

## Toward a Theory of the Basic Minimum

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When someone is unable to achieve the very basic necessities of a worthwhile life, it is tempting to state the problem directly. In this case, and in cases like this, what matters from the point of view of justice is the achievement of *those* necessities for *that* person. Citizens are owed by their government some sort of reasonable standard of living. Insofar as people fail to achieve it, the state failed its obligation to provide them if and when it can. Sentiments like these are common. Martha Nussbaum writes that “moving all citizens above a basic threshold of capability should be taken as a central social goal.”<sup>1</sup> Stuart White notes that there “is a widespread intuition that in a just society citizens must have access on reasonable terms to the resources necessary to meet their basic needs.”<sup>2</sup> Similar thoughts are expressed by Ronald Dworkin<sup>3</sup>, John Baker<sup>4</sup>, and others<sup>5</sup>.

Sentiments like Nussbaum’s and White’s point to the plausibility of a political basic minimum: some set of welfare achievements, resources, capabilities, etc., that any political institution must provide for citizens. However, if a basic minimum is plausible, we must have a theory: a theory of what, precisely, the state owes to citizens in terms of these basic needs, and

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<sup>1</sup> Martha Nussbaum, “Women and Cultural Universals” in *Sex and Social Justice* (Cambridge: Cambridge University Press, 1999), 43.

<sup>2</sup> Stuart White, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship* (Oxford: Oxford University Press, 2003), 131.

<sup>3</sup> Ronald Dworkin, *Sovereign Virtue* (Cambridge, MA: Harvard University Press, 2000), 5.

<sup>4</sup> John Baker, “An Egalitarian Case for Basic Income” in *Arguing for Basic Income: Ethical Foundations for a Radical Reform*, ed. van Parijs (New York: Verso, 1992), 107.

<sup>5</sup> In a global, rather than domestic, context, see Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, NJ: Princeton University Press, 1980), 22-29.

what, precisely, is the structure of that obligation. In this paper I wish to go some length toward answering these questions. Certain questions must remain unanswered - the all-things-considered justification of the existence of such a basic minimum, for example - but I hope to establish that those interested in a basic minimum as a part of the theory of justice ought to take my account seriously.

This paper will have two parts, one negative, one positive. In Part One, I discuss and criticize the most important philosophic account of a basic social minimum, Martha Nussbaum's "human capabilities approach." I argue that Nussbaum's approach has several structural features, few of which are independently plausible, and which create insuperable difficulties when viewed in combination. The failure of Nussbaum's account is instructive, however - it provides some motivation for adopting the positive account I sketch in Part Two.

### *1. Nussbaum on the Basic Minimum*

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

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

## B. Property and land rights.<sup>6</sup>

Further questions can be asked of any member of this list (which Nussbaum fully admits). But the intuitive idea behind each facet is clear enough. In order to fulfill the basic minimum we are to have at least a threshold level of each basic capability. We do not need to have maximal ability to, for instance, exercise our capacity for imagination - but we need to be able to do so to at least some basic degree, commensurate with a fully human life. In addition, Nussbaum believes - unlike John Baker, for instance - that the obligation to provide for the basic capabilities is an obligation of all governments, not simply of governments with reasonably abundant resources from which to draw.<sup>7</sup>

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

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<sup>6</sup> Adapted from Martha Nussbaum, *Frontiers of Justice* (Cambridge, MA: Harvard University Press, 2006), 76-78. Hereafter: *FJ*.

<sup>7</sup> Baker, 123. *FJ*, 401-2.

elements of the list, such as life and bodily health. Those who wish to fast for political or religious purposes should be able to give up being adequately nourished if they so choose.

*Expansive List* and *Capabilities Not Welfare* are features of the list of basic capabilities itself. But there are three other features of Nussbaum's understanding of the basic minimum, as concerns the the associated governmental obligation. The third crucial element is *Guarantee*. According to Nussbaum, it is a requirement of justice that everyone have a crucial threshold level of basic capabilities. Nussbaum writes: "[I]n some form all are held to be part of a minimum account of social justice: a society that does not guarantee these to all its citizens, at some appropriate threshold level, falls short of being a fully just society, whatever its level of opulence."<sup>8</sup> Notice that Nussbaum does not suggest that it fails to be the *best* society, or fails to be an *ideal* society. Rather, such a society is *unjust*. Somewhere along the line, if the ten basic capabilities are not granted to every citizen, the political society has failed its obligations of social justice. This is true even in extreme cases. "In desperate circumstances, it may not be possible for a nation to secure them all up to the threshold level, but then it becomes a purely practical question what to do next, not a question of justice. The question of justice is already answered: justice has not been fully done here."<sup>9</sup>

The fourth element is *No Trade-offs*. The threshold level of each capability is a discrete moral requirement. It is unjust to trade off one element of the list for gains in another element. It would be unjust, according to Nussbaum, to refuse to grant the opportunity for play, but make this up in a greater ability to form friendships, or to participate politically. "What the theory says is: *all ten of these plural and diverse ends are minimum requirements of justice*, at least up to the threshold level. In other words, the theory does *not* countenance intuitionistic balancing or trade-offs among them."<sup>10</sup> Again, "This account entails that the capabilities are radically nonfungible:

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<sup>8</sup> *FJ*, 75.

<sup>9</sup> *FJ*, 175.

<sup>10</sup> *FJ*, 175.

lacks in one area cannot be made up simply by giving people a larger amount of another capability.”<sup>11</sup> *No Trade-offs* has both an intrapersonal and interpersonal feature: capabilities cannot be traded *within* a given individual, nor *across* individuals (i.e., not providing for one person’s voting rights for the heightened opportunity for play for another).

