

**A STATE OF FREEDOM:
A DEFENCE OF PERFECTIONIST LIBERALISM**

A Thesis

by

DAVID ABRAM WIENS

Submitted to the Office of Graduate Studies of
Texas A&M University
in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

May 2006

Major Subject: Philosophy

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ABSTRACT

A State of Freedom:

A Defence of Perfectionist Liberalism. (May 2006)

David Abram Wiens, B.A., Brock University

Chair of Advisory Committee: Dr. Derrick Darby

This essay begins with the assumption that a liberal political morality is grounded upon two core ideals—*one*, that the freedom to shape one’s own life in accordance with one’s reasonable beliefs about the good is constitutive of the ideal human life; and *two*, that the state ought to be in the business of securing this *life-shaping freedom* for its citizens. I argue that the endorsement of these ideals has *perfectionist* implications for a political morality. My central claim is that *if* the liberal state is committed to securing its citizens’ life-shaping freedom, *then* it must actively and intentionally promote a definitive ideal of human flourishing. Accordingly, a liberal political morality is perfectionist insofar as it promotes an ideal of human flourishing; it is liberal insofar as that ideal is a distinctively liberal one.

My argument proceeds in four stages. In Chapter II, I argue that a liberal political morality cannot remain *neutral* in the way that many liberals claim it must be. The consequence of this is that a liberal morality must be grounded upon a non-neutral moral ideal. In Chapter III, I argue that this non-neutral ideal must take citizens’ positive liberty—or what I am calling their *life-shaping capabilities*—seriously if it is to achieve its end of securing its citizens’ life-shaping freedom. In Chapter IV, I present a theoretical framework intended to support the perfectionist element of my account. To do this, I propose a capabilities approach to well-being, which enables us to determine which capabilities are necessary for life-shaping freedom. In Chapter V, I address the inevitable worry that the state’s enforcement of perfectionist political principles is likely to unjustifiably infringe

upon its citizens' freedom. To alleviate this concern, I argue that any paternalistic interference justified by a capabilities approach actually enhances citizens' long-term freedom by preventing them from permanently forfeiting the necessary conditions of their freedom. Once this obstacle has been overcome, we will be free to embrace the perfectionist implications of our commitment to life-shaping freedom.

To Barb

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CHAPTER I
INTRODUCTION:
THE FREEDOM TO SHAPE ONE'S LIFE

Defining liberalism is a slippery task. Each time some claim is presented as distinctively liberal, a counterexample is offered to contest and complicate that picture. One who attempts to find a common thread running through the work of liberal theorists undertakes a difficult task. At best, liberal theories enjoy a ‘family resemblance’; one belongs to the liberal tradition in virtue of sharing some important similarities with at least some other theories generally acknowledged to be liberal.

Yet, there are some thinkers who are recognized as being particularly representative of liberalism—e.g., John Stuart Mill, Isaiah Berlin, and John Rawls—those whose names we cannot fail to mention in any discussion of liberal theory. And within the works of these theorists, we do find a common starting point—viz., the ideal that people ought to be free to effectively pursue a life in accordance with their reasonable, deeply held beliefs about the good life.¹ To be sure, this ideal has been grounded in a variety of ways by liberals, and the implications drawn from it have been equally numerous. But close to the core of liberal thought is the idea that a human life goes best when it is lived in such freedom.

Jeremy Waldron offers some insight into what is traditionally seen as following from this ideal:

In politics, liberals are committed to intellectual freedom, freedom of speech, association, and civil liberties generally. In the realm of personal life, they raise their banners for freedom of religious belief and practice, freedom of life-style, and freedom (provided again that it *is* genuine freedom for everyone

This thesis follows the style and format of *The Chicago Manual of Style*, 15th ed.

¹See Mill 2002; Berlin 2002; Rawls 1996, 1999. We also find this ideal held by non-representative liberal thinkers as well. See Green 1899; Dewey 2000; Raz 1986; and Sen 1999.

involved) in regard to sexual practices, marital affairs, pornography, the use of drugs, and all those familiar liberal concerns.²

Accordingly, liberals are deeply interested in enabling people to shape their own lives. Such a life is one whose trajectory is determined by one's own beliefs about the good as chosen in accordance with one's exercise of reason. It is not a life forcibly imposed upon a person as a result of others' choices. A person who is free to make her own life is free to assert her individuality, which entails that people be free to more or less hold the beliefs they want to hold, say the things they want to say, act as they want to act, and interact with the people with whom they want to interact.

This ideal of *life-shaping freedom*³ is not simply presented as a political desideratum or as a by-product of a 'liberal' political theory. Liberals do not start with a theory of political organization and infer from that what kinds of lives people should be able to live. Rather, they start with an ideal of how people ought to be able to live and build a political theory around that. As William Galston argues, liberal political theory is justified by appeal to a distinctive conception of human well-being, a conception that gives pride of place to citizens' freedom to shape their own lives.⁴

But such freedom cannot be secured simply by oneself. We live in and amongst other people, and sometimes our freedom is threatened by those around us. Hence, we find a second common ideal among many liberals—namely, that the state ought to be in the business of securing life-shaping freedom for its citizens. This entails that the state ought to insure that the trajectory of people's lives not be determined by the social order, and that they are not be coerced to live a life imposed upon them by others.

My aim in this essay is to show that a commitment to these two liberal ideals—that

²Waldron 1993, p. 38.

³Throughout this essay, I shall use 'life-shaping freedom' and 'freedom' interchangeably.

⁴See Galston 1991, pp. 10, 79–97.

life-shaping freedom is constitutive of the best kind of human life, and that one of the state's tasks is to secure such freedom for its citizens—has *perfectionist* consequences for a liberal political morality. In other words, I intend to show that the liberal's endorsement of life-shaping freedom is the ground for a *perfectionist liberalism*.⁵

What does it mean to say that a political morality is 'perfectionist'? As Thomas Hurka defines it, a perfectionist theory

starts from an account of the good human life, or the intrinsically desirable life. And it characterizes this life in a distinctive way. Certain properties, it says, constitute human nature or are definitive of humanity—they make humans human. The good life, it then says, develops these properties to a high degree or realizes what is central to human nature. Different versions of the theory may disagree about what the relevant properties are and so disagree about the content of the good life. But they share the foundational idea that what is good, ultimately, is the development of human nature.⁶

My argument is that a liberal political morality must share these features to some extent. It begins with the assumption that liberalism starts with life-shaping freedom as 'an account of...the intrinsically desirable life' and that its distinctive characterization of this life includes reference to certain human characteristics such as individuality, rationality and autonomy. It then builds a political theory around this description, claiming that political and social organizations should enable people to develop these distinctive traits to some degree. My central claim is that *if* the state's task is to secure its citizens' freedom, *then* it must actively and intentionally promote an ideal of human flourishing. Hence, a liberal political morality must be 'broadly perfectionist' in the sense that it 'tells us to de-

⁵'Perfectionist liberalism' is a term Galston (1991) uses to classify Raz's account of liberalism in Raz 1986.

⁶Hurka 1993, p. 3.

velop some capacities and also defines an ideal of excellence.⁷ That ideal of excellence I am assuming to be a liberal one—the ideal of life-shaping freedom. Those capacities that are to be developed I am calling life-shaping capabilities.

A note about argumentative strategy. Throughout this essay, I simply assume many commitments that are widely recognized as being liberal commitments. I then argue from these premises to perfectionist conclusions by critically assessing them and showing that they entail some perfectionist political principles. Hence, I do not offer any argumentative support for adopting the liberal commitment to life-shaping freedom, nor do I offer any evaluation of such freedom as an ideal of human well-being. My objective is solely to expose the oft-unrecognized ramifications of endorsing this ideal. It follows that what I have to say will appeal only to those who affirm the ideal of life-shaping freedom. I do not try to persuade those who reject this ideal to believe otherwise.

I am not the first to have undertaken the project of reconciling liberal politics with perfectionist principles. The first prominent attempt to do so was made by T. H. Green over 100 years ago.⁸ In the last quarter century, there has been a resurgence of liberal perfectionist scholarship; the accounts given the most attention are those offered by Vinit Haksar, Joseph Raz, George Sher, and Steven Wall.⁹ Not surprisingly, my argument in this essay is deeply indebted to these thinkers. Yet, this essay is not simply a reiteration of their arguments. My contribution to the literature is two-fold. First, I offer original arguments against the liberal doctrine of political neutrality and in support of the political relevance of positive liberty, as well as new arguments to support the use of paternalistic measures by a liberal state. Second, I present a new strategy for defending perfectionist liberalism. Rather than arguing that perfectionist political principles are *compatible* with

⁷Hurka 1993, p. 4.

⁸See Green's political writings in Harris and Morrow 1986.

⁹See Haksar 1979; Raz 1986; Sher 1997; and Wall 1998.

liberal ones—as Sher and Wall have done—I argue that perfectionist principles can be *derived from* standard liberal commitments. This is done by showing that an adaptation of the capabilities approaches of Amartya Sen and Martha Nussbaum present us with the resources to draw a compelling picture of life-shaping freedom that is at the same time perfectionist in character.

1. ‘Familiar’ Liberalism

Liberalism’s starting assumptions often lead to one or both of two important conclusions, which are argued to be necessary means to insuring citizens’ realization of their life-shaping freedom. The first is that a liberal state’s commitment to life-shaping freedom demands that its fundamental political principles be justified by reasons that are neutral with regard to the diverse conceptions of the good citizens will inevitably hold in a free society.¹⁰ This conclusion is motivated by the apparent incompatibility between freedom and the imposition of political principles upon citizens who do not endorse those principles from within their own conception of the good. Political principles are considered justified when each citizen who is subject to them is able to reasonably endorse them from within his or her own conception of the good life.

The second conclusion drawn from the liberal starting point is that the state must solely concern itself with securing its citizens’ negative liberty—i.e., the space within which individuals are able to act unimpeded by the interference of others.¹¹ There are two main reasons for this claim. First, some liberals argue that positive conceptions of freedom—i.e., conceptions of the conditions under which one is self-determining—are inevitably controversial among citizens.¹² It follows that if the state must remain neutral

¹⁰Representative accounts of liberal neutrality include Dworkin 1978; Ackerman 1980; Larmore 1987; and Rawls 1996.

¹¹See Mill 2002, pp. 11, 12; Berlin 2002, pp. 169–74; Larmore 1987, p. 47; Rawls 1996, p. 194.

¹²Cf. Larmore 1987, p. 47.

among competing conceptions of the good, it must also remain neutral among competing conceptions of positive liberty. But for liberals who do not advocate state neutrality, the controversiality of conceptions of positive liberty is not necessarily a problem. Instead, such theorists maintain that only negative liberty is politically relevant because state promotion of positive liberty is likely to lead to ‘despotism’ and ‘tyranny’.¹³ Accordingly, it is argued, the state’s only obligation to its citizens in securing life-shaping freedom is to defend their negative liberty, or what I am calling their *life-shaping opportunities*—i.e., the set of life-options available for citizens to pursue unimpeded by the interference of others. This means that the state must refrain from using political power to impose any ideal form of life upon its citizens, as well as defend them against attempts by their fellows to do the same.

2. The Argument for Perfectionist Liberalism

One of my aims in the following essay is to reject these two conclusions. In Chapter II, I deny that a liberal state can adhere to the demands of neutrality. I do this by considering various accounts of neutrality and showing that Charles Larmore’s attempt to present a neutral justification of neutrality offers us the most promising defence of the neutralist position. I then show that the supposedly neutral premises of his argument are in fact controversial ideals that numerous citizens of a liberal state are bound to reasonably reject, thereby undermining his neutralist position. As Waldron notes, this leaves Larmore (and other liberal neutralists) facing a dilemma:

Either [the liberal neutralist] concedes that his conception of political judgment will be appealing only to those who hold their commitments in a certain “liberal” spirit, or he must look for a form of social order in which not only

¹³Cf. Berlin 2002, pp. 190f, 198, 203.

those with different ideals, but those with different views about the legitimacy of imposing their ideal, can be accommodated. Since the prospects for a social order of this kind are not very promising, the former more robust response seems the only one available.¹⁴

Consequently, my conclusion in this stage is that a liberal political morality cannot remain fundamentally neutral. It follows that ‘we must abandon any claim about the “neutrality” of liberal theory’¹⁵, and concede that a liberal political morality is justified by appeal to some conception of the good life, viz., the notion that a life of one’s own making is the best kind of human life.

But this conclusion does not entail that this ideal must take seriously citizens’ positive liberty. In Chapter III, I take on the liberal view that only citizens’ negative liberty is politically relevant. I do so by critically assessing the arguments offered by Mill and Rawls in favour of limiting the state’s obligations to the protection of its citizens’ life-shaping opportunities. I show that each of these arguments also give the state reason to concern itself with its citizens’ positive liberty, or what I am calling their *life-shaping capabilities*—i.e., the ability to effectively pursue one’s chosen ends when presented with the opportunity to do so. Upon reaching this conclusion, I will have shown not only that a liberal political morality must be non-neutral, but also that it must take seriously citizens’ positive liberty.

Having rejected these claims, Chapter IV presents a theoretical framework to support the perfectionist aspect of a liberal political morality, wherein we are able to determine which capabilities the state has a duty to promote. Adapting the capabilities approaches of Sen and Nussbaum, I argue that the state’s commitment to securing its citizens’ freedom obliges it to insure that each of them achieve a minimum threshold of four capabilities:

¹⁴Waldron 1993, p. 57.

¹⁵Waldron 1993, p. 57.

life, bodily integrity, physical and mental health, and practical reason. These capabilities are viewed as essential to the project of shaping one's own life. In committing itself to the promotion of these capabilities, the state actively and intentionally undertakes to insure that its citizens are able to live out a distinctive and definitive ideal, viz., a life shaped by one's deeply held beliefs about the good. It is in this sense that I argue a liberal morality must be perfectionist.

I should note that I am not interpreting liberal thinkers as perfectionists. It is not my claim that liberals have been misread as anti-perfectionists. I firmly believe that many liberals do repudiate perfectionist political principles, finding liberal politics to be at odds with perfectionism.¹⁶ Rather, I am arguing that the liberal's starting premises have perfectionist implications for a liberal political morality. My claim is that numerous liberals have been mistaken in their repudiation of perfectionist principles.

Of course, this claim is likely to worry most liberals. The spectre of perfectionism raises concerns about state repression of individual liberties, a result that, if true, would surely vitiate my connection of perfectionist principles with the ideal of life-shaping freedom. If I am to show that perfectionism and liberalism are not at odds with each other, I must overcome the inevitable worry that the promotion of a perfectionist ideal unjustifiably infringes upon citizens' freedom by compelling them to exhibit certain capabilities against their will. Chapter V addresses this objection. Traditionally, perfectionist liberals have addressed this objection by attempting to show that certain relevant liberal considerations—respect for autonomy or the notion that freedom requires one's endorsement of one's life—preclude the use of state paternalism. But doubts have been cast upon the effectiveness of such arguments.¹⁷ My strategy in addressing this objection differs from these. Rather than attempting to show that a commitment to freedom precludes state

¹⁶For example, Rawls 1999, pp. 288–89.

¹⁷See Clarke 2006.

paternalism, I am to show that any paternalistic interference licensed by perfectionist liberalism can be justified by the same principles used by the liberal to justify instances of weak paternalism. In other words, I show that, in the cases where a capabilities approach justifies state paternalism for the sake of promoting capabilities, such interference protects the conditions of long-term life-shaping freedom from permanent forfeiture.¹⁸ Further, I propose a cost-based justification of paternalistic state action to alleviate the concern that perfectionist ends must always be pursued by coercive means. The key point of this proposal is that paternalistic capabilities promotion will be justified in those cases where the benefit of promoting capabilities outweighs the harm done by paternalistically doing so.

Ultimately, my aim is not to show that liberals must change or abandon their fundamental commitment to individual freedom. Rather, I hope to demonstrate that this commitment has perfectionist implications that have largely gone unnoticed—indeed, that have often been repudiated—by liberal thinkers. This will require overcoming general liberal distaste for some aspects of a perfectionist theory by showing that some measure of perfectionism is entailed by liberal tenets. But first, I must engage in some critical work, showing that conclusions often taken by liberals as following from a commitment to individual freedom are in fact mistaken. I begin, then, with a critique of the liberal doctrine of neutrality.

¹⁸This strategy is akin to that taken by Mill in his argument against voluntary enslavement. See Mill 2002, pp. 106–07.

CHAPTER II

WHY LIBERALISM CANNOT REMAIN NEUTRAL

Numerous liberal theorists have claimed that the state's commitment to its citizens' freedom entails that political neutrality must be the central and distinctive feature of a liberal political morality.¹ In what follows, I will argue against this thesis; that is, I will argue that attempts to justify political neutrality have so far failed to demonstrate that liberalism is—indeed, that it *can be*—fundamentally neutral.² One available strategy to support this thesis is to survey numerous accounts of neutrality and show why each one of them fails to justify political neutrality. While such an exercise may be fruitful, it will not be necessary here. Rather, to support my thesis, I will critically assess the case for neutrality as defended by Charles Larmore.³ The strength of Larmore's account rests on the fact that he recognizes that the principle of neutrality *qua* political principle must itself be justified without appeal to any controversial moral or philosophical ideal. In other words, whereas other neutral theorists have grounded political neutrality upon particular controversial ideals, Larmore attempts to give the principle of neutrality a neutral justification. However, whatever the merits of Larmore's account, it is unsuccessful in presenting us with a genuinely neutral political morality. This is because the supposedly neutral principles he uses to ground political neutrality—viz., the norms of rational dialogue and equal respect—are controversial and thereby undermine the fundamental neutrality of his account. My conclusion is that the state's commitment to enabling its citizens to shape their own lives demands that it actively and intentionally promote a non-neutral ideal.

¹See, for example, Dworkin 1978, p. 127; Ackerman 1980, pp. 7–11; Larmore 1987, p. 69; Goodin and Reeve 1989, p. 5; Rawls 1996, pp. 9, 10.

²This should not be confused with the claim that neutrality *can never* be shown to be the central feature of liberalism. I leave open the question of whether an argument can ever be presented to accomplish this at some time in the future.

³See Larmore 1987, Chs. 3–5, 1996, Chs. 6 and 7, and 1999.

1. The Principle of Liberal Neutrality

Neutrality has been taken to mean many things in political philosophy. However, in recent years, the most prominent accounts defend neutrality as *procedural*, or *justificatory* in nature.⁴ The primary objective of procedural neutralists is to present a liberal political morality whose fundamental principles are ‘freestanding’ with regard to the diverse and often conflicting moral ideals held by citizens in a liberal society. The strategy used to obtain such ‘freestanding’ principles is to place broad constraints on political discourse. Neutrality in this sense is a justificatory principle, meant to restrict the kinds of reasons that can be given to justify the exercise of political power. According to the liberal neutralist, no political principle can be justified by appeal to the intrinsic superiority of any particular conception of the good.⁵

Such a position is formulated as a response to one of the enduring features of liberal societies: reasonable disagreement about what constitutes the good life. According to Rawls and Larmore, this is the central fact with which liberal theory must contend.⁶ But reasonable disagreement is not something we must attempt to eradicate. Indeed, it is the inevitable outcome of the free exercise of reason. Hence, neutralists argue that, for citizens to experience genuine freedom, the state must not compel them to comply with political principles with which they reasonably disagree. According to liberal neutralists, a society’s governing principles must be the object of reasonable agreement; they must be principles that citizens can endorse from within numerous conceptions of the good. But this is only possible, they argue, if citizens are required to bracket their controversial beliefs in political dialogue.

⁴For a discussion of other forms of neutrality, see Ackerman 1990 and Galston 1991, pp. 100–01.

⁵See Ackerman 1980, p. 11; Larmore 1987, pp. 43, 47; Rawls 1996, pp. 9–10, 40.

