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## Human Flourishing and Universal Justice

### 1.0 Introduction

The question of human flourishing elicits an extraordinary variety of responses,<sup>34</sup> which suggests that there are not merely differences of opinion at work, but also different understandings of the question itself. So it may help to introduce some clarity into the question before starting work on one answer to it.

That human persons are flourishing means that their lives are good, or worthwhile, in the broadest sense. Thus, the concept of human flourishing, as I understand it, marks the most comprehensive, “all-in” assessment of the quality of human lives. This concept is broader than many other concepts that mark more specific such assessments – including those of pleasure, wellbeing, welfare, affluence, and virtue as well as those denoting various excellences and accomplishments. Understanding the conceptual relations in this way, one need not deny the substantive claim that the most comprehensive assessment of

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human lives is exhausted by one of the more specific assessments, that pleasure, say, is all there is to human flourishing. For this claim, that human flourishing is nothing more than pleasure (or virtue, or affluence, or any of the others), does not entail that the *concept* of human flourishing is no broader than the *concept* of pleasure. This latter conclusion would follow only if the contrary claim, that human flourishing is more than just pleasure, were self-contradictory, which, on my understanding of the concepts, it clearly is not.

Let me try to give some more structure to the concept of flourishing. A straightforward distinction, which goes back at least to Plato, is that between *components* of flourishing, good for their own sake, and *means* to flourishing, good for the sake of their effects.<sup>35</sup> Something (e.g. happiness, wisdom) is a component of flourishing if and only if it is constitutive of flourishing, part of what flourishing does or can consist in. Something (e.g. affluence, education) is a means to flourishing if and only if it tends to enhance the components of flourishing on balance. These two categories of what one might broadly call *contributors* to flourishing are not mutually exclusive: A component of flourishing may also be a means to other components.<sup>36</sup> It is evident that the first of these categories has a certain priority: we cannot determine whether something is a means to flourishing until we have a sense of what flourishing consists in.

What, then, constitutes human flourishing, a comprehensively good or worthwhile life for human persons? Even this narrower question still elicits an overwhelming diversity of responses. One obvious reason for this is that we have diverse substantive conceptions, which differ in what they single out as components of human flourishing and in how they weight and relate these components. As a first step toward clarifying these differences, one might distinguish between *personal* value, a life being good for the person living it, and *ethical* value, a life being worthy or ethically good in the broadest sense. There are surely features of human lives (e.g. friendship, knowledge, art, or love) that contribute to both its personal and its ethical value. But – though the ancients resisted this insight – it is manifest that the two measures weight even these features differently and also diverge strongly in regard to other features. Pains from chronic gout, for instance, detract from the personal but not from the ethical value of a life<sup>37</sup> – while, conversely, menial and solitary labors for good causes tend to contribute to its ethical but not to its personal value. Given such divergences, substantive conceptions of human flourishing differ in how they relate the overall quality of a human life to its personal and ethical value.

The two more specific notions are themselves complex. Thus, personal value is related to a person's *experiences*: to their being, for instance, enjoyable, intense, interesting, rich, and diverse. But personal value would also seem to be related to a person's *success* in the world. These two ideas easily come apart: persons may not know about some of their successes and failures; and, even when they do, their inner lives may be dulled by successes and much enriched by failures.

The notion of ethical value also suggests two main ideas. It is associated with the idea of good *character*, of a person having admirable aims and ambitions, virtuous maxims and dispositions, noble feelings and emotions. But it is also associated with ethical *achievement*, with the ethical significance of the person's conduct.<sup>38</sup> These two ideas, as well, come apart easily: how one's character manifests itself in the world is significantly affected by one's social starting position and talents as well as by circumstances and luck. And worthy achievements may well result from base motives.

Distinguishing these four dimensions – experience, success, character, and achievement – may give some structure to the concept of human flourishing. Within this structure, one can then ask further whether these dimensions are jointly exhaustive, how and how much each of them contributes to human flourishing, and what more specific components of flourishing should be distinguished within each of them: different ways in which experiences may be good and undertakings successful, different character traits and kinds of achievement. The complexities indicated by these questions are one major reason for the diversity of views about what constitutes human flourishing.

Another important reason is the multiplicity of perspectives on human flourishing, which make this notion appear to us in various ways. It makes a difference whether one poses the question of flourishing *from within*, in regard to one's own life, or *from without*, in reference to the lives of others. And it matters also whether the question is posed *prospectively*, with practical intent and in search of normative guidance for how to use one's power to shape one's own life and the lives of others, or *retrospectively*, in the spirit of mere evaluation.

The relevance of these distinctions can be appreciated by noting that the choice of perspective has a substantial bearing on (at least our perception of) the relative importance of the dimensions of human flourishing distinguished above. It seems appealing, for example, to give more weight to ethical (relative to personal) value when one reflects prospectively on one's own life than when one reflects prospectively on the life of one's child. We are more likely to approve of

someone who sees a large part of her child's future flourishing in this child's happiness than of someone who sees an equally large part of her own future flourishing in her own happiness.<sup>39</sup> Similarly, it seems appealing to give more weight to experience and character (relative to success and achievement) when we think about another's life prospectively (with practical intent) than when we assess it retrospectively. We may conclude in the end that these are perspectival distortions that should be explained away en route to a unified conception of human flourishing. But in order to reach any such adequate conception, we must first notice that human flourishing appears differently to us depending on the perspective we take.

