

## A CONCEPTUAL ANALYSIS OF POVERTY

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## **LAY ABSTRACT**

Our common understanding of poverty is that it relates to a lack of financial resources, but if one digs deeper into how we actually think about poverty we see that it is not only about the lack of resources, but about the vulnerabilities created and the negative effects upon one's capabilities to meet their basic needs. Those basic needs refer not only to subsistence level goods like food and shelter, but also to the goods that one is commonly expected to have the ability to obtain in order to be considered free from poverty by other persons in the society in which one lives. Poverty is also a moral concept and we require moral reasoning in order to decide which basic needs one must be able to meet to be considered free of poverty.

## **ABSTRACT**

This Thesis employs the traditional philosophical method of conceptual analysis to look at the concept of poverty, employing H.L.A. Hart's meta-evaluative approach to that method, as described by W.J. Waluchow. Our common understanding of poverty is that it merely denotes a lack of financial resources, but if one digs deeper into how we actually think about poverty and our practices with regard to the concept, we see that the meaning of that concept is not only about a lack of resources, but about how that deprivation affects us: the vulnerabilities created and the negative effects upon one's capabilities to meet their basic needs. Those basic needs refer not only to subsistence level goods like food and shelter, but as Amartya Sen argues, one must also have the capability to avoid the shame associated with an inability to afford the goods that one is generally expected to have the ability to obtain in order to be considered free from poverty. Thinking about poverty in terms of capabilities thereby resolves the dichotomy between absolute and relative conceptions of poverty, as well as many of the counterfactuals deployed against the relative conceptions of poverty that are commonly found in affluent societies. The relationship between poverty and shame is also supported by empirical studies of the shame experienced by poor persons in disparate contexts. Poverty is also a moral concept that includes a moral call to action, and we require moral reasoning in order to decide which basic needs one must be able to meet to be considered free of poverty. After first advocating for a non-moral conceptual framework for poverty, I therefore also address three closely-related moral concepts, human rights, equality, and freedom, that variously constitute and inform the concept of poverty, and assist us with our moral reasoning in that regard.

## **DEDICATION**

This thesis is dedicated to the memory of Patricia Ethel Foye, my mom.

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Firstly, I want to thank my Supervisor, Professor Wil Waluchow. From the moment I contacted him in the Spring of 2017 with a vague idea for philosophical research on poverty, to his sustained kindness in agreeing to continue to supervise me after his well-earned retirement in 2020, to his many patient and incisive comments on earlier drafts of this thesis, Professor Waluchow has consistently exemplified the qualities of a great teacher and mentor, both through his sustained support and kindness and his sage guidance and direction. To the extent that this thesis is sound and clearly written, it is owed to him, while the mistakes are all my own. I also want to thank Professor Violetta Ighneski as my Second Reader who has also been so supportive and whose helpful comments and suggested readings were very helpful and significantly formative. I have learned so much and am very honoured to have had the opportunity to work with each of them.

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## Chapter 1 – Introduction

### The Question and Our Approach

The centrality of the issue of poverty (however we define the term) to our societies has been pushed into sharp relief by the global Novel Coronavirus pandemic (“COVID-19 pandemic”). As the virus spread across the globe, issues such as universal basic incomes, working conditions for low paid workers, eviction moratoriums for rental housing, tent city evictions, and the unequal adverse effects of the virus on already-marginalized communities, have entered into the public discourse to a level that would perhaps not have been imaginable pre-pandemic.

In this thesis, I will engage in a conceptual analysis of “poverty”. I will start in Chapter 2 with a discussion of conceptual analysis generally and the utility of that methodology for analysing the concept of “poverty”. In Chapter 3, I will propose a non-moral conceptual framework for the concept of poverty followed by a discussion of the constituent elements and concepts within that framework. In so doing I will describe how these elements fit and function within our conceptual framework, and how the framework addresses potential counterfactual objections to various conceptions of poverty. The analysis will also include consideration of some closely related moral normative concepts and how those concepts relate to the concept of poverty. I will look at the closely related moral normative concepts of human rights, equality, and freedom, with any eye to broadening and at the same time sharpening our analysis of the concept of poverty by asking how different conceptions of these concepts might affect our moral reasoning with regard to our response to poverty as well as our moral reasoning to specify the constituent

elements of our proposed conceptual framework such as basic needs and vulnerabilities.

We will conclude in Chapter 4 with a summary of the major points.

I rely throughout on the distinction between concepts and conceptions<sup>1</sup> to roughly distinguish between a theory that one might hold about the content of a concept and the concept itself that is the object of one's theorizing.

## Methodology

Before directly addressing the concept of poverty, we must first examine the contested strategy of conceptual analysis in philosophy more generally.<sup>2</sup> Chapter 2 will provide only a necessarily brief overview of some of the issues in conceptual analysis, focusing on influential forms of conceptual analysis in jurisprudence in order that we might gain some purchase on how the approach might apply to our project of examining the concept of poverty. In light of scope and amount of scholarship on conceptual analysis, we will begin with an admittedly cursory and incomplete overview of the main issues in the theory and practice of conceptual analysis, including the disputed relationships between conceptual analysis as the classical method of intuitively and logically defining concepts solely by way of an enumeration of necessary and sufficient conditions, methods of social constructivism that take into account contingent factors in that conceptual analysis, and methods that seek to improve a concept toward achieving some end other than understanding. In order to elucidate what kind of project we are engaged in, we will first try to come to some understanding of the method and ends of conceptual analysis, as

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<sup>1</sup> W. B. Gallie, 'Essentially Contested Concepts', *Proceedings of the Aristotelian Society* 56 (1955): 167–98; John Rawls, *A Theory of Justice* (Harvard University Press, 1971); Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Belknap Press, 1986).

<sup>2</sup> I am indebted to Jorge Fabra for a very helpful discussion on conceptual analysis and constructive conceptual explanation and for him pointing out some of the major writing in this area with regard to jurisprudence.

well as some of the common objections to conceptual analysis in analytic philosophy and analytic jurisprudence. In so doing, we will have provided ourselves with a collection of tools to interrogate the concept of poverty generally.

This project will aspire to the “descriptive sociology” of H.L.A. Hart,<sup>3</sup> “looking not merely at words... but also at the realities we use words to talk about.”<sup>4</sup> In preparing our analytic tools for engaging in this particular conceptual analysis, I will track the jurisprudential arguments on conceptual analysis offered by Wil Waluchow, in particular with regard to the distinction between “meta-theoretical-evaluative and moral-evaluative considerations”, the issues of moral relevance and moral justification, and the importance of “attempting to make a theory the best it can be and making the object of the theory the best it can be”<sup>5</sup> by employing meta-theoretical-evaluative criteria such as charity, simplicity, comprehensiveness, coherence, and elegance.<sup>6</sup>

After first setting out a brief overview of Hart’s own account of his methodology, I will turn to the analysis of Hart’s methodology as set out by Waluchow including the meta-theoretical-evaluative criteria that might be employed in such an approach. The Chapter will also rely heavily on the instructive interpretation of conceptual analysis of Michael Giudice who seeks to reframe the methodological approach as ‘constructive conceptual explanation’,<sup>7</sup> focusing first on his very helpful descriptions of the primary challenges to conceptual analysis as it is described by him as being linked to analytic philosophy

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<sup>3</sup> See H. L. A. Hart, *The Concept of Law*, ed. Joseph Raz and Penelope A. Bulloch, Third edition, Clarendon Law Series (Oxford: Oxford University Press, 2012) at Preface.

<sup>4</sup> See John Austin, ‘A Plea for Excuses’, *Proceedings of the Aristotelian Society* 57 (1957): 8; as quoted by Hart, *The Concept of Law*, 14.

<sup>5</sup> W. J. Waluchow, *Inclusive Legal Positivism* (Oxford: Oxford University Press, 1994), 30.

<sup>6</sup> Waluchow, 21 and 25 at footnote 28.

<sup>7</sup> See Michael Giudice, *Understanding the Nature of Law: A Case for Constructive Conceptual Explanation*, Elgar Studies in Legal Theory (Cheltenham, UK: Edward Elgar Publishing, 2015), at Part 1 ‘Beyond Conceptual Analysis’.

generally. I will also discuss the ways in which his methodology might be seen to improve our understanding, while ultimately disputing whether the Hartian approach requires such wholesale reimagining. I will argue that some of those challenges to conceptual analysis, including Giudice's, aim at strawmen caricatures of conceptual analysis and can themselves be subsumed under the larger methodology of conceptual analysis rather than requiring a wholesale re-appraisal of the approach. In so doing, I will focus on the ways in which the methodology of conceptual analysis can be improved by taking on these challenges and incorporating them to strengthen both the utility of the method to improve our understanding of concepts, as well as both the aptness and utility of the methodological approach to this current project. Given, the fundamental questions that it poses, I will address the challenges posed to the methodology of conceptual analysis by a Naturalist/Realist approach as articulated by Brian Leiter.<sup>8</sup> I will also discuss the distinction between different types of conceptual analysis as articulated by Natalie Stoljar and Sally Haslanger, while distinguishing the Hartian approach to conceptual analysis that I propose to follow from an ameliorative approach.<sup>9</sup> Finally, after having articulated a methodology that employs the traditional techniques of conceptual analysis while being revisable in the face of social and historical contingencies, I will address some questions posed by Waluchow with regard to the respective roles of retrieval and revision with regard to the methodology.

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<sup>8</sup> See Brian Leiter and Matthew X. Etchemendy, 'Naturalism in Legal Philosophy', in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Fall 2021 (Metaphysics Research Lab, Stanford University, 2021), <https://plato.stanford.edu/archives/fall2021/entries/lawphil-naturalism/>; Brian Leiter, 'Realism, Hard Positivism, and Conceptual Analysis', *Legal Theory* 4, no. 4 (December 1998): 533–47; Brian Leiter, 'Critical Remarks on Shapiro's Legality and the "Grounding Turn" in Recent Jurisprudence', SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 16 September 2020), <https://doi.org/10.2139/ssrn.3700513>.

<sup>9</sup> See Natalie Stoljar, 'What Do We Want Law to Be? Philosophical Analysis and the Concept of Law', in *Philosophical Foundations of the Nature of Law*, ed. Wil Waluchow and Stefan Sciaraffa (Oxford, United Kingdom: Oxford University Press, 2013), 230–53; and Sally Haslanger, 'What Are We Talking About? The Semantics and Politics of Social Kinds', *Hypatia* 20, no. 4 (2005): 10–26.

After having prepared ourselves with a conceptual approach, we will then turn to the concept of poverty to canvass some of the ways in which poverty is conceived in practice and in the philosophical literature.,<sup>10</sup> while testing those conceptions against counterfactuals and empirical evidence.

## The Concept of Poverty

The analysis of the concept of poverty in this thesis will primarily focus on conceptions of poverty in the English language found in western societies (as well as some international rights-based conceptions) and western philosophical traditions, without for example addressing other possible conceptions, such as for example conceptions of poverty found in China despite the admitted material gains in that country in alleviating extreme poverty (measured employing a common international measure).<sup>11</sup> This thesis rather focuses on the relatively modest contribution of a decidedly western-oriented analysis in the English language of various western and international conceptions of poverty.

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<sup>10</sup> In situating and summarizing the philosophical literature, I rely heavily on, and am thus indebted to, the excellent analyses of both Ruth Lister and Jonathan Wolff et al. surveying philosophical conceptions of poverty. See Ruth Lister, *Poverty* (Cambridge: Polity, 2004); and Jonathan Wolff, Edward A. Lamb, and Eliana Zur-Szpiro, 'A Philosophical Review of Poverty' (Joseph Rowntree Foundation, June 2015), <https://www.jrf.org.uk/sites/default/files/jrf/files-research/philosophical-review-poverty-full.pdf>.

<sup>11</sup> The Poverty Headcount ratio in China at the \$1.90 a day measure of extreme Poverty (see supra note??) at 2011 Purchasing Power Parity as a percentage of population shows a decrease from 66.3% in 1990 to 0.5% in 2016 (See <https://data.worldbank.org/indicator/SI.POV.DDAY?locations=CN>, retrieved 16Jan21). Also see for example: Xiaoling Wang and Xiaoying Zhang, *Towards 2030: Chinas Poverty Alleviation and Global Poverty Governance*, International Research on Poverty Reduction (Singapore: Springer, 2020) at p. 23:

*The World Bank China's achievements in poverty reduction have made tremendous contribution to the global poverty reduction by pushing for the attainment of [Millennium Development Goals] and the steady improvement of Human Development Index (HDI). Measured against the World Bank's poverty line of USD 1.25 a day (2005 PPP), the global poor population dropped by 1,090 million, from 1,926 million in 1990 to 836 million in 2015. Over the same period, the poor population in China decreased by 635 million, from 690 million to 55 million, accounting for 58.25% of the global poverty reduction. Between 1981 and 2015 China contributed 70% of global poverty reduction.*

Aside from the question of whether the intuitions that might inform a conceptual analysis might differ in East Asia, there exists social science research that raises question about the ways in which people reason and form beliefs in Western analytic culture versus East Asian holism. See Richard E. Nisbett et al., 'Culture and Systems of Thought: Holistic versus Analytic Cognition.', *Psychological Review* 108, no. 2 (2001): 291–310; as referenced in, Jonathan M. Weinberg, Shaun Nichols, and Stephen Stich, 'Normativity and Epistemic Intuitions', *Philosophical Topics* 29, no. 1 (2001): 429–60.