A further element, which is not explicitly stated in Nussbaum, but is instead related to *Guarantee* is *Inviolability*. Because “each and every person has an infeasible entitlement to come up above a threshold on certain key goods,”<sup>12</sup> it would be unjust to remove one person’s possession of the basic minimum in favor of others, possibly many others. Given that it is unjust for *anyone* not to have them, it would surely be unjust to create such a state of affairs by moving someone below the basic minimum. Though this is implied by *Guarantee*, the reverse does not hold. One could accept *Inviolability* and reject *Guarantee*. Thus it is worth our while to consider it as a separate element of Nussbaum’s view, though it is not explicitly stated.<sup>13</sup>

Some of these principles cover some of the same normative territory. Nevertheless, Nussbaum’s view is roughly captured by these five elements. Her view is clear, powerful, and intuitive. She suggests, which I have every reason to believe, that it could be accepted as part of a global overlapping consensus. Stated clearly, however, each element looks suspect. Furthermore, when considered together, they cannot be salvaged as part of a theory of the basic minimum. (I will discuss *Guarantee*, *Inviolability*, *Expansive List*, and *No Trade-offs* by themselves in §1.1, combined in §1.2. I will save *Capabilities Not Welfare* until §1.3.)

### *1.1. Problems with Individual Elements*

First, consider *Guarantee*. *Guarantee* as stated is an implausible principle - taken literally, no just society could ever exist. *Guarantee*, recall, states that it is a steadfast right of

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<sup>11</sup> *FJ*, 166-7.

<sup>12</sup> *FJ*, 342.

<sup>13</sup> It is likely that Nussbaum believes that the cases in which *Guarantee* would come apart from *Inviolability* are moot: simply circumstances of injustice. I hope to show this assumption is misguided. Nussbaum does mention the importance of the “inviolability of persons,” on p. 342 of *FJ*, but means something slightly different in this context.

every individual to possess the basic capabilities. Any failure in their possession is a failure of justice. But taken literally, this cannot be what Nussbaum means. For *any* society will have persons who, for one reason or another, cannot maintain even the most basic of the basic capabilities. Any society will have people with adolescent cancers, say, who have no capability to live a life of normal length. But this is not a failure of justice. Sometimes the battle to get some to the basic minimum is simply beyond political agency - and insofar as justice is ascribed to political decisions and the actions and intentions of political actors, it is simply a mistake to say that these cases are failures of justice. No political agency was involved.

Nussbaum suggests an alternative line. Given that many people will have mental and physical disabilities, Nussbaum suggests, it is enough that they have the “social conditions” of the basic capabilities. Society cannot guarantee that all persons actually have the capability to live a life of reasonable length, but it can guarantee that no one has their life interfered with and that when society *can* do something to bring the capabilities closer to fruition for these persons, it is done. This implies a counterfactual test: when someone fails the ten basic capabilities, we ask if they *would* have obtained them if some natural impairment would not have intervened. If the answer is yes, this is not a failure of justice.<sup>14</sup>

But the division of failures of the basic capabilities into natural and social impairments is complicated. According to Nussbaum, there are roughly two types of capability failure. The first type involves conditions of certain *individuals* that make them unable to fulfill some bundle of central capabilities (like, for instance, some severely mentally disabled people) that social engineering could not correct. (This last clause is important: anytime someone could be granted the basic capabilities they should be - even if this means correcting certain natural impairments, such as physical or mental illness.) Call these “natural failures”. “Social failures” are failures that do not involve such conditions of particular individuals. Thus, on Nussbaum’s understanding, *Guarantee* yields two paths to injustice. In the first case, if a failure of the basic

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<sup>14</sup> *FJ*, 193-4.

minimum obtains without an associated natural impairment, this is a failure of justice. However, in cases where citizens fail the basic minimum in ways that do not involve political agency, i.e., natural failures, we ask: “[h]as the public political arrangement in which she lives extended to her the *social basis of* all the capabilities on the list,”<sup>15</sup> to the extent that if she were not suffering from natural failure, she would obtain the ten basic capabilities? If the answer is no, the society is to that extent unjust.

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

Nussbaum’s strong specification of *Guarantee* fails. (In a following section, I will revise *Guarantee* in a more plausible way.) Nevertheless, we could reject *Guarantee* and keep its close cousin, *Inviolability*. Should we? *Inviolability* states that no person will be dispossessed of a

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<sup>15</sup> *FJ*, 193.

basic minimum. As regards our possession of the basic minimum, we are inviolable. This is a generally intuitive requirement, but unfortunately its applicability is stretched in certain cases.

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

This conclusion might be disputed. Perhaps this sounds a bit too much like the dreaded "Transplant" case - in which we must cut up one healthy individual and redistribute his organs to save ten. There is considerable disagreement surrounding the extent to which the Transplant cases are damaging for suggestions like mine, above. I don't wish to wade into this debate here except to say that if it is plausible to redistribute X's resources to the others, simply because cosmic circumstances struck down the many but not the one, perhaps there is some reason to rethink - *other things being equal* - the Transplant case. In my view, the power of human agency to alter that happenstance for the better is a power that ought to be cherished, revered, and used. If so, perhaps there is some intuitive reason for rejecting one corollary of Nussbaum's basic capabilities approach, *Inviolability*. This is, of course, not an argument. Thus I will leave *Inviolability* as an open possibility. However, even if we accept *Inviolability*, the crown jewel of Nussbaum's elements, *Guarantee*, is implausible and should be rejected.