The perspective in which we encounter the question of human flourishing also makes an important difference in another way. When one thinks prospectively (with practical intent) about the life of another person, a certain deference seems to be called for. It is widely agreed, nowadays, that the autonomy of adult persons ought to be respected and that the measure of a person's flourishing – the specification of its various dimensions, their relative weights, and their integration into *one* measure of the comprehensively good life – is then, to some extent, to be posited by this person herself. This is not just the trivial thought that, if one wants to make another person happy, one must give her what she enjoys and not what one would enjoy oneself. For this thought still assumes an underlying common currency – happiness or joy – in terms of which the personal value of *any* life can be assessed. To respect the autonomy of another means, however, to accept *her* measure of human flourishing. If she cares about knowledge rather than happiness, for example, then one should give her a good book for her birthday. This is likely to make her happy – both because the book will enhance her knowledge and also because one has chosen one's gift with care. Nevertheless, if one truly respects her autonomy, then one will give her the book not for the sake of her expected joy but for the sake of enriching her knowledge. One is respecting another's autonomy insofar as one takes her flourishing to consist in whatever *she* takes it to consist in.

This is certainly not tantamount to the introduction of autonomous living as a universal currency on a par with how the classical utilitarians conceived of happiness. To respect another as autonomous does not mean seeing him as someone whom one should try to goad toward free and deep reflections about his own life. It does not even mean accepting him as someone who has managed, through free and deep reflections, to develop his own measure of the value of his life. To the contrary: I respect someone's autonomy only insofar as I

accept *his* measure of his flourishing as well as *his* way of arriving at this measure – without demanding that he must have come to it on some path I approve as sufficiently reflective. This notion of autonomy is connected not to self-legislation, to the *giving* of directives to oneself, but, more simply and more literally, to *having* one's own directives: a purpose of one's own.

## 1.1 Social justice

The idea of human flourishing is central not only to our personal and ethical reflections about our own lives and the lives of those around us, but also to our political discourse about our social institutions and policies. Here it is, in particular, our idea of justice that affords yet another perspective on the question of human flourishing. In its ordinary meaning, the word “justice” is associated with the morally appropriate and, in particular, equitable treatment of persons and groups. Its currently most prominent use is in the moral assessment of social institutions, understood not as organized collective agents such as the US government or the World Bank, but rather as a social system's practices or “rules of the game,” which govern interactions among individual and collective agents as well as their access to material resources. Such social institutions define and regulate property, the division of labor, sexual and kinship relations, as well as political and economic competition, for example, and also govern how collective projects are adopted and executed, how conflicts are settled, and how social institutions themselves are created, revised, interpreted, and enforced. The totality of the more fundamental and pervasive institutions of a social system has been called its institutional order or basic structure (Rawls).<sup>40</sup> Prominent within our political discourse is, then, the goal of formulating and justifying a criterion of justice, which assesses the degree to which the institutions of a social system are treating the persons and groups they affect in a morally appropriate and, in particular, even-handed way.<sup>41</sup> Such a criterion of justice presupposes a measure of human flourishing, and one specially designed for the task of evaluating how social institutions treat the persons they affect. This task differs significantly from other tasks for which a measure of human flourishing is likewise needed, and its solution may therefore require a distinct conception of human flourishing.

When we think of how social institutions treat persons, we generally have in mind the persons living under those institutions, the persons to whom these institutions apply. But this focus on present

participants may be too narrow in two respects. First, social institutions may have a significant impact on present non-participants. The political and economic institutions of the US, for example – through their impact on foreign investment, trade flows, world market prices, interest rates, and the distribution of military power – greatly affect the lives of many persons who are neither citizens nor residents of this country. We should allow, then, that the justice of an institutional order may in part depend on its treatment of outsiders. Second, social institutions may also affect the flourishing of past and future persons – through their impact on pollution, resource depletion, and the development of religions, ways of life, and the arts, for example.

Here it may be objected that social institutions cannot possibly affect the flourishing of past persons in any way. Already Aristotle showed, however, that this thought is at least disputable.<sup>42</sup> To dispute it, one might argue as follows. It is relevant to a person's flourishing whether her confidence in her successes and ethical achievements is mistaken. This is so when her confidence concerns the present (the love she ascribes to her husband or the knowledge she ascribes to herself are not real) and also when it concerns the future (she wrongly believes that her invention will lead to great future benefits). But it seems arbitrary to hold that the – to her, in any case, unknown – true impact of her life is relevant to her flourishing only up to the time of her death. A person's flourishing may therefore depend in part on the long-term success and ethical achievement of her life. It may thus be in a person's interest that her last will be followed, that her creative productions remain available, or that her projects be continued by others. And social institutions can then arguably be unjust by avoidably causing the non-realization of such interests.<sup>43</sup>

In thinking about the justice of social institutions, we should not, then – as is so often done – ignore, or exclude in advance, the interests of past and future persons or those of present non-participants. Recognizing these interests does not preclude us from acknowledging the special status of present participants, who generally are more significantly affected by social institutions and also, by continuing and supporting them, tend to bear a greater moral responsibility for their shape.

It makes no sense to try to assess the justice of social institutions one by one. Doing so, we would detect various supposed injustices that turn out to be illusory when examined in a broader context. Compulsory male military service, for instance, is not unjust so long as men are not disadvantaged overall in comparison to women. Doing so, we would also be likely to overlook comparisons and reforms that

involve discrepancies in regard to several institutions: even if each of our social institutions is perfectly just so long as all the others are held constant, it may still be possible to render them more just by redesigning several of them together.<sup>44</sup>

Assessing the social institutions of each country together as one scheme is, in the modern world, only a partial solution to this challenge. For both the formation and the effects of such national basic structures are heavily influenced by foreign and supranational social institutions. This is especially evident in the case of politically and economically weaker countries, where the feasibility and effectiveness of national institutions (meant to secure, perhaps, the rule of law, or access to adequate nutrition for all) depend on the structure of the international order and also on that of the national institutions of more powerful states. We need, then, a holistic understanding of how the living conditions of persons are shaped through the interplay of various institutional regimes, which influence one another and intermingle in their effects.

