

# The Philosophical Quarterly

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## GLOBAL JUSTICE AND THE LIMITS OF HUMAN RIGHTS

BY DALE DORSEY

*To a great extent, recent discussion of global obligations has been couched in the language of human rights. I argue that this is a mistake. If, as many theorists have supposed, a normative theory applicable to obligations of global justice must also respect the needs of justice internal to recipient nations, any such theory cannot take human rights as an important moral notion. Human rights are inapplicable for the domestic justice of poor nations, and thus cannot form a plausible basis for international justice. Instead, I propose an alternative basis, a form of welfarist maximizing consequentialism. My alternative is superior to rights-based theories in dealing with the special problems of justice found in poor nations.*

### I. INTRODUCTION

Much recent work on global justice has been cast in the language of human rights. I shall argue that this language cannot form a plausible foundation for international obligations. The scope of global justice is wide, and though I believe the conclusion reached here will apply in general, I shall focus on the case of intersociety distributive justice, as opposed to, say, foreign military intervention. Although some thinkers claim that human rights possess powerful rhetorical appeal, and thus might profitably be used to mobilize action designed to reduce or eliminate suffering, human rights are not sensitive to the concerns of justice that exist in recipient nations. I argue that the proper focus should be welfarist, maximizing and sufficientarian.

I plan to reach this conclusion through an examination of the interplay between obligations of global justice on the one hand, i.e., what is owed by rich countries to poor, and of domestic justice on the other, i.e., how poor countries ought to organize internal institutions. In order to understand the foundations of global obligations fully, we must first understand the general framework of justice that exists in poor nations; a reasonably clear understanding of the internal justice of recipient nations can thus do much to illuminate the structure of global justice obligations. Indeed, without any such understanding, mechanisms of global resource redistribution are flying

blind: they cannot complete the crucial task of determining what their obligations ought to be responsive to and how these might properly be restricted. If, for example, human rights are inappropriate for the domestic justice of materially burdened societies, they ought not to be relied upon by theories of global justice.

## II. JUSTICE: GLOBAL AND DOMESTIC

By a theory of global justice, I mean a theory that specifies what sorts of obligations are owed by certain societies to others (not just obligations of resource distribution, but also obligations, say, of intervention in order to stop atrocities, etc.), and the grounds for these obligations. According to one popular view, a secure foundation for global obligations is to be found in the appeal to human rights – rich countries, on this view, are obliged to assist the poor, given the systematic inability of many in poor countries to achieve basic human rights. These basic rights, presumably, go beyond the skeletal ‘negative’ rights (such as the right not to be harmed), and include rights to certain basic human needs. As Thomas Pogge writes,

Other, more elementary basic goods are important for both the ethical and the personal value of human life. Among these are physical integrity, subsistence supplies (of food and drink, clothing, shelter, and basic health care), freedom of movement and action, as well as basic education, and economic participation. All of these basic goods should be recognized as the objects of human rights – but only up to certain quantitative, qualitative, and probabilistic limits: what human beings truly need is secure access to a minimally adequate share of all these goods.<sup>1</sup>

For Pogge, then, a human right is specified by the notion of a *need*: basic elements central to the notion of a decent human life (‘what human beings truly need’) are outlined as the basis of discrete rights.<sup>2</sup>

Questions regarding the formulation and normative justification of these rights remain. For such questions, Erin Kelly suggests, a look at the justice applicable to internal domestic institutions of poor countries is necessary: ‘[The principle of international responsibility for human rights] will meet the normative requirement of joint acceptance, however, only when the role it articulates for human rights in international relations is restricted by a

<sup>1</sup> T. Pogge, ‘Human Flourishing and Universal Justice’, in his *World Poverty and Human Rights* (Oxford: Blackwell, 2002), pp. 27–51, at p. 49.

<sup>2</sup> Pogge does not include Amartya Sen’s notion of the ‘ability to walk in public without shame’, which seems to relativize the notion of poverty, threatening to curtail the responsibilities of rich societies with high but malleable social standards to poor societies with comparatively low social standards. See Sen, *Poverty and Famines* (Oxford UP, 1981), chs 1–3, and ‘Poor, Relatively Speaking’, *Oxford Economic Papers*, NS 35 (1983), esp. pp. 159–63.

narrow understanding of the content of human rights. The content of human rights must be consistent with a range of not unreasonable understandings of justice *that societies may adopt for regulating their internal affairs*.<sup>3</sup> Though I shall later endorse a narrow reading of rights as most plausible, it is important here that Kelly finds such a range plausible because it can be endorsed by the internal affairs of recipient nations. Specifically, Kelly cites a requirement of joint acceptance, fulfilled only if the normative theory in question could be reasonably adopted by internal institutions. Indeed, Kelly's conclusion is reasonable even if the joint acceptance condition is rejected: in discussing matters of justice that involve resource distribution between nations, it is helpful to have a firm grasp of the circumstances of justice, the basic playing-field, in recipient nations. This will involve, crucially, a general picture of the internal justice requirements of poor nations. If so, examining these requirements is an important exercise for theories of global justice. Theories of global justice which ignore or tread upon internal obligations should at the very least be revised so as to reflect the circumstances of justice in recipient nations.

I offer an example: suppose it is a requirement of justice internal to a recipient nation that *alphas* should have greater political priority than *betas*. Should patterns of global redistribution reverse that priority, they ought to be amended: global obligations in this case are constrained by mutually exclusive internal distribution patterns. If so, an understanding of the proper orientation of justice in poor countries is required. In what follows, I shall offer a far too brief account of the beginnings of a theory designed to capture domestic justice obligations of burdened nations. I conclude that the internal domestic justice of poor and materially burdened societies cannot take human rights as a primary normative notion. And if this is so, there is strong reason to believe that human rights are inappropriate for theories of global justice, in so far as such theories seek, at the very least, to respect the general picture of justice applicable for poor nations.

