

# Anarchy and Legal Order

LAW AND POLITICS FOR A STATELESS SOCIETY

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**CAMBRIDGE**  
UNIVERSITY PRESS

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# Introduction

## *Embodying Freedom*

People cooperate peacefully and voluntarily when they interact without aggression.<sup>1</sup> A just society, a society rooted in peaceful, voluntary cooperation, is both possible and desirable.<sup>2</sup> Because the state precludes and preempts this kind of cooperation, aggressing or threatening to engage in aggression against those who disobey it, a peaceful, voluntary society must be a stateless society—an anarchist society.<sup>3</sup> The

- <sup>1</sup> By “aggression,” I mean, roughly, nondefensive, non-remedial harm to people’s bodies and nondefensive, nonremedial interference with their just possessory interests; see [Chapter 2, \*infra\*](#). “Peace” as nonaggression is a necessary condition for peace in other, more elaborate senses, and it can reasonably be expected to promote peace in these senses.
- <sup>2</sup> Events and states of affairs are not proper subjects for moral evaluation, which is concerned with *choice*. Moral choices are made by particular people, even if in concert and cooperation with others. Thus, while it is possible to talk about a “just legal system” or even a “just society,” this kind of language is shorthand. A just *institution* is one that characteristically functions in accordance with reasonable choices by particular people. Similarly, to call a legal *rule* just is simply to say that someone can enforce the rule consistently without doing anything unjust.
- <sup>3</sup> I take a state to be, in roughly Weberian terms, an entity that claims, and exercises something reasonably like, a monopoly over the determination, adjudication, and enforcement of legal rights in a given geographic area. Thanks to Charles Johnson for emphasizing the importance of referring to legal rights here and to Heather Ferguson for stressing the need to clarify the meaning of “state” as I use it in this book. In the interests of convenience, I refer at various points to states as doing things; in reality, of course, states as such don’t do things—rather, particular people, engaged in certain kinds of cooperative activities and proceeding with the benefit of certain kinds of legitimation, do things in their roles as state actors, and it should be clear throughout I have the actions of such people in mind when I talk about state action.

By “anarchy,” I do not, of course, mean *chaotic violence* but rather *social order rooted in peaceful, voluntary cooperation, and so without the state*. Cf. Patricia Crone, *Ninth-Century Muslim Anarchists*, 167 PAST & PRESENT 3, 3 (2000) (referring to “anarchists in the simple sense of believers in an-anarchy, ‘no government’.”). While my primary focus here is on opposition to social order created and maintained by aggressive force, support for anarchy is naturally and intimately associated with opposition to social hierarchies maintained by nonaggressive means (see Charles W. Johnson, *Liberty, Equality, Solidarity: Toward a Dialectical Anarchism*, in ANARCHISM/MINARCHISM: IS A GOVERNMENT PART OF A FREE COUNTRY? 155, 179–83 [Roderick T. Long and Tibor Machan eds., 2008]); as I argue in [Chapter 6](#), ending institutionalized aggression and various complementary varieties of nonaggressive

general character of the kind of legal and political order compatible with anarchy can be specified and justified in light of a plausible conception of what it means for people to live fulfilled, flourishing lives.

Contemporary natural law theory offers such a conception. It incorporates both a rich and variegated understanding of human well-being and a set of principles that can guide our attempts to foster our own welfare and that of others—the Principle of Fairness, the Principle of Respect, and the Principle of Recognition (Chapter 1). People’s obligations to each other with respect to physical things are both sources of conflict and (while too frequently invoked to legitimize unjust privilege) useful guarantors of autonomy and sources of flourishing; just possessory claims serve to demarcate those interests people can reasonably defend using force from those they can’t—and, properly understood, they help to explain why the state is illegitimate. Rooted both in basic moral principles and in a set of desiderata derived from these principles and from truisms about human existence, these obligations, embodied in what I call the *baseline possessory rules*, can play a crucial instrumental role in fostering people’s welfare. However, while there are good reasons to respect people’s possessory interests in physical things, people often claim that they are entitled to treat other kinds of things as possessions. Though people often claim that other people or other sentients are among their legitimate possessions, arguments that our fellow sentients, human or nonhuman, are raw material we can use at our discretion are unconvincing. And the notion that someone can justifiably control how other people embody abstract ideas in their own legitimate possessions finds little support in a credible account of people’s just possessory claims. The strong prima facie presumption in favor of respecting people’s claims to their justly acquired physical possessions—those acquired in accordance with the baseline rules<sup>4</sup>—combined with everyone’s right not to be the object of purposeful, instrumental, or otherwise unreasonable physical attack, can be usefully summarized in the form of a maxim of *nonaggression* (Chapter 2).<sup>5</sup>

protest can reasonably be expected to lead to significant reductions in the frequency and influence of such hierarchies.

<sup>4</sup> On just acquisition, see Chapter 2.IV, *infra*. To anticipate: just acquisition is acquisition in accordance with the baseline rules. Someone justly acquires a physical object if she takes effective possession of it when it is not justly claimed by anyone else, or when she receives it through voluntary transfer from another just possessor.

<sup>5</sup> The natural-law approach to moral theory I take here combines something resembling an Aristotelian account of personal flourishing, a Kantian account of duties with respect to basic aspects of others’ well-being, and a Humean account of obligations with respect to others’ possessory claims. The understanding of the prohibition on violence against basic aspects of flourishing which the natural-law approach grounds is thus straightforwardly deontological, similar to that enshrined in the Formula of the End-in-Itself. By contrast, the account of possessory rules I defend has (as applied to institutional actors) obvious affinities with a sort of practice-consequentialism; while I do not believe that global or aggregating consequentialism is defensible, persons reasoning in accordance with the Principle of

To reject aggression is to embrace a model of social interaction rooted in peaceful, voluntary cooperation. This kind of cooperation can occur without the state; it can be fostered effectively by a variety of nonaggressive social institutions, including, in particular, institutions upholding consensual legal rules, resolving disputes, and providing protection against aggression, which I'll refer to as *legal regimes*.<sup>6</sup> Unlike these institutions, the state is premised on the denial of human moral equality and is inimical to peaceful, voluntary cooperation (and the flourishing such cooperation facilitates) because of the state's nonconsensual character and its inefficiency, destructiveness, rapacity, and penchant for aggression—especially in the service of elite groups (Chapter 3).

The state is unjustified, illegitimate, and dangerous. But life without the state need not be thought of as organized purely on the basis of ad hoc cooperation or persistent social norms. There would be good reason for people in a stateless society to maintain just legal regimes. Such regimes (which might serve geographically localized or virtual and widely distributed networks of people) would of necessity be rooted in actual rather than implied or hypothetical consent; and even when they employed force against outlaws, they would be morally distinguishable from states in important ways (Chapter 4).

Though different actual legal regimes in a stateless society would doubtless adopt different rules, the maxim of nonaggression and the prohibitions on violating people's bodies and on interference with their possessory claims that underlie it provide a clear and intelligible framework for the legal rules it would be reasonable for just institutions in a stateless society to implement. A central role in maintaining justice and preventing aggression should be played by simple tort-law rules precluding attacks on bodies and possessions and requiring compensation for injuries when such attacks occur. Such rules would leave no room for attempts to foster virtue using the force of law or to employ the law to prevent or end nonaggressive injuries—often important, but appropriately addressed by non-forcible means. Just legal rules enforced in a stateless society would not feature the separate category of *crime*, which is essentially statist. A stateless society could deal effectively not only with direct interpersonal injuries but also with environmentally mediated injuries to

Fairness would surely take expected consequences into account when determining what it was and was not reasonable for them to do, and the general tendency of the baseline rules to foster certain kinds of consequences would (I believe) tend to make it reasonable for people to endorse them and to render it unreasonable for people to decline to so. Given the importance of simplicity and reliability, among other values, legal regimes would have every reason to treat the baseline rules as if they were deontological requirements, and ordinary moral actors would have good reason to treat them as generally exceptionless.

<sup>6</sup> I'll refer throughout to those who voluntarily agree to accept the authority of a legal regime as *participants* in the regime. For a model of how legal regimes in a stateless society might be structured, see Peter T. Leeson, *Government, Clubs, and Constitutions*, 80 J. ECON. BEHAV. & ORG. 301 (2011).

bodies and to possessions and with harms to human persons with limited capacities as well as to sentient nonhuman animals (Chapter 5).<sup>7</sup>

The maxim of nonaggression rules out purposeful, instrumental, or unfair injuries to bodies and interference with just possessory interests even in pursuit of desirable objectives,<sup>8</sup> requiring compensation for both intentional and unintentional injuries. But legal rules and institutions precluding aggression could make possible a range of effective responses to the problems of dispossession, deprivation, subordination, and exclusion. Just institutions in a stateless society could engage in and foster multiple forms of wealth redistribution, for instance, employing both legal mechanisms and various nonaggressive means not dependent on the force of law. And a combination of structural change and nonaggressive direct action could help to humanize workplaces, to liberate people from stultifying social pressure, and to create opportunities for the embodiment of diverse forms of human flourishing in ways that would help to nourish a culture of freedom (Chapter 6).<sup>9</sup>

<sup>7</sup> I think it may plausibly be maintained that some nonhuman animals, even on our own planet, qualify as genuinely *personal* creatures (the obvious candidates would be cetaceans, primates, and elephants). But I seek to argue at more than one point that sentient creatures that are not fully personal may still deserve moral standing and legal protection. See GARY VARNER, *PERSONHOOD, ETHICS, AND ANIMAL COGNITION: SITUATING ANIMALS IN HARE'S TWO LEVEL UTILITARIANISM* (2012).

<sup>8</sup> I interfere unreasonably with your just possessory interests when I damage your justly acquired possessions or limit your control over those possessions, except when doing so is (in light of the various interpersonal and systemic considerations noted in Chapter 2) consistent with the Principle of Fairness (since the Principle determines in what sense possessory interests are just).

<sup>9</sup> *Freedom* is, of course, a complex and open-textured concept, even when the vexed (though profoundly important) question of free will in the metaphysical sense is bracketed. In general, freedom in the sense(s) in which I am concerned with it here is the ability to do what one wants. (Metaphysical freedom builds on a similar sense of subjection to another, with the difference that the other is God or Nature.)

More specifically, (i) I take someone to enjoy what I will call *freedom from aggression* when she is not prevented from doing what she wants to do by someone else's actual or threatened aggression. (At least under ordinary circumstance, the bandit who points a gun at you and demands, "Your money or your life!" is violating your freedom in this sense.) (This sort of freedom is often called *political freedom*, but I avoid labeling it that way here because the realm of the political as I refer to it in this book has to do with more than just the use of force—it's also concerned with voluntary collective action, and efforts designed to shape and influence the behavior of institutions.)

(ii) Someone enjoys *social freedom* when she is not only free from aggression but also not (a) presented with an attempt to motivate her that focuses primarily on an appeal to the would-be motivator's position or status rather than to the inherent value of the action in which she is being urged to engage or (b) faced with a dilemma of the following sort: if she does what she wants, someone else will do something nonaggressive but inconsistent with the principles of practical reasonableness as I elaborate them in Chapter 1. (The boss who threatens to fire you if you fail to adhere to an arbitrary, humiliating work rule by which she would be unwilling to live herself is violating your social freedom.)

Freedom from aggression and social freedom both involve the absence of constraints imposed on one's choices by other people's choices—of subjection to other people's *wills*. We might also consider broader senses of freedom that involve the absence of limits on one's ability to do what one likes posed by (iii) *resources* (I am not currently free to buy an island), (iv) *culture* (someone in a traditional society



The project of building a society free from the privileges secured by the state may initially seem difficult to classify. It embraces freedom and challenges the hierarchical management of the economy, while also rejecting capitalism. It exhibits obvious affinities with classical liberal and libertarian thought, but unequivocally repudiates the affirmation of corporate power and statist privilege too many classical liberals and libertarians seem inclined to offer. It shares modern liberalism's challenge to non-statist forms of subordination and exclusion while declining the modern liberal's Mephistophelean invitation to use the state to provide remedies for them. It is a leftist, anticapitalist project appropriately seen as an expression of the strand of the socialist tradition developed by a range of nineteenth-century American radicals (Chapter 7).

There is nothing inherently contradictory about the idea of using law to structure a stateless society. Rooted in the requirements of practical reasonableness, just legal rules enforced by a network of overlapping, consensual legal regimes could foster peaceful, voluntary cooperation by restraining aggression, rectifying injury, and coordinating people's actions where necessary, even while allowing considerable room for variety in lifestyles and patterns of interaction. They could deal effectively with the problems of exclusion, deprivation, subordination, and dispossession, and in this way lay the groundwork for the emergence of a culture of freedom (Conclusion).

In one sense, the shape of freedom—of peaceful, voluntary cooperation—will be given by the basic rules and norms that structure interaction in a stateless society. But the shape of freedom *as lived* is not, cannot be, determined by a mandate issued by statist bureaucrats or revolutionary ideologues. The contours of life in a stateless society will be the product of innumerable free choices by people engaged in peaceful, voluntary cooperation. Such a society need not and will not be a society of isolated atoms: people do not need the state to equip them to form thriving networks of mutual support and interdependence. Absent the state's threat of aggressive force,

might confront inhibitions that prevent her from marrying outside her social class, ethnic group, or religious community), (v) *emotions* (a victim of childhood violence may in a practical sense lack the freedom to trust, even though she very much wants to do so), or (vi) the laws of *nature* (I am not free to fly without mechanical assistance or to vary my height at will). (vii) Finally, one might say that someone enjoys *moral freedom* in a case in which there is no conflict between her preferences and the requirements of practical reasonableness.

A society rooted in peaceful, voluntary cooperation is one in which people consistently and predictably enjoy freedom from aggression. Its institutions could reasonably be expected (*see* Chapter 6, *infra*) to facilitate the achievement of social freedom as well as, in varying degrees, resource freedom, freedom from cultural constraints, and emotional freedom. I leave it to transhumanists to consider the degree to which it might foster freedom from the laws of nature. Moral freedom is not, per se, a matter for decision or influence, given that moral requirements are not products of our wills and that our preferences are not legitimately subject to authoritarian meddling.