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

Though I will not present my alternative account until §2, I wish to note a slight tension in Nussbaum's understanding of basic human dignity and her account of the basic capabilities. She notes that "certain functions are particularly central in human life, in the sense that their presence or absence is typically understood to be a mark of the presence or absence of human life."<sup>16</sup> But consider the capabilities that fall under number 10 on the capabilities list, i.e., political participation and property and land use rights. It is difficult to see how these are essential to marking the presence or absence of a truly human life, or a life that is not worthwhile *as a human life*. Certainly it is more expansive than a more parsimonious account of a non-

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<sup>16</sup> Nussbaum, *Women and Human Development: The Capabilities Approach* (Oxford: Oxford University Press, 2000), 71-2. Hereafter: *WHD*.

worthwhile human life inspired by John Stuart Mill in *On Liberty*:

He who lets the world, or his own portion of it, choose his plan of life for him has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself employs all his faculties. He must use observation to see, reasoning and judgment to foresee, activity to gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold to his deliberate decision. And these qualities he requires and exercises exactly in proportion as the part of his conduct which he determines according to his own judgment and feelings is a large one. It is possible that he might be guided in some good path, and kept out of harm's way, without any of these things. But what will be his comparative worth as a human being?<sup>17</sup>

Though Mill is making a claim of necessity, rather than of sufficiency, why not accept a claim inspired by Mill, viz., that a truly human life is one that need only minimally engage human capacities and live according to some life plan or other? This would require neither political participation or land use rights - though perhaps good, these would be unnecessary for such an account of the basic minimum. Indeed, Mill's rejection of refusing to choose one's life plan appeals to values that might be thought to constitute an account of human dignity - an avoidance of beastliness, the engagement of faculties that are distinctly and clearly human, the ability to conform one's life to a conception of value. It is unclear that a life that is comprised of human dignity need require private property or the capacity to participate politically. Thus, as a matter of pure intuition, I believe Mill's account is more plausible. (Indeed, my positive account will reside in the same ballpark.)

Now consider *No Trade-offs*. Nussbaum steadfastly denies that any elements of the list can legitimately be traded off against other elements. This applies not only intrapersonally, i.e., a single person could not legitimately trade-off one's capacity for practical reason, say, for more bodily integrity, but also interpersonally, i.e., we could not trade-off one person's political participation for the enhanced opportunities of others. This applies only when the threshold level of each capability is in play, however. Nussbaum supports trade-offs *above* the threshold (i.e., when threshold levels of each is guaranteed).<sup>18</sup>

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<sup>17</sup> J. S. Mill, *On Liberty*, III, 4.

<sup>18</sup> *WHD*, 211.

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

The interpersonal version of *No Trade-offs* is also problematic. Imagine a case in which A has only the bare human subsistence, but could get a significant range of the central capabilities (i.e., everything but number 10); to do this, one would have to redistribute from B, who has all ten, but would end up also lacking number 10. It seems plausible at first glance to redistribute, i.e., if we could get A who is *very* badly off everything but political participation, and this would cost only B's political participation, this seems like the sensible course of action to take. It is unclear, however, given the interpersonal clause of *No Trade-offs* that Nussbaum could fit this sensible strategy into her account of justice.

Of course, whether *No Trade-offs* is a plausible principle with regard to the basic minimum will depend on the content of the ten basic capabilities. So far, I have assumed Nussbaum's list. But there are other ways of specifying the list, which might make *No Trade-offs* seem more plausible. For example, a list that consisted merely of life and bodily integrity might

be able to hold on to *No Trade-offs* more plausibly than Nussbaum's list. So my suggestion here really runs afoul only of *No Trade-offs* in light of *Expansive List*.

### 1.2. Problems with Combined Elements

In rejecting *Guarantee*, I suggested that there is a serious worry about Nussbaum's supposition that if a given individual *ever* fails the ten basic capabilities, this is a failure of justice. It turns single tragedies into double tragedies, in unwarranted ways. However, even if we weaken *Guarantee*, perhaps by suggesting that in certain cases beyond political agency justice is compatible with failures of the basic minimum, we run into problems when combining *Expansive List* and *No Trade-offs*. An illustration runs as follows.

Assume that a society has the following tragic choice. A and B are both below the basic minimum, at the same level. Assume that they maintain everything but the religious exercise clause of 4, and all of 10. Also assume the distribution scheme is such that in order to benefit one, the other must be reduced *significantly*, i.e., they must be stripped of nearly every possible capability. Nussbaum would say, given the strong logic of *Guarantee*, that justice cannot be done here. But we should reject this. Assume that justice could be done consistent with *some* failing the basic minimum. We could and should ask, consistent with the ten basic capabilities *qua* basic minimum, what is the *best* thing to do, or what is the *most just* thing to do? (Or, in Nussbaum's terminology, what is the most practical thing to do?) One could keep the status quo, or one could redistribute. If the ten basic capabilities are to be any kind of guarantee at all, the answer appears to be that the *most just* thing to do would be to redistribute. Otherwise you have *two* people who fail the basic minimum rather than one.

But doing so would violate the interpersonal clause of *No Trade-offs*. It would involve trading the threshold level of almost all the capabilities for one person, for the achievement of the threshold level of all ten for another. So it would appear that the most just thing to do in this case would be *not* to trade one person's capabilities for the other's, i.e., not to redistribute. But this would straightforwardly violate even the weakening of *Guarantee* (i.e., neither is to achieve the

basic minimum). Which is it? If we, as we should, disagree with Nussbaum that there is nothing just to do in this case, we cannot both keep *No Trade-offs* and *Guarantee*. But the problem goes even deeper. Even *if* we agreed with Nussbaum in this case that there is nothing just to do, we must have some principled reason for doing some thing rather than another. But which should we follow? Should we follow *Guarantee* more closely than *No Trade-offs*? In this case, *even if justice fails*, Nussbaum's theory can provide no practical guidance.

