

Chapter Five: Against Rights

The previous chapter offered an account of the relative intrinsic value of the basic minimum. This is the first stage of my solution to the problem of weight. We must now proceed to the second stage: how, if at all, does the comparative goodness of the basic minimum influence the comparative moral importance of the basic minimum? My proposal is simple: the comparative moral importance of the basic minimum just *is* the comparative intrinsic value of the basic minimum. In other words, the morality of basic minimum-promotion is teleological: we should promote the basic minimum only when it is best to do so. Put together with the axiology I defend in Chapter Four, this approach offers an account that approaches an overriding view without the excesses on display in *Tsunami* and *Severe Disability*.

Against this view is set a supposition made by many political theorists that the basic minimum is the object of a moral *right*, which itself implies a stronger reason to promote the basic minimum than would my approach. Most of this chapter responds to this popular, though I believe mistaken, view. Though a rights-based approach is not the only alternative to a teleological view, the problems for rights-based approaches should be widely worrisome.

This chapter is organized as follows. In §5.1 I present, and offer some brief considerations in favor of, a teleological approach to the basic minimum. However, in defending teleological approaches to any domain, most of the action is in the rejection of competitors, the most important of which I introduce in §5.2: that the basic minimum should be the object of a right. In §5.3, I argue that no rights-based view can escape the problems of *Guarantee* or *Maximize*, or avoid collapse into a teleological approach. In §5.4, I offer one important way in which the language of human rights might be morally appropriate even if we accept a teleological approach to the morality of the basic minimum. Finally, in §5.5, I discuss one important limit of the approach I offer here.

5.1. The Teleological View

As so far outlined, the basic minimum is a prominent feature of the good. The basic minimum has a distinctive axiological structure, taking lexical priority to sub-minimum benefits, and strong, but not lexical, priority to super-minimum project-improvements.

But the problem of weight is not yet solved. Recall that the problem of weight does not concern the axiological structure but rather the *moral*

structure of the basic minimum: how are we to *morally* weigh the promotion of the basic minimum against non-minimum states? It seems to me that the obvious starting point is

The Teleological View: For any two goods p and q , one has greater reason to promote p rather than q if and only if the promotion of p promotes the value of resulting states of affairs to a greater extent than the promotion of q .

As a solution to the problem of weight, *The Teleological View* holds that the moral weight of the basic minimum in comparison to other valuable states is simply given by the comparative value of these states. In any circumstance in which one could either promote the basic minimum or promote some other valuable state, one should promote the basic minimum when and only when promotion of the basic minimum is *better* than promotion of other states.

A feature of *The Teleological View* is worth noting. In keeping with the limitation of BM3, *The Teleological View* governs only the moral reasons that urge us to adopt a certain moral *stance* toward the basic minimum, viz., the stance of promotion. *The Teleological View* says nothing about whether we may have moral reasons to adopt alternative stances (such as, for instance, the stance of preservation, or “honoring”), nor does *The Teleological View* say anything about the comparative moral weight of reasons to adopt alternative stances toward the basic minimum, or the comparative weight of a reason to promote the basic minimum against reasons to adopt such alternative stances. Though *The Teleological View* is compatible with a thoroughgoing act-utilitarianism (see §4.8), it is also compatible with moral views that limit the pursuit of valuable consequences in important ways.

The argument for *The Teleological View* is relatively straightforward. Step one is to show that there is at least *a* reason to treat the basic minimum with moral weight that corresponds to its relative intrinsic goodness. But this is easy to show. There is good reason, independent of the existence of the basic minimum, to believe that there is a moral reason to promote intrinsic impersonal value. Indeed, no sane moral view will reject a moral reason to do so. As John Rawls writes: “All ethical doctrines worth our attention take consequences into account in judging rightness. One which did not would simply be irrational, crazy.”¹ Rawls is correct. Though many moral views will constrain a reason to promote the good in certain ways, it is uncontroversial to believe that there is such a reason. This can be illustrated by means of an easy example. Imagine that one is faced with two

¹Rawls (1971), 30.

actions ϕ and ψ . Imagine also that ϕ and ψ are otherwise morally identical, but for the fact that ϕ -ing produces a slightly better state of affairs than ψ -ing. If everything else is equal, it would seem morally irresponsible to ψ . If so, there is good reason to believe that, in any trade-off, there is at least *a* reason to morally weigh various goods according to their relative intrinsic goodness.

Step two is that there are no moral reasons that would have us treat the moral weight of the basic minimum as more or less significant than its relative intrinsic goodness (at least in terms of the stance of promotion). This is a little trickier to establish. Given the space allotted here, I will not come close to showing that there could be *no* reason to promote the basic minimum beyond the reason to promote the good. However, I will argue against what I take to be the most important deviation from *The Teleological View*. Many who think about the moral structure of a basic minimum would reject *The Teleological View* because they are committed to the view that the basic minimum should be the object of a moral right. Hence the remainder of this chapter will attempt to shed doubt on the existence of such rights. If I can show that a rights-based approach to the morality of the basic minimum fails, this should be strong (though defeasible) reason to accept *The Teleological View*. With that, I shall remain content.

5.2. Introducing Rights²

A rights-based approach to the morality of a basic minimum is widespread: Henry Shue,³ David Miller,⁴ Thomas Pogge,⁵ Nicole Hassoun,⁶ James Nickel,⁷ and James Griffin⁸ (among many others) all argue that the fundamental moral structure of the basic minimum must be put in terms of a human right, viz., that whoever lacks the basic minimum has a *right* to it or, at least, the necessary means to it.

Typically, a rights-based approach will insist that rights generate not only *a* moral reason to promote the achievement of the basic minimum for those who fail it, but will insist that rights give rise to reasons that are

²Some of the groundwork for §§5.2-5.4 is laid in Dorsey (2005). In that paper, I end up advocating a view similar to *Maximize*, but have since thought better of it, in favor of *The Teleological View*.

³Shue (1981).

⁴Miller (2008).

⁵Pogge (2002).

⁶Hassoun (2009).

⁷Nickel (2007).

⁸Griffin (2008).

morally overriding—or, at least, morally decisive with respect to the reason to promote value. As Dworkin notes, rights *trump* utilities.⁹ And though whether rights are *always* morally decisive with respect to the promotion of the good is open to dispute, moral rights will at least in many cases be morally overriding. If so, a rights-based approach will provide a very different account of the moral weight of the basic minimum than *The Teleological View*. For a rights-based approach, the basic minimum has moral heft that goes beyond its intrinsic value.

There are two different types of moral right that I wish to keep separate. Often the distinction to which I point is put in terms of “negative” and “positive” rights, though this language is to some degree misleading.¹⁰ To explain what I mean, consider that one can either *maintain* the basic minimum, or one can *fail* the basic minimum. The first sort of right, possessed by those who do not maintain the basic minimum, is a “benefit right”—a right *to be provided* the basic minimum.¹¹ The second sort of right, possessed by those who maintain the basic minimum, is hereby dubbed a “non-harm right”, a right of those who have the basic minimum not to have the achievement of the basic minimum traded-off for the sake of overall goodness.

Non-harm rights to the basic minimum are compatible with *The Teleological View*. *The Teleological View* governs only the relative weight of reasons to promote the basic minimum in comparison to reasons to promote non-minimum states. According to *The Teleological View*, one has a moral reason to promote the basic minimum if and only if doing so increases the value of resulting states of affairs. But a non-harm right is not properly construed as delivering reasons to promote the basic minimum, but rather to *preserve*—or, recalling Pettit’s terminology, to “honor”—the achievement of the basic minimum. Hence *The Teleological View* is compatible with the claim that a reason to promote value can be overridden by a reason to honor, or to preserve, the basic minimum or any other valuable states. Given their compatibility with *The Teleological View*, I lay aside non-harm rights here. Hence, when I refer to “rights” or a “rights-based approach” to the basic minimum, I refer to benefit rights, or an approach that characterizes reasons

⁹Dworkin (1984).

