, it might be the case that, even in the absence of political institutions, moral agents have reason to see to it that persons maintain some adequate “threshold” or achieve a basic level of “success”. There may be strong moral reason to assist others to achieve a certain level of relief of suffering or maintenance of rational capacities or other valuable states simply because this particular state is morally significant.⁴ In short, it’s hard to see why the avoidance of starvation isn’t just as significant for non-political agents in a position to assist groups A or B. Hence insofar as we’re looking for a conceptual account of the basic minimum, it’s best to avoid statements of the *concept* that apply only to political morality.

So the concept of a basic minimum should be broadened. Two things seem to me to characterize a view that accepts a basic minimum. First, views that accept a basic minimum will include an *evaluative* element. To accept a basic minimum, one must hold that some particular *state* of persons, whether a welfare achievement or some level of resources or capabilities (e.g.,

⁴Such views are offered by, among others, Singer (1972), and Herman (1993).

the avoidance of starvation) is *of value*. However, it is important that this state be of a certain structure. States of persons can be either *relative* or *absolute*. An *absolute* state of persons is *non-comparative* (such as, for instance, “maintaining one’s basic needs”, or “possessing capabilities x , y , and z ”); to determine whether an absolute state holds of a person, one need only look to that person. Relative states are essentially comparative; they are states that cannot hold of a person independently of a comparison between that person and others. Relative states include “being equal”, or “being better-off”, etc. Theories that accept a basic minimum will posit an *absolute*, non-comparative state and declare that this state is of special value. For example, though many views will hold that the state of “maintaining equality with others” is important for any person to achieve, such a state cannot constitute a basic minimum. A state of persons counts only as a basic minimum if that state could be possessed no matter one’s place in the overall distribution, and no matter whether one has been made better- or worse-off over time, and no matter whether anyone else, or everyone else, also maintains that state.

The evaluative element of a basic minimum requires a further word of clarification. Some political theories will refuse to index obligations of justice to a vision of the good life. Such views generally hold that the political domain should remain neutral when it comes to theories of that which is intrinsically good for persons.⁵ However, this form of neutrality need not disqualify a view from believing in a basic minimum, at least as I understand a basic minimum here. In particular, the basic minimum need not be, for instance, of value *because* it is valuable as a feature of the good life. One can believe that the avoidance of starvation is a valuable state of persons, but not as a *per se* feature of the good life. With this in mind, one might identify the basic minimum as some set of resources, capabilities, or primary goods that are not valuable as a matter of the good life, but are of value given that, e.g., every rational person has reason to desire them, or that they are the product of a reasonable overlapping consensus.⁶

The second feature runs as follows. Belief in a basic minimum has a moral, as well as evaluative, dimension. To believe in a basic minimum is to believe not just that a particular property of persons is of value, but that this particular property of persons has a certain moral weight. A basic minimum is morally *special*.

⁵There is a long and enduring list of liberal neutralists when it comes to the good. Among the *loci classici* are Rawls (1995), Barry (1992).

⁶Rawls, “Justice as Fairness: Political not Metaphysical” in Rawls (1999), Nussbaum (2000), 76.

One can put the moral dimension of a basic minimum somewhat more precisely as follows. It is common to make reference to the notion of a moral “reason”, i.e., a consideration that counts in favor of a moral requirement to perform some action ϕ . However, moral reasons can be of differing weight or importance. Say that an action ϕ is “morally decisive with respect to” another action ψ if and only if the reason(s) to ϕ is/are stronger than the reason(s) to ψ . Say that ϕ -ing is *overriding* if ψ -ing is morally decisive with respect to all alternative actions. With this terminology in mind, views that accept a basic minimum will hold that there is not just *pro tanto* reason to promote the achievement of the basic minimum, but rather that this reason has a particular weight or importance: to promote the basic minimum is *morally decisive* with respect to the promotion of other valuable states of persons. In this respect, the basic minimum—whatever it is—is morally special. This priority need not be overriding, or even particularly weighty. All that is required is what I call “weak moral priority”:

Weak Moral Priority: For any two valuable states p and q , p is weakly morally prior to q if and only if, if ϕ is the action of promoting a single instance of p , and ψ is the action of promoting a single instance of q , ϕ -ing is morally decisive with respect to ψ -ing.⁷

p is morally prior to q if and only if there is greater reason to promote p for A than there is to promote q for B, i.e., if there is greater reason to promote p than q in a one-to-one comparison. Given this terminology, it seems quite obvious that to be a basic minimum p must maintain *at least* weak moral priority to other valuable states of persons. In this way, we respect the moral “specialness” of the basic minimum. Of course, as specified, the requisite moral specialness is weak. Intuitions such as Nussbaum’s and White’s would point to a basic minimum of greater moral priority. Nevertheless, as a matter of concept, it seems right to say that any basic minimum p must take *at least* weak moral priority to any other valuable state of persons. If

⁷I treat the notion of a “single instance” as primitive. In essence, what I mean is the achievement of a particular property for a single person. This is vague however given that different conceptions of the basic minimum will identify the locus of “achievement” differently. Some might hold that the achievement of the basic minimum for a person is the achievement of the basic minimum for a person over the course of that person’s life. Others might believe that shorter time-periods are relevant, and hence a person can achieve the basic minimum at one time, but not at others. This, however, is a substantive matter that is rightly left aside in conceptual discussion of the basic minimum. I discuss this issue in the next chapter, §2.5. Thanks to an anonymous reviewer for calling this point to my attention.

q maintains weak moral priority to p , p is no basic minimum. This also holds of relative states. One might imagine the promotion of, say, equality, or the interests of the least well-off, tells in favor of ψ -ing rather than ϕ -ing. Though we may insist on the importance of the promotion of such valuable relative states, views that accept a *basic minimum* should insist that it takes at least *weak* priority to their promotion.⁸ If equality, or priority for the least well-off, render ψ -ing morally decisive with respect to ϕ -ing, p is not a basic minimum, at least in the sense I discuss here. For p to be a basic minimum, an increase in equality, say, cannot be enough to morally outweigh p 's promotion.

The weak moral priority of the basic minimum holds that the basic minimum should be, on a one-to-one basis, the most important social goal. However, this leaves open the possibility that the basic minimum might not conform to BM1: one might believe that the basic minimum takes moral priority to other valuable states, but not necessarily absolute or overriding priority. The basic minimum's moral priority—as a matter of concept, anyway—need only be weak.

A further feature of weak moral priority should be flagged. Consider the distinction, made famous by Philip Pettit, between different moral “stances” one might take toward morally relevant goods.⁹ One might believe, for instance, that there is a moral reason to “honor” p , which would hold that there is reason to preserve it, not to harm or destroy it, etc. One might also believe that there is reason to promote p , where this entails a reason to increase the amount of p , to maximize the achievement of p , etc. My account of the priority of the basic minimum is limited to the priority one must grant to the basic minimum when it comes to the stance of promotion only: in a one-to-one comparison, there is stronger reason to promote the basic minimum than there is to promote other states. But this limitation is important. BM1 seems to hold that political societies are perfectly justified in stopping at *nothing* to secure the achievement of the basic minimum for all. However, one might believe that pursuit of the basic minimum can be limited by, for instance, a right not to be harmed. One might believe that

⁸This might sound a bit awkward: how do we promote only a single instance of, say, equality? If you, say, benefit one person for the sake of equality, doesn't that mean that two people now possess the comparative state of being equal? When it comes to weak moral priority to comparative states, I understand the idea (somewhat roughly) like this: promotion of the basic minimum is morally decisive with respect to benefiting one person *for reasons of the promotion of comparative states*, such as equality, improving the less well-off, etc. Though this language is admittedly awkward, the idea should be clear enough.

⁹Cf. Pettit (1997).

there are reasons to “honor” some states of persons, reasons that are morally decisive with respect to the reason to promote the achievement of the basic minimum. Hence, though it seems correct to claim that the basic minimum should have weak moral priority, it also seems correct not to rule out views that would restrict the promotion of the basic minimum in the face of moral rights not to be harmed, or reasons to “honor” other states.