These interdependencies are of great significance – and are nonetheless frequently overlooked by moral philosophers, social scientists, politicians, and the educated public. We tend to assess a country's domestic institutional order, and also the policies of its rulers, by reference to how they treat its citizens, thereby overlooking their often quite considerable effects upon foreigners. Similarly, we tend to overlook the effects of the global institutional order, which may greatly affect national basic structures and their effects on individuals.

These institutional interconnections – an important aspect of so-called globalization – render obsolete the idea that countries can peacefully agree to disagree about justice, each committing itself to a conception of justice appropriate to its history, culture, population size and density, natural environment, geopolitical context, and stage of development. In the contemporary world, human lives are profoundly affected by non-domestic social institutions – by global rules of governance, trade, and diplomacy, for instance. About such global institutions, at least, we cannot agree to disagree, as they can at any time be structured in only one way. If it is to be possible to justify them to persons in all parts of the world and also to reach agreement on how they should be adjusted and reformed in light of new experience or changed circumstances, then we must aspire to a *single, universal* criterion of justice which all persons and peoples can accept as the basis for moral judgments about the global order and about other social institutions with substantial international causal effects.

Both moral and pragmatic reasons demand that we should try to formulate this universal criterion of justice so that it can gain universal acceptance. This desideratum suggests that respect of autonomy should be extended beyond persons to include societies and cultures as well. While a shared criterion of justice will of course impose important constraints, it should also be compatible with a significant diversity of national institutional schemes and ways of life. Here, again, the wider, more literal sense of “autonomy”: *having* one’s own way of life, is appropriate rather than the narrower one: *choosing* one’s own way of life. What matters is that a society’s institutional order and way of life be endorsed by those to whom they apply – they need not be endorsed in a way others find sufficiently reflective. The shared criterion of justice we seek should not, then, hold that cultures have an autonomy worthy of respect only insofar as they sustain supra-cultural reflection, discourse, and choice in matters of human flourishing.<sup>45</sup> In fact, it must not make this demand, if it is to be widely acceptable worldwide and thus immune to the complaint that it manifests an attempt to impose Western Enlightenment values upon other cultures.

## 1.2 Paternalism

Respect of autonomy was first mentioned above in the context of relating to an adult whose ideas about flourishing differ from our own. Rather than promote his good as we see it, we should often promote his good as he defines it for himself (while sometimes perhaps also engaging him in a discussion of this subject). It is tempting to advocate a like deference in the domain of justice, defining each person’s flourishing as whatever this person takes it to be. Such a nonpaternalistic strategy fails, however, in this domain, and that for at least two separate reasons.

First, since there is not one set of social institutions that best meets the values and aspirations of all persons affected, and since persons always differ in how they define flourishing for themselves, we must, in deciding between two institutional alternatives, compare the relative gains and losses in flourishing of different persons or groups. Such comparisons evidently presuppose a common measure. If we are not to go beyond how the relevant persons themselves define a good life for themselves, then this common measure can only be the *degree* to which particular social institutions meet the disparate values and

aspirations of the persons affected by them. Such a measure can indeed be constructed for simple cases where persons have divergent preference rankings over outcomes.<sup>46</sup>

But the conceptions persons have of their own flourishing are not simple preference orderings over states of the world. They involve deeper issues, which block any straightforward conversion of preferences and facts into a numerical value on a one-dimensional flourishing scale. One such deep issue concerns the question whether what matters is the fulfillment or the satisfaction of aspirations and desires,<sup>47</sup> where *fulfillment* is the actual realization of a person's desire in the world, while *satisfaction* is her belief that her desire is so realized.<sup>48</sup> Here one might respond that a nonpaternalistic strategy should go with each person's own desires regarding fulfillment versus satisfaction – that is, we should go by where she herself would place the outcomes *fulfilled but not satisfied* (she is loved but believes that she is not) and *satisfied but not fulfilled* (she believes falsely that she is loved) between *fulfilled and satisfied* (she correctly believes that she is loved) and *neither fulfilled nor satisfied* (she correctly believes that she is not loved). But this amendment runs into awesome complications. Is there, for each desire of every person, a fact of the matter regarding the relative weight this person would attach to the fulfillment versus the satisfaction of that desire? How can such relative weights be ascertained in an objective way? And how feasible is a social-justice calculus whose operation requires that such fulfillment-versus-satisfaction weights be ascertained for every desire of every person?

Another deep issue concerns how we should deal with a person's desires about desires – for instance, with her desires concerning her own desires. A person may desire active enjoyment over passive contemplation, yet regret this desire – and then again wish she did not have this regret. Such tensions across levels are commonplace when persons seek to define a good life for themselves. And it is not clear how, when there are such tensions, the degree to which a particular institutional order meets a person's values and aspirations is to be measured. Should we go with her first-order desires,<sup>49</sup> with the first-order desires she would prefer to have, with the first-order desires the person she desires to be would prefer to have, or what?

A second reason against the nonpaternalistic strategy is that social institutions shape not merely the environment and the options of the persons living under them – but also their values and aspirations, which cannot then provide an impartial standpoint from which alternative institutional schemes could be compared. We can have no determinate idea of how human persons define a good life for

themselves apart from information about the social conditions under which they grew up. In response to this difficulty, one might propose that social institutions ought to meet the values and aspirations of existing persons and/or the values and aspirations that persons raised under those same institutions would develop.<sup>50</sup> But these proposals by themselves cannot deliver an adequate criterion of justice. Otherwise a highly oppressive institutional order would be rendered just by the fact that the oppressed are raised so as to accept their abysmal status, and a dictatorship by the fact that those living under it are brain-washed into adoring the leader.

The failure of the nonpaternalistic strategy to deliver a determinate criterion of justice should not be surprising. It reflects our predicament. We will unavoidably bequeath a social world to those who come after us – a social world into which they will be born without choice and one that will ineluctably shape their values and their sense of justice in terms of which they will then assess the social world we left them with. Facing up to this daunting responsibility requires that we develop, within our conception of the justice of social institutions, a substantive conception of human flourishing.

