PERFECTIONISM WITHIN NEUTRALITY

Extending Liberal Justice to Citizens with Disabilities

by

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A thesis submitted to the Department of Philosophy

in conformity with the requirements for

the degree of Doctor of Philosophy

Queen’s University

Kingston, Ontario, Canada

July 2009

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Abstract

This dissertation explores and defends a form of perfectionism, which I call ‘public value perfectionism’. It is an approach that emerges from Sen’s capability critique of Rawls’s doctrine of primary goods and I argue that this form of perfectionism is not only compatible with, but also demanded by, a general defence of liberal neutrality. It is designed to fulfill a demand of justice that is beyond the reach of neutralist tools, yet it belongs within a larger neutralist framework in virtue of being justified by the same types of reasons that support neutralism. One of the main justifications for state neutrality is that it can serve as a means to remove or reduce disadvantage imposed on vulnerable groups. I will argue that in the case of disability limited state perfectionism can serve as a means toward that same goal.

The series of arguments that I make to defend public value perfectionism concern issues relevant to debates about neutrality and perfectionism, the metric of advantage, justice and disability, and health resource rationing. These issues each play a role in the argument I develop, which states, simplifying somewhat, that in order for society to make defensible rationing decisions about social spending that aims to reduce disability, we need an approach to advantage—i.e., public value perfectionism—that contains important elements of perfectionism and yet is grounded on neutralist considerations.
Acknowledgements

My interest in philosophy solidified in a first-year seminar offered by Lyn Rae of the Classics Department at the University of British Columbia. I remember her beginning the class by asking: “What are we as human beings? And given that, how should we live together?” Not long after, it struck me that I wouldn’t mind spending a great deal more time thinking about those and related questions, so I set out to pursue philosophy. Thanks, Lyn. Fellow students who helped me along at UBC were Shaunak Sood, Candra Marr and Susy Webb. I owe thanks also to John Russell and Paul Russell whose courses worsened my addiction to political philosophy.

At Queen’s, I have had the pleasure to discuss (at great length, to my good fortune) many details of theories of justice with Alistair Macleod, to acquire a better (or slightly less bad) sense of the subtlety of good philosophy from Steve Leighton, to be nudged (if only a bit) out of my theoretical shell by Udo Schüklenk, to be encouraged from day one by Sergio Sismondo, and to be supported and challenged in a variety of ways by nearly every member of our fine department.

I owe a tremendous debt of gratitude to Christine Sypnowich for being such an excellent supervisor. Her vigilant efforts to get me to step out from the shelter of exegesis are responsible for any force my arguments might have. My deepest thanks are also due to Will Kymlicka, whose stimulating comments on the entire manuscript are responsible for any plausibility my position might have for those who are neutrally inclined. Many others have had an influence on the work for this project. In particular, thanks to Jerome Bickenbach, who introduced me to issues of disability and justice; Andrew Lister, who
has been a great help in understanding Rawls; and Margaret Moore and Rahul Kumar, who provided helpful comments on earlier drafts.

My arguments owe a great deal to the unrelenting challenges raised by Jim Molos, who has been great friend during our time in the graduate program. Thanks also to Matt Doucet, Amanda Gibeault, Chris Riddle and Jenny Szende, as well as Omid Hejazi, Geordie McComb, Nolan Ritcey, Mark Rosner and Andrew Ross.

Finally, I want to thank my parents, who taught me to follow what you love (and then made damn well sure I was able to); my brother, who has more integrity (and clever replies) than any younger brother should be allowed to have; my in-laws, who are the warmest people I know; my sons Miles and Asher, who pull joy out of thin air; and, most of all, Danielle, my wife and best friend, who must really love me, because she has never—not once—asked me why I would want to do philosophy.
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This dissertation explores and defends a form of perfectionism, which I call ‘public value perfectionism.’ It is an approach to distributive justice which I hope to show has both practical application and theoretical significance for egalitarian political philosophy. Public value perfectionism emerges from Sen’s capability critique\(^1\) of Rawls’s doctrine of primary goods\(^2\) and I argue that this form of perfectionism is not only compatible with, but also demanded by, a general defence of liberal neutrality. It is designed to fulfill a demand of justice that is beyond the reach of neutralist tools, yet it belongs within a larger neutralist framework in virtue of being justified by the same types of reasons that support neutralism. One of the main justifications for state neutrality is that it can serve as a means to remove or reduce disadvantage imposed on vulnerable groups. I will argue that in certain cases limited state perfectionism can serve as a means toward that same goal.

Sen’s critique of Rawls centres on how theories of justice should measure advantage—that is, how well off or poorly off a person is. Sen argues that Rawls’s way of measuring advantage misses important kinds of inequality. In particular, it misses a type of inequality that is caused by disability in its various forms.\(^3\) Sen’s critique,

\(^{2}\) Rawls 1971, 90-95.
\(^{3}\) I do not claim that all the kinds of inequality missed by primary goods are caused by disability. Sen mentions environmental factors when he discusses his concern with morally arbitrary shortfalls in people’s ability to convert all-purpose goods into the power to pursue their ends (Sen 1999, 70-71). It is plausible to suppose that in some cases shortfalls of this sort could be caused purely by an adverse environment, such as one with extreme weather patterns or a very high rate of infectious diseases—rather than by the interaction between a person’s environment and her atypical physical or mental characteristics (i.e., by disability—see, e.g., Shakespeare 2006, 55-56). I do not think that merely living in an adverse environment is appropriately described as a disability. My discussion, however, focuses on the implications of Sen’s critique for
therefore, helps to identify the challenges involved in revising Rawls’s theory to address disability. Consequently, this dissertation’s central question can be rephrased as follows: Does the goal of extending justice to citizens with disabilities require people to discuss in the political sphere which activities are most important and valuable for a good life? I will argue that it does.

I want to be clear about what I am and am not trying to achieve. First, I do not aim to provide an exhaustive defence of ‘egalitarian perfectionism’. There are other ways to defend perfectionism that I do not pursue. For example, one may argue that perfectionism is needed to guarantee an adequate range of worthwhile options for the exercise of autonomy, or to help citizens who are bombarded by corporate advertising arrive at defensible beliefs about value, or to supply an alternative answer to the ‘equality of what’ question. I do not argue for or against those positions here, though I expect that they could be made compatible with what I do argue for. However, I think that the perfectionism I defend has a relationship to neutrality that is distinctive among the various forms of perfectionism.

Second, although I defend the need for a limited form of state perfectionism, I do not develop my own account of perfectionism. This would involve making claims about the constituents of a good life—or at least about the best methodology for identifying such constituents. It might also involve identifying how the state should go about making

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4 This term has been coined by Christine Sypnowich in ‘Equality Renewed’ (unpublished manuscript). See also Sypnowich 2008; 2000a; 1999.
5 Raz 1986.
6 Sypnowich 2008; Sher 1997.
use of those claims. I do none of those things. The present project does, however, explain the importance of tackling those questions and to some extent gives shape to them.

Third, I do not aim to provide either an exhaustive critique or an exhaustive defence of liberal neutrality. My arguments will identify the case of disability as one area where liberal neutrality is unable to fully satisfy the demands of justice without being supplemented by limited state perfectionism. I also suggest that nation-building may be a second instance of this. However, I neither reject nor defend the claim that there are yet other such areas. I have lingering doubts about the general defensibility of neutrality, but I consider the arguments in favour of neutrality to be forceful enough to be worth granting here for the sake of argument. My arguments in Chapters 3, 4 and 5 in defence of limited perfectionism proceed on the assumption that state neutrality is an acceptable position except where I argue otherwise.

Fourth, I do not aim to provide an exhaustive discussion of how best to secure justice for citizens with disabilities. Doing so would involve defending my form of perfectionism as the only satisfactory way to revise Rawls to address disability.\(^8\) It would also involve looking beyond the confines of Rawlsian liberal egalitarianism.\(^9\) I do neither of those things. My arguments do accomplish at least one thing with respect to debates about justice and disability: they pinpoint where among the various demands of justice we are forced to move beyond neutralist reasons in order to adequately respond to disabilities.

The project which I do undertake promises to make a significant contribution to liberal egalitarian theory. Among other things, my exploration of the central question

\(^8\) Stark 2007; Wong 2007, 2008; Nussbaum 2006; Wolff and de-Shalit 2007.
\(^9\) Stein 2006; Kittay 1999.
yields a novel interpretation of the role of opportunity in Rawlsian liberalism, introduces the idea of public values, and shows how that idea helps explain the role that perfectionism can and should have within neutralism.

The remainder of this introduction will provide an outline of the dissertation. The question that is the impetus for this work is: Does Sen’s critique of Rawls enable a defence of perfectionism? Though central to the dissertation’s project, the question can only be addressed once the stage is set. This involves laying out the various pieces of liberal theory that motivate Sen’s alternative account. We can then turn to laying out Sen’s position. The parts that follow build a defence of perfectionism on the basis of Sen’s conception of capabilities for functioning, as opposed to goods, resources or income. Here are summaries of chapters 2 through 5.

Chapter 2 provides the relevant background concerning the liberal egalitarian arguments in favour of neutrality, and explains the extent to which those arguments leave room for perfectionism. Rather than a broad survey of the very many interpretations of neutrality, I focus on two. The first is Rawls’s, for obvious reasons. The second is Will Kymlicka’s, because his account provides a more ambitious and complete defence of neutrality than Rawls does, and because it provides an example of what to do when the demands of justice outstretch the reach of neutrality. That example is found in Kymlicka’s account of minority rights, which provides important theoretical resources for the form of perfectionism that I eventually develop. In particular, it enables me to introduce the idea of public values.

Chapter 3 provides an initial defence of Sen’s claim about the need for a public ranking of valuable doings and beings. I begin by defending an interpretation of Rawls’s account of distributive justice, which aims to highlight first, the importance that a broad conception of opportunity has in his theory, and second, how his assumption concerning citizens’ mental and physical abilities is crucial for his defence of primary goods and for his theory’s ability to avoid the need for a public ranking. Next, I defend and augment Sen’s critique, which undercuts that key assumption. I then examine Sen’s capability approach and explain why it calls for a public ranking.\textsuperscript{13} The chapter thus argues that the capability approach, as presented by Sen, suggests that public judgment of the relative value of activities is required in order to correct the shortcomings of primary goods and so to extend justice to citizens with disabilities.

Chapter 4 provides further defence of Sen’s public ranking claim. It does so by discussing Norman Daniels’s theory of justice for health and replying to his attempt to meet the challenges raised by Sen’s critique without overstepping the bounds of neutralism.\textsuperscript{14} To complete my argument against this part of Daniels’s theory, and to complete my defence of Sen’s public ranking claim, the second half of this chapter is devoted to issues in health resource rationing as they apply to disability.

Chapter 5 builds a defence of limited state perfectionism on the basis of Sen’s critique. That is, the chapter seeks to identify precisely where and why I think state perfectionism is required for a satisfactory response to Sen’s critique and for a satisfactory revision of Rawlsian liberalism to address disability. I pursue those aims by arguing that a defensible neutralist public ranking is not feasible, and that public value

\textsuperscript{13} Sen 1992; 1993; 1999.
\textsuperscript{14} Daniels 1985; 1996; 2003; 2008.
perfectionism is needed. The wider implications of PVP are then discussed in the concluding chapter.

The ultimate goal of this dissertation is to articulate and defend a distinctive form of perfectionism—namely, public value perfectionism. That position is theoretically interesting in its own right; but it is also significant because it connects four philosophical debates. The series of arguments that I need to make to defend public value perfectionism concern the debates about neutrality and perfectionism, about the metric of advantage, about justice and disability, and about health resource rationing. These issues each play a role in the argument I develop, which states, simplifying somewhat, that in order for society to make defensible rationing decisions about social spending that aims to reduce disability, we need an approach to advantage—i.e., public value perfectionism—that contains important elements of perfectionism and yet is grounded on neutralist considerations.
Chapter 2: Perfectionism within Neutrality

One of the main claims in this dissertation is that the form of perfectionism I defend—public value perfectionism—is compatible with and required by a general defence of liberal neutrality. This chapter begins to set the stage for that claim by describing, interpreting and evaluating how state neutrality is understood and defended in the work of John Rawls and Will Kymlicka. I will assess how much room there is for perfectionism (and of what sort) in their theories; and I will introduce the idea of ‘public values’.

At first glance that phrasing might sound mistaken. Neutrality is often thought to rule out perfectionism. Yet neither Rawls nor Kymlicka claims that perfectionist values and projects have no role in the life of society. Their arguments are about restricting perfectionism, not eliminating it. To get a clear picture of the contours of those restrictions, we need a clear understanding of both the content and the range of application of neutrality principles.

I should explain why I focus on these two writers, rather than providing a wider overview of the very many accounts and defences of neutrality by other contributors. Rawls is included because his theory is the object of Sen’s critique, which provides the basis for my later defence of public value perfectionism. Moreover, Rawls’s theory is a prime example of a ‘political liberal’ defence of neutrality. According to his political

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15 My other main claim is that public value perfectionism is a necessary consequence of Sen’s critique of primary goods.
liberal defence, state neutrality is desirable because it makes possible a stable basis for liberal institutions in a democratic society characterized by reasonable pluralism.

Kymlicka, in contrast, defends state neutrality on the basis of ‘comprehensive liberalism’. That is one of the reasons for his inclusion here. According to his comprehensive liberal defence, state neutrality is desirable because it allows governments to promote people’s interest in living a good life, without imposing unfair disadvantages on vulnerable groups. The distinction between ‘comprehensive’ and ‘political’ liberalism will be explained during the discussion.

There are two further reasons for Kymlicka’s inclusion that are more important. First, his arguments for neutrality are more demanding than Rawls’s in a way that I think is right. I will argue that Rawls’s defence of neutrality actually undersells neutrality’s importance by overly limiting the range of issues to which it is meant to apply. Second, Kymlicka’s defence of minority rights as a response to state nation-building serves as a model for my later arguments in favour of public value perfectionism. More specifically, I will argue that what I refer to as ‘public values’ help to make sense of his arguments for minority rights, and that his account therefore illustrates how state perfectionism can be defended as compatible with and required by neutralist considerations. Defending and explaining that second claim is this chapter’s primary contribution to the dissertation’s larger argument.

This chapter proceeds in nine sections. I begin with some preliminary remarks about the kind of perfectionism that I will ultimately defend. Sections 2.2 to 2.4 outline and assess Rawls’s political liberal defence of neutrality, including the extent to which it is compatible with state perfectionism. Sections 2.5 to 2.8 explain and evaluate
Kymlicka’s comprehensive liberal defence of neutrality. Finally, in section 2.9, I defend a perfectionist interpretation of Kymlicka’s defence of minority rights, which I use to illustrate the general structure of my argument for public value perfectionism.

2.1. Public Values and State Perfectionism

Some remarks about my use of the term ‘public values’ are in order. The idea is similar in some ways to Rawlsian ‘public reasons’. What makes public reasons public in the Rawlsian sense is, I think, a function of two things: the nature of the reasons and the purpose to which members of a society put them. Reasons become public in this sense not simply because their content makes them suitable to serve a justificatory role in the political sphere of a democratic society, but also because they are publicly acknowledged to be suitable for that role. Public reasons are therefore reasons that are defensibly taken to be authoritative for certain political purposes by the members of a society.

What I will refer to as ‘public values’ share this feature: they are values that are defensibly taken to be authoritative for certain political purposes by the members of a society. Yet unlike public reasons the content of public values is not neutralist. Rather, on my use of the term, a public value is a value that is, or depends on, a claim about well-being that is defended as being appropriately authoritative within the context of a specified public political purpose. However, it does not follow from this that the well-being claim is therefore defensible for general application in all state activities. A set of public values is different from a conception of the common good in this regard. Public values have perfectionist content combined with a limited purpose.

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I should indicate the sort of perfectionism I have in mind. State perfectionism comes in many forms, not all of them liberal.\textsuperscript{19} What they share in common is the defense of at least some degree of objectivity about value paired with the claim that the state should play a role in the promotion of objective value. For example, what we could call ‘Nietzschean perfectionism’ would pursue that goal by funneling social resources into the production of a few extraordinary specimens of humanity. Communitarian perfectionism instructs the state to promote a single shared common way of life.\textsuperscript{20} In liberal versions, however, perfectionist goals are tempered by recognition of the value of cultural pluralism (contra communitarianism) and a commitment to egalitarianism (contra Nietzsche).\textsuperscript{21} Liberal perfectionists\textsuperscript{22} defend state actions that are justified by an appeal to a limited objective conception of well-being (limited in the sense that it by no means encompasses all aspects of life); and they do so for egalitarian reasons\textsuperscript{23} and in a way that aims to give due weight to the importance of citizens having the freedom and opportunity to pursue a plurality of conceptions of the good. Note that perfectionism so described is, like neutralism, a position about the justification of state actions.\textsuperscript{24}

Some alternative descriptions of the debate characterize perfectionism as any view defending state activities that promote—by intention or in effect—particular ways of life over others.\textsuperscript{25} I find such descriptions unhelpful. Neutralist liberalism favors, for example, ways of life that do not violate the rights of others, that are conducive to a

\textsuperscript{19} Perfectionism can also be developed as a strictly ethical view—see, e.g., Hurka 1993. My focus here is perfectionism within political theory.

\textsuperscript{20} Sandel 1998.

\textsuperscript{21} Although communitarians can accept that there are many different valuable ways of living (inter-community pluralism), to the extent that they are committed to fostering the bonds of community via a single shared way of life, their position is at odds with intra-community pluralism.

\textsuperscript{22} Raz 1986; Sher 1997; Wall 1998.

\textsuperscript{23} For instance, that the well-being of each citizen is of equal and objective importance (Dworkin 2000, 5).

\textsuperscript{24} Wall 2008.

\textsuperscript{25} Kymlicka 2002, 190.
public ethos of civility, and that support the survival and strengthening of liberal democratic norms. The anti-perfectionism of liberal neutrality is best located at the level of state justification. One advantage of this justification-centered description of both positions is that it identifies a real disagreement and specifies the point of contention.

The focus on justification, however, tends to underemphasize another feature of the positions—namely, that perfectionist theories typically have an aspirational quality, which is often absent in neutralist theories. Liberal perfectionism is typically motivated by a progressive politics that is concerned to advance the well-being or human flourishing of all citizens, particularly those whose effective range of choice of valuable activities is most likely to be hampered by economic disadvantage. This ambitious view of the purpose and scope of the state is grounded in the claim that the project of well-being promotion can successfully include an active leadership role for the state. Neutralist theories, in contrast, tend to place much more emphasis on requirements of legitimacy, which they generally take to be quite demanding.

The links between perfectionism and aspiration and between neutrality and legitimacy are quite strong, but they are not conceptually necessary. The form of limited state perfectionism that I defend is atypical in this regard. Public value perfectionism can be described as perfectionism motivated by considerations of legitimacy that are thoroughly at home in a larger neutralist framework. My position centres on the thought that appealing to a substantive, incomplete conception of well-being is an unavoidable feature of solutions for defending particular entirely normal (and legitimating) operations.

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of the state that present difficulties for neutralist liberalism. I will ultimately argue that this is true with respect to extending justice to citizens with disabilities.

Those remarks provide a rough indication of my intended argumentative endpoint. In order to get there, I need to begin with a look at what neutrality is, why it is important, and what its limits are.

2.2. Rawls and Neutrality

When faced with an objection that justice requires perfectionist evaluation to address a particular issue, there are at least two responses available to neutralism that do not involve simply refuting the claim that perfectionism is needed. First, one could respond by clarifying the content of neutrality requirements. For example, neutralists typically emphasize that they are *not* defending neutrality among *all* conceptions of the good, but rather only among a subset of those that count as ‘permissible’ or ‘reasonable’ or ‘justice-respecting’ and so on.\(^{28}\) This response essentially argues that what was alleged to be perfectionist evaluation was, in fact, within the bounds of neutralism, suitably characterized.

However, this response only works for cases in which justice merely requires rejecting an impermissible conception of the good (or activities defended thereupon) in favour of a reasonable one. If, instead, a justice-based issue can be resolved only by means of some further evaluative work, a second neutralist response would be to simply deny the importance of neutrality for the particular kind of issue at hand. This is what

Rawls seeks to do by limiting the application of the neutrality principle to constitutional essentials and questions of basic justice. To explain and assess that strategy, I will now look at Rawls’s approach to neutrality and perfectionism in detail.

One might be tempted to begin by saying that Rawls’s account of neutrality demands that the justification given for state actions must not appeal to any particular conception of the good. But I think that that would be misleading. Rawls distinguishes between three types of conceptions of the good: complete, partial, and political. Political conceptions of the good, which are a subset of partial conceptions, can be incorporated into Rawls’s theory and are compatible with the political liberal version of neutralism.  

A conception of the good counts as complete if it provides a full account of what constitutes a good life. In contrast, a conception of the good is partial if it merely identifies part of what makes for a good life. Some partial conceptions of the good are political in the Rawlsian sense. Others are not. Those that are political can be appealed to in justifying states actions without running afoul of neutrality. Because of that, I think that neutralism in Rawls’s political liberalism is best described as the requirement that any conception of the good incorporated into the theory must be political in the Rawlsian sense. We can shed some light on what that sense is, as well as Rawls’s defence of this form of neutralism, by looking at his account of legitimacy.

In the background of Rawls’s theory is a fairly standard liberal account of why the task of legitimating state authority is both important and challenging. To reconstruct that account I think that we should begin with the observation that human beings can secure for themselves a decent standard of living only by engaging in social cooperation on a scale large enough that it cannot be sustained by spontaneous bonds of trust. This is

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29 Rawls 2001, 141-142.
especially true in modern societies, where individual and collective material success is made possible by fruitful cooperation among strangers. As a result, the state is needed so that it can fulfill a facilitating role. That is, the state’s purpose is not only to prevent gross violations of individual rights, but also to create and maintain the social conditions that enable fruitful cooperation in the absence of trust. The state does this by designing and enforcing what Rawls’s calls the basic structure of society.\(^{30}\)

There are two features associated with the state’s activities concerning the basic structure that I think are important. First, if the basic structure is to be designed in a way that is at all responsive to considerations of efficiency, then it will yield significant inequalities in the distribution of benefits and burdens. Such inequalities are generally taken to be needed in order to elicit an optimal level of productivity from all members of society, especially those with highly marketable skills (i.e., ‘the talented’).

Second, if the basic structure is to be effective in facilitating fruitful cooperation in the absence of trust, it must be enforced in a way that is ultimately coercive. Rawls defends the liberal view that, because the state claims for itself a monopoly on the permissible use of violent force, “political power is always coercive power.”\(^{31}\) Furthermore, political power applies to citizens in a way that should be considered inescapable and involuntary. Rawls rightly rejects the Lockean move that points to emigration as always a live option.

[N]ormally, leaving [the state’s territory] is a grave step: it involves leaving the society and culture whose language we use in speech and thought to express and understand ourselves, our aims, goals, and values; the society and culture whose history, customs, and conventions we depend on to find our place in our social world.\(^{32}\)

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30 Rawls 2001, 10-12.
31 Rawls 2001, 40.
32 Ibid, 93-94.
This further solidifies the coercive character of the basic structure.

Taking these two points about the basic structure together leads to the conclusion that the activity of the liberal state ultimately amounts to an imposition of inequality. How, then, can state authority be made legitimate? Rawls’s answer is, roughly, that the fundamental principles of justice must be such that all reasonable citizens can agree to them.\(^{33}\) I think that this is the place in his theory where neutrality requirements have their largest role to play. To explain why, we need to look more closely at what he has to say about agreement.

Rawls has a specific view about what kind of agreement on a public conception of justice is possible and adequate for stability. The kind of agreement he envisions comes in two parts to be achieved in tandem. There must be agreement fueled by the appreciation of public reasons as well as agreement fueled by the various competing worldviews that flourish in democratic societies. He rejects the possibility that stable agreement could be produced by one compelling set of philosophical arguments that persuade all (reasonable) citizens.\(^ {34}\) Rawls argues that, over time, liberal freedoms have the inevitable (and politically unobjectionable) effect of producing a diversity of irreconcilable yet reasonable world views, or ‘comprehensive doctrines'.\(^ {35}\)

Rawls calls this the fact of reasonable pluralism. Different reasonable comprehensive doctrines espouse opposing understandings of our relation to the world, and Rawls thinks it would be utopian to expect these views to reach agreement ‘all the way down’ to the foundational reasons that support a conception of justice. The kind of agreement Rawls thinks is possible among these views is captured by his idea of an

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\(^{33}\) Ibid., 41.
\(^{34}\) Ibid., 32-34.
\(^{35}\) Ibid., 3-4, 34, 197.
‘overlapping consensus’, where opposing doctrines agree on the same conception of justice *but for different reasons*. Although an overlapping consensus will not extend to unreasonable doctrines, in a successful liberal democracy these can be expected to be too rare to undermine legitimacy.

Does this imply that philosophical arguments have no role to play at the base of Rawls’s theory? No. They are needed to specify and defend the idea of ‘reasonableness’, which ultimately yields a second justification of Rawls’s conception of justice – one that is independent of the support provided by the overlapping consensus. Rawls takes both of these to be important.

In Rawls’s theory, ‘reasonable’ is something of a technical term. Comprehensive doctrines count as reasonable if they instruct their adherents to be willing to offer fair terms for social cooperation and abide by those terms when others do so as well. Unreasonable comprehensive doctrines are ones that seek to use political power to advantage their way of life over others. To be reasonable is to affirm the moral equality of others by refraining from exerting one’s own superior power in the context of setting the terms of social cooperation. This conception of reasonableness leads to the Rawlsian idea of society as, first and foremost, a fair system of social cooperation. Comprehensive doctrines will count as unreasonable, then, if they reject that idea of society.

This view of society, which Rawls takes to be present in the public political culture of modern liberal democracies, can be seen as a premise that must be granted in order for political liberalism to get off the ground. As Rawls uses the term ‘reasonable’, this is effectively part of what it *means* to be reasonable—namely, to view society as primarily a fair system of cooperation. Reasonable citizens must also be willing to accept

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and live by a determinate conception of justice (such as justice as fairness) that is ‘worked up’ from those premises—that is, one that provides a fair way of fleshing out the components of the Rawlsian view of society.

In recasting justice as fairness as a political conception, Rawls’s aspiration, then, is to provide a conception of the justice that both (a) can be given a justification entirely in terms of public reasons, and (b) can also be affirmed for nonpublic reasons from within any reasonable comprehensive doctrine. More needs to be said about the first of these desiderata. It is the one that has to do with Rawls’s version of neutrality. In order to satisfy (a), Rawls wants avoid relying ‘comprehensive’ liberal values, such as autonomy and individuality, since these, he argues, are rejected by some reasonable doctrines (e.g., by ‘citizens of faith’), and therefore cannot be part of public reasons. The only values that can be a part of public reasons are the values contained in political conceptions of the good.

I want to emphasise the distinction between political liberalism and (the recast version of) justice as fairness, the latter being one (favoured) instantiation of the former. Political liberalism as a general view consists of, among other things, the Rawlsian idea of society. Justice as fairness is designed to provide a fair fleshing out of the components of that idea. The several political conceptions of the good in Rawls’s theory are key parts in that fleshing out. In order to get a better sense of this aspect of neutralism in political liberalism, I will examine in close detail one of those political conceptions of the good: primary goods. I have chosen primary goods as an example because of their relevance in later chapters.

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2.3. Neutralism and Primary Goods

I think that the best way to explain how primary goods fit into Rawls’s neutralism is to consider why we need primary goods in fleshing out the Rawlsian idea of society, and why Rawls thinks they are consistent with and, in some sense, worked up from that idea. The first of these tasks is fairly straightforward. In order to formulate fair terms of social cooperation, we need agreement on what is to count as advantageous in the context of resolving questions of justice. Rawls offers primary goods as that metric of advantage. Indeed, the doctrine of primary goods is one of the partial conceptions of the good that are incorporated into his theory as political conceptions. This leads to the second task. How exactly are primary goods ‘political’ in the Rawlsian sense? How are they neutralist?

Primary goods are often described as things that a person is presumed to want, whatever he wants.38 In Rawls’s later writings, this ceases to be the favoured description. Instead, Rawls emphasizes that primary goods are best understood as those things that people in a liberal democracy need as citizens.39 ‘Citizen’ is also something of a technical term for Rawls, the definition of which is worked up from his idea of society. He writes,

As suits a political conception of justice that views society as a fair system of cooperation, a citizen is someone who can be a free and equal participant over a complete life.40

Rawls argues that this idea of a citizen as someone who is capable and willing to do their part in a fair cooperative scheme is firmly rooted in the history of western political thought. More importantly, it is built up from the idea of reasonableness. What, then,

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38 Rawls 1971, 62.
39 Rawls 2001, 60.
40 Ibid., 24.
enables people to be citizens so conceived? Rawls’s answer is the two moral powers: the capacity for a sense of justice, and the capacity to have, to revise, and rationally to pursue a conception of the good.\textsuperscript{41} We can shed some light on the basis for this claim by looking at Rawls’s more specific remarks about the idea of social cooperation.

Rawls writes that one of the essential features of the idea of social cooperation is the idea of rational advantage. This latter idea “specifies what it is that those engaged in cooperation are seeking to advance from the standpoint of their own good.”\textsuperscript{42} Based on that, I think we should view the second moral power as enabling people to see the point of social cooperation, so that the capacity for a conception of the good is something like a condition for the possibility of their being \textit{willing} to engage in (fair) social cooperation.

In clarifying the idea of social cooperation, Rawls also emphasizes that it is distinct from mutual advantage fuelled by enlightened self-interest. The latter allows the terms of cooperation to be shaped by inequalities in bargaining power, which fails to capture the idea of reciprocity.\textsuperscript{43} Reciprocity involves, among other things, a commitment to abide by agreed-upon fair terms of cooperation even when doing so contradicts one’s own advantage. Since this is plausibly a matter of justice, I think that the first moral power (i.e., the capacity for a sense of justice) should be thought of as what makes people \textit{capable} of engaging in (fair) social cooperation.

