

Disadvantage, Capability, Commensurability, and Policy

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In their excellent book *Disadvantage*, Jonathan Wolff and Avner de-Shalit (hereafter: the Authors) state that their aim “is to provide practical guidance to policy makers by providing a version of egalitarian theory which can be applied to actual social policy.”¹ This is a worthy project and their execution of it is full of insight. However, I doubt that they succeed in fulfilling their stated aim.

1. The assumed convergence. Their starting point is that a wide range of disparate, broadly egalitarian social justice principles applied to the circumstances of contemporary developed societies “appear to converge on the same general policy prescription in the short to medium term: *identify the worst off and take appropriate steps so that their position can be improved*” (p. 3). The Authors identify advocates of the following principles as converging on the stated prescription: those who believe that social arrangements ought to bring it about that the condition of people should be made equal, “those who think there should be absolute priority for the worst off, those who think there should be some sort of weighted priority for the worst off, and those who think that what matters is that each should have enough (what are called ‘sufficiency

¹ . Jonathan Wolff and Avner De-Shalit, *Disadvantage* (Oxford: Oxford University Pres, 2007), p. 3. Further references to this book will be by way of page numbers enclosed in parentheses in the text.

theories’)” (p. 3). My perhaps fussy response is that I don’t see any reason to discern this convergence of different theories on the same policy prescription. One who favors making the condition of people more nearly equal will be looking for feasible ways to compress the overall distribution; focusing on the very worst off may or may not be a good strategy depending (inter alia) on how easy or hard it would be to improve the relative position of the very worst off. One who favors weighted priority will be looking for ways to make people better off, so that the weighted priority total of whatever-makes-people-better-off rises as high as we can make it. The very worst off may or may not loom large in this effort, depending on what can be done for them at what cost, compared to what can be done for others already better off. One who favors getting as many people as possible to the sufficient or good enough level may do best by her lights by concentrating efforts on those who are close to the threshold and ignoring worse off people who are not going to be able to cross the sufficiency threshold in any event. If instead sufficiency is understood as requiring giving greater priority to achieving gains for people, the worse off they are, with strict priority given to achieving gains (or preventing losses) for anyone below the sufficiency threshold in competition with all those past it, we then have a qualified weighted priority view, and again no special reason for exclusive or dominant focus on the very worst off. Of all the supposed participants in Authors’ egalitarian consensus, only those who give absolute priority to the worst off (leximinners, in other words) actually should be expected to join in. Others will resist to varying degrees.

2. The value of the project. This quibble does not lessen my interest in Authors' project, which might be characterized so: If we use the Amartya Sen-Martha Nussbaum capability framework to identify how well off or badly off someone is, and if we give priority to achieving improvements in the condition of the worst off people, what social policies should we adopt?² This is a tough intellectual challenge, and making progress toward answering it, as Authors undeniably do, is of great interest. Committed leximinners will learn what they are committed to. The rest of us, uncertain what the correct principles of social justice actually are, will be helped to think more clearly about what practical policies we find acceptable and for what reasons, and will thus be helped along from a state of theoretical confusion to something a bit closer to the wide reflective equilibrium we seek.

3. Who is worst off? Problems of commensurability. How do we tell who is worst off, or should be counted as a member of the broad group of the worst off? The Authors have interesting ideas. They start with a list of basic functionings close to a well-known set developed by Martha Nussbaum. They roughly accept the idea that the relevant measure of being badly off is the individual's capabilities to achieve these basic functionings; their version of this idea, in capsule form, is genuine opportunities to achieve secure basic functionings. Almost all of these basic functionings are multi-

² See Amartya Sen, *Inequality Reexamined* (Cambridge: Harvard University Press, 1992); also Martha C. Nussbaum, "Aristotelian Social Democracy," in *Liberalism and the Good*, ed. R. Bruce Douglas, Gerald M. Mara, and Henry S. Richardson (New York, Routledge, 1990); Nussbaum, "Women and Cultural Universals," in her *Sex and Social Justice* (New York and Oxford: Oxford University Press, 1999), pp. 29-54; also Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge: Harvard University Press, 2006).

dimensional, so there are difficulties about how to weight the scores an individual has the opportunity to achieve on each of the dimensions to yield an overall score for that functioning. Let's simplify by supposing we can nonarbitrarily generate a ranking of the members of society on each basic functioning, so that for that functioning, we can say who is best off, second-best-off, and so on, down to worst-off. Still the question remains: who is worst off overall? If the policy of a just state should be oriented toward alleviating the plight of the worst off, we first have to be able to identify that group.

