

Disadvantage as Impairment of the Will**Abstract**

291 Words

This thesis argues that unfair social disadvantage is best conceived as the relative impairment of the will of the person when that will is directed towards a valuable end. That valuable end is self-realisation. The term 'self-realisation' signifies a perfectionist conception of social justice in which the self-realisation of other persons forms part of one's own self-realisation. Although the notion of a substantive will is taken to be illusory, the experience of will is taken to be as real as the experience of pain. The experience of will is therefore taken to be the *de facto* will. It is argued that the will extends beyond the mind of the individual to include the culture, technology, and circumstances of the person's environment.

This conception of the will connects social disadvantage and morality within a framework of capabilities. It is then argued that social disadvantage can be mitigated by application of a principle of will-egalitarianism: the idea that all persons ought to have an equal opportunity to exercise will compatible with a similar scheme for all. This scheme is sufficientarian, but one in which a lower threshold of sufficiency of the will is tracked by an upper threshold. This upper threshold represents the degree of realised will above which persons cannot progress further towards self-realisation in the presence of others below that threshold.

The thesis concludes with a discussion of the significant implications (both practical and theoretical) for the role of the state. These include the adoption of policies designed to empower individuals, rather than targeting the circumstances of disadvantage. Such an approach would support policies that enhance social mobility, public participation, and the breaking down of social and class barriers, whilst addressing some of the problems associated with a 'benefits culture'.

THE UNIVERSITY OF HULL

Disadvantage as Impairment of the Will

being a Thesis submitted for the Degree of
Doctor of Philosophy in the University of Hull

by

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June 2012

Ethical Statement

As this thesis is almost entirely based upon the analysis of concepts, most of the common difficulties with ensuring an ethical approach to research do not apply. However, the thesis does make reference to the personal circumstances of a genuine example of social disadvantage. In this case the identity of the person concerned has not been revealed. Care has been taken to ensure that neither the name nor any of the circumstances can lead to her identification or any other breach of confidentiality.

Acknowledgements

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I would like to express my gratitude to Dr. Colin Tyler, Dr. Suzanne Uniacke, and Dr. James Connelly for their constructive criticism, support and guidance during the production of this thesis. I would also like to thank Professor Paul Gilbert for his encouragement, Professor Kathleen Lennon and my fellow students within the Philosophy Department for their feedback during various seminars conducted throughout this process. However, I must also point out that any errors and omissions are entirely my own, and any of the views expressed in this thesis should not be construed as belonging to or incriminating any of the persons that have assisted me along the way.

Whilst every effort is made to remain objective throughout, I recognise that my own background and circumstances are an inevitable part of the resources that I bring to the research process. Whilst it might be possible to dilute this effect by 'conscious effort', and the assistance of my supervisors in bringing any bias to my attention, it would be remiss of me not to point this out.

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June 2012

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Disadvantage as Impairment of the Will

Chapter One

Introduction and Methodology

1. Introduction

According to Gerald Cohen, “exactly what should count as an advantage [...] is surely one of the deepest [questions] in normative philosophy”.¹ Although Cohen is discussing advantage, his comment is directed towards clarifying and addressing the question of disadvantage. One reason why this is a difficult question, according to Cohen, is due to:

[the] heterogeneity of the components of the vector of advantage. One hopes that there is a currency more fundamental than either resources or welfare in which the various egalitarian responses [to disadvantage] can be expressed.²

In this thesis it will be argued that when unfair disadvantage is conceived as the impairment of the will of the individual relative to others (when directed towards a valuable end), that this can provide the fundamental currency that so eluded Cohen.

¹ Cohen, G.A., 1989, p. 920

² Cohen, G.A., 1989, p. 921

This thesis can be read in two halves. The first half covers chapters one to five, and the second half chapters six to nine. In the first half, a background account is given in which the nature of the problem is described within the context of the claims of rival theories. The culmination of the first half is the claim that a proper conception of disadvantage turns on the will of the person or persons affected by the disadvantageous circumstances. In the second half, the conception of unfair disadvantage as impairment of the will is described, analysed, and the implications for the state are explored.

In order to help orient the reader, a very brief overview will now be given. The thesis will start with an analysis of the term ‘disadvantage’. This is because the term is often used in a vague or loose manner, and to ensure that we have a good understanding of the problem. Once we are clear on the subject, the thesis proceeds by considering the assessment of disadvantage as a lack of welfare, resources, or liberty. For a variety of reasons, each of these approaches is shown to be inadequate. The alternative means to evaluate disadvantage, the capabilities approach, is then considered. This too proves to be inadequate in its current form. It will be argued that the capabilities approach promotes an unacknowledged ideal model of humanity. This model places the freedom of choice of the person at the centre. It is argued that the notion of ‘agency’ (upon which the capabilities approach relies) is insufficient for this application: what is required is a viable conception of the will. The culmination of the first half gives an account of the will as being extended to encompass our cultures, background, environment, technologies and so forth – not as influences upon, but as part of the will of the self. It is

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accepted that the will is an ultimately illusory conception, but that the experience of will is as real as the experience of pain.

The second half of the thesis proceeds by giving an account of unfair disadvantage as impairment of the extended will. It is suggested that a perfectionist model of humanity requires that all persons ought to have an equal opportunity to exercise will, but only when that will is directed towards self-realisation. This is a sufficientarian approach, but one in which a lower threshold is accompanied by an upper threshold. The lower threshold represents an achievement of an equal opportunity to express will (this is sufficiency of the will). Since the will is extended, and a perfectionist model is advocated, one cannot proceed towards self-realisation without recognising that such progress requires assisting others towards their own self-realisation. The upper threshold would therefore represent that degree of satisfaction of the will that one would not be able to exceed in the presence of others below that threshold.

In the remainder of the thesis the implications for the state are explored. These would support policies designed to empower citizens where this would allow development towards self-realisation, but support the state to impede or discourage activities that do not allow such development. The conclusion of the thesis gives a summary, a reflective account of the process, shows how an original contribution has been made, and suggests areas for future development. Hopefully, this very brief overview will allow the reader to recognise the place of the arguments as they develop. A more detailed account of the process and methodology will now be given.

2. Background

An adequate account of social justice must correctly identify those unfairly disadvantaged within society. Although the legitimacy of the conception of social justice is not without dispute (this will be explained in chapter three) its legitimacy will be assumed for the moment. The ‘traditional’ view (as this will be called) describes persons as being disadvantaged when they lack welfare, resources, or liberty. Such a view is problematic: as John Rawls remarks “it seems impossible to avoid a certain arbitrariness in actually identifying the least favoured group”.³ There are two problems here: the identification of the worst-off group, and the means by which such comparisons can be measured. One might see poverty, or profound disability, misery, or subjugation in the various communities around us, but be unable to decide which group is the worst off, or identify a common metric in which to make such an assessment. A disability is a different sort of concern from poverty, say, or misery, or other such circumstances. Yet the idea of a worst-off group appears to invite comparison. Rawls acknowledges these difficulties, but sets them aside in favour of a procedural approach to justice.⁴ As will be discussed in chapter three, Rawls advocates rules of justice in which, as long as certain activities also benefit the least well off, this will accord with his conception of a just society.

Although Rawls acknowledges that this approach may fail the most vulnerable individuals, other advocates of the procedural approach (such as the classical utilitarian) are less worried by this omission. Rather than

³ Rawls, J., 1999, p. 84

⁴ Rawls, J., 2003, p. 10, and pp. 52-4

attempting to ease the circumstances of the least well off directly, the classical utilitarian identifies happiness or the satisfaction of preferences as a target to be maximised, or sets rules to this end. Those who happen to be the least well off under such circumstances are incidental to the procedure: the utilitarian seeks to apply the process that maximises the total sum of happiness or satisfaction, and is not concerned if some (or many) individuals suffer perhaps extreme hardship as long as this is offset by the happiness of others.

Yet there is an alternative to the traditional view: the ‘capabilities’ approach, as advocated by Amartya Sen and Martha Nussbaum.⁵ This approach attempts to tackle the problem of identifying the least well-off by focusing upon what the individual can or cannot be or do. Sen and Nussbaum simply identify certain capabilities as criteria for judgements as to how well a person’s life is going. As such, the capabilities approach holds a model or ideal of human capability by which a worthwhile life is judged: to fall short of this model is thus to fail to achieve (or have the freedom to achieve) an acceptable standard of living. A comparison of circumstances can then identify acceptable levels of capability, or threshold limits. Yet in doing so they too either fall foul of Rawls’s problem of arbitrariness (Nussbaum’s list) or remain vague as to who the disadvantaged are, or what disadvantage is.⁶ Although the use of an ideal model of capability has some parallels with the idea of perfectionist self-realisation, this model does not give sufficient room for the will of the person subjected to the supposedly disadvantageous conditions. It will be argued that without giving room for the will of the individual, both Sen and Nussbaum’s

⁵ Sen, A., 1995, p. 39; Nussbaum, M., 2006, pp. 4-14, and 2007, p. 155

⁶ Sen, A., 1995, pp. 46-9, and 2009, pp. 232-3; Nussbaum, M., 2001, pp. 223-225, and 2006, p. 12

approaches conflate the conception of disadvantage with the further matter of its fairness.

It is not only the capabilities approach that makes this error: the traditional conception of disadvantage in terms of welfare, resources, or liberty, often includes an unnoticed assessment of fairness. To assess a person as disadvantaged because they suffer poverty, say, is a normative evaluation: it is to say that that person is lacking in resources and that she ought not to be suffering in this way. The evaluation of disadvantage in itself carries with it the implication that ‘something ought to be done’ to correct it. It thus couples an assessment of the person’s relation to others, and a judgement of the fairness of that situation. These two aspects (the assessment of the conditions of disadvantage, and the evaluation of fairness) are best kept apart.

It will be argued that the conception of disadvantage is best understood as the degree of impairment of the will, and that this gives a unifying metric for the subsequent evaluation of fairness: one is unfairly disadvantaged if one’s will, when directed towards self-realisation, has been impaired to a greater extent than other persons (the idea of self-realisation will be explained further in chapter six, although a preliminary account will be given shortly). Conversely, one is unfairly advantaged if one is able to realise a greater degree of will than other persons, unless directed towards self-realisation. It is the ‘direction towards self-realisation’ that defeats the evaluation of unfairness since self-realisation requires that one assists others in moving towards their own self-realisation. If one’s will is directed towards assisting others, such a will cannot be unfair, and so ought to be uninhibited. A will that is not so directed may or may not be unfair, but a person would be unable to

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simultaneously progress towards her own self-realisation whilst exercising a will that did not contribute to the benefit of others.

As Daniel Dennett notes when discussing the idea of free will, what is important to us as individuals is the degree of control that we have over our lives.⁷ It might therefore be suggested that social disadvantage would be better recast as a relative lack of control, rather than impairment of will. Such a move would avoid the need for the conception of self-realisation whilst retaining the idea that resources, welfare, and liberty are not the significant factors in the assessment of disadvantage. Although this thesis will not go into the issue of free will, if one considers control over one's life to be the significant factor in the conception of disadvantage, then the notion of control would not be reducible to a more fundamental factor. Yet control of one's life presupposes that an individual is empowered to make choices (or appears to do so), and this in turn presupposes an ability to exercise will towards preferred options. Since control is reducible to the exercise of will, it is the will that is fundamental to control.

Another reason to prefer the conception of will to the notion of control is that control alone would not be able to account for the conception of fairness. Control is too blunt a term to be able to distinguish between control that is directed towards others and control that is directed inwardly: both would count as control of the self. In other words, the idea of control is self-centred whereas the conception of the extended will necessarily incorporates relations with others. The self-centred approach can only evaluate fairness in relation to the self, whereas the extended will can evaluate fairness more widely.

⁷ Dennett, D., 1984, pp. 67-73

Furthermore, disadvantage conceived in terms of control alone would be vulnerable to the ‘expensive tastes’ objection, and would be committed to compensating those with undesirable or immoral preferences. Some of these issues are discussed in a moment when the perfectionist approach is defended, and further specific issues are discussed in chapter three where Ronald Dworkin’s views are raised. For these reasons, social disadvantage is cast in terms of will rather than control.

Yet the idea of control is still important, provided that one remembers the caveat that the will is prior to control. This becomes apparent when one considers the place of the valuable end to which the will might be directed. If the actions of an agent X causes the impairment of the exercise of will towards a valuable activity of a person (or persons) Y, and if Y has not been accorded equal moral concern in that process, then Y has been unfairly disadvantaged. X’s attempt to exercise control thus thwarts Y’s ability to exercise control, and this becomes unfair when the object of control is valuable to one or other of them. It is not unfair if both have an equal opportunity to exercise will, but if one impairs the other, then it might become unfair. It becomes unfair because what counts as a valuable activity is one that contributes towards the individual’s self-realisation within a perfectionist framework. If the exercise of will were toward some trivial objective it would not be a concern of social justice (it might still be unfair, but would not be morally significant). It is argued that the will is the decisive feature of unfairness in relation to social disadvantage. Minimum and maximum thresholds of social justice then follow, in which the lower threshold represents equal opportunity to exercise will, whereas the upper threshold represents the achievement of equal satisfaction

of the will (but not necessarily realised with the same goods). It is thus a 'sufficientarian' thesis inasmuch as what is important to social justice is that each person has sufficient opportunity to exercise will, not that each person has the same goods.⁸ These claims will be explained in chapter seven.

So, it is suggested that wherever the will is impaired when directed towards self-realisation, and without treating those affected as moral equals, there is unfair disadvantage. There may well be disadvantage in the traditional sense, but if the person has truly volunteered to accept that disadvantage, then it may even contribute towards her self-realisation. For example, an adequately nourished individual might forego her fair share of food in order to give it to another person in greater need. Such a sacrifice would put that individual at a disadvantage (in the traditional sense) since she no longer receives her due share, but such a virtuous act would align with a perfectionist ideal for humanity and might therefore contribute towards her realising that ideal. Using this perfectionist view, the person making the sacrifice is disadvantaged in the first normative way of using the term, but is benefited when the second normative evaluation is used: the sacrifice is evaluated as being good or right, and thus contributes towards the giver's self-realisation. The traditional conception is thus inadequate in its assessment of the situation. Furthermore, it would appear that wherever the will is exercised towards self-realisation, there can be no unfair disadvantage.

Yet errors of judgement and human fallibility might cause individuals to mistake what is actually necessary for self-realisation. These issues are discussed further in chapter eight. Under such circumstances, the evaluation of

⁸ Frankfurt, H., 1987, p. 21, Casal, P., 2007, p.296

disadvantage must change when the person realises the error and changes her mind. The person who mistakenly accepts a disadvantage in the belief that this is the good or right thing to do does not suddenly become unfairly disadvantaged: she only becomes disadvantaged if she realises that she has made a mistake and is blocked from correcting the situation. In volunteering to accept such a disadvantage this would incidentally contribute towards her self-realisation, and so would not amount to unfair disadvantage, but if she has made a mistake in accepting those conditions, then such voluntariness does not negate the evaluation of unfairness. It will be taken that voluntariness requires full knowledge of the likely consequences and wholehearted acceptance of those circumstances. This will rule out the possibility of deliberate acts of deception (tricking the virtuous person into accepting a disadvantage) from being assessed as fair. However, if she has simply made a genuine mistake, and she is unable to rectify that mistake, then her will is impaired in the presence of the disadvantageous conditions (even though she previously volunteered to accept them). She becomes disadvantaged not by the existence of the particular conditions, but from being denied the opportunity to realise her newly changed will.

Although the implications for the role of the state will be explained shortly, the reader is asked to allow for the moment that the just state must treat its citizens with equal concern. Since unfair disadvantage suggests a lack of equal concern, then the state would not be fulfilling its obligations towards all of its citizens if it allowed unfair disadvantages to persist. One of the aims of the state should therefore be to eliminate unfair disadvantage. Since unfair disadvantage is eliminated for the individual by her exercise of will (since she

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would wholeheartedly accept the disadvantageous circumstances in full knowledge of the likely consequences), the state need not attack the circumstances of disadvantage directly: it is argued that the state must ensure that all citizens have the equal opportunity to exercise will in controlling the way in which their lives turn out. This approach must remain sufficiently flexible to allow individuals to make mistakes in their assessment of the good. State policies must therefore keep opportunities for personal development open. In other words, a policy is advocated of facilitating equal opportunity to exercise will compatible with a similar scheme for all (sufficiency of the will). This would favour policies of widespread consultation (perhaps through encouraging public participation and the use of social incentives) ensuring equality of opportunity (legislation) and facilitating or increasing social mobility (perhaps through such measures as the reduction of economic inequality, the limitation of inherited wealth, and free higher education).

3. Why Perfectionism?

Given this brief scene-setting, it might be thought that the requirement to treat others as moral equals would be sufficient to give a full account of disadvantage. Under such an account, moral equality would require that persons are able to pursue whatever they considered to be their own good, subject to compatibility within a scheme in which all others have an equal opportunity to exercise will. Such a scheme will be referred to as 'will-egalitarianism'. One would then be unfairly disadvantaged if her will were impaired within this scheme. Since such a mechanism appears to be doing all the work, then the introduction of perfectionism might appear superfluous.

However, following a scheme of will-egalitarianism alone would give no reason by which to adjudicate between competing wills, would give unnecessary weight to trivial matters, and would give weight to considerations of unpalatable moral value. Thus the sadist, or the racist, would have to be accommodated within the scheme, as would a person with the conviction that watching a football match is more important than rendering assistance to the needy, or the person who believed that the number thirteen ought to be eliminated from hotel rooms. Each would be given equal status to their claims. In short, such a scheme has regard for each person as an equal locus for moral value, but has no regard for the goodness or rightness of the content.

Consideration of human perfection allows us to self-reflect in a way that will-egalitarianism alone would not: it allows objective reflection since the good is not defined by individual assessment. A perfectionist view of humanity gives the necessary connection with morality that a proper conception of unfair disadvantage requires. In his analysis of perfectionism, Thomas Hurka argues that an adequate perfectionist ideal must accord with our intuitive moral judgements.⁹ The idea of individuals becoming morally better persons such that they may develop towards some form of ideal human being is a common intuitive position. Take the common phrase ‘what would Jesus do?’ This slogan is used whenever deemed appropriate by someone demanding that others reflect on their conduct. Such phrases would suggest that persons intuitively seek some form of ideal role model as a template for their own behaviour. The common conceptualisation of a perfect entity upon which many religions are

⁹ Hurka, T., 1993, p.30

based gives further support to the idea of an intuitive need for some form of perfectionist ideal.

Perfectionism, then, sets boundaries within which will-egalitarianism can be applied. Even if these boundaries are widely set, such a framework requires a substantive conception of the good. As Thomas Hurka puts it:

[p]erfectionism is not a magical entrée into morality, but a substantive position within it. It assumes a general willingness to act on moral ideals and proposes a specific ideal to follow.¹⁰

Human perfection will therefore be taken to relate to those qualities of human nature that are commonly regarded as representing the best qualities that a person can have, leading to becoming the best person that that person can ideally become. Such qualities include such things as generosity, selflessness, courage, and kindness. These qualities refer to things that are constitutive of a good life, and are objectives that persons would choose to pursue or become in order to lead an ideal life.

It is accepted that such a justification of perfectionism appears somewhat circular, but a more forceful defence would change the entire focus of the thesis from disadvantage to the whole basis of morality. Some comfort will therefore be taken from Hurka's view that '[t]he best perfectionism, then,

¹⁰ Hurka, T., 1993, p. 30

equates human nature with the properties essential to humans and conditioned on their being living things'.¹¹

4. Definitions and Scope

The various terms used in the thesis will now be explained, starting with a preliminary account of the terms 'welfare', 'resources', and 'liberty'. Although these terms are central to the thesis, there are complexities and refinements that will be further described in chapter three. The term 'welfare' describes the intrinsically valuable aspects of a decent quality of life, such as the physical and psychological attributes of health, happiness and the satisfaction of preferences. The term 'resources' describes the instrumental necessities for a decent quality of life: these necessities include wealth, income, shelter, property and such forth. The term 'liberty' describes both the positive freedoms to take self-directed actions, and the negative freedoms from deliberate interference by others. The terms 'liberty' and 'freedom' will be used interchangeably.

The terms used to describe groups such as 'community', 'state', or 'society' are also significant. A 'community', will refer to a group within a common location, and that share a cultural identity. Thus British Muslims could be described as a community, as could the people of Yorkshire, or the church-goers of any town parish. A 'state' will refer to the political organisation having sovereignty over a territory, including the institutions that make this possible. A state can thus incorporate a number of communities within its territory. In turn, a 'citizen' is an individual member of the state who is entitled to participate in

¹¹ Hurka, T., 1993, p. 17

the institutions and arrangements of that state, and who has a right to receive protection from the state. Not all individuals subject to the authority of the state are citizens, but the state still has some responsibilities towards such persons. Thus an asylum seeker is not yet a citizen, but the state bears a duty to protect the welfare of that individual. Despite this responsibility, it must be emphasised that this thesis is limited to the responsibilities of the state towards its unfairly disadvantaged citizens. To qualify as a citizen will be by birth, close family relationship, or naturalisation. A 'society', however, does not refer to any particular organisation or state, or geographical location. This term thus refers to the more general collective interactions and persistent relationships with and between persons. Moreover, there is no implied common cultural, belief, or value systems that connect and define such a group.

Since the thesis will deal with aspects of social justice, it will only be concerned here with the idea of a just state. Any state which did not seek to be just towards its citizens would be unlikely to be concerned with ideas of disadvantage. Whilst such an entity could still be described as a state, it would not by this account be a legitimate state. The principle of justness towards its citizens requires that a state must be interventionist, at least to the standards of a minimal state. A minimal state, such as that advocated by Robert Nozick, could therefore still claim to be a just state provided that it was interventionist to at least to some degree (such that it would intervene to ensure that injustice, howsoever conceived, is rectified).¹² Whilst it might be suggested that a state by definition cannot exist without exercising authority and therefore must be interventionist to some extent, this thesis is not concerned with the subtleties

¹² Nozick, R., 2003, p. 26

surrounding the definition of the state. It is merely emphasised that the conception of disadvantage, and the measures advocated to deal with it, are only of interest to those states that claim to be just towards their own citizens.

It will also be taken that the function of the just state is to protect the interests of its citizens, both from external and internal threat. Whilst this does not deny that a non-interventionist state might still be a state: the possibility remains that an anarchist state could still claim to be just. However, the suggestion is that such a state would be dysfunctional. Since dealing with disadvantage requires a state to be interventionist, any obligations of the state would in fact be instructions to the government of that state to act. A state without formal government would therefore be unable to act. Furthermore, a government that merely protected its citizens from external threat, but allowed internal injustice, would not be performing all of the functions of the state that it ought to do: such a state would thus have the potential to allow injustice towards certain individuals or groups within its own curtilage. Any state that permitted, perpetuated, or ignored injustice towards its own citizens cannot by these terms be described as just.

Likewise, if a state did not protect its citizens from external threat, or lost its ability to do so, it would also be dysfunctional, and would be in danger of losing its identity as a state. The current situation in Somalia is an example of such a state: it is incapable of protecting its territorial waters, and so must allow foreign vessels to enforce order. Yet in doing so, the state becomes further disempowered, and more likely to be subsumed under the control of its more powerful neighbours. In contrast, the just state, in protecting its citizens from both external threat and injustice, cannot display bias towards or against

any particular group of its citizens. That is, it must treat all citizens as moral equals.

The idea of self-realisation will be refined in chapter six, but a preliminary account will be given for now. Self-realisation is taken to be the achievement of human perfection: it is an ideal whereby a person will embody all that is good or virtuous in humanity, and will reject those attributes regarded as vices. How such virtues and vices are evaluated is not as problematic as might at first appear. A very broad range of such qualities are already commonly accepted within most (if not all) human societies. For example, qualities and actions such as selfishness, theft, murder, dishonesty, avarice, are readily recognisable amongst the vices. On the other hand, courage, generosity, love, respect for others, selflessness, and honesty are all readily recognisable amongst the virtues. Self-realisation is therefore the attainment of each and every one of the virtues (being the best qualities of humanity), with the simultaneous rejection of the vices (being the worst qualities of humanity) as evaluated by the self, but for which the wider society in which one lives would plausibly agree. As with all perfectionist accounts, such ideal conditions are recognised as being unachievable in practice. We are all prone to making mistakes, or succumbing to temptations that might seem to be good for us at the time. However, as a perfectionist ideal, we can still seek to progress towards such a condition.

Finally, the term ‘impairment’ in relation to ‘impairment of the will’ is taken to include frustration, obstruction, limitation, prevention of development or exercise, or other such ways in which the will can be hampered. This is regardless of whether or not the impairment is caused intentionally or

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accidentally by the actions of others. One cannot self-impair one's will since to do so is to voluntarily exercise will: impairment is therefore always external to the self. Although weakness of will is beyond the scope of this thesis, impairment of the will is also taken to include the possibility that a person's will might be harmed, damaged, or weakened such that the person loses a sense of control over important decisions that will affect her well-being.

Having explored some of the important terms, at least enough to allow the discussion to begin, we will now turn to the matter at hand: the problem of disadvantage.

5. The Problem of Disadvantage

A major difficulty with egalitarian theories of distributive justice was pointed out by Amartya Sen when he asked the question 'Equality of What?'¹³ Whilst his question highlighted the issue of welfare versus resources, two important associated questions remain unanswered: (a) what is it that persons lack when we say that one person has more than another? and (b) why should this matter? It is suggested that to describe the least well-off in terms of a lack of primary goods, utility, resources, opportunities, welfare or liberties is inadequate for a full account of the concept of disadvantage. It is the aim of the thesis to answer this difficulty by gaining a better understanding of disadvantage.

¹³ Sen, A., 1980, pp. 1-26

In the introduction to this chapter, Gerald Cohen identifies only two forms in which disadvantage might be assessed. However, disadvantage is commonly manifested in three broad but distinct ways: as a lack of welfare, resources, or liberty. Welfare disadvantage can take the form of poor health, unhappiness, the failure to satisfy one's desires, disability, or lack of capability. Resource disadvantage can be assessed in terms of poverty, shortage of wealth, or lack of primary goods. The third manifestation of disadvantage becomes evident as a lack of liberty. It is disadvantage as a relative lack of liberty that perhaps provides the clue to a proper understanding of disadvantage.

To understand disadvantage in just three manifestations, it is suggested, would be a mistake: and on the face of it a common one. John Rawls and Ronald Dworkin suggest that disadvantage can be addressed by concentrating one's attentions upon the distribution of resources.¹⁴ Amartya Sen's capabilities approach, along with the many forms of utilitarianism, rejects this view for failing to realise that resources are only instrumental to the achievement of welfare: it is the distribution of some form of welfare attribute that is thus advocated as being the appropriate mechanism to address disadvantage.¹⁵ Robert Nozick and Hillel Steiner point to the importance of rights and liberty to argue that one cannot redistribute either resources or welfare if to do so would violate liberty.¹⁶

¹⁴ Rawls, J., 1999, pp. 78-81; Dworkin, R., 2000, pp. 65-119

¹⁵ Sen, A., 1995, pp. 12-30; Mill, J.S., 1998, pp. 914-926

¹⁶ Nozick, R., 2003, pp. 160-164; Steiner, H., 1994, pp. 57-99

Yet Sen's *The Idea of Justice* advocates a pluralistic approach in which all of these views have some important element, but are not the whole story.¹⁷ He suggests that these other views are 'niti' theories, focussing upon organisational and structural forms and procedures, when what is needed is a *Nyaya* approach – a practical 'outcome based' view simply aimed at removing injustice without dogmatic adherence to any one particular theory.¹⁸ To this extent the later Sen now agrees with Frankfurt that the proper focus of social justice is upon the existence of suffering, and its removal.¹⁹ Jonathan Wolff and Avner de-Shalit also advocate a capabilities-based pluralistic understanding of disadvantage in which different forms of disadvantage can accumulate in 'clusters'. They also agree with Sen that a practical solution is more important than theoretical understanding.²⁰ Nevertheless, the question remains as to how one can practically address the problem of disadvantage if one does not fully understand what disadvantage *is*.

Perhaps Wolff and de-Shalit's observation of clusters of disadvantage gives a clue as to why the *niti* approach is commonly taken.²¹ Since each form of disadvantage seems closely related to others, it is easy to assume that addressing disadvantage in the favoured dimension will somehow address disadvantage in its other manifestations. Resource disadvantages can cause poor diet, lack of shelter, and force individuals to live in unsanitary conditions. Resource disadvantages are thus associated with welfare disadvantage manifested as disease, misery, lack of education, or physical or mental

¹⁷ Sen, A., 2009, pp. 194-207

¹⁸ Sen, A., 2009, pp. 20-22

¹⁹ Frankfurt, H., 1987, p. 21; Sen, A., 2009, pp. 225-252

²⁰ Wolff, J., and de-Shalit, A., 2009, pp. 36-40, pp. 63-73, and pp.119-128

²¹ Wolff, J., and de-Shalit, A., 2009, p. 119.

incapacity. Similarly, a lack of education, or having no fixed abode, can limit one's ability to participate in the political process, and the lack of representation might then lead to a lack of recognition of rights and liberties.

Furthermore, a lack of resources is associated with a lack of those liberties that form part of (as Tony Honoré would say) the 'incidents' of property ownership.²² The lack of resources to buy decent clothing can cause shame, thus impacting upon self-esteem (a welfare disadvantage). This is not to suggest that resource disadvantage necessarily leads to welfare disadvantage, or that welfare disadvantage necessarily leads to liberty disadvantage, or that liberty disadvantage necessarily leads to resource disadvantage: the relationship is complex. Examples can readily be given to show that a disadvantage in one dimension can cause disadvantage to become apparent in any other dimension. Yet as Wolff and de-Shalit comment: "it is not always the case that a disadvantage in one respect can be discharged or overcome by a greater provision of a particular universal currency such as money or preference satisfaction".²³

The forms in which disadvantages appear are distinguishable. This raises problems with comparison and commensurability. It does not seem likely that one can weigh x units of liberty, say, as being comparable with y units of welfare or z units of resources. Even given the suggestion that money is the universal mechanism of exchange, this is clearly not the case. Just because money can be used to purchase certain freedoms or liberties does not entail that such transfers are comparable between different spheres of

²² Honoré, T., 1987, pp. 161-179

²³ Wolff, J., and de-Shalit, A., 2009, p. 34

transaction. In many cases, such transactions are associated with immoral or criminal activities, demonstrating the inappropriate use of money as a universal medium of exchange. As Michael Walzer objects, when money is allowed to exert influence in the wrong sphere, it can become a form of corruption: he offers examples such as the purchase of religious forgiveness for sins, and the use of wealth to gain political office.²⁴ If these three manifestations of disadvantage are incommensurable, then it seems inadequate to suggest that a system of redistribution can prioritise one manifestation over the others. Such systems seem to rely on some intangible connection so that variations in the prioritised dimension automatically adjust the other two.

Yet if these dimensions are incommensurable, such an approach can only address disadvantage as an approximation of the circumstances by ‘shoehorning’ the disadvantage into the framework of the favoured dimension. Prioritising one’s favoured dimension is to simultaneously allow compromise in the other two. For example, giving a bereaved widow a sum of money cannot fully compensate for the welfare loss, but it is taken to suffice to an approximate extent. The welfare dimension is thus compromised by its translation into a resources format. This is where Sen’s approach has advantages. Although he would not be attempting to compensate such a loss, his pluralistic approach would advocates the removal of the circumstances of the disadvantage, without prioritising any particular aspect. Yet despite his inclusive approach, his theory does not tell us what injustice actually is. He tells us how the phenomenon of injustice ought to be dealt with, but without a conception of disadvantage any attempt at recognising which injustice is the

²⁴ Walzer, M., 1983, p. 9

most grave and thus how it might be prioritised must remain an intuitive hunch on the part of the assessor. More will be said on the problem of prioritising disadvantage in Chapter Seven.

Furthermore, the expression of disadvantage only in terms of welfare, resources, or liberty does not seem to exhaust all of the possible manifestations. It is suggested that an important ingredient has still to be properly appreciated: this ingredient is related to the psychological disposition and how we choose to live. Take the case of Doris, an elderly woman recently taken into residential care. Although this relates to a genuine case in the East Riding of Yorkshire during 2010, the name has been changed for confidentiality reasons. Doris lived much of her later years as a pauper. When she was eventually taken into care, she was severely undernourished, and suffering from dementia. Despite her living in a state of poverty over a number of years (pre-dating her dementia) it was discovered that she had over £30 000 in cash secreted around her house. Whilst she was young, and able to exert her will in choosing to live as she did, she could not be accurately described as disadvantaged. If anything she was resource rich, and so able to change her lifestyle any time she wished. Yet as her illness progressed, she might be considered amongst the disadvantaged despite the wealth remaining formally available. The only relevant aspect that has changed is her mental capacity. The simple assessment of disadvantage in terms of welfare, resources, or liberty cannot recognise these changes. The welfare approach might suggest that she is disadvantaged if she can no longer satisfy preferences, but might also suggest that she is not disadvantaged if she appears happy with her lot. In contrast, since the availability of resources (as wealth) has not changed she is

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therefore not disadvantaged. Yet the characterisation of disadvantage as relative lack of liberty is also materially unaffected by Doris's dementia. Even the capabilities approach is unclear in this regard, although why this should be so will be explained in chapter four. The loss of mental ability, and therefore the loss of will, has left Doris a victim of her previous choices. Although the cash was available, she was unable to access or use it. She thus had the conditions of disadvantage but without the control, and as will be argued, it is the control that is the significant feature.

As suggested in the preliminary remarks, it might be thought that Doris should be included amongst the disadvantaged since her loss of capacity amounts to impairment of the will and therefore a loss of control. However, the impairment of the will is not the same as the loss of capacity. In losing capacity our concern for her becomes one of duty. We will return to this issue in chapter eight, where the implications of the state towards the vulnerable are discussed. Even though she has no one to blame but herself, (inasmuch as her circumstances are the result of decisions she made when she had capacity) it might be objected that since no one can be said to deserve to lose their faculties in this way, then the circumstances are unfair. However, so far as social justice is concerned, it is disadvantage through the failure to be treated as a moral equal that is the issue at hand, and this requires human agency. Whilst the loss of mental capacity is unfortunate, it is not on that account unfair. It is suggested that the fact of Doris's lost capacity is not a suitable subject for the evaluation of fairness: the proper focus for that evaluation is how other persons respond to her circumstances. What is significant about disadvantage in this case is the unfairness (or otherwise) of the response, and

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since the unimpaired will is argued to be the determining factor of that fairness, then it is the will that is fundamental to a proper conception of disadvantage. Where the capacity for will does not exist, the question of unfair impairment does not arise, therefore the scope of the conception of disadvantage as impairment of the will is restricted to those that possess the capacity for will.

Even though Doris has lost capacity, others might still behave unfairly towards her. If the response of others were to fail to respect her previous wishes, or were to fail in our duties towards her care, then she would be treated unfairly. In much the same way as a person's last will and testament can become incorporated within the extended will of the living relatives, the wishes of Doris can still become incorporated into the wills of her carers (the idea of an extended will is discussed briefly in a moment, and in further depth in chapter six). It thus becomes part of the culture, customs and practices of the community that care will be provided for persons in Doris's circumstances. Furthermore, the self-realisation of those around her requires the provision of care in line with the perfectionist model of humanity that this thesis endorses. The failure to provide care, or to respect her wishes, would be unfair because we have impaired the extended wills of those others around us in the community who would be appalled if Doris were neglected. The duty of care is owed to Doris, but the matter of fairness is owed to our peers out of respect for the moral equality and dignity of us all as human beings.

Whilst other views might struggle with such a scenario, it is suggested that when disadvantage is conceived as impairment of will, then such examples can be readily explained. Yet the conception of the will is notoriously problematic, particularly if understood in a Cartesian 'substantive' sense.

However, the sense in which it will be used here is not Cartesian. The will is to be understood as an explanatory device for human behaviour (without implying any mechanism for how the experience of will might correlate with the events taking place within our minds). This is not a behaviourist interpretation of the will: the belief that 'I did that' is not to be understood as simply behaving in such a way as to make a claim; hold up one's hand; utter 'I did that'; or otherwise engage in actions consistent with that statement. Rather, the will is to be understood as a genuine experience that results in the belief that 'I did that'. It is this belief that explains the behaviour without entailing the existence of a substantive will. Even if the will is ontologically illusory (as Gilbert Ryle, Daniel Dennett, Daniel Wegner, Andy Clark, and Saul Smilansky suggest) as an explanatory device it has yet to be surpassed.²⁵

Yet it is also a part of self-realisation, part of perfection, to recognise that other persons are part of our self-identity. This is more than suggesting that we are merely influenced by other persons: those others (and our relations with them) form a component part of the self. The perfect person does not situate the self as an isolated entity amongst other separate individuals: the perfectionist ideal identifies other persons as ends seeking the same good. Yet in situating the self, one draws upon the culture, technology, environment, and other persons in the formation of one's identity. One could not claim to be the same person were it possible to remove or expunge from one's existence the fact of having had a mother, for example, or siblings, or a certain upbringing. A person born with a disability will not see that condition as merely

²⁵ Ryle, G., 1973, p. 61; Dennett, D., 2003, p. 224; Wegner, D., 2002 pp. 1-28; Wegner D., and Sparrow, B., 2007, p. 17; Clark, A., 2007, pp. 101-120; Smilansky, S., 2002, p. 145

an influence upon their self identity: it is an essential part of it. Similarly, a person raised in a particular environment, culture and so forth, cannot see these factors as mere influences: they also are defining components of the self. Self-realisation as a perfectionist ideal, given a conception of an extended will, must also identify the perfection of the self as being dependent upon the achievement of the same end in other persons. Any of our actions that do not assist others in their own pathway toward self-realisation thus simultaneously inhibit our own self-realisation. The self-realisation of other persons is therefore part of our own self-realisation. This argument gives the communities, culture and environment in which we live a central role in our own self-realisation. The self, and therefore the will, is both constructed by, and constructs that external social network and environment.

By introducing the idea of interdependence upon others as part of the construction of the will, the idea of morality can be brought to bear upon an extended will. The conception of the will may well be illusory, but this is because it is merely a conceptual device, with (as Andy Clark argues) a location extending beyond the biological boundaries of the individual human being.²⁶ This is not a new idea: Thomas Hill Green deserves credit for recognising that the will is not merely located in the biological entity of each human being.²⁷ Although Green sought a theological conception of an extended will, this is not the view presented here. Nevertheless Green is acknowledged as the inspiration for this idea. Together with his analysis of what it means to exercise will, the distinctions between passive and active will,

²⁶ Clark, A., 2007, pp. 101-120

²⁷ See PE, Secs. 65, 173, 176 and 180-195 where Green discusses the 'eternal consciousness', the will and self-realisation.

and the role of morality, warrant the description of this thesis of disadvantage as being a broadly Greenian conception.

It is suggested that when disadvantage is explained as the impairment of will, then the different manifestations of *unfair* disadvantage are simply evidence of that impairment. It is the reduction, removal, or limitation of control that a person has over her life, relative to others, in such a way that the person concerned is not afforded moral equality. This is not to say that disadvantage is the simple frustration of one's will: such an idea has no connection with justice. The simple frustration of will might describe a person's being disadvantaged, but without a consideration of the fairness of that disadvantage, then there is no necessary connection with justice. She might be assessed (in an almost factual way) as having a particular set of circumstances relative to others, but justice requires an evaluation of the fairness of those circumstances in order to give a proper account of social disadvantage. This distinction will be explained in the next chapter. Thus a criminal is disadvantaged by his imprisonment, and to that extent is likely to have had his will frustrated, but that does not make his imprisonment unfair. He may also lose control over his life, but this too is not unfair so long as his moral status is not undermined. Conversely, where a person has been treated unfairly, it is suggested that it is necessarily the case that she has had her exercise of will impaired.

It is the recognition of persons as moral equals that is significant to the assessment of fairness, but this does not require that all persons are able to equally *realise* their will. It is the opportunity to *exercise* will that ought to be equal, at least to the extent of reasonableness and commensurability with all

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others having the equal opportunity to exercise their wills. Furthermore, just as a voluntarily accepted disadvantage is not unfair, a coerced disadvantage in which one has not had a say usually is. Yet even a coerced disadvantage is not necessarily unfair, and this is where reasonability comes in. If a disadvantage is imposed, but under circumstances to which the sufferer cannot reasonably reject, or even if they do so, the wider society would not reasonably reject, then any resulting disadvantage may still be regarded as fair. Thus the criminal imprisoned for an offence is coercively restricted, but cannot reasonably reject the imposition of a reasonable penalty: if she accepts that she has committed a crime then she must also accept the justification of a penalty. Furthermore, if she does not accept that the action she has done counts as a crime, but all other reasonable members of that state disagree, then it is not unfair to impose a penalty. The onus is upon the individual to persuade others that they are not being reasonable, or to accept that she did commit a wrongful act.

If the will is an individually and culturally distributed synthesis, then disadvantage as impairment of the will might simply be to express a truism: but only if disadvantage is expressed in a non-perfectionist way. The combination with a perfectionist objective introduces a moral 'best' approach. Without such a perfectionist interpretation, the distributed synthesis in which some do better than others would be morally neutral, or misplace the location of morality. For example, the classical utilitarian approach would place the determination of goodness, that is, the location of morality, entirely externally to the person. The perfectionist interpretation of the distributed synthesis of the self with the environment places morality, like the will, both within the individual and in the

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culture/community/environment in which she is placed. This seems to be a much better fit with how morality is perceived and practiced.

In summary, the problem of disadvantage is that it is evident in a number of seemingly incommensurable ways. Many philosophers, such as Rawls, Dworkin, the classical utilitarians, and the libertarians, have tried to identify a fundamental or primary form in which all types of social disadvantage can be weighed, measured, or adjusted. Others, such as Cohen and Sen, have metaphorically thrown their hands in the air and declared that the problem might never be solved. It is suggested that by focussing upon the normative assessment of the conditions of disadvantage rather than upon the normative evaluation of its fairness, they may have missed the fundamental role that the will must play.

Pinpointing the precise nature and concept of disadvantage has proven to be a slippery and challenging project. The three commonly assessed dimensions of welfare, resources, and liberty, are all important to the individual's experience of disadvantage, but are not sufficient to define it. Even combining all three dimensions into some form of capabilities approach cannot give a precise account (as even Sen now recognises).²⁸ Whilst it is accepted that the capabilities approach might provide the basis of the best practical approach to assessing disadvantage (as it recognises the essentially pluralistic nature of the circumstances of disadvantage), it is argued that it is the role of the will that gives the unifying and defining feature.

²⁸ Sen, A., 2009, pp. 20-22, pp. 231-33 and pp. 394-97

6. Methodology

This thesis is in the form of a conceptual analysis. This methodology is the mainstream in the contemporary tradition of Anglo-American analytical moral and political philosophy. However, conceptual analysis does not lend itself to quantitative measurement or qualitative methods. Although it may have been possible to design surveys of opinion, or interviews with disadvantaged persons, this would have lent little to the validity of the process, given that we are analysing concepts. A number of other sources and authors will be cited, of course, to support the arguments where appropriate, as will appeals to rational, reasonable, and/or logical argument.

The thesis necessarily draws upon and responds to the most influential positions within the field of social justice. These include the arguments of Ronald Dworkin (*Sovereign Virtue*), John Rawls (*A Theory of Justice*; *Justice as Fairness – A Restatement*), Amartya Sen, (*Inequality Reexamined*; *Development as Freedom*; *The Idea of Justice*), Martha Nussbaum, (*Women and Human Development*; *Frontiers of Justice*; *Creating Capabilities*), and Jonathan Wolff, and Avner De Shalit, (*Disadvantage*). To these authors must be added the general arguments of utilitarianism. Each of these have been selected as being the most important and relevant works to this thesis, and are representative of the range of views available. As such they cover views that advocate a welfare approach, or a resources approach, or a libertarian approach to the conception of social justice, and therefore towards the least well-off in society.

Chapter One – Introduction and Methodology

The thesis will be presented in nine chapters. Chapter Two is concerned with the generic conception of disadvantage. In particular, it separates out the normative character of the concept into two distinct parts. The first compares a model or standard condition with the circumstances, and the second evaluates the goodness or rightness of that condition. As has already been indicated, many theories of social justice wrongly assume that disadvantage is unproblematic, or attempt to avoid the difficulties. It is argued that a better understanding of the conception of disadvantage can resolve these problems. This chapter considers the generic conception of disadvantage in order to give the reader a better understanding of the issues. The conception of disadvantage is then narrowed to refer to social disadvantage only. The chapter points out that disadvantage can be either fair or unfair, and suggests a pivotal role for the will in that evaluation.

Chapter Three introduces the controversial concept of social justice. Friedrich Hayek and Antony Flew argue that the two terms should not be paired at all since justice has nothing to do with distribution. This argument is rejected. It is suggested that the ways in which the arrangements of the state impacts upon its citizens are clearly a matter of social justice. This analysis of disadvantage begins with a general discussion of distributive justice in order to set the framework for the debate. This will include a literature review of the main positions, particularly the work of John Rawls, and Ronald Dworkin.

In Chapter Four, the capabilities approach of Sen and Nussbaum is discussed, along with its practical application (as advocated by Wolff and de-Shalit). It is pointed out how each theory struggles with the identification of the least well-off group, or sets aside such difficulties, or conflates disadvantage

with unfairness. None of these approaches identifies what disadvantage really *is*, or recognises the significance of the will of the individual in these matters. Nevertheless, whilst many of these theories produce elaborate recommendations for the arrangements of a just society, the identification of the least well-off person or group is neglected. This issue is becoming increasingly recognised, particularly in the work of Wolff and de-Shalit, who note that disadvantage is manifested in several ways, and exists in ‘clusters’ of different aspects of disadvantage. Yet where they concentrate on a practical solution based on de-clustering, they avoid the theoretical foundations (particularly in relation to the question of fairness). Whilst their practical conclusions are supported, this thesis attempts to fill that theoretical gap.

It has now been suggested that the ‘traditional’ conceptions of disadvantage in terms of welfare, resources, and liberty are inadequate. It is also suggested that the capabilities approach falls short. In each of these views the role of the will has not been recognised or is under appreciated. Social justice, it is argued, thus turns on having a viable notion of the will. This is the subject of Chapter Five. In this chapter the views of Dennett, and Clark are drawn upon to argue that the will is extended outside of each individual to encompass one’s environmental, cultural, and technological circumstances. The views of Wegner are then added to support the argument that the will is an ultimately illusory creation of the physical human organism. The experience of will is real enough, allowing each individual to recognise authorship and to communicate relative intentions to others.

In Chapter Six it is argued that unfair disadvantage is the impairment of the will towards a valuable end in the presence of others that have a greater

opportunity to exercise will. It is the lack of equal opportunity for the exercise of will that determines the unfairness of disadvantage. The conception of fairness is crucial to social justice but little discussed in the literature (other than Rawls's circular view of justice as fairness). Any person impaired in the process of moving towards self-realisation by the actions of others, in such a way that does not recognise her moral equality, has thus been unfairly disadvantaged.

Chapter Seven explores the general view that the morally significant feature of disadvantage is not that some persons have less than others, but that some persons do not have enough. This is Harry Frankfurt's argument, which is accepted but to a limited extent. Although Frankfurt's conception of sufficiency relates to resources, it is suggested that such a scheme would be better conceived in relation to sufficiency of opportunity to exercise will. Frankfurt's development of his position, that it makes equality irrelevant, is not accepted. It is argued that the conception of disadvantage as impairment of the will reconciles Frankfurt's emphasis on sufficiency whilst recognising that equality *is* morally significant, at least insofar as the opportunity for the exercise of will is equal. Furthermore, it is suggested that fairness would require not only a lower threshold of sufficiency but an upper limit that tracks the impact upon those at the lower level.

Chapter Eight ties the conception of unfair disadvantage as the impairment of the exercise of will to the implications that this places upon the state. A policy of empowerment and consultation is therefore advocated rather than simply targeting resources or welfare deficiencies. It is also argued that the requirement for consultation can be met without the need for the direct

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involvement of each affected individual. This would be the case if arrangements take into account Thomas Scanlon's principle such that persons could not reasonably reject any imposed conditions.²⁹ However, any arrangements that fail to involve consultation, either directly or in accordance with reasonability, will be taken as resulting in an unfair disadvantage to those with less than an equal distribution of the traditional 'goods'. Furthermore, it would also imply that the further the disparity between the position of equality, and the existence of perhaps extreme wealth or poverty, then the stronger the justificatory reason must be. Thus the further removed from an equal distribution of welfare, resources, or liberty, the more difficult it will be to meet the consultation criteria, and the more likely it will be that such a distribution is unfair. This practical tendency would be mirrored by the theoretical suggestion of an upper threshold that accompanies the lower. Nevertheless, a further implication from the argument that voluntary disadvantage is not unfair, is that the lifestyle choice not to work would rule out many obligations that the state holds towards providing benefits. A number of potential objections to this view, and to the conception of disadvantage as impairment of the will are then discussed.

The thesis concludes with Chapter Nine, in which a summary is provided and in which further closing remarks are made. This will include a reflective account of the thesis, how this thesis has made an original contribution, and raises possible issues for further research and investigation in future.

²⁹ Scanlon, T.M., 2000, p. 5

Chapter Two

The Meaning of ‘Disadvantage’

1. Introduction

Many theories of social justice seem to assume that the term ‘disadvantage’ is unproblematic and universally understood. Yet different approaches to social justice are based upon different conceptions of disadvantage. For example, Rawls, Mill, Scanlon, and Sen each offer solutions to the problem of ‘the disadvantaged’, but do not agree what ‘disadvantaged’ means: they either take disadvantage to be synonymous with ‘the least well-off’, or as a matter of having the least ‘well-being’, or of being subject to a failure to recognise moral responsibilities, or of being the least capable of converting resources into well-being.¹

Wolff and de-Shalit recognise the difficulty that this lack of agreement presents and so deliberately avoid a definition, preferring to suggest a consensus to identify the worst off.² Wolff and de-Shalit’s aim is to offer practical means for agreement on the best policy to address the needs of the worst off. Despite this compromise they conflate the issue of disadvantage with the separate issue of fairness.³ As will be argued shortly, these two concepts are distinguishable and best not conflated.

The concept of disadvantage is fundamental to the conception of social justice, since without a solid understanding of what disadvantage is, we

¹ Rawls, J., 1999, pp. 83-4; Mill, J.S., 1998, pp. 917-926; Scanlon, T., 2000, pp. 155-168; Sen, A., 1995, pp. 39-55

² Wolff, J., and de-Shalit, A., 2009, p. 3

³ Wolff, J., and de-Shalit, A., 2009, p. 4, and pp. 21-24

cannot identify who the disadvantaged are, or identify an appropriate response. In this chapter, the generic concept of disadvantage will first be discussed, as distinct from the evaluation of disadvantage. It will be argued that the conception of disadvantage is normative in two distinct ways. In the first, comparison is made between different conditions, circumstances, or states of affairs to make a ‘factual’ assessment of the relationship between persons. This is the generic conception of disadvantage. In the second, comparisons are again made of relations between persons, but an evaluation is made of the goodness or rightness of those relations. This is the specific conception of social disadvantage by which the idea of fairness is introduced.