Therefore, if it is granted that—for purposes of justice—society should be thought of as a fair system of social cooperation, then it must also be granted that—for the same purposes—citizens should be thought of as having the two moral powers. Let us look, then, at how primary goods relate to the two moral powers. The primary goods are: the

\textsuperscript{41} Ibid, 18-19.  
\textsuperscript{42} Ibid., 6.  
basic rights and liberties, freedom of movement and free choice of occupation, powers and prerogatives of offices and positions of authority and responsibility, income and wealth, and the social bases of self-respect.\textsuperscript{44}

The basic liberties consist of political liberties and civil liberties. Rawls argues that the political liberties are necessary for the development and exercise of the sense of justice, and that the civil liberties make possible the development and exercise of the capacity to form, to revise, and rationally to pursue a conception of the good.\textsuperscript{45} Freedom of movement and free choice of occupation are secured against a background of diverse opportunities, and are thereby necessary for the exercise of the second moral power, since they make it possible for people to pursue their permissible conceptions of the good, including their revised conceptions of the good, whatever these may be.\textsuperscript{46} The same is true for income and wealth, since these are all-purpose means. The social bases of self-respect also support the exercise of the second moral power, though somewhat less directly, in that they “enable people to advance their ends with self-confidence.”\textsuperscript{47} Of the primary goods, Rawls says the least about the relation between the two moral powers and the positional goods that make up the third entry on his list. Nonetheless, I think that these goods have a clear enough link to the exercise of the capacity for a sense of justice; though their exclusivity would make it problematic to count them as being necessary in that regard.

I think that the above picture explains how Rawls hopes to offer up primary goods as a \textit{political} partial conception of the good—one that can be supported entirely by public

\begin{flushright}
\textsuperscript{44} Rawls 2001, 58-59. \\
\textsuperscript{45} Ibid., 45. \\
\textsuperscript{46} Ibid., 58. \\
\textsuperscript{47} Ibid., 59.
\end{flushright}
reasons. Here, again, is the rough outline of the argument. Since the overlapping consensus does not include a full or ‘comprehensive’ conception of the person, we need a political conception of the person as citizen that is built up only from the implications of taking society to be a fair system of social cooperation. This political conception of the person makes room within the overlapping consensus for an agreement on the needs of people as citizens, from which the list of primary goods, Rawls argues, can be drawn forth. The interdependence of these ideas in Rawls’s political liberalism is clear. He writes,

> While the list of primary goods rests in part on the general facts and requirements of social life, it does so only together with a political conception of the person as free and equal, endowed with the moral powers, and capable of being a fully cooperating member of society. 48

The doctrine of primary goods is a partial conception of the good. However, the values it contains are all worked up from the idea of society as a fair system of social cooperation, which in turns is derived from the idea of reasonableness. That partial conception of the good is one that can be given a defence on the basis of public reasons, which satisfies the political liberal version of neutrality. Because the defence is based on the idea of reasonableness, it is in principle compatible with all reasonable comprehensive doctrines in virtue of their reasonableness. This part of Rawls’s conception of justice is thus suitable as the site of an overlapping consensus.

Those remarks provide a rough indication of what neutrality means in Rawls’s theory. To complete the picture of his position on neutrality I will now discuss the limits he places on the application of neutrality requirements.

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48 Ibid., 58.
2.4. Rawls and Limits on Neutrality

Justice as fairness does not entirely rule out the use of perfectionist reasons in politics. In *A Theory of Justice*, Rawls made room for perfectionist pursuits in a way that did not diminish the importance of neutrality. He did so by introducing the idea of an exchange branch. This would be a branch of the government whose purpose would be to coordinate large scale perfectionist projects. The distinctive feature of the exchange branch was that it would be funded entirely and only by those who endorse its activities. It would require unanimous, as opposed to majoritarian, approval. Consequently, although technically it would be part of the state, it would not be part of the basic structure, because it would lack the requisite coercive character. I think that this explains why Rawls exempted it from neutralist requirements. However, in later works, Rawls appears to have abandoned the exchange branch in favour of a more permissive view concerning perfectionist politics.

After Rawls’s move to political liberalism, he makes room for perfectionism by instead diminishing the importance of neutrality. He does so by limiting its range of application to constitutional essentials and questions of basic justice. He argues that only neutralist reasons can provide a stable legitimate basis for agreement on constitutional essentials and matter of basic justice. But once those fundamental matters are settled, further state decisions and actions can be influenced by, even based on, perfectionist reasons. He writes that the

subordinate place [of perfectionist values] is acceptable once we see that the exclusion applies to questions of the constitutional essentials and basic questions of justice. … It does not follow that perfectionist values can never be appealed to in any form, say in

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suitably circumscribed questions legislators may consider, or on certain matters of policy.\textsuperscript{50}

Rawls thus limits the neutrality requirement to ‘fundamental’ justice. The most basic institutional features that shape the basic structure must be justified on the basis of public reasons that appeal only to values that are political in the Rawlsian sense. However, further exercises of state authority do not need to meet this test. Legislators acting within the constraints imposed by fundamental justice can appeal to perfectionist values, and state projects with perfectionist ends can be proposed and put to a popular vote, so long as they do not threaten the fulfillment of fundamental justice.

That being said, perfectionist values do not have a role to play in Rawls’s specification of the metric of advantage. Rawls uses primary goods to allow him to formulate the fundamental demands of socioeconomic justice without wading into substantive questions about the good. Although he says that the difference principle and the fair equality of opportunity principle are not constitutional essentials,\textsuperscript{51} I think it is defensible to conclude that they are matters of basic justice, due to their central role in securing background justice for fair social cooperation.

I take Rawls’s idea of fundamental justice, then, to consist of the equal basic liberties, the fair value of the political liberties, and background justice for fair social cooperation. Once these are secured, the consequences of the free interactions between individuals in compliance with the rules of the basic structure are just, whatever they turn out to be. His comments on perfectionism imply further than in such circumstances perfectionism in politics would no longer threaten state legitimacy. When constitutional essentials or “legislative questions that concern or border on these essentials, or are

\textsuperscript{50} Rawls 2001, 152.
\textsuperscript{51} Ibid., 48-49.

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highly divisive” are at issue, neutralist requirements apply, but otherwise not. He says that it is neither possible nor desirable to settle all legislative questions by appeal to political values. “There are many questions legislatures must consider that can only be settled by voting that is properly influenced by nonpolitical values.”

This points us toward a clearer picture of the potential for disagreement between Rawlsian neutralism and state perfectionism. I think that disagreement would arise if perfectionist input were argued to be needed to adequately address questions of fundamental justice. However, we need to keep in mind the different levels of legislation. For example, consider fair equality of opportunity. One would expect it to lead to legislation at a number of different levels. One might imagine a general declaration of a public commitment to secure fair equality of opportunity, followed by more specific legislation establishing public education, following by much more specific policies dealing with implementation issues. Rawls’s limitations on neutrality requirements suggest that perfectionist reasons could be permissible in support of the third, and perhaps also the second, level of state action in this example.

For my purposes, it would be convenient to simply accept Rawls’s concessions here concerning perfectionism, since they genuinely open the door to perfectionism within neutrality. Moreover, I think he is right that some issues of justice can be resolved only by means of perfectionist considerations, which is a claim I defend below—especially in chapter 5. Nonetheless, I think that Rawls understates the importance of neutrality when he argues that it simply does not apply beyond the realm of fundamental justice. I think that considerations of neutrality apply at every level of state actions (even

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52 Rawls 2001, 41.
53 Ibid., 41.
though they can be outweighed by perfectionist considerations in some case, as I argue in chapter 5). I have two reasons for thinking that neutrality requirements have this wide range of application.

First, Rawls’s definition of reasonable persons includes the idea that they will refrain from using state authority to further their own conception of the good. But if policy issues are put to a vote that is “properly influenced by nonpolitical values”, that would appear to allow members of the majority to use state resources to subsidize the ways of life they value. This would violate the demands of reasonableness. Second, Rawls’s limitations on neutrality ignore and are at odds with Kymlicka’s arguments concerning norms of articulateness, which apply to all levels of state decisions and actions, and which I find persuasive enough to grant for the sake of argument here.\textsuperscript{54} Doing so serves my purposes, because it allows me to defend public value perfectionism as being compatible with and demanded by a more ambitious version of neutralism than Rawls’s.

I find it to be a bit puzzling that Rawls limits the application of neutrality requirement in the way he does in his later work. He explains that neutrality is required for constitutional essentials and basic justice for the familiar reasons that are repeated throughout his discussion of political liberalism—namely, that these requirements are necessary for securing stable and fair institutions in the context of reasonable pluralism. One wonders, however, why, if he really is committed to the view that political power is always coercive power, he does not apply neutralist arguments to every exercise of political power. Kymlicka, in contrast, does indeed seem to do so. I will turn now to his arguments.

\textsuperscript{54} Kymlicka 1989b.
2.5. Kymlicka versus Rawls

Kymlicka summarizes liberal neutrality as the following: “The state does not take a stand on which ways of life are most worth living, and the desire to help one way of life over another is precluded as a justification of government action.” To explain his comprehensive liberal defence of neutrality, I will begin by outlining how it differs from Rawls’s political liberalism.

I think that Rawls should be understood as seeking to defend liberal egalitarian institutions without relying on a liberal account of the social conditions conducive to well-being. He does not, for instance, want to rely on the claim that individual autonomy is a constituent of the good life. He argues that reasonable comprehensive doctrines disagree about whether there is a beneficial connection between autonomy and well-being. Traditionally, liberals have argued that the rights and freedoms guaranteed by liberal institutions directly promote good lives. I think that political liberalism should be seen as breaking from that tradition because it argues that liberal institutions should instead be defended simply on the basis of their role in enabling a stable system of cooperation. Because of that role, liberal institutions facilitate the effective production and (allegedly) fair distribution of material goods. However, according to my understanding of political liberalism, the state should not seek to promote or discuss well-being directly. I think that this political liberal strategy is taken by Rawls to be a

55 Kymlicka 1989b, 883-884. This is, in fact, a statement of what Kymlicka calls ‘justificatory neutrality’, as opposed to ‘consequential neutrality’.
necessary response to the extent of reasonable disagreement about what makes for a good
life.\(^{56}\)

Kymlicka disagrees with much of Rawls’s defence of political liberalism. He
argues that Rawls overstates the controversy concerning autonomy, and Kymlicka
defends liberal institutions ultimately on the basis of considerations of well-being, or so I
will argue. His comprehensive liberalism defends neutrality as the best way for liberal
states to promote: (i) people’s ability to arrive at beliefs about value that correctly
distinguish the good from the trivial and harmful, and (ii) people’s ability to act on those
beliefs. Put another way, state neutrality is the best way for liberalism to acknowledge
people’s essential interest in leading lives that really are good.\(^{57}\) This is importantly
different from Rawls’s ‘political’ justification of state neutrality, which replaces the
language of well-being almost entirely with talk of citizenship needs, where these are
understood in light of the Rawlsian idea of society. In contrast, I will argue that well-
being considerations make up the very foundation of Kymlicka’s comprehensive
liberalism and his defence of state neutrality.

To sketch that defence, I will first examine his view of the relationship between
well-being and autonomy. Then, I will discuss to what extent state neutrality follows
from these claims, before addressing his specific arguments against state perfectionism.
Once his account of neutralism is clarified I can then properly examine his defence of
minority rights, in order to argue that it involves an implicit appeal to public value
perfectionism.

\(^{56}\) This is subject to criticism in Sypnowich 1996.
What, then, is the relationship between autonomy and well-being in Kymlicka’s theory? Let us begin by clarifying the role and understanding of autonomy at play in his theory. Kymlicka “believe[s] that the most defensible liberal theory is based on the value of autonomy.” He argues that Rawls overstates the severity of the fact of reasonable pluralism.

Kymlicka claims that in Western liberal democracies the ideal of autonomy is rejected only by a small number of isolated groups, rather than, as Rawls suggests, by a significant portion of the population. Rawls makes this mistake because he conflates two ideas of autonomy: autonomy as rational revisability and autonomy as individuality. The latter concerns the idea that a good life involves actively questioning and examining various conceptions of the good, so as to arrive at a personal understanding of the good that expresses one’s individuality. Rawls is right to reject this ideal of autonomy as the basis for a conception of social justice. Autonomy as individuality is too antagonistic towards all inherited beliefs about value to be politically workable. However, he is wrong to conclude that comprehensive liberalism is therefore also to be rejected. Comprehensive liberalism need not be bound up with autonomy as individuality, and can instead be based, as Kymlicka’s version is, on autonomy as rational revisability. So, what is rational revisability, and wherein lies its value?

Autonomy as rational revisability refers to the capacity to question and to revise one’s conception of the good. Contrary to some early communitarian criticisms, having

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58 Kymlicka 1996, 95.
59 That argument aims to show, essentially, that the move to political liberalism is unnecessary. Kymlicka also argues that political liberalism is ineffective. He denies that the arguments Rawls aims at reasonable private communitarians fail to justify the full set of basic liberties—and, even so, aren’t likely to be convincing to them (Kymlicka 2002, ch.6).
60 Kymlicka 1996, 102, n. 22.
the capacity to do this does not require the self to be able to stand back from all of its ends at once, so as to evaluate them. Kymlicka agrees with the communitarian point that evaluation is possible only when at least some ends are taken as given. But he also defends the liberal point that we should always take seriously the possibility of ourselves later having different ends from the ones we now have. At any point in time, at least some of our ends are taken as given, but across time, the identity of those ends is not fixed, so that no one particular end is given in a necessarily fixed and permanent way.\(^{61}\)

Several social conditions are needed for the development and exercise of this capacity: freedom of conscience, of association and of the press, as well as access to information about a wide range of lifestyles, and an education that nurtures both the critical thinking skills needed to question authority fruitfully and a willingness to do so.\(^{62}\)

In contrast, if our goal were to promote, instead, autonomy as individuality, we would aim to instill not only a willingness to question authority, but even a desire to question all of one’s inherited values.

Kymlicka claims that autonomy as rational revisability is not controversial in the problematic way that autonomy as individuality is. His support for this claim is made, in large part, by arguing that communitarian critics of liberalism do, in fact, accept the value of autonomy as rational revisability, despite their protestations to the contrary. I think that autonomy as rational revisability can be further supported by considering the perspective of what I will refer to as ‘reasonable private communitarians’. These are people who hold a worldview of the sort that is reasonable in Rawls’s sense and yet conceives of the good life as involving simple adherence to customary practices or religious doctrines. They

\(^{61}\) Moreover, Kymlicka argues that prominent communitarians like Charles Taylor and Michael Sandel really do agree with this liberal point, despite claims to the contrary (see Kymlicka 2002: 221-228).

\(^{62}\) Kymlicka 2002, 216.
have no reason to value a state that promotes autonomy as individuality, since that version of the autonomy ideal would necessarily seek to undermine their way of life. However, they do, nonetheless, have reason to value a state that promotes autonomy as rational revisability. This is because the meaningfulness of their own adherence becomes significant and considerable as a result of their being in a context of ample opportunities to do otherwise. A person who fully complies with a way of life in the absence of choice can deserve no praise for her adherence; but a person whose commitment persists in the face of the many opportunities secured by a liberal state promoting autonomy as rational revisability can describe her adherence as an achievement.

The discussion so far tells us what conception of autonomy is at play in Kymlicka’s theory. This is important, because he most often describes his view as being founded on autonomy (as opposed to political liberalism founded on toleration). However, I will argue in the next section that it is really well-being that is the foundational value in his comprehensive liberalism.

2.6. Kymlicka and Well-Being

I think that the value of autonomy as rational revisability in Kymlicka’s theory is to be found in its connection to well-being. His arguments are phrased more often in term of legitimate interests, rather than well-being; but I will argue that the connection between the two in his writing is very close. This is evident in “Two Theories of Justice”,
where his discussion moves seamlessly from talk of well-being to talk of legitimate interests. ⁶³

He begins the relevant section of that article by arguing that what gives beings moral status “is the fact that they have a good, and their well-being matters intrinsically.”⁶⁴ People deserve moral consideration precisely “because they can suffer or flourish, because their lives can go better or worse, and because we think their well-being is of intrinsic importance.”⁶⁵ These claims are followed immediately by the question: “How then should we construe justice as impartiality?” Kymlicka’s answer is that “[a]t the deepest level, justice is about the equal consideration of our legitimate interests.”⁶⁶ What this shows is that grounding liberalism on well-being (more specifically, on the equal and intrinsic importance of each person’s well-being) is what brings him to argue that we should understand justice in terms of the equal consideration of legitimate interests.

Why does Kymlicka shift from well-being talk to interest talk when he turns from discussing who has moral status to discussing justice? I think that the reason is that he is committed to the claim that people’s well-being matters equally, and so wants to rule out well-being considerations that are at odds with this stance of moral equality. We can imagine cases where rejecting moral equality would increase the well-being of some. This thought that well-being considerations and fairness considerations sometimes pull apart is, I think, what motivates the terminology shift. To discuss justice, he needs a term that picks out only those well-being interests that are consistent with equal concern and

⁶³ Kymlicka 1990.
⁶⁴ Ibid., 111.
⁶⁵ Ibid., 111.
⁶⁶ Ibid., 112.
are thereby legitimate. Talk of legitimate interests is therefore still talk of well-being, except with added constraints related to moral equality.

Moreover, when we look into the interest that he focuses on primarily, we get further evidence of the centrality of well-being considerations in his theory. In his defence of state neutrality, Kymlicka focuses on our essential interest in leading a life that is good. He writes,

> At the most general level, our aim is to lead a good life, to have those things that a good life contains. ... [That claim] has important consequences. For ... leading a good life is different from leading the life we currently believe to be good.\(^67\)

His view here exhibits no small degree of objectivity about well-being. In further developing this point, he argues that we should take seriously the distinction between genuinely worthwhile activities and trivial ones. The distinction is important because one of the necessary conditions for something being able to contribute to a person’s well-being is that it is worthwhile independent of her preferences. “If [something] is not valuable, then satisfying my mistaken preference for it will not contribute to my well-being.”\(^68\)

To clarify this point about the relationship between value, preferences and well-being, suppose that I have a preference for \(X\), and I choose to do \(M\) as a means to create or experience the value I believe \(X\) has. Doing \(M\) could fail to contribute to my well-being in one of two ways: on the one hand, I could be mistaken about \(M\) being a good means for achieving the value in \(X\); on the other hand, I could be mistaken about \(X\) being valuable at all. One could attempt to deny objectivity about well-being by defending a very tight connection between preferences and what is valuable. That view would be

\(^67\) Kymlicka 2002, 214.  
\(^68\) Ibid., 215.
defensible only if the first kind of explanation was acceptable in all cases where my acting on my preferences fails to contribute to my well-being. However, that is not the route Kymlicka takes. His defence of the distinction between genuinely worthwhile and genuinely trivial activities shows he is in agreement with liberal perfectionists that there are at least some objective constituents of the good life. Moreover, the essential interest he emphasizes shows that he also agrees that one of the tasks of the state is to promote the well-being of its citizens. Why, then, does he oppose state perfectionism?

2.7. Kymlicka’s Arguments against Perfectionism

Is it because he rejects the feasibility of a common conception of the good on the basis that our individual differences require more personally tailored conceptions? If what makes for a good life for different people were highly idiosyncratic, then information gathering challenges would strongly tend to make centralized efforts to promote well-being terribly expensive, or ineffective, or harmful, or all those combined. However, Kymlicka’s objection to state perfectionism is not grounded on a worry of that sort. He argues that our good is not unique. Rather, our good is

tied in important ways to the cultural practices we share with others in our community. We share enough with others around us that a well-intentioned perfectionist government could, by drawing on the wisdom and experience of others, arrive at a reasonable set of beliefs about its citizens’ good.

Can his rejection of state perfectionism be explained, instead, by an underestimation of the risks and dangers of neutrality? No. He is clearly aware of what is at stake in defending state neutrality. Liberal perfectionists argue against giving exclusive

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69 Ibid., 216.
priority to individual autonomy out of concern that sometimes such freedom fails to contribute to well-being. Kymlicka shares this concern. He writes,

We know that some people are not well equipped to deal with the difficult decisions life requires. They make mistakes about their lives, choosing to do trivial, degrading, even harmful, things. If we are supposed to show concern for people, why should we not stop people from making such mistakes? When people are unable to deal effectively with life, respecting their self-determination may amount in practice to abandoning them to an unhappy fate.

But he argues against restrictions on individual autonomy. He argues against the idea that the state should provide incentives that guide citizens away from trivial and harmful activities and towards ones that are genuinely worthwhile. Why?

Kymlicka offers two reasons: the endorsement constraint, and pessimism about state forums for evaluating the good. Concerning the first of these, he argues that being endorsed by the agent, just like being valuable, is a necessary condition for something being able to contribute to a person’s well-being. Engaging in genuinely worthwhile activities contributes to a person’s well-being only if she experiences them as valuable. “[N]o life goes better by being led from the outside according to values the person does not endorse.” According to this argument, the state’s efforts to promote well-being will be effective only if they are done in ways that are consistent with people being ultimately left to choose in light of their own beliefs about value—that is, to lead their lives from the inside. Improving the well-being of a person who chooses the trivial becomes a matter of convincing him to choose to engage instead in worthwhile activities for the right reasons—namely, reasons that explain the value of the activities.

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70 Sher 1997.
71 Kymlicka 2002, 213.
It has been pointed out, however, that the endorsement constraint is compatible with some forms of state perfectionism. Endorsement is compatible with state interventions aimed at exposing the uninitiated to valuable activities, so as to enable an appreciation of those activities that leads to a revision (in the right direction) of their beliefs about value. Kymlicka concedes this. He writes,

One way to get people to pursue something for the right reasons is to get them to pursue it for the wrong reasons, and hope they will then see its true value. This is not inherently unacceptable, and it occurs often enough in the cultural marketplace. So the endorsement constraint argument, by itself, cannot rule out all forms of state perfectionism. But he does not concede that we should, therefore, support this type of state perfectionism. These temporary state interventions require prior evaluation of the good by, or at least within, the institutions of the state; and Kymlicka is pessimistic about this.

What he favours is to have evaluation of the good occur in civil society, which he refers as ‘social perfectionism’. He agrees with the communitarian point that evaluating the good cannot be a private, one person affair. But from the mere fact that it must be collective, it does not follow that it must belong in the political sphere. That would follow only in the absence of the distinction between the political sphere and civil society. As compared with non-state forums, state forums for evaluating the good intensify,

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73 Hurka 1995.
74 This perfectionist argument against the endorsement constraint focuses on situations in which the state encourages people to give up trivial activities in favour of worthwhile ones; and the defensibility of the argument relies on future endorsement. I think that we can also argue against the endorsement constraint by defending perfectionist state action that encourages people to give up harmful or degrading activities in favour of merely trivial ones. In that kinds of case, future endorsement would not be essential (though it would be desirable) since the removal of a harm contributes to well-being even if it is not replaced by a worthwhile activity that is experienced as such.
75 Kymlicka 2002, 277, n. 6.
76 Ibid., 248.
Kymlicka argues, certain inevitable disadvantages that marginalized groups face in the competition for gaining adherents to their conception of the good.\(^77\)

The non-state forums of civil society produce what Kymlicka refers to as a cultural marketplace of ideas. Against a background of civil and political liberties, a fair distribution of advantage, and state neutrality, groups espousing competing conceptions of the good are each free to extol the virtues of their way of life, seeking to gain further adherents to their conception. This activity is not only permissible, but also, in a weak sense, obligatory as an appropriate way of making oneself accountable to one’s fellow citizens as someone who holds her conception of the good responsibly. Under these conditions, the hope and expectation is that genuinely worthwhile ways of living will show themselves to be so, and trivial or harmful ones will lose out. In this way, Kymlicka’s neutralism aims to improve people’s beliefs about value, by defending the importance of perfectionist ideals in civil society. He argues that the debate over state neutrality “should perhaps be seen as a choice, not between perfectionism and neutrality, but between social perfectionism and state perfectionism—for the flip side of state neutrality is support for the role of perfectionist ideals in civil society.”\(^78\)

Of course, the cultural marketplace will serve this function only if it is sensitive to how far competing conceptions get things right with respect to the value of their practices—or at least sensitive to this more so than to other kinds of factors. If success in the cultural marketplace is excessively determined by, for example, marketing strategies or prevailing fads, then it will be unlikely to serve the epistemic function Kymlicka hopes

\(^{77}\) Christine Sypnowich (2000b) complains that Kymlicka is inconsistent, calling for rights to culture for minorities, but arguing against a common conception of culture for society as a whole.

\(^{78}\) Kymlicka 2002: 248.
it can. Whether the force of such questionable forms of non-rational preference formation can be counteracted would depend in large part on a society’s degree of success in enabling, at least, a very large segment of its population to develop the capacity to intelligently and critically reflect on a variety of ways of life.

However, Kymlicka acknowledges that even if we should be reasonably optimistic in this regard, we can still expect marginalized groups to face certain disadvantages in the cultural marketplace. One reason is social prejudice. To the extent that this form of injustice persists, the voices of members of marginalized groups will receive less than their fair share of attention. A second reason has to do with a society’s norms of articulateness. This type of disadvantage is far less obvious, and arguably more difficult to remove, than social prejudice. With effort and help, well-meaning members of the majority can often come to recognize their own inherited social prejudice and can work to counteract it. But the same is not true in the case of a society’s norms of articulateness. Kymlicka focuses on this problem, describing it in the following way:

The dominant cultural practices of our community were defined by one section of the population—that is, the male members of the upper classes of the white race—and were defined so as to exclude and denigrate the values of subordinate groups. Members of these excluded groups—women, blacks, Hispanics—have been unable to get recognition for their values from the cultural mainstream and have developed (or retained) subcultures for the expression of these values, subcultures whose norms, by necessity, are incommensurable with those of the mainstream.

To have an effective voice, one must not only be listened to, but also understood. This is a real problem for the pursuit of perfectionist ideals in the cultural marketplace. However, expanding the pursuit of perfectionism beyond civil society and into the political sphere would, Kymlicka argues, only makes things worse.

79 Sypnowich 2008.
80 Kymlicka 1989b, 900-901.
State perfectionism intensifies the disadvantage of marginalized groups for two reasons: it forces them into a mode of competition in which they are particularly vulnerable, and, at the same time, it raises the stakes of that competition. In the cultural marketplace, minority groups can decide how and to whom they advocate their ways of life; and often they do so by targeting the most favourable segments of the majority (i.e., those least swayed by social prejudice and cultural conservatism). Kymlicka argues that state perfectionism forces minority groups to adopt the far less feasible aim of convincing the majority.\footnote{Ibid., 901.} This is presumably because he assumes that state perfectionism would involve public evaluation of the good using majoritarian criteria of success.\footnote{This is not necessarily the case, since perfectionist state actions could alternatively be chosen by expert panels. In that case the worry about norms of articulateness could be less or could be the same, depending on the particularities of the panel.} This would mean that minority groups would be bound to lose out unless they adopt the mainstream’s norms of articulateness. But doing so would likely fail to capture the real meaning and value of their practices, and fail to remove their disadvantage, since the mainstream’s norms have been defined by and for the mainstream.\footnote{Kymlicka 1989b.}

Secondly, the stakes of the competition among conceptions of the good are higher under state perfectionism. In the cultural marketplace, winners have only to gain the benefits of economies of scale. The types of activities associated with mainstream conceptions of the good can be expected to be more readily and cheaply available because of mass demand, as compared to activities associated with less popular ways of life. State perfectionism adds to this inequality by exercising state power in various ways designed to subsidize the favoured activities. This may be complemented by imposing special tariffs on disfavoured activities. But even in the absence of direct disincentives of
this sort, all non-subsidized activities would still become more difficult to maintain, because the mere fact of subsidies (funded by taxes collected from all) makes them more expensive in relative terms.

Kymlicka acknowledges that under conditions of competition that genuinely did, as Nozick says, track bestness, these higher stakes would be a good thing for well-being. They would quicken the pace of improvement in our beliefs about value. In that case, Kymlicka’s comprehensive liberalism would, it seems, lead to the modest form of state perfectionism that is compatible with the endorsement constraint. But he argues that the conditions in question describe neither our present nor our foreseeable future. He takes the problems concerning social prejudice and the norms of articulateness to be inevitable consequences of ethnocultural diversity, which is a permanent feature of modern liberal democracies. And state perfectionism, he argues, is unhelpful—even harmful—as a response to these problems. That is why Kymlicka defends state neutrality complemented by social perfectionism as the best way for the state to promote its citizens’ essential interest in leading a good life.

How defensible is that position? The considerations Kymlicka marshals in defence of his view are quite forceful. Yet I am not convinced that perfectionist state policies that had a mandate of counteracting the negative effects of the norms of articulateness would be bound to do more harm than good. However, providing a general defence of state perfectionism is not my aim. Rather, I want to argue for a form of perfectionism that can be supported by neutralist considerations. To achieve that, it is best for me to grant the argument about the norms of articulateness, since doing so yields an ambitious version of state neutrality. More specifically, Kymlicka’s arguments are

\[84\] Kymlicka 1989b, 900.
best described as concluding that the state must refrain from appealing to any particular conception of the good when doing so would impose unfair disadvantage on vulnerable groups.

2.8. Kymlicka’s Defence of Nation-Building and Minority Rights

Rawls makes room for perfectionism by identifying certain areas of state activities where, he argues, neutralist requirements do not need to be met. I have endorsed Kymlicka’s version of neutralism, which rejects that particular concession. However, I think that Kymlicka’s defence of nation-building and minority rights makes room for perfectionism in a different way. I will argue in the next section that it makes room for a form of perfectionism characterized by public values and justified by a demand of justice that would otherwise go unmet.