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

Leaving aside *No Trade-offs*, however, *Expansive List* looks particularly problematic when viewed in light of *Guarantee*. Consider A and B. A is far below the basic minimum, with mere life and nutritional adequacy. B, however, possesses almost everything, except for the land use clause of number 10. Political society can either raise A to the level of B (i.e., by granting almost everything beyond land use rights), or it can grant B land-use rights. If Nussbaum's list really is to be a basic minimum (given *Guarantee*), it seems as though the distribution should go to A. But this is implausible. Land use rights, though perhaps important, are surely not of the same moral importance as the range of capabilities that could be granted to A.

The above dilemma exploits a peculiar feature of any basic minimum. Call the proposal that a basic minimum should license the occasional priority of the better-off in order to achieve the basic minimum "upward distribution." Upward distribution is a little-noted feature of basic minimum-style views, but it cannot be avoided. Any view that posits a basic minimum that has normative strength must confront it. In ruling out such upwards transfers, i.e., if distributions to the worst-off trump the achievement of the basic minimum, the basic minimum has no real

normative force over a view that merely suggests that the least well-off are to be given distributional priority. In order for a basic minimum to have any normative, rather than merely heuristic, value, the basic minimum must in at least some cases trade-off against benefits below the minimum. Indeed, the stronger the minimum - in Nussbaum's case, *very* strong given *Guarantee* - the more cases in which upward distribution is licensed. Thus any basic minimum must adequately negotiate the problem of upward distribution. Any basic minimum must plausibly be able to embrace upward distribution. In light of *Expansive List*, Nussbaum's basic minimum fails this test.

Now combine *Guarantee* with *Inviolability*. Imagine that A and B fail the basic minimum, but C maintains it. In order to grant the basic minimum to A and B, resources must be diverted from C, leaving C without the basic capabilities. If the basic minimum is really a guarantee of justice (or, leaving the question of justice aside, if *Guarantee* is to be used in making the best practical decisions), what are we to do? Offhand, it might seem plausible to distribute to A and B, given that the basic minimum failure in this case would be less overall - if basic minimum achievement is really a *guarantee*, this decision, though non-optimal, is certainly the best open option. But this runs into problems with *Inviolability*. C cannot be dispossessed of his basic standard. If so, we are again at an impasse. Which principle is to have greater weight? Which are we to follow? If we simply do nothing, we are admitting that *Guarantee* has lesser weight against *Inviolability* - but there is a reasonable question whether or not this should be true, given the importance of the basic minimum. In any event, on Nussbaum's own account, the right answer is indeterminate - even if we are merely asking "practical" rather than moral questions.

Nussbaum's view is clear, straightforward, and powerful. Her approach has but one moral demand: get everyone all ten basic capabilities. Unfortunately, however, this is not always possible - if not in fact, then certainly in principle. Contrary to Nussbaum's insistence, there are questions of justice in cases where some fail the basic minimum. Some choices are legitimate, others are not. Whether or not we call these "practical" as opposed to "moral" problems seems

merely semantic. Nussbaum's approach is unable to give us a clear understanding of what we should do in cases of guaranteed basic minimum failure.

### 1.3. *Against Capabilities*

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

Amartya Sen famously criticized Rawls's resourcist account of the distributive index by suggesting, reasonably enough, that the same amount of resources do different things for different people.<sup>19</sup> Take a simple example. Distribute \$50 to two David Bowie fans, one of which is a Type-1 diabetic, and the other will be much better off: he can afford to buy the three Bowie records he needs to complete his collection while the diabetic must spend her \$50 on medical care and prescriptions. Through no fault of her own, the diabetic is already worse-off. She strongly wanted to listen to *Diamond Dogs*, but merely because she is diabetic, she does not have the resources to do so. Not so for the other. One natural answer to this worry presented by Sen is that the proper distributive index should be capabilities rather than resources. Imagine that rather than distributing \$50 equally, the state is now obligated to make it the case that David Bowie fans have the equal capability to listen to *Diamond Dogs* - this would entail distributing more resources to the diabetic - enough to afford prescriptions and medical care in addition to said record.

If this is the case, it seems that a pure resourcist theory is inferior in comparison to the capabilities approach. The capabilities approach actually places both persons on an equal level

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<sup>19</sup> Sen's criticism appears in numerous places, most clearly stated in *Inequality Reexamined* (Cambridge, MA: Harvard University Press, 1993).

with regard to what might actually matter to them, which was closer to what was intended in the original distributive program. Resources do different things for different people and thus must be measured against some other, more fundamental, index. For this purpose, capabilities are attractive.<sup>20</sup>

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

Nussbaum writes:

I have spoken both of functioning and of capability. How are they related? Becoming clear about this is crucial to defining the relation of the “capabilities approach” both to Rawlsian liberalism and to our concerns about paternalism and pluralism. For if we were to take functioning in a single determinate matter, the liberal pluralist would rightly judge that we were precluding many choices that citizens may make in accordance with their own conceptions of the good, and perhaps violating their rights. A deeply religious person may prefer not to be well nourished, but to engage in strenuous fasting. Whether for religious or for other reasons, a person may prefer a celibate life to one containing sexual expression. A person may prefer to work with an intense dedication that precludes recreation and play.<sup>21</sup>

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

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<sup>20</sup> These are more compelling arguments for a resourcist understanding of the basic minimum. I do not wish to engage this literature here.

