

## **The Capabilities Approach and Political Liberalism**

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Perfectionism in political theory has taken a beating in recent years in academic writing. The political perfectionist holds that it is morally acceptable and perhaps morally mandatory for the state to promote certain activities and conditions on the ground that the activities and conditions to be promoted are intrinsically valuable (Raz: 1986 and Wall: 1998). Prominent attacks on perfectionism proceed from ‘political liberalism,’ a doctrine associated with the later work of John Rawls (1996), which maintains that the exercise of state power is morally legitimate only if it is justifiable by appeal to principles that all reasonable citizens can accept, each from her own evaluative perspective. Since reasonable citizens will differ widely in their views about what activities and conditions of people are intrinsically valuable, a state that chooses its policies on perfectionist grounds will fail to be morally legitimate and hence will be morally unacceptable.

Elizabeth Anderson (1999), Martha Nussbaum (2006 and 2011; for criticism see Wall 2014), and others have developed theories of justice that conjoin the capabilities approach and political liberalism as just characterized. The core idea of the capabilities approach is that justice as a first priority requires that each person over the course of her life be provided continuous access to a set of basic capabilities that is sufficient according to some appropriate standard such as being a fully participating member of democratic society or enjoying an existence worthy of human beings. Very roughly, capability is real freedom: one has real freedom to get or achieve X just in case one has some

available course of action such that, if one chooses it, one gets or achieves X, and if one does not choose it, one does not get or achieve X. The capabilities approach is thought to be a good match with political liberalism, because all reasonable citizens can endorse, from their diverse and conflicting perspectives, the list of basic capabilities and the principle that justice demands that all citizens be enabled continuously to have access to them. The state eschews policies that insult or condemn any reasonable citizens' deep evaluative commitments and in this way enables all of them to relate as equals.

The question arises whether this marriage of the capabilities approach and political liberalism is a promising one or rather doomed to divorce. This chapter argues for divorce, but readers will have to judge the matter for themselves.

To put this another way, this chapter argues that the political liberalism approach is flawed. Its proposed constraint on legitimate public policies should be dropped. Embracing perfectionism, the capabilities theorist will be enabled to affirm more promising and plausible doctrines. So anyway I claim. This chapter ventures no ultimate verdict on the capabilities approach as such.<sup>1</sup> I tentatively suggest that capabilities are best regarded as opportunities for well-being, with 'well-being' objectively construed. To reiterate, this is a tentative suggestion. On the larger issue, political liberalism versus perfectionism, the reader will discern that plausibility considerations are adduced on both sides, and no knockdown argument known to this author demands a specific weighting or balancing of these opposed reasons.

### **Capabilities.**

Amartya Sen (1992) has suggested that an appropriate measure of a person's condition for purposes of a theory of justice is the extent to which she has real freedom or

capability to lead her life in ways she has good reason to value. If justice demands that each and every person has enough, the claim will be that the measure of what is enough is sufficient capabilities. Real freedom as we have defined it involves open options; if one has real freedom to get X, one can get X or not as one chooses.

Straightaway we should acknowledge a qualification. According to Sen a person's capabilities can include closed options. One may have the capability to live without being afflicted with malaria even though one lacks the option of contracting malaria if one chooses. Call these weak capabilities. One can treat them as enhancing the value of the full-blooded capabilities one enjoys, and take the latter as involving open options and as the social justice measure of one's condition.

Sen identifies a person's well-being with the quality of her achieved functionings, ways of being and doing. A person's real freedom or capability is constituted by the various combinations of functionings she can achieve. 'Capability is, thus, a set of vectors of functionings, reflecting the person's freedom to lead one type of life or another,' writes Sen (at 40). Capability can be measured at a time or over a period of time. Sufficiency capability justice requires that one be sustained at the sufficient capability level throughout one's adult life.

The capabilities to function one has consist of the combinations of functionings any one of which one will get if one chooses it. Suppose that if one were to choose ice cream one would get it, but one cannot choose ice cream (one suffers from phobia that blocks this choice). Strictly, one has the capability to achieve ice cream functioning, but this might seem capability in name only. To my mind the problem revealed here is not a minor puzzle but rather the tip of a large iceberg of complications.

### **A perfectionist capabilities doctrine.**

The term ‘perfectionism’ may be somewhat misleading, by suggesting that someone adhering to this view thinks people should always be striving for greater perfection or that the state should be trying to bring it about that citizens become ever more perfect human beings.<sup>2</sup> But becoming a more perfect specimen of one’s type might not help one attain greater well-being and might well detract from it. Well-being here is what a rational person seeks insofar as she is striving to be prudent, or in other words to bring it about that her life goes better for her rather than worse.<sup>3</sup>

The term ‘perfectionist’ might also suggest an elitist doctrine, which holds that only the most excellent human achievements have value and what the rest of us do or achieve could not count for much.<sup>4</sup> But one can hold that enjoying simple pleasures is intrinsically valuable and contributes to one’s well-being. Same goes for simple friendship. All that the perfectionism under review in this chapter is committed to is that some things are more objectively worthwhile than others and that the state has a duty to help us succeed in living lives that achieve genuinely worthwhile goods. Call this spare doctrine ‘common-sense perfectionism.’

For example, one might think that there are several distinct things that are in themselves good for anyone—pleasure or enjoyment, friendship and successful family ties, achievements in practical reason and agency, and specific achievements in sports, science, organization and management, creative arts, and so on, knowledge, and meaningful work. The more you get or achieve the good things, the better your life is going for you—the more well-being you have. In the same spirit, we can hold that that there are several things that are in themselves bad for anyone—pain, especially chronic

pain, along with other unpleasant mental states such as boredom and fear, making a ruin of friendship, love and family tie relations, drastic failures of knowledge including gross ignorance, confusion, and superstition, significant deprivations of liberty, perhaps severe physical injury and disease that block opportunities for significant goods. This list is simply illustrative, and anyway contains overlapping entries, so needs tidying up. The more you achieve the intrinsic goods and avoid the intrinsic bads, the better your life goes for you.