This interpretation is at odds with Kymlicka’s own presentation of his defence of nation-building and minority rights. My purpose in defending a perfectionist interpretation is that it provides an illustration of how public value perfectionism can be justified within and by neutralism. To defend my interpretation, I will begin by outlining Kymlicka’s arguments as he presents them.

His arguments concerning culture and the state are widely known. Although states can disestablish religion, they cannot avoid all cultural attachments. Violating ethnocultural neutrality is inevitable, and the potential for nation-building that this opens up is desirable. I will examine those two claims in turn.
Why is ethnocultural neutrality impossible? Choice of official language is the clearest example to illustrate this fact. Governments operate much more effectively and efficiently if a common language is used by all involved. If, for example, the courts were maximally language inclusive, they would grind to a halt. Choosing an official language is thus very close to a practical necessity. Whichever language is chosen, this choice will substantially advantage native speakers and disadvantage any who lack fluency.\footnote{Kymlicka quotes Taylor (1997, 34) who writes: “If a modern society has an ‘official’ language, in the fullest sense of the term, that is, a state-sponsored, -inculcated, and –defined language and culture, in which both economy and state function, then it is obviously an immense advantage to people if this language and culture are theirs. Speakers of other languages are at a distinct disadvantage” (Kymlicka 2002, 348).} A state’s official language not only serves as the primary means of communication in economic and political life, it also influences how people understand themselves and their lives. Every language has a distinctive (even if evolving) set of cultural meanings.

However, the state could, in theory, seek to minimize the non-neutral aspects of its other culture-concerning choices. For example, it could abolish all public holidays, cancel its anthem, destroy all public monuments, make its flag as nondescript as possible, remove any regional emphasis from its public school curriculum, and so on. But instead of arguing that the state should aim to minimize its violations of ethnocultural neutrality, Kymlicka advocates harnessing the power of nation-building in the name of egalitarian justice.

It is desirable for the state to promote a national identity as a way of strengthening civic ties and so improving the social conditions conducive to public support for egalitarian politics and policies. Modern liberal democracies can no longer depend (if they ever could) on ethnoreligious affiliation as a basis for the degree of social unity that is required for ambitious implementation of egalitarian justice. Neither can they rely
exclusively on a shared conception of justice, since this often fails to distinguish one political community from another. Nation-building now serves that function instead.\textsuperscript{86}

But even if nation-building is desirable, is it permissible? Promoting a particular national identity does have the potential to disadvantage vulnerable groups. Kymlicka focuses primarily on two kinds of cultural minorities that are likely to be disadvantaged by nation-building: national minorities and members of immigrant groups.\textsuperscript{87} State nation-building has the potential to impose disadvantage on immigrants groups if it is done in a way that pressures them to conform to mainstream social practices or subsidizes such practices to the exclusion of all others. Nation-building has the potential to impose disadvantage on national minorities—who can be described as members of a territorially concentrated group that sees itself as a distinct nation with a larger society—if nation-building is monopolized by the majority nation and used to attempt to destroy the minority nation.

Kymlicka defends minority rights as a remedy to these risks and problems associated with nation-building.\textsuperscript{88} In the case of immigrant groups, he argues that the proper remedy is to require that the national identity that is promoted is based only on a ‘thin’ societal culture that facilitates a sense of belonging without privileging any particular way of life or conception of the good. A thin societal culture consists primarily of shared public institutions that operated in an official language. National identity can also be promoted through public symbols, holidays, national media, school curricula and

\textsuperscript{86} Kymlicka 2002, 264.
\textsuperscript{87} A more complete list also includes: indigenous groups, metics, racial caste groups and isolationist ethnoreligious groups (Kymlicka 2002, 349).
\textsuperscript{88} Kymlicka 2001, ch. 1.
so forth; but Kymlicka argues that this must be done in a way that ensures fair terms of integration for immigrants groups and does not privilege any view of the good.

In the case of national minorities, Kymlicka argues that the proper remedy to state nation-building is to enable minority nation-building. That is, minority nations should be allowed all of the same nation-building tools that are available to the majority nation. This allows national minorities to maintain and protect their own societal culture, which would otherwise be threatened. Further, Kymlicka argues that both state nation-building and minority nation-building do not violate neutralist constraints—provided that the national identity that they promote is a ‘thin’ one.\textsuperscript{89}

In defence of this neutrality claim, he argues that the justification for the promotion of a national identity is neutralist. The justification cites the instrumental value that doing so will have for the stability and implementation of egalitarian justice. Further, he argues that promoting a national identity is not equivalent to promoting a conception of the good. Nation-building promotes a certain view of who we are, not how we should live. More specifically, it makes a claim about the people with whom we belong in a political community.

Although there are many more details in his full arguments, the above remarks provide a rough picture of Kymlicka’s defence of minority rights as a remedy to nation-building. I will now defend my perfectionist interpretation of it.

2.9. Perfectionism within Kymlicka’s Neutralism

\textsuperscript{89} Kymlicka 2002, 344.
To begin, I think that there is an important difference between minority rights that concern fair terms of integration and those that concern minority nation-building. When state nation-building causes problems concerning fair integration, this is because of contingent problems with a particular instance of state nation-building. Fair terms of integration specify how to permissibly go about nation-building. Fair terms of integration are achieved by getting nation-building right, which requires that the content of the promoted national identity is neutralist and inclusive. Problems are caused by departures from neutrality. Because of this, it is possible to simply avoid causing the problems that can be associated with terms of integration.

This is not the case with the problems that state nation-building causes for national minorities. These occur because of inherent problems with state nation-building. There is no way to get the content of state nation-building right such that the problems would be avoided. The negative effect of state nation-building on national minorities is inevitable. It occurs even when state nation-building refrains from privileging any particular valuable activities. What is needed is a counter-measure, a remedy. This is because although promoting one national identity and not another does not privilege any particular activities, it does make a claim about the good. That is, it makes a claim about the identity we should have. That statement requires further examination.

One might argue instead that promoting a national identity does not have the normative content that I am attributing to it. One could argue that promoting a national identity simply makes us more aware of an identity we already have. But I do not think that can be right. The purpose of state nation-building is to create social unity where it is lacking. Nation-building efforts have to say more to citizens who do not think of
themselves as part of one group than that they really are part of one group. Rather, the message, if it is going to serve its purpose of improving social unity, must be that they should think of themselves as part of one group—that this is the right group for them. They don’t need to think that their lives will go better in virtue of belonging to the identity being promoted. They simply need to think that the alternatives would lack something like meaning or authenticity for them. This is a claim about what is important in life, what is valuable, even though one might hesitate to call it a claim about well-being.

I think it makes sense to infer that a national identity must have this normative aspect not only because otherwise state nation-building would not work, but also because that evaluative content is needed in order to make sense of the idea that a minority nation would be harmed by lacking nation-building privileges. How exactly would they be harmed? If it is true that permissible nation-building does not privilege any particular way of life, then the harm cannot be explained in terms of being impeded or cut off from valuable activities. One might be tempted to appeal to the fact of a group’s very strong desire for nation-building tools as an explanation that harm is involved. But I think we need to look one step further and ask about the reason(s) behind that strong desire. A person could do all of the same things if she had the majority identity rather than her own, but she could not be who she thinks she should be. Again, I think some notion close to meaningfulness or authenticity is at issue here.

The point of these remarks is to argue that nation-building involves affirming that a particular national identity is something of perfectionist value. With that interpretation
in mind, let us examine the general structure of the argument concerning state nation-building and minority nation-building.

According to my interpretation, state nation-building is perfectionist. However, it is perfectionist is a very limited way. The general need for nation-building has a neutralist justification: it improves social unity which facilitates the implementation of egalitarian justice. Moreover, Kymlicka argues that nation-building is the only effective means to sustain the requisite level of social unity in a modern democratic society. Without nation-building, demands of justice would go unmet. In light of all this, the conclusion is that instead of rejecting state nation-building because of its limited perfectionism, society should instead make use of it, but only for this specific public political purpose. In addition, we should attend to any disadvantage it may cause and respond accordingly, such as by defending minority nation-building. On this approach, the value of a national identity is therefore a public value—that is, a value with perfectionist content that is taken to be authoritative for a specific political purpose.

Concluding Remarks

I concede that my arguments in the previous section perhaps do not provide the clearest kind of instance of perfectionist value. My claim would be far less assailable if nation-building were to involve affirming the value of particular activities. Fortunately, if I am mistaken in my attribution of perfectionist value here, little harm is done to my larger argument. The instance of public value perfectionism that I argue for in chapter 5 does indeed involve affirming and evaluating the well-being value of particular activities
and so is a much clearer case. My purpose in this chapter was to introduce and evaluate the relevant theoretical background on neutrality, and to provide an illustrative example of the general structure of my defence of public value perfectionism. Whether or not promoting a national identity is indeed a perfectionist deed, the discussion has provided an initial indication of the kind of theoretical territory that public value perfection occupies.
Chapter 3: Distributive Justice and Disability

Chapter 2 set out to explain the idea of public value perfectionism and to indicate the role it can intelligibly have within a neutralist framework. In chapters 3 through 5 I develop my argument that extending liberal justice to persons with disabilities requires the use of public value perfectionism. The present chapter provides an initial defence of what I refer to as the ‘public ranking claim’. The main arguments in favour of the claim and well as its core content come from Sen’s critique of primary goods, which I have supplemented with some further analysis and terminology. The public ranking claim states the following: (i) if we accept that the target of our metric of advantage should be what I refer to as ‘broad opportunity’ and (ii) if we accept that Rawls’s idealization concerning mental and physical abilities—known as the ‘normal and fully cooperating’ assumption—should be abandoned, then (iii) we should also accept that extending liberal justice to citizens with disabilities will require a public ranking of valuable activities.

What, in general, is this claim about? It touches on at least two general issues in distributive justice. It concerns how a theory of justice should measure advantage so that it can capture all the kinds of advantage and disadvantage that it should. My arguments focus on what a theory needs in order to be able to properly identify the disadvantage that attaches to disability. It also concerns the role of opportunity in theories of justice. My arguments defend a noticeably larger place for opportunity than most.

This chapter provides an initial defence of the public ranking claim by exploring each part in sequence. I begin by defending an interpretation of Rawls that supports part (i) of the claim—that the proper target of a metric of advantage can be captured by the

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idea of ‘broad opportunity’. Next, I defend part (ii) of the claim by exploring the role that the normal and fully cooperating assumption (hereafter, NFCA) plays in Rawls’s theory and explaining why justice requires that it be abandoned. Finally, I provide an initial defence of the public ranking claim as a whole by explaining and defending Sen’s arguments in favour of the need for a public ranking of valuable activities. My defence of the public ranking claim is completed in chapter 4 where I examine and then argue against Norman Daniels’s proposal for employing a biomedical model of health to avoid the need for a public ranking.

Note that the public ranking claim is not on its own a defence of state perfectionism. To complete my argument for public value perfectionism, I must also show that perfectionist evaluation is needed for the task of creating an adequate public ranking to meet the demands of justice related to disability. I make that argument in chapter 5. I will now turn to an examination of the role of opportunity in Rawls’s account of distributive justice.

3.1. Distributive Justice

In next few sections, my aim is to defend an interpretation of Rawls’s account of distributive justice that places particularly great emphasis on opportunity. More specifically, I will look at how the liberty principle, opportunity principle and difference principle are designed to work together with each other and with the doctrine of primary goods to yield an account of distributive justice that, on my interpretation, is centrally
concerned with what I will call ‘broad opportunity’ and yet abstains from fleshing out the content of broad opportunity by means of a public ranking.

Most of what follows in this chapter concerns distributive justice. However, that term can be used in at least two senses, or so it seems to me. There is a broad, general sense, where ‘distributive justice’ refers to justice in the distribution of any goods, services, rights, responsibilities, and so on, over which the state has influence. This general sense concerns justice that can be achieved by means of the right distribution. In addition to this general sense of the term, there is also, I think, a narrower, technical sense of distributive justice that concerns only considerations of justice that pertain to the fairness of relative advantage per se. This is the idea that the character itself of the distribution of advantage—and not simply its effects—can give rise to demands of justice. I will refer to this narrow sense as ‘distributive justice proper’.

In contrast, some other demands of justice have a noncomparative character and could be captured by a suitable account of ‘sufficientarianism’. They specify entitlements that are owed absolutely, where the content of those entitlements is not shaped by what other people have or did, but rather is based on some fairly independent feature(s) of the moral agent. This sufficientarian type of justice is what we talk about when we say, for example, that everyone’s basic needs should be met and their bodily integrity protected. Those demands should be satisfied not because doing so would lessen indefensible inequalities, but because doing so would remove deprivations that no moral agent should be made to endure.

91 The idea of sufficientarianism is said to originate with Harry G. Frankfurt who states: “what is important from the moral point of view is not that everyone should have the same but that each should have enough” (Frankfurt 1987, 21).
Distributive justice proper (hereafter, DJP) has a narrower area of concern. It presupposes that these noncomparative demands of justice are satisfied; and deals with benefits and burdens that cannot or should not be distributed to all members of society in identical shares. For example, it is probably not possible for modern societies to achieve a literally equal distribution of political power. And even if direct democracy among millions were possible (perhaps by means of a highly sophisticated virtual town hall), it would be problematic. If parliamentary rules were designed to give every citizen genuinely equal direct input, the political process would grind to a halt. Although there any many needed improvements to the existing practice of democratic representation, surely some form of representation is desirable. And this necessitates varying levels of political power being vested in elected officials of different ranks. DJP requires that the permitted inequalities in political power are not indefensible. It takes over the lead at the point where the promptings of sufficientarian justice cease, or cease to be helpful.

The reason that I point out this distinction is that my focus on DJP in the context of discussing justice with disabilities is perhaps somewhat surprising. One might think that sufficientarian requirements should take up our concern first in a discussion of this sort, and that matters of mere DJP can be pursued after these other more pressing demands of justice have been addressed. That reaction is entirely sensible if one’s primary concern is immediate practical policy-based application. I think that I should be clear that my orientation in this discussion is more theory-centred. My aim is to explore how best to revise Rawlsian liberalism in order to improve its theoretical adequacy. I do not claim that the revisions I defend are the most important ones in terms of practical impact, though I hope that they do have some potential for that.
3.2. Broad Opportunity

An account’s concern with opportunity can be assessed along (at least) two dimensions. First, we can ask about the nature of opportunity. What conception of opportunity is in play? Is it formal opportunity, having mostly to do with legal provisions? Or is it substantive opportunity, which also addresses economic, social and other types of barriers? Rawls’s conception of opportunity is clearly an instance of the second type. On such a view, a person has the opportunity to pursue an activity if at least three conditions obtain:

i. S has the formal liberty to pursue P;
ii. S has access to resources that are adequate for the pursuit of P; and
iii. S’s social environment does not contain any special obstacles (e.g., discrimination) for S’s pursuit of P.

Opportunity, then, involves the combination of formal and substantive means for pursuing an activity.

We can also ask about the scope of opportunity at play in an account. What is the range of application of the account’s opportunity principle? Is the range narrow or broad? Here I think it is useful to distinguish between opportunities in three domains: (i) *political opportunities* to participate in political life and to affect the outcomes of collective political decisions; (ii) *economic opportunities* to acquire marketable skills through education and exercise them through employment; and (iii) *civil opportunities* to participate in the social and cultural life of a community, both in the context of private life and civil society. An account’s concern with opportunity is narrow if its ultimate
target is one or both of the first two domains (i.e., political and economic), and broad if it also encompasses civil opportunities.

In order to assess whether an account’s scope of opportunity is narrow or broad, it is important to be clear about the general meaning of equality of opportunity. Equality of opportunity does not mean that everyone should have an identical chance of success with respect to a particular activity; much less that everyone should have the same chance of success for all activities. Equality here refers to the basis for the distribution of opportunities. Unequal chances of success are consistent with equality of opportunity, so long as they are reconcilable with an egalitarian commitment to the equal moral importance, and equal standing, of citizens. There would be descriptive advantages if we replaced ‘equality of opportunity’ with something like ‘an egalitarian distribution of opportunity’, but I will keep the standard terminology.

When assessing an account’s scope of opportunity, it is also important to look beyond the segment of the theory that explicitly articulates its opportunity principle. Surface evidence suggests that Rawls is concerned with narrow opportunity. However, his presentation in this regard is misleading. Rawls’s account of distributive justice is, in fact, focused on broad opportunity, as I will now argue.

3.3. Rawls and Opportunity

One might be tempted to think that Rawls’s theory is concerned with narrow, rather than broad, opportunity. This mistake could easily be made if one were to assume that Rawls’s concern with opportunity is contained entirely within his principle of fair
equality of opportunity. His opportunity principle is meant to apply only to economic opportunities—those having to do with education and employment. It is designed to make sure that desirable social positions are not more attainable for some citizens simply in virtue of social contingencies related to their upbringing or the status and power of their family.

Norman Daniels, for instance, appears to be guilty of taking Rawls’s focus to be narrow opportunity. Daniels argues in favour of a revision of Rawls’s theory, which seeks to enable the theory to address broad opportunity by broadening the opportunity principle beyond its employment-related focus. Daniels is right to push our attention toward broad opportunity; but he overlooks the fact that Rawls’s theory already does address broad opportunity—albeit in a way that is misleading and, as we will see in the next chapter, unsatisfactory.

Why is it a mistake to assume that Rawls’s concern with opportunity is encapsulated within his opportunity principle? The problem with that interpretation is that it leads us to think that in the Rawlsian framework, opportunity competes for importance with liberties and resources. Liberties, resources and opportunities, however, are not simply three distinct kinds of goods. The relations between them are significant. Rawls’s comments concerning the worth of liberties make this clear. He writes that:

[T]he basic liberties ... are the same for all citizens. ... But the worth, that is, the usefulness of these liberties, which is estimated by the index of primary goods, is not the same for all. 

...[T]he equal political liberties, and only these liberties, are to be guaranteed their fair value.... This guarantee means that the worth of the political liberties to all citizens, whatever their economic or social position, must be sufficiently equal in the sense that all have a fair opportunity to hold public office and to affect the outcome of elections, and the like.  

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92 Daniels 2008.
93 Rawls 2001, 149.
This passage needs to be unpacked.

To begin, note that Rawls is employing a formal notion of equality when discussing the equal basic liberties. They are the same for all even though people’s ability to make use of their liberties varies according to (among other things) the resources at their disposal.

This does not, of course, mean that a formal guarantee of equal liberty is all that Rawls thinks justice requires. His concern for substantive egalitarianism is evident from the demands of justice involving the worth or usefulness of the basic liberties. Talk about the worth of liberties is indeed talk about opportunity. Although Rawls chooses not to use opportunity talk when discussing the political and civil domains, the content of his claims can and should be cast in terms of opportunity. Consider the remarks concerning the fair value of the political liberties. The fair value of a person’s political liberties can be said to be guaranteed just in case she has fair opportunity to make use of those liberties—namely, “to hold public office and to affect the outcome of elections, and the like.” This claim can be formalized as follows:

\[
S’s\ liberty\ to\ pursue\ X\ has\ fair\ value\ \text{if\ and\ only\ if}\ S\ has\ fair\ opportunity\ to\ pursue\ X
\]

More generally, this means that my liberties have value insofar as I have substantive opportunity to pursue those things they permit. Concern for the value of liberties is concern for opportunity. Therefore, the worth of a liberty is the magnitude of the opportunity the agent has to pursue the activities that the liberty renders permissible. And since primary goods are used to measure the worth of liberties, a person’s share of
primary goods is supposed to act as an indicator of the magnitude of a person’s opportunities.

With this analysis, we can recast Rawls’s account of justice in opportunity terms. Since he defends fair equality of employment-related opportunities, and argues that society should guarantee the fair value of political liberties, his account is committed to fair equality of political and economic opportunities. The fair value of civil liberties, however, is not guaranteed. Inequalities in the worth of these liberties are measured by primary goods. The unequal distribution of primary goods is meant to be egalitarian nonetheless in virtue of the difference principle. The difference principle is thus responsible for ensuring that the unequal worth of people’s civil liberties is reconcilable with civic equality—the equal political standing and moral importance of all citizens. In opportunity terms, Rawls’s account therefore argues that civil opportunities (i.e., opportunities to participate in the social and cultural life of a community, both in the context of private life and civil society) should be unequal only insofar as this improves the civil opportunities that are attached to the least well off social position.

At this point, I want to flag three different sorts of worries about inequalities in civil opportunities. Unequal civil opportunities would be excessive if (i) they impose avoidable deprivation on people at the low end, or (ii) they undermine fair equality of political and economic opportunities, or (iii) they are more pronounced than what is consistent with an adequate response to the moral arbitrariness of natural and social contingencies. The first two of these would run afoul of the demands of sufficientarian justice, whereas the last is a matter of distributive justice proper. Each will be discussed further in due course.

Rawls resists a broad discussion of opportunity. He restricts his use of opportunity talk to employment-related opportunities. Instead of talking about civil opportunities, or opportunities in general, he refers to the ‘life prospects’ of members of society or, as we saw above, to the worth or value of liberties. This works well with his commitment to liberal neutrality. His theory ensures distance between its carefully controlled value claims and any evaluation of civil opportunities, by restricting its focus to economic opportunities. These can be defended as valuable without entering into perfectionist debates about well-being because they have all-purpose value. Economic opportunities are, in effect, opportunities to acquire civil opportunities, by means of earning a particular social position, to which a particular share of primary goods—the measure of the magnitude of civil opportunities—is attached.

Rawls’s theory is undeniably concerned with broad opportunity, but there are various features of his account that allow it to deal with broad opportunity at a distance. The normal and fully cooperating assumption (NFCA) is one of those features. The next section will explain the role that the NFCA plays in Rawls’s theory.

3.4. The ‘Normal and Fully Cooperating’ Assumption

What is the NFCA? Rawls explicitly adopts a number of idealizations in order to make his (still very large) project more feasible and to confine his attention to what he takes to be the central concerns of social justice. The ‘normal and fully cooperating’ assumption is an idealization of this sort. It confines our attention to only those members of society who are fully cooperating participants in fair social cooperation and who have
physical and mental abilities that fall ‘within the normal range’. Rawls acknowledges that this idealization effectively brackets many concerns about justice for citizens with disabilities. He briefly discusses how his theory deals with temporary illness, but he explicitly notes that his theory would have to be extended in some way in order to address injustices related to disabilities. According to the Rawlsian idea of society at the core of his theory, citizens are taken to be not only free, equal, reasonable and rational, but also “normal and fully cooperating members of society over a complete life, from one generation to the next.”

I do not think that Rawls adequately clarifies the relation in his thought between being ‘normal’ and being ‘fully cooperating’. Is he making the claim that having physical and mental abilities within the normal range is a necessary condition for being a fully cooperating participant in social cooperation? Such a claim would be highly questionable. Most types of employment are compatible with a variety of physical and mental disabilities. Further, an even wider range of physical and mental disabilities are compatible with social cooperation if it is understood expansively to include social contributions beyond economic production. Despite those points, Rawls almost invariably uses the combined phrase ‘normal and fully cooperating’, rather than simply the latter half. Yet to require that citizens must be ‘normal’ in addition to being fully cooperating cannot be justified on the basis of the political conception of the citizen, or so I argue. On that conception, a citizen is simply someone who is willing and able to

96 Critics include Kittay 1999; Minow 1990.
97 For Rawls’s discussion of temporary illness and injuries, see Rawls 2001, 170-76.
98 Rawls 2001, 8.
engage in fair social cooperation. I think that these are fairly good reasons to abandon the NFCA. More are provided in the next section.

What role the NFCA play in Rawls’s view? What contribution does it make? I think that the best way to describe its contribution is to say that it allows Rawls’s theory to flesh out egalitarian principles of distributive justice without being forced to engage directly with broad opportunity. More specifically, I will argue—in line with Sen—that the defensibility of the doctrine of primary goods depends on the NFCA. Once we remove the idealization, the shortcomings of the primary goods metric become clear. The next two sections will explain that line of thought.

3.5. Rawls’s Distributive Principles

In order to explain how the NFCA fits into Rawls’s theory, we first need a picture of its main components and how they work together. I think the best way to describe the aim of Rawls’s principles of distributive justice is see them as seeking to determine which kinds of morally undeserved inequalities are reconcilable with civic equality—the equal moral importance and equal standing of citizens. Rawls’s view of desert is presented in his arguments about the moral arbitrariness of the natural and social contingencies and their impact on economic talent.\footnote{Rawls 1971, ch.2.} We should think of these arguments as an evaluation, from the perspective of desert, of the many factors that affect how well or poorly individuals succeed in acquiring marketable skills. For each factor that Rawls considers, he finds it largely influenced by morally arbitrary natural or social contingencies. Native endowments are not things for which individuals can take credit.
Good upbringing and positive social environments are matters of luck. One’s family’s influence in society is unearned. And even a strong work ethic is largely a product of inborn psychological traits and fortuitous upbringing.

The normative result of these arguments is that we have strong reasons to resist any distributive inequality. But Rawls, of course, does not defend absolute equality. Native endowments are morally undeserved, but because it is rational for society to harness those endowments (rather than leveling them down), Rawls offers the difference principle to mitigate the effects of the natural lottery. Social contingencies, the most important of which is the family, compound this moral problem, since they unequally distribute the chances people have to cultivate their native endowments; but because the family serves a number of important social purposes, Rawls offers the principle of fair equality of opportunity to mitigate the talent-related effects of social contingencies, including the family.

The opportunity principle and the difference principle work together to secure fairness in the process that yields unequal levels of advantage. In Rawls’s theory, that process has two steps.

The first step consists of the many things that a person does and that are done for a person in the process of coming to occupy a particular spot on the economic ladder—what Rawls calls a ‘social position’. He is especially concerned about how social contingencies can influence this process; so fair equality of opportunity aims to guarantee that an individual’s social position is determined by her skill and industriousness.

The second step concerns the design of the many institutions that collectively give shape to the economic ladder—its overall height and the spacing of the rungs. The
difference principle guarantees that the magnitude of the level of advantage attached to any particular social position is justified on the basis of its contribution to the advantage of the least-well off. I think we should take Rawls’s argument to be rejecting the view that the spacing of the rungs can be justified on the basis of the praiseworthiness of the aptitudes and achievements of the occupants of each position. Aptitudes and achievements should determine who goes where on the economic ladder, but not to how much inequality there should be among the rungs.

I think that that is the best way to understand how individuals in Rawls’s theory come to enjoy different levels of advantage—or more specifically, different magnitudes of civil opportunities. Individuals compete for social positions under conditions of fair equality of opportunity, and then they enjoy the magnitude of civil opportunities that is attached to their social position as a result of the operation of the difference principle.

The point here is that securing a distribution of advantage that meets the challenges presented by the morally arbitrary natural and social contingencies requires addressing both how advantage is distributed among the various social positions and how individuals come to occupy those positions. If the basic structure does what it can to secure an equitable process in determining who goes where, but fails to distribute advantage fairly among the social positions, or vice versa, then distributive justice is incomplete. The unequal distribution of civil opportunities is nonetheless egalitarian because the justification for those inequalities is fueled by a commitment to the equal moral importance of all citizens, including those in the least well-off social position.

For the above account to work, Rawls needs a way to measure the magnitude of civil opportunities that attach to various social positions, which he does by means of
primary goods. The next section explains how the NFCA helps to make primary goods work. My aim is not to show that the NFCA was adopted so that the primary goods metric would work (which would be a claim about Rawls’s intentions), but rather that primary goods work well only if we grant the NFCA.

3.6. Primary Goods and the NFCA

Primary goods are used to measure the magnitude of civil opportunities indirectly. To explain what I mean by saying that the measurement is indirect consider the following alternative. A direct way of measuring the magnitude of civil opportunity would be to judge the value of particular social and cultural activities that individuals in a given social position in fact have the opportunity to pursue. However, doing so would involve evaluating the relative merits of various civil activities—judging which are such that it is most valuable for individuals to have the opportunity to pursue them. Instead, Rawls develops an indirect approach that relies on primary goods. He uses primary goods as an indicator of a person’s level of advantage, which, according to my interpretation, is the same as saying that primary goods serve as a proxy for the magnitude of their civil opportunities.

Primary goods would be an adequate indicator of broad opportunity if it were the case that a given share of primary goods adds worth to liberties in roughly the same way for everyone, or, in other words, provides roughly equally effective means to pursue the activities that the liberty renders permissible.
Some commentators have questioned this claim by arguing that primary goods favour individualistic, materialistic activities over more communally oriented ones. In response, Rawls and others emphasize that primary goods have all-purpose value—that is, they are instrumentally valuable for the pursuit of any reasonable conception of the good.\textsuperscript{100} I find that response persuasive. It is false that anti-materialistic, communal lifestyles do not require a resource base; even ascetic ways of life normally do, since they involve a voluntary rejection, rather than an externally imposed denial, of material comforts.

This shows that for any conception of the good primary goods will create opportunity to pursue it. Of course, a typical share of primary goods will not be sufficient for all conceivable ways of life, since some of these are inherently very expensive. Rawls rightly does not consider this to be a problem. Individuals should be responsible for forming a reasonable life plan in light of their expected resource limitations. The key point in the argument is this: because primary goods have all-purpose value, the fact that people differ greatly with regard to their conception of the good life does not undermine the claim that a share of primary goods adds value to liberties in roughly the same way for everyone. However, this point only works if we grant the simplifying assumption that people’s physical and mental abilities are all within the normal range. Let me explain.

Consider the following example as an analogy. Ten tourists find themselves at the downtown square of a major city and are each given identical, fully fueled mopeds to go sightseeing. The tour company provides each with a map that lists popular destinations throughout the city, but abstains from making any judgments about the relative merits of different destinations. The moped’s fuel capacity will allow each sightseer to see only a

\textsuperscript{100} Kymlicka 1989b.
portion of all that there is to see. Although the number of destinations that each will be able to reach will vary depending on the choices they make, it is reasonable to conclude that each person has the same magnitude of opportunity; and we can reach this conclusion without any comparative evaluation of the specific sight-seeing opportunities that each person sees fit to seize.