### III. JUSTICE IN POOR NATIONS: A MAP OF THE TERRAIN

The circumstances of justice in poor countries bring with them special challenges, and make salient particular concerns to which a theory of global justice should be responsive, and which might otherwise not be noticed. Consequently we do not have a full understanding of the general terrain of justice in poor countries, nor do theories of justice with current philosophic

<sup>3</sup> E. Kelly, 'Human Rights as Foreign Policy Imperatives', in D. Chatterjee (ed.), *The Ethics of Assistance* (Cambridge UP, 2004), pp. 177–92, at p. 179; my italics.

currency seem to do the job. Rawls' two principles illustrate this. Though Rawls claims that his theory fails to apply only where there is a lack of political or cultural influences strong enough to sustain justice, his claim is far from obvious.<sup>4</sup> The main worry concerns the distributional implications of the maximin rule in countries with rampant poverty and with few resources to distribute to alleviate it. Given a country in the midst of a crisis, say, a severe famine coupled with attendant disease epidemics,<sup>5</sup> if we were to follow in this situation a strictly Rawlsian model, we would have to address the worst-off members of the population *first*. But depending upon the resources available and the condition of the worst off, attending to the worst off might have the effect of reducing the available resources of those who are able to avoid starvation to the level at which starvation sets in, greatly increasing the length and impact of the famine. If so, the difference principle offers precisely the wrong results in countries in the midst of crises, and in countries where significant poverty exists but resources are slim – distributing resources in accordance with the difference principle would actually *increase* destitution. Thus it cannot be that we should follow Rawls strictly in cases of severe famine and severe endemic deprivation, or in cases where the danger of these is magnified.

My task in this section is not to criticize Rawls, merely to bring to light the extraordinary concerns which guide thinking about justice in poor nations. It is not clear that the distributional implications of most major liberal theories do any better than Rawls does at accommodating these special situations.<sup>6</sup> However, my reflections on Rawls have brought to light a general conclusion governing the legitimate conduct of government in burdened and materially poor countries. In famines, for example, the main concern of the government should be to bring the famine to an end as quickly as possible with as few deaths as possible. In cases of severe endemic poverty the main concern of the government should be to alleviate poverty for the greatest number possible, consistently with proper provisions for future generations. I take this goal to be crucial, although perhaps not entirely uncontroversial. Government action that increases endemic poverty or that prolongs famines unnecessarily is, we should agree, unjust. In addition, the priority of basic needs also has a maximizing feature. In famines, we do not merely want *some* to survive, we want as many as possible to survive. In cases of severe deprivation, we do not merely want some to avoid

<sup>4</sup> See Rawls, *A Theory of Justice*, rev. edn (Harvard UP, 1999), p. 132.

<sup>5</sup> On the relation between famine and incidents of disease see Sen, *Poverty and Famines*, pp. 55–6.

<sup>6</sup> See, for example, Dworkin's 'equality of resources', most artfully stated in *Sovereign Virtue* (Harvard UP, 2000), chs 1–2; also Harry Frankfurt's response to egalitarianism on this score, 'Equality as a Moral Ideal', *Ethics*, 98 (1987), pp. 21–43, at pp. 30–2.

poverty, we want as many as possible to avoid poverty. This essential maximization feature causes difficulties for Rawls' distributive priority. If the worst off are sufficiently badly off, though some people may survive, more than is necessary may face the prospect of starvation, endemic poverty, etc., depending upon the extent of resources available in the society (which may be very limited). The maximal fulfilment of basic needs, so that persons can live lives of at least minimal decency and avoid unnecessary morbidity and mortality, is the essential priority for just institutions in poor countries.

Though the above reflections do not constitute a theory, they indicate a general map of the terrain. Much work remains – in particular, a specification of the nature of poverty, i.e., of when one *is* poor, and the normative weight of particular aspects of material deprivation. I shall not have occasion to discuss these issues here. What is crucial for the present examination is that many theories of justice are unable to capture even this basic starting-point – that fulfilling basic needs has priority.

#### IV. HUMAN RIGHTS, POVERTY AVOIDANCE AND WELFARE

Can human rights fulfil the general constraints of justice for materially burdened nations? Though I do not have the space to discuss all possible permutations of rights-centred theories, I shall discuss two that book-end the continuum along which rights views fall. The first maintains that the *logic* of rights claims operates as rigidly binding obligations of social and governmental agents. A right to assistance, in this way, is a 'claim-right', a right the non-fulfilment of which constitutes a great moral wrong. This sort of rights logic can also be expressed in purely 'negative' fashion – doing so conforms to Robert Nozick's understanding of rights as 'side-constraints', i.e., claiming that rights constrain the legitimate policy options available: no legitimate options violate or infringe what one possesses and has a right to possess.<sup>7</sup> The second I shall refer to as 'rights-consequentialism'. This position was articulated by Amartya Sen in his 'Rights and Agency': 'A moral system in which fulfilment and non-realization of rights are included among the goals, incorporated in the evaluation of states of affairs, and then applied to the choice of actions through consequential links will be called a goal rights system'.<sup>8</sup> In this sort of system the violation of certain rights can be legitimate – rights are not conceived as inviolable side-constraints or absolute imperatives. Rather, one is to factor in the greatest possible degree of right-fulfilment into the evaluation of states of affairs. If a policy violates a

<sup>7</sup> See R. Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 28–33.