2. The generic concept of disadvantage

In this section, the generic conception of disadvantage is first discussed, using the etymology and OED definitions as the starting point. From this discussion, it becomes clear that the generic conception is entirely descriptive. As such it is inadequate to describe social disadvantage since this conception has both descriptive and evaluative components. This prepares the ground for the following section in which the normative nature of disadvantage is discussed, along with the place of fairness and reasonableness in the proper conception of social disadvantage.

Disadvantage is a relational term. It would be nonsense to describe someone or something as disadvantaged without also specifying in relation to what. The ascription of disadvantage can apply to an individual, or a caste,

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race, or class of people. One can be said to face a disadvantage, suffer a disadvantage, put oneself at a disadvantage, or accept disadvantage relative to one person whilst simultaneously claiming an advantage over another. As examples, a member of a lower class or caste can be disadvantaged both as an individual and as a member of that class or caste; one can be economically disadvantaged insofar as one is poor, but advantaged in having physical well-being; or suffer welfare disadvantage in having poor health, but have economic advantage in being wealthy; or the beggar in the west might be considered to be wealthy relative to others in the developing world, and thus be economically disadvantaged and advantaged at the same time, depending upon the context. Such examples describe serious circumstances, yet the term ‘disadvantage’ can also be used trivially to explain a racing handicap, say. The term therefore appears to be used in contrasting and varying ways: sometimes referring to individual challenges, or challenges to whole groups; sometimes one is and is not disadvantaged at the same time; or disadvantaged in one respect but advantaged in another; or describes circumstances of the utmost importance, or circumstances of little importance.

What, then, is meant when one proposes to organise a society to eliminate (or mitigate) disadvantage, or to make arrangements to benefit the most disadvantaged, when disadvantage relates to so many different circumstances? Such proposals are made in the name of social justice: it just seems natural to suppose that the disadvantaged are the poorest, all things considered, and that we should ‘do something about it’. Aside from the justification of the pairing of the terms ‘social’ and ‘justice’, such a proposal is

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dependent upon the identification of disadvantage, and it simply will not do to suggest that they are ‘the least well off’ since this merely begs the question. Yet the term ‘disadvantage’ is used in so many different ways and contexts that it can be difficult to pin down not just who it identifies, but what it means.

Clearly, a stipulative definition will not do either: we are looking for how the term is to be understood in its actual use. Yet the extent and variety of ways in which the term is used may even indicate that different underlying concepts are being applied to each circumstance. Despite this apparent possibility, this would be unlikely to be the case. It seems far more likely that the same underlying concept is being applied, but that it is merely ill-defined. If so, then one would expect a common defining feature: disadvantage must relate to the same ‘something’ that is lacking in each case.

Etymologically, the term ‘disadvantage’ has its roots in the Latin *ab ante* meaning ‘from before’.⁴ This has moved through French ‘*avante*’ to become ‘*avantage*’, and its opposite ‘*disavantage*’. However, the meaning has now changed: whereas the original meaning is naturalistic (stating a natural fact), the new meaning is, using Derek Parfit’s categorisation, “partly normative and partly naturalistic”.⁵ The meaning has moved from a blunt statement of fact of origin to ‘having (and not having) the *property* of being from before’, that is, being in advance or behind. As such, the property invites a further evaluation of better or worseness. Take the examples of damage, or loss: each appear to state a natural fact: one has an injury, or less of something that they had before. This usage remains normative inasmuch as a

⁴ <http://www.oed.com/view/Entry/13605#eid32450009> (Accessed 14th February 2011)

⁵ Parfit, D., 2011b, p. 265

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model of the previous condition is used as a standard for comparison. However, compare this with the term’s usage in which disadvantage is considered as harmful, or bad: a property is now evaluated in which an ‘ought’ statement is implied. A standard of comparison is still present, but now the term’s usage includes an additional evaluation of the goodness or rightness of the disadvantageous circumstances. There are thus two distinct ways in which the term ‘disadvantage’ can be applied and understood. We will return to this distinction in a moment, but first let us look at how the generic conception of disadvantage might be defined.

Although not intended as a philosophical account, the Oxford English Dictionary suggests basic descriptive definitions of disadvantage that might make a useful starting point to our enquiry. Firstly as: “[a]bsence or deprivation of advantage; an unfavourable condition or circumstance”, and secondly as: “[d]etriment, loss, or injury to interest; diminution of or prejudice to credit or reputation”.⁶ In both definitions, the common feature is the interests of the person or persons affected. Although general, the OED definitions do indicate the range of subjects to which the term may be applied. Thus the removal of a privilege might count as a disadvantage to an individual, or the occurrence of rain, say, might be to the disadvantage of those wishing to watch or play a game of cricket.

These are relatively trivial examples of the way in which the term might be applied, however. Of greater interest to this thesis are the more serious applications of the term to describe physical, economic, social, and political

⁶ <http://www.oed.com/view/Entry/53419?rskey=tkmEVu&result=1#> (Accessed 14th February 2011)

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circumstances. In order to count as a disadvantage, at least so far as is relevant to this thesis, the something that is lacking must be valued both by the individuals affected, and by other members of the society. The question of value might therefore vary according to the parameters of intrinsic worth as a vital need, or worth to the individual according to her own conception of the good, or in accordance with other societal norms.

Social disadvantage is at the core of this thesis, yet the OED definitions struggle with these aspects. For example, if disadvantage is the absence or deprivation of advantage, (as the first OED definition asserts) then everyone is advantaged or disadvantaged relative to others to some extent. This might be readily applied to economic circumstances, or other such situations where accurate measurement can be made, but seems wholly unsuited when an evaluation of appropriateness becomes necessary (that is, where an evaluation of the goodness or rightness of a set of circumstances is called for). Add in the difficulty that social and political aspects cover a huge range of topics (culture, background, education, class, ability, various liberties) each of which might need to be given some sort of ordering, and the description of social disadvantage becomes increasingly difficult. Furthermore, since each person might be advantaged in one area whilst disadvantaged in another, then the accurate assessment of disadvantage according to generic criteria becomes unachievable, and any attempt to do so must make arbitrary choices.

Aside from the circularity of defining disadvantage as the opposite of advantage (as indicated in the first OED definition) loss of advantage can

simply restore equality: it would then be confusing to claim that a person is now disadvantaged when in fact they have been brought into line with everyone else. Such a person might still be described as individually disadvantaged in the relative sense to their former condition, but the OED definitions makes no reference to the importance of the relational constraints of disadvantage. However, the OED definition of ‘advantage’ (to which ‘disadvantage’ is the opposite) as “a favouring circumstance; anything which gives one the superiority or tends to improve one's position”, does suggest a relational aspect but without referring to any particular standards, thus the OED versions are devoid of these particular normative implications.⁷ Disadvantage in this sense cannot imply that one ought not to be placed under those conditions.

Using the first definition, physical disadvantage would relate either to the absence of an advantage, or presence of an unfavourable condition. Yet when one considers physical disabilities one does not usually describe those within a species norm as being an ‘advantaged’ group. Moreover, to describe disabled persons as holding an unfavourable condition is also disputable since to do so would rely upon a social model of disability. To apply the second definition would suggest that a physical disability is a loss to that person’s interests. Yet such a conception is vulnerable to accusations of prejudice, since many persons with ‘disabilities’ deny that they are disabilities

⁷ http://www.oed.com/search?searchType=dictionary&q=advantage&_searchBtn=Search
Accessed 11th March 2011

at all. For example, some deaf parents might prefer to have a deaf rather than a ‘normal’ child.⁸ These points will be discussed further in a moment, but might suggest that the first definition is inadequate, at least in this particular application.

To be fair to the OED, it is not aiming to provide a philosophically robust account of disadvantage. It is merely providing definitions that fit the generic conception. It would therefore be unfair to criticise for failing to fulfil an objective that it does not intend to meet. The OED definition is merely used as a starting point in this thesis to show the nature of the problem, and to show that the generic conception does not adequately fit the ways in which the concept is actually used in a social context. If the concept of disadvantage is not clear, then how do we know that we are talking about the same concept in different discussions? Without a clear understanding, we cannot ask the more serious questions of what obligations disadvantage may place on others (if any) or how they might be addressed, or who it is that ought to act. If the generic conception is inadequate to meet the challenge of social justice, what then is the proper conception of disadvantage?

A moment’s consideration reveals that the term ‘disadvantage’ does not relate to the absolute ‘least’ of anything since only the least well-off individual in the world could meet this condition. This is more than a matter of accurate measurement of the circumstances, or of accurate interpersonal comparison. If one were to lump together a number of candidate ‘least well-off’ persons into a set, and call these ‘the disadvantaged’, it would only

⁸ Kahane, G., and Savulescu, J., 2009, p. 10

postpone the problem, for one might still wish to order this group into the more and less disadvantaged. Even consideration of the least advantaged group must address the problem of multiple candidate groups and comparability between different forms of disadvantage.

Yet the poverty-stricken starving person might just as accurately be described as the least well-off as the desperately depressed individual, or the person trapped in a house fire, or the victim of torture. The same would apply to candidate groups. Given that at every moment any number of persons is in desperate circumstances, then the absolute least well-off person or group does not identify anyone at all. The idea of the least well-off individual or group is therefore a fiction. Even where the context is specified, such as in Rawls’s reference to the least well-off representative in a particular society, unless this society is very small indeed, there may still be many such persons that could stake a claim to be the one absolutely disadvantaged.⁹

Rawls recognises this difficulty, remarking that “it seems impossible to avoid a certain arbitrariness in actually identifying the least favoured group”.¹⁰ He explains that he is merely using this fiction as a heuristic device, yet in doing so the concept of disadvantage he uses must also be heuristic.¹¹ Disadvantage now relates to a fictitious ‘least well-off’ group, therefore the absolute level of disadvantage becomes further obscured. Other persons are now compared with an indeterminate condition of disadvantage in order to relate their own circumstances. As this difficulty confirms, and since one cannot say that any individual is disadvantaged without also specifying in

⁹ Rawls, J., 1999, p.83

¹⁰ Rawls, J., 1999, p.84

¹¹ Rawls, J., 2003, p.17

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relation to what, then if that something is indeterminate, the conception of disadvantage remains unclear.

However, to describe a person as being in poverty might suggest that the ‘something’ they lack is a certain level of resources below a particular threshold. It would also be to claim that that threshold represents a level that all persons ought to be able to achieve: it would therefore represent a level of acceptability. Yet there is no clear cut-off point here: the existence of a line between disadvantage and an acceptable level of access to resources appears to be unlikely. Furthermore, disadvantage is also a matter of degree. A person just under a particular threshold can be described as advantaged relative to another person even further below that threshold. Likewise, a person just above that threshold can be considered disadvantaged relative to a person above it. It would therefore appear possible to give an ordinal ordering between different degrees of disadvantage. Yet this would seem to be in tension with the arbitrariness and indeterminateness of any attempt to define a least advantaged person or group. The idea of a threshold would thus appear to be arbitrary so far as the conception of disadvantage is concerned, despite disadvantage being clearly relational. We will return to this point in chapter seven, where it will be shown that this appearance of arbitrariness is mistaken.

It is for these reasons that Wolff and de-Shalit describe disadvantage in general terms: “[b]y designating those who lack access to some goods (for example, those lacking employment) ‘disadvantaged’ we immediately locate

these people in relation to others”.¹² In doing so they recognise that disadvantage is not just about primary goods, but that disadvantage is caused or created by others. Unfortunately, they do not develop this idea to show the connection with fairness (an omission hopefully corrected in this thesis). As an egalitarian project, they take it as read that disadvantage is unfair.¹³ Instead of worrying about identifying the nature of disadvantage, or the difficulties with identifying who they are, they consider disadvantage in broad-brush terms as categorising the least advantaged persons, and cut directly to the practical urgency to address their needs.

In the next section we will examine the two-way normativity of disadvantage. It will be argued that when social relations between persons are concerned, disadvantage has both a generic component and an evaluative component. The generic component discussed so far might identify the ‘natural fact’ of relative positions of individuals when comparisons are made, but then an evaluation is made of the goodness or rightness of that relationship. The tendency to conflate these two aspects (it is suggested) has allowed the separate issue of fairness to become conflated in many accounts of disadvantage (including Wolff and de-Shalit’s). If so, it would be unsurprising that they have chosen to focus upon the practical issues to the detriment of the theoretical underpinnings.

3. The Normative Character of Disadvantage

¹² Wolff, J., and de-Shalit, A., 2009, p. 7

¹³ Wolff, J., and de-Shalit, A., 2009, p. 5

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Whilst the OED definitions provide a reasonable starting point, they do not address all of the relevant features of disadvantage. The previous sections have indicated some of the shortfalls and complexities at issue, and the difficulties that these present to the identification of disadvantage. The reason for these difficulties is that an important component of disadvantage has been missed: the connection with fairness, and as later argued, with the will. Whilst the OED have avoided conflating the issue of fairness with disadvantage (their definitions have no indication of the rightness or goodness of these situations) there are further relevant features of disadvantage that must be included. These turn on the normative nature of the term, inasmuch as disadvantage indicates ‘acceptable’ levels of welfare, resources, or liberty.

Statements that prescribe how things ought to be arranged, or how one ought to act, are normative inasmuch as they relate to a standard that is to be applied or achieved. Those statements that presuppose a conception of the good or the right are also moral statements in that they contain an idea of how things ought to be arranged to make a life go well, or at least better. Such statements are evaluative against the normative standard. It is therefore easy to run a normative statement into an evaluative one, thus conflating an account of a state of affairs into the evaluation of whether this is right or good. The term ‘disadvantage’ lends itself to this error. The conception of disadvantage compares a particular state of affairs with another, yet insofar as ‘disadvantage’ is a negative characterisation, suggests that one is better than the other. Whereas the term ‘disadvantage’ describes a particular relational position, it is the negative characterisation that perhaps leads one to

conflate this description with a notion of unfairness. One can be fairly disadvantaged, or unfairly disadvantaged, but the term is commonly used to suggest that disadvantage is bad in itself.

Take the example of disability, where the ‘disabled’ person does not consider her condition to be disadvantageous: the case in point (raised in the previous section) being the deaf parent who might choose to have a deaf child. This parent would perhaps see the lack of a sense of hearing, not as a problem that resides in the child, but one of social relations and attitudes of others that come into contact with her. The problem is external to the child and not something ‘wrong’ with the child. This example illustrates the two distinct ways in which the normative character of disadvantage is displayed: in one way the deaf person is compared with a species norm model of disability, but then an evaluation is applied to suggest that the person ought not to suffer the condition. Putting to one side the appropriateness of any particular model, let us take it for the sake of the argument that it is possible to identify a ‘correct’ model of disability. The evaluation of the goodness or rightness (whether one ought not to suffer that condition) can then be made by the individual concerned, or by members of the wider community. Although the normative comparison (in the first way) with the model standard is a matter of natural ‘fact’, and as such can be accurate or inaccurate, the normative evaluation (in the second way) is not a matter of accuracy, but of appropriateness. In the first way, the normative comparison would be inaccurate if that comparison suggested that there was a deviation from the standard model (in this case the species norm) when there was not. Even if

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the first normative comparison is ‘factually’ correct, (inasmuch as it judges an accurate correlation) the second normative evaluation could be inappropriate if the model standard is subjective, disputed, or otherwise inaccurate (inconsistent with a social norm). Appropriateness under these conditions is then dependent on the evaluation of the goodness or rightness of the circumstances under assessment.

Disadvantage as a generic concept is thus a separate issue from the assessment of the fairness of the circumstances. Yet whenever relations between persons are analysed, it seems inevitable that the matter of fairness is also brought into the discussion. It is at this point that the notion of fairness slips into the conception of disadvantage. Once the generic conception of disadvantage is applied to the relations between persons, then the conception changes, and becomes normative in the second way. Whereas the generic conception merely compares conditions against a standard, when social relations are introduced there arises a tendency to apply a second standard of goodness or rightness to the conception of disadvantage. The term now relates to *social disadvantage*, not the generic conception.

In our example it can be taken for the sake of the argument that deafness falls outside of the species norm, and that therefore there is no inaccuracy in the first normative assessment. Even so, the evaluation might still be inappropriate in that it misjudges the goodness or rightness of the condition. That such usage might well be inappropriate may be because the individual person is not consulted in relation to the assessment of disadvantage. Since the evaluation of appropriateness can be made both

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externally to the person affected (by the wider community) and by that person herself, any evaluation of disadvantage that did not include the individual concerned has missed an important (perhaps the most important) component of that evaluation. As will be discussed in chapter six, consultation with the individual is essential to the proper evaluation of disadvantage. From the disabled person’s perspective, she might not consider herself disadvantaged, but from the point of view of others, she may well be. The assessment is thus contextually dependent. The term ‘disadvantage’ is not being applied inaccurately in comparing the existing condition with the model condition (this is the generic use of the term), but it is being used inappropriately when an evaluation is made that such a condition is necessarily bad, or unwelcome. Both the disabled person, and the person external to that individual, are using the same generic concept in this case, but assessing the outcome differently: the generic assessment is not disputed, but the evaluation *is* under dispute.

The generic conception of disadvantage says nothing about the rightness or goodness of the circumstances, but the negative associations with the term are often taken to infer that disadvantage cannot be right or good. Notice for example how often the word ‘suffer’ is associated with ‘disadvantage’, suggesting a necessary, or at least clichéd, link. Yet if one voluntarily accepts a disadvantage, for example, by giving a competitor in a race a head start, then it is plausible to say that they are not unfairly disadvantaged. To use the phrase ‘I am putting myself at a disadvantage’ might accurately describe a condition of disadvantage, but it is not neutral in this regard. It still says something about the fairness. Since the disadvantage

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is volunteered, and provided that it is not coerced in some way, this negates any ascription of injustice or unfairness. The very idea of a handicap in horse racing, or golf, depends upon circumstances in which disadvantage is accepted as being right or good in some way. These examples relate to games, however, so it might be objected that social and political relations are not quite the same. Nevertheless, it is suggested that if disadvantage can be so easily distinguished from fairness in these trivial examples, it is very likely that the disadvantage ought to be distinguished from fairness in the more serious circumstances too.

That this is the case is supported by the use of such a phrase as ‘I am putting you at a disadvantage’: this would be to impose an unfair condition unless some reason is given that the subject of that disadvantage would assent to, or at least could not reasonably reject. Such a phrase can be used in social or political contexts, and if the disadvantaged person accepts (or cannot reasonably reject) such an imposition, then the resultant conditions would be fair. As Scanlon would point out, assent is not necessary, but understanding and reasonableness is required.¹⁴ A coerced disadvantage for reasons that the subject and others would reasonably be expected to reject would thus appear to be unfair. On the other hand, an imposed disadvantage to which one might not necessarily assent could sometimes describe a condition whereby involuntary disadvantage is suffered, but not necessarily unfairly.

¹⁴ Scanlon, T., 2000, p. 4 and p. 32

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Take the example of ‘lifeboat etiquette’ and the common expression ‘women and children first’: the man who must wait his turn may not assent to such a restriction, but might not be unfairly disadvantaged. Fairness would depend upon the will of the individual, and the identification of reasonableness, which in turn might vary with the social and cultural norms of the times. This idea was discussed earlier in relation to the two-way normativity of disadvantage, and the possibility of inappropriate evaluation. In the previous example of the deaf person, the point of view of the deaf person was the telling locus for the evaluation of goodness. Yet in the current example the locus of the evaluation need not rest so firmly with the generically disadvantaged person. The man might reject the principle of ‘women and children first’ and express his objections against such a view, but if the cultural norms of the time are overwhelmingly against him, then that individual would be considered as being selfish, or unreasonable, and cannot claim to be unfairly treated. He is disadvantaged by this cultural procedure in virtue of his being male, but this would not be considered unfair even if he were compelled against his will to comply. At the risk of getting ahead of ourselves, this shift of locus for the appropriateness of the evaluation of fairness would also suggest that the will of the disadvantaged individual is wider than the adversely affected person alone.

So far, it has been argued that imposed and coerced social disadvantages to which one might reasonably reject are nearly always unfair, although what counts as reasonable may be culturally dependent. The caveat ‘nearly always’ is used in recognition that it would be reasonable for the

subject of certain imposed or coerced disadvantages to reject them without it being unfair for that reason alone. The imprisonment of offenders is a case in point, indicating that our investigation is still incomplete. It is important to state at this point that this thesis will not be concerned about fair disadvantage, other than as it affects the conception of unfair social disadvantage. The reasons why fair disadvantage must be restricted within these limits will now be explained.

In general terms, it would be an inadequate moral position that claims that it is justifiable to ignore perhaps extreme involuntary hardship. Even those who might be said to deserve their disadvantage, such as the profligate, or reckless, are still entitled to the respect that must be afforded all persons in virtue of their humanity and equal moral standing. To fail to have concern for such persons, at least to a certain minimal level, would be to undermine the dignity and standing that we all share. To suggest that it is just to allow persons to suffer (other than voluntarily) would put such a principle of fairness into the perverse position of protecting the process ahead of what it is supposed to protect, that is, the human being as the subject of justice.

Some final remarks will now be made which will hopefully clarify the relationship between fairness and disadvantage. At the risk of getting ahead of ourselves somewhat, the importance of voluntary choice must be stressed here, and this leads to the notion of will. Recall that a person might voluntarily accept a disadvantage without it thereby becoming unfair. The will of the individual can thus trump the circumstances of disadvantage. Yet when a person's will has been impaired then that person is likely to have been treated

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unfairly. This likelihood will increase if some are able to exercise unimpaired will whilst others are not. However, something is still missing: one’s will might be directed towards ends that are not compatible with mutual societal relationships (for example, the will of a racist). A will that is not compatible with such mutuality could not be accepted as reasonable by all members of society (particularly by those towards whom hatred is directed). Since it would not be reasonable to allow the full exercise of such aims within a society of mutual equals, such wills can be restricted without this amounting to unfair disadvantage. Although the matter of valuable ends will be explored later, at least we can say that the will thus plays a significant role in the determination of the fairness of disadvantage.

The term ‘disadvantage’ then, if it is to be appropriately applied, refers to the circumstances (the lack of welfare, resources, or liberty) plus a ‘consultation’ modifier. This consultation modifier, it is suggested, is the role of the will. The term ‘consultation’ indicates that the person affected by those conditions must be involved in some sort of two way relationship between her own autonomy and the society in which she happens to live. This relationship, through such things as culture, upbringing, religion, and other societal norms, seem to create the experience of will in the individual, and in return the cultural and societal norms are created by the interactions of the person within that society. It is this relationship that determines the normative assessment of reasonableness.

Any person suffering unfair social disadvantage has not been ‘consulted’, that is, they have not volunteered to accept those conditions, and

the requirements of reasonableness have not been met. This builds upon the idea that Derek Parfit calls the ‘*Consent Principle*’: that “It is wrong to treat anyone in any way to which this person could not rationally consent”.¹⁵ Such an individual, in not being consulted, loses control over the way in which her life will go. At best they become merely the passenger carried along in a direction determined by others. At worst they become a target of another’s malice, or the collateral damage of someone else’s will. In either case they are dismissed as an irrelevant moral concern. I will take such treatment to be stipulatively a violation of the principle of equal moral concern that the idea of fairness requires.

It is the conditions that are significant here, even if the individual is responsible in some way for those conditions arising: the person may have chosen to take a risk, but this is not the same as volunteering to accept the conditions (more will be said on this point in chapter six). In not having a say on this imposition, she has not been treated as a moral equal by those bringing about those conditions. As such she has not been treated with the basic Kantian requirement as an end in herself, and thus has not been accorded the necessary consequential requirement of human dignity. It is the criterion of fairness that is modified by the will of the person, therefore without having the opportunity to accept or reject those circumstances, imposed and unreasonable conditions are unfair.

This provides an answer to the question of when disability might be considered unfair: if the ‘sufferer’ has had a decisive say in the assessment of

¹⁵ Parfit, D., 2011a, p. 181

the disability as a disadvantage, then it is not unfair, but where she has no such autonomy, then the condition would be an unfair social disadvantage. This will almost always require a positive acceptance of the circumstances on the part of the affected person, since the remaining members of the community are unable to inform the criterion of reasonableness. For example, a deaf person might accept the condition and deny that it is a disadvantage. For those persons, they have exercised their will over the physical conditions of their disability (they have thus been ‘consulted’) and although it may meet the circumstances of disadvantage it is not an unfair disadvantage. It becomes fair because voluntarily accepted. The normative assessment of the variation from the species norm is made in the first way, but the best person to rule on the appropriateness of the normative assessment of the goodness or rightness of that variation (the normative evaluation in the second way) is the person with the condition.

Nevertheless, there is a danger here that the disabled person might be retrospectively asserting positive acceptance of her condition and confusing this with voluntariness: it might thus be a coping mechanism; a way of claiming control when no such control existed. Take the example of a deaf person refusing to recognise her condition as a disability. Such a person might claim that she would freely have chosen to be deaf, or even prefer it, had she been given the opportunity. The attempt of the deaf person to assert control could then be seen as an apologistic position: it could almost be saying ‘do not feel sorry for me, I like it this way’. Yet the suspicion remains that the person is being disingenuous, particularly if that person has become

deaf in later life rather than being born that way. Alternatively, the assertion of voluntary preference for deafness could be perceived as an aggressive act of defiance to reject outright the concerns of other hearing persons. Nevertheless, these considerations present more of a practical difficulty than a theoretical one. The practical difficulty relates to the assessment of voluntariness, whereas the theoretical requirement for the existence of voluntariness remains unaffected. The test of wholeheartedness might then be applied to voluntariness to ensure that any such acceptance of a condition is warranted. Such a test would also entail consultation. Furthermore, if the evaluation of the goodness or rightness of a set of circumstances can be made both by the individual concerned, and by the wider society in which she lives, then consultation with the individual in isolation is not sufficient. As will be discussed in chapter five (when the nature of the will is discussed) the will of the individual is to be conceived in such a way that it is extended into one's culture and environment. By this understanding of the will, the evaluation of the goodness or rightness of social disadvantage necessarily includes both an individual and societal component. Such a view would insulate the individual somewhat from the misrepresentation of a disadvantage as voluntarily accepted when the individual is only 'putting a brave face' on things, perhaps as an adaptive preference or other such coping mechanism.

4. Conclusion

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‘Disadvantage’ is a normative term, but it is normative in two distinct ways. In the first, it describes certain conditions relative to another set of conditions. This is the generic conception of disadvantage. In the second, these conditions are evaluated either positively or negatively. The evaluation of relative conditions between persons refers to social disadvantage. It is the negative characterisation of disadvantage that causes the problematic conflation with unfairness. It is suggested that fairness requires the treatment of all persons as moral equals. Disadvantage relates to the circumstances, but it is the will of the individual and the idea of reasonableness that connects this with fairness. Unfair social disadvantage thus describes those circumstances whereby one person or persons has relatively less of something compared to others, but only if that person has not been treated as a moral equal in the arrangements that caused that state of affairs to come about. It is the recognition of the unfairness that gives the ‘oughtness’ that something should be done to correct that situation.

In the next chapter the appropriateness of this ‘something should be done’ idea will be discussed. This is the concept of social justice. The ideas of welfare egalitarianism, resource egalitarianism, and libertarianism provide the main positions in this debate. Once the conception of social justice has been introduced, these main positions will be explained as a grounding for the position taken by this thesis. It is suggested that the conception of social disadvantage as the unfair impairment of the will would provide a common ground within which all of these main positions would be compatible.

Chapter Three

Social Justice and Disadvantage

1. Introduction

Social disadvantage, then, refers to the notion of generic disadvantage paired with an evaluation of the goodness or rightness of that situation. This coupling raises a serious challenge: is social disadvantage a proper subject of justice? The first part of this chapter will answer that question in discussing the debate surrounding the concept of social justice and its implications for those disadvantaged within the arrangements of the state. The second part of the chapter will develop the framework of the debate as a three-way argument between welfare egalitarianism, resource egalitarianism, and libertarianism. This will be presented as a literature review of the main positions. Together with the next chapter on capabilities, this will set the grounding for the position on social disadvantage that will be adopted within this thesis.

2. Social Justice

The pairing of the word 'social' with 'justice' suggests that justice has a bearing on the fairness, or rightness, of the arrangements of the state to meet some other concern, such as the flourishing of its citizens. As such social justice is usually associated with the distribution of some good, be it welfare, resources, or liberty, in order to meet a requirement of well-being. Yet the

concept of social justice is disputed, particularly by right-libertarians.¹ For holders of these views, the idea of coupling 'social' with 'justice' is invalid. They assert that justice has nothing to do with social concerns.

For right-libertarians, it is the intervention into the affairs of individuals in the name of justice that is problematic. Libertarians such as Robert Nozick, Friedrich Hayek, and Antony Flew, would invoke the rights of individuals to oppose the argument for social justice. On this view, the role of the state is to protect the interests of its citizens, and to this extent that view is held in common with supporters of social justice. However, for libertarians, these interests are narrowly conceived. They consider it to be in the interests of all citizens that the state does not interfere in private transactions unless this is to secure the liberties to conduct those transactions, or to enforce contracts. This claimed right to non-interference is a moral right, dependant upon the moral arguments of libertarianism, and would remain a moral rights claim until enshrined in the legal apparatus of the (minimal) state. This view will be explored in more detail in a moment, but first let us look at the 'pro' social justice position.

Supporters of social justice (as an appropriate coupling) include John Rawls, Ronald Dworkin, Thomas Scanlon, Martha Nussbaum and Amartya Sen. They agree that the role of the state is to secure the interests of its citizens, but deny that this entails protecting private transactions regardless of the impact upon the least well-off. Interests are now conceived much more widely, and are taken as referring to the well-being of all persons within the

¹ See Flew, A. 1995, pp. 76-93, and Hayek, F., 1976, p. 97

state. Those that agree that the distribution of certain social goods are a proper concern of justice argue that fair treatment imposes responsibility upon the state to protect the interests of the least well-off, and those who cannot protect their own interests. One must also bear in mind that not all libertarians deny the validity of the social justice coupling: 'left-libertarians' such as Hillel Steiner argue that the protection of private transactions would require that the least well-off are also protected, since they have evidently had their entitlement to fair shares violated and would therefore warrant recompense from 'over appropriators'.² This distinction will be discussed further in Section Three.

The argument thus appears to turn on the concept of well-being and interpretations of rights, interests and entitlements. This is not to suggest that well-being, or rights, or interests and entitlements, are master values or foundations for justice. Attention is merely drawn to these points of difference between the major positions. Social justice thus concerns the distribution of the components of well-being between all members of a society, and the arrangements of society to achieve a fair, or right, distribution. However, it must be emphasised that the idea of well-being in this sense is not intended to imply support for a utilitarian position: well-being is to be understood in its widest possible sense to mean how well a person's life is going, regardless of the means that might be used to assess that condition.

For advocates of social justice, the entitlement to fairness from others gives rights to have certain needs fulfilled or protected, be they for resources

² Steiner, H., 1994, p. 270

in the case of Rawls and Dworkin, or welfare in the case of Sen. Even those who would deny the conception of social justice, such as Hayek and Flew, must still protect claimed rights to liberty. Any state founded on the advocated system must therefore implement the means to enforce those rights, or at least make arrangements to ensure compliance. In doing so, they must invoke moral arguments to justify their positions: typically based upon a duty towards others, or a simple assertion that it is the right thing to do. Yet in achieving those arrangements, the status of the moral argument must be elevated to an imperative. It would not be possible to realise the advocated system whilst also allowing others to opt-out. To do so would undermine that state, changing its identity away from the advocated model. Yet, the required elevation of the moral argument to an obligation is to invoke the idea of a moral right, and this too is problematic.

The coupling of the term 'moral' with 'right' suggests that the moral argument alone can provide the necessary force to make a right. Yet moral arguments must remain as 'oughts' unless supported by some form of coercion or imperative condition. The conception of social justice depends on this move from moral argument to the establishment of rights to fair treatment, and would require that the 'is-ought' gap is filled.³ Even the libertarian claim of a right to equal liberty is a moral claim, and is thus faced with the same problem.

There are two positions that can be taken on this problem: either the acceptance or denial that the is-ought gap can be filled. If one accepts that it

³ Hume, D., 2003, p. 334.

can, perhaps through the acceptance of the social framework in which persons must act, then the moral basis upon which the conception of social justice must rest is also secured: morality is as real as the human relationships, reactive attitudes, and interactions in which we cannot but help engage.⁴ On the other hand, if one denies that this gap can be filled then the basis of morality is nothing more than a relativistic social construction. Social justice would then be a variable conception depending upon the society and culture to which the concept is applied. Yet those who deny that the gap can be filled can still accept the conception of disadvantage, but must then regard this as being no more than a culturally dependent view. Nevertheless, and to avoid being side-tracked into this argument, so long as one accepts that morality is real for us (regardless of its foundations), then disadvantage is one amongst many of our moral concerns.

This in turn suggests at least two types of right: those that are supported by coercive force, and those that are supported by an imperative condition. Rights that derive their compulsive force from the threat of coercion tend to be legal rights, whereas rights that derive their force from imperative conditions tend to be moral rights. Then again, certain other relationships such as the rights of a parent to punish their child, perhaps by imposing a curfew or withdrawal of privileges, might also be regarded as coercively enforced moral rights. The form in which rights might take is therefore important to the concept of well-being and social justice.

⁴ Alan Gewirth calls this the 'Principle of Generic Consistency'. See Gewirth, A., 1974, pp. 46-57

Leaving aside for the moment the relationship between rights and duties, it must suffice to say for now that many claim-rights place corresponding duties upon others.⁵ Although this ‘correspondence’ theory is not without dispute, the subtleties of the debate surrounding the nature of rights are beyond the scope of this thesis. Despite these reservations, some discussion will be necessary since the conception of rights is intimately associated with the conception of liberty. It is therefore pointed out that although rights often correspond with duties, this need not always, or necessarily, be the case. As H.L.A. Hart observed, two persons simultaneously finding a bank note in the street can both have a right to pick it up whilst neither has a duty to let the other do so.⁶ Therefore a right might not always correspond with a duty. Even in the reverse direction, the ‘correspondence’ theory might not always hold. Alan White points out that a judge’s duty to pass sentence does not confer a right on the criminal to be punished.⁷ However, in either of these examples it might be suggested that the duty is merely owed elsewhere. Thus the right of either person picking up the banknote corresponds with a duty to hand it in to the police, or the duty of the judge (being owed to the state) corresponds with the state’s right to punish and not towards any right that the criminal might possess. Nevertheless, regardless of these subtleties, where a claimed moral right is asserted it must rely upon the recognition of others that they have a duty to comply with that claim. Without such recognition, the asserted moral claim must fail.

⁵ See Hohfeld, W.N, 1923, pp. 35-65

⁶ Hart, H.L.A., 1955, pp. 179-180

⁷ White, A., 1984, p. 61

Legal rights holders are not vulnerable to the recognition of duty by the person subject to that claim. They can simply point to the authority of the granting institution, and even if the person against whom the claim is made does not recognise the duty or the authority of the institution, they can still be legally forced to comply. Legal rights are therefore considerably more robust than moral rights. Nevertheless, an interesting distinction from moral rights is that many legal rights can be relatively unimportant. As Michael Hartney points out, “there are no unimportant moral duties”, and the concept of social justice is wholly dependent upon these.⁸ Furthermore, even legal rights are underpinned by the moral duty to obey the law, regardless of the moral content of any particular law. Despite the increased motivational force, importance alone does not elevate a moral concern into a moral duty to comply with, or recognise, a claimed right.

There are three ways in which a moral rights claim might acquire the compulsive force necessary for the advocated system of social justice to be implemented. These are the deontological argument (the argument from duty) the appeal to rationality (that it is the right way to behave) and the teleological argument (the promotion of a desired end). Yet each of these arguments merely postpones the justification of compulsion. If it is thought to be a matter of duty that one ought to conduct one’s actions in a certain way, it is not clear how this leads to a substantive enforceable right. Similarly, if it is thought to be rational that one behaves in a certain manner, it is again unclear how this can give the compulsive force of a right. If it is a matter of rational agreement

⁸ Hartney, M., 1991, p. 212

to a hypothetical contract, as John Rawls argues, just because one ought to agree does not give the necessary force to compel. As for the promotion of a desired end, then why should someone's desire force anyone else's behaviour? If one cannot enforce the required arrangement for social justice, that is, one cannot claim a right to do so, then all of these arguments remain insufficient.

This move from an ought to an is, and the justification of the coercive force of a moral duty, is the Achilles' heel of the concept of social justice. Although the libertarian argument must also rely on the move from an ought to an is, it is less vulnerable to the problem of coercion because the consequences of the advocated system (other than the left-libertarian conception) is one of minimal coercion. For the same reason, the system that advocates the greatest extent of coercion would be the most vulnerable to criticism. It is therefore the claimed moral rights in the name of social justice that are especially vulnerable. In particular, it is the distributive aspects of social justice (those that advocate coercive redistribution of goods) that come into conflict between claimed entitlements to goods, and claimed rights to remove and redistribute these goods. It is this perceived weakness that is the pressure point of libertarian arguments against redistribution. Nonetheless, as will be argued, the pressure upon the status of a moral right is misguided. It is founded upon the failure of the libertarian to recognise that they too rely upon the moral claim of equality of liberty. If the moral foundation of other egalitarian conceptions of social justice is inadequate, then the same weakness would also affect the libertarian argument. The reader is asked to

bear in mind the suggestion made in the introduction that a perfectionist view of humanity can provide a suitable moral basis.

Turning now to the libertarian position, in which the pairing of the terms 'social' with 'justice' is disallowed. For libertarians, such as Hayek, Flew and Nozick, rights follow from the conception of self-ownership and consequent individual entitlements to conduct one's affairs without interference from others. As self-owners, persons are also owners of their labour and provided that they only acquire an initial fair share of natural resources, are also entitled to the products of that labour. Any trading that is done between self-owners is then allowed to lead to inequalities since if goods are fairly transferred, then there can be no injustice.⁹ Since distributive justice would require the compulsory removal of some of these goods, the very idea of redistribution, and calling it 'justice' is an anathema to the libertarian: to be forced to contribute towards others would in itself be an injustice.

Hayek regards the term 'social justice' as the product of "primitive thinking".¹⁰ For Hayek, naïve thinkers saw the patterns produced by market forces, and attributed these patterns to some sort of willing agency that ought therefore to be subject to moral rules. It was then a matter of association that collective processes, such as market forces or other joint actions of persons, came to be attributed as fitting subjects for justice. Hayek regards such an account as understandable, but mistaken:

⁹ Nozick, R., 2003, pp. 149-164

¹⁰ Hayek, F., 1976, p. 62

As primitive thinking usually does when first noticing some regular processes, the results of the spontaneous ordering of the market were interpreted as if some thinking being deliberately directed them, or as if particular benefits or harm different persons derived from them were determined by deliberate acts of will, and could therefore be guided by moral rules. This conception of 'social' justice is thus a direct consequence of that anthropomorphism or personification by which naïve thinking tries to account for all self-ordering processes.¹¹

Hayek thus regards the idea of social justice as an abuse of the word justice. He sees justice as the foundation and limitation of all law: as such, it is the safeguard of individual liberty. If justice is about the rights that an individual holds against others, then the idea of social justice is an oxymoron.

Antony Flew upholds Hayek's view that "social justice could not be justice".¹² Flew finds it bizarre that people should be more concerned by inequalities in health and inequalities in wealth than with ill health, or poverty, as absolutes.¹³ Flew looks to Aristotle for support, pointing to his view that justice requires that like cases should be treated alike, not that all should be treated equally.¹⁴ Flew would thus disregard any idea of disadvantage as a concern of justice, since this would be to confuse the conditions of poverty

¹¹ Hayek, F., 1976, pp. 62-3

¹² Flew, A., 1993, p. 1

¹³ Flew, A., 1993, p. 1

¹⁴ Flew, A., 1993, p. 1

with the circumstances by which those conditions came about. For Flew, neither the inequality nor the poverty is a concern of justice, so long as the rules applied to the transactions that led to this state of affairs was just. This only requires that persons are entitled to the holdings that they trade, and that such transactions are voluntarily made.¹⁵

Yet the authority of Aristotle can also point the other way: “by doing the acts that we do in our transactions with other men we become just or unjust”.¹⁶ This would suggest that the outcome of those transactions, and not just the process, *is* a matter of justice. Since the question in dispute relates to the place of justice in the distribution of goods, Aristotle seems to be clearly of the view that both transactions and the outcomes are appropriate subjects. One could thus have an assessment of the justness of a transactional process, an assessment of the justness of the resultant distribution, and an assessment of the justness of the persons involved. As Martha Nussbaum points out “the Aristotelian account insists that the good of a human being is both social and political”.¹⁷ The idea of social justice thus seems entirely consistent with Aristotelianism. Although Flew wants to restrict justice to the transactional aspects alone, he cannot successfully use Aristotle to support his assertion that ‘social’ is not a proper coupling with ‘justice’.

Robert Nozick is a little more comfortable with the pairing, but argues that social justice is not about distribution at all: it is about entitlement. He gives the example of ten Robinson Crusoes, each working alone for several

¹⁵ Flew, A., 1986, pp. 31-40

¹⁶ Aristotle, 1980, p. 29 (NE Book II, Sec.1)

¹⁷ Nussbaum, M., 2007, p. 86

years on separate islands, and asks a rhetorical question: if they simultaneously found radios that allowed them to communicate with each other, and discovered that some lived better than others, would the awareness of the differences now make them a suitable subject of justice?¹⁸ Nozick suggests that any claim of unfairness would be misplaced. Indeed, it would be an injustice if goods that one person has created by his own efforts were taken away to give to someone else who had done nothing to earn them. However, since our discussion here relates only to the conception of social justice, further details of Nozick's argument must wait for a moment, but it would certainly appear that Nozick has a case.

So what is justice? Flew criticises Rawls for assuming that readers will understand what it is, although he asserts that Rawls does not offer any explanation.¹⁹ Flew therefore says that the title of *A Theory of Justice* is misleading because Rawls does not look at justice, but only at one of its subsets.²⁰ In his defence, Rawls does equate justice with fairness, although he does not then go on to explain what he means by fairness.²¹ As a Kantian constructivist, the idea of treating all persons as moral equals (together with the requirement for impartiality that underpins the use of the veil of ignorance) can be taken as the basis for Rawls's conception of fairness.²² This being the case, it is suggested that Flew over-eggs his assertion: fairness is not a subset of justice, it is foundational to justice.

¹⁸ Nozick, R., 2003, pp. 184-187

¹⁹ Flew, A., 1993, p. 2

²⁰ Flew, A., 1995, p. 79; Rawls, J., 1999

²¹ Rawls, J., 1985, pp. 223-251

²² Rawls, J., 1980, p. 515; 1999, pp. 118-123; 1999, pp. 163-166

Although the legitimacy of the terms 'social justice' and 'distributive justice' remain the subject of debate, this appears to be disputed only by those who wish to prioritise liberty. As Amartya Sen points out, these objections rest on a failure of libertarians to recognise that they are themselves egalitarians: but that their libertarianism advocates individual liberty as the good that is to be distributed equally.²³ Social justice to the libertarian can therefore be interpreted as the view that individuals are entitled to equal liberty, and that those persons denied such liberty have been treated unfairly.

The advocacy of equality of liberty is a moral view, just as it is for equality of resources, or equality of welfare. As moral views, they each make a judgement of fairness. Without making the commitment that justice is the same thing as fairness (this argument has not been made) it is reasonable to say that when a person has been treated unfairly, then they have suffered an injustice. Equality of liberty is thus a normative position too: it gives a standard for which liberty is to be applied to all persons, that is, equally, and upholds this position as a good to be pursued. So, if an individual has been denied equality of liberty as a moral equal by another person or persons, then that individual has been treated unjustly. If such an injustice is the consequence of the arrangements of a particular society, then one can say that the person has suffered a social injustice. It will therefore be accepted that 'social' and 'justice' is an appropriate pairing of these two terms. Nonetheless, even if we accept this pairing, it still remains to identify which

²³ Sen, A., 1995, p. 13

aspect (welfare, resources, or liberty) ought to be prioritised, if any, in the description of disadvantage. It is this question to which we turn next.

3. Distribution of What?

It is commonplace within political philosophy, particularly where distributive justice is concerned, to label certain authors as ‘welfarists’, or ‘resource egalitarians’, or ‘libertarians’, or other such term based on their favoured priority. Thus Nussbaum, and Sen (along with the classical utilitarians) are labelled as welfarists, Rawls and Dworkin are labelled as resource egalitarians, and Hayek, Flew and Nozick, are regarded as exemplars of libertarianism. Each label is intended to simplistically identify which of the three aspects is favoured. However, such labels imply that these three aspects are somehow incommensurable, or that the unfavoured aspects are less important, or that prioritising just one aspect will also address inadequacies in the other dimensions.

The use of labels in this way is too simplistic, and does not accurately reflect the views of any of these authors. For example, Nussbaum allows certain freedoms and resource possessions in her list of vital goods; Sen incorporates liberty into terms such as ‘well-being freedom’ and ‘agency freedom’; Rawls includes space for liberty and welfare; and Dworkin allows a compromise of resource distribution to account for bad brute luck, thus incorporating elements of welfare.²⁴ Even libertarians recognise that persons

²⁴ Rawls, J., 1999, p. 54; Dworkin, R., 2000, pp. 73-83; Nussbaum, M., 2001, pp. 223-5; 2011, pp. 33-34; Sen, A., 1995, pp. 49-53

with disabilities, or those in abject poverty, need to be supported although they usually rely on charitable giving or philanthropy as the preferred means of addressing this, rather than as a requirement of justice ('left-libertarians' excepting).²⁵

In the following section (subdivided into three parts) the main positions on distributive justice will be discussed. These 'traditional' positions prioritise either the distribution of welfare, resources, or liberty. The section will be presented as a review of these positions in which it will be shown that, although each view expresses something important about disadvantage, each is ultimately unsatisfactory. They are unsatisfactory because none of these 'monist' views can express social disadvantage in a sufficiently comprehensive way: in prioritising the favoured position they necessarily neglect the other aspects. This would suggest that there is something more fundamental by which disadvantage can be assessed. The subject of welfare will be taken first.

3.1 Distribution of Welfare

Broadly speaking, the term 'welfare' refers to the intrinsically valued aspects of a person's life. These are things that persons might regard as important for their own sake, such as pleasure, satisfaction of preferences, good health, happiness, loving relationships, leisure, living without fear, and such like. This may even include liberty, but the advocate of welfare distribution would typically consider liberty to be a contingent variable, rather than as a

²⁵ Nozick, R., 2003, p. ix, p. 168, and p. 265-8

fundamental component of well-being. These items may be judged by the individual concerned, or by an external (supposedly objective) set of values, or a combination of internal and external judgements on how a person's life is going. Welfare can include some, or all of these components, but may also refer to one aspect to be promoted independently of the others as a means by which to pursue the good life.

The main theory of social justice as the promotion of welfare is utilitarianism. Classical utilitarianism, such as advocated by Jeremy Bentham or J.S. Mill, conceives utility as the maximisation of happiness, but variations are also possible, such as the maximisation of preference satisfaction, or the promotion of rules or acts designed to have that effect.²⁶ All such theories evaluate the good (and the degree of goodness) according to the consequences that follow. Thus utilitarianism is a type of consequentialist theory: an act is good or right if it results in the most benefits for the most persons, that is, utility is a good to be maximised. Nevertheless, difficulties arise when one must adjudicate between extreme benefits for a few, say, or negligible benefit for a large number, given that both situations express the same overall utility increase.

This maximisation principle can be achieved in two distinct ways: one might adopt the principle so as to always act in such a way as to produce the most good, or one might work out a system of rules to be applied with the view that following such a system will produce the most good overall. The two main forms of consequentialism thus depend upon which principle is

²⁶ See Bentham's letter to James Mill clarifying the phrase 'greatest happiness of the greatest number' reprinted in Troyer, J., 2003, p. 92; Mill, J.S., 1998, p. 917

considered to be fundamental: actions, or rule-following. Act-utilitarians claim that the rightness of an act depends upon whether or not it increases utility.²⁷

Rule-utilitarians claim that the rightness of an act depends upon the terms of the rules selected for their utility.²⁸

There is also a third possibility, which incorporates a normative *standard* into the consequentialist approach (this is not to suggest that the previously discussed conceptions were not normative). By this view a standard, or average, or ideal, is used as a comparator for the application of the utilitarian rule. Thus one might act so as to move the maximum number of persons above some standard level of benefit. Dworkin calls such a view the 'objective' conception of welfare.²⁹

Despite these variations, the problem for those least well-off under any utilitarian scheme is that it is less concerned with the individual than it is with the quantification. Thus even severe disadvantages might be allowed to persist so long as sufficient numbers of others are satisfied. Even widespread mild social disadvantage might be offset by extreme happiness for a few. As Rawls puts it "[u]tilitarianism does not take seriously the distinction between persons".³⁰ They are reduced to numbers: mere vehicles upon which a calculation of satisfaction and dissatisfaction is made. There is a moral disconnection between the individual and the system to be applied. The idea of fairness towards an individual that might be suffering from disadvantages is

²⁷ Frey, R.G., 2003, pp. 165-182

²⁸ Hooker, B., 2003, pp. 183-201

²⁹ Dworkin, R., 2000, p. 16

³⁰ Rawls, J., 1999, p. 24

thus divorced from the assessment of fairness as applied to the society as a whole (with fairness assessed in terms of utility).

Whichever principle is chosen, each is assessed according to psychological benefit and the degree to which this is achieved. Ronald Dworkin thus categorises welfare theories as either “success theories”, “conscious state theories”, or “objective conceptions”.³¹ Yet such categorisation does not fit neatly into the ‘act’ or ‘rule’ models of utility. Success in fulfilling preferences, or achieving happiness, might be gained by following either an act or rule consequentialist principle. Likewise conscious state theories might be described in terms of either approach too, although objective conceptions would lend themselves more to rule-consequentialism.

Given that the search here is in regard to the conception of disadvantage, the act/rule distinction is not as helpful in this matter as the distinctions that Dworkin uses. This is because an analysis of disadvantage which is dependent upon the conception of the consequentialist principle by which it was measured would not be analysis of disadvantage at all: it would be an analysis of consequentialism. For example, if disadvantage were measured by a happiness metric, in an act-utilitarian society one could be described as disadvantaged if one had less happiness despite following the utilitarian policy. This must therefore be offset by the greater happiness in others, and the individual’s misfortune is of little concern unless some other act could result in a superior overall position. In a rule-utilitarian society, the individual’s unhappiness would again be of no concern unless a policy rule

³¹ Dworkin, R., 2000, p. 16

had not been followed. In either case justice would not be a matter of individual concern, but a matter of structural adherence. The act/rule distinctions between various forms of welfare theory are more frequently encountered, but do not emphasise the role of the individual quite as well as Dworkin's characterisation. The Dworkinian characterisation will therefore be adopted here.