Shaping social institutions with such a conception in mind inevitably involves a dose of paternalism, which can, however, be made more palatable by honoring the following four desiderata:

- 1 The sought universal criterion of justice ought to work with a thin conception of human flourishing, which might be formulated largely in terms of unspecific means to, rather than components of, human flourishing. Though disagreements about what human flourishing consists in may prove intractable, it may well be possible to bypass them by agreeing that nutrition, clothing, shelter, certain basic freedoms, as well as social interaction, education, and participation are important means to it, which just social institutions must secure for all. Such a thin conception would express some respect of the autonomy of diverse cultures, favoring social institutions acceptable to persons from different (religious, social, ethnic, etc.) backgrounds representing a wide range of diverse more specific conceptions of human flourishing.
- 2 The sought universal criterion ought to be modest. Rather than define justice as the highest attainable point on an open-ended scale, it should define justice as a solid threshold compatible with an international diversity of institutional schemes that are merely required to treat the persons affected by them in a minimally decent and equitable way.

- 3 The requirements of the universal criterion should not be understood as exhaustive. They should, for instance, leave the various societies free to impose their own more demanding criteria of justice upon their own national institutions and even to judge foreign or global institutions by the lights of such more ambitious criteria.<sup>51</sup>
- 4 The supplementary considerations introduced by such more ambitious criteria of justice must not, however, undermine the universality of the modest criterion and therefore must not be allowed to outweigh the latter in situations of conflict or competition (e.g. over scarce resources). The requirements of the universal criterion should therefore be understood as preeminent within any more ambitious national criterion.

Taking all four desiderata together, the envisioned universal criterion should be able to function as a *core* in a dual sense – as the core in which a plurality of more specific conceptions of human flourishing and of more ambitious criteria of justice can overlap (thinness and modesty); and as the core of each of these criteria, containing all and only its most important elements (preeminence without exhaustiveness).<sup>52</sup> The task is, then, to formulate a criterion of basic justice that is morally plausible and internationally widely acceptable as the universal core of all criteria of justice.

### 1.3 Justice in first approximation

On the basis of the reflections introduced thus far, our task has taken on the following form: we are seeking a widely acceptable core criterion of basic justice that assesses social institutions by how they treat persons. Such a criterion presupposes interpersonal comparability,<sup>53</sup> but it should also respect the autonomy of the various persons and cultures. This suggests formulating the sought criterion in terms of certain basic goods, broadly and abstractly conceived – in particular, in terms of the extent to which the persons affected by an institutional order have the goods they need to develop and realize a conception of a personally and ethically worthwhile life. In the last few decades many theorists have indeed developed criteria of justice along these lines. Those following this general approach must answer three questions in order to specify an operational criterion of justice.

*Question 1* How should these basic goods be defined? Here one might work with something like Rawls's social primary goods or Dworkin's

resources adding perhaps freedom from pain as a further component, as Scanlon suggests.<sup>54</sup> An important alternative to this answer is Sen's account of capabilities.<sup>55</sup> Insofar as the quest is for a modest criterion of basic justice, one that marks only a solid threshold, the demand for basic goods should be severely limited, in four respects: (a) Only really essential goods, ones that are truly needed for developing or realizing a conception of a worthwhile life, should be placed on the list of basic goods. (b) The demand for the basic goods listed should be limited both quantitatively and qualitatively to what I call a *minimally adequate* share. Food and freedom of association are necessary for a worthwhile life, but we need these only in limited amounts and can get by entirely without delicacies and without meetings at certain times or places. (c) Persons truly need *access to* the basic goods, rather than these goods themselves. It is no intolerable flaw in a social order that some persons living under it choose to fast for long periods, to participate in boxing matches, to live as hermits cut off from human interaction, or even to obtain help in committing suicide – provided they could gain the basic goods they are renouncing without thereby incurring a serious lack in other basic goods. (d) Basic goods should also be limited *probabilistically*. Social institutions cannot be so designed that everyone affected by them has absolutely secure access to all goods that he needs. US society, for example, cannot be so structured that your physical integrity is guaranteed 100 percent. It cannot be completely ruled out that some punks or even police officers will attack you without provocation. Even when this can, or even does, happen, we should nonetheless say that you have here secure access to the basic good of physical integrity so long as the probability of such an attack does not exceed certain limits. What sounds paradoxical is nevertheless plausible: it is possible that your physical integrity but not that of your African-American colleague is sufficiently well protected in the US even though only you do in fact suffer an assault during your lifetime.

When social institutions work so that each person affected by them has secure access – understood always as reasonably rather than absolutely secure access – to minimally adequate shares of all basic goods then they are, according to my proposed core criterion of basic justice, fully just. But a criterion of justice should also facilitate comparisons of institutional schemes that are not fully just. We therefore need answers to two further questions that have to do with aggregation.

*Question 2* How should the chosen basic goods be integrated into *one* measure of a person's standard of living? How should relevant

shortfalls – in nutrition, freedom of movement and liberty of conscience, say – be weighted vis-à-vis one another so that it can be ascertained how far any affected person or group falls below the minimum standard of living required by our core criterion of basic justice? Here one might ascribe a standard of living, 1, to all affected persons who reach the threshold in regard to all basic goods and then ascribe lower numbers  $0 \leq x < 1$  to all those who fall below the threshold with regard to one or more basic goods.<sup>56</sup> My use of the new expression “standard of living” is not merely meant to flag that we are dealing here with a thin core notion of human flourishing which, to be appropriate to the global plane and in contrast to the thicker notions that particular countries or groups might employ, is severely limited in the four ways (a)–(d) described above. It is especially also meant to flag the further point that the construction of a standard of living, and of a criterion of justice more generally, is also a pragmatic task. The constructed standard should be a good proxy for the appropriately thin core notion of human flourishing, of course, but it should also, when used within a public criterion of justice, promote human flourishing so conceived through its compelling unity, clarity, simplicity, and easy applicability. It is such pragmatic reasons that justify constructing the international standard of living as a numerical measure with a threshold. And one can therefore support this standard even if one does not believe that human flourishing itself is either discontinuous (so that gains and losses above some threshold are much less significant than gains and losses below it) or quantifiable.