It might seem that Authors are committed to the claim that there cannot be any answer to that question beyond dominance: if someone is worse off than everyone else on some dimension or dimensions of assessment, and at least as badly off along every other dimension of assessment, the person is unambiguously worst off. In all other cases, we could single out a worst off person only if there is a correct weighting scheme that attaches weights to every basic functioning (or dimension of assessment), such that for any two individuals whose scores on each basic functioning are given, we can compute each person's overall basic functioning score and determine who is worse off. This would be a solution to what Authors call the Indexing Problem. I suppose this means the numbers assigned to each person would be interpersonally cardinally comparable.³

Authors say this cannot be done; there are several components to the decently good life and it is not the case that for a given loss in one component, in principle compensating

³ Cardinal interpersonal comparison might be limited, and leave zones of indeterminacy of comparison. For two goods X and Y and a given numerical measure of each, we might be able to say only that if someone gets more than 100 units of X, that is better than getting one unit of Y, and if someone gets less than five units of X, that is definitely worse than getting one unit of Y. In the range between five and 100 units of X, the comparison to one unit of Y is indeterminate—neither better nor worse nor exactly the same.

gains in one or more other components could offset the loss, so the person is no worse off with the loss plus the compensation than she would have been absent the loss and the compensation. (“In principle” allows that we might not actually be able to provide the compensation—e.g., the number of licks of ice cream that would compensate me for the collapse of all my friendships might be greater than I could amass in several lifetimes.) To repeat, Authors assert this cannot be done. As they say, “Pluralism [which they accept] is simply the doctrine that different disadvantages are incommensurable.”⁴ This should be the end of the story.

However, Authors go on to discuss how to commensurate the incommensurable. They say somewhat coyly, “there is a sense in which insisting on incommensurability is a type of philosophical indulgence which is all very well in the seminar room, but very obstructive outside, given the practical problems governments face” (p. 97). I’m lost. If a certain kind of comparison or assessment of values cannot be made, then it cannot be made anywhere, and politicians and citizens should be told there’s no sense in trying to square the circle.

Authors suggest and reject one possible end run around this problem: define a good enough level for each separate basic functioning and declare the minimal goal of justice is to get each and every person, so far as this is possible, to the good enough level for every basic functioning. The Authors raise difficulties for this sufficientarian

⁴ . For the record, pluralism versus monism does not seem to me to determine a view on commensurability. Suppose there are plural goods and no overarching good that incorporates both. Why isn’t it possible still to say, given a set amount of one good, there will be combinations of other goods that are definitely superior or inferior, that is, more or less valuable than the set amount of the first good? The goods differ in value or goodness and can be compared as better or worse, even there is no further type of good or supergood in addition to the set of plural goods initially postulated. This view may be wrong, but is not an incoherent nonstarter.

proposal with which I have sympathy. However, in one way their treatment of this sufficientarian proposal seems unfair. They go on themselves to propose that we can in a manner of speaking or to a certain extent solve the indexing problem by in effect taking a democratic vote. Ask every citizen to make up a weighting system and insofar as there is overlap among everyone's weightings, extend the dominance ordering by treating as among the thousand worst off persons, say all those whom every citizen using his or her weighting system would rank among the thousand worst off. (Amartya Sen proposes something similar.) But then why can't we beef up the sufficientarian proposal in essentially the same way? Against this, the Authors say, "The attempt to avoid a weighting leads to an implicit assumption that all categories—or at least all threshold points on all categories are of equal importance; an entirely arbitrary principle smuggled in without justification" (p. 93). But the democratic vote version of sufficiency need involve nothing of the sort. Take a putative list of basic functionings and ask each citizen to set a threshold for each functioning such that any person's achieving a threshold on any functioning on the list makes an equally important contribution toward that person's attaining a minimally decent life. If the citizen cannot carry out this exercise for all functionings, because some are judged to be too trivial, reduce the set of functionings that are to be counted as basic so the exercise can be completed by that citizen. Then see if there is any overlap or broad similarity in the set of threshold levels for functionings regarded as basic by the citizens.

I myself do not believe that if you are skeptical about commensurability, you should be able to ease your skeptical doubts by consulting the results of a vote on commensuration by all citizens. This to my mind no more settles the issue what is more

valuable than what a democratic vote would settle the justice of a proposed war, the moral acceptability of racial or sexual discrimination, or more generally the moral status of any disputed issue. To be fair, what Authors actually propose is not merely a democratic consultation procedure, but something they call Complex Evaluation, which includes the democratic consultation procedure plus a dose of philosophical advice and maybe expert polls of some sort, mixed together in a stew. I don't see how what they end up with can seem in any way theoretically satisfactory, and they don't seem to insist they have a theoretically satisfactory response to the Indexing Problem. What is puzzling is why in that case they like the practical guideline they go on to affirm. How one can provide a practical down-to-earth guideline (which they try to do by successive simplifications of their Complex Evaluation) unless the practical guideline is developed as a proxy for a theoretically satisfactory (if not practically implementable) solution?

Just to indicate my skepticism about democratic consultation in this context: I would put more credence in a single expert's considered proposed solution of the weighting problem after ideally extended consideration of the arguments and difficulties that bear on the issue, than in an aggregate vote of the citizenry. The "expert" is someone who combines expertise in practical reasoning, in moral philosophy, and in the social sciences that contribute to our understanding of advantage and disadvantage in human life.