Now suppose that one of the ten tourists is on the run from the law. Further, ignoring the ethics of assisting fugitives, suppose that the gracious tour company has equipped her moped with a GPS monitor that provides the up-to-date locations of police patrols through the city. As a result, although a few of the destinations are still easily accessible to her, many can be reached only via fuel-consuming detours, while yet other destinations are effectively blocked entirely. Our fugitive has the same set of sightseeing resources as her nine fellow sightseers, yet she does not have the same magnitude of sightseeing opportunity.

Similarly, the all-purpose nature of primary goods makes them a good candidate for an indicator of broad opportunity only if we confine our attention to members of society with normal health states and functional capacities. Primary goods allow us to avoid the need to directly evaluate broad opportunity only if we grant the NFCA. The next few sections explain why we should not grant the NFCA.

3.7. Sen’s Arguments against the NFCA

If the ‘normal and fully cooperating’ assumption were to be left intact, Rawls’s theory would miss significant distributive injustices experienced by citizens with
disabilities. I will provide two arguments to defend the claim that we should abandon the NFCA. In the present section, I interpret and defend the reasons against the NFCA that are provided in Sen’s critique of primary goods. In the next section, I will strengthen the case against the NFCA with my own arguments that appeal more explicitly to considerations of legitimacy.

To begin, it is important to identify the best way to describe the Sen’s objection to Rawls. Sen’s own phrasing of this is, I think, problematic. He describes his argument as accusing Rawls of mistaking primary goods for what is valuable—a mistake which Sen labels as ‘goods fetishism’. In Sen’s view, what is valuable is the power that primary goods give people to pursue their objectives. He accuses Rawls of focusing only on the ‘means to freedom’, when what matters is the ‘extent of freedom’.

I do not think Sen’s objection is best phrased in terms of charging Rawls with goods fetishism or with valuing only the means to freedom. Sen’s own phrasing misses the mark. I argued above that Rawls’s theory should be understood as being ultimately concerned with broad opportunity; and this is equivalent to what Sen calls the extent of freedom—that is, the power people have to pursue ends they value. Sen’s objection is better described as arguing that Rawls, because he adopts the NFCA, mistakenly defends primary goods as an adequate indicator of broad opportunity. Sen’s capability critique should be understood not as accusing Rawls of denying that broad opportunity is what matters, but rather as rejecting the adequacy of primary goods as an indicator thereof.

Sen’s objection is based on the importance of what he calls ‘inter-individual variation’. This refers to differences in what I will call conversion ability, which he

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101 Sen, 1980, 216.
describes as “what power [a person] has to convert primary goods into the fulfillment of [her] ends.”

Discussions about variation in physical and mental abilities sometimes emphasize the impact on economic opportunities—that is, they focus on how various disabilities can be obstacles in the process of coming to occupy a rung on the economic ladder. Sen’s point, in contrast, focuses on what happens after people—disabled or not—have come to occupy a social position. Does the bundle of primary goods that is attached to that position really provide equivalent levels of advantage to all occupants of that rung? He rightly argues that it does not, because of differences in conversion ability. The disadvantageousness of a disability can thus manifest in two stages: it can make it more difficult to attain a desirable social position, and it can reduce the value (in terms of civil opportunities) of the rewards that come with that social position.

Rawls rules out differences in conversion ability. He argues that for the purpose of formulating the fundamental principles of a theory of justice, it is appropriate to adopt a simplifying assumption that takes all citizens to be “normal and fully cooperating members of society.” He writes,

[W]e have made an important background assumption: namely, that with respect to the kinds of needs and requirements that political justice should take into account, citizens’ needs and requirements are sufficiently similar for an index of primary goods to serve as a suitable and fair basis for interpersonal comparisons in matters of political justice.

As we have seen, according to this assumption, a given share of primary goods is taken to provide civil opportunities in roughly the same way for everyone. Inter-individual variation is disregarded.

103 Ibid., 85.
104 Rawls 2001, 8.
105 Ibid., 170.
Sen gives us three reasons why a theory of justice must take into account differences in conversion ability. First, differences of this sort do not merely constitute exceptional cases. These differences are pervasive, applying to all sectors of humanity.\textsuperscript{106} To make this claim plausible he points to numerous sources of variation, including: “age, sex, physical and mental health, bodily prowess, intellectual abilities, climatic circumstances, epidemiological vulnerability, [and] social surroundings.”\textsuperscript{107} Second, Sen claims that these differences are significant in their effects: “[o]ur physical and social characteristics make us immensely diverse creatures.”\textsuperscript{108} The point here is that the range of differences in conversion ability includes not only relatively minor departures from what is typical, but also quite major ones. Finally, and perhaps most importantly, these differences are to a large extent morally arbitrary\textsuperscript{109} in much the same way as the natural and social contingencies to which Rawls famously draws our attention.\textsuperscript{110} Sen’s arguments therefore give us three reasons to abandon the NFCA—namely, the differences in conversion ability that it leads us to ignore are pervasive, profound and morally arbitrary.

### 3.8. A Further Argument against the NFCA

Sen’s arguments are quite persuasive. I think the case against the NFCA can be strengthened, however, by appealing to reasons that deal more explicitly with

\textsuperscript{106} Sen 1985c, 142.
\textsuperscript{107} Sen 1992, 28.
\textsuperscript{108} Ibid.
\textsuperscript{109} One shortcoming of the capability approach is that Sen typically fails to distinguish between capability-reducing factors that are clearly morally arbitrary (e.g., chronic illness) and ones that are not (e.g., unhealthy choices). I thank Rahul Kumar and Margaret Moore for first drawing my attention to this concern, which is raised by Cohen 1995; Daniels 1990.
\textsuperscript{110} Sen 1990, 112.
considerations of distributive justice proper. In the present section, I develop an argument that does just that.

First, however, I should note that the primary goods metric would also fail to meet certain demands of sufficientarian justice. One reason to argue for a metric of advantage that takes into account conversion ability is that otherwise we risk missing instances of deprivation. There will be problems if a metric, like primary goods, that neglects inter-individual variation is used to make judgments about whether or not the basic needs of a given population are being met. The share of primary goods that would be judged to be sufficient to meet people’s basic needs would in fact be sufficient only for individuals with physical and mental abilities within the normal range. For individuals with lower conversion ability, an allegedly sufficient share of primary goods would be too meager.

In addition to these considerations, there are also reasons related to distributive justice proper in favour of a metric of advantage that takes into account conversion ability. The discussion here will focus on this second type of reasons. I will do so by adding further support for Sen’s critique by appealing to considerations of legitimacy.

As we have seen, Rawls argues that in the case of economic rewards, the idea of moral desert is mistaken; and yet he nonetheless defends an economic system with differential rewards that favour those whose contributions are more valued by others. In Rawls’s view, the moral arbitrariness of talent does not give us cause to reject the practice of giving higher pay to those who work harder or better; rather it gives us reason to implement a tax and transfer system that adjusts the levels of advantage attached to the various social positions so that the occupants of the least advantaged position benefit in absolute terms from the inequalities of the cooperative scheme. This framework specifies
how individuals can take advantage of their place in the distribution of talent in a way that they can reasonably expect those least favored by that distribution to be able to reconcile with an affirmation of their equal moral importance and equal standing as citizens.

Rawls’s theory thus yields a hierarchy of social positions and it affirms the appropriateness of the differential levels of advantage that are attached to them. That is, the theory in effect defends the following claim:

\[ P: \text{It is just that social position } X \text{ comes with level of advantage } A, \text{ that position } Y \text{ comes with level } B, \text{ and so on.} \]

Since, as I argued above, advantage should be understood ultimately to be a matter of broad opportunity, we can replace \( P \) with the following:

\[ Q: \text{It is just that social position } X \text{ comes with magnitude of broad opportunity } A, \text{ that position } Y \text{ comes with magnitude } B, \text{ and so on.} \]

Rawls’s theory goes one step further and replaces \( Q \) with the following:

\[ R: \text{It is just that social position } X \text{ comes with share of primary goods } A, \text{ that position } Y \text{ comes with share } B, \text{ and so on.} \]

However, I do not think that the last step is justified. In order to move from \( Q \) to \( R \), one must defend primary goods as an adequate indicator of broad opportunity. If that defense is undermined, then the legitimacy of a basic structure that enforces \( R \) is weakened.

To meet his own aims, Rawls would need to defend \( R \) as something that all members of society can reasonably be expected to be able to reconcile with their freedom and equality as citizens. I do not think that can be done, given the epidemiology of human difference. There is a push in the disability literature to describe disability in terms of a continuum and to emphasize how individuals inevitably occupy various locations along
that continuum during their life span.\textsuperscript{111} The consequence is that disability should be thought of as a normal part of the human condition. When we assume a citizenry that exhibits such difference, it is not reasonable to expect that citizens who affirm $Q$ on the basis of the plausible justice-based reasons Rawls provides would also be able to reasonably accept $R$.

This is because under $R$ the share of primary goods attached to a particular social position would yield considerably different magnitudes of broad opportunity for different occupants of that position, depending on the morally arbitrary distribution of conversion ability among them. If state authority is to be legitimated, then the basic structure and its distributive effects must be reconcilable with the freedom and equality of all citizens, regardless of conversion ability. That means that both $R$ and the NFCA are ruled out.

We might be tempted to argue that this problem would be handled by the difference principle, since the purpose of that principle is to mitigate the effects of the natural lottery. However, the difference principle is designed to address relative advantage between social positions, not within them. Citizens with low conversion ability do not form a distinct social position, because there is no necessary correspondence between conversion ability and economic talent. In the case of conversion ability, any mitigating effect produced by the difference principle would be accidental. Legitimacy considerations give us reason, then, to reject the idealization concerning physical and mental abilities and to look for a genuine extension of Rawls’s theory. Sen’s capability approach is one such extension. The remainder of this chapter examines Sen’s approach, focusing on the arguments it provides in favour of a public ranking of valuable activities.

\textsuperscript{111} Bickenbach 2003.
3.9. Capability and Opportunity

The influence of Amartya Sen’s capability approach extends across a number of academic disciplines and political contexts.\textsuperscript{112} Within political philosophy, the capability approach\textsuperscript{113} is principally regarded as an important contribution to the metric of advantage debate, where its main rival is primary goods.\textsuperscript{114} The next few sections aim to explain how Sen’s approach allows us to address the problems and shortcomings caused by Rawls’s NFCA, by means of defending the need for a public ranking of valuable activities. I will also comment on the extent to which Sen’s approach is congenial to perfectionism, although my arguments in favour of perfectionism will be presented later in chapter 5.\textsuperscript{115}

To properly understand Sen’s view, it is important to be clear about the narrowly defined theoretical ambitions of his capability approach as compared to Rawls’s justice as fairness. Sen does not provide alternate principles of distributive justice or offer a competing account of the conditions under which an unequal distribution of advantage is nonetheless egalitarian. Rather, he restricts his argument to the metric of advantage to be used by such principles. The issue he addresses is not how much advantage various people should have, but rather how we can tell how much advantage people have. That is the metric question: What is the best unit of measurement for the purposes of distributive justice? Sen’s answer, of course, is capability.

\textsuperscript{112} Sen develops his view in a number of works, see especially Sen 1992; 1993; 1999.
\textsuperscript{113} The capability approach has been taken up and developed by Nussbaum (2006) and many others. My discussion here is confined to Sen’s articulation.
\textsuperscript{115} This connection has also been noted by Hurka 2002.
‘Capability’ is a technical term. Sen uses it to refer to a specific conception of advantage. That conception departs in several ways from what people typically have in mind when, in ordinary language, they say that someone is capable of something. Fortunately, Sen goes to great lengths to explain what he means by ‘capability’. His shortest, most common explanation is ‘well-being freedom’—the freedom to achieve well-being. A less condensed formulation is: the substantive freedom to lead the kind of life one has reason to value. By and large, Sen chooses to describe capability as a conception of freedom. He notes, however, that it is just as much a conception of opportunity.

This claim makes sense within his approach because of his very robust understanding of freedom. This is evident, for instance, in Sen’s response to objections that charged his view with excessive ‘athleticism’. His freedom-centred terminology has lead a number of commentators to conclude that focusing on capability commits him to give almost exclusive importance to what an agent is able to do by and for herself. This interpretation is mistaken. According to Sen’s use of freedom, it is entirely intelligible to say, for example, that a baby who has someone to feed her has the freedom to achieve a nourished physical state—even though opportunity-centred phrasing seems more comfortable.

There are probably some rhetorical advantages to employing the terminology of freedom. However, I think that an opportunity-centred explanation of capability is descriptively superior. To see why, consider how one might compare what tends to be

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117 Sen 1985, 5-6.
118 Sypnowich (2005, 66) defends ‘atheleticism’ in her human flourishing account of capability.
119 E.g., Cohen 1989.
120 Sen 1993.
associated with substantive freedom as opposed to substantive opportunity. Substantive freedom is normally thought of as a function of the presence or absence of obstacles (physical, legal, social, etc.) and the presence or absence of resources (physical, emotional, material, etc.) at a person’s disposal. On such a view, I am substantively free to pursue $x$ if the obstacles to my doing so are outmatched by my various resources.

Substantive opportunity, in contrast, brings to mind one further consideration: the support I receive from particular others and from my social environment in general. We can comfortably say that when I receive help to do $x$, or even have $x$ done for me, my opportunity can thereby be increased. Someone can step in and help me and thereby give me an opportunity. But it is a stretch of ordinary usage to say the same thing about freedom. To give someone a freedom typically brings to mind stepping back or otherwise removing an obstacle.

I concede that this connotation might merely be a throwback from ideas of negative freedom. Nevertheless, it is, at the very least, defensible to cast the capability approach in opportunity terms, and so I will do so. The capability approach, then, can be seen as an effort to measure (substantive) opportunity directly. Moreover, Sen places no restrictions on the types of opportunities to include, so we can also say that capability is meant to serve as a direct measurement of broad opportunity. I will need to say considerably more about Sen’s theory in order to defend that claim. But first, let us recall the ways in which Rawls’s approach to opportunity is, and is not, indirect.

Rawls’s approach is indirect only for civil opportunities. When comparing magnitudes of civil opportunities, Rawls instructs us to use shares of primary goods as a proxy. However, with respect to economic and political opportunities, his remarks
suggest that we should look directly at the opportunities people have. The principle of fair equality of (economic) opportunity demands that people’s chances of success in education and employment be roughly equal for all citizens who are comparable in their industriousness and natural aptitudes. Therefore, to fully implement the principle, we would need to, among other things, look directly at the economic opportunities people actually have in order to assess whether those opportunities have been augmented or diminished by impermissible factors. Similar steps would be needed to secure fair equality of political opportunities. All of that would require directly assessing the relative importance of different economic and political opportunities.

3.10. Sen’s Capability Approach

Let us now take a closer look at Sen’s theory. In his approach, a person’s well-being is measured by judging the value of her ‘functionings’, which are described as ‘doings’ and ‘beings’. A functioning is anything that persons can do or be. The category of ‘doings’ includes general activities like moving about or communicating with others, as well as very specific activities like chewing spearmint gum or going to see Rent on Broadway.

Note that the inclusiveness of the category of functionings extends to both worthwhile and trivial things. The notion of functionings is not inherently evaluative. Consequently, a person’s well-being cannot be measured simply by listing her functionings. The value of those functionings must also be judged. The activities and states of being that enrich a person’s life must be distinguished from those that make no
contribution to her well-being. A good life is a life where there is value in what a person manages to do and to be. Those points do not tell us what well-being involves, but I do think that they are helpful for thinking about the nature of claims about well-being. As a description of capability, we can replace ‘the freedom to achieve well-being’ with ‘the (substantive) opportunity to engage in valuable activities and achieve valuable states of being’.

A person has a high level of advantage when a wide range of valuable activities and valuable states of being are live options for her. More specifically, capability is a measure of a person’s feasible combinations of functionings. To illustrate, imagine two people (Peter and Roger) and three functionings (going to university, actively participating in the social life of the university, and graduating debt free). Suppose that an examination of functionings one at a time indicates that both Peter and Roger have the opportunity to achieve each of the functionings, but if we look at which combinations of functionings they have the opportunity to achieve, we find out that Roger has the social and personal resources to achieve the combination of all three, whereas Peter can only achieve either 1 and 2 but not 3, or 1 and 3 but not 2—that is, if he goes to university, he has to choose between an active social life and graduating debt free. Therefore, we conclude that Roger has a higher level capability than Peter; he has a more valuable range of options; he has greater opportunity. I think this must be right. Sen refers to ranges of options as ‘capability sets’. How, then, do we compare the value of different capability sets?

Sen gives us good reason to reject what he refers to as the ‘count method’, which evaluates capability sets according to the number of options in each set. He rightly notes
that there is an obvious and compelling sense in which a person is given more opportunity by a set of options she judges to be valuable than by a set of the same number of options she judges to be worthless or detrimental.\textsuperscript{121} Because of this, the evaluation of capability sets requires judging the value of the options themselves.\textsuperscript{122} We need to come up with a list of which functionings are valuable and how greatly so.

This bears resemblance to what Griffin calls an ‘objective-list account of well-being’, which is not surprising since Sen is significantly objectivist about well-being.\textsuperscript{123} He writes that “the ‘limits’ of objectivity extend well into the assessment of well-being.”\textsuperscript{124} However, he does not defend a universal ranking of valuable functionings. In fact, in his theory the evaluation of functionings is done ultimately by individuals. He argues that objectivism about well-being is compatible with giving centrality to individual evaluations, because even with objectivism, it is not unreasonable for different people to evaluate functionings differently.

He claims this because (i) he defends a conception of objectivity that is ‘position-dependent’, and (ii) he expects the value ranking of functionings to be incomplete. Position-dependence is the idea that people in different positions can have good reason to come up with different answers to the same evaluative exercise. Sen denies that the evaluation of well-being is person-relative, but he does think that is position-dependent.

Sen writes that “an objectivist view would not necessarily rule out the possibility of interpersonal variations of well-being rankings.”\textsuperscript{125} The claim about incompleteness is the idea that when we look at a person’s beliefs about the value of functionings, it may often

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{121}] Sen 2002, 13.
\item[\textsuperscript{122}] Sen, 1993, 35.
\item[\textsuperscript{123}] Griffin 1986, 33.
\item[\textsuperscript{124}] Sen 1985, 35.
\item[\textsuperscript{125}] Ibid., 35. See also Sen 1999, ch. 15.
\end{itemize}
\end{footnotesize}
be the case that not all pairs of functionings can be ranked by those beliefs.\textsuperscript{126} Because of these two points, when measuring one person’s capability, the value of her range of feasible functionings options is to be judged in light of her own ‘valuation function’—that is, in light of her own beliefs about the value of functionings.

Of course, as a metric of advantage, the capability approach is primarily meant to be used in interpersonal applications. Sen’s rejection of a universal objective ranking of the value of functionings (i.e., a universal valuation function) presents a significant challenge in this regard. It is a challenge because of the impossibility of what Sen refers to as ‘inter-valuation-functional’ comparisons of well-being.\textsuperscript{127} A comparison of two people’s well-being is ‘inter-valuation-functional’ if two rankings of the value of the functionings being compared are used. This difficulty applies to interpersonal comparisons of capability as well, because capability is ‘well-being freedom’. To illustrate this problem, consider the following example.

Suppose that there are 100 functionings that Sandra has the substantive opportunity to achieve. (This number is implausibly small, but will serve for the purpose of an example.) And suppose that Joan has the opportunity to achieve 90 of those and no others. Now, suppose that you and I are evaluating to what extent, if any, Joan has less capability than Sandra, and we disagree about the value of the 10 functionings that only Sandra has the opportunity to achieve. You judge them to be of some value, while I think they are entirely trivial. If my valuation function is correct, then Joan has the same level of capability as Sandra. If your valuation function is correct, then Joan’s level is lower.

\textsuperscript{126} Sen 1985, 16.
\textsuperscript{127} Sen 1985, 58.
We can arrive at a measurement of capability only if we decide which valuation function to use—whether it is yours, mine or some middle position.

Comparing different people’s well-being requires not only listing and comparing their doings and beings; it also requires attaching values to those functionings. As a result, interpersonal comparisons of either well-being or capability require (at least partial) agreement on the value of doings and beings. The social evaluation of capability is possible only insofar as a common society-wide valuation function can be established—that is, a public ranking of the value of specified activities and states of being.\(^\text{128}\)

Once we abandon the normal and fully cooperating assumption, our metric of advantage must directly evaluate magnitudes of opportunity. And since evaluating such magnitudes is more than a purely descriptive affair (as was shown by the reasons against the count method), this means that rejecting the NFCA results in the need for a public ranking of valuable functionings that is defensibly applicable to all citizens. A public ranking of this sort is needed to directly measure the magnitude of opportunities, which is what our metric of advantage must be able to do once we reject the NFCA.

A few remarks about how this is supposed to work to address injustices related to disability are in order. A public ranking of valuable opportunities makes it possible to judge how much disadvantage is imposed by various factors affecting conversion ability. Using the standard kinds of empirical data familiar to economists, we can check whether there are any consistent discrepancies in the achievement of the particular functionings on the public list. If any such discrepancies can be reliably traced to disabilities, then this

\(^{128}\) Sen (1999, 78) writes that “in arriving at an “agreed” standard for social evaluation..., there has to be some kind of a reasoned “consensus” on weights, or at least on a range of weights.”
identifies a difference in conversion ability that should be addressed as a matter of justice.

To fulfill the requirements of claim \( Q \) discussed above (namely, that each social position justly comes with a particular level of opportunity, which should be sufficiently similar for all occupants of that position), we must seek to determine how best to reduce or cancel disability-related differences in conversion ability. The design of the basic structure must contain an institutional commitment to those goals if that structure is to be something that it is reasonable to expect citizens of varying conversion ability to reasonably accept. Some of the further details of those goals are discussed in chapter 5. The incorporation of that commitment is thus a condition for the legitimacy of liberal state authority.

How does this fix the shortcomings of Rawls’s approach? The problem with Rawls’s idealization concerning physical and mental abilities is that the distribution of magnitudes of civil opportunities—that is, opportunities for wellbeing other than political and economic positions—would vary not only between social positions, but also within social positions as a result of conversion impairments. Whereas the first kind of inequality can be reconciled with civic equality (since the unequal levels of advantage attached to different social positions are to the benefit of all, including the least well off social position, and are thus egalitarian), the second kind of inequality cannot be given a matching justification.

The capability metric makes it possible to track this second type of inequality, which in turn makes it possible to assess when it is unfair (because caused by morally arbitrary factors) and to subsequently respond to it as well as can feasibly be done.
Moreover, the capability metric is well-suited to enable the extension of liberal justice to people with disabilities, because the metric’s broad focus that includes both personal and environmental factors affecting conversion ability in several ways parallels the most defensible current understanding of disability with its focus on the interaction between the impairments in the individual and the design of her physical and social environments.\textsuperscript{129} And in order for the capability metric to do achieve that, we need a public ranking.

3.11. The Importance of a Robust Public List

Not only is a public ranking needed, a robust one is needed. It is important for the public list of valuable functionings to be as extensive in scope as is feasible. Why is that? The reason is fairly simple. The point of the capability approach, and the public list it requires, is to make it possible for society to respond to inequalities in conversion ability that are overlooked by the doctrine of primary goods. Society will be able to respond to those inequalities only to the extent that they are picked up by the capability metric. The capability metric’s capacity for recognizing conversion impairments—particularly those associated with disabilities—extends only as far the content of the public list.

To put the point in a more concrete way, the disadvantage that attaches to a disability will be recognized by the capability metric only if, and insofar as, that disadvantage manifests in ways that involve one or more of the functionings whose value is affirmed by the public list. If the disadvantage manifests only in ways that involve other functionings whose value is not captured by the public list, then the capability metric

\textsuperscript{129} Shakespeare 2006.
metric will overlook that instance of inequality, and so will not enable society to respond to it.

The power of the capability metric to achieve its goal concerning the mitigation of disadvantage associated with disabilities is thus dependent on the scope of the public list. The more extensive the list, the more instances of this type of disadvantage can be recognized by the capability metric. Moreover, since responding to this type of disadvantage is important for state legitimacy, in virtue of its connection with fair terms of cooperation for all, we have strong reasons grounded in a broader neutralist framework to favour a robust public ranking.

Therefore, Sen’s arguments support the conclusion that, ideally, public debate concerning the creation or revision of a public list should encompass political, economic and civil opportunities. If we were to confine our attention to political and economic opportunities when taking on the task of creating a public list, we would greatly limit the ability of the capability metric to remedy the shortcomings in Rawls’s theory. If we are to take seriously the Rawlsian claim that the level of advantage attached to various social positions is just, provided that the difference principle is satisfied, then we should not be content to disregard inequalities within social positions concerning the civil opportunities enjoyed by occupants with varying conversion ability. The consequence is a need for a public ranking of valuable opportunities: political, economic and civil.

3.12. Sen and Neutrality
Although I have defended the need for a public ranking of valuable activities, I have not yet argued that this leads to state perfectionism. I think it does, but my arguments for that claim are found later in chapter 5. Nonetheless, I would like to comment on the extent to which Sen’s own view appears congenial to perfectionism. My aim in this section is not to defend Sen’s particular points here, but rather only to open the door for a capability-based defence of state perfectionism.

Sen himself has shied away from entering into the neutrality debate. However, there is reason to think that he is not committed to neutrality. His view does not confine our collective evaluation of the good life to the social domain of civil society. Moreover, he shows little interest in confining himself to reasons, ideas and values that are political in the Rawlsian sense.

Sen has explicitly referred to the issue of state neutrality twice in his writings, both times in a footnote. Those two comments should first be addressed, in order to cut off the objection that the question of capability and neutrality was resolved—in favor of neutralism—nearly twenty years ago in “Justice: Means versus Freedoms”. In that article, Sen argues that Rawls was mistaken when he claimed that capability comparisons require a prior specification of one particular comprehensive view of the good.

Capability reflects a person’s freedom to choose between alternative lives (functioning combinations), and its value need not be derived from one particular “comprehensive doctrine” demanding one specific way of living.

This passage shows that Sen is not a communitarian perfectionist, or at least not one of a unitarian sort. He rejects the view that the state should promote one particular conception

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131 Sen 1990.
133 Sen 1990, 118.
of the good life. But we cannot therefore infer that he is committed to neutrality. Similarly, Sen’s agreement with Rawls that people should not be compensated for their choices of ends (their so-called *inter-end variation*) does not demonstrate a commitment to neutrality, because holding people responsible for the effects of their choices is also compatible with liberal perfectionism.\footnote{Ibid., 120, see also Sen 1992, 85.}

In the first of his two notes on neutrality, Sen recognizes neutrality\footnote{It is not entirely clear whether Sen’s understanding of ‘neutrality’ here is the justification-centered one that has become dominant. It may be that he has in mind ‘consequential neutrality’, which is not what neutralists defend.} as important, especially for Rawls’s theory.

If every possible list of primary goods (and every way of doing an index) makes some people’s ends very well served and others terribly minutely so, then the important feature of “neutrality” is lost, and the entire line of reasoning of “justice as fairness” is significantly undermined.\footnote{Sen 1990, 120, n. 23, see also Sen 1992, 85, n. 26.}

However, this passage is not a direct endorsement of neutrality. Moreover, Sen’s second note, which is made in the context of *Inequality Reexamined*’s critical discussion of Rawls’s political conception of justice, expresses ambivalence toward the neutralist project.

There is a related—but larger—issue regarding the exact role of ‘neutrality’ in political liberalism and the feasibility and desirability of imposing neutrality on theories of justice and fairness. … The discussion here bears on that issue, but I shall not, here, go on to a fuller treatment of that larger problem.\footnote{Sen 1992, 77, n. 12.}

This shows that the question of capability and neutrality is a live one. The fuller treatment towards which Sen gestured has not yet surfaced. Let us take a closer look at some of the features of his theory that relate to neutrality and perfectionism.

The key feature of Sen’s view that is relevant in this respect is the public ranking of valuable doings and beings. Do we need perfectionist values to create an adequate

\begin{footnotes}
\item[134] Ibid., 120, see also Sen 1992, 85.
\item[135] It is not entirely clear whether Sen’s understanding of ‘neutrality’ here is the justification-centered one that has become dominant. It may be that he has in mind ‘consequential neutrality’, which is not what neutralists defend.
\item[136] Sen 1990, 120, n. 23, see also Sen 1992, 85, n. 26.
\item[137] Sen 1992, 77, n. 12.
\end{footnotes}
public ranking? Sen certainly leaves the door open for this. There are two features of his view that I want to examine for these purposes, to see whether or not they are at odds with neutralism.

First, Sen appeals to the ‘constructive role’ of democracy in the formation of values. He applauds how the practice of democratic institutions fosters ‘reasoned scrutiny’ of one’s inherited views, and he specifies that beliefs about value are politically important only if they can survive reasoned scrutiny. This suggests the ideal of autonomy as individuality, which is at odds with the neutralism of both Kymlicka and Rawls. As we saw in chapter 2, Kymlicka’s ideal of autonomy as rational revisability provides a defence of social conditions that secure the opportunity to question one’s belief about value. Sen’s remarks about the constructive role of democracy go further and suggest support for the state promotion of actual questioning (i.e., reasoned scrutiny) of all beliefs about value.

Sen’s position concerning reasoned scrutiny also goes against Rawls’s response to reasonable private communitarians—individuals who belong to the overlapping consensus via their permissible conception of the good, yet regard their own comprehensive doctrine as “already formed and firmly held, and in this sense given.” There is no indication that Sen’s view demands the coercive imposition of liberal norms in private life, but Rawls insists furthermore that neither should the state non-coercively promote liberal norms in the private lives of the “many persons [who] may not examine

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139 Sen 2002, 590: “[W]e can go even further and require reasoned scrutiny as a requirement of a preference ordering to have an important status in the evaluation of freedom. ... [A] valutational ranking that can survive reasoned scrutiny has a central role in the assessment of freedom. In the use of “preference” as the basis of evaluation of the opportunity aspect of freedom, a special place must be given to the valuational interpretation of preference, combined with the need for compatibility with reasoned scrutiny.”
140 Rawls 1982b, 25.
their acquired beliefs and ends but take them on faith, or be satisfied that they are matters of custom or tradition." Sen’s arguments imply that it is important for the state to non-coercively encourage a critical stance towards one’s inherited views. The broadening and strengthening of social practices of reasoned scrutiny is claimed to play a key role in facilitating overlap among people’s beliefs about value, upon which a public ranking of functionings can be based.