*Question 3* How should the measurements of the standard of living of the various affected persons (or groups) be integrated into *one* overall measure for the justice of social institutions? Here one might work with the arithmetic or geometric mean, for example, or else choose sum-ranking, maximin, or some indicator of inequality as an interpersonal aggregation function.<sup>57</sup> One might also want to give differential weights to persons depending on whether they are insiders or outsiders, and living in the past, present, or future.

## 1.4 Essential refinements

Before thinking further about these questions, we must take account of another complication which has been neglected in recent writings about justice. It is relevant for assessing the justice of social institutions

*how* such institutions affect the flourishing of individuals. Let me introduce the point through a quick example. Imagine a hypothetical scenario in which every year some 10,000 US residents (27 per day) are killed by the police. US residents would then, on average, face an approximately 0.25 percent probability of dying through police violence.<sup>58</sup> If this were really the case, we would surely want to dispute that the physical integrity of US residents is here secure. We would want to say that the social institutions of the US are unjust in this regard and ought to be reformed toward reducing the number of police killings. This might be done through better police training, for instance, or through more effective and more severe punishments of unjustified police violence.

Persons are actually killed in motor vehicle accidents in the US at a rate that is over four times higher than the imaginary rate in the preceding story: over 43,000 in 1995, 1996, and 1997, or about 119 per day.<sup>59</sup> At this rate, the average US resident has a better than 1 percent chance of dying in a motor vehicle accident.<sup>60</sup> In this case, too, institutional reforms might bring relief. One might allow only cars with a built-in maximum speed of 50 miles per hour, for example. Or one might greatly increase punishments for drunk driving, which plays a role in some 38 percent of the fatalities in question.<sup>61</sup>

The juxtaposition of these two cases makes evident that we assign very different moral weights to different institutional influences on our risk of premature death. We view a significant and avoidable risk of premature death through police violence as a much greater injury to the justice of a society than an otherwise equal, or even a considerably greater risk of premature death through traffic accidents – and we do this even on the assumption that all other things (such as citizens' acceptance of these risks, possibility and social cost of reducing them) are equal in the two cases.

If we did not think in this way, if we assigned equal moral weight to such different kinds of institutionally reducible risks of premature death, then we would have strong reason to support the death penalty for the most dangerous drunk drivers. An institutional “reform” that causes some 100 of the worst offenders to be executed in the US each year – roughly doubling the current number of executions – would presumably have a very considerable deterrent effect, thus resulting in a significant reduction in the incidence of drunk driving. If it could reduce the total number of alcohol-related traffic fatalities by merely 5 percent (ca. 860 deaths annually), then some 760 fewer persons would die prematurely each year and all US residents would face a lower risk of premature death.<sup>62</sup>

If we want to avoid embracing this proposal as an easy and obvious step toward a more just society, then we need to make moral distinctions. We must not assess social institutions from the perspective of rational prospective participants, as modern hypothetical-contract theories have been doing starting with Rawls. For such prospective participants would prudently favor the imagined execution scheme over the status quo, so long as it really does entail an overall reduction in citizens' risk of premature death. This is so, because they are conceived as ranking feasible institutional arrangements solely in terms of the quality of life they could expect under each and thus as not caring *how* one institutional order produces a higher expected quality of life than another.

The dubious implications of consequentialist and hypothetical-contract theories are due to the fact that they assess social institutions *solely* on the basis of the quality of life they afford to their prospective participants. To avoid such implications, we must distinguish different ways in which social institutions affect the lives of individuals and then incorporate this distinction into our criteria of justice, including the universal core criterion sketched in section III. This core criterion must not define basic-good shortfalls simply as institutionally avoidable shortfalls from secure access to minimally adequate shares of basic goods, but must also take into account how social institutions relate to such shortfalls.<sup>63</sup>

Let me illustrate this thought by tentatively distinguishing six basic ways in which social institutions may relate to human flourishing. Because of our specific focus here, I formulate this sixfold distinction in terms of institutionally avoidable basic-good shortfalls – without assuming, however, that the universal core criterion we seek ought to be sensitive to shortfalls of all six kinds (classes 5 and 6, in particular, may well fall outside the core). For illustration, I use six different scenarios in which, owing to the arrangement of social institutions, a certain group of innocent persons is avoidably deprived of some vital nutrients V – the vitamins contained in fresh fruit, say, which are essential to good health. The six scenarios are arranged in order of their injustice, according to my preliminary intuitive judgment. In scenario 1, the shortfall is *officially mandated*, paradigmatically by the law: legal restrictions bar certain persons from buying foodstuffs containing V. In scenario 2, the shortfall results from *legally authorized* conduct of private subjects: sellers of foodstuffs containing V lawfully refuse to sell to certain persons. In scenario 3, social institutions *foreseeably and avoidably engender* (but do not specifically require or authorize) the shortfall through the conduct they stimulate: certain

persons, suffering severe poverty within an ill-conceived economic order, cannot afford to buy foodstuffs containing V. In scenario 4, the shortfall arises from private conduct that is *legally prohibited but barely deterred*: sellers of foodstuffs containing V illegally refuse to sell to certain persons, but enforcement is lax and penalties are mild. In scenario 5, the shortfall arises from social institutions *avoidably leaving unmitigated the effects of a natural defect*: certain persons are unable to metabolize V owing to a treatable genetic defect, but they avoidably lack access to the treatment that would correct their handicap. In scenario 6, finally, the shortfall arises from social institutions *avoidably leaving unmitigated the effects of a self-caused defect*: certain persons are unable to metabolize V owing to a treatable self-caused disease – brought on, perhaps, by their maintaining a long-term smoking habit in full knowledge of the medical dangers associated therewith – and avoidably lack access to the treatment that would correct their ailment.