<sup>21</sup> *WHD*, 86-7.

pluralism about the good life.

My view is that Nussbaum's point here is surely right. We should not be insisting that persons achieve sexual satisfaction. We should not be insisting that people achieve play if they do not wish to. Such a view would be perverse. But *why*? What is motivating the thought that a religious person ought to be able to fast? One possible motivation is the concern for pluralism about the good life. In other words, given the inevitability of conflict regarding the good, we should not be in the business of endorsing a vision of the good life not valued by all reasonable persons or designing political institutions that adopt premises reasonable persons could not accept. This position has been questioned. One plausible criticism is made by noting the required asymmetry between a conception of the good and a conception of the right.<sup>22</sup> Why believe that all citizens would agree on a conception of the right, but not the good? Wouldn't a consistent application of the principle of neutrality render political morality impossible? It seems to me, however, that the concern about neutrality and pluralism is a red herring. What is driving Nussbaum's intuition, it seems to me, is a general interest in citizens leading *autonomous*, rather than *non-autonomous* lives. If a religious person is force-fed, that person is to that extent living a non-autonomous life, a life that does not reflect his conception of the good. Political institutions, then, should refrain from forcing citizens to live non-autonomous lives - lives they do not choose and do not value.<sup>23</sup> This is clear from Nussbaum herself: insisting on functionings precludes "many choices that citizens may make in accordance with their own conceptions of the good."

But this is perfectly compatible with a theory of welfare. Indeed, it *is* a theory of welfare. On this view, the best life for a person to lead is the autonomous life. An autonomous life, on this

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<sup>22</sup> See George Sher, *Beyond Neutrality: Perfectionism and Politics* (Cambridge: Cambridge University Press, 1997), 142-5. See also Richard Arneson, "The Priority of the Right over the Good Rides Again" in *Ethics* 108 (1997), 187-8.

<sup>23</sup> Richard Arneson notes this implication of Nussbaum's examples in "Perfectionism and Politics" in *Ethics* 111 (2000), 61. Arneson comes to a different conclusion, however, claiming that "freedom can be seen to be intrinsically, not just instrumentally, valuable. ... But none of these perfectly reasonable claims is of the right type to justify the position that the fundamental concern of justice is to provide freedom and not achieved good." In my view, living an autonomous life (or living a "free" life) *is* the achieved good.

view, is one that is reflective of the agent's genuine conception of the good.<sup>24</sup> This view explains and supports the judgments Nussbaum herself relies upon in clarifying and defending the capabilities view. For instance, the autonomy view best explains the cases in which Nussbaum herself declares that functionings, rather than capabilities, are important to enforce. Nussbaum says that in children, for instance, functionings are crucial because they are required to produce adults who can possess the ten basic capabilities. Furthermore, even in adults, certain basic functionings are required because

Even where adults are concerned, we may feel that some of the capabilities are so important, so crucial to the development or maintenance of all the others, that we are sometimes justified in promoting functioning rather than simply capability, within limits set by an appropriate concern for liberty. Thus most modern nations treat health and safety as things not to be left altogether to people's choices: building codes, regulation of food, medicine, and environmental contaminants, all these restrict liberty in a sense. They are understood to be justified because of the difficulty of making informed choices in all these areas, and the burden of inquiry such choices would impose on citizens, *as well as by the thought that health and safety are simply too basic to be left entirely to people's choices...*<sup>25</sup>

But a strong and plausible explanation for why health and safety are too important to be left to people's choices is that health and safety are things that radically affect the possibility of living an autonomous life. It is *autonomy*, rather than mere capability, that explains Nussbaum's quite sensible judgments in these cases. Take Evel Knievel. Given the capabilities approach as stated by Nussbaum, it would surely be unjust for political institutions to enforce a safety norm against Knievel. Indeed, Nussbaum makes this quite clear: "I do not favor policies that would make unhealthy activities such as boxing, unsafe sex, football, and smoking illegal, although education about risk seems to be highly appropriate, and the infliction of harm on others ... could rightly be penalized."<sup>26</sup> However, Nussbaum does insist on enforced safety in some cases - but her own view on this matter supports the *autonomy* view, rather than the capability view. Her examples

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<sup>24</sup> "Autonomy" is a term with a long history and therefore indeterminate reference. My use of the term is to some extent technical, though it explains Nussbaum's concerns plausibly. Autonomy, in my sense, is living a life that one values living in light of one's conception of the good.

<sup>25</sup> *WHD*, 91, my emphasis.

<sup>26</sup> *FJ*, 171.

clearly involve cases in which the loss of safety is, for most people, a hinderance to the achievement of their conceptions of the good (building codes, food, medicine, etc.). For Evel Knievel, on the other hand, his safety risk is the product of his autonomy - it is part of a life he values living. This thought also explains the requirement of functionings for children. Without certain functionings Nussbaum describes, children cannot live autonomous lives. In addition, the autonomy view adequately explains Nussbaum's support of educative policies: without clearly understanding the risks of, e.g., smoking, it is implausible to think that one could make a genuinely autonomous choice to smoke. Education is required in bridging the gap between agents' actual choices and agents' conceptions of the good. Once the proper level of education is provided the choice *can* plausibly be described as autonomous.