The thesis will also bracket<sup>12</sup> moral considerations in the sense of providing justificatory moral arguments for addressing poverty. I mean not to ask what individual persons or groups of persons should do about poverty, but rather to advocate a particular conception of poverty. That being said, I will however comment on how one ought to view and assess various conceptions of poverty and its related concepts while largely employing a “meta-theoretical-evaluative” approach as described by Wil Waluchow with regard to the methodological approach of H.L.A. Hart.<sup>13</sup> That is to say, I will attempt to refrain from commenting on the morality of poverty or on approaches to poverty, that require consideration of what Waluchow refers to as “moral-evaluative considerations.” However, I will at times comment on the “moral value relevance” of approaches to the concept of poverty, such as for example with regard to various approaches to justice in terms of egalitarianism, as well as describing moral aspects of the concept of poverty, while attempting to avoid offering moral justification for those positions and arguments.<sup>14</sup> The reader may however be aware that I have long been an advocate for efforts toward the eradication of poverty (or they will now be so),<sup>15</sup> and I hope that this methodological approach will contribute to those efforts in some way insofar as it improves our understanding of how we conceive of poverty. More specifically, as will become clearer, I hope that this the conceptual arguments in this thesis might convince decision-makers in

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<sup>12</sup> In this paper I will use the term “bracket” to mean “to set aside as an object of inquiry and evaluation”, rather than for example the specific usage employed with regard to phenomenological bracketing by Edmund Husserl; see Edmund Husserl, *Cartesian Meditations An Introduction to Phenomenology* (Dordrecht: Springer Netherlands, 1977).

<sup>13</sup> Waluchow, *Inclusive Legal Positivism*, Chapter 2 ‘Theories and Conceptions’.

<sup>14</sup> Waluchow, 30.

<sup>15</sup> See for example: Craig Foye, Chabriol Colebatch, and Deirdre Pike, ‘Report on Canada to the United Nations Committee on Economic, Social and Cultural Rights: The Right to an Adequate Standard of Living in Hamilton’ (Geneva: CESCR 36th Session, January 2006), <https://socialrightscura.ca/documents/CESCR-Submissions/Income-Security-Working-Group.pdf>; Craig Foye et al., ‘The Right to an Adequate Standard of Living in Hamilton, Update to the 2006 Report: A Follow-up Report to the United Nations Committee on Economic, Social and Cultural Rights’ (Geneva: CESCR 57th Session, January 2016), [https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CAN/INT\\_CESCR\\_CSS\\_CAN\\_22871\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CAN/INT_CESCR_CSS_CAN_22871_E.pdf).

law and policy to focus on the capabilities and vulnerabilities that one must have the capability to meet or avoid (respectively) in order to be free of poverty, while examining the related moral concepts and values that help us to fill out those constituent elements of the concept. With regard to the moral aspects of the concept, I further hope that the discussion herein helps us to reflect on the critical call to action that poverty presents.

The Chapter will begin with a discussion of poverty with a focus on what one might say are necessary and sufficient conditions for the concept, while being aware that that the framing of certain matters as necessary and/or universal may be vulnerable to charges of pretense if only because they may be contingent on a social-historical position. While some of this analysis may be open to the charge of armchair philosophy since there will be some reliance on intuitions, I hope the reader will find that such intuitions will be tested, at least to some degree, by situating that discussion within a broader discussion of empirically informed counterfactual analysis and empirical social science research. The overarching metric for this analysis will be the explanatory power of our conceptual framework with particular focus on the capacity of our conception to capture the internal perspectives of poverty such as with regard to shame, the relational aspects of the conceptions to the context of human experience, and the coherence of those conceptions with empirical evidence. It is hoped that the reader will in turn give a charitable reading to this wide-ranging and reflexive approach to what is ultimately a multi-dimensional concept, that is neither simple nor elegant, and yet one that is central to an understanding of ourselves as humans and the ways that our societies function.

I will argue for the following non-moral conceptual framework for the concept of poverty:

*a human state of material/financial deprivation that results in vulnerabilities and adversely affects one's capabilities to meet basic needs, including the capabilities to acquire the goods generally required to avoid shame due to social exclusion.*

This non-moral conceptual framework is a conceit in the sense that it is acknowledged that poverty is an evaluative concept that has both normative and moral aspects to it, aspects of the concept which will also be described more fully, particularly with regard to some closely related concepts.

I will discuss concepts, definitions and measurements, by building on Ruth Lister’s helpful elucidation of the distinctions between them. Lister sets out that concepts are essentially “about the meanings of poverty – both to those who experience it and to different groups in society,” definitions “provide a more precise statement of what distinguishes the state of poverty and of being poor from that of not being in poverty/poor,” and measures “represent ways of operationalizing definitions so that we can identify and count those defined as poor and gauge the depth of their poverty.”<sup>16</sup> As I will argue, the relationship between conceptualization and measurement is a reflexive one, and in fact there is relatively little consensus on definitions of poverty. Thus, many existing measures of poverty fail to sufficiently capture the multi-dimensional nature of poverty, and in fact, as has been pointed out by Jonathan Wolff and Avner de-Shalit, there may be “surprisingly little overlap” between measures of different criteria.<sup>17</sup>

When one looks to our intuitions about the concept of poverty one notes, as H.P. Lötter has pointed out, that one thing that we can say about poverty is that it is a “uniquely human” concept.<sup>18</sup> Further, the concept is not only descriptive but there are prominent

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<sup>16</sup> Lister, *Poverty*, at pp. 3-5.

<sup>17</sup> See Jonathan Wolff and Avner de-Shalit, *Disadvantage* (Oxford: Oxford University Press, 2007), 123; as mentioned by Wolff, Lamb, and Zur-Szpiro, ‘A Philosophical Review of Poverty’, 35.

<sup>18</sup> See H. P. P. Lötter, ‘Defining Poverty as Distinctively Human’, *HTS Teologiese Studies / Theological Studies* 63, no. 3 (7 May 2007): 1195–1212; and H. P. P. Lötter, *Poverty, Ethics and Justice*, Political Philosophy Now (Cardiff: University of Wales Press, 2011).

evaluative aspects of the concept including the ways in which we tend to categorize the poor. When we describe someone as being poor<sup>19</sup> we are not only describing their situation but at the same time placing them into a category socially, but also institutionally with regard to for example government statistics and in some cases legislation.

Poverty is regularly both conceptualized and measured in terms of absolute vs. relative poverty, where the former represents a threshold, generally based on a subsistence income or some other financial measurement(s), below which one is in poverty, while the latter describes a state of inequality leading to, for example, social exclusion and which is determined through such measurements as falling below a threshold of one half of median income. A tension that is commonly identified with regard to absolute measures of poverty,<sup>20</sup> is that such a conception fails to capture what we commonly think of as poverty in more affluent countries. Relative conceptions of poverty, on the other hand, are criticized both in regard to their failure to capture absolute deprivation, or longitudinal changes thereof, if for example a society stays relatively equal, as well as the intuition, originally pointed out by Amartya Sen, that “[i]t would be absurd to call someone poor just because he had the means to buy only one Cadillac a day when others in that community could buy two of these cars each day.”<sup>21</sup> That being said, it has long been recognized that one’s relative position with regard to absolute measures of poverty in terms of income or

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<sup>19</sup> There are sound objections to the use of “the poor” to describe those who are experiencing poverty relating to the categorization described in this paragraph which can lead to stereotypes. As with some other marginalized groups the term has at times been reclaimed by those groups and used for the purposes of political organizing and empowerment. Although I am not poor and thus have no such justification for my use of the term, I hope the reader will forgive that I have made the choice to employ both the descriptive phrases “the poor” and “those experiencing poverty” (and variations thereof – including with regard to “the homeless”) for readability. For a helpful discussion on this point see Lister, *Poverty*, 112-115; Lister also discusses the various arguments for continued use of the terms as “a moral and political challenge” (p. 115) rather than employing more sanitized terms which may blunt the force of the moral and political arguments to help the poor.

<sup>20</sup> For example, consider the World Bank definition of extreme poverty as living on or below \$1.00 (U.S.) per day (now raised to \$1.90). See World Bank, ‘World Development Report 1990: Poverty’ (Washington, DC: The World Bank, 1990), <http://elibrary.worldbank.org/doi/book/10.1596/0-1952-0851-X>.

<sup>21</sup> Amartya Sen, ‘Poor, Relatively Speaking’, *Oxford Economic Papers* 35, no. 2 (July 1983): 159.

assets will have some bearing on whether that person can afford certain goods that are expected of the non-poor according to the customs and norms of a particular time and place, such as with regard to the oft-cited example of the necessity of a linen shirt and leather shoes in the time of Adam Smith.<sup>22</sup>

Amartya Sen argues that the dichotomy between absolute and relative conceptions of poverty is resolved if we conceptualize poverty in terms of capabilities,<sup>23</sup> where capabilities are understood as our ability to achieve various living conditions.<sup>24</sup> Sen argues that to be free of poverty one must be absolutely free of the shame entailed by the relative poverty experienced by those who cannot afford the goods that are expected of them to be considered free of poverty, “not so much having equal shame as others, but just not being ashamed, absolutely.”<sup>25</sup> These conceptual arguments highlight that “becoming relatively worse off can make you absolutely worse off in terms of opportunity and social standing,”<sup>26</sup> and that “*absolute* deprivation in terms of a person’s *capabilities*

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<sup>22</sup> As mentioned by, Wolff, Lamb, and Zur-Szpiro, ‘A Philosophical Review of Poverty’, and ; Sen, ‘Poor, Relatively Speaking’ see; Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. Edwin Cannan (New York: The Modern library, 1937), 1168–69:

*By necessities I understand not only the commodities which are indispensably necessary for the support of life, but whatever the custom of the country renders it indecent for creditable people, even of the lowest order, to be without. A linen shirt, for example, is, strictly speaking, not a necessary of life. The Greeks and Romans lived, I suppose, very comfortably though they had no linen. But in the present times, through the greater part of Europe, a creditable day-labourer would be ashamed to appear in public without a linen shirt, the want of which would be supposed to denote that disgraceful degree of poverty which, it is presumed, nobody can well fall into without extreme bad conduct. Custom, in the same manner, has rendered leather shoes a necessary of life in England. The poorest creditable person of either sex would be ashamed to appear in public without them. In Scotland, custom has rendered them a necessary of life to the lowest order of men; but not to the same order of women, who may, without any discredit, walk about barefooted. In France they are necessities neither to men nor to women, the lowest rank of both sexes appearing there publicly, without any discredit, sometimes in wooden shoes, and sometimes barefooted. Under necessities, therefore, I comprehend not only those things which nature, but those things which the established rules of decency have rendered necessary to the lowest ranks of people.*

<sup>23</sup> See Sen, ‘Poor, Relatively Speaking’.

<sup>24</sup> Amartya Sen, *The Standard of Living*, ed. Geoffrey Hawthorn (Cambridge: Cambridge University Press, 1987), 23.

<sup>25</sup> See Sen, ‘Poor, Relatively Speaking’, 161.

<sup>26</sup> Brian Barry, *Why Social Justice Matters* (Cambridge: Polity, 2005), 173; as mentioned by Wolff, Lamb, and Zur-Szpiro, ‘A Philosophical Review of Poverty’, 30.

relates to *relative* deprivation in terms of commodities, incomes and resources” [emphasis in original]<sup>27</sup>. There is a circularity to the notion of the capability to avoid shame, since the particular type of shame identified by Sen is specific to that shame which arises out of a societal stigma which perceives that person as being in poverty. This is not entirely surprising, since again our project of conceptual analysis is to some extent about discovering something we already know. I appropriate the contested concept “social exclusion” to denote this particular type of shame as ‘shame due to social exclusion’.

