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Towards a Thin Theory of the Good

1 Introduction

In the course of our lives, we differentiate between the value of different goods and capabilities for us. Being able to acquire food is generally thought to be more important than being able to acquire perfume. Having warm clothes is generally thought to be more important than possessing an ornament.¹ These examples highlight two important features of our lives. First, we regard certain resources and capabilities as having value for us. Secondly, we regard some resources and capabilities as having greater value than others. This chapter focuses upon trying to understand the deeper basis for these two types of judgment.

That basis is of central importance to a theory of fundamental rights. To explain why individuals require the protection of rights, it is necessary to have an understanding of what is of value to individuals. Since rights apply across a range of diverse individuals, this requires an understanding of the common grounds of value for such individuals. Certain constraints must, however, be placed on the theory of value that is developed. First, the theory of rights must take account of the fact that in every society, individuals differ in a large number of ways. The theory should aim to be true, and provide an accurate account of what in fact are the common grounds of value in the lives of a diverse range of individuals. It should not aim to impose commonality where none exists. It is likely that the area of overlap between the goods for different individuals will require that the theory be fairly general and limited. Secondly, a theory of rights such as the one which is developed in this book is directed at influencing the way in which rights are used and interpreted in a diverse political society, and as such should be designed so as to command as much agreement as possible amongst a range of diverse individuals. Agreement is not necessarily an indication of truth, but it is necessary if members of a society are to regard themselves as bound by the schema of rights

¹ We often attempt to capture this difference in the distinction between necessities and luxuries. However, the distinction appears to be too crude. A computer, for instance, does not seem to be a necessity, but it also does not appear to be a complete luxury in the modern world. Computers serve a number of functions: they aid communication, information acquisition, writing papers, research, and much else. They do not appear to be essential to living; yet they have the power to affect our lives significantly.

that govern a society. In turn, such agreement would lead to greater stability and social cohesion. For these reasons, this chapter attempts to arrive at a 'thin' theory of the good.² Such a theory is not exhaustive, in that it specifies the common sources of value in the lives of individuals, despite their differences. Moreover, such a theory attempts to avoid, as far as possible, bringing in assumptions that cannot be justified from the perspectives of different individuals.

I shall thus proceed by analysing what is involved for something to be of value to a being.³ I shall offer an argument for recognizing that the primary notion of value refers to what is of importance to beings capable of having subjective conscious experiences of the world. This argument limits the scope of creatures to which such judgments apply. It also provides reasons for thinking that the quality of the subjective experiences that beings have will be important when providing an account of value.

I then turn to the accounts of value offered by Nussbaum and Rawls that also seek to provide a true account of the common sources of value shared by diverse beings that can command widespread assent. It will be argued that neither of these accounts alone provides us with a wholly satisfactory account of value in the lives of beings. In developing a more adequate account, I shall argue that it is important to attend to the empirical characteristics of beings which have an evaluative dimension. I shall focus on two such characteristics—the ability to experience and to have purposes—and attempt to demonstrate how an account of value can be rooted in certain very general natural features of beings.

Given this general account of value, it is necessary to determine whether it is possible to arrive at a 'thin' account concerning which goods or capabilities can be said to be of particular importance to beings. A theory of rights cannot possibly ensure that each individual is guaranteed everything that he values, and must attempt to determine which goods have a particular urgency for individuals. I shall conclude the chapter by arguing that there are two significant thresholds that can be identified, the first having a greater urgency than the second. The first threshold involves a priority interest in having the resources and capabilities necessary to be free from threats to survival. The second threshold involves an important interest in having the general resources and capabilities necessary to have and realize a wide range of purposes.

2 Value and Point of View

Let us first then consider the idea that there are resources and capabilities that have value for beings. This idea presupposes the notion that there is some way in which

² The notion of a 'thin' theory of the good can be originally traced to Rawls, 1999a: 348ff.

³ In the course of this discussion, I shall try to understand the primary sources of value judgments in the world. It is a mistake to confine oneself at the outset to the human case without justification.

a being's life can be better or worse. Resources or capabilities that have value for beings are those which contribute to rendering a being's life better or worse.

It is important to recognize that there are two senses in which things can go better or worse for a being: the one sense is 'primary' and the other sense 'derivative'. In order to grasp the difference between these two senses, let us consider the case of plants. It is conceivable that someone might claim that life can go better or ill for a plant: if one deprives a pot-plant of water, for instance, it generally wilts, and if placed in sunlit, moist conditions it usually thrives. How then is one to make sense of the idea that life can go better or worse for a plant?

The real difficulty in making such judgments relates to the fact that a plant lacks a point of view. The lack of a point of view means that the plant itself lacks a perspective from which harm can be judged. This fact entails that we cannot know what constitutes harm from the point of view of a plant. In order to judge whether a plant is harmed or not, we therefore have two possibilities. The first possibility is that harm to the plant can be judged relative to our interests. Consider an example where Mary enjoys eating fresh tomatoes and thus daily picks tomatoes from the plant growing in her garden. If the tomato plant wilts and dies, then Mary will be unable to pick and eat her fresh tomatoes. We can thus claim that the tomato plant is harmed if it perishes, as it is unable to produce tomatoes for Mary's consumption, something that she values. Yet, it is clear that the harm to the plant in this case is derivative: it is wholly dependent on Mary's capacity to be harmed, which is primary.

The second possibility is that there is some objective method of establishing when a plant is harmed. The most plausible attempt to explicate this idea involves making sense of the notion that a plant is harmed when it is unable to fulfil its biological function. 'Life going well for x' can be conceived of in terms of a biological (or mechanical) function that is specified independently of the point of view of a creature or living thing. We attempt to capture the standards that are appropriate to a particular kind of species or being and define good or bad functioning in relation to those standards.⁴ In the case of plants we specify that there is an end to be achieved (continuing to live), and evaluate various states of affairs in relation to that end.

The problem, however, is to specify why the fulfilment of a certain type of biological functioning is valuable in itself. The problem with assigning primary value to entities such as plants or rivers is that it is we who identify the ends and standards in terms of which their flourishing is to be judged. Ultimately, there is no point of view from which something is bad for a plant other than some externally imposed framework. If a plant wilts and dies, it is unclear why its biological function should be regarded as valuable anyway. Our ability to make value

I shall use the term 'beings' to refer to those creatures that have subjective conscious experiences of the world.

⁴ See the discussion of Attfield and Taylor in Sumner, 1996.

judgments about plants is thus dependant upon standards that we adopt in relation to such entities. This need not imply that plants are only valuable in an instrumental way when they fulfill our needs. They may also be intrinsically valuable in the sense that we value them for certain qualities that are components of the good life for us—they provide beauty, for instance, or a sense of gratification.⁵ Either way, however, the capacity to make value judgments about plants is dependant on the existence of beings with subjective conscious experiences of the world for whom such entities can have value or who can specify the standards according to which their value is to be judged.

Once subjective consciousness emerges, however, a being has the capacity to be benefited or harmed in its own right. I adopt Nagel's⁶ explication of what is involved in being a subject: there must be 'something it is like to be an x'. The emergence of a distinct point of view entails that there is not merely an external perspective from which harm can be judged. A being with subjective conscious experiences of the world can experience life as going badly for her independently of what anyone else says about what harms her or not.

The reason subjectivity is so important is that it forces us to consider that there are things that are of value and disvalue from the point of view of the being concerned. Once a point of view emerges, there is a clear perspective from which value can be judged: the subject's own point of view. Such value is not dependent upon the existence or judgments of any other being. Thus, the notion that something is valuable for a being has primary application in relation to beings that have subjective experiences of the world. The fact that other living and material entities lack a point of view means that there is no criterion by which we can judge or know what constitutes harm to such entities in their own right. As a result, any judgments of value that we make concerning such entities will be derivative of what makes the life of a being with subjectivity go better or worse.⁷

⁵ Raz (1986: 177; see also 1999: 296) distinguishes between ultimate value—value which does not derive from its contribution to something else—and intrinsic value—value that is not instrumental: it does not derive its value from the value of its consequences. In Raz's terms, I wish to draw attention to the fact that plants could have intrinsic value without being of ultimate value. I have not employed Raz's distinctions as I have doubts about whether there is a sharp distinction between intrinsic and instrumental value. Both types of value are valuable in the sense that they contribute to the lives of beings with ultimate value: the difference is in the way they contribute to the lives of such beings. An instrumentally valuable thing is one that is a means to a valuable end; whilst an intrinsically valuable thing is one that forms part of or constitutes the valuable end pursued.

⁶ Nagel, 1979a: 166.

⁷ Having reached this conclusion, it is important to question whether it is possible to understand what it is about the point of view of beings with subjective consciousness which allows them to be benefited or harmed in their own right. The existence of a point of view is integrally connected with certain characteristics of beings, which I shall argue later are the common sources of value for such beings. First, the existence of subjective consciousness is generally accompanied by the capacity to have experiences. These experiences have a particular quality which can be either pleasant or unpleasant for the beings that experience them. Beings generally find experiences that have a pleasant phenomenological feel desirable and those that are unpleasant are regarded as undesirable. Thus, the capacity to have experiences of a particular quality could be closely linked to an account of what is

I shall be concerned in this chapter with the question of value in the sense in which it has primary application to beings. I turn now to consider two accounts concerning the common sources of value in the lives of beings. These accounts concentrate on the particular case of human beings and this explains why the focus in what follows is on the good for human beings.⁸

3 Nussbaum and the Notion of a Human Life

3.1 The capabilities approach: Sen and Nussbaum

Martha Nussbaum has offered a theory of the human good which she sees as a development of Amartya Sen's capabilities approach. The capabilities approach attempts to carve out a space in between a 'welfarist' view of the good and a 'resourcist' view. It does not ask only whether a person is satisfied with what she has or does; nor, is it merely concerned with the resources at a person's disposal. Rather, value in an individual life is to be understood in terms of functionings and capabilities: 'we ask not only about the person's satisfaction with what she does, but about what she does and what she is in a position to do (what her opportunities and liberties are)'.⁹

Sen characterizes functionings as representing parts of the state of a person—in particular the various things that he or she manages to do or be in leading a life'.¹⁰ This is a very broad notion and includes passive states of the person such as being well-nourished and being healthy, as well as activities that a person engages in, such as debating or playing the piano. Capabilities, on the other hand, represent sets of alternative combinations of functionings that a person can attain.¹¹ The concept recognizes that there are alternative courses a person's life may take, and that the choice between these courses is an important value for those capable of such a choice. The notion of a capability also recognizes that the achievement of functionings is limited by a number of factors, including individual abilities, the resources at an individual's disposal, and the existence of social, environmental, and physical constraints.

For Sen, the life of an individual is to be seen 'as a combination of various "doings and beings", with the quality of life to be assessed in terms of the capability to achieve valuable functionings'.¹² The central question of the capabilities

valuable in the lives of beings. Secondly, many beings with subjective conscious experiences are able to form purposes which they act upon. They hold the achievement of these purposes to be desirable and the frustration thereof undesirable. Thus, a second general characteristic that can be a source of value for a being is its capacity to have and fulfill its purposes. I shall elaborate on how I take these two general features to ground an account of what is of importance in the lives of beings later in this chapter.

⁸ I regard this as a mistake and, as will be shown, this starting point accounts for some of the defects in these views.

¹⁰ Sen and Nussbaum, 1993: 31.

¹¹ Sen, 1992: 40.

⁹ Nussbaum, 2000a: 70.