<sup>8</sup> Sen, 'Rights and Agency', *Philosophy and Public Affairs*, 11 (1981), pp. 3–39, at p. 15.

right, it may remain justified, so long as it promotes the greatest satisfaction of rights generally.<sup>9</sup>

Though I shall discuss two options for the logic of rights claims, it is also important to discuss the possible substance of rights claims. For this discussion, two possible questions arise. The first involves what *sort of thing* the right in question is a right to – the *content* of rights claims. The second involves how *much* of that sort of thing people ought to have a right to – the *level* of rights claims. On the first question, one view suggests that a right is fulfilled if one possesses certain goods. Something like this line of thought appears in Pogge. For him, a major section of human rights take as their object ‘subsistence supplies’, i.e., goods such as housing, shelter, food, etc. Sen, however, differs from Pogge on the content of rights claims. Sen (‘Rights and Agency’, pp. 15–19) suggests that rights ought not to be understood in terms of goods which are required for (what one might call) a minimally decent living standard: the rights are to a range of human capabilities. Finally, another view takes welfare achievement itself to be the content of rights claims. Though I do not have space to discuss in detail the question of level, most views agree that basic rights must be set low, in the manner specified by Pogge and Kelly.<sup>10</sup> I shall follow their lead.

I shall consider, then, a number of variations on the human rights theme. The first is specified by the inviolability of rights claims. Rights cannot be violated, remain unfulfilled, with legitimacy. Next are rights-consequentialist views. Of these, I shall consider three. The first specifies the content of the posited right as certain commodities, or tools, to improve welfare. Secondly, I shall consider whether ‘capabilities’ could do a better job than commodities in the rights-consequentialism picture. Thirdly, I shall examine a rights-consequentialist position which takes welfare achievement itself to be the proper subject of rights claims. Of course, rights views form a continuum, of which side-constraints and rights-consequentialism are extremes. Nevertheless, I hope to show that the interior of the continuum is committed to the same implications as side-constraint views are, implications problematic for my purposes. The only rights view with any claim to plausibility is the least distinctive, offering no power over a welfarist alternative offered in §IV.4.

#### IV.1. *Claim-rights and side-constraints*

The thought that people have inalienable rights to basic subsistence is highly attractive. Joel Feinberg captures some of this attractiveness: ‘A claim-right

<sup>9</sup> This position is also articulated by Dasgupta in *An Inquiry into Well-Being and Destitution* (Oxford UP, 1993), p. 35.

<sup>10</sup> See also H. Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy* (Princeton UP, 1980), esp. ch. 1.

... can be urged, pressed, or rightly demanded against other persons... When that to which one has a right is not forthcoming, the appropriate reaction is indignation; when it is duly given there is no reason for gratitude, since it is simply one's own or one's due that one received.<sup>11</sup> This line ought to be particularly compelling for those concerned with the plight of many in poor nations. Justice, global or domestic, ought at least to respond to their most basic needs, not merely as the product of some laudable beneficence, but as the outcome of strict obligation. Conversely, the possession of basic needs also forms a side-constraint on social policy: no governmental action or institution is legitimate if it infringes the possession of that to which one has a claim-right, in this case, basic needs.

However, what of the following scenario? Assume that all have a claim-right to minimal decency. Given the resource constraints of country *X*, either one person *A*, who is particularly badly off, or else several people *B–Q* can be brought up to the level of general subsistence. Certainly the state is permitted to save more rather than fewer, if the choice is put in such terms. Furthermore, I claim, this course of action is morally required. Battlefield triage supplies an analogy. Where medical resources are limited, one is certainly required to save as many as possible, to maximize the resources-to-survival ratio. Perhaps we may be required in such cases to apologize, or to admit that the required action falls short of an ideal, but the reason is not one of reparation for moral wrongdoing; we may feel bad, or feel the need to apologize, but it is clear that this does not entail that performing triage is not a moral requirement. If this is correct, it seems to cause problems for the view that an unfulfilled claim-right is a grave moral infringement. If it is legitimate for resources to be spent on the greater number, what sense does it make to say that *A* has a right to minimal decency (so that non-fulfilment entails a great moral wrong), although, depending upon resource availability, the state has behaved rightly in non-fulfilment? (This is not a violation of 'ought' implies 'can' – the state *could* save *A*, but is obliged to save the greater number.) Resource scarcity makes a claim-right to a minimally decent standard implausible. And because most of the problems to which a theory of global justice must be sensitive are of this kind (i.e., for whom to provide a minimally decent standard of living), the failure of claim-right views is a tremendous blow to the applicability of rights talk to global justice.

Nevertheless, there remains a negative claim, i.e., rights *qua* side-constraints on state action. In this spirit, perhaps it is plausible to suggest that once someone is possessed of a decent living standard (assuming

<sup>11</sup> J. Feinberg, *Social Philosophy* (Englewood Cliffs: Prentice Hall, 1973), p. 59.

everything is on the up and up), the state cannot legitimately remove it. In effect, this proposal is that the state ought to bring as many as possible up to the level of minimal decency (perhaps this is cashed in terms of rights-consequentialism), but it is constrained to respect the minimally decent standards of living of those who already possess them.

Though this view is plausible, its plausibility is strained in crises. Suppose a given citizen of country *X* happens to possess a minimally decent standard of living. Is this standard reasonably inviolable in the midst of, say, a drought and resulting famine, as the side-constraint view insists? Though it will almost never be the case that dispossessing some citizens of basic decency will elevate several others, suppose it *is* possible (and also suppose all other things are equal). I contend that in such crises, one should be concerned with the greatest possible survival – one ought to save as many from starvation as one can, even if this means the violation of rights described by some as inviolable (this need not be an anti-rights view: such trade-offs are possible on a rights-consequentialist picture). Crises, endemic poverty, indeed, many of the most significant problems facing poor countries in the world, strike often in haphazard ways. The mere fact that one person has survived a famine rather than succumbing to starvation seems morally arbitrary, if anything is. The work done by Amartya Sen and Jean Drèze illustrates this point quite clearly. In the circumstances of poor nations, whether one is in a position to survive during famine depends upon factors out of one's reasonable control. Much depends upon the prices of food in local markets, and the intricacies of the economy as a whole, over which any given individual has no control, especially in the extreme conditions of day to day life in many poor countries in non-famine conditions (i.e., it would be simply unreasonable to expect that any household has stored enough food to survive famine conditions, given that during non-famine conditions many people who are in a position to die during famine conditions lack the material resources necessary to build up reserves).<sup>12</sup> In cases of endemic poverty and related catastrophes, justice is adhered to by a government in rearranging the effects of such a crisis, redirecting the impending threat, to make sure that as many citizens maintain a minimally decent standard of living as possible.