Although arguing, along with Jonathan Wolff and Ruth Lister, that the concept of capabilities cannot replace nor fully encompass the concept of poverty, I will argue that the notion of capabilities and the related philosophical distinction between means and ends is crucial to our understanding of poverty, insofar as our concern, as commonly-understood, is about the relation between material resources and the capabilities they enable, even if those material resources such as income also remain central to our conceptions of poverty.

Having addressed the ways in which capabilities figure in our understanding of poverty, we will then discuss the concept of “vulnerability” or more specifically, Florencia Luna’s conception of “layered vulnerabilities” in the context of applied medical ethics, which I will suggest is also a closely related counterpart of ‘capabilities’, and which is particularly useful in understanding the ways in which one becomes poor as well as the ways in which one’s poverty can create vulnerabilities in other areas. Vulnerabilities might be understood as the obverse of capabilities. I suggest that vulnerability, or vulnerabilities, is

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<sup>27</sup> Sen, ‘Poor, Relatively Speaking’, 153; as mentioned by, Wolff, Lamb, and Zur-Szpiro, ‘A Philosophical Review of Poverty’, 30.

another essential feature of the way that we understand poverty, since we would not consider a person to be poor if they were not vulnerable to some harm, whether it be the harms of starvation or at least of the shame due to social exclusion arising out of the inability to afford such goods as for example shoes or perhaps a computer.

The concept of poverty is also closely related to a number of other concepts, some of which are sometimes even mistaken for the concept of poverty or seen as a sufficient basis in and of themselves to conceptualize poverty. I will argue that the concepts of human rights, equality, and freedom, are major moral normative concepts that help us to fill out our definition of poverty with regard to both the moral obligations entailed by the ‘call to action’ aspect of the concept, and also to fill out the basic needs and vulnerabilities that one is expected to have the ability to meet or avoid, respectively, in order to be considered free of poverty. While none of these related concepts can themselves encompass our multidimensional conception of poverty, I will argue that they form part of our moral reasoning, in the forms of deliberation and argument, that help to specify our meaning of the concept, and that human rights and equality are currently actually a part of our folk conception of poverty.

The Chapter will then move on to a discussion of the internal experience of poverty, arguing that, similar to Hart’s use of the internal/external distinction to elucidate the concept of legal obligation, the internal aspects of poverty are necessary to understand how poverty is experienced and thus conceptualized. The discussion of the internal experience of poverty will focus primarily on the experiences that empirical social science evidence suggests are common to all who experience poverty such as for example ‘othering’, shame and stigma, as well as adverse effects on mental health and cognition. The discussion of the internal experience will also consider crucial questions of agency,

particularly including the capability to comply with the law, which I will suggest raises questions with regard to the internalization required for the phenomenon of legal obligation as described by Hart.



## Chapter 2 – The Method of Conceptual Analysis – A Hartian Approach

### Introduction – A pragmatic and instrumental approach

Before we can say something about the concept of poverty, it will be helpful to set out some methodological tools for doing so. I propose to do so by examining the strategy of conceptual analysis in legal philosophy, and also more generally. This chapter will provide only a necessarily brief overview of some of the issues in conceptual analysis through a discussion of the methodology primarily as it has been employed in legal philosophy, while focusing on how the methodology might apply to our project of examining the concept of poverty.

Many books and articles have been written about, and/or have extensively employed, the methodology of conceptual analysis, without any settled philosophical consensus having been reached regarding the value and utility of the methodology, or as we shall see, even with regard to what we mean when we refer to conceptual analysis. In light of this, we will begin with an admittedly cursory and incomplete overview of some of the main issues in the theory and practice of conceptual analysis, including in particular some of the common objections to conceptual analysis in analytic philosophy and analytic jurisprudence. In order to understand what kind of project we are engaged in, we will first try to come to some understanding of the method of conceptual analysis, including its scope, and the ends thereof.

Conceptual analysis is a particularly contentious area in philosophy, with regard to jurisprudence and legal theory, but also more generally, and particularly with regard to

epistemology and ontology. This Chapter will not attempt to resolve these disputes, except perhaps in a very minor and incidental way in that it will attempt to articulate a methodology as it has been employed in jurisprudence and employ it for the purpose for examining our prevailing conceptions of poverty. In articulating a method, or methods, the Chapter will focus on some discussions of conceptual analysis in legal philosophy as a way to approach 'poverty'. In this sense, the Chapter is an instrumentalist and pragmatic approach to the method of conceptual analysis, although it will not seek to provide ontological or metaphysical answers nor detail such theories commonly associated with scholars who are commonly grouped in the school of thought known as Pragmatism or American Pragmatism.<sup>1</sup> There will be no overarching theories of Truth or Knowledge drawn nor relied upon.

## The Roadmap

The Chapter will proceed first with an attempt to articulate the methodological approach of H.L.A. Hart as a paradigmatic example of the type of conceptual analysis to which this project aspires. I will rely on Hart's own work and on the analysis of Wil Waluchow,<sup>2</sup> while also addressing some of the recent challenges to, and defences of, conceptual analysis as a useful philosophical methodology in legal philosophy. Some of those challenges, I will argue, aim at strawmen caricatures of conceptual analysis and can themselves be subsumed under the larger methodology of conceptual analysis rather than requiring a wholesale re-appraisal of the approach. I try to focus on the ways in which the methodology of conceptual analysis can be improved by taking on these challenges and incorporating them to strengthen both the utility of the method to improve

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<sup>1</sup> See Catherine Legg and Christopher Hookway, 'Pragmatism', in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2021 (Metaphysics Research Lab, Stanford University, 2021), <https://plato.stanford.edu/archives/sum2021/entries/pragmatism/>.

<sup>2</sup> See Waluchow, *Inclusive Legal Positivism*, Chapter 2 'Theories and Conceptions'.

our understanding of concepts and the aptness and utility of the methodological approach to this current project.

After first setting out a brief overview of Hart's own account of his methodology, I will turn to the analysis of Hart's methodology as set out by Waluchow including the meta-theoretical-evaluative criteria that might be employed in such an approach. The Chapter will also rely heavily on the instructive interpretation of conceptual analysis of Michael Giudice which seeks to reframe the methodological approach as 'constructive conceptual explanation',<sup>3</sup> focusing first on his very helpful descriptions of the primary challenges to conceptual analysis as it is described by him as being linked to analytic philosophy. I will also discuss the ways in which his methodology might be seen to improve our understanding, while ultimately disputing whether the Hartian approach requires such wholesale reimagining, but might rather already subsume Giudice's methodology. Given, the fundamental questions that it poses, I will address the challenges posed to the methodology of conceptual analysis by a Naturalist/Realist approach as articulated by Brian Leiter.<sup>4</sup> I will also discuss the distinction between different types of conceptual analysis as articulated by Natalie Stoljar and Sally Haslanger, while distinguishing the Hartian approach to conceptual analysis that I propose to follow from the ameliorative approach as described in their taxonomy.<sup>5</sup> Finally, after having thus articulated a methodology that employs the traditional techniques of conceptual analysis where both the concepts and conceptions thereof may be revisable in the face of social and historical contingencies, without thereby aiming toward a target concept such as with regard to an

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<sup>3</sup> See Giudice, *Understanding the Nature of Law*, at Part 1 'Beyond Conceptual Analysis'.

<sup>4</sup> See Leiter and Etchemendy, 'Naturalism in Legal Philosophy'; Leiter, 'Realism, Hard Positivism, and Conceptual Analysis', and Leiter, 'Critical Remarks on Shapiro's Legality and the "Grounding Turn" in Recent Jurisprudence'.

<sup>5</sup> See Stoljar, 'What Do We Want Law to Be? Philosophical Analysis and the Concept of Law'; and Haslanger, 'What Are We Talking About? The Semantics and Politics of Social Kinds'.

ameliorative approach, I will address some questions posed by Waluchow with regard to the respective roles of retrieval and revision with regard to the methodology.

## Hart's "Descriptive Sociology"

Perhaps the most influential work in conceptual analysis (broadly understood) with regard to jurisprudence can be found in H.L.A. Hart's seminal work "The Concept of Law".<sup>6</sup> In this work Hart focuses on the concept of 'law', but also on the related concepts of 'coercion' and 'morality'. He prefaces his arguments by classifying them as "an essay in descriptive sociology".<sup>7</sup> As Les Green notes, "[i]t is a funny kind of sociology that presents no fieldwork, no statistical modelling, and even few legal cases,"<sup>8</sup> but the description of his project is apt in the sense that it has "an empirical basis", beginning with basic things that are already known, rather than beginning with "definition or axioms" from which we might derive *a priori* truths.<sup>9</sup> Hart further explains that "inquiries into the meanings of words" do more than throw light onto those words; they also, through "an examination of the standard uses of the relevant expressions and of the way in which these depend on a social context," throw light onto the important distinction "between types of social situations or relationships" in which these words are employed.<sup>10</sup> He describes his approach as *general*, in the sense that it is an attempt at an "explanatory and clarifying account" that is not tied to any particular legal system, and descriptive in the sense that "it is morally neutral and has no justificatory aims".<sup>11</sup>

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<sup>6</sup> Hart, *The Concept of Law*.

<sup>7</sup> Hart, at 'Preface'.

<sup>8</sup> Hart, xlv, at 'Introduction'.

<sup>9</sup> Hart, xlv, at 'Introduction'.

<sup>10</sup> Hart, *The Concept of Law*, at 'Preface'.

<sup>11</sup> Hart, 239–40, at 'Postscript'.

Other than these general comments, from which we can derive some significant observations on the Hartian methodology, Hart himself does not spend a great deal of time discussing his own approach to conceptual analysis, although he does further distinguish it through some important discussion on “definition”.<sup>12</sup> In this regard, Hart distinguishes between the project in which he is engaged and the Aristotelian approach of definition *per genus et differentiam* whereby one identifies a genus “about the character of which we are clear,”<sup>13</sup> such as a triangle or an elephant, and then locates the object of one’s inquiry within that genus by identifying and articulating its distinguishing characteristics. For Hart, the question “what is law?” cannot be answered by way of definition “in the sense of a rule by reference to which the correctness of the use of the word can be tested”. His project is to provide improved analysis, better understanding, of law and the concepts employed in its practice and thereby “to advance legal theory”.<sup>14</sup>

It seems that for Hart concepts may be open to reconceptualization in the straightforward sense of offering a new conception, if only based upon the fact that he is himself engaged in such a project of reconceptualization. One might assume that for Hart such reconceptualization always refers to a process by which a previously incorrect conception is arguably replaced by a correct one, but it is not clear that this is Hart’s position. Rather, Hart seems to suggest, in response to Ronald Dworkin’s criticism of his conception, that there may be alternative conceptions that are not in conflict (as they would be were they competing to be an accurate account of a single concept):

It is not obvious why there should be or indeed could be any significant conflict between enterprises so different as my own and Dworkin’s conceptions of legal theory.<sup>15</sup>

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<sup>12</sup> Hart, 13–17.

<sup>13</sup> Hart, 15.

<sup>14</sup> Hart, 17.

<sup>15</sup> Hart, 241, at ‘Postscript’.

Although, Hart does not specifically indicate the ways in which he thinks such alternative conceptions may be true, or perhaps useful, we can conclude that he remains open to the possibility of them, and thus he is not wedded to a view of a single concept which admits of only a single correct conception. However, in addition to this sense of reconceptualization whereby an alternative conception is offered, we can glimpse in Hart's description of the partial empirical basis for his methodology as descriptive sociology that Hart is significantly diverging from the traditional perception of conceptual analysis, whereby a concept is defined solely through an intuitive armchair analysis of its necessary and sufficient conditions, to one that is also responsive to the empirical social scientific evidence. Although, it is crucial to note that, in addition to his foray into descriptive sociology, Hart also employs a traditional analysis of "people's intuitions about particular cases, including hypothetical cases that figure in crucial thought experiments,"<sup>16</sup> thus articulating a methodology that includes the traditional philosophical work of testing intuitions and common understandings while also admitting of the importance of empirical work to improve our understandings.

### Waluchow on the Meta-Theoretical-Evaluative Approach

Waluchow elucidates the methodology employed by the Hartian legal positivist project in contrast to the work of Ronald Dworkin (often described as an example of natural law theory). Hart himself devoted much of his postscript to *The Concept of Law* to answering Dworkin's criticisms of his work.<sup>17</sup> As Waluchow points out, Hart's project can be distinguished in that he takes on the perspective of "an external observer out to describe

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<sup>16</sup> See Eric Margolis and Stephen Laurence, 'Concepts', in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Spring 2021 (Metaphysics Research Lab, Stanford University, 2021), 36, <https://plato.stanford.edu/archives/spr2021/entries/concepts/>.