As an improvement on BM1, then, we might consider:

BM2: p is a basic minimum if and only if p is a valuable absolute state of persons, which maintains at least weak moral priority to all other valuable states of persons.

BM2 seems to correct the deficiencies of BM1. BM2 accepts that an interest in the basic minimum is not confined to the political. Furthermore, BM2 allows that the basic minimum might not maintain overriding moral priority in all cases, avoiding a serious problem encountered by BM1.

Though BM2 seems to capture the basic conceptual structure of a basic minimum, I think one amendment is in order. BM2 seems to insist that, for any two people A and B, A’s maintenance of the basic minimum must take weak moral priority to B’s maintenance of any other valuable state p . But this might be too strong. We could imagine, for instance, conditions under which it is appropriate *not* to treat someone’s basic minimum as weakly morally prior. For instance, one might imagine a view according to which the achievement of the basic minimum for cold-blooded murderers, or those who display some other form of negative moral responsibility, is less morally important than non-minimum states for others. On such a view, the basic minimum *for cold-blooded murderers* would not maintain weak moral priority. Hence given that such a view is possible (even plausible) it seems sensible to add a qualifier to the conceptual structure of the basic minimum:

BM3: p is a basic minimum if and only if p is a valuable absolute state of persons, which—in the general case—maintains at least weak moral priority to all other valuable states of persons.

My use of the term “in the general case” is meant to allow that the basic minimum for some might not maintain moral priority given some particular fact about *them* (being a cold-blooded murderer, for instance). However, for reasons already rehearsed, in the *general* case the basic minimum should take at least weak moral priority to all other states. For the purposes of this book, then, I accept BM3. The theories I consider, and the theory I offer, are intended to be conceptions of the concept identified therein. (I hereby

abstract from the qualifier, which I discuss in more detail in §6.2.)

1.2. Conceptions

The conceptual structure of a basic minimum is now on the table. The remainder of this chapter will address the plausibility of various accounts of the basic minimum in light of the minimal requirements of BM3. Though there may be many more, in this chapter I discuss six such theories. First, I discuss the claim that the basic minimum is to be identified as the possession of a certain threshold level of primary goods or resources (§1.3). Second, I discuss the possibility—argued for by Henry Shue—that the basic minimum is the state of human *subsistence* (§1.4). As a third possibility, some have held that the concept of “poverty” (and, perhaps by extension, the concept of failing a basic minimum) should not be understood in abstraction from the various *social* needs of people in a given society or political context. Fourth, one might adopt a suggestion, popular in development economics, that the basic minimum is best understood not as the fulfillment of social needs, but rather as the fulfillment of *basic human needs* (§1.5).¹⁰ The fifth possibility has been strenuously defended by Martha Nussbaum. This view holds that the basic minimum should not be understood as the accumulation of primary goods, or the achievement of subsistence *per se*, but rather the maintenance of certain central *capabilities*.

The sixth and final option I consider is the option for which I shall ultimately argue. In contrast to the capabilities approach, a *welfarist* approach to the basic minimum holds that the achievement of the basic minimum is to be understood as *living a good life* to some threshold degree.

The remainder of this chapter discusses these options with a critical eye. I end on a down note. By the end of this chapter, I hope to have shown that there are very serious problems with each approach to the basic minimum. One might take this as evidence that no basic minimum exists. While this possibility may be tempting, I begin construction of a welfarist approach—one that can avoid the dilemma I pose—in Chapter Two.

1.3. Primary Goods and Other Resources

Take *Famine*. One might be tempted to claim that group A fails the basic minimum because group A fails to have sufficient primary goods (including food and purchasing power) from which to draw, resources that are available

¹⁰See, for instance, Streeten, et. al. (1981).

to group B. Hence, one might claim that the failure of a sufficient threshold of these basic resources provides reason to distribute to group A rather than B. If this thought is plausible, one might claim that the basic minimum should be expressed as a threshold level of such goods. Familiar from Rawls, primary goods include not just income and wealth, but also a range of other valuable resources. Rawls defines them as “things which it is supposed a rational man wants whatever else he wants.”¹¹ Rawls distinguishes five kinds of primary goods, the most recent account of which runs as follows:

- (i) The basic rights and liberties: freedom of thought and liberty of conscience, and the rest. These rights and liberties are essential institutional conditions required for the adequate development and full and informed exercise of the two moral powers.
- (ii) Freedom of movement and free choice of occupation against a background of diverse opportunities, which opportunities allow the pursuit of a variety of ends and give effect to decisions to revise and alter them.
- (iii) Powers and prerogatives of offices and positions of authority and responsibility.
- (iv) Income and wealth, understood as all-purpose means (having an exchange value) generally needed to achieve a wide range of ends whatever they may be.
- (v) The social bases of self-respect, understood as those aspects of basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence.¹²

A basic minimum composed of primary goods would presumably require some threshold set of each of these five types of primary good, perhaps weighing some more heavily than others, and perhaps allowing trade-offs among them. This view seems to adequately explain our reaction in *Famine*: because group A fails to possess adequate levels of resources (including income and food), there is stronger moral reason to assist group A rather than group B.¹³

¹¹Rawls (1971), 92.

¹²Rawls (2001), 59.

¹³I here focus on Rawls’s account rather than alternative “resourcist” or goods accounts offered by, e.g., Philippe van Parijs. Van Parijs claims that the basic minimum should be a “basic income”—specified as the highest possible unconditional income that can be granted to all. (See van Parijs (1995), 34-35.) However, van Parijs’s view is only nominally a resourcist approach, insofar as he believes that this basic income is only morally resonant

But where is the threshold to be set? Two questions deserve answers. First: is the set of primary goods that constitutes the basic minimum to be understood to apply *universally* or *relatively*? A universal approach holds that a particular set of primary goods constitutes the basic minimum for all individuals within a given society. A relativist approach, by contrast, holds that for any particular person, the minimum threshold of primary goods will vary depending on factors such as that individual's abilities, disabilities, health, natural talents, etc. On this view, the basic minimum for A will be determined by whatever is required for A to maintain some *further* valuable, absolute state. But once we have identified whether a primary goods approach is universal or relative, we still must know what the proper threshold is. This, then, is the second question: if we define the basic minimum universally, what is the threshold of primary goods that counts as the basic minimum? If we define the basic minimum as relative between persons, to what *further* achievement do we index each person's threshold set of primary goods?

Take the first question. Is it plausible to establish some particular threshold of each category of primary goods that, taken jointly, could apply as the basic minimum for all persons? I think the answer is no. Take, for instance, a primary good such as the provision of health care. Presumably one might believe that the provision of health care is one institution that is "normally essential if citizens are to have a lively sense of their own worth as persons and to be able to advance their ends with self-confidence", i.e., one of the social bases of self-respect. But what *level of access* to health-care will count as essential for the basic minimum?

If we define the proper threshold universally at, say, level h , we are left with the following problem. Some individuals will not require level h to, say, "advance their ends with self-confidence". Others will require much more than h . Assume now that A is a healthy person, does not require any access to health care to maintain a life that A values to the fullest. Assume that B is extremely sickly, and has some illness that requires provision of health care in excess of h to advance his ends or goals. Now assume that providing level h for A will require providing *only* h for B. If the universalist primary goods approach is to declare that the basic minimum requires the provision of h , it must say that there is stronger moral reason to provide this level of health-care access to A than there is to provide additional levels of health-

insofar as it allows people the "freedom to live as one might like to live," (van Parijs (1995), 30). Hence, insofar as van Parijs insists on the maintenance of a basic minimum, this basic minimum seems to take the form of a capabilities approach: real freedom, real capabilities, to live as one might like to live. I argue against capabilities approaches in detail below.

care access to B: the basic minimum, of course, is weakly morally prior to other valuable states of persons (including B's provision of additional health-care access). But this is surely the wrong answer. A doesn't need h , while B requires more than h . Given BM3, a universalist primary goods approach cannot provide a plausible account of the basic minimum.¹⁴

So if we are going to accept a primary goods approach, we must accept a *relativist* approach: one that defines the primary goods that are to count as part of the basic minimum in a way that is sensitive to the distinction between individuals, including A's natural healthiness, B's natural sickness. Indeed, this is Rawls's own approach. At various places, Rawls claims that one essential feature of political morality includes the provision of primary goods sufficient for individuals to meet their *basic needs*. Rawls writes: "a social minimum providing for the basic needs of all citizens is... [a constitutional] essential."¹⁵ Rawls also claims that the provision of individuals' basic needs may very well be the *first* principle of political morality: "[T]he first principle covering the equal basic rights and liberties may easily be preceded by a lexically prior principle requiring that citizens' basic needs be met, at least insofar as their being met is necessary for citizens to understand and to be able fruitfully to exercise those rights and liberties."¹⁶ Rawls's own approach is relativist insofar as Rawls defines the basic minimum in terms of whatever primary goods are *sufficient to obtain one's basic needs*. This will allow variation when it comes to the particular level of primary goods constitutive of the basic minimum between persons.