The objective list idea is in a nutshell that some things are in themselves or noninstrumentally good for any person, whether or not that very person desires to have those things or herself judges that they are valuable. And the same is true of some things that are in themselves or noninstrumentally bad. Some things are in themselves good and bad for you, regardless of your subjective attitudes toward those things. For example, if enjoyment is an item on the objective list, then getting enjoyment in itself makes my life go better, even if I (perhaps for silly reasons) believe that all enjoyment is worthless, and even if I (perhaps due to childhood indoctrination) do not desire enjoyment and do not seek it. If genuine enjoyment nevertheless falls into my life, the experience in itself makes me better off.<sup>5</sup>

Some object that achieving even excellent things might be good or admirable, but is not good for you unless your subjectivity engages positively in some way with the objectively valuable achievement. This thought motivates various hybrid views (see Kagan 2009, Adams 1998, Parfit 1984, Dworkin 2000). A generic version holds that nothing is in itself good for you unless it is both (a) objectively valuable and (b) subjectively desired or valued by you.

The common-sense perfectionist response is that what one wants may be out of line with what is valuable and what one believes to be valuable (or the opposite) may not really be so. Even after reflection, or with full information, this misalignment may occur. Granted, it would be better both to have the achievement and to be enjoying it, since then there would be the additional good of pleasure besides the good of achievement. But the rock-bottom objective list intuition is that the naked achievement without subjective affirmation still has value. Moreover, the perfectionist, who takes enjoyment to be one good among others, will value naked enjoyment even when it is linked to nothing objectively valuable. The experience of staring at mud might simply be pleasurable, and gaining this pleasure adds value to one's life, even if there is nothing in the slightest valuable about the mud or the staring at the mud. On this ground the perfectionist rejects hybrid views. But this rejection of the claimed requirement that what is good for one must engage one's subjectivity positively in some way is controversial, even if defensible, so wrapping this position in the label "common-sense-perfectionism" will perhaps strike some as presumptuous.

Notice, however, that the line taken by the perfectionist here chimes in with the broad capabilities approach. No capabilities theorist denies that providing people an important capability is worthwhile only on the condition that those who have the capability have positive attitudes to it.

Perfectionism then asserts that what in itself makes an individual's life go better for that very person is (1) getting or achieving the items on an objective list (2) that has several entries not just one. This objective list account (see Parfit 1984; also Arneson

2010 and 2016, and for excellent overviews, Bradley (2015) and Fletcher (2016). is a generic doctrine admitting many variations.

As described so far, perfectionist views can differ in their commitment to commensurability. Given a list of goods and bads, we can ask how well a person's life goes for her, for any combination of amounts of the various goods and bads there are that she gets over the course of her life. We can tackle this daunting question by ordinary reflective equilibrium methods. We reflect on a broad range of actual and hypothetical examples: would it be better for an individual to have one rather than another combinations of particular functionings? I assume that these methods yield very partial commensurability and that for practical purpose it may not matter whether the limits to commensurability are due to intractable epistemic barriers or the absence of any fine-grained metaphysical fact of the matter. We then end up with a measuring rod that is made of rubber but not indefinitely elastic. Some ways one's life might go would be better in well-being terms than others, and better than some ways other people's lives might go.

Common-sense perfectionism as so far characterized is still a sketch of a position. For clarity, further questions about structure would need to be answered. The simplest objective list view is structureless. It simply says, the more of the good things you get over the course of your life, weighted by their value, net of the bads you suffer, the better your life goes for you. One complication would hold that the distribution of the goods and bads one gets over the course of time in one's life also matters. Another complication would hold that one must have some specific good or goods on the list at some threshold amount, for one's life to be overall a good one. For example, one might

deny that the joyless life could be a good one, or deny that a life with too much suffering could be good overall, no matter how many other goods are packed into it. Another complication is whether only the total net sum of goods in one's life matters, or also the average amount of good per year. These questions about structure we set aside,

Common-sense perfectionism yoked to the capabilities approach gives an answer to the question: if justice demands that everyone have capabilities at or above a threshold 'good enough' level, what sets this good enough level?<sup>6</sup> Virtually everyone, even those intuitively leading very unfortunate lives, will have some capabilities that others lack. We need some rough measure of capabilities. Perfectionism supplies a measure.<sup>7</sup> One's capability set is good enough if and only if those capabilities give one a fair opportunity to lead a life that would overall and all things considered reach a threshold well-being level that we ought to deem sufficient. One has a fair opportunity to reach that good enough well-being level if and only if there is a way of living one could choose and maintain and that it would be morally reasonable (not too demanding) to expect one to choose and maintain, given the difficulty and suffering that would attend doing that, and given the obstacles that one's nonculpably acquired desires, dispositions, and beliefs pose to doing that.

*Objection:* This proposal abandons the capabilities approach and substitutes instead an opportunity for welfare approach.

*Reply:* The proposal blends the approaches. This arguably makes sense. Those pursuing the capabilities approach have been especially concerned to develop the idea of capabilities as workable, feasible guidelines for public policies and global justice initiatives.<sup>8</sup> The opportunity for welfare idea is pitched at a different level of abstraction,



and is intended to be a candidate fundamental moral principle, making no claim to be directly implementable. Individual humans are diverse, and their social environment is largely constituted by other people leading their own lives. Ensuring adequate opportunity for a decent life all is likely an elusive aspiration. Ensuring for all an adequate set of capabilities fixed to try to ensure adequate opportunity is a demanding but feasible goal. A good capabilities standard is a good practical proxy for an opportunity for welfare standard. (cf. Vallentyne 2005).

Amartya Sen, intellectual architect of the capabilities approach, sharply distinguishes it from welfarism. But welfarism here is the idea that the good for a person is constituted by her subjective preferences, perhaps idealized to some degree, or else that the good for a person so far as this is to provide a guide for laws and other public policies is constituted by her subjective preferences in some way. Welfarism in this sense is entirely opposed to the objective list idea of opportunity for welfare (or perhaps to avoid confusion we should say, opportunity for well-being). What Sen argues against, the objective list opportunity for well-being advocate does not affirm. In this respect at least, Sen and the objective-list advocate are comrades not enemies.

*Objection:* The perfectionist capabilities doctrine conflicts with the deepest and most compelling moral values of liberalism, reflected in Rawlsian political liberalism. In a nutshell, political liberalism demands that so long as a citizen is committed to supporting basic rights and freedoms for all, and repudiates the aim of imposing her controversial notions of the right and conceptions of the good on others, she is entitled to state policies that do not contradict or insult her own particular views about what is worthwhile and valuable in human life and what we owe to others. The capabilities

sufficiency doctrine fits hand to glove with political liberalism. According to this doctrine, each person is free to live as she chooses, according to her own values, respecting the freedoms of others. The just state ensures adequate capabilities for all, with capabilities understood in a nonsectarian way, not as pushing people toward particular functionings, but as ensuring real freedom for all. We can take the measure of adequate capabilities also to be nonsectarian and endorseable by all. This might be set as the overarching capability to be a full functioning member of a democratic society relating as an equal with other citizens, or alternatively we might take the discrete set of basic capabilities to constitute a capability for a decent life, a life worthy of human nature, according to all reasonable views. To be avoided above all is endorsement of perfectionist principles that justify using state power to promote ways of life that some citizens reasonably reject.