This, however, is surely too quick. Side-constraint views are persistent, and perhaps for good reason. The Rawlsian rejection of utilitarianism, for example, insists upon the theory's problematic implication that perhaps even in this world, slavery *could* be justified if only the gains and losses turned out in such and such a way. In point of fact, utilitarians stress, gains and

<sup>12</sup> Sen's work on this topic is summarized in *Development as Freedom* (New York: Anchor Books, 1999), ch. 7, esp. pp. 162–8.

losses never turn out in such and such a way, but, Rawls claims, this is a gross procedure for determining the wrongness of slavery: ‘The question whether these gains outweigh the disadvantages to the slave and to society cannot arise, since in considering the justice of slavery these gains have no weight at all which requires that they be overridden. Where the conception of justice as fairness applies, slavery is *always* unjust.’<sup>13</sup> If we are inclined to agree with Rawls here, does not the notion of rights *qua* side-constraints account for the agreement in a perfectly natural way? Certainly, it might be thought, a blanket prohibition on certain courses of action, including robbing some people of their minimally decent standard, is required.

The pull of blanket prohibitions is strong, but I think we should reject this line of thinking. Though I do not seek to defeat deontological views, I shall issue a few remarks designed to undermine them. I quote J.J.C. Smart: ‘if a case really *did* arise in which injustice was the lesser of two evils (in terms of human happiness and misery), then the anti-utilitarian conclusion is a very unpalatable one too, namely, that in some circumstances one must choose the greater misery, perhaps the *very much* greater misery, such as that of hundreds of people suffering painful deaths’.<sup>14</sup> Utilitarianism aside (see §IV.4), Smart’s point is worth delving into. He makes it clear that in either case, whether we do act to save the greater number or do not, our decision is a matter of choice, and is a matter of human agency. In the famine cases with which I have been working, any legislator possesses the ability to save more rather than fewer, to trump the mere deliverances of contingency, of fate. If tragedy arises in either case, should we not look, first and foremost, to maximizing survival?

Part of the thought underpinning the theses I am attacking is, I think, the supposed moral distinction between acting and allowing. But, speaking from the perspective of the poor, far from being a moral failure, acting has moral value. Though one must act in ways which many would refuse, I cannot countenance allowing fate to determine who lives or dies when human agency can make a strong difference. Though, one might think, dispossessing some of their minimally decent standard of living is horrible, distasteful to one’s moral sensibilities, the alternative, to stand idly by, is unacceptable. We should not think, merely as a result of the necessity of action rather than inaction, that we are bound to countenance morally arbitrary distributions, natural lotteries. This is especially true in poor countries, where the value of human agency, *versus* idle passivity, has been

<sup>13</sup> J. Rawls, ‘Justice as Fairness’, in his *Collected Papers* (Harvard UP, 1999), pp. 47–72, at p. 67.

<sup>14</sup> Smart, ‘An Outline of a System of Utilitarian Ethics’, in J.J.C. Smart and B. Williams, *Utilitarianism: For and Against* (Cambridge UP, 1973), p. 72.

stressed.<sup>15</sup> Rights, expressed in a non-consequentialist fashion, fail to provide the flexibility required on the part of legislators to change for the better the world in which they live. Part of the reason why such cases are so difficult, I think, is that our thinking is not well trained to deal with these potentialities (one reason, obviously, is because they simply do not happen in the real world, another the general non-salience, for those inhabiting developed OECD nations, of the extreme circumstances faced by many in poor countries<sup>16</sup>). Combined with the haphazardness of the distribution of deprivation and (relative) affluence in poor nations, I see no reason to remain steadfast and let more die, when we could have acted, though tragically, to save them.

This, perhaps, still does not satisfy. One final thought might simply be the claim that here I have justified *barbarity*, *butchery*: were events to turn out just a tiny bit differently, the rejection of side-constraints would justify the Khmer Rouge. This I dispute. I have not justified mass murder. Rather, I have justified an action taken by legislators who are deeply concerned about the survival of their people, about the ability of as many as possible to obtain what is necessary for basic human life. Seneca writes that cruelty is ‘an inclination of the mind towards excessive harshness’.<sup>17</sup> It is worthwhile to note here that even on a welfarist view, there is never an ‘inclination’ of legislators to rid some of minimal decency. Part of the reason, I think, why Pol Pot and others are seen as so barbaric is their inclination to destroy frivolously, or for warped ideologies. For the internal justice of poor countries, the inclination is always to save as many as possible, even if, in the midst of misery, one must choose actions that seem counter to the stated goal.

It may be argued that I have concentrated my attacks on a view which is quite implausible and which very few people who believe in rights actually hold, i.e., that rights are side-constraints that can never be legitimately violated. Certainly more moderate views exist. Perhaps one may violate rights when the benefit is great enough – if there were enough persons who could be saved. Nevertheless, any rights view which is not straightforwardly consequentialist must give rights significant moral weight over the greatest

<sup>15</sup> See Sen, *Development as Freedom*, pp. xi–xii (and *passim*); also A. Sen and J. Drèze, *Hunger and Public Action* (Oxford UP, 1989), ch. 13. See also M. Nussbaum, *Women and Human Development: the Capabilities Approach* (Cambridge UP, 2000), esp. ch. 2, for a passionate defence of the importance of agency for women in poor nations. Of course, these theorists do not discuss the possibility I am dealing with here, i.e., having to kill, say, to save as many as possible. They share my concern for the problems in the real world, and thus reasonably forego discussion of such fanciful cases.