If we accept that access to sufficient health care is a basic need, a relativist primary goods approach may be able to avoid the problem that plagued a universalist approach: because access to health care at level h is not one of A's basic needs, and access to health care at a level greater than h is one of B's basic needs, defining the basic minimum as "primary goods sufficient to meet one's basic needs" would appear to solve this problem. But a further problem must be obvious. In defining a primary goods approach to the basic minimum as whatever is required for an individual to maintain his or her basic needs, the primary goods approach is in danger of simply reducing to a basic needs approach: the basic minimum is defined not in terms of primary goods, but in terms of the maintenance of some set of important basic needs.¹⁷

¹⁴This is a classic objection to resourcist views about the nature of political distribution. It is made most famous by Sen. See (1993), (1980), (2009), 260-2.

¹⁵Rawls (1995), 228.

¹⁶Rawls (1995), 7.

¹⁷Of course, that Rawls's approach reduces to a basic needs approach is not strictly

This problem generalizes. A relativist primary goods approach must specify the appropriate level of primary goods in terms of some other index: primary goods sufficient *for p*, whether *p* is basic needs, subsistence, some level of capabilities or welfare, etc. But in so doing, the primary goods approach loses distinctiveness: the moral force of the basic minimum is determined not by the moral force of primary goods themselves, but by the moral force of *p*. Of course, a basic needs approach is important, and will be considered below, as will a number of other potential competitors for the role of *p*. But either the primary goods approach yields implausible verdicts in light of BM3 (on a universalist interpretation), or the primary goods approach loses distinctiveness (on a relativist interpretation).

1.4. Subsistence

Recall again *Famine*. Perhaps the fact that group A lacks adequate primary goods is not that which drives us to support group A's moral priority. Perhaps, rather, it is the fact that group A fails to *subsist*, for which food, resources, or purchasing power are essential (at least in this case). Surely, it might be claimed, if anything is a morally important state of persons, it is the achievement of subsistence. In weighing various reasons to promote particular achievements, it seems hard to believe that the promotion of human subsistence doesn't take at least weak moral priority to other distributive goals or valuable states of persons. Thus, if the failure of group A to subsist is morally resonant, we might be tempted to claim that subsistence constitutes the basic minimum.

Briefly suggested by Locke, the most important account of a basic minimum in terms of basic human subsistence is argued for by Henry Shue. For Shue, if any particular state of persons is to take moral priority, it must be subsistence:

entailed by his own account. Rawls might insist that the basic minimum entitles a given individual *only* to the *primary goods* sufficient for the achievement of one's basic needs, and hence hold that the basic minimum does not include non-primary goods that might, for some people, be required for the maintenance of their basic needs. However, it seems to me that this position smacks of fetishism. If non-primary goods are essential for the ability to participate politically, and to exercise one's two moral powers, there is surely just as much reason to provide these non-primary goods as there is to provide the various primary goods. Indeed, this proposal seems to be internally unstable. It would appear that the moral force of *this particular level* of primary goods is given by the fact that it allows individuals to maintain their basic needs. But if the fact that doing so allows individuals to meet their basic needs forms the moral reason to distribute primary goods, why not also non-primary goods, as well?

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.¹⁸

If Shue is correct, human subsistence clearly satisfies BM3—it appears to uniquely satisfy his reasoning for a “social guarantee”.¹⁹ Offhand, Shue’s claim is plausible. Shue notes that the lack of human subsistence entails an extreme cost (especially when it comes to their resultant vulnerability). Subsistence, as Shue understands it, thus seems to be extremely important, morally speaking.

But a problem arises. “Human subsistence” sounds like a concept that itself stands in need of a theory. Defining a basic minimum in terms of human subsistence threatens emptiness without a plausible account of subsistence itself. However, Shue’s own account is unsatisfactory:

By...subsistence, I mean unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and minimal

¹⁸Shue (1981), 29-30.

¹⁹Importantly, Shue mentions a basic right to “security and subsistence”. However, it would seem that, for the purposes of assigning a proper basic minimum, “security” is eliminable. Though I will argue for this in more depth in Chapter Six, a person who subsists, but whose subsistence is under threat, would not be said to fail the basic minimum. Rather, it would seem more appropriate to describe this person as maintaining the basic minimum, but in a way that is unsecured, or tenuous. Of course, there might be reasons to promote the security of persons, but not because security of persons is a valuable state *per se*, but rather because security is instrumental in achieving states that are genuinely valuable, including subsistence. Hence, it would seem most charitable to interpret Shue’s suggestion as the claim that we have a basic right to the achievement of basic subsistence, to which security is an important means.

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.²⁰

Shue's account is indeterminate. Shue writes that subsistence amounts to "adequate" food, "adequate" clothing, etc. But the problem with Shue's approach should be relatively obvious: how much is "adequate"? Adequate for what? One might be tempted to say that the basic minimum is maintained by A if and only if A has food adequate *for the maintenance of the basic minimum*. But Shue cannot avail of himself of this response. This account of nutritional adequacy requires prior understanding of the basic minimum itself and hence would render an account of the basic minimum in terms of subsistence circular. But if we don't index food adequacy to the achievement of the basic minimum, to what do we index it?

The indeterminacy of Shue's approach could, in principle, be fixed in one of two ways. First, one could identify some particular set of calories, say, and hold that this constitutes "adequacy" when it comes to food. Call this a "universalist" approach. Or Shue could say that "adequate" food for any person A is food enough for A to maintain some other valuable state. Call this a "relativist" approach. But if these are the two options, a subsistence-based approach to the basic minimum is either (a) implausible, or (b) fails to be a distinctive account of moral reasons. The universalist approach fails for the same reasons that a universalist primary goods approach fails. Those with extremely fast metabolisms will starve; those with slow metabolisms will require much less. The achievement of a certain specified number of calories cannot maintain the weak moral priority required by BM3. The relativist strategy, as in the case of a relativist primary goods approach, lacks distinctiveness. One could, in principle, identify subsistence in terms of a range of possible *capabilities* for an agent. Here the basic minimum might be understood as "adequate" food for the ability, say, to be well-nourished, to live a life worth living, etc. However, on this account of subsistence, we have replaced the moral importance of subsistence with the moral importance of certain central *capabilities*. Such a view, of course, is an important and influential account of the basic minimum, which will be discussed here in

²⁰Shue (1981), 23.

due time. It might very well be that subsistence just *is* the achievement of certain basic human capabilities. But this would be to fail to adequately distinguish the subsistence approach from a capabilities approach.

One could, alternatively, understand “subsistence” in terms of what a person *achieves*, rather than in terms of what that person has the capability to achieve. For instance, one might suggest that “subsistence” is just *being* well-nourished, *being* free of diseases caused by dirty air and lack of shelter, etc. However, this view also appears to sap the motivation for a subsistence approach. What we have here is a “functioning” or “welfarist” approach. This possibility will be discussed in greater detail in §§1.6.3-1.8.