¹⁰For instance, it is often claimed that a negative right is a right that entails a duty in others to *refrain* from certain actions, but a positive right is a right that entails a duty in others to *perform* certain actions. Of course, for my purposes this is misleading. One might, to best promote the achievement of the basic minimum, be required to refrain from acting rather than acting.

¹¹My terminology here overlaps with terminology accepted by Oswald Hanfling in Hanfling (2006), 64.

to promote the basic minimum at least partially in terms of benefit rights, which *The Teleological View* denies.

I think the suggestion that the moral importance of the basic minimum should be understood in terms of benefit rights is misguided, and I will argue against the existence of such rights here. My general strategy is as follows. As we have so far seen, no plausible moral theory can reject reasons to promote value, or to do what's best. But if this is the case, those who believe that rights exist must show that the structure of morality insisted upon by a rights-based view cannot be accommodated by a view that rejects any reference to rights. My argument, in essence, boils down to an appeal to parsimony. Because a teleological approach to the basic minimum is comparatively parsimonious, a rights-based approach must justify its insistence that rights exist by showing that the rights-based approach delivers different—and *better*—verdicts than *The Teleological View*. I argue that any such attempt is doomed to failure.

One further point is worth mention before I begin my critical discussion of rights-based views. I am interested only in particular methods of understanding a right *to the basic minimum*. Some of the views I consider will deny that a right to the achievement of *a valued project* exists, insofar as other theorists have a different understanding of the basic minimum. However, I do not rest any of my coming discussion on WBM (or WBM2), i.e., the view that the basic minimum is the achievement of a valued project (or, if one accepts WBM2, the achievement of a valued project of sufficient preference-independent value). Rather, I insist that any plausible rights-based approach to the basic minimum must eventually evaluate the moral import of the basic minimum by its comparative intrinsic goodness—whatever this is—leaving their views simply equivalent to a teleological approach to the basic minimum, as outlined in *The Teleological View*.

5.3. Benefit Rights

Any approach to the moral importance of the basic minimum in terms of benefit rights must avoid problems that felled *Guarantee* or *Maximize*. But, at least initially, this challenge seems overwhelming. To see this, consider Shue's account of the essence of a benefit right:

Being socially guaranteed is probably the single most important aspect of a standard right, because it is the aspect that necessitates correlative duties. A right is ordinarily a justified demand that some people make some arrangements so that one will still

be able to enjoy the substance of a right if—actually, *especially* if—it is not within one’s own power to arrange on one’s own to enjoy the substance of the right. Suppose people have a right to physical security. Some of them may nevertheless choose to hire their own private guards, as if they had no right to social guarantees. But they would be justified, and everyone else is justified, in demanding that somebody somewhere make some effective arrangements to establish and maintain security.¹²

Shue’s account of rights is similar to Nussbaum’s *Guarantee*. At least as stated, Shue’s account appears to have the following two features: first, all individuals have a right to the basic minimum, and second, the provision of that to which A has a right must be a social guarantee: if A has a right to p , A’s non-possession of p is incompatible with the fulfillment of the moral obligations of those against whom A has the right. But if A’s right to the basic minimum requires a social guarantee, this appears to generate precisely the problems that felled Nussbaum’s approach. Recall *Tsunami*. Surely, in this case, one behaves morally appropriately in granting the basic minimum to more rather than fewer when not all can be granted the basic minimum. But this is incompatible with Shue’s view. On Shue’s approach to rights, one has a moral obligation to guarantee the basic minimum to all who fail to maintain it, despite the fact that, in this case, this cannot be done. Indeed, Shue’s approach has a problem not just with *Tsunami*, but also with *Severe Disability*. Because the basic minimum is socially guaranteed, one is morally required to promote the basic minimum for an individual who can achieve it only at exorbitant cost.

So far my critique of Shue’s approach has been a bit unfair. Most who posit benefit rights do so in a way that is more complex than the simple account sketched above. Two potential qualifications are worth consideration here. First, Shue himself holds that a right to the basic minimum does not entail that one must be provided whatever is required to maintain the basic minimum, but rather one must be provided protection from “standard threats” to the basic minimum. The standard threats approach is considered in the next section. The second possibility differs from *Guarantee* in the following way: though one has a moral reason to respect rights to the basic minimum, rights are limited by certain “practical considerations”. The “practicalities” approach is advocated most forcefully by David Miller, and will be considered in §5.3.2.

¹²Shue (1981), 16.

5.3.1. Standard Threats

Recall the problem facing Shue. *Guarantee* is too strong; hence if any rights-based view faces the same problems as *Guarantee*, this view is also too strong. And, at least on the face of it, a benefit right to the basic minimum faces these problems. But according to Shue, he is

not suggesting the absurd standard that a right has been fulfilled only if it is impossible for anyone to be deprived of it or only if no one is ever deprived of it. The standard can only be some reasonable level of guarantee. But if people who walk alone after dark are likely to be assaulted, or if infant mortality is 60 per 1000 live births, we would hardly say that enjoyment of, respectively, security or subsistence had yet been socially guaranteed. It is for the more precise specification of the reasonable level of social guarantees that we need the final element in the general structure of moral rights: the notion of a standard threat... [T]he social guarantees required by the structure of a right are guarantees, not against all possible threats, but only against what I will call standard threats.¹³

Shue's suggestion is initially compelling: *Guarantee* seemed problematic in light of the fact that not all persons will be able to achieve the basic minimum, or could achieve the basic minimum only at absurd cost. As Shue notes, however, if a benefit right to the basic minimum only provides a reason to protect persons from standard threats, this might alleviate the worry about *Severe Disability*. Indeed, Shue claims that a right to the basic minimum should not include a right to "open-heart surgery", let alone complex and costly medical procedures that are yet to be developed.¹⁴ This seems to allow the possibility that, consistent with justice or the fulfillment of one's moral obligations, some might fail the basic minimum in a way that does not imply moral failure. Of course, the standard threats approach requires a guarantee: a guarantee of protection against standard threats. But this guarantee would be to states of affairs that are not, one might think, unduly burdensome or that succumb to problems faced by *Guarantee*.

But which threats are "standard"? Does protection from standard threats include provision for protection against tsunamis, hurricanes, and other natural disasters, which are, no doubt, threats to one's achievement of the basic

¹³Shue (1981), 17, 29.

¹⁴Shue (1981), 23.

minimum? If so, the problem with *Guarantee* arises again. Even in cases of resource abundance, protecting all persons from the devastating effects of tsunamis, earthquakes, etc., is simply impossible. One might instead reject the idea that a tsunami or any other such natural disaster is a standard threat to subsistence and security. But on what grounds? Whether a hurricane is a standard threat to one's subsistence and security surely depends upon where one is. A hurricane is not a standard threat to one's subsistence in Edmonton, Alberta. But it surely is a standard threat to one's subsistence in Kingston, Jamaica, or Biloxi, Mississippi. If so, it would appear that any attempt to rule out, say, hurricanes or other natural disasters from being standard threats is simply arbitrary. In any event, without a proper theory of what makes a threat "standard", Shue's account is hard to evaluate in light of the failure of *Guarantee*.