¹² Sen and Nussbaum, 1993: 31.

approach is thus whether a person is capable of being or doing X. However, put in this way, the central incompleteness of Sen's approach can clearly be seen. Sen offers us little guidance in determining which functionings and capabilities can be said to be valuable. Yet, it is simply incorrect to assert that all states of being and doing enhance our lives. Some functionings have a minor impact on our lives: for instance, being able to choose a particular brand of washing powder that is much like any other washing powder is unlikely in and of itself to enhance an individual's life.¹³ Other functionings have negative value and detract from our ability to live well: being nauseous, being obsessive, and being highly strung. Thus, we need some basis upon which to judge which capabilities are important to us, and whether there are different degrees of importance amongst capabilities.¹⁴

Nussbaum attempts to resolve this problem by providing an account of the principled basis upon which to evaluate the importance of various functionings and capabilities to human beings. She claims that there are two distinct thresholds which delineate the value of functionings and capabilities to human beings.¹⁵ The first threshold concerns those functionings that are particularly central in human life: their presence or absence is typically understood to be a mark of the presence or absence of human life. Nussbaum contends that those who display a severe deficiency in their ability to reason, think, speak, move around, or recognize a loved one would fall below this threshold.¹⁶ The second threshold delineates those functionings that characterize a flourishing human life, one that is 'worthy of a human being'.¹⁷ This threshold is based on the idea that it is of importance for us to exercise the various capabilities in a manner that is truly human: that is, in Nussbaum's view, through the use of the powers of sociability and practical reason which distinguish human beings from other animals.

On the basis of the notion of what it is to live a human life and further, a good human life, Nussbaum develops a list of central human functionings and capabilities that determine what is of importance to human beings and how well off they are. In arriving at this list, she does not believe that she has arrived at some external pre-ordained ahistorical truth about the human good.¹⁸ Rather, the list is drawn up on the basis of a discussion amongst human beings and an analysis of narratives and myths in different cultures that give content to the notion of what it is to live a 'truly human life'. Through this method of discussion and analysis that is tentative and open-ended, Nussbaum believes that human beings will arrive at an overlapping consensus concerning what it is to live a human life, and a flourishing human life.¹⁹ She proceeds to outline a list that she has compiled through her cross-cultural discussions. The list is fairly extensive and ranges from 'being adequately nourished' to 'being able to use imagination and thought in connection with experiencing and producing self-expressive works and events of one's own choice, religious, literary, musical, and so forth'.²⁰

¹³ Williams, 1987: 98.

¹⁴ *Ibid.*: 100.

¹⁵ Nussbaum, 1995: 81.

¹⁶ *Ibid.*: 82.

¹⁷ Nussbaum, 2000a: 73.

¹⁸ *Ibid.*: 74–7.

¹⁹ *Ibid.*: 76.

²⁰ *Ibid.*: 78–80.

There are many virtues to Nussbaum's account. Unlike Sen, she attempts to grapple with the difficult issue as to how different capabilities can be valued. Through the notion of the two thresholds, Nussbaum also recognizes differing levels of priority amongst capabilities.²¹ Nevertheless, I shall argue that both her methodology and her principles that determine the value of differing capabilities are defective.

3.2 The factual notion of human life

Nussbaum specifies her first threshold in terms of the claim that there are certain functions that are particularly central in human life, 'in the sense that their presence or absence is typically understood to be a mark of the presence or absence of human life'.²² The core notion here is the idea of what constitutes a human life.²³ Now, there are two possible ways to understand the idea of a human life to which Nussbaum is referring. The first possible understanding thereof involves reference to those functions that factually mark the presence of a life that meets the biological characterization of the species *homo sapiens*. For instance, a human life typically involves the ability to move around using two legs. A human being unable to move around on two legs would lack a central capability.

There are several problems with trying to use this factual notion of the human being to provide us with an account of what is of value in human life. First, human beings are typically able to do many things. A human being can typically spit at someone. He can procreate. She can abstain from food. The ability typically to do something does not alone tell us whether something is of value for human beings or how much value it has for them. A person who cannot see we regard as lacking a capacity of value; a person who cannot whistle is not generally regarded as being deprived in a similar way. Moreover, the importance of not having a capacity typically possessed by human beings very much depends on an individual's purposes. For instance, though the ability to procreate is typical of the human species, many people engage in relationships where procreation is not a possibility or choose not to have children. The lack of a capacity to procreate, although typical of human beings, may well not be important for some people. Thus, the fact that our species can typically perform certain tasks naturally fails to delineate which tasks are of importance to members of our species.

Secondly, if Nussbaum's view is construed in this particular way, it leads to triviality: any function that can be performed typically by a member of the human species can be regarded as one that marks the presence or absence of human life. Therefore, all functions that human beings can typically perform can be said to meet Nussbaum's first threshold, and it thus fails to mark out those functions that

²¹ Here I disagree with Alkire and Black, 1997, who regard the two thresholds as an 'unnecessary complication' (at 266).

²² Nussbaum, 2000a: 72.

²³ My critique here shares commonalities with that of Antony, 2000.

human beings can typically perform which are of *particular* importance to human beings. Thus, Nussbaum's first threshold fails in its task to provide us with a principled basis upon which to select the functionings that matter.

These arguments suggest that there is a more general problem here: if we appeal to general facts about the human species which lack an evaluative dimension, then it seems unclear how such facts can serve to generate evaluative judgments about what is valuable for members of that species.²⁴

Finally, Nussbaum's first threshold on any understanding of it is objectionable in that it characterizes beings as not human if they lack typically human characteristics. Human beings who lack two legs, or cannot stand upright, or lack the mental abilities to reason are not regarded as being fully human. Yet, this is mistaken. On a purely factual level, the lack of certain capacities does not determine which species one belongs to. Physically or mentally disabled people still belong to the species *homo sapiens*.

Furthermore, although the treatment of a being need not automatically differ as a result of being characterized as less than 'fully human', the category of being human is critical in Nussbaum's thought. It is only to human beings that one owes the duty to act according to the principle that one should treat each person as an end in themselves.²⁵ Thus, in Nussbaum's system, the characterization of a being as either human or not indicates what sort of treatment it is owed to such a being. Apart from failing to provide us with any ideas as to how we are to treat non-human animals, such a system would create a stratification within the realm of the human species: between those that are 'truly' human and those that are not. Such a distinction is not well-motivated, and has, in the past, been at the heart of some of the most morally reprehensible systems such as Nazism and Apartheid.²⁶

3.3 The evaluative notion of human life

It seems therefore that Nussbaum needs to go beyond the factual characterization of a particular species and develop some kind of evaluative notion of human life that can serve to determine what is of value to us. Indeed, in a later article, Nussbaum claims that her project involves reference to a 'concept of the human being (person) that is . . . evaluative and, in the broad sense, ethical: for among the many things we do and are, it will have to single out some as particularly central,

²⁴ See Antony, 2000 at 15, who puts the point in relation to ethical value.

²⁵ Nussbaum, 2000a: 73–4. In her Tanner Lectures delivered at Cambridge University in 2003, Nussbaum did recognize duties to beings that are not human or not 'fully human'. However, her revised view is still vulnerable to the charge that it focuses on the category of being 'human' or 'truly human', in a way that stigmatizes and de-emphasizes the unique value that resides in the lives of those that are less than 'fully human'.

²⁶ This illustrates the fine line that can exist between theory that supports progressive outcomes and that which has repugnant consequences: by understanding how the latter are generated through, for instance, unjustified hierarchical assumptions present in Nussbaum's work, we can attempt to provide more solid ethical foundations.

as so important that without those we don't think that a human life exists any longer'.²⁷ We have to ask ourselves about the importance of certain capacities such as reasoning and sociability to human life, and she claims that there is a broad consensus that a life without these qualities is not a truly human life.

First, it is important to note again that Nussbaum's terminology is very confusing. She retains as her central ethical category the notion of human life, asking us to evaluate what in our view is central to being human. Yet, there is a real question as to why the species we belong to should determine what is important to us. Though we may be creatures of a certain sort, it may be that what is important in our lives is connected with what is important in the lives of other species. It is unclear why what differentiates our species from others should come to define what is most important to us. For instance, we share the ability to have pleasurable and painful experiences with many other animals and that appears to be an important part of the good for us.

Moreover, it may well be that there are differences between members of the same species. It is again unclear why what is most valuable to an individual must track what is common between members of a species. Thus, Nussbaum presupposes a link between 'the category constructed by asking me what I value most deeply about my life and the biological category that will classify me together with many others whether I want to be so classified or not. But, it is the link itself that needs explaining.'²⁸ Nussbaum fails to explain why the central ethical question is 'What makes your life a human life?', rather than the question 'What makes your life important to you, what makes it a life worth living for someone like you?'.²⁹

This objection raises the question as to the role that species should play in defining the good for creatures such as us. As shall be argued later in this chapter, it is important to recognize that it is not the species we belong to that defines the good for us; rather, it is the possession of certain abilities and characteristics—most notably the ability to experience the world and engage in purposive behaviour—that leads to our valuing certain capabilities and resources. The actual experiences and purposes that are valued will vary often as a result of belonging to different species, and in some instances will lead to different capabilities being valued. A dolphin lives in the water and performs all activities central to its life in the water: its ability to swim is thus central to its ability to experience and act in the world. The same would apply to a whale or shark. On the other hand, a human being cannot live in water: being able to swim is thus less of a central capability for a human being. The same is true of a vervet monkey or elephant. Thus, in all these cases, what is centrally important is the having of positive experiences and the fulfilment of our purposes. These features transcend any one species and thus ensure that the species to which we belong does not determine the source of value in our lives. Since the type of experiences and purposes that a being values will often vary

²⁷ Nussbaum, 2000b: 119.

²⁸ Antony, 2000: 34.

²⁹ Ibid: 34.

in accordance with the species they belong to, the species barrier may nevertheless be a convenient indicator of the importance of certain resources or capabilities to particular beings.

A further problem with Nussbaum's evaluative notion of human life is that it is supposed to provide the principle by which we identify what is important and valuable in our lives. Yet what is the evaluative notion of human life if not itself already a view of what is of central importance in human life? Defining what is of value in human life by reference to an evaluative conception of human life is thus question-begging. What we need is an account of why a life lived in a sociable manner and employing practical reason is better for a particular human being than a life in which a person deliberately tries to live according to his emotions or withdraws from society with others.

Thus, the real question involves deciding how to arrive at an evaluative conception of human life. Nussbaum's method of answering this question rests on our judgements that certain types of life are 'worth living' and others are not. In order to identify what can truly be called our shared 'evaluative' notion of human life, Nussbaum claims that we must attempt to arrive at an overlapping consensus of human beings. The idea of an overlapping consensus that Nussbaum employs has been borrowed from Rawls, who developed it in the context of outlining a theory of political liberalism that is supposed to be free of controversial metaphysical assumptions. The idea according to Rawls is that all citizens living in a democratic society and with different visions of what it is to live a good life can, for the purposes of setting up a basic structure of society, agree on certain basic assumptions from which to begin constructing a system.³⁰ Being aware of problems with the Aristotelian method of ascertaining the human good, Nussbaum attempts to use the method of achieving an overlapping consensus involving *all human beings* to attain an account of the human good.

Yet, there are several problems with trying to arrive at an overlapping consensus as the basis of an account of the human good. First, it is not clear how Nussbaum wishes to judge whether or not the overlapping consensus exists concerning the human good. She claims tentatively that her fairly determinate list could form the basis of such a universal consensus. Yet, it is not clear how extensively she has consulted and how one could reach a position where universal consensus is obtained. Rawls limits his claims about consensus to a specific context—a bounded democracy.³¹ His claim about arriving at an overlapping consensus is more plausible as it is more limited in scope.

Secondly, a presupposition of Nussbaum's methodology is that an overlapping consensus is possible. Yet, there seems no basis for believing that such a consensus will arise unless there is some deeper metaphysical truth regarding the 'essence' of human nature that we can all converge upon. Thus, an overlapping consensus is

³⁰ Rawls, 1993: 15.

³¹ Ibid: 12.

likely to happen only if there is some deeper metaphysical truth about human nature.³²

Thirdly, if there is such a deeper truth, then it is unclear why an overlapping consensus would provide the best epistemological access to such a truth. An overlapping consensus will surely also include persons with mistaken or unreflective conceptions of the good, including those with racist or exclusivist conceptions. To achieve consensus, an account of the good would have to aim for the lowest common denominator between the diverse conceptions of the good in a society. As a result, it is unlikely to be the best way to discover the truth in this regard.³³

The overlapping consensus in Rawls functions not as a means to discover the truth but as a means of arriving at agreement on the principles of justice in a diverse society. If agreement is all Nussbaum is aiming at, then it is possible for the consensus to overlap in the wrong way such that it merely expresses the prevalence of a shared ideology that is mistaken about what is in fact valuable for individuals. For instance, many patriarchal assumptions that differentiated between the good life for men and women failed to capture what was of importance to many women despite having been almost universally shared in the past. Thus, the project of defining the good for human beings is not merely concerned with what we agree to be good—which may be mistaken—but with what actually is good.