<sup>17</sup> See Hart, *The Concept of Law*, 239–76 The Postscript was published posthumously with the 2nd Edition, having been completed based on Hart's draft and notes by his editors, Joseph Raz and Penelope A. Bulloch.

and analyse a particular kind of social system, and the concepts in terms of which we conceive of it in a philosophically illuminating way,”<sup>18</sup> whereas Dworkin adopts an internal perspective that is “normative through and through” and is based on interpretation and focused on adjudication since he holds that “jurisprudence is only ‘the general part of adjudication’ and ‘no firm line divides it from adjudication or any other part of legal practice.’”<sup>19</sup> It is in the contrast of the Hartian and Dworkinian conceptual projects that Waluchow articulates a number of distinctions, two of which will be instrumental in demarcating the methodology for our conceptual analysis of poverty:

- a) The distinction between “[m]eta-theoretical-evaluative and moral evaluative considerations;
- b) That between “seeing (moral) value relevance and offering moral justification.”<sup>20</sup>

Like Waluchow and Hart, this project will also adopt the Hartian meta-theoretical-evaluative approach to our analysis of conceptions of poverty. As Waluchow points out, this involves adopting what Gerald Postema describes as an “observer” theory, as opposed to a “participant” theory.<sup>21</sup> As Waluchow also points out, in so doing (with regard to jurisprudence) one is likely to attract criticism from legal realists and others that what one finds in their analysis is as much a function of one’s “moral biases and personal predilections” as what is really there in the object of analysis, an argument which Waluchow describes as “commonplace and beyond dispute.”<sup>22</sup> However, this does not

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<sup>18</sup> Waluchow, *Inclusive Legal Positivism*, 5.

<sup>19</sup> Waluchow, 5–6.

<sup>20</sup> Waluchow, 30. There are two other distinctions that Waluchow considers necessary for his project in theorizing ‘inclusive legal positivism’, but which will not be key for our inquiry into conceptions of ‘poverty’: “c] attempting to make a theory the best that it can be and making the object of the theory the best that it can be; and d) wanting to justify morally what one sees and wanting to avoid making those who engage in the practice (the object one studies) look stupid.” With regard to the former, while this project will aim to provide the best conceptualization(s) of poverty, the disjunct is of less concern since we will not be engaging with any justificatory approaches to poverty qua poverty. With regard to the latter, while the project will intentionally not be focused on a normative analysis of approaches to poverty, and it will attempt to employ a charitable lens in its analysis of conceptions of poverty, it will however not be concerned with avoiding making those who engage in the myriad practices related to poverty look stupid. Rather, I leave it to the reader to judge whether those conceptions and/or practices are rational.

<sup>21</sup> Waluchow, 15; in reference to Gerald J. Postema, ‘The Normativity of Law’, in *Issues in Contemporary Philosophy: The Influence of H.L.A. Hart*, ed. Ruth Gavison (Oxford: Clarendon Press, 1987), 85.

<sup>22</sup> Waluchow, *Inclusive Legal Positivism*, 17.

mean that the analysis must then necessarily be merely composed of moral argument, or even that one who aims for the ‘observer’ perspective is hopelessly engaging in a self-deceptive enterprise. As Waluchow notes, echoing Joseph Raz, “‘evaluative’ and ‘moral’ are not equal in meaning,”<sup>23</sup> and one can contribute “to the study of human society and culture”<sup>24</sup> by employing “meta-theoretical-evaluative considerations” including “simplicity, comprehensiveness, coherence,”<sup>25</sup> as well as “elegance”<sup>26</sup> and “intelligibility.”<sup>27</sup> In so doing, one is not necessarily engaged in moral evaluation nor justifications of a concept or its related practices, but can instead employ these meta-theoretical-evaluative criteria “to sort out what is central and significant in the common understanding” of a concept,<sup>28</sup> while also noting morally relevant aspects of the analysis. On this latter point, one can describe how a concept may for example relate to moral questions or approaches, such as with regard to contentious legal questions or the oft-invoked moral human right to subsistence, without adopting the participant perspective nor necessarily taking a moral position on the moral questions at play. As Hart notes, “[d]escription may still be description, even what is described is an evaluation.”<sup>29</sup>

Although Hart takes the stance “of an external observer out to describe and analyse a particular kind of social system, and the concepts and terms of which we conceive of it, in a philosophically illuminating way,”<sup>30</sup> this descriptive-explanatory external methodological stance is also employed by Hart to describe the internal perspective *vis-à-vis* the

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<sup>23</sup> Waluchow, 19.

<sup>24</sup> See H. L. A. Hart, ‘Comment’, in *Issues in Contemporary Legal Philosophy: The Influence of H.L.A. Hart*, ed. Ruth Gavison (Oxford, United Kingdom: Clarendon Press, 1987), 37; as quoted in Waluchow, *Inclusive Legal Positivism*, 26.

<sup>25</sup> Waluchow, *Inclusive Legal Positivism*, 21.

<sup>26</sup> Waluchow, 25.

<sup>27</sup> Waluchow, 25 at footnote 28.

<sup>28</sup> See Joseph Raz, ‘Authority, Law and Morality’, *Monist* 68, no. 3 (1985): 332; as quoted by Waluchow, *Inclusive Legal Positivism*, 26.

<sup>29</sup> Hart, *The Concept of Law*, 244, at ‘Postscript’.

<sup>30</sup> Waluchow, *Inclusive Legal Positivism*, 5.



normative force of law in the form of “obligation”.<sup>31</sup> This external theoretical perspective on the internal perspective of persons with regard to a particular social institution such as the Law<sup>32</sup> may analogously also provide fruitful analyses of the concept of poverty and the ways that concept affects and is perceived by variously situated persons such as poor and non-poor persons, as well as legal and other institutional actors.

In looking at the concept of ‘poverty,’ whatever theoretical approach one adopts, one cannot hope to escape discussion of morality, for the concept is commonly bound up with other closely-related concepts that are normative and commonly thought of as moral. While our analysis of conceptions of poverty will touch on these and other moral conceptions, such as for example egalitarianism and human rights, it will not focus on a justificatory moral analysis of poverty from these perspectives *per se*, but will instead take a descriptive approach to the concept of poverty and closely-related concepts. In so doing we will address how those related concepts might relate to conceptions of poverty with an eye to a better understanding of what is salient in these conceptions, their relations, and how they interact with our conceptions of poverty. In short, this thesis purports and aspires to be another project employing the descriptive/explanatory approach of Hart and Waluchow, albeit one of more modest scope and application in that it has no pretensions to the considered universality of their generalist accounts in the field of Jurisprudence.

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<sup>31</sup> See Hart, *The Concept of Law*, 82–91.

<sup>32</sup> For a brief and incisive comparative discussion of the theoretical external perspective on the internal perspective see W. J. Waluchow, ‘Lessons from Hart’, *Problema. Anuario de Filosofía y Teoría Del Derecho* 1, no. 5 (1 January 2011): 382–83.

## Criticisms of Analytic Jurisprudence and Conceptual Analysis

Michael Giudice provides a very helpful overview of the criticisms of analytic philosophy and conceptual analysis, before re-interpreting the methodology employed by Hart as one of “constructive conceptual explanation” rather than ‘conceptual analysis’. Giudice describes a “familiar view” of ‘conceptual analysis’ as being “simply a reflection on the application of familiar concepts or categories to particular cases by appeal to intuitions, until something like necessary and sufficient conditions for the application of those concepts or categories emerges,” or more simply and essentially “to make explicit what is already implicit in our ordinary understanding and use of particular concepts.”<sup>33</sup> While I ultimately question Giudice’s re-interpretation of the methodology as either conceptual analysis or a constructivist project,<sup>34</sup> for reasons that I will set out herein, he provides a very helpful analysis of some common objections to analytic philosophy, a philosophical tradition which he describes as having “clear affinities” to the particular methodology of conceptual analysis (and from which he seeks to distinguish constructive conceptual explanation),<sup>35</sup> as well as sound answers to those criticisms.

Giudice’s first thesis of his project describes a de-coupling of analytic philosophy and conceptual analysis. He notes that they are not co-extensive, proceeding to an analysis of the theories of Hart and Joseph Raz, many of whose conceptual claims he contends “are better understood as claims of *a posteriori* necessary truths.”<sup>36</sup> In a theoretical foreshadowing of his argument, he describes a relationship that is, if not necessary, then

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<sup>33</sup> Giudice, *Understanding the Nature of Law*, 18.

<sup>34</sup> Giudice acknowledges that this characterization of the Hartian project is a departure from the most common association of the Hartian project with conceptual analysis in legal theory, describing Hart as being “often thought to be the first philosopher of law to introduce and use the general methods of ordinary language philosophy and conceptual analysis to understand law.” See Giudice, 2.

<sup>35</sup> Giudice describes these affinities in reference to the work of Frank Jackson and Colin McGinn: ‘Knowledge and truth can be arrived at by means of conceptual analysis whereby analysis of the use and understanding of particular concepts can yield analytic and necessary truths about those concepts.’; see Giudice, 21.

<sup>36</sup> Giudice, 4.

at least evident between conceptual analysis and *a priori* necessary truths which neatly foreshadows and supports his contention that any methodology which takes into account factors not commonly associated with conceptual analysis, such as “contingent features and relations”,<sup>37</sup> is *ipso facto* not conceptual analysis. Highlighting the importance of his move distinguishing between analytic philosophy and the methodology of conceptual analysis, he describes his reinterpretation of the methodology as aiming to:

[s]ave the heart of the goal of analytical jurisprudence, and to preserve some of its methods, while reframing the goal and reforming those methods to account for criticisms whose merits cannot be rejected.<sup>38</sup>

Giudice identifies 4 “probing criticisms” of analytic jurisprudence and conceptual analysis which he then addresses by way of his arguments for a reinterpretation of the Hartian methodological approach as constructive conceptual explanation. The first of these criticisms, that of Dworkin with regard to the “morally neutral method of conceptual analysis” failing to “capture and explain the moral significance of law,”<sup>39</sup> may also be somewhat analogously directed at the philosophical analysis of poverty herein. Like ‘law’, ‘poverty’ is a socially constructed concept referring to a complex grouping of social phenomena, rather than a more straightforward object of description such as a triangle or elephant,<sup>40</sup> and one that is the object itself of a great deal of moral argument and upon which, depending on how it is conceived, many morally significant implications may flow. I will however adopt, without fully canvassing them, the arguments of Hart and Waluchow with regard to legal positivism in answer to Dworkin, that one can evaluate a conception of poverty without necessarily taking a moral justificatory stance toward said concept, and

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<sup>37</sup> Giudice, 5.

<sup>38</sup> Giudice, 4.

<sup>39</sup> Giudice, 3.

<sup>40</sup> See Hart, *The Concept of Law*, 15, where he notes that these examples admit of the simplest form of definition, per genus et differantum, whereas the ‘Law’ cannot be defined in this way because we “have only vague confused ideas as to the character of the family” or genus.

that there is thus no necessary conflict between descriptive-explanatory approaches such as that of Hart, and interpretive-justificatory approaches such as that of Dworkin.

Giudice notes that the other three criticisms of analytic philosophy, which relate also to conceptual analysis, tend to focus on rebutting a perceived presumption of conceptual analysis “that there is a single, unified and coherent concept of law out there, whose properties are not contradictory but simply waiting to be made explicit.”<sup>41</sup> These include the criticisms of Dan Priel and Liam Murphy that conceptual analysis involves an incorrect presumption that there is “pre-theoretical agreement in the uses of the concept of law and intuitions about what does and does not count as law;”<sup>42</sup> those of legal pluralists such as Brian Tamanaha and William Twining that “law’s manifestations vary so much across time and space as to render pointless the proposed search for necessary or essential features;”<sup>43</sup> and those of advocates of Naturalized Jurisprudence such as Brian Leiter who, largely on the basis of W.V.O. Quine’s arguments that there are no *a priori* analytic truths,<sup>44</sup> argue that “the only proper way to judge conceptual claims about law is to see which of these figure in the best social scientific theories of legal phenomena.”<sup>45</sup> It seems obvious that the first two criticisms are widely accepted as accurate with regard to the concept of poverty and are not criticisms of conceptual analysis if the methodology admits of these contingencies. For example, it appears widely understood that there is no pre-theoretical agreement about a concept of poverty, and that conceptions of poverty admit of socio-cultural and historical variations: one will for example often encounter arguments about whether those with the lowest incomes and/or wealth in so-called

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<sup>41</sup> Giudice, *Understanding the Nature of Law*, 22.

<sup>42</sup> Giudice, 4 and 22–27.

<sup>43</sup> Giudice, 3 and 30–37.