But leave this aside. Let's assume a plausible theory of "standard" threats can be found. A serious problem remains. No matter *what* conception of "standard threats" one holds, the standard threats approach does not avoid the most serious problem confronted by *Guarantee*: because each person is *guaranteed protection from standard threats*, any particular society that lacks sufficient power (for whatever reason) to provide all persons protection from standard threats to the basic minimum will violate the rights of those who cannot be granted protection from standard threats. On Shue's model, a right is a *social guarantee*. But any guarantee can at least in principle require expenditures of resources, say, that not all will have available. How the guarantee is specified is irrelevant. To guarantee protection from standard threats will occasionally require resources or other powers that might simply be unforthcoming or unavailable. In such cases, failure to provide protection against standard threats is a failure of morally overriding reasons despite the fact that moral or political agents might have done the best they could. This position is unacceptable.

But even if we accept the claim that the standard threats approach alleviates the problems with *Guarantee*, Shue's approach is independently implausible. Take two people, A and B. Assume that A lacks p (the lack of which, assume, is a standard threat to the basic minimum), B lacks q (the lack of which is not a standard threat). However, also assume that A is not threatened with the lack of a basic minimum. In other words, assume that for whatever reason, A's failure to obtain p will never lead to A's failure of the basic minimum, despite the fact that a lack of p is a *standard* threat to the basic minimum. B's achievement of the basic minimum *is* threatened by the lack of q , though this threat is non-standard. Assuming that the right to protection against standard threats is morally overriding, A must

be provided p before B receives q . But this is surely the wrong answer. Providing p for A will have no effects whatever on A's achievement of the basic minimum. Providing q for B will have profound effects; doing so will allow B to achieve the basic minimum. Hence it would seem that the obligation to provide protection against at least one of B's non-standard threats is of greater moral weight than the obligation to provide protection against A's standard threats to the achievement of the basic minimum. Hence it seems wrong to say that if there is a right to the basic minimum, it is a right to protection from *standard threats* to the basic minimum. If B's claim is morally prior—as it surely is—the standard threats approach fails.

Furthermore, the standard-threats approach seems in tension with Shue's own justification of rights to the basic minimum (or that which he defines as the basic minimum). When it comes to a right to subsistence, Shue writes:

No one can fully, if at all, enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonably healthy and active life. Deficiencies in the means of subsistence can be just as fatal, incapacitating, or painful as violations of physical security. The resulting damage or death can at least as decisively prevent the enjoyment of any right as can the effects of security violations. Any form of malnutrition, or fever due to exposure, that causes severe and irreversible brain damage, for example, can effectively prevent the exercise of any right requiring clear thought and may, like brain injuries caused by assault, profoundly disturb personality. And, obviously, any fatal deficiencies end all possibility of the enjoyment of rights as firmly as an arbitrary execution.¹⁵

Shue justifies an interest in subsistence and physical security in the same way: without subsistence, very little else is possible. For Shue, the all-encompassing effects of a lack of subsistence render it the subject of social guarantees. But this principle is in tension with the insistence that persons only have rights to be protected against *standard threats* to the basic minimum. Some persons will fail to achieve subsistence (or whatever it is that constitutes a basic minimum) as a result of non-standard threats. Insisting that people have only a basic right to protection from standard threats seems to place greater moral weight on the subsistence of those who are threatened in standard as opposed to non-standard ways. After all, all persons who fail subsistence fail to possess the ability to follow through on other rights, goals,

¹⁵Shue (1981), 24-5.

or opportunities. The mere fact that the achievement of the basic minimum is threatened in a standard as opposed to a non-standard way seems to make very little difference to whether one can fulfill one's rights, or pursue other states one regards as valuable.

The above problems seem to me decisive against any standard threats approach. However, there is some possibility that I have committed Shue to a position he does not hold. Though he does not develop the thought in any detail, at one point Shue claims that “[m]any causes of death and illness are outside the control of society, and many deaths and illnesses are the result of very particular conjunctions of circumstances that general social policies cannot control.”¹⁶ One interpretation of Shue's remark is as follows: a “standard threat” is not determined relative to some more or less absolute theory of what makes a particular threat standard as opposed to non-standard. Rather, a standard threat just *is* a threat that a particular society has the power *to control*. This approach solves a number of problems. First, if social institutions must only guarantee that they will protect against what they *can* protect, the standard-threats approach avoids the problematic suggestion that justice is simply beyond the bounds of societies in the midst of natural disasters, for instance. Second, if standard threats are those that can be controlled, it would appear that there is no motivation to grant non-standard threats moral priority—non-standard threats cannot be controlled.

Though this possibility fruitfully solves some problems with a standard threats approach, problems remain. Most importantly, this interpretation of the standard threats approach can no longer adequately address *Severe Disability*: because Elise's achievement of the basic minimum is *under the control* of her political society, the standard threats approach—as so interpreted—would entail a morally overriding reason to promote her achievement of the basic minimum despite its astronomical cost to the welfare of others. But this should be rejected. It must be the case that the basic minimum is morally fungible against non-minimum states, including super-minimum states. If Shue's standard threats approach avoids the problems of *Guarantee*, it cannot avoid the problems of *Maximize*.

5.3.2. Practicalities

The standard-threats approach cannot salvage benefit rights to the basic minimum. As articulated by Shue, this view either succumbs to the prob-

¹⁶Shue (1981), 25.

lems that face *Guarantee* or those that face *Maximize*. However, another approach has been offered by James Griffin and David Miller. According to Miller,

human rights, precisely because they are liable to place others under obligations of justice to fulfil them, have to take account not only of the interest of the right-bearer but also the interests of those whose behaviour would be constrained by the existence of a right. Theories of human rights characteristically attempt to do this by incorporating a practicality requirement into the existence conditions for a right... By appealing to practicalities we ensure that rights claims do not exceed what it is feasible for a particular society at a particular point in its development.¹⁷

According to Griffin, the existence of any particular right “must depend, to some extent, upon its being an effective, socially manageable claim on others.”¹⁸ If the existence of rights depends on their being a practical, manageable claim on others, benefit rights to the basic minimum might very well avoid the problems faced by *Guarantee* and *Maximize*. One might think that in both *Tsunami* and *Severe Disability*, to guarantee the achievement of the basic minimum to all is not practical; in the former because it is not possible, in the latter because one cannot do so at reasonable cost.

To properly evaluate this approach, however, we must have an answer to the following question: to what extent might the fulfillment of a right to the basic minimum be “impractical” or “unmanageable”? In discussing this question, I think it is worth distinguishing three “levels”, as it were, of impracticality that might limit the existence of a right to the basic minimum:

1. *Impossibility*: A’s right to the basic minimum does not exist in cases in which to provide the basic minimum for A is not possible.
2. *Costliness 1*: A’s right to the basic minimum does not exist in cases in which to provide the basic minimum for A would be costly in terms of the promotion of the basic minimum for others.
3. *Costliness 2*: A’s right to the basic minimum does not exist in cases in which to provide the basic minimum for A would be costly in terms of the promotion of non-minimum states for others.

¹⁷Miller (2007), 185-6.

¹⁸Griffin (2001), 315.

What is Miller’s method? First, it is relatively clear that Miller accepts *Impossibility*. Miller insists that rights can be limited if “[w]hat is needed [for the procurement of the object of a right] cannot be provided by human agency. Consider diseases for which there is at present no known cure, such as several forms of cancer. . . [I]t makes no sense to say that they have a right to this [non-existent] form of medical aid. Or to put it differently, their general right to medical treatment does not include, at present, a right to the specific treatment that would halt the cancer.”¹⁹

Accepting *Impossibility* does very little to solve the problems that felled *Guarantee*. In *Tsunami*, each person (A-F) *could* be assisted. Assisting every individual person is possible, hence anyone who is not assisted maintains a right to the basic minimum, so long as one accepts only *Impossibility* as a method of constraining the existence of rights as a result of practical considerations.