On the varieties of freedom, *see, e.g.*, MORTIMER J. ADLER, *THE IDEA OF FREEDOM* (2 vols., 1958–61); DAVID SCHMIDTZ & JASON BRENNAN, *A BRIEF HISTORY OF LIBERTY* (2010).

people will be free to be, not atomic, but (as Sheldon Richman suggests we say) *molecular*,<sup>10</sup> linked with each other in innumerable arrays of fruitful relationships. Together, on an ongoing basis, they will form and *reform* their own lives and *inform* the choices of others through their voluntary interactions. Together, they will determine the shape of freedom.

<sup>10</sup> For this phrase, see Sheldon Richman, *Molecular Individualism*, THE FREEMAN: IDEAS ON LIBERTY, March 1, 1998, <http://www.thefreemanonline.org/columns/perspective/perspective-molecular-individualism/>. Since Richman refers specifically to molecular *individualism*, it is worth emphasizing that individualism comes in multiple varieties: political, methodological, moral, and metaphysical, among others. *Political individualism* is the thesis that force should not be used to prevent, end, or sanction nonaggressive conduct. *Methodological individualism* is the thesis that ultimate explanations of human events refer to the characteristics and actions of particular persons. *Moral individualism* is the thesis that only particular creatures have moral worth. *Metaphysical individualism* is the thesis that persons (and other creatures) are importantly distinguishable from each other and from their relationships with each other. It is important to emphasize that in *none* of these senses is individualism incompatible with the recognition that (i) we have robust moral responsibilities, *positive* as well as negative, to others; (ii) relationships help to determine who we are; (iii) relationships both constitute and contribute to our flourishing; and (iv) institutions significantly affect our self-understandings, our perceptions, our choices, and the possibilities we confront. Cf. MURRAY N. ROTHBARD, MAN, ECONOMY, AND STATE WITH POWER AND MARKET 3 n.6 (2d scholar's ed., 2009) (acknowledging "that [agents] are influenced in their desires and actions by the acts of other individuals" and refusing to make the assumption that they "are 'atoms' isolated from one another").

## Laying Foundations

### I. A REASONABLE CONCEPTION OF THE GOOD LIFE WILL INVOLVE AN UNDERSTANDING OF BOTH WELFARE AND RIGHT ACTION

A credible account of human flourishing and reasonable human action can ground the law and politics of a society rooted in peaceful, voluntary cooperation. The elaboration and justification of such an account is not the purpose of this book; what I offer here is a brief overview rather than the extensive argument that would be required in a study focused on the explication of the normative approach I adopt.<sup>1</sup> In brief: a satisfactory understanding of the good life will, I maintain, feature a

<sup>1</sup> The general approach to moral reasoning I defend here is outlined and applied in GARY CHARTIER, *ECONOMIC JUSTICE AND NATURAL LAW* (2009), though I have refined and in some ways altered here the position elaborated in that book. In both books, I draw freely on, and with equal freedom depart from, the stimulating and helpful work of the “new classical natural law” theorists and other contemporary exponents of natural law ethics; see, e.g., JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (1980) [*hereinafter* FINNIS, *LAW*]; JOHN FINNIS, *FUNDAMENTALS OF ETHICS* (1983) [*hereinafter* FINNIS, *ETHICS*]; John Finnis, *Commensuration and Practical Reason*, in *INCOMMENSURABILITY, INCOMPARABILITY, AND PRACTICAL REASON* 215, 225–28 (Ruth Chang ed., 1997) [*hereinafter* Finnis, *Commensuration*]; 1 GERMAIN GRISEZ, *THE WAY OF THE LORD JESUS: CHRISTIAN MORAL PRINCIPLES* (1983) [*hereinafter* GRISEZ, *PRINCIPLES*]; GERMAIN GRISEZ & RUSSELL SHAW, *BEYOND THE NEW MORALITY: THE RESPONSIBILITIES OF FREEDOM* (3rd ed., 1988); JOHN M. FINNIS, JOSEPH M. BOYLE, JR. & GERMAIN G. GRISEZ, *NUCLEAR DETERRENCE, MORALITY, AND REALISM* (1987) [*hereinafter* FINNIS ET AL., *DETERRENCE*]; 2 GERMAIN G. GRISEZ, *THE WAY OF THE LORD JESUS: LIVING A CHRISTIAN LIFE* (1994); JOHN FINNIS, *AQUINAS: MORAL, POLITICAL, AND LEGAL THEORY* (1998) [*hereinafter* FINNIS, *AQUINAS*]; GERMAIN GRISEZ & JOSEPH M. BOYLE, JR., *LIFE AND DEATH WITH LIBERTY AND JUSTICE: A CONTRIBUTION TO THE EUTHANASIA DEBATE* (1979); ROBERT P. GEORGE, *IN DEFENSE OF NATURAL LAW* (2001); Germain Grisez, Joseph M. Boyle & John Finnis, *Practical Principles, Moral Truth, and Ultimate Ends*, 32 *AM. J. JURIS* 99 (1987); John M. Finnis, Germain G. Grisez & Joseph M. Boyle, “Direct’ and ‘Indirect’: A Reply to Critics of Our Action Theory”, 65 *THOMIST* 1 (2001); MARK C. MURPHY, *NATURAL LAW AND PRACTICAL RATIONALITY* (2001) [*hereinafter* MURPHY, *RATIONALITY*]; MARK C. MURPHY, *NATURAL LAW IN JURISPRUDENCE AND POLITICS* (2006); TIMOTHY CHAPPELL, *UNDERSTANDING HUMAN GOODS: A THEORY OF ETHICS* (1995). While my work, like the work of these theorists, clearly lies within the broader natural law tradition, it should be clear that it differs from that of other natural law theorists in a variety of ways.

*substantive* and *pluriform* conception of well-being (Part II) and a set of constraints governing the flourishing of moral agents and moral patients (Part III).<sup>2</sup> A credible conception of welfare—featuring a diverse array of basic aspects of well-being—and of what reason requires with respect to our own flourishing and our attempts to help others flourish (including acknowledging the reality of the varied dimensions of welfare, acting fairly, and declining to cause harm purposefully or instrumentally) can ground a rich and attractive conception of the good life (Part IV).<sup>3</sup>

## II. WELFARE IS MULTIDIMENSIONAL

### A. Well-Being Is Diverse and Lacks a Substantive Essence

Talk about welfare, well-being, flourishing, or fulfillment (I use the terms synonymously) is generic and abstract.<sup>4</sup> Saying that something is an aspect of welfare is just a way of saying that one has a reason to experience it or engage in it or embody it, or to help another do so.<sup>5</sup> In other words, there's no substantive *essence* of what it is for something to be an aspect of welfare other than this.

People often talk as if there were such an essence. Two common approaches to specifying it are unsatisfactory: (i) the notion that something is an instance or aspect of welfare if it counts as the satisfaction of a *preference* (Section B), and (ii) the idea that something is an instance or aspect of welfare if it produces some hedonic psychic state (Section C). Rather, welfare is a multidimensional reality without a substantive essence that can be identified using a range of complementary approaches (Section D). Its aspects are incommensurable and non-fungible (Section E). And well-being *matters* in any particular case precisely because it is the well-being of a

<sup>2</sup> For present purposes, I count as a moral *agent* if I am capable of making morally responsible choices; I count as a moral *patient* if I am owed moral consideration.

<sup>3</sup> See CHARTIER, *supra* note 1, at 6–23 for a further discussion of the approach to moral theory represented here and further references to sources of insight on which I draw here. Though there are not dramatic differences, there are some, and of course the present account, rather than its predecessor, represents the current state of my thinking about the contours of an appealing moral stance.

<sup>4</sup> Cf. THOMAS M. SCANLON, WHAT WE OWE TO EACH OTHER 95–100 (1998).

<sup>5</sup> We *participate* or *engage in* friendships; we *experience* aesthetic form and sensory pleasure; we *are* alive; we *acquire and embody* practical reasonableness and knowledge. While we can reasonably talk about friendship, aesthetic experience, sensory pleasure knowledge, life, and practical reasonableness, among others, as aspects or dimensions of welfare or well-being, some are activities; some are relationships; some are experiences; some are qualities of our existence. It's awkward to talk about all of them, viewed as a class. In this book, I've decided to avoid talking about *participating* in the various aspects of well-being (except when, as in the case of friendship, participation-language has an obvious and non-confusing meaning), because, while it need not be read as doing so, it too easily suggests that aspects of well-being are preexisting impersonal realities. I use a variety of alternatives (talk about *flourishing* will be especially common) in hopes of emphasizing that particular relationships, experiences, activities, and states of being are worthwhile goals.

particular moral patient (Section F). In brief, welfare or well-being or flourishing or fulfillment is what it is, independent (at least in general) of our reactions to it,<sup>6</sup> and it is inescapably diverse (Section G).

### B. Welfare Is Not Preference-Satisfaction

The notion of welfare (like the similar notions of well-being, flourishing, and fulfillment) is essentially *normative*.<sup>7</sup> By contrast, talk about preferences is straightforwardly *descriptive*. To report a preference is simply to note a particular attitude or disposition on someone's part. For any preference, it will always be reasonable to ask whether it ought to be satisfied; the question of what action it is reasonable for me to take in light of the preference always remains open. To the factual report, "I prefer X," it will always make sense to respond, "But is it *reasonable* for you to prefer X?" The only basis on which it would make sense to equate welfare with preference would be a synthetic judgment to the effect that I *ought* (at least presumptively) to prefer what I prefer (not in the sense that I ought to ratify some particular preference, but that I should prefer things simply because I do in fact prefer them). And there are too many instances of things which people do prefer but which we ordinarily suppose that they have good reason *not* to prefer for this to be an attractive option.

In any event, the equation of preference with welfare misses the point that, when I do prefer something, I ordinarily prefer it under some description other than the description "preferred by me." My preference typically presupposes the judgment that what I am preferring is actually *worth* preferring—good for me or for another. It might seem that this isn't always the case: sometimes I select one option from among a menu of possibilities simply because I experience some sort of psychic inclination to do so. And there is a sense in which acting on my preference in this case needs no further justification than that I prefer what I prefer. But notice that, even here, not just anything is on the menu of possibilities. The fact that something is treated as reasonably included on the menu suggests that it's already been vetted as reasonable, as worth preferring; it's easy to imagine a case in which I express a preference for myself or another that might seem (or be) unintelligible or undesirable, and so in need of justification. Justifying something *simply* by saying that I prefer it only makes sense in the limit-case in which I'm choosing it from among a set of possibilities any

<sup>6</sup> Peace of mind, aesthetic experience, and sensory pleasure might all be thought to be exceptions here.

<sup>7</sup> This is not true, of course, in the specialized discourse of welfare economics, which is concerned precisely with determining how best to satisfy preferences. My goal here is not to correct economists in their use of language; my focus is on welfare in what I take to be the ordinary-language sense. Thanks to Sandy Thatcher for emphasizing the need to make this point.

of which might merit being selected. Preferring ordinarily presupposes preferability, so preference-satisfaction can't reasonably substitute for preferability.

### C. Welfare Is Not a Pleasant Emotional Reaction

#### 1. *It Is a Mistake to Identify Well-Being with a Positive Emotional State*

Well-being isn't the same thing as some sort of positive emotional reaction. For a mental state to qualify as an emotion, it must be associated with a cognition (Subsection 2). Thus, it makes no sense, at least ordinarily, to perform an action *for the purpose of* experiencing a particular emotion (Subsection 3). There is certainly no reason to think of well-being itself as a subjective, emotional state (Subsection 4). Well-being is neither dependent on nor constituted by one's emotional states (Subsection 5).<sup>8</sup>

#### 2. *Emotions Necessarily Involve Cognitions*

It's important to recognize that pleasant psychic states come in (at least) two varieties: sensations and emotions. A *sensation* carries no particular cognitive content; it is what it is, and we characteristically seek (or avoid) sensations just because of their phenomenal qualities—just, that is, because of how they *feel* in a narrow sense. An emotion, by contrast, is a sensation allied with a *cognition*—that is, with a *thought* about value or meaning or appropriate response. When I experience an emotion, I'm experiencing a sensation that serves as a signal either pointing to or prompted by a judgment about what might be an appropriate response to a given situation. Judgments about appropriateness—inherently normative judgments—are inextricable from emotions.

There's a complex relationship between the sensation and the cognition that make up an emotion. The sensation characteristically serves as a *signal* that encapsulates or points to the cognition.<sup>9</sup> In some cases, a logically prior *judgment* about a situation triggers a conscious sensation. In others, the sensation is triggered unconsciously, without any intervening thought, but then goes on to prompt the relevant sort of thought. In either kind of case, the emotion embodies useful information about the significance of our circumstances. Emotions provide us with compressed insight into those circumstances, insight that may sometimes reflect our awareness of factors we haven't allowed into consciousness. In addition, they tell us about

<sup>8</sup> For an extended discussion of the relevant issues, see FINNIS, *ETHICS*, *supra* note 1, at 26–55.

<sup>9</sup> Cf. ANTONIO DAMASIO, *DESCARTES' ERROR: EMOTION, REASON, AND THE HUMAN BRAIN* (1994) (discussing the notion of emotions as "somatic markers" efficiently encapsulating relevant information).

ourselves, about what—quite apart from our beliefs about how we *ought* to react—we *actually* prize and fear.

But although emotions do embody information related not only to ourselves but also to our circumstances, it's important to see that any information about our circumstances conveyed in an emotion hasn't necessarily been weighed and scrutinized critically. It is often helpful to take seriously the signals about our surroundings embedded in an emotion, but careful, critical reflection is still often in order to determine whether the assessment the emotion conveys is accurate.