This differentiation of six ways in which social institutions may be related to human flourishing is preliminary in that it fails to isolate the morally significant factors that account for the descending moral significance of the shortfalls in question. Since trying to do this here would lead us too far afield, let me just venture the hypothesis that what matters is not merely the *causal* role of social institutions, how they figure in a complete causal explanation of the shortfall in question, but also (what one might call) the implicit *attitude* of social institutions to the shortfall in question.<sup>64</sup> Thus a high incidence of domestic violence (a shortfall in women's secure access to physical integrity) may show a society's legal order to be unjust if it could be substantially reduced through more vigorous enforcement of, and more severe punishments under, existing laws. But the same abuse of the same women would indicate an even greater injustice if it were not illegal at all – if spouses were legally free to beat each other or, worse, if men were legally authorized to beat the women in their households.

My preliminary classification is surely still too simple. In some cases one will have to take account of other, perhaps underlying causes; and one may also need to recognize interdependencies among causal influences and fluid transitions between the classes.<sup>65</sup> It is to be hoped that the formulation of a universal core criterion of basic justice, which is to be internationally acceptable, can bypass most of these complications by focusing narrowly on the morally most important institutionally avoidable basic-good shortfalls. In any case, I bypass these complications here, merely emphasizing once more the decisive point missed by the usual theories of justice: to be morally plausible,

a criterion of justice must take account of the particular relation between social institutions and human flourishing. In the special case of a core criterion of basic justice, this relation may affect whether some institutionally avoidable basic-good shortfall counts as a basic-good deficit (a core injustice<sup>66</sup>) at all and, if so, how morally significant this deficit is (how great a core injustice it indicates).<sup>67</sup>

We have now seen, at least in outline, that a morally plausible criterion of justice must consider institutionally avoidable basic-good shortfalls not merely in regard to their magnitude and frequency, but also in regard to how social institutions are related to them. The identification of this new weighting dimension suggests the question whether there might be additional weighting dimensions that the usual theories of justice have overlooked. I believe there are two such, which I can only mention here. One further weighting dimension concerns the social costs that would arise from the institutional avoidance of a morally significant basic-good shortfall. Whether and how urgently justice demands reforms toward reducing the traffic-related risk of premature death may depend on the cost of such reforms. In order to save the lives of 2,000 pedestrians annually, would we merely have to lower the speed limit within residential areas from 30 to 25 miles per hour or would we have to invest billions into construction of tunnels and overpasses? To avoid 20,000 cases of child abuse annually, would we merely need to modify the training of schoolteachers or would we have to spy on millions of private homes with video equipment? Such questions are surely relevant to deciding whether given basic-good shortfalls are unjust at all and, if so, how much they detract from the overall justice of the relevant social institutions.

A third and final plausible weighting dimension concerns the distribution of basic-good shortfalls. Many of the usual theories of justice are, of course, distribution sensitive through their aggregation function (using maximin, the geometric mean, or some measure of inequality in this role). But these theories also tend to accept what economists call the anonymity condition. On the face of it, this condition looks harmless enough: it requires merely that permutations of persons over social positions should make no difference to judgments of justice. Thus, the injustice of certain basic-good deficits is exactly the same regardless of who is suffering these shortfalls. This requirement seems to express the very essence of justice. Surely, one wants to say, our moral assessment of an institutionally avoidable hardship ought not to be affected by whether this hardship is suffered by me or by you, by someone like us or unlike us, by someone we like, dislike, or don't even know – every person matters equally. But the anonymity condition

becomes problematic in reference to certain groups. It may indeed not matter whether a particular hardship is suffered by a man or a woman, by a white or a black, by a Mormon or a Jew – but what if women or blacks or Jews are greatly overrepresented among those suffering the hardship? Is this still to be considered morally irrelevant, as the anonymity condition requires?<sup>68</sup> It would seem that a morally plausible criterion would have to take account of some such correlations. Whether such a correlation is unjust and, if so, how unjust it is, may well depend on how large a role social factors play in its genesis and on how salient the disadvantaged group is. For illustration, consider severe and avoidable poverty suffered by a certain fraction of a population. The injustice indicated by this poverty would not be much affected by the fact that some non-salient group (e.g. those with blood-type B) is, owing to statistically inferior genetic endowments, overrepresented among the very poor. The injustice might be seen as greater, if women (a salient group) were overrepresented owing to statistically inferior genetic endowments. And it would be seen as greater still, if women were overrepresented among the very poor owing to sexist cultural practices under which they do most of the housework and have fewer educational opportunities.<sup>69</sup>

In this section I have, at least in broad outlines, displayed the general structure of a morally plausible criterion of justice – and, in particular, the various parameters in regard to which alternative specifications of such a criterion would differ from one another. This structure is unfortunately rather complicated. The criteria of justice currently on offer tend to be simpler. Rawls's perspective of the original position ignores the first and third new dimensions entirely and the second for the most part, because the parties are conceived as interested solely in the quality of life of prospective citizens, irrespective of the institutional mechanisms that may condition such quality of life.<sup>70</sup> As I could here show only generally and in outline, these simpler theories of justice imply various demands that are either morally dubious or unable to cope with the actual complexities of contemporary social systems.<sup>71</sup>

## 1.5 Human rights

A complex and internationally acceptable core criterion of basic justice might best be formulated, I believe, in the language of human rights, at least if we are prepared to understand it in a special way. We should conceive human rights primarily as claims on coercive

social institutions and secondarily as claims against those who uphold such institutions. Such an *institutional* understanding contrasts with an *interactional* one, which presents human rights as placing the treatment of human beings under certain constraints that do not presuppose the existence of social institutions.