Hence to avoid the problems of *Guarantee*, Miller must accept—at least—*Costliness 1*. In *Tsunami*, granting the basic minimum for any given individual is costly in terms of the basic minimum for others: only five of six can achieve it. Hence there can be no guarantee of the basic minimum, and hence there need be no moral failure in this case if one person fails the target threshold. Does Miller accept *Costliness 1*? It would appear not. Miller writes, for instance, that: “[r]esource scarcities mean that not all needs of a certain kind can be fulfilled simultaneously. Under this heading I want to consider cases in which it is feasible to fulfil the needs of each person taken separately without imposing obligations on others that are either impossible to fulfil or that violate their own rights, but in which this cannot be done for all taken together.”²⁰ Although Miller feels the pull of the suggestion that we would not want to “say in such cases that when we distribute our limited supply of food in the morally best way, we are at the same time infringing a multitude of obligations to all those who get less than they need,” he believes that limiting the moral force of rights in this case is problematic. Hence Miller appears to believe that we should not accept either *Costliness 1* or *Costliness 2*. Hence, it would appear, Miller’s view succumbs to problems inherent in *Guarantee*, providing us with reason enough to reject Miller’s approach.

I should take a moment to consider Miller’s argument that limiting the force of benefit rights in cases in which they could not be fulfilled for all is problematic. First, Miller notes that limiting the force of benefit rights re-

¹⁹Miller (2007), 186.

²⁰Miller (2007), 190.

quires us to come up with some prior account of the moral reasons involved, and to limit the force of rights in accordance with those moral reasons.²¹ Miller holds that there are two problems with doing this. First, any such account of moral reasons that govern distribution in cases in which not all can be helped is bound to be controversial. But, says Miller: “Human rights, by contrast, are supposed to set minimum standards of treatment for human beings that are incontestable—as I have argued, the requirements of a minimally decent life for human beings in any society can be established objectively, in principle anyway. To limit human rights by reference to controversial principles of distributive justice therefore seems a mistake.”²² But this line of reasoning is not compelling. When not everyone can be granted the basic minimum, there still remain important moral questions. Do we maximize? Do we provide for the better-off? Worse-off? And to what extent? And though the answer to such questions may well be controversial, this shouldn’t lessen their importance; there are surely morally better or worse ways of answering such questions unless we simply choose to adopt a position of moral skepticism. But if we agree that there are morally better and morally worse ways to respond to cases in which not all can be granted the basic minimum, it seems wrong to say that those who answer those questions in the best way still fail to conform to their moral obligations. Though incontestability is surely desirable, committing ourselves to the claim that individuals have failed morally when they could not have done better is too high a cost to pay.

Second, Miller writes that: “The purposes of human rights is not simply to guide the behaviour of those who have to deal directly with people whose human needs are not being met. They can also be used to set targets for governments, international organizations, etc. From this perspective, it may be important to state that scarcity itself may constitute a human rights violation where it can be prevented by human agency... For this we need a conception of human rights that is *not* sensitive to the quantity of resources available to a society at any given moment but is based directly on human needs understood as requirements for a minimally decent life.”²³ Miller is surely correct that we do not want to index rights to the basic minimum to the *tout court* availability of resources; after all, sometimes resource scarcity can be the fault of those in charge. But this does not imply that we should refuse to say that the moral force of human rights must not be limited by

²¹Miller (2007), 192.

²²Miller (2007), 193.

²³Miller (2007), 193.

Costliness 1. After all, even if we accept *Costliness 1*, we can also say that a political society failed in its obligations *if its resource scarcity could have been prevented*. (Indeed, Miller’s important insight here is fully compatible with *The Teleological View*, which rejects rights altogether.) The problem with rejecting *Costliness 1*, or adopting the strong account of human rights Miller prefers, is that it would imply that political society failed in its obligations in cases of resource scarcity it *could not* have prevented. *This* conclusion is untenable, as shown in *Tsunami*. Furthermore, in cases in which resource scarcity could have been prevented, we should distinguish two actions: first, the failure to prevent it (which is surely a failure of justice), and, second, adopting a distributive scheme *given* the (preventable) resource scarcity. Miller’s approach would hold that no one acts in morally appropriate way in case of the *second* act simply given a moral failure in case of the *first* act. But this lumps together two separable actions, and is implausible to boot; even though I may have, in a morally inappropriate way, failed to prevent my resource scarcity, I can still, in a morally appropriate way, do the best I can under resulting conditions of scarcity.

So I think, if Miller’s view is committed to the rejection of *Costliness 1* and *Costliness 2*, it should be rejected. But my interpretation of his view is complicated by the following. Miller also argues that considerations of practicality limit the extent to which one possesses a right insofar as the achievement of the basic minimum for any particular person is threatened by various medical needs, including, for instance, a need for a kidney or liver transplant. In this case, Miller writes, people have a right to refuse to give up their livers or kidneys, even though doing so would not threaten their achievement of the basic minimum, and would promote the achievement of the basic minimum overall. Taking Miller’s claim at face value, he seems to claim that there are other goods against which the achievement of a particular right may be balanced, and hence that non-minimum states can render the fulfillment of any given right to the basic minimum too costly. It would appear that Miller refuses to accept *Costliness 1*, but accepts *Costliness 2*. But this is a strange combination of views. How could it be that the achievement of non-minimum goods is sufficient to render the achievement of the basic minimum impractical, but the achievement of the basic minimum itself—which is morally more important (given BM3)—cannot?

However, I think Miller has something else in mind. Miller seems to insist that the existence condition of rights fails to hold when “[o]bliging others to provide what is needed would violate their own human rights. I am thinking here of cases in which the need is such that to meet it would place demands on others that they have the right to refuse, even though they

might choose voluntarily to supply what is needed.”²⁴ The fact that A’s right to the basic minimum does not outweigh the interest others have in keeping their kidneys “stems from the human right to bodily integrity: in order to live a decent life, we must have assurance that our bodies will not be used in significant ways without our consent, even for the benefit of others. . . . Before a need can ground a right, we have to know that the proposed right would not impose obligations on others that would necessarily violate their own human rights.”²⁵

The best way of interpreting these is by way of a fourth possible practical limitation of the existence of benefit rights:

4. *Non-Harm Preservation*: A’s right to the basic minimum does not exist in cases in which to provide for A’s basic minimum would require the violation of the non-harm rights of others.

I have no problem (or, at least, no problem I’ll get into here) with *Non-Harm Preservation*. *Non-Harm Preservation* is not inconsistent with *The Teleological View*. But it does little to salvage the practicalities approach: in at least some cases, the practicalities approach will succumb to the same problems that felled *Guarantee*.

One final word on the practicalities approach. Because Miller rejects *Costliness 1*, his view cannot adequately address *Tsunami*. But unlike Nussbaum, Miller actually attempts to respond to the various “practical questions” that such a position leaves open. In so doing, Miller offers a more complex view than Nussbaum’s sparse specification of *Guarantee*. This complexity is worth examining in greater detail. Miller writes:

Typically. . . a human right will bring with it ‘successive waves of duty’—the primary duty not to violate the right directly being followed by various duties to ensure that the right is not infringed in indirect ways. Thus corresponding to the right to food is first the duty not to snatch food out of the mouth of the starving person, and then various duties to ensure that the conditions that lead to starvation in the first place do not materialize. Even in cases where because of scarcity we cannot meet our direct obligation to protect A’s right, we can still act on background duties that make it more likely that the right will be fulfilled in time.²⁶

²⁴Miller (2007), 187.

²⁵Miller (2007), 187-8.

²⁶Miller (2007), 193-4.