The second non-neutralist feature of Sen’s view is arguably the most central to the capability approach as a whole. This feature is the fact that the evaluations of doings and beings required for the creation of the public list unavoidably take place in the public political sphere (as well as in civil society and private life). He endorses public debate about values as part of the democratic promotion of reasoned scrutiny, which in turn is important for the feasibility of a public ranking.

Statements about the value of doings and beings are central to world views. Identifying which activities and states of being are valuable makes up a large part of most full conceptions of the good. Of course, it is not the mere fact that non-political ideas of the good are voiced and discussed in public debate that puts Sen’s view at odds with neutralism. In Rawls’s ‘wide view’ of public reason, it is appropriate for non-political ideas of the good to be voiced in public political debate so long those ideas are buttressed by political arguments supporting the proposal in question in due course. Rawls endorses the voicing of non-political values in the public sphere on the grounds that doing so can facilitate mutual understanding between groups with very different

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141 Ibid., 28.
142 For a discussion of conceptions of autonomy in comprehensive and political liberalism, see Kymlicka 1996; 1989a, ch. 4.
143 Sen 1999, 153.
144 Rawls 1997.
perspectives. However, arguments based on political values are to be given principal weight in the discussion and ensuing decisions.

Sen’s view does not contain this requirement. His emphasis on reasoned agreement through public debate leaves open the possibility of perfectionist ideas of the good playing a role—perhaps even a large role—in the creation of a public ranking. Creating the public list thus appears, for Sen, to involve debate in the public political sphere about questions about the good that neutralists typically argue should be contained within civil society and private life.

**Concluding Remarks**

In this chapter I have argued that the target of our metric of advantage should be what I refer to as ‘broad opportunity’, encompassing political, economic and civil opportunities and that we should reject Rawls’s idealization concerning mental and physical abilities—known as the ‘normal and fully cooperating’ assumption. This entails, I have shown, that extending liberal justice to citizens with disabilities will require a public ranking of valuable activities.

This chapter’s discussion raises the question of whether the evaluation required for an adequate public ranking would necessarily include perfectionist values. I think it would, but I have not yet argued for that. What I have argued for is the public ranking claim—namely, that if we accept a broad opportunity conception of advantage and we reject the NFCA, then we should also accept the need for a public ranking. In chapter 5 I will argue that this need provides the basis for a defence of public value perfectionism;
but first, in order to strengthen the case in favour of the public ranking claim, chapter 4 will examine and argue against Norman Daniels’s attempt to measure broad opportunity directly by appealing to a biomedical model of health.
Chapter 4: Defending the Public Ranking Claim

Chapter 2 sought to explain how it is possible for state perfectionism to fit within a larger neutralist framework, by introducing the idea of public values and arguing that Kymlicka’s defence of nation-building is an instance of a neutralist use of public value perfectionism. Chapter 3 sought to provide an initial defence of the public ranking claim by, first, defending an opportunity-centred interpretation of Rawls; second, arguing against the ‘normal and fully cooperating’ assumption, and third, defending Sen’s arguments that a public ranking is needed as a result of those first two points. The present chapter completes my defence of the public ranking claim by examining and arguing against Norman Daniels’s proposed alternative to the capability approach. The next and final chapter argues that the public ranking claim leads to public value perfectionism.

The public ranking claim states that if we accept, as we should, that the ultimate target of our conception of advantage should be broad opportunity and that the NFCA (normal functioning and cooperating assumption) should be abandoned, then we should also accept that our metric of advantage will need to measure broad opportunity directly by means of a public ranking of valuable doings and beings. I fully agree with this. To defend my endorsement, I will provide a reply to Daniels’s objection to it. On my interpretation, he argues that a biomedical model of health allows us to accept the two antecedents of the public ranking claim, while rejecting its conclusion. That is, I take Daniels to be arguing that a biomedical model of health allows us to measure broad opportunity indirectly even after we have abandoned the NFCA.
In defence of the need for a public ranking, I will argue that a biomedical model is unhelpful. It can provide a list of valuable functionings, but it fails to give adequate guidance for ranking those functionings. Such a ranking is needed because of resource constraints that force us to fund less than all possible enabling services and projects. The latter portion of this chapter defends my claim that prioritization concerning the use of resources for enablement is inevitable even in a perfectly just society. That completes my defence of the public ranking claim.

Before proceeding further I will outline, without defending, the central position that the discussion in this and the final chapter seeks to support, so that it can be kept in mind. Here it is:

Justice demands, among other things, that society remove or mitigate the detrimental effects on people’s opportunity that are caused by morally arbitrary differences in conversion ability. Most of those differences are captured by the notion of disability. The disadvantage that attaches to disabilities can be removed or reduced in two ways: (i) by medical treatments, assistive devices and support services that remove or reduce the impairment(s) in the individual; and (ii) by regulations and projects that aim to improve the accessibility of our physical and social environments. Because of reasonable resource constraints, no society can afford to do everything that is possible to reduce disability. All societies must therefore make prioritization decisions about enablement efforts. This requires a public ranking, and that ranking will be able to adequately recognize and respond to the different dimensions of disadvantage associated with disability only if it makes use of public value perfectionism to judge the relative value of
different civil activities. Public value perfectionism is justified by a demand of justice grounded on neutralist considerations that would otherwise be unmet.

I will now discuss Daniels’s theory of justice for health. I begin by providing an explanation of how he suggests we revise Rawls’s theory in order to extend it to address injustices related to disability. Then I discuss two points where Daniels’s theory departs from Sen’s approach. I support the first of these departures, which narrows the range of differences in conversion ability that are matters of justice; but I argue against the second, which claims that inter-valuation-functional comparisons of capability are feasible by reference to a biomedical model of health.

4.1. Norman Daniels’s Theory of Justice for Health

Norman Daniels’s work spans political philosophy and health policy. His arguments and positions are taken very seriously in a number of debates at the intersection of those fields. Both the content and the presentation of Daniels’s arguments frequently demonstrate a concerted engagement with current political challenges, primarily from the American context, but more recently at the international level as well. My discussion here does not seek to assess the practical value of his work, although there are practical implications in what I argue. I concentrate on a philosophical goal in his theory of justice for health which reflects his relation to the tenets of Rawlsian liberalism. In a number of important works, Daniels argues for an extension of Rawls’s theory to allow it to address injustices related to disability.145 Daniels claims that his extension is

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inline with Rawls’s larger neutralist project, and Rawls cites the extension approvingly.\textsuperscript{146}

A reminder of why such an extension is needed may be useful. Rawls explicitly adopts a number of idealizations in order to focus on what he takes to be the central concerns of social justice. The simplifying assumption that rules out differences in conversion ability is one of those idealizations.\textsuperscript{147} It confines our attention to only those members of society whose physical and mental abilities meet or exceed what Rawls takes to be necessary for being a ‘normal and fully cooperating’ participant in fair social cooperation.\textsuperscript{148}

This assumption is important for Rawls’s neutralist project because it allows him to measure advantage without directly measuring broad opportunity, by treating a person’s shares of primary goods as proxy for her level of opportunity. If the NFCA were defensible, it would thus avoid the need for a public ranking. The assumption of roughly equal conversion ability allows Rawls to infer a \textit{qualitative} judgment about the relative value of people’s range of opportunities from a \textit{quantitative} measurement of their shares of primary goods. On the capability approach, defensible qualitative judgments about levels of opportunity (i.e., capability) can be made only by making use of a public ranking of the value of doings and beings.

Rawls’s defence of the adequacy of primary goods alone as a proxy for broad opportunity depends on (i) identifying goods whose instrumental value can be defended with public political reasons, and (ii) assuming that, for political purposes, people’s capacity to make use of such goods is roughly equal. More precisely, this second point is

\textsuperscript{146} Rawls 1996, 184, n. 14; 2001, 175, n. 58.
\textsuperscript{147} For Rawls's discussion of \textit{temporary} illness and accident, see Rawls 2001, 170-76.
the assumption that differences in conversion ability are either dealt with by other aspects of the theory or are politically irrelevant. Daniels agrees with Sen that neither of those conditions is satisfied in cases of disability, and that this requires us to abandon the NFCA. However, Daniels seeks to do so in a way that does not make his extension vulnerable to Sen’s capability critique. In particular, Daniels hopes to be able to construct a neutralist list of valuable functionings by appealing to a biomedical account of health, which I discuss further below.

To motivate his rejection of Rawls’s simplifying assumption that citizens’ mental and physical capacities and status are all within the ‘normal range’, Daniels must argue that disability is not dealt with by Rawls’s view as a whole (including elements like the difference principle) and is, or gives rise to, matters of justice. Meeting the first of these conditions is quite easy, since Rawls is explicit about his bracketing of questions about disability. Rawls does defend the ability of his theory to address temporary illness, understood in terms of a short-term lapse in a person’s ability to participate in cooperative schemes of production; but these brief remarks require amplification and, in any event, do not address disability. He explicitly acknowledges that his theory would require a genuine extension if were to address disability.

That leaves the issue of whether disease and disability are, or give rise to, matters of justice. Daniels discusses disability together with serious illness, and argues that considerations of justice extend to disease and disability because of health’s significant impact on opportunity. His strategy is to broaden the scope of fair equality of opportunity beyond Rawls’s focus on employment-related opportunities. To do this, he introduces the idea of the ‘normal opportunity range’ of a society, which is “the array of life plans
reasonable persons are likely to develop for themselves."\textsuperscript{149} He argues that guaranteeing people a fair share of that range can be defended within a Rawlsian framework as a vital part of what people need in order to be “normal, fully functioning members of society.”\textsuperscript{150} He argues that disease and disability reduce a person’s share of the normal opportunity range below what is fair. Removing or reducing the advantage that attaches to disability (and disease) is therefore a matter of justice if we grant that securing for each her fair share of the normal opportunity range is also a matter of justice. Each of those points needs to be expanded and clarified.

4.2. Daniels’s Strategy

Note how this is different from Sen’s strategy, which aims to incorporate concerns about disability by revising Rawls’s metric of advantage. It seems clear that Daniels, however, intends to leave the doctrine of primary goods intact. Instead, he aims to introduce a revision further upstream, which takes effect before the difference principle comes into play. On Daniels’s view, disability and disease are obstacles to the achievement of fair equality of opportunity. He likens health to education in this regard. Justice issues related to education cannot be resolved by a strategy that first guarantees fair shares of resources and then allows a market distribution of educational opportunities. This is because one cannot specify what counts as a fair share of resources unless fair equality of educational opportunities are already in place. Fair equality of

\textsuperscript{149} Daniels 2008, 43; cf. 1985, 33.
\textsuperscript{150} Daniels 1996, 216. He also emphasizes the connection between a person’s fair share of the normal opportunity range and her fundamental interest in being able to revise her conception of the good, see Daniels, 1985, 28.
educational opportunities is one of the preconditions for the possibility of shares being unequal yet fair.

Daniels argues that the same considerations apply to social resources for meeting needs that arise from disability and disease. We cannot fully specify what would count as a fair share of resources unless we already know what justice requires with respect to meeting those needs. It is therefore fitting that considerations relating to disability are incorporated into the opportunity principle which, in Rawls’s framework, has lexical priority over the difference principle.

In addition to appealing to the relevant similarities between education and health, Daniels also points to the theoretical advantages of plugging considerations of disease and disability into Rawls’s theory via the opportunity principle, rather than revising the primary goods metric. Daniels rejects treating health as a sixth primary good because of the worry that doing so would compromise the point of primary goods: to measure advantage without entering into controversial judgments about the good that more direct interpersonal comparisons of well-being typically require.\textsuperscript{151} In my terminology, Daniels seeks to preserve the ability to measure advantage without measuring broad opportunity. The reasoning behind the worry is as follows. If health were a sixth primary good, then the task of creating an index would require deciding trade-offs between, e.g., health and income; and to do that would require evaluating the relative impacts of different health states on well-being or substantive opportunity. Daniels, like Rawls, is sceptical that this kind of interpersonal comparison can be done without appealing to values beyond neutralist ones.

\textsuperscript{151} Daniels 2008, 57.
Daniels is thus quite clear that one of his central aims is to preserve Rawlsian neutralism by hitching health to Rawls’s theory via the opportunity principle. Of course, Daniels does more than to simply bring health within the domain of the opportunity principle. He also defends a revision of fair equality of opportunity that significantly broadens its scope. As discussed earlier, Rawls’s opportunity principle falls far short of incorporating the full breadth of our common understanding of the scope of the notion of opportunity. Daniels’s use of ‘opportunity’ is not inherently limited with respect to the types of activities and states (i.e., doings and beings) that it concerns. Rawls’s use of ‘opportunity’ does, however, have an explicitly limited scope of application—namely, employment-related doings and beings. In Rawls’s use, fair equality of opportunity requires that all citizens have—especially during childhood and adolescence—sufficiently competitive opportunities to develop marketable skills. If the scope of Rawls’s opportunity principle extends beyond doing and beings that help or hinder such development, it does so only by accident.

Why does Daniels broaden the scope of the opportunity principle? It would have been possible to incorporate considerations related to disability and disease without pushing for broad opportunity. However, holding onto narrow opportunity does have costs. It would limit the theory’s ability to identify injustices related to disability and disease. It would effectively be unable to identify injustices of this sort insofar as they could not be cashed out in employment-related terms.

Daniels recognizes that this is unacceptable. In particular, he is motivated to broaden opportunity in order to avoid an age bias in the just distribution of resources for health. If justice requires that we respond to disease and disability only insofar as they
adversely affect employment-related opportunities, then the health needs of the elderly
(and to a lesser extent, the middle-aged) will be discounted because of the
correspondingly lower value of their remaining life-time potential for productive
contribution. When this tendency is combined with the fact that people’s health needs
generally increase with age, and generally increase more rapidly post-retirement, the
result of incorporating health into social justice via opportunity understood in Rawls’s
narrow sense would be the serious neglect of the health needs of the elderly.

Furthermore, although Daniels does not apply these arguments to the case of
disability, they have some force there as well. To the extent that disability interferes with
productive contribution (at least when such contribution is conceptualized in
conventional economic terms), there would be a similar disability bias if we refused
Daniels’s broadening of the opportunity principle beyond employment-related doings and
beings.

4.3. Broadening the Opportunity Principle

Let us now examine Daniels’s proposal. To broaden the scope of fair equality of
opportunity beyond Rawls’s focus on employment-related opportunities, Daniels
introduces the idea of the ‘normal opportunity range’ for a society, which is “the array of
life plans reasonable persons are likely to develop for themselves.”¹⁵² This revision of the
opportunity principle requires guaranteeing, so far as it is feasible in light of reasonable
resource constraints, that people have a fair share of their society’s normal opportunity

range. This requirement concerns how much (substantive) opportunity a person has to pursue beings and doings that are widely valued in his or her society.

Daniels provides two defences of why people have good reason to support the state protection of opportunity shares as a matter of justice. The first appeals to people’s fundamental interest in being able to revise their conception of the good. The second one appeals to the claim that a fair share of the normal opportunity range is a vital part of what people need in order to be “normal, fully functioning members of society.”

I will outline these arguments and then will explain how they show that there is significant theoretical distance between Daniels’s theory of justice for health and Rawls’s political liberalism.

The first of Daniels’s two defences of the normal opportunity range appeals to people’s fundamental interest in being able to revise their conception of the good. There are persuasive reasons for the claim that people have such an interest. Being able to revise our beliefs about value is important because our reasoning capacities are limited and fallible. We never have at hand all the possibly relevant evidence; and new evidence may challenge what we now believe. Furthermore, revisability is just as important for those who do not change their beliefs. One’s commitment to any view of the good gains meaningfulness and worth largely as a result of it being sustained by choice, in some suitable sense. Indeed, the very possibility of commitment is undercut if all alternatives are blocked. Having a fair share of the normal opportunity range allows people to act on their belief about the good, and on their revisions of those beliefs.

Daniels’s second defence of the claim that ensuring fair opportunity shares is a matter of justice appeals to the claim that fair opportunity shares are a vital part of what

\[153\text{Daniels 1985, 216.}\]
people need in order to be “normal, fully functioning members of society.” His position suggests that a person has a less than fair share if morally arbitrary, socially controllable factors reduce her share in a way that undermines her standing as a free and equal citizen. In other words, guaranteeing fair shares of the normal opportunity range requires that the inequalities in people’s opportunity shares that are caused by factors that are both morally arbitrary and socially controllable must be inequalities that are consistent with, or demanded by, a public recognition of the moral equality of citizens.

I agree with most of what Daniels is arguing for here. I agree that we should broaden the conception of opportunity to be used in theories of justice, and that the idea of the normal opportunity range can be useful in this regard. Moreover, Daniels’s arguments in favour of the claim that guaranteeing fair opportunity shares is a matter of justice are persuasive. However, I disagree with his claim that this revision of Rawls is a minor one.

Compare, for instance, Daniels’s to Rawls’s approach for meeting people’s fundamental interest in being able to revise their conception of the good. In Rawls’s account, this interest is met by (i) guaranteeing freedom of conscience, expression, and association, and (ii) providing all-purpose means (e.g., income and wealth) with which individuals can make use of those liberties, and (iii) securing the social bases of self-respect (which helps to enable people to pursue their ends with self-confidence). The strategy Rawls defends for meeting people’s interest in revisability preserves his theory’s ability to measure advantage without directly measuring broad opportunity. At no point in Rawls’s approach do we need to assess the value of the particular various alternative
life plans or conceptions of the good that a person has the substantively opportunity to pursue.

Does Rawls’s choice of this strategy indicate that he discounts or denies the value and importance of securing for all their fair shares of the normal opportunity range? No. Rawls is not best described as rejecting the value of opportunity shares. Rawls avoids measuring opportunity shares directly not because he rejects the value of fair opportunity shares, but rather because his simplifying assumption concerning conversion ability allows him to circumvent the normative challenges involved in evaluating broad opportunity directly. That is, Rawls’s simplifying assumption allows him to defend the claim that when the basic liberties, the social bases of self-respect, and fair equality of opportunity (in the narrow, employment-oriented sense) are guaranteed, we can treat shares of income and wealth as a workable approximation of people’s shares of the normal opportunity range. And if shares of income and wealth are produced by a fair cooperative scheme as specified by the difference principle, then we can infer that opportunity shares (in Daniels’s broad sense) under this scheme are also fair.

Now, Daniels recognizes that Rawls designed the opportunity principle and the difference principle to work in combination. And his aversion to incorporating health as a sixth primary good shows that he is also aware of the neutralist purpose of the doctrine of primary goods. He recognizes the purpose of the division of labour between the opportunity principle and the difference principle; and his revision appears to be designed with the hope of preserving that division of labour and its neutralist results.

However, the revision does not succeed in that respect. When the opportunity principle is broadened, it is not merely the case that the opportunity principle does more

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154 Daniels and Sabin 2008, 23, n.4.
work before the difference principle comes into play. Rather, the broadened opportunity principle entirely takes over the work that was previously done by those two principles in combination. This is because what Rawls’s opportunity principle and difference principle do in combination is guarantee that people’s shares of broad opportunity are fair; and in Daniels’s theory, that is done entirely by the broadened opportunity principle. His revision is thus akin to Sen’s in at least one respect: they both explicitly focus on broad opportunity.

Now, how does Daniels’s revision allow him to incorporate concerns relating to disability and disease? The idea of fair shares of the normal opportunity range leaves open the possibility of there being a number of factors that could reduce a person’s share below what is fair. Daniels disavows any intention to examine such factors exhaustively. He merely identifies disability and disease as two such facts. He argues that their negative effect on fair opportunity shares can be considerable, and that their moral arbitrariness and social controllability makes them matters of justice.

4.4. Measuring Opportunity Shares

The discussion so far leads us to the question of how we can assess how good of a share of the normal opportunity range a person has, in order to determine whether she has a fair share. Daniels wants to avoid doing such assessment directly, and he appeals to a biomedical model of health with the hope of making an indirect assessment possible. Before discussing the biomedical model, I will explain why filling in the content of the normal opportunity range could be problematic for neutralism.
To see how one might go about making a direct assessment of opportunity shares, we can begin by imagining the array of life plans—valued or not—that a particular person has the opportunity to pursue. I will refer to this as an individual’s feasible array of life plans. We can then ask how much overlap there is between an individual’s feasible array of life plans and the array specified by the normal opportunity range. As a general tendency, we would expect that some of an individual’s feasible life plans will not be represented in the normal opportunity range. It is unlikely that every one of the things that a particular person may and could do would be widely valued by reasonable persons. Some, perhaps many, feasible life plans have highly idiosyncratic appeal or simply very little. We would also expect, as a general tendency, that the overlap will cover only a part—frequently a quite small part—of the normal opportunity range. The diversity and limitations of human beings make it unlikely that any particular individual would have the genuine opportunity to effectively pursue all, or even most, of the life plans that reasonable persons in her society are likely to develop for themselves.

Note that although the idea of an individual’s feasible array of life plans is simply a descriptive notion, the normal opportunity range is a value-laden idea, since it consists of the array of life plans that we expect to be widely valued by reasonable persons. Describing the degree of overlap between the two will be more than a simple descriptive matter. Although it is tempting to ask how large the overlap is, the pertinent question is how valuable the overlap is. Sen’s objection to the count method has force here as well.

This difficulty is not easily circumvented. For example, one might try to defend the claim that the opportunity value of each life plan in the normal opportunity range is equal, but this faces several objections. Likelihood is one of the specified criteria for the
selection of the life plans that constitute that range. One might suppose, then, that the higher the likelihood a life plan has of being deemed choice-worthy, the greater its opportunity value. On the other hand, the opportunity value of less common life plans is especially high for those who pursue them, since the relative unpopularity of such life plans make the pursuit of them all the more vulnerable to social obstacles. In response to these objections, one might press for a permissive reading of likelihood, such that any life plan is to be included in the array specified by the normal opportunity range if it can reasonably be imagined to be compatible with at least one comprehensive doctrine that counts as reasonable.

This might well defeat the objections, but only at the cost of making the normal opportunity range impossibly large for practical purposes—so large that having even a good-sized share of it could fail to give a person the genuine opportunity to effectively pursue much of anything that her own conception of the good gives her reason to value. We should allow the possibility that a person can indeed have a fair opportunity share and yet lack the opportunity to pursue most of the activities she personally values (she might hold an idiosyncratic and/or expensive conception of the good); but if this were regularly the case, then that would be a problem.

What this shows is that we cannot adequately describe a person’s share of the normal opportunity range—let alone assess whether it is fair—without being forced to create a public ranking. To measure opportunity shares one must judge the value of the opportunity to pursue the life plans that are found within the portion of the normal opportunity range to which a person has access. If this were accepted by Daniels, it would make his revision of Rawls nearly identical to that of Sen. In fact, Daniels is quite
sympathetic to the capability approach. Despite some minor reservations about the capability metric, he states that the idea of shares of the normal opportunity range is essentially equivalent to the idea of capability sets. Nonetheless, Daniels departs from Sen’s approach in at least two respects.

4.5. Daniels’s Two Departures from Sen

Daniels’s first departure is a more limited concern with differences in conversion ability. The capability metric is designed to ignore differences in the ends people choose to pursue (inter-end variation), but Daniels objects that there are further types of differences in conversion ability that should be ignored. For instance, whenever differences in talent translate into difference in conversion ability, Daniels thinks they should be ignored. He argues, quite rightly, that such differences are already addressed by the difference principle.

What emerges from this point is a slightly less ambitious role for broad opportunity. Instead of employing the normal opportunity range or capability sets to measure advantage in the first instance for everyone, the appeal to broad opportunity can be made as a supplement to Rawls’s initial scheme. That is, we can begin with Rawls’s narrow opportunity principle and the difference principle (with its use of primary goods); and then supplement that by checking whether there are any remarkable discrepancies in the doings and beings people actually pursue and achieve, which suggest a conversion impairment or a reduction in a person’s opportunity share below what is fair. If lower

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155 Daniels 2008.
156 Daniels 2003.
levels of achievement can be tied to a morally arbitrary personal feature or environmental circumstance, then steps can be taken to remove or reduce the disadvantage that attaches to that trait or circumstance. Otherwise, the initial Rawlsian scheme can be left intact.

Two factors that do meet the test of whether they reduce opportunity shares below what is fair are, of course, disease and disability. Daniels argues that health has a special moral importance in this respect, because (i) its impact on opportunity is so significant, and (ii) the significance of that impact is subject to wide agreement across diverse conceptions of the good. This leads us to the question of how we measure the impact of disabilities or diseases on opportunity. One way to do so would be to create a public ranking of the value of various activities and states of being, and then assess how greatly a disability or disease reduce a person’s opportunity to achieve the doings and beings on the list. Such a list would, in effect, partially fill in the content of the normal opportunity range. Note that the longer the list, the more ability the theory has to recognize and respond to the disadvantage that attaches to disabilities and diseases. This, essentially, is what Sen’s approach aims to do.

Daniels’s second departure from Sen occurs here. Daniels wants to avoid a direct evaluative approach of this sort. He seeks a way to sidestep the need to fill in the content of the normal opportunity range. To do so, he appeals to a biomedical model of health in an effort to bypass the normative challenges that would be involved if his theory were forced to flesh out the substantive content of the normal opportunity range and create a public ranking. The biomedical model holds that the biological sciences are capable of weighting the severity of various diseases and disabilities by identifying ‘species-typical functioning’. The model defines disease and disability as departures from the normal
functional organization of a species. Disease and disability are thus understood as impairments to normal functioning, which, in turn, are argued to reduce a person’s share of the normal opportunity range below what is fair.

The idea of normal (species-typical) functioning is put forth as being able to identify the members of an important set of conversion impairments—namely, the set that describes disease and disability. This identification is meant to occur without any judgments of the value of particular activities. It is independent of the specification of the normal opportunity range.\textsuperscript{157} Daniels argues that although the idea of the normal opportunity range explains why disease and disability are matters of justice, the idea is not needed for identifying the conversion impairments related to them. And he argues that these judgments, although not value free, can reasonably be expected to be acceptable to all reasonable persons.

4.6. Problems with Appealing to a Biomedical Model of Health

Daniels’s view ultimately requires the very same kind of evaluation of doings and beings as defended by Sen. The thought that we cannot judge how disadvantageous a particular inter-individual variation is (and so cannot directly identify and weight conversion impairments) without also needing to judge the value of the doings and beings that are impeded or prevent by said variation, is precisely what motivates Sen to argue that measuring advantage requires measuring broad opportunity via the value of capability sets. Daniels, however, thinks this can be done. He argues that the biomedical sciences (broadly construed to include, e.g., evolutionary theory) are—at least

\textsuperscript{157} Daniels 1985, 55.
potentially—able to fully describe normal functioning for humans in a way that is publicly acceptable and free from a degree of normativity that would run afoul of Rawlsian neutralism. I will now explain why I do not think this works.

It is important to distinguish between what normally a human body can do and what normally a human can do with his body. This is the difference between actions, such as moving my arm in a forward arc, and activities, such as throwing a baseball. Prior to the evaluation of doings and beings, we can talk about what normally a body can do, and thereby draw up a list of actions that a person lacks the ability to do. However, we cannot identify which of those lacks are disadvantageous—or how greatly so—without asking what is important about the activities that the person is cut off from because of not being able to do the specified actions.

Perhaps that puts the point too strongly. We might be able to draw up a fairly uncontroversial list of all the actions that have some significant all-purpose value similar to income and wealth. We could then avoid social evaluation of the activities that these actions enable, on the assumption that they are valued no matter what else one values. This point can be applied to Sen’s approach by drawing a distinction between what I will call ‘means-functionings’ and ‘end-functionings’.

To illustrate that distinction consider two of the ‘doings’ mentioned earlier: moving about and seeing Rent on Broadway. These are both functionings, and both arguably valuable ones, but while the latter can easily described as an end, the former is

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158 Daniels 1985, 28-30.
159 I take this analysis to be compatible with the social constructivist point in disability discussions that addressing disability should involve revising social environments away from an ‘ableist’ bias that prioritizes the needs and aims of able-bodied, neurotypical individuals.
This is important, because when we are describing a view of the good life by reference to the particular activities and states of being to which it attributes value, those functionings, I want to suggest, are all ‘end-functionings’—that is, functionings that are also ends. While seeing *Rent* on Broadway could easily be considered an element of the good life, moving about *per se* is not. Rather, moving about is valued primarily as a means to the various ends that it opens up for a person. If we were to describe a particular view of the good life according to its ranked list of valuable functionings, these would not be means-functionings. Neutralism could therefore be satisfied if the public deliberation about the value of functionings were limited to means-functionings.

Moreover, if we look at a wide variety of different end-functionings from different views of the good life, I think we will find that they depend on a relatively small number of the same means-functionings. For example, consider how wide a variety of specific valuable activities are opened up by having the capability to achieve the four following means-functionings: moving about, communicating with others, perceiving one’s surroundings and manipulating small objects. Therefore, a fairly short but powerful list of means-functionings might well be valued instrumentally by a wide variety of conceptions of the good, which would seem to pass the test of liberal neutrality.

We might think that this proposal would adequately account for inter-individual variation. Conversion impairments can plausibly be thought of as being located at the level of means-functionings. When a person has a conversion impairment with respect to a particular end-functioning, that can typically be explained in terms of a conversion impairment with respect to one (or more) of the means-functionings that are necessary for

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160 In some contexts moving about might at the same time be an end as well. For example, when I choose to *not* sit perfectly still, one of my ends is to simply move about (e.g., fidgeting, stretching, etc.). I thank Stephen Leighton for this point.
that end-functioning. It would seem therefore that we could get what we need for addressing conversion impairments simply by identifying a defensibly inclusive list of means-functionings.