It is important to note that I do not regard the lack of distinctiveness as a substantive critique of Shue’s approach. Shue offers an intentionally vague theory of the basic minimum, and it is easy to see any more substantive theory of the basic minimum being a reasonable candidate for the proper theory *of subsistence*. In such a case, Shue’s theory is true, but only trivially. To better understand the basic minimum, we cannot simply understand it as basic subsistence.

1.5. *Social Needs*

In *Famine*, group A fails to meet a morally resonant threshold. But we have so far seen that this threshold cannot plausibly be identified as a set of primary goods, or as the maintenance of human subsistence (without some further theory of human subsistence). But one—*very* plausible—thought might be that whatever else is true of group A, its members seem to lack *what they need*. Of course, everyone has unfulfilled needs; for me to own my dream car, I need a substantially higher income. But there are two ways of understanding the needs that are central to the basic minimum that will be the topic of this, and of the next, section.

The first needs-based approach holds that the basic minimum is constituted (at least in part) by the fulfillment of certain important *social* needs, or needs that vary with social context. To see what I mean, consider the following. Assume that for a particular society, most people are expected to live rather poor lives—secondary education is rare, food rarely goes beyond what is required for survival, etc. It might seem that the basic minimum should not exceed what people in that society can or should expect to get in that particular set of social circumstances. Those who achieve that which their society can offer could not complain that they were somehow left behind: the basic minimum is indexed to their most basic life expectations. But contrast this society with one of rather less modest means. Imagine an

extremely affluent society, call this place “Beverly Hills”. Given the overall expectations that individuals have in Beverly Hills, it might be thought radically inappropriate to insist merely on the provision of primary education and nutritional adequacy. In Beverly Hills, for example, nutritional adequacy is surely a valuable state of persons, but the *basic minimum* ought to refer to a much higher standard of living, given the *social* needs of individuals that live in Beverly Hills. According to Peter Townsend, “people have needs which can only be defined by virtue of the obligations, associations and customs of. . . membership [in a given social context].”²¹ Whether someone achieves the basic minimum will depend on whether that level is sufficient for the satisfaction of needs as understood to apply within that society, relative to their various practices, mores, and expectations.

Amartya Sen offers an account of just the sort of social need that might be central to the maintenance of the basic minimum:

[T]he absolute satisfaction of some. . . needs might depend on a person’s relative position *vis-á-vis* others. . . The point was very well caught by Adam Smith when he was discussing the concept of necessaries in *The Wealth of Nations*:

By necessaries 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.²²

According to Sen, the avoidance of shame, or social stigma, is an absolute state of persons, and an important social need, that may very well form a

²¹Townsend (1985), 662.

²²Sen (1983), 159. The Smith quotation Sen takes from Smith (1776), 351-2.

part of the basic minimum.

However, the fulfillment of social needs is neither necessary nor sufficient when it comes to the basic minimum. First, they are not sufficient. Social needs do not appear to explain our considered judgment in *Famine*. After all, it would be very strange to say that we ought to distribute to group A simply because, otherwise, they may be ashamed, or may be subject to social stigma. This may very well be an important thing to avoid, but much more important is the avoidance of *starvation*, and starvation is important to avoid even if no one is stigmatized for starving, or if the avoidance of starvation is not a *social* need.

In addition, social needs are not necessary for the fulfillment of the basic minimum. Contrary views cannot satisfy the moral dimension required by BM3. Surely it is not the case that the various social needs of people in very rich societies take weak moral priority to all other absolute states of persons. Consider Beverly Hills resident A in comparison to B, who resides in a comparatively poor social context. Assume that you are forced to choose between providing for A's Beverly Hills social needs (which include, imagine, a high-fashion wardrobe), or providing for B's basic nutrition, which is in fact *not* a social need, given the poverty that surrounds B. It seems clear that the right decision is to provide for B's nutrition. If so, the achievement of A's social needs, or A's ability to live without shame in Beverly Hills clearly cannot be part of the basic minimum. The basic minimum has weak moral priority, which the social needs of Beverly Hills residents simply do not have. Hence social needs are neither necessary nor sufficient for the achievement of the basic minimum.

1.6. Basic Needs

So social needs cannot constitute the basic minimum. But this does not exhaust the various need-based approaches. After all, it still seems plausible to say that the members of group A lack what they need. But what they need is surely not entirely relative to social context. To avoid starvation is not merely a social need (if a social need at all), but might be deemed a *basic* need. If so, one might characterize the morally resonant threshold in terms of the fulfillment of one's basic, rather than social, needs. On the importance of such needs, James Griffin writes:

[B]asic needs... seem to have a quite special moral importance simply in virtue of being basic. For one thing, the presence of the notions of health, harm, and proper function make statements

of basic need moral—in the proper, strict sense of the term that is not the contrary of ‘descriptive’. They all involve a norm falling below which means malfunction, harm, or ailment. And that explains why basic needs have an especially strong link with obligation: my ailment makes a claim on others that my whims, hankerings, pleasures, and even happiness cannot. And these claims on others are of a strong sort; they depend not upon this or that person’s particular wish or purpose, but upon something deeper and objective—human nature.²³

Like “subsistence”, however, the appeal to basic needs in defining a basic minimum appears to be rhetorically powerful, but theoretically thin. What is a basic need? According to Griffin, a basic need is a need that is somehow dependent on human nature. According to David Miller, some particular state of affairs or object p is adequately characterized as a basic need when p is required to achieve a minimally decent life.²⁴

Concentrate on Miller’s view for the moment. Even if we understand what it means to live a minimally decent life, the basic needs approach is still indeterminate; the basic needs approach faces a set of questions similar in structure to the questions that faced previous approaches. To see this, consider the following. What is required for any *particular* person to achieve a minimally decent life is going to be wildly variable among persons. Take the following case: A fails to maintain a minimally decent human life. But, given certain psychological facts about A, A cannot achieve a minimally decent life with the same basket of resources that everyone else can. However, assume that A *could* live a minimally decent life if A was given some particular good, g . Question: is g a basic need of A’s?

The basic needs approach can offer two different responses to this question. The first is “no”: g is not a basic need of A’s despite the fact that A

²³Griffin (1989), 42.

²⁴Miller (2007), 181. One further point is worth noting. Miller draws “a distinction between *basic needs* and *societal needs*, where the former are to be understood as the conditions for a decent human life in *any* society, and the latter as the more expansive set of requirements for a decent life in the particular society to which a person belongs,” (Miller (2007), 182). According to Miller, both sets of needs are basic needs, but only the former ground obligations that are reason-giving for all moral agents. The latter set of needs, however, are reason-giving only for those in one’s societal context. Hence the basic needs approach, as outlined by Miller, is committed to defining the basic minimum in terms of that which is required for a person to live a minimally decent life, where this will include both basic needs and societal needs. Insofar as I have already argued against inserting such social needs into a theory of the basic minimum, for the purposes of charity, I propose to leave aside this feature of Miller’s view.

requires it to live a minimally decent life. Basic needs, on this view, just are the set of resources, calories, or other goods that *in the general case* are required to maintain a minimally decent life. This approach appears to simply define a set of basic needs without taking into account the possibility of interpersonal variation. But this approach has no plausibility. Such a view would appear to insist that there is more reason to provide these so-called “basic needs” to B, who does not require them to live a minimally decent life, at the expense of g for A, who requires g to live a minimally decent life. Such a view is unacceptable.

The better answer is “yes”: g is a basic need of A’s. Miller agrees. For Miller, basic needs are “the conditions that must be met for a person to have a decent life given the environmental conditions he faces.”²⁵ But for A, this requires g . It would seem, then, that g is one of A’s basic needs.