Thus, it seems to me, Nussbaum's motivation for *Capabilities Not Welfare* boils down to an insistence on autonomy - construed as living a life that conforms to the agent's conception of the good - rather than non-autonomy (or *best* boils down to autonomy). But this is a theory of welfare, and a plausible one. In the face of such an account of welfare, capabilities are an idle wheel. The insistence on an autonomous life can give precisely the answers Nussbaum requires: living a good life does not require sexual satisfaction if it is not part of a life one values living. From the point of view of autonomy, forcing someone to achieve such satisfaction would be bad indeed.

Nussbaum would insist, however, that such a welfarist account is incomplete *without* insistence on capabilities. Even if the religious faster prefers not to eat, political society owes him at least the *capability* for adequate nourishment. I am suspicious. Political institutions should not be obligated to grant capabilities to people that they would not use and do not value. This is *especially* clear in cases where granting capabilities would be costly. Assume that A is missing only the capability for adequate nourishment. Assume B has all ten basic capabilities and then some: a heightened education, opportunity for play, etc. B values these additional capabilities and makes use of them. However, in order to grant A the capability for adequate

nourishment, you must strip *additional* achievements from B - stripping him to the bare level of the basic minimum. This, I think, is a plausible result *only if* the capability for adequate nourishment is something that A actually values as most do. But assume that he is a religious fanatical. Nussbaum's view would require that we strip all additional capabilities - which are actually being made use of and are enhancing the life of B to grant the capability for adequate nourishment to A, who does not value them and would not make use of them. This implication is unacceptable. Insisting on the capability, even when this capability would have no effect on the extent to which A might live a life he values living, is fetishistic.

## 2. *An Alternative Proposal*

The difficulties confronted by Nussbaum's capabilities approach are instructive. In designing an alternative, I seek a view that will avoid the problematic implications of Nussbaum's five elements. Thus one way of introducing my understanding of the basic minimum is to contrast it with the elements of Nussbaum's approach. I reject *Inviolability*, *Expansive List*, and *Capabilities Not Welfare*. I keep *Guarantee* (though modified). My account of the basic minimum will not commit me on *No Trade-offs*.

I think Nussbaum's account accurately captures the interest in a basic minimum. A basic minimum, on the most general intuitive level, is supposed to be a living standard below which no citizen in good standing<sup>27</sup> should be allowed to fall. If so, the very *idea* of a basic minimum seems to imply *Guarantee* - no society could be said to take a basic minimum seriously unless there were some sort of guarantee involved for citizens. If there is such a basic minimum, there must be some sort of assurance on the part of political agents to citizens. Of course, what *kind* of guarantee this is makes all the difference. In the previous section I criticized Nussbaum's exceptionally strong *Guarantee* as failing in certain crisis cases, or in cases in which failures of the basic minimum cannot be avoided. Rather than merely admitting that these are tragic, she

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<sup>27</sup> Things that might hinder a citizen's good standing are, e.g., imprudent or irresponsible behavior - failures of the basic minimum for which they are directly responsible. I will remain neutral on this clause here.

insists that they are failures of justice. We should not follow Nussbaum. Rather, we should admit that sometimes basic minimum failure is unavoidable. Of course, this might seem merely semantic. But even if Nussbaum is right and failures of the basic minimum in any case are failures of justice, we need some sort of practical guidance that Nussbaum cannot supply. Instead, we should insist that political society *maximize* the achievement of the basic minimum.

Maximization need not presume consequentialism. An alternative specification might be to simply suggest that the maximization of the basic minimum is one deontic rule among others. This would leave the adoption of other elements of Nussbaum's account, e.g., *Inviolability*, open. There could be a set of rules with an associated priority rule: *Inviolability* plus *Guarantee*, with *Inviolability* taking priority.

Though this possibility is open and has distinct advantages over Nussbaum's approach, I resist this way of characterizing the basic minimum. One, though by no means the only, reason is that I find *Inviolability* implausible in cases such as the flood case I presented in §1.2. I prefer instead to insist that *Guarantee* is the crucial rule in this case. Greater achievement of the basic minimum takes priority. Thus, I believe that the most perspicuous way of characterizing the basic minimum is as a feature of a teleological account of political morality: the achievement of the basic minimum is a feature of states of affairs that has dominant priority in value. In seeking to maximize value, one should maximize the achievement of the basic minimum. (This framework also leaves open the possibility that my account of the basic minimum will accommodate a wide range of construals of the value relation, i.e., that the dominance of the basic minimum is not quite *lexical*. In other words, it leaves open the suggestion that in certain cases the basic minimum could take a back seat to massive benefits to persons either above or below the basic minimum - if such a suggestion is in fact justified.)

This characterization gives a plausible answer in cases in which not every person could be assisted to the basic minimum. My view suggests that (in virtually all cases) the best overall state of affairs is the one with the greatest achievement of the basic minimum. Consider again the

following example. Imagine that two persons (A, B) are below the basic minimum, only one of whom can be brought *to* the basic minimum. My view suggests that it is a requirement of justice that one or the other be assisted. This may require sacrifices on the part of A for the sake of B's basic minimum achievement.