Reply: The remainder of this chapter explores this objection.

### **Political liberalism.**

The label “political liberalism” attaches to a movement of thought that stems from writings of John Rawls (1998) and Charles Larmore (1987 and 1996). There are many variants; for the most part we follow Jonathan Quong’s clear articulation (2011).

According to political liberalism, the exercise of political power is morally legitimate only when it is justified by principles that all reasonable persons subject to this authority accept. A morally legitimate government is one that rules permissibly, it does not do moral wrong by issuing authoritative commands to members of society and enforcing them. The idea of a *reasonable* person combines moral and cognitive elements. The moral component specifies that a reasonable person accepts that all

members of society have moral rights to basic liberties including wide freedom to live as one chooses, so long as one does not harm others, without interference by the state or fellow citizens. Also, a reasonable person does not seek to use state power to impose on others her controversial ideas of the good and the right; she wants to live with reasonable others on grounds all can accept. The cognitive component is not overly demanding. A reasonable person need not be fully rational or prone to make no mistakes. She is cognitively competent at an ordinary level, capable of engaging in reasoning and argument.

Quong suggests that the principles, compliance with which renders a state just, are set by discovering the best interpretation of the basic liberties, acceptance of which marks persons as reasonable. Accepting the basic liberties and noting that they are amorphous and need further interpretation, reasonable persons are thereby committed to accepting what are in fact their best interpretation. This suggestion avoids making the content of principles of justice hostage to the judgments of imperfect deliberators.

Martha Nussbaum introduces an important qualification into this picture. She proposes that the idea of the reasonable person be construed entirely in moral terms, as one who accepts the basic liberties on their best interpretation. She is concerned that if the politically liberal state is bound only not to impose views that are unwelcome to (cognitively) reasonable persons, some good citizens who are (morally) reasonable persons but happen to affirm patently (cognitively) unreasonable conceptions of good will be vulnerable to facing public policies that oppose their way of life. This outcome she takes to be undesirable, and construing the idea of the reasonable citizen entirely in moral terms avoids it.

Political liberalism constrains the characterization of the capabilities that are to figure in the capability sufficiency social justice requirement. These are understood as capabilities that any reasonable person should seek for herself, and be prepared to join with others to provide for all, to be able to make good use of the basic liberties that form the core of social justice. Or better, we should understand the basic liberties as encompassing an entitlement to real freedom along with formal freedoms, and the capabilities we must make available to all citizens are those that all citizens will see as necessary, keeping in mind that thinking about one's life as a whole, the capabilities one needs might shift if one's values and commitments shift. We seek a thoroughly nonsectarian capabilities ideal.

#### **A perfectionist complaint.**

The problem with a politically neutral capabilities doctrine is simply that it is by design blind to the possibility that people are leading avoidably bleak and miserable lives and would not register these bad quality lives as any indication of social injustice or a problem that ought to be fixed (see Raz 1984, Wall 1998 and 2014). If the demand of distributive justice is that all members of society are steadily secured access to the core capabilities at a threshold 'good enough' level, and the notions of core capabilities are diluted so that none could reasonably reject them, distributive justice according to the capabilities approach can be entirely fulfilled regardless of whether people's lives are good, bad, excellent, or hellish. This implies that distributive justice according to this version of the capabilities approach can be completely fulfilled even though everyone's lives are avoidably hellish. This also implies that in a society in which people's lives are going well, distributive justice according to this capabilities doctrine can require social

change in the name of justice that will predictably make everyone's lives go worse. Something has gone wrong. In this scenario our social justice yardstick is mismeasuring.

No fancy argument is required to show that the politically liberal capabilities approach has these implications. They lie on the surface of the doctrine, easily seen. Moreover, the advocates of a political liberalism position will view these implications as attractive, not disabling. This already indicates that some care will be needed to ensure that in this area of controversy, where opinions are deeply divided, discussion is not unfair to one side or the other.

There are two complaints against the politically liberal capabilities doctrine from the common-sense perfectionist standpoint. One is that this capabilities doctrine will not register subpar well-being opportunities as deficits on people's lives that cry out for assistance required by justice. Its measure of people's condition for the purpose of determining what we owe one another is flawed. A related complaint is that this capabilities doctrine will reject as unjust interferences in people's lives or as unjust transfers policies that plausible social justice principles should endorse. To assist people who lack adequate opportunity for welfare, sometimes we should compensate them by providing other benefits. In some cases we should subsidize desirable options to render them motivationally more accessible, or attach taxes or even criminal penalties to bad options to discourage people from choosing them. In some cases manipulative nudge policies or even coercive 'shove' policies are justified all things considered. The government's educational policies should tilt in favor of shaping people's preferences in ways that will redound to their benefit and especially in ways that will reduce the prospects of lives going disastrously astray.

Recall the context of the dispute. We are supposing that justice requires sufficient capabilities for all. The question is, what counts as sufficiency. Notice also, the dispute is not liberalism versus conservatism, or need not be that. We can frame the dispute as one between alternative versions of liberalism, perfectionist and politically liberal (antiperfectionist). Notice further, this dispute will not boil down to consequentialism versus nonconsequentialism in ethics (where the consequentialist holds that one morally ought always to do whatever would bring about best consequences). For purposes of this discussion we can assume that fundamental morality is nonconsequentialist, includes constraints and options. The perfectionist liberal will hold (a) that there is a beneficence component to fundamental morality, (b) that this component requires helping people attain adequate opportunities for well-being, and (c) that there is no valid moral constraint that so decisively forbids state policies that are nonneutral on the good as to render (a) and (b) otiose.

The advocate of an antiperfectionist capabilities doctrine might wonder what the fuss is about. When someone has access to a fully adequate set of capabilities, she thereby has a fair opportunity for achieving a good life. Why not?