The problem here should be familiar. If g is a basic need for A just in case A requires g to live a minimally decent life, the basic needs approach is equivalent to a capabilities approach, viz., that a person should be given the capability to obtain a minimally decent human life. Here what is really central is not any particular set of goods, or the achievement of any particular valuable outcomes, but rather the ability, for A, to live a minimally decent life. If so, the most plausible understanding of a basic needs approach is just a version of the capabilities approach.²⁶

Indeed, this result is on display in Rawls’s (admittedly very brief) sketch of a basic needs approach. As Rawls writes, individuals must have their “basic needs . . . met, at least insofar as their being met is necessary for citizens to understand and to be able fruitfully to exercise [their] rights and liberties.”²⁷ But in this case, Rawls explicitly ties the fulfillment of one’s basic needs to the *capability* for individuals to “exercise” the various basic rights and political liberties that appear in Rawls’s first principle of justice. Embellishing this view, Rawls later writes, with respect to medical care in particular, that “provision for medical care, as with primary goods generally, is to meet the needs and requirements of citizens as free and equal. Such care falls under the general means necessary to underwrite fair equality of opportunity and our capacity to take advantage of our basic rights and liberties, and thus to be normal and fully cooperating members of society over a complete life.”²⁸ As seen here, Rawls identifies the primary goods approach as facilitating certain basic capabilities, including the “capacity” to take advantage of our

²⁵Miller (2007), 184.

²⁶Sen, “Goods and People” in Sen (1984), 513-4.

²⁷Rawls (1995), 7.

²⁸Rawls (2001), 174.

equal basic rights and liberties and to be normal and cooperating members of a political endeavor. Hence, read literally, Rawls's own basic needs approach is simply coextensive with a capabilities approach.

The problem here is identical for *any* basic needs approach. A basic needs approach must answer the question: what are these basic needs *for*? But to properly answer this question, one must identify a particular goal, p , for which these basic needs are needed. One could avoid collapse by holding that the basic minimum is just that which *most* people need for p , or that which is needed for p in the general case. But this view is implausible. Hence A's basic needs must be those things that A requires to maintain the ability to achieve the set target p . In this way, it would appear that any basic needs approach that specifies a relevant target p is extensionally equivalent to a capabilities approach. Hence, for the purposes of charity, it seems sensible to describe the basic needs approach as one *form* of a capabilities approach (indeed, as some basic needs theorists readily admit).²⁹

1.7. Capabilities

Two possibilities remain. The first, and clearly most influential, defines the basic minimum in terms of a universally applicable set of basic capabilities. That capabilities should be an index of distributive justice has long been championed by Amartya Sen, and the capabilities approach has been used in the development of a basic minimum in more recent years by Martha Nussbaum.³⁰ The capabilities approach is important, and has justly received sustained philosophical attention.³¹ The capabilities approach, indeed, seems to provide a substantive core of other approaches already discussed here, including the basic needs approach.

Its plausibility is undeniable. Take *Famine*. In this case, it seems important that group A be given sufficient food, or resources with which to purchase food. But why? Surely at least part of the answer is that food or other fungible resources allow people the capability to live a life of sufficient length, to develop and live according to their interests, etc., etc. In other words, in caring about group A, and in choosing to assist group A rather than group B, we are interested not in the promotion of food access *per se*, not in resources *per se*, but rather in the promotion of the capability to live a flourishing life, which is already available for group B. Given its advantages,

²⁹See Streeten (1994).

³⁰See, for instance, Sen (1980), Nussbaum (2000), (2006).

³¹For a mere taste, consider Kaufman (2008).

I take the capabilities approach to be the chief competitor of the welfarist approach for which I will eventually argue.

According to Nussbaum, 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, and which together form a primary obligation of political morality. Nussbaum has articulated many different versions of the list, which she maintains is a work in progress. As 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-use rights.³²

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. To fulfill the basic minimum we are to have at least a threshold level of each basic capability. We do not need to have the maximal ability to, for instance, exercise our capacity for imagination, but we must be able to do so to at least some minimal degree, commensurate with a fully human life. In addition, Nussbaum believes that the obligation to provide for basic capabilities is an obligation of all governments, not simply of governments with reasonably abundant resources from which to draw.³³ Furthermore, in a way that

³²Nussbaum (2006), 76-78.

³³Compare Baker (1992), 123. Nussbaum (2006), 401-2.

corrects defects of the approaches of Townsend and Sen, Nussbaum does not rely on social needs to define the basic minimum.

Nussbaum's view is admittedly tentative, and open to revision based on circumstances, as it were, "on the ground". Nevertheless, this view contains four crucial elements that are important for our purposes here. The first element, *Capabilities Not Welfare*, is fairly self-explanatory, and contains the beating heart of every version of a capabilities approach. Nussbaum does not believe that to satisfy the basic minimum one must actually possess the functionings that make up a flourishing life (i.e., imagination, sexual fulfillment, and the like). Rather, it is enough that one has the threshold capability to do so. This is clearly plausible in the case of, say, sexual fulfillment. Though sexual fulfillment might be *good*, there appears to be no *per se* moral reason to ensure that everyone has had some threshold level of sexual satisfaction (including those who wish to remain celibate). In addition, however, Nussbaum believes that one should not insist on functioning, rather than capability, even for more basic elements of the list, such as life and bodily health. Those who wish to fast for religious or other purposes should be able to give up being adequately nourished if they so choose. The second element—call it *Expansive List*—is clear from Nussbaum's account of the basic minimum itself. Nussbaum does not merely suggest that some baseline of life and freedom from slavery, say, 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. She includes life and bodily integrity, but also political participation, recreation, affiliation with other species and the world of nature, etc.

Third is *No Trade-offs*. The threshold level of each capability is a discrete requirement for the achievement of the basic minimum. According to Nussbaum, one cannot achieve the basic minimum by trading off a threshold level of one capability for the sake of additional gains in another element. It is not compatible with a concern for the basic minimum, according to Nussbaum, to refuse to grant the opportunity for play, but to make this up with a greater ability to form friendships, or to participate politically. "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."³⁴ Again, "This account entails that the capabilities are rad-

³⁴Nussbaum (2006), 175.

ically nonfungible: lacks in one area cannot be made up simply by giving people a larger amount of another capability.”³⁵

One might break Nussbaum’s elements into two categories: evaluative elements that define the structure of the basic minimum itself—such as *Expansive List*, *Capabilities Not Welfare*, and *No Trade-offs*—and moral elements, elements that form Nussbaum’s account of the various reasons to promote the basic minimum and their strength. For our purposes here, there is but one relevant moral element: *Guarantee*. According to Nussbaum, justice requires 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.”³⁶ Notice that Nussbaum does not suggest that a society that cannot avoid failures of the basic minimum for some 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, political society has failed to conform to that which it has overriding moral reason to do. 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.”³⁷

When put together, it is clear that the capabilities approach offers a genuine basic minimum. The ten basic capabilities are intended to be a valuable state of persons, and this state of persons clearly maintains the highest possible moral priority: it is a *guarantee* of justice.³⁸ Nussbaum’s view is clear, powerful, and intuitive. However, it has grave defects, which I explore in the following sections.

One organizational note. Though it is useful to understand the whole

³⁵Nussbaum (2006), 166-7.

³⁶Nussbaum (2006), 75.

³⁷Nussbaum (2006), 175.

³⁸Of course, one might claim that a particular state is a guarantee of justice, but claim that this state does not take priority over other states. This could be possible if p and q are both guarantees of justice, and maintain equal moral importance. Though Nussbaum believes the basic minimum takes substantial priority over super-minimum states, Nussbaum is silent on whether the basic minimum, in a one-to-one comparison, takes priority over sub-minimum states (she believes that any such trade-off is simply unjust). This causes serious problems for Nussbaum’s view, which I discuss in Chapter Six. For now, however, I’ll assume that Nussbaum’s basic minimum conforms to BM3.

of Nussbaum's view at the outset, the remainder of this section will discuss only Nussbaum's evaluative elements. I will presume that these elements are intended to form a basic minimum of moral strength at least sufficient to conform to BM3 (i.e., I will not assume *Guarantee* for the purposes of this discussion). I discuss *Guarantee* in more detail in Chapter Four.