However, there is a fatal problem with this proposal: it ignores the inevitability of health resource prioritization (i.e., rationing, or limit setting). No society can meet all the health needs of its population, nor can it fund all possible enablement efforts. Not all items on the uncontroversial list can be secured for all. Given that, how do we come up with a defensible weighted list of means-functionings? One possibility is to look for the means-functionings that are valued by all, and attach to them to only whatever weight avoids controversy. Rawls would reject that strategy as being political in the wrong way. Instead, his approach suggests that we should seek to identify a list of means-functionings all of whose members can be defended as political in the Rawlsian sense, by seeking to identify the various means-functionings that enable people to be normal and fully cooperating members of society. Rawls emphasizes the two moral powers in this regard. He describes them as capabilities the value of which can be defended by political liberalism. The two moral powers, however, are too general to be of much use in the present exercise. For instance, almost every conceivable means-functioning would seem to be important for the capacity to pursue and revise a conception of the good.

We might look instead to Daniels. He argues that people need a fair share of the normal opportunity range if they are to be normal and fully cooperating members of society. This suggests that we should seek to determine which means-functionings are most important for guaranteeing people their fair share. However, comparing means-functionings in terms of their instrumental value for people’s access to the normal

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opportunity range is equivalent to specifying how much power particular means-functionings give people to pursue “the array of life plans reasonable persons in [a society] are likely to construct for themselves”—or, using Sen’s terminology, to pursue the kinds of lives they have reason to value.\(^{162}\) In other words, this strategy involves filling in the content of the normal opportunity range as part of the task of measuring effective freedom, which is something that Daniels had hoped to avoid by appealing to a biomedical approach.

I do not see any way around this. The biomedical approach can identify the species-typical norm for what a human body can do, but it cannot explain which functionings are valuable or how greatly so unless the approach attributes value to particular end-functionings, which goes against the reason for appealing to the approach initially.

The evaluative challenges related to resource prioritization become even more demanding when we recall that the disadvantage that attaches to disability is a function of the interaction between the individual’s variation and her physical and social environments.\(^{163}\) This is a further reason why a list of significant means-functionings is insufficient. State efforts to lessen disability must include regulations and projects that aim to enhance the accessibility of environments. But the prioritization issue reminds us that society cannot afford to make all environments maximally accessible. Their relative importance must be assessed. This cannot be done by confining our attention to means-functionings (actions). To assess the relative importance of various environments, we

\(^{162}\) Daniels 1985, 33.  
\(^{163}\) Shakespeare 2006.
must assess the relative value of the activities (end-functionings) that take place in them. The biomedical model of health cannot provide answers here either.

This lends support to the claim that Daniels’s theory of justice for health does not circumvent the need for a public ranking. My argument, however, depends on the applicability of rationing challenges to enablement efforts. Do rationing considerations really apply to social spending on enablement? The remainder of this chapter will explain why they do, thereby completing my defence of the public ranking claim.

4.7. Rationing

Every society, no matter how prosperous, now faces (and perhaps always has) the necessity of setting priorities and limits for social spending on health. I will argue that this task unavoidably involves ranking the importance of services and projects that aim to promote health. Furthermore, although there are important differences between illness and disability, I will argue that the rationing challenge also applies to social spending on enablement. Which enablement projects should the state fund when it cannot fund them all? On what basis should such priority setting decisions be made? The remaining sections take on the task of establishing that these are questions that must be answered by means of a public ranking.

If rationing were unnecessary and unwarranted for social spending that aims to reduce the disadvantage that attaches to disability, then there would be no need to appeal to public values for this issue. Society would simply take every effective measure available to enable all significant means-functionings (actions) and make all physical and social environments maximally accessible. In a world of abundance, this would be
absolutely required. Unfortunately, that is not our world. Services and projects that secure and promote enablement and health must compete with each other and with other legitimate uses of social resources. That is why public values are needed for the implementation of the demands of justice concerning disability and advantage. We need to rank the importance of enablement services and projects by engaging in public debate about the value of the activities that they give people the opportunity to pursue. It is important to show, therefore, that the claim about rationing is well-founded: that its scope extends to enablement services and projects.

I want to be clear that the aim of this discussion is not to defend any particular prioritization decisions. My arguments do not show how we should ration, but rather only that we do need to ration.

The argument proceeds as follows. I begin by establishing the necessity of rationing medical care, and then explain why rationing unavoidably involves ranking the importance of treatments. Next, I explore how the focus of rationing debates has been broadened to include public health initiatives, and why this increases the evaluative challenges associated with health resource rationing. Finally, I argue that both the necessity of rationing and the associated evaluative challenges apply to social spending on enablement. This sets the stage for the next chapter’s arguments that those evaluative challenges cannot be met unless we establish and appeal to public value perfectionism.

4.8. The Necessity of Rationing Medical Care
In an entirely private health system, where resources are allocated strictly according to ability to pay, there would be no need for explicit health resource rationing. All resources for health would be treated as consumer products to be distributed by the market on the basis of demand. Such an arrangement, however, is defended in theory by very few, and is rarely, if ever, fully instantiated in practice. The following discussion assumes at least some significant level of state spending on health, whether as part of a mixed private/public system or one that is fully public. This spending is typically devoted to both medical care and broader public health measures. The term ‘resources for health’ is intended to capture this breadth. For our purposes it is also helpful to distinguish ‘resources for enablement’, which include medical care, public health measures and other types of resources, whenever any of these is aimed at reducing the disadvantage that attaches to disability. The philosophical debate about health resource rationing began with a narrow focus on medical care. I will begin with that narrow focus, before broadening the discussion.

Why is explicit rationing of medical care necessary? If one rejects both rationing and the market model, then one is left with the claim that for every patient, any and all treatments that can be expected to yield a medical benefit should be provided. The only treatments that are ruled out are ones with negative or no benefit. Although this describes an ideal that fits well with the traditional understanding of doctors as unwavering advocates of their patients, it is an ideal that is no longer defensible—if it ever was. Indeed, none of the prominent contributors to rationing debates argues that we should aim to provide absolutely all beneficial treatments. I will refer to this as the all-beneficial-
treatment (ABT). Explaining why it should be rejected helps to clarify the reasons behind approaches to rationing.

It may be that a society could theoretically achieve the ABT ideal, but this would require devoting a huge proportion of its social resources to medical care, leaving inadequate funding for education, culture, social investment in economic stability, and so on. Assuming a moderate scarcity of resources, there is real competition between these demands. We can expect, or even reasonably desire, that there will be some limits on state-funded medical care budgets. (Whether existing medical care budgets of actual countries are sufficient is a further issue.) The reason to oppose a very large budget is not simply that it would be difficult to politically sustain (although that might well be true), but rather because such a budget would undersell the importance of competing demands of justice. Medical care is important, but not exclusively so.

But even if we accept the inevitability of limits on public medical care budgets, must we also accept that rationing is unavoidable? Some early debates on rationing pointed to the wastefulness of existing health systems. Some argued that with superior management, the ABT ideal could be realized without needing to substantially increase funding overall. This is almost certainly too optimistic. Inefficiencies should indeed be reduced, and doing so could admittedly free up substantial resources, but the extra resources would not be nearly enough to allow absolutely all beneficial treatments to be publicly funded. In support of that claim I will point to three types of cases that illustrate why complete avoidance of rationing is not realistically achievable.

First, consider what we might call ‘bottomless pit’ cases. ‘Bottomless pit’ is a rather unkind description given to medical cases where a high needs patient (usually with
a very low quality of life) possesses a seemingly endless capacity to receive very marginal benefits from high-cost treatments. In the paradigmatic case, at no point can one say that further interventions cannot be expected to yield a benefit, yet the expense of providing all beneficial treatments would be astronomical. Assuming a fixed total medical care budget, the ABT ideal could be fulfilled for such patients only by denying beneficial treatment to some others. But it is a mystery how the ABT ideal could provide a basis for such a decision. According to the ABT approach, what matters is whether the patients have some capacity to benefit. Typical medical cases are identical to bottomless pit ones in that respect. We are forced, therefore, to consider the magnitude of the expected benefit, as well as the cost. That is, we are forced to engage in rationing.

Second, ‘long shot’ cases involve expensive treatments that have a low likelihood of a large benefit with no satisfactory alternatives. This is often the case with cutting-edge or experimental treatments. Should social spending on medical care include coverage for such treatments? The all-beneficial-treatment ideal can exclude treatments only if they have no expected benefit. This does not rule out any cutting-edge treatments, since they have at least progressed successfully through safety approval mechanisms, which demand confirmation of effectiveness. Even experimental treatments invariably have some scientifically grounded indication of an expected benefit, even if very uncertain; otherwise, the treatment would not have obtained research funding. Although expectations of benefit yielded by, e.g., computer-based models and promising test results in non-human animals are admittedly provisional, they are genuine nonetheless. Assuming a fixed total medical care budget, treatments that are both very expensive and
very uncertain can be publicly funded only by denying other more certain treatments to other patients. Explicit rationing is needed to address this issue.

Finally, consider ‘non-essential benefit’ cases. This kind of case involves patients whose conditions pose little or no threat to their health, but who nonetheless could benefit from an existing treatment. The reason that we can talk sensibly about such cases is that the mere notion of benefit is very broad. Perfectly healthy people can benefit from medical care. It is difficult to deny that a person benefits by receiving laser eye surgery to correct typical vision impairment, or even cosmetic surgery to alter his appearance for professional gain. Numerous points can be made to call into question the value of such treatments, especially with respect to whether they should be publicly funded. But these points would seek to demonstrate the non-essential (or misguided) character of the benefits offered, not a lack of benefit altogether. Surely such treatments should not be publicly funded; yet the ABT ideal provides no basis for rejecting them. This final kind of case shows that a complete and sincere rejection of medical care rationing would yield foolish, as well as unfair and unsustainable, uses of social spending on health.

Medical care rationing is here to stay. Furthermore, the urgency of rationing has increased since the beginning of rationing debates, and it is expected to increase even more quickly in the coming decades. This is because the strains on public medical care budgets are on the rise. There are two trends that are largely responsible for current and projected escalating medical care costs.

The first is global aging. A major demographic shift is occurring. For quite some time, developed countries have been concerned about what will happen as ‘baby boomers’ move into retirement. But that is only one among other more profound and

\[164\] Daniels 2008, ch.6.
widespread factors that are contributing to rapid global aging. Developing countries are currently aging even more rapidly than developed ones. The main cause is the success of public health efforts to increase longevity and reduce fertility rates. The combined effect is a worsening of societies’ workers-to-dependents ratio. Because of increased longevity, people are spending considerably longer stretches of time in retirement. Because of reduced fertility, the relative size of the workforce has shrunk and will continue to do so. This demographic shift is greatly increasing the pressures on health systems.

The second trend is technological progress in medicine. Although it is reasonable to suppose that at least some of the recent technological advances have reduced the cost of some treatments, the overall impact of advances in medicine has been to make the system much more expensive. We now have many more treatments than before, and a significant portion of them are extremely costly. This trend is expected to accelerate in the foreseeable future as medical researchers pursue ever more technologically sophisticated treatment regimes to combat our most challenging diseases.

In order to make defensible and accountable health promotion decisions, we need to do more than distinguish between beneficial and futile treatments; we must engage in explicit rationing.

4.9. The Evaluative Challenge of Rationing

The argument that will be developed in chapter 5 depends on the necessity of ranking the importance of enablement projects, and the argument for that necessity depends on establishing the need to rank the importance of health promotion projects.
One way of improving health is by using resources for the promotion of health, not just medical care that treats shortfalls in health. For the moment, however, our focus is medical care. The necessity in question, then, is the need for public policy to identify which medical treatments are so greatly important that their provision must be protected, and which treatments are of so little importance that they can be fully or partially excluded from public coverage when doing so is the only way to fund the important treatments. The discussion so far has established that rationing medical care is necessary. But could one concede the necessity of rationing medical care, while denying the need to rank the importance of treatments? This section explores that possibility, and concludes that such a position is untenable.

One strategy for avoiding the need to rank the importance of treatments is to leave decisions about which treatments to provide and which to deny up to chance. If one genuinely claims that all treatments are on a par (or at least insists on considering them as if they were), then a lottery-like selection procedure might seem like the solution. In a purely statistical sense, patients would have an equal chance of receiving the beneficial treatment they seek. Such a strategy would make it possible to respect medical care budget constraints while entirely avoiding the evaluations necessitated by rationing, since all beneficial treatments would be viewed as equally important.

However, there are at least two serious problems with such a proposal. First, it would yield wildly implausible priority judgments, such as affirming the equal importance of hair plugs and chemotherapy. The results would likely be unfair and inegalitarian. Second, if all decisions about which treatments to provide and which to deny were determined by lottery, it would be virtually impossible to engage in efficient
health care planning. A lottery system would undermine the capacity to reliably forecast the numbers of recipients for any particular treatment.

In search of an alternative strategy for avoiding the evaluative challenges of explicit rationing, we might look at the case of Oregon. In that highly publicized example of rationing from the early 1990s, Oregon’s state health department sought to extend public medical care coverage to a substantially larger number of its economically disadvantaged residents by reducing the range of treatments covered. This example highlights the two main ways to meet medical care budget constraints: limit the treatments covered, or limit the people covered. The aim of the Oregon plan was to increase the first type of limits by means of explicit rationing in order to decrease the second type of limits.

However, if one were dead set against ranking the importance of treatments, one might be motivated instead to do just the opposite. That is, one might focus the rationing exercise on patients. Instead of meeting budget constraints by excluding certain kinds of treatments from public coverage (so that more or all people can be covered), this strategy would seek to meet budget constraints by excluding certain kinds of patients (so that all beneficial treatment can presumably be offered to the people who are not excluded). But which kinds of patients would such a strategy exclude? There are at least three parts of rationing debates that are relevant for this question. They concern expected quality of life, age, and personal responsibility. I will discuss each of these in turn.

First, one might argue that providing high-cost life-saving interventions is less important when the patient is expected to have a low quality of life. This position, however, fails to avoid the evaluative challenges of rationing. This is because the position
invokes the relevance of magnitudes of expected benefit. It attributes lower priority to life-saving treatments for patients with low expected quality of life, on the grounds that there is a significant difference between them and ‘normal’ patients in terms of expected benefit.

In order for this position to provide a strategy for avoiding the need to rank the importance of different treatments, it would have to be able to justify limits based on types of patients without also affirming the relevance of considerations that lead to distinctions between types of treatments. However, the argument affirms the relevance of differences in expected benefit, which is a consideration that provides a basis for ranking the importance of treatments. It would be mysterious indeed if that consideration were relevant in cases involving patients with low expected quality of life, but not in general. This strategy, therefore, would not avoid the need for explicit rationing.

Second, with respect to age, a number of contributors have argued that it is less important to provide high-cost treatments to older patients. This claim is occasionally defended as applying across all ages, so that for any two ages the greater one is always associated with a lesser degree of importance vis-à-vis treatment. More frequently, a threshold age (e.g., 75) is used, so that treatment priority is lessened only after the beginning of ‘old age’ (as specified by the threshold). I think that one problem with this position is that there are a number of difficulties associated with accurately identifying the individuals to whom the positions apply. Although a person’s age is simple to determine, the appropriate threshold age is not. Should there be one threshold age for everyone or multiple ones for different groups

165 Veatch 1993.
166 Williams 1997.
depending on group-specific average longevity? For example, since women tend to live longer than men, if there were only one threshold, then women would on average receive less medical care over their lifetimes, since the threshold would be farther away from their most vulnerable years, as compared to men. Considerations of gender equality, therefore, favour group-specific threshold ages in this case. Yet in other cases, such as economic class, race, or disability, a group-specific approach would be objectionable.

However, for the sake of argument let us momentarily ignore those difficulties. If we did that, then age-based rationing could, in principle, be modified to achieve the goal of avoiding the need to ranking the importance of treatments. To do so, one would have to render the position more extreme, so that it would completely withdraw coverage for the elderly, rather than merely attributing lower priority to their claims. This would be a significant departure from the typical version of the position, which grants the elderly palliative care, as well as suitable low-cost quality-of-life-enhancing treatments. The typical version is based on the thought that these treatments are important enough to protect. Removing that protection would greatly undermine whatever defensibility age-based rationing has. And even if that objection could be answered, all ages—not just the elderly—are affected by the three types of cases mentioned in the first section (bottomless pit, long shot, and non-essential benefit), as well as by the financial impact of progressing medical technology. Age, therefore, does not provide a defensible strategy for avoiding rationing’s evaluative challenges.

Third, concerning responsibility, one might argue that individuals who are personally responsible for their own poor health have a weaker claim to treatment. There is some plausibility to this claim. It is arguably unreasonable for individuals who
knowingly engage in reckless, or simply risky, behaviour to expect full public coverage for medical treatments if they become injured, when providing such coverage inevitably reduces the quality or availability of medical care for others who are sick or injured through no fault of their own. Drawing attention to the fact of medical care rationing lends credence to the view that thrill-seekers not only take on personal risks, but also impose risks on those who are most likely to have treatment denied or withdrawn on rationing grounds. The same is true for individuals who regularly make lifestyle choices that have high health risks. In principle, therefore, we have reason to give priority to patients who are blamelessly in need of treatment. However, there are both moral and practical reasons why this argument does not yield a defensible strategy for entirely avoiding the need to rank the importance of treatments.

Recall that in order to entirely avoid that evaluative challenge, one’s rationing strategy must go beyond attributing differential levels of priority, and must instead specify types of patients to be excluded entirely from coverage. Lower priority means, in effect, that the specified patients would be eligible for some types of treatments but not others. Determining how far the eligibility of reduced-priority patients extends would require ranking the importance of treatments. Therefore, if personal responsibility is to be used to avoid the need for such ranking, then the proposal would have to involve an outright denial of treatment to patients whenever they are personally responsible for the illness or injury in question.

However, in many cases, such an approach would be too severe. Even if it is unreasonable for an injured thrill-seeker to expect to be restored to her status quo ante at public expense no matter the cost, it is nonetheless reasonable to expect a strong public
commitment to unconditionally secure her most basic needs. Death or extreme suffering is rarely, if ever, a morally appropriate price to pay for irresponsibility. This has implications for rationing. If there is indeed a set of basic needs whose provision should be immune to considerations of (ir)responsibility, then this will yield a distinction among treatments: those that help to secure basics needs will have greater importance than treatments that serve less vital ends.

A further difficulty associated with personal responsibility is the impact of socioeconomic factors. Although there are undoubtedly some clear individual cases of responsibility (which may be useful for micro-allocation), studies have identified significant socioeconomic determinants for unhealthy choices concerning, e.g., smoking, diet, and exercise. Since the socioeconomic disparities that give rise to and reinforce these trends are themselves products of injustice, this significantly undercuts the appropriateness of basing treatment exclusion decisions on the presence of unhealthy choices. This is not to say that personal responsibility should no longer be considered a weighty consideration; but a defensible account must both recognize and address the associated social factors. This would not occur if responsibility were the basis of a strategy to achieve rationing while avoiding the need to rank the importance of treatments.

4.10. Rationing and Public Health

The discussion so far has established that the rationing required by reasonable limits on state medical care budgets cannot defensibly be achieved without distinguishing

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167 Daniels et al. 2000.
at least some treatments as being more important than others. In other words, rationing forces us to consider very seriously questions like whether we should accept longer wait times and/or (higher) co-payments for treatments X, Y, and Z in order to fund better access to treatments A, B, and C. Addressing these types of questions involves, among other things, significant attention to the impact on health of the various treatments being compared.

When we turn our attention to that impact, at least two issues arise. First, how should the impact on health be measured? Should we be interested in sum total maximization or equitable distribution or equality of opportunity or some other value(s)? For the moment, I am going to leave aside this question, and focus instead on the second issue: Which state-funded projects impact on health? Is this category limited to public projects concerning medical care?

Giving attention to the impact on health leads naturally to a broadening of one’s focus beyond medical care to include broader public health concerns. Once we are routinely asking whether funds for one treatment would better be spent on another treatment, it is a fairly small jump to ask whether funds for one treatment would better be spent on a type of health-promoting social spending other than medical care. If our interest is to figure out how to be accountable in our social spending on health, it is sensible to ask whether focusing on medical care is the best use of our resources. The answer, in many cases, is no. Broader public health measures often have a more profound effect on population health than improved high-technology medical care. This issue has become prominent in rationing debates. Instead of focusing on the limits of medical care
budgets, the debate has been rephrased in terms of the limits of social spending on health more generally.

What implications does this have for the evaluative challenges associated with rationing? An anti-rationing stance is even harder to defend in the broader domain of public health. Roughly speaking, there are two kinds of public health projects. The first focuses on individuals and aims to discourage behaviour that is associated with increased health risks. This includes behaviour that directly impedes health (e.g., smoking, poor diet, inactivity, etc.), as well as behaviour that indirectly impedes health by facilitating communicable diseases (e.g., poor hygiene, risky sexual practices, etc.). The second kind of public health project focuses on environments and aims to decrease physical and social obstacles to good health. This includes improving physical spaces (e.g., work places, homes, public spaces, etc.), as well as efforts to improve social circumstances by addressing the social determinants of health (e.g., income, education, etc.).

Once we recognize the number and range of possible public health projects, it becomes clear that an anti-rationing stance is unsustainable. The amount of things that could, in principle, be done to improve public health very greatly exceeds what is practically achievable in light of reasonable resource constraints.\(^{168}\) This is especially true with respect to the second kind of public health project. Aiming to entirely remove all environmental obstacles to good health is not feasible for reasons of incompatibility and resource scarcity.

In terms of physical spaces, for instance, it is unlikely that all health-related desiderata are compatible enough to be able to be realized together at once, even in principle. Improvements along one dimension will, at least sometimes, cause adverse

\(^{168}\) And in light of the moral demands for limits on the intrusiveness of state action.
effects along another. Consider, for example, discouraging contagion and promoting exercise. Pursuing maximal achievement with respect to one of these features would frustrate maximal achievement of the other. The relative importance of each has to be determined so that sensible trade-offs can be made.

Broadening our focus from medical care to social spending on health generally substantially increases the associated evaluative challenges.

4.11. Rationing and Enablement

The purpose of this section is to explain how the preceding discussion of health resource rationing is relevant to justice for persons with disabilities. One possible way of accomplishing that would be to question the distinction between disease and disability by denying that there are any philosophically important differences between them. I am not going to do that. I take the distinction to be meaningful and assume that the differences are significant—morally and otherwise. Nonetheless, many of the issues involved in health resource rationing are also applicable to state-funded enablement projects.

What are enablement projects? They include any publicly funded service, program, regulation or campaign that aims to reduce the disadvantage that attaches to disability. The methods that can be employed in enablement projects are diverse. To understand why, consider the distinction between an atypical feature, an impairment, and a disability. The first is simply a statistically rare physical or cognitive characteristic of an individual. An impairment is an atypical feature that tends to be disadvantageous (which is to some degree society-relative). A disability is the disadvantage a person
experiences as a result of the interaction between her impairment(s) and her physical and social environment(s).\textsuperscript{169} This conception of disability draws attention to the two broad kinds of enablement projects: those that reduce individuals’ impairments and those that improve the accessibility of environments.

In the case of health resources, rationing is necessary because of three facts: (i) the inevitable limits on public medical care coverage, (ii) the inevitable limits on public health programs, and (iii) the competition for funding between these two. Much the same is true for enablement projects.

With respect to impairment-reducing projects, our discussion of medical care is instructive. Whether impairment-reducing projects focus on medical treatments, assistive devices or support services, they can be expected to face budget constraints even in a just society. ‘Bottomless pit’ and ‘long shot’ cases clearly occur in the context of enablement. Even ‘non-essential benefit’ cases are an issue here as well. Consider, for example, specialized high-performance prosthetics. Many of these are far too expensive to be publicly provided to all those who request them. Yet there is no denying that these remarkable products provide enablement. In order to exclude such products from public coverage, one would have to demonstrate that the kind of enablement they provide is less essential than what is provided by other products or treatments. We are thus forced to explicitly ration.

Furthermore, one of the two trends that explain escalating medical care costs also apply to enablement projects: technological progress. As researchers continue to search for more effective ways to reduce impairment, ever more technologically sophisticated treatments and devices are being developed. The existence of very high-cost options

\textsuperscript{169} Shakespeare 2006.
forces us to take seriously questions like whether we ought to accept longer wait times
and/or (higher) co-payments for some impairment-reducing treatments, devices or
services in order to fund better access to other impairment-reducing treatments, devices
or services. This is not to say that existing levels of social spending on enablement are
adequate. They are not, and should be increased. Yet an unconditional commitment to
enablement akin to the ABT ideal would, just as in the case of medical care, is not
defensible.

Accessibility-enhancing projects, whether they focus on improving physical or
social environments, can also be expected to face budget constraints even in a just
society. The reasons for this are much the same as those we encountered in the context of
public health. In particular, resource scarcity is an issue for efforts to enhance
accessibility. The cost of revising every physical environment—urban and natural—to
make them maximally accessible, taking into account every type of impairment, would
surely outstrip available enablement resources in a just society. Again, this is not to say
that existing social spending on environmental accessibility is adequate. It is not, and
should be increased. Yet the need for rationing even in this area will not disappear, nor
will the need to rank the importance of accessibility-enhancing projects.

Moreover, even if funds were limitless, we would still have to confront problems
of incommensurability. It is impossible to cater to all interests at once. For example,
making a historic building maximally accessible involves balancing competing interests,
retaining the integrity of the building on the one hand and providing equal access on the
other. Such balancing cannot escape making reference to some assessment of value.
Finally, because impairment-reducing and accessibility-enhancing projects share the aim of enablement, there will be competition between them for enablement resources. This is obvious enough. In search of defensible uses of enablement resources, society must consider seriously whether to sacrifice some impairment-reduction in favour of more accessibility-enhancement, and vice versa. The choices involved here are probably even more difficult than the ones between medical care and public health. Impairment-reduction has the potential to produce wider forms of enablement for recipients, but accessibility-enhancement has the potential to reach a wider number of people.

The strategies for achieving rationing while avoiding associated evaluative challenges would fail in the case of enablement projects for familiar reasons. A lottery-like allocation system would undermine resource planning capacity and would yield implausible priority judgments. And a strategy that involved excluding certain types of individuals in order meet budget constraints would go against one of the central motivating values behind enablement: political and social inclusion.

**Concluding Remarks**

I have argued in favour of explicit rationing of enablement resources, which requires a public ranking of valuable activities. One might, however, want to resist this conclusion in the interest of disability rights advocacy. One might well argue that explicit rationing in this case should not be endorsed in any form, on the grounds that such rationing necessarily falls short of a moral ideal that should not be compromised. To endorse explicit rationing, one might say, is to place a stamp of moral acceptance on facts
about nature and human society that we ought to regret, even if justice does not require—and our resource capacities do not allow—us to remedy them. I feel the force of this view. But my concern is drawn even more strongly toward the dangers of refraining from engaging in explicit rationing.

If enablement resource rationing occurs in an implicit way, where judgments about the relative importance of enablement projects are made on the basis of values that are neither publicly disclosed nor publicly discussed, then those values will tend to have a mainstream bias. There are two problems with this. First, there is the worry that mainstream values tend to reflect stereotypical ideas about what living with a disability is like. This is unlikely to produce defensible rankings of the importance of enablement projects. The rankings would tend to poorly reflect the needs, interests, and aims of persons with disabilities. Second, there is the worry that high-profile disabilities (such as those with a stronger history of advocacy, or those that more naturally evoke sympathy or solidarity) will tend to be unfairly favoured over other disabilities that are further from the public’s eyes and hearts. If rationing is done in an implicit way, funding decisions would tend to shortchange ‘unpopular’ disabilities.

Explicit rationing, in contrast, can be designed to include procedural requirements that aim to secure public accountability. This creates avenues to address both the problem of stereotypical views and popularity effects. Because of that, priority rankings are more likely to be defensible in a system of explicit rationing. In short, since rationing is unavoidable, even for enablement services and projects, it should be explicit, and this requires a public ranking. We are finite creatures in a finite world, where ethical

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170 G.A. Cohen (2008) makes the stimulating argument that justice is ultimately not grounded in facts—such as scarcity, but also incommensurability more generally.
dilemmas are rampant. Choosing to do good in one domain inevitably makes it difficult to do good in another. It is therefore vital that we engage in open, public debate about the relative value of competing uses of social resources that aim to secure justice of citizens with disabilities.
In this final chapter, I explain and defend public value perfectionism. More specifically, I will argue that public value perfectionism is needed to figure out how best to allocate the social spending on enablement that is required as a matter of justice. Although the demand for social spending on enablement has a neutral justification (i.e., mitigating morally arbitrary disadvantage) and the ultimate aim of such spending is neutralist (i.e., making sure that fair equality of political and economic opportunity and a fair distribution of civil opportunity are met for citizens with disabilities), nonetheless I argue that in order to identify the best state actions for meeting that demand and achieving that aim we need to make use of public value perfectionism (hereafter, PVP).

I see PVP as having a necessary role to play in two aspects of this task: (i) evaluating the importance that particular civil opportunities have for civic inclusion (which in turn is important for securing fair equality of political and economic opportunity for citizens with disabilities); and (ii) judging the well-being value of particular civil opportunities insofar as this is important for securing a fair distribution of relative advantage for citizens with disabilities. My aim is to show that the need for public value perfectionism in these regards is inevitable if we take seriously the goal of revising Rawlsian liberalism in a way that accepts a broad opportunity conception of advantage while rejecting the ‘normal and fully cooperating’ assumption.

To defend my position, I explore theoretical resources in Norman Daniels’s accountability for reasonableness approach to health resource rationing (developed with
The aim of that exploration is to ascertain how far neutralism is able to create a defensible public ranking, and thereby determine where—and why—PVP is needed.