Success theories recommend that a person has equality of success in fulfilling his preferences, goals and ambitions. Distribution should therefore be carried out until no further transfer can decrease the extent to which people differ in such success. Dworkin further subdivides success theories into i) political preferences (about goods and resource distribution) ii) impersonal preferences (those preferences not directed towards an individual's own life, for example, the preservation of great works of art, or the promotion of scientific achievement) and iii) personal preferences (about the individual's own situation). Equality of success can therefore be expressed in terms of these three preferences.

Conscious state theories hold that distribution should leave people equal in some aspect of their conscious life, such as happiness, pleasure, freedom from pain, and so forth. Dworkin uses the terms 'enjoyment' and 'dissatisfaction' to cover these variants.³² Conscious state theories can also be expressed in the same three forms as success theories regarding the source of enjoyment or dissatisfaction.

³² Dworkin, R., 2000, p. 42

Dworkin only briefly discusses objective conceptions and quickly dismisses these as overly paternalistic, unreliable, and being of questionable objectivity. Dworkin points out that such conceptions judge welfare against some supposedly 'objective' metric, adding that these conceptions of welfare will depend on the availability of knowledge about how others are doing. This raises problems of changing preferences over time, and the 'factual status' of a supposedly objective measure of welfare. Although cultural circumstances will affect a person's internal judgement of their own well-being, these circumstances will also impact upon external (objective) assessment of those welfare components of well-being. Thus any individual will have many of their own preferences, pleasures, leisure requirements and so forth determined by the culture in which they live, or are raised.

The attempt to determine external measures of welfare may also be affected by the cultures of those setting the criteria for welfare. This is not to suggest that there might be any attempt on the part of those who might set such assessment criteria to deliberately disregard objectivity. One cannot stand outside of one's experiences, or outside of one's culture and background. Given that all persons are immersed in their own cultures, it seems inevitable that any attempt at objectivity will itself be pervaded by the assessor's cultural ideals.³³ Furthermore, since many aspects of welfare may be psychological, it seems unlikely, or at least difficult, to convincingly show that a 'pure' objective judgement of welfare is possible.

³³ This objection is often cited by non-liberal groups that oppose such things as the Declaration of Human Rights because they believe them to promote liberal values ahead of their own, particularly Asian values. See Sen, A., 2001, p. 231.

Despite these concerns, Dworkin's dismissal of objective measures is too swift. Although the terms used to describe welfare have limitations and distortions caused by differences in individual expectations, some objective measures might still be employed to gain a *representation* of these attributes. Such measures might include longevity, infant mortality, adult literacy, leisure time, illness, and crime rates. These are measures used by the UN Human Development Index.³⁴ Even though personal objectives may change over time as Dworkin suggests, and taking into account the caveat regarding cultural impact upon welfare judgement criteria, objective measures such as these have remained generally consistent over time and across cultures. These might at least express a core of fairly stable interpersonal indicators of objective welfare.

One form of personal success theory presents a particular problem for welfare egalitarians. This is the well-known "expensive tastes" problem.³⁵ Equality of welfare would require that persons with less welfare than others receive additional resources to compensate, or raise welfare to the same level that others enjoy. Dworkin takes such a view to be committed to doing so regardless of the cause of the shortfall, and regardless of the responsibility of the person suffering that shortfall for any actions that led to it. Thus someone who acquires expensive tastes should receive extra resources, regardless of whether this expensive taste is acquired deliberately or accidentally. If Dworkin is correct, this has the potential to compromise or contradict the views of those who would recommend a principle of equality of

³⁴ Mahbub ul Haq, 1990, pp. 9-16

³⁵ Dworkin, R., 2000, p. 48

welfare, since it seems committed to redistribution from the poor to the wealthy, when the motivations of egalitarianism would prefer the other way around.

Dworkin offers the example of Louis, who would like to cultivate his expensive tastes. He has the following options: a) keep his present resources and do without the tastes he wants to cultivate, b) keep the resources he has, cultivate his expensive taste, but enjoy less overall welfare, or c) expect others to give up some of their share to allow him more resources so that he can have his expensive tastes and the same overall welfare as everyone else. It seems wrong that option c) is permitted because it would require the previously fair shares of everyone else to be reduced.

So why should Louis not be allowed to choose the path that he believes will make his life go better for him? On the other hand, it does seem that deliberately cultivating a taste for plovers' eggs, or fine claret (Dworkin's examples) is a reckless choice that could easily have been avoided, without any penalty for Louis's welfare. If so, then why should other persons be expected to pay for Louis's inconsiderate or irresponsible behaviour? Even if he had not deliberately chosen to acquire his expensive tastes, but just simply had them, Dworkin suggests that the distinction between voluntary choice and natural propensity is not as significant as some might think: rarely are such deliberate choices voluntary "all the way down".³⁶ Assuming that equal overall success is the aim, if a claim for extra resources is to be accepted, it must be because Louis's previous shares were founded on a mistaken assessment of

³⁶ Dworkin, R., 2000, p. 52

his needs. Louis has reflected on his life and recognised that something is lacking. He therefore asks for a readjustment. This view of equality in welfare must therefore discourage people from reflecting on their lives in ways that might leave them dissatisfied.³⁷ Dworkin believes that this is embarrassing for adherents of equality of welfare success because it suggests that it should be founded on a principle of efficiency, rather than the claimed ideal, otherwise those who advocate equality have no option but to compensate for expensive tastes. The consequence of discouragement of experimentation in tastes would then produce a very dull, monotonous and unattractive community.

Dworkin then points to a further difficulty by offering the example of Jude, a person with simple tastes who gets just as much enjoyment from life as others with much larger shares of resources. If Jude becomes interested in a more expensive lifestyle, how can we reasonably refuse? He is not asking for any more than anyone else, yet Jude's taste could be just as expensive. The only way, Dworkin says, that this can be explained is by an appeal to equality of resources:

Louis asks that more than an equal share of social resources be put at the disposal of his life, while Jude asks only that something closer to an equal share be put at the disposal of his. We need the idea of fair shares (in this particular case the idea of an equal share of resources) in order to express the force of this difference.³⁸

³⁷ Dworkin, R., 2000, p. 54

³⁸ Dworkin, R., 2000, p. 58

In summary of Dworkin's argument, he claims that welfare understood as an objective conception can be rejected, even though it has been suggested that this may not be the case. He then concentrates on success theories of welfare, and claims that they too can be rejected because they would be unable to meet the problem of expensive tastes. It will now be shown why this objection is not fatal to welfarist views (although it must be emphasised that it is not intended to advocate welfare conceptions within this thesis).

Dworkin's suggestion that equal success in impersonal preferences is committed to potentially outlandish expenditure does not necessarily follow. Dworkin's statement regarding how he shall understand liberty, that is, in negative terms only, leads him to consider equal opportunity to welfare as simply "equality of welfare under another name".³⁹ His argument is that personal choice, subject to both option and brute luck, is fundamental to questions of distribution, responsibility for choice, and entitlement. Equality of opportunity, then, is about ensuring that bad brute luck is compensated, but not option luck. The attempt to isolate option luck would always be unsuccessful, as the earlier "all the way down" comment suggests.⁴⁰ Dworkin therefore concludes that equality of opportunity is a form of equality of compensation for option luck, and would thus be susceptible to the same problems. However, equality of opportunity only requires that the procedural choice component remains equal, not the outcome. Thus if a person chooses

³⁹ Dworkin, R., 2000, p. 120 defines liberty as negative, the quotation is from p. 286

⁴⁰ Dworkin, R., 2000, p. 52

to expend effort on training to achieve a certain career, and so long as others have also had the same opportunity, one cannot claim compensation for not getting the job without putting in the necessary effort. The choice to train is then an aspect of option luck inasmuch as certain consequences would be expected to follow from that choice.

Dworkin asserts that the welfare egalitarian is committed to compensating those for whom only expensive goods give average welfare, or for whom cheap goods no longer give average welfare. This commitment arises, he suggests, because success theories of welfare are insensitive to personal responsibility and ambition. Yet this commitment only follows when liberty is defined negatively, as Dworkin specifies in *Sovereign Virtue*.⁴¹ By Dworkin's account, Louis is disadvantaged since he is not at liberty to escape his condition: his welfare is thwarted not by his expensive tastes but by the actions of others in preventing him from meeting his 'needs'. However, when liberty is conceived positively, Louis is not disadvantaged at all by his expensive tastes so long as he is as free as everyone else to seek to satisfy his personal tastes. Louis's welfare is only thwarted if he is not prepared to sacrifice other aspects of his life to pursue those tastes (such as foregoing other luxuries, or taking on extra work, or using savings). If he simply cannot afford those expensive tastes, then his lack of liberty is not a welfare issue at all. The welfare egalitarian, in its success variation, can be sufficiently sensitive to personal responsibility simply by ensuring that each person has an equal opportunity for success.

⁴¹ Dworkin, R., 2000, p. 120

For Dworkin, it is the idea of luck that gives the necessary connection between responsibility for one's choices, and the actual distributive pattern. Take Louis's example, before he decides to cultivate his expensive tastes, he has average welfare, and at a low cost to satisfy that level of welfare. At the moment he decides to cultivate his expensive taste, his welfare goes down to below average because he is now dissatisfied, although his costs remain low. What has happened here can now be seen to be the result of option luck, rather than brute bad luck. So long as he has had the same sort of options as everyone else, opportunity, conceived as a component of liberty, is not committed to compensating bad option luck.

Similarly in the case of Jude, before he decided to demand the same resources as everyone else, his welfare was average, but his costs were low. Once he makes the decision that he wants more, he becomes dissatisfied and his welfare falls. Yet this too is now a result of his choice, and therefore constitutive of option luck. Under the revised form of liberty in which it is the process of opportunity which is important and not the outcome, the welfare egalitarian would not be committed to compensation on these grounds alone. Nevertheless, this may still be 'embarrassing' for welfare egalitarians since it would advocate denying Jude a more equal share. This may not be a problem since all that is indicated is that Jude is not entitled to more welfare on the grounds of option luck, but he may nevertheless be entitled to more according some other principle, such as the claimed 'rightness' of the principle of equal welfare, or even the principle of equal concern that Dworkin advocates for

resource egalitarians. Welfare egalitarians need not discourage persons from reflecting on their circumstances.

What might remain embarrassing, on the face of it, is that the person born with expensive tastes would still merit compensation (although this might still be a defensible position). If Louis was now so miserable from being deprived of plovers' eggs and fine claret that he no longer saw his life as worthwhile, he might perhaps become severely depressed or even suicidal. This would suggest that not only is Louis unable to satisfy his expensive tastes, but that his whole life is set on achieving them. This one-dimensional view of a person's life is rather far-fetched: does he have no other interests? Can he not put up with the inability to satisfy this aspect of his life by pursuing other, cheaper interests? If things are that bad from a failure to succeed in a personal preference, then this is so far out of the normal range that it must be considered to be a mental health issue. If he does suffer severe depression, then welfare egalitarians are still committed to help, but not necessarily by satisfying this particular preference.

Nevertheless, the aim here is not to defend welfare egalitarianism, it is merely to point out that Dworkin's objection is not necessarily fatal, and that welfare might therefore still be a valid means of assessing disadvantage. However, we can agree with Flew that it is embarrassing for egalitarians that success theories care more about positional arrangements than suffering, and agree with Dworkin that equality of welfare may have problems in relation to compensating for 'natural' expensive tastes.

Yet Dworkin's turn to the distribution of resources does not exhaust the alternatives: his arguments against welfare do not impact upon a perfectionist reading of humanity. The idea of perfectionism will be discussed further in chapter six, and can accept that the person with expensive tastes could be disadvantaged (in the traditional sense), but not unfairly. Since such tastes do not align with a perfectionist view (they do not contribute towards mutually-dependent self-realisation) they do not warrant compensation. Furthermore, if one accepts that what is important is that people have enough, not that they have the same (as Frankfurt suggests) then Dworkin's attack on welfare egalitarianism simply becomes further support for that position.⁴² Unfortunately for Dworkin, that same Frankfurtian position would reject the resources egalitarianism that he favours (as will be discussed in chapter seven).

We have now described some of the strengths and weaknesses of the welfare view of social justice. It has been suggested that the distribution of welfare does identify some important aspects of social disadvantage, but that it is not sufficiently flexible to answer all of the objections, or encompass all of the relevant features. Let us now examine social justice in the form of the distribution of resources to see if this can do any better.

3.2 Distribution of Resources

The main advocates of resources as the appropriate subject for distributive justice are John Rawls and Ronald Dworkin. Rawls suggests a list of primary

⁴² Frankfurt, H., 1987, p. 21

goods that comprise the resources that he suggests are necessary to define the least advantaged persons. These goods, along with the principles of justice, are chosen by representative persons behind a veil of ignorance about their eventual place in the society.⁴³ The primary goods determine “the various social conditions and all-purpose means that are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good”.⁴⁴ These two moral powers are the capacity for a conception of the good, and a capacity for a sense of justice. The list of primary goods contains all those things necessary for persons to thrive according to their self-determined autonomous choice of the good, that is, in accordance with the development and exercise of will within a framework of the good (so conceived). Rawls’s list in its final form:

- (i) The basic rights and liberties: freedom of thought and liberty of conscience and the rest [...]
- (ii) Freedom of movement and free choice of occupation against a background of diverse opportunities [...]
- (iii) Powers and prerogatives of offices and positions of authority and responsibility.
- (iv) Income and wealth, understood as all-purpose means (having an exchange value) generally needed to achieve a wide range of ends whatever they may be.

⁴³ Rawls, J., 1999, p. 118

⁴⁴ Rawls, J., 2003, p. 57

(v) the social bases of self-respect.⁴⁵

The addition of the social bases of self-respect to the list blurs the distinction between resources and welfare, since self-respect might more readily be considered to be an aspect of welfare rather than a resource. Similarly, the addition of various liberties blurs the distinction between resources and liberty. Only item (iv) directly relates to resources in terms of material things. In fact the first three items refer to liberties, or components of liberty. Even the final item, self-respect, is dependent on the achievement of the first three items, rather than item (iv): it is quite possible that a person can have self-respect without wealth, but it would be much more difficult to achieve self-respect without items (i) to (iii). Rawls's list of primary goods can thus be said to be intrinsically dependent on the realisation of the priority of liberty, and that therefore the proper conception of liberty is a vital concern to the distribution of resources.

Rawls suggests that these primary goods are to be distributed according to two principles of justice.⁴⁶ These principles have been refined somewhat since the first version of *A Theory of Justice*, but the basic implication towards those disadvantaged within the arrangements of the state has remained the same: persons cannot become increasingly wealthy without also ensuring that the least well-off also benefit in the process. Rawls calls this 'the difference principle'. The final form of the two principles of justice are:

⁴⁵ Rawls, J., 2003, pp. 58-59

⁴⁶ Rawls, J., 1999, p. 118

- (a) Each person is to have the same infeasible claim to a fully adequate scheme of equal liberties, which scheme is compatible with the same scheme of liberties for all; and
- (b) Social and economic inequalities are to satisfy two conditions: first they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).⁴⁷

Notice that Rawls requires that the least well-off benefit to the greatest extent possible by the activities of those better off. Here at last is a theory of social justice which puts the socially disadvantaged at the centre, if only those least well-off could be identified, and if only the wills of those individuals affected by such conditions could be better taken into account (a shortcoming that this thesis hopes to address).

We can agree with Rawls that the term 'resources' refers not only to physical materials, such as money, property, and wealth, but must also add knowledge, skills, and access to recreational activities. It can even include such intangibles as education, natural talents, or the availability of assistance that might result from personal friendships or mutual co-operation. What makes all these things resources is that they are necessities to achieve the individual or group's own self-identified ends.

⁴⁷ Rawls, J., 2003, pp. 42-3

Yet these intangibles further blur the distinction between resources and welfare. Take the lack of natural talents, or lack of knowledge, for example: although one's abilities are a resource accessible mainly to oneself (coercion aside), they are wholly under the control of the will of the individual and need not only be seen as means to certain ends. Thus a person with a natural talent for running may take up jogging for the enjoyment of the exercise, without experiencing that talent as a resource to some other end. Likewise, education for its own sake can be considered as a matter of welfare, rather than resources. Thus persons wishing to take non-vocational courses might do so for the pleasure of the experience and the enjoyment of the subject. However, in both situations it seems that individual choice is an important factor in determining whether such a talent, or possession of knowledge, is to be regarded as a resource or welfare issue. This would suggest that the will can have a decisive role upon whether a lack of such intangibles ought to be considered as resource or welfare deficiencies. When we consider the implications for the conception of disadvantage, this would cast doubt on the adequacy of either of these categorisations to fully capture what it means to be disadvantaged.

Furthermore, the exercise of intangible resources for their own sake nearly always provides additional resources to that individual without diminishing the resources available to others. Thus the provision of education for enjoyment can enhance the abilities of the individual in other areas (such as mental concentration, problem solving abilities, organisational skills and so forth) which may then be useful additional resources. Similarly, the enjoyment

of jogging can enhance the individual's stamina, muscle tone, speed, and such like, which may then become additional resources that the individual may draw upon when physical demands are made of them. In either situation the increase in resources might even become indirectly apparent in the basic structure of the society (for example, if the workforce voluntarily took up regular exercise, became fitter and more productive, and suffered less sickness absence as a result). Since such increases in resources would make no direct difference to the least well off, the difference principle would be impossible to apply in these cases (unless a zero is accepted as meeting the 'greatest benefit' requirement).

Perhaps for these reasons Rawls does not specify such other items, although each of these items might be included in the list of primary goods in view of the contribution each makes towards an individual's self-respect. Other intangibles might also be added, such as friendship, or access to leisure, but it would seem odd to only include such things inasmuch as they might contribute towards another individual's ego. Again this would be to consider friendship or leisure as being valuable only instrumentally. Likewise, knowledge could only be considered to be a primary good if it adds to self-respect, choice of occupation, or powers of office. Knowledge that is sought for its own intrinsic value cannot thus be considered as primary, even if it might also contribute towards the individual's two moral powers. The author would therefore agree with Rawls's justificatory criteria for items to include on the list of primary goods, but would add the social and educational

contributors that assist in the development of the individual's two moral powers (even though the difference principle could not be applied).

Let us turn next to Ronald Dworkin, the other main advocate of resources as the appropriate metric for distributive justice. Dworkin suggests that the market place for goods and services must be at the centre of any principle of equality of resources.⁴⁸ Even so, it would not be fair to share resources without regard for each person's preferences, choices, and willingness to work. He therefore suggests an 'envy test' in order to determine fair division across a spectrum of time, choices, abilities, effort and luck: equality is when no one would rather have anyone else's bundle of resources, conceived as a total across this spectrum.⁴⁹

Under equality of welfare, according to Dworkin, people decide what sort of lives they want independently of how much their choices will cost others. Under equality of resources how much people pursue is set against a background of available resources and the effect of choice of lifestyle upon others.⁵⁰ Dworkin proposes a hypothetical auction to mimic the function of a market place, but with a long drawn out process in which all goods, or part lots, are subject to an auction, and in which persons can choose to exchange bundles at any time. The fair distribution has been reached when no one would prefer anyone else's bundle to their own.

To overcome the problem of bad brute luck, Dworkin makes another suggestion: an insurance market to run alongside the auction. This will allow

⁴⁸ Dworkin, R., 2000, p. 66

⁴⁹ Dworkin, R., 2000, p. 67

⁵⁰ Dworkin, R., 2000, p. 69

future consequences of the auction to be assessed. Since some persons will become more skilled at producing goods, some will be better than others as a result of better natural endowments and post-auction fortunes. So when bundles are conceived diachronically, including the effort and sacrifices that the skilled producer may have made, perhaps such a bundle would not be envied. Dworkin suggests that an insurance premium that guaranteed a high level of income (despite lack of talents, or laziness) would be too expensive to be worthwhile, therefore insurance would only be reasonably purchased if the guaranteed level of income approached that which could be reasonably expected, that is, a moderate income. Still, there is a potential conflict between talent and equality:

On the one hand we must, on pain of violating equality, allow the distribution of resources at any particular moment to be (as we might say) ambition sensitive. [It must reflect the choices to work hard, or save, or squander]. But on the other hand, we must not allow the distribution of resources at any moment to be endowment-sensitive, that is, to be affected by differences in ability [given the same ambitions].⁵¹

Can a compromise be reached? Dworkin suggests that taxation can form a suitable stand-in for the hypothetical insurance scheme, suitably weighted so that those on the higher income pay more tax than those on lower incomes.

⁵¹ Dworkin, R., 2000, p. 89

Taxation is both ambition sensitive and appropriately endowment sensitive. Endowment sensitivity is appropriate when it makes a distinction between talents and handicaps. Talents do not simply differ as a matter of degree: we do not say that someone without the skill of Wayne Rooney is therefore handicapped.⁵² Talent and handicaps both emphasise the genetic and luck components of natural endowments, but the relationship between skills and ambitions must also be accommodated in any taxation scheme.

We might ask what level of insurance a person might have bought against not having been born with a certain level of skill, in much the same way as it is commercially possible to insure against a child's being born with a handicap. This is further complicated because a person may be born with a talent that has little prospect for employment, for example, the talent might be as a contortionist, or playing the kazoo. Just knowing that persons will have different talents does not give an accurate account of how much income they may expect to receive from it. Yet it might still be possible to generalise, given sufficient information on the range of talents available, and expected economic value.

Dworkin borrows the 'veil of ignorance' from Rawls, albeit in a gossamer-thin version, to suggest that although people are aware of their talents, they have no way of predicting how valuable such a talent might be to others in the marketplace.⁵³ For Dworkin, this veil is not a device of representation, but is in recognition of how an actual state of affairs might be used to predict a social outcome. Dworkin suggests that if all the relevant

⁵² Dworkin, R., 2000, p. 92

⁵³ Dworkin, R., 2000, p. 94, and Rawls, 1999, p. 118

data, such as tastes, ambitions, attitudes and so forth for each individual, together with information regarding available raw materials and technology, a computer might be able to calculate a projected income structure.⁵⁴ Insurance might then be bought to guard against poverty, paid for from future earnings after the auction.

In many ways, this is similar to placing a bet, but since the chances of not 'winning' are reasonably high (not being a top earner) so will be the cost of the premium, paid in the form of taxation. The argument becomes stronger for those near the bottom of the earning pile, and since those with the lower incomes (or same as or equal to the mean) will be the vast majority, the argument to pay insurance when the outcome is not known (behind Dworkin's own veil of ignorance) will be compelling. Then again, as the actual income drops, so the penalties of losing the bet become less significant, therefore, the lesser the required premium, that is, lower incomes should be taxed at a lesser rate than those at a higher income.

Unfortunately for Dworkin, the distinction between brute luck and option luck is not 'clean' inasmuch as both are blurred by the choices that persons make. If I choose not to buy insurance, and do not suffer bad luck, then I am better off than someone else who did purchase the insurance. If things had gone the other way, then the person buying insurance would have been better off. Therefore my choice has a bearing on the outcome independently of the actual occurrence of bad brute luck. Kasper Lippert-Rasmussen makes a similar observation in relation to two farmers choosing

⁵⁴ Dworkin, R., 2000, p. 94

to insure against the loss of their crops: one chooses to insure against flood, whilst the other against drought.⁵⁵ The actual occurrence of drought would mean that one person's option luck becomes another person's brute bad luck.

Perhaps the most telling objection against the prioritisation of resources, applicable to both Rawls and Dworkin, is that such a focus is misdirected. It prioritises those aspects of life which are merely instrumentally valuable rather than intrinsically valuable. This is the charge levelled by the advocate of welfare conceptions of social justice. Resources are not valuable in themselves: they are only important inasmuch as they give access to the things we actually value. The claim of the welfare egalitarian is therefore that we should focus on those aspects of life that are important, such as happiness or other such valuable constituent of well-being. Even freedom can be framed as being of only instrumental value in this way, but when conceived as a resource, such conceptions are both misdirected and inefficient. As Sen puts it "[t]o judge equality [...] in the space of primary goods amounts to giving priority to the *means* of freedom over any assessment of the *extents* of freedom".⁵⁶ Such a misdirected conception leads to the regard of the pauper and the wealthy as having an equal liberty to sail around the world, when one has only a formal freedom whilst the other also has the effective freedom. We will explore this issue further in chapter four.

In summary of this section, it has been shown that neither Rawls, nor Dworkin, have been able to demonstrate that the prioritisation of resources is

⁵⁵ Lippert-Rasmussen, K., 2001, pp. 557-559

⁵⁶ Sen, A., 1995, p.8

sufficient to produce an adequate account of disadvantage. Indeed, Rawls even admits this problem. Furthermore Rawls's attempts to produce a comprehensive list of primary goods is a compromise: these goods can only be considered to be 'resources' when stretching the meaning of that term. Rawls thus counts aspects that one would normally regard as liberties or welfare within his account of resources. This in itself is a tacit admission that resources alone are inadequate as a metric to describe the situation of the least well-off.

Yet despite Dworkin's intention to favour some form of resources egalitarianism, he is still unable to answer the welfarist's accusation that such resources are only instrumentally valuable. Rawls is less vulnerable to this criticism since he does include welfare elements as primary goods. Nevertheless, both are vulnerable to the accusation of the libertarian that they are more fixated on procedural matters of inequality than the suffering itself. Let us see if the argument for the equal distribution of liberty fares any better.

3.3 Distribution of Liberty

For libertarians, the principle of distributing goods such as property and wealth is to ignore claims to legitimate possession, and assumes that all such goods begin as collectively owned. As Flew argues: "for if they are not, then by what right is this contracting collective to redistribute these goods – and exclusively amongst themselves at that".⁵⁷ In Robert Nozick's example, sports fans willingly pay extra into a separate fund to watch Wilt Chamberlain play

⁵⁷ Flew, A., 1993, p. 3

(Chamberlain was a famous basketball player during the 1960's).⁵⁸ Nozick points out that this will lead to Chamberlain's accumulation of considerable wealth, without anyone else's rights being violated. Nozick then asserts that any attempt by some external body to redistribute Chamberlain's wealth more evenly would be a violation of liberty. If this example is accepted, Nozick suggests, then any imposed pattern of distribution, such as recommended by resource egalitarianism, will be disrupted by liberty. So long as the resources have been accumulated fairly, then no one may object to the distributive pattern that results.

By this view, the role of the state is simply to enforce the conditions for fair exchange and to protect those persons from external threat.⁵⁹ The minimal state does not oblige its members to make provision for the welfare of others, but it does protect the conditions for members to make their own living if they are able to do so. This then is the only justification for the state to govern a society, since anything more will be to infringe individual liberty.

The implications for those suffering social disadvantage are serious. There are no justifications to compel the able-bodied or well-off to distribute any of their resources to the least fortunate so long as they have accumulated their own wealth legitimately. Such a position condemns the disadvantaged to the good will and charity of others. Nevertheless, Nozick does allow some forms of redistribution: he accepts that those goods which have been accumulated unfairly (the possession of goods to which the claimant is not entitled) can be legitimately redistributed. This would cover such illegitimate

⁵⁸ Nozick, R., 2003, p. 160

⁵⁹ Nozick, R., 2003, pp. 10-53

transfers as might result from theft, or coercion. He is not suggesting that an injustice done to some person's distant ancestors can result in compensation being due to any person existing today. This would require too complex an analysis, but he does accept, in principle, that illegal transfer warrants rectification. However, Nozick is unclear as to the justification for the bureaucratic body that would be necessary to monitor and enforce all such private transactions within this 'minimal' state.

It is the question of legitimacy in the case of over-appropriation which has led to a challenge from 'left-libertarians' such as Hillel Steiner. Typically, left-libertarians regard natural resources as held in common. Persons may appropriate only an equal share, and if they appropriate any more, then they owe everyone else compensation, usually paid in some form of redistributive taxation. To be left-libertarian is, to this extent, to accept the idea of self-ownership and to accept that everyone has a right to an equal share of unappropriated natural resources, but it is also to accept the principle of justified redistribution.

In Steiner's view, there are four ways of justifiably owning property: appropriation, production, voluntary transfer, and redress. Of these, only the last two are redistributive. Voluntary transfer is non-mandatory, but redress is usually compulsory and serves to undo unjust transfers. Since appropriators of more than an equal share are also engaging in redistribution, though unjustly, they owe under-appropriators redress. The amount owed is an equal share (or equivalent recompense) to the undeveloped raw materials that they would otherwise have had. Steiner uses an example of twelve acres of land

shared by two persons: then a third comes along, then a fourth, and much later a fifth – but now the land has all been appropriated and developed.⁶⁰

According to Steiner's left-libertarianism, those persons for whom unappropriated land is not available are to receive redress to the value of an equal share of what the undeveloped land would be worth.

Steiner goes further, however, and suggests that people too are part of those natural resources. For Steiner, since all persons have natural rights to self-ownership, they also have ownership of their labour, and the fruits of that labour. So far his position is indistinguishable from Nozick, but Steiner then makes an important development: since "all persons are themselves the products of other persons' labour" they cannot be fully entitled to all of the products of their labour.⁶¹ They must surrender the unencumbered rights to what is produced since one of the resources they are using is the parental germ-line information. Given the Lockean proviso that 'enough and as good' is left for others, and since conceiving children "involves the appropriation of natural resources" then parents owe everyone else a share in the value of those resources.⁶² The redistribution of wealth under a Steinerian left-libertarian scheme is then simply a matter of giving people fair shares of the resources that children represent. Steiner suggests that the widespread global inequalities amount to evidence of unjust over-appropriation and would thus warrant compensation through a 'global fund' differentially paid into by the over appropriators, and tapped into by the under appropriators.⁶³

⁶⁰ Steiner, H., 1994, p. 270

⁶¹ Steiner, H., 1996, p. 141

⁶² Steiner, H., 1996, p. 141

⁶³ Steiner, H., 1994, p.270

Unfortunately, this still leaves Steiner with the problem of what to do about persons with disabilities, particularly the severely disabled. Whilst he can support their getting a fair share, as Sen points out, many disabled persons require extra resources merely to enjoy the same amount of welfare as everyone else.⁶⁴ Yet a doctrine based upon self-ownership cannot endorse giving extra resources to those unfortunates that cannot convert resources into welfare, or are unable to participate in a mutual system of cooperation.

Steiner might use the 'germ-line' argument to justify unequal distribution of material goods in favour of the disabled, but in doing so leaves himself open to a significant problem. Since a healthy person has inherited 'good' genes, these represent appropriated natural resources. The disabled person has not had the opportunity to appropriate 'as good' genes, and therefore the healthy person has appropriated a more than equal share. The disabled person is thus entitled to compensation from the healthier 'over-appropriator'. Yet this is also a matter of degree: if the person is only mildly disabled (short sightedness for example) they would only be entitled to a small amount of compensation (such as a pair of spectacles). On the other hand, as Jonathon Quong argues, if a person's disabilities are so severe that to fully compensate him would require all the resources of the world, then this must inevitably come into conflict with the idea of self-ownership for all others on the planet.⁶⁵ Everyone else would become a trespasser on the severely disabled person's world, and if they cannot move without permission, they cannot be self-owners. Steiner must therefore lose the commitment to self-

⁶⁴ Sen, A., 1995, p. 20

⁶⁵ Quong, J., 2011, pp. 70-72

ownership, or follow Nozick and abandon the severely disabled to charitable giving. Of course he could simply deny that an equal share requires compensation for a person's inability to convert resources into welfare. Yet if he takes the latter route, he must again condemn the severely disabled to relative inequality as compared with the identically placed able-bodied person.

Whereas Dworkin, Rawls, Nussbaum and Sen agree that justice requires that all members of a society benefit from a fair distribution of either resources or welfare, they all differ in the best means for this to be achieved. Their disagreements are thus over procedure, justification, or implementation. Yet all accept that liberty is also an important good in its own right, and must therefore be incorporated somehow into their own respective schema. Conversely, Nozick rejects the idea that the distribution of welfare, or resources, is relevant to justice, but recognises that these dimensions are vital to well-being (although liberty takes indefeasible priority).⁶⁶ Whilst each writer thus recognises the importance of each dimension of well-being, each adopts a position in which their own favoured dimension is fundamental.

Yet what Nozickean libertarians fail to appreciate (as was pointed out earlier) is that they too are egalitarians, but in a different form. No one is to have more than equal entitlements to liberty in virtue of who they are, or what talents they might possess, or what luck they happen to meet, or how satisfied they are, or how many resources they possess. This latter aspect often results in greater freedoms in practice, but the libertarian would still be

⁶⁶ Nozick, R., 2003, p. ix

committed to the view that other than purchasing power, it would be improper for greater wealth to purchase more than one vote in an election, say; or for the fact of greater wealth giving the owner a greater claim than anyone else on acquiring other property; or more freedoms under the law than anyone else.

As a particular species of egalitarianism, it would thus be vulnerable to Frankfurt's challenge. According to Frankfurt, there is nothing intrinsically moral about equality: what matters is that people have enough. If this is so, then the fact of equal entitlements to liberty should be unimportant, other than and inasmuch, as the pursuit of equal liberty ensures that each person has enough. Yet Nozickean libertarians seem to be so 'fetishistically' (to borrow from Frankfurt) concerned with the pursuit of equality of liberty that they overlook the dire straits of others. In denying any responsibilities toward the welfare of others just because they believe that assistance would violate the entitlement to equality of liberty, they confirm Frankfurt's observation. The beggar has an equal liberty to the rich person to buy a yacht, but what he needs is not that particular liberty. He needs enough liberty, enough welfare and enough resources, not equality of all of them, and not equality in one at the expense of another.

In summary, liberty too is inadequate as a distributive principle by which to meet the challenge of social disadvantage. It must either deny that it is a concern of justice, as Nozick asserts, or be faced with the compromise of self-ownership, as Quong points out. Nozick's denial is simply to reject that libertarianism can be considered to be an egalitarian position. Steiner

recognises the needs of those persons disadvantaged by over-appropriators, and accepts the responsibility of left-libertarianism to compensate, but then it appears that liberty is inadequate as an egalitarian principle to meet that challenge.

4. Conclusion

So far, the debate surrounding social justice has been characterised in terms of welfare, resources, and liberty. In each case, it has been demonstrated that the advocated position of each writer turns on the conception of well-being that they choose to prefer. Advocates of welfare egalitarianism conceive of the socially disadvantaged in terms of unhappiness or dissatisfaction, leaving them open to the problem of expensive tastes (as Dworkin accuses) or as detached from the person (as Rawls accuses). Advocates of resource egalitarianism conceive the least advantaged representative as lacking in goods, when in fact such things are only instrumental to what is really important (as Sen accuses). Furthermore, in a scheme in which justice is based upon the idea of social cooperation for mutual benefit, cases of severe disability do not quite fit. Such persons cannot cooperate, and are therefore set aside as too difficult. Advocates of libertarianism either abandon the socially disadvantaged to charitable institutions, or if they accept redistribution, cannot cope with severe disabilities without compromising self-ownership. All three positions struggle with the identification of the least advantaged group.

Then again, each position does identify an important aspect of well-being: an aspect that when lacking can be assessed as a form of social disadvantage. Yet in advocating just a single aspect, and expecting the prioritised aspect to be able to adequately encompass disadvantages in the other aspects, is to ask too much. It is therefore concluded that neither welfare, nor resources, nor liberty is fundamental, and that none of these views are sufficient to account for, or address, social disadvantage. In the next chapter, we will consider an alternative view in which well-being is conceived in terms of a person's capabilities.

Chapter Four

The Capabilities Approach

1. Introduction

One of the most influential alternatives to the ‘traditional’ view of social justice is the ‘capabilities approach’, as developed by Amartya Sen and Martha Nussbaum.¹ This view is based upon what persons are able to be and to do, expressed as ‘functionings’ of the person.² This chapter is more a literature review than a critique, partly because one could not adequately survey the field of social justice without dealing with capabilities, and partly because the capabilities approach is offered as the best practical means by which to assess disadvantage. The conception of disadvantage that is to be offered in chapter six (disadvantage as the impairment of the will) is to be seen as complementary to the capabilities approach inasmuch as it gives additional support for its application. It is suggested that this support is necessary because the capabilities approach assumes an unacknowledged ideal model of human flourishing, and because the will is a necessary but neglected part of that model. In assuming this ideal model of flourishing, it is also observed that the achievement of capabilities has parallels with the idea of self-realisation. It is important to recognise though, that the capabilities approach does not refer to a single view: it refers to a family of views. With this in mind, the views presented by Sen and Nussbaum are described first.

¹ Sen, A., 1995; Nussbaum, M., 2006.

² Sen, A., 1995, p. 6

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The feature lacking from within the capabilities approach, one suggests, is a full recognition of the importance of the will of the individual to the proper conception of disadvantage. Although Sen strongly emphasises the importance of choice and agency freedom within the conception of capabilities, it will be argued that this does not quite cover the point that the will is fundamental and prior to agency freedom.³ Nussbaum also recognises the importance of choice, but does not go as far as Sen (suggesting that the notion of agency freedom adds little to the conception of capability) and thus further distances her view from the one advocated here.⁴ Yet Nussbaum's emphasis upon combined capabilities and human dignity, it is suggested, need a stronger, more personal, foundation than the notion of agency can offer.

The practical application of the capabilities approach as advanced by Jonathan Wolff and Avner de-Shalit is then explored.⁵ Wolff and de-Shalit acknowledge that the existence of uncertainty, risk, and vulnerability can all count as social disadvantages, but because they eschew a theoretical basis in favour of practical recommendations, cannot explain why this should be so. It is suggested that the once the role of the will is recognised within the ideal model of capability, then a reason for including uncertainty, risk, and vulnerability can be provided.

2. The Capabilities Approach

2.1 Overview

³ Sen, A., 1985, pp. 169-221

⁴ Nussbaum, M., 2006, p. 14

⁵ Wolff, J., and De Shalit, A., 2007, p. 36

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The capabilities approach evaluates a person's quality of life or standard of living by asking what it is they are able to be or to do. This is not simply a question of their abilities: it is also a question of opportunities and freedoms to achieve certain 'functionings'. It is important to note the distinction between capability and functioning here: the capability is the person's freedoms and opportunities to live according to their own choices, whereas the functionings are the achievements of that person (her beings and doings). Typical functionings include such things as being well-nourished, or being warm. The corresponding capability to these particular functionings would be the freedom to access good health, achieved through access to an adequate diet, and the freedom to buy warm clothes or heat one's home. In Sen's view, the capabilities approach is based upon a "person's freedom to achieve well-being".⁶ The capability is thus an expression of a person's freedom, whereas a function is the actual achievement of the valued objective of well-being. As Nussbaum puts it "[f]unctionings are beings and doings that are the outgrowths or realizations of capabilities".⁷

Although the capabilities approach is not a comprehensive political theory of social justice, both Sen and Nussbaum are strongly influenced by John Rawls. Aside from the obvious difference that Rawls is offering a resources-based social contract approach, there are other significant differences (notably in relation to the priority of liberty, the exclusion of those outside the normal range in the choice of the two principles of justice, and the

⁶ Sen, A., 1995, p. 49

⁷ Nussbaum, M., 2011, p.25

role of primary goods).⁸ Nevertheless, Sen suggests that the capability approach might even be read as an extension to Rawls, inasmuch as equality of capability might take the place of primary goods within the Rawlsian framework. Nussbaum agrees that the “central capabilities play a role similar to that played by primary goods”.⁹

Nussbaum and Sen present a view of social disadvantage in which the focus is upon the needs of the individual, or rather, those aspects that are necessary for each person as an individual to be able to thrive. This includes such things as food, water, shelter, the ability to be seen in public without shame, and other such aspects of well-being. By focussing on persons as centres of need, it immediately addresses the problem of justice towards the disabled. All persons are viewed as moral equals, but with perhaps unequal needs, rather than as units of production and distribution.

Nussbaum follows Aristotle in isolating those aspects that she sees as essentials for human flourishing. As she explains in *Women and Human Development*, Sen had been working on functionings within the context of economic development prior to her collaboration on the concept. Yet the idea of functionings is a very Aristotelian term.¹⁰ It has parallels with Aristotle’s use of the word *ergon*, to suggest that the good of a human being lay in his purpose or function, that is, to live well or happily.¹¹ Since Nussbaum had been developing an Aristotelian approach to human development there were striking commonalities, and this is what led to their collaboration. Both had arrived at a similar idea but through different pathways. This difference in

⁸ Sen, A., 1995, p.8; 2009, p. 52; Nussbaum, M., 2007, pp. 3-9

⁹ Sen, A., 1995, pp. 8-9; 1999, pp. 74-6; 2009, pp. 299-301; Nussbaum, M., 2001, p. 223

¹⁰ Nussbaum, M., 2006, p. 11

¹¹ Aristotle, 1980, p. 11 (NE, Book 1.7 1097b22 – 1099b20)

origins has also led to differences between the interpretations and implications of their respective approaches.

Sen's approach is intended to provide a suitable 'space' within which comparisons can be made of each person's standard of living.¹² This shows the foundations of his thought in economics. Sen justifies this term by saying that this "spatial analogy, despite its demonstratively Cartesian pretensions, is a useful classificatory device [...] to separate out the choice of focal variables ('the choice of space') from other issues in the assessment of inequality".¹³ Sen thus attempted to show how the least well off are blighted in more ways than just poverty, and was working on ways that this could be evaluated and measured.¹⁴ Whilst Nussbaum agrees that this is important, her focus upon an Aristotelian conception of what it means to have a good life makes this space more personal. She wants to "go beyond the merely comparative", identifying capabilities in terms of threshold levels of functionings that are required for a good life.¹⁵ This approach has led Nussbaum to produce a list of central human capabilities, and the rejection of the priority of liberty in favour of the view that "all the capabilities are equally fundamental".¹⁶ These central capabilities can be regarded as Nussbaum's list of vital needs, each of which has a threshold level of adequacy. Nussbaum suggests that this list defines the basic essentials for a decent human life.¹⁷ That is, central

¹² Sen, A., 1995, p. 2

¹³ Sen, A., 1995, p. 2

¹⁴ Sen, A., 1973: 1985; Dreze, J., and Sen, A., 1989, p. vii

¹⁵ Nussbaum, M., 2006, p. 12

¹⁶ Nussbaum, M., 2006, p. 12; 2011, pp. 33-34

¹⁷ Nussbaum, M., 2001, p. 223

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capabilities “support our powers of practical reason and choice, and have a special importance in making any choice of a way of life possible”.¹⁸

Despite Nussbaum’s assertion that “Sen nowhere uses the idea of a threshold”, his position in this regard is not clear: it may well be the case that Sen is simply non-committal on the possibility. In clarifying what he means by ‘basic capabilities’, Sen explains that the term “was intended to separate out the ability to satisfy certain elementary and crucially important functionings up to certain levels”.¹⁹ Such a comment, admittedly in a footnote, would suggest acceptance of some sort of threshold. That Sen is non-committal on the possibility of a threshold would be consistent with his later views of capability as a *Nyaya* approach: that it must be sufficiently flexible as a concept to accommodate a plurality of conceptions of realised justice.²⁰

Included on Nussbaum’s list of central capabilities are such things as life, health, bodily integrity, being able to use one’s senses, emotions, imagination and thought, and control over one’s political and material environment, amongst other things. Meeting the requirements of such a list will be necessary for the achievement of an acceptable quality of life. Since each of these elements must be met up to the point necessary to achieve acceptability, Nussbaum’s approach is sufficientarian. The precise point of sufficiency is variable, depending upon the specific item. Thus the threshold for meeting the first item on her list, life, is absolute, but the threshold for meeting the second item, bodily health, depends upon an assessment of

¹⁸ Nussbaum, M., 2001, p. 223

¹⁹ Sen, A., 1995, p. 45, n. 19

²⁰ Sen, A., 2009, pp. 295-7; pp. 392-9

adequacy, and this will depend upon meeting that (less than absolute) threshold.

Sen and Nussbaum both point out and reject the common view of disadvantage as poverty, which concentrates on the quantity of resources that persons may or may not possess.²¹ Regardless of the differences between their approaches, there is agreement that to assess poverty in terms of income, wealth, Gross Domestic Product, or Gross National Product is to focus on the wrong arena: at least insofar as poverty affects individuals. Such approaches may be sufficient for the purposes of economists (in that they allow the analysis of patterns at the macro level) but when one analyses what these measures mean to individuals, they are clearly inadequate. As Sen points out, the focus upon resources alone is to confuse means with ends. Whilst resources might be thought to improve the circumstances for persons, they are only instrumental: it is only when resources are converted into something of intrinsic value that circumstances are improved. The something of value is typically related to well-being: those aspects described as 'beings' and 'doings'.²² These beings and doings mark the point at which resources and liberties are converted into well-being.

However, Sen does not mean to suggest that well-being is to be directly related to the achievement of functionings. Rather, it is 'well-being freedom' that is important here.²³ This distinction is important to Sen's

²¹ Sen, A., 1987, pp. 1-51; 1995, p. 102; 2001, p. 20; 2004, p. 315; Nussbaum, M., 2001, p. 212; 2006, pp. 1-106; 2007, p. 155

²² Sen, A., 1985, p. 8

²³ In a reply to R. Sugden and L.W. Sumner, Sen (2006, p. 91) accuses these authors of misrepresenting his views by failing to recognise the importance of this distinction.

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emphasis on agency and individual freedom.²⁴ Unlike Nussbaum, Sen recognises an elevated place for liberty within his version of the capabilities approach (Nussbaum accepts that liberty is important but holds that all capabilities, including liberty “are equally fundamental”).²⁵ Even so, to concentrate on well-being alone would be to treat persons as passive recipients of welfare or resources, when what is important is to increase the available freedoms to achieve well-being in accordance with their own value sets. Thus a fasting monk may choose to forego food, although he may still have the freedom to choose to do otherwise. A simplistic well-being-as-functionings view would misinterpret the importance of the monk’s agency and might suggest that he ought to be provided with food. Yet such a provision might even be a torment to the monk. Well-being is thus related to capability only inasmuch as it expresses a freedom to achieve functionings and expresses the achievements that result from a realisation of these functionings. Sen’s emphasis on agency recognises that the will of the individual is an important aspect of capability, although he shies away from using that term.

The capabilities approach is not just about converting resources into well-being freedom, or agency freedom. If the objective of the approach was to simply raise the level of welfare of the least well-off by allocating sufficient resources, then it would be vulnerable to Dworkin’s objection that this might be unrealistically expensive.²⁶ Take the example of a severely disabled person in a society with limited resources. Addressing her needs might

²⁴ Sen, A., 1995, pp. 56-62

²⁵ Nussbaum, M., 2006, p. 12

²⁶ Dworkin, R., 2000, p. 48 and p. 59

require enormous wealth to bring her up to a similar level of functioning as the average person. If this is wealth that the society simply does not have, then it may be expensive in more than just resources: it would require the lessening of everyone else's quality of life in order to achieve that parity. By default, such a requirement would collapse into the lowest amount of equal welfare. This is the well-known 'levelling down' objection that will be discussed further in chapter seven.

Sen emphasises that the need to consider all aspects would rule out excessive sacrifices of some in favour of the benefits to others: "it is not credible that a person can morally evaluate his or her actions without taking note of their effects on the well-being and agency aspects of others".²⁷ This would require a moral evaluation of both the disabled recipient of benefit, and the impact upon the wider community from whom sacrifices are required. Such an evaluative process would insulate Sen somewhat from Dworkin's 'expensive tastes' problem. Yet where the line is to be drawn between the pay-off for a few and the cost to the others is not clear. Neither is the basis upon which a determination of excessive sacrifice is to be made. Again, this would point to the need for further support, perhaps from some form of list of basic requirements, as Nussbaum advocates, rather than the vague notion of self-evaluated agency freedom and generalised development indicators that Sen must rely upon. Yet even a list of basic requirements would be arbitrary without further justificatory support. Alternatively, one could point to the achievement of capabilities as an aspect of self-realisation in which mutual

²⁷ Sen, A., 1985, p. 216

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support of others is a central component. This alternative will be discussed further in chapter six.

As Nussbaum points out, the capability approach operates in a number of spaces, not just welfare.²⁸ Although Sen is less specific here, he defines capabilities in terms of freedoms to pursue functionings, and specifically includes resources as a means to achieve functionings.²⁹ Welfare, resources and liberty are thus all encompassed within the conception of capability. As such, the availability of resources, the consequences to others, and efficiency constraints are also considerations. Furthermore, Sen emphasises that equality in one space may require the sacrifice of equality along another, and that individual diversity may justify specific variations in benefits. Capability transcends the spaces of welfare, resources, and liberty by recognising and building upon this diversity: “ignoring the interpersonal variations can, in fact, be deeply inequalitarian, in hiding the fact that equal consideration for all may demand very unequal treatment in favour of the disadvantaged”.³⁰

In his book *Development as Freedom*, Sen advises policy makers to aim at increasing the freedoms of people in poorer nations as a means to allow them to develop their own well-being, that is, to promote their agency freedom.³¹ The “expansion of freedom is viewed as both (1) the *primary end* and (2) the *principal means* of development”.³² He points out that measures directed at raising personal freedoms, such as education, have always tended empirically to promote such things as longevity, reduce reproductive rates,

²⁸ Nussbaum, M., 2001, p. 222

²⁹ Sen, A., 1995, p. 37

³⁰ Sen, A., 1995, p. 1

³¹ Sen, A., 2001, p. 289-298

³² Sen, A., 2001, p. 36

and create more sustainable and prosperous communities.³³ In contrast, measures to compel such things as reduced reproductive rates have not achieved anything like the success that has been achieved by educating women, in particular, in these poorer nations. Sen applauds democracy *because* that system encourages agency freedoms.³⁴

Whilst he does not commit himself to utilitarianism (he even tries to distance himself from the suggestion) this does suggest that he has in mind a conception of the human good to be maximised.³⁵ To this extent, Sen is an advocate of welfare prioritisation. Nevertheless in his later work, *The Idea of Justice*, he admits that this may be only part of the answer.³⁶ As an illustration of the efficacy of freedom in safeguarding the health of a nation, Sen points out that “no famine has ever taken place in the history of the world in a functioning democracy”.³⁷ This is so even in the poorest nations. He argues that this is because a citizenry that has the *effective power* (agency freedom) to remove from office those in positions of authority ensures that those so authorised make swift and effective measures to mitigate any forecasted shortages.³⁸

Whilst famine relief is just one area where development as freedom is claimed by Sen to be the best long-term solution, it is also important to remember that it is not always the best solution to treat persons equally. Recall Sen’s point in regard to individual diversity: if equal bundles of resources are given to two people, they need not be converted equally into

³³ Sen, A., 2001, p. 198-9

³⁴ Sen, A., 1985, p. 216

³⁵ Sen, A., 1985, p. 203

³⁶ Sen, A., 2009, p. 20

³⁷ Sen, A., 2001, p. 16

³⁸ Sen, A., 1985, p. 208

well-being.³⁹ Thus if it is decided to distribute identically sized bowls of rice as part of a famine-relief strategy without taking into consideration the individual circumstances of each person, it may not result in the equal satisfaction of everyone's needs. Some individuals may have more, or less, efficient metabolisms; nursing mothers may need extra food; small persons will need less food than tall persons.⁴⁰ Bundles of resources are merely means to well-being, and are not constitutive of well-being, thus equal distribution of food will not result in equal distribution of outcome. If well-being represents functioning, the beings and doings of an individual, then capability is the freedom to pursue well-being, and represents the various combinations of functionings that a person can achieve. Yet the very idea of well-being, and the freedom to achieve well-being are both subject to the presumption of an ideal set of capabilities for the human condition. Sen is aware of this relationship, and states that "it may simply be 'right' that individuals should have substantial well-being freedom".⁴¹

In summary of this section, the capabilities approach has been characterised as a means of evaluating social justice by looking to what it is that persons are able to do or to be. It is about the freedoms that persons have to achieve these functionings. A person's well-being is thus a matter of meeting a set of recognizably valuable capabilities. This, then, raises questions about how these valuable capabilities are identified. It is suggested that Sen's comment regarding the 'rightness' of well-being freedom gives a clue to the missing support that the ideal model of the capabilities approach

³⁹ Sen, A., 1995, p. 148

⁴⁰ Sen, A., 1985, p. 198

⁴¹ Sen, A., 1995, p. 40

requires: the conception of rightness (along with the idea that freedom is *inter alia* good) suggests a form of human perfectionism. It is this issue we turn to next.