The final problem with Nussbaum's view is that it seems unlikely that an overlapping consensus will be forthcoming on a fairly detailed evaluative conception of human life such as she provides. In a diverse world, there are likely to be substantially different conceptions of what is valuable in human life, and these will vary according to people's philosophical and religious commitments. One of the central assumptions underlying Rawls' work is his acceptance of the reasonable pluralism in a democratic society regarding determinate conceptions of the good.³⁴ There is strong reason to think that comprehensive conceptions of the good differ quite considerably even about the requirements for lives that can be said to be 'human' or 'truly human'.

Consider, for example, the fact that in Nussbaum's view, persons with certain severe forms of mental disability are not living 'truly human lives'.³⁵ There are a number of religious and secular views that would be in sharp disagreement with Nussbaum's position. Many forms of Judaism and Christianity, for instance, regard any member of the human species as having a divine spark which is the only status that is relevant in those particular systems of thought. Some ideologies in our society also deny the status of human to those who do not share the same

³² The problems with reaching consensus without any grounding in the actual nature of human beings would be akin to those I identify in relation to Rawls' heuristic conception of the person below.

³³ I attempt to establish here merely that consensus is not the best way to *discover* the truth; nevertheless, it is a desirable outcome for a political theory that will hopefully be arrived at by recognizing the truth.

³⁴ Rawls, 1993: 36.

³⁵ Nussbaum, 2000a: 73.

beliefs ('Jews', for instance) or a certain status ('female', for instance); others may see some practices or characteristics as not 'truly human' (certain dogmas regard homosexuality in this way). O'Neill³⁶ points out that such differences occur within Aristotelian ranks. Whilst recent Anglophone Aristotelians like Nussbaum tend to view human flourishing as highly variable and sensitive to context, more traditional Aristotelians often have a view of human flourishing that is quite determinate and exemplified by the Thomist vision of the good. Quite different value judgements would be endorsed by these differing conceptions of the good and thus a method is required to break the deadlock between them. Appeals to an unavailable consensus about what it is to be truly human cannot do so. It is thus doubtful that we share an evaluative concept of the human being that has sufficient content to distinguish between what is valuable and what is not.

In my discussion of Nussbaum, I have thus attempted to show that the notion of a 'human life' cannot perform the work she wants it to. A 'thin' factual conception fails to provide criteria as to what is of value in human life. Yet, a 'thick' evaluative notion of human life fails for other reasons, chief amongst which is its inability to command the consensus that Nussbaum seeks. The diversity of human beings renders it unlikely that consensus will be achieved on a determinate, detailed conception of value. Thus, it seems that only a 'thin' evaluative theory can perform both the functions of outlining the important sources of value in life and achieving significant agreement. I turn now to an evaluation of Rawls' concept of the person to see whether it can offer us a more satisfactory account of what renders a life valuable for human beings.

4 Rawls and the Concept of the Person

In order to arrive at his principles of justice, Rawls requires some understanding of what people value in life. Yet, at the same time, he wants to regard the principles of justice (or right) as constraining people's ability to pursue their conceptions of the good.³⁷ He also recognizes that there are numerous divergent conceptions of the good, and wishes to establish principles that do not rely on what he terms a controversial comprehensive notion of the good. Thus, he attempts to develop what he terms a 'thin' theory of the good which is restricted to the bare essentials necessary to arrive at principles of justice.³⁸

Fundamental to Rawls' theory is a conception of the person and a well-ordered society.³⁹ A person, he claims, is to be viewed as being moved by two highest-order

³⁶ O'Neill, 1995: 145.

³⁷ Rawls, 1999a: 347.

³⁸ Ibid: 348.

³⁹ In providing an account of Rawls' views, some complexity is introduced by the fact that the way he characterizes his view has changed over time. I focus on Rawls' account as laid out in his article 'Social Unity and Primary Goods' (1982). In his Revised Edition of the Theory of Justice (1999), he points to this article as being his fuller statement on the subject (at xiii).

interests to realize and exercise the two powers of moral personality: the capacity for a sense of justice (the capacity to honour fair terms of cooperation) and the capacity to decide upon, to revise, and rationally to pursue a conception of the good. Moral persons also have a higher-order interest in advancing their determinate conceptions of the good.⁴⁰ The latter interest is subordinate to the highest-order interests in the sense that the pursuit of one's good as well as the demands one can make on others must conform to public principles of justice that all can reasonably be expected to accept. '[T]his conception of the person gives regulative primacy to the two highest-order interests, so that moral persons are said to have both the capacity and the desire to cooperate on fair terms with others for reciprocal advantage'.⁴¹ A well-ordered society in turn for Rawls is one where all individuals cooperate for mutual advantage on the basis of fair terms which all can be reasonably expected to accept. How then are we to conceive of each person's advantage?

Rawls develops his account of 'primary goods' in order to answer this question. Primary goods, Rawls argues, are defined relative to the highest-order interests that people have, and are the means for realizing these interests. Thus, primary goods are the necessary conditions for realizing the powers of moral personality and are all-purpose means for a sufficiently wide range of final ends.⁴² They include basic liberties—for instance, freedom of thought, speech, and association—freedom of movement and job opportunities, the ability to assume public office, income and wealth, and finally, the social bases of self-respect. The interests Rawls identifies as part of his conception of moral personhood do not only single out the primary goods, but also specify their relative importance. Thus, the priority of liberty over the difference principle in Rawls' theory reflects the 'pre-eminence of and the relation between the highest-order interests in the conception of the person'.⁴³

4.1 The concept of the person as a heuristic device

In specifying these interests and the priorities between them, Rawls provides a general 'thin' account of what in his theory is to be regarded as valuable in human life. What is important to recognize, however, is that Rawls' conception of the person is in fact heuristic and defined for the purposes of setting up his theory of justice. Rawls refers to his use of primary goods as a 'reasonable social practice which we try to design so as to achieve the workable agreement required for effective and willing social cooperation among citizens whose understanding of social unity rests on a conception of justice'.⁴⁴ Thus, he does not claim that the concept of the person he is working with actually describes what we regard as valuable. Rather, his notion of the person is in fact a model designed for the purpose of fitting into a theory designed to achieve social unity.

⁴⁰ Rawls, 1999b: 365.

⁴¹ Ibid.

⁴² Ibid: 367.

⁴³ Ibid.

⁴⁴ Ibid: 386–7.

There is a tension here between defining a theoretical conception of the person and relating it to the more empirical notion of how we are and what we regard as valuable.⁴⁵ I shall argue that Rawls faces a difficult dilemma here: either his account is purely a theoretical construct of limited use in the world of politics, or, when understood as an account of what is really valuable in human lives, it becomes controversial, is incomplete, and is, in some respects, mistaken.

Let us first consider the problems with regarding the model of the person as purely a theoretical construct. First, if the model of the person does not relate to what we do in fact value, then the model will be of little relevance to the world in which we actually do live. Why should we choose principles of justice which are based on a theory of the good that is dissociated from what we actually do value?

Secondly, if the model is not defended on the grounds that it mirrors best what we do value, then there is the real question as to why we should adopt any particular construct over any other. If Rawls merely provides one model of the person which need not be accepted, then it is open to political societies to adopt a different model which would lead to different principles of justice. Acceptance of the Rawlsian principles of justice becomes contingent upon accepting this particular model of the person. A religious society such as Iran, for instance, could argue that the model of the person it adopts is of a being that conforms its will to the will of God (as expressed in the Koran). Similarly, an illiberal society such as China could argue that it regards the person as an entity whose chief function is to contribute to the collective good. Thus, there are several different and incompatible heuristic conceptions of the person. In order to decide between these conceptions, and come up with a theory that applies universally, we need to make claims about whether such conceptions accurately reflect what is in fact important in our lives. Otherwise, it is unclear why only a society founded upon Rawls' conception of the person should be considered just.

A final problem with a purely heuristic conception of the person is that it does not explain why persons are conceived of as valuing the particular things they do value. The starting point seems relative to the particular theory that is desired: in Rawls' case it involves specifying a theory of social cooperation. 'When the notion of cooperation . . . is applied to the basic structure of society, it is natural to take the two moral powers as the essential features of human beings.'⁴⁶ However, it is unclear why a theory of social cooperation necessitates adopting the particular conception of the person that Rawls does. Hobbes, for instance, outlines a theory

⁴⁵ Given the influence of Kant upon Rawls, it is not surprising that Kant faced a similar difficulty. In the context of a discussion of 'equality', Williams, 1972: 116 captures this tension when he argues that the Kantian transcendental conception of all persons as equally rational agents seems empty, 'when the question, for instance, of men's responsibility for their actions is one to which empirical considerations are clearly relevant, and one which moreover receives answers in terms of different degrees of responsibility and different degrees of rational control over action'.

⁴⁶ Rawls, 1999b: 385–6.

of social cooperation employing a very different conception of the person: individuals are conceived as being restless, egocentric, and concerned primarily to protect their interest in self-preservation.

Thus, in order for Rawls' model of the person to be a plausible basis upon which to construct a theory of justice, it must connect up with an account of what are in fact the sources of value in our lives. However, Rawls' account fails in large measure to capture accurately what our highest-order interests are.

4.2 Social cooperation

I shall concentrate firstly upon Rawls' claims regarding the centrality of social cooperation within the structure of human preferences. Rawls contrasts his conception of the person with an alternative view: '[i]n justice as fairness the members of society are conceived in the first instance as moral persons who can cooperate together for mutual advantage, and not simply as rational individuals who have aims and desire they seek to satisfy.'⁴⁷ However, moral persons do not simply have the capacity to cooperate but it is one of their highest-order interests: 'citizens in the well-ordered society of justice as fairness have both the capacity and the regulative desire to cooperate on fair terms with others for reciprocal advantage over a complete life'.⁴⁸

The idea that one of the highest-order interests of persons is in social cooperation places a controversial and highly contestable notion of the person at the foundation of Rawls' theory. I am not denying the importance of social cooperation: after all, a human being is born into society with other human beings and thus rules regulating the relationships between persons are going to be important for individuals, whatever their conceptions of the good. Yet, there is a major difference between theories that regard human beings as having a primary interest in social cooperation and theories that regard an interest in social cooperation as deriving its importance from other interests that are of primary importance to people.

Hobbes, for instance, views individuals as primarily self-interested. They aim to ensure their self-preservation, and to achieve what they regard as best for themselves even at the expense of others.⁴⁹ Their interest in social cooperation arises as a result of the fact that social coordination will better enable individuals to achieve their important ends than a situation in which such coordination is absent. The Hobbesian view has been influential and, it could be argued, much of modern economics is based on a similar view of the person. Rawls, as I have indicated, in his initial assumption directly contradicts the Hobbesian view, by placing social cooperation as one of the primary interests that human beings have. The first problem with this approach is that it builds a highly controversial assumption into the foundation of Rawls' theory of justice that is supposed to convince people

⁴⁷ Rawls, 1999b: 385.

⁴⁸ Ibid: 386.

⁴⁹ Hobbes, 1991: 87.

with diverse philosophical convictions. This runs counter to Rawls' liberal project of attempting to found a theory of justice upon slender and relatively uncontroversial basic premises.⁵⁰ Anyone who did not share Rawls' view about the place of social cooperation within the structure of human interests would thus not be persuaded by his account. If possible, it would thus be preferable to have a theory of value that avoids placing such a contestable claim at its centre.

Nevertheless, the fact that Rawls' view is controversial does not mean it is mistaken. Yet there are strong reasons for thinking that social cooperation is not best classed as one of the primary values in the life of individuals. Though the Hobbesian notion of human nature is too bleak, the Rawlsian view is too optimistic. Social cooperation involves being prepared to work together towards common goals. Having a primary interest in social cooperation would imply that if one's own purposes conflict with the cooperative enterprise, one would be prepared to subdue those purposes in order to further cooperation. If very slight personal interests could cause people to act in ways which violate the terms of social cooperation, then it would appear that the latter interest is pretty weak.