4 Who is worst off? Ignoring nonbasic functionings. Authors' general strategy for identifying the least advantaged group is flawed. The problem with the Authors' approach is not inherent in the capability approach they favor, but only in one

specific, problematic version of that approach. The opportunities to function in valuable ways on which authors focus, following Nussbaum's elaboration of the full set of basic capabilities, consist of elementary and fairly low-level achievements. Having some education appears on the list, but not gaining the comprehensive theoretical knowledge of what causes what in the universe that understanding of fundamental science involves. Excellence of achievement in sport, creative cultural expression, scientific discovery, the management of complex enterprises, and the like do not appear on the list, nor do establishing and sustaining excellent friendships and personal relations and deploying judicious judgment and exquisite skill in caring for dependent others. But if one is going to give priority to achieving improvements for the worst off, one needs to be able to identify the worst off, and in principle shortfalls in basic functionings can be offset and overridden by high marks in nonbasic functionings. A person may be in bad health, lonely and lacking in supportive social networks and affiliative ties, unable to secure normal enjoyments and felt satisfactions from one's activities, but still not plausibly regarded as overall among the worst off or near the worst level of well-being, because she has modest scores on many further nonbasic functionings or perhaps some excellent achievements.

There is a further important reason to have the social justice measure of people's condition sweep broadly to encompass all of their functionings of any significance, basic and nonbasic. This is so for the reason that even if a person qualifies as disadvantaged in virtue of her especially low scores on a few very basic dimensions of functioning, perhaps the particular six the Authors specify to be most important, in some cases the most useful intervention to improve the person's well-being level may not touch any of

the person's severe disadvantages but instead ameliorate his condition by improving his functioning in some area in which he is already doing quite well. Suppose I am a grouchy and cantankerous person, mired in alcoholism, with few social contacts, lacking stable employment, in chronic poor health, homeless, and forced to make do with unstable low income. However, I am a talented poet (though my poetry is not potentially lucrative). You can see where this is going. We can flesh out this story in plausible ways so that improving my condition by lifting any of my severe disadvantages would be pretty much hopeless. My condition is intractable, except that I am currently morose and not applying myself productively to poetic creation, but with aid and encouragement, I can be encouraged to devote myself anew to my craft, with the result that I write and publish some excellent poems, give some poetry readings that are well received, and establish significant though prickly relations with readers who appreciate my literary work. In the case as I am envisaging it, facilitating my creative achievement over the course of my life to rise from very good to excellent is by far the most effective way to (help me) improve my life significantly.

The example may seem irrelevant to any feasible administrative practice. Maybe, maybe not. Perhaps intractable and difficult cases of overall personal disadvantage call for individualized modes of treatment. The difficult case is assigned to a case worker who is encouraged to think outside the box and is authorized to initiate any of many kinds of intervention. At any rate, we need to separate cleanly the issue, what the principles of social justice require, and the further issue, what are the best strategies and tactics for fulfilling these requirements as best we can.

A theory of justice that gives special priority to improving the condition of the worst off needs to attend broadly to advantage as well as disadvantage, people's nonbasic capabilities as well as their basic capability levels, in determining who is really worst off. Same goes if we are identifying those below sufficiency and committed to helping all subthreshold folk get to the threshold.

5. Amending the capability framework. The Authors propose to amend the capability approach.⁵ In their preferred formulation, disadvantage is “lack of genuine opportunities for secure functionings” (p. 182). One has a genuine opportunity for a functioning to the extent that one can get the functioning by a course of action it would be reasonable (not too costly or difficult, not too costly in terms of other functionings that would have to be foregone to get this one) to take. Their other innovation is the idea “that a further essential compounding aspect of disadvantage is that an individual's functionings are or become insecure involuntarily and in a manner which other people do not have to experience” (p. 14).

I don't see the merit in the proposed revisions on the straight capability approach. On Sen's view, the capability to walk down a city street at night and thereby to incur a significant risk of being criminally assaulted is different, and less valuable, than the capability to walk down a similar street without any such risk. Sen's view already incorporates the dimension of assessment the Authors want to add. More generally, the capability approach can and should acknowledge that the opportunities that make up a

⁵ . Authors suggest adding certain items to Martha Nussbaum's proposed list of basic functionings necessary for a decent life. I don't comment on their discussion of this suggestion.

person's capability set include not only choices that will lead certainly to given goods but also choices to gain lotteries that involve prospects for gaining packages of goods or packages of goods and bads.

Moreover, just as one's capabilities according to Sen include not only open options to choose whether or not to get a certain good functioning but also a certainty or chance of getting a good unmediated by any choice on one's part, so too the Senian set of capabilities an individual faces may include either the certainty or some chance of suffering a bad functioning unmediated by any choice on one's part. Being poor, I may be effectively confined to living in a neighborhood in which I face a high probability over time of being victimized by crimes of varying severity. This bad aspect of my condition appears to be the type of scenario that is prompting the Authors to revise the capability approach. So far as I can see, the straight Senian approach already registers adequately what the Authors suppose will not register adequately without tinkering with the account.

According to Sen, a person's capability is the vector of functionings which are available to her. The vector consists of sets of functionings, any of which one might choose. (Some of these functionings will be unchosen—for example, in a society that has eradicated malaria, any set of functionings one opts for will include not becoming sick with malaria.) So far this assumes choice under certainty, but the framework surely can be expanded to include choice under risk and uncertainty.