<sup>16</sup> See my ‘Moral Failure and Agent-Relative Prerogatives’, in F. Adams (ed.), *Ethical Issues for the 21st Century*, Suppl. to *Journal of Philosophical Research* (2005), pp. 309–20, at pp. 311–13.

<sup>17</sup> Seneca, *De Clementia*, II 4.

survival. The error of such an approach is seen in starkest contrast when considering a side-constraint view. Survival is, must be, the goal of legislators in poor countries. The line of thinking which suggests that *this person's* survival is of greater moral weight than that of *these others*, as a result of an arbitrary distribution of resources or goods, is suspicious from a moral point of view.

I believe that imparting rights to keep one's minimally decent standard of living, with positive weight over maximal survival, is flawed (whether that weight is infinite, as in a side-constraint view, or not). But assume that everything I have said above with regard to side-constraint (and more moderate) views is false. Nevertheless, even if rights talk is legitimate in the cases where one must harm an individual (or a group of individuals) to save the greatest number, this ought not to provide much comfort to the rights theorist. Global justice, in the real world, is not faced with such choices. The actual cases for which theories of global justice are required will not be concerned with violations of side-constraints, if such rights exist. Merely suggesting that one does not act legitimately in harming some to save others leaves unanswered most questions concerning the foundation of our global obligations. Even if I have failed to justify my rejection of this species of 'negative' rights, it does not follow that a theory of global justice can be legitimately couched in rights language, given the failure of claim-right views to adapt reasonably to foreseeable problems in the midst of famine, crises and severe endemic poverty. The side-constraint view is false, at least in poor countries. But even if it is true, it is of no real use.

#### IV.2. *Rights-consequentialism: commodities*

Justice in developing and poor nations thus cannot maintain the strong positive weight for human rights required by views discussed so far. Neither, then, should a theory of global justice which is concerned to accommodate the general orientation of justice best in poor nations do so. But this does not spell the end for notions of human rights and their applicability for global justice. In particular, one can maintain that the fulfilment of rights is part of the good-making properties of certain states of affairs. One can then, *à la* maximizing consequentialism, seek to maximize their fulfilment. Rights-consequentialism overcomes some of the more difficult problems for a side-constraint view: in principle, it allows that governments have the flexibility to distribute, so far as is possible, the burdens of endemic poverty and of additional crises with an eye to the greatest possible survival, i.e., the greatest possible maintenance of a minimally decent standard of living. Assuming that the possession of a minimally decent standard is a right to be maximized, if dispossessing one person of his minimally decent standard will

save the greater number, this ought to be done. It seems that as far as the *logic* of rights views is concerned, rights-consequentialism does better at advancing the basic principle articulated earlier, that subsistence and survival ought to be maximized. Nevertheless, problems arise in the area of *content*: the only acceptable version of goal-rights merely mimics a straightforward welfarist view. Rights language, I shall claim, adds nothing of moral significance.

There are three interpretations of the content of goal-rights which I shall consider here. The first interpretation construes one's rights as rights to the commodities, social primary goods, etc., necessary to the achievement of a minimally decent standard of living. Henry Shue seems to endorse this position when he defines a right to 'subsistence' as a right to 'minimal economic security': 'By minimal economic security, or subsistence, I mean unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and minimal preventive public health care'.<sup>18</sup> The basic idea of the rights-to-commodities view, specifying some set of social primary goods, is that each person has a right to some bundle of them. Bundles can be specified in a variety of ways, but generally include what is thought to be a minimum necessary for whatever characterization of a decent human life is operative (consistent with the low level assumed here).

Commodity-centred views have well known problems; it is worthwhile to rehearse some here. A bundle of commodities for one person may achieve a minimally decent standard of living. But if other people have one or another disability (e.g., paraplegics), or have heightened nutritional demands (e.g., pregnant females and lactating mothers), the bundle of goods may *not* be sufficient to achieve a minimally decent standard of living in these cases. In general, certain citizens may require extra commodities to escape poverty or to obtain minimal decency. But this does not seem to be captured by a mere right to commodities – one has to supplement the view with additional benchmarks: one's health outcomes, welfare, etc. This style of (oft-repeated) objection to commodity-centred views exploits the difference in value between commodities and one's standard of living. Because we value standard of living, and one's standard of living is not determined by one's commodities (as in the paraplegic case, for example), we ought not to understand the target of human rights as commodities.<sup>19</sup>

<sup>18</sup> Shue, p. 23. Shue defends a commodities-based view, not a goal-rights view.

<sup>19</sup> This objection is common, and is so, I believe, because it is correct. Its canonical statement can be found in Sen's writings. See 'Equality of What?', in *Choice, Welfare, and Measurement* (Harvard UP, 1982); *Inequality Re-examined* (Harvard UP, 1992), especially chs 4–5. See also Dworkin's *Sovereign Virtue*, chs 1–2. Dworkin attempts to provide a commodity-centred theory which responds to Sen's objections, though its implications are similar to Rawls' theory, and thus ought to be rejected for poor and impoverished nations.

There is, however, a way out. One might keep reference to commodities in the content of rights by relativization, i.e., people have a right to *enough* resources, *enough* commodities, for them to obtain a minimally decent standard of living.<sup>20</sup> Thus the proper bundle of commodities is not some particular predetermined set, but is relative to what would provide each individual with a life of minimal decency (the avoidance of ‘35 years of fever-laden, parasite-ridden listlessness’, in Shue’s terminology, p. 23). A lactating mother, then, has a right to a greater bundle of resources because she requires extra resources to maintain a minimally decent life.