This suggestion worked against Nussbaum. If A and B in the status quo both possess *nearly* all basic capabilities, it would surely be implausible to strip one to bare human subsistence to allow the other some set of seemingly minor capabilities that *both* lacked in the original. Why is my view not committed to a similarly problematic conclusion? After all, *Guarantee*, as I interpret it, merely suggests that the basic minimum should be maximized. Like all basic minimum views, this will require upward distribution. But my view, unlike Nussbaum's, can embrace upward distribution. The implausibility of upward distribution depends in large measure on how high the bar is set for the basic minimum. In Nussbaum's case, it is implausible simply to insist on *Guarantee*, because when it is combined with *Expansive List* it yields the remarkably implausible conclusion that some persons should be stripped of everything to assist others in getting minor benefits (or, at least, minor in comparison). But we can and should reject *Expansive List*. With a less expansive basic minimum, it is much more plausible that in some cases, those who have the opportunity to reach the basic minimum take distributive priority against those below the minimum. But I have not yet explained what, on my view, the basic minimum is. This is the project of the next section.

### *2.1. Minimal Autonomy*

Recall my account of welfare suggested in §1.3 - the best life for an agent is the autonomous life: one that is structured by the agent's basic values and commitments. I begin with that account of welfare - it seems to me to respond to worries that trouble Nussbaum in a clear and plausible way. Though there are additional virtues of such an account, I leave to the side the all-things-considered justification of an "autonomy" account of welfare; it seems to me that such a theory accomplishes the goals I set for this paper: articulating a plausible basic minimum.

However, autonomy, strictly speaking, is indeterminate. Living a life one values might require expansive resources, achievements, and social expenditures of other sorts. Surely *that* could not form a basic minimum. But this problem arises even in the case of non-expensive tastes. It would surely not be the case that I am the author of my own religious practices if I have only one option for religious worship. In fact, even if there are several options for religious worship, there might still be a legitimate question about my authorship of my own religious practices. If my preferred religious observance is Hindu, but there do not exist facilities available for Hindu worship, the religion I actually practice might not be consistent with my conception of the good. If so, one might think that in order to be autonomous there must be a range of available options including (perhaps) the one I prefer. If I prefer to be a revered painter, but have to instead settle for being a thankless middle-school art teacher, can it really be said that I am autonomous? And if not, does the *basic minimum* really require that I become a revered painter?<sup>28</sup>

It seems to me that living a *fully* autonomous life does require access to an extremely wide range of options - living a life one most values living. There is a sense in which many people, though they are living lives that are assuredly above the minimum, might nonetheless justly complain that the life they led was not all-things-considered valuable. Given this, very few, if any of us, live *fully* autonomous lives. But autonomy as concerns the basic minimum is something far more basic. Rather than suggesting that someone must be the author of his or her life in every dimension, someone must merely possess *minimal* autonomy, or must have exercised *some* choice and agency in the long-term direction of one's life. My account of minimal autonomy here will be somewhat sketchy, though hopefully sufficient to convey the intuitive idea. No one is minimally autonomous if they are unable to exercise long-term control over the plans and projects of their lives. One must live a *life plan*. By "life plan," I mean something somewhat different than Mill: I do not believe that one is required to robustly plan one's activities in the *ex ante*. On my view, there are two requirements for minimal autonomy. First, one must avoid

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<sup>28</sup> I owe a debt to Erin Kelly for pushing me on this point.

having the activities of one's life dictated or handed-down.<sup>29</sup> This is best expressed with an options constraint: a life that fulfills the basic minimum must be open to the agent from some range of options. Second, the life one actually leads should be expressive of an agent's conception of the good. It need not fulfill all aspects of this conception of the good, or even most. It is enough that the life the agent chooses reflects an agent's conception of the good by containing at least some global project or activity (i.e., not simply momentary<sup>30</sup>) that forms part of a life an agent values living.

Though my account is not precisely isomorphic to Mill's account, it is in the same ballpark. The major difference, of course, is that I do not require robust planning in the *ex ante*, which Mill appears to require. My account here is intuitive: it is plausible to believe that an agent could live a life dictated entirely by the winds of fortune and pass the basic minimum, so long as that life was available from some range of options, and that life reflected in some way or other a life the agent *would* value living (given her conception of the good). However, Mill's strictures against a life of "ape-like" imitation are given a plausible interpretation here: the life lived must be found in the *agent's* conception of the good - it must be a life that the agent herself endorses (at least to some minimal degree).

Minimal autonomy rules out paradigmatically awful circumstances. Crippling destitution, for instance, unacceptably limits people's options - it stunts the ability for people to select *this* life plan, rather than *that* life plan. When one's deliberations are taken up with

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<sup>29</sup> This modification is meant to accommodate Rawls's sensible suggestion, made in part III of *A Theory of Justice*, that: "The hypothetical nature of the definition must be kept in mind. A happy life is not one taken up with deciding whether to do this or that. ... With great luck and good fortune some men might by nature just happen to hit upon the way of living that they would adopt with deliberative rationality. For the most part, though, we are not so blessed," (Cambridge, MA: Harvard University Press, Rev. Ed., 1999), 372.

<sup>30</sup> By "global" and "not simply momentary" I mean something like a valued plan, project, or activity that tracks an agent's life through time - being a philosopher, say, or maintaining a successful love relationship. See, e.g., Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), 497; Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), ch. 12; T. M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1999), ch. 3; Simon Keller, "Welfare and the Achievement of Goals" in *Philosophical Studies* 121 (2004); J. David Velleman, "Well-Being and Time" in *The Possibility of Practical Reason* (Oxford: Oxford University Press, 2000), ch. 3.

acquiring the next meal, for instance, this is incompatible with minimal autonomy. The direction of one's life is handed down externally: the activities of one's life are determined just by what would procure the next meal. Furthermore, at least some level of basic education is required (though it does not require expansive education); without any level of education or ability to confront the world and think critically, no autonomous choice about the sort of life one would value leading *in* that world is possible. Minimal autonomy does not guarantee all features of a life that an agent would find valuable. But it does guarantee that the values of agents are to some extent represented in the lives they lead: they are lives that reflect at least some global element of an agent's conception of the good.