### 3. *Experiencing an Emotion Is Not Ordinarily the Goal of a Reasonable Action*

Although an emotion is a source of information (however accurate) about oneself and one's surroundings, the fact that doing something will enable one to experience a particular emotion is not ordinarily a credible reason to do it. One ordinarily has perfectly good reasons to do things which one knows will, in fact, evoke positive emotions: one knows, say, that one will experience emotional satisfaction in the course of going home for the holidays. But one's reason for going isn't the emotional satisfaction, but rather the activities, relationships, and experiences that one expects to give rise to the satisfaction.

It's important to seek good information about oneself and one's surroundings, and such information may be accessible by means of an emotion. However, an emotion involves a cognition, characteristically the judgment (not necessarily fully conscious) that a given object or event merits a particular sort of physical or mental reaction. Such a judgment is either appropriate or inappropriate, and its fittingness cannot ordinarily be the direct object of an action.

If I understand what an emotion is, I cannot reasonably seek to experience a different emotion in response to a particular situation without also making a different associated judgment about the situation. And I cannot make a different judgment unless my understanding either of the relevant facts or of their significance alters. I might wish that I experienced a different emotion in a given case—I might, say, want the feelings associated with fear to go away—but I can't change the *emotion* without changing the allied cognition (whether the feeling is a product or a cause of the cognition).

Sometimes an environmental trigger—rather than deliberation, perception, or intuition, any of which might be the source of a reasonable belief—generates a belief one takes to be unreasonable, and in this case, one can surely attempt to manipulate the trigger to end the belief.<sup>10</sup> Most of the time, however, beliefs are

<sup>10</sup> I can, of course, sometimes reason in precisely this way. Suppose I'm walking through a forest at night and hear a sound that triggers intense fear. Perhaps I'm paralyzed by the fear; or perhaps I begin

not, nor can they be, under our volitional control. A belief-forming mechanism that gave us the beliefs we chose rather than the beliefs that actually followed from our encounters with the world outside the process of conscious reflection would be thoroughly unreliable, because the beliefs would be unrelated to their putative objects. What one wants from one's beliefs is precisely that they be *accurate*, that they in some sense count as correct *responses* to a world that exists independently of one's beliefs and preferences. A belief presents itself as *about* something, but it does no good if it's shaped primarily by one's will rather than by the object it's supposed to be about.<sup>11</sup> So it will make sense to seek volitionally to undermine a belief associated with an emotion (and so to alter the emotion itself) only when one takes the belief-forming mechanism responsible for the belief to be generally unreliable or when one has good reason in a particular case to judge that the mechanism has produced a dubious belief.

Under ordinary circumstances, a reasonable action is an action that seeks to realize or protect—in one's own life or another's—some aspect of well-being. Such an action may well yield a particular emotional response—say, satisfaction at the achievement of something valuable. Indeed, it *should* characteristically yield such a response if one's emotions are in good working order. But it will be the aspect of well-being that makes the response appropriate, and *that* will thus be the reasonably chosen object of one's action.

Again, of course, we do sometimes seek to change emotions directly. I might, say, visit a new and interesting place in order to boost my spirits. But when my feelings are the direct object of my action, this would seem to be either because (i) I am seeking unreasonably to alter an evaluation of my circumstances which I can see no way to undermine cognitively, in which case I run the risk of disconnecting myself from reality; (ii) my feelings do not match my beliefs about the way things are or about how it might be desirable to respond to the way things are, and I am trying to bring the two into alignment; (iii) I am uncertain how best to evaluate a situation I confront, but am trying, at minimum, to avoid being paralyzed by negative feelings (which can feed back into and warp accurate judgment) and am therefore trying to alter my feelings *without* impeding my capacity for judgment; or (iv) I am seeking an experience of imaginative immersion (as in the world of a film or book), in which case it is *that* world, rather than the world of my everyday experience, to

running in particular direction. The fear, we may suppose, leads to a cognition of some sort: say, the judgment that my flight or paralysis, as the case may be, is warranted by the situation. I may quite reasonably challenge this judgment directly, because I regard it as inaccurate, or else put myself in a situation in which environmental stimuli no longer trigger the fear that leads to the judgment I regard as inappropriate.

<sup>11</sup> Obviously, in a case in which an emotion involves a cognition that is *triggered* by a sensation, one may indirectly affect the cognition by seeking to alter the sensation, as when one knows that a certain event will yield irrational fear.



which I seek to make my judgment and my feelings, aligned in an emotion, responsive. Case (i) is an instance of unreasonable action, and the frequency with which choices of this kind occur does nothing to count against their unreasonableness. By contrast, cases (ii), (iii), and (iv) do not involve any denial that accurate cognition is the appropriate basis for reasonable action and that it makes no sense to want the feeling-cognition pair that is a given emotion when one regards the cognition that would be an integral element of the emotion as false. Thus, none of these cases provides a counterexample to the claim that it is at least ordinarily unreasonable to desire to experience an *emotion*, which necessarily incorporates a judgment, as the goal of an action.

#### 4. *Welfare Is Not an Emotion*

The (dubious) claim that welfare, well-being, is, just as such, a pleasant psychic state can't sensibly be the claim that welfare *is* a particular emotion. That's because the emotion—whichever emotion is purportedly the right one—embodies judgments about appropriateness that will likely unavoidably amount to or involve judgments about welfare. So the claim that welfare amounts to an emotion would be question-begging: to make sense of the cognition involved in the emotion would require making sense of welfare, so it wouldn't work to appeal to the emotion itself as a way of making sense of welfare.

Clearly this is true of the special case in which the pleasant psychic state is *happiness*, which can be understood as the pleasure associated precisely with preference-satisfaction. Understood as an emotion, happiness obviously involves a cognition—roughly, the belief that the object of one's happiness is an appropriate object of happiness. One can always ask about this belief whether it is accurate.

One can also always ask of one's satisfaction with any given state of affairs "Should I be happy about this?" "Does it make sense to be happy about it?" "Is it worth being happy about?" If one's preferences are actually worth satisfying, then it makes sense to be pleased that they have been satisfied. But, in this case, what matters—and so what seems actually to constitute one's well-being—is whatever it is that makes it worthwhile that the preference has been satisfied—and not *either* the satisfaction of the preference qua preference *or* the sensation associated with the satisfaction of the preference. On the other hand, if one's preferences are not worth satisfying, there will be no more reason to seek to be pleased at their having been satisfied than there will be to seek that they be satisfied in the first place. What's important to see in either case is that the question of the reasonableness of one's reaction to the satisfaction of one's preferences is always on the table, and that its reasonableness depends on the reasonableness of satisfying the preferences.

An obvious example of the frequent conflation of well-being with a psychic state is the assumption that *being in love* is inherently valuable apart from the worth of the relationship to the existence and value of which this emotional state is a pointer. Being in love is a particular mental state that involves both feelings of excitement, euphoria, and delight in the beloved and the desire to be united—usually both psychically and sexually—with the beloved; it necessarily involves judgments about the beloved as, for instance, worth desiring, worth pursuing, worth finding attractive, worth uniting with, worth admiring, and so forth. It can be triggered in a variety of ways; it seems to be realized in the brain and the rest of the nervous system through the release of chemicals including oxytocin and phenylethylamine.<sup>12</sup> The chemically induced high associated with being in love is phenomenally pleasurable, but relatively transient, with the result that many people find the prospect of pursuing the high, by repeatedly beginning new relationships, quite irresistible. But although romantic passion is reasonably regarded as evidence that something important is occurring or could occur (for the experience of being in love need not come at the beginning of a relationship), it's *the something*—the actual or prospective relationship, the prospect or the reality of creating a “we” with someone—that's important, worthwhile, valuable, not the psychic state that *highlights* its value.<sup>13</sup> There is no reason not to relish the pleasure associated with being in love, as long as it's not treated as an end in itself—*or* as the only possible evidence of a relationship's worth, because a chemical high can dissipate even as a relationship remains very real and valuable. But the temptation, unfortunately, is often to treat the high as valuable in its own right, and thus both to regard a relationship that no longer provokes it as being somehow itself deficient and to seek a new relationship with the potential to birth a new high at the cost of an existing one. Remembering the relationship between emotions and well-being may help to reduce the likelihood that the value of existing relationships will be discounted or ignored in this way.

##### 5. *Well-Being Is Not Identical with or Dependent on One's Emotional Reaction to One's Condition*

Listening to one's emotions is important and informative. But although sensory pleasure—an *aspect* of a positive emotion—is an aspect of well-being, well-being isn't the same as a particular emotional state. An emotion is an emotion precisely because it involves—in any of several ways—a cognition, a judgment, which frequently presents itself as an accurate evaluation. The aptness of the evaluation is

<sup>12</sup> See HELEN FISHER, *WHY WE LOVE: THE NATURE AND CHEMISTRY OF ROMANTIC LOVE* (2004).

<sup>13</sup> See ROBERT C. SOLOMON, *ABOUT LOVE: REINVENTING ROMANCE FOR OUR TIME* (1988). Despite the title's gesture at contemporaneity, Solomon's basic understanding of emotion is Aristotelian.

dependent on factors external to the evaluation itself, so it makes no sense to seek an emotion as such as the goal of one's action.

#### D. Welfare Is Pluriform

##### 1. *Multiple, Complementary Approaches Help Us Identify Basic Aspects of Well-Being*

Among the reasonable approaches to identifying good reasons for choice may be locating the things we characteristically take to be basic justifications for our actions (Subsection 2) or the aspects of our lives that are affected by what we confidently judge to be real harms (Subsection 3). We might reasonably judge some claims about putative aspects of well-being to be correct if rejecting them would involve us in self-contradiction (Subsection 4). That some beliefs about well-being seem relatively consistent across cultures may provide limited evidence for the truth of those beliefs (Subsection 5). And the process of seeking and achieving reflective equilibrium might enable us to justify claims to identify particular aspects of well-being (Subsection 6). These approaches might all reasonably figure in efforts to provide credible support for the tentative identification of multiple aspects of well-being (Subsection 7).

##### 2. *We Take Something to Be a Dimension of Well-Being if We Treat It as a Basic Reason for Action*

Identifying something as an aspect of welfare, or as an instance of such an aspect, is ultimately a matter of identifying good reasons for making choices. So one way to think about what might or might not be a good reason for action is to think about what might or might not be a good reason to choose. And perhaps we can begin to get at this more clearly by thinking about how we actually *do* make choices.<sup>14</sup>

Very often, it makes sense, when someone else proposes that I do something, or when I experience an inner impulse to make a particular choice, to ask, "Why should I?" or "What would make that a sensible choice?" And usually, in turn, we can offer underlying reasons for our choices. Why should I get in the car? *To drive to the park.* Why should I want to drive to the park? *Because I'm supposed to meet Chris there.* Why should I want to meet Chris in the park? *Because the park will provide us with a comfortable environment in which to talk.* Why should I want to talk with Chris? *Because, by talking, we'll grow closer, achieve greater mutual understanding, amuse each other, or perhaps discover ways of helping each other.* Why should I want

<sup>14</sup> See, e.g., GRISEZ, PRINCIPLES, *supra* note 1, at 122; CHAPPELL, *supra* note 1, at 35–36.

to do those things with Chris? *Because those things are important constituents of friendship; Chris is my friend, and I want to nourish our friendship.*

But suppose I ask, “Why should I want to nourish a friendship—not this friendship in particular, but any friendship?” What answer can I give, apart from the relatively uninformative report on the way things seem to me: *friendship matters*. Of course there are various ways in which friendship matters instrumentally: friends help each other in various ways. But we do not seem in general to want friendship just because of the aid friends can offer, so that friendship turns out to be important just because it conduces to our other purposes. Connecting with others, knowing others, incorporating them into our lives and our identities, seems often to be something we actually choose for its own sake.

And the same seems to be true of lots of other things as well. Take sensory pleasure.<sup>15</sup> Perhaps I consume a bar of chocolate as a source of energy, or as part of a social ritual. But more often I do so simply because of its flavor. There is nothing odd about choosing to eat a bar of chocolate because the taste of chocolate is pleasurable, and this fact, offered in justification of my action, seems to require no further rationale. It’s worth emphasizing, again, that an experience of sensory pleasure is on its own a bare *sensation*, not an *emotion*; while it might be accompanied by a judgment, it need not be, and it can serve on its own as an independent reason for action despite the fact that experiencing an emotion ordinarily cannot function in this way.

Or consider knowledge. If I want to learn about the behavior of a particular molecule, or determine how mind and body are related, or understand Chinese tort law, I may be pursuing some independent goal: perhaps I am trying to justify a promotion or a new job, or impress a date. But I can just as sensibly pursue my goal for its own sake. Someone else can reasonably ask why finding out about something in particular is appealing to me—a question that requires explanation, but not justification—but simply wanting to know, wanting to understand, seems to provide as much *justification* as is needed.

What about aesthetic experience? To seek to see the beauty of a painting, to relish the artistry of a gymnast, to catch the interplay of themes in a fugue, to appreciate the artistry involved in combining flavors and textures in a meal, or to trace the elegance of a mathematical proof—in each case, one’s action seems perfectly intelligible, perfectly reasonable, without needing any additional rationale. And the same seems true of other dimensions of our lives and experiences, any of which might seem—like friendship, knowledge, and aesthetic experience—to be sufficient to end a chain of justification for a choice. Play, the capacity for practical reasoning, religion (in the broad sense of being in harmony with reality, whether the cosmos is the whole of reality or not), imaginative immersion in a fictive narrative and the

<sup>15</sup> See CHAPPELL, *supra* note 1; THOMAS NAGEL, *THE VIEW FROM NOWHERE* 156–62 (1986).

lives of its characters (perhaps this is an aspect of aesthetic experience), life, bodily well-being, and peace of mind all seem to provide sensible reasons for doing things that don't need to be justified or rendered intelligible by reference to any deeper reasons.<sup>16</sup>

Thinking through our own (or other agents') reasons for action, and seeing where chains of justification and explanation stop, is perhaps the most natural way of identifying what we take to be genuinely worthwhile aspects of welfare, *basic*—in the sense of irreducible—aspects of well-being. Perhaps we're mistaken about this, of course: we're not infallible. But we can at least make our own understanding more luminous; we can clarify what makes sense to us. Notice that at no point in this process do we attempt to derive a judgment about what we *ought* to pursue, about what really is an aspect of well-being, from a *descriptive* claim about what we do, in fact, pursue. Rather, we're simply trying to find the most basic normative judgments we do, in fact, make regarding our own well-being and other people's and ask what follows from these judgments.