2.2 *The Assumption of an Ideal Model*

Regardless of whether Sen or Nussbaum's version of the capabilities approach is preferred, it is important to emphasise at this point that both depend upon an underlying ideal conception for humanity. The very idea of 'functioning' which "gives the notion of capabilities its end point" asserts a model conception of well-being, and thus what is best for human flourishing.⁴² One falls short in well-being when one falls short of the ideal model, that is, one cannot achieve the same capabilities (as opportunities to realise functionings) as other persons that do meet the ideal model conditions.

Although Nussbaum recognises this claim, she denies that the capabilities approach might invoke an ideal conception of humanity.⁴³ Nussbaum asserts that the "Capabilities Approach is not a theory of what human nature is, and it does not read norms off from innate human nature".⁴⁴ Yet Nussbaum's Aristotelian beginnings clearly place her capabilities approach upon an ideal of human flourishing. However, Nussbaum goes on to say that the capabilities approach "is evaluative and ethical from the start: it asks, among the many things that human beings might develop the capacity to do, which ones are the really valuable ones".⁴⁵ Such an evaluation requires a standard by which to make comparison and ethical judgement. Nussbaum

⁴² Nussbaum, M., 2011, p. 25

⁴³ Nussbaum, M., 2011, p. 23

⁴⁴ Nussbaum, M., 2011, p. 28

⁴⁵ Nussbaum, M., 2011, p. 28

readily points out that “some capabilities are trivial, and some are even bad” but does not explain how a moral judgement can be made as to which capabilities are bad ones without holding some background notion of ideal, good, or right capabilities.⁴⁶ The use of a list of central capabilities, even though open to alteration, is itself an attempt to formalise some sort of ideal. I suggest that the standard by which human flourishing is judged amounts to an ideal model of capability. Despite her earlier denial, Nussbaum does admit that the capabilities approach “is not ideal in the sense of being unworldly or utopian”, thus implying that it might be ideal in a more practical way. However, in setting the question to one side “for future discussion”, Nussbaum makes a tacit recognition that the model exists.⁴⁷

Sen’s distinction between well-being freedom and agency freedom is a significant point of difference from Nussbaum. Well-being achievement is the outcome for persons in accordance with their realised capabilities, whereas agency achievement refers to the chosen options made under conditions of agency freedom. Agency freedom “refers to what the person is free to do and achieve in pursuit of whatever goals and values he or she regards as important”.⁴⁸ It is thus an expression of a person’s freedom to determine goals according to her own value system. This distinction is an important aspect of Sen’s ideal model, albeit one that is dismissed by Nussbaum as unnecessary. Nussbaum’s reasoning is that this distinction adds little that cannot be “captured as aspects of the capability/function distinction”.⁴⁹ Furthermore, Sen’s persistence with the terminology of well-being worries Nussbaum: the

⁴⁶ Nussbaum, M., 2011, p. 67

⁴⁷ Nussbaum, M., 2011, p. 76

⁴⁸ Sen, 2006, p. 91

⁴⁹ Nussbaum, M., 2006, p. 14

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term is often associated with utilitarianism, and she would “prefer to disassociate herself more strongly” from that tradition.⁵⁰ In losing the distinction between well-being and agency, together with Nussbaum’s assertion that liberty does not warrant prioritisation over other capabilities, she further distances herself from the idea that the will of the individual might be central to the conception of disadvantage.

In addition to well-being freedom and agency freedom, Sen identifies two other categories of interest here: well-being achievement, and agency achievement.⁵¹ Each of these is of interest because they frame Sen’s ideal model of human flourishing, and because (as will be shown) such a model requires an underpinning justifying principle in order to avoid circularity. In Sen’s case, such a principle could be one of utility (although he is non-committal in this regard). However, it is suggested that perfectionism might provide a better basis, especially since Nussbaum so forcefully rejects utilitarianism.

These distinctions together express the idea that human flourishing requires a self-determined choice, and this, I suggest, would be better captured in terms of the will of the person: it is not the agent as an objective conception who has well-being, or freedom, or achievement, it is the very personal circumstances of the individual. It is the idea of agency freedom (but only when considered as the exercise of will) that rules out choice under conditions of coercion or threat from counting towards the achievement of capability. We will return to the implications of this shortly, when the

⁵⁰ Nussbaum, M., 2006, p. 14

⁵¹ Sen, A., 1985, p. 203; 1995, pp. 56-62; 2006, p. 91

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relationship between capability and disadvantage is discussed. Yet the very possibility of self-determined choice depends upon the notion of personal freedom as a constitutive part of Sen's ideal model of well-being, and thus for the ideal human capability. Indeed, Sen emphasises that "[t]he well-being aspect of a person must be seen in terms of freedom as well as actual achievement".⁵²

It might be thought that to rely on that person's own value system would suggest that an external metric of agency freedom would not be appropriate, but this is not so. As an illustration of the problem, consider the effect upon Sen's own example of adaptive preference: a member of a lower Hindu caste might be described as having equivalent agency freedom as a Hindu of higher caste, even though the higher caste member has significantly greater freedoms and opportunities. The member of the lower caste may consider herself to only be due a limited range of freedoms and thus accept that limitation. Sen's concept of agency freedom, relying as it does on self-evaluation, would appear committed to the acceptance of both situations as equivalent. Yet agency freedom is just one example of capability, and although this particular capability is introspective, it must be applied in concert with other aspects of capability such as well-being achievement and agency achievement. An external assessment of these aspects is therefore both appropriate and necessary (such as through the application of the Human Development Indices).⁵³ We will return to the idea of self-evaluation shortly,

⁵² Sen, A., 1985, p. 203

⁵³ Mahbub ul Haq, 1990, p.123

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as it has further implications when Sen's view of disadvantage and freedom are discussed.

If well-being is taken in its most general sense of expressing how well a person's life is going for them, framing such a view in terms of capability has two distinct aspects: firstly, in the evaluation of capabilities that the person has achieved, or can achieve, and secondly, in the underlying belief that well-being consists in holding the freedom to achieve functionings, that is, capability. The ideal model of human flourishing (well-being) is thus framed as freedom to achieve functionings. However, It would then appear that 'well-being achievement' is somewhat circular. Replacing the term 'well-being' within this phrase would produce the idea that capability (the set of freedoms to achieve functionings) is simply the achievement of the freedom to achieve functionings. As Nussbaum has already asserted, such a view would appear to add nothing that the conception of capability has not already captured. Sen denies such circularity, suggesting that this merely "force[s] us to see these concepts as mutually dependent".⁵⁴ Unless some form of independent support can be given for the relationship between well-being and capability, then the charge of circularity would appear to stick.

Without explicitly recognising that such support is necessary, Sen does point to the role of freedom as a constitutive part of his ideal model of human flourishing: "the good life is inter alia also a life of freedom".⁵⁵ This would suggest that well-being is simply the attainment of an 'acceptable' level of capability because the freedom to achieve functionings is constitutive of a

⁵⁴ Sen, A., 1985, p. 202

⁵⁵ Sen, A., 1985, p. 202

good life. As we have already seen, such a view is also supported by Sen's implied acceptance of thresholds (as his "up to certain levels" comment suggests).⁵⁶ Nussbaum's sufficientarian approach would have no difficulty in accepting this point in her version of the ideal model of human flourishing.

Nevertheless, once the idea of freedom to achieve functionings is taken as an objective (since constitutive of the good life), then the utilitarian language of maximisation of capability might gain a foothold. This is clearly a worry for Nussbaum, but Sen is less concerned and explicitly advocates the maximisation of capability. This is not to suggest that Sen's capabilities approach is utilitarian, although it might be framed in that way. It is merely to suggest that the approach needs further support to justify its moral stance. If not founded upon the idea of utility, Sen must either give an account of why agency freedom and well-being freedom are goods to be promoted (not in terms of capabilities or functionings), or provide some other network of supporting conceptions (such as Nussbaum's list). Simply suggesting that these 'goods' are necessary for human flourishing would either invoke circularity or acknowledge the existence of the ideal model. Once an ideal model is suggested, then this would need its own independent justification. Even broadening the support with a foundational network would still suggest a common set of perfect or ideal human qualities to be promoted or achieved.

So, to draw this section together, it has been asserted that the capabilities approach depends upon an ideal model of human flourishing. Yet since the conception of capabilities is about freedoms to achieve functionings, this ideal model is not about species norms. This model is about self-

⁵⁶ Sen, A., 1995, p. 45, n. 19

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determined choices to achieve well-being, and this notion of well-being is in turn dependent on the freedom to achieve functionings (conceived as capabilities). It is now suggested that such an account has remarkable parallels with the notion of self-realisation: an idea which formed the backbone of the British Idealists in the nineteenth century.⁵⁷ This should not be surprising. Nussbaum admits that “[h]istorically, the approach is influenced by philosophical views that focus on human flourishing or self-realization”.⁵⁸ Briefly, the idea of self-realisation conceives the ideal person as striving towards the achievement of perfection (or in the language of capabilities, well-being) through a process of self-determined choices. Typically, the achievement of self-realisation by this account would allow the person to approach an ideal of perfect health, honesty, trustworthiness, caring for others, courageousness and so forth, that is, to achieve all of the ideal qualities, functionings, and capabilities of the perfect human being. The idea of self-realisation will be discussed further in chapter five, but for now it is also pointed out that such a conception places the will (and thus freedom to achieve functionings) at the centre.

However, as a conception of social justice, capability should deal with the wider society and not just the achievement of perfection for individuals. As Nussbaum points out, the important focus of social justice is rightly upon the lives of people, not upon wealth, productivity, or other such metrics.⁵⁹ Governments must therefore focus upon meeting the needs of its people, and not rely upon such abstract measurements of ‘development’. If the capability

⁵⁷ Bradley, F.H., 1962, p. 67; Green, T.H., PE Sec. 178; Carter, M., 2003, p. 50

⁵⁸ Nussbaum, M., 2011, p. 23

⁵⁹ Nussbaum, M., 2011, pp. 12-16

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approach is to successfully meet this challenge it must be able to identify those whose lives are not going well. In the next subsection we will consider how the capabilities approach might identify those disadvantaged persons.

2.3 Capability and Disadvantage

There is an assertion within the capabilities approach that one ought not to be denied any of the central capabilities (Nussbaum's view), or at least must achieve those capabilities that allow a decent standard of living (Sen's view). These entitlements to capabilities are in virtue of our status as human beings (Nussbaum would extend this notion to some animals too). Where one does not meet these 'ideal model' conditions, one has been treated unjustly, that is, unfairly. Aside from the difficulties with the justification of the assumption of unfairness, this gives rise to difficulties with the notion of agency, and thus with the place of the will within capability. In this section, the relationship between these terms will be described, starting with the conception of disadvantage as capability failure.

For Sen and Nussbaum, differences in their derivation of the capabilities approach have significant implications for the conception of disadvantage. Sen's foundations in economics lead him away from a personal conception of disadvantage in favour of comparative assessment. This leaves him open to accusations of vagueness in identifying the least well-off persons: such persons lacking in capability or functionings must still be compared with others, who may also lack different capabilities or functionings, thus making it difficult to identify who is the least well-off. Sen's lack of discussion in regard to the possibility of a threshold merely adds weight to this accusation. In

contrast, Nussbaum's Aristotelian beginnings look to the person, and the virtues and attributes that are necessary for a good life: this has led her towards the compilation of a list, thus opening the way for accusations of arbitrariness in identifying the least well-off, or acceptance of an underlying ideal model by which comparisons are made (with the consequent need to justify the application of that model).

Although Nussbaum sees disadvantage as a failure to meet any of the central capabilities, Sen sees the possibility of disadvantage to be described as a failure of functionings and/or capability. This is because "in evaluating well being, the value objects are the functionings and capabilities".⁶⁰ Sen also states that "even an exact 'tie' between two persons in achieved functionings may still hide significant differences between the advantages of the respective persons which could make us understand that one person may be really much more 'disadvantaged' than the other".⁶¹

There is however, a problem with disadvantage conceived as functionings failure: if functioning failure alone is sufficient to describe social disadvantage, then it must struggle with cases in which voluntarily choices are made to accept those failures. As an example, in choosing to fast, one has exercised will (Sen would prefer 'agency'), but the person might still be hungry and lack nutrition. To that extent she does not hold the necessary functionings, but one would not want to describe her as suffering a disadvantage. As Nussbaum points out "problems of this type are avoided by

⁶⁰ Sen, A., 1995, p. 46

⁶¹ Sen, A., 2009, pp. 236-7

making capability, and not functioning, the appropriate political goal”.⁶²

Nussbaum suggests that the high value that the capabilities approach places on choice would allow the individual to evaluate that position, and this choice and evaluation (the exercise of practical reason) is itself a central capability. One might thus have a shortage in a particular functioning but an increase in central capability. Since the person possesses the central capability, the functioning failure would therefore not amount to a disadvantage. In contrast, the term ‘disadvantage’ for Nussbaum refers to a failure to meet the threshold for any particular central human capability (subject to the caveat of overlapping consensus on what constitutes an adequate threshold), and not a failure of a particular functioning. By this view, differences above the threshold of capability would not amount to disadvantage.

Unfortunately, taking this position is also problematic. Capability failure alone might also be insufficient to describe disadvantage. As we have just seen, a person suffering a failure to achieve a functioning might still have the capability achievement without that person being disadvantaged. However, there are also circumstances whereby a person meets the capability, but would still count as being disadvantaged. For example, a person might achieve the capability of good health with a dour diet of water, boiled rice and vitamin supplements, but one would still want to describe her as disadvantaged in comparison with an equally healthy neighbour drinking fine claret and eating plover’s eggs. Both have the same capability (the opportunity for good health) but one has greater freedom than the other. Yet the former may still meet a threshold for nourishment. As another example,

⁶² Nussbaum, M., 2011, p. 107

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take Nussbaum's ninth central capability, play: "[b]eing able to laugh, to play, to enjoy recreational activities".⁶³ A child in Soweto, say, can meet this capability up to the threshold (and therefore not count as being disadvantaged) with a primitive toy car made from discarded cola cans and coat hangers. The child's family cannot afford the sophisticated toys that children enjoy in the UK, or in wealthier parts of South Africa, yet one would still want to describe the Soweto child as disadvantaged in comparison. Even if a person meets the minimum threshold for all ten of Nussbaum's central capabilities, one might still describe that person as being disadvantaged in comparison with another person holding even greater freedoms. If the description of disadvantage can be applied to a situation in which capability failure has not occurred, then this too is an insufficient account.

Sen criticises utilitarians for treating freedom as instrumental to the achievement of certain ends, and rightly emphasises that freedom to achieve ought not to be seen as instrumental in this way.⁶⁴ Yet he does not make clear how his own implied conception of disadvantage is not vulnerable to a similar criticism. Even if capability includes the freedom to achieve functionings as an intrinsic component, this does not make clear how freedom is related to disadvantage. Presumably, disadvantage is both a lack of achievements relative to some normative standard, and a lack of freedom (that is, the opportunity) to achieve that standard. If disadvantage is conceived as a failure to achieve functionings, or the lack of opportunities to achieve functionings, then freedom can be seen as irrelevant to the

⁶³ Nussbaum, M., 2011, p. 34

⁶⁴ Sen, A., 1995, p. 32

evaluation of those achievements rather than, as he claims, intrinsic to those functionings.

As an illustration of this difficulty, let us return to the idea of self-evaluation. Consider the possibility that a disabled person does not accept that she has a disability. Sen recognises this as the “agent-relative” position of evaluation, and endorses that viewpoint.⁶⁵ If she has the freedom to choose such a ‘disability’, then she simultaneously has her capability enhanced by that choice whilst remaining disadvantaged by her supposed lack of functioning. Yet if she is denied the freedom to choose her disability status, then she would be both disadvantaged by that denial, whilst also remaining disadvantaged by her supposed lack of functioning. In other words, her freedom would be irrelevant if the evaluation of disadvantage is placed externally to the person affected. It would therefore seem that some form of substantive (and internal) conception of disadvantage is required, one that recognises the importance of positive liberty, in order for the capabilities approach to adequately meet these challenges.

Sen does not give a substantive account of how disadvantage might be constituted: he merely describes the complexities of the various functionings, freedoms, and opportunities for their achievement. Perhaps this is to avoid the accusation that he is advocating a particular conception of the good. As has already been suggested, such a move is to fail to acknowledge that the capabilities approach holds an ideal model of human flourishing. As such, the failure to fully recognise this ideal model leads to the assumption that disadvantage (as a capability failure) is nearly always unfair.

⁶⁵ Sen, A., 1982, pp. 3-39; 1983, pp. 114-132

The qualification ‘nearly always’ is in recognition that exceptions may exist. One notable exception is where capability has been enhanced by the exercise of choice. Even then, if the functioning failure persists Sen might still regard this as constituting a disadvantage. The problem here is that mere choice (or agency) is insufficient to capture the richer conception of capability that Sen requires. Sen’s preference for the neutral term ‘agency’ does not recognise that liberty can be a negative freedom from interference, or a positive freedom to make self-evaluated choices. Both Sen and Nussbaum place freedom and choice at the centre, but in their reluctance to allow the conception of the will to be the locus of that choice, somewhat dilute what that freedom and choice might involve. As an illustration of this difficulty, Wolff and de-Shalit point out that vulnerability to risk is a disadvantage in itself.⁶⁶ The idea of vulnerability to risk is not covered in Nussbaum’s list, and unless the risk turns out badly, would not be recognised by Sen’s ‘realised outcome’ approach to capabilities either. The language of agency is insufficiently personal to encompass such notions as vulnerability. We will consider Wolff and de-Shalit’s practical approach to disadvantage and capability in a moment, but must first consider this important point here.

Wolff and de-Shalit use Sen’s own example of honey collectors from forests in India, in which Bengal Tigers hunt. The honey collectors must risk entering the forest even though many are killed in doing so. An account of disadvantage that merely looked to the achievement of good health under conditions of freedom of choice as an ‘agent’ would be inadequate. After all, the honey collectors are formally free to choose not to enter the forest, but

⁶⁶ Wolff, J., and de-Shalit, A., 2007, pp. 65-6

would have to find some other way to support their families. However, the alternative means of support may not be available. As Wolff and de-Shalit emphasise, it is not simply the matter of risk, but the involuntariness of the risk that is important here, and voluntariness is more than a matter of agency freedom: it is personal, it is a matter of will.⁶⁷

If the capabilities approach turned on the will of the individual, as is suggested here, it becomes clear that the affected person must have control over the evaluation of her capability. A person might choose to accept risk: doing so can even enhance well-being, as the popularity of many extreme sports would suggest. Under these circumstances, the risk-taker would not suffer disadvantage by the exposure to risk alone. However, in the case of the honey collectors, this risk is not voluntary: it is chosen, but not wholeheartedly. The alternative use of the term 'agency' does not express the wholeheartedness required, and allows the evaluation of capability to be placed externally to the person. The agent is free, inasmuch as there are no restrictions preventing her from gathering honey, but she is not free inasmuch as she does not have the self-evaluated choice according to her own conception of the good. She might prefer to avoid the risk and choose a safer life if she could, but this would require that she can exercise her will to do so. Having the freedom to choose does not recognise that such a choice must be voluntarily made, and without any form of coercion or patronisation or constriction of circumstances. The evaluation of disadvantage cannot be made by an external assessment of achieved functionings or capability freedom: the proper placement of such an assessment must include the

⁶⁷ Wolff, J., and de-Shalit, A., 2007, p. 66

affected person's own internal perspective. This requires consultation and consideration of the will of that individual.

Consider the famous scene from the Monty Python film *Life of Brian*, in which an ex-leper complains that Jesus cured him against his will: "One minute I'm a leper with a trade, next minute my livelihood's gone. Not so much as a by your leave. You're cured mate".⁶⁸ Aside from the comical absurdity of the scene, the ex-leper has a serious point. If he has chosen to accept his disadvantage, then it is no longer unfair, and the importance of the phrase 'by your leave' becomes clear. The ex-leper has been denied the opportunity to exercise wholehearted freedom of choice. The absurdity of the situation does not suggest that he has had his will impaired, since the exercise of will is a much more complex issue than mere choice (as will be explained in the next chapter). Yet persons typically identify themselves and others by the occupations they hold or intend to pursue, so one's livelihood is often a matter of will rather than a simple choice.

Perhaps this situation is not as far-fetched as it first appears. There are many examples of persons who would be judged by outsiders to suffer from a disability (even with the best of intentions) and thus might be considered to be unfairly disadvantaged in a normative sense, when in fact the persons concerned do not accept that judgement. Gus Kahane and Julian Savulescu give a number of such examples (although their target is to undermine both the social and medical models of disability). These include: deaf parents wanting a deaf child; dwarf parents that want a dwarf child; and a body-integrity-identity-disorder sufferer who wants to have a perfectly good limb

⁶⁸ Jones, T., 1979

amputated.⁶⁹ In each of these cases, the wills of the persons affected are at odds with the external judgement of disadvantage. The point exaggerated by the Monty Python team remains: we cannot assume that a disadvantage is unfair (even if this looks like a capability failure) without consulting the persons affected, and we cannot make an assessment of disadvantage without placing ourselves and others in relation to that person.

Sen and Nussbaum merely suggest that a person's agency freedom is to be weighed along with the achievement of secure functionings so that the assessor can then judge the meeting of an unspecified threshold of basic human capability or an equality of capability.⁷⁰ It is suggested that this fails to recognise that the fundamental feature prior to agency freedom is the will of the individual. Since Sen shies away from advocating the capabilities approach as a system upon which to build a fair society (he merely offers it as a means of assessing disadvantage) he avoids commitment to any particular scheme. In doing so, he loses the theoretical underpinnings for fairness: he cannot advocate either equality of capability, priority of certain capabilities, or thresholds of capability.

Sen rejects a "unifocal" view of equality, and consequently cannot identify a way of preferring one scheme of social justice over another.⁷¹ He recognises this difficulty as an inevitable consequence of social choice theory.⁷² This theory suggests that wherever individual choices are aggregated, arbitrariness and instability cannot be avoided: the identification

⁶⁹ Kahane, G., and Savulescu, J., 2009, p. 10

⁷⁰ Nussbaum, M., 2007, p. 71; Sen, A., 1995, p. 7, supports equality of capability but then rejects it in 2009, p. 295

⁷¹ Sen, A., 2009, p. 297

⁷² Sen, A., 1999, pp.349-378; 2009, pp. 91-96

of ‘just institutions’ that accurately track the choices of individuals, or even the rational arguments of the designer of such a system, are thus bound to miss the mark.

In contrast, Nussbaum’s version of the capabilities approach (which does advocate a threshold view) simply becomes just one scheme amongst others with no reason to prefer that either.⁷³ It is suggested that the will can provide just such a unifocal view, and see the proper conception of social disadvantage as providing the missing theoretical underpinnings for the capabilities approach.

Despite these misgivings, it might yet be possible to apply the capabilities approach towards practical issues in order to suggest solutions to many social and political problems. Jonathan Wolff and Avner de-Shalit take up this challenge, with a specific focus on the problem of disadvantage. Let us now look at their practical applications.

3. Wolff and de-Shalit

In their stimulating book *Disadvantage*, Wolff and de-Shalit aim “to provide practical guidance to policy makers by providing a version of egalitarian theory which can be applied to actual social policy”.⁷⁴ They suggest that whilst the many forms of egalitarianism give rise to disagreements on theory, the practical focus on how to proceed should overcome such objections. They call this a “consensual starting point” in which egalitarians agree that we

⁷³ Nussbaum, 2007, p. 71

⁷⁴ Wolff, J., and de-Shalit, A., 2007, p. 3

should “*identify the worst off and take appropriate steps so that their position can be improved*”.⁷⁵ Although not as explicit as Nussbaum in regard to how ‘consensus’ is to be understood, this is not a matter of compromise. They suggest a deliberate vagueness, and refer to a “general convergence” in the identification and prioritisation of those persons considered to be disadvantaged.⁷⁶ Wolff and de-Shalit are thus asking the same question about the nature of disadvantage that this thesis also wrestles with but, although recognising the difficulties, they set these matters aside in favour of the broad consensus.⁷⁷

Wolff and de-Shalit quickly establish that disadvantage is not just about poverty: “redistribution of money cannot in itself end oppressive social structures”.⁷⁸ They suggest that egalitarian views that concentrate on poverty or on social structures are misdirected, but argue that they can be accommodated within a pluralistic view. Those views which prioritise welfare, or resources, or other such goods are characterised as ‘monist’ inasmuch as they would suggest that all such goods can be compared and ranked in order of preference (or tied such that the person should be indifferent between them).⁷⁹ Wolff and de-Shalit reject this view as false: it is simply not true (they claim) that where a person has to choose between taking a job and avoiding poverty, say, and thus severing ties with friends and family, that she might be indifferent between such a choice, or that she has a preference between them. These issues are not commensurable and pull in different directions. A

⁷⁵ Wolff, J., and de-Shalit, A., 2007, p. 3

⁷⁶ Wolff, J., and de-Shalit, A., 2007, p. 4

⁷⁷ Wolff, J., and de-Shalit, A., 2007, p. 4

⁷⁸ Wolff, J., and de-Shalit, A., 2007, p. 5

⁷⁹ Wolff, J., and de-Shalit, A., 2007, p. 22

monist account does not reflect reality and so would guide governments to pursue policies which may have unacceptable social consequences for many. Disadvantage, they suggest, is clearly pluralistic as it calls upon multiple personal values.⁸⁰

Unfortunately, in common with both Sen and Nussbaum, Wolff and de-Shalit also confuse the ontology of disadvantage with its evaluation (inasmuch as they do not recognise a generic conception upon which an evaluation of fairness is subsequently made). Since examples of social disadvantage (as an outcome) can take multiple forms, they assume that the conception of disadvantage is not a single thing. They thus criticise ‘monist’ views as inadequate. Such views, they suggest, cannot adequately encompass all the different forms of disadvantage because they cannot compare like with like. This move is premature. It is perfectly reasonable to assess a person as being disadvantaged because she suffers poverty, just as it is reasonable to assess someone as disadvantaged because she suffers poor health. It is not quite correct to then take disadvantage to be a necessarily plural concept. It is suggested here that although the assessment of disadvantage can be conceived plurally, (as a deficiency of welfare, resources or liberty) the underlying conception of disadvantage remains the same. A person’s lacking in welfare, resources, or liberty can be stated as a naturalistic ‘fact’ without also applying an evaluation of that condition. It is the monist evaluation of the goodness or rightness of the generic conception that gives rise to the multiple forms in which unfair social disadvantage can be realised. The person choosing between poverty and severing family ties is not

⁸⁰ Wolff, J., and de-Shalit, A., 2007, p. 22

indifferent precisely because she will remain unfairly socially disadvantaged whichever way the outcomes are assessed.

The model of disadvantage used by Wolff and de-Shalit is pluralistic, and considers social goods, drawn together with material goods, within a capabilities framework.⁸¹ It is based on a modification of Sen and Nussbaum's approach, but with acknowledgement of the other pluralistic 'complex equality' models of Michael Walzer and David Miller.⁸² This model is therefore focussed upon what it is that contributes to individual well-being. Wolff and de-Shalit point out that 'goods' also covers non-material aspects, and that redistribution is not always a matter of taking from some to give to others: some goods, such as being valued, can be redistributed by adding more to those with less at no cost to those with more. For Wolff and de-Shalit "any change in how people's lives are going [...] is to be thought of as redistribution".⁸³ The main modification to the capabilities approach:

is the idea that what matters for an individual is not only the level of functionings he or she enjoys at any particular time, but also the prospects for sustaining that level. To put this in another way, exceptional risk and vulnerability is itself a disadvantage, whether or not the feared event actually happens.⁸⁴

⁸¹ Wolff, J., and de-Shalit, A., 2007, p. 6

⁸² Wolff, J., and de-Shalit, A., 2007, p. 8; Walzer, M., 1983, pp. 3-30; Miller, D., 1995, pp. 197-225

⁸³ Wolff, J., and de-Shalit, A., 2007, p. 6

⁸⁴ Wolff, J., and de-Shalit, A., 2007, p. 9

Thus someone in fear of unemployment is by that fact alone disadvantaged relative to another person secure in their work. This is an interesting observation, and entirely consistent with the idea of social disadvantage being defined in terms of the will. Fear is a psychological condition which does not lend itself to the assessment of disadvantage in relation to such things as resources or liberty, although it could be recognised when assessed in terms of welfare. As a psychological condition, such aspects are notoriously difficult to measure and evaluate. Such psychological disadvantage is a strong indicator of a more fundamental conception of social disadvantage than can be described by the traditional assessment.

Yet Wolff and de-Shalit see functionings as being related to disadvantage in such a way that to be disadvantaged is to be unable to achieve functionings. However, they take this further, “[b]y this we assume that functionings are, in a way, the opposite of disadvantages”.⁸⁵ This suggests an equivalence which does not bear scrutiny: it would imply that to be able to achieve functionings is to be advantaged, and conversely that disadvantage is equivalent to functionings failure. This is to overstate the case. Being able to function, one suggests, is not to be advantaged but to be able to exert one’s moral equality as a person, and being equal in this respect is not a privilege or advantage that one can rightly have over another. Furthermore, as we have already discussed, if disadvantage is conceived merely as a functionings failure, it cannot recognise the role of voluntariness in accepting a lack of functioning.

⁸⁵ Wolff, J., and de-Shalit, A., 2007, p. 38

When identifying the least advantaged (or most disadvantaged) Wolff and de-Shalit have in mind the chronic unemployed, rough sleepers, teenage mothers and such like. Although such persons are rarely totally abandoned by the state, they are seen as hard, persistent and expensive to fix, so governments tend to focus on the short term unemployed and those they believe are most likely to result in quick and easy wins (or returns on the public investment). For the hard cases, “the cost of taking care of these people and bringing them above a certain threshold are said to be enormous, while the chances of getting satisfying results are slim”.⁸⁶ This would tend to show against a sufficientarian view, such as the one that will be presented in this thesis, but sufficientarianism is not the target of Wolff and de-Shalit here. They merely point out that it is a common failing of public policy to focus upon the easy-to-fix problems to the detriment of those most desperately in need.

This leads Wolff and de-Shalit to question whether fair redistribution is simply a matter of ‘who gets what’ – they suggest that this is part of a profound issue, since redistribution that does not reach the very worst off is corrosive to social attitudes. In this respect Wolff and de-Shalit are in agreement with the sufficientarian. They point out that when we see increasing numbers of drug addicts, rough sleepers and such like, it seems fair to say that once the initial shock has been overcome, we become apathetic. This, they say, is “a matter of shame” and we should not allow ourselves to ‘get used to it’.⁸⁷ Yet the corrosive effect may be even worse than Wolff and de-Shalit portray. There is evidence to suggest that the sight

⁸⁶ Wolff, J., and de-Shalit, A., 2007, p. 7

⁸⁷ Wolff, J., and de-Shalit, A., 2007, p. 8

of social deprivation and social neglect causes further damage. The 'Broken Window' Theory of James Wilson and George Kelling suggests that where visible signs of social neglect exist within a community (typified by fly-tipping, graffiti, and derelict buildings with broken windows), then this is rapidly associated with increased criminality and vandalism.⁸⁸ Rather than becoming apathetic, a term which implies indifference, it may even be the case that we give up caring, or that such deprivation adds to our own sense of despair and encourages an escalation of neglect. Thus in a neighbourhood strewn with litter, one is more likely to drop litter; or where buildings are obviously neglected (having long unrepaired broken windows), the remaining windows are likely to become broken in the near future. It is as though the neglect of the neighbourhood becomes part of the identity of those persons living there. This effect is emphasised here because the role of our communities in the construction of the self plays an important part when we later come to discuss the extended will.

When taken together, the idea of disadvantage as plural and the duty of help towards the least advantaged leads to the problem of identifying who the least advantaged are. A pluralistic view by definition accepts multiple candidates, but then how is such an approach to identify the worst off? Are they the ones with poor health, or the ones with low income, or the ones with no freedom? Furthermore, a fair society must also be able to recognise when disadvantage has been rectified. The combination of these aspects they call the "*realism constraint*".⁸⁹ According to Wolff and de-Shalit, monist accounts

⁸⁸ Wilson, J., and Kelling, G., 1982

⁸⁹ Wolff, J., and de-Shalit, A., 2007, p. 21

cannot meet this ‘realism’ condition since it assumes that a disadvantage in one area can be substituted or compensated by some other aspect in which benefits can be awarded.⁹⁰ As already suggested, this is a problem of a failure to recognise the ontology of disadvantage: it is to confuse the norm of condition or circumstance with the evaluation of the (un)fairness of that condition.

A second problem is that since social disadvantage is relative, an ideal account of disadvantage (they suggest) should be able to place each individual on a scale whilst also identifying absolute disadvantage. This is the “indexing problem”.⁹¹ The realism constraint pulls towards complexity whilst the indexing problem pulls towards simplification: the two aspects are thus in tension. Wolff and de-Shalit argue that this problem is both serious and unavoidable to the extent that it may be impossible to address. The indexing problem has already been encountered when the relative merits of theories of distributive justice based on welfare, resources, or liberty were discussed. These are the views that Wolff and de-Shalit regard as mistaken monist views. Whilst this thesis is in agreement with Wolff and de-Shalit to this extent, the view that this may be impossible to address is rejected. As will be argued, a better understanding of disadvantage may be able to meet this challenge. The indexing problem would only apply to the assessment of disadvantage, but when properly conceived in terms of the extended will, as will be argued in chapter six, the problem simply evaporates.

⁹⁰ Wolff, J., and de-Shalit, A., 2007, p. 24

⁹¹ Wolff, J., and de-Shalit, A., 2007, p. 21

Wolff and de-Shalit's practical approach meets the realism constraint, and side-steps the problem of identifying the least well-off, by observing that disadvantages tend to exist in clusters. Those suffering poverty also tend to be poorly educated, live in poor quality housing, have a shorter lifespan, have higher unwanted pregnancy rates, and so forth.⁹² In studying this observation, Wolff and de-Shalit offer an imaginative analysis of an ideal society: "a society of equals is a society in which disadvantages do not cluster, a society where there is no clear answer to the question of who is the worst off".⁹³ They therefore advise policy makers to identify patterns and concentrate on declustering as a means to address disadvantage.⁹⁴ In practice, then, they suggest that we have no difficulty in recognising disadvantage, and therefore make a powerful case for a consensus approach towards identifying those in need of support.

A further distinction is then made between "corrosive disadvantages" and "fertile functionings".⁹⁵ However, one must bear in mind Nussbaum's criticism of this latter coupling: "I fear that alliteration has superseded theoretical clarity".⁹⁶ Nussbaum suggests that the distinction between functionings and capabilities has become blurred by this term, and that the term 'fertile capabilities' is more accurate. Nevertheless the focus upon practical ways to address disadvantage means that this lack of precision does not detract greatly from the ideas that are described. Corrosive disadvantages are those which lead to other disadvantages (for example, unemployment

⁹² Wolff, J., and de-Shalit, A., 2007, p. 10

⁹³ Wolff, J., and de-Shalit, A., 2007, p. 10

⁹⁴ Wolff, J., and de-Shalit, A., 2007, p. 10

⁹⁵ Wolff, J., and de-Shalit, A., 2007, p. 121

⁹⁶ Nussbaum, M., 2011, p. 44

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leading to poverty and homelessness), whilst fertile functionings are those which, when secured, lead to the securing of other functionings (such as getting a job, leading to income security and housing). A link is thus established between the capabilities approach and the policy of declustering: the advice to policy makers is thus to promote fertile functionings whilst eliminating, or reducing the effect of, corrosive disadvantage. Wolff and de-Shalit are absolutely justified to bring the reader's attention to this effect, and absolutely justified to focus upon the practical urgency in meeting the challenge of social disadvantage in this way. Even so, this practical urgency does not establish that all 'monist' accounts are theoretically inadequate.

Having now described Wolff and de-Shalit's position on disadvantage, one final comment must be made in order to clarify the position of this thesis within the views presented. It is supported that the monist accounts so far discussed are unsatisfactory, but not that all monist view must necessarily be inadequate. The argument is yet to be made that the will of the person affected by disadvantage is crucial to the determination of fairness, although it is taken to be so in this thesis. Wolff-and de-Shalit do not give sufficient attention to the conflation of fairness within their conception of disadvantage, although they recognise a role for the will in regard to voluntariness. This thesis will focus upon the role of the will, as it becomes pivotal in defining disadvantage, and thus in producing guidance on how best to address disadvantage whilst maintaining respect for the individual.

It is always going to be difficult to arrive at the right balance between the fair consideration of the interests of the individual with the interests of the community (especially if the community is to be conceived as an entity rather

than as the mere collection of individuals). However, as will be argued in chapter six, if the will is conceived in an extended sense, this balance is in-built. Once the will is recognised as extending beyond the biological mind of the individual, then such things as culture, community, technology, and upbringing (amongst other things) become incorporated into the identity of each person. We are jumping the gun somewhat now, but these comments are merely intended to signpost the argument in relation to the capabilities approach. In extending this approach into its practical applications, Wolff and de-Shalit have hinted at the importance of individual voluntary choices. Given the strongly individualistic way in which the capabilities approach is applied, it is remarkable that the role of the will has been so overlooked.

4. Conclusion

In this chapter we have considered what is probably the most significant rival to the traditional views on distributive justice: the capabilities approaches of Amartya Sen and Martha Nussbaum. Whilst it has been shown that the capabilities approach has a great deal in its favour, it is not complete. When seen from Sen's point of view, the capabilities approach is about agency, and the freedom to achieve functionings. However, his reliance upon the notion of agency is insufficient to account for the conception of disadvantage. This becomes evident in his vacillation between disadvantage conceived as capability failure and functionings failure. From Nussbaum's point of view, since she correlates disadvantage with capability failure, she must then deny that differences in freedoms of persons above a capability threshold might

count as disadvantage. Nussbaum is also concerned with what disadvantage means to the individual, but her reticence in relation to agency means she too overlooks the significance of will. Both fail to acknowledge the ideal model of human flourishing upon which the capabilities approach depends.

Even though the capabilities approach has its shortcomings, it may be the best view by which disadvantage can be assessed. Sen's evident frustration with *Niti* approaches in his later work demonstrates his recognition that this may be one of the shortcomings in his own view of the capabilities approach. I do not share this worry: if more emphasis is placed upon the role of the will, then this could resolve many of Sen's concerns.

Wolff and de-Shalit have added to the debate on social justice by emphasising the practical urgency to address the problem of disadvantage. In this respect they are in concordance with the later Sen. Yet the emphasis on practicality leaves them short on theoretical underpinnings for the identification of social disadvantage. Whilst they do make comment that suggests recognition of a role for the will, they do not develop the idea. It is suggested that greater recognition of the wills of the persons suffering disadvantage can give a unifying validity to the conception. Once a full and proper identification of disadvantage has been made, this has the potential to provide a unifying view of social justice: one which does not then lead to some other *Niti* means by which to best address disadvantage. It is argued in the next chapter that the will of each person, when conceived as extending beyond the individual, can provide a better account of disadvantage than can capabilities or the traditional views alone.

Chapter Five

What is The Will?

1. Introduction

In the previous chapter, the idea was introduced that a proper understanding of social disadvantage must include recognition of the role of the will. Furthermore, it was suggested that the capabilities approach requires a viable notion of the will since both Sen and Nussbaum already acknowledge the central place of self-determined choice within that conception. Yet a proper understanding of social disadvantage must do more than simply recognise the relevance of the will of those affected: it is now suggested that the will is fundamental to that conception. Before this argument can be made though, it is necessary to establish exactly how the will is to be understood, at least so far as the conception of social disadvantage is concerned.

The argument to be established in this thesis is that social disadvantage is best understood as the impairment of the will. Yet the conception of the will is a controversial subject. A thesis that appears to rely upon an outdated conception of a perhaps illusory entity would run the risk of a rather perfunctory dismissal. Nevertheless, such a dismissal would be too swift, and would throw away a powerful tool: especially since the idea of the will remains remarkably effective in explaining human behaviour and moral responsibility.

Within the history of ideas, the will has typically been taken as positing the actual existence of a soul, or spirit, or *elan-vital*. This 'substantive view' of

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the will (as it will be called) is not the view supported here. The alternative view is to deny the existence of the will as being anything more than an illusion. Nevertheless, it is argued that just because the will might be ultimately illusory, this is not sufficient reason to abandon the concept: the experience of will is real for us. It will be accepted that just as I experience having willed an action, other persons will have the same sort of experience in their own actions. However, the problem of 'other minds' will be set aside at this point as being outside the scope of this thesis.

Whether one takes the will to be substantively real, or only as an experience, each position has implications for the conception of social disadvantage as the impairment of the will. For those persons that might support the substantive conception, the idea of disadvantage as the impairment of the soul, spirit or life-force should not present any difficulties. If a substantive soul is accepted, then it can also be accepted that it might be impaired in some way. A much greater challenge to my argument is presented by those who deny the existence of the will, or suggest that its appearance is illusory. Much more space will therefore be devoted to addressing this challenge than to the substantive view.

In this chapter, it is argued that the will is to be understood in two ways: as extending beyond the individual, encompassing culture, technology, and other environmental circumstances; and as describing a real experience (without implying any substantive existence). The idea of the extended will is inspired by a Greenian conception in which the self can only achieve

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perfection through recognition of others as part of that process.¹ Thus one's own will includes others in a mutually supportive ideal. This is combined with the arguments of Andy Clark and David Chalmers (that the extended will includes our environment, technology and culture) to give an account of what it is that might be impaired in describing disadvantage.² The experience of will, so far as the conception of disadvantage is concerned, can be further subdivided as an experience of activity, or as experience of capacity. This is not to be understood as a direct apprehension of the experience of will by the agent. As will be explained shortly, the person does not perceive having willed, and then the event occurring: the experience is applied after the event. When one's will is directed towards a particular end, it is an activity experienced as willpower. When experienced as a means of orienting oneself in relation to others, then it is a passive experience of capacity: it is the recognition of an action as belonging to the self, or as caused by another.

Although the view of the will as an illusion is presented as being more plausible than the substantive view, the acceptance of the conception of disadvantage in terms of the will does not turn on this issue. If the will is a substantive concept, then the idea of its impairment is straightforward in its morally significant consequences. On the other hand, and as will be argued, if the concept of the will is illusory, then impairment of this illusion has the identical morally significant consequences. When described in the round, and regardless of the view that one takes on the nature of the will, the conception

¹ PE, Secs. 65, 173, 176 and 180-95

² Clark, A., 2007, pp. 101-120; Clark, A., and Chalmers, D., 1998., pp. 7-19

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of social disadvantage as the impairment of the will can still be accepted either way.

A clarification is necessary at this point to emphasise that the term ‘illusory’ is not to be taken pejoratively: an illusion can be taken to be real inasmuch as it is experienced. Just as one might describe pain in terms of neurons firing, chemical reactions in synapses, or electrical disturbances in ‘C’ fibres, this does not describe what it feels like to experience pain. One might assert that pain is illusory, or deny that it correlates with anything more than biochemical processes, but as Daniel Wegner puts it, “illusory pain is still pain”.³ Similarly the experience of will can be just as real, without positing any particular entity called ‘the will’. The experience of will might well correlate with biochemical processes in the brain in a similar way to the experience of pain, but this does not thereby devalue the experience for us.

The idea of will as illusion goes back at least as far as Gilbert Ryle, who famously referred to the will as the “ghost in the machine”.⁴ His pupil, Daniel Dennett, recognised that even if ultimately illusory the conception of the will can still be usefully employed to predict and describe human behaviour. He called this perspective the “intentional stance”.⁵ In contrast, Jerry Fodor raised concerns that such views remove the self from discussions of human action and therefore weaken the idea of moral responsibility.⁶ Fodor suggests that without a morally responsible and substantive self, then any notion of desert or merit must be abandoned. However, the *experience* of will

³ Wegner, D., 2002, p. 14

⁴ Ryle, G., 1973, p. 17

⁵ Dennett, D., 1971, pp. 87-106; 1987, pp. 13-35

⁶ Fodor, J., 1998, p. 207

is not the same thing as its actual substantive existence.⁷ It is therefore argued that there is room to accept an illusory will whilst maintaining the truth of moral responsibility.

The argument will begin by examining the claim that the will is real as an experience. It is then suggested that the experience of will allows the possibility of moral responsibility without being committed to its substantive existence. This in turn leads to the matter of the location of the experience of will: if the will is not substantive, but one still wishes to say that it is experientially real, then where is this experience taking place?

The first proposition to be considered is that the will is located within the mind of the subject. By describing some of the problems associated with such a delimited view of the will, it is suggested that this view is unlikely. If the will is not located just within the mind, then the alternative is to consider the possibility of an extended will. This argument looks at the role of our biological systems such as memory and senses, and suggests that there is no relevant difference from the way in which we access external sources of information. Furthermore, it seems reasonable to suppose that each person would not have the will that they did if they had been raised in isolation, or in a different environment. Since moral responsibility requires the existence of will in either a substantive or experientially real way, and since it is suggested that the individualistically limited view is both unlikely and committed to the substantive conception, the conclusion is drawn that the experiential view is compatible (in a mutually supportive way) only with the extended view.

⁷ Wegner, D., 2002, pp. 62-98

Since this thesis places the will at the centre, and to avoid being unnecessarily drawn into the free-will and determinism debate, certain assumptions are made that are believed to be both justifiable and relatively uncontroversial. The first assumption is that the will is a conceptual part of personhood, which is at least intelligible in a practical, if not real sense. The second assumption is that one's will in this limited sense appears free to choose between available alternatives as one sees fit.

Since the libertarian in the free will debate claims that free will genuinely exists, she cannot object to these assumptions.⁸ Since many compatibilists argue for this position anyway, and those who do not still accept the plausibility of free will, they too cannot object.⁹ Those incompatibilists who accept the existence of free will (and thus argue that determinism is false) cannot object.¹⁰ Even the hard determinist has space available to deny the existence of genuine free will but accept that we do actually behave as though it were real.¹¹ Those hard determinists should therefore have no difficulty in accepting my assumptions even if they believe that free will is ultimately false.

It would therefore follow that the substantive or experiential view of the will makes little difference to the acceptance of the proposed conception of disadvantage. To those who conceive of the will as substantive, there would be no objection to the conception of disadvantage in terms of the will. For those who accept the illusory nature of the will, disadvantage in terms of the

⁸ See Kane, R., 2007, p. 5

⁹ See Fischer, J.M., *et al*, 2007, p. 44

¹⁰ Van Inwagen, P., 2005, pp. 158-177

¹¹ Pereboom, D., 2007, p. 85,

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will can still be accepted along the same basis as moral responsibility's dependence on the reality of the experience of will.

The distinction between the formal will and willing as such must be emphasised at this point. Formal will refers to such things as raising an arm 'at will', whereas willing as such is an activity or 'choosing' to follow one action rather than another. Formal will is necessarily free. Formal will is about what it *is* rather than what it *does*. The matter under discussion in this chapter expands on the formal will; what it is; the person's experience of control over her circumstances, and although it encompasses such things as raising an arm, it is the experience of control that is the significant feature. Although formal will might be impaired through physical restraint or damage to the central nervous system, such impairment is not relevant to social disadvantage unless it impairs the process of willing as such. It is the impairment of the exercise of will, willing as such, that will be the subject of the next chapter.

2. The Concept of the Will

The concept of the will has a long history. Aristotle suggested that voluntary actions depend upon the will of a causal agent, since without the existence of both a choice, and a willing agent, then the agent cannot be held responsible for his or her actions.¹² Yet such a description seems to imply the possibility of an uncaused cause. Descartes regarded the will as synonymous with the soul, located in the pineal gland, and controlling the actions of the 'I' in the

¹² Aristotle, 1980, p. 48

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self.¹³ Yet such a presentation suggests a homunculus residing in the mind, and for which the body is the vehicle. This would incur an infinite regression to explain how the 'I' comes to control the homunculus. More recently, Richard Double has suggested that the will is just the "sanction[ing of] assignments of moral responsibility".¹⁴ Yet this is too simplistic, and says nothing about the processes involved in the exercise of will. Gilbert Ryle suggests (as will be described shortly) that the concept of volitions, and thus the will, is a fictitious "ghost in the machine" that deserves no place in the theory of the mind.¹⁵ Daniel Wegner also sees the will as illusory, but necessary for moral responsibility.¹⁶ He shows that the feeling of conscious will can come apart from an action that we believe we have caused, thus throwing doubt upon the idea that an agent, through willing, causes an event to happen.¹⁷ Wegner shows that the feeling of having willed is often created by the mind for acts done unconsciously, or even for actions done by others.¹⁸ It thus seems that we are psychologically arranged to attribute actions to either the self or others, and that this creates the illusion of will. Why then, given the problematic history associated with the concept of the will, should this thesis seek to resurrect it now? The reason is simple: the will encapsulates a means of understanding our own behaviour and that of others. The will, it is suggested, provides a fundamental means to understand the proper conception of social disadvantage, combining as it does the idea of

¹³ Descartes, R., 1997a, p. 372

¹⁴ Double, R., 2005, p. 507

¹⁵ Ryle, G., 1973, p. 17 and 61

¹⁶ Wegner, D., 2002, p. 341

¹⁷ Ryle, G., 1973, p.13; Wegner, D., 2007, p. 28

¹⁸ Wegner, D., 2002, pp. 63-98

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relative comparison and moral assessment of the rightness of that relationship.

The actual existence of a ‘thing’ called the will is unlikely, but as a conceptual device it is both readily accepted as an intelligible notion, and explanatorily effective. Furthermore, as George Ainslie observes, just because we speak about a unifying organ named the ‘self’, there does not actually need to be such an organ existing as a physical thing.¹⁹ Dennett sees this organising entity as a virtual construct arising as a consequence of the need for our ‘selves’ as agents to communicate with each other without revealing our motivations or intentions.²⁰ This implies the possibility of truth and deception in our relations with one another, and introduces the idea of morality.