⁶See Rawls 1996, p. 4; Larmore 1996, p. 122. Rawls’ term here is ‘reasonable pluralism’, whereas Larmore makes a distinction between ‘reasonable disagreement’ and ‘pluralism’; see Larmore 1996, Ch. 7.

Neutrality in this justificatory sense need not imply moral neutrality—i.e., it need not be independent of moral predicates. In fact, neutrality is a moral ideal, but as such, it is independent of *controversial* moral claims. It aims to insure that the principles of a liberal morality are shared by the citizens subject to them. Further, neutrality is solely a *political* ideal. It is intended to govern the interaction between the state and its citizens, not the interaction of citizens with each other or citizens with private institutions (e.g., churches and corporations). In the private sphere, citizens must be free to shape their lives in accordance with a wide range of reasonable beliefs about the good. Indeed, political neutrality is presented as a necessary means to promoting that end.

Despite the attempts to restrict neutrality to the political sphere, liberals have failed to apply the demands of neutrality to the principle of neutrality itself. In many cases, they have grounded their account of political neutrality upon controversial moral or philosophical principles. For example, Ackerman claims that four different arguments are able to independently justify neutrality: the moral scepticism argument, the Millian experimentalism argument, the argument from autonomy, and the prophylactic argument.⁷ The problem with these arguments is not that they do not support neutrality as a political principle, but that they rest on controversial premises. And it is not simply that these arguments are objects of philosophical debate.⁸ Each of these will be opposed by some who nevertheless hold reasonable conceptions of the good. Thus, in Ackerman's formulation, the principle of neutrality does not meet its own requirements—i.e., to justify political principles without appeal to some controversial ideal.

Rawls does not fare much better on this count. For him, neutrality is justified by appeal to a certain conception of the citizen as 'free and equal'⁹:

⁷See Ackerman 1980, pp. 11–2.

⁸For critiques of these arguments as grounds for neutrality, see Sher 1997. See also Raz 1986 and Wall 1998.

⁹See Rawls 1996, pp. 30–4.

- (1) Citizens conceive of themselves and others as ‘having the moral power to have a conception of the good’. This includes having the freedom to revise their conception since no one is inexorably tied to their present ends.
- (2) Citizens view themselves as ‘self-authenticating sources of valid claims’—i.e., as the fundamental source of legitimate moral claims in the political sphere.
- (3) Citizens view themselves as ‘capable of taking responsibility for their ends’, which affects the assessment of their claims.

In light of this conception, Rawls believes that no state should have the power to compel citizens to pursue an end they have not themselves chosen in accordance with their exercise of reason, since such compulsion is inconsistent with their capacity to hold and revise a conception of the good and live accordingly. But it is clear that Rawls’ conception of the person will be controversial; again, not just among scholars, but among ordinary citizens as well. Many people do not see themselves or others as ‘self-authenticating sources of valid claims’ because they appeal to some external authority as the source of valid claims. Many people do not see themselves as inevitably free from their present ends because they see themselves as intertwined with a particular moral tradition.¹⁰ Thus, it is apparent that Rawls’ own version of neutrality is not able to meet the burden of its demands.

Perhaps this is not a serious defect for neutralists. Some neutralists might argue that the principle of neutrality need not meet its own demands so long as it is sufficiently public, democratic, and non-coercive in nature. Indeed, we may not agree on *why* we should endorse political neutrality, but we may nevertheless agree *that* we should endorse it as a constraint on political decision-making. This seems to be a reasonable response. The aim of neutrality as a political principle is to prevent the use of political power as

¹⁰See Sandel 1984, esp. p. 90; Sandel 1998, pp. 195–218; Taylor 1989, Chs. 1 and 2, esp. p. 27.

a means to compel citizens to comply with moral ideals they do not reasonably endorse. And this seems to be a goal each of us might be willing to endorse given our desire to shape our own lives in accordance with our beliefs about the good. Thus, perhaps it is some fact of consensus that justifies neutrality as a political principle, not any appeal to a controversial moral ideal.¹¹

There are two problems with this line of reasoning, one empirical, the other conceptual. The empirical difficulty is that such a consensus seems implausible given the liberal neutralist's view of reasonable disagreement—i.e., as a deep and insoluble feature of our social experience. According to the liberal neutralist, there are very few moral, philosophical, or religious beliefs that can escape reasonable disagreement. If this is the case, what gives the neutralist any hope that a consensus will be reached on the priority of neutrality as a political principle? If the neutralist is proposing political neutrality as a fundamentally *moral* ideal, then without some argument to show how neutrality *qua* moral ideal is relevantly distinct from other controversial moral ideals, we have little reason to believe that political neutrality will meet with reasonable agreement. Thus, it appears unlikely that neutrality will be able to attain the kind of consensus that could possibly justify it.

One might object to this by arguing that the neutralist should be able to garner such a consensus if the principle is presented as 'reasonable', not as 'true'. However, this move does not get the neutralist the result he hopes for. In claiming that neutrality is 'reasonable' as a guiding principle of liberal political morality, he is making a substantive claim—viz., that it is the best or most effective or most fair or most just political principle. This move is not made by taking a poll and finding out what percentage of people agree with this, but by developing a theoretical account of 'reasonableness' from a particular set of assumptions—to which all will not agree—and claiming that neutrality best meets the

¹¹Cf. Waldron 1993, pp. 50–62.

criteria. Unless the neutralist is able to show that some principle is more ‘reasonable’ in virtue of its being able to secure an *actual* consensus, the ‘reasonableness’ of that principle will be vulnerable to the same problems as if it were presented as ultimately ‘true’.

Moreover, it does not help the neutralist to claim that all this theoretical work is done from a particularly liberal perspective and, thus, neutrality is likely to achieve consensus among those who are committed to the central tenets of liberalism. Liberalism is not a monolithic theoretical perspective from which certain principles necessarily follow, but a family of political theories that all purport to take individual freedom seriously in some way. But this commitment varies widely enough that it would be difficult to say that the neutrality impulse is distinctively representative of liberalism.

The deeper conceptual problem with justifying neutrality by appeal to some consensus is that it presupposes that agreement upon a principle is the key justifying feature of that principle—i.e., that it is true that a principle is justified *because* it is one to which most (if not all) can reasonably assent. Hence, neutrality as a political principle would be justified if it could in fact garner a consensus. All things being equal among the various options, this claim seems intuitively plausible. If the principles from which we are choosing are considered equally just, it seems reasonable to say that we will choose the principle that reaches the most agreement. However, it would be false to claim that consensus is the *primary* justifying feature of our political principles. We do not merely endorse those principles upon which we can in fact agree. It matters to us to a great extent that our political principles in fact effectively promote a just society.¹² Hence, consensus alone cannot justify the promotion of a political principle, for if we want our society to be just, we want to endorse principles that achieve that end. And it is questionable whether political neutrality is the kind of principle that does in fact promote a just society. The affirmative answer to

¹²Here ‘just society’ can be understood broadly as one that promotes the equal freedom of citizens to shape their own lives.

this question presupposes that those principles upon which we can reasonably agree are thereby just principles. But this presupposition seems mistaken and is certainly controversial. Thus, the appeal to a consensus to justify neutrality fails to avoid appealing to a controversial ideal, since the notion that a just society is one whose fundamental principles reach consensus is certainly disputed.

The neutralist might object here by claiming that this response fails to appreciate the fact of reasonable disagreement altogether, since the determination of a principle's 'justness' in the absence of a shared moral perspective is exactly what is at issue. To say that a principle's 'justness' is a factor in our decision to endorse it is to beg the question, viz., what counts as a just principle? This is exactly the question political neutrality is supposed to answer by turning to a procedural view of justice. However, this move still does not help the neutralist's case. Even if the *content* of procedural justice may be relatively uncontroversial, the view that justice must be purely procedural in nature is itself a substantive view. And we can certainly take other reasonable views of justice, as some within the liberal tradition do.¹³ Thus, the view that justice is strictly procedural fails to escape reasonable disagreement. For the neutralist to here justify neutrality by appeal to this view of justice is to ground neutrality on some controversial ideal. And this fails to take seriously the very thing he intends to take seriously, that is, each citizen's demand for a justification of political principles he or she can endorse. Hence, political neutrality *qua* political principle must be subject to its own demands—i.e., it must be justified neutrally.

2. Larmore's Neutral Justification of Neutrality

Larmore's response to this challenge sets his account apart from others. Recognizing the depth of this difficulty, he argues that the principle of political neutrality itself—as *the*

¹³For example, Green 1881, 1895; Raz 1986.

governing principle of the liberal state—must be justified by abstracting from disputed ideals. His innovation is his attempt to give political neutrality a *neutral justification*, and thereby put neutrality on more stable ground.

The ground for this neutral justification is what Larmore calls the ‘universal norm of rational dialogue’. This norm demands that ‘[i]n the face of disagreement, those who wish to continue the conversation should retreat to *neutral ground*, with the hope of either resolving the dispute or of bypassing it.’¹⁴ This norm is supposed by Larmore to be uncontroversial because it allegedly follows directly from the nature of argumentation. Briefly, an argument ends when reasons, derived from shared assumptions, result in an uncoerced consensus. Yet, solely from the norm of rational dialogue, it does not follow that we ought to circumscribe the kinds of reasons permitted in the course of political dialogue. This is because the norm of rational dialogue only tells how to proceed *if* we in fact desire to continue the conversation once we meet disagreement. It does not oblige us to continue the conversation. Indeed, one might prefer to meet disagreement with the use of force instead.

Accordingly, Larmore articulates a second norm meant to impel us to continue the conversation. This is the norm of ‘equal respect’. In his words, ‘however much we may disagree with others and repudiate what they stand for, we cannot treat them merely as objects of our will, but owe them an explanation for those actions of ours that affect them.’¹⁵ The norm of equal respect demands that we not simply compel a person by force to comply with political principles, but that compliance must be based on reasons given in rational dialogue.

Larmore argues that this norm follows directly from two considerations. First is the coercive nature of political principles. Political principles, unlike some other moral prin-

¹⁴Larmore 1987, p. 53. See also Larmore 1996, pp. 134–35.

¹⁵Larmore 1987, p. 62.

ciples, are the kind of principles with which people can justifiably be forced to comply.¹⁶ For Larmore, the enforcement of compliance can only be legitimate if citizens cannot reasonably reject the enforced principles. Thus, political principles *qua* coercive principles must be affirmed as a result of citizens' collective and public exercise of reason.

Acceptable principles must also respect citizens as persons. Coercive principles must recognize that each person possesses a capacity for coherently developing beliefs from within her own perspective and respect that capacity whether those beliefs are justified or not. However, to avoid entangling himself with the controversial ideal of autonomy, Larmore makes clear that these beliefs need not be formed autonomously to warrant respect.¹⁷ Nevertheless, since our actions toward another person are something that she must deal with from within her own perspective, we must treat this capacity as a reason to provide the other with reasons she can accept as justification for our actions toward her. To fail to continue the conversation and rest compliance solely upon the use of force is to fail to engage this distinctive capacity of the citizen as person. Such a failure, claims Larmore, is the 'only clear-cut case of treating a person as a means' rather than an end in herself.¹⁸

3. The Non-Neutrality of Rational Dialogue

Whatever appeal Larmore's argument may have, we ought to reject it as it is in fact non-neutral in a way that undermines its objective. To be clear, the non-neutrality of Larmore's account does not derive from his appeal to moral ideals. Indeed, it is supposed to be based upon a 'minimal moral conception', which is neutral in virtue of the fact that 'citizens can affirm [it] together, despite their inevitable differences about the worth of specific ways of

¹⁶For the distinction between coercive and non-coercive moral principles, see Larmore 1999, pp. 607–08.

¹⁷Larmore 1987, p. 63f.

¹⁸Larmore 1996, p. 138.

life.¹⁹ But how minimal can this moral conception be if it is to ground substantive political policy? In fact, if the moral conception proposed by Larmore is to remain uncontroversial and thereby neutral, it can only do so at a highly abstract level, one that is too thin to ground substantive political prescriptions.²⁰ To insure that liberal political morality is thick enough to ground such prescriptions, Larmore must inevitably justify neutrality by appeal to at least two controversial ideals. And therein lies the problem. Consequently, since Larmore's account is intended to be an improvement upon this defect in other accounts, we should reject neutrality altogether as the fundamental liberal ideal.²¹

The norm of rational dialogue as articulated by Larmore is not the only way for us to meet disagreement in conversation. Indeed, following Galston, someone might object that controversial moral ideals are exactly the kinds of things that should be the subject of public discourse. In part, dialogue is an appeal, not to shared propositions, but to a common experience. This requires that we 'bear witness' to our experience, to invite the other to view the world from our perspective, to share our experience of the world with others and share in others' experiences.²² In response to this objection, Larmore claims that neutrality solely governs political decision-making—that is, when a decision must be made about which principles will guide a liberal polity, neutrality must be the guiding principle. However, political neutrality does not rule out citizens' disclosure of their personal moral ideals to fellow citizens. This enables them to 'bear witness' to their

¹⁹Larmore 1996, p. 123.

²⁰Cf. Fishkin 1989, p. 154.

²¹Of course, there may be ways to unpack the norms of rational dialogue and equal respect other than the way Larmore does. Thus, it is possible that Larmore's project can be rescued from its fundamental non-neutrality if genuinely uncontroversial principles are used to justify the principle of political neutrality. To my knowledge, such a feat has yet to be accomplished. Moreover, it is plausible to suppose that any articulation of the norms of rational dialogue and (particularly) equal respect will be non-neutral in its details, since a philosophically uncontroversial articulation of these norms has yet to appear in the literature. Nevertheless, I have not considered these other possibilities here, so my rejection of neutrality is best formulated as a conditional claim: *if* political neutrality is justified by appeal to some controversial moral ideal, *then* neutrality is nothing more than a non-neutral ideal. It is an open question whether we can categorically rule out the possibility that political neutrality could be the fundamental liberal ideal.

²²Galston 1990, p. 321 and 1991, p. 106.

moral experience as each attempts in good faith to understand the experiences of others.²³

But Larmore's insistence on retreating to neutral ground in political decision-making seems to presuppose that the shared beliefs from which we argue must be shared by disputants *prior to* the start of the conversation. If this is not the case, then from where could he derive the injunction to retreat to neutral ground? If he is solely talking about beliefs that become shared during the course of a conversation, then the norm of rational dialogue could require that we present the best case possible to support our moral ideals to enable the other to see the appeal of these ideals and thereby come to adopt them. This may require using reasons derived from within our own perspective. Clearly, this is not what Larmore has in mind. But why agree that the common ground from which we debate must be *antecedently* shared? As Henry Shue argues, '[i]t is of course true... that agreement reached must rest upon something else shared prior to the *agreement*—but... not necessarily prior to the *conversation* that leads to the agreement! Even the shared "premise" on which new-found agreement rests need not have existed *ex ante*, before the conversation occurred.'²⁴ Thus, it may be that a commitment to the practice of dialogue itself—and not some antecedently agreed upon propositions—is the common ground upon which we are able to ground our affirmation of political principles. But such a commitment need not require that we bracket our controversial beliefs; it simply requires that we commit to continuing the conversation until agreement can be reached.

A distinction made by Steven Wall helps us to further see how Larmore's norm of rational dialogue is bound to meet with disagreement.²⁵ Wall argues that considerations relevant to political dialogue can be classified in one of two categories. On the one hand, there are those considerations that speak to the content of any political principle and are

²³Larmore 1987, pp. 135–36.

²⁴Shue 2004, p. 231. Emphasis added.

²⁵For what follows, see Wall 1998, pp. 79–80.

meant to provide answers to any substantive issue. In other words, they are concerned with the correctness of any principle. Wall calls these *content considerations*. On the other hand, there are considerations that concern the quality of relationship that results from citizens' interaction with each other and are meant to insure a state of relative stability and peace among disagreeing citizens. Wall calls these *civility considerations*. The importance of this distinction for the discussion at hand is that, put in these terms, we can readily see that Larmore's account of rational dialogue gives categorical priority to civility considerations in political decision-making. This is seen from the fact that citizens are enjoined to lay aside their controversial moral ideals during political discourse, ideals that are believed to be correct by those who hold them. Thus, Larmore's articulation of the norm requires citizens to bracket their concern for the content of their political morality and proceed in their interaction so as to, first and foremost, insure social stability and civil peace.

What makes this view controversial is the fact that citizens' moral ideals—if they are comprehensive in their scope—will include a view about the relative importance of content versus civility considerations. Some conceptions will give civil peace a central role in political interaction, believing that the best society is a stable and peaceful society. Others will give primacy to the content of a political morality, believing that a society that 'gets it right' with regard to its governing principles is the best kind of society. Thus, to conclude that citizens must give priority to civility considerations is to exclude their concern for content from the political domain, a concern considered by many—including those who give priority to civil peace—to be based on an eminently reasonable belief, viz., that political principles should, in some sense, be 'correct'.²⁶ Indeed, Larmore himself seems

²⁶There may be a question as to whether 'getting it right' with regard to political morality is incompatible with other liberal commitments. This need not be the case. Indeed, it seems that the liberal project is an exercise in trying to get it right. If it is true that liberals begin with a commitment to securing the conditions under which citizens are able to enjoy freedom, then liberalism is an attempt to 'get it right' with regard to

to hold this belief, claiming that the principle of political neutrality and the norms upon which it is grounded are ‘understood to be correct and valid norms and not merely norms that people in a liberal order believe to be correct and valid.’²⁷ Ironically, if we hold to Larmore’s view about rational dialogue, this belief must also be excluded as controversial.

4. The Non-Neutrality of Equal Respect

The norm of equal respect is even more controversial than that of rational dialogue. As Larmore notes, this norm does not come with a pre-packaged meaning; it can be given content in a variety of ways. The way Larmore gives the norm content is by appealing to the Kantian formulation—each person must be treated as an end and not solely as a means.²⁸ This leads him to conclude that respect for persons altogether precludes coercion—i.e., using force to compel compliance with principles that can be reasonably rejected.

One way to show that we need not follow Larmore in thinking about respect is to think about why coercion might not violate the principle of respect to the extent he thinks it does. Before we do this though, we must define what exactly is meant by ‘coercion’. Larmore himself never unpacks this idea other than to indicate that it is the ‘only clear-cut case of treating a person as a means.’²⁹ Given the Kantian flavour of his norm of respect, we may surmise that Larmore’s opposition to coercion derives from the fact that it infringes upon a person’s capacity to develop reasonable beliefs from within her own perspective. Consequently, to compel one to comply with principles she does not consider justified subordinates her own will to that of another and effectively treats her as a means

the conditions that most effectively achieve this end. See Mill 2002, pp. 12, 14–5; Green 1881, pp. 199, 200, 202; Dewey 2000, p. 57; Berlin 2002, pp. 171, 213–16; Raz 1986, pp. 369, 390, 425; Larmore 1987, pp. 43, 46; Kymlicka 1989, pp. 10–3; Rawls 1996, pp. 4, 9, 15–21.

²⁷Larmore 1996, p. 145.

²⁸See Larmore 1996, pp. 136–37.

²⁹Larmore 1996, p. 138.

to an end she views as unjustified.