It is evident that there are numerous instances within our range of experience where people are not prepared to subdue the pursuit of their personal purposes for the sake of cooperation. Many people are prepared to gain benefits for themselves at the expense of others. For instance, if people can find methods to evade paying taxes unlawfully, many will attempt to do so, despite such a course of action being inimical to a society based on social cooperation. The enforcement agencies in our societies are kept busy precisely because people place the pursuit of personal advantage above the furtherance of social cooperation. Thus, there are numerous instances in the world which indicate that the demands of social cooperation appear to have little weight for many people when they decide what to do. This suggests that social cooperation is not in fact a primary interest shared by all people; rather, it is the pursuit of their own experiences and purposes that is fundamental for all. Rawls' view is thus not only controversial: it seems in significant respects to be mistaken.

In *Political Liberalism*,⁵¹ Rawls has recast how the concept of the person is to be viewed. In that work, he argues that the concept of the person is to be understood as a moral notion latent in the public culture of a constitutional democracy. The concept of the person is not just a theoretical construct but rather an evaluative notion that lies at the heart of modern democratic societies and which could form the basis of an overlapping consensus within such societies.

However, this revised understanding of Rawls' concept of the person also suffers from several shortcomings. First, the justificatory power of the concept of the

⁵⁰ Rawls' view could also be said to be contrary to the liberal project of being neutral between competing comprehensive conceptions of the good by enshrining a particular conception of the good based upon social cooperation within his theory. It would seem to be prejudiced against those who do not view social cooperation as a fundamental project of theirs and wish, for instance, to lead solitary lives.

⁵¹ Rawls, 1993: 13–14.

person has been significantly limited by this revised understanding. Rawls' project was to outline what a just society would be like.⁵² Yet, his recent methodology assumes a certain model of society is just and then attempts to interpret which model of the person is latent therein. The concept of the person that is arrived at will merely reflect the nature of the system it is derived from. Thus, it is not surprising that Rawls' concept of the person emphasizes personal and political freedom because it is drawn from an analysis of the latent assumptions of societies that emphasize such freedom. The fact that the concept of the person is derived in this way thus means that it cannot really function to justify a particular system—constitutional democracy—as it is derived from an analysis of that very system.

Furthermore, a theory of justice arrived at on the basis of a conception of the person derived in this way cannot provide the basis for criticizing societies which do not share the same conception of the person. The theory of justice one adopts thus becomes relative to the type of society one lives in. Moreover, Rawls' method of arriving at a theory of justice is also likely to lead to conservative conclusions even within the domain of constitutional democracies. By basing the theory on the current assumptions of particular societies, it is likely that the theory which results will not deviate too significantly from the current status quo.

It is also debatable whether Rawls has correctly identified the presuppositions of constitutional democracy. Many constitutional democracies exhibit sharp divergences of wealth between the rich and poor. The United States, for instance, has significant problems of homelessness and food insecurity.⁵³ People who are homeless are generally unable to compete on fair terms with others. Yet, socio-economic guarantees have often not been provided ensuring that people will be housed and thus able to enjoy the opportunities that others have. In some countries, the welfare state is being cut back. It is doubtful whether the desire of each to cooperate on fair terms is presupposed where the constitutional structure allows for a situation in which the most basic socio-economic needs of citizens are not met. Certain constitutional democracies may be better understood to be premised on a conception of persons as highly competitive creatures who are willing to benefit at each other's expense. On such a view, the rules of the basic structure are merely there to preserve a framework in which people's competitive natures can be expressed in ways which do not defeat their primary interests in having positive experiences and realizing their purposes. Thus, it is not clear that Rawls is correct to interpret all modern constitutional democracies as presupposing a model of the person that places the desire to cooperate on fair terms as one of the highest-order human interests.

I have thus attempted to show, through a critique of Rawls' 'thin' account of value, the limitations of a heuristic conception of the person with little application to what people do in fact value. When Rawls' theory is considered as an account of

⁵² More accurately, he wishes to understand which principles of justice would regulate the basic structure of a just society.

⁵³ See the concluding chapter of this book (Chap 7).

what we actually do value, I have argued that his claim that social cooperation on fair terms is a primary interest of all human beings is controversial and, possibly, mistaken. I have not thus far criticized Rawls' identification of the second highest-order interest of persons: an interest in being able to decide upon, revise, and rationally pursue a conception of the good. Though Rawls has identified a value of importance, there are two reasons why a more adequate account needs to be developed.

First, Rawls offers us an overly intellectualized vision of people's highest-order interests. Many individuals, even rational ones upon whom Rawls focuses, do not have a fully coherent 'conception' of the good. They have a number of projects and purposes they wish to fulfil, lacking a comprehensive overall understanding that would comprise a 'conception'. For some, these aims and desires are quite haphazard. As a result, it is likely that many rational individuals lack an overall 'conception' of the good but rather have a variety of aims, goals, and preferences that are valued by them and contribute to their well-being.⁵⁴

Moreover, Rawls' account of this highest-order interest automatically excludes both human and non-human beings that are not fully rational. A 'conception of the good' seems to require the ability to have an explicit understanding of what is valuable in one's life. Though non-rational creatures may lack such an explicit understanding, it is unclear that this precludes their lives from having value for them. Non-rational creatures can also form purposes, and experience the fulfilment or frustration thereof in ways which affect their well-being. Their situation in this regard seems analogous to the fulfilment or frustration of a rational being's conception of the good. It is thus unclear when developing a theory of value why it is necessary to restrict ourselves to a consideration of rational beings. Consequently, it would be preferable to find a way of describing this interest without assuming that it need involve a coherent, explicit, and reflective 'conception' of the good. I shall argue below that the notion of purposiveness can better describe this fundamental interest.

Secondly, Rawls emphasizes the importance of moral autonomy, being able to make decisions and to fulfill one's goals.⁵⁵ However, he fails to recognize that it is not only what we succeed in achieving that is of value to us, but also the manner in which we experience the world. It shall become evident, when I defend my own account of value, that Rawls' claims concerning a person's highest-order interests are seriously incomplete as a result of omitting the experiential dimension.

5 Drawing Fact and Value Together: Experience and Purpose

Thus far, I have argued that we cannot read off directly from factual accounts of what constitutes a human being to what is of importance to us. The two evaluative

⁵⁴ I am indebted to Onora O'Neill for this point.

⁵⁵ In this, Rawls falls within a tradition of liberal theorists, from Kant to Raz.

conceptions of the person I considered also have not provided a satisfactory basis upon which to determine what is of value to us. Louise Antony attempts to specify a general problem faced by all attempts to provide an account of value rooted in human nature: ‘appeals to external accounts of human nature can be expected to garner interpersonal agreement that’s independent of normative judgments but, for that very reason, will not be able to generate reasons for accepting ethical propositions about what human beings should or should not do. Appeals to internal accounts can generate ethical conclusions, but the crucial premise about human nature will only be acceptable to someone who antecedently endorses the value judgments embodied therein, rendering the appeal itself otiose.’⁵⁶

In posing this dilemma, Antony constructs a strict opposition between factual and evaluative notions. Indeed, the history of philosophy has seen many philosophers distinguish sharply between fact and value and criticize others for making illicit inferences from fact to value.⁵⁷ I do not wish to dispute that there are occasions when the distinction is important: what I do wish to suggest, however, is that fact and value are not as separate as is often made out, and it is this recognition that will allow us to make progress in identifying what is of central importance to beings.

In any field of enquiry, there must be an end to derivation or inference.⁵⁸ Although our starting points for ethical enquiry will have a special epistemic status, we need to provide some justification for commencing with them. Just as our knowledge about the world around us begins with sense experience, it seems to me that the starting points for ethical inquiry can be found in observing features of the world around us. What is interesting is that when we do so, we are able to find general factual characteristics of beings that are intimately tied to the evaluative dimension of their lives.

5.1 Experience

Consider the case of pain. Pain involves a particular type of phenomenological experience, one that can be regarded as having a particular descriptive content. If it did not have that ‘feel’, it would not be pain.⁵⁹ Yet, pain is also a state which all beings with subjective conscious experience find unpleasant: it is an experience such beings regard as undesirable. My claim is that the undesirability of such an experience is integrally linked to the particular phenomenological content of the experience. To experience pain is to have an experience of something that is of dis-value to a being.

⁵⁶ Antony, 2000: 15–16.

⁵⁷ See, for instance, G.E. Moore, 1965: 19 and 67.

⁵⁸ This assumes that our model of justification for ethical or political theory must connect up with the world in some way.

⁵⁹ Putnam, 1975: xi states that ‘anything that a normal person who is paying attention cannot distinguish from a pain . . . is necessarily a pain . . . the term “pain”, like many other sensation terms, has the appearance-logic’. Kripke, 1980: 152 expresses a similar point as follows: ‘[p]ain, on the other

To support this claim, two methods of corroboration seem possible. First, each individual can be asked to evaluate whether this claim is true for her from the first-person point of view. Secondly, the linguistic and non-linguistic behaviour of beings that accompanies painful experiences can provide evidence as to how they regard those experiences from the first-person point of view. These methods provide, in my view, overwhelming evidence upon which to conclude that phenomenological experiences of a certain type (which we refer to as ‘pain’) are regarded by beings that have subjective conscious experiences as having disvalue for them.⁶⁰

However, pain is only one particular type of experience. There are many types of experience: frustrating experiences, boring experiences, exhilarating experiences. Each type of experience is associated with a particular phenomenological feel: yet, it is also associated with either a state that is valuable to us—one which enhances our lives—or which has disvalue for us—one which harms us. Once one is conscious, things can either go better or worse for one. What applies to pain thus applies also to many other types of experience: there is a tight connection between the content of such experiences and their value for us.

In section 2 of this chapter, I defined a being that has conscious experiences as one for which there is ‘something it is like to be x’. My contention is now that ‘what it is like to be x’ at various points in time involves not only having a particular phenomenological experience, but that such an experience also involves a particular qualitative state that has either positive or negative value for that being. Thus, the ability to experience the world consciously provides a bridge between fact and value: our phenomenological experiences of the world are themselves one important source of value in our lives.⁶¹

The fact that the existence of conscious experience is closely linked with an evaluative dimension provides some explanation for the earlier claim that the notion of value has primary application to beings that can experience the world. It also provides a non-arbitrary reason for including within the scope of an enquiry into value all beings that can have subjective conscious experiences of the world. It

hand, is not picked out by one of its accidental properties; rather it is picked out by the property of being pain itself, by its immediate phenomenological quality.’

⁶⁰ There are cases such as that of the ascetic and sado-masochist that exhibit some complexity, which I discuss below.

⁶¹ J.M. Coetzee, 1999: 44–5, the famous South African author, alludes to this important point when he writes: ‘[W]hat is it like to be a bat? Before we can answer such a question, Nagel suggests, we need to be able to experience bat-life through the sense-modalities of a bat. But, he is wrong: or at least is sending us down a false trail. To be a living bat is to be full of being; being fully a bat is like being fully human, which is also to be full of being. Bat-being in the first case, human-being in the second, maybe; but those are secondary considerations. To be full of being is to live as a body-soul. One name for the experience of full being is *joy*.’ I understand this passage to mean that we need not understand exactly what the particular experience of another entity is like in order to be aware that there is a quality which the experiences of other beings have that makes them like our own. I endorse Coetzee’s further claim that for conscious beings, there are no neutral experiences: being able to exist and be free from negative experiences would mean being in some form of positive state: what he terms ‘joy’.

is an empirical matter as to which beings have this capacity that will depend on a judgement based upon suitable behavioural and physiological evidence.⁶²

5.2 Purposiveness

A second characteristic of beings which involves an intimate link between fact and value is the ability to have purposes and to act on those purposes. There are many creatures that act for certain ends or purposes. The frustration of such purposes is of disvalue to such beings and the fulfilment thereof valuable to them. Alan Gewirth⁶³ develops this idea as the starting point for his theory of human rights. By considering his theory, I shall attempt to explore the complexity involved in the notion of having ‘purposes’ or a ‘conception of the good’.