So, does the term ‘the will’ describe a real substantive entity, or does it represent a sort of shorthand for the experience of conscious activity? In other words, is the will akin to soul-stuff as Descartes would suggest, or is it an illusion created by the brain? In the next two sub-sections we will look first at the substantive view of the will, and compare this with the conception of the will as illusory-but-experientially-real (this will be referred to as the ‘experiential’ view). Once this analysis has been completed we will turn to the extended view of the will. Although the argument will favour the experiential (and extended) view, regardless of how convincing the argument that the experience of will is illusory, in the context of social disadvantage this argument does not turn on this issue. Even so, as will be explained in the

¹⁹ Ainslie, G., 2001, p. 43

²⁰ Dennett, D., 2007, p. 96

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second sub-section, this distinction does have a significant impact upon the consequences of the conception of social disadvantage as impairment of the will. If the will is accepted as being substantively real, then contrary to the standard claim that moral responsibility requires a robust notion of the self, it is argued that the connection with morality is somewhat weakened. This is because the substantive view of the will makes morality a matter of the individual's self-centred relations with others, (often based on compliance with externally derived rules) whereas the extended will immerses the self within the framework of others in a synergy of mutual moral relations. Yet since the delimited view is likely only to be compatible with a substantive view, and since it is argued that this is implausible, then the extended view of the will is to be preferred. The compatibility of the extended with the experiential view of the will gives further reason for this preference. This is significant to the consequences of the conception of social disadvantage as impairment of the will, since it is through the acceptance of the extended view that the perfectionist development is made, and thus to the sufficientarian mechanisms of disadvantage that are supported in the subsequent chapters.

2.1 The 'Substantive View' compared with the 'Experiential View'.

This subsection will first consider the proposition of the substantive view that the will represents an existent soul, immaterial spirit, or 'mind' that is synonymous with the self. It is suggested that the search for such an entity is to make a category mistake (as Ryle forcefully argues). The experiential view is then considered (which does not commit the category mistake) and it is shown that the experience of will can come apart from our actions in such a

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way as to contradict the substantive view (as Wegner demonstrates). This would suggest that the experiential view is the more likely. These arguments prepare the ground for the second subsection in which candidates for the location of the will are considered. Since the substantive view is committed to locating the will within the brain alone, it is argued that this view is confronted with insurmountable difficulties. Since the experiential view is not so committed, it is also to be preferred as being the least problematic. This will produce the strongest conception of the will, and thus the form that the conception of disadvantage as the impairment of the will must meet.

The substantive view of the will, as Ryle describes it, is part of “the official doctrine” of mind/body dualism that he traces back to Rene Descartes.²¹ Although the idea of a separate human soul has a theological origin, Descartes attempted to ‘prove’ the possibility of non-physical existence through reason in order to reconcile Christian belief with scientific method.²² Descartes therefore sought philosophical congruence between scientific reasoning and the view that “the human soul does not perish with the body” in order to refute the arguments of infidels that might suggest otherwise.²³ Such a view suggests that although the body occupies time and space, the mind occupies some other timeless spirit space. The physical world (including one’s body) is conceived as external, whilst the mind is said to occupy the internal.²⁴ From this viewpoint, the self is supposed to have a privileged access to the goings on of its own mind (will, volitions and desires) but have no access to the goings on in the minds of others or the external world other

²¹ Ryle, G., 1973, p. 13; Descartes, R., 1997b, p. 134

²² Descartes, R., 1997b, pp. 123-4

²³ Descartes, R., 1997b, pp. 123-4

²⁴ Ryle, G., 1973, p. 14

than through the perceptions of this inner world. Ryle describes this view as “absurd” saying “I shall often speak of it, with deliberate abusiveness, as ‘the dogma of the Ghost in the Machine’”.²⁵

Thus represented, we are left with the puzzle of how a mental activity in this spirit realm can cause a hand to move, say, or any other such action in the physical world. Aside from the difficulties of conceiving such an interaction, it also requires that the ‘self’ is an uncaused cause. The proposal would suggest that this non-physical soul possesses the power not only to cause physical entities to move, but also without having any external cause for doing so. If the soul is synonymous with the true ‘self’, and is expressed in terms of the will, then any resultant action would be *causa sui*.

The apparent advantage of such beliefs (which it must be admitted are intuitively very powerful, as evidenced by the widespread belief in a spirit world) is the explanation of morality as God-given laws. Yet even then, such a morality would suggest that an act is morally good just because some spirit entity said so, rather than that a morally good act is good in itself. Furthermore, the creation of the belief in a spirit world is also at the same root as the creation of the experience of our own will, as Wegner suggests and as will be explained shortly.

Ryle starts the destruction of the ‘official doctrine’ by pointing out the “category mistake”.²⁶ He does this with a series of illustrations starting with the example of a foreign student visiting Oxford or Cambridge. He is shown the various colleges, playing fields, libraries, museums and departments.

²⁵ Ryle, G., 1973, p. 17

²⁶ Ryle, G., 1973, p. 17

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Having done so, the student asks ‘where is the University?’ since he was expecting that the term ‘university’ named another building of the same type as the others:

His mistake lay in his innocent assumption that it was correct to speak of Christ Church, the Bodleian Library, the Ashmolean Museum *and* the University, to speak, that is, as if ‘the University’ stood for an extra member of the class of which these other units are members.²⁷

Notice that in this example, the mistake is in regard to which category the buildings are to be placed. Yet the category mistake can also apply to processes and activities rather than units. Ryle illustrates this in his example of a game of cricket in which a foreigner sees the bowler, fielders and wicket keeper and then wonders whose role it is to exercise team spirit. Ryle argues that the representation of a person as a ghost in the machine is to repeat this mistake.

Such a representation of a non-physical self is thus at the root of the mistaken search for the location of the soul. This is the apparent puzzle of identifying where exactly the ghostly ‘self’ is located and how does this ghost work itself? According to Ryle, the first problem does not exist since it rests on the same mistake as the foreigner trying to locate the team spirit in a game of cricket. The second part of the question then simply disappears, but even if this is so, how it might work would still be problematic. If the soul represents

²⁷ Ryle, G., 1973, p. 18

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an immaterial 'self' controlling the physical body (which by definition is then 'not-self') such a view is to posit a homunculus. The idea might then be extended to suggest that the homunculus itself might be controlled by another inner soul and so on to infinite regress.

Nevertheless, even if the will is ultimately no more than an illusion as Wegner suggests, the will can still exist in a practical sense in much the same way that Dennett uses the 'intentional stance' to explain consciousness.²⁸ In using this approach the observer makes an assumption of what the agent ought to do as a rational being with desires. Although the intentional stance can be applied to objects such as a room thermostat, this approach is most appropriately applied towards living creatures. Take Dennett's example of a person calling in at a shop on his way home from work to pick up a bottle of wine.²⁹ This event might well be explained from a physical stance by an omniscient being who was aware of all the biochemical and subatomic interactions that occur in the person; was aware of the weather and road conditions; could calculate the mechanical processes within the engine and transmission to predict that the car would travel reliably and in which direction; could calculate that another car setting off from the opposite direction would brake when a light bulb operated in a stop light at the crossroads, and so on. Even then, how would this being know that the person getting out of the car to go into the shop would get back into it again? The physical stance has extraordinary difficulty in accounting for this, yet the intentional stance can easily predict such activities: but is not an alternative

²⁸ Wegner, D., 2002, pp. 1-28; Dennett, D., 1971, p. 87; 1991, p. 76

²⁹ Dennett, D., 1987, pp. 13-35

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‘shortcut’ to the physical stance: it is a practical approach that recognises patterns of behaviour that are not available from the physical stance.

Using this practical approach, one’s behaviours, beliefs and attitudes towards oneself and others can be interpreted using the concept of the will as a metaphor for what is actually going on inside our minds. The existence of the will may well be ultimately illusory, but the situation remains that we behave as though we have genuine will, we hold reactive attitudes towards one another as though we have genuine will, and that we can understand and interpret the behaviour of others as though we have will.³⁰ Thus in a practical sense, there is no distinction between apparent will and genuine will. Even Ryle can accept the efficacy of our everyday use of the conception: he just denies that the concept is coherent as an explanation of how the mind really works.³¹

Most of our actions do not involve the experience of will, and even those actions that are claimed to do so cannot really be apprehended. When one consciously focuses upon a particular action with the express intention of trying to experience ‘will’, the experience eludes us. An act of creativity simply pops into our heads without any awareness of how it got there. We still claim the credit for it nevertheless – after all, who else would we credit? We are always sensitive of the need to attribute authorship to actions. Even though the cricketer intends to swing the bat and hit the ball, such actions are not experienced as will: the bat becomes part of the batsman, he is ‘in the zone’, He might even explain the ‘six’ he scores in terms of noticing the bowler’s arm

³⁰ Ryle, G., 1973, p. 61; Strawson, P., 1962, pp. 6-7; Dennett, D., 1991, p. 76

³¹ Ryle, G., 1973, p. 9

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movements, hand position, direction of spin, the moment of release and so forth, but the speed of such actions are beyond conscious apprehension, and are more likely to be the result of reflex. It would therefore appear that such explanations are applied afterwards.

This tendency to apply explanations after the event appears to be commonplace, and represents the normal way in which we attribute reasons to our own actions. For example, take the challenge ‘why didn’t you ring’, or ‘why didn’t you answer the phone’, made by a partner, friend, or colleague, to which your response might be ‘I was busy’. Whilst this might in fact be true, the reason is often applied afterwards to justify the action (or inaction in this case). Although this example relates to a commonplace but trivial scenario, such retrospective application of reasons is given for even the most serious actions: he murdered his wife, say, when he found her with a lover, but the retrospective reason of ‘crime of passion’ is applied. Although he may be the author of the crime, he cannot give an account of his experience of will at the time, and those in judgement are asked to accept it as reasonable that he would not be able to furnish such an account.

Furthermore, the experience of will can easily come apart from the action in other ways: the ‘self’ can be fooled into believing that an action caused by another was in fact their own; or believe that their own actions were caused by someone else; or fail to experience one’s own actions at all; or to experience actions as willed when no action happens at all; or to attribute one’s own actions to the will of another. Daniel Wegner offers numerous examples of these effects involving such things as Ouija boards, phantom limbs, hypnosis, alien hand syndrome, dissociative identity disorder,

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laboratory experiments involving other person's hands, and automatistic effects such as dowsing, automatic writing and the use of the Chevreul pendulum in divination. In each case the experience of will is either claimed by the subject or attributed to some other real or imaginary consciousness. Thus in the Ouija board, will is attributed to 'spirits'; phantom limbs are experienced as under the wilful control of the amputee; the hypnotised subject believes that she is under the control of the hypnotist; the victim of the alien hand has no experience of wilful control over the hand which is undoing a shirt button, and so forth. It thus seems that wherever a bodily action is observed, we are ready to assign some form of willing agent that has caused it.

These examples are supported by the experimental research of Benjamin Libet, who noted that specific brain activity (the "readiness potential") occurs 550ms before the subject becomes aware of an intention to act.³² This would suggest that 'voluntary' actions begin involuntarily, and thus the experience of will would be added after the action has commenced. Libet points out, however, that conscious functions might still control the outcome by vetoing the act, thus leaving a space for free will.³³ Yet even the 'action' of the veto may itself start unconsciously, and would thus be accompanied by a readiness potential of its own, but since this would be an entirely unobservable mental 'act' it remains mere supposition. Notwithstanding that Libet's findings are not conclusive, it would appear at least that the

³² Libet, B., 2005, p. 551

³³ Libet, B., 2005, p. 551

experience of will occurs “at some point *after* the brain has already started preparing for the action”.³⁴

So, it would appear that in order for a person to report the experience of will, she must have a thought just prior to the action, although this thought is itself preceded by an unconscious process. In addition to this priority of thought, Wegner notes two further things necessary to the experience of will: consistency, and exclusivity.³⁵ The thought must be just prior to the action, be consistent with the sort of action that occurs, and there must be no other agent that might also be credited with causing that action. Disrupt any of these and the experience of conscious will does not occur. Thus, for example, one might concentrate on a tree branch on a windless day and will it to move. If the branch moves immediately after the thought, one might be inclined to believe that the willing had caused the movement. If, however, the branch does not move until sometime after the thought, or if it moved before the thought, then one would not experience the feeling of having willed the action. If one had willed it to move, but instead it was struck by lightning, then the thought would not be consistent with the action and again the experience of will would not occur. Likewise, if one notices that it is in fact windy outside, or if a squirrel happened to walk along the branch at that time, then there would be a rival cause and the feeling of having caused the movement would not be experienced. On the other hand, if the movement occurs just after the thought, and there are no other reasons to disrupt the feeling of having caused it, then one is likely to experience having willed the action.

³⁴ Wegner, D., 2002, p. 54

³⁵ Wegner, D., 2002. p. 69

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The importance of priority, consistency, and exclusivity have been borne out in a number of ingenious experiments such as Albert Michotte's 'launching disc', Wegner and Wheatley's 'I Spy Study', and in the idea of 'attribution theory' which attempts to give a psychological answer as to why persons infer causal influences to the behaviour of themselves and others.³⁶ Such processes would be consistent with the imagined telekinesis effect, the invention of spiritual causation, automatism, and the invention of God as "the ultimate imaginary friend".³⁷ The conclusion that Wegner reaches is that the brain is a device which produces the experience of conscious will so as to position the self in relation to the environment. This will is illusory, and displaceable, but provides a "compass" for the individual to negotiate her social and physical environment.³⁸

In negotiating this environment, each person must therefore behave in a framework of belief in their own conscious experience of the world as accurately reflecting a 'reality for us': each of us thus has an illusion of will that is experientially real. Although it will not be argued for here, the simultaneous operation of each person within this framework may also produce a belief in moral responsibility that can also be considered as being ultimately illusory, but in terms of the human experience is very real. The actual truth of morality as a construction (along with the truth of the conception of will) is therefore dependent upon the belief in the reality of our experiences and the way in which we respond to those experiences. As Peter

³⁶ Wegner, D., 2002, pp. 70-98; McClure, J., 1998, pp. 7-20, Heider, F., 1958, p. 89

³⁷ Wegner, D., 2002, p. 226

³⁸ Wegner, D., 2002, pp. 317-342

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Strawson has emphasised, this is the ‘truth’ of our reactive attitudes.³⁹ So, if moral responsibility and will are to make sense, they can only be defined in terms of this framework. The investigation into disadvantage thus *applies to the context in which the will exists*, not the matter of whether the will represents anything other than an illusion outside of this framework. The question as to the existence of the will is then akin to asking if moral responsibility exists outside of our social interactions. Clearly it does not, but that is not the same thing as suggesting that moral responsibility does not exist within our relations with each other.

Such observations are thus of limited impact upon the conception of disadvantage as impairment of the will (although it will be argued in the next subsection that the *consequences* of this distinction are significant). If the will is regarded as real, then disadvantage can represent impairment of this substantive conception, but if illusory, then disadvantage can represent an impairment of the social means by which persons relate to each other. As Daniel Dennett suggests by the subtitle of his book *Elbow Room*, we have all the “free will worth wanting” at least so far as the conception of disadvantage is concerned.⁴⁰ Even if illusory, the experience of will is real enough just as Wegner’s “illusory pain is still pain” comment makes clear.⁴¹ The way in which we relate to one another, and thus the conception of moral responsibility, is also, as Dennett and Wegner agree “quite real”.⁴²

To sum up this section, practical evidence has been offered to suggest that the will is an illusory creation of the mind. It allows us to orient a ‘self’ in

³⁹ Strawson, P., 1962, pp. 1-25

⁴⁰ Dennett, D., 1984

⁴¹ Wegner, D., 2002, p. 14

⁴² Dennett, D., 2003, p. 224

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relation to others, to attribute actions and gives a foundation for moral responsibility. In contrast, the substantive conception of the will is confronted with perhaps insurmountable difficulties. The trump card for the substantive conception is the claim that only a truly free will can provide sufficiently robust foundations for the truth of morality. Yet even this claim, it is suggested, is mistaken. The experiential conception of the will, when combined with notion of the will as extended (as will be described next) makes an even stronger foundation than does the substantive view.

If the will is accepted as experiential, or even if one still wants to hold on to the idea of a substantive will, the question remains as to its location. Notwithstanding Ryle's suggestion that such a search would be to commit a category mistake, the intuitive belief is that the will (or rather the experience) exists somewhere in our heads, either in a specific area of the brain, or distributed across different functional areas. However, there is also a third possibility that the will is extended beyond the brain of the individual to incorporate one's culture, technology and other environmental circumstances. This avoids Ryle's 'category mistake' accusation in that the search is not for an entity as though it were a member of a set of physical components or activities. It would be akin to looking for Oxford or Cambridge universities by looking to the collection of buildings as a whole as well as the people, functions and activities that give the university its identity. It is this argument that will be addressed next.

2.2 The Extended Will

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This next sub-section will be in two parts. In the first part, it is argued that the will is not delimited just within the mind of the individual. It is suggested that such a view is only compatible with a substantive view of the will, and that this view is met with perhaps insurmountable difficulties. Since the substantive view has already been shown to be rather unlikely, it is far more plausible to suppose that the will describes an illusory-but-experientially-real concept. The second part will complete the argument that the extended will is to be preferred due to its compatibility with the experiential view of will and incompatibility with the notion of substantive will.

It would even seem that the conception of the will as a useful illusion is becoming the mainstream position.⁴³ It is now almost universally accepted that Cartesian dualism is unsustainable. The argument against such dualism is partly practical and partly philosophical: neuroscience has been unable to locate any single area of the brain that might contain such an influential 'thing'. Despite extensive research into mapping distinct functional areas, and studies into the effect of brain injury upon conscious experience, there has been no success in locating a single area responsible for our experience of consciousness.⁴⁴ Nevertheless, consciousness is not synonymous with the experience of will (the exploration of the nature of consciousness is beyond the scope of the thesis and will not be undertaken here). Yet it must be borne in mind that without consciousness one cannot have will, so if a seat of

⁴³ Ross, D., 2007, p. 11

⁴⁴ Delgado, J., 1969, pp. 115-6; Penfield, W., 1975, pp. 75-6; Libet, B., 1982, pp. 235-224; Prigatano, G., and Schacter, D., 1991, pp. 229-294; Bechtel, W., 2002, pp. 229-242; Bechtel, W., 2003, pp. 211-227; Schutter D., Van Honk, J., and Panksepp, J., 2004, pp. 155-173; Alkire, M., Hudetz, A., and Tononi, G., 2008, pp. 876-880

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consciousness cannot be found it would also entail that a seat of will cannot be found either.

Even if such an area could be located, it merely postpones the search for the source of the will. It would be vulnerable to further subdivision to find exactly which part of that area represented the controlling 'self', and so on in an infinite regress. It would therefore seem that no such single point exists. Even so, it does appear that some form of executive control takes place in the frontal lobes, but as Wegner points out, "this sort of evidence tells us little about where the *experience* of will might arise".⁴⁵

This gives rise to the possibility that the will is an epiphenomenal effect produced by the distribution of functional components across the entire brain. It would be akin to a circuit board model of the brain in which different processors handle different sources of data. Yet if the will is distributed over the various parts of the brain, then where is the self? As Jerry Fodor puts it "if [...] there is a community of computers living in my head, there had also better be somebody who is in charge; and, by God, it had better be me".⁴⁶ Fodor's objection to the distributed 'self' points out that regardless of the functional construction of the brain, it still needs to have a 'controlling mind' identified as the 'self'. It thus seems to be committed to the existence of a substantive and localised will. Although we should not get drawn into the side issue of the theory of mind, such a view would be consistent with Fodor's advocacy of the realistic view of the propositional attitudes (beliefs and

⁴⁵ Wegner, D., 2002, p. 31

⁴⁶ Fodor, J., 1998, p. 207

desires).⁴⁷ Just as Fodor argues that these attitudes represent actual brain states, the experience of will would also be representative of a brain state capable of causal relations to actions.⁴⁸

Yet the idea of a ‘controlling mind’ does not entail that the controlling mind has to be understood in a substantive sense, although this is how Fodor takes it to be. The search for the source of the will confuses the ontological existence of the will with the experience of willing as such: It is, as Ryle points out, a category mistake to place experiences within the same group as physical materials. Nevertheless, and regardless of whether one is a realist, instrumentalist, or eliminativist in this matter, one cannot deny the practical usefulness of such a conception in explaining and predicting behaviour.

Perhaps though, it might be possible to conceive of a distributed, but ultimately illusory will? In such a model, one would take the ‘inputs’ of various sense organs, and of the multiple other inputs distributed around the body (such as proprioceptors, thermoregulatory sensors, balance and so forth) and process these inputs within different parts of the brain. These would then somehow produce a collective experience of an illusory will. Unfortunately, this would seem to require that somewhere in the brain, these various distributed processors would need to be brought together collated and controlled within a single area of the brain (such as the frontal lobes) in order to produce this experience. Such a view must either return to the substantive will (and thus be vulnerable to either Fodor’s objection to the location of the distributed self, or to the infinite regress of the homunculus if localised) or

⁴⁷ Fodor, J., 1984, p. 232; 1985, p. 77; 1987, p. 16

⁴⁸ Fodor, J., 1984, p. 231-250

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accept that each one of these 'inputs' is as much a part of the experience of self as any other. The existence or otherwise of a collating and controlling area is not then synonymous with the self, it is merely another part of that experience. Thus if we had different 'inputs', such as different memories, feelings, seeing things from a particular angle, and so forth, we would have a different experience of self. This would be regardless of any controlling or collating centre, and therefore this would not be the locus of the will.

Nevertheless, although the conception of disadvantage as impairment of the will has yet to be explored, if the will is conceived to be substantive, then one would be disadvantaged relative to others if one could not exercise will on equal terms with others. However, the connection with other persons would be somewhat weakened. The basis for morality would then be either an individualistic and atomistic matter of ones relations with others, or as obedience to rules provided by a lawgiver (such as a God's commandments). This, it is suggested, is an impoverished view since it loses the notion of intrinsic 'rightness' in a morally good act, and would reduce relations with others to grounds of rationality and interests rather than respect for others as moral ends or moral equals. Although it might be objected that the substantive view of the will does not make the commitments suggested, without being drawn into the debate surrounding the nature of morality, it is merely observed that in order to avoid these commitments (and thus accept that a moral act can be intrinsically good or right) one must move towards an extended view of humanity.

To sum up this part of the argument, it would appear that if the will is substantive, however unlikely this appears, then it could be located only in the

brain. The substantive view of the will is unlikely because it has not been found to be localised within any particular area of the brain, and a distributed view would be vulnerable to Fodor's objection. Yet the localised view is both committed to the substantive will and vulnerable to the problem of infinite regression. This would suggest the falsity of the idea of the will as being entirely located within the brain.

Let us look now to the second part of the argument: that the will ought to be considered as extending beyond the individual mind. The inability to locate an area of the brain responsible for the experience of will now adds weight to this argument. Similarly, the incompatibility of the experiential view of the will with the delimited location becomes a strength of the extended experiential view. When the notion that the current 'self' would not be the same 'self' as might exist under different cultures and environments is taken into account, the argument for an extended will seems far more plausible than the bodily delimited version. How then might the 'self' exist outside of the confines of the individual body?

If the will is not 'found' to reside at any particular place within the brain, then where is the 'self'? An interesting solution to this 'identification' problem is the idea of the extended will. This solution suggests that the will of the individual is not in fact located just within the biological boundaries of the person: it is widely distributed across the community, the culture, the environment, and the technology that the individual is able to access and make a part of her identity. The extended view of the will is supported by authors such as Andy Clark, David Chalmers, Philip Pettit, and Daniel

Dennett.⁴⁹ These writers are not looking for a metaphysical perfectionist ideal for humanity however: they are merely looking for a rationalistic approach to the experience of will. Nevertheless, Dennett and Pettit recognise that the extended will can be considered as foundational to morality, and so to this extent are also discussing metaphysics.⁵⁰

Clark and Chalmers argue that there is no material difference between having a notepad to record information, or having it stored in biological memory.⁵¹ Clark develops this idea to suggest that the person with a cochlea implant who can now hear sounds beyond the pitch of normal hearing will soon identify such hearing as being part of their own ability, or that the person with an enhanced prosthetic arm will soon become accustomed to what they can and cannot now lift.⁵² The person does not regard natural biological memory as other than herself, or her hearing as a separate sensory organ that the self uses, or judge her lifting ability separately from the self that does the lifting. As Clark puts it, “it seems less and less clear where what ‘I’ know stops and what ‘it’(the plug-in) makes available starts”.⁵³

Although these scenarios involve enhancements to an individual’s body, it might also be the case that we use the memories, skills and abilities of other people as part of our own resources and identity. This is precisely the idea of the social context of the extended will. Whilst no further comment will be made as to the locus of cognition, or the nature of neuroscience in relation to the mind, it is simply noted that the idea of disadvantage as the impairment

⁴⁹ Clark, A., 2007, pp. 101-120; Clark., A., and Chalmers, D., 1998., pp. 7-19; Pettit, P., 1996b, pp. 341-355; Dennett, D., 1991, pp. 412-430

⁵⁰ Dennett, D., 2003, pp. 193-220; 2007, pp. 93-99; Pettit 1996b, p. 337

⁵¹ Clark, A., and Chalmers, D., 1998, p. 9

⁵² Clark, A., 2007, p. 105

⁵³ Clark, A., 2007, p. 105

of the will is not threatened by such concerns: on the contrary, in comparison with a substantive will, the conception of disadvantage as impairment of the will is facilitated by the extended view (as will be explained shortly). Concerns relating to cognition and neuroscience are beyond the scope of this thesis in any case. Even so, the much less ambitious claim is made that the will of the individual cannot exist as part of the same self when taken out of context. The individual willing human being would not, and perhaps could not, will in the same way without having the community, culture, technology and social structures to provide the necessary framework. As such the will is embodied within one's environment and creates that environment in return. Disadvantage as impairment of the will can thus relate not only to the individual person, but to any of the pathways and circumstances of her environment that isolate her from those social interactions.

To put this view of the will into the context of the capabilities approach, we can now say that when a person is denied the opportunity to achieve certain functionings, she is unfairly disadvantaged because her will is impaired from achieving a valuable objective. This valuable objective is one that all persons would expect to be able to attain as moral equals in that particular community, that is, one that aligns with (or at least progresses toward) the ideal model of capability within the means of that community to facilitate such 'goods'. The term 'certain functionings' would thus refer to those beings and doings that comprise the essential aspects of human well-being, such as might be specified in Nussbaum's list of central capabilities, for example. The denial of the opportunity to achieve these valuable functionings as a moral equal is paradigmatically unfair. Although impairment of the will

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can relate to both the beings and doings of the capabilities approach, the will is more directly impaired when doings are obstructed (which then fail to be realised as beings). Take for example the functioning of being well nourished. This is not normally considered to be an act of will (although its opposite, the choice to fast most definitely is). However, as the contrast between the person achieving this function through eating boiled rice and the person eating plover's eggs demonstrates, how one achieves this functioning (the doings) is an act of will and can therefore be impaired or not.

Since agency freedom is an expression of the opportunities to achieve functionings, agency freedom is the practical description and assessment of the impairment of the will. There is a normative comparison between the circumstances of the person's situation (comparison with the ideal capabilities model) and the goodness or rightness of that condition (the moral assessment of the fairness). The goodness or rightness of the will in seeking to fulfil particular functionings is then informed by the social context of the extended will such that the objective is accepted as being valuable by the individual and by the greater community in which she lives.

In contrast to the substantive view, then, disadvantage conceived as impairment of the extended will makes our relationships with each other central. In doing so the framework of our interactions with each other becomes intrinsically a matter of morality. Unlike the substantive view's individualistic approach to our moral interactions, the extended view makes disadvantage a concern of unity, rather than division: it is not a matter of the 'haves' versus the 'have nots', but a social concern of all of us. Whereas the capabilities approach has hitherto been presented as a set of conditions that

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an individual must be able to access (which positions the self apart from the wider community) capabilities can now be seen as a set of conditions for which all persons must participate in meeting as moral equals. This conception lends itself to the perfectionist ideal for humanity by recognising the intimate relationship between morality and the community as a whole, and treats the person not as an observer looking in, but as a part of that framework.

A final comment must now be made to counter a possible objection. It has been claimed that the will is as real as the experience of pain. It has also been claimed that the experience of will might correlate with biochemical processes in the brain, in a similar way to which the experience of pain arises. Yet if will is experienced entirely within the brain, then how can the will also be extended outside of these processes: it would be akin to suggesting that pain can be external to the body?

The answer to this objection is threefold: firstly in the distinction between the biochemical processes and the experience, secondly in pointing out the category mistake, and thirdly in the application of the experience after the event. The first part of the response points out that the experience of will is more than just the biochemical changes. These changes might be a necessary part, but they are not sufficient. One also requires (as Wegner has pointed out) that an external event takes place in the right way, at the right time, and with no rival causal factors. Whilst this might seem to posit a mysterious metaphysical entity that makes up the missing internal components for the experience of will, such a move would be to commit the category mistake to which Ryle drew attention. The objection would thus

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make the mistake of assuming that just because an individual's brain might undergo certain biochemical processes (that are then taken to 'produce' the experience of will) that these processes are identical with the will: it would be akin to assuming that 'team spirit' is located in the biochemical changes in the brains of each one of the players on the team. The third part of the response is to point out that the experience of will seems to be applied after the event (so to speak). The biochemical processes would therefore occur in response to external stimuli, and these are then experienced as will. In other words, the mind draws together all of the components parts that comprise the person's will, and then produces the experience of will. This must include those component parts that are external to the biological brain of the individual: the biochemistry might be internal, but the experience of the will includes the external. It is therefore consistent with this view that the experience of will can be extended to include external components.

Furthermore, it is also pointed out that the biochemical processes that might give rise to the experience of pain can also have an external source, at least so far as emotional distress is concerned. Take the example of grief: the loss of a loved-one might cause biochemical changes in the brain which are then experienced as distress. The source of such distress is external and as such is an intrinsic part of the pain experienced as grief.

Given the importance of the framework of social interactions to the conception of the will and moral responsibility, we can now proceed with the investigation into disadvantage with a conception of the will understood as being real enough, at least in a practical sense.

3. Conclusion

We are not *causa sui*: we are not self-initiators of uncaused causes, although that is certainly how it feels. The experience of will is thus different from how things might actually be. As Wegner has demonstrated through examples of phantom limbs, hypnosis, dissociative identity disorder, laboratory experiments involving other person's hands, and automatism, the experience of will can easily come apart from action. The 'self' can thus be falsely led to believe that one has willed an action to come about, when in reality the feeling of conscious will might just be our organism's means of attributing authorship after the fact: a means of identifying that 'I did that' rather than someone else or no one at all.

Yet if this is so, then what is this 'I'? Where does the self appear? This is Jerry Fodor's concern, and one which Wegner answers in terms of the experience: the self is merely the locus of the experience of an illusory will. Just because the will is illusory, this does not make the experience any less real. The question then turns to the locus of this experience, and where that might be located. Andy Clark answers this in terms of the extended will. One cannot find a place where the experience of will is located any more than one might find Ryle's university somewhere in addition to the buildings. Instead the will must be conceived holistically, as relating to the individual and her cultural, technological and environmental circumstances.

So, in answer to the title question of this chapter, the will is the experience of our authorship or control over our circumstances (actions, thoughts, desires, wants, and choices) even if that authorship or control is ultimately illusory. As a capacity it is the recognition of authorship, but as an

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activity it is the exercise of control. The experience is real, as is the morality that comes from that experience. It is extended to encompass our cultures, technology and circumstances in such a way that they are experienced as part of the identity of the self. Even though the experiential view of the will accepts that this experience is ultimately illusory, it is as real as pain, or as real as the conception of a university. Just as it makes sense to say that pain has been blocked, or that the role of the university has been impaired, it makes sense to say that one has been disadvantaged by the impairment of the will. In the next chapter, we will look at the implications of this view to the assessment of disadvantage.

Chapter Six

Unfair Disadvantage as Impairment of the Will

1. Introduction

In this chapter, it is argued that impairment of the will is decisive to the assessment of unfair social disadvantage. It is about the impairment of willing as such rather than impairment of the formal will. If the affected individual has not been consulted or considered in the imposition of disadvantageous conditions, then that person has been denied the opportunity to exercise will, and has therefore been unfairly disadvantaged (provided that the impaired will is towards a valuable end, as will be explained). Such persons have been denied the ability to control their lives as equals and this lack of control relative to others, aside from any vulnerability from being the subject of control themselves, makes them unfairly disadvantaged.¹ It is incumbent upon others to ensure that the wills of each individual are taken into account and given due weight as moral equals. This will be called the 'consultation' requirement. Conversely, it is argued that where will has been freely exercised, then any subsequent disadvantage is not unfair. The existence of social disadvantage alone does not show unfair impairment of the will, although it might usually be the case.

It will then be argued that the exercise of will is necessary to individual self-realisation, or at least for progress towards that ideal, assuming that all individuals with the potential for self-realisation would wish to achieve it. This leads to the conception of 'will-egalitarianism': the idea that all persons ought

¹ Dennett, D., 1984, pp. 50-73

to have an equal opportunity to exercise their wills in progressing towards self-realisation. It follows from this idea that where a person has been denied the opportunity to exercise will (directed towards self-realisation) under circumstances that have neglected her moral equality, she has been unfairly disadvantaged.

2. Preliminary Remarks and Assumptions

As Don Ross comments, “the conceptual image of the will and the self that has been characteristic of western culture for several centuries is paying diminishing returns”.² Given this difficulty, why then should a new thesis give the will such a prominent place? As Ross points out, these diminishing returns are not because the conception is useless or wrong, but because the will has been mistakenly taken to identify a real rather than a virtual concept.

This thesis does not make this mistake and takes the *experience of will as the de facto will*. As an experience it is real to the subject. Just as the experience of pain *is* pain, the experience of will *is* will. Furthermore, it is real in the most direct way: a way which makes it particularly relevant to the evaluation of disadvantage. Given that it would be rather an imaginative stretch to even conceptualise a fully functioning person without her having the experience of will, one must accept that the will is a necessary part of what it means to be a person. Without a notion of the will, persons must be considered as automatons, or zombies, blindly following a predetermined sequence of events in which any experience must be regarded as inconsequential. Yet such experiences, even if ultimately illusory, are not

² Ross, D., 2007, p. 15

inconsequential. They have consequences for *us*: they are felt as pleasure or pain, and such things matter just because they are experiences. It is notable that pain is important to all persons simply because of the negative experience it causes. Likewise, disadvantage is important to persons inasmuch as it causes a negative experience. After all, pain matters to us in just the same way as poverty, misery, oppression, stress, anxiety, and other such disadvantages matter to us: they matter for the negative experiences they impose (dysfunctional extremes aside).

This is not to assume that pain is always bad in itself. There are circumstances where pain forms an important role in allowing us to become aware of harm, and thus to take action to avoid its source, or mitigate its effects. Similarly disadvantage is not always bad in itself. Thus, for example, the application of higher tax rates to the richest compared with lower taxes for the least well-off causes disadvantage (but not unfairly) for those persons well-off. Recall the distinction made in chapter two that disadvantage is normative in two distinct ways. Disadvantage is not always unfair since it can be compared with a model standard, and then evaluated as being either right or wrong; good or bad.

The conception of social disadvantage is primarily about fairness: it is therefore a moral issue. The social connection between the extended will and morality avoids taking an overly individualistic perspective that the idea of the will has a tendency to lead. By recognising that the will of the self encompasses factors external to one's physical body the moral importance of the will to unfair social disadvantage is revealed. One cannot plausibly object that impairment of the will does not matter because the will is only illusory

(and therefore that an impaired illusion has no consequences) because the will is a necessary part of what it means to be a person. The experience itself makes it important, and the extension of the will to incorporate the way in which we experience other things around us (persons, culture, technology *et cetera*) also matters.

The term ‘unfair impairment’ might suggest that it is possible to impair the will fairly in some circumstances. One must reject this possibility inasmuch as the will is conceived formally. Nevertheless, when conceived in relation to moral action, the will can be fairly impaired as long as the affected individual is treated as a moral equal, or if the impaired will would not align with that individual’s self-realisation. This is the source of the ‘consultation’ requirement, and would allow the prevention of the satisfaction of harmful desires (unless wholeheartedly pursued and within the boundaries of self-realisation).³ What counts as ‘self-realisation’ and how this is set will be discussed shortly. When the experiential and extended nature of the will is considered, such ‘fair impairment’ must be considered as no impairment at all, and so the question of fairness does not really arise.

Yet it is possible to impair the *development* of the will, even when conceived formally. Such processes and techniques as indoctrination, and ‘brainwashing’ are examples (although it will be left open as to where the line between education, indoctrination, and brainwashing lays).⁴ This is always unfair as it necessarily involves a failure to treat the person as a moral equal. It would follow from this that any consequent disadvantage caused by

³ This might allow ‘harm’ toward the self under some circumstances, but not towards others unless they are willing parties.

⁴ Dennett, D., 2003, p. 281; See also Dawkins, R., 2006, pp.309-340

external human agency that prevents the development of the will (and so prevents the possibility of self-realisation) must also be unfair.

Although the acceptance of the concept of the will necessarily presupposes the question of its freedom, these two aspects are distinct. This requires further clarification in regard to impairment since this could relate to either the impairment of the will itself or to the impairment of its freedom. Thus to suggest that a person's will is impaired could mean that the person is incapable of will perhaps as a result of brain injury. On the other hand, perhaps impairment could include a lack of natural capacity (which might then raise questions of personhood). Alternatively, it could mean that although the person is in possession of all her faculties, she is prevented from exercising them. It is the latter account that is particularly significant to social disadvantage.

When the term 'impairment of the will' is used, it refers to the impairment of the freedom of the will and thus to the opportunities available to the person, not to the conceptual part of personhood (unless specifically stated otherwise). Despite this distinction, these aspects are closely related, and for people with certain mental disabilities it may well be the case that the conceptual possibility of a will is not an appropriate assumption.⁵ Under these circumstances, the matter of personhood becomes questionable. Even so, it is not the intention within this thesis to address the conceptual requirements of personhood, so this matter is put to one side. The reader is simply

⁵ See Kittay, E., and Carlson, L., 2010, pp. 1-3, and chapters by Singer, P., and McMahan, J., pp. 331-369 of that volume.

reminded that it is the aim of this thesis to provide an account of social disadvantage as it applies to persons.

Furthermore, it is also emphasised that the phrase ‘impairment of the will’ is only to be understood in relation to significant actions. It is thus only concerned with the wholehearted pursuit of valuable ends. Even though the ability to raise an arm on command can be described in terms of willing the arm to move, impairment of the will does not apply to such circumstances. Willing an action is only significant to the conception of disadvantage if the action willed is restricted in some way in which the person is treated as less than a moral equal in the process of that restriction. The will that is impaired must prevent or obstruct self-realisation to some extent.

4. The Will and Self-Realisation

Although self-realisation is an idea that formed the backbone of the British Idealists in the nineteenth century, the conception of an ideal model of a valuable human life has enjoyed something of a resurgence in the idea of capability. Capabilities theorists such as Sen, Nussbaum, Wolff and de-Shalit all accept that there is an ideal capability implicit in the conception.⁶ In this chapter, it is argued that all persons (as equal moral agents) are entitled, in virtue of their moral equality, to the same opportunities for self-realisation as everyone else. Self-realisation in this sense is the achievement of the full

⁶ Sen, A., 1995, pp. 46-9, and 2009, p. 233; Nussbaum, M., 2001, pp. 223-225, and 2006, p. 12; and Wolff, J., and de-Shalit, A., 2007, pp. 36-40. All acknowledge some set of ideal capabilities or ideal model of human capability necessary to live a valuable life, so conceived.

attributes for 'perfect' personhood: a condition which represents an impossible ideal. This ideal is to be understood in the widest sense, and not just in terms of the attainment of valuable functionings (as the capabilities theorist would hold).⁷ Nevertheless, the attainment of such functionings would still be included as a necessary component of self-realisation. Unlike functionings however, self-realisation is not to be taken as an individualistic notion, or one that can be achieved in isolation from others. Since the will is to be understood as extended, and in alignment with a perfectionist ideal, the self-realisation of the individual necessarily encompasses the self-realisation of others in a mutually supportive and interdependent synthesis.

Self-realisation, then, is the attainment of ultimate well-being: it is the achievement of human perfection. However, the meaning of well-being in this sense is not self-centred: it recognises that for a person's life go well for them to the greatest possible extent requires consideration for the needs of others. Well-being is a social concept. Even the acceptance of help from others can contribute towards one's own and the assistant's well-being. The attainment of functionings, and the opportunities to achieve them, are thus socially dependent and necessary attributes of self-realisation.

As a moral entity, perfection would entail that one acquires the character and virtues of a morally perfect or saintly being. Although such a conceptual being is an absurdity, to suggest that one should strive towards such a state is not absurd: it is merely to recognise the ambition. Self-realisation would then be specific to each person, but hold in common with all persons the generic qualities of perfection, that is, that perfection would entail

⁷ Sen, A., 1995, p. 49

virtues as opposed to the perfection of immoral attributes. These attributes must, of necessity, align with the extended wills of others within the community. This is because the virtues and vices are dependent upon (though not necessarily decided by) the societal norms for that particular community, and therefore virtues would be compatible whereas vices would not.

Yet even the non-perfectionist might accept that a person can become a better or worse human being through the choices and actions that she makes. The language of personal development, continuous professional development, the significant number of publications on well-being, even the existence of religion and the commonly reported search for meaning in our lives, all point towards it being in our nature to seek improvement. The process of self-realisation might therefore be acceptable to those who are not convinced by a perfectionist ideal. The process of becoming might in itself be sufficient for this thesis (as will be described shortly) provided that one also accepts the notion of moral goodness.

The interconnectedness of morality and the will is evident within the context of a community in which all persons seek mutual self-realisation. The essential conditions for the achievement of this ideal include such things as dignity, self-respect, access to a loving and nurturing environment (especially during childhood) and such like. Rawls's two moral powers (the capacity for a sense of justice, and the capacity for a conception of the good) can also be

considered as essentials in this respect.⁸ The perfectionist element relates to the attainment of an ideal in which the will is directed towards this end.

It is the role of community that is particularly important to the conception of self-realisation, inasmuch as we are looking at the problem of social disadvantage. It is the community in which one lives that provides the opportunities for self-realisation, determines to some extent what that entails (practically more than spiritually), and so determines what social disadvantage is in relation to that community. Yet it does not seem strictly necessary to require the achievement of full self-realisation in order to obtain a working tool to define disadvantage. Although self-realisation is regarded as the attainment of a state of perfection of the self, such a metaphysical conception may only define the limits of the term: it may not be necessary in practice. One can hold onto the theoretical model of an ideal self whilst recognising that here and now, within the circumstances that one finds oneself and the materials one has to work with, that the aim should be to achieve a more limited view of optimisation rather than 'perfection'.

This view of self-realisation as optimisation will of course depend on the prevailing circumstances, such that in ideal circumstances full self-realisation would align the optimum with the ideal, but in less than ideal circumstances, the best self that could be realised is also less than ideal. Thus in a state with restricted resources, say, the optimal self may be further from the ideal than in a state with plentiful resources. Yet many of the attributes of the ideal self are independent of such things as the availability of resources. For example, the achievement of the ideal self includes an

⁸ Rawls, J., 2003, p. 114

awareness that the good of the self aligns with the good of others. Therefore even in times of severe restrictions of resources, this would require that whatever scarce resources are available, that they should be shared equitably. This does not necessarily mean equally. As Sen has pointed out (and as discussed in chapter four) persons are not all the same: they might be different sizes; might be pregnant; have different metabolisms; or otherwise have unequal needs that may require unequal distribution.⁹

Notice though, that one does not become unfairly disadvantaged in a community if all members of that community are in such dire straits that all are driven by circumstances of austerity. That is, in a community in severe poverty say, or where no one has a greater opportunity to exercise will than another, then no one is unfairly disadvantaged. Then again, such persons may be regarded as severely disadvantaged in comparison with other wealthier communities in which such choices are available. Although this has implications for global justice, this thesis is concerned with the role of the state in meeting the challenge of unfair disadvantage: the focus must therefore be on citizens as members of that state, not ‘persons’ or ‘individuals’ generally. The state’s responsibilities must be to ensure that all of its members are treated fairly by the arrangements of the state. Considerations of global justice are beyond the scope of this thesis and will not be explored further here. Nevertheless, they could form the basis of further research in the future.

Recall however, that the will can relate to the formal will, or the act of willing as such. Whereas the formal will is *necessarily* free, at least in a social

⁹ Sen, A., 1995, p. 1

context, the *exercise* of will need not be.¹⁰ The relationship between the formal will and the exercise of will is not symmetrical: One can develop one's will through its exercise (inasmuch as one can refine a conception of the good, recognise which actions align with that conception, take stock of one's beliefs and ensure consistency between them by adjusting one or the other) but one cannot attain moral perfection, that is achieve self-realisation, through that route alone. Thus an ill-defined will can become stronger and more focussed through its repeated exercise. Yet its exercise does not improve the moral rightness or goodness of that will. The phrase 'power corrupts' illustrates the problem of an excessive opportunity to exercise will, but a will that is constrained by regard for others is less exposed to this danger. Only a good will, that is, one in which the self both recognises the existence of others as moral equals, and recognises that as aligning with one's own good, can possibly attain self-realisation since only then can the 'constraint of others' be considered as a liberating element of one's own perfect self.

The extended will is a moderating factor in this achievement since such a conception is both created by and creates the social norms of the community in which one lives. A will which merely accepts the constraint of the recognition of the equal rights of others could perhaps be regarded as morally neutral, inasmuch as those constraints are taken to be a pragmatic solution to the problem of Hobbesian competition.¹¹ The view of self-realisation of an extended will requires a moral conception of the good in

¹⁰ As an analytical conception, the term 'will' includes the conception of freedom since it would be meaningless without it. However, no commitment is made here in regard to deterministic freedom.

¹¹ See Hobbes, 1998, pp. 507-8

which the good of the self aligns with the good of others not as a constraint, but as a liberation. It is an active embrace by the self as a part and product of one's community.

Since perfectionist self-realisation requires the extended will to be unimpeded, any impairment of the will towards that end would be manifested as disadvantage relative to the achievement had the will not been impaired. Yet when we are considering multiples of persons, and where impairment is caused through human agency, such impairment will be manifested as the disadvantage of the person relative to others. Such other persons might then be further towards their own state of self-realisation (with the caveat that one cannot progress far without realising that one's own possibility of perfection depends upon the success of others towards their own self-realisation). Disadvantages that might occur in the absence of human agency, such as from natural disasters, or accidents of birth, are not in themselves examples of social disadvantage. It is how we relate to such persons and events that makes them social disadvantages, rather than simply disadvantageous circumstances.

When such disadvantage is through human agency then the impairment of the will (towards self-realisation) is nearly always unfair. The exception to this is where conditions are so limited that no one can progress toward self-realisation. Still, given that a perfectionist ideal is unachievable in practice, it is the matter of progress towards self-realisation that is important. Since the treatment of others as ends is part of one's own self-realisation, then it will not be possible to have unequal progress without some degree of unfairness for some. Therefore, any substantial inequality in progress towards

a person's self-realisation through the actions of another will almost always be unfair.

Yet the structures and arrangements of the societies in which we live can profoundly affect the opportunities for self-realisation, and thus the achievement of each person's due as a moral equal. Furthermore, it is not only each person's due as a moral equal that is affected: it is also their chances for moral development. This would suggest that the less equal a society is in terms of welfare, resources, or liberty, the more likely it is that persons within that society have had their wills unfairly impaired. Such a mechanism does not suggest that the inequality is objectionable in itself, but locates the objection in the fact of disruption to the wills of some members of that society relative to others. Wilkinson and Pickett are thus correct to point out that an unequal society is a dysfunctional one, but could not explain why equal societies perform better in terms of such things as unwanted pregnancy rates, social mistrust, physical and mental health, crime rates, obesity, and other such social measures.¹² The idea of impairment of the will can give an account of why this should be so without resorting to the "rather shabby" comparison between what some people have relative to others (as so annoyed Frankfurt).¹³ Unequal societies simply tolerate unfairness and permit the impairment of the wills of some persons relative to others: they thus ensure the suppression of moral development for the socially disadvantaged, and perpetuate the socially undesirable traits that Wilkinson and Pickett identify. Unequal societies prevent persons from recognising that their own

¹² Wilkinson, R., and Pickett, K., 2010, pp. 173-184

¹³ Frankfurt, H., 1987, p. 34

self-realisation depends on the facilitation of others and so perpetuates a Hobbesian outlook for society. Conceived as the impairment of the extended will, unfair disadvantage is not to be regarded as a shortage of a particular object or property: it is a disruption of our standing as equal moral persons.

The connection between substantial inequality and fairness is therefore close, but not quite a necessary relationship (at least in the short term). There are two aspects that determine this relationship: degree of inequality, and duration. It is suggested that a large discrepancy over anything other than a very short term, or a moderate discrepancy over a long term, would almost certainly entail the unfair impairment of the will for those who are adversely affected.

Taking the former aspect first, substantial inequality might result from natural disaster, and would not by that account amount to the unfair impairment of anyone's will. However, if this inequality were sustained, that is, our response to the suffering of others allowed the resulting inequality to persist, then this would necessarily involve the unfair impairment of the opportunities for self-realisation of the victims by the inaction of those unaffected. It would necessitate a failure in those unaffected by the disaster to recognise that their own self-realisation depends upon assisting those in need. If such persons are able to assist and do not do so, they are necessarily treating the victims unfairly.

In the second aspect, some moderate inequalities would be inevitable as persons will progress towards self-realisation at different rates. What would count as 'moderate' will be dealt with in the next chapter, but relates to a range of acceptability between upper and lower threshold levels of the will.

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The existence of moderate inequality would not be unfair in itself, but since progress towards self-realisation requires the rendering of assistance to others, if any groups or individuals fail to make progress over a sustained period, then it is likely that they have had their wills unfairly impaired. Any specified timeframe would be arbitrary, it would therefore be reasonable to make such a judgement on a case by case basis. As an indicator however, persistent moderate inequality that adversely affected a group or individual might be measured in decades rather than generations. Any moderate inequality that persisted across generations would almost certainly be unfair by this account. This is because those better off in that society have failed to treat such persons as moral equals: they have failed to allow them access to an equal opportunity for self-realisation. Note however, that voluntary action to forego welfare, resources, or liberty is an exercise of will and therefore not unfair. Thus the persistence of poverty, say, in a monk who rejects materialistic concerns would not amount to unfair social disadvantage. When taken together with the idea of different rates of progression towards self-realisation, and the idea of upper and lower thresholds of acceptability, some degree of general moderate inequality (not attributable to specific groups or individuals) could persist without being necessarily unfair.