Now consider the fact that each of us is vulnerable to making errors of judgment when forming beliefs about the good. Given this fact, what can it mean to say that we disrespect a person when we prevent her from living in accordance with mistaken beliefs? Does treating a person as an end require that we permit one to pursue a life led by false or misguided beliefs? It would seem that this could not be so. For what if one's beliefs lead her to choose to become a means, to be taken advantage of and to forfeit her status as an end? In many cases of prostitution or drug use, this result seems inevitable. Hence, it appears that in some instances, treating a person with respect might require us to put her in a position to be an end, to provide her with real options from which to choose and the ability to make effective choices. We must put people in a place where *they* are able engage their rational capacity, to rationally assent to just principles and not simply adaptively prefer unjust ones.³⁰ To do this may require coercion in some instances, and in such instances, coercion may actually be a requirement of the norm of respect.³¹

The foregoing possibility involves a somewhat extreme situation, one in which Lar-
more may be willing to make an exception to his ban on coercion. What about the 'normal'
case, where a person is in a position to engage her rational capacity and form coherent (yet
possibly false) beliefs about the good? Does coercion disrespect a person in this situation?
To clarify, I am not challenging the notion that the uncoerced pursuit of the good is bet-
ter than the coerced pursuit of the good. Rather, following Galston, I am challenging the
notion that the uncoerced pursuit of what is bad is always better than the coerced pursuit

³⁰On adaptive preferences and their influence on choice making, see Sen 1987, pp. 14–5; Nussbaum 2000b, Ch. 2. Further discussion below in Ch. IV, §2.

³¹Cf. Raz 1986, p. 156. The discussion of this paragraph is too superficial to do more than simply raise the possibility that coercion may not violate the norm of respect in situations where the person's social circumstance precludes her from exercising her capacity to coherently form beliefs from within her own perspective. A much more detailed discussion of this possibility and its implications for political morality is given below in Ch. V.

of the good.³² To illustrate that coercion does not always disrespect a person, consider the following argument. Assume that political principles can be sound and can be known to be sound, even if controversial.³³ Assume further that a state enforces a prohibition on some kind of activity and justifies this prohibition by appeal to sound principles. Under such conditions, only the citizen who rejects the imposed principles and any policy justified by them has an apparent grievance with respect to the prohibition. However, it turns out that this grievance is not legitimate if the principles with which they are being compelled to comply are (1) sound and justified by good reasons, or (2) are just as sound as competing principles.

In (1), any grievance would be based on an unsound belief. But such a grievance is not a legitimate grievance at all. Since we never give credence to arguments and premises known to be unsound or false in any non-moral sphere, neither should we entertain grievances based upon unsound arguments or false premises in dealing with moral questions. If a child has a mistaken belief regarding the value of touching a stove element and her parents prevent her from touching the element against her own will, the child's grievance against this restriction is plainly illegitimate. Similarly, if one has a mistaken belief about the value of respecting persons as such or engaging in rational dialogue, she has no legitimate grievance against the one who compels her to comply with these principles. In fact, Larmore says as much when he claims we need not justify such principles to 'fanatics'; we need simply prevent them from violating these principles.³⁴ Clearly, then, it is not always wrong to coerce someone to comply with sound moral principles, even if

³²Galston 1991, p. 87. Cf. Clarke 2006, p. 116.

³³What follows is based upon the argument given in Wall 1998, pp. 75–91. I recognize that the following depends heavily on the notion of a sound principle or sound belief. This notion is here meant to be as uncontroversial as possible—i.e., that a principle is sound if it is justified by appeal to strong reasons and is known to be justified by those reasons. Of course, what constitutes a 'strong' reason is a matter of debate, but I do not think this is a critical issue here. What matters is the possibility that some set of political principles can be considered 'sound' on some understanding of 'sound'.

³⁴Larmore 1987, pp. 60, 66.

they could be reasonably rejected.

The issue in (2) is not the decision outcome, for there will be numerous sound principles that could be chosen from among a collection of competing principles. Rather, the issue is the decision *procedure*. This raises questions I am not prepared to deal with here. Yet, regardless of the procedure we choose, so long as it is just, it will be the case that the principles imposed will be sound and thereby just. To coerce a person to comply with just principles can hardly be considered a case of treating a person with disrespect, even if that person endorses conflicting ideals that are themselves just. In any case, the state of affairs will be considered just.

Larmore might object to this line of reasoning by pointing out that equal respect is of such high importance that no political principle can be sound unless it is the object of reasonable agreement. Thus, the state will not be justified in imposing principles upon those who reasonably disagree with them. However, this objection presupposes the view that justice must be procedural, as well as the absolute priority of civility considerations. This can be seen from the fact that Larmore takes the norm of equal respect to entail that citizens must bracket their concern for the content of political morality in favour of affirming a political morality that will be reasonably agreed upon. Given this presupposition, the objection here only begs the question, viz., why accept that a political principle can only be sound if it is the object of reasonable agreement? To claim that this is entailed by the norm of respect is simply to assume that justice demands reasonable agreement.

To this, Larmore could respond that enforcing compliance with reasonably disagreed upon principles infringes upon the coerced person's capacity to form her own beliefs, in addition to her freedom to shape her own life in accordance with those beliefs. And this really gets to the core of the issue, for this objection clearly implies some commitment to autonomous belief formation as a central political value. Otherwise, it is hard to see how coercion could be as pernicious as Larmore indicates. He claims that equal respect

demands that we recognize each person's capacity to coherently form beliefs from within her own perspective. Further, he notes that these beliefs need not be formed autonomously to warrant recognition.³⁵ But if this is the case, then the norm of equal respect is no objection to coercion, for coercion is one way by which people come to form beliefs within their own perspective. Indeed, as Joseph Raz notes, when someone is coerced to act a certain way, her compliance is not, strictly speaking, against her own will, for she thinks her life will go better for her if she complies with the coercive threat.³⁶ Notice what happens here: the coerced person coherently forms beliefs from within her own perspective. Those beliefs may arise from a regrettable situation—one in which she may be unable to choose a course of action autonomously—but she nevertheless coherently forms beliefs from within her own perspective. So the problem with coercion cannot be that it prevents one's coherent belief formation. For rather than infringing on this capacity, coercion is simply one of the causal factors in this process, alongside less insidious causal mechanisms such as tax incentives that favour certain forms of life or public funding to promote various arts or recreation programs.

We see from the foregoing, then, that the problem with coercion is that it infringes upon a person's ability to *autonomously* form beliefs. Hence, following Raz, we must claim that coercion only deserves significant political attention if one makes autonomy a central political value.³⁷ But, as we have seen (above §2), this is not a position Larmore can endorse on his view because respect for autonomy is bound to be a controversial ideal. Indeed, he repeatedly claims that one of the innovations of his account is that it is able to

³⁵Larmore 1987, p. 63.

³⁶Raz 1986, p. 151.

³⁷Raz 1986, p. 156. In fact, Raz goes on to argue that coercion is unjustified by giving autonomy a central role in liberal political morality. *Contra* Raz, Husak 1981 offers compelling arguments that illustrate why respect for autonomy need not be antithetical to paternalistic coercion. I explore this point further in Ch. V, §2.

justify neutrality independent of the ideal of autonomy.³⁸ Thus, Larmore faces a dilemma: either his norm of respect precludes coercion, in which case it gives autonomy a central role; or his norm of respect is independent of the ideal of autonomy, in which case coercion is not categorically ruled out by equal respect. If Larmore opts out of this dilemma by choosing the first horn, he undermines his entire project by justifying neutrality by appeal to the controversial ideal of autonomy, thereby failing to alleviate the concern that liberalism presupposes an excessively individualistic conception of the person. If he grabs hold of the second horn, then the norm of equal respect does not necessitate that we seek reasonable agreement, for enforcing compliance with sound political principles, even if the object of reasonable disagreement, would not be unjustified. Hence, we see that Larmore's argument only works if he smuggles the ideal of autonomy into his norm of equal respect. And such a norm is certainly controversial.

5. Liberal Non-Neutrality

To be clear, my disagreement with Larmore (and other neutralists) is not over the content of a liberal political morality. Indeed, my own account of a liberal political morality follows that of other liberal theorists in giving priority to citizens' freedom to shape their own lives. Rather, I think it is misleading to claim that a liberal political morality is *fundamentally* neutral in any fashion.³⁹ In fact, liberal neutrality is just another non-neutral political morality, one that justifies political principles by appeal to a controversial moral ideal—viz., life-shaping freedom—and charges the state with the task of protecting and promoting that ideal as fundamental. Given this, I think that liberal theorists should be forthcoming about their own non-neutrality and, as a result, leave behind the neutrality/non-neutrality

³⁸For example, see Larmore 1987, p. 66.

³⁹Although it may be the case that political neutrality can be a second-order political principle, one meant to promote whichever moral ideals are held to be fundamental.

debate in favour of a transparent discussion about which moral ideals best enable citizens to shape their own lives.

In light of this conclusion, it is still possible for the liberal to claim that the best ideal is one that only takes citizens' negative liberty seriously. In the next chapter, I argue that a political morality that secures citizens' life-shaping freedom must be concerned not only with citizens' negative liberty, but their positive liberty as well. In the words of John Dewey:

The problem of [liberal] democracy becomes the problem of that form of social organization, extending to all the areas and ways of living, in which the powers of individuals shall not be merely released from mechanical external constraint but shall be fed, sustained and directed.⁴⁰

It is to a discussion of this problem that I now turn.

⁴⁰Dewey 2000, p. 40. Although Dewey does not use the word 'liberal' here, the context of the quote makes clear that by 'democracy' he means liberalism in some sense.

CHAPTER III

THE POLITICAL RELEVANCE OF CAPABILITIES

We have seen that liberalism cannot remain fundamentally neutral because it espouses at least some controversial ideals. Yet, if we affirm liberalism's commitment to citizens' life-shaping freedom, it remains open for the liberal to claim that such a commitment entails that the state should solely concern itself with the protection of citizens' negative liberty—i.e., with citizens' opportunities to shape their own lives without threat of interference by others. In what follows, I will argue that the state's commitment to citizens' freedom gives it good reason to go beyond the mere protection of citizens' *life-shaping opportunities*—i.e., the set of unimpeded life-options available to a person from which she can choose which ends she would like to pursue. In addition, such a commitment demands that the state concern itself with citizens' positive liberty—i.e., that it promote citizens' *life-shaping capabilities*. Accordingly, the state is charged with a duty to secure the social and material conditions necessary to enable its citizens to take advantage of their life-shaping opportunities.

To support my argument, I will examine Mill's and Rawls' accounts of the state's obligation to secure citizens' freedom, as well as their reasons for upholding opportunity-protection as the only politically relevant obligation. I then show that each reason offered in favour of this ideal gives the state reason to not only protect its citizens' opportunities to shape their own lives, but also promote their capabilities to take advantage of those opportunities. Finally, I conclude that the state's obligation to promote life-shaping capabilities requires that the state actively and intentionally promote an ideal of human flourishing, thereby enabling citizens to achieve a minimal degree of well-being.

1. Protecting Opportunities Versus Promoting Capabilities

Before I begin my discussion of Mill and Rawls, it will be important to define ‘opportunities-protection’ and ‘capabilities-promotion’ as I use them. I intend to align ‘life-shaping opportunities’ with Berlin’s use of ‘negative liberty’ and ‘life-shaping capabilities’ with his use of ‘positive liberty’. Accordingly, the notion of life-shaping opportunities is defined by ‘the area within which the subject... is or should be left to do or be what he is able to do or be, without interference by other persons.’¹ We measure one’s opportunities by determining the extent to which one is able to act unobstructed by the interference of others. The greater the degree of freedom in this sense, the greater the number of life-shaping opportunities available. The important point here is that negative liberty is defined by an *absence of deliberate external interference*. As Berlin notes, the ‘mere incapacity to attain a goal is not a lack of political freedom’ in this negative sense.² Negative liberty is not concerned with a person’s actual ability to effectively realize a certain end—e.g., the life of a concert pianist or a Supreme Court Justice—but with the extent to which her pursuit of such a life will go unhindered by the interference of others. The protection of citizens’ life-shaping opportunities requires that citizens are presented with a maximum number of life-options from which to choose the form of life they prefer.

The notion of life-shaping capabilities aligns with Berlin’s use of ‘positive liberty’ in the sense that they are defined by the extent to which a person is ‘the source of control’ over the trajectory of his life—that is, the extent to which he is ‘his own master’.³ Unlike negative liberty, positive liberty is concerned with the degree to which a person is able to effectively realize a form of life that accords with his beliefs. The greater the degree of positive liberty, the greater the success one has in realizing his goals. Whereas

¹Berlin 2002, p. 169.

²Berlin 2002, p. 169.

³Berlin 2002, pp. 169, 178.

negative liberty is concerned with the number of life-options available to a person, positive liberty is concerned with what he is able to do with the options available. Similarly, whereas opportunities-protection is concerned with preserving the maximum number of life-shaping opportunities available to citizens, capabilities-promotion is concerned to enable them to take advantage of those opportunities.

But what about the duties of *opportunities-protection* and *capabilities-promotion*? Are they negative or positive duties—i.e., are they duties to refrain from acting in some way, or are they duties to be proactive in providing some benefit? While ‘opportunities’ and ‘capabilities’ neatly align with the ‘negative-positive’ paradigm, ‘protection’ and ‘promotion’ do not. Although the duty to protect life-shaping opportunities is a duty to secure citizens’ negative liberty, it is not clearly a *negative duty* in the sense that it is not solely a duty to refrain from acting in certain ways. Similarly, although the duty to promote life-shaping capabilities is a duty to secure citizens’ positive liberty, it is not clearly a *positive duty* in the sense that it always requires that the state be proactive in providing its citizens with some benefit.

The duty to secure citizens’ life-shaping opportunities will sometimes demand that the state refrain from interfering with citizens’ opportunity set, while at other times, it will demand that the state be proactive in preventing those citizens who deliberately interfere with others’ opportunity set from doing so. Hence, we see that opportunities-protection can be construed as both a negative and a positive duty depending upon the circumstances. Likewise, the duty to secure citizens’ life-shaping capabilities will sometimes require that the state refrain from intervening in certain situations where such intervention would hinder citizens’ development of certain capabilities; whereas, in other situations, it will demand that the state proactively intervene to remove social or material obstacles that hinder capabilities development. Hence, we also see that capabilities-promotion is both a negative and a positive duty as determined by the situation in question.

What, then, is meant by the terms ‘protection’ and ‘promotion’? Perhaps the best way to answer this is by reference to the respective ends of the two kinds of activity. On the one hand, the act of protecting aims at defending some object of value against some attempt to violate the integrity of that object. In this case, the act of protecting life-shaping opportunities aims at defending citizens’ set of life-options against deliberate attempts to reduce the number of options in that set. In Berlin’s words, ‘[t]he defence of liberty [that is, of life-shaping opportunities] consists in the “negative” goal of warding off interference.’⁴ Consequently,

[t]he freedom of a society, or a class or a group, in this [negative] sense of freedom, is measured by the strength of these barriers [that is, the barriers that prevent one person from imposing his will on another], and the number and importance of the paths which they keep open for their members.⁵

The term ‘protection’ refers to the erection of the kind of barriers to which Berlin makes reference here. Hence, the duty to protect life-shaping opportunities can be either a negative or a positive duty depending upon the situation, but in every situation, it is a duty that aims to defend citizens’ negative liberty—i.e., opportunity-set—from external interference.

On the other hand, the duty to promote life-shaping capabilities is not a duty *from* something, but a duty *to* something. It has as its end the realization of some otherwise unrealized state of affairs, viz., citizens’ ability to effectively pursue a form of life that is available for them to pursue. Although the duty to promote capabilities can be either a negative or a positive duty, it is always a duty to develop citizens’ *ability* to shape their own

⁴Berlin 2002, p. 174. Berlin argues that negative liberty is the proper understanding of political liberty. Since I have taken ‘negative liberty’ and ‘life-shaping opportunities’ to be aligned with each other, the quoted statement can be appropriately read as referring to the defence of life-shaping opportunities.

⁵Berlin 2002, p. 211.

lives, not merely their opportunity to do so. To simplify the distinction, the state's duty to protect life-shaping opportunities is a *defensive* duty to secure citizens' negative liberty, whereas the duty to promote life-shaping capabilities is an *offensive* duty to increase citizens' positive liberty.⁶

2. The Political Duty to Protect Life-Shaping Opportunities

Perhaps the most powerful and compelling defence of citizens' freedom to shape their own lives is that found in Mill's *On Liberty*: 'The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it.'⁷ We see here in Mill's thought that political freedom is linked with the opportunity to shape one's own life, that a person only counts as free if they are afforded a certain degree of control over the trajectory of their life. The primary concern of the state, then, is to protect the space wherein citizens are left to pursue their own life free from interference by others. That space, Mill argues, is defined by the *Harm Principle*:

[T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. . . . The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence

⁶Some, following Gerald MacCallum (1967), might object to this discussion by rejecting wholesale the negative liberty/positive liberty paradigm. In MacCallum's view, there are not different kinds of freedom—viz., negative and positive. Rather, there is only one kind of freedom, expressed by a 'triadic relation'; 'freedom is thus always *of* something (an agent or agents), *from* something, *to* do, not do, become, or not become something' (p. 314). While MacCallum's objection might be instructive, it does not vitiate the present train of thought. To avoid the objection, I need simply refer to negative and positive liberty, not as different *kinds* of freedom, but as different *aspects* of a single kind of freedom. The 'negative' aspect of freedom would correspond to the 'from something' element of the triadic relation, whereas the 'positive' aspect of the freedom would correspond to the 'to do, not do, become, not become something' element of the same relation.

⁷Mill 2002, pp. 14–5.

is, of right, absolute. *Over himself, over his own body and mind, the individual is sovereign.*⁸

This principle is presented as *the* fundamental political principle for a liberal society, and is intended to insure that citizens are permitted sufficient space to shape their own lives by restricting the state's authority over their conduct to those acts that are likely to cause harm to others. The state's corresponding obligation is a defensive one: it must protect citizens' opportunities to shape their own lives. The use of political power is unjustified if used to promote citizens' good.

It is important to note that the Harm Principle applies solely to *political* morality; it is intended to guide the conduct of the state towards its citizens, not the interaction between individual citizens. Of course, the principle limits how individuals can treat each other, since the state is justified in intervening in situations where one person is causing harm to another. But Mill is clear: the Harm Principle solely precludes the use of *political* power as a means to compel people to live a certain kind of life or exhibit certain virtues. It is a restriction on state enforcement of any particular form of life. It does not prevent individual citizens from challenging the merits of another's life choices through rational dialogue, nor from using reason to persuade another of the baseness or foolishness of his chosen form of life. So long as citizens refrain from causing harm to each other—e.g., by forcibly preventing someone from pursuing her chosen form of life—they are permitted to express their disapproval of certain forms of life.⁹

According to Mill, then, the state's duty to its citizens is to insure that their opportunities to shape their own lives are not unjustifiably constrained by external interference, in accordance with the Harm Principle. The fact that one's beliefs about the good are fallible and possibly mistaken, or the fact that one's chosen way of life is undesirable to many does

⁸Mill 2002, pp. 11–2. Emphasis added.

⁹See Mill 2002, pp. 11–5.

not justify state interference. The promotion of certain positive goods should be beyond the state's purview, for such activity is likely to unjustifiably restrict citizens' life-shaping opportunities.

Rawls takes a different argumentative strategy than Mill by grounding the state's obligation to protect citizens' life-shaping opportunities upon a respect for their autonomy. The central problem of Rawls' overall project is found in the question, 'how is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?'¹⁰ His response to this question is grounded upon the idea of society as a system of fair cooperation among citizens. Liberal political association depends upon the equal ability of citizens to be 'normal and fully cooperating member[s] of society.'¹¹ Accordingly, Rawls asks 'what must citizens be like if they are to be members of such a society?' The answer is that they must have two moral powers and the powers of rationality¹²:

- (1) Citizens must have the moral power to form, revise, and pursue a determinate conception of the good.
- (2) Citizens must have the moral power to understand, to apply, and to act in accordance with fair terms of social cooperation.
- (3) Citizens must have the powers of reason—i.e., the powers of thought and judgment, the power to understand and consider evidence, and the power to make inferences.

In addition to possessing these powers, Rawls assumes that citizens are both reasonable and rational; 'reasonable' insofar as they are willing and able to propose fair terms of cooperation to their fellow citizens and are sensitive to the 'burdens of judgment' and their

¹⁰Rawls 1996, p. 4.