Trying to defend the feasibility of a neutralist public ranking is the second of two ways to resist the conclusion that Sen’s critique of Rawlsian distributive justice enables a defence of state perfectionism. The first way involves denying that we need a public ranking at all. Daniels attempts to employ a biomedical model of health to do so. I explained in the previous chapter why I do not think that works. A biomedical model of health can help us to identify the many actions that it is valuable for a human body to be able to do, but this alone does not provide an adequate understanding of the disadvantage that attaches to various disabilities. We must also know the relative importance of those many actions (which requires judging the value of the activities that they make possible), and we must pay attention to the extent to which the design of physical and social environments can intensify the disabling effects of impairments. That requires a public ranking.

This final chapter assesses the prospects for a neutralist argument denying that public value perfectionism is needed for creating a public ranking. It might be argued that such a ranking could be accomplished entirely by means of neutralist values. I examine whether the accountability for reasonableness approach (henceforth, ARA) could provide adequate support for such a view. I argue that it cannot. We need public value perfectionism. More specifically, I will argue that neutralism’s ability to create a

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171 Daniels and Sabin 2008.
satisfactory public ranking ceases when we turn our attention from the value of political and economic opportunities to civil ones.¹⁷²

The chapter proceeds in twelve sections. The first two clarify some of the relevant terminology and distinctions. Section 5.3 outlines the ARA. Sections 5.4 to 5.11 attempt to adapt it to provide a neutralist way to create a public ranking, so that the limits of neutralism can be identified and the need for PVP can be explained. Section 5.12 then outlines and defends PVP.

5.1. Terminology in Daniels and Sen

Before proceeding further, it may be helpful to connect the arguments about Sen to Daniels’s theory. Using Sen’s terminology, we can extend distributive justice to citizens with disabilities only if we are able to assess the worth of the range of opportunities they enjoy—the magnitude of their broad opportunity. This range is a capability set. The notion of capability sets matches up very closely with Daniels’s idea of opportunity shares. (Indeed, Daniels sometimes treats the two terms as equivalent.¹⁷³) A person’s capability set can be described as her combinations of realizable functionings, or as the alternative lives she is able to choose. A person’s opportunity share can be described as his portion of the normal opportunity range, or as his realizable life plans that are reasonably valued. This agrees well with Sen’s favoured description of advantage: a person’s opportunity to lead the kind of life she has reason to value.

¹⁷² Recall that I use the term ‘civil opportunities’ to refer to opportunities to engage in social and cultural activities, both in the context of civil society and private life.
Capability sets and shares of opportunity can therefore be taken as equivalent ideas for our purposes.

I have argued in the previous chapter that in order to extend distributive justice to citizens with disabilities, we need to be able to assess whether inequalities in people’s magnitudes of broad opportunity (i.e., their capability sets or opportunity shares) are fair; and to do this we need, among other things, to be able to make interpersonal comparisons of the worth of capability sets and opportunity shares. One way to perform this evaluation would be to appeal to an objective conception of well-being that would allow us to assess the relative value of different activities in terms of the contribution they make toward a good life. The relative importance of different opportunities could then be judged in terms of the well-being value of the activities associated with them as specified by the objective account. I will follow Daniels and Sen, neither of whom makes an immediate appeal to an objective conception of well-being. Instead, they argue that some form of deliberative democratic process is the best way to earn legitimacy for the evaluative rankings that must be made.

Sen argues that defensible interpersonal comparisons of capability are possible only insofar as we have a public ranking of valuable functionings. In more general terms, interpersonal comparisons of the value of a person’s opportunities require a common standard of the value of the activities to which those opportunities refer. The equivalent of a public ranking in Daniels’s theory is the normal opportunity range. A public ranking is a ranked list of valuable doings and beings. A normal opportunity range is a list of valuable life plans, and life plans are realizable doings and beings. Therefore, the two
terms can be taken to be equivalent, and the same reasons in favour of establishing a public ranking explain why the normal opportunity range needs to be filled in.

Furthermore, I think that there are reasons in favour of making the content of the public ranking (or the normal opportunity range) as robust as is practically feasible. This is because, using Sen’s terminology, any inequalities among capability sets that do not have to do with functionings included on the public list will be ignored by this account. The theory, consequently, would be unable to mitigate—let alone recognize—the disadvantage that attaches to disabilities insofar as they impede or block those overlooked functionings. Similarly, using Daniels’s terminology, inequalities among opportunity shares can be recognized only insofar as they correspond to items on the list of valuable activities that is drawn up to fill in the content of the normal opportunity range. Moreover, the magnitude of said inequalities can be assessed only insofar as the items on the list for the normal opportunity range are ranked in terms of relative importance. The theory would be unable to respond to disability that impairs the pursuit of valuable activities that are left off the list. What this shows, I claim, is that the more robust the ranked list, the greater the theory’s capacity to address injustices related to disability will be.

Therefore, the question at hand is: Can we create a public ranking in an adequate way if we appeal only to neutralist values? I do not think we can in all cases. To identify where we cannot, I will explore how far the ARA and other neutralist tools can take us.

5.2. Measurement and Distribution
Before launching into the major details of the ARA, I think it is important to provide a few remarks about its context and what I take to be its original purpose, since that purpose is different from the purpose of creating a public ranking (i.e., filling in the content of the normal opportunity range). The following remarks are meant to help explain (a) why the ARA is presented the way it is in section 5.3, and (b) what sort of adaptation is attempted in sections 5.4 to 5.11.

I think it is important to distinguish between two kinds of things that one needs to worry about when making limit-setting decisions. The first thing to worry about is finding a defensible way to measure the relative benefits of the various uses of resources. This focuses on the question of how great of a benefit different treatments or projects are expected to produce. Second, one needs to know how cost/benefit information ought to be aggregated in order to reach a rationing decision. This focuses on the question of what our aims are with respect to producing benefits.

These really are two distinct questions. The first asks about the size of the benefit of various uses of resources for the people whom they affect. The second question asks what distribution of benefits is best for society as a whole. If all we know is how to measure benefits, then we do not yet know how to make rationing decisions. We also need a distributive principle—or at least distributive decisions. Should we maximize expected benefit, or give priority to the most urgent needs, or pursue some middle position? Similarly, we are stuck if we know what the most defensible distributive principle is, but are unable to properly measure benefits. In that case, we would know what to aim for, but not how to accurately tell whether we are achieving it.
Now, Daniels and Sabin do not explicitly employ this distinction between the issue of measurement and distribution. However, I think that the distinction helps to make sense of the way that they present the accountability for reasonableness approach. In their presentation and discussion of the approach, Daniels and Sabin focus almost entirely on issues related to distribution. This makes sense within Daniels’s larger view, since he argues that the measurement of benefits can be handled by appeal to a biomedical model of health. According to my interpretation of Daniels, a biomedical conception of species-typical functioning can tell us about the level of importance that different means-functionings have for the protection of fair opportunity shares. A medical service’s benefit is thus assessed in terms of its contribution to protecting opportunity. Because Daniels takes that issue about measurement to have been resolved, he appeals to the ARA only to help resolve the issue of distribution.

However, the issue of measurement is far more pertinent to our larger discussion here. My arguments in defence of PVP make the claim that a fully adequate neutralist measurement of benefits is not achievable in all cases. In particular, I have argued that the biomedical model fails in this regard. We need a metric that directly evaluates opportunities, which requires evaluating the value of the associated activities. This issue related to measurement cannot be side-stepped with an improved solution to the issue of distribution. We cannot solve questions about what should be distributed by answering how it should be distributed.

Therefore, in order to determine whether the ARA can allow Daniels to avoid the need for public values, the approach must be applied to a different question—namely, what should be distributed?—than that for which it seems to me to have been designed.
Sections 5.4 to 5.11 attempt that task. However, in order to lay out the accountability for reasonableness approach, it should first be presented in its original formulation (i.e., designed to deal with distributive concerns). That is what I will now do.

5.3. Outline of the Accountability for Reasonableness Approach

The ARA is designed to deal with the legitimacy and fairness problems in limit-setting decisions concerning the use of resources for health.174 Daniels and Sabin argue that these are two distinct problems: it is possible for a legitimate authority to make unfair decisions, and it is possible for decisions to be fair and yet fail to achieve legitimacy. I will focus on the fairness issue. To explain why, here is how I understand the difference between those two issues.175

I take a decision to be fair if either (a) it gives equal consideration to the interests of all affected by the decision, or (b) it was made by means of a process that includes the steps that are necessary to reasonably ensure that equal consideration was given to the interests of all affected. The second option is important whenever merely reflecting on the content of the decision does not enable an assessment of whether equal consideration was given. In that case, fairness requires that the reasons offered and discussed in the decision-making process can reasonably be defended as aiming to give equal consideration to the interests of all affected. (This allows for reasonable disagreement about which reasons are best in that regard.) Considerations of fairness thus force us to reflect on the defensibility of the content of the reasons for limit-setting decisions.

174 Daniels and Sabin 2008, ch.3.
175 Daniels and Sabin do not comment at length on the details of the difference between fairness and legitimacy, since that is not their central concern.
In comparison, I take legitimacy to be satisfied when a decision can reasonably be expected to be accepted as fair by those affected by it. This requires that the reasons for the decision are not only fair, but also made public and presented in a way that is as intelligible as possible to the target audience. Considerations of legitimacy thus force us to reflect on the access people have to those reasons.

I will focus on the fairness problem in my discussion of the ARA, because the neutrality versus perfectionism debate has to do with the nature or content of justificatory reasons. My larger concern is whether reasons or values whose content is neutral can be used to create an adequate public ranking. Therefore, for our purposes in this section, I will focus on how the ARA proposes to ensure fairness. Daniels and Sabin characterize the issue by means of the following question:

When does a patient or clinician who thinks an uncovered service is appropriate or even “medically necessary” have sufficient reason to accept as fair the limit-setting decisions of a health plan or public authority?\textsuperscript{176}

Daniels and Sabin argue that this question cannot be resolved by developing more sophisticated and fine-grained distributive principles.\textsuperscript{177} In particular, they want the ARA to be implementable in real-word decision situations where there is continued entrenched disagreement about competing distributive principles. They argue that most people reject an extreme view that gives exclusive priority to the most urgent needs or, conversely, gives exclusive priority to maximizing total expected benefit across all members of a population.\textsuperscript{178} However, there are many intermediate possibilities. In response to this lack of consensus concerning criteria that could enable an independent assessment of the

\textsuperscript{176} Daniels and Sabin 2008, 26.
\textsuperscript{177} Ibid., 30.
\textsuperscript{178} Ibid., 3.
fairness of the content of a decision, Daniels and Sabin argue that what is required is a fair process.

The ARA aims to specify such a process by means of four conditions. The publicity condition requires that all limit-setting decisions and the reasons given to justify them are made public. The relevance condition requires that reasons given for limit-setting decisions are ones that can be accepted as relevant. The revision condition requires all limit-setting decisions to be open to future appeals and revisions. The regulative condition requires enforcement of the other three conditions.

The most important of these, for our purposes here, is the relevance condition, because it alone relates directly to considerations of fairness. It restricts the types of reasons that can be used to justify rationing policies. The relevance condition requires limit-setting decisions to be defended by appeal to rationales that are reasonable in the following sense:

A rationale will be reasonable if it appeals to evidence, reasons and principles that are accepted as relevant by fair-minded people who are disposed to finding mutually justifiable terms of cooperation. Daniels and Sabin describe the fair-minded people as “people who in principle seek to cooperate with others on terms they can justify to each other.” The notion of ‘fair-minded’ is therefore equivalent to what Rawls’s sense of ‘reasonable’. We can say, then, that a reason is relevant if it has force for people insofar as they are reasonable in Rawls’s sense. I will say more about that sense of ‘reasonable’ in the next section.

How much of a constraint is the relevance condition? What kinds of disagreements matter for the issue of what is mutually justifiable among fair-minded

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179 Ibid., 45.  
180 Ibid., 45.  
181 Ibid., 44.
people? I think that Daniels and Sabin have in mind something very much like Rawls’s claims about reasonable pluralism. They choose religious reasons as the main example of reasons that fail to meet the relevance condition. Moreover, they write that “the giving of reasons must itself respect the moral diversity of those affected by the decisions.” They explain that in effect this means acknowledging reasonable disagreement about the relative importance of population-centred reasons that emphasize stewardship and patient-centred reasons that emphasize meeting urgent needs.

The relevance condition seeks to improve the quality of the reasons that are considered during a decision-making process. They must be reasons that aim to explain how best to provide “value for money” in allocating resources for health. To allocate resources for health with any other aim in mind would not be reasonable. Although Daniels and Sabin concede that this still leaves plenty of room for reasonable disagreement about which limits to set on treatment coverage, the relevance condition nonetheless narrows the range of reasons that can be appealed to in decision-making.

Let us now consider what the relevance condition would mean when we shift our attention to measurement issues instead.

5.4. Neutralist Values

The aim of the next few sections is to examine and evaluate the theoretical resources within neutralism for adapting the ARA for the task of producing an adequate ranked list of valuable activities to be used for prioritization decisions about resources for

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182 Ibid., 53.
183 Ibid., 52.
184 Ibid., 72-3.
enablement. I will ultimately argue that neutralism fails in this regard and needs to be supplemented with public value perfectionism.

In order to identify where and why neutralist theoretical resources fall short in this task, I will begin by attempting to advance arguments on behalf of neutralism. The first step is to explain what it means to say that a value is neutralist, so that prioritization decisions based on those values can satisfy the ARA’s relevance condition. The question of what counts as a neutral value is no doubt a controversial issue. However, recall that our focus in the larger discussion here is to assess proposals for revising Rawls’s theory. Accordingly, it is appropriate to draw on features of his view in order to get a grip on the idea of neutralist values. Rawls stresses that citizens are to be regarded as both reasonable and rational. This feature can serve as a key to specifying neutralist values. I will take values to be neutral if they would have force for someone insofar as she is reasonable and rational in Rawls’s sense. That statement calls for explanation.

For Rawls, to be reasonable is to be willing to search for terms of cooperation that others can accept as being fully compatible with their equal importance and standing as citizens. This is basically equivalent to Daniels’s idea of a ‘fair-minded’ person. In particular, I think that reasons that concern the stability of just institutions will have force for a reasonable person. Neutralist reasons of this sort appear to be well-suited for defending fair equality of political opportunity. All particular political opportunities are valuable for helping to secure support for just institutions, as well as being valuable because they provide people with the ability to influence public decisions that can significantly affect their well-being regardless of their conception of the good. Blocking
people from political opportunities undermines their equal standing as citizens, and cannot therefore be reasonably acceptable.

To be rational in Rawls’s sense is to have a conception of the good that one seeks to pursue effectively. In particular, I think that reasons that concern securing goods that have instrumental value for a wide variety of conceptions of the good life will have force for a person insofar as she is rational in Rawls’s sense. Neutralist reasons of this sort appear to be well-suited for defending fair equality of economic opportunity. All particular economic opportunities can be argued to be instrumentally valuable for all conceptions of the good because of the all-purpose goods that they provide in the form of remuneration.

Neutralism, therefore, seems theoretically able to affirm the value of political and economic opportunities. Those values satisfy the ARA’s relevance condition. The value of these opportunities, when explained in this way, can be recognized by any fair-minded (i.e., reasonable and rational) person. In contrast, it is less easy to provide a neutralist ranking of the value of particular civil opportunities (that is, opportunities to engage in social and cultural activities, whether in civil society or private life). Although all reasonable conceptions of the good are likely to agree that having a decent magnitude of civil opportunity is important, there is controversy over the relative value of particular civil opportunities, since these have to do with activities in civil society and private life about which there is reasonable disagreement among fair-minded people. Moreover, that disagreement is about the extent to which different activities are or are not important for a good life, or do or do not contribute to well-being. Neutralist values cannot provide a ranking of civil opportunities on those terms.
This might suggest the following strategy for a neutralist way to create a public ranking: appeal only to values that can be cashed out in political or economic terms, while avoiding reference to civil opportunities. However, perhaps there is another way for neutralism to make assessments about the value of civil opportunities. Their value could be judged via assessments about the value of political or economic opportunity. I do not think that this preserves neutrality, but I will explore this strategy in some detail in order to explain why not.

One might be tempted to come to the conclusion that the strategy is plausible by noting that the opportunities that contribute to the magnitude of a person’s political and economic opportunity are not all themselves straightforwardly political and economic. This is where I think the idea of civic inclusion has a role to play. In order for citizens to have equal standing in the public political forum, in the workplace and in school, people need not only opportunities that relate immediately to these areas of life, but also opportunities to engage broadly in valued aspects of civil society. If one is denied civil opportunities and thereby excluded from many aspects of the social and cultural life of the community, this has effects that spill over into political and economic areas of life. A lack of civic inclusion undermines people’s equal standing as citizens.\footnote{This point is made quite forcefully in Anderson 1999.} When people have poor opportunities to participate in the life of the community, this weakens their political voice, creates a less welcoming or supportive atmosphere for educational pursuits, and prevents an open and equal work environment.

This shows that particular civil opportunities are important for political and economic opportunity. I think that is correct; however, I do not think there is a defensible neutralist way to evaluate civil opportunities by judging which of them are most...
important for protecting civic inclusion. To defend that claim, I will spend the remainder of this section setting out what I think is the most plausible way to attempt a neutralist evaluation of that sort; and then in the next few sections I will explain why it would not be satisfactory.

The answer to whether this strategy for neutralist evaluation of civil opportunities would work depends on what determines the importance that particular civil opportunities have for civic inclusion. Consider the following claim: Lacking the opportunity to do \(x\) (where \(x\) is some activity in civil society or private life) damages a person’s level of civic inclusion insofar as \(x\) is important for a good life. According to that claim, the importance that a particular civil opportunity has for civic inclusion would be determined by the well-being value of the associated activity. If that claim is correct, then appealing to the idea of civic inclusion would not help neutralism avoid the need to engage in assessments of the well-being value of different civil opportunities.

To make neutralism work in this case, then, requires denying that claim. In its place, one could argue that something like being commonplace—which can be judged without violating neutrality—rather than well-being is what determines the value that particular civil opportunities have for civic inclusion. This would be the claim that: Lacking the opportunity to do \(x\) (where \(x\) is some civil activity) damages a person’s level of civic inclusion insofar as \(x\) is widely engaged in by her fellow citizens.

To attempt to defend that position, let us compare two kinds of cases. First, imagine a civil activity that is widely engaged in yet of dubious value for well-being—for example, dining at McDonald’s. Second, imagine a civil opportunity that is not widely engaged in but arguably does contribute to a good life—for example, dining at Charlie
Trotter’s.\textsuperscript{186} Now, from many perspectives having the opportunity to go to Trotter’s is more valuable than having the opportunity to go to McDonald’s. But from the perspective of civic inclusion, one might be tempted to conclude that the reverse is true. Many (in fact, most) people lack the opportunity to dine at Trotter’s, yet this does not undermine a person’s ability to see herself as an equal citizen.\textsuperscript{187} (If it did, then civic inclusion would not be satisfied for most people.) In contrast, if a small group of people were barred from McDonald’s when millions of their fellow citizens are served daily with a smile, one could argue that their sense of being peers and equal citizens would justifiably be damaged. The conclusion here would be that the more common an activity, the greater is its ability to produce a sense of exclusion in those who lack the opportunity to engage in it.

If that were correct, then neutralism would appear to have the theoretical resources to affirm and judge the value of all three kinds of opportunities. Neutralism would conclude: (i) that all political opportunities are important; (ii) that economic opportunities are important insofar as they provide access to all-purpose goods (primarily, money); and (iii) that civil opportunities are important in proportion to their commonplaceness. However, I do not think that the above strategy works with respect to civil opportunities. In order to defend that claim, I will now explore how well (or poorly) this account of neutralist values is able to determine prioritization decisions about resources for enablement.

\textsuperscript{186} Charlie Trotter’s is a well-known high-end restaurant in Chicago.

\textsuperscript{187} If one thinks that the price at Trotter’s—approximately US $300 per person or more—is a formidable but not complete impediment to most people, then we can imagine instead a dining hall in an exclusive country club where membership is by invitation only.
5.5. Types of Enhancement

In order to attempt to apply the neutralist strategy to see whether it works for rationing resources for enablement, it would be helpful to have in mind a rough picture of what sorts of state services and projects are at issue. That is, it would be helpful to consider what things are candidates for being funded by resources for enablement. The present section aims to do that in a way that is at least detailed enough for the theoretical discussions in subsequent sections.

As I have mentioned several times, there are two ways for society to pursue enablement: reducing impairment in individuals and improving the accessibility of environments. Reducing impairment in individuals is pursued by means of medical treatments (e.g., surgery, physiotherapy), assistive devices (e.g., prosthetics, wheelchairs) and support services (e.g., nursing care, guide dogs, sign language interpreters). Enhancing accessibility is pursued by making physical environments easier to navigate for people with mobility, hearing or visual impairments (which involves, e.g., ramps, elevators, automated doors, uncluttered and spacious pathways, and providing both auditory and visual communication of information as much as possible), and by making social environments more welcoming (which involves, e.g., combating stigmatization and prejudice).

I think that for both types of enablement the associated rationing challenges require a public ranking of the value of activities (end-functionings). Why is that? Concerning impairment reduction, the associated treatments, devices and services aim, in the first instance, to enable people to do particular actions (means-functionings) with
their body that they were previously unable to do. As I argued in the previous chapter, the value of means-functionings depends on the end-functionings that they make possible. Therefore, for the purpose of rationing resources for impairment reduction what we need is a public ranking of activities (end-functionings) that will yield evaluative judgments about what actions (means-functionings) it is valuable for a human body to be able to do. In order to meet the challenges of rationing, that ranking ought to be able to identify some means-functionings as being okay to sacrifice for the sake of others that are more important. Treatments, devices and services that target means-functionings that are thus identified as low-priority would then receive less or no state funding.

Turning now to accessibility enhancement, the targets of the associated projects are physical spaces and social attitudes. Concerning efforts to combat stigmatization and prejudice, I am doubtful that rationing considerations are very useful. Although it is necessary for public awareness campaigns with those aims to have finite funding, I do not think that the proper justification for such limits would be that some types of stigma or prejudice are unimportant; rather, I think the reason (at least ideally) is that combating stigma and prejudice can also be pursued by means of improving the accessibility of physical environments, since doing so makes possible greater degrees of interaction between people with and without disabilities. For that reason, I will focus on physical environments.

From the perspective of accessibility enhancement, I think that typically the concern with particular spaces is not merely as spaces per se, but rather as venues for activities. In most, if not all cases, the value of having access to a particular space depends on the value of the activities that regularly take place therein. For the purpose of
rationing resources for accessibility enhancement, what is needed, therefore, is a public ranking of activities that yields evaluative judgments about the relative importance of different spaces. To meet the challenges of rationing, that public ranking ought to be able to identify some venues that can justifiably be sacrificed for the sake of others that are more important. Accessibility enhancement funding would then be directed toward venues that are thus identified as high-priority, whereas projects that target low-priority spaces would receive less or no state funding.

Can neutralist values be used to create an adequate public ranking of the value of activities for these purposes? I will discuss that question with respect to political, economic and then civil opportunities.

5.6. Political Opportunities

Let us consider in further detail how neutralism in a Rawlsian framework would make evaluative judgments about political activities for the purpose of rationing resources for enablement. This is a two-part evaluative question: Which political activities are such that the opportunity to pursue them is valuable? And which types of enablement would earn high priority as a result? The first of these has already been discussed. On my interpretation of Rawls, he defends fair equality of political opportunity, and I argued in section 5.4 that neutralism can affirm the value of all political opportunities by appealing to citizens’ reasonableness and rationality.

What would this neutralist evaluation of political activities mean for social spending on enablement? With the exception of some demanding forms of activism,
political participation requires: (i) access to large public spaces, (ii) access to public information, and (iii) the ability to communicate effectively with many others. Concerning accessibility enhancement, all spaces that regularly serve as venues for political activities would receive priority. This would include, for example, all government buildings, public meeting places (such as a town square), convention centres, and voting stations. Libraries could also be included by appeal to political participation, since accessing public information is an important political activity.

Let us now consider impairment reduction. If all public spaces were required to have an accessible design, then what would be needed is a relatively basic level of mobility. Treatments, devices and services that target that basic level would receive priority. However, ones that aim to enable greater levels of agility or speed could not be justified simply by appeal to the value of political activities. The other type of impairment reduction that would receive priority by appeal to political participation concerns communication. Treatments, devices and services that aim to enable more effective and convenient communication between people with and without disabilities would be deemed important.

I think that these particular projects and services are all fairly uncontroversial and not especially expensive. The most pressing rationing challenges do not appear to be found here. With respect to opportunities that are straightforwardly political, I therefore concede that neutralism appears to be able to provide a reasonable explanation of what should receive priority for social spending on enablement.
5.7. Economic Opportunities

Neutralism can affirm the value of all economic opportunities on the basis of the all-purpose goods they provide. In light of that, the value of a particular type of job would depend primarily on (a) how much it pays and (b) how often there are openings. Further, the value of educational opportunities would depend on the quality of the job prospects as measured by those two criteria.

What would this mean for social spending on impairment reduction? Treatments, devices and services that target means-functionings that are marketable or that enable the exercise of other marketable talents would receive priority. The degree to which a means-functioning is thus directly or indirectly marketable would depend on how often it is required for valuable economic opportunities. Means-functionings whose importance cannot be captured in terms of educational and economic success would receive less priority.

Concerning accessibility enhancement, spaces that regularly serve as good business venues would receive priority. In judging which businesses are most important for this purpose, the perspective of a staff member rather than a customer should be taken up. The pertinent question does not concern a business’s products and goods, but rather whether it provides good employment opportunities—especially for positions that are compatible with different types of impairments. The importance of an educational institution being accessible would likewise depend on whether the training it provides is for jobs of that kind. Accessibility would be correspondingly less important for businesses where the job requirements are inevitably incompatible with particular
impairments. For example, ramps and elevators are plausibly less important for a fire station than for a courthouse.

As in the case of political opportunities, I concede that neutralism appears to have the theoretical resources necessary to be able to produce a reasonable ranking of straightforwardly economic opportunities for the purpose of rationing decisions about social spending on enablement. However, I do not think that that is the case with respect to civil opportunities, or so I will now argue.

5.8. Must Civil Opportunities be Included?

In sections 5.9 to 5.11, I will defend my claim that neutralism is not able to provide a satisfactory evaluation of the value of civil opportunities. First, I will argue that the popularity-based neutralist strategy described in section 5.4 does not adequately capture the value that particular civil opportunities have for civic inclusion. Second, I will argue that the justice-related value of civil opportunities extends beyond the value they have for civic inclusion. I will argue that both of these points give us reasons to acknowledge the need for public value perfectionism.

But before presenting those arguments, I want to briefly explain why neutralism cannot provide a defensible public ranking simply by staying within the bounds of political and economic opportunities. If it were to do so, the range of activities on the public ranking would be too narrow. One explanation of why it would be too narrow is that it would leave out civil opportunities, and there are independent reasons of justice—which concern relative advantage—that demand that our concern be extended to civil
opportunities rather than only political and economic ones. I explain those reasons in section 5.10.

Yet even without appealing to that argument, there are more immediate reasons that go against restricting one’s focus to political and economic opportunities—namely, that the rationale for our concern with political and economic opportunities also is a rationale for concern for civil opportunities. The importance of particular political and economic opportunities derives from the importance of fair equality of political and economic opportunity. However, as we saw in section 5.4, civil opportunities are also important for fair equality of political and economic opportunity.

However, there is a potential neutralist response that should be considered. One might argue that the importance of neutrality gives us reason to disregard the above considerations. If including civil opportunities in our evaluation for a public ranking would inevitably violate neutrality, then we perhaps should—because of the importance of neutrality, which is grounded in, among other things, avoiding the imposition of unfair disadvantage on vulnerable groups—defend the adequacy of a less than complete account of value for the public ranking to be used for enablement. After all, neutrality does not claim to capture all value in other areas of the theory (as we saw in the discussion of political liberalism in chapter 1). Rather, it aims to identify what can be defended within the constraints it takes justice to require.

I think this is mistaken. The same reasons that ground neutrality also warrant drawing attention to civil opportunities. Doing so is needed to fully recognize and respond to the disadvantage that attaches to disabilities. When we reflect on the goal of minimizing the unfair disadvantage imposed on vulnerable groups, we are led in this case
to depart from neutrality—but to do so in a way that keeps in mind the concerns of doing so. If perfectionism is required, then it should be pursued, but also supplemented with neutralist counter-measures that would be designed to mitigate the disadvantage, if any, that PVP itself imposes on vulnerable groups. I will return to the issues of suitable counter-measures to PVP in the concluding chapter. Note, however, that this in no way denies the need for PVP.

5.9. Civil Opportunities and Civic Inclusion

In section 5.4 I described what I take to be the most plausible neutralist strategy for evaluating civil opportunities, which involves appealing to the idea of civic inclusion and judging the value of civil activities only as it relates to political and economic opportunity. Further, the argument claimed that the value that particular civil activities have for civic inclusion is in proportion to their commonplaceness—that is, the frequency with which fellows citizens engage in these activities.

What would this mean for prioritization decisions about social spending on enablement? The implication for impairment reduction would be that means-functionings that enable statistically common civil activities would receive priority. Treatments, devices and services that target means-functionings that are not required for common civil activities would receive less or no state funding (unless they already receive priority because of their importance for political or economic opportunities). Similarly, venues where common civil activities take place would receive priority, whereas the accessibility
of other spaces would not be deemed important (unless they were already important for political or economic opportunities).

I have two reasons for thinking that this strategy would not work. First, the connection between commonplaceness and importance for civic inclusion is not as tight as the argument takes it to be. A civil activity has importance for civic inclusion if that activity is in some way an important part of the life of community, which is typically the case when its value is widely acknowledged by the community in question. However, there are many civil activities that are statistically common but do not play such a role in the life of the community. For example, shopping at the supermarket, going to the gas station and being stuck in a traffic jam are common civil activities, but they do not plausibly make up a part of the life of the community such that they help the individuals who engage in them to achieve civic inclusion.