Thus there is only one element of my account of the basic minimum and it is not expansive. Spelling out the basic minimum in this way shows why keeping *Guarantee* at the expense of, e.g., *Inviolability* or *No (interpersonal) Trade-offs* is ultimately plausible. *Guarantee* requires downwards redistribution, i.e., requiring those who are better-off to benefit those who are below the basic minimum and see to it that they achieve the basic minimum. However, *Guarantee* also requires upward distribution. In cases in which one person who is below the basic minimum could bear a burden in favor of those who could achieve it, this is justified. And this is much less implausible with a less expansive list. In effect, the basic minimum as I define it is quite low-level. And if so, it is plausible to believe that the "upward distribution" implication of *Guarantee* is not as implausible in the case of a basic minimum set at minimal autonomy as it might be in the case of a basic minimum set at, e.g., Nussbaum's ten basic capabilities.

Given my account of the structure of the basic minimum, the value of a minimally autonomous life is prioritized: it always achieves a better state of affairs to increase the number of minimally autonomous lives if one can. (*Modulo* the suggestion that the dominance of minimal autonomy is not lexical, which I leave open here.) This account suggests that a minimally autonomous life is a guarantee, but that the possession of it is not inviolable; furthermore, the issue of trade-offs does not arise: there is only *one* feature of the basic minimum (i.e., minimal

autonomy). In addition, the list is not expansive; though some of Nussbaum's capabilities will be required to live a minimally autonomous life, others will not.

### 2.3. *Objection: Too Low*

Minimal autonomy, as I understand it, is a pretty low threshold of welfare achievement. One need only have lived a life available from options, and composed of some global element of the agent's conception of the good. It might be objected that it is, in fact, too low. Political societies are obligated to guarantee citizens more than just this. Consider, for example, diverse capacities for religious worship or for lasting relationships and interpersonal bonds. Clearly these are parts of a minimally decent human life. Anyone who had no capacity for religious worship, or who was simply unable to form lasting bonds with fellow humans is in a sorry state indeed. Why not include these capacities along with whatever else might be granted by achieving minimal autonomy?

My response to this objection is to note that nothing about my account of the basic minimum requires that there is no governmental obligation to provide citizens additional benefits, including benefits that appear on Nussbaum's list. Most of these elements, for most people, will form part of a life they value living. Enhancements to one's autonomy in the form of the greater capabilities are certainly part of an adequate account of political morality. In fact, one might think, it is plausible to believe that their achievement should be distributed in a way that grants priority to the worst-off, such that whenever they can be granted at a cost to someone above them, they should be (at least in non-extreme cases). But I am thoroughly unwilling to accept what including these capacities as part of the basic *minimum* would require. Imagine that you could get one person this more expansively autonomous life only at the cost of someone else's minimal autonomy. I submit this choice would be unjust.

Whenever we can, we ought to grant the most extensive features of good human lives, which surely requires many of the goods to which Nussbaum points. But recall, the difficulty with Nussbaum's account of the basic minimum was not that her capabilities were not good for

the person who possessed them (at least in most cases). Rather, suggesting that this set of capabilities captured the basic minimum was too extreme. This view did not license trade-offs that should be licensed, and it allowed (indeed, required) trade-offs that seem implausible. Distributing these further goods according to the priority for the worst-off would provide the sought-after implication, without committing the view to the absurd implications of such an expansive basic minimum.

But there is a further reason why setting the bar as low as minimal autonomy might be thought implausible. Nussbaum's view, though fraught with difficulties *below* the minimum, gives at least a plausible-sounding answer above it. If the basic minimum is dominant, this will involve resource distributions from the better-off, perhaps in some cases extremely costly distributions from the better-off, perhaps even reducing them to the point at which they are *just above* the basic minimum. This is far more plausible when there is a higher minimum than when the minimum is set as low as minimal autonomy.

What to do? If this objection is correct, it seems as though virtually *any* account of the basic minimum must confront serious intuitive difficulties, either above the line or below. The costs and benefits thus must be weighed. However, I offer the following thoughts in favor of a lower basic minimum. It is worth asking, as one sets the basic minimum high or low, who is favored by such a decision? Clearly, as one sets the bar higher, the better-off are benefited. Not only are those who are *above* the basic minimum benefited (because they are given extra assurance that they will not suffer the fate of a lower basic minimum), but the best-off among those who are *below* the basic minimum are benefited (with a high basic minimum there are now *more people* who could not obtain it, thus increasing those who are subject to upward distribution for the benefit of those higher up). Furthermore, in setting a basic minimum high the worse-off are harmed. Assume that A could have achieved minimal autonomy, but could not have achieved a higher basic minimum. A now must face the prospect of upwards redistribution for persons who are already better-off - *including* persons who already maintain minimal autonomy. This

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

Perhaps this conclusion is less plausible when the number of better-off is multiplied. Perhaps many better-off must be lowered to mere minimal autonomy for the sake of A. I offer the following ecumenical suggestion. I claim that the number of the better-off might make a moral difference and in such a case the achievement of the basic minimum could be outweighed. For the purposes of this paper, I need not insist on the *absolute* priority of the basic minimum. Nevertheless, the argument I provided above details some reason for preferring the implausible conclusions of a lower level basic minimum to the implausible conclusions of a higher level basic minimum. Preference should be granted for minimal autonomy, especially given the plausible suggestion that a life of one's own choosing is a reasonable approximation of one's basic human dignity.