Returning now to the conception of self-realisation, this must describe the successful satisfaction of the will. This can take different paths to achieve, within limits of social acceptability (as will be explained in a moment). If someone's self-realisation means that they need to become a doctor, or lawyer, or footballer, or window-cleaner, or carpet seller, they ought to have an equal opportunity to do so. Since the path to self-realisation can be

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mutable over time, these opportunities must also remain open to such changes.

Yet errors of judgement and human fallibility might cause individuals to mistake what is actually necessary for self-realisation. Where this is the case, the will is not going to be successfully satisfied. The self will not identify with the options available and so self-realisation will not be possible. The path to self-realisation will vary, depending upon the individual's own conception of the good. It is this variability that makes it possible that persons might not be sufficiently self-aware to accurately identify their own needs and so may accept compromises, or make errors of judgement. For example, over-ambition might cause individuals to mistake what is actually required for self-realisation, leading to frustration of the will and disappointment.

How then might the state fulfil its role of facilitating the self-realisation of its citizens when they are perhaps prone to error? This question will be addressed in more detail in chapter eight, but raises some relevant issues to unfair disadvantage that must be described here. If the state were obliged to facilitate all persons to achieve self-assessed and misguided attempts at self-realisation, then this could be both wasteful and costly. The impositions upon the individual members of that state would also be excessive if not impossible to meet fairly. It would therefore seem that the state cannot meet all that is self-identified, and 'affordability' must be taken into account (though not simply conceived as resources). However, one must remember that it is the other members of the particular society that are the source of moral accountability, and thus the ultimate source of the self-realisation of the individual.

Furthermore, since only that which is good contributes towards one's self-realisation there falls no obligation on the state to facilitate claims that do not actually contribute. Therefore those who identify with the bad as being for the time being their good cannot claim the assistance of the state to realise that ambition. The state cannot therefore assist in acts of vengeance on behalf of victims of crime, say. Similarly for those who have destructive tendencies, such as criminals and those with psychological dysfunctions. They too cannot claim assistance from the state to meet what they might mistakenly identify as their self-realisation. Those who would seek to profit by anti-social behaviour, or self-inflicted disadvantage, or deliberately wasteful behaviour, need not be allowed to become parasitic upon other members of the community since such behaviour does not actually contribute towards their own self-realisation.

Recall from the previous chapter that the will can be either a capacity when passive, or an activity when exercised. As a capacity, it relates to the recognition of authorship: the placing of the self relative to a set of circumstances and accepting that 'I did that'. This is the aspect of the will that produces moral responsibility when social interactions with other persons takes place. It is this aspect that is particularly sensitive to the social norms of the particular community, and is therefore the aspect that can most readily be envisaged as extending into the community in a two-way relationship. It is the aspect involved in the identification of valuable ends. Yet it is the will as an activity that is involved in the wholehearted pursuit of the valued activity. This idea of wholeheartedness is also used by Joseph Raz in his discussions of

well-being.¹⁴ As Raz puts it, “only valuable activities contribute to our well-being”, and even laid-back inactivity, if chosen as a life-style, would also counts as wholeheartedness.¹⁵ Thus the will as activity, when taken together with the will as recognition of authorship makes possible the idea of self-realisation.

The notion of self-realisation of all persons within a society, each having their own mutually dependent interests, requires the idea of interconnectedness and compatibility between person’s ends such that no-one’s will can fairly dominate or override anyone else’s. This idea will be called ‘will-egalitarianism’. It is this idea that we turn to next.

5. Will-Egalitarianism

In this next section, the idea of will-egalitarianism will be discussed, along with some of the implications that follow from this conception. Will-egalitarianism is described as a principle of fairness and control over one’s choices and opportunities. So conceived, this allows will-egalitarianism to meet what is perhaps the greatest challenge to egalitarianism: the “levelling down” objection.¹⁶ This is the view that “society would be better, in one respect at least, if each person’s condition were reduced to that of the worst off individual”.¹⁷ This claim would suggest that in a world of blind persons, for example, if the only sighted person were to be blinded that this would be

¹⁴ Raz, J., 1994, p. 3

¹⁵ Raz, J., 1994, p. 4

¹⁶ Parfit, D., 1997, p. 10

¹⁷ Mason, A., 2006, pp. 116-7

better in a way, since fairer.¹⁸ Will-egalitarianism is not vulnerable to this objection.

Will-egalitarianism is the idea that all persons ought to have the equal opportunity to exercise will. It is thus a principle of fairness. Since unfair social disadvantage is to be considered as resulting from the impairment of the will, this would suggest that a fair society is one in which all persons have an equal opportunity to exercise will within a scheme of equal opportunities for others to do likewise. Furthermore, the requirement of perfectionism (that individual self-realisation requires that others are also able to progress towards self-realisation) is more than simple reciprocity: it is interdependent mutuality.

Yet it can also be regarded as a principle of control over the circumstances of one's life. It is thus a matter of personal autonomy within a framework that sets limits to the exercise of that autonomy. As Daniel Dennett suggests, this is exactly what we want in order to be free: "we want to keep our options open, so that our chances of maintaining control over our options, come what may, are enhanced".¹⁹ Will-egalitarianism adds to this experience of control by introducing a scheme whereby each can express control over their options on an equal (and mutually supportive) basis.

One is unfairly socially disadvantaged where one's choices are restricted relative to others such that the person cannot progress towards self-realisation. In practice, such disadvantage would entail that any choices that exist do not carry significant moral responsibility, that is, significant

¹⁸ Parfit, D., 1997, p. 211 makes a similar point.

¹⁹ Dennett, D., 1984, p. 63

choices for which one might be held accountable, and not just trivial matters. This would require that the state pursue policies of empowerment to individuals, and to enable citizens to exercise control over their circumstances.

Unfortunately, the existence of some disadvantages (such as physical disability) cannot be eliminated as a matter of state policy. Even so, the effects of such conditions can be eased or removed by facilitating the exercise of will. Yet where such disadvantages persist, if the will has been exercised in the wholehearted acceptance of those circumstances, then the disadvantage can no longer be regarded as unfair. This is not to say that the psychological acceptance of a less than ideal lot is sufficient to suggest that this would now be fair (this is the problem of adaptive preference). The exercise of will must also align with the perfectionist ideal of self-realisation in a mutually supportive way. Although an individual may be expressing will as a way of coping with an unfair burden, this does not make it suddenly become fair. Yet if one is willing to accept conditions that others would reject, whilst refusing to accept that they are in fact burdens, then such circumstances might truly be described as contributing towards her self-realisation. Such circumstances would therefore no longer count as unfair. This is what is meant by 'wholehearted acceptance'. The business of the state should therefore be directed not at the elimination of social disadvantage, but at the elimination of unfair social disadvantage, and this will entail the equalization of opportunities for all citizens to exercise will in directing it towards their own self-realisation. The implications for the role of the state will be discussed in chapter eight.

Nevertheless, a potential misunderstanding with the term 'will-egalitarianism' must now be addressed. This will clarify the sort of actions or choices that count for the purposes of will-egalitarianism as carrying moral responsibility: The term 'will-egalitarianism' does not claim that all persons ought to be equally able to *realise* their will, just that the opportunity for the *exercise* of will ought to be equal to the point that allows practical self-realisation (a term which allows only actions for which one can be held morally responsible as contributing towards a perfectionist ideal).

It might be objected that persons need more than just an equal opportunity to exercise will: they must be able to exert will equally. If only the opportunity were equalised, then it would be possible for luck, or skill, or natural ability to gain an inroad into an unfairly superior position. Take the example of a penalty shot in basketball: one could line up several people and allow them each one shot. Each person has thus had an equal opportunity, but if one person is seven feet tall, whilst another is only four feet, the taller person has a significant advantage. Another person might be blind, or another born with no arms, or another might slip, whilst another simply throws a lucky shot. It would therefore seem that equal opportunity alone is insufficient to address unfair disadvantage.

Despite this apparent difficulty, the objection can be answered both conceptually and practically. Conceptually, this would not really be a problem to will-egalitarianism since the lucky, or gifted, must still recognise that the good of others is part of their own. They would thus recognise that it would be wrong to abuse their superior position to exploit the unfortunate or less talented. In a practical sense, those who do not recognise that the good of

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others is part of their own would be harming their own development and must be prevented from doing so. Systems must therefore be put in place by the state to prevent exploitative behaviour. Furthermore, the realisation of equal exercise of will is not an undesirable outcome (as will be explained in the following chapters).

The exercise of will must be compatible with a similar scheme for all, but since self-realisation entails the facilitation of self-realisation in others, this will ensure equality of opportunity in practice. The idea of an extended will, when allied to a perfectionist ideal of self-realisation, would channel the choices of the lucky, or the gifted, in a direction which assists the less fortunate since to do otherwise would undermine their own self-realisation. This will require that the choices that persons make are always subject to those choices being compatible with all other citizens having the opportunity to do likewise.

Yet the concept of practical self-realisation does not commit a society to service all identified (or misidentified) choices, even if these appear to contribute towards self-realisation. Such choices are tempered by considerations of equal concern, compatibility with the wills of others, and affordability (not simply conceived as resources). Other members of that particular society are only obliged to facilitate self-realisation of the individual on an equal basis as a principle of social cooperation – fairness requires ‘will-egalitarianism’. This means that in a society which cannot afford free education, say, there is no requirement that it be provided, so long as whatever the state can afford allows all members to have an equal opportunity to realise their respective wills within such restrictive

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circumstances. Members of that society might be disadvantaged in relation to other societies, but not within their own society. On the other hand, in a society in which free education is affordable (in this case, that sufficient resources exist) then that society is obliged to provide it to those who need it for self-realisation.

It might be thought that since will-egalitarianism seems to be doing most of the work in relation to the determination of fairness, then the combination with perfectionism and self-realisation is superfluous. Thus in a scheme in which all persons are to be treated by the state as moral equals, then it seems as if compatibility between competing views is the only regulating mechanism. The introduction of the idea of perfectionism would therefore seem to be unnecessary. Take Dworkin's example of the frustrated racists: it is conceivable to have a racist society in which each racist treats all others as moral equals, so long as they remain racist towards the same 'others'. Yet such a scheme would be unstable: if the requirement of will-egalitarianism were enforced by the state, any dissenters from the racist code must be given an equal opportunity to have their own will facilitated. The facilitation of such dissenters would require more than simple compensation, it would be incompatible with the wills of the racists and so destabilise the state. Furthermore, if will-egalitarianism is applied to a single racist within an ideal state, it might be claimed that such a person would warrant some form of compensation for having her will frustrated. The accusation might then be made that perfectionism is simply a practical device added to will-egalitarianism in order to prevent such consequences.

The idea of perfectionism as a moral principle answers these objections. Perfectionism is the moralistic justification for treating each person as an end, whereas will-egalitarianism is the mechanism for the application of this moral ideal. By definition, the racist does not recognise that the self-realisation of others, including those races that are subject to her hatred, is part of her own self-realisation. Such intolerance would also tend to erode her own well-being, perhaps resulting in mistrust of others that she might suspect of being 'impure' or sympathising with such groups. Such self-destructive intolerance can hardly be considered as an attribute of the perfectionist ideal. The frustrated racist might well count amongst the disadvantaged in virtue of being unable to realise her will, but since her ambitions do not contribute towards her self-realisation, her disadvantage is not unfair, and she would not warrant compensation.

Whilst will-egalitarianism is to be recognised as carrying the strongest regulating influence (in a mechanistic sense) it is not to be conceived as the only such influence. Impairment of the will can define disadvantage in itself, but the role of the state only becomes implicated when it is conceived as social disadvantage. Thus will-egalitarianism alone would recognise the person with expensive tastes as being disadvantaged; it would also accept the person who made it their will to preserve the eroding coastline of Martha's Vineyard as disadvantaged by the failure; and it would likewise recognise that the racist prevented from realising her will is also disadvantaged. They are not unfairly disadvantaged, however. Whereas Dworkin turns to a scheme of distribution of resources to describe what the state should do, it is suggested that a scheme based upon a perfectionist view is better placed and more

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consistent with the conception of social disadvantage: it is better placed to recognise that the assessment of social disadvantage is pluralistic in nature and therefore cannot be adequately addressed in terms of resources alone.

In the example of the expensive tastes problem, there is a step missing from Dworkin's account. Dworkin makes the assumption that the individual who possesses such tastes would automatically make it their will to satisfy those tastes. Yet just because a person has certain tastes, they can still choose, or rather will, to satisfy that taste or not. As the controversy over the acceptance of 'non-practising' homosexual priests within the Catholic Church would suggest, a person may have certain sexual tastes, but choose celibacy as an exercise of will over the taste.²⁰ Those heterosexual priests that choose celibacy make a similar commitment. In doing so they acknowledge that they have certain tastes but recognise that their life would be better overall by not satisfying that taste (and thus further acknowledge that their own extended will incorporates cultural norms). Similarly, the person with expensive tastes may acknowledge such tastes but recognise that their life would be better overall by following a more frugal lifestyle. After all, it is extremely unlikely that one would build an entire life around the satisfaction of just one aspect, such as drinking only fine claret and eating only plovers' eggs.

It is this personal identification with satisfying the expensive taste that will-egalitarianism would recognise as causing the individual disadvantage when she fails to satisfy that aspect of her will. So, when one introduces a perfectionist ideal, the obsession with just one aspect of the person's life can immediately be recognised as counter-productive to self-realisation. The

²⁰ Brown, A., 2010

focus upon satisfying only personal tastes is entirely to ignore the recognition that the well-being of others is part of one's own self-realisation, and is to ignore that our lives are considerably richer than the satisfaction of just one, or a few, tastes and desires.

In the example of Martha's Vineyard, an individual may indeed make such an objective her will to the exclusion of other aspects in her life. An account based upon will-egalitarianism alone would recognise the disadvantage, but be inadequate to address the pressures that this might place upon others. Such a will must be assisted up to the point where the expense becomes detrimental to the facilitation of the wills of others, or when the pressure from others with competing (or even opposing) wills overcomes the will of this particular environmental conservationist. Yet when the idea of perfectionism is introduced other regulating limitations are introduced much sooner. Firstly, because a single issue obsession of this kind is unlikely to contribute to an individual's self-realisation, and secondly, because the failure to be able to recognise a lost cause, and to continue to expend resources upon such an objective, is not a trait that might describe the perfectionist ideal for humanity. The obsessed conservationist may well believe that such an action would also contribute to the well-being of others, so to that extent might align with self-realisation, but without consultation with those others, such a view becomes authoritarian. True self-realisation must take into account only those factors that genuinely contribute to the self-realisation of others. This requires some form of consultation, as will be discussed further in chapter eight.

Returning now to the levelling down objection. We are now in a position to understand why this objection cannot apply to will-egalitarianism: the objection is simply no objection at all. It would certainly be better in a way if society were levelled down so that all persons have an equal opportunity to exercise will, but there is no difference in this respect between levelling up, or levelling down. Will-egalitarianism thus represents an ideal at which a point of moral sufficiency coincides with a point of optimacy. What might become a problem in practice is if some individuals were legitimately able to exercise a greater degree of will than others, since this would allow them to become an oppressor, or *dominus*, regardless of the perhaps good intentions of the individual.²¹ Since the practical application of will-egalitarianism is likely to differ from the ideal, this would suggest a tolerable range, such that a minimum level of opportunity for the exercise of will might mark a point of sufficiency, whereas an upper level might mark the point at which the greater opportunities for the better-off now harm the opportunities for the least well-off. These issues will be explored further in the next chapter.

There is thus a mechanism of conservation of will at work here too. This is not to say that there is an absolute maximum 'amount' of will to be distributed. Fluctuations of populations will ensure that the total extent must change. Yet regardless of the extent of the population each must have an equal opportunity to exercise will (directed towards a valuable end). One cannot have a greater degree of exercise of (extended) will without adversely affecting the wills of others (despite the tolerable range). This is not to say that persons cannot hold a greater amount of welfare, resources, or liberty:

²¹ Pettit, P., 1996a, p. 576; 2002, p. 340

these are just aspects in which traditional disadvantage might be expressed, but they have little to do with the evaluation of the fairness of disadvantage or how persons might legitimately exercise will (other than that they facilitate or enable the exercise of will). Just because a person is resource-rich this does not necessarily mean that they can be permitted a greater opportunity to exercise will than a poorer person. Power over goods is not the same thing as power over persons, and the two spheres ought to be kept separate. Persons must be allowed the same opportunity to control how their life will progress towards self-realisation.

To sum up, the will is expressed in the direction of activities towards self-realisation, which in turn is the making real of an optimal self given the circumstances in which one finds oneself. It is perfectionism constrained by circumstances that determines what exactly the optimal self is able to realise, and this depends upon a principle for the equality of the extended will. The principle of equality of will is to apply to all members of the community and is the basis for an assessment of social disadvantage. One is unfairly disadvantaged when the arrangements of the society, or actions of others within that society, impair the will of any individual in progressing towards her self-realisation. One cannot be unfairly disadvantaged if one wholeheartedly chooses, in full knowledge of the possible consequences of that choice, to accept the resultant circumstances of disadvantage.

6. Conclusion

As presented, the 'will' is about moral responsibility, self-realisation and the direction of activities towards that end. As Green suggests, it is a capacity when passive and an activity when directed towards a particular end.²² As a capacity, it is about the recognition of authorship. This gives the connection to moral responsibility: a notion that is dependent upon the social norms of the community. As an activity, it is about the exercise of control. This gives the connection with the wholehearted pursuit of a valuable end. Together, these two aspects of the will make the exercise of control towards a valuable end morally imputable to the individual, that is, it makes possible the idea of self-realisation. However, self-realisation must describe the successful satisfaction of the will, and since the will is taken to be extended beyond the individual, includes the self-realisation of the wills of other persons within that community. The implications of this are that each person is to be afforded an equal opportunity to exercise will (the opportunity to achieve self-realisation) interdependent upon and compatible with a similar scheme for all. One is disadvantaged when she has been unable to achieve the same level of progress towards her own self-realisation relative to the progress achieved by others.

Even though the elimination of unfair social disadvantage might be an ultimately unachievable goal, it is nevertheless the case that where an individual has had the opportunity to wholeheartedly exercise will, then any resultant disadvantage must be considered to be fair. It is therefore suggested that in order to minimise unfair disadvantage it might be a viable

²² PPO, Sec. 6

objective for the state to focus upon increasing opportunities for all citizens to exercise will.

In the next chapter, some implications arising from the pursuit of will-egalitarianism will be considered. As already discussed, the levelling down objection does not apply to will-egalitarianism since, when conceived as an ideal, it represents both a maximum and minimum level of control over how each person's life might proceed towards self-realisation. This idea will now be developed to suggest that will-egalitarianism thus represents a sufficientarian position.

Chapter Seven

Social Disadvantage: Thresholds, Sufficiency, and Priority

1. Introduction

In the previous chapter, it was argued that unfair disadvantage is best conceived as impairment of the will of the individual when directed towards a valuable activity (self-realisation). This argument will now be developed to suggest that such a conception leads to a sufficientarian principle of social justice, that is, that will-egalitarianism leads to a threshold requirement in which all persons have enough. Such a view is unusual in that it combines a principle of egalitarianism with a view that is typically anti-egalitarian, at least in the version offered by Harry Frankfurt.¹ Although Frankfurt targets only economic wealth, it will also be taken that other aspects in which egalitarianism can be expressed (such as resources, liberty, and the will) are also subject to his anti-egalitarian argument. In this chapter, Frankfurt's challenge will be met by demonstrating that will-egalitarianism is compatible with his doctrine of sufficiency.

A further implication of perfectionist will-egalitarianism is the possibility of an upper threshold which accompanies the lower level. The upper threshold then represents that degree of excess that a person cannot fairly exceed in the presence of those below that threshold (bearing in mind that these thresholds represent equality of opportunities and satisfaction of the will respectively, and not the amount of goods that individuals might possess). To attempt to do so would be to either expose those at the lower level to

¹ Frankfurt, H., 1987, p. 21

domination, and/or would be damaging to the better-off person's progression towards self-realisation. This meets the common criticism of sufficientarianism that it is not concerned with those above the minimum threshold.²

The chapter will first discuss the conceptions of thresholds and sufficiency before looking to the rival doctrine of priority. Whilst sufficientarians (such as Frankfurt) typically point out that it is not the inequality but the suffering that is of moral concern, it is not accepted that disadvantage, by extension, ought not to be of moral concern either. By this reasoning, if a disadvantage results in suffering then it should be only the suffering that is of concern. However, if the disadvantage is unfair, then this *can* have moral implications regardless of the suffering. Whilst Frankfurt's point would be correct if aimed at the generic conception of disadvantage (as discussed in chapter two), we are dealing here with social disadvantage. Frankfurt thus also commits the error of conflating the conception of disadvantage with unfairness: he assumes that all egalitarians, when making comparisons between persons, agree that those with less have been treated unfairly. As has been shown, this is not necessarily the case: the proper objection is to the unfairness, and not simply to the differential. The normative nature of this conception is therefore very much a concern of morality.

As Paula Casal points out, Frankfurt's sufficiency principle does not give a full account of social justice, and would need further support to become workable.³ It is suggested here that the conception of unfair disadvantage can

² Dworkin, R., 2000, p. 3; Casal, P., 2007, pp. 296-326

³ Casal, P., 2007, p. 298

give that support.⁴ Furthermore, it will also be argued that Frankfurt's dismissal of equality on sufficientarian grounds is premature. At root, it is suggested, the sufficiency principle relies upon the moral equality of all persons, and this fundamental egalitarianism also supports the focus on the will of the individual in relation to unfair disadvantage. The chapter finishes by considering some of the implications of these views to the conception of disadvantage as impairment of the will, before discussing some potential objections.

2. Thresholds, Sufficiency, and Priority

Harry Frankfurt argues in his influential paper 'Equality as a Moral Ideal' that the egalitarian's "fetishistic" obsession with equality is misplaced, and that the fact of inequality should not be considered a matter of moral concern.⁵ Furthermore, Frankfurt also believes that the preoccupation egalitarians have with the possessions of some persons in order to position others in a metric of equality, is morally reprehensible. It removes people from consideration of what should really be important to them, that is, the extent to which their own interests and needs are satisfied. Frankfurt points out that many egalitarians would be appalled if their own children were preoccupied with what others have, and would regard such an attitude as "rather shabby".⁶ Frankfurt is therefore questioning why we should believe equality *per se* to be a morally good principle at all. Whilst I agree with Frankfurt that the possession of

⁴ Casal, P., 2007, pp. 296-326

⁵ Frankfurt, H., 1987, p. 21-43

⁶ Frankfurt, H., 1987, p. 34

goods is morally irrelevant, it is suggested that what should really be important is not whether interests and needs are satisfied, but the fairness of our relations with each other.

Worryingly for a conception of social justice, since the assessment of social disadvantage is also dependent upon a comparative assessment, Frankfurt would also dismiss the existence of disadvantage as being a moral concern too. Although Frankfurt's target is economic equality, his arguments can also be directed at equality of welfare, or equality of liberty, or other such types of egalitarianism. He suggests that advocates of equality have misidentified the relative disparity between person's holdings as being morally important in itself, when what they really object to is the hardship and suffering of the least well-off:

many people believe that economic equality has considerable moral value in itself. For this reason they often urge that efforts to approach the egalitarian ideal should be accorded – with all due consideration for the possible effects of such efforts in obstructing or in conducing to the achievement of other goods - a significant priority. In my opinion, this is a mistake. Economic equality is not as such of particular moral importance. [...] what is important from the point of view of morality is not that everyone should have *the same* but that each should have *enough*.⁷

⁷ Frankfurt, H., 1987, p. 21

He calls this “the doctrine of sufficiency”, and describes it as an alternative to egalitarianism.⁸ However, he does make an important caveat: he emphasises that in many cases the best way to ensure that everyone has sufficient may well be to promote equality. Nevertheless, he also holds that “the error of believing that there are powerful moral reasons for caring about equality is far from innocuous. In fact, this belief tends to do significant harm”.⁹ He supports this assertion by pointing to the conflict between equality and liberty, such that the imposition of a policy of equality will inevitably mean the repression of liberty for others.

Yet Frankfurt’s view of egalitarianism may not be the best reading of the concept. As Gerald Cohen argues, the “right reading of egalitarianism [takes account of its purpose to] eliminate involuntary disadvantage”.¹⁰ For Cohen, ‘involuntary disadvantage’ is “disadvantage for which the sufferer cannot be held responsible, since it does not appropriately reflect choices that he has made or is making or would make”.¹¹ Egalitarianism is thus not about comparing what others have in relation to oneself: it is about choice and equality of access to advantage.¹² Such a conception recognises three fundamental aspects of social justice; that it is concerned with fundamental equality of the person; that it is concerned with disadvantage; and it is concerned with the effective will of the individual to make voluntary choices. As discussed in chapter one, Cohen recognises the need for something more

⁸ Frankfurt, H., 1987, p. 22

⁹ Frankfurt, H., 1987, p. 22

¹⁰ Cohen, G.A., 1989, p. 916

¹¹ Cohen, G.A., 1989, p. 916

¹² Cohen, G.A., 1989, p. 916

fundamental than the distribution of resources or welfare in which to express the idea of social justice, and the consequent concept of disadvantage.

Economic egalitarianism treats equality as intrinsically valuable, rather than, as Frankfurt suggests, contingently valuable to the achievement of needs and interests.¹³ Yet Frankfurt's focus on sufficiency alone leaves no place for voluntary acceptance of insufficiency. His objection to egalitarianism (that it is so obsessed with the principle of equality that it misses the important point) leaves him open to a similar accusation. It is thus suggested that Frankfurt's obsession with sufficiency misses the importance of voluntariness, and thus the will of the individual. By this account, it is not just the suffering and hardship that is objectionable: it is the unfairness of such conditions.

For Frankfurt, the urgency that motivates agency is a consequence of persons not having enough, or more precisely, it is the fact of suffering. Yet this is not due to the existence of inequality: not even inequality of well-being. In a particularly significant example, Frankfurt argues that the dogmatic pursuit of equality might sometimes produce disastrous results. He postulates a thought experiment in which ten people need five units of medicine each in order to survive. Unfortunately, only forty units are available (let us call this scenario one). This, he suggests, shows a problem with resource egalitarianism: if the forty units are shared equally, all will die, and "it would be morally grotesque to insist on equality!"¹⁴

An alternative view to the doctrine of sufficiency is the principle that priority should be given to those who are suffering the most. This principle

¹³ Frankfurt, H., 1987, p. 34

¹⁴ Frankfurt, H., 1987, p. 30

supposes that the worse off the person is, then the more urgent the requirement to alleviate that condition. There will be more to say on such prioritarian principles shortly, but for now it is merely pointed out that such views have been particularly influential. One such principle underpins Rawls's Difference Principle, which insists that it is only justifiable to benefit some persons if the worst off individuals also benefit.¹⁵ Frankfurt suggests that such a principle must fail in this situation: "If the available resources are used to save eight people, the justification for doing this is manifestly not that it somehow benefits the two members of the population who are left to die".¹⁶ Frankfurt thus concludes from this that where resources are scarce "an egalitarian distribution may be morally unacceptable".¹⁷

Whilst Frankfurt's argument seems to be correct in this situation, it must be remembered that Rawls is expressly not arguing for equality: he is arguing that there are circumstances in which *inequality* can be justified. Frankfurt's criticism thus only applies to the suitability of the difference principle to meet all possible circumstances of distribution. Rawls could still add the proviso that the difference principle is not to apply where resources are so scarce that the life of the wealthiest would be forfeit by any redistribution. Rawls implies this anyway, since he stipulates that the first principle of justice must first require that the basic needs are met.¹⁸ Furthermore, Frankfurt is arguing for 'step changes' in which there is no morally significant difference between a person having four units of medicine

¹⁵ Rawls, J., 1999, p. 65

¹⁶ Frankfurt, H., 1987, p. 30

¹⁷ Frankfurt, H., 1987, p. 31

¹⁸ Rawls, J., 2003, pp. 43-53

and another person having none: both have less than enough and are therefore both identically disadvantaged. Yet for Rawls, gradual incremental increases are recognised as beneficial, and in a way, the person with four units *is* better off than the person with none. Despite the implications that follow from these two different approaches, both Frankfurt and Rawls point out features of disadvantage that must be reconciled.

Frankfurt would advocate the distribution of resources in such a way that as many people as possible have enough, in other words “to maximise the incidence of sufficiency”.¹⁹ That way, the forty units would save eight people and only two would perish. Yet such a move is flawed. As Paula Casal observes, “following such a policy would prefer a population of billions just above the threshold (with perhaps many below that level) to a less overpopulated world living in paradise”.²⁰ Casal’s purpose is not to refute sufficientarianism, it is just to point out that it needs further support.

Frankfurt then asks what should be done if we have forty one units instead of forty (call this scenario two). What should be done with the extra unit? After all, one unit is no good to those without any. Frankfurt suggests that since it would be right to give five units to eight people, “it is a mistake to maintain that *where some people have less than enough, no one should have more than anyone else*”.²¹ Frankfurt develops this claim by suggesting that giving someone with no units the extra one may even be harmful (if less than five units is toxic, say, or if the unit is food and one unit merely prolongs the agony of the inevitable death). It would therefore be better that one person

¹⁹ Frankfurt, H., 1987, p. 31

²⁰ Casal, P., 2007, p. 298

²¹ Frankfurt, H., 1987, p. 31

has six units even though others have none. His claim then is that it is also a mistake to say that “*where some people have less than enough, no one should have more than enough*”.²² His point is to demonstrate that it is *not always* justifiable to give additional resources to those who have less than enough: “Those below a utility threshold are not necessarily benefitted by additional resources that move them closer to the threshold. What is crucial for them is to attain the threshold. Moving closer to it may either fail to help them or be disadvantageous”.²³

Unfortunately for Frankfurt, there is an omission within his scenario that can have a significant impact on the validity of the implications he favours. This is the implication that redistribution can be imposed by some external observer. Frankfurt does not discuss the possibility that where some individual has too much, that the excess might be forcibly redistributed. The question put by Frankfurt was about what to do with just one extra unit: but this was an ‘unowned’ unit which by his account was no good to anyone. What if there were five extra units legitimately in the possession of some persons over and above the five units needed? Can they be forced to give them away? A caveat must be issued at this point: the framing of these arguments in terms of units can lead the reader into conceptualising disadvantage as a lack of goods. It must be emphasised that the significant feature (as argued within this thesis) is not the goods but the moral equality of persons and the opportunity for the exercise of will.

²² Frankfurt, H., 1987, p. 31

²³ Frankfurt, H., 1987, p. 32

The question of the infringement of liberty relates to the justifiability of the use of force, but there are also further implications in relation to the redistribution of forcibly removed benefits. What if a new scenario involving ten persons is considered in which six persons have the requisite five units, one has seven units, another holds three, and two more have none (call this scenario three). According to traditional sufficientarianism, it would be right to take the excess from the richest and give it to the one to whom it would be most beneficial, that is, the person with three units, and not the persons least well off. This would suggest that it might sometimes be justifiable to ignore the plight of the most desperate, since those with none must be abandoned if the purpose is to save the most lives. Together, these scenarios have three implications: a) that property rights might be overruled by desperate need, b) that there is an upper limit to accumulated wealth in the presence of need, and c) that prioritarian views that focus on the most urgent need might divert assets to lost causes when they could be better used to protect saveable lives. Each point will be taken in turn.

a) Desperate need and property

Frankfurt recognises that it is sometimes (but not always) the case that giving the extra to the needy may allow them to accumulate or reach sufficiency, and therefore would be beneficial in moving toward or meeting the threshold.²⁴ However, Frankfurt assumes that the things to be distributed are simply unowned. Yet what would be the situation if someone legitimately owned more units? Perhaps they may be the producer of the ‘medicine’ entirely from their own body (such as in the case of a blood donor in which

²⁴ Frankfurt, H., 1987, p. 32

the 'cure' does not require any external materials). In this situation five units might represent an anaemic condition which is barely survivable, whilst seven units might represent a normal healthy individual who could afford to lose two units, although this would then leave them weak and anaemic (at the barely survivable condition). This is not intended to imply that a threshold of sufficiency ought to be set at such a meagre level: this example is merely intended to stretch the extremities of the argument. The person with only three units is in a serious life threatening condition and will die unless she receive two units within the next twenty four hours, say. Those with no units will die anyway, even if they received two units of blood. By what right then might distribution be forcibly imposed? An inference from Frankfurt's argument is that where someone has excess in the presence of someone with insufficient, then it is morally justifiable to forcibly remove the excess to supply the less well-off person if doing so would raise them to the threshold.

Such an argument would assert that meeting the sufficiency threshold can override certain property rights. More specifically, the rights of a person with insufficient means to meet her vital needs would trump the liberties of another person to dispose of her assets as she sees fit. The justification for such a move, so this argument would go, is a matter of fundamental moral equality. The arrangements of a society which did not permit such forcible transfer would be to fail to recognise the moral equality of those less well-off. This argument is not available to Frankfurt (since equality is of no moral concern) although it is available to will-egalitarianism.

Even so, such an argument might simply be denied: it might be claimed that support for the inviolable rights of the individual is to affirm moral

equality. In the broadest scheme of arrangements, so this objection would claim, the affirmation of individual interests is a protection and recognition of a fundamental right without which we could not claim to be human in anything other than biological terms. The private interests of the individual would be claimed to have such weight that they would override the interests of any number of 'others'. The denial of property rights held against all others, even in cases of extreme urgency, would be to undermine the very features of humanity that allowed the society to exist, and to forcibly remove property would thus be to act against the overall interests of humanity.

Yet the distinction between private and public interests is not at all straightforward.²⁵ There are numerous examples of limitations and restrictions on private property rights and liberties: one can own a listed building, but cannot alter or destroy it without permission; one can own a stretch of river, but cannot divert, block, or dispose of effluent into it without permission; one can own a motor vehicle, but not use it without suitable permissions. Such examples show conditions where restrictions are readily accepted. It would follow that where circumstances are sufficiently compelling (as assessed by the community's representatives) then restrictions can be justifiably imposed, that is, 'rights' can be overruled if the public interest is strong enough. Even an appeal to something as important as human rights, or the protection of human liberties is never so important as to be inviolable simply on grounds of the public/private distinction. It is therefore suggested (reluctantly and with reservations) that even these claims can be overridden if the independently justifying reason is strong enough.

²⁵ See Geuss, R., 2003, for further discussion on this distinction

The circumstances that might permit such a move would have to be so serious that the threat to the individual would be congruent with the threat to the community. Thus if a failure to protect the individual would be to undermine the arrangements that permit the existence of a community, then the protection of individual interests have the stronger independent (perfectionist) justification. On the other hand, where the protection of the individual would undermine or threaten the existence of the community, then the community interests have the stronger independent justification. As examples, consider circumstances such as a civil or military emergency (widespread famine, floods, or war). Under circumstances of famine, the liberty to destroy one's own crops, say, can be justifiably and forcibly prevented. In times of flood, a boat can be commandeered for the benefit of others, thus overruling a person's right of ownership. In times of war, freedom of movement, or the liberty to shine lights at night, can all be forcibly denied. Since such property and liberty 'rights' might be overridden in times of emergency, then perhaps there might be other circumstances where such rights can overridden. Thus in (extreme) circumstances in which some individuals have excess where others have insufficient, then perhaps such a circumstance might justify forcible redistribution.

Nevertheless, this thesis does not depend upon the public/private distinction: the conception of (extended) will-egalitarianism gives equal weight to the interests of all parties, and also adds the suggestion that the self-realisation of each is dependent upon the self-realisation of others, further blurring the public/private distinction. The voluntary donation from the richest to the one best placed to benefit would tend to increase the self-realisation of

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both the donor and the recipient. Conversely, forcible removal would only add to the self-realisation of the recipient, but may do nothing for the donor, or even harm her self-realisation. The mere fact of her unwillingness to donate may make her the subject of condemnation by her fellows, thus harming self-esteem, and that in itself may impair her extended will (but not unfairly). The justification for limitation or restriction of rights must therefore align with the perfectionist ideal for humanity, rather than rest upon the judgement and authority of a public body.

Furthermore, these examples involve external possession, not the highly personal circumstances that would involve forcible removal of part of the self. Our current example involves a blood transfer, but circumstances might easily be adjusted to involve kidney transplants to help those with renal failure, or other organs such as the taking of one eye from the sighted to give to the blind as Parfit suggested.²⁶

Yet, the reason for hesitance when it comes to ‘property’ redistribution in terms of body parts is not a matter of inconsistency in the reasoning. The hesitancy is a reflection of the urgency and gravity of the circumstances themselves. It reflects the tension between the imperative to protect the liberties and integrity of the person, and the imperative to save the lives of others who, as moral equals, have claims upon us all to assist when doing so is reasonable. As Kant would observe, it is in recognition of others as ends in themselves that the duty to assist rests.²⁷ The idea of the extended will further supports such a view, since an extreme measure that seriously affects an

²⁶ Nozick, R., 2003, p. 206; Parfit, D., 1997, p. 210

²⁷ Kant, I., 2002, pp. 46-7

individual is also likely to have a serious impact upon those around her. Furthermore, the threshold of sufficiency relates to the exercise of will for all concerned. It would therefore be a serious matter to deliberately impair one person's will in order to advance another person's will. Since both the donor and recipient are moral equals, and taking into account the conception of an extended will, there is a duty placed upon not only the donor to volunteer, but on the remaining members of the community to assist. At one end of the scale, this might include members of the community placing moral pressure upon the reluctant donor, or at the other extreme, justify the use of force. To do so would be to apply the principle of equality of opportunity of the will towards self-realisation, whilst allowing that force may be used where the individual's will is not so directed.

Even so, the liberty of those persons that might reasonably choose to refuse to donate body parts must also be protected. With regard to the seriousness of what is at stake in the forcible removal of body parts, it would therefore only be in the direst circumstances that compulsion might be justifiable. Given the impact on the individual's self-realisation as compared with the recipient's, and in recognition of the impact upon those around her and upon the wider community, it is suggested that only in circumstances of life or death might forcible removal be considered. Moving a person away from self-realisation could only be justifiable (that is, not amount to unfair impairment of the will) when to do so moves other persons towards equality of the will. As moral equals, these other persons have an equal claim to be able to exercise will, even if this requires enforced redistribution of traditional 'goods'. However, such a requirement is only enforceable up to the point at

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which a person is in danger of losing her life, since such a loss would be the ultimate violation of moral equality. As such, there must be no possible alternative since if there were, the circumstances would no longer amount to life or death. Such life or death situations would then represent the limitation of our moral obligations towards others. We cannot recognise one person's rights claim if doing so would allow another to perish (since both have an equal claim to survive). The principle of moral equality would require that such rights (and the corresponding duties) can be set aside under conditions of dire emergency. Such an argument would thus support the forcible transfer of blood from the healthy individual to the saveable individual who would otherwise die, but it would not support the compulsory surrender of a kidney (since dialysis exists as an alternative) or the removal of a single eye to help the blind (since it is not a matter of life or death).

Yet it might be objected that the forcible taking of blood would contravene Kant's imperative that persons must never be treated "merely as means", or contravene the requirements of will-egalitarianism.²⁸ Whilst a duty to assist the recipient might be evident, a duty also exists towards the donor to not treat her as means either. The forcible removal of body parts for 'good' reasons could be seen as being little different from the removal of body parts for any other reason: the violation of the donor would be the same. Yet if this were the case, then the taking of blood could be equated with mutilation of the body under torture. Just as torture might be used as a means to get information, say, the forced removal of body parts (even if this is 'only' blood) can be seen as using that person's body as a means for some other purpose.

²⁸ Kant, I., 2002, p. 47

Even so, the two situations are not the same. The removal of blood does not involve mutilation, and the intentions of the enforcer are morally different. Whereas the torturer will intend pain, perhaps to extract information, or even for no reason at all, the person compelling the donation of blood does not intend to cause pain or harm to the donor. An argument can be made that compulsory donation does not therefore contravene Kant's imperative, or the requirements of will-egalitarianism. The person is not used simply as means, they also remain an end in that they retain dignity, are not stripped of personhood, and similar actions would be taken for their benefit if they too were in need of a transfusion. When an extended view of the will is taken, the will of the recipient can be balanced, not against but with, the will of the donor. Resistance to the voluntary donation could even be construed as acting against one's own self-realisation, although forced donation would be unlikely to contribute towards the donor's self-realisation. Furthermore, the removal of blood would be done in such a way as to minimise discomfort and distress, under conditions of care, and whilst monitoring the well-being of the donor for her own sake.

Since different aspects of life would reflect or correspond with different and separate needs (such as for warmth, shelter, decent food, clean water, friendship, and the like) this might suggest a multiple threshold of sufficiency of 'goods' (in order to attain sufficiency of the will) dependent upon relative disadvantage, the particular community in question, and the aspect of traditional disadvantage at stake. Even within the same community, the threshold of sufficiency (conceived as the equal opportunity to exercise will) might entail the realisation of different levels of the goods by which

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disadvantage is traditionally conceived. Thus individual needs might appear to require a particular threshold level of welfare 'goods', along with a different threshold for resources, or a threshold for liberty (the dimension in which bodily integrity appears to be at stake). Such a view would be mistaken, as will now be argued.

b) Threshold Levels

As can be appreciated, such a move would suggest a level of complexity over and above that usually required for a doctrine of sufficiency. Whereas the traditional view of disadvantage in terms of sufficiency would conceive a threshold level of resources as a minimum requirement (and *mutatis mutandis* for welfare or liberty), sufficientarianism of the will places the (extended) will of the individual as the defining feature. Each person ought therefore to be afforded a sufficient opportunity to exercise will. This is overlaid with a metric that can be observed and assessed in the traditional way, and thus might lead the assessor into the mistaken perception that inequality in resources, say, is indicative in itself of unfair disadvantage. As has already been shown, this is not necessarily the case: a person may choose to sacrifice resources in favour of leisure, or spiritual satisfaction, say, without being unfairly disadvantaged. Any person who does not have the equal opportunity to exercise will towards self-realisation does not meet the minimum threshold of sufficiency and is thereby unfairly disadvantaged, regardless of how this might be assessed in terms of welfare, resources, or liberty. This is the lower threshold, and represents that level at which a person has sufficient control over the way her life is going.

In a state that is impoverished, sufficient control might entail the ability for the individual to meet certain vital needs, or access primary goods (widely conceived), or realise basic capabilities. In a more developed state, what counts as vital, primary, or basic will reflect the achievements of others within that state. However, once the threshold of the will has been achieved, it becomes clear that the idea of 'needs', 'goods', or 'capabilities' are unnecessary to the judgement of unfair social disadvantage. Such things are therefore to be regarded as 'enablers' of the will. Sufficiency is where each person has enough to allow the exercise of the fully developed will of a moral equal. Below the lower threshold, impairment of the will has necessarily taken place and is unfair: the will has either been prevented from development, or its exercise towards self-realisation has been blocked (such as through a lack of the necessary conditions). This is not to say that inequalities in the distribution of 'enablers' cannot be permitted above or below this threshold: as Frankfurt suggests, such inequalities are not morally significant. They become significant insofar as the opportunity for the exercise of will is constrained, and this can be affected fairly or unfairly. Inequalities in enablers that prevent the person's attainment of the threshold of sufficiency (impairing a person's equal opportunity to exercise will) are necessarily unfair. Inequalities in enablers that do not impair equality of opportunity to exercise will are not morally relevant. Although inequality in enablers that do not affect the equal opportunity to exercise will are not necessarily unfair, the larger the inequality, the more difficult it will be to ensure that the equal opportunity to exercise will is not disrupted. The appearance of a need for threshold levels of welfare, resources or liberties is therefore not justified. One may have

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insufficiency in these enablers, but that does not imply the existence of a threshold for these 'goods'. The threshold conception applies to the will, whereas the levels of enablers required to meet this threshold can be as variable as the individuals, communities, and circumstances to which they might be applied.

There are thus two important matters at hand here, both of which can have an independent influence: the exercise of will, and the conditions by which such exercise is possible. A person's will can be prevented from development either by the actions of another, or by a lack of welfare, resources, or liberty. The actions of others are relevant to the lower threshold of sufficiency of the will, whereas the latter aspects represent the potential disruption of enablers of that will: the vital needs of each individual. Once the conditions have been met to allow an individual to exercise will, the extent of relative control becomes an issue. Access to enablers can be independent from human agency though, and can thus be fairly or unfairly denied. Where such access is denied without the involvement of human agency, then the question of fairness is not appropriate to social justice (although the response by other persons to those conditions will be). Where such access is denied through human agency, then such intervention that impairs the will (towards self-realisation) is necessarily unfair. Since all persons are to have an equal opportunity to exercise will towards self-realisation, the threshold of sufficiency is the point at which disadvantage as impairment of the will ceases to be an imperative social concern.

Such circumstances relate to a lower threshold level. Might there be an upper limit too? Returning to our blood donor example, the upper limit is

implied by the suggestion that where need exists for some in the presence of excess for others, then provided that the excess is sufficient to alleviate that need, that is, to bring them from a position of insufficiency (in enablers) to the threshold of sufficiency (of the will), the excess must be surrendered. However, in the scenario in which the donor would drop from seven units to five (the level of barely survivable anaemia) the upper limit appears to be identical to the point of sufficiency. In terms of ideal will-egalitarianism too, the lower threshold would appear to be identical with the upper level since all persons would have an equal opportunity to exercise will. However, equal exercise of will is not the same thing as the achievement of perfectionist self-realisation. The two fixed points (the threshold of sufficiency of the will and the threshold of achieved self-realisation) do not actually coincide. They might appear to do so only when one slips into the error of cashing out disadvantage as a lack of welfare, resources, or liberty once again. In practice though (and in recognition that such a perfectionist ideal might be impossible to achieve) it will be necessary to invoke a range of acceptability.

It is therefore argued in this thesis that an upper threshold is necessarily required even when all apparently have sufficient. It might be thought that the weaker claim of 'usually' rather than 'necessarily' should be made, in recognition of the complexity involved when one takes into account the different aspects in which disadvantage can be assessed, and the individual differences between persons. Thus it might be suggested that if welfare is measured as longevity, for example, then it might be possible for a person to live significantly longer than others even if all have the same opportunity to live sufficiently long lives, and without this being to the

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detriment of anyone else. However, the difference between the traditional assessment of disadvantage (in terms of welfare, resources, or liberty), and the advocated conception of disadvantage (in terms of impairment of the will) must be emphasised here. The lower threshold relates to the opportunity for the exercise of will, not the assessment of how many resources, or extent of health, happiness, or range of liberties that persons may have available. The term ‘apparently’ is intended to suggest that what counts as sufficient is often shaped by the presence of excess. One need only look to the influence that economic wealth, particularly extreme wealth, has upon those other less well-off persons that interact with the extremely wealthy. Economic wealth makes the mature man attractive to the much younger woman (and *vice versa*); others defer to their opinions, or kowtow to their preferences; titles can be bought along with the land (and usage of the title insisted upon, simply to reinforce the inferiority of those who do not possess a title); political preferences can be funded; the possession of land can be used to exercise power over tenants, even though such exercise is to the detriment of others.

The list of examples is extensive, each showing that the presence of excessive wealth also leads to the exercise of power over those who do not have it. This exercise is improper where it leads to the lowering of the self-esteem or status of others as moral equals. In Pettit’s terminology, the existence of excessive wealth allows its owner to become a *dominus*.²⁹ Such circumstances ought therefore to be unacceptable on grounds of the adverse effect upon the interests of the remaining less wealthy, and on the adverse effect upon the wealthy person in precluding her own self-realisation. Whilst it

²⁹ Pettit, P., 1996a, p. 576; 2002, p.340

might be suggested that such a view is based on the notion of envy, the root of this view clearly lies in the *dominus*, not those who are dominated. To suggest otherwise is to simply get things the wrong way round.

Since inequalities in enablers (welfare, resources, and liberty) are permitted above the threshold of sufficiency so long as no one suffers social disadvantage, some difference in these measures is to be expected. This will reflect the different rates of progress towards self-realisation between individuals. The upper threshold is then the point at which equal satisfaction of the will is achieved. This is not to say that equality has been achieved in any of the enablers. Variations are permissible such that one person may have more wealth, say, than another, but when one considers both to have equal satisfaction of the will then neither is unfairly disadvantaged. Neither prefers the other's bundle of welfare, resources or liberty (similar to Dworkin's point about bundles of resources, but recast more widely).³⁰ The proper subject of this 'bundles' approach should clearly be in terms of wholehearted self-evaluated choices (and therefore the will) rather than any particular aspect by which the will might be enabled. After all it is the will that becomes satisfied, not some abstract formula for parity between the different permutations of amounts of welfare, resources, or liberty. However, the differences between these amounts would not generally be expected to be great since the perfectionist ideal would require persons to be selfless, generous, and compassionate. Thus awareness of the needs of others would immediately generate assistance from those with the means to meet those needs. However, differences might be considerable in isolated circumstances,

³⁰ Dworkin, R., 2000, p.67

such as in the case of the hermit who might shun all materialistic conceptions of a valuable life. In this case, since the will is equally satisfied, there is no discrepancy between needs.

As will be discussed shortly, persons would still be able to develop beyond the upper threshold, but this would entail progression towards mutual self-realisation. However, beyond this upper level, we are in the realms of the perfectionist ideal in which this objective would be co-terminous with the simultaneous progression of all others (and in which those others must also have reached the upper threshold). In practice, the upper threshold would therefore represent the maximum achievable level beyond which one cannot progress in the presence of others below that level. At this point, all persons have equal satisfaction of the will, and since this is extended to include one's culture, and environment, further personal development towards human perfection would not be possible without the simultaneous identical progression of others. If just one of those others had yet to reach equal satisfaction of the will, then those approaching the upper threshold are obligated as a condition of human perfection to assist that person to become similarly satisfied. If this were not the case, the attempt to seek further personal progress in the presence of another person below that threshold would be an act of greed or selfishness, and would move that person away from, rather than toward, self-realisation.

The lower threshold level must be maintained despite any differences in the amount of goods that persons have. If it were not, then the possession of those goods would lead to an infringement of the wills of those less well off. In pushing persons below the threshold, they would necessarily be unfairly

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disadvantaged and so warrant redress (either through the provision of goods, or the removal of goods from those above the threshold, or limiting the influence that the possession of those goods allowed). Take the example of a person who is resource-rich, but uses these resources to exert improper influence over others, that is to exercise greater will for herself at the expense of the wills of others. The dominated individuals would necessarily fall below the lower threshold since they no longer have an equal opportunity to exercise will, that is, they have been caused unfair disadvantage. Improper influence refers to those activities that would limit the ability or opportunity for others to exert will towards self-realisation: it would be to fail to recognise persons as moral equals.