What Authors are trying to capture by insistence on "genuine" opportunity is also already incorporated in the basic Sen framework. If my choice of a decent, meaningful job involves lower wages and a long commute and hence less time to spend with my family and less overall purchasing power, these costs of this job choice will be reflected

in the relevant capability sets.⁶ Authors write, on p. 77, “It is not acknowledged as often as it should be that capability theory, or any opportunity theory of distributive justice, is under-specified until it is settled what exactly is required for people to exercise their opportunities.” What they have in mind is that it might be correct to say I have an opportunity to get to Paris in a wide range of circumstances: (a) I can get to Paris if I spend my life savings and expose myself to a dread disease or (b) I have a nontradeable free plane ticket to Paris and can get there without incurring any significant cost or (c) any of many intermediate scenarios. Authors are worried that “having an opportunity” is too vague. But any opportunity approach including Sen’s already solves this vagueness worry by insisting on clear specification on what exactly it is I have an opportunity to do or be.

In my view neither of the two main amendments to the capability approach that the Authors propose—formulating the justice goal as gaining for individuals “genuine opportunities” for “secure functionings”—is well motivated. Authors suggest, but do not so far as I can see do not ultimately endorse, a different proposal, for which I have some considerable sympathy. This is that what we ultimately ought to care about, and what should be the measure of someone’s condition for purposes of social justice, is the lifetime valuable functionings she achieves. (Being free to choose matters insofar as it has a constitutive or instrumental impact on functionings.)

⁶ . On p. 64 Authors acknowledge that the Sen framework does incorporate the concern they are trying to capture with their notion of “effective opportunity.” They then say this “seems to render the idea of capabilities problematically complex for public policy.” I’m lost here. I thought we were discussing what we should ultimately care about. This is a distinct issue from the question, how can we achieve what we should ultimately care about.

On this point I find Authors' position had to pin down. They say at one point (p. 37) that "the point is not only to create opportunities for the sake of creating opportunities, but to allow for the fulfillment of a life worth living, a good life." The first half of the sentence suggests that creating valuable opportunities for a person—expanding her capability—is not per se morally desirable, but on the capability approach, just this must be regarded as per se morally desirable, the essence of justice. The second half of the sentence seems to take back this thought—after all, if the point is to ALLOW for the fulfillment of a good life, then we should acknowledge that an individual can be allowed a good life, enabled to attain a good life, and then the point of justice is realized. So does capability matter per se or not?

In the next chapter, Authors ask "what motivates the shift from achieved functionings to capabilities," and cast doubt on some responses that have been offered to support taking provision of capabilities to be the core justice requirement. They then deny "that achieved functionings should be the sole measure of well-being," instead we should recognize the great importance of "the freedom to sustain functionings." Hence the focus on opportunities for secure functionings in their favored canonical formulation of what justice demands in this connection.

If a functioning, say good health, is had for a time, then lost, this will show up in the person's lifetime inventory of achieved functionings. So emphasis on the significance of *sustaining* functionings does not provide any reason to shift from taking achieved functionings to be the currency of justice, the measure of a person's condition.

Moreover, the Authors' discussion of secure functionings flirts with an idea I regard as incorrect—the idea that suffering a risk of harm should per se count as suffering

a harm. A risk of harm is not a harm, not automatically and necessarily any loss of well-being. If my neighbor wrongfully imposes risk of harm on me, say by playing with powerful explosives in his basement, but I never learn of the danger, and in fact no explosion occurs, I have not been harmed, have not suffered any loss. The assessment of my achieved functionings, the good or bad quality of my life, should not result in a lowered score in virtue of risks of harm imposed on me that do not actually give rise to any harm. The Authors mention the horrifying example of poor honey gatherers in parts of Southeast Asia who can gain their livelihood only by subjecting themselves to large risks of being eaten by tigers. But the disadvantages the honey gatherers suffer will show up in an inventory of lifetime achieved functionings. Those who are killed or mauled by tigers suffer horrible loss of functioning. Being fearful because one faces high risks of death as one goes about one's daily job is also a significant loss of functioning. The inconveniences and burdens one imposes on oneself in order to reduce the risk of being eaten by tigers also show up as significant lowered functionings. But the sheer risk of suffering harm is just that, a risk of suffering harm, and not itself a harm. (If historians determine that the overall risk of all-out nuclear war between the U.S. and the U.S.S.R. between 1950 and 1989 was much larger than anyone had hitherto realized, we do not then conclude that we must subtract this additional risk of great harm from the lifetime well-being totals of the citizens of the U.S. and U.S.S.R and others who would have been injured or killed had such a catastrophe unfolded.)

To be fair, Authors are interpreting the concept of "disadvantage," not the concept of "well-being." Also, they want a notion of disadvantage applicable to a person who has not already completed her life, and for which something to improve it might be done. So

overall lifetime well-being is not the measure we seek. My response is that if one wants to consider the general situation in which we assess the condition of a person who has attained certain functionings up to now and has various chances of gaining further functionings depending on how she chooses to act and further good or bad luck that might befall her, we should take account of her chances of gaining any and all functionings she might get, not only a limited set of basic ones. (A further question that arises here is how, if at all, a person's eligibility for compensation or aid from others diminishes to the degree she departs from the most prudent course of action she might take and does not instead choose a virtuous [reasonable, altruistically imprudent] course of action. See section 7 of these comments, on "responsibility.")