¹¹Rawls 1996, p. 18.

¹²Rawls 1996, p. 19.

consequences¹³; and ‘rational’ to the extent that they are able to formulate a plan of life in accordance with their own interests.¹⁴ Such a view of citizens, Rawls argues, gives the state reason to secure equal opportunity for all to pursue permissible conceptions of the good as chosen in accordance with their own exercise of reason. Such freedom requires that citizens not be compelled to live a life that is not of their own choosing. Indeed, to fail to protect such an opportunity would be a failure to respect citizens’ autonomy—i.e., their distinctive capacity to be life-shapers.

3. Refining Our Understanding of the Good

What reasons can be offered to support the view that only citizens’ negative liberty and the state’s attending defensive duties are politically relevant? Mill’s first argument is that experimentation with a variety of life-options is necessary for refining our understanding of which kinds of lives are worthwhile. People are not infallible in their judgments about the good and the improvement of our understanding of what constitutes a worthwhile life requires that many forms of life be tried and tested. For Mill, human life must be an exercise in putting forth ‘value hypotheses’ and testing the merit of those hypotheses. ‘[T]he worth of different modes of life should be proved practically, when anyone thinks fit to try them.’¹⁵ Unless someone takes the time to practically find out whether a certain form of life is worthwhile, she will be left ignorant about its value. If we leave numerous hypotheses untested, we may be doing ourselves a disservice, for those untested ways of life may in fact turn out to be worthwhile, perhaps more so than those that are familiar to us.

¹³‘Burdens of judgment’ is Rawls’ term, used to refer to the variety of factors that contribute to reasonable disagreement among citizens. See Rawls 1996, pp. 54–8.

¹⁴For further discussion on the ‘reasonable’ and the ‘rational’, see Rawls 1996, pp. 48–58.

¹⁵Mill 2002, p. 58.

Moreover, to limit citizens' opportunities to experiment presumes that our current judgments about the good need not be adjusted or improved. Such restriction implies that we already have a clear grasp on what constitutes a worthwhile life and that there is nothing left to understand. But Mill thinks this is patently false; rather, we must concede that there is still much left to learn about the constitution of a worthwhile life. Accordingly, 'unity of opinion [about the worth of certain forms of life], unless resulting from the fullest and freest comparison of opposite opinions, is not desirable.'¹⁶ Conformity is undesirable because it impedes the experimental process and obscures our understanding of the worth of different ways of life. Our knowledge of what is good is only increased by the clash of conflicting opinions and ways of life. Consequently, the state should insure that space is made for such experimentation to be possible.

Will Kymlicka takes Mill's argument one step further, arguing that the opportunity to experiment is not just necessary for refining our understanding of the good, but that it serves our 'essential interest' in living a good life. Our essential interest, Kymlicka claims, is in having things that a good life contains. But we can be mistaken in our views about what is good. Consequently, to be able to correct our mistaken views in an attempt to actually live a good life, we must have the opportunity to revise our beliefs about the good. This freedom is insured by two conditions: (1) we must be free to live in accordance with our own beliefs about the good, and (2) we must be free to question these beliefs. The opportunity to experiment is a necessary means to the refinement of our beliefs about the good. Accordingly, a person is prevented from pursuing her essential interest in living a good life when a certain form of life is forcibly imposed upon her. Such coercion leaves one ignorant as to the worth of certain forms of life, thereby restricting one's view of what constitutes a good life.¹⁷

¹⁶Mill 2002, p. 58.

¹⁷See Kymlicka 1989, pp. 10–8, 34.

By preventing citizens from experimenting with certain forms of life, the state not only militates against our collective knowledge of what constitutes a worthwhile life, but against one's personal knowledge of what constitutes a valuable life *for him* as well. Given that each of us possesses a unique character accompanied by unique desires and preferences, it is impossible that there should be a single form of life or some small set of lives that will be suitable for all. In Mill's words, '[t]he same things which are helps to one person towards the cultivation of his higher nature, are hindrances to another.'¹⁸ To figure out what form of life is worthwhile for him, one must be have the opportunity to learn this by experimentation. Compelling one to exhibit certain abilities or to live in a certain way unduly restricts this opportunity.

4. Developing One's Own Abilities

Mill's second reason for charging the state with the protection of citizens' life-shaping opportunities is that doing so best enables individuals to exercise and develop their unique human characteristics. For Mill, there are certain abilities which are 'the distinctive endowment of a human being,' and the development and exercise of these abilities ought to be the highest priority of each person.¹⁹ Mill's use of von Humboldt's words to make his point is instructive, for it gives us insight into the importance Mill placed upon the development of distinctive human traits. According to von Humboldt, 'the end of man... is the highest and most harmonious development of his powers to a complete and consistent whole'; it is this end 'towards which every human being must ceaselessly direct his efforts.'²⁰ There can be no mistaking that Mill thought that the activity of human life ought to be devoted to the increased development of certain distinctive human qualities.

¹⁸Mill 2002, p. 70.

¹⁹Mill 2002, pp. 60–1.

²⁰Baron Wilhem von Humboldt, *The Sphere and Duties of Government*; quoted in Mill 2002, p. 59.

The significance of experimenting with a wide variety of life-options derives from its instrumental importance in achieving this goal. According to Mill, ‘it is only the cultivation of individuality which produces, or can produce, well-developed human beings.’²¹ By experimenting with various forms of life, Mill claims that we will be impelled to develop and exercise our distinctive human abilities. Such abilities include practical rationality—i.e., the ability to consider a variety of paths and choose from among them, the ability to discern which means will best serve our ends—as well as the ability to make judgments about the good. But these abilities can only be strengthened with exercise: ‘The mental and moral, like the muscular powers, are improved only by being used.’²²

To restrict citizens’ opportunity to experiment with a variety of life-options demeans that which is distinctive about them. According to Mill, ‘it is the privilege and *proper condition* of a human being, arrived at the maturity of his faculties, to use and interpret experience in *his own way*. It is *for him* to find out what part of recorded experience is properly applicable to *his own circumstances and character*.’²³ Indeed, anything less than the exhibition of these abilities relegates one to a less-than-human status, for ‘[h]e who lets the world, or his own portion of it, choose his plan of life for him, has no need of any other faculty than the ape-like one of imitation.’²⁴ Without the opportunity to experiment, these abilities become atrophied and potentially lost. Thus, it is not only that the opportunity to experiment is good in itself as an end; it is also a valuable means to an end held to be intrinsically valuable, viz., the development of our distinctively human abilities.

²¹Mill 2002, p. 65. Cf. Berlin 2002, p. 171.

²²Mill 2002, p. 60.

²³Mill 2002, p. 60. Emphasis added.

²⁴Mill 2002, p. 60f.

5. Experimentation and the Capability to Experiment

Mill's reasons for endorsing the protection of life-shaping opportunities as the state's sole obligation to its citizens are compelling. Nevertheless, his argument gives us reason to charge the state with an additional duty to promote citizens' capabilities to capitalize on those opportunities. In the first place, if the opportunity to experiment with different forms of life is supposed to be a means to one's refinement of his understanding of the good, he must have the ability to take advantage of such an opportunity. Mill seems to recognize this, claiming that '[l]iberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion.'²⁵ At the very least, Mill seems to recognize that his argument solely applies to those who can take advantage of their freedom. But Mill faces a dilemma when this claim meets with the Harm Principle. Either freedom is significant solely for those who are able to take advantage of it, in which case the state has an obligation to insure its citizens are able to do so, an obligation that surely extends beyond the scope of the Harm Principle. Or the state's action ought to be restricted by the Harm Principle, in which case many citizens will remain unable to take advantage of their freedom. In light of the fact that Mill places much more emphasis on the Harm Principle than on this other claim, it is most plausible to read him as grabbing the second horn of the dilemma. Given this, we must conclude that, for Mill, so long as one is not harming another, she must be left to her own devices. In restricting state activity to the protection of one's life-shaping opportunities, Mill demonstrates concern solely for the range of life-options that are available to citizens. So long as the state insures that this range is sufficiently wide, its obligation to them has been discharged.

But this fails to take into account citizens' ability (or lack thereof) to capitalize on

²⁵Mill 2002, p. 12.

those opportunities, even if they are free from external interference. For example, a person might have opportunities to pursue various forms of life—e.g., to become a concert pianist or a doctor—because no one is preventing her from doing so. According to Mill, such opportunities are sufficient to insure her freedom. Nevertheless, it could remain the case that she cannot take advantage of those opportunities due to the presence of various obstacles, such as inadequate training or lack of material support. If this is so, then she is not really free to become a concert pianist or a doctor. The mere guarantee that such opportunities will be open to her does not present her with the possibility that she will actually be able to become a concert pianist or doctor if she so chooses.

To understand this point, consider a distinction made by Sen between two kinds of interpersonal variation.²⁶ The first of these he calls *inter-end variation*, which refers to the fact that different individuals pursue different ends. For example, Carrie's beliefs about the good lead her to pursue a life devoted to accumulating material wealth, whereas Theresa's beliefs lead her to pursue a life devoted to serving disadvantaged people. Sen calls the second kind *interpersonal conversion variation*, which refers to the fact that each individual differs in her ability to convert an opportunity to pursue a certain form of life to the actual experience of that life. For example, Pete and Paul might both have the opportunity to become professional athletes in the sense that neither of them are prevented from pursuing that end. Yet, Pete will be better able to effectively pursue his goal because he is provided with appropriate equipment and he attends training camps to develop his skills, whereas Paul is unable to afford equipment and registration in skills training camps. In this case, Pete will have a greater ability than Paul to convert his opportunities into the realization of his ends.²⁷

²⁶Sen 1990, p. 120.

²⁷But Pete's greater ability to pursue his ends does not necessarily mean that he will be successful in achieving them.

A commitment to insuring that citizens have a wide range of life options for the purpose of experimentation solely respects the former variation by giving them adequate opportunity to pursue numerous divergent ends. However, this fails to take account of the latter variation. If the state is to uphold a commitment to life-shaping freedom, it must take seriously the fact that such freedom depends on the opportunity to choose one's ends *as well as* the ability to convert that opportunity into the effective pursuit of a life in accordance with one's choices. If a person is unable to act upon her choices, then she will not be free to shape her own life. This is why Berlin is partly mistaken when he claims that the '[m]ere incapacity to attain a goal is not lack of political freedom.'²⁸ This claim fails to distinguish between two sources of inability. On the one hand, one might be unable to do something *and* lack the potential to have such an ability—e.g., the ability to fly under one's own power. On the other hand, one may lack the ability to do something *yet* have the potential to have such an ability—e.g., the ability to read. In the former case, we would certainly agree with Berlin—the inability to fly under one's own power is not a restriction of one's freedom. However, if one's inability to read is the result of not being able to take advantage of the opportunity to be educated *despite* being free from interference, then we cannot agree with Berlin. Acquiring the ability to read requires certain social and material conditions that are supportive of education and the failure to provide those conditions is a way of restricting one's life-shaping freedom. To best enable a person to shape her own life, the state must insure that she is capable of doing so when provided the opportunity.

Perhaps Mill can extend the Harm Principle to account for citizens' need of certain capabilities. Indeed, he seems to do so in at least one place: 'A person may cause evil to others not only by his actions but by his inaction, and in either case he is justly accountable to them for the injury.'²⁹ Here Mill's view seems to be that harmful acts are not only acts

²⁸Berlin 2002, p. 169.

²⁹Mill 2002, p. 13.

of *commission*—i.e., the act of actively causing some harm to another person—but also include acts of *omission*—i.e., the failure to prevent harm when one is in a position to do so. Accordingly, we might read Mill as charging the state with the duty to provide citizens with life-shaping capabilities when it is able to do so.³⁰

But even this move will not be enough to secure one's freedom, for one could be in possession of life-shaping capabilities and free from human interference, yet still be unable to exercise those capabilities. If the trajectory of one's life is such that its outcome is determined by external factors beyond his control—e.g., many instances of abject poverty—then no amount of ability or freedom from interference will enable him to experiment with different forms of life. For example, Alex may have the developed capability to think and learn, he may live close to a school, and no one is preventing him from attending school. However, his family's economic situation may be such that they cannot afford for Alex not to work, thereby preventing him from attending school. This in itself restricts Alex's ability to shape his own life because he cannot go to school if he so chooses, but the fact that he will lack a certain level of education will drastically restrict his future freedom even though no one is interfering with his option set and he possesses certain capabilities. Instead, Alex's exercise of his capabilities is determined by his circumstances, which, to some degree, are beyond his control.³¹

Thus, direct interference is not the only way to restrict a person's life-shaping freedom. Failing to promote the social and material conditions necessary for her to develop *and exercise* certain valuable capabilities inasmuch as one is able to do so will also be a restriction of her freedom. Consequently, we see that the state's failure to promote the

³⁰Reading Mill in this way is probably highly unconventional given the strength of the Harm Principle. In any case, I do not offer this as an interpretation of Mill's thought, but as a way Mill's own words might be used to avoid the preceding objection. Even if this cannot be construed as a reply Mill would offer, it is one that someone could offer. See, for example, Kymlicka 1989, p. 13.

³¹'Beyond his control' in the sense that he was arbitrarily born into circumstances of poverty, which continue to have a pervasive effect on his freedom.

exercise of certain capabilities (inasmuch as it is able to do so) constitutes an obstacle to its citizens' realization of life-shaping freedom. This seems to be T. H. Green's criticism of a political regime that solely concerns itself with citizens' 'negative rights':

It [i.e., the idea that society ought to be a 'community of good for all men'] makes itself felt in certain prohibitions, *e.g.* of slavery, but it has no such effect on the ordering of life as to secure for those whom we admit that it is wrong to use as chattels much real opportunity of self-development. They are left to sink or swim in the stream of unrelenting competition, in which we admit that the weaker has not a chance. So far as negative rights go—rights to be let alone—they are admitted to membership of civil society, but the good things to which the pursuits of society are in fact directed turn out to be no good things for them.³²

Contra Mill, Green argues that state protection of life-shaping opportunities is not enough to secure citizens' freedom. To experience freedom, one must be able to take advantage of those opportunities, and in many instances, the development and exercise of this ability will require some degree of state action to insure that certain life-shaping capabilities are developed. Consequently, we must follow Raz in arguing that 'the principle requiring people to secure the conditions of autonomy for all people, yields duties which go far beyond the negative duties of non-interference, which are the only ones recognized by some defenders of autonomy.'³³ If the state's defensive duty to protect citizens' opportunities from external interference is grounded on a commitment to enabling them to shape their own lives, then that same commitment generates an offensive duty to promote their life-shaping capabilities as well.

³²Green 1899, p. 279.

³³Raz 1986, p. 408. For Raz, 'autonomy' is synonymous with my use of 'life-shaping freedom'; see Ch. IV, §3, note 19.

6. Protecting the Means, Promoting the End

There is a second reason to conclude that Mill's argument supports more than the protection of life-shaping opportunities, that is, if the end of protecting such opportunities is the development of distinctive human traits, then why not charge the state with the promotion of that end rather than solely the protection of one of its means? In other words, if what we want are humans with developed abilities, then why not charge the state with the task of promoting developed capabilities? Here Mill (and others) might reply by asserting the asymmetry of capability development—i.e., that the state can only do so much to promote the development of human capabilities. After a certain (undetermined) point, that development must be the result of the individual's personal effort. For example, the state may be able to go some distance in developing its citizens' capability to read through education initiatives and literacy programs; but, ultimately, the development of that capability will depend on the degree of personal investment made by the individual. Compelling her to attend school does not necessarily insure she learns to read. Moreover, some argue that it is improbable that one will endorse a way of life imposed upon him. If one is to embrace a certain way of life—e.g., that of a doctor—his belief about the goodness of a doctor's life must be changed, and imposing certain external behaviours does not necessarily change his beliefs.³⁴ Of course, one's beliefs about the goodness of a doctor's life can change, but then once such a change occurs, his pursuit of such a life will be in accordance with his beliefs. Given this asymmetry, some will argue that the state will be better off to stick with opportunity-protection and leave the development of capabilities up to individuals.³⁵

Even if we concede this point, the fact that developing life-shaping capabilities is

³⁴Although Sher argues that a change in belief can arise if someone is continually exposed to a certain way of life over an extended period of time. See Sher 1997, p. 63.

³⁵Cf. Kymlicka 1989, pp. 12, 18. For additional discussion on asymmetry, see Hurka 1993, pp. 64–8, 152–56.

asymmetrical does not entail that the state has *no* role in promoting those capabilities. The effective development and exercise of such capabilities requires certain social and material conditions as a conducive environment for such development. The state's role in society enables it to wield enormous power in securing such conditions, and these are not entirely met by merely discharging a duty to protect citizens from having their life-shaping opportunities interfered with. Their assurance also requires the state to discharge certain offensive duties, such as the duty to insure that families have adequate income levels and are within reasonable proximity to educational facilities so that children will be free to attend school and thereby invest in the development of certain capabilities; or the duty to insure that each citizen has adequate access to affordable health care to insure that they are healthy enough to develop and exercise their life-shaping capabilities. The list of offensive duties need not be long to show that the mere protection of life-shaping opportunities will not be enough to insure that such opportunities will result in the effective development and exercise of their life-shaping capabilities. Thus, if it is citizens with well-developed capabilities the state desires, it must do more than simply protect their life-shaping opportunities, particularly if it is committed to securing their freedom.

Another objection is that there are certain natural conditions, such as physical or mental disabilities, that prevent a person from developing certain capabilities. Therefore, it will be futile and wasteful for the state to expend resources in an effort to promote capabilities where none can be had.³⁶ But this need not be the case, nor must everyone be made to reach the same level of capability development. If a citizen's physical or mental condition prevents him from developing certain capabilities or from increasing his development beyond a certain point, the state need not expend time and money to (further) develop them. Certainly, a commitment to equal respect demands that such people remain able

³⁶Cf. Nussbaum 2000b, pp. 81–2. Nussbaum does not endorse this objection herself, but considers it in her argument for capabilities-promotion.

to pursue a meaningful life to some degree, and even be able to develop their capabilities to the extent that this is naturally possible. We can do this, for example, by providing group homes for those who suffer from severe brain injuries, or by providing wheelchairs for those who lack mobility. But we need not expend resources to enable those with irreversible mental injuries to reason practically where the acquisition of this capability is medically impossible, for such efforts will be wasteful and futile. However, it does not follow from this that the state need not concern itself with promoting the development of life-shaping capabilities where their increased development can be attained.

One might here ask why it must be *the state's* duty to promote capabilities. Perhaps capabilities development would be better achieved if the state solely concerned itself with protecting opportunities and the promotion of capabilities was left up to local communities and groups of private citizens (e.g., families, religious groups, civic organizations, etc.). There are several reasons why the state must accept at least part of the burden of capabilities promotion, thereby enabling it to be a powerful ally to citizens in the achievement of this end.³⁷

The first reason can be called the 'collective action problem'.³⁸ Given the difficulty of effectively coordinating group action, it will be appropriate to rely on effective state institutions to guide and focus the efforts of individuals to promote capabilities, otherwise chaos is likely to ensue. The efforts of private citizens without the aid of an institutional structure will be more or less sporadic and uncoordinated, and such efforts are less effective than sustained and coordinated ones. State institutions can accomplish more than individuals or small groups, and institutional effects are far more pervasive than individ-

³⁷Note that charging the state with this duty does not absolve individuals of any duties they might have to each other in this respect. One obvious way in which the duty falls to individuals is that it is individuals who cooperate with and compose institutions. Thus, individuals have a negative duty to not cooperate with unjust institutional arrangements, which entails a positive duty to promote and cooperate with just institutional arrangements. See Pogge 2002, p. 171f.