To be sure, there will be variations among persons and groups in this regard, and some of these variations will quite possibly be explicable with reference to personality or cultural difference of one sort or another. But in trying to determine whether a putative aspect of welfare really is intrinsically valuable, a particular moral agent will still need to ask herself whether it seems to her on due reflection to be a genuinely final end or not. And, if she judges that it is, she will thereby be committed to maintaining that it is, in fact, an authentic aspect of well-being—for her and for anyone relevantly similar to her.<sup>17</sup>

### 3. *Our Judgments about Harms Point Us to Insights about the Nature of Well-Being*

There are other, complementary approaches to reaching the same kind of understanding. For instance: we can begin by focusing on what's going on when we believe another has been harmed, when we believe we're being threatened, and so forth. What's the locus of the actual potential loss? What does the harm amount to? Again, we can work our way down to the most basic level of understanding, asking at each stage if further illumination would be offered by a recharacterization of what has been or might be harmed. The destruction of an archive of irreplaceable documents, for instance, might be seen as (among other things) impeding an opportunity

<sup>16</sup> Perhaps bodily well-being should be thought of as an independently valuable aspect of flourishing. Alternatively, it might make sense to regard bodily well-being as valuable to the extent needed to make life and the other kinds of flourishing possible.

<sup>17</sup> Thanks to Sandy Thatcher for highlighting the need to clarify this point.

for *knowledge* or *aesthetic experience* on the part of those who might consult it. Lying about one person to another might damage a *friendship*. Torture seems to be an attack on *peace of mind*, and sometimes, of course, on *life*. And so on. By analyzing our judgments about situations in which harms occur or are threatened, we can again identify what we in fact take to be fundamentally worthwhile aspects of our lives.<sup>18</sup>

#### 4. *It May Be Self-Contradictory to Deny That Some Putative Aspects of Welfare Provide Reasons for Action*

In some cases, we can do more than this: we can show that it is actually self-contradictory to attempt to deny the value of one or another aspect of welfare. Most fundamentally, of course, it makes no sense to say, “Nothing is valuable for its own sake,” for, if an infinite regress is to be avoided, the process of valuing one thing with reference to another thing must finally come to rest. Nothing can be valuable instrumentally unless something is valuable intrinsically. And something must be valuable intrinsically or there will be no reason to act at all (and so, of course, no reason to choose to assert that nothing is valuable).

It won’t do to respond that something can be valuable instrumentally as long as something else, something to which it is instrumental, is *valued* for its own sake. For if the focus is on the act of valuation rather than its justification, the question, “But is this valuable?” will continue to be appropriate. The answer to the question must be either “Yes” or “No.” And if it is “No,” then it seems that anything instrumental to whatever it is that has been judged not to be inherently valuable can’t be seen as intrinsically valuable itself. Unless something else farther along the chain of justification does prove to be genuinely worth valuing, action still seems pointless.

In addition, a person actively nurturing a friendship, seeking bodily well-being, engaging in play, is estopped from claiming that the putative aspect of welfare that is the object of her action isn’t, at any rate, worthwhile for *her* to value; if it weren’t, why would she choose it as the object of her action? However one might be inclined to view other people’s actions, one can’t view one’s own, from the inside, as simply *happening* to one. Rather, one has to choose. And if one has to choose, it will at minimum be difficult not to select the object of one’s action under some description such that it is *worth* pursuing under that description. Further, if one judges that something is a worthwhile aspect of one’s own life, it will be difficult to resist the conclusion that it is also potentially a worthwhile aspect of another’s.

Denying some aspects of well-being may be self-contradictory for deeper reasons. Someone who denies that knowledge is inherently valuable appears to be making

<sup>18</sup> See GRISEZ, *PRINCIPLES*, *supra* note 1, at 123; MURPHY, *RATIONALITY*, *supra* note 1, at 40.

a truth-claim, a claim about knowledge, that might seem to presuppose the worthwhileness of things.<sup>19</sup> Someone who embraces skepticism about the objectivity of the ends of action but who *argues* for this conclusion might seem to be presupposing the inherent worth of truth, and so to be caught in a contradiction.<sup>20</sup>

And rejecting the possibility that there might be objective reasons for action—and so of reasons to seek to flourish or to help another to flourish—is at least very close to rejecting the possibility that there might be objective reasons for *judgment* as well. Certainly, the reasons characteristically offered for rejecting this possibility—as that actions and dispositions must be accounted for in causal terms and that normativity can play no part in explaining them—seem fairly clearly to count against reasons for judgment as much as against reasons for action. And this means that claims about (at least) logical, mathematical, and epistemic norms are undermined by these arguments. But when an argument appears to undermine the possibility of argumentation itself, something—even if we cannot agree on what—seems pretty clearly to have gone seriously wrong. And this obviously gives us reason to question the underlying argument, and so to doubt the effectiveness of its in-principle challenge to normative claims about reasons for action.<sup>21</sup>

### 5. Cross-Cultural Consensus May Help Us to Identify Basic Aspects of Well-Being

The fact that another *finds* something valuable does not mean, of course, that it *is* valuable—either for her or for you. Nonetheless, the existence of a widespread, cross-cultural consensus on basic aspects of well-being is perhaps evidence of a certain kind that humans either have correctly identified multiple, diverse aspects of well-being or are systematically deceived. Whether one concludes that such a consensus *does* serve to support particular claims about well-being will depend, of course, at least in part, on how one evaluates the possibility that there are normative

<sup>19</sup> See FINNIS, *LAW*, *supra* note 1, at 73–75.

<sup>20</sup> See FINNIS, *AQUINAS*, *supra* note 1, at 58–61. Cf. FINNIS, *ETHICS*, *supra* note 1 at 4–5, 51–53.

<sup>21</sup> The analogy between reasons for judgment or belief on the one hand and reasons for action on the other has been explored effectively by a variety of philosophers, notably Hilary Putnam. It is developed extensively in TERENCE CUNEO, *THE NORMATIVE WEB: AN ARGUMENT FOR MORAL REALISM* (2007) and Nathan Nobis, *Truth in Ethics and Epistemology: A Defense of Normative Realism* (2004) (unpublished PhD dissertation, University of Rochester). The approach defended by Cuneo and Nobis rightly forms part of an ensemble of defenses available for moral realism, and I believe these defenses are worth taking quite seriously. An alternative understanding of metaethics—say, an expressivist one—might be seen successfully to ground the kinds of normative claims I make here, although I am inclined to think that expressivist approaches undermine the force of moral requirements rather more substantially than their proponents often suppose. I take no position here on questions of moral *epistemology*: whether a sentimentalist epistemology, for instance, turned out to be correct need have no implications for the realism–irrealism debate.

truths and that one might actually succeed in knowing some of them.<sup>22</sup> In any case, it does not seem unreasonable to pay some attention to cross-cultural evidence for the endorsement of particular ends of action.

6. *We May Be Able to Justify Claims about Well-Being by Seeing  
How Well They Fit into Coherent Webs of Belief*

Finally, we might reasonably pursue a piecemeal strategy of assessing—and so of validating or invalidating—particular claims about putative aspects of well-being in much the way we assess most claims in our lives. The piecemeal approach has famously been described as a matter of seeking “reflective equilibrium.”<sup>23</sup> Unavoidably, we begin (our conscious lives, and each of the successive moments in those lives) with particular beliefs. When we encounter challenges to those beliefs, we resolve them—by rejecting or modifying the beliefs we hold, by reinterpreting or rejecting the challenging evidence or argument, or by finding a way in which both new and old beliefs can coexist consistently.<sup>24</sup> There is no rigid formula for doing this; rather, one seeks to achieve an elegant fit among all of one’s beliefs. One is not responsible, surely, for constantly searching for potential defeaters for one’s beliefs, but one *is* surely responsible for taking appropriate account of potential defeaters when they come to one’s attention.<sup>25</sup>

This general approach is surely available with respect to one’s beliefs about basic aspects of well-being. Self-reflection will reveal that we do, in fact, seem often to have particular beliefs about what is and isn’t a basic dimension of welfare. We can retain those beliefs that seem correct to us absent particular challenges to them (challenges which may focus, of course, either on specific putative aspects of welfare or on the notion that there are objective aspects of welfare at all). In the face of such challenges, we may need to alter or abandon our beliefs about what makes for well-being; alternatively, we may find that they emerge from the process of scrutiny more obviously correct than before.<sup>26</sup>

<sup>22</sup> See FINNIS, LAW, *supra* note 1, at 81–90 (1980). Cf. DONALD BROWN, HUMAN UNIVERSALS (1991); MORRIS GINSBERG, ON THE DIVERSITY OF MORALS (1962).

<sup>23</sup> See JOHN RAWLS, A THEORY OF JUSTICE 18–19, 42–45 (2d ed. 1999); cf. W. V. O. QUINE & J. S. ULLIAN, THE WEB OF BELIEF (2d ed., 1978).

<sup>24</sup> See, e.g., ALASDAIR MACINTYRE, WHOSE JUSTICE? WHICH RATIONALITY? (1988); Nicholas Wolterstorff, *Can Belief in God Be Rational if It Has No Foundations?*, in FAITH AND RATIONALITY: REASON AND BELIEF IN GOD 135 (Alvin Plantinga & Nicholas Wolterstorff eds., 1983).

<sup>25</sup> Taking appropriate account obviously does not mean seeking to resolve every problem immediately: one may surely place on the back burner a major challenge to some trivially important belief.

<sup>26</sup> Cf. CHARLES LARMORE, THE MORALS OF MODERNITY 55–64 (1996); Gary Chartier, Comment, *Righting Narrative: Robert Chang, Poststructuralism, and the Limits of Critique*, 7 UCLA ASIAN PAC. AM. L.J. 105 (2001).



7. *Varied Approaches to Identifying Aspects of Well-Being  
May Prove Mutually Supportive*

Analyzing what we take to be good reasons for action and loci of what we take to be real harms, recognizing that denying the value of some arguable instances of well-being would be self-contradictory, drawing inferences from cross-cultural beliefs about well-being, and seeking to determine how well particular convictions about well-being fit into coherent webs of belief can all help us to provide secure foundations for our identifications of various aspects of welfare, flourishing, or fulfillment. In many cases, it seems likely that we will find that different approaches reinforce parallel identifications of particular dimensions of well-being. Bodily well-being seems to be a source of basic reasons for action; bodily well-being seems to be what events which we would likely recognize as authentic injuries in fact injure; there is widespread cross-cultural support for the view that bodily well-being is valuable; and the notion that bodily well-being is a fundamental aspect of well-being fits well with our other beliefs about our lives and our convictions about what is worthwhile.<sup>27</sup> I believe the same kind of case might arguably be made for the other aspects of welfare I have considered, including friendship, knowledge, æsthetic experience, play, practical reasonableness, religion, imaginative immersion, life, sensory pleasure, and peace of mind.<sup>28</sup> Rational reflection can provide at least some plausible grounding for claims about well-being.

**E. The Various Dimensions of Welfare Are Incommensurable  
and Non-Fungible**

There is no underlying *thing* that well-being *is*. “Well-being” or “welfare” or “flourishing” or “fulfillment” should simply be seen as a summary label for all the different aspects of a life that goes well. There is no quantity, no substance, that underlies all dimensions of well-being qua dimensions of well-being. And the absence of such a substratum, a definable common element, means that the various aspects of well-being are *incommensurable*—that there is no way of measuring them in relation to each other.<sup>29</sup> It makes no sense to say that æsthetic experience is worth more

<sup>27</sup> Cf. BRYAN TURNER, *VULNERABILITY AND HUMAN RIGHTS* (2006).

<sup>28</sup> Thus, it is unreasonable to treat *pleasure*, or some particular sort of pleasure, as the only valuable thing, or the substratum underlying other putative aspects of welfare; rather, sensory pleasure—as over against emotional pleasure, which is not independently valuable, but is, instead, a pointer to the putative value of an action, quality, relationship, characteristic, or experience—is simply one among many dimensions of well-being. Cf. FINNIS, LAW, *supra* note 1, at 95–97.

<sup>29</sup> See, e.g., FINNIS, LAW, *supra* note 1 at 92–95; FINNIS, ETHICS, *supra* note 1, at 86–90; GRISEZ & SHAW, *supra* note 1, at 132.

than play, or practical reasonableness more than life. There is thus no way of weighing some particular instance of one against some particular instance of another, as if there were an objective fact of the matter about whether a solitary trip to a museum, say, was more worthwhile than a day spent with friends. And there is no way, either, of weighing some particular instance of the same kind of flourishing against another: my friendship with Sheldon and my friendship with Jeffrey and my friendship with Annette are all different from each other, even though each is a friendship. The point is *not* that there is no reliable procedure for determining what the fact of the matter might be, as if the problem were in essence epistemic. Rather, the point is that there *is* no fact of the matter, any more than there is a fact of the matter about whether orange is faster than up.<sup>30</sup> Thus, attempting to aggregate the putative values of various instances of diverse kinds of welfare “is senseless in the way that it is senseless to try to sum together the size of this page, the number six, and the mass of this book.”<sup>31</sup>

Similarly, particular instances of the various aspects of well-being are *non-fungible*: there is no objective basis for trading one off against another. It is silly to suppose that it is either true or false that listening to Bach’s third Brandenburg Concerto involves more aesthetic value than contemplating the *Mona Lisa*, that knowing about theoretical physics is better than knowing about history, or that one friendship is more *intrinsically* worthwhile than another.