The Authors propose that the measure of well-being that is appropriate for social policy choice specifies for each individual and each basic functioning both the functioning level in that category and "the person's current power to sustain that level of functioning should they attempt to do so" (p. 73). This formulation still appears to be noncommittal on the "capabilities or functionings" issue. Notice that a straight capability approach, assessing my capabilities now, will acknowledge that my capabilities to function regarding my past collapse into my actual functionings, since I can't change the past. Moreover, a straight achieved functionings measure, assessing my lifetime condition while my life is still ongoing, will include in its assessment the likelihoods that I will attain various functionings in future. Moreover, on either a capability or an achieved functioning approach, why focus exclusively, so far as my future is concerned, on my opportunity to sustain basic functionings securely should I choose to do so? Surely less than certain likelihoods of gaining future valuable functionings should count

for something in assessing my present condition (and in determining whether I should count as overall disadvantaged, among the worst off). And I am not sure why a theory of justice should count my condition as acceptable given that if I chose a certain course of action, I would end up with a full roster of secure basic functionings. Maybe in fact I am set on not following that course of action, and it might be either reasonable for me not to do so or not very blameworthy for me not to do so. So maybe I am still owed compensation despite my having genuine access to secure basic functionings. This takes us to the responsibility issue, about which, more in section 7.

6. Narrow focus on high-weight basic functionings. The Authors quite reasonably are not willing to be constrained by the theoretical predicament on commensurability to which their arguments have led them. They deny that the various components of the good or minimally good enough human life can be given nonarbitrary weights so that one can say, for any two people with any scores on each of the various components, which one is worse off overall. However, their theoretical conscience is at odds with their common sense belief that we do after all have reliable hunches about who are the truly disadvantaged. My own response is that the best weighting scheme we could devise would be loose and baggy, and would allow for some objectively ascertainable judgments that some are worse off than others and many situations in which our limited commensurability gives out. The limits to commensurability surely are partly epistemic (and might partly be overcome through further thinking and careful observation informed by that future thinking) and I suspect are partly limits in principle, there being

no evaluative fact of the matter, in many cases where we might want to reach a comparison, as to who is really worse off all things considered.

The Authors press ahead with a practical guideline that they think has merit, even though they do not claim a theoretical, principled anchoring for their rough test. Their proposal is to reduce the Nussbaum list of basic functionings to a very few high-weight functionings. Using this reduced list, one then looks to identify individuals who are very badly off, by comparison with others, on all of the high-weight functionings. These roughly qualify as the least advantaged. And a practical policy guide follows in the wake of this practical measurement suggestion: Bring it about that these individuals who are in the worst off category (broadly and somewhat arbitrarily defined) in every high-weight functioning be brought significantly above that worst-off level in at least one of these functionings. That is, boost individuals' functionings in such a way that no one is worst off or near to worst off in all of the high-weight functionings. Having done this, we will have created a social world in which no one can be unproblematically identified as worst off, and we will thereby have made significant progress toward a society of equals.

My own responses go in just the opposite direction: not to pare down the set of functionings to be employed in the exercise of identifying the worst off even more narrowly than the list of basic functionings, but rather to look at people's scores on all functionings that might reasonably be thought to matter, basic and nonbasic alike. Setting this point aside, and following Authors' lead, I find I have a seat-of-the-pants hunch that is different from theirs. I don't pretend my seat-of-the-pants hunch is better than theirs, but then I am not sure why any such hunches—yours, mine, theirs, or anybody's-- really can be offered as philosophical advice to policy planners.

A crucially important functioning is described as “Life. Being able to live to the end of a human life of normal length” (p. 38). If one lowers the bar, and takes the relevant functioning to be “avoidance of very premature death, prior to adulthood,” my intuition is that attaining this functioning very nearly trumps all else. If someone scores extremely high on all of the basic functionings but dies say at age ten, the person’s lifetime well-being is very very low. I would suppose almost any amount of very bad scores over the course of one’s life on all other functionings attained by a person who also lived well into adult years would still yield a life higher in value and rationally to be preferred to the life of the person who is fortunate up to age ten or so but then dies abruptly. Only a life of close to normal lifespan burdened by severe chronic untreatable pain, extreme cognitive impairment, or an inability to experience the simplest quotidian pleasures and fellowship, would rank below the life cut short in infancy or childhood. Roughly, death in infancy or childhood is the worst that can befall one (unless one’s adult life would be just unremitting pain and none of the simplest adult fulfillments).

Hence if we accord strict priority to improving the condition of the worst off persons over the long run, we should channel available resources toward avoiding anyone’s death in childhood and infancy. We could not ever achieve the goal of ensuring that everyone lives at least into adult years, but we could continually make progress toward that goal, and there is virtually no end to the amount of productive resources that could be devoted to this project while continuing to see gains, perhaps very small gains, with further resources deployed. That policy would be roughly the public policy dictated by the goal of making the worst off members of society as well off as possible. The

policy does not sound normatively attractive to me, but that simply reflects my non-leximin moderate prioritarian views.