³⁸For what follows, cf. Nussbaum 2003, p. 475.

ual effects. Since the task of promoting citizens' life-shaping capabilities is significant in scope, maximum impact calls for mechanisms that are able to deliver the desired results. Thus, the state can and should play an important role in coordinating collective action aimed at promoting capabilities.

Second, the state's involvement is needed to meet a fairness requirement. If we charge institutions with the primary duty to promote capabilities, then we will insure that a minimum level of responsibility falls evenly to all citizens, so long as the institutions are structured fairly—e.g., all people are required to pay taxes in proportion to their means, etc.—thereby insuring that some citizens are not overburdened with the duty to promote capabilities while others are absolved of that responsibility. State involvement also promotes fairness by insuring that each of its citizens receives roughly equal assistance in the development of their capabilities in accordance with whatever distribution criteria is deemed just. If we leave capabilities promotion up to locally organized groups, it is likely that some communities will be in a better position to develop their constituent's capabilities than others. In this case, one's capabilities development will depend upon arbitrarily determined circumstances, such as the community one is born into and that community's access to resources. If the state's sense of fairness commits it to protecting citizens' life-shaping opportunities equally, and if this commitment is driven by a concern to see citizens' life-shaping freedom secured, then it follows that any obligation to promote life-shaping capabilities must be discharged equally as well.

The third reason for endorsing state involvement is a quality of life consideration. If each individual's life were consumed with the demands of capabilities promotion, then their own opportunities to shape their lives would be obstructed, since they would have little time for anything but discharging their duties. However, this would defeat the purpose of promoting life-shaping capabilities, which is to increase citizens' freedom to shape their own lives. This does not mean that one could not voluntarily devote her life to the

development of others' capabilities; it simply insures that the full burden of capabilities promotion is not forcibly imposed upon people to the point where they are unable to choose any form of life other than one that is devoted to capabilities promotion. To avoid creating such stringent demands on individuals, we charge the state with the duty to promote its citizens' capabilities and enjoin individuals to simply cooperate with state institutions.

7. Individuality and Respect for the Individual

To summarize the argument thus far: I have considered two arguments offered by Mill for solely charging the state with the obligation to protect citizens' life-shaping opportunities—viz., that the protection of such opportunities (1) enables citizens to refine their understanding of what constitutes a good life, and (2) is necessary for citizens to develop certain abilities. In each case, I have shown that the argument provides the state with good reason to also promote citizens' life-shaping capabilities. In response to (1), I have argued that the mere opportunity to shape one's life will not enable one to gain greater comprehension of the good; she must also be capable of taking advantage of that opportunity. In response to (2), I claimed that, if the state is concerned with citizens' development of abilities, then it must assume a more expansive role in promoting that end, a role that goes beyond the mere protection of life-shaping opportunities.

But what about other arguments, like those offered by Rawls? Rawls' first argument for the sole political relevance of protecting of life-shaping opportunities is that restricting those opportunities disrespects citizens' moral and rational powers. By promoting certain goods and thereby imposing certain ways of life on them, the state treats its citizens as means rather than as ends, thereby failing to recognize their fundamental capacity to be life-shapers. Recall Rawls' vision of the citizen (above, §3). Accordingly, Rawls claims that reasonable persons are not motivated by a vision of the good but by a vision of a

cooperative society composed of free and equal people wherein each citizen can benefit equally.³⁹ This is because reasonable citizens account for the fact of reasonable disagreement, which is understood as the fact that citizens' good faith efforts to exercise their reason will lead them to endorse a variety of conflicting and incompatible, yet reasonably held ideals. As a result, a reasonable citizen will think it unjustified to use political power to prevent other citizens from living in accordance with other reasonable beliefs about the good because a publicly shared standard of justification for evaluating the worth of citizens' beliefs does not exist; such compulsion would be arbitrary.⁴⁰ Since there is no way to adjudicate between citizens' conflicting ideals, and each ideal is seen as reasonable, citizens ought to be permitted to shape their own lives in accordance with their reasonably held beliefs. Those who use political power to restrict that opportunity by imposing a particular way of life on others disrespect citizens as life-shapers, for all could equally make the claim that their beliefs about the good is 'true' or 'correct'.⁴¹

8. The Promotion of Autonomy

Rawls' second reason for claiming that the state's political task is to protect life-shaping opportunities is that such opportunities promote citizens' autonomy, thereby securing one of the conditions of a cooperative society. For Rawls, rational autonomy rests on one's capacity to form, revise, pursue, and reason in accordance with a conception of the good. The aim of a society's principles of justice is, therefore, to enable citizens to adequately develop and exercise their moral powers—i.e., their power to form, revise, and pursue a conception of the good, as well as the power to understand and act from a sense of

³⁹Rawls 1996, p. 50.

⁴⁰Rawls 1996, p. 60f.

⁴¹Rawls 1996, pp. 61, 138.

justice—and to design institutions supportive of this goal.⁴² This entails that citizens not be compelled to live in accordance with a conception of the good that is not of their own choosing. Instead, the development of these moral powers requires that citizens have the opportunity to shape their own life in accordance with their own reasonable beliefs.

This argument recalls that of Mill, i.e., that citizens should be free to shape their own lives because such freedom is instrumental for the development of their distinctive human traits. However, Rawls' argument does not rely, as Mill's does, on the *intrinsic* value of developing our abilities. Rather, for Rawls, the development of our moral and rational powers is *instrumentally* valuable because they are preconditions of our being fully participating members of a cooperative society.⁴³ Without these powers, citizens will fail to meet the prerequisites for membership in a liberal society. Since the perpetuation of a cooperative society depends upon its members being able to meet the demands of such a society, the welfare of a liberal society crucially depends upon citizens' development of the requisite moral and rational capabilities. Thus, the continuation of society as a fair system of cooperation depends upon the protection of citizens' life-shaping opportunities.

9. Respect, Autonomy, and Capability

Rawls' first argument claims that a failure to protect citizens' life-shaping opportunities by compelling them to live a life not of their choosing disrespects their status as autonomous life-shapers. But such disrespect is also the case if we fail to promote citizens' life-shaping capabilities. The primary concern of respect is that citizens actually be able to shape their own lives and that those efforts not be impeded by external interference. However, citizens who have ample opportunity to shape their own lives but lack the capability to actually do

⁴²Rawls 1996, pp. 72, 77.

⁴³See Rawls 1996, pp. xlv–xlvi, 18–20.

so are not in a position to be life-shapers. Consequently, their efforts to shape their own lives cannot be interfered with, for such efforts cannot be made (or can only be made to a minimal degree). At best, they are in a position to *become* life-shapers if they are able to develop and exercise the requisite abilities. Earlier (§7) I argued that the state can and should play a significant role in aiding its citizens to develop their life-shaping capabilities. Thus, if the state's concern is to respect its citizens' status as life-shapers, it must enable them to achieve that status insofar as it is able to do so (and to the extent that there is a need). Failure to do so disrespects their life-shaping potential.

Finally, if the end of protecting life-shaping opportunities is for citizens to achieve autonomy—indeed, if the perpetuation of a cooperative society depends on the achievement of this goal—then why not promote this end directly? As we saw with Mill, this is a case of settling for protecting opportunities as a means to an end rather than aiming for the accomplishment of the end. Indeed, merely protecting one of the means to citizens' development of autonomy does not guarantee the achievement of this goal. And in Rawls' case, the achievement of the end is much more urgent than in Mill's, for citizens' autonomy is connected to the very welfare of society as a fair system of cooperation. In Mill's case, someone may reply to my argument by saying that the achievement of the end—i.e., citizens' actual development of certain capabilities—is not especially critical; whether someone is actually able to shape their own life will not have widespread consequences beyond the life of the individual concerned. But in Rawls' case, the failure of an individual or group of individuals to develop into autonomous citizens has consequences for the entire society. Those individuals who fail to become autonomous will fail to exhibit the requisite abilities for membership as citizens—they will be unable to offer fair terms of cooperation to their fellows; they will be unable to understand and act from a sense of justice; and they will be unable to consider and evaluate arguments given in political dialogue. Indeed, they may even exhibit certain characteristics that are detrimental

to the advancement society, such as excessively belligerent tendencies in their interaction with others. Hence, we see that, for Rawls, the development of citizens' capability to be politically autonomous is critical to the welfare of society. Since the mere protection of life-shaping opportunities does not insure the development of life-shaping capabilities it is imperative that the state take an interest in the development of its citizens' life-shaping capabilities.

10. The Political Relevance of Life-Shaping Capabilities

The key contribution of the preceding discussion is not to charge the liberal state with a *positive duty* to its citizens. This would be nothing new, since liberals like Mill and Rawls already charge the state with the duty to protect citizens' life-shaping opportunities, and this can be seen to be a positive duty under appropriate circumstances. Rather, the important conclusion I have argued for is that the liberal state has a duty to secure its citizens' *positive liberty*—viz., their life-shaping capabilities—if it is committed to securing their freedom. This conclusion is certain to be controversial, for many liberals argue that positive liberty has no political relevance.⁴⁴ However, given the foregoing arguments, we see that liberals such as Mill and Rawls offer the state reasons to not only protect citizens' opportunities to shape their own life, but to promote their capabilities to capitalize on those opportunities as well. In doing so, the state must be guided by a view of the ideal kind of human life and enable citizens to achieve that ideal to a minimal degree. The next chapter is devoted to the articulation of such a view and the implications it has for the state in its duty to its citizens.

⁴⁴In addition to Mill and Rawls, see Berlin 2002 and Larmore 1987, esp. p. 47.

CHAPTER IV

A CAPABILITIES APPROACH TO FREEDOM

Thus far, I have argued that a commitment to securing citizens' life-shaping freedom entails a duty to intentionally promoting a non-neutral ideal of human well-being—viz., the freedom to shape one's own life—as well as an 'offensive' duty to actively enable citizens to pursue that ideal. Such a position is bound to concern many liberals because of its explicitly perfectionist bent. However, before I address the most pressing of these concerns, I must first provide a theoretical framework within which we will be able to discern the relevant capabilities for the state's political task to promote capabilities. To do this, I will highlight some of the key structural features of two existing capabilities approaches—those of Martha Nussbaum and Amartya Sen¹—adapting both accounts as necessary to suit my purposes.

1. A Normative Account of Well-Being

My account, like Sen's and Nussbaum's, is explicitly normative. That is, it begins with normative premises—viz., that people ought to be free to shape their own lives and that one of the state's tasks is to secure that freedom—and argues to a normative conclusion—viz., that a commitment to its citizens' life-shaping freedom demands that the state promote certain life-shaping capabilities in addition to protecting their life-shaping opportunities. Unlike other perfectionist moralities—e.g., those offered by, among others, Plato, Aristotle, Aquinas, Marx, and most recently, Thomas Hurka²—I am not concerned with adequately describing the essential features of human nature and charging the state with a duty to maximize those features. Rather, my account begins with an ideal of human flour-

¹See Nussbaum 1992, 1995, 2000a,b, 2002; Sen 1997, 1985, 1987, 1993, 1999.

²See Hurka 1993, esp. p. 3.

ishing and shows what is entailed by that ideal. To be sure, normative premises are bound to be controversial. Thus, any conclusion derived from those premises will only appeal to those who accept those premises. But this should not be problematic in my case, for the normative premises from which I begin are assumed to be shared by the members of my intended liberal audience (Ch. I).

An explicitly normative account of human flourishing dodges two main problems faced by some perfectionist accounts: first, the challenge of adequately describing a human essence, or defining which traits are *essentially* human; and second, the difficulty of getting some description of human nature to do the kind of normative work desired.³ First, by focusing on central *life-shaping* capabilities rather than essential *human* capabilities, I need not adopt a descriptive view of ‘essential’ human nature. My account solely requires that I show which capabilities are necessary for citizens to shape their own lives, which avoids the thorny empirical issues involved in determining essential human characteristics. Instead, this view must solely answer a conceptual question: what kinds of things must a person be able to be and do if she is to be free to shape her own life? Thus, we begin by defining the concept of life-shaping freedom and ask about the necessary conditions of such freedom.

Second, by focusing on life-shaping capabilities, I need not worry about getting a solely descriptive account of human nature to do the necessary normative work, since the argument here begins with the acceptance of a normative ideal—viz., life-shaping freedom—and specifies the normative implications of accepting this ideal.

Accordingly, the explicit purpose of a capabilities theory of well-being must be to ground normative principles that will be appropriate for a liberal political morality. In other words, the principles derived from the theory must in fact secure citizens’ freedom

³For relevant discussion on the former, see Kitcher 1999; for discussion on the latter, see Antony 2000.

to shape their own lives. This contrasts with the purpose of accurately describing human well-being. In *Welfare, Happiness, and Ethics*, L. W. Sumner objects to this feature of a capabilities approach because it is, in his words, ‘descriptively inadequate’; that is, it fails to adequately describe a state of ‘being well’.⁴ According to him, normative adequacy—i.e., the ability of an account of well-being to ‘fit’ with our normative goals—while important, must take a back seat to descriptive adequacy in our assessment of theories of well-being.⁵ This is because we want *first*, an account that best fits our preanalytic understanding of well-being and only *second*, an account that serves our normative purposes well. If our normative end is to promote well-being—indeed, especially if this is our normative goal—Sumner argues that we ought to promote whatever *in fact* counts as well-being, not just some impostor. One important consequence of his position is that a list of social or natural conditions that benefit a person will not adequately capture the sense in which those conditions are beneficial.⁶ Thus, something like a list of central capabilities is descriptively inadequate because it does not describe the state of ‘being well’; it simply articulates the conditions under which this state could possibly be achieved.

However, the aim of the capabilities approach defended here need not be the description of human well-being. In the first place, it takes a limited view of well-being. It begins with the assumption that life-shaping freedom is endorsed by liberals as the ideal kind of human life and argues that the affirmation of that ideal entails for the state an offensive duty to promote life-shaping capabilities. In so doing, it does not claim that liberals have got it right with respect to human well-being, nor that the notion of life-shaping freedom provides us with a complete picture of well-being. My objective is solely to expose the ramifications of accepting the liberal’s starting premises, not to evaluate the justification

⁴See Sumner 1996, p. 65.

⁵On descriptive and normative adequacy, see Sumner 1996, pp. 8ff.

⁶Sumner 1996, p. 65.

offered for those premises. Accordingly, I have refrained from offering any argumentative support for those premises, and do not here make the claim that life-shaping freedom is the correct description of well-being.

In addition, the priority given by Sumner to descriptive adequacy is not appropriate for my explicitly political task, i.e., to enable citizens to shape their own lives. Since life-shaping freedom entails that citizens be able to pursue a *wide range* of forms of life, an account that gives priority to descriptive adequacy may be too restrictive or too rigid to allow citizens an adequate measure of freedom to determine what constitutes their ideal kind of life for themselves. Of course, this can be avoided by adopting a mental state or desire-satisfaction account of well-being. But such an account of well-being encounters insurmountable problems, particularly the charge that it ignores the difficulties posed by adaptive or mistaken preferences.⁷

Finally, the political task taken up here is not concerned with accurately describing what it means for a person to 'be well'. It is concerned with delivering to citizens the social and material conditions under which *they* will be able to define, if they so choose, what it means to be well. Within the space of capabilities, each person or group may describe their well-being differently. Yet, the provision of life-shaping capabilities enables citizens to pursue their well-being under a wide variety of descriptions. Thus, it is in fact the *normative* adequacy of a capabilities theory of well-being that I am most concerned with here.

2. Evaluating Life-Shaping Freedom

The impetus for the development of the capabilities approach was the articulation of an evaluative space wherein we would be able to measure human well-being according to the

⁷See Sen 1985; Griffin 1986, Ch. 1; Nussbaum 2000b, Ch. 2. These problems are discussed in greater detail in the next section.

extent of freedom actually enjoyed by the individual. The inability of alternative metrics—such as utility or opulence—to provide a space able to measure actual freedom only highlights the need for the capabilities approach. Since I have taken liberalism to be concerned with securing the end of individual life-shaping freedom, liberal theory should evaluate lives in terms of their achievement of that end.⁸

Consider the objections to the available alternatives. The commodities, or opulence theorist (e.g., Rawls, Dworkin, Ackerman) will say that, in light of our different ends, the state ought not judge the value of different lives and should simply insure its citizens' freedom by providing them with value-neutral all-purpose goods that will enable each person to shape his or her own life.⁹ In other words, the state should solely provide its citizens with commodities as the means to pursue their own individually chosen ends. But this strategy fails to take into account the reality of interpersonal conversion differences (Ch. III, §6). A person's ability to convert the commodities she controls into a certain form of life will depend upon myriad factors.¹⁰ life-shaping freedom is not simply a function of the commodities one controls but the *kind of life one is able to lead with those commodities*. We want to insure that citizens are actually able to shape their own lives, and this requires more than mere access to commodities.

The utility theorist will argue that we can evaluate the value of individual lives but that the individual must be the final judge of her life's value.¹¹ Such a judgment is made according to a criterion like happiness or desire-satisfaction. But a utility account of well-being fails to address what Sen calls the *physical-condition neglect problem* and the *valuation neglect problem*.¹² The former takes note of the fact that a person's happiness or satisfac-

⁸Cf. Sen 1999, p. 3.

⁹As we have seen, even this prescription will not be fundamentally neutral; it depends on the controversial moral ideal that each citizen should be able to shape her own life.

¹⁰See Sen 1987, p. 17.

¹¹Cf. Mill 2002, p. 79.

¹²See Sen 1987, pp. 14–5.

tion fails to capture her actual physical condition. After all, happiness is simply a mental reaction to one's situation. As such, it is adaptable; people are capable of accustomizing themselves to dire situations by lowering their life-expectations. Accordingly, they develop 'adaptive preferences'—i.e., their desires adapt to their expectations, and their mental reaction to their situation is adjusted to these lowered expectations. Consequently, we may find many people who live in situations of extreme poverty, malnourishment, and poor health status yet report a satisfactory level of happiness with their lives.¹³ Thus, happiness may be evidence for being well, but it cannot be coextensive with well-being.

The valuation neglect problem ignores two things: first, the fact that the value of a life and the desire for a certain kind of life are not the same thing; and second, the fact that the strength of one's desires for a certain kind of life is conditioned by one's situation. In the first instance, the mere fact that someone desires a particular end does not necessarily confer value upon it. We must shape the distinction here between two statements:

- (1) I desire *x* because *x* is valuable.
- (2) I value *x* because *x* is desirable.

The utility theorist wants to endorse (2), arguing that our desires and their satisfaction are the source of value. But if it is true that our desires are in many ways socially conditioned, or at least influenced by our personal circumstances—which seems eminently plausible—then our desires will not be a good ground for value. Indeed, they will be largely contingent and in many cases mistaken or adaptive. And this introduces the second problem of neglect in the utility theorist's position: it is more likely to be the case that people desire something because they believe it to be valuable in some way. But these beliefs will be at least partly

¹³Nussbaum recounts a survey done among widows and widowers in India in 1944. When asked the question, 'How would you rate your health?', 45.6% of widowers ranked their health as either 'ill' or 'indifferent', whereas only 2.5% of widows made the same assessment. But this was in stark contrast to the actual situation, where, in objective terms, the widows' health was generally much poorer than the widowers'. See Nussbaum 2000b, p. 139.

conditioned by our circumstances; we often derive our conceptions of value from our social context. Thus, we must put people in a position to be able to judge the real value of certain kinds of life, an ability which itself requires certain capabilities. Again, desires may be evidence for well-being, but desire cannot be coextensive with well-being.