Furthermore, as the resource-rich person attempts to exert improper influence, she must also fail to recognise the role of others in her own possibility of self-realisation, and therefore would not be acting in her own true interests. This would lead to a self-regulating upper threshold beyond which the possession of other goods combined with the attitudes and behaviours of individuals, a person cannot progress further towards perfection. It is important to note that the possession of goods alone would not set the upper threshold. It is entirely consistent with this view that a rich philanthropist might be careful not to let his resources lead him to dominate or devalue others. She might even accumulate wealth in order to benefit mankind through the elimination of some disease or other. Yet the greater the disparity in 'goods', the more difficult such a position would be to sustain, since the temptation to use such resources for personal non-self-realising activities would grow (as

would the willingness of others to submit to domination for the same personal non-self-realising reasons).

The upper threshold would therefore represent that level of exercise of will beyond which one cannot progress further towards self-realisation in the presence of others that have not matched the same level of exercise of the will. This would be the case even if all other persons are at or above the level of sufficiency. This is because progression towards personal self-realisation includes the self-realisation of others. Any greater exercise of will for those at the upper threshold would necessarily be to the detriment of those below. The level of the upper threshold would therefore appear to vary depending upon the conditions of those less well off: in practice, it would mark the boundaries of a range of acceptable conditions.

This mechanism would suggest that an upper threshold would track the lower threshold. However, this appearance can be prone to misinterpretation, and a clarification is necessary. Whilst the lower threshold of equality of opportunity to exercise will represents a fixed point, the upper limit of realised will actually represents a second fixed point. The upper limit does not actually track the lower but the distance between these points, although fixed, appears to vary when considered in terms of access to enablers. To use an analogy, consider road traffic law: a road can have both a minimum and a maximum speed limit. It is legally irrelevant if one car is more expensive than another, or if one is larger than another, or more luxurious, or able to travel off-road. The distance between these speed limits is fixed in terms of velocity, but reaching the upper limit can be done in a number of different ways, with a great deal of variability in aspects that are of

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no legal relevance. Similarly, when one considers social justice: if the morally relevant feature is the exercise of the will, the lower threshold is equivalent to the minimum speed limit and the upper threshold the maximum speed. One can have more or less welfare, more or fewer resources, more or fewer freedoms. Yet none of these aspects are morally relevant. Both of these thresholds are fixed points, but the variety of ways of reaching the upper threshold can give the appearance of a variable upper point.

Nevertheless, as with all analogies, they are not exact. In this example, a significant omission is that the attainment of an upper threshold is also dependent upon access to enablers. However, this omission simply demonstrates how easy it is to fall into the error of perceiving the upper threshold to be a variable point since it reinforces the appearance that a lack of an enabler is morally significant in itself. One must bear in mind that such an appearance is to fail to compare like with like, and to revert to the measurement of disadvantage in terms of a lack of welfare, resources or liberty once again.

Take the example of economic wealth (as an enabler for the exercise of will): where the threshold of equality of opportunity to exercise will coincides with a very low level of economic wealth, such as would only just meet the basics of life, this would reduce the apparent 'distance' to the attainment of the upper threshold of realised will. It should therefore be easier to move from equality of opportunity, to equality of realised will. However, even though citizens may have equality of opportunity to exercise will, the range of available opportunities is low, and the vulnerability to domination is high. Even a modest amount of wealth at this limit would tend to lead to its

possessor dominating those at the lower threshold. In practice, such impoverished societies often show huge differences in wealth between the richest and poorest. By this account, such societies would be paradigmatically dysfunctional since they would not accord all citizens moral equality.

Conversely, in a generally wealthier society, a lower threshold of the will that coincides with a comparatively high level of access to enablers will provide those at that level the necessary dignity to resist attempts by the wealthy (either intended or otherwise) to exercise domination. The range of available opportunities has increased whilst vulnerability has reduced. Those who already have their basic needs met, and perhaps several more luxury 'wants' too, might not be pressured quite as readily as those who are suffering deprivation.

Although the position of the lower threshold is fixed, the distance to the upper threshold might therefore *appear* to increase: the possibility of attainment of equality of realised will would appear to become more difficult as the number of available opportunities and possible outcomes increases. However, it is the realisation of the extended will that is the morally relevant feature, and not the means by which that is achieved. The range of available opportunities can in itself increase the level of satisfaction of the will, but only if inequalities of enablers are kept low. A richer society should therefore make it easier to move from the lower to the upper threshold provided that the inequalities between richest and poorest are kept to a minimum. A society with a large differential in access to enablers would, by this account, be dysfunctional since it would prevent citizens from moving from the lower threshold towards the upper threshold. Such a society would allow

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impairment of the will towards self-realisation, and would therefore not be treating all citizens as moral equals. Regardless of the availability of enablers between different societies, it would therefore appear to be the case that the existence of inequalities is the symptom by which a fair society can be judged.

This is also the conclusion reached by Wilkinson and Pickett.³¹ Yet whereas Wilkinson and Pickett merely report the symptoms, it is suggested that the reason for the evaluation of unfairness is not because of the existence of the inequalities *per se*: it is because of the impairment of the will of citizens and the failure of the basic structures of such a society to treat all citizens as moral equals. Wilkinson and Pickett point to empirical evidence to suggest that regardless of the wealth of a particular society, it is the existence of inequality that is particularly harmful.³² Evidence covering such wide topics as mental health, drug use, physical health, life expectancy, obesity, educational performance, teenage birth rates, violence, and such like all suggest a correlation with inequality.³³ These examples of resource, welfare and liberty disadvantages all suggest that it is the gap between the least well-off and the most well-off that is the significant feature. Since it is not the level of wealth that matters here, such a correlation supports the idea of upper and lower thresholds. Although Wilkinson and Pickett have identified a broad association, they have not been able to demonstrate how or why such a relationship might exist. As has already been suggested, such a correlation might be explicable in terms of the unfair impairment of the will: large short-

³¹ Wilkinson, R., and Pickett, K., 2010

³² Wilkinson, R., and Pickett, K., 2010, pp. 15-30

³³ Wilkinson, R., and Pickett, K., 2010, pp. 49-157

term discrepancies between the least well-off and the most well-off are objectionable not because of the inequality in a particular enabler, but because the structures that allow such a circumstance do not recognise the moral equality of the persons subject to unfair social disadvantage. Likewise, long-term persistent inequalities in enablers would be evidence of persistent disregard of moral equality. Social disadvantage conceived as the unfair impairment of the will can account for (and be responsive toward) this relationship since it would require empowerment of those persons.

Before moving on to the question of priority, a final comment is necessary in relation to temporal implications. Since a child born into the ideal society could not be expected to know her own will, at least until it is fully developed, she cannot immediately expect to achieve equal satisfaction of the will. This is in recognition that our individual wills develop and change diachronically. Nevertheless, as soon as her will has developed sufficiently she must be accorded an equal opportunity to exercise will. She must therefore be provided with the conditions to meet the lower threshold of sufficiency. Furthermore, these conditions must be maintained from this point onwards whilst also allowing her personal development towards self-realisation. In contrast, the upper threshold represents a culmination of individual personal development. In temporal terms, it must be regarded as an achievement towards which each person's development ought to be directed: it would therefore be a 'snap-shot' of achievement, perhaps only maximally attained at the later stages of an individual's life. However, this does not make either of these thresholds any the less universal: they would

still represent a level of sufficiency or equality regardless of the individual lives of the persons that make up that community.

So far, the upper threshold has been described as being no more than a theoretical requirement of a scheme of will-egalitarianism. Whilst such an upper threshold might be a likely consequence of the pursuit of will-egalitarianism, such a mechanism would be difficult to prove. It may be possible to construct an economic argument for the apparent tracking principle (in terms of enablers of the will), but since the upper threshold regulating mechanism includes the metaphysical conception of self-realisation towards an unachievable perfectionist object, then such a mechanism must remain unmeasurable. Although indirect indicators (such as happiness, satisfaction, charitable activity, hours devoted to communal pursuits, and such like) might be used, the upper threshold must remain merely conjecture.

c) Priority and Inefficiency

Turning now to the third point: that prioritarianism would allocate welfare, resources, or liberty under conditions of shortage to lost causes. Such a principle would be wasteful, or at least inefficient, when the community can ill afford to be so. Simple prioritarianism would advocate giving assistance to those with the most urgent needs, that is, it would favour those persons in the absolute worst position. As the example in scenario three illustrates, prioritarianism would advocate giving medicine (or blood) to the two persons with no units rather than giving it to the only person that might be saved by such a redistribution. Although following prioritarianism in such a scenario would be absurd, it is an admittedly extreme situation. We must therefore look at little more closely at the more general arguments of prioritarianism.

Prioritarians believe that “the moral value of a benefit, or disvalue of a burden, diminishes as its recipient becomes better off”.³⁴ This would suggest that the needs of the poorest outweigh the needs of those better off, or suggest that the needs of the poorest are more urgent. As Frankfurt points out, this is mere assumption, entirely contingent on other features and not on the fact that one person has less than another: “There is no necessary conceptual connection between a person’s relative economic position and whether he has needs of any degree of urgency”.³⁵ It is entirely possible for someone with little money to have no urgent needs, whilst a wealthy but miserable person does so. Even more everyday cases such as the disabled person with moderate economic means may still have urgent needs. This is because, as Frankfurt puts it, “the notion of ‘urgency’ has to do with what is *important*”.³⁶

Prioritarians can agree with Frankfurt that it is not relative disadvantage that matters, but maintain that the disparity does account for the degree of urgency. As Derek Parfit explains: “on the Priority View, benefits to the worse off matter more, but that is only because these people are at a lower *absolute* level. It is irrelevant that these people are worse off *than others*”.³⁷ Yet the use of terms such as ‘worse off’ invites comparison and maintains the link that Parfit had hoped to sever. To describe one set of circumstances as having priority cannot be achieved without asking ‘priority over what’, or ‘priority over whom’? This then invites comparison of one set of

³⁴ Casal, P. 2007, p. 296

³⁵ Frankfurt, H., 1987, p. 35

³⁶ Frankfurt, H., 1987, p. 35

³⁷ Parfit, D., 1997, p. 214

circumstances with another in order to decide which case is the worst. Parfit's priority view would advocate always benefitting the one with the least (unless the inequality was voluntarily accepted) but in doing so cannot escape the trap of relativities, or recognise that it is sometimes better to help those with a bit more than the least (as the example in scenario three shows).

Principles that prioritise the worst off, such as Rawls's difference principle, would suggest that benefitting the absolute worst off (even if only very slightly) is to be preferred over benefitting the second worst off substantially.³⁸ As Roger Crisp suggests, this "is almost as absurd as levelling down".³⁹ Whilst this objection is not effective against all prioritarian views, it does suggest that further support would be necessary. Although arbitrary disclaimers might be made, such as the restriction of application to persons within the normal range, such a move would be to admit that the principle of priority is not universalizable. Nevertheless, additional support would still be necessary to account for differential treatment of persons to whom priority is to be allocated. This could perhaps be applied through a system of 'weighting'. Such a system would then need to take into account numbers affected and degree of benefit. Yet the suggestion of weightings just introduces further difficulties: the reason for applying such a weighting principle must be given independent justification, and must be able to reconcile numbers affected with the degree of benefit (a task that Crisp argues cannot be done within a prioritarian framework).⁴⁰

³⁸ Rawls, J., 1999, p. 65

³⁹ Crisp, R., 2003, p. 752

⁴⁰ Crisp, R., 2003, p. 754-5

In choosing which case to prioritise, the question is then in relation to how much weight is to be given to different degrees of deprivation. Should one unit of benefit to the averagely well off count as ten units to the worst off, and five units to the one in between? If so, then why should this be the case? As Brad Hooker suggests, there seems to be no non-arbitrary reason to choose these weightings, yet the need for such weighting is clear.⁴¹ The relationship is an analogue of the marginal utility argument for excess, such that each unit of deprivation becomes exponentially more important to the prioritarian. Without such a mechanism, then increasing deprivation would not invoke the increasing urgency upon which prioritarianism depends.

Yet the idea of weighting reveals a tension between the view that we are all moral equals and the view that we should (or should not) prioritise the least well off under conditions of scarcity. Prioritising the absolute worst off (in the presence of others in desperate need) seems to conflict with the impartiality between persons that the principle of moral equality requires.⁴² Adding weight just seems to bias the response towards particular individuals regardless of moral equality. Since the worst off persons are all moral equals, there is no reason by that account to favour any one of them. Just because one person is in greater absolute need, this does not make his case on grounds of moral worthiness any the stronger: all remain equally worthy. In following prioritarianism, the principle that each person is to be treated as a moral equal is ignored: favourable treatment is awarded to the person with the greatest need.

⁴¹ Hooker, B., 2000, pp. 56-64

⁴² Brad Hooker makes a similar point. See Hooker, B., 2000, p. 61

Yet if there is no moral reason to choose between persons, this does not paralyse the decision: we merely choose another relevant reason. Take the situation described in scenario three. Our three worst off persons are all moral equals, yet only one has a chance of survival. Will-egalitarianism would require that we give each person an equal opportunity to exercise will, and since only one person might realise that opportunity, this gives reason to choose to save the saveable life. Enablers of the will (resources, welfare or liberty) can be distributed unequally without infringing moral equality, therefore these goods are to be distributed so as to maximise sufficiency of the will. This will require unequal distribution of enablers (in this case, resources) in favour of the saveable life. As such, will-egalitarianism is a principle of sufficiency, not priority.

However, 'maximisation' of sufficiency in this way would only apply during conditions of extreme scarcity (life or death situations). There is no requirement to allow everyone to perish at an equal rate in order to maintain equality of opportunity: this would be a Frankfurtian obsession with equality. The justification for this limitation is for the same reasons that forcible removal of body parts is restricted to life or death situations. It is a limitation on our obligations towards others as moral equals, reflected in the limitations of our rights and duties held against others. My obligation towards you as a moral equal no longer applies if adherence to such a principle would result in one or both of our deaths. At other times, (not life or death situations) shortages would be reflected in the acceptance of perhaps severe deficiencies or inequalities (in enablers) as long as equality of opportunity to exercise will is maintained.

In summary, we can agree that prioritarians and egalitarians ought to focus on the suffering rather than the inequality, but must add that fairness also needs to be taken into account. As a consequence, it is suggested that Frankfurt's argument does not apply to all forms of egalitarianism. When equality is applied to the fundamental idea of the individual wills of each member of the community, and since will directed towards valuable activity determines fairness, will-egalitarianism aligns with Frankfurt's objective of sufficiency. Furthermore, it has been argued that prioritising the absolute least well off under conditions of scarcity does not always lead to the best moral outcome. Will-egalitarianism is thus sufficientarian, not prioritarian. In the next section, some objections to this view will be discussed.

4. Objections to Will-Egalitarianism

The first objection is one that is commonly levelled against sufficientarian concepts: that it is committed to either an ambiguous, intuitive, or arbitrary determination of the threshold of sufficiency.⁴³ Furthermore, so the objection proceeds, sufficientarianism is indifferent to inequality above the threshold. Will-egalitarianism though, in positing both a lower and an upper threshold, avoids this second criticism.

Although these thresholds might appear to be variable, they are not intuitive or arbitrary: they depend upon a scheme of compatibility between the extended wills of all members of a community so long as such wills are directed towards self-realisation. Since self-realisation includes recognition that the same ends (self-realisation) of others are part of one's own, complex

⁴³ Casal, P., 2007, pp. 312-4

systems of social cooperation and interdependence will be developed. Yet since such levels appear to be variable (inasmuch as different levels of enablers may be evident) they may also appear ambiguous, but this appearance is only due to the complexity when cashed out in terms of welfare, resources, or liberty. When conceived as fixed points (the lower being the point at which all persons are able to express will as a moral equal, and the upper threshold being that point of achieved realisation of the will beyond which one cannot progress further towards self-realisation in the presence of others below that threshold), then such points are neither arbitrary nor ambiguous.

A second objection commonly levelled against liberal idealism is that it focuses on needs rather than where the wealth is generated. Perhaps will-egalitarianism is vulnerable to this challenge? This objection asks how it can be fair to determine the level of equality without regard for the effort that goes into producing those goods? As an illustration of the problem, take the example of Hercules, a man with extraordinary physical abilities. Assuming that Hercules has laboured long and hard, without using more than his equal share of resources, his efforts might produce considerably more wealth than others. Yet if the level of equal distribution were less than the level of sufficiency, (so the objector might say) would he be justified in keeping his extra wealth even in the presence of others starving? If all of a society were below the point of sufficiency, could Hercules keep all the fruits of his labour, or must he share?

This is a matter of determining which principle matters the most: equality or sufficiency. As the examples in relation to our blood donor

suggested (particularly in scenario three) sufficiency is the more pressing moral issue. However, one must bear in mind that will-egalitarianism relates to equality of the will, not equality in the enablers of that will. So, differences in wealth would be permitted provided that Hercules does not use those additional resources to exercise a greater degree of will than others. Unfair disadvantage as impairment of the will allows deviations in distribution, just that the further from equality, the stronger the required justification. Thus the effort to produce goods would allow unequal distribution of goods (conversely, so would idleness), provided that the producer does not use that inequality to dominate others. Under conditions of sufficiency, Hercules would be able to keep the fruits of his labour (within the appropriate range) and still add to his own self-realisation, whereas the idle person would be allowed to have less than the person willing to work.

Nevertheless, the justification for allowing inequality in enablers is not sufficient reason to allow others to slip below the point of sufficiency of the will, or rise above a level of acceptability in the presence of those below. It is therefore suggested that if all of a society were below the point of sufficiency of the will, perhaps due to a lack of enablers, (including Hercules - although he may have more than others) there is no requirement to share: this situation is typified in a widespread famine. Survival is under threat, therefore individuals are under no obligation to forfeit their own survival for the sake of another, or for the sake of maintaining equality of the will (so that all perish as equals). The requirement to share only comes into effect once at least one person is above the threshold of survival in the presence of those below. The need to treat others as moral equals now becomes an obligation, and the

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conception by which the facilitation of the self-realisation of others is part of one's own self-realisation, would require sharing. So if Hercules were the only one above the level of sufficiency of the will, he would have a duty to share. If he did not do so, he would be moving away from, rather than towards, his own self-realisation. Yet if others were above the lower threshold, he would not have a duty to share with them, other than as he might volunteer to do so (although so doing would align with the perfectionist ideal and thus move him toward self-realisation). Once the upper level is approached, in the presence of others below that level, then the duty to share becomes increasingly pressing depending upon the differential. This is because activities towards Hercules's own self-realisation become increasingly difficult the further removed other persons are from their own self-realisation.

On the other hand, duty (although a powerful motivator) only becomes elevated to an obligation to share, when a limit of acceptability is reached. Although this level appears variable, this is the point at which membership of a community produces those obligations. When persons are below the level of sufficiency, then the upper level of *acceptability* is identical with the lower level of sufficiency. However, continuous progress towards self-realisation from this point onwards must maintain equality of opportunity to exercise will, but this level would tend to require a more equal distribution of enablers. It would therefore be expected that in a wealthy society sufficiency of the will would be reflected in a more equal society in terms of distribution of that wealth. A wealthy society in which a large differential exists between richest and poorest would tend to show a dysfunctional society: the existence of a large differential would be evidence that all persons are not being treated as

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moral equals unless other evidence could demonstrate that equality of opportunity to exercise will was being maintained.

When persons are above the level of sufficiency, then the upper level of acceptability (the upper threshold) represents the point at which the wealthiest cannot progress further toward their own self-realisation. The excess then becomes a burden that hinders moral progress. Under normal circumstances, and without a superhuman member of the community, this upper limitation is in virtue of both the perfectionist ideal of self-realisation and recognition that one can only achieve excessive levels through trade with others, or accumulated from the labours of others.

Although this mechanism only partially answers the objection, it does at least address some of the wealth production issues. However, there is another mechanism that would operate, and thus provide additional support. The failing of the production side of the equation is that the strategy of free-riding is a powerful disincentive for others to be productive. Yet those persons who are able to be productive but who might choose not to do so would not be able to move towards their own self-realisation. Furthermore, they would hinder the possibility of other productive persons from moving towards self-realisation. Since it would appear that a lower threshold entitlement prevents economic leverage from being applied to such persons, how might the problem of free-riding be addressed?

The answer is that the existence of a lower threshold alone does not rule out economic leverage: it is a threshold of will, not the enablers of that will. Recall that one may exercise will in choosing disadvantage without thereby becoming unfairly disadvantaged. This would allow economic

leverage to supply a powerful incentive to participation such that free-riders would not be able to access additional resources that did not contribute towards self-realisation. Given that self-realisation requires the equal opportunity to exercise will, and as the example of the fasting monk in the previous chapter shows, the voluntary exercise of will allows persons to forego resources if they choose. The monk, in choosing to starve, is not by that account unfairly disadvantaged. Since the free-rider is making a wholehearted voluntary choice to exploit the efforts of others, then they have no entitlement to further support in terms of the provision of enablers (such as the provision of resources): the free-rider has already demonstrated sufficiency of the will. In choosing not to support themselves when they are able to so, such persons are voluntarily choosing disadvantage without this being unfair. This will be discussed further in chapter eight when the implications for the state are discussed.

Nevertheless, it is also possible for persons to not so much free-ride as put in the minimum productive effort. Such persons must then be satisfied with a minimum acceptable level: they must assess their personal circumstances and balance the benefits that they will be granted against the efforts of production, loss of self-esteem, loss of social participation, and possible marginalisation. Even though such a lifestyle would be acceptable within a scheme of will-egalitarianism, it would be a very individualistic and self-centred approach. It would tend to isolate such persons from participation in society and limit engagement to others in a similar situation. As a consequence such persons would not be able to progress towards self-realisation. However, the minimal effort strategy would only be worthwhile

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under circumstances in which there is no prospect of improvement. This would give further support to policies intended to facilitate the exercise of will towards valuable ends, and to ensure that these are accessible to all citizens. Therefore in a fair state, access to education, public office, public participation, consultation, and other such policies designed to increase social mobility will all act to break down barriers to improvement. Examples of such policies will be described further in the next chapter, but even though some individuals may still choose the minimal effort option, once the opportunities to better one's life are seen to be accessible, the reason to be satisfied with minimal participation is diminished.

5. Conclusion

In this chapter it has been suggested that unfair disadvantage as the impairment of the will towards a valuable end entails a lower threshold below which no individual can be allowed to 'fall' without thereby treating them as less than a moral equal. The term 'fall' does not include voluntary acceptance: one might deliberately choose to suffer without being treated other than as an equal. Such an idea would suggest that at times of scarcity, assistance should be given to those best placed to make use of it, not necessarily to the absolute worst off. It would further imply some form of limitation on the wealthiest in the presence of those at or below the threshold level.

Although the assessment of disadvantage is pluralistic (referring to comparisons of welfare, resources, or liberty) it was suggested that these are only 'enablers' to the exercise of will. It was therefore argued that unfair social disadvantage is best understood as the impairment of the will of the individual

when directed towards a valuable end. So understood, it was then argued that such a conception would lead to a sufficientarian principle of social justice in which a lower threshold of sufficiency of the will would be accompanied by an upper threshold of realised equality of the will. It would follow from this that the role of the state should be to eliminate unfair social disadvantage through the facilitation of the individual (but extended) wills of its citizens. This raises the question of how the state should respond to such a task. It is this issue that we turn to next.

Chapter Eight

Implications for the State's Response to Social Disadvantage

1. Introduction

In this chapter, the implications arising from the adoption of will-egalitarianism are described. These would include policies designed to increase social mobility, break down class barriers, increase public consultation and accountability, prevent the perpetuation and stagnation of wealth along genealogical lines, to provide a minimum level of support for all persons, and ensure that any increases in wealth or standard of living for the most well-off are reflected in the increasing empowerment of the least well-off. Differences in welfare, resources, and liberty are permissible only if equality of opportunity to exercise will is maintained.

In terms of welfare, it would seem almost decadent to accept that some persons enjoy a life that goes very well in the presence of others in misery, particularly if those very well off could address that misery by reducing their own satisfaction somewhat. Will-egalitarianism applied to this particular enabler would recommend increased opportunities for the least well off to satisfy will, and perhaps reduced opportunities for the very well off. In terms of resources, a growing economy cannot allow the concentration of wealth in the hands of a few to result in the disengagement or domination of the poorest. Similarly in a shrinking economy, those with the most wealth cannot be permitted to use their additional resources to insulate themselves from the suffering that the poorest in the community endure. In terms of liberty, it would be unacceptable for some persons to have great liberties at

the expense of the restriction of the liberties of others. The policies required to address such issues would not be radical, and for the most part would support some mainstream policies whilst rejecting others. What might be surprising for a thesis that advocates a form of egalitarianism is that it also offers a means to address the ‘benefits culture’: the disputable idea that many persons in receipt of benefits in the UK see this as a lifestyle choice.¹

What will-egalitarianism does is to provide justificatory reasons to pursue certain policies, often where no good reason other than intuition was previously available. In many respects this approach advocates (as Andrew Mason would say) “levelling the playing field”.² However, whereas he suggests mitigation of disadvantage rather than neutralisation, my approach advocates using both means. Mason sees neutralisation as being “equivalent to fully cancelling out” inequalities of access to advantage.³ Such an approach would recognise the natural differences between persons, but seek to eliminate these differences from becoming realised as inequalities of condition. The intuitively uncomfortable implications of this characterisation cause Mason to reject neutralisation in favour of mitigation:

My claim is that if the neutralisation approach were the correct one, parents would have a reason of justice not to behave in any way whatsoever that advantages their child relative to others, yet

¹ Tweedie, N., 2010; Department of Works and Pensions, 2010

² Mason, A., 2006

³ Mason, A., 2006, p. 4

this is highly implausible. Not even egalitarian parents believe there is such a reason.⁴

Mason suggests that the neutralisation approach would disallow parents from such things as reading to their children, or seeking to provide better education, or encouraging development of their talents if this would give them an advantage over others. Such a claim sees it as inevitable (and acceptable) that parents will seek to favour their own children, and act in such a way as to benefit their own children regardless of what other parents might be able to provide. He therefore suggests that the neutralisation approach is “highly implausible” and should be rejected in favour of mitigating those effects.⁵ This statement is a turning point for Mason since he hangs his justification of the mitigation approach entirely on this seemingly self-evident claim.

This particular egalitarian parent suggests that there are very good reasons of justice to ensure that children are not favoured by their parents in regard to development of the will, and suggests that other egalitarians would recognise this too. Parents would be committing an injustice to their own child, as well as to others, if they raised their own child to believe that she was more than the moral equal of others, or thought that their own child’s will were more important than the wills of others. In one respect this is a mainstream position, as over indulging a child is widely recognised as ‘spoiling’ the child. Strictly speaking this is not behaving so as to produce

⁴ Mason, A., 2006, p. 99

⁵ Mason, A., 2006, p. 99

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advantage, even if the intention is to advantage them, but the reason it does not do so is because of the reaction of others.

It would thus appear to be appropriate to favour neutralisation in regard to unfair social disadvantage conceived as impairment of the will, but to mitigate many of the inequalities in the enablers of will (welfare, resources, or liberty) that are traditionally assumed to constitute disadvantage. Such a move follows the distinction in the ontology of disadvantage between its assessment and its evaluation (inasmuch as the conception of disadvantage is normative in two different ways): whilst unfair social disadvantage must be eliminated (or neutralised), it may be advisable to mitigate its manifestations in order to do so.

Jonathan Wolff categorises such measures as targeting “internal aspects”, “external aspects”, or “social structure”.⁶ These categorisations of policies to address disadvantage are taken to be the best currently available. In the next section, these categories will therefore be followed in discussing the implications for the state in addressing unfair social disadvantage conceived as impairment of the will. Whilst each of these categories carries implications for the state as to how social disadvantage ought to be addressed, the conceptualisation of disadvantage as impairment of the will also carries some implications that do not fall under these headings. This is because in identifying what disadvantage is, this thesis necessarily identifies what disadvantage is not, and thus eliminates some of what might otherwise be considered to be obligations of the state. These implications will be discussed in section three, and describe the means by which the proper

⁶ Wolff, J., 2002, p. 210

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conception of disadvantage can give guidance to address the problems associated with the ‘benefits culture’. Section four will discuss some practical objections to these implications.

Whilst many of the methods advocated by this thesis to realise will-egalitarianism are recognisable mainstream liberal policies, the underlying reasoning is different. This reasoning does not regard disadvantage as a peripheral concern to equality, it places it at the centre. As such it can simultaneously support policies that might appear to be from either the left or right of liberal politics without contradiction. For example, the private ownership of property would be supported alongside the restriction of inherited wealth. Thus the private ownership of a dwelling would be compatible with self-realisation so long as others that would choose to do so could also purchase a similar dwelling. What would not be compatible would be the forms and mechanisms of private ownership that perpetuate unequal ownership. In short, this might disallow long-term leasehold arrangements, or restrict inheritance to the transmission of the family home. Despite such implications, this chapter will not make specific recommendations for the state, or describe the structure of a fair society. Such specifics are beyond the scope of this thesis, therefore only examples of the sort of policies that would be implied under a scheme of will-egalitarianism are offered.

2. Will-Egalitarianism and the State

So far, it has been argued that wherever the will is impaired relative to others, there is disadvantage (but not always unfairly). Such disadvantage would be

fair if the will were not directed towards the valuable end of self-realisation, and would be unfair if the will were so directed. Wherever the will is wholeheartedly exercised towards this valuable end, there can be no disadvantage. Given that the state must treat all of its citizens as moral equals, the state should take steps to prevent unfair social disadvantage from becoming realised in the basic structures of the state (following Rawls). A state cannot claim to treat persons as equals whilst allowing systems of moral inequality to become established between persons. The state must therefore ensure that all citizens have the equal opportunity to develop the will and to exercise it in progressing towards self-realisation. The state need not attack the circumstances of disadvantage directly, but need only seek to empower its citizens whilst ensuring that empowering some does not thereby facilitate domination by others. How then, might the state achieve this task?

In seeking to empower citizens, equality of welfare, or resources, or liberty, would only be instrumental to the fair treatment of persons, and thus need not be the aim in itself. These aspects are merely indicators by which disadvantage can be assessed: they do not constitute social disadvantage. If the state is to treat all of its citizens as moral equals, it should direct its activities towards that end through pursuing policies that facilitate equality of the extended wills of those citizens. Consequently, will-egalitarianism would only give suggestions for the type of policy that one ought to adopt. This may entail mitigating inequalities in welfare, resources, or liberty in order to do so.

Yet the exercise of will is both limited and moulded by the opportunities with which the individual observes and identifies. In asking 'what determines someone's opportunities in life?' Jonathan Wolff identifies three factors:

internal resources (the natural assets of strength, charm, intelligence, beauty and so forth); external resources (money, wealth, property, friends and family); and the social structure (laws, customs, class structure, culture, and technology).⁷ Whilst other examples could be added, each of these factors represents an aspect in which policies to enhance or protect the exercise of will can be targeted.

Although Wolff’s categorisations seem broadly useful for this thesis to adopt, the term ‘resources’ used in describing these factors is misleading: it might suggest a return to the prioritisation of resources over welfare or liberty. This would be inappropriate since Wolff is addressing a question related to well-being. Wolff is clearly referring to such things as health, and access to public institutions, as well as resources when they would be better understood as welfare and liberty concerns. As Wolff’s later work indicates, he is firmly of the view that the assessment of disadvantage ought to be pluralistic.⁸ Whilst it is accepted that disadvantage can be assessed in terms of welfare, resources, or liberty, the state would be better advised to target the root of unfair social disadvantage as impairment of the will. Furthermore, as Nussbaum points out, well-being is often associated with utilitarianism.⁹ This thesis will therefore refer to ‘internal and external aspects’ of self-realisation, rather than using Wolff’s terminology.

It is suggested that policies directed towards securing equal opportunity for the exercise of will can align with Wolff’s objective of addressing disadvantage through increasing life opportunities. This would

⁷ Wolff, J., 2002, p. 210

⁸ Wolff, J., and de-Shalit, A., 2009, pp. 21-35

⁹ Nussbaum, M., 2006, p. 14

target such things as education and health (to enhance natural assets); encourage civic responsibility and sound economics (to enhance external aspects); secure equal opportunities; and the removal of barriers to social mobility (to enhance the social structure). Although Wolff's suggestions are based on a practical approach to the mitigation of disadvantage, it is suggested that the theory of unfair social disadvantage as impairment of the will can supply the missing theoretical basis to pursue such policies. These options will be discussed further below.

2.1 Internal Aspects

As already suggested, the state should facilitate independent living as a means of securing equal exercise of will. This will require policies directed at encouraging healthy lifestyles, literacy, numeracy, and civic participation. Nevertheless, measures must also be put in place to prevent an authoritarian approach to such policies since this would serve to prevent rather than enhance exercise of will. 'Nudging' policies might be best placed to serve this function. Aspects to be encouraged (those adding to the objective of equal opportunity for the exercise of will) should receive state support, whereas aspects that do not so contribute would not (although need not be actively prevented).¹⁰ As an example of how this might work, consider smoking: since smoking is recognised as being bad for health it would be unlikely to contribute towards self-realisation or enhancement of the will (its incidental addictive nature notwithstanding) – yet it need not be prohibited for this reason alone. Measures to assist persons to quit could be supported through

¹⁰ Hausman, D., and Welch, B., 2010, p. 123

free help, negative advertising, free nicotine patches and such like (although care must be taken to avoid reinforcement of divisive stigmatisation).¹¹

Wolff suggests that internal aspects could be improved through education, training, or in some cases through medical intervention to rectify a disability.¹² The promotion of will-egalitarianism would add that such measures should also be readily available (or even cost-free) to those who need it. This would be in line with the state's duty to treat all of its citizens as moral equals. Even though the policy of securing equal opportunity for the exercise of will might require such measures to be taken, this would not be regardless of cost: the threshold of sufficiency of the will can also set limits of maximum relative to minimum, particularly in relation to resources, and would dictate the maximum amount of funding available. In a state with the wealth and technology available, it cannot reasonably refuse to provide the necessary assistance for disabled persons, say, to express equality of the will. In a state without the wealth and technology, assistance must still be provided to allow equality of the will, but this would be limited by the negative impact upon the able bodied within that state.

In a developed state, therefore, if the lack of funding for higher education, or lack of access to health care, were to prevent any individual from the equal opportunity to achieve self-realisation, then the state would have failed in its obligations towards its citizens. It would be to fail to treat those individuals as moral equals, and to cause or allow impairment to their wills. Such a duty would therefore support such policies as free higher

¹¹ Graham, H., 2011, pp. 83-99

¹² Wolff, J., 2002, p. 211

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education, and free health care for many of its citizens (in a society with the resources to do so). The claim of insufficient resources would only apply in a society in which no one is able to exercise a greater degree of will than anyone else, since under conditions of scarcity the lower threshold (equality of opportunity to exercise the will) would be set at the same level (or close) as the higher acceptable level (when cashed out in terms of welfare, resources, or liberty). As discussed in the previous chapter, it is only under circumstances of surplus that the range between the lower and upper thresholds appears to increase (as differences between amounts of enablers of the will) as persons progress towards self-realisation at different rates. Yet one must bear in mind that some may progress towards self-realisation through the rejection of materialistic concerns. Where this is the case, widening differences in possessions is not a relevant moral concern.

The problem of adaptive preference is relevant here. This problem concerns those who are poor but nevertheless consider themselves to be satisfied with their lot.¹³ If unfair social disadvantage relates to the impairment of the will, yet the person’s will appears to be fully functioning, it would suggest that those who do not recognise that they are being treated less favourably, are not disadvantaged after all. Thus, for example, the poorly educated Muslim woman in Taliban Afghanistan would not be described as disadvantaged unless she actually sought education. Yet she may even agree that it is not the place of women to be educated. Since she would not expect to be educated, so the argument would go, she would not have such an aspiration and therefore would not be unfairly disadvantaged.

¹³ Sen, A., 2001, p. 62

Remember though that the account of unfair social disadvantage as impairment of the will also requires progress toward the attainment of will through the idea of self-realisation. Thus a person who is prevented from progressing towards self-realisation to the extent that she is unable to develop her will would also count as having her will impaired. Such a person is clearly disadvantaged by those conditions: although the will appears to be fully functioning, this is only because it has not been allowed to develop. The appearance of a fully functioning will is therefore deceptive in these cases. The advocated policy of the state to target the development and exercise of the will (and not just to provide the necessary resources) would meet this requirement through the provision of education to all that need it for self-realisation, and thus develop that internal aspect of well-being as Wolff recommends.¹⁴

One of the greatest challenges of social justice relate to those persons with severe disabilities. It bears repeating that John Rawls considered this an issue upon which his own scheme of “justice as fairness may fail”.¹⁵ It might be suggested that this could also present difficulties for will-egalitarianism. For a scheme in which social disadvantage is defined by unfair impairment of the will, it might appear that the plight of the severely disabled, particularly in relation to mental disabilities, would be missed since such people are often incapable of autonomy: without autonomy, one would be unable to exercise will. It must now be shown how will-egalitarianism can meet this challenge.

¹⁴ Wolff, J., 2002, p. 210

¹⁵ Rawls, J., 2005, p. 21

Recall that it is possible for a person to suffer from impairment of the will but not necessarily unfairly. Such circumstances might come about (it might be suggested) when an individual is born with a mental defect or suffers a brain injury where no human agent was responsible. The challenger could argue that such an individual should be regarded as disadvantaged. However, such a challenge must rest on a misinterpretation of will-egalitarianism: whatever will that the person might develop has not been impaired, it has been precluded. The case cannot be made that a will that does not exist ought to be developed, or regarded as though it could be developed. Whilst unfortunate, without anyone to blame such misfortune cannot properly be described as unfair.

Even if this argument is accepted, the objection might still be pressed. It could be suggested that the focus upon the will would leave a huge 'blind spot' by disregarding certain vulnerable groups as a concern of justice. If state policies were only directed towards assisting the exercise of will of those capable of doing so, then it may leave such individuals unprotected, and any theory that did not protect the most vulnerable members of the community must be regarded as inadequate.

The answer to this problem is that we still have obligations towards these individuals, but that this obligation comes from a different source: it is from the same source that places a duty upon persons to not abuse children or animals, and to look after their care and welfare. Any individual that cannot exercise will would not have personhood: either such personhood has already been lost, or was never achieved. Without wanting to get drawn too far into the debate over personhood, and despite his advocacy of utilitarianism, Peter

Singer's arguments that personhood relates to our ability to exercise will is accepted.¹⁶ Any individual that does not have that capacity cannot count as a person even though they might remain a human being with all of the rights and protections that that status affords. Individuals that are incapable of the exercise of will thus fall into the same category as many of the higher mammals (conversely, if any higher mammals were capable of such exercise then they would count as persons). This lack of ability in such individuals does not mean that they can be harmed, or that their lives would be considered to be less valuable. It would not entail a lowering of respect for such individuals, but a raising of our appreciation of animals. Non-persons simply do not have will, and therefore cannot exercise what they do not possess. It would thus be inappropriate to describe individuals that do not have will as unfairly disadvantaged. This does not produce a 'blind spot' in relation to such vulnerable groups since we still have duties and obligations towards them. Nevertheless, a failure to provide due care must still be construed as behaving unjustly towards the individual's friends and family.

A further complication is that some forms of disability are not clear or uncontroversial. Take for example the case of deaf parents having *in vitro* fertilisation and choosing to have a deaf child.¹⁷ Those parents are making a statement that they do not agree that their condition is a disadvantage at all. Any attempt by the state to attempt to rectify this 'defect' would be a misuse of authority: it would be in opposition to the wills of those affected citizens. Although it may be further objected that the will of the yet-to-be conceived

¹⁶ Singer, P., 2000, pp. 217-8

¹⁷ Kahane, G., and Savulescu, J., 2009, p. 10

child has not been considered, as Steiner points out, since persons not yet existing cannot reciprocate duties, they cannot hold corresponding rights.¹⁸ Although this view is not universally accepted, such persons cannot yet exercise will, and since this thesis proposes will-egalitarianism, the state has no obligations towards future persons: it cannot 'second guess' what the will of future citizens might be without becoming authoritarian.

Nevertheless, recently deceased persons can exercise will, as seen in the obedience of the next of kin to adhere to a deceased person's wishes, and as seen in the state's recognition of the legal standing of a written 'last will and testament'. This is consistent with an extended view of the will in which the will of one's deceased loved-ones becomes a part of one's own will. Even so, carrying out the wishes of a deceased person is still subject to the will of the living as to whether they choose to comply. The implications of will-egalitarianism to future generations is beyond the scope of this thesis, but would perhaps be interesting for a future project.

Finally, in relation to the internal aspects of social disadvantage, the state must allow persons to make mistakes, or change their minds, or make adjustments in their choice of pathway to self-realisation. If this were not the case, the state would become unduly authoritarian or paternalistic. This in itself could amount to the unfair impairment of the wills of those subject to such restriction. Two questions then arise. The first asks whether a person mistakenly volunteering to accept a disadvantage is unfairly disadvantaged or not? The second asks if the person that frequently changes her mind is

¹⁸ Steiner, H., 1994, p. 251

vacillating between being disadvantaged and not being unfairly disadvantaged?

In answer to the first question, the person who mistakenly accepts a disadvantage in the belief that this would contribute toward her self-realisation may or may not become unfairly disadvantaged when she realises that she has made a mistake. However, her original voluntary acceptance of the disadvantageous circumstances are no longer sufficient to nullify the assessment of unfair disadvantage. However, if she has the opportunity to rectify the mistake, she is not yet unfairly disadvantaged: such an evaluation only becomes appropriate where that opportunity is denied. To clarify this point, since social disadvantage is defined in terms of the impairment of will, at the moment that she realises that she has made a mistake, her will has been changed but is not yet impaired. Her will becomes impaired if she is prevented from realising her newly directed will in the presence of the disadvantageous conditions (even though she previously volunteered to accept them). She becomes unfairly disadvantaged.

In answer to the second question, such a person may well vacillate in the assessment of disadvantage every time she changes her mind, but only if the opportunity to progress in the new direction is blocked. The state must therefore ensure that a variety of pathways remain equally open to all of its subjects. The assessment of disadvantage as impairment of the will is sufficiently flexible to cope with such circumstances without becoming unduly authoritarian or paternalistic. It accomplishes this by setting boundaries to a range of 'acceptable' conditions inasmuch as the boundary is set by the perfectionist model of human well-being. The extended will, in being informed

by the community in which the person lives, would rule out destructive or extreme miss-assessment of the route to self-realisation. Take the example of a person's miss-assessment of vocation. A person can mistake the path towards self-realisation by choosing the wrong career, but if all career paths remain equally open to all persons, then a readjustment would not present a problem. A wrong career choice would not make the person unfairly disadvantaged since an alternative career path remains open, that is, the person's will is not impaired by her change of mind. However, she would be unfairly disadvantaged if alternative pathways were closed to her relative to others, since that would amount to an impairment of her will towards self-realisation.

2.2 External Aspects

Since external aspects include such things as money and wealth, an obvious priority of the state (that need not be dwelt upon) is sound economic policies. Other external aspects include property, and social relationships. Implications of a policy designed to equalise the opportunity for the exercise of will would therefore include the requirement to encourage civic responsibility, public ownership of communally important properties, access to the internet, access to libraries, and so forth. As a sufficientarian thesis, persons at the lower threshold must have enough external 'goods' to enable their exercise of will towards valuable activities, that is, towards self-realisation in accordance with the ideal of perfection.

Even if self-realisation is unachievable in practice, movement toward this objective would advocate such policies as a minimum wage, and a

minimum standard of social benefit for those unemployed and willing or unable to work. It would also commend policies that protected the individual's need for shelter and security above the protection of the interests of those whose needs are already satisfied. Take the example of the judicial ruling to require Camden Council to publish a list of long-term vacant property in London.¹⁹ Such a policy should favour squatting relative to protecting the interests of absentee landlords and corporate property speculators, but would oppose squatting where this clashes with another person's right to live in their own home. Since this policy would align with the objective of empowering those below a threshold of sufficiency (given that the need for shelter is a prerequisite of the equal opportunity to exercise will) and would facilitate the possibility of such persons to progress towards self-realisation, then such a policy would align with the principle of will-egalitarianism.

Policies that contribute towards equality of opportunity to exercise will should be encouraged, whilst those policies that do not should be discontinued. Policies to be encouraged would therefore include those that promoted education, or promoted participation in social and political activity, or promoted employment. Policies to be discontinued would include such things as the closing of libraries, destruction of public spaces, the closure of rural shops and post offices, and the sale of certain public assets where such actions are pursued on economic grounds alone. The impact of the closure or sale of such assets upon the requirements to maintain the ability for all citizens to participate in society, and the need to safeguard the possibility of

¹⁹ <http://www.telegraph.co.uk/news/uknews/law-and-order/8742631/Squatters-could-be-good-for-us-all-says-judge-in-empty-homes-ruling.html> Accessed 6 Sept. 2011

all members of the community to progress towards self-realisation must all be taken into account.

Nevertheless, any policy which turns on the exercise of will must to some extent relate to the choices that are made, and the preferences of the person making that choice (congruent with progress towards self-realisation). Since persons must be allowed to make poor choices, this leaves an opening for individuals or groups to attempt to benefit from these poor choices. It must therefore be the business of the state to protect persons from exploitation whilst also allowing mistakes. Nevertheless, in order to avoid authoritarianism, state intervention can only be to maintain the balance of competing interests in a network of individuals seeking (or rather, being nudged towards) self-realisation.

Furthermore, as individuals become aware of others better off than themselves, they are likely to become dissatisfied with their own circumstances. Although this would not necessarily require any adjustment, it could do so if an inequality in opportunity to exercise will became revealed. Thus if it becomes apparent that some have excessive opportunities then that arrangement must be mitigated. Take the example of inherited wealth: if the arrangements of the basic structure permitted inheritance to adversely impact upon equal opportunity to exercise will, then that arrangement must be restricted to prevent such encroachment. Likewise, the long-term leasehold arrangement for property usage must be regarded as unacceptable if the period of lease is longer than the owner's lifetime (unless the owner is a public or charitable body). Such arrangements are made in order to perpetuate an advantage, typically along family lines. As such they also

perpetuate inequality of opportunity of the will, and are therefore necessarily unfair.

One must also remember that the wealthier, or better placed, or dominant, or exploitative person is also prevented from self-realisation by the presence of socially disadvantaged persons within her community. As a state policy, the toleration of social disadvantage, even if those affected are unaware or accept that disadvantage, would undermine the potential of all members of the community for moral development. Thus the internal aspect of individual personal need (or adaptive preference) could become manifest as a negative external effect upon others within that community.

A further external aspect that might present a challenge to a will-egalitarian scheme of social justice becomes apparent when we question why the state need not target unfair social disadvantage directly. Since it is the circumstances of disadvantage that appear to be the most pressing factor, the obvious route to addressing poverty, for example, would seem to be through benefits payments. Whilst it is accepted that this might be beneficial, such a policy is only effective inasmuch as it empowers people, that is, facilitates exercise of will. Thus removing a person from poverty would empower that person to exercise will. Even so, such a remedy might also run the risk of making that person dependent upon benefits, particularly if cases of short-term alleviation of the immediate circumstances become established as long-term dependency, and thus undermine self-reliance (the implications from this effect will be further discussed in section three). It is therefore more advantageous to both the individual and the community to facilitate autonomy rather than to simply relieve a particular shortage. The morally significant

feature of such an action is that it allows the person to function as an equal moral agent. A policy aimed at addressing the long-term circumstances of poverty in such cases would be instrumental to the achievement of that status.

The use of targeted resources to address poverty is often regarded as the only way to address all forms of unfair disadvantage. It thus seems as though the view of money as a universal exchange mechanism leads to the view that it is also the appropriate mechanism to address all social disadvantages. This approach, it is suggested, is entirely inappropriate. Unfortunately, the convenience and simplicity of this approach to policy makers directs resources into the wrong sphere (to paraphrase Walzer).²⁰ As has been argued, the most appropriate means to address all forms of unfair social disadvantage is to empower the individual so affected. This allows the individual to access welfare where this is unfairly denied; to access resources where these are unfairly denied; and to access additional freedoms where these are unfairly denied.

2.3 Social Structure

These aspects include laws, customs, class and culture. Policies should therefore be directed towards promoting individual liberty, tolerance of others, and the breaking down of barriers to equal opportunity and barriers to social mobility. Furthermore, the recognition of the importance of culture and identity would direct the state to protect such structural arrangements even in the face of economic arguments to do otherwise.

²⁰ Walzer, M., 1983

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As Wilkinson and Pickett show, inequality is strongly associated with health and social problems. They argue that it is not the amount of wealth that is significant: it is the amount of inequality. Although an association is suggested, they cannot show a causal relationship. The evidence they present points out that unequal societies consistently perform poorly in terms of such things as crime and imprisonment rates; life expectancy; trust; obesity; unwanted pregnancy rates; unhappiness; children's well-being; status of women; mental illness; drug abuse; numeracy; literacy; social mobility, and so forth.²¹ The conception of social disadvantage as the unfair impairment of the will would suggest that it is not the fact of material inequality that causes these problems, (such a causal relationship cannot be drawn) but could perhaps be a consequence of the lack of treatment as moral equals.

The blocking of the potential for self-realisation in those least well off, whether caused by individual acts or the arrangements of the state, can be implicated as causal to the symptoms. This does not imply any intent, but suggests that individual (supposedly self-interested) actions on the part of the wealthiest, or the arrangements of the state, unfairly impairs the wills of those least well-off. Once the pathway towards self-realisation is blocked, individuals will act in other directions which will necessarily be away from the perfectionist ideal. If a person is prevented from becoming a 'better' person, they are likely to look to crime, or drugs, or other means to improve self-esteem such as through pregnancy, or acts of violence, or domination of other similarly placed individuals. Once persons are treated as though they are in a Hobbesian war of all against all, they are likely to behave in that

²¹ Wilkinson, R., and Pickett, K., 2010, pp. 15-169

Chapter Eight – Implications for the State's Response to Social Disadvantage way.²² When the arrangements of the state fail to protect the interests of all citizens equally, then inequality is the consequence, perhaps along with these health and social problems.

The obvious means to secure the conditions to allow citizens to equally exercise will, and thus equally exercise control over the way their lives might go for them (at least insofar as the state is able) is to enshrine that equality in legislation. This measure has already been taken in most (if not all) properly functioning democracies to some extent. Legislation that can help individuals to equally exercise their wills include such things as the prevention of discrimination on grounds of race, ethnic background, gender, sexual orientation, disability, age, or beliefs. In each case, employers and public authorities are required to ensure that citizens and employees are treated fairly. This can include such measures as public scrutiny of employment profiles, provision of wheelchair access to public buildings, and the encouragement of toleration.

Although Wolff does not specifically mention public consultation, it is suggested that such a mechanism would be essential to the removal of unfair disadvantage. Since the state must enforce the law, and since it would not be realistic to obtain consent from every person subject to the state's authority, then the state must consult widely in order to track the interests of its subjects.²³ Laws must assist individuals in the progression towards self-realisation, but this progress must be self-assigned. Consultation is a compromise. It is an alternative to gaining consent from each individual, such

²² A similar point is made by Douglas McGregor (Theory X and Theory Y) 1960, pp. 33-57

²³ Pettit, P., 1999, p. 184

that the state may use compulsion only when to do so would be in alignment with each person’s self-realisation (even if they do not recognise it as such at the time). Consultation would ensure that laws that are passed not only track the interests of the community, but are on terms that persons affected cannot reasonably reject.²⁴ They must also align with the interdependent network that is apparent in the conception of the extended will. This extended will is sensitive to the needs and interests of the individual as she relates to the needs and interests of others within her community. Given that the advice to the state is to target the enhancement and protection of the exercise of the wills of its citizens, public consultation should form part of this process (although ensuring participation may be an issue).