1.7.1. No Trade-offs

Consider first *No Trade-offs*. Can it reasonably be held that a person who has substantial gains in one set of basic capabilities *cannot* obtain the basic minimum unless she has a threshold level of *all* basic capabilities? Initially, it seems plausible to say that a capability like political participation could be reasonably traded-off against gains in other areas, at least for a single person. Consider two choices: the first choice would allow one person, A, to develop the capacities and capabilities of Leonardo da Vinci, which A enjoys and exercises, but with no opportunity for political participation, which A does not value and use of which A would not make. The second alternative would allow A a threshold of each basic capability but just barely above the threshold level. It seems implausible to opt for the latter. And if that's right (given BM3), it seems wrong to say that these capabilities, in Nussbaum's terminology, should be radically nonfungible. Of course, Nussbaum has an account of basic human dignity that (she claims) supports the requirement of basic political participation, and hence supports *No Trade-offs*. I will say more about this in the next section, but for now I simply note that I find it very difficult to believe that a person living the life of da Vinci (*sans* opportunity for political participation) lacks *basic human dignity*. Of course, my point here should not be taken to mean that political participation is not a good thing, or that there is no moral reason to establish a right of political participation for all. Rather, I simply argue that one can maintain the basic minimum, or so it seems, without it: to grant a da Vinci-like character the opportunity for political participation cannot take the requisite moral priority.

No Trade-offs is thus implausible, but one caveat is worth mentioning. The implausibility of *No Trade-offs* is a consequence of the conjunction of *No Trade-offs* with *Expansive List*. Indeed, one might be tempted to accept *No Trade-offs* if the list of basic capabilities comprising the minimum is substantially shortened, a list composed of the capabilities to maintain, say, life and bodily integrity. It is worthwhile, then, to consider whether *Expansive List* has any independent support over such a restricted list, which may support *No Trade-offs* more plausibly.

1.7.2. Expansive List, *Human Dignity*, and *Upward Distribution*

A critic of *Expansive List* needn't claim that there are elements on the list of ten basic capabilities that are not valuable. It is perfectly open to someone who rejects *Expansive List* to declare that there is a moral reason to promote *all* basic capabilities. All one need deny is that the ten basic capabilities should form the basic minimum, i.e., that the conjunction of the ten basic capabilities satisfies BM3.

If so, to establish *Expansive List*, one must argue that *each* of the ten basic capabilities forms part of a morally important threshold as per the demands of BM3. According to Nussbaum, this is established by showing that *Expansive List* plausibly captures capabilities sufficient to maintain a life of *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—a life that has available in it ‘truly human functioning.’”³⁹

The reference to human dignity here is certainly striking and rhetorically powerful. However, human dignity permits of interpretation. One might wonder whether political participation, or land-use rights, really is essential for a life comprised of “truly human functioning.”⁴⁰ After all, “truly human functioning” is only sensible when considering its contrast class, i.e., less-than-human functioning, or functioning that doesn't go beyond that of non-human animals. But one needn't have political and material control over one's environment to avoid a life fit only for a non-human animal. Rather, one might think the elements of Nussbaum's list relevant for human functioning include, for instance, a threshold level of the use of practical reason, or “senses, imagination, and thought.” Such a view is not without precedent. Aristotle, in book I of the *Nicomachean Ethics*, identifies a truly human life as a life composed of “activity and actions of the soul that involve reason; hence the function of the excellent man is to do this well and finely.”⁴¹ Presumably, on an Aristotelian view of truly human functioning, one must develop at least a minimal capacity to exercise one's rationality; this will require some of the ten basic capabilities but not others.

³⁹Nussbaum (2006), 74. Nussbaum cites Marx as the inspiration for her understanding of truly human functioning, but it seems to me unclear that Marx's understanding of “rich human need,” or the need of a “totality of human life-activities” need express itself in anything like Nussbaum's *Expansive List*.

⁴⁰See Arneson (2000a), 48.

⁴¹Aristotle, 1098a 13-15.

Aristotle is not alone. Hurka, in developing a contemporary restatement of Aristotle's view, writes that "humans share with other animals certain bodily essential properties but are also essentially rational, in both the theoretical and practical senses of 'rational'. [This form of perfectionism has] three values: physical perfection, which develops our physical nature, and theoretical and practical perfection, which develop theoretical and practical rationality."⁴² Hurka here is specifically referring to the human essence, the minimal instantiation of which is surely a reasonable account of "truly human functioning." On this view, some of the basic capabilities will be required for a life of truly human functioning, but others will not. (Though, again, this is not to say that a more fully developed human life would not require them.) Insofar as we are interested in "truly human functioning", which I discuss critically in the next chapter, Hurka's seems a better account. That the da Vinci-like life fails to maintain basic human dignity, or "truly human functioning" is not believable. If truly human functioning is to guide the choice of the basic capabilities, Nussbaum's list is too expansive.

Nussbaum might respond by suggesting that the operative term in "truly human functioning" is *truly*. In other words, though there might be some particularly minimal account of bare human functioning (as opposed to mere animal functioning), morally speaking we are interested in more than this. Thus "truly human functioning" is morally loaded: it should consist of elements that we find morally attractive or desirable; attractive enough to form the content of a basic minimum.⁴³ But I find it hard to assess this claim independently of particular considered judgments about the moral priority—the ability to conform to BM3—of Nussbaum's basic minimum as opposed to a less expansive list. And in such a comparison, Nussbaum's list fails.

Consider two people, A and B. A is far below the basic minimum, with mere life and nutritional adequacy. B, however, possesses almost everything, except the land use clause of number 10. Political society can either raise A to the level of B (i.e., by granting almost everything except land use rights), or it can grant B land use rights, but not both. If *Expansive List* captures the true account of the basic minimum *and* the achievement of the basic minimum is to maintain weak moral priority, the distribution should go to

⁴²Hurka (1993), 37.

⁴³Nussbaum (2006), 181. This might be similar to a response often given to critics of Aristotle's account of the human function. For Aristotle, so the suggestion goes, the human function is morally loaded, i.e., constructed in such a way that the elements of the human function are intrinsically desirable of themselves. See, for instance, Whiting (1988), 38-9, Kraut (1989), 317-18, Annas (1993), 216-17.

B. This simply follows from BM3 and from Nussbaum’s *Expansive List*.⁴⁴ But this is implausible. Land-use rights, though perhaps important, are surely not of the same moral importance as the range of capabilities that could be granted to A. Land use rights are not important enough to form a necessary feature of the basic minimum.

The above case illustrates an important dilemma for any view committed to a basic minimum. Call the occasional moral priority of the better-off to the worse-off “upward distribution”. Upward distribution is a little-noted feature of views that accept a basic minimum, but it cannot be avoided. Any view respecting BM3 will imply it. Insofar as the promotion of the basic minimum must take weak moral priority to the promotion of all other valuable states (including comparative states), a single instance of the basic minimum must take priority to a single instance of the promotion of a valuable state for a worse-off person. Thus any view that posits a basic minimum must address it plausibly. Indeed, the stronger the minimum the more cases in which upward distribution is licensed. Thus any basic minimum must adequately negotiate the problem of upward distribution. In light of *Expansive List*, Nussbaum’s basic minimum fails this test.

1.7.3. Capabilities Not Welfare

In this section, I criticize the essential feature of any view that defines the basic minimum defined in terms of capabilities: the rejection of a basic minimum in terms of the actual achievement of valued states (or, in Nussbaum and Sen’s terminology: “functionings”) in favor of a basic minimum defined in terms of the capabilities to achieve such valued states. My argument here will have two parts. First, I consider Nussbaum’s arguments for a capabilities approach rather than a welfarist approach. As it turns out, I argue, Nussbaum’s own considered judgments about the relationship between the basic minimum and the capabilities approach are better explained by a welfarist approach. Second, I argue that any view that accepts *Capabilities Not Welfare* and posits a basic minimum (sufficient to satisfy BM3) is committed to absurd conclusions. This applies whether or not one accepts any of Nussbaum’s other elements.