Obviously, we make choices among different kinds of well-being and different instances of different kinds of well-being, in light of our preferences and circumstances and characters and dispositions.<sup>32</sup> And as long as we’re choosing reasonably among real goods, that seems entirely appropriate. We can’t do everything, we shouldn’t try to do so, and we’re free to choose how we will shape our lives. It’s just important to remember that, when I make a choice among particular kinds of welfare, I’m not selecting, because I can’t be selecting, the best option for any human, or the best option for anyone in my situation, or the best option for me: I’m selecting one of a number of possibilities, none of which can be ranked ahead of any of the others because they’re all fundamentally different, because each is fundamentally unique, and any of which I can freely embrace. And of course it’s not as if the only way to generate moral requirements regarding choices among aspects of well-being is to show that they can be objectively ranked: there are constraints on our choices imposed by specific requirements of practical reasonableness. Seeking to participate in a friendship and enjoying the dietary benefits and sensory pleasures associated

<sup>30</sup> Thanks to Fritz Guy for this example.

<sup>31</sup> FINNIS, LAW, *supra* note 1, at 113; *cf. id.* at 115.

<sup>32</sup> See, e.g., FINNIS, ETHICS, *supra* note 1, at 90–94; *cf.* DAVID L. NORTON, PERSONAL DESTINIES (1976).

with consuming a good meal are both ways of flourishing, but it may be inconsistent with the requirement of practical reasonableness I label the Principle of Fairness to opt for the meal over helping a friend.<sup>33</sup>

**F. To Recognize Something as an Aspect of Welfare Is to See a Reason to Pursue It for the Benefit of the Moral Patient of Whose Welfare It Is an Aspect, Not a Reason to Try to Realize “Impersonal Value”**

The claim that there are multiple basic aspects of well-being or flourishing or fulfillment can certainly risk sliding into “Platonism”—the sense that the various aspects of welfare are important independently of the people whose goods they are, that their logically prior existence exerts some sort of claim on us, that they demand their own realization in the world and in our lives. I do not wish to defend this sort of view. On my view, what matters most about the sort of account of welfare I have offered here is simply this.

- (i) There are truths about my welfare, or yours, that are strongly independent of our preferences.<sup>34</sup>
- (ii) The aspects of a moral patient’s welfare are diverse—there are different ways in which her life is or isn’t going well at any given time, and different ways in which it could go well over time.
- (iii) While one is quite free to seek flourishing and fulfillment in an infinite variety of ways, there are meaningful continuities among the things that make for welfare in humans (and others).
- (iv) Whatever one’s welfare amounts to, there are some things *no one’s* welfare amounts to, including preference-satisfaction and the cluster of emotional states we call happiness (since only if the preferences being satisfied are preferences for real instances of flourishing is satisfying them going to be a real instance of flourishing, and since only if the states of affairs regarding which one is happy are real instances of welfare is it going to be reasonable to be happy about them).

I strenuously deny that there is only one kind of good life for persons or groups of persons. There are many, many different kinds of good lives, and the attempt to claim that one is objectively better for persons in general or, often enough, for

<sup>33</sup> *But cf.* Roderick T. Long, comment under Sheldon Richman, *Do Ends Justify Means?*, THE FREEMAN: IDEAS ON LIBERTY, Feb. 24, 2012, <http://www.thefreemanonline.org/columns/tgif/do-ends-justify-means/#comment-89490>.

<sup>34</sup> With whatever allowances, if any, are needed for peace of mind, aesthetic experience, and sensory pleasure.

any particular person, is simply false. There is no single, unique *summum bonum* that is the same for every person; flourishing is not a *summum bonum* or an agent-neutral good at all, but rather a placeholder for all the diverse ways in which people can flourish. There are many different ways in which creatures, human and otherwise, can flourish, many different ways in which their lives can go well and be worthwhile. However, there are limits on reasonable choices and reasonable lives: some putative aspects of well-being are not genuine constituents of flourishing—they are in one way or another unreal, and so not worth pursuing—and there are universally applicable requirements of reasonable action that apply to all moral agents.<sup>35</sup>

### G. Welfare Is Reaction-Independent and Varied

For most purposes, it is not particularly important to identify an exhaustive list of the various aspects of welfare. What matters is rather that (i) there is some fact of the matter about what makes for well-being, (ii) one's well-being is not reducible either to the fact that one's preferences have been realized or that one experiences some particular emotion or other sensation, (iii) well-being is not a unitary quantity, but rather one that is multiform and variegated, and (iv) an action is reasonable if and only if its goal is one's own flourishing or another's.

Well-being is a function of how one's life actually goes, and not, per se, of how one *reacts* to one's choices, relationships, and experiences. Whether one's preferences are or aren't satisfied, whether one experiences positive or negative emotional reactions to particular aspects of one's life, may provide some *evidence* about, but doesn't generally *determine*, whether one is flourishing or helping another to flourish. (To be sure, however, a *failure* to experience a positive emotional response to one's own flourishing may often be rightly regarded as a deficiency: to fail to recognize an instance of flourishing as an instance of flourishing is to be deficient with regard to knowledge, while to fail to experience a positive sensation when one is flourishing may be a deficiency with regard to bodily well-being.) Reasonable choices are choices intended to foster one's own well-being, or another's; positive emotional responses may be concomitants of such choices, but they are ordinarily not reasonable *objects* of such choices. The objects of such choices are instances of the various dimensions of welfare. The diverse aspects of welfare are incommensurable, and particular instances of each are both incommensurable and non-fungible. They matter precisely because they are aspects of the welfare of particular moral patients, and not because they are, somehow, impersonally valuable.

<sup>35</sup> See Part III, *infra*. Thanks to an anonymous reader for prompting me to clarify my position in the way I seek to do in this paragraph.

### III. REASONABLY SEEKING TO FLOURISH OR TO HELP ANOTHER TO FLOURISH REQUIRES RECOGNITION, FAIRNESS, AND RESPECT

#### A. Living Well Means Acting Reasonably

Reasonable action begins in free and reasonable *choice*.<sup>36</sup> Particular agents, and only particular agents, make choices and are morally responsible for conforming those choices to the requirements of practical reasonableness. Neither the issuance of commands by authority figures nor the fact that other participants in a common enterprise take a particular view of what ought to be done absolves anyone of responsibility for acting reasonably or confers on her any moral privileges she wouldn't otherwise have.<sup>37</sup>

Recognizing something as an instance of an authentic dimension of welfare, well-being, fulfillment, or flourishing means taking it as a reason (not necessarily decisive) to choose to realize it in one's own life or another's. But not all actions in pursuit of instances of basic aspects of well-being are reasonable. It's important to seek genuine aspects of well-being, rather than illusory ones (Section B). We pursue genuine aspects of well-being reasonably only when we do so fairly (Section C). And we act in accordance with reason only when we avoid attacking any aspect of well-being purposefully or instrumentally (Section D). The principles of practical reasonableness generate different sorts of prohibitions—some absolute, some relative and qualified (Section E). Taken together, they outline the contours of a reasonable life, while leaving considerable freedom for personal creativity and experimentation (Section F).

#### B. The Principle of Recognition Calls for the Acknowledgment of All and Only Real Aspects of Well-Being as Worthy Objects of Action

What I'll call the Principle of Recognition can be summed up this way: *do not act except in order to foster what one recognizes as a genuine aspect of well-being in one's own life or another's*.<sup>38</sup>

<sup>36</sup> On free choice, see, e.g., JOSEPH BOYLE, JR., GERMAIN GRISEZ & OLAF TOLLEFSEN, *FREE CHOICE: A SELF-REFERENTIAL ARGUMENT* (1976); CARL GINET, *ON ACTION* (1989); DAVID RAY GRIFFIN, *UNSNARLING THE WORLD-KNOT: CONSCIOUSNESS, FREEDOM, AND THE MIND–BODY PROBLEM* (1998); ROBERT KANE, *THE SIGNIFICANCE OF FREE WILL* (1998); JOHN THORP, *FREE WILL: A DEFENSE AGAINST NEUROPHYSIOLOGICAL DETERMINISM* (1980); AUSTIN FARRER, *THE FREEDOM OF THE WILL* (1957). Cf. BENJAMIN LIBET, *MIND TIME: THE TEMPORAL FACTOR IN CONSCIOUSNESS* 123–56 (2004).

<sup>37</sup> There may, of course, be an exception with respect to anyone whose preferences are such that she consents to the exercise, with respect to her, of a privilege the agent wouldn't otherwise have had. The point is that the relevant sort of privilege needs to be rooted in consent, at minimum, if it is to be legitimate. (It may not be legitimate in any case: even if I genuinely consent, and so relinquish any claim to *legal* recompense, it is still *morally* wrong of you to chop off my fingers for your pleasure.)

<sup>38</sup> Cf. FINNIS, *ETHICS*, *supra* note 1, at 40–42.

It is clearly reasonable to seek to flourish or to foster flourishing—one's own or another's. Seeking to flourish or to foster flourishing provides an intelligible reason for action; there's nothing puzzling about the claim that one acts in a given way in order to participate in a friendship or to help another have an aesthetic experience. By contrast, it is hard to see why one would pursue something one does not regard as contributing to the well-being of any sentient.<sup>39</sup> What would be one's reason for doing so? It is easy to see how a chain of justifications for an action might terminate in an appeal to a basic aspect of flourishing. But when the rationale for an action involves no reference to any sentient's flourishing, it seems as if it would make sense to keep asking for further justification.

Sometimes people do things seemingly for inanimate objects. In some cases, this may be because they want to benefit humans or other animals. People attempt to foster life and bodily well-being by seeking to control pollution. They work to protect particular sites or regions in order to enable themselves or others to experience natural beauty. Perhaps they seek to preserve objects or spaces that have particular significance for them—that they've incorporated into their identities. (And this would include a case in which someone welcomed the fact that a particular natural object might be in existence well after the end of her own life.) In all these cases, they're doing things that they intend to contribute to well-being in one way or another; and so, even if it might initially appear otherwise, what they're doing can be perfectly intelligible and reasonable.

Often, I suspect, people attempt to benefit some non-sentient reality for its own sake simply because they reflexively treat it, or some aspect of it, as sentient, and it's hard not to see this as an instance of false belief. But it's also imaginable that someone might not have any finite creature's well-being in mind and still be acting rationally and intelligibly when seeking to enhance some aspect of the nonhuman world. At least, it's possible to conceive of the actor intending to contribute in some way to the enjoyment of beauty in the world which God might be thought to experience. And on the view that there is God, this is hardly unreasonable. On the other hand, someone who supposes that there is no God and that she is not fostering the well-being of any actual or potential sentient *does* seem to me to be acting irrationally if she seeks to enhance or protect some bit of the non-sentient world for its own

<sup>39</sup> Note, by the way, that, doing something for the well-being of a nonhuman sentient is not an instance of irrationality, for there are ways in which the sentient's life can go well or not *for the sentient itself*. The sentient's life can go well in various ways (even if fewer than yours or mine can), and, as a sentient, it can in some sense be aware that things are going well or not. So there's nothing irrational or unintelligible about fostering the animal's well-being. On nonhuman sentience, *see, e.g.*, GARY VARNER, *PERSONHOOD, ETHICS, AND ANIMAL COGNITION: SITUATING ANIMALS IN HARE'S TWO LEVEL UTILITARIANISM* (2012). On the more general question of taking moral account of nonhuman animals, *see, e.g.*, STEPHEN R.L. CLARK, *THE MORAL STATUS OF ANIMALS* (1977).

sake. (Even if she understands the world in pantheistic fashion as somehow divine in its totality, but without any conscious center, it's not clear that the notion of conferring a benefit on it is genuinely intelligible.<sup>40</sup>)

Apart from efforts to benefit the non-sentient world, it seems as if an attempt to act for some purpose other than honoring or promoting the well-being of sentients might either reflect (i) a mistake about what counts as well-being or (ii) an unconcern for well-being, rooted in the notion that preference-satisfaction is on its own a sensible reason for action. The most likely sort of mistake of the first sort, I suspect, will involve the misidentification of emotional satisfaction as a goal that's inherently worthwhile on its own. What I've already said should make clear why I regard the second option as an error.

To be sure, while particular goals can be distinguished for analytical purposes, we often pursue them in tandem—as when beauty provides an occasion for the pursuit of friendship, for instance. However, although there are vastly many reasonable but diverse ways of flourishing, people sometimes act for reasons which can reasonably be judged not to be, and not to conduce to, instances of flourishing at all (though there are certainly good reasons not to interfere with people's nonaggressive attempts to pursue these putative goods).

Instances of basic dimensions of well-being provide good independent reasons for action. Other aspects of reality do not. The Principle of Recognition embodies the requirement that we acknowledge the difference.

### C. The Principle of Fairness Calls for the Avoidance of Arbitrary Distinctions among Those Affected by Our Actions

#### 1. *The Principle of Fairness Protects the Basic Moral Equality of Sentients Capable of Flourishing*

Sometimes, we act to flourish or to foster our own flourishing (directly or indirectly). Sometimes, we act to foster the flourishing of others. Sometimes, we act for the benefit of ourselves *and* others. In principle, all such actions can be reasonable, as long as they don't involve arbitrary choices among those affected by our actions (including ourselves).

The Principle of Fairness reflects the reality and importance of shared characteristics (Subsection 2). This Principle requires that an agent *avoid discriminating arbitrarily among those affected by her actions*; it entails that she treat them equivalently except when doing so is a way of fostering authentic well-being (Subsection 3) *and* when she would be willing to see herself or her loved ones subjected to the

<sup>40</sup> *But cf.* PAUL TAYLOR, *RESPECT FOR NATURE* (1986). Thanks to Sandy Thatcher for this reference.

same sort of discrimination in which she proposes to engage were roles reversed (Subsection 4). The Principle of Fairness does *not* require that we opt for consequentialist maximizing (Subsection 5) or that we abandon particular projects, loyalties, relationships, and attachments (Subsection 6). But it nonetheless provides important safeguards against unreasonable partiality (Subsection 7).