7. Responsibility. In chapter 4 of *Disadvantage* the Authors take up an aspect of the topic of responsibility in its bearing on distributive justice. What they have in mind is the degree to which the priority or moral urgency that attaches to the task of bringing about improvement in the condition of a badly off person varies with the extent to which the person himself has brought about his present predicament by his voluntary action. To put the question another way, is society under a less stringent duty to bring it about that I get another chance for a good life, if I have already had a first good chance and misused it—or a second chance? A third? A fourth? A fiftieth?

The Authors pour cold water on the idea that any feasible government policies we could devise could nonarbitrarily separate the deserving from the undeserving poor and the deserving from the undeserving rich and accord differential ideally fair treatment to all four groups (much less to a larger array of groups identified by more nuanced distinctions). Their discussion on this issue is brisk but reasonable. I would put the upshot as follows. One point is that the question is not really to what extent my own voluntary choice has placed me in my current plight, but the moral quality of my choices. A second point is that the assessment of the moral quality of my choices involves both (1) to what degree my actions are appropriately oriented toward the right and the good and also (2) given the extent to which my actions meet, exceed, or fall short of the relevant standard, to what degree am I praiseworthy or blameworthy given this performance. Given a public announcement of a standard, a government agency might reliably discern

the extent to which an individual has satisfied the standard, but the fine-grained evaluation of praiseworthiness and blameworthiness requires detailed knowledge of the interaction between a particular person's psychology and her circumstances. This involves seeing into someone's soul, and government agencies, to understate the point, can't do this effectively and shouldn't try.

The Authors need to distinguish two issues more sharply than they do. One issue is whether it is intrinsically morally more valuable to help the deserving rather than the undeserving poor (and to require sacrifice from the undeserving rather than the undeserving rich), and whether it would be a good idea in practice for government policies to be responsive to this intrinsic value (if such there be). On this issue, I see the Authors joining forces with egalitarian theorists, who have argued, against conservative social theorists, that there is no reason to think that thinking through the intrinsic moral importance of deservingness and its relevance to social policy provides any grounds for stingy policies toward the poor.

Another quite different issue is the degree to which there is instrumental value in adopting social policies that hold people responsible for their actions in the sense of setting incentives so that they are likely to be better off if they conform to uncontroversial norms of social duty including duties of prudence and worse off if they do not conform. The idea is that by holding people responsible for their actions in this way we bring it about that our justice values are achieved over the long run to a greater degree than they would be if we held back from holding people responsible in this sense. Is this true or not, in the actual circumstances in which social policy choices must be made?

The answer to this question strikes me as very likely to be an important determinant of the correct answer to the question the Authors are pursuing—how to develop a version of egalitarian social justice theory suitable for practical social policy guidance. Yet Authors pretty much ignore it. Notice that if you answer the question about deservingness and intrinsic value with a resounding NO, that still leaves wide open the question, whether holding people responsible in various ways (or for that matter treating them as if they were undeserving) might result in better outcomes over the long haul as assessed by appropriate social justice standards.

The conservative critique of U.S. welfare policy by Charles Murray and others is harder to dismiss when posed as an instrumental question.⁷ Responding to Murray, the liberal social policy analyst Christopher Jencks asserts in his own voice that the liberal social coalition that controlled U.S. social policy from 1964 to 1980 “often rewarded folly and vice, and it never had enough confidence in its own norms of behavior to assert that those who violated those norms deserved whatever sorrows followed.”⁸ I hear these words as raising the instrumental issue: If you don’t hold people responsible by penalizing them for behavior in violation of social norms of personal responsibility and self-help, the result is that they don’t help themselves, and end up worse off than they would have been if your helping hand policies had not been in place.

Think of this issue in the first person. As a middle-class university professor, my life is hemmed in by a complex web of rules and norms linked to carrots and sticks that guide my behavior toward the straight and narrow. If I fail abjectly in my duties toward

⁷ Charles Murray, *Losing Ground: American Social Policy 1950-1980* (New York: Basic Books, 1984).

⁸ Christopher Jencks, *Rethinking Social Policy: Race, Poverty, and the Underclass* (Cambridge, MA: Harvard University Press, 1992).

students, I get fired. If I don't stay intellectually active, I don't get pay raises. If I behave abusively toward my wife, she divorces me. If I exploit my friends, they withdraw from me. If I break the law in a serious, felonious way, my life is ruined. In the first person, I'm glad I face unforgiving rules with swift and harsh penalties for noncompliance; they help me to live decently and avoid making a mess of my life. Jencks and Murray ask, then why should I support for the poor and needy a flexible, forgiving regime of rules that sharply compresses the gap between the rewards for behaving well and the penalties for behaving badly? I wouldn't want this for myself, so why should I want it for others?

As should be obvious, these are not merely rhetorical questions. They introduce many hard issues. For starters, individuals have different capacities to respond rationally to incentives, and the people who have worse capacities (cognitive, affective, volitional) to choose well tend to be clustered among the worse off among the worse off. This means that in many areas of social policy, well designed rules that penalize antisocial and imprudent behaviors tend to work to the benefit of those who respond well to the incentives and to the disadvantage of those who do not respond well. However, many of those who do not respond well are people with poor capacities to respond well, and these will tend to be among the worse off fraction of the worse off. To some extent one can alleviate this problem by designing policies that treat these two groups of people differently, but often separating policies are either unfeasible or undesirable (they can carry a high stigma cost, for example). One can try to tweak the policies to minimize the bad effects and boost the good effects, but often these efforts cannot do much to alleviate the basic hard choices. Often policies that are good for the many are bad for the worse off among the many, and policies that target the worse off can be good for the better off

among the worse off and bad for the worse off among the worse off. The issue is then continually raised, as a prioritarian would see it, how much moral priority should we assign, to gaining benefits and avoiding losses to someone who is especially badly off, within this range of disadvantage?