This question merits exploration. One might suppose that the capabilities approach balances social responsibility and personal responsibility in an appropriate way. That is surely part of the motivation for focusing on capabilities rather than individual achieved functionings. It is simply assumed from the start that an individual might enjoy a just and fair and adequate share of capabilities, but decline to exercise them for reasons that are the responsibility of that individual, not properly the responsibility of society. The fact that an individual has ended up with hellishly bad functionings in all spheres of

life might just indicate that she has messed up her life, not that society has messed it up for her.

The inadequacy of this response shows up when we consider that in the counterexample under review, it can be stipulated that all of the people who have enjoyed fully adequate capabilities and ended up with bad quality lives reached those bad outcomes through no fault or choice of their own. Let us take it for granted that a morally sound capabilities doctrine will incorporate a morally sound doctrine of personal responsibility.<sup>9</sup>

A part of this doctrine will show itself in the irrelevance of the functionings that people reach in their lives (other than the functionings that are themselves parts or prerequisites of required capabilities) to the question, do they have complaints of injustice against the social order. Given that society provides me continuously throughout my adult life with adequate access to a fully adequate set of capabilities, whether I exercise the capabilities I have, and how I do so, and whether I take advantage of the access to capabilities I have been afforded, and how I do so, and hence what actual functionings I reach over the course of my life, is my responsibility, not the responsibility of society. This means that in the envisaged scenario the social arrangements have done enough for me, and the members of society have no further obligations of justice to take positive steps to improve my life. The outcome I reach is my responsibility in the sense that it does not arise via any failures by others to fulfill their social justice obligations toward me.

With all this on board, we can restate the problem for a politically liberal capabilities doctrine. It allows that a person might register as enjoying all the capabilities

that justice requires, yet lack a fair opportunity to lead a life that is a decently fulfilling life, one that achieves a threshold level of flourishing that satisfies a reasonable sufficiency norm. My life goes badly, and maybe hellishly badly, through no fault or choice of my own, yet the politically liberal capabilities doctrine fails to register this fact.

<sup>10</sup> Of course if my life goes badly, this will be literally traceable to choices I make that take me along a path to very poor functionings. But there will have been no course of action it would have been reasonable to expect me to take, given the ensemble of my circumstances, that would have led me to a decent outcome (or to a decent prospect of a decent outcome, if we are supposing that what social justice demands for each of us is provision of good enough set of choices under risk). My choices did not occur in a fair choice environment.

The preceding remarks may be too abstract to be persuasive, or even to give the reader an idea of what might be at stake. Consider some examples.

1. Sam is a righteous dope fiend. He is addicted to a “hard drug” such as heroin, and is not internally conflicted about his drug usage. He regards the life of the addict as worthy and valuable, and superior to forms of life that eschew the characteristic bliss of drug usage. He has ruminated and deliberated about these matters, but his thinking has been decisively shaped by peer pressure when he was a high school student and by his early experimentation and then whole-hearted embrace of a life devoted to drug sensations.

2. Sally is a Jehovah’s Witness and accepts, somewhat timidly, the church doctrine that prohibits blood transfusions as inimical to her salvation. She unfortunately suffers from a medical condition that requires surgery that cannot be done without blood



transfusion. Without the surgery, she will die young. She does not suffer from mental disease or mental incompetence; she is a sane adult of normal intelligence. Her parents were Jehovah's Witnesses, as were most of her family relatives; she attended religious schools from kindergarten to high school graduation.

3. Sarah leads a sedentary, unhealthy lifestyle. Active participation in athletics is no part of her life, though she has some interest in being a spectator at major sports events. She is inhibited from participation in sports by her correct perception that she has subpar native athletic talent and by her strong value judgment, shaped by the cultural glorification of sports stars and sports played at the highest professional standards, that klutzy athletic performance is silly and useless.

4. Jim is unmarried, and in fact utterly lacking in romantic fulfillment. He happens to be physically unattractive by any standards, and his discomfort with his physical appearance has contributed to the shaping of his personality so that his friends and acquaintances rate him extremely low in charm and offputting to any potential sexual partners, though he has some estimable talents and virtuous traits. His sexual and romantic ambitions are ordinary and unremarkable for young males; his stands out from others only in his complete lack of success in this domain of life, not just lack of comparative success but in absolute terms as well. Part of the problem Jim is experiencing in this domain arises from diffidence and lack of steady striving to obtain romantic fulfillment of any sort. He is discouraged by failure and by the prospect of continued failure. Plus, he has concocted an ideology that says romantic fulfillment does not matter anyway, and half-believes his concoction.

About all of these cases we should recognize that devising what if anything we owe to the persons in their troubling circumstances and what just social arrangements would be doing for them can hardly proceed along sensible paths unless we make controversial judgments about what kinds of lives are good for people and are willing to base policy choice on these controversial judgments. Eschewing controversial value judgments, we could arrive at sensible policy only by accident.

I don't say that arriving at correct (or even evidence-relative best) value judgments relevant to any of these cases (or many others we might confront) would be easy. Nor should we think that if we had the for sure correct value judgments about what are more and less valuable attainments in human life ready to hand, then arriving at defensible and fair public policies would be easy. The point is just that eschewing controversial value judgments amounts to giving up the hunt for fair and defensible public policy.

An issue that arises in all of the examples as posed is the degree to which an individual's voluntary choice, on the basis of her own considered values and preferences, to refrain from seeking a particular good, insulates society from responsibility for the resultant harm that consists in her failing to achieve the good. Sam, we can suppose, could choose to enter a rehabilitation program and wean himself from drug addiction. Sally could elect the surgery she needs to save her life. Sarah could start jogging. Jim could assiduously seek out opportunities to find mates, and might find some.

However, these courses of action are in a sense beyond the reach of these agents; their values and commitments oppose them. Making these choices might be impossible,

or if possible, so difficult to make that it would not be reasonable to hold the individual responsible for failure to make them. Real freedom is not freedom enough.

The political perfectionist holds that fundamental morality (justice) requires the state to promote the good and discourage the bad. Here's a sketch (see Raz 1986, Wall 1998 and 2014) of an argument that such promotion and discouragement is morally required.

1. Justice requires bringing about a fair opportunity for a good life for all members of society.
2. A good life for a person is a life high in well-being.
3. If government does not promote activities, conditions of persons, and ways of life that are in themselves superior to others, and discourage those that are in themselves inferior, some members of society lack a fair opportunity for a life high in well-being.
4. Justice requires that government promote activities, conditions of persons, and ways of life that are in themselves superior to others, and discourage those that are in themselves inferior.