Action as conceived by Gewirth has two primary features: voluntariness and purposiveness. Voluntariness involves an action being under the control of an agent’s unforced and informed choice. Purposiveness involves acting for some end or purpose which is a person’s reason for acting. People who engage in voluntary behaviour control their movements for reasons of their own. These reasons or wants are the purposes of action.⁶⁴ All forms of wanting involve a pro-attitude towards something, which involves selective attention to a purpose, attempts to attain the purpose, and a favourable attitude to attaining the purpose. Thus, aiming to perform an action involves a purposive being in having some pro-attitude towards doing it.

Beginning with this conception of action, Gewirth constructs an argument for fundamental rights. I shall be concerned in this chapter with the first two steps in his argument. His first claim is that every agent makes an implicit judgement that the purposes for which he acts are good.⁶⁵ In acting, an agent envisages some outcome he wishes to achieve. In acting voluntarily, he regards this goal as worth pursuing, and thus values the goal sufficiently to act upon it.⁶⁶

Since an agent values the attainment of his purposes, he must also value the generic features of all action—voluntariness and purposiveness—which are central to his ability to pursue any purposes at all (Gewirth refers to these features under the heading of ‘freedom’). In addition to these features of action, he must value three other kinds of goods. First, ‘basic goods’ are those necessary preconditions for his performance of any and all of his actions. They include food, physical security, clothing, for instance, without which he would not be able to act for any purpose or good at all. Secondly, he must value ‘non-subtractive goods’: abilities and conditions that ensure one’s level of purpose-fulfilment is not diminished.⁶⁷

⁶² Some philosophers of mind investigate how it is possible to know which creatures have similar qualitative experiences to our own. I have defended an account thereof in Bilchitz, 1998. We can justifiably attribute conscious experiences to mammals, some birds, and some reptiles for instance, whilst it is doubtful that insects have such experiences (see, for instance, Wise, 2001: 133).

⁶³ Gewirth, 1978.

⁶⁴ Purposes may be dispositional and not clearly in view: Ibid: 38.

⁶⁵ Ibid: 52.

⁶⁶ Ibid: 49.

⁶⁷ Gewirth, 1982c: 56.

These involve, for instance, not being lied to, and not being subjected to debilitating conditions of physical labour or housing. Finally, he must value 'additive goods': the abilities and conditions required for increasing one's level of purpose-fulfilment. These include having his self-esteem protected, access to education, and not being discriminated against.⁶⁸ The valuation of one's general ability to fulfil one's purposes is thus the ground for valuing these three other types of goods which Gewirth refers to as comprising a person's 'well-being'.⁶⁹ Thus, 'freedom' and 'well-being' represent together the most general and proximate necessary conditions for an agent's purposive action. Since an agent values her purposes, she must also be committed to achieving that which is necessary to achieve her purposes. Consequently, we arrive at the second proposition: every agent must be committed to having the freedom and well-being that are necessary for achieving her purposes.⁷⁰

5.3 Does purposiveness imply reflective awareness?

I shall not reconstruct the rest of Gewirth's argument in this chapter.⁷¹ Since purposive action is the key notion in Gewirth's theory, it is important to consider further what is involved in this notion. For Gewirth, it is only beings capable of using language and following logical entailments that are capable of purposive action. His reason for making this claim lies in his conception of action which does not simply consist in bodily movements but also involves thought processes such as choosing and intending. Such thought processes, he claims, are connected with language. Thus, if one can attribute intentional action to a being, then that being must be capable of making judgements expressible in language.⁷²

Yet, this claim suggests that Gewirth is working with a narrow and simplistic conception of agency. The crucial point to recognize is that it is possible to act for a reason without recognizing and being able to formulate a linguistic judgement which captures that reason. Consider two examples. First, let us consider the development of a child. In the initial stages of a child's life, it moves around a lot, and much of the movement appears involuntary. As the child matures, but prior to its acquisition of language, the child will often point to something that it wants (a bottle or a toy, for instance) and make an effort to grab hold of it. In explaining such actions, we typically attribute a desire or purpose to a child—that she wants her bottle, or toy—without claiming that she is able to recognize the reason for her action in linguistic terms. As the child develops, she will (hopefully) grow to

⁶⁸ Ibid.

⁶⁹ In Gewirth's view, there is a hierarchy in relation to the three kinds of goods which make up a person's well-being which could be linked to the varying degrees of urgency for individuals. The basic goods have the highest degree of necessity as without them no purposes can be fulfilled. The additive goods, on the other hand, have less necessity as their absence precludes increasing purpose-fulfilment, but allows for some degree of purposiveness.

⁷⁰ Gewirth, 1978: 63.

⁷¹ The rest of the argument will be discussed in Chap 2.

⁷² Gewirth, 1978: 42.

be able to become a competent user of language and recognize linguistic judgements. However, even when we reach adulthood, not all our actions stem from the self-conscious recognition of our purposes. Strong emotions such as anger or passionate desires for food or sexual pleasure may well drive us to act without a self-conscious examination of our reasons for doing so.

The second example concerns documented cases where chimpanzees use certain tools (such as the bark of a tree) to crack a nut. In explaining such actions, we typically attribute a certain intention to the chimpanzee: that she desires the nut and believes that using the bark of the tree will allow her to eat it. It seems plausible to refer to the chimpanzee as an agent, who acts in the world to achieve her purposes.⁷³ Yet, the chimpanzee cannot generally formulate or recognize these judgements in the linguistic forms we use.⁷⁴ Of course, in all likelihood, it also has a type of language, or system of representation that allows it to process cognitive information. This system of representation does not, however, appear to be such that we can say the chimpanzee is aware of a linguistic proposition and can follow logical entailments of the sort Gewirth requires for thought.⁷⁵

There are thus beings who have intentions and appear to control their actions in accordance with purposes, yet are not self-conscious about their purposes, and do not deliberate in linguistic form regarding the course of action they will pursue. Into this category fall children at least up to the age of language acquisition, many mentally ill people, and many non-human animals. There is also, as we know, a category of beings who have intentions and control their actions in accordance with their purposes, but who are capable of self-consciousness about their purposes and who do deliberate in linguistic form about which course of action to pursue. As far as we know, only adult human beings who are not mentally ill fall into this category. Let us call the first category 'non-reflective beings', and the second category 'reflective beings'.

Gewirth claims that reflective beings need not be self-consciously aware of the judgements and inferences he attributes to them in order to derive his supreme moral principle. We can attribute commitments to such beings, even though they are not aware of them. This is in fact a centrally important feature of his 'dialectically necessary method' that involves analysing what an agent is necessarily committed to by engaging in action.⁷⁶ It importantly relies on being able to attribute

⁷³ See, for instance, Regan, 1988: 74–5.

⁷⁴ There is indeed a dispute in the philosophy of mind as to whether language is required in order to be able to think. Gewirth simply glosses over this debate and seems to assume that only those able to express judgements in language can properly think: 'it has long been recognized that language is connected with thought, as expressing and communicating it' (1978: 42). The truth seems to me to be much more complex and requires separating out mental states which allow us to operate in the world, from the self-conscious recognition of these mental states. Language may be required for the latter recognition, but is not required for the former beliefs. My position is opposed to that adopted by Davidson, 1984 in 'Thought and Talk', which I have criticized in Bilchitz, 1998. Some animals may even be capable of higher-order thoughts: see the examples given by Dennett, 1983.

⁷⁵ See, for instance, Malcolm, 1991: 458; and Wise, 2001:158–9.

⁷⁶ Gewirth, 1978: 42–4.

a judgement to an agent even if the agent herself does not recognize the judgement: 'the method operates to trace the judgements and claims every agent logically must make from within his standpoint.'⁷⁷ Thus, an agent may not be self-consciously aware of the inferences Gewirth draws; yet we can still claim that such a person is committed to such judgements.

However, if this is so, why could we not also attribute such commitments to beings who are non-reflective? The difference between the two cases is that the one group can become reflectively aware of these judgements whilst the other cannot. Yet, if there are members of the former group who never do become reflectively aware of these judgements, and we still attribute these judgements to them, it is not clear that *in respect of these judgements* they differ in any relevant way from beings that can never become reflectively aware thereof. It is clearly the case that there are people who have never become reflectively aware of Gewirth's judgements about what they are committed to: after all, since his theory involves an element of originality, no one presumably ever drew these exact inferences. Thus, if we can still attribute these commitments to those who never consciously recognized them, then we can do so in relation to beings that can never become reflectively aware of them.

This argument may initially seem strange in that it involves attributing judgements to those who cannot become reflectively aware of them. The important point to consider is the role of reflective awareness in Gewirth's theory. The crucial characteristic of a being that allows Gewirth to attribute judgements to it is that it is a purposive agent. Gewirth ties purposiveness to the possession of language. I have attempted to prise these two characteristics apart, and show that one can be a purposive agent without possessing a human language.⁷⁸ If this is so, then it is possible that Gewirth's argument could apply to reflective as well as non-reflective beings.

Let us consider the two claims of his argument in light of what has been said. A purposive agent, Gewirth claims, is committed to the positive valuation of her purposes. A non-reflective being could not be self-consciously aware of this valuation, but by the mere fact that she pursues a particular purpose we can infer that she judges it in a favourable light. Thus, any form of creature to whom purposes can meaningfully be attributed embraces only what is favourable to it and avoids what is harmful.⁷⁹ Since such creatures value their purposes, each non-reflective creature must also wish to have the necessary goods involved in realizing her purposes.

⁷⁷ Ibid: 44.

⁷⁸ See, for instance, also the fascinating examples of human beings that only developed language later in life, and reported that they had had thoughts and purposes of their own prior to acquiring language: see Wise, 2001: 158ff.

⁷⁹ It is important to distinguish between beings that merely respond to stimuli, and those which are able to engage in properly purposive behaviour. It seems to me that such a distinction must rest on the difference between having an end that can be identified but is aimed at without any act of

If this line of reasoning makes sense, then the question becomes why has Gewirth limited himself to the class of reflective beings? There is indeed a powerful reason why a theory of morality must address itself to reflective beings. A being that is not reflectively aware does not consider her purposes in light of morality, and does not deliberate as to the correct course of action to follow. It is only a being that is reflectively aware that can consider the demands of morality upon her action, and thus regulate her conduct in accordance with Gewirth's theory. A theory of morality will thus address itself to reflective beings.

Accepting this truth, however, is quite different from accepting that the subject matter of morality concerns itself only with reflective beings or that life can go better or worse only for beings that are reflective. Gewirth in fact provides us with powerful reasons for thinking that the realization of purposes for any being that has them is morally significant. I have thus attempted to highlight some complexities in relation to the notion of what constitutes a purposive agent which Gewirth does not consider. These complexities allow us to recognize that it is possible for both reflective and non-reflective beings to have purposes whose fulfilment is of value to the individuals in question.⁸⁰

6 In Defence of the Proposed Theory of Value

I have attempted to identify two general characteristics of beings which provide the grounds for judgements about value and disvalue in their lives: the ability to have conscious experiences with a particular quality and the ability to will the fulfilment of one's purposes.⁸¹ By situating the sources of value in certain natural features of beings, the theory provides a criterion as to which creatures fall within the scope of our moral concern. It offers principled reasons for its focus on beings that can have subjective experiences or purposes, and does not arbitrarily exclude non-human species from the sphere of moral concern.

It should be evident that the theory I propose has both objective and subjective elements. Features of the world—such as consciousness and purposiveness—are objective in the sense that they exist in beings independently of anyone's perspective. In turn, these features provide us with an objective basis upon which to recognize the sources of value within the lives of beings. Whether something

'endorsement' by the organism, and the conscious and willing pursuit of a particular end. For instance, only creatures that exhibit some flexibility in their behaviour and the capacity to learn can be said to engage in properly purposive behaviour (see, for instance, the sphex wasp's behaviour, which appears to exhibit merely a stimulus-response mechanism (Dennett, 1984: 11)). A fuller account of purposiveness would have to address such issues in the philosophy of mind, but for reasons of length I cannot hope to address all these matters here.