<sup>44</sup> See Giudice, 4; and see Peter Hylton and Gary Kemp, ‘Willard Van Orman Quine’, in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2022 (Metaphysics Research Lab, Stanford University, 2022), <https://plato.stanford.edu/archives/sum2022/entries/quine/>.

<sup>45</sup> Giudice, *Understanding the Nature of Law*, 4.

developed societies are really poor when compared to those in developing societies.<sup>46</sup> Indeed, the existence of multiple ways for measuring poverty implies that there is no general agreement as to the concept of poverty, even on a post-theoretical basis. Thus, these perceived criticisms of conceptual analysis in jurisprudence apply perhaps more obviously to the methodology as it applies to our conception(s) of poverty, and as the following discussion will suggest, the analysis of our conception(s) of poverty must concede to the criticisms and account for pre-theoretical disagreements and *a posteriori* contingencies. Both criticisms are also closely related to the more fundamental Naturalist criticism, as articulated by Leiter, that as per Quine “there are no genuine analytic or necessary truths, and that “*a priori* appeals to intuitions will at best reveal contingent and local beliefs.”<sup>47</sup>

### The Naturalist Objection – What is left?

As noted, in many ways the temptation to look for *a priori* universality in the concept of poverty is significantly mitigated by the aforementioned widely-acknowledged disputes over defining so-called first world poverty in relation to the more severe poverty seen in so-called developing countries, as well as the methodological disputes in poverty measurement. This makes it hard to not acknowledge the thrust of the naturalist objection to conceptual analysis that “appeals to intuitions will at best reveal contingent and local beliefs”,<sup>48</sup> as well as the aforementioned closely related criticisms from pluralism and those denying the possibility of pre-theoretical agreement. This then raises the question

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<sup>46</sup> See for example H. Luke Shaefer, Pinghui Wu, and Kathryn Edin, ‘Can Poverty in America Be Compared to Conditions in the World’s Poorest Countries? - Stanford Center on Poverty and Inequality’ (Stanford Centre on Poverty and Inequality, July 2016), <https://inequality.stanford.edu/publications/media/details/can-poverty-america-be-compared-conditions-world%E2%80%99s-poorest-countries>.

<sup>47</sup> Giudice, *Understanding the Nature of Law*, 27.

<sup>48</sup> Giudice, 27; in reference to Brian Leiter, *Naturalizing Jurisprudence* (Oxford, United Kingdom: Oxford University Press, 2007).

of what is left of conceptual analysis after one concedes the naturalist objection (as I do so concede to the extent that Quine's arguments have not been successfully answered in full and thus proscribe an approach that assumes the possibility of *a priori* universality in conceptual analysis).<sup>49</sup>

With regard to the question of what is left given the deflationary effects of the naturalistic challenge to conceptual analysis, one must first ask whether there remains in fact any important philosophical work for conceptual analysis (or conceptual explanation in the Giudician approach). In concurring with William Twining that "[d]escription, interpretation, and explanation all presuppose adequate concepts," Giudice notes "[t]o some degree or other conceptual explanation is inescapable,"<sup>50</sup> and "even Leiter acknowledges, some concept of law will be needed to group together sources of law and legal phenomena to be studied naturalistically."<sup>51</sup>

Further, one must ask what would be lost if one jettisons not only the traditional armchair methodology of conceptual analysis by way of appeal to folk understandings and shared philosophical intuitions, but also the assumption of universality towards which such methodology traditionally aims. In defending the consideration of folk understandings, Waluchow notes "the richness of the 'raw data' from which conceptual analysis can begin," and denies any circularity in the arguments from semantic holism by which one can begin the analysis through an analysis of various spheres of usage, including folk usage.<sup>52</sup> With regard to the universalist aspirations of conceptual analysis, Giudice also

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<sup>49</sup> This is not to say however that I concede to the Naturalist argument that there cannot be universality, only that the questions remains open and thus leaves any analysis as at least potentially provisional and local.

<sup>50</sup> See Giudice, *Understanding the Nature of Law*, 62; in reference to William Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge: Cambridge University Press, 2009), 56.

<sup>51</sup> See Giudice, *Understanding the Nature of Law*, 28; in reference to Leiter, *Naturalizing Jurisprudence*, 45–46.

<sup>52</sup> See W. J. Waluchow, 'In Pursuit of Pragmatic Legal Theory', *Canadian Journal of Law & Jurisprudence* 15, no. 1 (January 2002): 134. Waluchow defines semantic holism as "the view that the meaning of a concept in

notes Brian Tamanaha's observation that the costs of foregoing a general theory include the ability to "formulate a sense of the whole, to spot patterns and relationships across contexts," and "to observe large-scale or parallel developments."<sup>53</sup>

Giudice also identifies that a theoretical use of conceptual explanation is "to determine categories or subject matters,"<sup>54</sup> and notes that Frank Jackson also identifies this as "the theoretical rationale for conceptual analysis (in the context of metaphysics)."<sup>55</sup> As an example that is apposite to the present project, Giudice points to the need to identify or develop a concept of harm before one can proceed "to measure the harm to society created by poverty." Giudice further observes that folk understandings "serve initially but only roughly to define the category or subject matter,"<sup>56</sup> and that certain concepts like law (and I would suggest also 'poverty') are difficult to grasp because the phenomenon they seek to explain or determine share similarities and connections with other closely-related phenomena.<sup>57</sup> With regard to the latter point, one will recall the statement by Hart with regard to his analysis of the concept of Law that it "will advance legal theory by providing .. a better understanding of the resemblances and differences between law, coercion and morality, as types of social phenomena."<sup>58</sup> This instrumental fruitfulness of conceptual analysis, another meta-theoretical-evaluative criterion,<sup>59</sup> will be employed in the present

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any one practice influences its proper meaning in all the others in which it figures," and points out that these "other spheres of inquiry and usage" include "folk theory".

<sup>53</sup> See Giudice, *Understanding the Nature of Law*, 83, at footnote 44; in reference to Brian Z. Tamanaha, *A General Jurisprudence of Law and Society* (Oxford: Oxford University Press, 2001), xiv.

<sup>54</sup> Giudice, *Understanding the Nature of Law*, 75.

<sup>55</sup> Giudice, 75, at footnote 24.

<sup>56</sup> Giudice, 76.

<sup>57</sup> Giudice, 77.

<sup>58</sup> See Hart, *The Concept of Law*, 17; as noted by Giudice, *Understanding the Nature of Law*, 78, at footnote 35.

<sup>59</sup> As Giudice notes, this instrumental criterion is consistent with Hart's project and its aim for use in other areas of social theory, in contrast to Raz's stated warning that to measure a conception by its fruitfulness misses the point since "unlike concepts like 'mass' or 'electron', 'the law' is a concept used by people to understand themselves". See Giudice, *Understanding the Nature of Law*, 72–73, at footnote 20; Joseph Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (Oxford, United Kingdom: Oxford University Press, 1995), 237; and Hart, *The Concept of Law*, v.

project to examine the resemblances and differences as between poverty and closely related concepts such as ‘capabilities’, ‘vulnerability’, ‘human rights’, ‘egalitarianism’, and ‘freedom’.

In defending a position which he describes as a form of replacement methodological naturalism known as legal realism,<sup>60</sup> Leiter joins us in asking what kind of knowledge the methodology of conceptual analysis yields once one concedes Quine’s argument at least to the extent that truths about social phenomena must be answerable to the contingencies of *a posteriori* empirical data. Leiter at points answers this central question by arguing, at least with regard to legal philosophy, that the empirical sciences require little more than lexicography to inform their own work and that the work remaining for the philosophers involves little more than responding to empirical science in ways that “may be able to offer some greater reflective clarity about the concepts invoked in the explanatory story.”<sup>61</sup> For Leiter, “conceptual and justificatory theories are to be *replaced* by empirical and descriptive theories” [emphasis in original],<sup>62</sup> and given our discussion of the potential ways in which the methodology can be responsive to empirical data, he seemingly aims his own rhetorical efforts at a strawman by asserting that those who practice conceptual analysis “are skeptical that the explanatory premises of empirical social scientists give us any reason to prefer one concept of law over another.”<sup>63</sup>

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<sup>60</sup> Leiter’s position is methodological, as opposed to substantive, in that it views “philosophy as continuous with empirical inquiry in the sciences”, but does not necessarily accept the substantive ontological position that “there exist only natural or physical things” [emphasis in the original]. His position is a replacement theory in that it holds that: ‘(1) Conceptual analysis of the concept of law should be replaced by reliance on the best social scientific explanations of legal phenomena, and (2) normative theories of adjudication should be replaced by empirical theories.’ See Leiter and Etchemendy, ‘Naturalism in Legal Philosophy’, 1.

<sup>61</sup> Leiter and Etchemendy, 13.

<sup>62</sup> Leiter and Etchemendy, 5.

<sup>63</sup> See Leiter and Etchemendy, 12; Leiter recently had occasion to critique what he describes as the “intuition pumping” and “reflective equilibrium” of Scott Shapiro’s methodology, based as it largely is on the familiar view of conceptual analysis, in a uncharitable review of Shapiro’s “Legality”. See Leiter, ‘Critical Remarks on Shapiro’s Legality and the “Grounding Turn” in Recent Jurisprudence’; and see Scott Shapiro, *Legality* (Cambridge, Mass. London: Belknap Press of Harvard University Press, 2013).



However, as has been noted, it is not the case that Hart saw his project as unresponsive to empirical evidence. He in fact thought of his project as a descriptive one rather than a normative one.

Leiter himself also notes however “that there remains some characteristically philosophical work to do (e.g., conceptual analysis), even if philosophical questions ultimately require naturalistic answers,”<sup>64</sup> and as previously noted, Leiter admits that the replacement naturalist must themselves base their descriptive enterprise on a conception, such as for example a “test of legality,”<sup>65</sup> and that a descriptive enterprise without some foundational point of view “will simply collapse into the descriptive sociology of knowledge.”<sup>66</sup> Or as put by Quine himself, “[e]pistemology, or something like it, simply falls into place as a chapter of psychology, and hence of natural science.”<sup>67</sup>

In summary, the Legal Realist/Legal Naturalist still needs “a concept of law that is not itself empirical or naturalized,”<sup>68</sup> and the naturalist method is purely descriptive, which leaves it open to describing a conception where the arguments therefor may be unsound, poorly articulated, and/or false. Thus, Leiter begs the question of the foundational concept for his descriptive analysis, for even if the Legal Realist may only require a

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<sup>64</sup> See Leiter, *Naturalizing Jurisprudence*, 45–46, and also footnote 140: “once one concedes the temporally and perhaps culturally relative character of the concepts to be analyzed—as most contemporary philosophers do ... then there is no reason to be worried about Quine’s attack”.

<sup>65</sup> See Leiter and Etchemendy, ‘Naturalism in Legal Philosophy’, 21, where the author’s quote Jules Coleman: “the naturalist is committed as a conceptual matter to the existence of a test of legality ... the naturalist is thus in the same boat with every other analytic philosopher of law”; See Jules L. Coleman, *The Practice of Principle: In Defence of a Pragmatist Approach to Legal Theory*, Clarendon Law Lectures (Oxford; New York: Oxford University Press, 2001), 214.

<sup>66</sup> Leiter and Etchemendy, ‘Naturalism in Legal Philosophy’, 17.

<sup>67</sup> W. V. Quine, *Ontological Relativity and Other Essays*, The John Dewey Essays in Philosophy 1 (New York, NY: Columbia Univ. Press, 1969), 82–83; as quoted by Leiter and Etchemendy, ‘Naturalism in Legal Philosophy’, 15–16.

<sup>68</sup> See Brian Leiter, ‘Legal Realism and Legal Positivism Reconsidered’, *Ethics* 111, no. 2 (January 2001): 285, and at footnote 21: ‘If the Realists are, in fact, naturalists, it is only with respect to the theory of adjudication. There is nothing in Realism that would constitute a naturalization of the theory of law proper, e.g. a naturalized account of the concept of law. ...’.

lexicographical definition from which to proceed with their naturalist empirical analysis, the value of that inquiry will depend on the concepts which inform it. The crucial nature of the conceptual choices that one makes is highlighted by Hart in his argument for a broad positivist conception of Law that admits of immoral laws rather than one that excludes them, arguing that “it seems clear that nothing is to be gained in the theoretical or scientific study of law as a social phenomenon by adopting the narrower concept: it would lead us to exclude certain rules even though they exhibit all the other complex characteristics of law.”<sup>69</sup> The fact that Leiter himself admits of the essential nature of those conceptual choices which are informed by conceptual analysis, suggests that rather than adopt the reductive naturalist approach suggested by Leiter whereby a lexicographer could inform the important empirical work of the social sciences, we ought instead to also prioritize the foundational concepts themselves, evaluating various conceptions by meta-evaluative criteria such as those articulated by Hart, Waluchow and Giudice.