In an insightful study of the social problem of teenage pregnancy and welfare policy as it existed in the U.S. prior to welfare law reform, Kristin Luker effectively argues that many poor teenaged women who choose to have babies and go on welfare are not behaving badly according to reasonable ethical standards.⁹ They have few educational and labor market options, and their circumstances include a culture that makes it hard for young women to insist steadily on practices of effective contraception with their sexual partners. If they get pregnant, many have religious objections to abortion, and anyway many find the prospect of caring effectively for a young child a project which they find ethically appealing and at which they think they can succeed. Luker argues that if we look carefully at the circumstances of choice, there is no particular reason to think such women are behaving badly or render themselves morally undeserving by their reproductive choices. But nothing in her argument really tells against the proposal that was actually adopted in the U.S. in 1996. Part of the rationale of the welfare reform change is that by making the option of becoming a teenage mother less attractive, poor young women would be encouraged to do what was really in most cases in their long-run self-interest anyway—refrain from teen-age reproduction. In fact, although sorting out the casual story is complex, there is some evidence that the changes in state welfare

⁹ . Kristin Luker, *Dubious Conception: The Politics of Teenage Pregnancy* (Cambridge, MA: Harvard University Press, 1996).

policy did contribute to the significant decline in teen-age pregnancy rates that we saw in the U.S. in the years just after 1996.¹⁰

Even if we count this as an unqualifiedly good effect, it does not follow that the welfare reform in the U.S. was morally justified. Women who are induced to postpone reproduction are made better off than they would have been had the change in law not been enacted, but women who do not are surely made worse off, so there seems to be a problem of assessing gains and losses that accrue to the better off and to the worse off among the broad worse off group. Same goes for policy changes that deny income support to poor mothers and press them toward engagement in the labor market—this will likely be good for the more competent who do well when pushed to seek paid work, and bad for the less competent who are more likely to do poorly at seeking and finding decent jobs.

My complaint in this connection against the Authors is that so far as I can see they do not engage this issue. I don't see how to formulate an egalitarian theory that can serve as a useful practical guide to policy makers and social planners without doing so.

Once again, my criticisms might seem to ignore relevant aspects of Authors' subtle discussion. Here, Authors wind up their discussion with this perhaps canonical formulation: "government support, when provided to individuals, should be provided on the basis of achieved (secure) functioning, rather than opportunity for functioning, except where an individual has unreasonably declined to make use of genuine opportunities" (p. 84).

¹⁰ . For some preliminary evidence on the effects of the 1996 measure, see Rebecca M. Blank, "Evaluating Welfare Reform in the United States," *Journal of Economic Literature* 40 (December, 2002), 1105-1166.

Here Authors seem to tilt in favor of taking achieved functionings as the measure (with a qualification). To motivate this suggestion, they ask, if we care ultimately about provision of a fair share of opportunities to people, would we not feel compelled to continue providing aid to people whose opportunities are meager but who by dint of extraordinary effort succeed in fashioning a better life for themselves than it would be reasonable to expect them to do? But we don't favor further aid to these high performers, so this shows that opportunities per se are not the relevant measure of people's condition for purposes of distributive justice theory.

My first comment is that if we separate the level of fundamental principle and the level of practical policy, nothing said in this book gives any reason that should budge desertitarians from their conviction that we do owe more to the more morally deserving among the needy. (For that matter, I think that at least in principle, justice should also favor the deserving well off over the undeserving well off; we very roughly might do that by taxing certain forms of unearned income more highly than forms of earned income). I concede that at the level of policy, there probably is not much we can sensibly do to distinguish the truly deserving from the undeserving among the worse offs and better offs. At any rate, this issue, should justice favor the specially deserving, is completely separate and independent from the capabilities versus functionings issue. More broadly, capabilities versus functionings is completely separate and independent from the issue, what line you should adopt on personal responsibility and its role in distributive justice.

A second comment here is that Authors need to say clearly whether they are addressing an issue of moral principle or an issue of practical policy guidance, presumably guided by fundamental principle. At the level of fundamental principle,

saying in effect that if people do not reasonably make good use of opportunities provided, they forfeit claims to further aid, raises anew the big question of moral responsibility that Authors claim to wish to set aside. To settle whether it is reasonable to expect me to refrain from heroin use and keep looking for a job when I have been unsuccessful after months of fruitless job seeking depends on what Authors describe as the “swamp” of moral responsibility questions. Having advised us to skirt the edge of the swamp, they propose a formulation that lands us smack in the middle of it.