2. *The Principle of Fairness Is Grounded in the Recognition of Shared Characteristics*

There seems to be no *essential* difference between oneself and another sentient, presuming both are capable of flourishing. It seems clear that “intelligence and reasonableness can find no basis in the mere fact that A is A and not B (that I am I and am not you) for evaluating his (our) well-being differentially.”<sup>41</sup> And so, when one’s actions might affect oneself and others differently, or when they might affect several others in different ways, it’s important to avoid unreasonable, arbitrary choices. The Principle of Fairness precludes such choices.

3. *The Principle of Fairness Precludes Distinctions Not Made in Pursuit of Genuine Aspects of Well-Being*

If it is to be reasonable, a choice ought to be for the purpose of seeking to experience or do or be something inherently worthwhile, or of helping another to experience or do or be something inherently worthwhile, rather than simply the expression of a preference unrelated to one’s own flourishing or another’s. This follows, of course, from the fact that the point of an intelligible, justifiable choice should always be one’s own welfare or another’s. Deliberately choosing to allocate the costs and benefits of a risky policy on the basis simply of ethnicity, for instance, seems like a fairly obvious example of a choice animated by a preference unrelated to real well-being.<sup>42</sup>

Of course, one may reasonably select capable players for a football team in order to foster the good of play; one may reasonably select good art over trash in order to foster the good of aesthetic experience; friendship requires distinctions between friends and non-friends; and so forth. By contrast, distinctions related to membership in arbitrary—say, national or ethnic—groups would be difficult to defend, since discriminating in favor of these groups, or in favor of particular people on the basis of their memberships in these groups, does not obviously serve any intelligible aspect of welfare.<sup>43</sup>

<sup>41</sup> FINNIS, LAW, *supra* note 1, at 107 (italics supplied); cf. FINNIS, AQUINAS, *supra* note 1, at 140.

<sup>42</sup> See FINNIS, LAW, *supra* note 1, at 107–08, 304–05; FINNIS, *Commensuration*, *supra* note 1, at 227.

<sup>43</sup> The notion of friendship is stretched to the breaking point if one can be said to be able to participate in friendship with fifty million fellow citizens. A soldier may be friends, at least in some attenuated sense,



#### 4. *The Principle of Fairness Precludes Distinctions an Actor Would Be Unwilling to Accept If Roles Were Reversed*

A reasonable choice with disparate effects is a choice which one would be willing to accept were one to exchange positions with one of the others affected by it.<sup>44</sup> To make a choice one would *not* be willing to accept were roles reversed would be precisely to imply that one is in a different position from, is more privileged or morally worthy than, those impacted by one's choice (or that one or a group of those affected should be seen as privileged in ways that another affected, or another group of those affected, should somehow not be).<sup>45</sup> "From one's way of conducting oneself here and now it should be possible to derive a universal norm applicable to every case involving no rational consideration other than those involved in this case."<sup>46</sup> Thus, it would be unreasonable for me, say, to dump carcinogens into a stream from which people draw drinking water if I would be unwilling to accept the dumping of similar chemicals by someone else into a stream from which *I* drew drinking water.

It is certainly correct that I sometimes might be unwilling to accept being treated in a given way without its being the case that my treating another in a seemingly similar way should be seen as morally troubling. But this intuitively plausible conclusion need not count against the Principle of Fairness as I have formulated it.

Consider someone who desires very strongly not to perform a certain kind of work.<sup>47</sup> She could perfectly reasonably *offer* the same kind of work to someone else. In this case, however, the offeror presumably knows that others do not all share her preferences, and that the offeree need not have the same aversion to performing the work that she herself does. Thus, the offeror and the offeree are *not similarly situated*. Further, while the work itself is, in the example, detestable to her, there is no reason

with the other members of her unit, but she can hardly be said to be able to be friends with an entire army. And so forth. An alternative would be to treat *community* as an independently valuable aspect of well-being, with a given community identified, perhaps, by common purposes and other interconnections. Despite common talk about ethnic, cultural, gender, and other communities, I'm not sure any of these qualifies as a community in any interesting sense, given that none has a common purpose, a shared conception of the good, and so on. An army might qualify as a community, depending on how a community was understood; but given the dubious purposes shared by most armies and the myriad unjust injuries caused in the course of pursuing or facilitating the pursuit of those objectives, discriminating in favor of an army would seem to be inconsistent with the Principle of Fairness and perhaps, on occasion, the Principle of Respect. Thanks to Sandy Thatcher for conversation leading to my clarification of this point.

<sup>44</sup> Thus, even if it *were* the case that discriminating in the interests of, say, a state were somehow to foster flourishing, such discrimination would likely be unreasonable, given that most reflective moral agents would be unwilling to be disadvantaged on the basis of such discrimination.

<sup>45</sup> See Finnis, *Commensuration*, *supra* note 1, at 227–28; FINNIS ET AL., *DETERRENCE*, *supra* note 1, at 284–85; FINNIS, *ETHICS*, *supra* note 1, at 91–92.

<sup>46</sup> GRISEZ & SHAW, *supra* note 1, at 120.

<sup>47</sup> I owe this example to David Gordon.

to think that under ordinary circumstances *being given the opportunity* to do the work would be. She could thus quite consistently offer a similar opportunity to someone else and wait to see how that person responds without being in any way unfair.

### 5. *Accepting the Principle of Fairness Does Not Mean Embracing Impartial Consequentialism*

The Principle of Fairness might be thought to require that we reason like consequentialists—that we maximize well-being in the world, or something similar. But it doesn't. We're not required to choose "the best overall option" because, typically, at least, there isn't any such thing. There is ordinarily no way of showing that reason *demand*s that one choose a given kind or instance of flourishing over another. There's no necessary, rationally required ranking of options in light of the putative quantity of welfare each is likely to realize.

This is not because value is subjective, though this claim is sometimes advanced by some economists. The confusion here is a probably unavoidable consequence of cross-disciplinary equivocation about the use of the word *value*. For a typical economist, the value of a product is whatever it is about an actor's psyche in virtue of which she is disposed to pay whatever it is she is, in fact, disposed to pay for the product in a peaceful, voluntary transaction.<sup>48</sup> Economic value, in this sense, is obviously subjective: what plays an explanatory or interpretive role in economic analysis is simply an aspect or set of aspects of each relevant economic actor's motivational set, of her subjectivity.

People speaking as moralists may also use the word *value*, and sometimes they use it in this explanatory or interpretive way. More frequently, however, they use it in an objective sense. In this sense, value is the same as *inherent, intrinsic* worth. Real aspects of welfare can be spoken of as "basic values," and calling something valuable can be a way of identifying it as an authentic dimension of well-being.

Basic aspects of well-being are, as I've already argued, incommensurable and non-fungible. And that means that all varieties of consequentialism, which assumes

<sup>48</sup> This would often be framed in counterfactual terms, so that the focus would be on whatever it is that explains what she would be *willing* to pay under particular circumstances. There are two related problems with this formulation from the perspective of natural law theory: (i) The use of "explains" might be thought to amount to an appeal to a sufficient condition for the actor's behavior. But natural law theory is committed to belief in a robust view of free will, with the result that no factor apart from the agent's free choice itself, at least under ordinary circumstances, will be sufficient to explain the choice. (ii) If the agent's choice is genuinely free, then no claim what the agent would do or would have done under various envisioned non-actual circumstances will necessarily be true. Natural law theory can reasonably talk about the aspects of a person's motivational set that might dispose her to choose in a certain way, as long as it is clear that the relationship is, roughly, probabilistic, and that disposition is a far cry from necessitation.

that the states of affairs which might be produced by various choices can be ranked and requires that one make a choice such that no other choice has a higher rank, is fundamentally a nonstarter. Because different states of affairs typically involve different aspects of well-being, and different instances of both the same and different aspects of well-being, there's no way of measuring them, and so of comparing them quantitatively (whether cardinally or ordinally) in the way consequentialism seems to require.<sup>49</sup>

There is no rationally inescapable way to combine all of the goods realized in a given state of affairs. There *cannot* be, because the assignment of weights to different instances of different goods must be a matter of calculation in light of one's prior commitments (to oneself and others) rather than of rational necessity constraining such commitments (apart, of course, from the rational necessity imposed by the requirements of practical reasonableness themselves). So there will be, can be, no objectively required ranking of states of affairs in the way standard consequentialism demands.<sup>50</sup>

So avoiding arbitrariness, choosing in accordance with the Principle of Fairness, does not, cannot, mean promoting the overall good in all one's actions, for the simple reason that there isn't any such thing. There is no meaning to the notion of "the sum of all the goods realized in a given state of affairs." Thus, there can be no way of reasoning in genuinely consequentialist fashion.<sup>51</sup>

<sup>49</sup> There are, of course, various other problems with consequentialism, notably the fact that it requires predictions about the future which almost certainly cannot be made with any confidence, and that it will often require actions inconsistent with what I am calling here the Principle of Respect.

<sup>50</sup> Classical utilitarianism offers the possibility of objective ranking by focusing on the amount of pleasure embodied in each possibility to be ranked; but as early as Mill it was becoming apparent that this sort of Benthamite project was inattentive to crucial aspects of the human experiences of valuation and moral judgment. A more common recent approach has been to appeal to a putatively "impartial" or "objective" point of view from which it might be possible to rank states of affairs objectively. A frequent response has been to suggest that a moral agent need not adopt, or need not always adopt, this point of view. But my claim in the text is intended to offer a more radical critique of consequentialism: the kind of objective ranking envisioned is simply not *possible*, and it is not magically rendered conceivable through the adoption of one point of view or another. There is no point of view from which states of affairs can be seen to be objectively ranked.

<sup>51</sup> See, e.g., PAUL HURLEY, *BEYOND CONSEQUENTIALISM* (2009); ALASDAIR MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 61–63, 67–68, 185 (2d ed., 1984); FINNIS, *LAW*, *supra* note 1, at 111–19; FINNIS, *ETHICS*, *supra* note 1, at 80–108; FINNIS ET AL., *DETERRENCE*, *supra* note 1, at 177–296; GRISEZ & SHAW, *supra* note 1, at 111–14, 131–33; Germain Grisez, *Against Consequentialism*, 23 *AM. J. JURIS* 21 (1978). Cf. DAVID S. ODERBERG, *MORAL THEORY: A NON-CONSEQUENTIALIST APPROACH* 65–76, 97–101, 132–33 (2000); NEL NODDINGS, *CARING: A FEMININE APPROACH TO ETHICS AND MORAL EDUCATION* 86–87, 151–54 (1984); ALAN DONAGAN, *THE THEORY OF MORALITY* 172–209 (1977); BERNARD WILLIAMS, *MORALITY: AN INTRODUCTION TO ETHICS* (2d ed., 1993); BERNARD WILLIAMS, *A Critique of Utilitarianism*, in *UTILITARIANISM: FOR AND AGAINST* 77–150 (J.J.C. Smart & Bernard Williams eds., 1973); Stephen R.L. Clark, *Natural Integrity and Biotechnology*, in *HUMAN LIVES* 58 (Jacqueline A. Laing & David S. Oderberg eds., 1997). The new classical natural law

### 6. *Fairness Is Quite Compatible with Pursuing Particular Projects*

The Principle of Fairness does not rule out the pursuit of particular projects adopted in light of personal preference, whether for oneself or others. I acknowledge the reality and value of the various aspects of well-being precisely by choosing to realize them in one way or another, in my own life or another's.<sup>52</sup> Obviously, others matter, in the same way and for the same reasons, that I matter. But I can reasonably seek to foster flourishing in various ways, and I will obviously be able to seek to flourish and to influence my own flourishing in ways in which I cannot affect the flourishing of anyone else.<sup>53</sup> Similarly, fostering the flourishing of particular others is very much an expression of the worth of friendship and of other aspects of welfare.<sup>54</sup> Furthering the good of particular others reflects (in no particular order) the importance (i) of friendship and loyalty as aspects of one's own flourishing, (ii) of friends themselves as constitutive of one's own identity, (iii) of aspects of well-being shared with friends, and (iv) of the independent reality and value of the particular others one benefits.<sup>55</sup>

### 7. *Reasonableness Requires Fairness*

A particular moral agent's particular characteristics and circumstances can and should shape her own establishment of her priorities and her determination of what it makes sense for her to do or not do. But these characteristics and circumstances can reasonably play this role only *within* the constraints established by the Principle of Fairness (and the other principles of practical reasonableness). Universality is not the *sine qua non* of any moral action: being moral does not mean aspiring to be a legislator. However, to the extent that there *are* common characteristics that unite moral agents and moral patients, it would be unreasonable to ignore them.

People seem to be capable of acting to benefit themselves, to benefit others, or to realize shared goods that simultaneously benefit themselves *and* others. Shared natures enable people to understand others' well-being by analogy with their own (though it is obviously crucial to recognize that others' preferences and circumstances may differ from one's own), and so to see what it might mean to pursue it. And training, cultural environment, developmentally relevant experiences, and

theorists' critique of consequentialism is similar to, albeit not identical with, economists' critiques of the attempt to make interpersonal utility comparisons in welfare economics; see, e.g., Murray N. Rothbard, *Toward a Reconstruction of Utility and Welfare Economics*, in *ON FREEDOM AND FREE ENTERPRISE: ESSAYS IN HONOR OF LUDWIG VON MISES* 226 (Mary Sennholz ed., 1956); Walter Block, Art Carden & Stephen W. Carson, *Ex Ante and Ex Post: What Does Rod Stewart Really Know Now?*, 111 *BUS. & SOC'Y REV.* 427 (2006).

<sup>52</sup> See FINNIS, *LAW*, *supra* note 1, at 107.

<sup>53</sup> See *id.* at 304.

<sup>54</sup> See *id.* at 108.

<sup>55</sup> Cf. Finnis, *Commensuration*, *supra* note 1, at 227.

biological inheritance all dispose people to appreciate the independent significance of others' well-being,<sup>56</sup> and so to adhere to the Principle of Fairness.