The institutional understanding I have in mind diverges from a familiar one that conceives a human right to X as a kind of meta-right: a moral right to an effective legal right to X. So understood, human rights require their own juridification. Each society's government and citizens ought to ensure that all human rights are incorporated into its fundamental legal texts and are, within its jurisdiction, observed and enforced through an effective judicial system.<sup>72</sup>

This familiar institutional understanding leads to demands that are, in my view, both too strong and too weak. They are too strong, because a society may be so situated and organized that its members enjoy secure access to X, even without a legal right thereto. Having corresponding legal rights in addition is good, to be sure, but not so important that this additional demand would need to be incorporated into the concept of a human right. One's human right to adequate nutrition, say, should count as fulfilled when one has secure access to adequate nutrition, even when such access is not legally guaranteed. A human right requires its own juridification only when it is empirically true – as it may be for some civil and political rights – that secure access to its object presupposes the inclusion of a corresponding legal right in the law or constitution.

The demands entailed by this familiar institutional understanding are also too weak, because legal and even constitutional rights, however conscientiously enforced, often do not suffice to ensure secure access. Here I am not merely thinking of showcase constitutions that list many important rights but are widely ignored in governmental practice. It is likely that the proponents of the familiar institutional understanding would not rest content with such “rights” either. I am mainly thinking of cases where, though legal rights are effectively enforced, poor and uneducated persons are nonetheless incapable of insisting on their rights, because they do not know what their legal rights are or lack the knowledge or minimal economic independence necessary to pursue the enforcement of their rights through the proper legal channels. Even if there exists in India a legal path that would allow domestic servants to defend themselves against abuse by their employers, their human right to freedom from inhuman and degrading treatment (*UDHR*, Article 5) nonetheless remains unfulfilled for most of them.

In contrast to the ways in which human rights are currently understood, I thus propose to explain this concept as follows: the postulate of a human right to X is tantamount to the demand that, insofar as reasonably possible, any coercive social institutions be so designed that all human beings affected by them have secure access to X.<sup>73</sup> A human right is a moral claim *on* any coercive social institutions imposed upon oneself and therefore a moral claim *against* anyone involved in their imposition.

With this explication, one can clear away from the start the suspicion, common among communitarians and in communal cultures (e.g. in Southeast Asia), that human rights promote individualism or even egoism, and lead persons to view themselves as Westerners – as atomized, autonomous, secular, and self-interested individuals ready to insist on their rights no matter what the cost may be to others or the society at large.<sup>74</sup> This critique has some plausibility when human rights are understood as demanding their own juridification. But it has much less force when, as I propose, we avoid any conceptual connection of human rights with legal rights. We are then open to the idea that, in different economic and cultural contexts, secure access to the objects of human rights may be established in diverse ways.

Those hostile to a legal-rights culture can, and often do, share this norm: that any coercive institutional order must, insofar as reasonably possible, afford all those whose freedom it restricts secure access to certain basic goods. Even if we feel strongly that, in our own culture, human rights ought to be realized through matching individual legal rights, we should allow that human rights can be realized in other ways, that secure access to their objects is what really matters. This agreement can then be juridified in *international* law, committing states and cultures to designing all national and international social institutions so as to afford all those whom they constrain secure access to the objects of their human rights. There is no good reason to insist that such secure access must be maintained in the same way everywhere on earth.

Two things must be said to soften this point. First, it is clear that legal rights can be, and often are, an effective means for realizing human rights. Such legal rights need not, however, have the same content as the human right they help realize. Depending on the context, the best way of realizing a human right to minimally adequate nutrition may not be legal rights to food when needed, but rather some other legal mechanisms that keep land ownership widely dispersed, ban usury or speculative hoarding of basic staples, or provide childcare, education, retraining subsidies, unemployment benefits, or

start-up loans. And non-legal practices – such as a culture of solidarity among friends, relatives, neighbors, compatriots – may also play an important role.

Second, it is at least theoretically possible to include certain legal rights in the object of a human right. An example would be a human right to constitutionally protected freedom of religion. I worry, however, that the inclusion of such demands would render the resulting conception of human rights too demanding for its intended role as a core criterion of basic justice. A society whose citizens know that their enjoyment of religious liberty is secure – perhaps because religious tolerance is an unquestioned way of life in that society – does not deserve the charge that it fails to realize human rights merely because there is no legal statute that explicitly guarantees freedom of religion.

The concept of human rights is especially well suited to take account of the necessary differentiations according to how social institutions relate to basic-good shortfalls. Such differentiations are already being made in regard to some constitutional rights. The German constitution, for instance, postulates: “Everyone shall have the right to life and to inviolability of his person.”<sup>75</sup> According to the developed judicial understanding of this right, it is not the case that every avoidable death constitutes a violation of this right to life – let alone an exactly equally serious violation. Death during a violent police interrogation would certainly count as a serious violation of the basic right in question. Death due to unofficial violence condoned by state officials would count as a less serious violation. And a death that could have been prevented by expensive medical treatment that the patient was unable and the state unwilling to pay for would not count as a violation of the right to life at all. The concept of human rights I am proposing involves similar differentiations – though with the difference that human rights are not addressed to a government and its agents, but to the institutional structure of a society (or other comprehensive social system). Human rights are not supposed to regulate what government officials must do or refrain from doing, but are to govern how all of us together ought to design the basic rules of our common life. This suggests the probabilistic *ex-ante* perspective sketched above: a valid complaint against our social institutions can be presented by all those whose physical integrity is not sufficiently secure, not by all those who happen to suffer an assault. This is why it makes more sense, on my institutional understanding, to speak of non-fulfillment or underfulfillment rather than violation of human rights. A human right to life and physical integrity is fulfilled for specific persons if and only if their security against certain threats does not

fall below certain thresholds. These thresholds will vary for different human rights and for different sources of threats to one human right; and they will also be related to the social cost of reducing the various threats and to the distribution of these threats over various salient segments of the population. These differentiations have to be incorporated into the specification of human rights.