⁸⁰ As a result, this notion also solves certain of the difficulties raised in connection with Rawls' account of locating value in a 'conception of the good'.

⁸¹ It may be that it is possible to identify further features; however, the ones I have identified seem to me to be the most important and plausible candidates for performing this role.

in particular is of positive value or not, however, can usually only be judged by considering what the experience is like for the being in question or whether such a being regards certain purposes as important to her.⁸² This feature of my account thus allows us to recognize common sources of value in the lives of beings, whilst at the same time being able to take cognizance of the diversity of the experiences and purposes in the world. The content of what constitutes 'positive experiences', for instance, will vary according to the 'form of life' of creatures, their societies, their individual natures, and circumstances.

These features enable the account I have developed to meet the requirements for an account of value that were outlined at the outset of this chapter. In this regard, it is instructive to compare my account to that of Rawls. First, in a previous section of this chapter, I have attempted to show the difficulties with the heuristic and constructivist nature of Rawls' account. The account I have offered is not merely a theoretical construct but aims to be a true account of the sources of value in our lives. It has a naturalistic element which ties value to the possession of certain characteristics exhibited by creatures in the world. It thus can be evaluated in light of empirical features of the world, and is not defined in relation to a particular theory or the wishes of a corrupt regime. This naturalistic feature of the theory allows us to root our theoretical constructs in the world.

If it is true that certain naturalistic features of the world are the sources of value in our lives, then it is also more likely that individuals will be able to reach a consensus about the sources of value in life. Arriving at consensus does not in and of itself determine what is of value in the lives of beings. That fact is determined by actual features of the world: however, the existence of such objective naturalistic features renders it likely that individuals will eventually be able to reach agreement about these issues. As in the case of scientific theory, it is still possible for a mistaken consensus to arise; yet, the existence of certain hard features of the world means that such a consensus is likely to be disrupted when it fails to take account of such features and, thus, errors are likely to be discovered.

The theory I have proposed also seeks to outline a general, minimal account of the common sources of value in the world. It does not, however, require agreement about the value of specific experiences or purposes and thus allows for individual opinions to differ regarding these issues. It thus seeks to define a small space of commonality whilst recognizing the wide-ranging diversity of individuals. This feature will hopefully enable it to command a large degree of consensus.

⁸² We need not be confined to examining what actually is the case for the being in question, but what could be the case for such a being as well. Thus, my view allows for the possibility that we can make predictions that a certain state will be of greater experiential value for a being even though that is not her current state. The difference between the value of the actual states she experiences and the ones it is possible for her to experience opens up the possibility of criticizing an individual's own understanding of what is best for her. The difficulty of making judgments about when others would be better off would correctly lead to circumspection in this regard, and may partially explain our reluctance to make such judgments in relation to others. For purposes of this chapter, it is not necessary to develop these points further. I make a similar point later in connection with purposes.

These considerations count in favour of the theory I have proposed. Moreover, there is a further argument in favour of this account based upon another interesting feature of the world: despite the diversity of different creatures, it is striking that we are to a large extent mutually intelligible. Were individuals completely different, valuing nothing in common, it would be impossible to understand one another. Davidson claims that '[t]he process of making the beliefs and other propositional attitudes of others intelligible to ourselves necessarily involves our fitting others into our scheme to some degree'.⁸³ Thus, in order to understand one another, it is necessary that we have at least some shared framework of values.

John Finnis⁸⁴ provides an account of the human good that can be understood as an attempt to identify this shared framework that is necessary to understand one another. He identifies seven basic values in human life: life, knowledge, play, aesthetic experience, sociability, practical reasonableness, and religion. These values can be identified, he claims, through the use of practical reason: employing reason in 'identifying the desirable'.⁸⁵ That entails analysing human action and understanding the general commitments and purposes which generally render such action intelligible.

However, in order to understand each other, we do not need a detailed or specific account of the good such as is provided by Finnis. Consider a dictator such as Robert Mugabe. Let us attempt to explain why he went to such lengths to rig the March 2002 election in Zimbabwe. Let us say that our explanation is: 'Mugabe wished to retain political power.' That is a familiar form of motivation that we often attribute to political leaders and serves to provide a plausible account of their behaviour. Thus, our very ability to understand others does, it seems, depend upon their conforming to certain patterns of behavioural and motivational assumptions that are recognizable to us.

However, the example highlights two problems with Finnis's account. First, the desire for power is not included amongst his seven basic values of human life. Though he could merely have made a mistake about this, the omission suggests a serious problem with identifying an exhaustive and specific list of the basic values in human life given the diversity of individuals. Secondly, and more seriously, it is unclear that in attempting to explain Mugabe's behaviour, we must share the *specific* value lying behind his action: of wishing to retain political power. Similarly, it is unclear that we must share the specific value of knowledge or aesthetic experience in order to understand the actions of others who pursue these values. What is necessary to explain the actions of others does not appear to be certain shared *specific* values.

What we require is rather a minimal account of certain *general* sources of value we share with others who have certain similarities to us. In my view, the identification of experiences and purposes as the general sources of value is sufficient to enable us to understand the actions of others. Mugabe is intelligible to us because

⁸³ Davidson, 1986: 205.

⁸⁴ Finnis, 1980.

⁸⁵ Finnis, 1983: 35.

we understand that he is attempting to fulfil his own purposes, even though we regard his *specific* purposes as warped. A drug addict's actions are intelligible to us as we can understand the desire for positive experiences, though we may regard his actions unfavourably. Thus, the thin theory of the good I have defended identifies the shared framework of value necessary to render the actions of others intelligible. It does not go beyond what is strictly necessary for this purpose and thus avoids some of the controversial territory that more specific accounts of the good—such as that of Finnis or Nussbaum—traverse.

6.1 Objection 1: Nozick's experience machine

I have thus far provided reasons for favouring the account of value I have proposed. One of the features that distinguishes my account from that of Rawls is the fact that it does not regard all value in life as deriving from the achievement of goals and purposes. I have also sought to draw attention to another clear source of value in our lives: the ability to have experiences that are of a particular quality.⁸⁶

Finnis,⁸⁷ however, claims that it is a modern mistake to think that experience plays an ineliminable role in accounting for what is valuable in human life. He employs Nozick's famous thought-experiment—the 'experience machine'—to support his case.⁸⁸ Imagine that one is given the choice to plug into an 'experience machine' which stimulates one's brain whilst floating in a tank and thus provides one with all the positive experiences one could wish to have. One must, however, plug in to the machine for a lifetime or not at all. Finnis claims that no one would choose to plug into such a machine as each person 'wants to *do* certain things (not just have the experience of doing them), one wants to *be* a certain person through one's own authentic, free self-determination and self-realization'.⁸⁹

It is important to be clear about what exactly the 'experience machine' establishes. This thought experiment relies on our intuitions about the quality of a life that is plugged into such a machine. Even if people generally would not wish to plug into the experience machine,⁹⁰ that does not mean that there would be no value in the lives of those who choose to become connected to it. It is precisely because there is some attraction to an existence of pure pleasure that the thought experiment is so powerful. Those connected to the experience machine would have positive experiences and so have some form of value in their lives. Yet many think that other features of the situation overshadow the experiential value that is derived.

In specifying what those features of the situation are, we are not led to conclude that experiences lack intrinsic value in the lives of beings. All the thought

⁸⁶ It is not the case, however, that both characteristics must be present in order for there to be value in the lives of beings. One of the characteristics is sufficient.

⁸⁷ Finnis, 1980.

⁸⁸ Nozick, 1974: 42.

⁸⁹ Finnis, 1980: 95.

⁹⁰ The thought experiment relies on people sharing this intuition. In my experience, the reaction of people to it is not as uniform as Finnis or Nozick would like.

experiment succeeds in establishing is that we regard it as being important that the quality and content of our experiences are connected with the way the world is. Yet this does not in any way imply that experience is somehow unimportant; rather, it shows that a good life is one in which one has positive experiences that connect up reliably with the way the world is. The fact that one does not wish to live in a dream world does not mean that one does not place value upon having positive experiences of the real world.⁹¹

This point directs our attention to the fact that value in the lives of beings that have a subjective consciousness but live in an external world involves considering the interrelationship between beings and the world. We cannot ignore the component we bring to the world (our experience), but we want to be experiencing things about the world, and doing things in the world itself. The account of value I have developed can recognize this point by providing that experience must connect up reliably with the world.

The second component of value I have identified already implicitly requires there to be a connection between purposive agents and the world. The fact that beings have purposes and wish them to be fulfilled means that they are not satisfied where there is the mere 'illusion' of having their purposes fulfilled. Only the actual realization of their purposes can be a source of value to them. Thus, the fact that purpose fulfilment is one of the sources of value in my account means that individuals would not generally be satisfied by a life lived in the hallucinatory world of the experience machine.

6.2 Objection 2: Is pain always bad?

In defining one of the sources of value as lying in experience, I have suggested that there are some types of experience that virtually always are of negative value to the individuals who experience them. It may be objected, however, that even in the case of painful experiences, there are those who regard them as positive. For instance, sado-masochists regard painful experiences as 'positive'; ascetics regard the experience of starving as 'good'. Thus, it could be argued that an experience is only negative if one regards it as such. Whether one regards an experience as negative can be affected by all sorts of factors, such as one's purposes and the society in which one lives. As a result, there are no experiential states that can be identified uncontroversially as being 'negative'.

Contrary to this argument, I wish to defend the claim that there are in fact certain experiences—such as pain and starvation—that are negative for all beings that experience them. The critics usually accept that this may be the case in most instances but point to exceptional cases to disprove the general claim. I shall offer an alternative explanation for two exceptional cases—the ascetic and the

⁹¹ It is an interesting question why it is that we wish our experiences to be connected to the world. I cannot deal with this question here.

sado-masochist—that does not require us to believe that pain in certain instances is ‘good’.

What then about the ascetic? In response to this example an element of complexity is added to my account. Beings such as human beings are able to have experiences and choose the purposes they wish to fulfil. Sometimes, there is a conflict between these two sources of value. At times, we choose to undergo experiences that are negative in order to fulfil our purposes. We may be prepared to suffer the momentary pain of a vaccination to allow us to have a vacation on a tropical island. Similarly, we may be prepared to suffer the pain and injuries that often happen when preparing to run a marathon, in order to attain the health benefits thereof or succeed in a personal goal. What is important to recognize is that the negative experiences we subject ourselves to do not become ‘positive’ merely because of this act of choice. They remain negative, but there is another domain—in relation to the fulfilment of purposes—wherein they can be regarded as positive. The case of the ascetic is thus best explained, in my view, by saying that she has many negative experiences but regards them as valuable in that they accompany the fulfilment of certain purposes that she has freely chosen. In turn, the realization of the ascetic’s purposes generates certain positive experiences (that generally accompany the fulfilment of her purposes) in her. In this case, the two dimensions of value I have identified clash, with one superseding the other.⁹²

The case of the sado-masochist may, however, appear to be more difficult for my account. Here, an experience most would usually regard as negative is valued as positive by the sado-masochist. There are three possibilities consistent with my account that can explain such a case. First, it could be that the usually painful experience is in fact pleasurable for the sado-masochist. In this instance, there is no clash with my account as in fact there is only a ‘positive experience’. It seems unlikely but sado-masochists may just be hard-wired differently from the rest of us.

Alternatively, it could be that sado-masochists experience pain as we do. Yet, such an experience triggers in them a pleasurable experience as well. The phenomenon is a genuinely mixed one: pleasure and pain combine in one experience. Since the pleasure exceeds the pain, sado-masochists subject themselves to such experiences.⁹³

The other possibility is that we have a case such as that of the ascetic: sado-masochists have certain purposes—subjecting themselves or others to pain which they see as good—and this dimension of value conflicts with the experiential

⁹² The value to the creature of fulfilling his various purposes will have to be judged against the disvalue of the negative experiences. The relative importance of the purpose or the experience for the being will often determine which course of action the being pursues. One’s attitude towards commensurability will affect whether one thinks clear-cut judgments can be made in each instance as to which source of value will take precedence.