If in actual circumstances government is inept or vicious and cannot be trusted to promote the good in productive ways, then it should not seek to do so, even in 1-4 are true. But in favorable circumstances, a government that is making progress toward providing adequate opportunities for all its members to lead good lives will seek to promote the good and discourage the bad.<sup>11</sup> Sufficient capabilities for all will be interpreted so that steadily possessing them gives all a fair opportunity for a good life.

The political liberal, advocating a capabilities approach that eschews perfectionism, will reject either premise 1 or premise 3 or both, and hence reject 4, I shall assume.

**Perfectionism, paternalism, and disrespect.**

Imagine a society that initially thoroughly conforms to some plausible nonperfectionist liberal theory of justice. The society, led by the state, protects the basic moral rights that liberal citizens possess. Now imagine that this state enforces laws that promote some controversial idea of human good. These might be coercive, for example, a criminal law prohibition on sale or purchase or consumption of certain dangerous recreational drugs. They might take the form of eliminating an option for choice, as would happen if the state deemed skiing on a certain mountain to be excessively dangerous and dumped radioactive material on the mountain so that everyone is deterred from venturing on it. The state might offer tax incentives or other manner of public subsidy aimed at encouraging people to engage in activities deemed intrinsically valuable.

Jonathan Quong (2011) has urged that any such policy will be morally unacceptable on the ground that it would be wrongfully paternalistic. He does not rule out the possibility that paternalistic state action might be justified in extreme conditions, as when the consequences of refraining from paternalism would be disastrous. But there is a strong moral presumption that paternalistic state action is wrong and unjust.

An immediate objection is that paternalistic actions are those that restrict someone's liberty for her own good against her will, and mild state action such as a subsidy that effectively lowers the price of opera tickets fails to restrict liberty and so

fails to qualify as paternalistic. But we might dismiss this objection on the ground that it presupposes an inadequate account of paternalism. There are various notions of paternalism used by political theorists and political commentators; it would be unfruitful to search for one correct definition of the term ‘paternalism.’ Consider this proposal: the essence of paternalism is an act by one agent that (1) aims to improve the welfare, interests, values, etc. of another agent with respect to some particular decision or problem that agent faces and that (2) is motivated by a negative judgment about the ability of the person being helped to make the right decision and carry it out successfully.<sup>12</sup>

Paternalism so understood is objectionable, at least when carried out by the state, because it is inconsistent with the free and equal moral status of the individual subjected to this treatment. In a liberal political theory each person has the status of free and equal citizen—free in that she has the capacity to understand and follow the reasons of justice that apply to her and the capacity to form, revise, and rationally pursue a conception of the good (of what is worthwhile and worth striving for and what she herself will pursue in her life), and equal in that all those who possess these capacities at or above a threshold level equally do so. So holds Quong.

According to this idea about what is at root objectionable about paternalism, noncoercive perfection-promoting policies aimed to improve people’s lives are appropriately classified as paternalistic along with coercive and other liberty-limiting paternalistic acts, because they all involve the state in making a negative judgment about citizens’ abilities to manage their own lives successfully. The state broadcasts the message regarding some citizens that they are incompetent and must be managed or manipulated in some way for their own good. If the government subsidizes opera-going

or enacts a sin tax on smoking cigarettes, by way of promoting the good and discouraging the bad, the motivation is that the relevant state agency judges that some people are prudentially defective, are unlikely to make reasonable choices about how to live, and are likely to make better choices if they are sweetened by state action aiming at just this result.

One might deny that state policies aimed to promote some good need be expressing any invidious judgment about one's fellow citizens whom the policy aims to help. Perhaps the state is encouraging people to sample this valuable good, without denying their competence to decide for themselves whether to pursue this good any further after sampling it. But the state acting in this way must be motivated by the thought that the individuals targeted for aid would not make competent decisions concerning what goods to sample if left to themselves. So just below the surface of its announced justification is a wrongful paternalistic judgment.

Another claim might be that some citizens, absent state encouragement, would be unable to afford the good that state promotes by subsidy. But if the concern is that citizens lack a fair share of resources, the nonpaternalistic remedy would be to improve the distribution of resources, and then let individuals to choose their own plan of life with the resources they foresee they will be able to gain without further state meddling.

Yet another claim might be that individuals are deemed competent to perceive what goods are worthwhile but predictably will be tempted to pursue lesser goods rather than greater goods and will succumb to weakness of will. But state policy motivated by this train of thought rests on the negative judgment about some citizens' competence, namely that they are afflicted with weakness of will.

Another claim would be that the state that promotes some good is providing an open option to citizens—take it or leave it. But provision of options to someone does not reduce the person's liberty, nor imply the person is incompetent to choose among available options. However, the perfectionist state that spends resources to provide otherwise unavailable options gets the resources from taxpayers. In effect, the state is coercively taking resources from me as a taxpayer in order to provide me some option those who control, state policy deem to be especially valuable for me. But why not let me keep my money and spend it as I choose?

A related claim would be that it might be that having an option available is a good for all in a group, whether or not they actually exercise the option. The existence of an option, for example to play soccer at a big neighborhood park, is a public good for those in the neighborhood, and hence might be subject to free riding if the good is provided by individual voluntary choice. The state might then implement policies that require all to contribute to the maintenance of the option, without being motivated by any adverse judgment about any citizen's competence to plan her own life and execute her chosen plan. The motivation is rather to keep people from unfairly free riding on the cooperative contributions of others.

This could occur, but might well be a rare outlier case. The argument does not apply to citizens if they do not value having the option available at all or regard it as a bad not any sort of good. The question is how much you would be willing to pay for the having the option available if it were the case that your contributing or not made the difference between the option's being present and absent. At any event, a state policy motivated by the desire to prevent free riding and assure that all pay a fair share of the

costs of goods that they value but that are unlikely to be provided absent government provision would not be a perfectionist policy. (The policy might be objectionable on other grounds, but not this one.)

We could put the general argument in these words:

1. The state is morally bound to accord its normal adult citizens the status of free and equal citizens.
2. If the state accords its normal adult citizens the status of free and equal citizens, the state treats those with the status as competent to manage their own lives.
3. Paternalistic action and policy carried out by the state treat some normal adult citizens as incompetent to manage their own lives.
4. Paternalistic action and policy carried out by the state fail to accord its normal adult citizens the status of free and equal citizens.