Why *Capabilities Not Welfare*? In the following passage, Nussbaum considers the possibility that a capabilities approach should be replaced by

⁴⁴Alternatively, one could suggest that a sufficient improvement in some areas of the ten basic capabilities can render some elements of the list unnecessary in terms of the achievement of the basic minimum. But this would seem to deny *No Trade-offs*.

a welfarist approach that insists on the achievement of actual functionings, rather than capabilities:⁴⁵

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.⁴⁶

Nussbaum’s motivation for a capabilities metric, then, involves concerns generally associated with political neutrality: people may desire to live a life that interferes with functionings that Nussbaum’s approach declares important for truly human functioning. Of course, the central capabilities must be possessed by all—but there is no moral reason to insist that individuals develop particular functionings, lest we interfere with a form of liberal neutrality (or “pluralism”) about the good life.

My view is that Nussbaum’s point here, in broad outline, is surely right. We should not insist that persons achieve sexual satisfaction (or, perhaps, other functionings they do not value). If a religious person is force-fed, for

⁴⁵There is a reasonable question concerning whether all functionings-based approaches must also be welfarist approaches. In other words, must a theory of the basic minimum that insists on functionings also believe that these functionings are features of human well-being? Nussbaum herself seems ambivalent on this question. (See Nussbaum (2000), 14.) Though such a position is surely featured in logical space, it seems to me that a functionings-based approach that is not *also* a welfarist approach lacks plausibility, especially in the face of BM3. Assume that there are two valuable functionings that make up an approach to the basic minimum p and q , but that these functionings are not features of human well-being. Now consider A and B. A maintains p but not q , B maintains q but not p . In order to grant the basic minimum to A, however, you must disadvantage B in terms of well-being, and vice versa. Also assume that granting A q and granting B p will improve neither A’s nor B’s quality of life. I find the suggestion that one has a moral reason to disadvantage either A or B for the sake of these non-welfarist functionings morally absurd. Hence it appears to me rather clear that any *plausible* functionings-based approach will also commit to the welfare value of these functionings.

⁴⁶Nussbaum (2000), 86-7.

example, that person is to that extent living a life that does not reflect his conception of the good. But political institutions should refrain from forcing citizens to live lives they do not choose and do not value.⁴⁷ This tells in favor of a capabilities, rather than welfarist, approach: to insist on functionings precludes “many choices that citizens may make in accordance with their own conceptions of the good.”

That which constitutes a person’s true “conception of the good” (i.e., a person’s set of genuine preferences, pro-attitudes, valuations, etc.) is a matter for substantive discussion—I will offer my own interpretation in Chapter Three. Leaving aside the details for the moment, however, it seems to me that a concern that institutions not undercut the ability of people to live lives they value is compatible with a moral concern, not for Nussbaum’s ten basic capabilities, but for the achievement of conceptions of the good. It is a concern for what I shall call, admittedly somewhat awkwardly:

*Proto-autonomy*⁴⁸: An individual is proto-autonomous if, and to the extent that, she fulfills those preferences, pro-attitudes, and evaluations that constitute her conception of the good.

An approach to the basic minimum organized around the achievement of proto-autonomy (rather than the functionings noted in Nussbaum’s list) is compatible with Nussbaum’s insistence that people should not be forced to live lives that they do not value.

Of course, compatibility is one thing, plausibility another. But an approach to the basic minimum in terms of the achievement of proto-autonomy also helps to explain and unify a number of Nussbaum’s own considered judgments, upon which she relies in clarifying and defending her account of the basic capabilities. For instance, Nussbaum herself declares that functionings, rather than capabilities, should be enforced in a number of important cases. Nussbaum says that in children, functionings are crucial because

⁴⁷Richard Arneson notes this implication of Nussbaum’s examples in (2000a), p. 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.” I claim that freedom *itself* is of no intrinsic value, merely the *achievement of conceptions of the good*. My defense of these claims, however, must wait.

⁴⁸I refer to this state as “proto-autonomy” rather than “autonomy” because I do not wish to commit to any particular theory of autonomy, or any particular theory concerning the relationship between the achievement of one’s conception of the good and the achievement of autonomy. Though there may be some relation, even a strong relation, I simply remain neutral on its strength.

they are required to produce adults who maintain the ten basic capabilities. Furthermore, even in adults, certain basic functionings are required because

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.⁴⁹

Nussbaum insists that some functionings should be enforced given an interest in the capabilities themselves. Choices that adversely affect important capabilities are prohibited. But, for Nussbaum, these proposals permit of *exceptions*. For instance, Nussbaum writes: "I do not favor policies that would make unhealthy activities such as boxing, unsafe sex, football, and smoking illegal, although education about risk seems to be highly appropriate, and the infliction of harm on others... could rightly be penalized."⁵⁰ Take Evel Knievel. Given the capabilities approach as stated by Nussbaum, it would be unjust for political institutions to enforce a safety norm against Knievel. For Knievel, jumping the Snake River Canyon is protected as an *exception* to the general edict to promote of functionings that are central to protecting the ten basic capabilities. But why?

Nussbaum's view strains in giving a coherent account of these exceptions. Where, say, food safety is concerned, the capabilities approach suggests that unsafe food is a hindrance to the development and maintenance of important capabilities. But then it is hard to understand her rejection of laws against smoking, unsafe sex, or general daredevilry. These things are just as harmful to one's overall capabilities. Nussbaum might suggest, given the rhetoric of the above-quoted paragraph, that regulation of building codes and food, etc., are vastly more important for the basic capabilities than, say, the avoidance of unsafe sex. But even if this "vastly" could be given a coherent interpretation, why should we imagine that it is true? Just as

⁴⁹Nussbaum (2000), 91.

⁵⁰Nussbaum (2006), 171.

with unsafe buildings or unsafe food, the extent to which unsafe sex or risky motorcycle stunts are debilitating to one's capabilities seems to be a matter of luck; a bit of bad luck, and they are ultimately debilitating.

The best explanation of Nussbaum's exceptions, it seems to me, makes essential reference to the value of proto-autonomy itself. Though the exceptions Nussbaum allows do not straightforwardly serve the project of basic capability-promotion, they *do* serve the general purpose of *proto-autonomy*-promotion. Knieval is allowed to jeopardize his safety because in so doing he better achieves his conception of the good. General policies of food and drug regulation are acceptable given their importance to the proto-autonomy of individuals—rarely is eating unsafe food or living in unsafe buildings a part of anyone's conception of the good, and rarely will such policies interfere with anyone's conception of the good.⁵¹

Thus, it seems to me, Nussbaum's suggestions when it comes to enforcement of various types of behavior are best captured by an insistence not on the intrinsic importance of the ten basic capabilities for justice, but rather on the intrinsic importance of proto-autonomy. But if this is the case, Nussbaum's arguments for *Capabilities Not Welfare* appear to dissipate. While the importance of proto-autonomy rules out versions of a welfarist approach that insist upon the maintenance of, say, sexual functioning, it does not appear to rule out all welfarist approaches. Indeed, one might state a rough sketch of a welfarist approach as follows:

The Basic Minimum as Proto-autonomy: x achieves the basic minimum if and only if x is proto-autonomous to a sufficient degree.

Whether *The Basic Minimum as Proto-autonomy* can be plausibly sustained will be a matter for investigation in the remaining chapters. However, it is important to note that Nussbaum's own arguments for a capabilities approach and against a welfarist approach fail in the face of *The Basic Minimum as Proto-autonomy*. *The Basic Minimum as Proto-autonomy* 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. Safe food is

⁵¹What about someone who eats unsafe food proto-autonomously? Given everything that Nussbaum has said, it would seem that such a person should be allowed to do so; see, for instance, her suggestion that regulations should be justified "within limits set by an appropriate concern for liberty"; but given the effects of unsafe food on the general populace, purveyors are required to maintain safety standards. This is compatible with an emphasis on proto-autonomy rather than capabilities.

required because safe food is essential to the maintenance of a life one values living (in most cases, anyway; see note 51). From the point of view of proto-autonomy, forcing someone to achieve such satisfaction would be bad indeed. If *The Basic Minimum as Proto-autonomy* succeeds, Nussbaum's argument for a capabilities approach is deflated. (Chapters Two and Three are dedicated to defending a welfarist approach sufficient to capture *The Basic Minimum as Proto-autonomy*. Suffice it to say that whether *The Basic Minimum as Proto-autonomy* can succeed is as yet undetermined.)