### Conceptual Analysis and/or Constructive Conceptual Explanation

Giudice argues that, despite the weight of the aforementioned criticisms, one can articulate a conceptual methodology, which he refers to as “constructive conceptual explanation,” that can help to improve our understanding of complex social institutions or phenomena such as the law.<sup>70</sup> He briefly defines “constructive conceptual explanation” as the “philosophical construction of new and improved concepts for use in explaining and understanding social reality,”<sup>71</sup> and distinguishes constructive conceptual explanation from the aforementioned “familiar view” of ‘conceptual analysis’ as making explicit that

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<sup>69</sup> Hart, *The Concept of Law*, 209; as quoted by Giudice, *Understanding the Nature of Law*, 72.

<sup>70</sup> See Giudice, *Understanding the Nature of Law*, 43–66 at Chapter 2 ‘Constructive Conceptual Explanation’.

<sup>71</sup> Giudice, 38.

which is already implicit in our understanding of a concept. In making these arguments he notes his argument will stand or fall on “the relevance of testing conceptual accounts against observable, empirical features of social reality,”<sup>72</sup> referencing Jules Coleman that both analytic and synthetic claims are “subject to the tribunal of empirical evidence,” but that analytic claims “stand at a greater distance or remove from experience.”<sup>73</sup> It is however this requirement of responsiveness to empirical contingencies, coupled with the naturalist objection that there are no *a priori* analytic truths, that must at least deflate “the pretensions of concepts.”<sup>74</sup> Giudice articulates this pretense, through a discussion of Raz, as the epistemic move from conceptionally dependent knowledge of something to a conceptually independent knowledge of the necessary and essential features of something, where the former is a particular conception that claims to have identified the true essence of the latter, despite the possibility that those conceptions maybe be revised in light of empirical evidence. This thus raises the question of how “one can move, epistemically” from the former to the latter.<sup>75</sup> Giudice then suggests, in conceding to and addressing the criticisms of conceptual analysis, that even if Law’s necessary and essential features are inaccessible to us, we can nevertheless accept the force of the naturalist objection that all propositions are revisable and intuitions only reveal contingent beliefs, and yet appeal to ever broader intuitions that thereby yield conceptual explanations “which approach universality.”<sup>76</sup>

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<sup>72</sup> Giudice, 43.

<sup>73</sup> Giudice, 58 at footnote 37; in reference to Jules L. Coleman, ‘Methodology’, in *The Oxford Handbook of Jurisprudence and Philosophy of Law*, ed. Jules L. Coleman, Kenneth Einar Himma, and Scott Shapiro (Oxford, United Kingdom: Oxford University Press, 2004), 344.

<sup>74</sup> Giudice, *Understanding the Nature of Law*, 50.

<sup>75</sup> Giudice, 50–51.

<sup>76</sup> Giudice, 57–58.

Giudice is not alone in describing his conceptual project as one of explanation rather than analysis.<sup>77</sup> He notes that his methodology, while constructive, produces a concept or conception that “is neither fabricated nor created in ways unresponsive to the phenomena,”<sup>78</sup> and he further details that process whereby an institution such as law, or a phenomenon, changes over time along with “popular or participant self-understanding,”<sup>79</sup> and that the concept consequently also changes. With regard to the concept of Law, for Giudice this points to a role for philosophers to “suggest by way of construction new and improved concepts of law that better respond to and reflect changes in the institution or phenomena of law itself.”<sup>80</sup> In this way we can see that the approach admits of socially constructed concepts, as most would agree is an apt description of ‘Law’ or ‘Poverty’, but it is unclear however why the methodology itself need necessarily be described as a constructivist project, particularly if the revisions to the philosophical understanding follow a change in and/or clarification of the institution or phenomena itself. Why is Giudice’s method necessarily described as a constructivist project, when one might just as coherently describe this as an ongoing empirically-responsive and dialogical project of conceptual analysis that responds to changes in and clarifications of the concept itself that involve the ongoing historical phenomenon of social construction? If the analysis follows *a posteriori* changes to the concept to which we are catching up then one is engaged in ongoing conceptual analysis of the concept, while also engaging in the responsive methodology described by Giudice.<sup>81</sup> As previously noted, this move by Giudice appears to set up a false dichotomy whereby one is either engaged in an armchair analysis of non-changing universal concepts, or one is engaged

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<sup>77</sup> For example see Coleman, *The Practice of Principle: In Defence of a Pragmatist Approach to Legal Theory*; Waluchow however notes with regard to Coleman’s definition of conceptual explanation that “[i]t is, in short, conceptual analysis.” See Waluchow, ‘In Pursuit of Pragmatic Legal Theory’, 128.

<sup>78</sup> Giudice, *Understanding the Nature of Law*, 56.

<sup>79</sup> Giudice, 57.

<sup>80</sup> Giudice, 57.

<sup>81</sup> Giudice, 57.

in a constructivist project, while it is not clear why the methodology of conceptual analysis cannot accommodate both.

With regard to its philosophical usage, the Oxford English Dictionary defines “analysis” as:

The action or method of proceeding from effects to causes, or of inferring general laws or principles from particular instances; the tracing back of knowledge to its original or fundamental principles. Frequently contrasted with synthesis.<sup>82</sup>

While the above-noted definition is roughly in line with the familiar view of conceptual analysis described by Giudice, the term “analytic” is a term of art particularly in 20<sup>th</sup> century analytic philosophy with a meaning usually connected to logical analysis that may not fully capture other ways in which the term has been employed in philosophy; Michael Beaney refers to a common conception of analysis as described by the OED as the “decompositional conception of analysis”, but notes that the practice of analysis in the history of western philosophy had employed many conceptions of analysis including regressive conceptions, as well as conceptions that include transformative or interpretive dimensions.<sup>83</sup>

In an approach that better accords with this historically pluralist approach to philosophical analysis, Natalie Stoljar echoes Sally Haslanger in advocating a “pluralistic methodology” and distinguishing three methodologies that fall within the ambit of conceptual analysis: 1) a conceptual inquiry that focuses on a “manifest concept” that we already believe ourselves to have, 2) a descriptive inquiry that investigates the real-world phenomena

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<sup>82</sup> ‘Analysis, n.’, in *OED Online* (Oxford University Press), accessed 12 June 2022, <http://www.oed.com/view/Entry/7046>.

<sup>83</sup> See Michael Beaney, ‘Analysis’, in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2021 (Metaphysics Research Lab, Stanford University, 2021), <https://plato.stanford.edu/archives/sum2021/entries/analysis/>.

that the concept is meant to track with an eye to identifying the “operative concept”, and 3) an ameliorative inquiry that seeks to develop a “target concept” based on theorizing “about our ‘legitimate purposes’ in using a concept.”<sup>84</sup> In such a taxonomy we can roughly identify the traditional conception of the methodology of conceptual analysis as one that limits itself to an analysis of our intuitions and folk meanings, another conception of the methodology that is responsive to the contingencies of empirical data (which I suggest represents an elaboration of, rather than a categorical move away from, conceptual analysis), and finally a conception of the methodology that aims to construct or engineer a target concept based on normative considerations, including moral ones.<sup>85</sup>

The debate about whether Hart’s methodology is best described as ‘conceptual analysis’ or ‘constructive conceptual explanation’ tends toward the lexicographical in that there appear to be no dispositive logical arguments, nor fully accepted usages (whether folk or specialized), that can settle the matter. I have argued that although one need acknowledge the sound critiques of traditional understandings of conceptual analysis, the method itself subsumes the methodological amendments that those critiques recommend by being responsive to both our socially constructed intuitions and ordinary language as well as contingent empirical data, and need not be categorically reimagined, at least unless the methodological project pursues Stoljar’s and Haslanger’s third methodological approach whereby one seeks to engineer a target concept based on normative considerations.<sup>86</sup>

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<sup>84</sup> Stoljar, ‘What Do We Want Law to Be? Philosophical Analysis and the Concept of Law’, 232; and also Haslanger, ‘What Are We Talking About? The Semantics and Politics of Social Kinds’.

<sup>85</sup> See Stoljar, ‘What Do We Want Law to Be? Philosophical Analysis and the Concept of Law’, 247–51.

<sup>86</sup> For an enlightening discussion of early theories of “conceptual engineering”, including pragmatist and logical positivist theories, see Cheryl Misak, ‘A New History and Underpinning for Conceptual Engineering’, *Inquiry*, 2022, 1–16, <https://doi.org/10.1080/0020174X.2021.2021982> Although Misak, like Stoljar and Haslanger, labels all theories that take into account contingent factors of experience as “conceptual engineering”, including those that change the object and meaning of the referent, the reader will note my argument that conceptual

## A Note on Retrieval and Revision

Thus I suggest that there is an important distinction between the Hartian approach described herein and an “ameliorative inquiry” in the taxonomy of Haslanger and Stoljar. Waluchow suggests, in the area of jurisprudence, that if one is to distinguish conceptual analysis from conceptual engineering, while admitting of the revisability of our concepts under conceptual analysis, then one must explain the difference between those two types of revisability and also provide “an explanation of the difference between arguments designed to ‘retrieve’ the concept of law and those designed to ‘revise’ it.”<sup>87</sup> I would suggest that this is a general explanatory requirement for conceptual analysis, and further to my earlier discussion calling into question the Giudician arguments for a reclassification of the Hartian methodological project in jurisprudence, I think that we can begin to sketch an answer to Waluchow’s challenge. As I noted with regard to Giudice’s arguments for the reinterpretation of the Hartian project as a constructive one, the fact that one is revising a concept in light of changing or recently identified contingent social historical factors leaves one within the realm of revisability for which conceptual analysis is an apt description since one is analysing the concept, albeit in light of contingent factors (which one is also analysing). In this sense, a concept is always revisable in light of changing or improved analysis of contingent empirical factors. It is only when one asks the questions of what a target concept *ought to be* independent of that descriptive-explanatory approach that one enters into the realm of conceptual engineering. One’s analysis of the contingent social and historical factors might be seen as a form of retrieval just as much as the traditional conception of the armchair philosopher appealing to common intuitions and folk understandings, in the sense that both involve the analysis of

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engineering instead refers to Stoljar and Haslanger’s ameliorative method which is normative and aims at a target concept.

<sup>87</sup> Waluchow, ‘In Pursuit of Pragmatic Legal Theory’, 136.

something that is there to be discovered. But note that it is the analysis of the existent contingent data or evidence by which one might be said to be involved in retrieval, rather than the retrieval of a new concept. I would suggest rather that the process of conceptual analysis is a dialogical and responsive process involving the retrieval of evidence including, but not limited to, intuitions, folk understandings, and contingent social and historical factors. This evidence is used to socially construct some concepts through conceptions that may subsequently be revised on the basis of improved analysis and/or changing contingent factors. In light of my interpretation of Hartian methodology as admitting of the constructivism of Giudece, it is thus clear that this conceptual process would aim for something like reflective equilibrium (although not in the justificatory sense employed by Rawls), whereby one collects or retrieves evidence relevant to the concept under analysis and then analyzes, constructs and/or revises said concept.<sup>88</sup> In this way, our proposed methodology I hope also avoids the paradox of analysis,<sup>89</sup> since it is not solely based on what we already know

## Conclusion

I have attempted to articulate a methodology based on the Hartian approach to conceptual analysis in Jurisprudence that is applicable in other areas of philosophical inquiry and with regard to other socially-constructed concepts. It is context-responsive in

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<sup>88</sup> See Norman Daniels, 'Reflective Equilibrium', in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2020 (Metaphysics Research Lab, Stanford University, 2020), <https://plato.stanford.edu/archives/sum2020/entries/reflective-equilibrium/>.

<sup>89</sup> For a helpful overview and proposed answer to the 'paradox of analysis', see Colin McGinn, *Truth by Analysis: Games, Names, and Philosophy* (Oxford: Oxford University Press, 2011), 47–48 at Chapter 4 "The Paradox of Analysis":

*The paradox can be stated in the form of a dilemma: either I don't know what "game" means, in which case I cannot judge that a proposed analysis is correct; or I do know, in which case I cannot be enlightened by an analysis. I certify an analysis as correct by reference to the concept I antecedently possess, in which case the analysis must be identical to the concept, and hence uninformative; but if it is not identical, how can I certify it as correct, that is, as capturing the concept I already possess? To be informative, it must be incorrect; to be correct, it must be uninformative. A correct analysis is, in modern parlance, a tautology; but tautologies are never enlightening, merely repetitive.*



the sense that the conceptions developed under such a methodology are revisable in response to empirical and socio-historical contingencies. The approach does not rely solely on an *a priori* armchair analysis of the necessary and sufficient conditions for a concept, although it does not in any way exclude those conceptual tactics toward an overall strategy of conceptual analysis. Something that may be a necessary condition for a particular concept may change as we begin to understand more about that concept and/or the object to which that concept refers, such as for example our improved understanding that a whale is a mammal rather than a fish,<sup>90</sup> or our understanding that Law “is a system of primary rules that direct and appraise conduct together with secondary social rules about how to identify, enforce and change the primary rules,”<sup>91</sup> rather than the commands of a sovereign backed up by the threat of force.