Quong's claim is that perfectionist political policies are paternalistic and hence presumptively wrongful because incompatible with treating the objects of paternalistic policy as having the status of free and equal citizens. His point is closely linked to a similar charge leveled by Martha Nussbaum against perfectionism in politics in her essay 'Perfectionist Liberalism and Political Liberalism.' She distinguishes reasonable and unreasonable citizens. Reasonable citizens are willing and disposed to treat fellow citizens justly, to respect their rights, to refrain from harming them wrongfully, to follow the rules of just institutions. Reasonable citizens do not seek to use state power to impose their particular evaluative or metaphysical outlook on fellow citizens. Reasonable citizens are then entitled to be treated as justice dictates, and importantly, to be treated with the respect owed to free and equal citizens. If the state promotes some particular



ways of life or conceptions of the good over others, the state treats those citizens with disrespect. To respect one's fellow citizens in a just liberal order involves giving them free space to pursue their own ideas of what gives value and confers meaning in life, without denigrating or disparaging their ideas and goals. Paternalistic policies such as subsidies to opera ineluctably establish two classes of citizens, the wise who incorporate opera into their lives and the foolish or incompetent who do not. The state ought not to be in the business of insulting any of its just members in this way. If some citizens are set against justice, committed to denying freedom of religion to some groups, or to wrongful discrimination against people of disfavored skin color, or the like, the state rightly condemns these views and those who promote them. But favoring the opera fans over the wrestling fans or fans of any other life plan however grim or threadbare it might strike the rest of us is treating adult human agents as second-class citizens. Again, this is incompatible with treating all with respect as free and equal citizens.

Borrowing from John Rawls, one could say the just state is under a stringent duty to maintain the social bases of self-respect for all its citizens. To have self-respect is to have confidence that the goals one seeks are worthwhile and one is competent to pursue them. State action that criticizes or disparages some fundamental beliefs of some citizens in the name of improving their lives is failure properly to maintain the social bases of self-respect. It is not that the state should carefully assess everyone's capacities to run their lives and somehow be guaranteed to find everybody's abilities always to be fine. The state should refrain from such particular assessments, refrain from assessing anyone's particular agency capacities and basing policy on such assessments.

Notice that the special requirement to refrain from paternalism as characterized here or to refrain from executing policies that imply or assert criticism of citizens' cherished views and conceptions about how to live applies to the state, to us acting collectively through the state, and to public officials carrying out state mandates. No such requirement applies, or at least not with such stringency, to people interacting as private individuals. In this connection Quong notes that a friend may know another friend very well and be in a position perhaps to make fine-grained assessments (without intrusive violations of privacy) of the person's competence and act on some particular judgment of deficit without calling into question the person's status as free and equal person generally competent to run his life. But state laws and policies are blunt instruments, so inevitably in acting paternalistically the state would be taking wide swipes at people, treating them as incompetent on the basis of very limited information about their qualities. Nussbaum makes similar remarks. The issue of whether to criticize a friend's views arrived at in the course of his search for meaning and fulfillment in life is always a delicate matter; there will be pros and cons that take great sensitivity and wisdom to evaluate. But the state must act on the basis of general information and statistical trends, and the state lacks the opportunity for judicious assessment that a private individual might possibly be in a position to make.

Moreover, state actions carry a weight of official judgment that is not conveyed by a friend advising a friend or criticizing him or even manipulating him for his own presumed good. The state claims to be acting in the name of all of us and ought to be making that claim when it acts. So official state judgments rating conceptions of the

good, and thus rating the persons who are adherents to low-ranked or disfavored views, are subordinating and status-lowering in a way actions by private individuals may not be.

To this point in this section, the discussion has tried to articulate sympathetically the political liberal anti-perfectionist stance. The standpoint now shifts, and the discussion focuses on asserting what strike me as good perfectionist rejoinders.

*In reply:* The perfectionist can respond to these arguments by pointing out that according to the Rawls-inspired idea of what it is to have the status of a free and equal citizen in a just society, state action that is paternalistic in the sense of implying a negative judgment of the ability of the person who is the object of the state action to conduct herself competently and effectively in the situation is not inconsistent with acceptance of that status. One can coherently say both that someone is a free and equal moral person and that this person is not fully competent for handling the type of decision problem that is the occasion for the state action. So in the argument stated above, premises two and three are flawed and the conclusion does not follow.

For one thing, competence is not all or nothing. Living well is a demanding task, calling for many kinds of competence, each of which any given person has to varying degrees. One can have well above whatever is the threshold level of ability to be just and identify what the good is that should qualify one as a normal adult person and still be deficient in some domain, in some contexts, with respect to some relevant capacity. So it is implausible to hold that state action implying a negative judgment of one's ability to cope with some decision problem or type of situation has to be insulting and a denial of one's status as free and equal.

The facts that competence is multi-faceted and its attainment is hard and deficiencies are widespread do not constitute a license allowing the state to engage in paternalistic action and especially paternalistic restriction of individual liberty on slight grounds. There are many reasons to be wary of paternalism; see pertinent writings of J. S. Mill (1978). But paternalistic state action is not per se wrongfully disrespectful, a denial of a status to which every sane nonfeeble-minded adult person is entitled.

Quong points out correctly that state laws and public policies are blunt instruments, so paternalistic laws and policies will be blunt instruments. He thinks this strengthens the case for the presumptive wrongness of paternalism (see also Patten 2012).

We should disagree. Consider a paternalistic law forbidding the recreational use of certain dangerous drugs such as methamphetamine. The law will be based on statistical generalizations regarding the risks that agents of various types will face in the environments they are likely to encounter, and generalizations regarding the mood enhancing and energizing effects of such stimulants, and some weighing of costs and benefits. The overall judgment that emerges will be fallible and even if correct, will not be to the effect that each and every agent whose freedom to use is restricted by the law is better off for the restriction. So the message the law conveys is not that necessarily, anyone who wants to incorporate usage of this drug into her life must be making a mistake.<sup>13</sup> The law is a blunt instrument. If the law is a good one, then even if you are a person who would be better off with no prohibition in place, the cost to you is sufficiently offset by gains to those who would use to their detriment, so the law is not unfair all things considered even if disadvantageous to you. Not does the enactment of a

prohibition suggest that restricting individuals' freedom to choose for themselves is not undesirable; if the law is justified, that consideration has been accorded its proper weight.