⁹³ Thus, when deciding what to do, a particular course of action may lead to both negative and positive experiences. So long as the experiences are commensurable, individuals will prefer that course of action that will tend overall to produce the experience which is maximally positive.

dimension of value. Whichever of these interpretations is accepted of the sado-masochist's experience, it remains possible to identify certain experiences such as pain that are of disvalue to all who have them. This is, in my view, a basic feature of all creatures that are conscious.

Some object that pain in fact is 'good' for a being as it has survival value. However, it is precisely the 'negativity' of pain that leads beings to avoid phenomena that are harmful. The 'benefits' of pain arise precisely from its 'negativity': having a painful experience leads us, in general, to avoid further similar painful experiences, and, in this way, we are enabled to lead lives that are filled with positive experiential value and the fulfilment of our purposes. For most individuals, living in a continual state of pain would be a miserable existence, having little value.

6.3 Objection 3: Mistaken purposes and adaptive preferences

As with the experiential component of value, there are several objections that can be lodged against purposiveness as a source of value. I shall briefly consider two objections that must be mentioned, though cannot fully be answered in this book. I shall suggest responses only insofar as is necessary for developing my theory of fundamental rights.

The first problem relates to the fact that an individual's purposes may vary in accordance with her information and rationality. An individual may initially want to smoke. However, upon finding out that smoking causes lung cancer, the individual would decide that she no longer wishes to smoke. Thus, when deciding upon what is of value to individuals, the question becomes whether we consider an individual's current purposes as determinative of what she values. The alternative is to consider what she would value under certain favourable conditions of evaluation such as full information or rationality.⁹⁴ Both accounts that exclusively focus on actual purposes and those that make counterfactual judgments about a being's real purposes face difficulties that need not be resolved here. All I have sought to establish in this chapter is that the fulfilment of purposes is a source of value in the lives of purposive agents: this brief discussion has suggested that we need not be confined to our actual purposes in evaluating this value in the lives of beings.

The second problem concerns the fact that beings often accommodate their subjective purposes to their particular conditions. A being may thus come to be satisfied in conditions that are tremendously meagre. Yet, most people would judge that individuals in such situations do not live well. Consider an example

⁹⁴ Certain desire accounts of well-being do not focus on actual desires but a person's 'true' desires which are defined as those 'he would have if he had all the relevant factual information, always reasoned with the greatest possible care, and were in a state of mind most conducive to rational choice' (Harsanyi, 1982: 55). See also, Griffin, 1986: 11. For a critique of these accounts, see Scanlon, 1993; and Rosati, 1995.

mentioned by Nussbaum: women in India living in the desert area outside Mahabubnagar were severely malnourished and lived in conditions which violated basic United Nations norms for health, sanitation, and the provision of clean water.⁹⁵ Despite such conditions, these women had no desire to change their circumstances and merely accepted that this was their lot in life. They adapted their purposes to fit their position in society.

Accounts of value that include a subjective component are forced to accept the individual's own account as to which purposes or desires are valuable for her. That very determination by an individual is liable to be influenced by the environmental conditions in which an individual finds herself. Thus, accounts of value with a subjective component are bound to legitimize tyranny and validate judgements which merely reflect an accommodation of human expectation to circumstance. 'Consider a very deprived person who is poor, exploited, overworked and ill, but who has been made satisfied with his lot by social conditioning (through, say, religion, or political propaganda, or cultural pressure). Can we possibly believe that he is doing well just because he is happy and satisfied? Can the living standard of a person be high if the life that he or she leads is full of deprivation?'⁹⁶

This problem is often termed 'the adaptive preference problem'. It has been one of the prime motivating reasons to develop an objective account of the good. If a person's own subjective purposes cannot be relied on to determine what is good for them, then it is necessary to go behind such purposes. However, when we consider the components of value in our lives, it is clear that value is in fact in large measure tied to the subjective experiences and purposes of a being. Allowing room for subjectivity in an account of value also allows us to take cognizance of the diverse nature of the good for different individuals. It is thus implausible to remove subjectivity completely from the picture. Yet, any account that retains a room for subjectivity faces the adaptive preference problem in some form or another.

I cannot hope to offer a complete response to this problem here and thus merely wish to point to resources within my own theory that mitigate the force of the problem and may offer the possibility of a solution. First, several philosophers have attempted to examine the conditions under which our preferences, valuations, or purposes are formed. It is often argued that what we need is the ability to identify conditions under which purposes can be formed autonomously such that they are regarded as those of the person themselves.⁹⁷ The theory I have proposed situates the source of value in the fulfilment of a being's *own* purposes. A plausible development of the theory could thus provide that it is only in circumstances where purposes are formed autonomously that the fulfilment thereof is valuable for a being.

⁹⁵ Nussbaum, 2000a: 113.

⁹⁶ Sen, 1987: 8.

⁹⁷ In this regard, see Arneson, 1990; Sumner, 1996; and Christman, 1989. This strategy will depend upon developing an adequate account of 'autonomy'.

Secondly, the theory I have proposed is not a pure subjectivist theory and includes objective claims about the two sources of value in individual life. I shall argue shortly that there is a further objective element in my account of value that allows us to identify features of the world that are of particular importance to beings. These features of the world are certain objective necessary conditions that must exist in order for beings generally to be able to have positive experiences and fulfil their purposes. These conditions arise as a result of certain facts about the physical, psychological, and social nature of beings that affect their capacity to lead valuable lives. As such, they are not susceptible to much variation between individuals and so provide a ground for judging that, in their absence, individuals will generally be badly off.

This allows for a partial response to the adaptive preference problem. In the exposition of the problem, it was clear that it is most acute where we are led to judge via a subjective theory of the good that an individual is well-off despite being severely deprived. If we can identify objective conditions that are necessary for the very possibility of fulfilling purposes, then it will be possible to judge that individuals are badly off where these conditions are absent, even if their actual purposes have adapted to their circumstances. Yet these objective conditions cover most of the circumstances of severe deprivation. Thus, once we eliminate the possibility that individuals can live well even where these objective conditions are not present, we have succeeded in strongly reducing the force of the adaptive preference problem.

It is important to point out that these objective conditions are identified by considering what is generally necessary for a particular species (or several species) to have the sources of value in their lives. It is the physical or psychological similarities between beings that allow for the identification of such conditions. The generality of such conditions provides a safeguard against rendering such judgements relative to the particular circumstances of an individual. Where these conditions are not met, we judge that individuals will generally be badly off. Where individuals maintain that they are well off despite these objective conditions not being present, we will need to analyse whether this is as a result of a freely chosen lifestyle choice or an adaptation of their purposes to a pre-existing situation of deprivation. The similarity of individual physical and psychological natures would lead us to be sceptical, for instance, about accepting individual claims that they are well-off even when malnourished. It is to the task of identifying these objective conditions that I now turn.

7 Judgements of Priority

I have thus far argued that there are two sources of value in individual lives: the first source of value is in having experiences with a positive phenomenological content; the second source of value is in the fulfilment of a being's purposes.

However, individuals also characteristically make judgements about different levels of importance that various goods have for them. Those judgements can have a number of sources: they may, for instance, vary with individual purposes and experiences, and so prevent us from drawing any conclusions about what is of particular importance to beings in general. The question in this section concerns whether it is possible to identify certain general features of the world that beings must generally regard as having particular importance for them. If we can answer this question in the affirmative, it will be possible to judge that individual lives go particularly badly where such features of the world are lacking in their lives.

The general argument in this section shall be that in relation to all physical beings with consciousness, it is possible to identify certain general and essential preconditions that are required for such beings to realize the sources of value I have identified. If we can identify such preconditions, we can identify what must necessarily be realized in order for beings to lead lives of value to them. I shall argue that we can identify certain objective preconditions which can be divided into two thresholds. Both are of significance in the lives of beings but the first threshold has a greater urgency than the second threshold for individuals. The importance of recognizing different thresholds within the class of objective preconditions and the greater urgency of the first threshold will be argued for in Chapter 6.

7.1 The necessary preconditions for being free from threats to survival

One clear precondition for having experiences or purposes at all is survival. Since existence is a necessary condition for the realization of what is valuable in our lives—experiences and purposes—it too must be of central significance in the lives of beings. The ability to maintain one's existence can thus be identified as a particularly important interest of beings.

There are many goods and resources that are necessary for maintaining a being's survival. Some of these will depend upon the type of beings that we are concerned with. A certain level of food is necessary for the survival of all beings. For human beings, some shelter too is necessary for survival. These goods and resources can thus be termed 'survival needs' and are clearly of particular value to any being.

It is important to recognize that survival needs will generally be fairly minimal. A very small amount of food can keep an individual alive. An individual may have sufficient food to maintain her survival but lack sufficient food to be free from malnutrition. Similarly, an individual's environmental conditions can be adequate to keep her alive but not be adequate to keep her healthy. These states of malnutrition or ill-health would themselves be of general disvalue to beings as they would prevent individuals from having positive experiences and impair the realization of their purposes. As a result, it is clear that the interest in having the necessary

resources to be able to survive does not exhaust the objective preconditions that can be identified as necessary for living lives of value.

However, it is important to point out that in many of these instances—of severe malnutrition or ill-health—there would in fact be a strong threat to the survival of beings, and thus their ability to have any value in their lives whatsoever. Chronic malnutrition may not kill immediately but progressively over many years. Thus, the first threshold I have identified is best specified as requiring that beings be in such a position as to be free from the general conditions that threaten their survival.⁹⁸ That would involve having access to a higher level of resources than that merely required to maintain bare survival.

7.2 The general necessary preconditions for the fulfilment of purposes

However, being free from the general conditions that threaten survival does not exhaust the objective preconditions that can be identified which are necessary for realizing the sources of value in the lives of beings. In trying to define a sphere of objective interests that are of primary importance, Rawls' account of 'primary goods' is often regarded as a natural starting point. He argues that the primary goods are the 'necessary conditions for realizing the powers of moral personality and are all-purpose means for a sufficiently wide range of final ends'.⁹⁹ I have already criticized Rawls' conception of the ends that the primary goods aim to fulfil; however, now I wish to consider whether a range of particularly important interests can be identified by the idea of identifying objective necessary conditions for realizing a being's purposes.

7.2.1 *Defining the threshold*

A famous objection has been made to Rawls' account of primary goods. It has been argued that if one is to be fair between differing ends, then the primary goods, understood as all-purpose means, must help to promote each end to the same extent. However, it has been contended that the primary goods fail to promote each person's purposes to the same extent. As such, they are not 'all-purpose means' but rather means of realizing particular conceptions of the good. The primary goods, it is argued, will be differentially useful to people depending on their final aims, and in particular will be biased towards those with individualistic goals.¹⁰⁰

⁹⁸ It is necessary to add the caveat that these conditions must be capable of being eliminated without restricting the person's ability to achieve the sources of value. Thus, legislation to prevent people driving motor vehicles owing to the threat they pose to survival would be impermissible as a result of the fact that such vehicles also provide the mobility necessary to fulfil one's purposes.

⁹⁹ Rawls, 1999b: 367.

¹⁰⁰ Nagel, 1973; Schwartz, 1973; Arneson, 1990b: 429. Rawls has replied to this claim, and there have been responses to his reply: see Arneson, 1990b.

In responding to this objection, it is important to point out that in considering these particular preconditions, I am not attempting to examine the content of the purposes that beings have or how far each is able to realize their particular purposes. Rather, it is important to understand whether there are certain general shared conditions that must be realized for beings to be able to fulfil their purposes. If there are such conditions, then these will be of particular importance to each being, whatever their particular purposes. There do in actual fact seem to be such general conditions. Being in a state of health, for instance, will be of importance to anyone wishing to fulfil any purposes whatsoever and, similarly, having an adequate amount of food will be of great importance to any purposive being. Thus, it is possible to identify certain general conditions necessary for beings to fulfil any purposes whatsoever.