This view defeats the objection – but it is unclear what normative weight is being pulled by continued talk of commodities. The actual target of such a view, the legitimate interest of citizens and legislators is not the commodities *per se*, but rather some standard of living, some set of opportunities to live in a way we might think minimally decent, for which commodities themselves might be essential. But the commodities themselves are merely instruments to this end. It may be, however, that commodities talk is important for the following reasons: first, commodities themselves are crucial instruments in achieving subsistence – it is important to stress the tools with which obligations will be discharged, both domestically and globally. Secondly, and more importantly, it may be the case that commodities are specified, rather than the actual listlessness-free life, given the importance for individual human agency in *choosing* one’s life.

Some might object that there is at least one plausible view that involves the relativization of commodities but for which commodities talk (as opposed to listlessness-free-life talk) is central. Henry Shue claims (p. 23) that ‘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’. But Shue also claims that societies are responsible only for protecting their citizens against ‘standard threats’, and not every conceivable thing that could interfere with a ‘reasonably healthy’ life (‘People are neither entitled to social guarantees against every conceivable threat, nor entitled to guarantees against ineradicable threats like eventual serious illness, accident, or death’, p. 32). All the same, standard threats need not be cashed in terms of commodities: standard-threat clauses might themselves be plausible for even a right-to-welfare view. Nevertheless, what Shue seems to have in mind is not the importance of commodities, in and of themselves, but the importance of what commodities provide. As I have

<sup>20</sup> Though Frankfurt does not speak in terms of rights, this view is perhaps best instantiated in his discussion (p. 37) of the money required to grant someone ‘contentment’: ‘To say that a person has enough money means that he is content, or that it is reasonable for him to be content, with having no more money than he has’.

stated above, commodities are important – it is up to individuals to choose the life they seek to lead. What the government is obliged to maximize is the opportunity to live a life of subsistence, if individuals so choose. Thus examination of the rhetoric of commodities has led to a *capabilities* view.<sup>21</sup>

#### IV.3. *Rights-consequentialism: capabilities*

The ‘capabilities approach’ has received philosophically nuanced treatment by Sen and Nussbaum, among others. On this view, the content of human rights is certain specified basic capabilities, the ability to do, to be, certain basic things throughout the course of one’s life. This view brings out precisely the conclusion I reached in the previous section: commodities themselves do not form the content of rights claims. Rather, one has the right to a certain opportunity (which the possession of certain commodities grants); this one can choose to exercise or leave inert. Despite its virtues in comparison to a straightforward commodities view, a capabilities view has vices. First, a capabilities view cannot accommodate straightforward judgments about the obligations of states, and poor countries in particular, to their citizens. In addition, a right-to-capabilities view has no advantage over the maximizing view offered in §IV.4.

For a start, however, it is important to note that a capabilities-centred view not only betters a commodities-centred view but has much going for it over a welfarist alternative. Martha Nussbaum writes (pp. 87–8): ‘Where adult citizens are concerned, *capability, not functioning, is the appropriate political goal....* For political purposes it is appropriate that we shoot for capabilities, and those alone. Citizens must be left free to determine their own course after that.’ Sabina Alkire writes that ‘The reason that it *must* be capabilities we are focusing on, even in “meeting basic needs”, is that this approach makes the need for choice and participation at all stages explicit.’<sup>22</sup> Thus, one might think, there are values that are captured by a capabilities view but cannot be accommodated by welfarism: personal autonomy and self-determination, agency over passivity.

But the case for a right to capabilities begins to erode in the face of an important conceptual and moral distinction between having the capability of obtaining a life of minimal decency and actually having minimal decency. Obviously, though an entire population may possess the capability, they may fail to fulfil it. In country *X*, justice is not indifferent, as it must be on a straightforward capabilities view, between the state of affairs, on the one hand, where the population of *X* possesses the capability for a minimally

<sup>21</sup> Thanks to an anonymous referee for pressing me on this point.

<sup>22</sup> S. Alkire, *Valuing Freedoms: Sen’s Capability Approach and Poverty Reduction* (Oxford UP, 2002), p. 172.

decent standard of living but where that standard is possessed by no one, and the state of affairs wherein all enjoy minimal decency. Here, political society ought not to be neutral between capabilities and ‘functioning’, or actual achievement of valued states.

Of course, it is rarely the case that persons are provided with the capability for basic subsistence and yet fail to achieve it. Though this thought-experiment demonstrates that across an entire population justice is more concerned for the possession of decent lives than for mere capability, mere capability is often enough to grant possession. Furthermore, there are cases where political society should not insist that persons must actually possess the decent life. Starvation is unacceptable. But fasting, deliberately choosing with full information to endure a status of malnutrition, is different. Though someone may then be living a life below minimal decency, it has been *chosen*, perhaps as an expression of deeply held and considered beliefs and desires. Alkire (pp. 175–6) calls to mind the sort of Orwellian policies it would take to insist upon anything other than capabilities: if we are to insist that people *actually* achieve minimal decency, are we not committed to some sort of insidious forced-nutrition programme, or a gastronomic analogue of China’s infamous family planning policies?

My response is as follows: we do not believe the state should avoid intervention in every case where capabilities are granted but where minimal decency is lacking.<sup>23</sup> People may have the capability for subsistence, but be in the thrall of casino gambling. Or some people may want to subsist, but because they are so overcome at the prospect of watching television, it is worth it to them to fail minimal decency in order to stare at the screen for as many hours as possible. There are many similar examples of ‘adaptive preferences’, cases in which preferences are shaped, e.g., by one’s poverty or lack of information or of adequate consideration.<sup>24</sup> In these cases, it seems to me, the state is perfectly entitled to intervene to promote subsistence, perhaps even by coercion, and indeed is negligent if it does not. A capabilities-centred view, however, cannot capture this seemingly straightforward conclusion. *Pace* Alkire, we do not value choice and agency ‘at all stages’. The value of minimal decency trumps the fulfilment of unconsidered or adaptive preferences when these compete.

Furthermore, a welfarist view is not committed to the view that we should coerce people into avoiding malnutrition when they are fully informed,

<sup>23</sup> Many thanks to Sam Rickless for assistance in sharpening my thoughts here.