According to Miller, even when one has violated one's moral obligations—behaved unjustly—one can still “act on background duties that make it more likely that the right will be fulfilled in time”. In this way, Miller offers a concrete answer to the “practical questions” on which Nussbaum was silent. But this does little to alleviate the problems with his view. It is unclear that every case of B's failure to fulfill his obligations to protect A's right to p can be responded to by making it more likely that the right will be fulfilled in time. Certainly cases arise in which for any given individual whose right to p is violated, her right cannot be fulfilled “in time”, because the fulfillment or non-fulfillment of the right means the difference between life and death. In addition, there is no guarantee that, for any given society, such ancillary rights can be established for all: even in cases in which one fails one's obligations to establish the basic minimum for some range of people, there is no guarantee of sufficient resources to allow all rights to be fulfilled “in time”. If I fail to establish the basic rights of 50 people, and I have resources only to make it more likely that the rights of 25 people will be established “in time,” I have failed even if I have done all I can when it comes to the promotion of the basic minimum, not just now but in the future. This position is no more acceptable than *Guarantee*, and still leaves open practical questions that deserve an answer.

5.3.3. *A General Argument Against Benefit Rights*

My discussion might give rise to the following complaint. So far, I have interpreted the various rights-based approaches to a basic minimum in ways that are specific to the thinkers who advocate them. For instance, I interpreted the standard threats approach—as per Shue's writing—as insisting on social guarantee of protection against standard threats to the achievement of the basic minimum. I have interpreted a “practicalities” approach in Miller's very specific way, accepting *Impossibility*, but rejecting *Costliness 1* and *Costliness 2*. But *surely* there are more charitable accounts of a rights-based approach to the basic minimum. Surely, for instance, there is the possibility that one might accept a standard threats approach, but reject the claim that rights are a social guarantee. Surely, for instance, one might accept not just *Impossibility*, but also *Costliness 1* and *Costliness 2*. My rejection of the approaches taken by Shue and Miller do not exhaust the important permutations of a rights-based approach to the basic minimum.

In this section, I offer a more general argument against a rights-based approach. The argument runs as follows. As we have seen so far, any such approach must avoid *Guarantee*. Hence, in so doing, it must weaken the

moral importance of the basic minimum in comparison to *Guarantee*. But a good place to begin in considering ways in which such a view might be weakened are by considering *Impossibility*, *Costliness 1* and *Costliness 2*. First, if such a view accepts *Impossibility*, but not *Costliness 1* or *Costliness 2*, this view succumbs to the problems that felled *Guarantee*. In *Tsunami*, for instance, though it is impossible to grant the basic minimum to all, it is possible to grant *any given person* the basic minimum, and hence not doing so remains (unacceptably) a failure of justice.

Second, if a rights-based view weakens the moral force of the basic minimum by accepting *Costliness 1* but not *Costliness 2*, this approach to benefit rights is equivalent to *Maximize*: the moral force of the basic minimum is limited, but limited only to the extent that the promotion of A's basic minimum would interfere with the promotion of the basic minimum for others. This view has clear problems with *Severe Disability*. The basic minimum obviously *can* be outweighed by a sufficient amount of non-minimum states.

If a rights-based approach accepts all three methods of limiting the existence or moral force of the basic minimum, and allows that rights to the basic minimum can be limited given the cost to others in terms of non-minimum states, we are met with an obvious question. How is the promotion of the basic minimum to be weighted against non-minimum states? When does the achievement of non-minimum states become too costly in comparison to the achievement of the basic minimum? But it seems to me that an obvious, and perfectly natural, answer is to compare the overall goodness of the basic minimum to the overall goodness of non-minimum states. But if a rights-based view weakens the moral force of the basic minimum in this way, it cannot distinguish itself from *The Teleological View*.

To deny the force of this argument, one must offer a principled approach to the relative moral force of the basic minimum that accepts *Impossibility*, *Costliness 1*, and *Costliness 2*, but that does not morally weigh the basic minimum exactly as *The Teleological View* does. But coming up with a principled reason to depart from a *The Teleological View* is difficult. After all, *The Teleological View*, and views that simply boil down to *The Teleological View*, have a clear and obvious rationale: the comparative moral force of the basic minimum, whether this is in terms of a right or not, is determined by the comparative intrinsic value of the basic minimum. Any deviation from this proposal must offer a similar, and similarly strong, rationale.

Of course, alternative rationales exist: there are recognized, non-arbitrary, deontic principles of the moral weight of competing benefits that might help govern the comparative moral importance of the basic minimum and that do not simply boil down to *The Teleological View*. Four seem worth con-

sideration here (obviously, these options are not exhaustive, but seem to me to capture the most plausible non-teleological principles by which one might weigh the competing moral importance of the basic minimum against non-minimum states):

1. *Deontic Egalitarianism*: the comparative moral importance of the basic minimum is determined by the equality of the resulting state, not the intrinsic value of the resulting state.
2. *Deontic Leximin*: the comparative moral importance of the basic minimum is determined by the position of the worst-off in the resulting state (lexical priority), not the intrinsic value of the resulting state.
3. *Deontic Crispian Sufficientarianism*: the comparative moral importance of the basic minimum is a function of three factors: a weighted sum of all benefits (lexical priority) for those below a line of “sufficient goodness”, a weighted sum of benefits strictly among those below the line of “sufficient goodness” (non-lexical priority for the worse-off), and a sum of benefits for those strictly above the line of “sufficient goodness” in the resulting state, not the intrinsic value of the resulting state.
4. *Deontic Prioritarianism*: the comparative moral importance of basic minimum is determined by a weighted sum of benefits (non-lexical priority for the worse-off) in the resulting state, not the intrinsic value of the resulting state.

Before considering these views individually, it is worth noting that there is always at least one reason to reject deontic principles that override a teleological approach to moral obligation. Each of these principles license a moral requirement to act in ways that result in states of affairs that are *worse* than they otherwise would have been had one adopted a teleological approach. Of course, to say that this by itself is a reason to reject these principles would obviously be question-begging. However, it is worth noting that there is at least *one* important moral reason that tells against each of them: the moral reason to promote the best states of affairs.

With this in mind, take *Deontic Egalitarianism*. This view would insist that though people have a right to the basic minimum, this right generates an obligation to promote the basic minimum only to the extent that doing so increases equality (perhaps weighted against overall welfare, or admitting welfare as a tie-breaker, etc.). However, this view seems to provide the wrong answers. First, one could imagine a state of affairs in which virtually everyone lives extremely good lives, save A, who fails the basic minimum.

To provide the basic minimum for A would make the state of affairs much more unequal, but only by *increasing* the well-being of a number of persons already well-off. Assuming that inequality is increased enough, this would seem to generate the implausible verdict that the basic minimum should not be granted in this case. Furthermore, one could imagine that very many people are equally poorly off, and that one could grant the basic minimum to many, but in a way that would increase inequality (though it wouldn't affect the well-being of those who wouldn't be granted the basic minimum). Again assuming that inequality is increased enough, it would seem that balancing the competing demands of the basic minimum and equality would render sufficient reason not to grant anyone the basic minimum in this case. Again, this is an incorrect answer. (One might choose to accept a deontic version of any of the various variants of egalitarianism, i.e., Paretian or conditional egalitarianism, for instance. But I can see no reason to believe that a deontic version of these views would be able to avoid the moral analogue of the seriously problematic implications that plagued axiological interpretations of these views.)

Second, one might accept *Deontic Leximin*, and hold that though people have a right to the basic minimum, this right entails an obligation to promote the basic minimum if and only if the least well-off are benefited by so doing. But this view fares little better. This view would generate the problematic verdict that the reason to assist any worse-off person is morally decisive with respect to the moral reason to promote the basic minimum. Strictly interpreted, this view would eliminate the moral possibility of upward distribution (which is essential, given BM3). But even if we sidestep this problem (say, by focusing only on the distribution of valued projects), it is far too strong: the achievement of the basic minimum, in this case, is morally overriding in comparison to super-minimum states, and *Severe Disability* seems to loom large.