In response to these problems, a capabilities approach aims to evaluate a person's well-being in terms of the effective life-shaping freedom she enjoys. It asks the question, to what extent is a person actually able to shape her own life? To what extent is she able to do the things she wants to do and be the person she wants to be? It answers this question by reference to an account of central life-shaping functions—i.e., functions that reflect one's freedom to shape her own life—and aims to insure that persons have the capability to function in these ways if they so choose. We see then that well-being is explicitly defined in terms of the ability to function in certain ways—for example, as will be discussed further below, the ability to maintain physical and mental health and bodily integrity and the ability to function with practical reason. The value of capabilities derives from the value of the specified functions, which are held to be intrinsically valuable; they are the kinds of things many people value for their own sake. Further, these functions are instrumentally valuable; they are the kinds of things that are necessary for a person to shape her own life. Accordingly, a capabilities approach is able to avoid the physical condition neglect and valuation neglect problems because it concerns itself with the kinds of things citizens are actually able to do and be regardless of or despite their happiness or satisfaction. Moreover, it is able to account for interpersonal conversion discrepancies by considering what degree of freedom a person is able to generate from her commodities stock rather than simply the size of the commodities stock to which she has access.¹⁴

Since evaluating life-shaping freedom will be important for the state's task to secure

¹⁴See Crocker 1992 for an extended discussion of the issues touched on in the foregoing paragraphs.

that end for its citizens, a key structural feature of a capabilities account of well-being is the use of thresholds to evaluate the degree to which an individual realizes her freedom. The first threshold is one below which an individual completely lacks freedom—i.e., she lacks the opportunity to shape her own life as well as the capability to take advantage of that opportunity even if it were presented to her. In other words, the life of someone below the first threshold is completely determined by her circumstances and the choices of others; her life is made by someone or something other than her. For example, under the rule of Islamic fundamentalists, such as the Taliban, women have no opportunity to choose what kind of life they would like to pursue, and even if they were given such an opportunity, many lack the capabilities to do so. Social and material conditions have left many woefully underprepared to determine the trajectory of their lives, and fear of reprisal leaves many unwilling to develop the requisite capabilities.¹⁵

The second threshold is one above which an individual has the maximum allowable number of opportunities to shape her own life—i.e., she is free to pursue many forms of life without threat of external interference—as well as maximal capability to capitalize on these opportunities.¹⁶ For example, wealthy white males in the United States during the twentieth century had the opportunity to pursue nearly any end they could dream of, and, as a result of their wealth and influence, they had developed the capabilities needed to effectively pursue their goals.

Between these thresholds, a person's life-shaping freedom will be 'mixed' to varying

¹⁵See Amnesty International 1995; Revolutionary Association of the Women of Afghanistan 2005. It may be that this example is only a borderline case of someone below the first threshold, and that there are no pure cases of this phenomenon in reality. Nussbaum's most common example of a person below both thresholds is someone with severe mental disabilities. However, this does not completely match my description of the situation, as such a person could still have adequate life-shaping opportunities insofar as no one is preventing her from shaping her own life.

¹⁶I say 'maximum allowable number' here because I think it is clear that there will be certain opportunities that will not be open to individuals, whether they be precluded by natural restrictions—e.g., the inability to fly under one's own power—or normative restrictions—e.g., we do not provide citizens with the opportunity to intentionally harm one another. Of course, the issue of defining which opportunities will be permitted under these restrictions will be a matter of debate, but it is a debate I need not take up here.

degrees. For example, one's life-shaping opportunities might extend beyond her capability to take advantage of those opportunities, such as a person who lives in extreme poverty, whose lack of wealth prevents her from developing certain capabilities despite the fact that she is not prevented by anyone from pursuing certain ends. Or one's exercise of her life-shaping capabilities may be restricted by a lack of life-shaping opportunities, such as an educated person who resides in a totalitarian regime, like Communist China. Or one may have certain life-shaping capabilities but lack others; or one's life-shaping capabilities might be developed to varying degrees of maturity. In any event, an individual who is judged to be between the two thresholds will have her life-shaping freedom restricted to some degree but not completely eliminated.

These thresholds are fundamental because each citizen's freedom is measured in terms of her position relative to them. Of course, this is done by degrees; one's actual freedom could place her anywhere along a spectrum. Yet, there are more or less distinct delineations where a person's freedom to shape her own life markedly increases, from a complete absence of freedom to maximal freedom.

3. Different Levels of Capability

A distinction made by Nussbaum provides us with an additional feature of the capabilities framework and helps to clarify what is meant by 'capability'. This is the distinction between three classes of capabilities: basic, internal, and combined. Briefly, a *basic capability* refers to the innate 'equipment' necessary as a basis for the development of advanced life-shaping capabilities. In Sen's words, they 'separate out the ability to satisfy certain crucially important functionings up to certain minimally adequate levels.'¹⁷ On Nussbaum's view, as well as my own, such basic capabilities are primarily physio-biological in

¹⁷Sen 1993, p. 41.

character, such as the capability for life, the capability for physical and mental health, and the capability for bodily integrity. The promotion and protection of these capabilities insures that a person will be able to further develop other important life-shaping capabilities. Without these basic capabilities intact, it will be impossible for an individual to shape her own life.

Some might object to my use of ‘protection’ in connection with basic capabilities, as I have almost exclusively used this term to connote the state’s duty to defend life-shaping opportunities. However, the use of ‘protection’ in conjunction with ‘promotion’ is appropriate here because the importance of these basic capabilities demands that they be defended against those who try to violate them. Since they represent a ‘point of no return’ with regard to the realization of freedom—that is, a point beyond which life-shaping freedom is virtually lost—the state’s obligation to its citizens with regard to these capabilities must be both defensive and offensive as appropriate.

An *internal capability* is considered to be a mature state of readiness to function in a certain way under conducive circumstances. It is the ability to take advantage of an opportunity to function in a certain way—i.e., to play piano, or study physics, or participate in civic affairs, etc.—once that opportunity has been presented.¹⁸ Internal capabilities are crucial for life-shaping; they enable citizens to capitalize on a wide range of life options. Our description of internal capabilities can be either general—e.g., the capability to learn—or specific—e.g., the capability to study physics. For my purposes here, it will be more appropriate to describe them generally. If we describe them too specifically and then charge the state with their promotion, we will have given the state an unnecessarily difficult and probably futile task. It is implausible to believe that all citizens will be able to develop an inordinately large number of specific capabilities. In addition, because the

¹⁸See Nussbaum 1988, p. 160, 1990, p. 228, and 2000b, p. 84.

state's end is the promotion of life-shaping *freedom*, we want to enable citizens to perform important classes of functions and allow them to specify how they will exhibit these capabilities in accordance with their beliefs about the good. In any case, this is a minor issue; this approach will work with capabilities described in varying degrees of specificity. The important point is that an internal capability to act a certain way is a necessary condition of a person being free to act in that way.

It is worth highlighting the particularly important role played by the internal capability of practical reason for life-shaping. As argued by liberals, the goal of securing life-shaping freedom is to enable individuals to live a life in accordance with their beliefs about the good.¹⁹ Accordingly, one's beliefs must be, at least to a great extent, the determining source of the trajectory of her life. However, to have genuine life-shaping freedom, one's beliefs cannot simply be had or handed down prereflectively from some external source—e.g., cultural or religious tradition, parents, or political authority. A life determined by such beliefs is not a life of one's *own* shaping, but a life made by the beliefs originally chosen by others. Instead, to be a life-shaper, one's beliefs about the good must be reflectively chosen by the individual in question. This does not mean that one should reject one's cultural or religious heritage. But if one is to shape her own life in accordance with these traditions, she must adopt them reflectively. This requires the capability of practical reason—that is, the ability to consider and reflect upon one's beliefs and to choose which beliefs one will retain and which ones to discard. In Raz's words:

It [i.e., autonomy, or life-shaping freedom] requires that self-creation must proceed, in part, through *choice* among an adequate range of options; that the agent must *be aware* of his options and of the meaning of his choices; and that he must be independent of coercion and manipulation by others... Personal

¹⁹See Dworkin 1978, p. 129; Kymlicka 1989, pp. 10–9; Larmore 1987, p. 46 and 1995, pp. 66–7; Rawls 1996, pp. 50–61.

autonomy is the ideal of free and *conscious self*-creation.²⁰

Freedom requires that the individual is the life-shaper and is not determined by beliefs that are not reflectively chosen by her (even though such beliefs may be ‘her beliefs’ in the sense that she holds them). Consequently, the capability of practical reason is a necessary condition of life-shaping freedom because it enables one to consider and weigh a variety of life-options, determine which of those options she believes to be good, and formulate a strategy for achieving her chosen ends.

Finally, a *combined capability* is simply an internal capability combined with the material and social conditions necessary for its exercise—i.e., the ability to take advantage of life-shaping opportunities coupled with the presentation of such opportunities.²¹ This is where capabilities-promotion and opportunities-protection are brought together to secure life-shaping freedom. Consequently, if the state is concerned to secure its citizens’ freedom, it must provide them with combined capabilities.

The importance of this distinction derives from its alignment with a person’s position relative to the evaluative thresholds. A person without combined capabilities will have her life-shaping freedom restricted to some degree, thereby placing her below the second threshold. We can also say that a person without basic capabilities is one who falls below the first threshold, for such a person will never be able to shape her own life since she does not have the basic equipment required to do so. A person with internal capabilities but no life-shaping opportunities or one with adequate opportunities but underdeveloped internal capabilities will fall between the two thresholds.

It will be instructive to highlight the relationship between combined capabilities and the ability to choose in accordance with one’s exercise of practical reason. As Nussbaum

²⁰Raz 1986, pp. 389–90. Emphasis added.

²¹See Nussbaum 1988, p. 164 and 1990, p. 228. Nussbaum used to refer to these as ‘external’ capabilities, but later changed the term to ‘combined capabilities’ for the reasons given in Nussbaum 2000b, p. 84f, footnote 94.

argues, the ability to choose among one's options actually requires certain material and social conditions that enable one to make such choices. To support this view, she identifies three ways that people exercise their ability to choose.²² First, given supportive conditions, a person can choose to function in certain ways. Second, a person is able to choose a life plan, and given supportive conditions, is able to live according to this plan. Third, under supportive conditions, a person is able to choose a particular expression of her capabilities—e.g., she can exercise her life-shaping capabilities by playing basketball, chess, or piano, or she can do so by working as a doctor or an administrative assistant. The salient feature of each of these instances of free choice is the background support structure. Quite simply, no person could freely choose their conception of a good life and live accordingly unless she had the real opportunity to do so and the capability to take advantage of that opportunity. Such a support structure enables a person to get 'fair value' from their capabilities rather than simply have 'formal' freedom—i.e., the presentation of opportunities without the capability to take advantage of them. And this is precisely what combined capabilities are intended to be. They are the opportunity to effectively exercise one's internal capabilities—especially that of practical reason—and the ability to do so upon receipt of such an opportunity. Therefore, if the state cares about respecting life-shaping freedom, it must care about securing combined capabilities.²³

4. The Capabilities Picture of Well-Being

We can now begin to see how the several elements of this capabilities approach fit together to provide a cohesive picture of human well-being. To move citizens across the second threshold, we must enable them to achieve well-being—i.e., we must enable them to shape

²²Nussbaum 1990, pp. 238–39.

²³To avoid confusion, I have and will continue to use 'capabilities' to refer to basic and internal capabilities, unless otherwise noted. 'Combined capabilities' should be understood as co-extensive, and therefore synonymous with 'life-shaping freedom'.

their own lives—by providing them with combined capabilities; that is, the opportunity to choose a way of life that is infused with practical reason and the ability to take advantage of that opportunity.

In addition, we can begin to compose a picture of life between the two thresholds. First, to aid people across the first threshold (which is a prerequisite for moving them across the second), the state must preserve one's basic capabilities and provide the social basis for the development of internal capabilities. Without internal capabilities, one cannot take advantage of the opportunities that support freedom. Hence, the state must train or educate citizens to prepare them to shape their own lives when given supportive conditions.

Second, we can see that those between the two thresholds, while enjoying some degree of life-shaping freedom, are not maximally free to shape their own lives; there is some restriction upon their freedom. A person between the thresholds will experience some minimal freedom but her choices will be socially determined in a way that precludes the free use of her practical reason. A person between the thresholds has minimal life-shaping freedom, and is very often forced to function in certain ways regardless of her choices.

While the foregoing case is intuitively tragic, the case of the person below the first threshold is much more so. Two things are clear in this case. First, we see that the person below the first threshold has no life-shaping freedom. All her actions are causally determined by her circumstances and devoid of any practical reason, thereby obviating any ability to choose.²⁴ Further, such a person lacks the internal capabilities to shape her own life, and may even lack the basic capabilities to develop such internal capabilities.²⁵ This may be so for a number of reasons.

²⁴Nussbaum often refers to Marx's examples of the starving person and the worker who is unable to use his senses to illustrate this point. See Nussbaum 1988, p. 183f, 1990, pp. 214–15, and 2000b, pp. 72–3.

²⁵Perhaps the latter is the case in instances of irreversibly severely mentally handicapped persons.

One reason is of particular concern here. Recall the earlier description of the physiological (basic) capabilities—life, physical and mental health, and bodily integrity. Those who are deprived of these capabilities will be deprived of the physical equipment necessary to develop internal capabilities and make the transition to life-shaping freedom. For example, in many cases, a person of unsound physical health will have her number of options so drastically reduced that she could not be considered free to shape her own life under any description. In addition, a person of unsound mental health will be precluded from exercising any degree of practical reason, a prerequisite for minimal life-shaping freedom. It follows, then, that the state's primary obligation to people below the first threshold, if they are to secure their freedom, is to promote basic capabilities development when possible and protect them when they are endangered. If a person loses whatever basic capabilities she has, she loses her chance to develop internal capabilities that will, in turn, allow her to take advantage of combined capabilities and make the transition to a free life—i.e., a life she has shaped in accordance with her beliefs. Thus, respecting a person's freedom and enabling her to make free choices requires both the promotion and protection of certain basic capabilities.

5. Capabilities and the Political Task

To summarize: I have highlighted several key structural features of a capabilities account of well-being: the use of evaluative thresholds for measuring a person's degree of life-shaping freedom; and the distinction between basic, internal, and combined capabilities and their respective descriptions, with special attention to the capabilities of life, physical and mental health, bodily integrity, and practical reason. I have also briefly drawn these features together to present a cohesive picture of the relationship between capabilities, life-shaping freedom, and well-being.

Given this, we can now begin to get a grip on what this entails practically for the liberal state's commitment to individual freedom. Briefly, if liberalism charges the state with the task of removing the obstacles to life-shaping freedom, then a capabilities approach understands this task practically as the removal of obstacles to combined capability possession. This is because combined capabilities are concerned with the social and material conditions necessary to provide citizens with opportunities to shape their own lives, as well as citizens' ability to convert life-shaping opportunities to the effective pursuit of a life shaped by their beliefs about the good.

It follows from this that the state must aid its citizens in developing their internal capabilities—particularly that of practical reason—as these are crucial to freedom. The state's primary role in this respect is the provision of the social and material basis for internal capabilities. This is because the state does not have full control over their development.²⁶ First, there are natural limitations associated with the development of internal capabilities—i.e., not all persons will be able to develop certain capabilities. Second, capability development is asymmetrical; to some extent, it is contingent upon the individual's effort and motivation. Nevertheless, this role implies several political obligations. For example, the state ought to remove the social and material obstacles impeding capability development by providing adequate education and health care for its citizens, especially for those who cannot otherwise afford it. The state ought to provide the material and social resources necessary to foster their development by distributing wealth in a way that insures that citizens' circumstances are not a barrier to capability development and exercise. And the state should educate its citizens about the value of certain capabilities for life-shaping by promoting activities—e.g., recreational, cultural, artistic, scientific, etc.—that engage their life-shaping capabilities and permit them to see the value of those capabilities.

²⁶Cf. Nussbaum 2000b, p. 81. The following points were discussed in greater depth above, in Ch. III, §7.

However, the state's obligation does not end with capabilities promotion. Since the state is ultimately concerned with the promotion of life-shaping freedom, it must also provide the opportunities necessary to exercise those capabilities once developed.²⁷ Thus, we can see further alignment with the aforementioned thresholds: public policy aims to move citizens above the second threshold, and to accomplish this, it must provide them with combined capabilities. As I indicated earlier, to be above the second threshold, one must be able to exercise her capabilities in accordance with her practical reason. Hence, we see that, to provide combined capabilities, the state must provide capabilities in a way that they are exercised in accordance with persons' choices and within a supportive and stimulating social context.

We must be sure to note here that the state's political task entails the provision of life-shaping *capabilities*—i.e., the ability to shape one's life a certain way if one so chooses—not actual life-shaping functioning. It is not the case that citizens are required to shape a certain kind of life, or that they are even required to shape their own lives, but that they must be able to do so if they so choose. This is due to the fact that the state's end is life-shaping *freedom* and not life-shaping *achievement*.²⁸ If we make functioning the goal, we deprive citizens of their capacity to choose and thereby disrespect their freedom. In doing so, we undermine the capability of practical reason and preclude the possibility of accomplishing our goal, viz., individual freedom. To be sure, the value of the capabilities derives from their corresponding functions; it is the actual *shaping of one's life* that is an indicator of well-being. Nevertheless, to respect citizens' ability to shape their lives in accordance with their exercise of practical reason—including a life that is not shaped by oneself—capabilities are the appropriate political goal.

²⁷Cf. Nussbaum 2002, p. 132. This point is unlikely to be controversial among liberals, who already affirm the state's role in protecting life-shaping opportunities.

²⁸Cf. Sen 1993, p. 36; Nussbaum 2000b, p. 87 and 2002, p. 131.

Although this is an important distinction, it is not as sharp as one might like. As Nussbaum notes, in many cases, developing internal capabilities requires actual functioning—e.g., using one’s body and mind to develop internal physical and mental capabilities. Also, in some cases, persistent deprivation of the opportunity to exercise an internal capability can result in an atrophied capability. Hence, in some cases, we may require minimal functioning to insure the presence of capabilities. Indeed, in the case of the basic capabilities (life, bodily integrity, physical and mental health) and the capability of practical reason, we ought to follow Nussbaum in claiming that ‘some of the capabilities are so important, so crucial to the development of maintenance of all the others, that we are sometimes justified in promoting functioning rather than simply capability.’²⁹ In cases where the possession of these essential life-shaping capabilities is in jeopardy, paternalistic action aimed at insuring their maintenance will be justified. To fail to do so—to fail to protect these capabilities from forfeiture—endangers citizens’ life-shaping freedom and puts them at risk of living a life imposed upon them by others.

The key point here is that capabilities play a role as both the end of life-shaping freedom as well as the means to that end. Greater capabilities access is the end of freedom since we want people to be able to shape their own lives. This end is best understood in terms of combined capabilities possession. In addition, greater capabilities access is also a means to greater freedom, for as people become capable of certain functions, they will thereby be able to extend the range of their freedom.³⁰

Up to this point, I have solely emphasized the promotion of four specific capabilities:

Life: The ability to live a life of natural length, free from the threat of being cut short by naturally avoidable causes.

²⁹Nussbaum 2000b, p. 91.

³⁰Cf. Sen 1993, p. 41.

Physical and Mental Health: The ability to maintain a healthy body and mind throughout one's natural life; the ability to receive timely and effective health care to remedy ill health.

Bodily Integrity: The ability to preserve the natural functionality of one's body; the ability to protect one's body from violation.

Practical Reason: The ability to reflectively consider and evaluate one's life-options; the ability to formulate a conception of the good; the ability to formulate a strategy for achieving one's ends.

Yet, are there other specific capabilities the state ought to promote? Are there other capabilities that are necessary for life-shaping? Certainly one could make the case that there are, and do so without describing capabilities that are too specific for my purposes here. For example, Nussbaum's list includes ten general capabilities (four of which are included here).³¹ From this list, one could easily make the case that the development of such items as our imaginative and emotional capabilities, or our capability to control our environment are necessary for full life-shaping freedom.