It could be objected, however, that satisfying these conditions that are necessary for the fulfilment of any purposes whatsoever does not take us much beyond the level required for survival. Once a being is alive and capable of minimal functioning, he or she is capable of realizing at least some purposes. Also, some individuals may actually decide to adopt purposes that are self-denying and thus may only require what is necessary for a very minimal level of survival. Thus, it is unclear whether in identifying these general conditions we have merely succeeded in reformulating the first threshold—the necessary conditions to be free from the general conditions that threaten survival—in a different way, without substantially increasing the level of provision and goods required to meet this threshold.

Setting this standard so low is, however, problematic. It only identifies what is of particular importance to those with purposes that require minimal resources to realize them. It thus fails to identify general conditions necessary for the realization of a diversity of purposes. Yet it is that set of objective conditions we must identify if we are to find a common interest between a set of diverse beings. The reason for this is that beings differ and, as a result, their purposes differ. To identify a shared interest that is of particular importance to the full range of beings, it must be an interest in having access to general conditions that are necessary for the realization of a *diversity* of purposes, rather than merely a minimal range of purposes.

Individuals might also change their purposes throughout their lives. If this is so, then it is of particular importance that individuals be guaranteed the objective conditions that would not only involve the fulfilment of their current purposes, but also place them in a general position to be able to change their purposes.¹⁰¹ If this threshold is too minimal, then it is unlikely to enable individuals to realize different purposes in their own lives should they so wish.

However, it is then arguable that the converse problem arises. Some people have purposes that require a lot of goods and others require only a minimal amount of goods. Thus, some people will regard having a television as a necessary

¹⁰¹ Buchanan, 1975 has put forward an argument to this effect in his defence of Rawlsian primary goods.

precondition for realizing their purposes, whilst others will only require a small amount of food and minimal shelter. To enable each to realize the full range of purposes would involve essentially providing everyone with everything they could conceivably want. The threshold would collapse into the statement that each person must have all the necessary resources to fulfil her purposes. In such an instance, no general shared objective conditions would be identifiable that would be of particular importance to a wide range of individuals.

In response, however, an important distinction should be drawn. Each creature no doubt has an interest in the fulfilment of his or her particular purposes. In order to do so, however, certain general conditions must be met. These conditions are of priority as, in their absence, the creature cannot attempt to fulfil or realize the particular purposes he has or adopts. They are also of particular importance as these conditions are not only implicated in the fulfilment of one particular purpose, but they are instrumental in satisfying various other purposes as well.¹⁰² Thus, there is a difference between the fulfilment of particular purposes and achieving certain states of the body and control over resources which enable beings to realize a diversity of purposes. These general conditions are the ones that provide the opportunities to fulfil a range of purposes, and are thus of particular importance to all purposive beings, even if they do not share many particular purposes.

Are there any such general necessary conditions that can be identified? Two points are important here. First, our ability to identify such conditions may depend upon restricting our focus to beings of a certain type. If the nature of beings of a particular type diverge too much, then it will not be possible to identify shared general conditions necessary for the realization of a wide range of their purposes. There is thus important empirical work to be done in attempting to identify the similar natural and social conditions that must obtain in order for creatures of a particular type to be enabled to realize their purposes. What we need to do is to analyse the similarity in structure between the nature of certain beings and their purposes in order to arrive at the general conditions necessary to realize a diversity of purposes.¹⁰³ Secondly, it is important to recognize that no being is prejudiced by having certain conditions met that are greater than necessary to realize his particular purposes. Since one is not compelled to use these resources, there is no prejudice should one be provided with more than one needs.

7.2.2 Capabilities or resources?

It is important now to consider an example as to whether these considerations actually allow for the identification of a level of provision that is of priority and falls between the first threshold relating to survival needs and the complete

¹⁰² Goodin, 1988b: 39 explicates the priority of needs over wants in this way.

¹⁰³ Thus, Rawls states (1993: 180) that we need to identify a 'partial similarity in the structure of citizen's permissible conceptions of the good'. In order to have a shared idea of rational advantage, it is important that people require roughly the same primary goods to advance their ends. 'We suppose

fulfilment of beings' particular purposes. Before doing so, however, it is necessary to consider the manner in terms of which this level of provision is to be specified. The issue arises in the context of Sen's objection that Rawls makes a fetish of primary goods. Rawls, he claims, is guilty of regarding the achievement of equal levels of primary goods as desirable in itself.

However, Sen contends that equal levels of primary goods would have a differential impact on different people. A disabled person, for instance, would require more resources in order to be able to move around than a person without such a disability: 'while goods and services are valuable, they are not valuable in themselves. Their value rests on what they can do for people or rather, what people can do with these goods and services.'¹⁰⁴ We should not as a result be interested purely in the level of primary goods that each being has but rather, Sen suggests, whether such goods enable people to function in a valuable way. Thus, the threshold that determines what is of particular importance to beings should not be specified in terms of access to certain goods but in terms of the functionings and capabilities of beings.

It is clear that the threshold I have identified is concerned to articulate the general conditions necessary for beings to be able to realize a diversity of purposes. Thus, ultimately, what we are concerned about are the abilities and capacities of beings. We are not simply interested in whether a being is provided with a certain amount of food for its own sake, but about whether such food provides a being with the general capabilities necessary to enable them to fulfil a diverse range of purposes. Thus, my account can be said to require specification in terms of certain objective functionings and capabilities.

However, even though this is true, the matter is a little more complex. There are certain resources that are generally necessary to enable beings to achieve these capabilities. Whilst we wish to achieve the general capabilities that enable us to realize our purposes, we can also identify particular goods that are necessary conditions for realizing these capabilities. The capabilities alone are fairly abstract and fail to provide sufficient detail as to what is of particular importance to beings. That is why, in specifying the threshold of priority in question, it is necessary to make reference both to certain goods and to the capabilities that we are concerned with. I shall proceed in what follows by examining an example of a capability with which we are concerned, and then specifying the goods necessary to realize that capability.

In order for a being to have purposes and realize them, two types of conditions are necessary. The first is that certain conditions must be fulfilled in relation to the internal workings of a being. In order for beings to be able to realize their purposes, they must be in a state of physical and psychological health. To maintain

that all citizens have a rational plan of life that requires for its fulfilment roughly the same kind of primary goods'(at 181). In saying this, he claims, 'we rely on various common sense psychological facts about human needs, their phases of development and so on' (at 181).

¹⁰⁴ Sen, 1984: 510.

health and bodily functioning, certain goods are necessary. For instance, it is crucial for human beings that they are provided with food adequate to meet the nutritional requirements of a human being. Here, it is interesting to note that one cannot just be provided with that level of food necessary to be free from threats to one's survival. As has already been mentioned, such a level of provision may well keep one alive but still undernourished. A person who is undernourished, however, will be hindered in the pursuit of a wide range of purposes. As such, if we wish to protect the conditions necessary to pursue diverse purposes, we must make sure that people are not undernourished and constantly hungry. In such an instance, the food must be sufficient that human beings have the energy and vitality necessary to pursue a range of purposes. The level of food required does not entail that individuals share a priority interest in such luxuries as ice cream and caviar. However, it does mean that individuals have a priority interest in well-balanced nutritional food that enables them to be healthy and physically vigorous, thus being capable of realizing a wide range of purposes. In turn, it is important to realize that recognizing this threshold of priority does not determine exactly which foods will be provided. Having nutritional food is consistent with providing different types of food, and which types of food are chosen will no doubt depend on the tastes and preferences of the individuals concerned.

Similar remarks could be made in relation to human beings about having access to housing, clothing and medical care. Such goods all concern the bodily and mental states of an individual that must be obtained if they are to be in a condition such that they are able to realize a wide range of purposes. However, in describing these necessary conditions, it is not sufficient to focus purely upon the bodily states of individuals but we need to consider the social conditions in which they exist as well. If one is in excellent bodily shape, but will be imprisoned if one attempts to realize one's purposes, then one is frustrated in the pursuit of one's purposes despite being in peak bodily condition.

Thus, it seems that certain protections for individual liberty are necessary conditions for realizing a wide range of purposes. Individuals will be unable to pursue a range of purposes if hindered from doing so through fear of harm to their sense of bodily security. Moreover, human beings typically require the liberty to express themselves and to act according to their purposes if they are to have a hope of realizing them. Thus, protection of freedom of speech and action is a necessary precondition for realizing a diversity of purposes. Similar points could be made about freedom of association, and freedom of belief. In addition, there is a general need for individuals to have control over some of the resources in the world in order to realize a range of purposes. Beings with a highest-order interest in purpose-fulfilment will thus have an interest in a system that allows them control over some resources.

It is thus possible to attain a fair degree of specificity as to the functionings, capabilities, and resources that are necessary preconditions for being able to realize a wide range of purpose. Even the fairly general analysis above has indicated that

the level of provision necessary to meet this threshold will exceed that which is required to meet the first threshold of survival. To achieve more specific determinations as to the practical meaning of this threshold requires additional empirical facts (regarding what constitutes sufficient nutrition, for instance). Such facts will mean that, to some extent, the actual necessary conditions for realizing a variety of purposes will vary in accordance with the particular circumstances of beings. In a rural town where distances are very small, people will be able to achieve a range of purposes without having access to a system of transport. On the other hand, in large cities where one cannot achieve much without being able to move around over larger distances, the existence of a system of transport will constitute a necessary precondition for realizing a wide range of purposes for the affected people.

It is thus possible to specify a threshold of priority at a level greater than that required for survival, but which does not involve the complete fulfilment of each being's particular purposes. The ability to specify this threshold is of immense importance to the task of specifying the level of provision required in a society that recognizes socio-economic rights. It is also of great importance in our judgements about individual well-being, as without the fulfilment of these conditions, it becomes clear that individuals are impaired in their ability to realize one of the sources of value in their lives.

A similar threshold could also be developed in relation to the other source of value: experiential value. There are certain shared conditions that generally give rise to negative experiences and would prevent a being from having positive experiences. There is a strong degree of overlap between the general conditions identified by a threshold focused on experiences and one focused on purposes. For ease of use and simplicity, I shall thus focus on the threshold that I have specified as involving the general necessary conditions for realizing a variety of purposes.

7.3 Shared purposes

I have argued that the source of value in the lives of beings does not lie in the species we belong to but rather certain characteristics we have. These characteristics—being able to experience or have purposes—are shared by many species. It is to be expected, however, that in specifying the content of the experiences and purposes that are valued, similar types of creatures will find certain similarities between what they regard as valuable. Thus, most human beings are likely to share certain characteristics that lead them to regard certain activities and practices as valuable.

It is interesting to note that in almost all known human societies, some form of music has developed. Similarly, we note that across diverse nations, there is a shared interest in sport. The shared and widespread nature of these goods suggests that they have some specific importance for human beings on either or both of the experiential or purposive dimensions of value. The mere fact that they are shared cannot, however, determine that they are of positive value; rather, the shared and

universal nature of these purposes provides evidence of what human beings typically regard as being of value to them. In deciding which purposes to adopt oneself, or which purposes to promote in a society, such evidence may be of great significance. Thus, beyond the thresholds I have identified, there may well be other features of our lives—such as music and sport—that are of particular importance to beings of a certain type. The identification of these things may depend upon empirical and contextual factors that are not amenable to theorizing of the type exhibited in this chapter.

8 Conclusion

Thus, I have attempted to offer solutions to two important questions in this chapter. The first problem concerned how to arrive at an account of what is of value to beings. I have suggested that this can be done through identifying two general characteristics of beings—the ability to have experiences with a particular quality, and the ability to fulfil purposes—which both have an essential evaluative element. The second aim of this chapter has been to try to understand whether there are features of beings' lives that can be said to have particular importance for them: these features may be termed the 'urgent interests' of beings. I have attempted to use the account of value developed in this chapter to argue for the existence of two thresholds concerning shared interests that are of particular importance for beings. These conclusions are useful not only in providing us with a deeper understanding of what beings value but also in guiding decisions about what we ought to do. The next chapter attempts to understand the relationship between the thin theory of the good that I have developed in this chapter and the entitlements that a society must recognize that beings have.