Our status as free and equal moral agents and citizens has to be understood as compatible with the variable deficiencies in our abilities that bear on our capacity to identify and follow the right and the good. Making adjustments in our treatment of fellow citizens, when acting through the state, in line with these deficiencies, does not per se deny the dignity and worth that is conferred on each of us by having agency capacity at the threshold level. Either (1) paternalistic state action (according to the Shiffrin-Quong conception of it) does not per se constitute an insult to any citizens' status as free and equal or (2) if we construe the idea of an insult to status in such a way that any paternalism is per se a status-denying insult, then we should say that sustaining one's status as free and equal in this special sense is not a requirement of justice. On the contrary.

### **Religious toleration and neutrality on the good.**

Political liberals tend to regard antiperfectionism as continuous with religious toleration properly understood. The state should be neutral in its treatment of opposed religions and sects, and for the same reason should be neutral in its treatment of controversial conceptions of good and their advocates. Martha Nussbaum states that when state policies are based on doctrines your reasonable conscientious ethical beliefs reject, you are being relegated to 'a position of second-class citizenship.'<sup>14</sup> To clarify, state enforcement of fair principles of justice that are opposed by citizens holding unreasonable conscientious beliefs, such as conscientious racists, would not be denying the first-class citizenship status of those who chafe at the enforcement, or at least would

not be wrongfully imposing second-class status on anyone. A reasonable citizen is committed to treating others fairly and decently in ways specified in core liberal doctrines; beyond that, one's aims in life and doctrines one affirms, rational or irrational, are one's private concern and do not impugn one's entitlement to reasonable citizen status. Establishment and implementation of state policies that are justifiable if at all only by appeal to controversial conceptions of good convey the message that those who accept disfavored conceptions of good have lower status. Such wrongful state action she labels 'expressive subordination'; this is 'subordination that consists in being publicly ranked below others.'

Favoring one religion or sect over others commits the wrong of expressive subordination and amounts to state establishment of religion. Favoring some controversial conceptions of good over others that qualifies as expressive subordination is effectively a form of religious establishment and wrong for the same reason: 'it offends against the equality of citizens.'

*In reply:* The political perfectionist has an alternative understanding of the equality of citizens. On this view, each citizen equally has a right to a fair opportunity to achieve a genuinely good life, one with adequate well-being. Since individuals will often have, to varying degrees, through no or slight fault of their own, motivations and beliefs that prevent them from having this fair opportunity, what we owe one another can require challenging their current convictions and ambitions, and either working to alter some of their current motivations or providing compensation for the well-being deficits they will tend to generate. The two understandings of the equality of citizens are incompatible. In

some likely circumstances fulfilling one violates the other. We must choose one or the other (or perhaps seek yet another alternative).

In the same spirit, the political perfectionist has an alternative understanding of the moral requirement of respect for persons. Attributing to each person an underlying commitment to live in accordance with good reasons, not merely her particular current opinions as to what are good reasons, respect for all persons as equals is compatible with acting toward them in ways that presuppose that their convictions about how to live are mistaken. Acting toward a person on the basis of evidence-relative correct perceptions of their actual traits and circumstances is never in itself wrongfully disrespectful, even though such treatment might be disturbing to the recipient and perceived as insulting.

The essential problem with Rawlsian political liberalism is that the requirement that the state act only on principles that all reasonable persons accept is unduly strict and constraining. Since according to the Rawlsian the reasonable person need not be fully cognitively reasonable and making no errors, the lower the cognitive reasonableness bar is set, the more the constraint blocks one from basing public policy on doctrines that are evidence-relative right even though controversial. This flaw is not eliminated by dropping the cognitive element of the idea of the reasonable person as Nussbaum suggests.

Notice that the political liberal is pressed by her premises to distinguish sharply between basic ideas of the right and ideas of the good. The political liberal stipulates that a (morally) reasonable person accepts core liberal moral rights and is committed to respecting and promoting them.

A dilemma looms. If these core liberal rights are specified in articulate detail and exclude any controversial ideas of what is intrinsically valuable in human life, the political liberal just begs the question against her perfectionist opponent.

Suppose instead the core liberal rights are vaguely specified, and require further interpretation and elaboration, which will inevitably be controversial among cognitively Rawlsian reasonable (that is, semi-reasonable) persons. If on further interpretation controversial ideas of right such as the politically liberal capability sufficiency doctrine are embraced despite being controversial, on what grounds does the political liberal rule out controversial conceptions of good as potential legitimate bases for public policies? The vague statements of core liberal rights admit of perfectionist construals—especially common-sense perfectionist construals.

Quong raises this question and answers it by insisting that the core liberal rights do not implicitly or explicitly contain any reference to well-being or ideas of the good. We can then be committed to accepting whatever turns out to be the philosophically best interpretation of core liberal rights, even if that is controversial, without being open to accepting that the core liberal rights might require ensuring capabilities for all that provide fair opportunity for welfare. But this again amounts to just begging the question against the perfectionist opponent. The crucial point is inserted at the outset: what we owe one another at the fundamental moral level has nothing to do with providing fair opportunity to live well.

The preceding discussion does not so far answer Nussbaum's interesting charge that basing state policy on controversial ideals of the good is sectarian and wrong in the same way that a state establishment of religion would be sectarian and wrong. This line



of argument raises issues about religion and politics that cannot be settled here. I shall simply indicate the line that best fits the perfectionist capabilities approach. This is simply that the perfectionist should embrace secular establishment at the level of fundamental morality. The public policies the state should pursue are those that are justified by perfectionist capabilities doctrine. Insofar as religions dissent from this doctrine, the state should be non-neutral on religious questions. (Nothing follows about what political constitution is practically and politically feasible and should be adopted in given circumstances. A good political constitution for a society at a time is one that facilitates fulfillment of fundamental moral principles.)

### **Conclusion.**

If one should hold that it is not the proper business of the state to be telling its citizens how to live and promoting some ways of life over others, one should find the politically liberal, antiperfectionist version of the capabilities approach to be congenial. This chapter has tried to clarify what is at stake in assessing this antiperfectionism, and to suggest some reasons for supporting a modest, common-sense perfectionism yoked to the capabilities approach. Also, independent of the issue whether the capabilities approach itself is ultimately defensible, the chapter asserts reasons to reject the political liberalism doctrine of state legitimacy. Political liberalism is floating on an updraft of popularity, but I have sought to puncture the balloon. However, this may be one of those situations in which, as the late philosopher Brian Barry remarked, one person's *reductio ad absurdum* is another person's *quod erat demonstrandum*. The dispute seems to be wide and deep.