Although, the methodology is accurately and helpfully articulated by Giudice in a way that responds to prominent criticisms of analytic philosophy and conceptual analysis, I dispute that the methodology need be reinterpreted as ‘constructive conceptual explanation’, but rather hold with Waluchow, Stoljar and Haslanger that the methodology is subsumed under the broad category of ‘conceptual analysis’. Likewise, while accepting the thrust of the Naturalist objection that concepts are always revisable in response to contingencies, I dispute that conceptual analysis can be replaced by social science research. Rather, it is clear that the important empirical work of the social sciences, although only requiring some lexicographical definition to begin its work, nevertheless depends on the crucial conceptual work involved in conceptual analysis to ensure that the conceptions on which its research is based are sound, and that the soundness of that research depends upon the soundness of the conceptions upon which it is based.

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<sup>90</sup> My gratitude goes to Prof. Wil Waluchow for this instructive example.

<sup>91</sup> Hart, *The Concept of Law*, xv, at ‘Introduction’ by Leslie Green.

Echoing Hart and Waluchow, Giudice explains that the ultimate goal of his project is “improved understanding,”<sup>92</sup> and to that end articulates four ways in which it can do so: 1) that it can reveal “confusion and disagreement, with the goal of clearing the way for the construction of more adequate theories or models with which to understand ourselves,”<sup>93</sup> 2) that it “may supply a better understanding of a social phenomenon by exploring its relations with other related phenomena,”<sup>94</sup> 3) that “it seeks to find basic organizing and structuring claims or theses which possess much explanatory power”, where he defines ‘explanatory power’ as “a combination of simplicity and comprehensiveness,”<sup>95</sup> and 4) that it may improve understanding by way of “the introduction of new vocabularies with additional concepts.”<sup>96</sup> It is hoped that our present project will also reveal confusion and disagreement around the concept of poverty, improve our understanding of poverty by exploring related concepts, and thereby ideally point to way in which we can fruitfully organize our understanding of poverty and related concepts.

Like Hart, we will at times be looking to things that we may already know. We will rely on the meta-theoretical-evaluative criteria set out by Waluchow to clarify and refine our conception of poverty: simplicity, comprehensiveness, coherence, elegance, and intelligibility. With Giudice we will add fruitfulness to these criteria and will further apply success criteria to judge our conceptions in the sense that: 1) they do not encourage mistaken conceptions about our social reality, 2) that they can serve as “precursors or accompaniments to subsequent moral deliberations and judgement,”<sup>97</sup> and 3) that they

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<sup>92</sup> Giudice, *Understanding the Nature of Law*, 85.

<sup>93</sup> Giudice, 85.

<sup>94</sup> Giudice, 85.

<sup>95</sup> Giudice, 86.

<sup>96</sup> Giudice, 86.

<sup>97</sup> Giudice, 89.

aim to be less parochial and approaching universality. The approach herein will aim to be, like Hart's approach, an "explanatory and clarifying account" of poverty that is "morally neutral and has no justificatory aims," and which, it is hoped, will result in some small way in improved analysis of the concept of poverty in a way that can advance real-world-based theorizing of our conceptions thereof as well as perhaps contributing to public policy in that regard.

## Chapter 3 – The Concept of Poverty

### The Approach

In this Chapter I will propose a non-moral conceptual framework for the concept of poverty, followed by an explication of the constituent elements of that framework, as well as some closely-related moral normative concepts and how they fit into and inform the conceptual framework.

After some introductory remarks, I will propose a non-moral conceptual framework for poverty. The chapter will then move to a discussion of the relations between our concepts, conceptions, definitions and measurement, looking at different thresholds and ways to measure poverty, while arguing for a multidimensional approach to those thresholds and measures. We will then expand our discussion of poverty with a focus on what one might say are necessary and sufficient conditions for the concept, while being aware that the framing of certain matters as universal may be vulnerable to charges of pretense if only because they may be contingent on a social-historical position. While some of this analysis may be open to the charge of armchair philosophy since there will be some reliance on intuitions, I hope the reader will find that such intuitions will be tested, at least to some degree, by situating that discussion within a broader discussion of empirically informed counterfactual analysis and empirical social science research. We will then proceed to a discussion of the distinction between absolute and relative poverty, and in particular Amartya Sen's argument that poverty has an "irreducible absolutist core"<sup>1</sup> and that this is evident if one understands that poverty is not about material resources, but rather about human capabilities and functionings. We will then discuss the

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<sup>1</sup> Sen, 'Poor, Relatively Speaking', 159.

somewhat related concept of ‘vulnerabilities’ as a part of our conceptual framework. In order to flesh out our non-moral conceptual framework for poverty, we will discuss three closely-related moral normative concepts: human rights, equality, and freedom. We will examine how these concepts fit into and inform our non-moral conceptual framework for poverty. The chapter will then move on to a discussion of the internal experience of poverty, arguing that, similar to Hart’s use of the internal/external distinction to elucidate the concept of legal obligation, the internal aspects of poverty are necessary to understand how poverty is experienced and thus conceptualized.

## Introductory Remarks

I shall in this chapter propose a particular non-moral conceptual framework for the concept of poverty that accords most closely with our non-moral folk understanding of the concept when tested against both counterfactuals and empirical evidence. I shall argue that the concept of poverty refers to:

*a human state of material/financial deprivation that results in vulnerabilities and adversely affects one’s capabilities to meet basic needs, including the capabilities to acquire the goods generally required to avoid shame due to social exclusion.*

In order to begin our analysis of this conception, it will be helpful to sketch out some rough definitions for the constituent concepts to provide some indication of meaning that will aid in following the argument, while the concepts will be further described and explicated later in the chapter. For the purpose of our project, a vulnerability can be thought of as a state of affairs such that one is at an identifiably increased risk of incurring an additional or greater harm.<sup>2</sup> We can generally think of capabilities as “the doings and

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<sup>2</sup> This definition is adapted from the definition employed by Samia A. Hurst in her work in the area of medical research ethics. Hurst defines vulnerability as “an identifiably increased likelihood of incurring additional or greater wrong,” I have chosen to employ the term “harm” instead of “wrong” in order to circumvent any suggestion that our operative conception of vulnerability will in any way depend on an analysis of whether the

beings that people can achieve if they so choose — their opportunity to do or be such things as being well-nourished, getting married, being educated, and travelling,”<sup>3</sup> and “functionings are capabilities that are realized,”<sup>4</sup> We can understand basic needs as the achieved functionings where the capability to achieve those functionings must necessarily be met to be free of poverty. How we determine basic needs will thus be an exercise in threshold setting for a sufficient level of well-being for a person. For the purposes of our conceptual framework, the specific capabilities that go into meeting one’s basic needs are not stipulated, and while any fleshing out of those capabilities may or may not include the examples provided in the aforementioned operative definition, we can imagine that there will be a core of capabilities that will probably be on any list of basic needs such as for example the capability to obtain some amount of food or some level of nourishment, and the capability to obtain some standard of shelter or housing. The proposed conceptualization or definition also stipulates that this notion of the basic needs or functioning includes the ability to obtain the goods or achieve the states to avoid shame due to social exclusion. The reason for this necessary condition will be explicated in our discussions of our common folk understanding of relative conceptions of poverty, as well as the internal perspective of those experiencing poverty, including empirical evidence regarding the common ways in which poverty is experienced by the poor themselves in particular.

The reader may object that our folk conception of poverty is intimately and inextricably linked with moral questions and that it is thus not possible to describe the concept of

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vulnerability is the fault of the individual and thus deserved in some way (and thereby arguably not a wrong). See Samia A. Hurst, ‘Vulnerability in Research and Health Care: Describing the Elephant in the Room?’, *Bioethics* 22, no. 4 (May 2008): 195.

<sup>3</sup> Ingrid Robeyns and Morten Fibieger Byskov, ‘The Capability Approach’, in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Winter 2021 (Metaphysics Research Lab, Stanford University, 2021), <https://plato.stanford.edu/archives/win2021/entries/capability-approach/>.

<sup>4</sup> Robeyns and Byskov.

poverty without also grappling with these moral questions; that perhaps the concept itself is both condemnation of a particular state of affairs, *viz* poverty, as well as a call to action to remedy that situation.<sup>5</sup> As will be discussed in this chapter, these moral aspects are also a part of our folk understanding of the concept of poverty. The purpose of my proposal of this non-moral conception of poverty is that: 1) it is an essential part of our understanding of poverty, and 2) it provides a framework for our moral reasoning about what we ought to do about poverty. This non-moral explication of poverty is in this sense a conceit, since it is presented in light of an admission that the common meanings we accord to poverty include moral aspects. However, I hope this conceit of a non-moral conception of poverty will lead to better understanding by providing a non-moral framework for the concept that guides our moral reasoning, and whereby the constituent concepts within that conceptualization, such as capabilities and shame, can be described in a meta-theoretical-evaluative, rather than a moral-evaluative sense.

The inquiry presented herein is not a normative one: I mean to ask not what individual persons or groups of persons should do about poverty, but rather aim to provide a decidedly localized and contemporary discussion of conceptions of poverty. That being said, I will however comment on how one ought to view and assess various conceptions of poverty, and its closely-related concepts, while employing a “meta-theoretical-evaluative” approach as described by Wil Waluchow with regard to the methodological approach of H.L.A. Hart.<sup>6</sup> That is to say, I will attempt to refrain from fleshing out our moral duties or obligations with regard to poverty or of approaches to poverty, what Waluchow refers to as “moral-evaluative considerations,” although I will at times comment on the “moral value relevance” of approaches to the concept of poverty, such

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<sup>5</sup> Thanks are owed to Wil Waluchow for helpful and compelling comments in this regard.

<sup>6</sup> See Waluchow, *Inclusive Legal Positivism*, Chapter 2, ‘Theories and Conceptions’.

as for example with regard to various approaches to justice in terms of egalitarianism, while attempting to avoid offering moral justification for those positions and arguments.<sup>7</sup> I will argue that there is a core common to our understanding of the term that conveys meanings that are not moral, and yet which requires moral reasoning and concepts to fully define the concept of poverty.

The analysis is also not an historical account of the concept, even from this relatively narrow geographical and cultural perspective. I have no doubt that there is great value in an analysis of the enduring themes that surround poverty and inequality in the history of the traditions in western philosophy, such as for instance Prof. Hennie Lötter's observation that "Plato's views on the significance of poverty and wealth in the Republic challenges us to rethink the role and position assigned to wealth in contemporary society", both with regard to how poverty and wealth affects "the moral function in individuals," and also for societies and the "global village."<sup>8</sup> Further, as Quentin Skinner has argued, the historical and cultural context of for example Plato's arguments,<sup>9</sup> or those of the Levellers,<sup>10</sup> not only brings into question the universalist approach to "perennial questions" but a philosophically plausible inquiry into the ideas at play also requires a dialogic contextual inquiry into the very questions that are being asked and the intention(s) at play in answering.<sup>11</sup> A similar point is made by Michel Foucault with regard

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<sup>7</sup> Waluchow, 30.

<sup>8</sup> H.P.P. Lötter, 'The Significance of Poverty and Wealth in Plato's Republic', *South African Journal of Philosophy* 22, no. 3 (January 2003): 205.

<sup>9</sup> Quentin Skinner, 'Meaning and Understanding in the History of Ideas', *History and Theory* 8, no. 1 (1969): 51.

<sup>10</sup> Skinner, 27.

<sup>11</sup> As Skinner notes:

*All I wish to insist is that whenever it is claimed that the point of the historical study of such questions is that we may learn directly from the answers, it will be found that what counts as an answer will usually look, in a different culture or period, so different in itself that it can hardly be in the least useful even to go on thinking of the relevant question as being "the same" in the required sense after all. More crudely: we must learn to do our own thinking for ourselves.*

See Skinner, 52.



to his own approach to studying the manner in which certain human “difficulties” have been “problematized” in order to understand the answers given to those problems.<sup>12</sup> While I will not engage in these types of historical (or historicist) analyses, and although I acknowledge the potential explanatory power of such projects, I however try to identify the ways in which the ‘problems’ of poverty and some related concepts have been described in contemporary accounts in hope of promoting some understanding of the ways in which those problematizations might influence the answers that are provided. The project herein is not however entirely ahistorical for I will also at times remark, in a wholly non-comprehensive and inadequate manner, on the ways in which certain problems have historically been framed in ways that influence our contemporary answers.