On the other hand, if it is specified that we are talking about practical policy guidance, then I don't see why the question, would it have been reasonable to expect me to use the opportunities available to me more productively than I did, has any special status for what is owed to me by way of further compensation. Recall the poor teenaged women contemplating reproductive decisions as characterized by Kristin Luker. We might consistently say that it is not really reasonable to expect them to behave differently than they are doing, on the ground that their decisions to bear children while teenagers are either morally reasonable all things considered or at least nonculpable even if not morally reasonable. This leaves it entirely open whether it might nonetheless be morally right, at the level of policy, to hold these women responsible for their reproductive choices in the sense of not offering them compensation if they choose to undertake childbearing early, on the ground that this will result in better quality of life overall for poor women and their children, and more broadly for people as a whole (we get more human well-being fairly distributed according to prioritarian principles with sensible weighting).

8. How much priority for the worst off? By its very nature the capability framework calls attention to the way in which the particular traits and talents and disabilities of an individual in given circumstances combine with the resources the person commands to determine what real freedoms the person has. Same resources, different personal traits, different real freedoms. The unfortunate person who enjoys little real freedom may be unlucky in the resources he possesses or in the traits he has or both. A person with a low lifetime expectation of capability may then be someone who is a poor transformer of resources into capability. The question then arises whether the priority that attaches to providing benefits for the person because he is badly off diminishes because his capability score will rise only a little if he is provided the benefits. The Authors refer to this train of thought as the efficiency argument for withholding resources and other aid from the worst off. They are suspicious of this argument. I am not sure exactly what position they want to embrace, moved by this suspicion.

One danger they see is that if we relax our efforts to improve the condition of the very worst off on grounds of what they are calling efficiency it is very likely that callous attitudes will form toward the worst off, now left to languish in miserable conditions. At first the plight of the homeless and destitute troubles us, then, doing nothing about it, we quickly get used to it.

The Authors also note that if we are persistent and resolute in sustaining good faith efforts to improve the condition of the worst off, we may well find that we can figure out effective ways to boost their condition substantially at reasonable cost. Such

efforts might sometimes take the form not of beating our heads against the wall by continuing to maintain expensive programs that don't work, but of channeling resources into research that is designed to uncover knowledge that will enable us to design effective programs that target the most needy. Taking both points into account, we realize that we should never abandon the worst off in policy choice as the efficiency argument bids us to do.

The points the Authors make here may be sensible but do not touch the theoretical issue, what level of priority should go to the worst off, unless one couples to them the bald assertion that the very worst off should be accorded absolute priority in policy choice. If one is initially inclined as I am to reject the bald assertion, nothing in Author's exhortations gives one any reason to change one's mind. It's true that by dint of effort and imagination we might find effective ways of improving the condition of the worst off, but the same is true as regards the goals of improving the condition of the second worst off, third worst off, and so on up to very best off. The fact that we might do better to achieve our goals if we try harder does not tell what goals we should be striving harder to achieve. With greater investment in research, we may gain the knowledge we need to do better at fulfilling our goals, but again this point holds for just about any choice of goals and does not steer us toward any in particular and certainly not to leximin or to anything close to it.

The worry about becoming callous also strikes me as speculative and weak. Authors say, if we don't try to do more than we should toward the down and out, we might become callous, and end up doing less than we should. One could launch a similar worry against virtually any theoretically derived policy proposal. If someone proposes

new taxes on the rich to achieve egalitarian justice goals, a sage might worry that if we don't try to be nicer than we should be toward the rich, we might become envious, and end up being less nice than we should be. Such sagacious advice is relevant always, so tells against no type of policy proposal.

9. The shadow of global justice: Why should we care especially about who is worst off in one society? In conclusion, I note that a question the Authors purposely set to the side seems to me to overshadow their discussion. Their framework poses the question, what do we owe to the worst off, the truly disadvantaged, in our society? However, one might suppose that whether I am worst off, or second worst off, or in some other low position in an ordinal ranking for a single rich society is not so relevant to the question, what am I owed by way of distributive justice. The relevant question is, taking the entire set of persons whom our actions might hurt or help, how badly off in absolute terms am I? Perhaps I am worst off in a rich society but from a global perspective, my situation looks enviable. Or perhaps even if my condition still looks bad when my situation is compared to the situation of other badly off people around the globe, the moral urgency of bringing about improvements in my condition is not so great, because there are far more cost-effective things one can do instead to help distant needy strangers than to help me, a fellow member of your society close to home.

This point is not made in criticism of Authors' discussion. By design they do not address it. But notice that there are possible policies one might suggest to help say badly off low-skill persons in a contemporary developed society, that Authors refrain from considering—presumably because they would help the local needy who are insiders at

the expense of the distant needy who are outsiders. For example, one might propose protectionist legislation that preserves the jobs of low-skilled Americans and English people at the expense of needier job-seekers in China or Nigeria. Or one might close the borders of one's own affluent nation tighter, to preserve and enhance job opportunities for poor citizens, with whom even poorer immigrants would compete. Why not follow such policies? I presume Authors don't pursue such lines of thought because they have cosmopolitan sympathies. But when fully brought into view, the cosmopolitan assessment of social justice obligations might shove to decisively secondary or tertiary status the questions on which they do—insightfully and elegantly to be sure—confine their attention.