Like *Deontic Leximin*, *Deontic Crispian Sufficientarianism* is plagued by the same problems that plagued its axiological cousin. This view must hold that the basic minimum takes lexical priority to any benefits for individuals above the relevant threshold l . But any such l seems to succumb to problematic sequence arguments—or, at least, moral versions of them—as explored in the previous chapter, which ended up destabilizing the position as a whole. (Surely there is a sequence of people A-Z, from worst-off to best-off, each better-off than the next by a marginal amount, such that sufficient magnitude project-improvements for any given individual in the sequence is sufficient to *morally* outweigh any magnitude of valued project-improvement for the next-worse-off person.) Hence it seems to me that *Deontic Crispian*

Sufficientarianism cannot be plausibly accepted.

The final possibility is worthy of more careful examination. One might accept *Deontic Prioritarianism* and claim that a moral right to the basic minimum entails that a reason to promote the basic minimum, while itself of significant moral weight, is more heavily weighted against the moral reason to promote the interests of the better-off, less heavily weighted against the interests of the worse-off. On this view, the interests of the worse-off get a “moral boost” in comparison to the interests of the better-off. This rights-based proposal would yield a view that does not simply reduce to *The Teleological View*: whatever axiology one accepts, there is always *greater* reason to promote the interests of the worse-off than the better-off than is claimed by a teleological approach.

Deontic Prioritarianism is a perfectly coherent, and indeed plausible, method by which a rights-based view might accept *Impossibility*, *Costliness 1*, *Costliness 2*, and avoid arbitrariness. However, to accept *Deontic Prioritarianism* as an alternative to *The Teleological View* seems an awkward position. The chief reason is the availability, and comparative plausibility, of prioritarianism as an axiological, rather than deontic, view. Though I don’t wish to rest an argument for *The Teleological View* on the acceptance of my specific approach to the axiology of the basic minimum, it does seem that a prioritarian approach to equivalent welfare benefits is plausible. Take, for instance, the following two states of affairs. In S1, A has five hedons, B has 10 hedons. In S2, A has 7 hedons, B has 7 hedons. I find it overwhelmingly plausible to believe that S2 is better. And if this is the case (and if this isn’t to be explained by a commitment to egalitarianism) axiological prioritarianism is plausible. Furthermore, there’s reason to believe that prioritarianism’s natural expression is as an axiological, rather than deontic position. The most powerful reason to treat benefits for the worse-off as of greater moral priority seems, simply, to be that it is *better* to do so. As Nils Holtug writes: “Like the egalitarian, we should characterise the prioritarian in terms of her commitments with respect to intrinsic value. We should require that she favours giving priority to the worse off not (only) because doing so will tend to further some other goal of hers, say, fraternity or political stability, but (at least in part) because she holds that, everything else being equal, an outcome in which a benefit falls at a lower level is *intrinsically* better than an outcome in which an equal benefit falls at a higher level.”²⁷

Of course, one could say, with Richard Arneson, that “[t]he root idea of prioritarianism is that one ought as a matter of justice to aid the unfortunate,

²⁷Holtug (2007), 132.

and the more badly off someone is, the more urgent is the moral imperative to aid.”²⁸ But there is no reason to favor a particularly deontic expression of this “root idea” in comparison to an axiological version of prioritarianism combined with *The Teleological View*. Any rationale that could be offered to treat the interests of the worse-off with moral urgency (on grounds of, say, fairness, reciprocity, “fraternity” or “political stability”, or any other) could be equally managed by *The Teleological View*.

Thus if axiological prioritarianism is plausible—and it seems that it is—*Deontic Prioritarianism* is rendered otiose by *The Teleological View*. But not just otiose! Accepting *Deontic Prioritarianism* in the face of a prioritarian axiology would grant *additional* priority to the worse-off, beyond that which is required to account for whatever rationale one might offer for its acceptance, in a way that *worsens* the value of resulting states of affairs. But if this is correct, a rights-based approach plus *Deontic Prioritarianism* seems to have no real advantages, and an important disadvantage, in comparison to *The Teleological View* assuming we accept axiological prioritarianism (which seems, in any event, a natural corollary to the prioritarian idea). *Deontic Prioritarianism* is thus no savior for a rights-based approach to the basic minimum.

What is the result of all this? Any very strong conclusion drawn here is bound to be speculative insofar as I have considered only a narrow range of potential deontic principles that could support a rights-based solution to the problem of weight. Indeed, there could be any number of other non-arbitrary deontic principles of distribution I have not considered, some of which may even be plausible. However, the problem displayed by *Deontic Prioritarianism* should be widely worrisome: any acceptable rights-based view that rejects the problematic implications of *Guarantee* and *Maximize* will have a very difficult time offering a rationale that could not also be accommodated by a teleological approach, which is independently plausible, comparatively parsimonious, and supported by additional reasons not to worsen the intrinsic value of resulting states of affairs. I conclude that in the face of *The Teleological View*, there is no reason to suppose that benefit rights exist.

5.3.4. Parsimony Reconsidered²⁹

²⁸ Arneson (2000d), 343.

²⁹ I’m grateful to Fred Harrington and David Reidy for stimulating conversations on this topic.

So far, I have claimed that benefit rights either display the same problems as *Guarantee* or *Maximize*, or are rendered otiose by *The Teleological View*. However, some hold that an appeal to parsimony is not as decisive as I claim. It might be that rights have a role to play even if a rights-based account of the morality of the basic minimum is equivalent to *The Teleological View*. And the role is this: rights seem to have a form of interpersonal moral left that non-rights-based views lack. Rights, some have argued, allow those who fail the basic minimum to claim that the achievement of the basic minimum is owed *to them*, rather than simply as a byproduct of the promotion of the good.³⁰ In other words, rights are required to say that, when someone does not grant A the basic minimum, they have *wronged* A. Allen Buchanan puts the matter this way:

The judgment that you have violated my right and thereby wronged me has certain implications which the judgment that I have failed to give you something you ought to have, or failed to treat you as you ought to be treated, does not have. . . The judgment that you have wronged me implies a presumption that you ought to provide restitution, compensation, or at least apologies *to me*. This is not the case if you merely fail to fulfill a non-rights-based requirement, such as a duty of beneficence. If your duty toward me has a correlative right, then your failure to fulfill that requirement *changes your moral (or legal) relationship to me* in ways in which your failure to fulfill a non-rights-based requirement does not.³¹

If B has a duty to promote A's basic minimum, on *The Teleological View*, B has this obligation only in virtue of the fact that A's achievement of the basic minimum would be a good thing. But this fact seems to entail that B does not *owe* the basic minimum to A—the achievement of the basic minimum is not A's "due". Furthermore, B's failure to promote the basic minimum for A does not change B's moral relationship to A; B has not wronged A. B has merely failed in his moral requirement to promote the good.

But it is worth wondering what all this amounts to. What does it mean to say that B's promotion of A's basic minimum is owed to A as A's due? What does it mean to say that B *wrongs* A in not promoting his achievement of the basic minimum? And why can't *The Teleological View* accommodate this?

³⁰Harrington (MS), Feinberg (1970), 245.

³¹Buchanan (1984), 74.