To acknowledge the basic moral equality of the sentient capable of flourishing is to see that arbitrary distinctions among them cannot be justified. While this does not require that one seek to perform the impossible task of maximizing the quantity of good in the universe or abandon one's particular projects and commitments, it does require that one avoid discriminating arbitrarily—that one make distinctions only when doing so is a way of flourishing or helping oneself or others to flourish and only when one would not be willing to accept a given distinction if roles were reversed.<sup>57</sup>

#### D. The Principle of Respect Calls for the Avoidance of Purposeful and Instrumental Harm

##### 1. *Recognizing the Value and Incommensurability of Basic Aspects of Well-Being Rules out Making Harm to Any the Goal of One's Action or a Means to One's Goal*

Because aspects of well-being are valuable, it makes no sense to attack them purposefully (Subsection 2), and because they are incommensurable it makes no sense to attack them instrumentally (Subsection 3). These dual requirements do not rule

<sup>56</sup> Cf. YOCHAI BENKLER, *THE PENGUIN AND THE LEVIATHAN: HOW COOPERATION TRIUMPHS OVER SELF-INTEREST* (2011); ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (rev. ed., 2006); Stephen Jay Gould, *Kropotkin Was No Crackpot*, 106 *NATURAL HIST.* 12 (1997); MATT RIDLEY, *THE ORIGINS OF VIRTUE: HUMAN INSTINCTS AND THE EVOLUTION OF COOPERATION* (1996); ALFIE KOHN, *THE BRIGHTER SIDE OF HUMAN NATURE: ALTRUISM AND EMPATHY IN EVERYDAY LIFE* (1992); KRISTEN RENWICK MONROE, *THE HEART OF ALTRUISM: PERCEPTIONS OF A COMMON HUMANITY* (1996); FRANS B. M. DE WAAL, *GOOD NATURED: THE ORIGINS OF RIGHT AND WRONG IN HUMANS AND OTHER ANIMALS* (1997); ELLIOTT SOBER & DAVID SLOAN WILSON, *UNTO OTHERS: THE EVOLUTION AND PSYCHOLOGY OF UNSELFISH BEHAVIOR* (1997); ROBERT WRIGHT, *THE MORAL ANIMAL: WHY WE ARE THE WAY WE ARE* (1995); SAMUEL BOWLES, *A COOPERATIVE SPECIES: HUMAN RECIPROCITY AND ITS EVOLUTION* (2011).

<sup>57</sup> The Principle of Fairness certainly leaves room for a reasonable agent to prioritize friends by investing time, energy, and resources in nourishing her friendships. It seems likely to leave less room for her to give priority to others based simply on national or ethnic commonalities. The Principle requires that I avoid discriminating except in pursuit of a genuine good. Acting for the sake of a relationship with a person or a group of people is a matter of acting for the good of friendship—but simply acting for their sake when such a relationship isn't in the air is not. Thus, the Principle seems likely to rule out prioritizing others simply on the basis of their membership in large-scale and medium-scale groups. By contrast, membership in small-scale groups clearly could matter here. Further, even if particular nationalistic and quasi-nationalistic choices could be seen as narrowly appropriate in some cases vis-à-vis the Principle of Fairness, I think it would be hard to implement those choices non-destructively given the constraints imposed by not only the Principle of Respect but also the baseline possessory rules that I suggest can be derived from the Principle of Fairness; see Chapter 2, *infra*. Thanks to Sandy Thatcher for calling to my attention the need to make this point.

out the use of force to defend oneself or others (Subsection 4). They do, however, provide crucial protections for multiple, valuable aspects of our lives (Subsection 5). Together, they yield what I'll call the Principle of Respect: *do not purposefully or instrumentally harm any instance of a basic aspect of well-being, and do not cause harm to anything out of hostility.*<sup>58</sup>

## 2. *Purposefully Harming an Instance of an Authentic Aspect of Well-Being Is Unreasonable*

Something like the Principle of Respect is sometimes expressed in this form: *don't do evil, even to bring about good*. The principle is often treated as presupposing a set of rules (say, in a religious context, the Ten Commandments); in this case, the principle can be understood as stipulating that the rules should be treated as exceptionless, so that they may not be violated even in pursuit of particularly good consequences. But understood in this way, the principle appears unavoidably arbitrary. Why should I accept the relevant moral rules in the first place? And what reason, exactly, does the principle give me to treat them as exceptionless?

Thus the strength of the Principle of Respect. This principle doesn't begin with a set of specific moral rules treated as givens or with a prior understanding of evil. Rather, it is derived in large part simply from the idea that there are objective aspects of human welfare which it is unreasonable to harm.

Think about how one might reason if one sought to attack another's well-being (or one's own). One reason for which one might do so would be to cause harm for its own sake. Acting for this sort of reason seems unjustifiable.

To make attacking an instance of any aspect of well-being one's *purpose*, to attack it for the sake of attacking it, might make sense if it lacked value, if it weren't inherently worthwhile. Attacking it can be seen as presupposing a denial of its inherent worth. Once that intrinsic value is granted, the attack seems unreasonable (as does choosing to maintain an attitude of hostility toward any instance of any aspect of well-being). Any purposeful attack on an instance of welfare, and so any action rooted in hostility toward the welfare of the one being affected by one's action, won't make sense because it will involve treating a genuine aspect of welfare as if it weren't a genuine aspect of welfare at all. In addition, an attack on a basic aspect of well-being for the purpose of harming it is, by definition, undertaken for no intelligible reason: one seems to be seeking no ultimate benefit, but only a harm, and doing so appears to be inconsistent with the Principle of Recognition.

<sup>58</sup> See MURPHY, RATIONALITY, *supra* note 1, at 204–07; FINNIS, ETHICS, *supra* note 1, at 109–27; GRIEZ & SHAW, *supra* note 1, at 129–39; FINNIS ET AL., DETERRENCE, *supra* note 1, at 286–87; FINNIS, LAW, *supra* note 1, at 118–25.

3. *Instrumentally Harming an Instance of an Authentic Aspect of Well-Being Is Unreasonable because Aspects of Well-Being Can't Be Objectively Rank-Ordered*

One might also attack a basic aspect of well-being not because one doesn't think it's valuable, but instead *in order* to flourish or to foster another's flourishing. This, too, seems hard to defend,

An instrumental attack on an instance of flourishing will still be—one must still think of it as being—an attack on the relevant aspect of well-being. Since it is unreasonable to attack a basic aspect of anyone's welfare—to the extent that an attack seems to involve treating it mistakenly as valueless or worse—it seems as if there will be good reason not to attack, *whatever one's reason*.

Perhaps this argument might be thought to count against a direct attack but not an instrumental one. In the case of an instrumental attack, one might correctly understand what one was doing as an attack on some aspect of another's good but not as involving a denial of its value. In this case one will presumably see one's attack as justified in virtue of the good one seeks to realize or pursue. It can't be because the aspect of welfare one is attacking is valueless. However, the good one is attempting to realize doesn't, couldn't, *outweigh* the good one is attacking: it's not commensurable with it. So any instrumental attack on an instance of an acknowledged aspect of well-being in the service of another such instance would seem to be unreasonable: it would need to be grounded on the assumption that a basic aspect of well-being could be objectively less valuable than another genuine aspect of well-being—despite the fact that this can't be the case.<sup>59</sup> Instances of well-being are incommensurable and non-fungible, so none can outweigh any other.<sup>60</sup>

<sup>59</sup> Of course I may reasonably choose one real good rather than another simply because I like the good I choose and don't like the one I don't. We do this sort of thing all the time, and I didn't mean to imply that we don't, or that we don't act sensibly when we do. But I can't *cause harm* to one aspect of someone's well-being as a means to furthering some other aspect of someone else's well-being (or my own) on the assumption that the aspect of well-being I'm choosing to harm is somehow objectively less important than, say, the one in the interests of which I'm causing the harm.

Thus, it is not unreasonable to pursue something one likes in preference to something one doesn't: for instance, I may reasonably pursue a research program in biophysics that is so demanding that I will have little time to devote to personal friendships, with the unintended but foreseen consequence that my friendships suffer, perhaps irremediably. But this can be reasonable in a way that, say, forcibly subjecting a friend to a burst of harmful radiation in pursuit of that program would not be. My point is *not* that choosing one good over another can only be rational if one is worth more than the other—this would leave us paralyzed. Rather, I believe various aspects of welfare are incommensurable, and that one can choose one over another without making any false judgment about their relative merits—as if they were, in fact commensurable. But one *does* need to treat one as more valuable than another in order to justify purposefully or instrumentally attacking it.

<sup>60</sup> Obviously, this does not mean that one cannot in some cases reasonably *choose* to promote one rather than another without attacking the instance of well-being not chosen, but one does not do so on the basis of any objective weighting. Thus, the possibility of preference does not provide a backdoor

This doesn't apply, of course, when the harm one causes is merely incidental. But it *does* apply when one harms one good *in service to* another: in this case, it would seem that one must judge the good one harms as less important than the good one is seeking to foster, provided one acknowledges that directly harming the good isn't reasonable. And doing this can never be reasonable because of the incommensurability and non-fungibility of the various aspects of well-being and the various instances of those aspects.

A critic could argue that one might choose to harm one aspect of flourishing in order to foster another, not because one judged the latter superior to the former, but only because one *preferred* the latter to the former. On this view, one wouldn't fall foul of the criticism that one was unreasonably treating one as inherently more valuable than the other. But it is not clear that this response would be satisfactory. While one may certainly choose some aspects of flourishing (one's own or others') in preference to others, one must still judge what one chooses to be valuable, and to be worth choosing because of its value, if one is to choose reasonably (in accordance with the Principle of Recognition). The preference amounts, as it were, to a proposal that one opt for something, but one can reasonably accept that proposal only if that for which one opts really *is* valuable. So it doesn't seem one could escape considering the actual worth of the object of one's choice. In addition, whatever the role of one's preference in motivating one's action, to proceed in the envisioned way would still involve choosing to attack a genuine aspect of flourishing. One's preference wouldn't be sufficient to justify the attack, since it wouldn't provide a justification for action at all—only the value of what one preferred would. But the value of what one preferred would be, *ex hypothesi*, incommensurable with the value of what one attacked and therefore incapable of providing the needed justification.<sup>61</sup>

Harming something—say, a physical object—that isn't itself an instance of a basic aspect of well-being, but doing so on the basis of *hostility* to another's well-being (as when the object is attacked because it is a means to another's well-being, which one intends to affect adversely), is also inconsistent with the Principle of Respect. Even though one isn't attacking a basic aspect of welfare, one is choosing *on the basis of* hostility to a basic aspect of welfare. And doing so amounts, again, to the denial that something valuable—the well-being of the person toward whom one is being

rationale for direct attacks on basic aspects of well-being. (Thanks to Sandy Thatcher for a useful exchange on this point.) Suppose, for instance, that one seeks to end spectacles of public torture in the arena that strike some people as aesthetically appealing. Eliminating these spectacles has an adverse affect, *ex hypothesi*, on the aesthetic experiences of those who appreciate them. But this is a foreseen but unintended side effect of eliminating the spectacles, not a means to their elimination. One chooses in this case to promote the well-being of the spectacles' victims rather than that of the victimizers (a preference mandated, surely, by the Principle of Fairness).

<sup>61</sup> Thanks to David Gordon for discussion of these points.



hostile, the indirect target of one's hostile action—really *is* valuable. Something that is inherently worthwhile isn't a reasonable object of hostility, even if the hostility isn't expressed in a direct attack on whatever it is that's worthwhile, but rather in an assault on something else. The Principle of Respect doesn't rule out causing incidental harms to things that aren't aspects of welfare, but it *does* rule out causing purposeful harms to such things *in order to* hamper another's well-being.

#### 4. *Accepting the Principle of Respect Is Consistent with Using Force Defensively*

The Principle of Respect does not itself rule out causing harm as a foreseen but unintended by-product or side effect of doing something else.<sup>62</sup>

Often enough, we do things with consequences that we do not intend, that we do not choose purposefully. A dentist may knowingly disturb a patient's peace of mind by drilling into one of his teeth, but she may *intend* only to improve his health by doing so. The Principle of Respect does not rule out causing this kind of harm. It governs *how* we choose, how particular reasons *figure* in our deliberation and our selection of options. It precludes making injury the *object* of our action because doing so amounts to a denial of the value of inherently worthwhile aspects of well-being and their incommensurable, non-fungible character. Knowingly but unintentionally bringing about some harm to some instance of well-being need not involve *either* treating the instance of well-being as if it weren't an instance of well-being or treating it as less intrinsically valuable than some other instance of well-being.

Thus, while the use of force as a means of intimidation or retribution or retaliation is ruled out by the Principle of Respect, the use of force to defend oneself or another is not. Using force against an assailant for the purpose of stopping her attack may, in fact, result in her injury or death. But the structure of one's action need not involve injuring or killing purposefully: one need not use force *in order to* injure or kill her. And it need not involve injuring or killing *instrumentally*: one can act in a way one knows will injure or kill without selecting the attacker's injury or death as a *means* to the goal of stopping her.<sup>63</sup> Instead, one's goal may be, say, to stop the other's unjust action, using a method one expects to result in harm, but without willing the harm itself. One's action might be "directed at resisting and reducing unjust force, ... [while] unavoidably ... [resulting] in the injury or death of another"<sup>64</sup>—it might be designed "to stop the attack, accepting as a side-effect the attacker's death"<sup>65</sup>

<sup>62</sup> See FINNIS, ETHICS, *supra* note 1, at 132; GRISEZ & SHAW, *supra* note 1, at 140–46; FINNIS ET AL., DETERRENCE, *supra* note 1, at 312–13; FINNIS, LAW, *supra* note 1, at 123–25.

<sup>63</sup> Cf. FINNIS, ETHICS, *supra* note 1, at 132.

<sup>64</sup> GRISEZ & SHAW, *supra* note 1, at 151.