I would not object to the inclusion of these capabilities, for I too believe these to be important for freedom. However, my objective here does not require me to go beyond the four I have already mentioned. First, the promotion of these capabilities alone already places a strong demand upon the state and goes quite far in enabling citizens to shape their own lives. The implications are pervasive: the promotion of these capabilities will require the provision of a quality educational experience for all; of affordable health care; of adequate commodities such as food and shelter; of a wide range of life options from among which citizens can choose a form of life they find valuable, including career and recreational opportunities; and the list can go on.

³¹For the most recent articulation of her list, see Nussbaum 2000b, pp. 78-80.

Second, by restricting my list to these four, it gives citizens the opportunity to specify further capabilities through public dialogue. The promotion of the capabilities listed here insures that citizens will be able to actively participate and positively contribute to such a dialogue.³² As a result, the specification of further life-shaping capabilities will reflect the collective exercise of citizens' practical reason, thereby insuring that, not only individuals are free to shape their own lives, but societies are also free to shape their public life.

We have seen that the state's commitment to securing its citizens' freedom entails a political duty to actively and intentionally promote certain life-shaping capabilities, and in this chapter, I have provided a theoretical framework meant to guide the state in its satisfaction of this duty. But there remains a pressing question arising from the preceding discussion: to what extent is the state justified in compelling its citizens to maintain their essential capabilities? In some cases, citizens will be unlikely to resist the state's aid in developing their capabilities, especially where state assistance is requested. But there will be instances where capabilities promotion goes against an individual's will. To compel one to maintain certain capabilities in such instances would be seen as unjustified by many liberals. Hence, this question is particularly pertinent because we can envision certain scenarios where a capabilities approach seems to generate internal contradictions. If citizens reasonably disagree about which capabilities ought to be promoted, or whether they ought to be promoted at all, yet they are compelled to comply with the promotion of those capabilities, is it not the case that their exercise of practical reason is being unjustifiably infringed upon, thereby limiting their freedom? If a citizen chooses a life devoid of certain life-shaping capabilities, does the state not constrain her freedom if it compels her to

³²Indeed, the promotion of these capabilities is necessary for individuals to become the kinds of citizens Rawls claims are necessary for a liberal society to flourish—viz., 'fully participating members of a cooperative society'. Without these capabilities, citizens could not even participate in the kind of public dialogue envisioned by liberal neutralists. Hence, we have another reason why liberalism cannot remain neutral: a liberal state must actively and intentionally promote certain crucial capabilities if its citizens are to be able to participate in a public dialogue.

develop and retain certain capabilities? In each case, it appears that the state's promotion of capabilities in fact limits citizens' life-shaping freedom rather than enhance it. Thus, it will be important to deal with these worries, which is the subject of the next chapter.

CHAPTER V

PATERNALISM AND FREEDOM

How far must the state go in insuring that its citizens maintain and develop certain capabilities? To what extent does capabilities-promotion justify state paternalism? My earlier response was that state paternalism is justified in instances where the essential life-shaping capabilities—i.e., life, physical and mental health, bodily integrity, and practical reason—are in jeopardy. However, given liberalism's commitment to enabling citizens to shape their own lives, there is a strong presumption against certain forms of state paternalism because many liberals hold that, beyond some point, state interference undermines its citizens' freedom. In Waldron's words,

[I]f the rule is simply *imposed*, without reference to the consent of those who are to be bound by it, then something important. . . *is* lost—namely, the capacity of human agents to determine for themselves how they will restrain their conduct in order to live in community with others. That capacity will have been pushed aside in the name of social order, as though it were something of no consequence; and that *is* an attack on what we should conceive as the importance of freedom.¹

Certainly, there are few liberals who argue that *any* amount of state interference is unjustified, for very few claim that the project of shaping one's own life is a solo one. Moreover, most recognize that the demands of social life require that individual liberty be restricted to some degree so that each individual can experience maximum freedom within a social context. The liberal worries about the *extent* to which state interference is justified; her main concern is that the life of the individual never becomes subordinate

¹Waldron 1993, pp. 42–3.

to the life of the community. Too much paternalistic interference is sure to unjustifiably restrict individual freedom. Thus, overcoming this concern is of central importance if I am to show that my project is in fact a liberal one.

To accomplish this task, I first examine the extent to which many liberals are willing to endorse state paternalism and extract the principles underlying their justification for weak paternalism. I then critically assess the anti-paternalist argument from individual autonomy, showing that the liberal's acceptance of weak paternalism conjoined with his commitment to life-shaping freedom justifies strong state paternalism in cases where essential capabilities are endangered. My conclusion is that, in the cases where the capabilities approach justifies strong paternalistic interference with a citizen's life, such interference protects the conditions of long-term life-shaping freedom from permanent forfeiture of those conditions.

1. The Liberal View of Paternalism

Some degree of paternalism is often argued by liberals to be antithetical to life-shaping freedom. But what is meant by 'paternalism'? To what kind of state action do liberals typically object? Much has been made of the conceptual complexity of 'paternalism', so it will be worthwhile to get clear on precisely what it is to which liberals object and what it is that I am endorsing.

To distinguish paternalism from other liberty-limiting principles, I offer the following as representative definitions of paternalism:

The principle of legal paternalism justifies state coercion to protect individuals from self-inflicted harm, or in its extreme version, to guide them, whether they like it or not, toward their own good.²

²Feinberg 1980, p. 110.

By paternalism I shall understand roughly the interference with a person's liberty of action [i.e., their life-shaping freedom] justified by reasons referring exclusively to the welfare, good, happiness, needs, interests or values of the person being coerced.³

According to these definitions, for an action to qualify as an instance of paternalism, it must meet the following three conditions:

- (1) State paternalism must aim to prevent a person from inflicting harm upon *himself*. (Under the terms of the present discussion, 'harm' should be understood as endangering one's life-shaping freedom.)
- (2) State paternalism must coercively interfere with a person's freedom to act as she chooses—i.e., to shape her life as she sees fit.
- (3) State paternalism is justified by appeal to the well-being—physical, psychological, or economic—of the coerced person. (In this case, 'well-being' is understood as the freedom to effectively shape one's own life.)

To further clarify, by 'paternalism', I *do not* mean the following⁴:

Harm Principle: State interference with a person's ability to inflict harm on persons other than the one prohibited from acting.

Offense Principle: State interference with a person's ability to cause serious offense to persons other than the actor.

Legal Moralism: State restriction of inherently immoral, though not [necessarily] harmful or offensive, conduct.

³Dworkin 1972, p. 65.

⁴See Dworkin 2005, p. 305. Dworkin notes that his list is taken from Joel Feinberg.

Moralistic Legal Paternalism: State interference with a person's ability to cause *moral* harm (as opposed to physical, psychological, or economic harm) to the actor himself.

I am not concerned to here defend the Harm Principle, as few liberals (if any) will object to the state intervening to prevent one person from endangering the capabilities of another. Nor am I concerned with the Offense Principle, since I am worried about the maintenance of combined capabilities—i.e., life-shaping capabilities and opportunities to exercise them—not whether their particular way of being exercised is offensive to others. So long as no person's life-shaping capabilities are in jeopardy (including those of the actor), people should be free to exercise them as they choose. This same line of reasoning explains why I am concerned with neither Legal Moralism nor Moralistic Legal Paternalism. People should be able to exercise their capabilities as they see fit, regardless of the moral value of their actions (subject to the Harm Principle, of course). My concern here is solely to show, first, that a commitment to citizens' life-shaping freedom does not generate a general ban on legal paternalism—i.e., the state's use of force to prevent one from voluntarily endangering or forfeiting his own life-shaping capabilities—and second that legal paternalism is justifiable as a means to securing one's freedom.

Given these conditions, what is it about state paternalism to which liberals object? Initially, it may appear that it is the mere fact that paternalism is coercive in nature that causes so much concern for the liberal. But this cannot be the case, for many liberals argue that the state's coercive interference in individuals' lives will be justified in some instances. Certainly, some form of the Harm Principle is accepted by most, if not all liberals. And the Harm Principle is most definitely coercive in nature; it enables the state to prevent its citizens from causing harm to one another and to do so coercively if need be. Further, many liberals accept that a society's laws and other political principles have an

inherently coercive element and that the state is justified in enforcing them.⁵ Finally, some liberals, following Raz, are willing to agree that some measure of state coercion is justified if the coercive actions aim at securing greater freedom for individuals.⁶ The problem with paternalism, then, is not simply its coercive character.

Perhaps, then, objections to paternalism arise from the fact that it prevents a person from pursuing a life in accordance with her own beliefs. But liberals are also willing to allow the state to prevent people from living according to their beliefs in some cases, for example, if those beliefs lead one to cause harm to others or to break laws or to restrict others' freedom. The problem with paternalism is not merely the fact that it prevents people from living out their beliefs.

Worries about paternalism arise from the *kinds* of beliefs people are prevented from living out. Liberals generally recognize that individuals within a society are likely to hold a wide range of reasonable beliefs about the good, many of which will conflict with each other. Given this 'reasonable disagreement' (Ch. II, §1) and the strife and violence that arise from attempts to suppress such diversity, liberals are committed to permitting citizens to live in accordance with their *reasonable* beliefs about the good. Paternalistic interference, then, is unjustified inasmuch as its end is to compel people to pursue a conception of the good with which they reasonably disagree.

Clearly, some notion of what counts as 'reasonable' plays a key role here. Following Rawls, liberals generally understand a 'reasonable' conception of the good as one that is willing to 'propose and honor fair terms of cooperation', as well as recognize the fact of reasonable disagreement and accept its consequences.⁷ Accordingly, people ought to be able to live out their beliefs about the good provided that they acknowledge the equal

⁵E.g., Larmore 1999, pp. 606–08.

⁶Raz 1986, pp. 156–7.

⁷Rawls 1996, pp. 48–50.

freedom of their fellows to do the same and undertake to cooperate with them by permitting them to do so. Hence, a general principle underlying the liberal view of paternalism can be called the *Reasonable Belief (RB) Principle*:

(RB) Citizens ought to be free to pursue a life in accordance with their reasonable beliefs about what constitutes a good life.

Liberal adherence to (RB) also casts suspicion upon the third feature of paternalism—(3) above—viz., that paternalism is justified by appeal to the coerced person's well-being. To the extent that the conception of well-being used to justify the paternalistic action is not reasonably endorsed by the coerced person, the action violates (RB) and is therefore unjustified.

Yet, even the staunchest liberals do not object to all actions of paternalism that appear to violate (RB). Most often, liberal anti-paternalism is restricted to, in Mill's words, 'mature human beings in the maturity of their faculties.'⁸ Liberals do not usually consider the state to be unjustified in acting paternalistically toward those who are unable to make informed and rational choices, including children and the mentally or psychologically handicapped. Nor is paternalism deemed unjustified in instances where we must forcibly prevent one from taking a course of action to ascertain whether she is fully informed about the consequences of the action. Straightforward instances of so-called 'weak paternalism' do not usually provoke controversy among defenders of liberty.

The underlying principle in the first case—viz., the case of someone who is unable to make a rational and informed choice—can be called the *Reasonable Consent (RC) Principle*:

(RC) Paternalism is justified in those instances where we have good reason to believe that

⁸Mill 2002, p. 12.

the person interfered with would, if informed and rational, consent to the interference.

The underlying intuition here is that an action is justified if the person concerned consents to it because consent is an expression of one's freedom. If one consents to being interfered with in some way, then we say that she has freely chosen to be interfered with. However, as Douglas Husak notes, it is paradoxical to say that carrying out an action to which one has *actually* agreed is in fact a case of interference. In 'interfering' with a person under her consent, we have merely carried out her wishes. Indeed, to fail to comply with her wishes would appear to be a case of interference, at least more so than following them. Accordingly, it seems that some action can only be properly called a case of interference if the action has not been actually consented to.⁹

To resolve this paradox, Husak resorts to the notion of 'reasonable future-oriented consent'. Using Husak's example, Billy's parents compel him to brush his teeth before he goes to bed despite his desire to watch an extra five minutes of television. Billy resents this violation of his freedom to live in accordance with his reasonable beliefs about the good and withholds his consent from his parents' interference. Nevertheless, Billy's parents are justified in forcing him to brush his teeth in the absence of his actual consent, for it is reasonable to believe that Billy will come to see the wisdom of dental hygiene and endorse the interfering action at a later time. Moreover, it need not be the case that Billy ever does *actually* consent to the interference. He may die in a car accident the next day and never have a chance to offer his consent. What is important for justifying the paternalistic action is that we have a reasonable belief that the action would be consented to if the person were rational and informed.¹⁰ This principle also explains why certain forms of interference are justified in instances of mental or psychological disabilities that preclude the possibility of

⁹Husak 1981, pp. 30–1.

¹⁰Husak 1981, pp. 31–5.

making rational and informed choices.

In the case of interfering with a person to determine whether he is informed about the consequences of his action and would still rationally choose that action in light of those consequences, the justifying ground is the *Informed Agent (IA) Principle*:

(IA) Paternalism is justified if we have good reason to believe that the person concerned is uninformed about the consequences of his chosen action and that, if informed, would refrain from continuing the action in question.

life-shaping freedom requires the ability to choose which ends one will pursue, including the consequences entailed by achieving that end. This ability is compromised when one is uninformed of the consequences entailed by pursuing a given end. In cases where a person appears to be assuming an inordinate risk carrying consequences generally regarded as unwanted, our intuition as observers is to assume that the person is unaware of the risk he is taking. Indeed, we believe that, once informed, the person will likely change his mind about continuing on with the chosen course of action. Consider Mill's example of stopping a person from walking off a bridge to insure that he is aware the bridge is out.¹¹ It seems intuitively implausible that a person of reasonable mental and physical health would voluntarily walk off a bridge and plunge to his near certain death below. Hence, paternalism is justified if its aim is to insure that the person concerned is aware of the consequences of his action and determine whether he would still rationally choose that action once informed. Indeed, interference here insures that (RB) is satisfied.

2. Liberal Anti-Paternalism: The Argument From Autonomy

We see now that (RB), (RC), and (IA) form the theoretical framework supporting the liberal view of paternalism and that, within this framework, the liberal is inclined to permit

¹¹Mill 2002, p. 100.

some measure of state paternalism, viz., ‘weak paternalism’. It is the cases of paternalism that putatively violate these principles—i.e., cases of so-called ‘strong paternalism’¹²—that liberals reject as unjustified. According to anti-paternalists, the state must refrain from interfering with a person’s life inasmuch as she appears to rationally choose a course of action, seems fully informed about the consequences of carrying out that action, and is willing to accept those consequences. But this is precisely the kind of interference I have endorsed in claiming that the state will be justified in compelling people to maintain their essential life-shaping capabilities in cases where they are in jeopardy of permanently forfeiting them. In light of this, we can see why the perfectionist aspect of the capabilities approach to life-shaping freedom is bound to raise some concerns among liberals, if not their ire as well.

The most compelling anti-paternalist strategy is the argument from autonomy. As noted earlier (Ch. II, §4), coercive state interference is only a concern when autonomy is held high as a political value.¹³ Given the strong conceptual link between autonomy and life-shaping freedom, it will be important to show that this argument does not ground a general presumption against strong paternalism.

The general argument derives from something like the Kantian categorical imperative: always treat a person as an end, never solely as a means. Liberalism’s commitment to respecting individual life-shaping freedom entails that each person be able to pursue their reasonably chosen ends and that their freedom to do so be preserved. But state paternalism prevents one from doing this because it compels her to pursue a conception of the good with which she disagrees. Paternalism, in the words of Berlin,

is an insult to my conception of myself as a human being, determined to make

¹²Henceforth, I will use ‘paternalism’, ‘interference’, ‘coercion’, and any combination of these interchangeably with ‘strong paternalism’.

¹³Cf. Raz 1986, p. 156.

my own life in accordance with my own (not necessarily rational or benevolent) purposes, and, above all, entitled to be recognised [*sic*] as such by others.¹⁴

Interfering with a citizen's life to prevent her from jeopardizing her capabilities, it is argued, circumvents her freedom to live in accordance with (RB), and thereby treats her as a means to the state's end of promoting capabilities. And since the liberal state must be in the business of securing life-shaping freedom, it must, therefore, avoid undermining that freedom by refraining from paternalistically interfering with its citizens' lives.

But is it true that a commitment to respecting individual autonomy precludes strong state paternalism? Following Husak, I think that autonomy does not create a *conceptual* barrier to state paternalism—i.e., a presumption against paternalism does not follow from an analysis of 'autonomy' as a concept. Consider the arguments Husak presents.¹⁵ First, note that, according to (RC), the key justifying feature of paternalism is not consent, for neither actual consent nor actually forthcoming consent is necessary to justify paternalism under (RC). The reason we assume that consent is necessary to justify paternalism is because it is an expression of one's autonomy. But if consent is no longer a relevant justificatory concern, then neither is consent *qua* expression of autonomy a relevant concern. Rather, as Husak claims, in justifying instances of paternalism, '[t]he proper focus... is on whether the interference is reasonable—not on whether the person would consent to it.'¹⁶ That is, some instance of paternalism is justified by appeal to the *reasonableness of the action in question*, not the coerced person's potentially forthcoming autonomous endorsement of the action.

Of course, what counts as a 'reasonable' paternalistic action is precisely the question

¹⁴Berlin 2002, p. 203.

¹⁵See Husak 1981, pp. 34–5.

¹⁶Husak 1981, p. 34.

at hand. To assume that the ‘reasonableness’ of the action is its justifying feature only begs the question. But this need not be so if we are able to specify the content of ‘reasonable interference’ in some non-circular way. The liberal has gone some way toward doing this already by laying out (RB), (RC), and (IA) as a justificatory framework for paternalism. But, as noted, these principles are argued to solely justify weak paternalism. However, this position is mistaken. Indeed, I will argue that these principles, in addition to other considerations, in fact justify some measure of strong paternalism as a means to promoting citizens’ capabilities. In any case, the key point of the argument above is to show that there is no conceptual disjunction between ‘autonomy’ and ‘paternalism’.¹⁷

Contra the liberal, we can show that the anti-paternalist argument from autonomy actually supports, rather than opposes, paternalistic promotion of capabilities. The argument is meant to show that a person’s choices should not be interfered with since each is an end in herself and paternalism reduces people to the status of means to another’s end—i.e., the state’s interest in promoting capabilities. As the anti-paternalist argues, what it means to treat each person as an end in herself is to secure the background conditions necessary for people to shape their own lives. And, in terms of capabilities, this just means securing citizens’ combined capabilities. But this end is not always effectively attained by refraining from coercive interference. The state must be sure to ward off coercive practices when they will certainly constrain life-shaping freedom. But when the absence of coercion fails to promote the end of life-shaping freedom or even constrains the freedom of some citizens, the use of paternalistic coercion must be available to the state *as a means* to insuring life-shaping freedom.

Inasmuch as the liberal concern to limit coercion is a concern for the autonomy of persons, the liberal will also be anxious to secure natural and social

¹⁷For a lengthier discussion of this point, see Husak 1981.

conditions which enable individuals to develop an autonomous life... In pursuing such goals, the liberal may be willing to use coercion.¹⁸

If we agree with Green that social conditions often militate against people's realization of freedom¹⁹, then the state's concern for autonomy requires that the state interfere with its citizens' lives to overcome those social and material obstacles to the extent that they violate (RB)—the Reasonable Belief Principle. For example, a person may grow up in an environment surrounded by drug addicts and is influenced by her circumstances to choose to engage in the use of narcotic drugs, which jeopardizes her ability to make informed and rational choices. Once addicted, she loses much of her freedom to shape her own life. Hence, compelling her to remain free of addiction helps her overcome the obstacles presented by her social circumstance and insures that she remains free to shape her own life. Thus, state interference will count as 'reasonable' when it increases citizens' freedom to shape their own lives by securing their combined capabilities.