Because we are assuming that the rights-based view in question is extensionally equivalent to *The Teleological View*, any difference between *The Teleological View* and a rights-based view must be in the *explanation* of the moral reasons in question. If so, accommodating the interpersonal left of rights-claims must be accompanied by a particular explanation of moral requirements to promote the basic minimum. In short, A, or some particular property of A, must explain, or be the source of, B's duty to promote A's basic minimum. If A is the source of B's duties, we can begin to see how B's promotion of A's basic minimum is owed to A. Insofar as A is the *explanation* of B's moral obligations, this establishes a particular, morally relevant, relationship between A and B, the breach of which is sufficient to, as Buchanan puts it, change this relationship "in ways in which [the] failure to fulfill a non-rights-based requirement does not."³² Thus if a plausible rights-based view can accommodate the claim that the right-holder is the source, or explanation, of corresponding obligations in others, I see no reason to bar it from the claim that it can accommodate the important interpersonal features of morality.

I am willing to grant that a non-rights-based view cannot accommodate the claim that A is the "source" of B's moral obligations. Unfortunately no plausible rights-based view can accommodate it, either. My argument runs as follows: any moral view (rights-based or not) that is coextensive with *The Teleological View* is going to posit a particular moral obligation to which B must conform when and only when *The Teleological View* does so. But such a view is compatible with the claim that right-holders are sources of duties only if this obligation is plausibly *explained* by A, or some particular property of A, rather than the promotion of the overall good. But no moral theory can just *say* that B's obligation is explained by particular properties of A. This claim must be the product of independent argument, especially in light of the moral obligations this view posits. Hence for a rights-based view to plausibly support the claim that A is the source of B's duties or obligations, it must be the case that some property *p* of A provides

³²See Harrington (MS). Buchanan argues that characterizing A as the "source" of B's duty to ϕ is insufficient. (See Buchanan (1984), 273.) A could be the "source" of a duty of beneficence, while admitting there is no right to such beneficence on the part of A. However, this analysis sounds wrong to me; if we can say that A is the "source" of B's duty to ϕ , this is sufficient to establish an important normative relationship between A and B, such that, were B not to ϕ , B violates the "terms", as it were, of this relationship. I can see no reason, then, to believe that if A is the genuine source of B's duties, A cannot claim to be wronged, were B not to fulfill his obligation to ϕ . However, as I shall argue below, no matter what source, or explanation, of duties is posited by a rights-based view, it is problematic in the face of an alternative, teleological, explanation.

a *good* explanation of B’s moral obligations.³³ But any explanation of B’s obligation to promote A’s basic minimum that goes beyond the promotion of the overall good is a *worse explanation* than an explanation of B’s obligation that makes reference only to facts about value.

This can be seen simply by examining the standards of good explanation in any domain. The teleological explanation is parsimonious: it relies only on properties that we have independent reason to believe are morally relevant. The A-based explanation is bloated: it offers normatively relevant properties that go beyond what is necessary to explain B’s obligation. If we accept a view that is extensionally equivalent to *The Teleological View*, the reason to promote value *fully explains* B’s obligation. Hence there is no call to believe that particular morally relevant properties of persons play any role in explaining obligations. The explanatory principle on which this argument for a rights-based view relies fails. We *could* accept the explanatory claim if we are willing to accept a rights-based view that is not coextensive with *The Teleological View*. But this possibility is problematic for reasons already explored. *Once we have adopted a rights-based view that is coextensive with The Teleological View, we reject any previous claim we had to accommodate the right-holder qua source of obligations.* Given the failure of views that are *not* coextensive with *The Teleological View*, we no longer have any claim to explain these moral reasons in a way that would allow us to claim that any particular treatment is A’s “due”.

My argument here might be put formally:

1. To accommodate the claim that B’s ϕ -ing is A’s due, A must—at least in part—be the source of B’s duty to ϕ .
2. A is the source of B’s duty to ϕ if and only if some morally relevant property p of A explains B’s duty to ϕ .
3. For any view that is coextensive with *The Teleological View*, B’s duty to ϕ can be fully explained by reasons to promote the good.
4. If B’s duty to ϕ can be fully explained by reasons to promote the good, there is no reason to believe that a morally relevant

³³One might object that it is not just B’s obligation that should be explained, but also the fact that this obligation is *owed to* the right-holder. But this is to put the cart before the horse. What it means to say that something is *owed to* the right holder, as we’ve so far seen, is that the right-holder is the source of such an obligation. But this boils down to an explanatory principle: A explains B’s obligations. But if A is a *worse* explanation of B’s obligations than some other explanatory principle, it is plausible to say that A does not explain B’s obligations, and hence that A is not the source of B’s obligations, and hence that B’s ϕ -ing is not A’s “due”.

property p , possessed by A, is necessary for an explanation of B's duty to ϕ .

5. Hence, for any view that is coextensive with *The Teleological View*, p , possessed by A, is a comparatively poor explanation of B's obligation to ϕ .

6. Hence, for any view that is coextensive with *The Teleological View*, no facts about A explain B's duties.

7. Hence, for any view that is coextensive with *The Teleological View*, A is not the source of B's duty to ϕ .

8. Hence, for any view that is coextensive with *The Teleological View*, B's ϕ -ing is not A's due.

To sum up, it seems to me that the insistence on rights, or the rightholder, as a source of duties does nothing to salvage the efficacy of rights-claims if we have already assumed that, e.g., *Maximize* or *Guarantee* are unacceptable. Once these views are rejected, one is forced to admit that best explanation of the moral significance of the basic minimum does not appeal to benefit rights.

5.4. *Rights: An Ecumenical Comment*

There is little reason, in the face of the welfarist approach I propose here, to believe that benefit rights to the basic minimum exist. *The Teleological View* seems perfectly suited to the job of accounting for the moral importance of the basic minimum.

But I think there is room for an ecumenical comment. There is good reason to believe that an approach that deals in human rights is an important tool in the promotion of *the good*, and with it, the achievement of the basic minimum for more rather than fewer. Insistence that individuals have a right to the basic minimum is likely to generate public support, and to do more good, than alternative methods of framing our moral obligations. Given the importance of the basic minimum, it seems as though we might, for public policy purposes, insist that the basic minimum is a requirement of basic justice or moral decency—without committing ourselves to believing that such a right governs the actual moral structure of the basic minimum.

Part of what motivates this comment is the fact that *talk* of human rights has tremendous currency on the world stage. Bodies most responsible for the welfare of the worst-off cast their appeals in the language of human rights. The United Nations' chief office of humanitarian concern, for instance, is the United Nations Human Rights Council. *Talk* of human rights now is

ubiquitous, and it seems quite plausible to say, with Charles Beitz, that “‘human rights’ names not so much an abstract normative idea as an emergent political practice.”³⁴ In this way, when discussing the nature of human rights, “we take certain basic facts about the world’s political structure as fixed and consider the purposes of a practice of human rights within this structure.”³⁵ In other words, we accept that there are certain features of the political and moral world we inhabit, and we take the rhetoric of rights to be the fundamental means by which to navigate this world. *The Teleological View* is perfectly compatible with this approach to thinking about human rights, without embracing the claim that human rights are *per se* factors in determining our moral reasons.

Indeed, this point is noted by Nussbaum. Though Nussbaum rejects the normative force of rights, she insists that talk of human rights is important for four reasons. First, she holds that an appeal to human rights “reminds us that people have justified and urgent claims to certain types of treatment, no matter what the world around them has done about that.”³⁶ Second, an appeal to human rights—compared to a direct appeal to human capabilities or welfare—“is more rhetorically direct. It tells people right away that we are dealing with an especially urgent set of functions, backed up by a sense of the justified claim that all humans have to such things, by virtue of being human.”³⁷ Third, Nussbaum writes that “the language of rights. . . helps us to lay extra emphasis on the important fact that the appropriate political goal is the ability of people to choose to function in certain ways, not simply their actual functionings.”³⁸ Fourth, “the language of rights preserves a sense of the terrain of agreement,” in cases in which “we disagree about the proper analysis of rights talk”.³⁹ In this sense, Nussbaum believes that the language of rights can spur political action even “where the claims of utility, resources, and capabilities are still being worked out.”⁴⁰

I think that the third role for rights talk should surely be disputed. Indeed, if my welfarist approach is correct, the emphasis on capabilities and choice rather than actual functionings is not to be encouraged. (Although, to my mind, it is difficult to see why a rights-based approach should emphasize choice rather than specific functionings; it would depend, obviously,

³⁴Beitz (2009), xii.