Daniel Munro recognises the importance of public participation, and although he is addressing a different (but related) issue, points out that any theory of social justice must address the gap between the advocated system and the motivation to follow it: this “may require citizens to refrain from performing acts that they are already motivated to perform [or] demand that citizens perform acts for which they lack the motivation, or even the motivational capacity, to perform”.²⁵ Munro’s solution is through the use of a suitable forum for participatory debate, such as the participatory budgeting model used in Porto Alegre in Brazil.²⁶ His remedy to address this gap would only be effective inasmuch as it increases the opportunity of citizens to exercise will over their circumstances, and not simply having a state’s solution imposed upon them. In this example ordinary citizens were given the

²⁴ Scanlon, T., 2000, p. 5

²⁵ Munro, D., 2007, p. 449.

²⁶ Munro, D., 2007, p. 468.

opportunity to engage in the decision making process to determine the allocation of scarce municipal resources. Munro suggests that such “mini-public” participatory-deliberative arrangements might provide not only a solution to the problem of motivation, but ensure that citizens feel included in the process.

Despite the potential of such arrangements, there are associated difficulties. If mini-publics only deal with the smaller parochial issues, and ignore the larger issues, they can suffer from the perception of tokenism. When citizens are only empowered to make decisions in relation to trivial matters, this can become a disincentive to participation. The problem of imposition may therefore persist and lead to disillusionment with the system of social justice, even if the system is otherwise ideal. Even a perfectly just system, if it cannot be followed in practice, will become unjust.

Nevertheless, further support to participation might be gained by the use of incentives. An incentive might encourage a change of motivation towards the duties of the state. This is the approach of Vittorio Bufacchi. He suggests that “our task is to think of creative ways in which the institutions of justice can use the stick of bad reputation or the carrot of a good reputation as incentives to get citizens to embrace the principles of fairness and impartiality”.²⁷ In spite of this, his suggestions appear tentative and limited or undefined. He endorses systems such as public voting, at least for elected representatives, and the declaration of funding for political parties.

One such creative way might be for the further use of social networking sites, although to take advantage of such means of consultation would require

²⁷ Bufacchi, V., 2005, p. 36.

widespread public access to the internet. Yet even using such methods of gaining consensus may only be partially successful.²⁸ As Kevin Zollman notes, such methods might correctly identify the 'truth' of public perception, but such views may be divorced from the 'correctness' of an advocated solution.²⁹ Thus widespread consensus might suggest solutions that would be oppressive to minority interests. Then again, the awareness of this problem can minimise the effect, for example, by the state issuing limitations on consensus such that decisions must be commensurate with the state's obligations to facilitate will-egalitarianism within the perfectionist framework.

Moreover, the use of social networking sites as a short-cut to ascertaining the views of a community may not reflect a true picture after all. Without the actual personal interaction between individuals that exists in traditional human relationships, the individual contributor to the social network becomes isolated from the normal sense of responsibility for her postings. She becomes unaccountable and immune from the challenges that she would normally have to deal with in face-to-face communication. This is seen in the phenomenon of the internet 'troll': the person that makes outrageous or offensive comments simply to provoke a response. The use of social networking sites may thus not be a reliable indicator of public views and would not necessarily contribute positively towards the extended will or self-realisation.

Due to these reservations, no claims are made as to the effectiveness of each element in isolation. It is only suggested that such ideas would be in

²⁸ Zollman, K., 2011, pp. 1-19

²⁹ Zollman, K., 2011, p. 4

line with the proposal to focus on the empowerment of citizens as a means to increase exercise of will and thus to undermine the causes of social disadvantage. Social networking in particular may promise much, but without considerable development in providing an effective feedback loop, may distort public views or even fragment into like-minded interest groups. The use of such systems as a means for the state to engage more directly with its citizens must therefore be treated with caution.

A further implication for the state was raised in the opening paragraph of this section: the importance of culture and identity. The pursuit of policies to protect these aspects of social structure would require the state to take into account factors other than economic viability in reaching decisions which affect communities. One area where this is particularly evident is in employment. Persons strongly identify with their professions: it gives a sense of both identity and worth. As examples, a person is described as a potter, or trawlerman, or factory worker: personal identity becomes intertwined with the description of the profession. This facilitates social relationships, and in certain cases defines a local community. Thus in the UK, the area around Stoke-upon-Trent becomes known as 'the potteries', or the area around Kingston-upon-Hull becomes identified with the fishing industry, or the entire West Midlands becomes associated with the car industry. Should one become unemployed one loses both personal identity and the sense of worth. Both of these feature strongly as part of each person's self-realisation. Unemployment is thus a scourge for more than just economic reasons. This has two implications for the state: firstly in relation to the chronically unemployed, and secondly in relation to the state's economic policy.

So far as the chronically unemployed are concerned, and assuming that such persons would choose to work if they could, the state must assist such persons to become active members of the working community and therefore pursue policies with the objective of maximising employment. Yet whereas the traditional reason for doing so is economic, following will-egalitarianism would require the state to do so even where the economic reason alone is not compelling. This would suggest the use of job creation schemes such as public works where this would be beneficial to the community. This would include such work as the maintenance of public spaces (to improve the communal environment), or the maintenance of public transport infrastructure (to improve communications) even on economically unviable routes.

This in turn would have a significant influence upon the state's economic policies, and would require that the social needs of local communities receives due recognition in the decision making process of government. Had such a requirement been in place during the 1970's and 1980's, the widespread closure of 'uneconomic' coal mines in Yorkshire, Wales, and the Midlands would have been prevented, or at least mitigated. The benefits of personal and community worth would most likely have outweighed the disputable economic grounds for closure. Certainly such closures would not have been handled as badly as they were. Closure might eventually have occurred, but not so rapidly, simultaneously, and not before alternative employment had become established. No doubt this might have entailed government support for 'lame duck' industries, but the alternatives for

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individuals and communities in terms of the violation of will-egalitarianism would have been unacceptable.

In contrast to the protection of the needs of those adversely affected at the lower threshold, there are also implications for those at the upper threshold. In the previous chapter it was suggested that persons would not be able to progress towards self-realisation without recognising that this entailed the assistance of others to similarly progress. It was emphasised that this should not be taken to mean that an individual should be disallowed from the accumulation of perhaps fabulous wealth (if they did so for philanthropic reasons). One way to perhaps incorporate such an idea within a state's economic policy would be to offer tax incentives for such purposes. This would allow the establishment of such things as the Bill Gates' Foundation to fund the eradication of malaria (or other such purposes) that a state alone might not be able to achieve. The fabulously wealthy would thus be able to progress towards self-realisation, although they could not exceed the upper threshold by this means alone since it necessarily entails the existence of those below that threshold. This shows the increasing difficulty (and the greater commitment necessary) as the upper threshold is approached. Nevertheless, certain safeguards would be necessary, including mechanisms to ensure that the wealthy individual would not be able to access funds directed towards the charitable foundation for personal gains, and ensuring that tax incentives are only available for appropriate philanthropic purposes. Such incentives would encourage philanthropic giving whilst maintaining the effectiveness of the market capital system in the creation of wealth. However,

such creativity would be constrained towards mutual interdependent self-realisation for all persons within and beyond the state.

A final implication for the state under the 'social structure' heading is related to punishment: it would disallow the use of solitary confinement. If one considers an extended will, that is, that the will of the individual encompasses the wills of others who also reciprocally perfuse the will of that individual, and since self-realisation requires community, then denial of interaction would be to unfairly impair the will. Such a measure would block the pathway to that person's restitution since she would need access towards self-realisation in which the good of others was also part of her own objective. The state could not therefore endorse the use of solitary confinement on the grounds of punishment (although confinement for the protection of others might still be possible). Nevertheless, this is not to deny the place of voluntary isolation: the person who decides to live as a hermit, and thus voluntarily chooses to limit the extent of their will, would be disadvantaged but not unfairly.

Having now discussed some of the implications for the state in meeting its obligations towards its unfairly disadvantaged citizens, we must now turn to the implications that the new definition carries for those no longer considered to be unfairly disadvantaged. These implications tackle the problem associated with the so-called 'benefits culture'.³⁰

3. Disadvantage, Social Participation, and the Free-Rider problem

³⁰ Tweedie, N., 2010; Department of Work and Pensions, 2010

The existence of a benefits culture is broadly promoted by the British popular press, although it has now gained recognition in official government publications.³¹ Broadly speaking, this is the view that the long-term unemployed prefer to remain on benefits rather than work, perhaps also choosing to have large families in order to access increased child benefits. Notwithstanding the loss of a sense of identity and worth, the suspicion is that geographic clusters of endemic and sustained unemployment have removed the cultural stigma of unemployment. One possible explanation is the introduction of the ‘welfare system’. Prior to the implementation of the Beveridge report in 1942, the loss of work through redundancy or dismissal would result in severe poverty and shame for the families of those suffering unemployment.³² Since Beveridge, the National Health Service, The National Insurance Scheme, and other welfare benefits have become established and relied upon to give care to all citizens “from the cradle to the grave”.³³

It is possible that the clustering of disadvantage noted by Wolff and de-Shalit has, over the intervening years, perhaps normalised unemployment thus adding to the removal of any associated stigma.³⁴ When combined with the provision of a welfare benefit system, those persons unemployed become accustomed to a ‘state will provide’ attitude. In many cases, the unemployed individual can do a cost-benefit analysis and calculate that they would be worse off taking low-paid employment.³⁵ This is because unemployment benefit is a ‘trigger’ that then allows the individual to access other benefits

³¹ Department of Work and Pensions, 2010

³² Beveridge, W., 1942

³³ Often credited to William Beveridge, although Timmins, N., 1995, p.48, points out that this phrase was first used in this context by Winston Churchill.

³⁴ Wolff, J., and de-Shalit, A., 2007, p.119

³⁵ Tweedie, N., 2010

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such as housing support, Council Tax relief, tax credits, free dental care, free prescriptions, and other peripheral benefits. As the Work and Pensions Secretary Iain Duncan Smith admits, since the individual would lose all of these additional benefits once they begin employment, “people [are] better off claiming dole rather than working in a job paying £15,000 a year or less”.³⁶ The suggestion then is that over time the culture of acceptable unemployment can become embedded within these communities.

Despite this popular conception, the idea of a ‘benefits culture’ is disputable.³⁷ Data from The Office for National Statistics shows that the number of persons claiming unemployment benefit for five years or more has fallen dramatically over the last ten years (from 47,700 in 2000 to 4220 in 2011), and now amounts to only 0.3% of all those claiming Job Seeker’s Allowance.³⁸ However, it must also be borne in mind the possibility of a ‘yo-yo’ effect as the same individuals might fall in and out of short-term employment. This would distort the long-term unemployment figure. Furthermore, the allegation of benefits claimants choosing to have children in order to access greater benefits does not stand scrutiny.³⁹ The idea that one would be financially better off by having more ‘burdens’ does not make sense, and cannot be a rational reason for having more children. As Donald Hirsch (advisor to the Centre for Research in Social Policy at Loughborough, and the

³⁶ Smith, I.D., in *The Guardian*, 27 May 2010

³⁷ <http://www.channel4.com/news/welfare-reform-is-benefits-culture-a-myth> (Accessed 21st December 2011); Bradshaw, J., *et al*, 2006

³⁸ Office for National Statistics, reprinted at <http://www.channel4.com/news/welfare-reform-is-benefits-culture-a-myth> (Accessed 21st December 2011)

³⁹ Bradshaw, J., *et al*, 2006

Family Budget Unit at the University of York) puts it: “[t]he notion that you are going to be better off by having an extra child is bizarre”.⁴⁰

The relative lack of numbers, although putting the matter into context, does not affect the theoretical response of this thesis. Yet the evidence for those choosing to have children for financial gain alone is scant, and confined to anecdotal or popularist opinion: the reasons for having children are always far more complex than the accusations suggest and are not systematically recorded. Nevertheless, the possibility of just one person choosing to claim benefits rather than work, or choosing to have children for financial gain alone, would require this thesis to respond. Furthermore, the ONS record that over seven thousand economically inactive benefits-claimants admit that they “do not want a job”, (perhaps more accurately reflecting the yo-yo effect), and this too warrants a response.⁴¹ Since the problem might exist, even if only to a very limited extent, the implications of implementing a policy based on the conception of social disadvantage as the unfair impairment of the will must now be discussed.

Since the state is stipulatively required to treat all of its citizens as moral equals, it must facilitate will-egalitarianism. So, if a lifestyle choice were taken to live entirely on the state benefits system when the person is otherwise able to work, then this would be an exercise of will and therefore not amount to unfair disadvantage. The state benefit system, by definition, is to ensure that citizens are not disadvantaged below a certain threshold, thus meeting the state’s obligation towards its citizens as moral equals. Yet when

⁴⁰ Quoted in Tweedie, N., 2010

⁴¹ ONS Statistical Bulletin December 2011, Chart 13.

the threshold is conceived as one of sufficiency of the will, this would require a certain level of economic and social support unless individual circumstances allowed variation of this support. Thus a millionaire lottery winner, for example, would not be able to claim support when she quits her job; or the person losing a job through ill health may require more than financial support alone. In contrast, those who choose not to work (rather than those who are simply unable) have made a deliberate voluntary choice. In making such a choice, it is taken that the chooser has made a rational self-centred cost-benefit analysis, and calculated that they would be better off all things considered by remaining on benefits. We will not be concerned here by the person that has chosen to claim benefits through ignorance of alternatives, or through inability to make the necessary calculations: such persons have not made a wholehearted choice, or have difficulties that disable that choice. It will be assumed that the person ignorant of the alternatives would readily choose the alternative if it makes them better off all things considered. If they do not choose the alternative, that is to work, it will be taken that the person has now made a wholehearted choice in full possession of the relevant information and the expected consequences. The person that cannot make such a calculation, perhaps because she has learning difficulties, would not figure in this process as she would warrant further support independently of the ability to make a wholehearted choice.

Where such a voluntary and wholehearted choice is made, then as was argued in the previous chapters, the person cannot be said to be disadvantaged by the circumstances that result. This must not be understood as some form of 'permissibility' condition by which the point of sufficiency can

be overruled: this would be to confuse the traditional assessment of disadvantage as a lack of goods with the idea of sufficiency of the will. The lower threshold represents that level at which all persons must have sufficient opportunity to exercise will, therefore the person freely choosing any lifestyle is not by that account unfairly disadvantaged regardless of the level of goods that that person might possess. To do otherwise would be to ignore the autonomy of the individual. Since the individual choosing to live on benefits would no longer be regarded as unfairly disadvantaged, the state can legitimately withhold support.

Turning next to the allegation that some persons would consider having children just in order to gain financially. The conception of unfair disadvantage as impairment of the will gives guidance: if the motivation is entirely financial, then having children to 'profit' from the resultant needs (regardless of how irrational this may seem) would not amount to unfair disadvantage, and therefore the benefits can be withheld from the parents. This would necessitate some other means of ensuring that the children do not suffer from the withdrawal of benefits in this way. Whilst the details of such means would need to be devised, these might range from removal of the children into state care (at one extreme) to the provision of benefits in kind (such as directly supplying clothing and food). Whilst removal of children would be extreme, the protection of those children must be paramount. The parenting skills of anyone having children purely for financial gain must be seriously questionable, and cast doubt on their ability to care for those children. On the other hand, these extreme cases would be expected to be so few as to be negligible. The suspicion is therefore that a few isolated cases

become exaggerated by those with a vested interest in undermining welfare systems, or to deflect attention from other matters.

The proposals for withdrawal of benefits would be further supported by the idea of self-realisation at the core of disadvantage as impairment of the extended will. Since an individual's self-realisation includes the self-realisation of others, those who choose not to work entirely based on a self-centred cost-benefit analysis are failing to appreciate the impact on others. It is to fail to recognise that the benefits they receive are paid for out of the contributions of those who are working. Such claimants do not contribute towards the self-realisation of others, and therefore cannot contribute towards their own self-realisation either. This is not to say that recipients of benefits can never contribute to the self-realisation of others: non-employed parents raising children are still contributors, and therefore actively contribute to the development of their children and families. Similarly, where persons are in genuine need of assistance, the possibility of philanthropic giving can be seen as contributing towards the giver's self-realisation in a way that is not affected by the 'voluntariness' of the recipient. However, this would not be the mechanism by which the state must act. The state's actions would be to implement a mechanism to facilitate mutual self-realisation, and this would require reciprocity between those capable of doing so.

The voluntary choice to free-ride would deny the chooser the opportunity to progress towards her own self-realisation. The prevention of free-riding by the denial of benefits would therefore assist that individual to progress along the right (perfectionist) path. This would require the individual to engage with other members of the community in a more mutual

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relationship. Furthermore, this would also answer the potential objection that the denial of benefits would be to fail to treat the individual as an end. This objection was raised in chapter two in relation to those systems of procedural justice in which the process might allow considerable hardship so long as the process was fair. The objection is that a system of justice that would allow perhaps considerable hardship is misplaced since it would fail to recognise that the point is to protect vulnerable individuals. Even so, the denial of benefits would undoubtedly cause hardship, at least in the initial stages, but the justification for this is that in the longer term it would be in the interests of that person. This would still regard that person as an end in herself, but would merely nudge (admittedly very robustly) the free-rider into the acceptance of her responsibility to engage with others on a symbiotic rather than a parasitic basis.

A further implication from this view is that those able to work but in receipt of benefit for reasons other than lifestyle choice (such as temporary unemployment) must also be given the opportunity to continue contributing towards the self-realisation of others. Such persons would be entitled to those benefits for reasons of meeting the threshold of sufficiency and to address unfair disadvantage. Such beneficiaries would therefore be expected to engage in suitable community-based work or training in order to receive those benefits. Suitable work might include, maintenance of gardens and parks, rendering assistance to vulnerable members of the community, or even assisting with workplace crèches in order to allow others to work (all suitably risk assessed, of course). Suitable training might allow more challenging community roles to be undertaken in the future, such as training to be a

Special Constable; or Community Safety Adviser; or Teaching Assistant, for example. Such measures would provide the individual with a sense of engagement with community, add to self-esteem (since the benefits are 'earned'), and ensure that recipients cannot be accused of malingering or 'scrounging'. Only those who are unable to work would be entitled to receive benefits without contributing towards the community needs of others.

Taken to extreme, it might be suggested that the benefits claimant could continue training such that it might allow her to take the role of the teacher, say, or other appropriate but more highly skilled occupation. Such a mechanism could then reduce class sizes by distributing the workload more thinly, or reduce the working hours for the other employees. However, this might then be perceived as a threat to the existing workforce. It could be used as a means to reduce wages, either through increased competition or reduced remuneration: the 'claimant' could be working for much less than other teachers (thus applying downward pressure on pay scales) or hourly rates might remain the same but the total pay reduced in line with the fewer hours worked. Clearly such an eventuality would not be popular with those adversely affected, but the benefits for the otherwise unemployed can offset this concern. Since there is an obligation to furnish all persons with an equal opportunity to exercise will in the pursuit of self-realisation, it would not be defensible to restrict the benefits claimant from accessing full employment by this route. In effect, there would be little distinction between a benefits claimant and a public employee: both would be paid by the community in return for communally beneficial work. Although this may have a tendency towards reducing wages, it can also be regarded as having a tendency to

raise benefits. However, it would still be expected that the greater the level of skill required to perform a task the greater the remuneration should be, but equal work must still be rewarded with equal pay.

Although further work would be necessary on the economic implications of this development, the pressure towards a reduction of public-sector wages might be offset by the reduction in the level of general taxation: since only those unable to work would be effectively unemployed, there would be a reduction in the overall welfare costs from the reduced numbers of those non-productive claimants. This would suggest that reduced tax deductions would be necessary from the workforce to pay for the benefits scheme. Furthermore, since more persons would be employed, more would be in a position to pay income tax, thus spreading that reduced cost.

Insofar as equal work should attract equal pay, this would also imply that benefits claimants put into communally beneficial work should not all receive the same remuneration. This would also have the advantage that the idle, or misbehaving, employee would not have the comfort of job security for life. Whilst some might wish to pursue self-realisation through active engagement in the workplace, others might see it as a reason not to bother, or to take advantage of those that do. However, this would run the danger of becoming a wholehearted choice to free-ride, and would therefore not preclude the dismissal of such employees. This would be without the additional safety of guaranteed alternative employment or access to payment for remaining idle. Those that are simply incompetent or incapable might access additional training, or access less demanding work (without violating the lower threshold). However, a mechanism must be available for the

remorseful idle or misbehaving employee to return to employment (perhaps in a less attractive but necessary role) as a continued means of nudging towards self-realisation.

Whilst the requirement to work for benefits may appear harsh to some, they ensure that individuals can progress towards their own perfectionist self-realisation (or at least not fall or slide backwards) whilst also ensuring that they assist other members of the community to progress. In practical terms, it would remove the perverse incentive not to work, improve the environment of our towns and cities, keep individuals in the habit of work, and encourage the recognition of social worth from those better off towards those in receipt of benefits. Yet there are some practical obstacles to be overcome, and not just in relation to the receipt of benefits. It is these practical objections that are considered next.

4. Practical Objections

Since Wolff and de-Shalit have identified social structures as one of the aspects that affect how a person's life will go, then any structural deficiency in a scheme based upon will-egalitarianism may have a profound effect upon individuals, or perhaps threaten the stability of the scheme. Daniel Bell raises two objections in a review of Wolff and de-Shalit's book *Disadvantage*, firstly against their claim that the least advantaged must always be prioritised.⁴² He rightly points out that during a war situation, this should not be the priority. Secondly, he also points out that during peacetime, the least advantaged

⁴² Bell, D., 2008, p. 66

within a state are not always the ones that ought to be prioritised. He explains that if the cost of the state's action (for example, farming subsidies to support poor western farmers) were to impose costs on the poor of other countries, then that action ought not to be taken. Even though Wolff and de-Shalit want to leave aside issues of global justice, this is an area that they cannot treat in isolation.

Despite will-egalitarianism being a sufficientarian rather than prioritarian conception, perhaps similar objections might be raised against the conception of unfair social disadvantage as the impairment of the will. Firstly, since all persons are moral equals, this will require that any unequal application of policy (such as through the impairment of one person's opportunity for self-realisation relative to another's) will also be unfair. Even in times of extreme circumstances (such as times of war or famine) the principle of non-impairment of the will must be maintained. If it is not, then this would be to distribute the burden of the emergency unfairly. Although unequal burdens might be inevitable as a consequence of the emergency circumstances, the arrangements of the state ought to minimise this effect where possible. Any inaction of the state under these circumstances can even be construed as contributing to the distress of some in order to allow others to bear less of that distress. Certainly, the state could not contribute to the distress of some in order to protect others (unless by their voluntary acceptance) without treating those with the greater load as less than moral equals.

Even so, this would not rule out a general reduction in the opportunities available for all persons, or differential reduction with the voluntary agreement

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of the individual affected. So long as all persons get an equal (but perhaps substantially reduced) opportunity for self-realisation, then the situation is fair. It might even be the case that the recognition of the communal need for self-sacrifice can enhance self-realisation, and so paradoxically increase one's satisfaction of the will. Although the level of opportunity for self-realisation might vary at times of desperation any circumstances in which equality of opportunity to take self-realising actions is impaired through human agency *is* paradigmatically unfair. This would also disallow torture under any circumstances – even war. The person is not being treated as a moral equal and has not volunteered to be afforded a less than equal opportunity for self-realisation.

Although Bell's first objection is against prioritising the least well off during times of emergency, social disadvantage conceived as the unfair impairment of the will would not advocate policies susceptible to his objection. Will-egalitarianism would require that a balance of burdens is struck, such that all members of the state bear the circumstances of the emergency equally. This would be to advocate policies such as equal rationing of food, for example, regardless of the wealth or background, or role, or status of the individual members of that state.

Turning to Bell's second objection, that the impact on developing nations is ignored, perhaps this too can be levelled against social disadvantage conceived as unfair impairment of the will since this thesis also argues that the state ought to empower its own citizens. The net effect of such isolated actions might favour modern liberal societies at the expense of developing nations since they are in a better starting position to embark upon

such a task. Thus a policy to empower an impoverished citizen in the west might adversely affect the impoverished in other countries as they are exploited to meet the needs of the westerner. For example, to facilitate the westerner's desire to be seen in public without shame may entail his being able to afford decent clothing. This in turn may support the use of child labour in a developing nation in order to meet the 'affordability' problem.

Although this thesis is focussed upon the individual state, this is a valid objection. Whilst an answer can be provided to the effect that a global application of a principle of will-egalitarianism would prevent such exploitation taking place, it would run into difficulties. These would turn on issues of practicality, and in the conceptual difficulty of recognising that one's own self-realisation is dependent upon the self-realisation of others perhaps thousands of miles away, and of whom one might never be aware. Nevertheless, it is the awareness that is the key here: once a person becomes aware of the unfair disadvantage of others, they become drawn into the extended wills of those better off, and the obligation to assist becomes apparent. There will be more to say on this in the next chapter. Although this gives an indication of an answer, the question of global justice must be put to one side for the present time as being outside the scope of this thesis. However, if each state sought first to establish equality of opportunity of the will for each of its own members, then the question of global justice could be facilitated at a later stage.

A further objection might be that disadvantage in terms of will makes the subject entirely psychological, and thus somehow devalues the

circumstances of social injustice. If, for example, impairment of the will can account for all forms of unfair social disadvantage, then this suggests that all disadvantages are 'in our heads' so to speak. This is not to say that all forms of disadvantage can be interpreted as a disruption of some mental process, although this is one way in which a person might be disadvantaged. Remember though, the distinction between the assessment of disadvantage and its evaluation: whereas the assessment of disadvantage is pluralistic (in terms of a relative lack of enablers of the will), unfair social disadvantage is the impairment of the will when directed toward a valuable end, and to that extent is 'in our heads'. This does not devalue the suffering, but places it more accurately in relation to disadvantage. Starvation for example, is suffering, but not yet unfair social disadvantage. It only becomes an unfair social disadvantage if others are not starving. The existence of others says nothing about the distress, but adds everything to the evaluation of fairness. Where is the location of this unfairness if not 'in the heads' of the persons concerned? This is further supported by the recognition of will as extending outside of each individual to incorporate one's environment. The awareness of the distress of others makes this part of one's own self-realisation and if the observer is not likewise starving, the conditions become recognisable as unfair.

It is this distinction that makes the 'lifestyle' benefits-claimant vulnerable: in choosing not to work, she disqualifies herself from accessing benefits. However, the circumstances of poverty would remain and the individual must either comply with the requirement to 'earn' those benefits, gain paid employment, or persist with some other activity in order to survive.

This then leads to some other practical objections that need to be met. The first is the objection that such a policy might encourage criminality, since the work-shy might prefer to steal, or deal illegal drugs, or undertake some other illegal activity rather than earn a legitimate living. The second objection is in relation to the children of the work-shy: it would not be fair to prevent the development of the child's will in order to coerce or 'nudge' the parent.

Taking the former objection first, it is almost inevitable that some persons would choose the illegal route regardless of the systems or policies enacted by the state. Since those who are not in receipt of benefit and not in receipt of paid employment would have no visible means of support, they would be expected to be very few. Furthermore, they would not be able to pay rent, obtain loans, or engage with the community in any legitimate way. Such persons, it is suggested, would become apparent either because they might attempt to live on the streets as beggars, or through prostitution, or because they live on savings or inherited wealth. Those living by begging or prostitution could easily be made known to the social services, who could then check on their welfare and ensure that such circumstances remain as a lifestyle choice. Where they do not, such persons can be encouraged to receive benefits in return for their re-engagement with the community. For those who are living on savings or inheritance, that wealth would gradually diminish until such times that that person also chooses to re-engage through work. Those few that turn to crime for support would be relatively easy to identify, since they can be challenged to provide evidence of how they are supporting themselves. This could be part of a standard process to ensure that suitable levels of taxation are applied.

As for the second objection, if a parent chooses not to work for his or her benefits claim, then it is only right that his or her children should not suffer. This would be a delicate judgement to balance the needs of the child to be with her natural parents, and the need to ensure that the child's development is not impaired by staying with the parent choosing deprivation. It must be made clear to the parent at an early stage that if they do not wish to do community work in exchange for welfare support, that they run the risk that the children will be taken into the care of the state. Even single parents might be able to work in crèches, or other such activities in which care for his or her own children can be incorporated. However, this is not to be taken as devaluing the social contribution that child rearing does as a task in itself: single parents that cannot access suitable 'family friendly' work should not by that account be penalised. Withholding benefits may seem harsh, but ultimately, it is the will of the parent that determines this outcome: if she chooses the free-rider lifestyle, then the state cannot allow the child to be harmed by that choice, but if the choice is made to engage with the wider community, then support must be provided. It is, in practical terms, a delicate balance.

One must also bear in mind that an absentee parent must also contribute to the process of support. Even if his or her will were directed away from the provision of support, this would be in a direction away from his or her own self-realisation. The state can therefore apply pressure to nudge the reluctant parent along the right (perfectionist) path. Mechanisms such as direct wage deductions for child support would be possible, since even benefits claimants would be expected to work. It would thus be evident to the

absent parent that part of their own labour is taken for the benefit of the child, and thus enforce recognition of responsibility for that support. Only in the minority of cases where the parent is also unable to work would this mechanism not be applicable.

Two final objections relate to the requirement for claimants to work for the benefits: firstly, it might be objected that such a requirement is demeaning, or amounts to punishing persons for being unemployed (almost as if unemployment were a crime against the community); secondly, it might be objected that these measures would encourage some women to choose to have children in preference to engaging in such demeaning work.

The answer to these two objections is the same. The nature of the community-based work must not be menial: it must not be confused with the sort of tasks performed as community service punishments awarded by Courts (typically litter clearance, removal of graffiti, removal of chewing-gum from pavements and such like). Although these tasks are valuable, the nature of benefits-claimant's work must be distinctively more satisfying and valuable to the individual, further equipping the claimant to gain paid employment. If women choose to have children as an alternative to such work, then this can hardly be seen as an easy alternative: it would be rather absurd to suggest that the only motive for such a practice is to avoid work when the task of raising children is considerably demanding. In practice, the motivation is likely to be far more complex than any perceived financial gain. It would only be in the very rare (and almost pathologically abnormal) circumstances of a parent choosing to have children for a purely financial or work avoidance purpose (and for no other associated reason, such as for the love of children, or for

perceived benefits in self-esteem, or for the desire for the ‘completeness’ of a family, or other such reason) that removal of children, or withdrawal of benefits would be possible.

5. Conclusion

Wherever the will of the individual has been impaired in such a way that her moral equality has been neglected, then that person has suffered unfair social disadvantage. Conversely, wherever the person is able to exercise will in progressing towards self-realisation, then that person is not unfairly disadvantaged. Will-egalitarianism is the idea that all persons ought to have an equal opportunity to exercise will in accordance with this objective. Therefore, the aim of the state ought to be to facilitate its citizens’ exercise of will as a means to eliminate unfair social disadvantage.

However, this thesis is restricted to an analysis of the conception of disadvantage, and as such makes no specific recommendations as to how such a conception is to be implemented. Instead, this chapter is limited to the indication of the types of generic policy that would align with will-egalitarianism. This has produced no rabbits from hats, or other novel or otherwise surprising policies that have not been seen elsewhere under different guises. Nevertheless, it does give a new way of justifying the pursuit of certain policies, and adds further theoretical underpinnings to other observations (such as Wilkinson and Pickett’s *Spirit Level* observations).⁴³

⁴³ Wilkinson, R., and Pickett, K., 2010

Identification of the types of generic policy consistent with will-egalitarianism were suggested by following the three factors that Jonathan Wolff noted as influencing the life opportunities available to persons. These were the internal aspects of self-realisation, the external aspects, and the social structures. The policies that the state might pursue relating to internal aspects included free education and healthcare. Since will-egalitarianism relies upon the capacity of persons to have will, certain cases of severe disability (those involving brain injury) rule out such individuals from participation within the scheme. Even so, this does not undermine our duties towards the care of such people. Policies relating to external aspects included a sound economy and the encouragement of civic responsibility. This would include wide public consultation. As Daniel Munro suggested, 'mini-publics' might be a useful way of increasing consultation although participation might be problematic. Whilst social networking might encourage participation, the state must be clear as to the need to protect minority interests, and so must limit the options available for consultation within these bounds. Policies relating to the social structure were intended to break down the barriers to equality of opportunity and social mobility, and to recognise the importance of individual and community worth. These included the use of legislation, limitations on inherited wealth, recognition of social impact in government decision-making, measures to prevent free-riding, and the cessation of solitary confinement as a means of punishing prisoners.

In the next chapter, the thesis will conclude with an overview of what has been shown, a reflection on the process, and the original contribution that the conception of unfair disadvantage as impairment of the

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will has made. Some observations will also be made as to possible future
developments of the thesis.

Chapter Nine

Conclusion

Originally, this thesis started out as a critique of John Rawls, or rather, a critique of the acceptance of inherited wealth within his theory of Justice as Fairness. Quite soon, it became apparent that such a narrow concern provided insufficient fuel for a thesis. In spite of this, the more research that was carried out, the more the subject of disadvantage became troublesome. The subject seemed to revolve around the obligations that we may or may not hold towards those less fortunate than ourselves, and it did not seem clear either who these people were, or how their problems ought to be addressed, if indeed this was a suitable subject of justice. The conception of disadvantage thus became the focus of the thesis: one that it is hoped the reader has found engaging. The first chapter therefore described the nature of the problem, and how it was intended to go about providing a solution.

As with all intriguing conceptions, the difficult part has been arriving at the right question. The first problem to be addressed was therefore to define exactly what is meant by the term ‘disadvantage’. This was the subject of chapter two. It is only when one attempts to describe disadvantage that the multiple variations in its usage are noticed. Yet all such usages are supposedly describing the same concept. As examples, it was pointed out that one cannot assess disadvantage without also specifying in relation to what, and in relation to whom; that disadvantage can relate to trivial matters,

or life and death issues; that one might even describe a person as simultaneously advantaged in relation to X but disadvantaged in relation to Y. Furthermore, the assessment of disadvantage is not the same thing as suffering a disadvantage. So when we describe a person as disadvantaged, we also make certain assumptions in regard to fairness, and significance.

The next chapter reviewed the literature of the significant contributors to the debate surrounding social justice in general, and distributive justice in particular. These traditional views of social justice describe ‘the disadvantaged’ in terms of relative shortages of resources (Rawls, Dworkin) or welfare (classical utilitarianism) or liberty (libertarianism). Such approaches did not seem to meet the challenge of accurately defining disadvantage, or of identifying disadvantaged groups. They were compromises at best, and seemed to play off one attribute against another, or attempt to incorporate the rival aspects within the description of the favoured aspects, or assume that the favoured aspect rightly deserved priority, or set constraints to avoid potential conflicts of interests. Furthermore, some views implied destructive or unpalatable consequences, as shown by Dworkin’s ‘expensive tastes’ example, or the suggestion that frustrated racists might warrant compensation, or the libertarian’s dismissal of the claims of the poor, weak and vulnerable as not being a matter of justice at all.

In chapter three, it was argued that the concerns of the poor, the weak, and the vulnerable are indeed a matter of justice, although right-libertarians would deny this. Amartya Sen has shown that such a denial is itself a failure of libertarians to recognise that they are actually egalitarians, but of liberty.

Libertarians must therefore accept at least the form of social justice that relates to inequality of liberty. The conception of social justice was thus affirmed, regardless of whether this is assessed as a relative lack of welfare, resources, or liberty. It was then argued that all such traditional views of social justice are only dealing with the *assessment* of disadvantage, and have overlooked the *evaluation* of the goodness or rightness of those circumstances. Consequently they have tended to conflate the issue of assessment with the separate issue of fairness. When these issues are separated, it becomes possible to recognise that disadvantage can be assessed in many different forms without making a commitment to any particular form as being the right or best way of conceiving disadvantage, and without succumbing to the objections of triviality or destructive incoherence.

With Rawls as the starting point, the least well-off were considered to be persons within the 'normal' range who happened to have fewer resources than others. Yet this restriction to 'normality' immediately marginalises those who might be the most disadvantaged. One cannot read Rawls thoroughly without also studying the capabilities approach, either as a corrective to his position, or as a stand-alone rival system. The two main versions of the capabilities approach (those of Amartya Sen and Martha Nussbaum) were accordingly discussed in chapter four, along with the practical application of such an approach as described by Jonathan Wolff and Avner de-Shalit. By these views, the least well-off group now includes persons outside of the normal range.

Although a Rawlsian conception of social justice (as amended by the capabilities approach) can be considered as inclusive of both resources and welfare aspects of disadvantage, it has yet to meet the challenge of the libertarian: it is all very well coming to some form of agreement about who ‘the disadvantaged’ are, but this counts for nothing if addressing disadvantage would mean the violation of individual liberties and rights. It would be to acknowledge that disadvantage exists, but to admit that there is nothing that can be rightfully done about it. However, this would be an internally inconsistent view of justice: since social disadvantage has already been shown to be unjust, it cannot then be unjust to seek to rectify that injustice.

Something was needed to help make sense of it all. That ‘something’ was the will of the person affected by disadvantage. The recognition of the will as the key came about through analysing the common factors in all of the above conceptions of disadvantage, and the recognition of the intimate association between liberty and will. When one considers disadvantage in terms of a lack of resources, the impact upon the individual affected is that they cannot do or become the person that they want to be. When one considers disadvantage in terms of capabilities, it is the language of doing and being that again defines the issue. When one considers rights, liberties and entitlements, once more the person disadvantaged is the person that cannot do or become the person that they want to be. Yet capability alone does not appear to be the fundamental feature. Despite Sen’s recognition of the importance of agency, and its incorporation within his definition of capability, the evident caution in using the language of agency rather than

‘will’ perhaps causes him to overlook the fundamental nature of that concept. Nussbaum’s conception of capabilities takes liberty as being no more significant than any other item on her list. Nussbaum thereby undervalues the significance of the will, and misses the point that capabilities are not fundamental to the conception of disadvantage. The whole issue of disadvantage thus seemed to turn on the notion of the will. How the will is to be conceived was the subject of chapter five.

The conception of the will is a notoriously obscure issue. Despite the persistence of the conception for thousands of years, it has somewhat fallen out of favour, particularly over the last fifty years or so. Many philosophers (like Sen and Pettit) avoid the term, preferring to use ‘agency’, or coupling the term with the notion of freedom (as in discussions of ‘free will’). With the subject of the thesis now firmly focussed on the nature of disadvantage, the turn towards the will looked at first like another pathway further into the fog. Yet there was something about the will that struck a chord as intuitively correct. Despite the theistic trappings (this word is used to mean more than a synonym for ‘framework’) T.H. Green recognised that the will of the individual must be understood as a part of the wider community, with the person’s good being dependent upon the good of all. Yet Green went even further, speaking of a “unity of self-consciousness” between persons.¹ It was much later that this idea was found repeated in modern discussions of the extended will.

Contemporary authors such as Dennett, Clark, Wegner, and Ross now agree that the will is best conceived as a useful illusion extending beyond the

¹ PE Sec. 202

individual conscious being.² This idea acknowledges that many of our technologies have become incorporated into our own abilities: memory is augmented with electronic notebooks; hearing can be enhanced with implants; even the possibility of superior-to-natural prosthetics allows such facilities to be incorporated into one's self-identity. Furthermore, when one considers the impact of culture, education, social interactions and such like, it becomes increasingly difficult to see where the true 'self' might lie. The edges between the self, and supposed mere influences upon the self, have become so blurred that it is impossible to tell where the self begins and ends: it is impossible to conceive of one's personal identity (what it would be, look like, attitudes and behaviour, and so forth) if all such components were removed. None of us would have the wills we think we possess without the environment in which we live, and it seems reasonable to suppose that if we had been brought up in a different culture, say, then we would not have the same will or self-identity that we currently have. How then can we say which part of the will is truly our own, and which is a reflection of the wills of others? The answer, one suggests, lies in the extended will.

The idea of a will extending beyond the self and intertwined with others, despite being posited over a hundred years ago, is still relevant today and can provide the foundation for a perfectionist morality. Although Green's view forms the inspiration for my own view of the will, his theistic approach is rejected. By retaining a wide conception of the will in which others are recognised as a part of what each of us is, and applying this to a perfectionist

² For a single volume discussion of these views see Ross D., *et al*, 2007. See also Wegner, D., 2002

ideal, this forms a framework within which the will is connected with morality. A right or good act is then one that contributes to a person's progression towards self-realisation, and this in turn must be in alignment with the perfectionist ideal. A bad or wrong act would be one with the opposite effect. The connection with a widely conceived will makes the interests of each person (to progress towards self-realisation) the interests of all. It is this connection that allows the conception of the will to be applied towards the conception of social disadvantage.

It is the idea of self-realisation that resonates with the capabilities approach once more. Recall that the concept of social disadvantage is normative in two ways, (the comparative assessment of the circumstances, and the evaluation of the goodness or rightness of those conditions). A person's circumstances can be evaluated in the second way as being unfair when, as a result of the actions of another person, she cannot be or do something which is essential to her well-being. Since these beings and doings are necessary attributes of self-realisation, the denial of a person's agency freedom (her opportunities to realise functionings) is also a denial of the opportunity to progress towards self-realisation: her will has been impaired when directed towards this valuable end. Within the framework of an extended will, all persons must hold the same opportunity, and recognise that progress towards self-realisation is a matter of mutual dependency. The idea of the unfair impairment of the will can thus provide the foundations for a capabilities approach to the assessment of social disadvantage.

It therefore became apparent that the opportunity to exercise will in virtue of one's moral equality was a matter of fairness. This led to the idea of will-egalitarianism, discussed in chapter six, in which it was argued that impairment of the exercise of will towards a valuable end is the defining feature of unfair disadvantage. This conception allows that one can be fairly disadvantaged if she has exercised will in exposure to those circumstances, but that one has been unfairly disadvantaged if she has been denied the opportunity to exercise will through the actions of others in a way that denies her moral equality.

As far as I am aware, this is the first time that the conception of the will has been directed towards the conception of social disadvantage. The great benefit of this approach is that it identifies a fundamental unifying currency that so eluded Gerald Cohen. As his remark reported in the opening sentences of chapter one put it: "One hopes that there is a currency more fundamental than either resources or welfare in which the various egalitarian responses [to disadvantage] can be expressed".³ It is suggested that this response ought to be made in terms of the conception of will-egalitarianism. Thus social disadvantage is defined as the unfair impairment of the will (by human agency) when that will is directed towards self-realisation, and interdependent within a similar scheme for all. To impair a person's will in this way would be to fail to treat her as a moral equal.

Since this conception of social disadvantage requires equality of the will of each person to be able to pursue their own self-realisation towards an

³ Cohen, G.A., 1989, p. 921

(ultimately unachievable) perfectionist end, and since the extended view of the will recognises that the activities of others towards their own perfection is part of one's own progress, this leads to a sufficientarian conception of social justice. It is sufficientarian inasmuch as a lower threshold of equality of opportunity to exercise will is advocated (directed towards self-realisation). This lower threshold is then accompanied by an upper threshold of realised will beyond which one cannot progress any further toward this ideal in the presence of others below that level. It is not prioritarian since it is not always the case that priority is given to the absolute worst off. This discussion was the subject of chapter seven. As the blood donor example in scenario three of this chapter suggested, sometimes it is necessary to save those who are saveable over the idea of equal distribution. Yet by employing the conception of an extended will, even those in that absolute worst off position must acknowledge that the good of saving those saveable lives is better in a way: not only is it better that some should survive, but that their own sacrifice would, in a way, contribute towards their own perfectionist self.

As for the implications for the state (the subject of chapter eight) the acknowledgement of all persons as moral equals would give the fair state an obligation to facilitate the exercise of will for all citizens equally. This would be manifested in many familiar and relatively uncontroversial policies, such as universal health care, and universal education. It would also support such things as suggested by Rawls, that is, equal liberty for each person compatible with a similar scheme for all. Nevertheless, the facilitation of each citizen's will would also extend into other areas, such as opportunities for

higher education, the dismantling of class and caste systems, the ‘mitigation’ of genealogical privileges, and other such steps designed to, as Andrew Mason puts it, “level the playing field”.⁴

Yet the requirements of will-egalitarianism would give the state a protective as well as a facilitative function. In one way, this has parallels with Nozick’s justification for a minimal state, but whereas Nozick argues that it is the state’s role to protect equal liberty by assuming a ‘policing’ role for the enforcement of contracts, the protective role is now much wider. In line with the distinction between the assessment of disadvantage and its evaluation, we can argue that Nozick’s justification of the state’s role can be applied more widely to cover all aspects in which social disadvantage might be assessed. Thus the state ought also to protect welfare and resource distribution. On this analysis, welfare, resource, or liberty disadvantages are merely different manifestations of the assessment of the circumstances of disadvantage, and as Nozick would agree, are beyond the remit of the state to redistribute unless an injustice has occurred. This evaluation of injustice therefore falls within the state’s remit to make and address. It is this evaluation, regardless of how the circumstances of disadvantage are manifested, that looks to the moral rightness of a particular distribution, and considers whether all subjects of the state have been treated as moral equals. The state’s role is then the protection of equal will (towards self-realisation) by assuming a policing role to prevent the domination by the strong, or the fortuitous, or the exploitative, over the weak, unfortunate, or unfairly exploited.

⁴ Mason, A., 2006, pp. 146-7

Wherever the will is impaired relative to others, there is disadvantage (but not always unfairly). Wherever a person's will is wholeheartedly and voluntarily exercised in the acceptance of a particular set of circumstances, there can be no unfair disadvantage to that individual. The state must therefore allow certain voluntarily accepted disadvantages as long as the principle is maintained to ensure that all citizens have been able to exercise their (extended) will towards self-realisation, compatible with the same scheme for all. Together with the protective role for the state over welfare and resource distribution, aside from protecting the vulnerable, this would also address the free-rider problem since this too can be seen as a form of unfair exploitation of the benefits system. The idea that a person is not disadvantaged when she has exercised will would make the 'life-style' choice to claim benefits rather than work no longer count as unfair disadvantage, and therefore not be subject to state support. However, it is also recognised that such a lifestyle choice is rather rare, and often misrepresented in the popular press.

The implications for the state have only been fleshed out in a limited way, and it is therefore this part of the thesis that would benefit the most from further research. For example, very little has been said about the global implications of will-egalitarianism. Yet the rise in concern for global justice raises an interesting possibility. As discussed in chapter three, Robert Nozick framed the question of distributive justice in terms of 'Robinson Crusoe' islands between which no communication existed.⁵ The question then was

⁵ See Nozick, R., 1973 p. 81

whether it should matter to persons on the 'rich' island that people were in poverty on another island that they did not even know existed. Once the idea of an extended will is introduced, then an answer becomes possible. The existence of poverty would not be significant to the rich so long as they remain unaware, but becomes very relevant once the poverty becomes known: the rich could no longer move towards their own self-realisation in the knowledge of, and inaction towards, the suffering of those others. Such a conception is similarly applicable when applied to the growing concerns for global justice. As our technological accomplishments in global communications progress, the awareness of the circumstances of others, the recognition of such persons as connected to ourselves, and the assimilation of their needs as our own (reflected in our self-realisation of the kind of persons we are, or would wish to be) is manifested in the global concern for justice. Unfortunately, there is neither the time, nor the space, within this thesis to explore the implications of will-egalitarianism across state boundaries.

Further work would also be required in relation to impairment of the will for those with limited capacity. Since an assessment of disadvantage depends upon the impairment of the will, there may be many marginal cases where the existence of will is not clear. Although Rawls declared that justice as fairness might fail in relation to cases of severe disability, such cases do not present a problem for disadvantage as impairment of the will. The difficulty arises for those persons with mental impairments that are not so severely disabled. Such persons can be lucid on one occasion, and

completely lacking in capacity on another day. Furthermore, persons can have mental capacity in relation to such things as current personal financial arrangements whilst simultaneously being unable to consider future planning, and without mental capacity, one cannot have will. Given the complexity of such marginal cases, it is improbable that a distinction can be made between individuals that possess the necessary conditions of personhood, and those who do not. Since the matter of fairness is dependent upon the conception of the will, and since only persons can hold such a conception, only those with the attributes of personhood can suffer unfair disadvantage. Marginal cases may therefore present a conceptual difficulty: identifying those individuals with mental capacity issues as being unfairly disadvantaged (rather than mistreated) would be so imprecise as to be open to accusations of arbitrariness.

In practice, the conceptual difficulty is relatively easily dealt with: there would be little practical difference in the steps that would need to be taken to rectify unfair disadvantage in the person capable of will, as opposed to the duty of care towards those who are not. The current UK practice of carrying out an assessment of individuals under the Mental Capacity Act can provide a template for the process, and includes temporal considerations, knowledge of the previous condition, history of the person, and various practical tests of ability. Where an individual is sometimes lucid (and thus capable of will) her views are made known and must be taken into account. When she is not, then measures are taken in her best interests under our duty of care, and take into account her previously expressed will. Yet in either case, rectifying

unfair disadvantage or rectifying mistreatment would involve the same practical measures. Such marginal cases will not be explored further here though: the issues are merely raised as an indicator of possible future research.

This thesis set out to explore a new conception of disadvantage in which to express egalitarian responses to the suffering and harm of many persons. It has been shown that when conceived in terms of the impairment of the extended will of the individual, that this can provide the fundamental currency that so eluded Cohen. Furthermore, it has also been demonstrated that when social disadvantage is so conceived, that this would support a sufficientarian position in relation to social justice. Such a conception would suggest that a fair society is organised along the basis of will-egalitarianism: one in which each person would be able to exercise (extended) will equally, when directed towards self-realisation, in a scheme interdependent within the extended wills of all. The idea of an extended will in each case recognises that the self-realisation of each person also encompasses the self-realisation of others. The single-most significant implication for this new conception of disadvantage is that the state ought not to treat the symptoms of disadvantage directly (such as relative poverty, misery, or lack of freedom) but would be better advised to treat the fundamental deficiency. This deficiency is the lack of equality of the will.

Unlike the typical Hobbesian or libertarian view of the will in which the individual is set as a rights holder against the rest of the world, the extended view of the will is social. This immediately sets disadvantage into the correct

Chapter Nine – Conclusion

context, allowing space for an assessment of relative positions, and allowing an evaluation of the fairness of those relations. The final words are left to Thomas Hill Green, the inspiration for this view:

Man cannot contemplate himself as in a better state, or on the way to the best, without contemplating others, not merely as a means to that better state, but as sharing it with him.⁶

⁶ PE Sec. 199

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