Someone might object here by indicating that some people may freely and rationally choose to forfeit their capabilities, even those that are deemed so crucial as to justify coercive interference. But both (RC) and (IA) provide us with a way to answer this objection. (IA) justifies the state in interfering with a person's life when it has good reason to believe that the person is uninformed about the consequences of his action and, if informed, would refrain from acting in a way that brings about those consequences. In the case of the drug addict, it is plausible to assume that a person who engages in drug use is unaware of the potential for severe consequences as a result of his drug use. We have good reason to believe that, if the person understood that sustained drug use endangers his ability to reason practically, and that a lack of practical reason compromises one's freedom, then he would likely avoid those consequences. Thus, (IA) justifies the state in interfering with citizens'

¹⁸Raz 1986, p. 156. Cf. Husak 1981, p. 46.

¹⁹Green 1881, pp. 203–04.

lives when their capabilities are being jeopardized in an attempt to insure that they are aware of the degree to which their actions jeopardize their freedom.

However, it remains possible that, even once we have informed the person of the consequences of their action, she may still desire to continue in her course. At this point, her choice is informed and appears to be rational. Hence, interference with her action infringes upon her freedom. Yet, we often have good reason to challenge the assertion that a person could in fact could make a rational choice to sacrifice a necessary condition of her freedom, thereby transitioning from a state of potentially enhanced freedom to that of potentially irreversibly diminished freedom. And, if this holds, (RC) serves to justify paternalistic interference. For example, if a drug user asserts her freedom as a ground to resist interference with her drug use, then, as a condition of such freedom, she must possess certain life-shaping capabilities—e.g., the capabilities of life, physical and mental health, bodily integrity, and practical reason. Once these capabilities are forfeited, her freedom is compromised. Her willingness to forfeit necessary capabilities—in this case, the capabilities of mental health and practical reason, and, arguably, the capability of physical health—exhibits her willingness to sacrifice her freedom. The drug addict faces a dilemma here. Either she values her freedom, in which case it would be irrational to choose to give up a condition of that freedom and resist any action meant to preserve it. Or she genuinely desires to forfeit a condition of her freedom, in which case her resistance to interference would be futile and ultimately ineffectual; in resisting action intended to preserve her freedom, she resigns herself to a diminished ability to shape her own life. Either way, it is reasonable to assume that she places a high value on life-shaping freedom. If her resistance is vigorous, it is likely because she desires the opportunity to shape her own life; if she welcomes attempts to secure her capabilities, it is likely because she desires the ability to shape her own life. Given this, (RC) justifies the state in coercively preventing the drug user from engaging in sustained drug use because we have good reason to believe that, if

rational, she would consent to actions intended to secure her freedom. Such interference, then, counts as ‘reasonable interference’.

I have shown how the principles accepted by the liberal as justifying weak paternalism also justify some cases of strong paternalism. Yet, other objections remain. One could follow Raz in arguing that coercion unjustifiably reduces one’s options, thereby reducing one’s freedom.²⁰ However, in the case of paternalistic capabilities-promotion, only one option is being taken away: the option to forfeit one’s life-shaping capabilities. The state’s commitment to securing freedom entails that it will refuse more often than not to permit people to sacrifice their life, or their physical and mental health, or their bodily integrity, or their ability to reason practically. Since it is already widely acknowledged that it is impossible that *every* possible option be available to citizens, the goal of the state with regard to citizens’ life-options ought to be securing the greatest number possible, including the option of taking advantage of their life-shaping opportunities. By paternalistically closing off the option to forfeit one’s capabilities, the state does exactly this; it insures that citizens will be able to capitalize on the widest possible range of options available to them. This is analogous to the reasoning behind Mill’s prohibition of voluntary enslavement.²¹ We want people to be free to live otherwise than they actually are. Enslavement obviates this possibility. Similarly, if one permanently forfeits her essential capabilities, she will be prohibited from ever choosing to live otherwise than she actually is, thereby minimizing her freedom. We need not compel people to *actually* live otherwise than they are, but we must enable them to do so *when they so choose*.

Raz also argues that state paternalism violates one’s independence, which he takes to be a constituent element of life-shaping freedom.²² But what if some paternalistic acts ac-

²⁰Cf. Raz 1986, p. 377.

²¹See Mill 2002, pp. 106–07.

²²Cf. Raz 1986, p. 378.

tually promote independence or secure greater independence? Indeed, as I argued above, the end of promoting citizens' capabilities is not less, but *greater* freedom to shape their own lives—i.e., greater independence. To be sure, coercive promotion of capabilities *temporarily* infringes on one's independence, but only because one is already lacking independence in some sense—i.e., his material or social circumstances diminish his independence, or he lacks the ability to make an informed and rational choice. In lacking combined capabilities, one lacks some measure of freedom, which means that one is not wholly independent. By paternalistically promoting capabilities, the state removes the existing obstacles to one's independence and insures greater long-term freedom. Hence, some instances of paternalism actually respect independence by securing its long-term availability.

Ultimately, the case for paternalistic development of capabilities rests on this point: the capabilities of life, health, bodily integrity, and practical reason are so crucial to the maintenance of life-shaping freedom that their forfeiture would resign a person to a life of diminished freedom. Thus, in some instances, compelling their maintenance is necessary to secure life-shaping freedom. But we must remember that such paternalistic measures are aimed at securing *capabilities*, not at requiring functioning. The objective of paternalistic capabilities development is not dictating how those capabilities should be exercised once secure. Once a person's essential capabilities are secure, she should be free to exercise them as she chooses (so long as she does not endanger others' freedom). However, to secure this freedom, the state must prevent her from permanently surrendering a condition of that freedom.

3. Some Remaining Problems

Although I have certainly left numerous pertinent questions unanswered, there are two difficulties I must acknowledge here. First, there remains a question as to when a person

would actually surrender an essential capability and thereby permanently forfeit one of the conditions of her freedom. For example, with regard to bodily integrity, how badly must one's body be damaged to forfeit his freedom? Does one forfeit his bodily integrity capability when he simply chops off his hand, or is the threshold much higher? Does one forfeit her capability of practical reason when she damages her memory through occasional substance abuse, or must she suffer severe mental or psychological trauma? My initial response is that 'surrendering an essential capability' is a matter of degrees, and that policy makers must articulate some acceptable threshold below which the forfeiture will be seen as permanently limiting one's freedom to an unacceptable degree. This is an issue that must be debated at much greater length than the scope of this essay permits. To inform this debate, we require a great deal of empirical evidence about the minimum threshold level of capabilities necessary for life-shaping freedom. Although some work has been done toward this end, this is not a body of literature I am prepared to deal with here.²³ Yet, I think the present discussion has aided in presenting a conceptual framework that illustrates that the liberal state must be committed to its citizens' capabilities if it is to secure its citizens' life-shaping freedom, and that it will be justified in paternalistically insuring they have a minimum degree of freedom, however that is defined.

A second challenge is how to respond to at least two problem cases: that of assisted suicide and that of self-sacrifice for a political, religious, or social cause. A full response to each of these difficulties would require much more space than I am able to devote here. But it is possible to at least briefly outline a capabilities-based response.

How, then, would a capabilities approach to freedom respond to a request for assisted suicide? The problem arises from the conjunction of two facts: first, assisted suicide is an action that results in the loss of essential life-shaping capabilities and thereby the forfeiture

²³A comprehensive bibliography of relevant literature can be found at the Human Development and Capability Association's website (<http://www.fas.harvard.edu/~freedom/index.cgi?pageBody=publications>).

of one's freedom; second, a request for assisted suicide is an apparently informed and rational request, and is thereby an exercise of one's freedom. Although I earlier argued that we ought to challenge a person's ability to rationally forfeit their freedom, the case of assisted suicide seems to escape this challenge. Unlike the instances we ought to challenge, where the person concerned expresses a desire to move from a state of potential freedom to a state of potentially irreversibly diminished freedom, a request for assisted suicide is often a request to escape a state of certain and irreversibly diminished freedom—e.g., that of a terminally debilitating disease—by way of suicide. In this latter case, if we have good reason to believe that the person is informed about the contours of her present situation—i.e., that her condition is irreversible, that her condition precludes her from even minimally shaping her own life—and if we have good reason to believe that her condition has not diminished her ability to make rational choices and that one of those choices is to escape her situation through suicide, then (IA) no longer justifies intervention here and the state has reason to grant her request.

Nor does (RC) justify intervention, for my earlier use of (RC) was to challenge the rationality of voluntarily sacrificing one's freedom. However, in the case of assisted suicide, the request is often a plausibly rational one given the circumstances. Given this, it meets the challenge; we need not determine whether the person would consent to the interference *if* informed and rational, for we believe that her request *is* both informed and rational. Thus, (RC) does not justify interfering with her decision to escape her state of diminished freedom *via* assisted suicide. This does not mean that the state ought to encourage assisted suicide in all cases of terminally debilitating diseases, nor does it mean the state must grant every request for assisted suicide. The state will be justified by (IA) and (RC) in intervening in those cases where the request is either uninformed or irrational or both. However, in those instances where the request fits a rough description of an informed and rational choice, the request ought to be granted.

The problem posed by the case of self-sacrifice arises from the same two facts as in the case of assisted suicide: first, self-sacrifice is likely to result in diminished capabilities and thereby diminished freedom; second, many cases of self-sacrifice appears to be the result of an informed and rational exercise of one's freedom. However, unlike assisted suicide, self-sacrifice is not necessarily an attempt to escape a state of certain and irreversibly diminished freedom (although it arguably could be in some cases). Some cases of self-sacrifice are like the cases we ought to challenge in that they appear to be transitions from some state of potential freedom to a state of potentially irreversibly diminished freedom. Thus, self-sacrifice appears to fall under the category of 'challengeable cases' of capabilities forfeiture. And, to be sure, those instances where we find the person to be either uninformed, irrational, or both will fall into this category. But, in many cases, we will find the martyr—i.e., the one who sacrifices himself—to be eminently informed and rational. As prominent examples, consider Martin Luther King, Jr., Nelson Mandela, or Mother Theresa. Each of these people made an informed and rational choice to sacrifice some measure of their own freedom for the sake of some cause in the hopes of increasing the freedom of others.²⁴ Thus, (IA) and (RC) do not justify state interference with their self-sacrifice.

There is one important difference between these examples and the aforementioned challengeable cases—namely, in the case of the martyr, the sacrifice is motivated by a desire to see others' freedom increased, whereas challengeable cases, such as substance abuse, only serve to diminish one's own freedom without potentially increasing the freedom of others. This difference raises the prospect of using a *cost-based justification* for

²⁴In the cases of King and Mandela, one could argue that self-sacrifice was a means to escape a state of potentially irreversibly diminished freedom. If this holds, then non-interference in their self-sacrifice would be justified in the same way as in the assisted suicide case. However, Mother Theresa's sacrifice was not an attempt to escape a state of potentially irreversibly diminished freedom; it was a transition much more like those of challengeable cases. Thus, what I have to say here applies to her case even if it does not apply to the cases of King and Mandela.

state paternalism with regard to capabilities promotion.²⁵

The central claim of a cost-based justification is this: if the cost of paternalism is more acceptable than the cost of permitting one's conduct, then it will be justified. In other words, if compelling a person to maintain certain capabilities enhances her freedom or the freedom of those around her to a greater degree than tolerating her behaviour, then coercion will be justified. It may be the case that, in certain instances, the state ought to refrain from using coercion to compel capabilities development. A cost-based justification provides a framework for helping determine when coercive paternalism is the best means to promote capabilities and when other means ought to be pursued. But for such a justification to work, it must be embedded in a larger theoretical context that defines concepts such as 'harm' and 'benefit'. The capabilities approach outlined above (Ch. IV) provides such a context, wherein 'harm' and 'benefit' are defined in terms of life-shaping freedom. If one's freedom is decreased by either restricting her opportunities or forfeiting her capabilities, she is harmed—her life goes worse for her. If one's freedom is increased by either increasing her range of opportunities or effectively developing her capabilities, she is benefited—her life goes better for her. When any harm caused by state paternalism is likely to outweigh any benefit it will confer upon a person, then coercive interference will be unjustified. But the converse will also be the case; if state paternalism is likely to benefit a person more than harm him, interference will be justified.

Applying this proposal to cases of self-sacrifice, the state will be justified in interfering with a person's self-sacrifice if such interference is likely to produce greater benefit than harm—that is, if such interference is likely to secure greater freedom for a greater

²⁵It seems paradoxical to consider the degree to which a state is justified in preventing a person from becoming a martyr, for martyrs often arise in response to repressive state action, such as King and Mandela. Indeed, by coercively interfering with a martyr, the state inevitably creates one. Yet, there remain instances of self-sacrifice, such as Mother Theresa, where state action does not create a martyr. Thus, for cases such as these, it continues to make sense to inquire after the degree to which a state is justified in preventing a person from sacrificing his freedom for the sake of some greater cause.

number of citizens than it is to diminish citizens' freedom. State interference will be unjustified if it is likely to produce greater harm than benefit. To make such a determination, we are required to weigh the extent that freedom is increased by the self-sacrifice as compared to the amount of freedom secured by interference with that sacrifice, which boils down to a determination of the effectiveness of the self-sacrifice in enhancing others' freedom. For example, Mother Theresa's self-sacrifice greatly enhanced the freedom of many of Calcutta's poorest residents without greatly reducing her own freedom. In so doing, her self-sacrifice produced much more good than harm. State interference with her life would almost certainly have produced greater harm than benefit; thus, such interference would be unjustified. Hence, to the extent that one's self-sacrifice achieves the end of enhancing people's life-shaping freedom—an ideal to which the state ought to be committed—the state will not be justified in paternalistically intervening with one's self-sacrifice. However, where one's self-sacrifice greatly reduces her own freedom without much increasing the freedom of others, we must treat it in the way that we treat other challengeable cases.

Although this response will seem intolerably utilitarian to some, it need not be. One reason this is so is that I have not defined 'harm' and 'benefit' in normal utilitarian terms like 'pleasure' or 'happiness' or 'desire-satisfaction'. Rather, I have proposed that we measure cost in terms of 'life-shaping freedom' where this means the possession of a minimal threshold of combined capabilities. Such a definition of 'cost' insures that a cost-based justification is ultimately about respecting people's freedom. In the case of self-sacrifice, a cost-based justification aims to respect one's freedom to sacrifice himself for the sake of increasing the freedom of others. Where this is not the case—where one's sacrifice is unlikely to increase others' freedom or is likely to reduce others' freedom—we respect his freedom by insuring that he does not forfeit his capabilities in vain.

CHAPTER VI

CONCLUSION

To summarize the overall argument: I began in Chapter II by showing that a viable account of liberal political neutrality must be given a neutral justification and that Larmore's is the best such attempt. I then rejected his account of neutrality as being in fact non-neutral due to the controversiality of his ground level claims—viz., the norms of rational dialogue and equal respect. From this, I concluded that attempts to show that a liberal political morality must be fundamentally neutral (in a procedural sense) have heretofore failed. Thus, a liberal state cannot remain neutral as a means to securing citizens' freedom. The next step (Ch. III) was to show that liberalism's commitment to securing citizens' freedom to shape their own lives entailed more than simply protecting their life-shaping opportunities from the threat of external interference. Such a commitment was shown to entail an additional obligation on behalf of the state to promote its citizens' life-shaping capabilities. This was accomplished by critically assessing the cases made by Mill and Rawls that citizens' life-shaping freedom is best secured if the state restricts itself to opportunity-protection and demonstrating that these cases support the state's duty to promote life-shaping capabilities. From here, it was necessary to outline a theoretical framework wherein we could understand the relationship between certain capabilities and life-shaping freedom, and the way in which the relation impacts the state's obligations to its citizens in securing their life-shaping freedom (Ch. IV). The approach taken was adapted from the capabilities approaches of Nussbaum and Sen and shown to provide a cogent picture of life-shaping freedom and the state's responsibility to promote life-shaping capabilities. The conclusion of this discussion was that state paternalism aimed at securing life-shaping capabilities was a justifiable means to preserving citizens' life-shaping freedom.

The discussion of the final chapter had two objectives: *first* to show that the state's

commitment to its citizens' life-shaping freedom does not ground a general presumption against strong state paternalism; and *second* to present a general case to show that paternalistic capabilities promotion can be justified as a means to increasing citizens' freedom. But this argument must not be confused with an argument for the legal enforcement of a particular moral vision—referred to above (Ch. IV, §1) as 'legal moralism'.¹ We can make a distinction between (1) state enforcement of a particular moral vision and (2) state promotion of a particular kind of life. In the former case, the state's political and legal institutions are designed to compel citizens to behave in accordance with a certain well-defined moral code, one that sets the boundaries on which acts can be considered morally permissible versus immoral behaviour. Examples of (1) are the enforcement of Sharia in Muslim countries or the enforcement of Catholicism throughout much of pre-Reformation Europe. In (2), state institutions are designed to promote a certain kind of life—in this case, a life that is shaped by one's beliefs about the good. A capabilities approach is not a comprehensive moral theory that prescribes how people ought to conduct their lives. Rather, it is an account of the conditions necessary for citizens to be able to form their own moral beliefs and live accordingly (so long as those lives do not prevent others from exercising the same freedom). To be sure, the value of such a life is derived from a moral ideal that confers value upon life-shaping freedom and the promotion of such freedom prohibits acts that unjustifiably restrict that freedom. But the promotion of life-shaping freedom will include the promotion of citizens' ability to form reasonable yet diverse conceptions of the good and live accordingly. A capabilities approach to freedom allows some people to exercise their freedom by following Muslim law, while others are free to follow Christian doctrine, or live without any comprehensive worldview at all.

Further, a capabilities approach does not define any particular act as intrinsically

¹Cf. Hart 1963.

moral or immoral. It simply determines as morally justifiable those acts that promote citizens' freedom, while those that detract from their freedom are considered unjustified. In some cases, a specific act—such as state coercion—will be considered immoral inasmuch as it restricts someone's freedom; in other cases, the same act will be considered moral to the extent that it actually promotes life-shaping freedom.

The failure to distinguish between legal moralism and paternalism is grounded on the assumption that if law is not designed to prevent one person from harming another—i.e., to protect life-shaping opportunities—then it must be designed to enforce positive morality—i.e., the set of moral principles actually shared by some social group.² But we could just as intelligibly say that the law is designed to prevent the unjustifiable restriction of life-shaping freedom rather than the immorality of any freedom-restricting act.³ This distinction is probably less clear than it ought to be, for any act that restricts one's life-shaping freedom is 'immoral' in the sense that the protection of such freedom is deemed to be morally preferable to its restriction. However, such a distinction can still make some sense. For example, if tax evasion restricts the freedom of others because it results in the state's inability to provide adequate educational or health care resources to its citizens, thereby restricting their development of life-shaping capabilities, then the law punishes the offender not because the act of tax evasion has been determined to be immoral *in itself* by some moral theory but because the act of tax evasion unduly restricts others' life-shaping freedom. Of course, the capabilities approach to freedom defines any act that restricts one's life-shaping freedom as immoral, but it does not specify which acts those are; it simply prohibits *any* act that does so.

To be certain, worries about perfectionism will continue to linger until it becomes eminently clear how the general principles articulated here apply to concrete cases. Ad-

²On 'positive morality', see Hart 1963, p. 20.

³Cf. Hart 1963, p. 34.

mittedly, this work needs to be done at some length, but such work is beyond the scope of this essay. Nonetheless, the work done here retains some value, for it has gone some way to show that liberal theorists' theoretical worries about paternalistic capabilities promotion can be alleviated. Once this obstacle has been overcome, we are free to view life-shaping freedom in terms of capabilities and thereby accept the perfectionist implications of our liberal commitments.

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Columbia/NYU Graduate Conference in Philosophy, New York, NY, USA (April 2006)
- ‘Liberty and Capability’
Graduate Student Colloquium, The Melbern G. Glasscock Center for Humanities Research, Texas A&M University, College Station, TX, USA (March 2006)
- ‘David Hume and Adam Smith on Nature, Imagination, and Narrative’
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