<sup>65</sup> FINNIS ET AL., DETERRENCE, *supra* note 1, at 312.

instead of involving the proposal “to kill . . . as a means to an end.”<sup>66</sup> So, for instance, the point of the Stauffenberg plot was “that Hitler be incapacitated from participating in the ongoing Nazi tyranny whose murderous violence he directed.” It involved the use of a bomb just as someone on a battlefield might employ “a rifle or grenade to stop the assault of enemy soldiers, or a howitzer to disrupt enemy formations assembling far behind the lines.”<sup>67</sup>

None of this implies, of course, that there’s never a problem with foreseeably causing harm as long as one doesn’t intend to do so. For, even if one doesn’t, one may still be imposing harm, or the risk of harm, unreasonably. The Principle of Fairness may rule out a choice to impose harm even if the Principle of Respect does not. But the absolute prohibition on purposeful or instrumental harm embodied in the Principle of Respect leaves open the possibility of using force defensively.

##### 5. *The Principle of Respect Safeguards the Basic Aspects of Well-Being*

Any purposeful or instrumental attack on any instance of a basic aspect of well-being is unreasonable, as is any indirect harm to an aspect of well-being that is rooted in hostility. For a purposeful or instrumental attack on an aspect of well-being (or an act rooted in hostility to an instance of well-being) to be justified, it would have to be the case that a putative aspect of welfare wasn’t *really* valuable, in which case it wouldn’t really be an aspect of welfare at all, or that a genuine aspect of welfare could reasonably be treated as objectively less important than another—which it could be only if aspects of well-being, or instances of such aspects, could be rank-ordered, as they cannot be. The Principle of Respect does not rule out causing harm as the anticipated but unintended consequence of an otherwise reasonable action, but it does provide very secure protection against purposeful or instrumental harm and injury rooted in hostility.<sup>68</sup>

<sup>66</sup> GRISEZ & SHAW, *supra* note 1, at 151.

<sup>67</sup> FINNIS, AQUINAS, *supra* note 1, at 291.

<sup>68</sup> The Principle of Respect fairly clearly tracks common moral intuitions at some points. But it might seem not to do so at others. For instance, it might be asked whether one could choose in a manner consistent with this requirement of practical reasonableness while clipping fingernails, trimming hair, or cutting through someone’s skin for the purpose of facilitating access to a tumor one hopes to remove: do these not seem to be attacks on bodily well-being in the interests of logically subsequent good consequences? Perhaps the easiest way to deal with these sorts of problems would be to treat bodily integrity and well-being, not as basic aspects of well-being, but as valuable to the extent necessary to safeguard life and other varieties of flourishing. Alternatively, these actions might be judged not to be instances of *attacking* or *harming* bodily well-being, though I would wonder whether a clear line could be drawn. Perhaps in some cases the harm to bodily well-being might be seen as a side effect of choices made in pursuit of other sorts of fulfillment rather than as means

### E. The Principles of Practical Reasonableness Yield Some Absolute Prohibitions and Some Relative Ones

The Principle of Recognition, the Principle of Fairness, and the Principle of Respect are themselves absolute and exceptionless. That is, there is never a time when it is reasonable to ignore or disregard any of them. But there's one fairly obvious difference between the Principle of Recognition and the Principle of Respect on the one hand and the Principle of Fairness on the other. The Principle of Recognition and the Principle of Respect rule out certain generically specifiable action-types absolutely. For example: any instance of targeting noncombatants in wartime is fairly clearly an instance of purposefully causing harm to one or more basic aspects of well-being. So it's possible to be quite clear in general terms about various sorts of conduct that will always be inconsistent with the Principle of Respect: any time I choose to injure any basic aspect of well-being purposefully or instrumentally, and any time I act out of hostility, I violate this principle and so act unreasonably. By contrast, the Principle of Fairness leaves open a much broader range of possibilities. It creates, for instance, a general presumption in favor of honoring promises; but, in the absence of quite specific information about a given situation, it can provide only limited guidance about whether a particular promise might reasonably be broken or not. The Principle of Fairness does not yield exceptionless, specific rules of conduct in the way the Principle of Respect does, though it is itself exceptionless, and though it may provide reason for *institutions* to adopt rules which it makes sense for them to enforce exceptionlessly.

### F. We Act Reasonably When We Accept the Reality and Diversity of the Basic Aspects of Well-Being and the Essential Moral Equality of Those Capable of Flourishing

Acting reasonably means acting in full view of reality. The Principle of Recognition mandates attentiveness to the genuine worth of the objects of one's actions, and thus avoidance of the pursuit of illusory goals. The Principle of Fairness entails that a moral agent accept the moral equality of those capable of flourishing, and thus that she

to these ends, though, again, I am doubtful that this would always be true in the sorts of instances I've envisioned here.

The principle poses fewer problems in other cases than might initially be thought. Going on a diet to lose weight may unsettle my peace of mind, causing physical or emotional distress. But the distress is a by-product of a choice undertaken in the interests of life (and the various kinds of flourishing which bodily well-being facilitates), not a means to flourishing. What if the point of the diet is to prepare myself for an anticipated period of privation? If the only harm involved is likely to be to my peace of mind, I need not choose to cause *this* harm as a means to my purpose; rather, it could (and likely would) be a foreseen but unintended consequence of my decision to diet. By contrast, if depriving myself really amounted (as it need not amount) to attacking my bodily well-being, then I think it would be unreasonable. Thanks to an anonymous reader for suggesting the importance of addressing these issues.

avoid discrimination which is not rooted in the pursuit of actual goods and which she would not be willing to accept were roles reversed. The Principle of Respect requires that a moral agent acknowledge the incommensurability of the aspects of welfare and the non-fungibility of the particular instances of those aspects, and thus avoidance of purposeful or instrumental attacks on basic aspects of welfare. (Of course, simply because the various dimensions of welfare can be distinguished for this and other analytic purposes, it does not, of course, follow that in reality they occur or can be realized in isolation from other aspects.) Moral rules derived from the Principle of Recognition and the Principle of Respect are exceptionless; the Principle of Fairness itself is, like the others, exceptionless, but rules for personal conduct (a rule enforced by institutions over a wide range of cases may, of course, be another matter) derived from it will of necessity be more flexible and responsive to particular circumstances. As negative principles, the requirements of reasonableness leave actors with considerable latitude—with a great deal of freedom to choose the ways in which they will seek to flourish and those in which they will seek to help others flourish. But they do rule out choices that attack basic aspects of well-being, ignore the importance of flourishing, and preclude peaceful, cooperative interaction. Thus, they provide a framework that allows for the reasonable resolution of conflicts among actors' various attempts to flourish and to foster the flourishing of others.<sup>69</sup>

The principles of practical reasonableness do not, in general, *direct* agents' choices; rather, they constrain those choices, leaving agents free to pursue real aspects of welfare in light of their preferences and identities. It is the aspects of well-being that provide agents with reasons for action, but the reasonableness and the subjective appeal of a potential choice to realize a particular aspect of well-being in a particular way will depend on the temperament, circumstances, talents, endowments, interests, and commitments of the agent. Reasonable agents will accept the moral limits on their choices that flow from the principles of practical reasonableness; they must assess options in light of their preferences *within* these constraints. This kind of assessment is not, of course, in the ordinary sense an objective process, since the various dimensions of flourishing are incommensurable and non-fungible; but it amounts to the establishment of reasonable priorities by agents in light of their own unique characteristics and circumstances.<sup>70</sup>

#### IV. A FLOURISHING LIFE IS A REASONABLE LIFE

The point of morality is to acknowledge, in tandem with an awareness of the reality and variety of the modes of flourishing and fulfillment, (*i*) the irreducible diversity

<sup>69</sup> Thanks to an anonymous reader for making clear the need to make the points I seek to express in this sentence and the following paragraph.

<sup>70</sup> Cf. FINNIS, LAW, *supra* note 1, at 111–12; FINNIS, *Commensuration*, *supra* note 1, at 227–28.

of those affected by our actions (and so, in accordance with the Principle of Respect, to refuse to turn any into an object to be manipulated, an aspect of an aggregate, or a fungible unit exchangeable with others) and, at the same time, (ii) their common possession of those characteristics that render them (equally) morally considerable (and so, in accordance with the Principle of Fairness, to avoid arbitrary distinctions). The point of morality is, in short, a life lived well.

Such a life is a life lived in accordance with reason. This does not mean that reasonableness is itself the only sensible goal of action or that it is pointless or destructive to attend to our emotions. It *does* mean that we need to think carefully, reflectively, and critically about how and why we act. The right is neither logically prior nor logically subsequent to the good. Rather, rightness—practical reasonableness—is an ineliminable aspect of goodness, of flourishing.

When we reason well, we recognize that some aspects of our lives and those of others are inherently valuable for us, that it is reasonable to seek them for their own sake; by contrast, we can see that other aspects matter precisely because, and just to the extent that, they *enable* us to flourish. We can sensibly disagree about just what which aspects of well-being are intrinsically and instrumentally valuable, but there is good reason to think that it is *not* the case that things go well for us just because our preferences are satisfied or that we experience pleasant emotions. Instead, we flourish when we have inherently worthwhile experiences, join in inherently worthwhile relationships, engage in inherently worthwhile activities, acquire and maintain inherently worthwhile qualities, and so forth. There may be good, even if not unquestionable, reason to treat friendship, knowledge, aesthetic experience, play, practical reasonableness, religion, imaginative immersion, life, bodily well-being, and peace of mind, and perhaps other kinds of well-being, too, as among these aspects of well-being that are inherently worthwhile for us. What is clear, in any case, is that there is no substratum that underlies these varied dimensions of welfare: each is different from the others. Thus, the various aspects of welfare can't be weighed against each other using the same metric, and particular instances of each can't be objectively traded off against each other or against instances of others.

We *do* make choices among ways in which we seek to flourish, among ways in which we seek to help others flourish. But we do not, cannot, do so on the basis of objective rank-ordering or quantitative weighing, which are simply impossible.<sup>71</sup>

<sup>71</sup> Thus, talk about *personal utility* in the context of economic analysis is not best read as pointing to any sort of discriminable psychological state capable of doing explanatory work. It is relatively harmless, if confusing, to refer to an option chosen by a given agent as the one, of those available to her, with “the greatest utility.” But this can mean neither that she felt more strongly about it than alternatives (for she might have chosen one she judged to be preferable even though, as an empirical matter, she desired it less; she might also simply have desired the two options with qualitatively different desires incapable of quantitative comparison) nor even that it best met her preferred objectives (since, absent

Reason leaves us free to choose in light of our preferences, as long as we opt for real aspects of flourishing rather than illusory ones, avoid discriminating arbitrarily among those affected by our actions, and decline to attack any aspect of well-being—either directly or as a means to some other goal—and to act out of hostility.

Thus, morality as I conceive of it has both personal and interpersonal dimensions, which are inextricably linked: it is concerned with personal flourishing and with what we can reasonably be said to owe others.<sup>72</sup> As I will maintain in more detail subsequently, institutional actors choose reasonably when their decisions are constrained by the requirements of interpersonal morality in ways that reflect the scope and impact of their decisions. It is not the case, then, that there is any sort of specially institutional morality or that institutions have special moral prerogatives. Institutional actors' role-specific duties flow from the same moral principles that constrain all interpersonal moral choices, even as they also reflect the distinctive situations in which such actors find themselves.

a set of commitments ordering those objectives, they would be, because incommensurable, incapable of being ranked objectively and since she might well be fully aware of their incommensurable attractions). Similarly, it will ordinarily be meaningless to talk about the utility of options not chosen, not only because this ranking, if it existed, would likely be inaccessible to others but because it might well not exist at all—one may simply not have fully formed preferences about the relevant options on the basis of which a ranking of the options could be constructed. And since talk about utility is finally just a convenient way of pointing to people's choices, it will make no sense to claim that someone *would have* chosen a particular option when she didn't, in fact, do so, given that, in general, counterfactual propositions concerning free choices are either false or lacking in truth-values. In some cases, commitments or felt preferences *will* indeed yield subjective rankings of alternatives, but personal choice can be entirely intelligible without any reference to such rankings, as long as it involves a recognition of the chosen option as an instance of or a means to flourishing, and claims about rankings of this kind will often be indefensible.

<sup>72</sup> Personal flourishing and what we owe others are linked in at least two ways: acting reasonably, and so acting reasonably in relation to others, is an expression of practical reasonableness, which is an aspect of personal flourishing; and it is precisely the flourishing of persons that the principles of practical reasonableness serve to safeguard. I do not say a great deal here about the constraints reason imposes on purely self-regarding action. While action that harms unreasonably warrants guilt, I don't think this is appropriate in the case of action that harms or deprives oneself—in this case, regret seems more appropriate. But there *are* multiple constraints on reasonable behavior with respect to oneself. For instance: (i) the Principle of Respect obviously precludes causing oneself purposeful harm; (ii) one owes it to oneself, as well as the others affected, to make commitments and to nourish constitutive attachments (even thought of course one can reasonably absolutize neither); (iii) one ought to pursue one's goals in appropriately efficient ways. For a discussion of the latter two constraints in the context of contemporary natural law theory, see, e.g., CHARTIER, *supra* note 1. For a more general discussion of reason's constraints on one's treatment of oneself, framed with respect to "reflective rationality," see DAVID SCHMIDTZ, *RATIONAL CHOICE AND MORAL AGENCY* (1995). In general, I would be inclined to see Schmitz's analysis as complementing and supplementing mine, though I would tend to approach questions about personal flourishing in a somewhat different way. The dual focus of Schmitz's theory on personal well-being and social institutions is also in some ways parallel to the joint concern with personal and institutional morality I adopt here, though I think there's something to be said for emphasizing a bit more sharply a distinction between institutional moral requirements and interpersonal but noninstitutional ones.

These moral principles serve to referee conflicts among different people's attempts to flourish. And, in tandem with what we know about ourselves and our environment, we can use the basic principles of reasonable action to generate rules limiting the reasonable imposition of injuries on others and their justly acquired possessions, rules that can be summed up in what I call the *nonaggression maxim*, which provides a framework for reasonable interpersonal choices in both institutional and noninstitutional settings. I turn to the justification of this generalization and an introduction to its implications in [Chapter 2](#).