### 1.6 Specification of human rights and responsibilities for their realization

The proposed path toward the formulation of an internationally acceptable core criterion of basic justice is now open to view. We start from the personal and ethical value of human life – not to ascertain wherein this value lies, but to determine the social context and means that persons normally need, according to some broad range of plausible conceptions of what human flourishing consists in, to lead a minimally worthwhile life. This goal expresses respect of human autonomy, especially insofar as the criterion we seek is to be based on very weak assumptions about the components of ethical value. The main assumption here is merely existential: it is a historically and geographically universal fact that almost all human persons feel a deep need for an ethical world view by reference to which they can judge whether their own life, and also the lives of others they may care about, is good – not merely for themselves, personally, but also in a larger sense, ethically.

Beyond this, one can perhaps make one further general statement: in today's highly interdependent and closely interconnected world there exists in every culture an insuppressible plurality of ethical world views and of opinions about the objectivity and universality of such world views as well as about the relative importance of ethical as against personal quality of life. Even a modest criterion of basic justice should therefore demand that social institutions be designed so that the persons affected by them can develop, deepen, and realize an ethical world view of their own. The essential presuppositions for this capacity can be presented under two headings. First, liberty of conscience, the freedom to develop and to live in accordance with one's own ethical world view so long as this is possible without excessive costs for others. This freedom must include various other liberties, such as freedom of access to informational media (such as books and broadcasts) and the freedom to associate with persons holding similar or different ethical views. And second, political participation: the

freedom to take part in structuring and directing any comprehensive social systems to which one belongs. This includes the freedom publicly to express ethical criticisms of political institutions and decisions, freedom of assembly, and freedom to participate on equal terms in the competition for political offices and in the struggle over political decisions.

Other, more elementary basic goods are important for both the ethical and the personal value of human life. Among these are physical integrity, subsistence supplies (of food and drink, clothing, shelter, and basic health care), freedom of movement and action, as well as basic education, and economic participation. All of these basic goods should be recognized as the objects of human rights – but only up to certain quantitative, qualitative, and probabilistic limits: what human beings truly need is secure access to a minimally adequate share of all of these goods.

It is well known that many human beings today lack secure access to minimally adequate shares of these goods, that the realization of human rights has been only very partially achieved. This poses the question of how responsibility for the underfulfillment of human rights can be ascribed to particular social institutions, and thereby also to particular persons involved in designing and upholding these institutions. This question involves special difficulties in this era of global interdependence when social institutions influence one another and their effects intermingle. It is convenient for us citizens of wealthy countries, and therefore common, to ignore such interdependencies – to explain the severe underfulfillment of human rights in so many countries by reference to local factors domestic to the country in which it occurs. This *explanatory nationalism*, further discussed in later chapters,<sup>76</sup> diverts attention from the question of how we ourselves might be involved, causally and morally, in this sad phenomenon.

If we did pay attention to this question, we would better understand how global institutional factors play an important role in the reproduction of human misery and how plausible reforms of such factors could greatly advance the realization of human rights.<sup>77</sup> Such an understanding would lead us to take the underfulfillment of human rights abroad more seriously – provided we accept that persons involved in upholding coercive social institutions have a shared moral responsibility to ensure that these institutions satisfy at least the universal core criterion of basic justice by fulfilling, insofar as reasonably possible, the human rights of the persons whose conduct they regulate. If a particular underfulfillment of human rights – hunger in Brazil, say – comes about through the interplay of global and national factors

and could be remedied through global as well as through national institutional reforms, then the responsibility for this underfulfillment lies with both institutional schemes and therefore also with both groups of persons: with all those involved in upholding the global or the Brazilian basic structure.

Those who have such a responsibility should either discontinue their involvement – often not a realistic option – or else compensate for it by working for the reform of institutions or for the protection of their victims. The word “compensate” is meant to indicate that how much one should be willing to contribute toward reforming unjust institutions and toward mitigating the harms they cause depends on how much one is contributing to, and benefiting from, their maintenance. Obviously, these matters deserve a far more elaborate treatment than I can give them here.<sup>78</sup>

## 1.7 Conclusion

This essay is about what measure of, or proxy for, human flourishing is needed for purposes of assessing the justice of social institutions and what role this measure should play within such assessments. We have seen that measures of human flourishing differ in specificity. An internationally acceptable core criterion of basic justice requires a measure of low specificity. In this role a conception of human rights is far more suitable than all the theoretical constructs currently discussed by academics – or so I have argued. Such a conception is, on the one hand, substantial enough to support a severe and constructive critique of the status quo. And it also respects, on the other hand, the autonomy of the diverse cultures of this world – provided we are prepared to accept the institutional understanding I have sketched. A conception of human rights demands then that all social institutions be designed so that all human beings, insofar as reasonably possible, have secure access to the objects of their human rights.

Acceptance of such a universal core criterion of basic justice does not preclude particular societies from subjecting their national institutions to a stronger criterion of justice that involves a more specific measure of human flourishing. Such a national measure might, for instance, ascribe to citizens additional basic needs, such as: to have certain legal (constitutional) rights, not to be too severely disadvantaged through social inequalities, to be adequately compensated for genetic handicaps and bad luck, or to receive a subsidy for the discharge of important religious duties.<sup>79</sup> But such additional basic needs

would everywhere be understood as secondary to the universal human needs recognized by the globally shared conception of human rights. The preeminent requirement on all coercive institutional schemes is that they afford each human being secure access to minimally adequate shares of basic freedoms and participation, of food, drink, clothing, shelter, education, and health care. Achieving the formulation, global acceptance, and realization of this requirement is the preeminent moral task of our age.