<sup>24</sup> See Nussbaum, *Women and Human Development*, ch. 2. See also Sen, *Inequality Re-examined*, pp. 6–7. For a look at the phenomenon of adaptive preferences that is divorced from concerns about poverty, see Nussbaum, ‘American Women: Preferences, Feminism, Democracy’, in her *Sex and Social Justice* (Oxford UP, 1999), pp. 130–53.

when they see starvation as something they strongly value – political protesters, say, or members of a religious sect who find it important for their identity or sense of themselves to destroy their bodies systematically. It is not implausible to consider important to a minimally decent standard of living the freedom to pursue options that are central to one's life-plan and that are not the product of adaptation or a lack of information. If so, it would be inconsistent with this formulation of welfarism to interfere with persons who apparently are expressing their deep convictions – it would be inconsistent with the greatest achievement of minimal decency. This view (which, as I said in §III, I shall not develop in detail here) captures with great precision the obligations of poor countries to citizens: a state is implicated when citizens choose, for untrustworthy reasons, to starve, but welfarism avoids the problematic implication that we must coerce in all cases. The autonomy to follow through one's deeply held convictions is reasonably thought a part of a minimally decent standard of living.

I have rejected a rights-to-capabilities view because I believe that capabilities alone cannot capture the interests of justice in poor countries. An emphasis on welfare, properly understood, is important. But even if my argument against the importance of capabilities falters, this does not imply a rights-based view. In fact, as I suggest below, even if one steadfastly clings to the importance of capabilities as the metric of justice in poor countries, it ought to be treated in a sufficientarian, maximizing way. I shall leave this aside for the moment, however, and proceed to consideration of the final rights-based view under consideration here: a right to welfare.

#### IV.4. *Rights-consequentialism: rights to welfare*

Throughout §IV I have been examining different theories which in one way or another take rights to be an important aspect of conceptions of justice applicable for poor countries. One can think of a continuum of views: on one side a thoroughgoing welfarist consequentialism, on the other a distinctive rights-centred view (such as a side-constraint view). The further one moves towards rights views which are in any way distinctive, the greater the cost in plausibility for recipient nations. Rights-to-welfare in its current manifestation is, perhaps, the least distinctive rights-based view, when considered against a strictly welfarist view of the justice of poor nations. In fact, I shall claim, it is simply welfarism in wolf's clothing.

But first, an objection. I have described the favoured position as a form of maximizing welfarism. This leaves much unanswered. In particular, defending welfarism might be thought to fall foul of the general feature of justice in poor countries I have been insisting upon thus far: utilitarianism, for example, is distributionally insensitive. It cares not whether any particular

persons obtain minimal decency. Perhaps not in practice, but certainly in principle, it licenses exchanging persons below the poverty line for more specialized gains in other areas, such as, say, art-galleries, museums, or other gains that are applicable only to the most well off. Certainly, given what has been said so far, utilitarianism in its raw shape cannot form a plausible conception of justice for poor countries.

Utilitarianism, for poor countries and thus for global justice, is right out. I prefer a conception of welfarism that is buttressed by a core of sufficientarianism. In other words, what is to be aggregated and maximized, in the context of poor countries, is the number of people who have the sufficient level of welfare, defined here as minimal decency. Though the term is ugly, I call this programme ‘maxificing’.<sup>25</sup> This conception of welfarism mirrors remarkably the desiderata that opened this paper. Maxificing, as I define it, will always allocate available resources in favour of raising the condition of any citizens who, given resource constraints, can be raised to a minimally decent standard of living. Of course, maxificing is an incomplete theory: as it stands, it says nothing about two situations, (a) where resources are left over and all have been brought up to the sufficient level; and (b) where resources are left over but are not enough to bring any further persons to the sufficient level (some, say, are so far below the sufficient level that the resources available will not bring them to that level). Though I shall not defend my view here, I advocate allocating additional resources, in both cases, to further, more specialized, aspects of human welfare above the minimally decent standard (in a way that should be roughly compatible with leximin) rather than allocating such resources to those who have no chance at decency.<sup>26</sup> This interpretation, however, is not central and could be revised in the light of recalcitrant moral judgement.

Furthermore, this version of a welfarist maxificing view avoids some of the standard objections to a welfarist programme, by narrowing the range of information used to endorse one state of affairs over another. Here is an example, adapted from Sen (‘Rights and Agency’, pp. 7–9):

Mary can stop a group of ten men whose sadistic attitudes cause them to enjoy the occasional bashing of an innocent passerby. Though the bashee, in this case, will be harmed, this harm will be made up for by the utility gained by the bashers as a result of the bashing.

<sup>25</sup> ‘Maxificing’ is a conglomeration of ‘maximizing’ those persons who ‘satisfice’; John Roemer suggests this term in an unpublished manuscript.

<sup>26</sup> This interpretation distinguishes maxificing from other ‘sufficiency’ views, such as Frankfurt’s, expressed in ‘Equality as a Moral Ideal’, and R. Crisp’s in ‘Equality, Priority, and Compassion’, *Ethics*, 113 (2003), pp. 745–63. I claim that there are further justice-sensitive questions *above* the line of sufficiency that should be answered, in a nutshell, by leximin.

Sen claims that welfarism cannot offer the correct answer in this case, given the higher utility levels of a state of affairs in which the bashing takes place. But utility is construed here in a way I need not accept. Instead, important welfare levels correspond to the achievement of minimally decent standards of living, the avoidance of poverty, and additional specifiable states above subsistence (including, say, primary and secondary education, etc.). The 'utility' derived from the bashers has no significance, on the current version of maxifying, when compared with the potential loss of states of real significance (severe injury, etc.); Mary therefore ought to stop the bashing. Welfare is here construed (to use a somewhat misleading term) objectively, not in terms of the quality of one's experience or the satisfaction of one's desires.