I think that the neutrality strategy confuses the nature of the connection between a civil activity being widely engaged in and being important for civic inclusion. It is not the case that such activities are important because common. Rather, civil activities whose value is widely recognized are thereby important for civic inclusion, and this wide recognition of value causes them to be statistically common. (Of course, the activities that are common for that reason do not make up all common activities). What is needed, then, is a direct evaluation of the importance that particular civil activities have for the life of the community. I think that what makes them important is that they are widely believed to contribute to well-being or are considered to be meaningful in some other way. When we think about activities that are definitive of the life of a community or that help to give life to that community, I think that this claim holds. Whether the activities
are widely valued for well-being reasons or for more vague reasons concerning meaningfulness, the evaluation—in either case—would go beyond neutralist content.

The second reason why I do not think that the neutralist strategy would work is that it would not actually achieve the civic inclusion that is required for fair equality of political opportunity. This is because what is required is a range of opportunities that would enable two different kinds civic inclusion, which I will refer to as general civic inclusion and specific civic inclusion. In order to engage actively in political life, I think that one must be able to see oneself as both a fellow of all other citizens—general civic inclusion—and as a peer of the members of the smaller political group with which one has the closest affinities—specific civic inclusion.

Some or most of these smaller political groups will be within the social mainstream. In those cases, the particular civil opportunities that are important for specific civic inclusion are included in the common ones that are given priority by the neutralist strategy. However, in order for fair equality of political opportunity to be satisfied, people should also be able to achieve specific inclusion in groups that challenge the mainstream. Now, because such groups are at the fringe of political life, at least some of the civil activities that are important for them are also likely to be outside what is commonplace. The survival and development of such groups depend in part on their ability to distinguish themselves from what is thoroughly in the mainstream. If so, then the neutralist strategy would fail to enable specific civic inclusion in those cases. To rectify that shortcoming, we need to directly evaluate what is important for civic inclusion, rather than merely ascertaining what is statistically common.
5.10. Relative Advantage

I will now move on to my second argument in defence of the claim that naturalism is not able to provide a satisfactory evaluation of civil opportunities for purpose of making prioritization decisions about social spending on enablement. The previous section defended that claim by arguing that we need to go beyond neutralist values in order to satisfactorily assess the importance that particular civil opportunities have for civic inclusion. In the next section (5.11), I argue that the value of civil opportunities is not fully captured by a focus on civic inclusion. Civil opportunities are also important for assessing the fairness of relative advantage. To defend that claim, I will first explain in the present section what reasons I have for thinking that there are demands of justice that are entirely concerned with relative advantage.

There are several concerns that fall within the general idea\(^\text{188}\) of distributive justice—such as meeting basic needs, securing a social background that supports equal respect, and promoting civic inclusion. I think that a concern for comparative issues also belongs on that list. This is the idea—which I will refer to as distributive justice proper (hereafter, DJP)—that issues of relative advantage per se can be matters of justice. It is a concern with simply how much I have relative to you, even if the inequality does not produce deprivation or exclusion.

DJP is the focus of the difference principle. By the time the difference principle is introduced, Rawls’s theory has already specified that basic needs must be met, that the fair value of the political liberties must be guaranteed, and that fair equality of

\(^{188}\) By ‘the general idea of distributive justice’ I have in mind all issues concerning justice in the distribution of social benefits and burdens.
(economic) opportunity must be secured. The difference principle is thus supposed to enter onto a scene in which there is no deprivation, and the remaining socioeconomic inequality poses no threat to all citizens’ equal access to politics, education and employment.

After reflecting on that thought, one might be moved to question the need for a difference principle at all. One might think that if we take seriously the demands of the principles that are prior to it, then any objections to the remaining inequality must be grounded not on fairness, but rather on envy or greed. This reaction is understandable, but I think it is mistaken. DJP is based not on envy or greed, but on a demand for robust recognition of the equal importance and standing of citizens.

To explain why, consider the following example. Imagine that you live in a society that has achieved all demands of justice except DJP. Everyone is guaranteed adequate resources for a decent life and, further, socioeconomic inequalities have been curbed so that they do not yield unequal opportunities to participate in politics, education and employment. The main (perhaps only) difference between the rich and the rest is that the former are able to form life plans with fewer resource constraints in mind and are able to pursue certain civil activities that are out of their counterparts’ reach.

Does this guarantee better lives of the rich? No. Many constituents of well-being are simple, inexpensive pursuits or aspects of life that cannot be purchased. Nonetheless, the rich will have greater civil opportunity. They will have exclusive access to certain things that are valuable, for which others have competed and lost. For example, their opportunities for travel and leisure—which are plausibly valued by a wide variety of conceptions of the good—will be more varied and extensive. These are not opportunities
whose value is merely to fuel vanity; they are things that many people have good reason to want.

Now, if we were to entirely disregard DJP, then inequalities in, say, travel and leisure opportunities would be of no concern to justice. I think that would be a mistake. Even if the distribution of such inequalities does not matter for civic inclusion, it does matter for justice. Consider the following: Imagine that inequalities in civil opportunities that do not bear on civic inclusion were determined by ethnicity or gender, by means of a special tax imposed on targeted groups. The tax would apply only to individuals from the targeted groups who could pay it without thereby lessening their opportunities for employment, education and political participation. (Recall that in this hypothetical society fair equality of economic and political opportunity is secured, so personal resources above the average would not be required in that regard.) The only effect of this tax would be to increase the resource constraints that such individuals must keep in mind when making life plans, and to cut off certain civil opportunities—such as expensive travel and leisure pursuits.

I think that this would be clearly objectionable even though it would only violate DJP. It is objectionable because no rationale could be given for that kind of inequality that could be accepted by those affected as being compatible with their equal importance and standing as citizens. Although it is important to secure social conditions that enable equal access to political and economic life, it is also important to ensure fairness in the remaining inequalities in opportunities for pursuing the good. Equal citizens do not all need the expensive opportunities to pursue the good, but they do need to be given a reason why they lack them that is compatible with their having a moral importance and
standing in society that is equal to those who do have such opportunities. That is why there are genuine questions about the fairness of relative advantage *per se*.

### 5.11. Civil Opportunities and Distributive Justice

My aim in this section is to argue that if we take seriously the importance of a fair distribution of relative advantage, then we must affirm and judge the value of more civil opportunities than merely those that have importance for civic inclusion, and this requires public value perfectionism. To explain why, let us begin by recalling the reasons in favour of a robust, extensive public list of valuable activities (from section 5.1).

The purpose of the public ranking is, in the first instance, to allow the theory to recognize the disadvantage that attaches to disabilities. If an activity is on the list and one or more types of impairment would impede or prevent that activity in the absence of enablement efforts, then it is possible, at least in principle, for the theory to be able to recognize that instance of disadvantage and respond to it by justifying appropriate enablement efforts. However, if an activity is not on the list for the public ranking, then the theory misses that instance of unfair disadvantage altogether. If we confine our evaluation of civil activities to those that have importance for civic inclusion, then our theory will miss important instances of disadvantage related to distributive justice proper.

What types of civil activities would be missed? Which ones are important for DJP but not for civic inclusion? In section 5.9 I argued that civil opportunities are important for civic inclusion if they are widely valued by a community as being part of the life of that community. In contrast, what makes civil opportunities important for DJP is simply
that there is reason to think that they contribute to well-being and so can be a part of the
good life. DJP concerns relative advantage, and advantage is ultimately the opportunity to
pursue the good.

Now, simply having well-being value is compatible with activities not being widely valued, or with them being widely valued but not as a part of the life of a community. For example, many (perhaps all) solitary activities in pursuit of the good are important for DJP but not for civic inclusion, because only shared activities are valued as being part of the life of the community. There are also many civil activities that are engaged in with friends, family, or strangers that have idiosyncratic or personal value, and so are not important for civic inclusion because they are not widely valued. At any rate, it would be implausible to claim that all civil activities that have some potential to contribute to well-being are important for civic inclusion. Those that are not are the ones that a concern for DJP brings to our attention.

What are the implications for prioritization decisions about social spending on impairment reduction and accessibility enhancement? The answer contains both good news for enablement and bad news for the task of rationing. The good news for enablement is that any means-functioning that is important for an activity that arguably contributes well-being is a candidate for the public list, as is any physical space that serves as a venue for any sort of valuable civil activity. This means that the theoretical capacity to at least recognize the disadvantage that attaches to disability is far greater.

The bad news for rationing is that setting limits becomes much more complicated. Up until this development, limits could be set by distinguishing between political, economic or civil opportunities that have value and those that were taken to simply have
none. For example, civil activities that are not important for civic inclusion would simply have been disregarded for the purpose of allocating social spending on enablement. However, once a concern for DJP is incorporated, the evaluative task switches from drawing a line between valuable and valueless to distinguishing between different magnitudes of value. More specifically, it requires that we judge the relative well-being value of civil activities.

To do that, I think it would make sense to identify shared salient features of activities that would allow them to be sorted into categories, and then establish evaluative criteria—presumably based on considerations about well-being—that would allow the categories to be ranked, or the activities within them to be ranked, or both. That being said, my aim is not to present and defend a methodology for such evaluation, but rather merely to argue that such evaluation is needed. It is clear from these points that the task of creating a public ranking requires going beyond neutralist values. Public value perfectionism is needed. The next section will outline what that involves.

5.12. Public Value Perfectionism

My arguments in defence of the claim that neutralism cannot satisfactorily evaluate civil opportunities have now been presented. Neutralism needs to be supplemented with public value perfectionism in order to rectify that shortcoming. In the present section I describe in further detail how public value perfectionism can accomplish that. I will first describe what PVP is, then what it does, and finally why doing that rectifies neutralism’s shortcoming on the issue of justice for citizens with disabilities.
What is PVP? It involves a particular kind of public evaluation of the good that aims to create a public ranking of valuable activities. It is important to appropriately describe the task of creating a public ranking and the idea of public values. Public values are public in a technical sense similar to the sense in which public reasons are public. This use of ‘public’ is not equivalent to saying that they are widely popular among many citizens. Rather public values are values that have been publicly debated and have been defended as suitable for serving a public political purpose. Their importance is publicly affirmed, without thereby making any claim to their exhaustiveness or universal applicability.

When creating a public ranking citizens are not being asked to draw up a list of valuable activities for general use. They are not being asked to arrive at a full shared account of well-being. Rather, they are being asked a very specific question for a specific purpose. Which activities are such that having one’s opportunity to pursue them reduced or removed by a physical or mental impairment (and its interaction with physical and social environments) would have a significant negative impact on one’s civic inclusion or equal importance and standing as a citizen? This is significantly different than the question: Which activities contribute to well-being? The question that PVP seeks to answer\(^{189}\) is different in two respects: it has an evaluative focus on opportunities and a confined political purpose concerning enablement.

Consider the evaluative focus on opportunities. The public ranking is supposed to be about not the value of particular activities, but rather the value of the opportunity to

\(^{189}\) That is, the question PVP seeks to answer when it is applied to the issue of enablement. PVP could, in principle, be applied to other issues as well if there are other demands of justice that neutralism cannot adequately recognize or to which it cannot satisfactorily respond. Determining whether there are such demands is, however, beyond my aims in this discussion.
pursue particular activities. This focus on opportunities facilitates a greater degree of agreement among many people. Although it does not facilitate agreement between people who disagree about whether an activity has value at all, it does facilitate agreement between people who disagree about how much value an activity has. Let me explain.

If I think that an activity is entirely and irreparably trivial and so lacks value altogether, then I will not think that the opportunity to pursue that activity is valuable—for me or anyone else. In this case, an evaluative focus on opportunities does not facilitate agreement. However, if I think that an activity has some value, while you are convinced that it has great value and strive with considerable commitment to live according to that judgment, then it is reasonable for me to grant more value to the opportunity to pursue that activity than I grant to the activity itself. For example, in connection to the earlier discussion concerning civic inclusion, I might personally see little value in pursuing an activity that is valued by one of the smaller political communities in my larger society, yet I should reasonably grant that the opportunity to pursue it is of significant value, because of the role it plays in others’ ways of life.

Next, consider the explicitly defined purpose of the public ranking. Citizens are not being asked to create a list of valuable opportunities for general use in state business or in their own lives, but rather only for use in enablement efforts. That difference is significant because one may deny that state power should be used to widely improve the opportunity to pursue a particular activity, and yet be persuaded that state power should be used to remove or reduce disability-related impediments to that opportunity. For example, one might think that there is an important difference in the justifiability of

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190 That thought does not imply that efforts to prohibit the activity are warranted, but only that efforts to secure the opportunity to pursue it are wasteful.
general subsidies for an opportunity and enablement efforts. Why? The explanation is neutralist in character.

If we accept that the argument about norms of articulateness is sound, then the public ranking—because of its public evaluation of the good—risks imposing disadvantage on vulnerable groups. In particular, we might worry that the public ranking would be unlikely to reflect what is important to groups whose conceptions of the good are at some distance from the mainstream. As a result, enablement efforts would have less of an impact on the lives of people with disabilities from those groups. However, because enablement efforts themselves aim to mitigate the disadvantage of a vulnerable group (i.e., people with disabilities in general), and are likely to do so to a greater degree than the disadvantage they are at risk of imposing, the risk is acceptable.

But this is not the case with general subsidies, whose aim is not to rectify an injustice, but rather to enhance the well-being of all. In that case, the objection to perfectionism the stems from the norms of articulateness arguments—namely, that it risks imposing disadvantage on vulnerable groups—does apply. In contrast, when PVP is used for purposes concerning enablement, the above objection is countered, because PVP is in that case itself justified by the reason that grounds the objection itself (i.e., the importance of mitigating the disadvantage of vulnerable groups such as people with disabilities).

That describes what PVP is, but what does it do? To answer that, we need to step back briefly to consider the general details of how a capability-oriented revision of

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191 Recall that I have been granting this throughout my discussion for the sake of argument.
192 Of course, if general subsidies could be defended as being required to rectify an injustice that neutralism is ill-equipped to recognize or address, PVP may be applicable there as well. But determining whether that is the case is beyond the scope of my discussion here.
Rawls’s theory would conceivably work. First, Rawls’s distributive principles would be implemented in their original formulation, including the use of primary goods. Second, we would check for discrepancies in what people actually achieve. Discrepancies in achievement are evidence that there might be something reducing opportunities for some group(s). Third, if any of those discrepancies can be reliably linked to morally arbitrary factors that have not already been addressed by the theory this would indicate a difference in conversion ability that should be addressed as a matter of justice. If the factors in question are disabilities, then society should fund suitable efforts to reduce impairment and enhance accessibility in response.

Public values have a role to play in the second step. The step requires that we compare people’s achievement. We cannot do this in a purely descriptive manner. Counting how many things people achieve does not tell us the worth of what they achieve. What matters is that people have valuable achievements, not merely many of them. So we need to know which achievements are valuable. This is what the public ranking is for. If we do not have such a list, then we would have no systematic way to recognize shortfalls in achievement that might signal a difference in conversion ability, and therefore no way to respond to them as justice demands.

Moreover, public ranking plays a crucial role in determining what counts as a disability for purposes of justice. The public ranking of valuable activities makes it possible to identify which atypical physical and mental characteristics are properly described as impairments in virtue of being disadvantageous as a result of the way they interact with physical and social environments. Public ranking explains that sense of disadvantage. An atypical characteristic is disadvantageous—and is therefore an
impairment—if it significantly impedes or block activities that are identified as valuable by the public ranking.

Why would all of that improve liberal theory’s ability to extend justice to citizens with disabilities? A theory can respond to instances of disadvantage only if it is first able to recognize them. Public ranking makes this possible for the disadvantage that attaches to disability. If we confine our attention to neutralist values, then the public ranking would only include straightforwardly political and economic opportunities. In that case, the theory would be able to justify only enablement efforts that aim either to reduce impairments that impede or block activities that concern politics, education and employment, or to improve the accessibility of venues where such activities take place. The problem with that is that is leaves out many activities whose value can be explained only in connection with civic inclusion or distributive justice proper.

Public value perfectionism allows the theory to include those otherwise neglected activities in the public ranking. This, in turn, broadens the range of impairments and environments that can be the focus of state enablement efforts. Since the importance of enablement is grounded in considerations of justice, so too is the need for public value perfectionism.

Concluding Remarks

The aim of this chapter was to explain where and why I think neutralism is not able to adequately judge the value of activities for the purpose of creating a public ranking. In doing so, I also sought to identify where and why a public evaluation of the
good (i.e., public value perfectionism) needed for that task. The most important sections were 5.4, 5.9, 5.11, and 5.12.

In 5.4 I explained what I took to be the most plausible neutralist strategy for evaluating opportunities. In 5.9 I argued that the neutralist strategy fails to adequately capture the value that civil activities have for civic inclusion, and so PVP is needed. And in 5.11 I argued that even more civil activities become important when we turn our attention to issues of justice that concern the fairness of socioeconomic inequalities per se. Then 5.12 outlined my approach.

My argument demonstrated why a neutralist values cannot yield a public ranking that would adequately facilitate the recognition of and response to the disadvantage that attaches to disabilities. Although I am willing to concede that neutralism can account for the value of political and economic opportunity, public value perfectionism is needed to explain and judge the value of civil opportunities, as it relates to both civic inclusion and distributive justice proper. I argued that civil opportunities have value for civic inclusion insofar they are widely valued by a community in terms of their contribution to well-being or, more vaguely, their inherent significance or meaningfulness. And I argued that civil opportunities are important from the perspective of a fair distribution of relative advantage simply in terms of their contribution to well-being. Those two points explain the extent to which perfectionist evaluation is needed for the task of establishing an adequate public ranking for the purpose of enablement.

As a final step in this discussion, the concluding chapter will consider the importance of my defence of public value perfectionism for the neutrality versus perfectionism debate in liberal theory and for the issue of justice and disability.
Chapter 6: Conclusion

This dissertation has considered the extent to which theories of justice must take a stand on the nature of valuable ways of living. I have argued that the problem of the disadvantage of persons with disabilities illustrates how some ranking of activities and pursuits is required to ameliorate inequality. What is required, in my view, is a form of perfectionism which I call ‘public value perfectionism.’ Public value perfectionism is a way of understanding the import of Sen’s capability critique of Rawls’s theory of justice. I have argued that that public value perfectionism is not only compatible with, but also demanded by, a general defence of liberal neutrality. Though it is not espoused by neutralists, it belongs within a larger neutralist framework in virtue of being justified by the same types of reasons that support neutralism.

My aim in this concluding chapter is not to provide a summary of the arguments I have made, but rather to comment on what I take their wider implications to be for perfectionism versus neutrality and justice for citizens with disabilities.

Justice and Disability

The arguments I have presented in defence of public value perfectionism have at least two implications for issues related to disability. The first one concerns competing conceptions of disability. The debate about how best to conceive disability can be initially described by reference to two opposing positions. I will describe the two
positions, and then will explain what implications public value perfectionism has with respect to the evaluation of them.

On the one side, we can imagine a purely biomedical view of disability. In its starkest form, this would be the view that disability is an entirely physiological phenomenon and that we can therefore identify when a person has a disability and how serious that disability is by gathering medical information about her physical or mental impairment(s). According to that line of thought, conditions that are labeled as impairments would be taken to be inherently disabling: to have a disability would be simply to have an impairment.

On the opposite side of the debate, we can imagine a pure social view of disability. In its most extreme form, this view would deny that any condition that is currently labeled as an impairment is inherently or inevitably disabling. According to this approach, disability is not caused by physiology but rather by the design of the human world. To assess the disadvantage of a particular disability, the pure social view would focus entirely on the extent to which physical and social environments neglect the fact of human variation in physical and mental abilities.

It is doubtful that very many people working in the area of disability research, if any at all, now defend either of these views in their pure form. To be sure, there are a variety of intermediate positions that are more plausible. I do not think that public value perfectionism picks out any single conception of disability as superior to all others. However, I think it does narrow the range of defensible intermediate views in one respect. Let me explain.

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193 E.g., Daniels 2008.  
194 E.g., UPIAS 1976.
Although my arguments in favour of PVP acknowledge the importance of biomedical considerations as a part of the conception of disability, they imply that the biomedical model fails to do two of the things that it purports to do. It fails to provide a plausible account of how to evaluate the magnitude of the disadvantage associated with particular impairments, and of how to distinguish impairments from mere atypical characteristics. I will recall my arguments in favour of those two points and then explain what they imply for the defensibility of competing intermediate conceptions of disability.

The biomedical model cannot provide an adequate account of the disadvantage that attaches to disabilities, because the magnitude of that disadvantage can be amplified or diminished by social choices about environmental design that the biomedical model ignores. The biomedical model cannot adequate tell us what is and is not an impairment because bioscientific information can tell us what characteristic are atypical, but we need to know which activities are valuable in order to evaluate which atypical characteristics are disadvantageous.

Now, it is possible for an intermediate view to endorse the first point while rejecting the second. That is, one could accept that disability is a function of both impairment and environment, and yet reject the view that anything more than medical information is needed to identify impairments. I do not think that the second point is by any means entailed by the first. However, I do think, on the basis of arguments for the PVP, that both points are right. Public value perfectionism therefore implies that the range of defensible intermediate conceptions of the disability includes only those that endorse both of the points above. That is, my position would favour intermediate conceptions of disability that see the need for evaluative work—namely, judging the
value of the activities that would be impeded or blocked by the impairment in the absence of enablement efforts—not only in order to determine the severity of particular disabilities but also in order to draw a defensible distinction between impairments and mere instances of human variation.

The second implication of public value perfectionism concerns disability rights activism. Persons with disabilities have made enormous gains in terms of accommodation in public policy, inclusion in human rights codes, and in the configuration of public spaces. However, more needs to be done. Is neutralism or perfectionism more helpful for pushing for social change related to disability? If it is prudent for such activism to focus, at least for now, on straightforwardly political and economic opportunities, then my arguments indicate that neutralism would serve well. If, instead, it is prudent to adopt a more wide-ranging approach that pushes for change in all areas of life, then public value perfectionism should be appealed to. In the latter case, questions about well-being and the good life as they relate to enablement efforts would become important issues for public debate.

I can only speculate here about which of these trajectories is more plausible or more likely to serve the interests of persons with disabilities. However, I think that the wide-ranging strategy would be best for the following reason. In general, there is no guarantee that neglecting one area in need of change (e.g., enablement related to civic inclusion and distributive justice proper) in favour of another area also in need of change (e.g., enablement related to access to politics, education and employment) would allow progress in the latter to be speedier or more extensive than it otherwise would be. Rather, I think the reverse is true—namely, that effective change is more likely to occur when it
is pushed for in all areas of life to which it applies. This is because a wide-ranging approach of this sort is (I conjecture) more likely to incorporate the associated goals into the public consciousness thereby improving social attitudes and support on the issue. For example, if we encounter enablement efforts in both the formal settings of work, school and politics, and the informal settings of recreational pursuits and private life, then the chances we have in each area for appreciating the importance of such efforts will reinforce our appreciation of that importance for the other areas—or so it seems to me, at least.

In short, my arguments imply that more thought and research on questions of perfectionism and well-being from the perspective of disability are warranted.

Perfectionism and Neutrality

How is public value perfectionism distinct from other defences or forms of egalitarian state perfectionism? I think PVP is distinctive because of the specific way in which it is limited. That is what makes it both compatible with, and demanded by, a larger neutralist framework. PVP is limited in terms of the nature of the public evaluation of the good that it calls for. The values expressed by the public ranking are intended to be public in a technical sense akin to Rawlsian public reasons. This means that the evaluation of the good that PVP defends is constrained. It is not intended to be an evaluation with universal defensibility or applicability. I do not rule out the possibility of such applicability; however, for the purposes of my argument here, I limit the scope of my perfectionist argument to the justice-based purpose of enablement. Standard versions
of egalitarian perfectionism do not impose similar constraints on the account of well-being they employ. PVP thus provides a defence of perfectionism only insofar as it is required by demands of justice that can be defended ultimately on neutralist grounds but cannot be met using neutralist theoretical tools. Those limits and that justification are distinctive.

The fact that PVP is intended to fit within neutralism raises the question of the extent to which PVP poses a threat to neutralism. There are at least two issues to consider here. First, even if we accept that PVP is justified, does it have costs? Second, is PVP a stepping stone to wider forms of state perfectionism?

In response to the first of these, I think it is entirely possible that PVP would have costs. Although the evaluation of the good it defends is limited, that evaluation is nonetheless perfectionist, and as such, can prompt the usual neutralist reservations. However, there are strong neutralist reasons in the background that support this limited foray into perfectionism. We should not shrink away from these perfectionist endeavours, but should instead pursue them with the relevant goals of justice firmly in mind, and with an eye for the possible dangers. What could those dangers be? Recall that one of the chief arguments made against perfectionist politics, particularly relevant to our discussion, is that it can impose unfair disadvantage on vulnerable groups.

Who, then, might be disadvantaged by PVP when it is used for enablement? There are at least two groups to consider in this regard. First, there are minorities within the disabled community, who hold unpopular yet reasonable conceptions of the good. Consequently, they are less likely to have their views about the value of civil

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195 I want to repeat at this point that I am not hereby arguing against wider defences of perfectionism. Nothing in my defence of public value perfectionism rules them out absolutely.
opportunities reflected in the public list. This might also occur for groups whose members can less easily present their interests articulately, such as people with cognitive disabilities or mental illness. If the imposed disadvantage is significant and the size and concentration of the group is substantial, then some form of neutralist counter-measure may be appropriate. This might involve empowering the group or their advocates to implement enablement services and projects differently for their own group. This would be similar in some ways to Kymlicka’s defence of minority rights as a way of mitigating the risks and dangers of nation-building.

Second, there are people with ‘unpopular’ disabilities. Some conditions tend to produce empathetic responses more easily or have enjoyed more successful public awareness campaigns than others. In order to prevent excessive prioritization of ‘popular’ disabilities, it would be important to think about how best to ensure accountability and fair representation for rationing decisions. Committees whose members represent or advocate for a wide range of conditions might be useful in this regard.

Next, how likely is it that PVP would be a stepping stone to wider application of state perfectionism? Once we have a public list, would it inevitably be used for wider purposes? The feature of PVP that is most in tension with neutralism has to do with the promotion of deeper and wider agreement on a more robust public list. The more robust the list, the greater the theory’s capacity to address disadvantage will be. Disadvantage, after all, takes a variety of forms. Disability is one source of disadvantage, which is my focus in this dissertation. However, once we broaden our understanding of disadvantage, to include shortfalls in wellbeing more generally, then there is more potential for greater
tension with neutralism. There is no reason, however, within PVP to justify working toward removing the limits that relate to the political purpose of the public ranking.

In contrast, I noted at the end of chapter 3 that Sen defends the active state promotion of critical scrutiny of inherited views, which he justifies as being helpful for the creation of a public list. He argues that democratic institutions thus have a ‘constructive’ role to play in the formation of values. To defend that position would require a broader set of reasons than those that I have used in defence of PVP. The perfectionist public evaluation I defend is required as a response to injustice. My defence of PVP does not justify a wider application of the public ranking unless doing so would be required by similar unmet demands of justice.

Nonetheless, PVP does encourage (and hopes for) more robust agreement for the public ranking. It assumes that that agreement will be feasible only when the narrow justice-oriented purpose is stipulated; but if agreement happened to be less constrained than expected or effective strategies for mitigating the risks of perfectionism were developed, then this would make a wider perfectionism appealing. This is because if those things came to pass, then the standard neutralist objections to perfectionism would lose much of their force. I am not claiming that those things are likely to happen. Rather, my arguments merely suggest that such developments should be welcomed if they materialize. This is perfectly in keeping with the neutralist arguments I have taken seriously throughout this discussion.

Sen 1999, 153-154. Also, Sen (2002, 590) writes: “[W]e can go even further and require reasoned scrutiny as a requirement of a preference ordering to have an important status in the evaluation of freedom. ... [A] valutational ranking that can survive reasoned scrutiny has a central role in the assessment of freedom. In the use of “preference” as the basis of evaluation of the opportunity aspect of freedom, a special place must be given to the valutational interpretation of preference, combined with the need for compatibility with reasoned scrutiny.”
Closing Remarks

From the start, I thought of this dissertation not so much as a project that presents a solution to a philosophical problem, but more importantly, as a project that motivates further research. The challenge of seeking to ameliorate the disadvantage that attends disability underscores that our usual way of understanding the perfectionism-neutralism debate is too simplistic. It is possible, I have argued, to consider the impairment of capabilities as a form of disadvantage that requires public assessment of matters of value within the confines of neutralist constraints. Public value perfectionism is both neutralist in its motivation and perfectionist in its approach; it offers a marriage of two compelling, but contrary positions. Moreover, I have argued that such a rapprochement between the two perspectives is essential if we are to do justice to citizens with disabilities by ensuring that their disadvantage is not amplified either by a failure to pursue enablement efforts or by attempts to do so in a way that heedlessly imposes majority values.

In reading other defences of ‘egalitarian perfectionism’, I was often struck that a key part of the motivation for the approach was a confidence in the prospects for a common conception of well-being. I personally did not share that confidence, so I wondered whether there were reasons in favour of trying to make perfectionism work that would be persuasive to people who, like me, were largely convinced by neutralist arguments about the challenges and risks associated with public political evaluation of the good. This project has provided such reasons, and I hope it has shown that the antinomy between neutrality and perfection is not as intransigent as it might first appear.
There is much, of course, that remains to consider. How far can perfectionism be taken without running afoul of neutralist concerns? What other kinds of disadvantage might be tackled by public value perfectionism? How much content can we give public value perfectionism? I hope that my project has sparked an interest in pursuing these questions. At a minimum, I believe it has provided reasons for a neutralist to pursue further research in defence of state perfectionism.
Bibliography