Though I have so far focused on Nussbaum's view, hers is not the only "capabilities approach". Different capabilities approaches will identify a different set of capabilities as the basic minimum, and will differ when it comes to the overall capabilities that one has reason to promote. But *no* version of a capabilities approach to the basic minimum could be plausibly motivated in the face of an acceptable welfarist alternative. The general problem is as follows. A capabilities approach is committed to the provision of capabilities even if these capabilities have no effect whatsoever on the lives of individuals whose capabilities they are, i.e., even if these capabilities are *never used*. But this is a seriously problematic result, especially in light of BM3. Take the following case, inspired by Nussbaum's view. Assume that A is missing, and could be granted, the capability for adequate nourishment. Assume B, however, maintains the basic minimum, but could be granted a number of additional capabilities. B values these additional capabilities and would make use of them. Nussbaum would insist that we favor granting the capability for adequate nourishment to A. This, I think, is a plausible result *only if* A values being adequately nourished and would make use of the capability to do so, as most would. But assume that he is a faster. A capabilities view would require that we grant the capability for adequate nourishment to A, who does not value being adequately nourished, and would not make use of such a capability, rather than granting additional capabilities to B, who does value them, and *would* make use of them. This implication is unacceptable. Insisting on the provision of a threshold level of capabilities, even when these capabilities would have no effect on the extent to which A might live a life he values living, is fetishistic, no matter which capabilities make up the basic minimum.

This point can be made in a slightly different way. Call a "mere capability" a capability that is not made use of. In the example above, the capability for adequate nourishment for A is a mere capability. Call a "substantive capability" a capability that is actually made use of promotion of a given person's flourishing. B's potential non-minimum capabilities, in the example above, are substantive capabilities. Quite obviously, the capabili-

ties approach cannot index moral reasons to substantive capabilities rather than mere capabilities: to do so would be, like the basic needs and primary goods approaches, to lack distinctiveness. Hence the capabilities approach can make no *moral* distinction between a mere capability and a substantive capability. But, of course, the capabilities approach to the basic minimum must respect BM3: it must claim that the basic minimum takes at least weak moral priority to other valuable states. If so, the capabilities approach is committed to requiring that moral agents favor the capabilities that make up the basic minimum in comparison to other states even if they are *mere* capabilities, capabilities that are *never used*. This cannot be the right answer. Though there may be some space for the moral importance of capabilities (see, for instance, §6.5), a capabilities approach cannot succeed as a proper theory of the basic minimum.

One further note is worth mentioning. Some insist on a capabilities approach rather than a welfarist approach on the grounds that only a capabilities approach can deliver the right verdicts when it comes to individuals who are in some way responsible for their own disadvantage. For instance, we might feel as though we have no further moral reason to assist an individual to whom we have granted the capability for a minimally decent human life, but who has culpably gambled away his necessary resources. We may feel as though granting capabilities is all that is required—those who are prudent will use them to achieve proto-autonomy, or well-being, or a “minimally decent life”. But there is no moral reason to provide additional resources to those who are *not* similarly prudent, or who behave recklessly or irresponsibly. Hence, though Nussbaum’s particular capabilities approach fails, it might seem more plausible to insist on a some form of a capabilities approach rather than *The Basic Minimum as Proto-autonomy*.⁵²

This motivation for a capabilities approach only succeeds if a welfarist approach cannot *also* deliver satisfying verdicts in response to cases of general negative responsibility or culpable behavior. I turn to this question in Chapter Six. In any event, that a capabilities approach is committed to the promotion of mere capabilities at the cost of substantive capabilities, which in turn lead to better, higher quality lives, seems to me to cause significant problems for such an approach, whatever the rationale.

1.8. *The Welfarist’s Dilemma*

The problems that face a capabilities approach are significant. The ob-

⁵²See Arneson (1989).

vious answer is to reject the capabilities approach in favor of a welfarist approach. A welfarist approach—like the previous approaches—adequately explains our gut moral reaction in *Famine*. One might claim that the moral reason to assist group A rather than group B just is the fact that the persons of group A fail to live *good lives*. We incline toward assisting group A not because we are interested in group A’s capabilities, or basic needs, or primary goods, but rather because we are interested in group A’s quality of life, full stop.

Though a welfarist approach seems plausible, at least initially, matters are not so simple. There appears to be a powerful dilemma facing any welfarist theory of the basic minimum. One might put the dilemma this way. A welfarist approach will either accept *The Basic Minimum as Proto-autonomy*, or it will not. Any welfarist theory that claims to take seriously *The Basic Minimum as Proto-autonomy* seems committed to claiming that the *preferences* or *values* of individuals have an important role to play in the construction of a basic minimum. But this gives rise to a familiar problem. As rational agents, we adapt our preferences and other pro-attitudes to our circumstances. On coming to realize I cannot achieve some goal of mine, *p*, I adopt an aversion to *p*, instead preferring that which I can actually achieve.⁵³ But if this is the case, people who would certainly be described under any reasonable criterion as failing the basic minimum might in fact come to value their current, awful, state of affairs. Nussbaum writes: “If one does not know what it is like to feel well nourished, it is especially easy to be content with the undernourished state in which one lives; if one has never learned to read and is told that education is not for women, it is very easy to internalize one’s own second-class status and learn not to strive for, or even desire, what tradition has put out of reach.”⁵⁴ She concludes that “A wise approach [will hold] that some existing preferences are actually bad bases for social policy.”⁵⁵ If this is correct, we should reject *The Basic Minimum as Proto-autonomy*. Though this view would accommodate many of Nussbaum’s concerns about the importance of capabilities rather than functionings, it appears *not* to accommodate Nussbaum’s concern that the basic minimum (for anyone) not be defined by adaptive preferences.

Alternatively, one could reject *The Basic Minimum as Proto-Autonomy*. The basic minimum, on this view, might simply be the achievement of some objectively valuable welfare state (knowledge, flourishing, great achieve-

⁵³There are other important examples of this phenomenon. See Elster (1983), 111-124.

⁵⁴Nussbaum, “American Women: Preferences, Feminism, and Democracy” in Nussbaum (1999), 151.

⁵⁵Nussbaum (2000), 112.

ment, etc.). But this view fails for a reason that must by now be familiar: this approach fails to accommodate Nussbaum's concern that individuals not be forced to live lives that are not compatible with their conceptions of the good. This view will declare that there is moral reason to insist that certain individuals adopt courses of action or embrace activities regardless of whether these states or activities are valued by them.

Thus a welfarist basic minimum faces a dilemma. Any welfarist basic minimum must accommodate *The Basic Minimum as Proto-autonomy*. But any theory of the basic minimum that accommodates this thesis would seem to succumb to the problem of adaptive preferences, which is a death knell for any theory seeking to provide a plausible account of the basic minimum.⁵⁶

1.9. Conclusion

To sum up, in this chapter I have specified a concept of the basic minimum to which any particular theories or conceptions of the basic minimum must live up: BM3. I have also argued that five important theories of the basic minimum (primary goods, subsistence, social needs, basic needs, capabilities) either fail to be distinctive approaches, or fail to posit a minimum threshold that meets the minimal moral priority insisted upon by BM3. In addition, I have argued that a welfarist approach faces a powerful dilemma. Offhand, the landscape looks rocky.

One might respond to the dilemma faced by welfarism in three ways. First, one might simply conclude that a basic minimum cannot be accepted. Indeed, this possibility appears to loom large: it would appear that no plausible conception of a basic minimum can be articulated. Second, one might accept a capabilities approach, warts and all. If the relevant alternative is to reject a basic minimum altogether some might find this an attractive option.

But there is a third possibility. One might try to show that a welfarist approach escapes the dilemma presented the previous section. This is the possibility I embrace. I think a welfarist approach can avoid this dilemma—or, more accurately, I believe that it can be shown that there is no dilemma at all. To show this, however, I must first articulate a basic minimum that could plausibly accommodate *The Basic Minimum as Proto-autonomy* without seeming arbitrary. This is the topic of Chapter Two.

⁵⁶Nussbaum (2000), 117-18.