³⁵Beitz (2009), 128.

³⁶Nussbaum (2000), 100.

³⁷Nussbaum (2000), 100.

³⁸Nussbaum (2000), 101.

³⁹Nussbaum (2000), 101.

⁴⁰Nussbaum (2000), 101.

on what the right is a right *to*, i.e., a right to some set of choices, or some set of functionings.) However, the other three points seem important to note: rights-talk can be an important tool in the establishment of any basic minimum. Thus political precedent and salutary effects seem to me good reasons not to simply jettison rights *talk* for talk of overall good or the promotion of human well-being. Doing so is likely to achieve less good than we might otherwise have in insisting on human rights, and is likely to erase whatever progress a political approach to human rights has in establishing good quality lives for the disadvantaged. However, there is a difference between embracing rights *talk* and embracing *rights*. For the reasons I have so far noted, I do not believe there is any reason to admit the existence of rights in an explanation of the moral reasons to promote a basic minimum. Nonetheless, if we take the importance of rights to be confined to the importance of reference to rights in political or social dialog, it surely has a place in our moral and political theory.

However, insofar as the appropriateness of rights-language is, as it were, *just talk*, I have shown that no rights-based approach to the morality of basic minimum promotion is acceptable. This is a significant result for the defense of *The Teleological View*. Though I have discussed only rights-based deviations from *The Teleological View*, my arguments here should be widely worrisome for its opponents. Any view, rights-based or not, must justify a deviation from considerations of the value of resulting states of affairs in determining the relative moral weight of the basic minimum. However, I have shown that if such views are not to collapse into *Guarantee* or *Maximize*, there is much pressure indeed to simply accept a view that collapses into *The Teleological View*.

5.5. *Honoring, and Other Moral Stances: Some Schematic Comments*

The Teleological View is limited. Though it provides a relatively clear account of the relative moral weight of the basic minimum when it comes to the stance of promotion, it says little about the relative moral weight of the basic minimum when the promotion of the basic minimum must be weighed against the *honoring* of non-minimum states, or, indeed, the honoring of the basic minimum itself. But this is quite a limitation! After all, one might think, there is rarely an opportunity to promote the basic minimum that does not harm others, whether in terms of non-minimum states, or the basic minimum itself.

Of course, *The Teleological View* could be expanded. One might accept:

The Teleological View 2: For any moral stance S , one has reason to adopt S toward any valuable state of persons p if and only if doing so maximizes the value of resulting states of affairs.

The Teleological View does not reject the existence of reasons to honor particular valuable states of persons, nor does it assign a relative weight to these potential reasons. But *The Teleological View 2* holds that the relative weight of *any* stance one might take toward the basic minimum or any other valuable state of persons is simply governed by the value of the resulting states of affairs.⁴¹

I am attracted to *The Teleological View 2*. *The Teleological View 2* seems to adequately represent a number of initially intuitive thoughts about the nature of the basic minimum. For those who accept the existence of the basic minimum, as noted in the previous chapter, it is natural to believe that the moral weight of the basic minimum should be very strong—or, at least, as strong as it can be without accepting *Guarantee* or *Maximize*. If so, one would expect that there should be no hesitation to trade-off super-minimum goods for some to promote the basic minimum for others, at least within the bounds of overall good-promotion. Limiting the promotion of the basic minimum with reasons to honor non-minimum states further weakens the moral importance of the basic minimum, taking us further than is warranted from an overriding approach. In addition, limiting the moral force of the basic minimum by recognizing reasons to honor the basic minimum itself seems to me to end up with an undesirable result: fewer, rather than more, will achieve the basic minimum. (Of course, these considerations simply pound the table in favor of *The Teleological View 2*; I do not pretend to consider any number of potentially convincing arguments in favor of a stance of honoring, whether for non-minimum states or the basic minimum. I merely report that which I find plausible, and why.)

However, the extent to which one accepts *The Teleological View 2*, or limits the promotion of the basic minimum by, e.g., reasons to honor valuable states of persons obviously depends on whether one believes the stance of honoring is or can be a morally appropriate stance to adopt. Insofar as this is a deep and complex question, the answer to which would go most of the distance between solving the centuries-long dispute between consequentialists and non-consequentialists, it is *far* beyond the purview of this book to answer. However, I do want to say a few words about the method by which

⁴¹Even *The Teleological View 2* is not a version of full-blown consequentialism; one might still accept reasons, say, to promote or preserve things like culture, community, democracy, etc., that go beyond valuable states of persons.

one might weigh various reasons to honor versus reasons to promote the basic minimum or non-minimum states, assuming one accepts such reasons. It seems right to me to say that whatever reasons one might have to honor a particular state p should be indexed, at least in part, to the relative welfare value of that state. If p is more important for in terms of welfare value than q , it seems that any reason to honor q must be outweighed by a reason to honor p . Hence, looking strictly at the comparative weight of reasons to honor states of persons, it does seem to me that the relative intrinsic value of these states provides a rough guide. But if this is correct, one can determine the *relative* weight of reasons to promote in comparison to reasons to honor by determining the relative moral weight of *honoring* some particular state p against the relative moral weight of *promoting* p . If honoring p is morally prior to promoting p , one would expect that the extent to which honoring p is morally prior to promoting p will provide a “moral multiplier”, e.g., that the moral reason to honor p is twice (or thrice, or whatever) the moral importance of the moral reason to promote p . If this is right, this moral multiplier could be applied to the relative intrinsic value of p and q in determining the relative moral weight of the reason to honor p rather than to promote q . If p is 3x better than q , and the honoring of p is 2x the moral importance of the promotion of p , then the honoring of p is 6x the moral importance of promoting q , and so forth.

Of course, this is all very schematic and artificial. Furthermore, additional normative dimensions may be relevant which would alter any potential “moral multipliers”. I hesitate to say more simply because I do not wish to commit to any one way of judging the relative merits of honoring versus promoting. To offer my own view, there can be no such difference, and hence there is no more reason to honor p is to promote p . But others may very well disagree; I thus leave the precise relative weight, or “moral multiplier”, to those who would accept differential reasons to honor rather than to promote. Nevertheless, it should be relatively clear that the axiology of the basic minimum—and hence the solution to the problem of weight as I define it—is relevant in any such inquiry.

5.6. Conclusion

In this chapter, I have argued against benefit rights to the basic minimum and in favor of *The Teleological View*. This solves the problem of weight. Though I have left open the possibility that there is more to morality than the promotion of the good, once the structure of human well-being—including the relative weight of various goods—is fully understood there is

good reason to believe that we need look no further than a standard utilitarian, consequentialist account of moral or political obligation to end up with, a basic minimum that is not only plausible in itself, but that conforms to the conceptual requirements of any basic minimum identified by BM3 (and, indeed, comes reasonably close to the traditional, and plausible, overriding approach without falling victim to its problems, on display in *Tsunami* and *Severe Disability*).

This, however, does not conclude the book. I have so far not discussed a range of objections to a welfarist approach to the basic minimum. Insofar as I have been saving the best for last, however, the next, and final, chapter will discuss six reasons that have compelled some thinkers to reject welfarism as an approach to the basic minimum, disadvantage, or political morality more generally.