To return to the notion of a right to welfare, on this view the goal is to maximize the achievement of welfare for the greatest number of people, to maximize welfare across the given population. Of course, like previous rights views, a plausible rights-to-welfare view would follow the dictum that the level of welfare one has a right to is set low. That is, one tries to maximize the achievement of a minimally decent standard of living, but one does not weigh the achievement of 'higher level' states against the greatest achievement of minimal decency. So this view is structurally isomorphic to maxifying. Rights talk adds nothing of normative importance. The same is true, as I suggested at the conclusion of the previous section, if we steadfastly maintain that capabilities, rather than valuable welfare states, are the proper metric of distributive justice. If so, maxifying claims that distributive justice ought to see to it that as many people as possible possess the *capability* for subsistence, rather than subsistence itself (on the welfarist line I have been pushing here). Though I find reason for rejecting a capabilities view, in any event maxifying delivers the goods without commitment to rights.

One final human-rights view will demonstrate the power of maxifying as an alternative to the human-rights strategy. Pogge (p. 46) writes 'a human right to  $x$  is tantamount to the demand that, so far as reasonably possible, any coercive social institutions be so designed that all human beings affected by them have secure access to  $x$ '. Of course, maxifying also says that as many people as possible must be granted  $x$  (in this case, minimal decency). Not only does Pogge's rights rhetoric not improve on maxifying's welfarism, maxifying is able to go further, specifying precisely when the achievement of minimal decency for any individual is 'reasonably possible' (i.e., when it is compatible with the greatest total subsistence achievement), and giving clear guidance in difficult conflict cases where the above rights-based view is mute (famines, *A vs B-Q*, etc.). Maxifying is a normative tool with greater cutting power. Rights, in comparison, are at best impotent, at worst contrary to the most important interests of those in poverty.

I have shown that the internal obligations of justice in poor nations cannot be built upon a foundation of human rights. One might think, however, that this conclusion is of limited applicability in the global case: many rights-based views (most notably the claim-right view) have been rejected on the basis that resources are constrained – claim-rights are sometimes legitimately ignored. But *global* redistribution does not have similar constraints. Global distribution, clearly, has more resources on which to draw; it may thus avoid the problematic implications of claim-right views in cases of resource scarcity. I have two responses. First, it is not clear that global redistribution can avoid all the problems that exist for claim-right views. It is perfectly possible that in many poor countries a certain population is simply a poor converter of resources into minimal decency (those, say, who have suffered extensively from starvation and rampant disease). Global justice, then, must conceivably be able to make a choice between saving some and saving many more not similarly stricken. A bigger pot of resources from which to draw certainly does not solve the conceptual difficulty with such views, and may in fact not alleviate the problem. Secondly, maxifying mimics the implications of claim-rights views in all cases *except* those cases where such views fail. In the ideal case, maxifying does no harm; in the non-ideal case, maxifying gives the right answers. Global justice should thus avoid talk of rights and focus instead on promoting the greatest possible subsistence.

## V. CONCLUSION: GLOBAL JUSTICE AND HUMAN RIGHTS TALK

Human rights talk has a certain purchase in the discourse of global obligation, not only within philosophy and political theory, but also within the culture generally. It may be, then, that a welfarist-consequentialism should advocate discussing our obligations in the language of human rights, though (behind the scenes) endorsing policies in conformity to maxifying. Martha Nussbaum sees the pull of such a strategy for four reasons. First, she claims, '[Rights talk] 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'. Secondly, rights talk, as compared to talk about basic capabilities (or talk about welfare) is rhetorically powerful. 'To say, "Here's a list of things that people ought to be able to do and to be" has only a vague normative resonance. To say, "Here is a list of fundamental human rights" is more rhetorically direct.' Thirdly, 'rights language has value because of the emphasis it places on people's choice and autonomy'.

Fourthly, ‘Finally, in the areas where we disagree about the proper analysis of rights talk – where the claims of utility, resources, and capabilities are still being worked out – the language of rights preserves a sense of the terrain of agreement, while we continue to deliberate about the proper type of analysis at the more specific level’.<sup>27</sup>

I do not find every such reason for the continued use of rights talk compelling. I certainly do not find welfare talk any less indicative of agreement than rights talk. Surely we can agree that we ought to make it the case that as many people as possible can achieve minimal decency, even if the *minutiae* of what constitutes minimal decency and the relative weights of different welfare achievements are not well known. Also, Nussbaum’s emphasis on choice and autonomy is tied closely to her capabilities-centred normative view; I hope to have cast doubt here on the supreme importance of choice and autonomy, along with capabilities.

However, this is not to say that there is no instrumental efficacy in rights talk, especially on a global scale. It is hard to disagree with Nussbaum’s first two points. Conversation about global justice is conducted largely in the language of human rights, and these patterns can be hard to shift. Human rights talk, therefore, has a certain rhetorical or motivational efficacy that, perhaps, welfare talk lacks (though I am not sure what precisely the difference in efficacy is: surely a clear description of human needs might itself be rhetorically direct). If so, there is no principled reason why we should exclude a rhetoric of rights, even if we accept a global politics of welfare maxifying. But one must be careful. We should be wary of imparting too much significance to rights talk, lest the notion of rights becomes so ingrained in the global culture that the obligations themselves are taken to concern human rights on a fundamental level. Though we can accept rights talk, this must be recognized as a ‘second-best’ option, given the misguided nature of global dialogue. If we *could* dispense with rights talk and retain important gains in human welfare, we ought to do so. In so far as we cannot, however, we must work to assure that the proper object of global obligation is the minimally decent standard of living for as many as possible.<sup>28</sup>

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<sup>27</sup> Nussbaum, *Women and Human Development*, pp. 100–1.

<sup>28</sup> I should like to thank Sam Rickless, Richard Arneson, David Brink, Jerry Doppelt and Kory Schaff for helpful criticisms and suggestions while I was preparing and finalizing this paper.