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<sup>1</sup> . For assessments of the capability approach, see Brighthouse and Robeyns, (2010).

<sup>2</sup> . On perfectionism, see Hurka (1990), Brink (2013, chapter 3), and for a survey, Bradford (2015).

<sup>3</sup> . Why suppose anyway that insofar as we are obligated to help people lead good lives, we are concerned with helping them attain well-being? A life can be good in the sense of admirable or virtuous, even if it is not good for the person living it. Think of a young person who throws herself on a grenade to save others from the explosion. She lives admirably, but with a life low in well-being. But the capability approach tied to well-being does not say that individuals should not chose to live morally well at a cost of living prudentially well, if one must choose one or the other. The capability view says each should have real freedom to live prudentially well. So if the self-sacrificing heroine in the example survives but is badly injured, we owe her adequate real freedom to live prudentially well, and this obligation is not fulfilled by the fact that her moral virtue score is already high.

<sup>4</sup> . Rawls (1998) identifies perfectionism with a view he attributes to Friedrich Nietzsche, according to which only the very greatest human achievements have any significant value.

<sup>5</sup> . Here I assume the correctness of an internal rather than external account of the nature of enjoyment (enjoyments are not desired experiences, rather experiences with a certain feeling tone). See Crisp (2005). Parfit (1984) affirms the external account.

<sup>6</sup> . The capabilities approach tends to be identified with a sufficiency doctrine to the effect that what justice above all requires is provision of good enough capabilities for all. This sufficientarian ideal of justice is accepted *arguendo* in this chapter, in order to concentrate on the

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perfectionism versus political liberalism issue. Whether we should accept any sufficiency doctrine is a topic for another occasion.

<sup>7</sup>. There are of course other candidate measures. The idea that adequate capabilities are those that enable one to be a fully functioning member of democratic society runs into the problem that this does not guarantee any amount of well-being. Our society could be fully democratic even though we all lead avoidably short, bleak lives. The idea that the measure of adequate capabilities is a life worthy of human beings seems to waver between a moral and a prudential idea of a good life. Also, if the idea of a life worthy of human beings is interpreted according to the constraint that it cannot be controversial among the reasonable, it runs into the difficulties that attend the Rawlsian idea of the ‘reasonable.’

<sup>8</sup>. The signal contribution of the capability approach is the development of ethically attractive measures of individual poverty and of a society’s level of economic development that are superior to gross domestic product or income levels and other commonly used economic measures. Sen has also developed the capabilities approach as a critique of measuring individuals’ condition for purposes of a theory of justice by their primary social good holdings as in Rawls or by their inclusive resources as in Ronald Dworkin (2000). See, for example, Sen (1980, 1985a, 1985b, and 1992, and 2009); also Alkire (2016). On the relationship between Sen’s and Nussbaum’s versions of the capability approach, see Qizilbash (forthcoming).

<sup>9</sup>. This is not an innocuous assumption. Many capabilities approach theorists will strenuously resist it. Suppose the capabilities doctrine says that all members of society should be continuously enabled to function in all the ways necessary for living a decent human life. One question that immediately arises is whether any tradeoffs between gaining the threshold level for all and gaining higher levels of capability for those already above the threshold is allowed. Another question is whether someone who falls below the minimally acceptable capable threshold level through her own irresponsible conduct might become less eligible for threshold-

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restoring help than those who fall into personal peril or disaster through no fault of their own.

Does the capability approach permit or require giving priority to the more deserving when resources to aid the badly off are scarce?

<sup>10</sup> . To clarify the disagreement, consider that a politically liberal capabilities doctrine will not permit judgments as to what capabilities people need to achieve the adequate level that justice demands to be responsive to controversial judgments about what is valuable and worthwhile in life. Nor may such judgments reflect paternalistic judgments that impugn the competence of citizens to run their own lives and form their own conceptions of the good. Suppose Tom needs extra resources, more than others need, to have a decent opportunity for a good life. He has sufficient resources and abilities, given the circumstances he faces, to pursue successfully the life of a couch potato. (Let's just assume this will not yield a good enough life quality.) The perfectionist capabilities doctrine judges that his resources are insufficient; Tom needs more. The political liberal disagrees. Or suppose Tom has sufficient resources, except that his practical reasoning abilities are subpar. They lead him toward choice of couch potato life. He then has below-threshold opportunity for a decent life, so insufficient capabilities according to perfectionist capability assessment. He has subpar life prospects through no fault of his own. But state action to help him, or groups of people like him, will be unacceptable according to a politically liberal capabilities approach, on the ground that they will convey negative messages about the intended beneficiaries' capacities to choose wisely and effectively pursue their good. The perfectionist capabilities approach advocate disagrees.

<sup>11</sup> . A qualification is needed. The perfectionist claim is that fundamental morality does not rule out state promotion of the good and in some circumstances requires it. But circumstances vary. As an illustration, just suppose being an engaged spectator at opera performances is superior to being an engaged spectator at mud wrestling performances. But my proclivities, for which it would not be fair to hold me significantly responsible, may preclude my being engaged by opera

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and gaining any value from it. If I am subpar in opportunity for well-being, bringing me to the sufficient capability level might require helping me to engage with what I can appreciate. This determination is at the fundamental level relative to each individual, but social policy will call for coarse-grained policies that treat groups of people the same. So the perfectionist state, striving for social justice, might in some circumstances be bound to subsidize mud wrestling.

<sup>12</sup>. Quong (2011), chapter 3. The idea of paternalism he accepts is traceable to Shiffrin (2000). Quong allows that when someone has mistaken beliefs on matters of empirical fact that bear on his choice, acting against his current judgment need not qualify as paternalistic in the sense he intends to specify. Think of Mill's example of crossing an unsafe bridge.

<sup>13</sup>. Notice also that if a legislature in a democratic society committed to perfectionist capability sufficiency enacts a policy that favors some ways of life over others on the ground that the former are intrinsically superior, the judgment underlying the enactment will be fallible. The message the policy thus conveys to someone devoted to a disfavored activity is then not 'your view must be inferior' but rather 'a democratic majority has judged your view to be inferior.' Even in ideal circumstances the democratic enactment just gives one some evidence that one's value commitments might be off-track and are in need of revision.

<sup>14</sup>. Nussbaum (2011), at 35.