In addition to limiting this conceptual analysis of poverty historically, culturally and geographically, as well as focusing on a meta-evaluative approach to the concept, I will also for the most part refrain from fully describing conceptions of poverty that may be employed for particular purposes, such as a legal conception of poverty or a conception of poverty that is most fruitful for particular investigations in the social sciences. One exception to this is that I will discuss the ways in which we measure poverty and the conceptions of poverty that inform those measurements, since it is likely that those measurements in turn inform our folk understanding of the concept. Although other

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<sup>12</sup> See Michel Foucault, ‘Polemics, Politics and Problematizations, Based on an Interview Conducted by Paul Rabinow’, in *Essential Works of Foucault*, ed. Paul Rabinow and Nikolas Rose, trans. Lydia Davis, vol. 1 (New York: The New Press, 1998), 117–19, wherein he states:

*But the work of a history of thought would be to rediscover at the root of these diverse solutions the general form of problematization that has made them possible—even in their very opposition; or what has made possible the transformations of the difficulties and obstacles of a practice into a general problem for which one proposes diverse practical solutions. It is problematization that responds to these difficulties, but by doing something quite other than expressing them or manifesting them: in connection with them, it develops the conditions in which possible responses can be given; it defines the elements that will constitute what the different solutions attempt to respond to. This development of a given into a question, this transformation of a group of obstacles and difficulties into problems to which the diverse solutions will attempt to produce a response, this is what constitutes the point of problematization and the specific work of thought.*

conceptions, such as a legal conception (to the extent that there is a coherent legal conception) may also influence our common understanding, I shall suggest that there has been an ongoing dialogic process between our conceptions of poverty and the way in which we measure poverty that is uniquely reflexive. While these other conceptions might exist, and may even be instrumentally useful, I will present a conception of poverty which I will argue best accords with our understandings of poverty without regard to the particular uses to which that concept may be put. There are many conceptions of poverty at play, some competing, but I hope and intend to engage in that discourse and argue for a specific description of what we mean by the term poverty, firstly in the non-moral sense. As Joseph Raz notes in regard to his conception of ‘authority’, the boundaries between competing conceptions are fluid, and the explanations involved in these competing conceptions, coupled with the indeterminacy of those concepts, requires one to enter in the “advocacy business” in setting out a particular explanation.<sup>13</sup> I will herein advocate a conception of ‘poverty’.

## Concepts, Conceptions, Definitions, and Measurement

### Distinguishing Concepts, Conceptions, Definitions, and Measurement

As previously noted, Ruth Lister helpfully elucidates the distinctions between ‘concepts’, ‘definitions’ and ‘measures’ whereby concepts are essentially “about the meanings of poverty – both to those who experience it and to different groups in society,” definitions “provide a more precise statement of what distinguishes the state of poverty and of being poor from that of not being in poverty/poor,” and measures “represent ways of

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<sup>13</sup> Joseph Raz, ‘The Problem of Authority: Revisiting the Service Conception’, *Minnesota Law Review* 90 (2006): 1011.

operationalizing definitions so that we can identify and count those defined as poor and gauge the depth of their poverty.”<sup>14</sup>

This now requires some elaboration and clarification of the distinctions since the three are often conflated.<sup>15</sup> Without entering into the many debates around for example the nature of concepts, or how they relate to definitions, I will instead provide a short overview that I hope will suffice for our purposes.

Recall that a conception denotes a theory that one might hold about the content of a concept and the concept itself that is the object of one’s theorizing.<sup>16</sup> In this thesis I present a conception of poverty which I argue accurately describes the concept of poverty that is currently operative in English-speaking Western countries, and may also be operative elsewhere. Concepts are how we think about things, such that “having a concept is just being able to think thoughts that contain the concept.”<sup>17</sup> We intend them to refer to things, although as noted in Chapter 2, we will often need to update our conceptions, and this may be particularly true with regard to socially constructed concepts, such as poverty or law. Concepts are the “building blocks of thoughts.”<sup>18</sup> We express our concepts in language, thereby conveying meaning. Although we may not always successfully convey the meaning that we intend to convey through concepts, for the concepts we employ will not always be understood in the same way by everyone who has some conception thereof, concepts nevertheless help us to do so by generally constituting the “ways a thinker thinks about things, properties, relations, and so on.”<sup>19</sup>

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<sup>14</sup> See Lister, *Poverty*, 3–5.

<sup>15</sup> Lister, 3.

<sup>16</sup> Gallie, ‘Essentially Contested Concepts’; Rawls, *A Theory of Justice*; Dworkin, *Law’s Empire*.

<sup>17</sup> Tyler Burge, ‘Concepts, Definitions and Meaning’, *Metaphilosophy* 24, no. 4 (1993): 309.

<sup>18</sup> Margolis and Laurence, ‘Concepts’.

<sup>19</sup> Burge, ‘Concepts, Definitions and Meaning’, 310.

A definition mediates a concept by providing more precision. It does so mainly by setting out the necessary and sufficient conditions for the application of the concept, providing “the most fundamental individuating conditions”<sup>20</sup> for application of the concept. We describe a concept by way of a definition, and this is true of the aforementioned conception of poverty which I am advocating. As the reader will note, definitions of many concepts are at least potentially provisional, particularly those concepts ripe for conceptual analysis. They represent our best understanding at any given time, and may be updated in light of better understandings. It is not however necessarily the case that our definitions of concepts are revised in light of better understanding. If one surveys the myriad definitions of poverty that are employed by various governments, Non-Governmental Organizations, and Funders, one sees that that those definitions are often different, and have often changed over time in different ways over different periods, sometimes without any clear consensus developing. The varying definitions may however display different trends in definitions over specific periods.<sup>21</sup> For example, as will be discussed, we have seen an increasing prevalence of human-rights-based conceptions of poverty.<sup>22</sup> Further, as Ruth Lister notes, “there is sometimes a degree of overlap between definitions and concepts,” citing the example of the many international definitions that refer to “basic rights” or “dignity”.<sup>23</sup>

The Measurement of poverty is not only an instrumental exercise for estimating and remediating poverty and its consequences in society, but as previously noted Lister

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<sup>20</sup> Burge, 311.

<sup>21</sup> Federica Misturelli and Claire Heffernan, ‘The Concept of Poverty: A Synchronic Perspective’, *Progress in Development Studies* 10, no. 1 (2010): 35–58, in which the authors evaluated “changes contained within 159 definitions of poverty over a 30-year period from 1970s to 2000s,” identifying trends in the many signifiers that they found, and concluding that “poverty is a highly contested concept”.

<sup>22</sup> Misturelli and Heffernan, 44; For example, Ruth Lister, whose work on the concept of poverty is relied upon heavily in tis thesis argues that “the conceptualization of poverty in terms of human rights, citizenship, vice and powerlessness strengthens the analysis of poverty.” See Lister, *Poverty*, 175.

<sup>23</sup> Lister, *Poverty*, 5.

points out “[d]efinitions of poverty are operationalized through measures.”<sup>24</sup>

Measurements operationalize definitions, by employing the specific individuating conditions of the definition and putting a process in place whereby for example one can identify who meets those conditions and count those persons. The reader will note that my proposed conceptual framework of poverty is in itself a definition, while it will also need to be further defined with regard to the specific basic needs for which one must have the capabilities to meet before one can begin to count those who do not have those capabilities. It will also need to be fleshed out with regard to the vulnerabilities that would constitute one being in poverty, as well as the goods the absence of which would lead to shame, and so on.

One can imagine also that the relationship between measurement and conceptualization will affect our conceptualization of poverty since the ways in which we measure poverty in any given group or society will be, if not dispositive of the ways in which we conceive of poverty, then at least influential with regard to the ways we think about poverty and the options for responding to and remediating that poverty. Indeed the myriad definitions used for measurement demonstrate that one need not have a comprehensive nor settled definition in order to engage in measurement. As was recommended through our discussion of the naturalist objection to conceptual analysis, our empirical analysis is sound only insofar as it is grounded upon a sound conceptual basis. Scott Wisor argues with regard to measuring global poverty:

To answer the question of whether global poverty is increasing or decreasing, we must first critically reflect on how to conceive of and measure global poverty. This reflection, I will argue, must necessarily address methodological, normative questions about the values that are reflected in various conceptions and measures of poverty and the purposes that are served by those conceptions and measures.

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<sup>24</sup> Lister, 37.

A meta-level discussion of values and purposes must precede the development of new poverty measures and systems of poverty measurement.<sup>25</sup>

Contrary to Wisor, insofar as we conceive of poverty in the way I am proposing, I would suggest that the normative questions will determine how we fully define and measure poverty, rather than how we initially conceptualize poverty. The proposed conceptual framework does not require us to decide for example whether the abilities to purchase computers or shoes are conventionally required to be seen as non-poor in a particular society the absence of which will generally lead to shame, or what type of housing or shelter is required as part of basic human needs. These are vital and necessary questions but they occur at a further stage of defining and measuring poverty, not necessarily at the stage of conceptualizing what we mean by poverty. The process of defining the concept does not require that all of the normative and methodological questions be answered at the initial stages of conceptualization.<sup>26</sup> As previously noted, the way we tend to conceive of poverty morally does usually imply moral imperatives such as a right to be free from poverty, or a moral obligation to do something about poverty, but these conceptual level values do not determine what we measure when we measure poverty, but rather address our moral obligations to engage in such measurement, and what is required when faced with the results of those measurements. Recall, Hart's incisive observation that "[d]escription may still be description, even what is described is an evaluation."<sup>27</sup> The ways in which we flesh out our definition of poverty by determining the vulnerabilities that are indicative of poverty, and the basic needs that one must necessarily be able to meet, as a sufficient condition to be considered free from poverty are normative questions that will require moral reasoning. As will be argued later

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<sup>25</sup> Scott Wisor, *Measuring Global Poverty: Toward a Pro-Poor Approach*. (London: Palgrave Macmillan Limited, 2018), 5–6.

<sup>26</sup> Thanks are owed to Wil Waluchow for helpful comments in this regard.

<sup>27</sup> Hart, *The Concept of Law*, 244, at 'Postscript'.

in the chapter, our common understanding of poverty includes a sufficient condition based on the inability to avoid the shame due to social exclusion associated with being unable to obtain certain goods in a given time, culture or location. As noted in the introductory chapter, these may include for example the suggested linen shirt in the time of Adam Smith, and perhaps a cellphone or computer in our time.

## Poverty Measurement

While it is becoming widely accepted that poverty is multidimensional,<sup>28</sup> the most common way that Poverty has traditionally been defined by states is through some forms of income measurement, which are commonly grouped under the general distinctions between measures of absolute poverty based on what income one requires in a specific jurisdiction to meet certain basic needs such as subsistence or some other defined threshold, and relative measures of poverty which commonly measure poverty in relation to a percentage of the average or median income in a given jurisdiction. There are also various other metrics for measuring poverty such as for example through measurement of wealth, social exclusion, participation, or through measurement of the aforementioned capabilities.<sup>29</sup> Ultimately, however any measurement of poverty will at the same time inform and be at least partially dependant on how we conceptualize and define poverty.<sup>30</sup>

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<sup>28</sup> See for example United Nations, '2021 Global Multidimensional Poverty Index (MPI)', *Human Development Reports* (United Nations, 7 October 2021), <https://hdr.undp.org/content/2021-global-multidimensional-poverty-index-mpi>.

<sup>29</sup> Canada now uses a "dashboard of indicators" to measure poverty in Canada: "The dashboard tracks, for example, the reduction in food insecurity levels, the attainment of skills required to get good jobs and the number of Canadians with enough savings to handle setbacks in their lives." See Employment and Social Development Government of Canada, 'Canada's Poverty Reduction Strategy – An Update', report on plans and priorities, 21 May 2021, <https://www.canada.ca/en/employment-social-development/programs/results/poverty-reduction.html>.

<sup>30</sup> For a discussion on the various metrics used to measure poverty see Jean-Yves Duclos and Abdelkrim Araar, *Poverty and Equity: Measurement, Policy and Estimation with DAD*, Economic Studies in Inequality, Social Exclusion and Well-Being 2 (Boston, MA: Springer, 2006); also see Caterina Ruggeri Laderchi, Ruhi Saith, and Frances Stewart, 'Does It Matter That We Do Not Agree on the Definition of Poverty? A Comparison of Four Approaches', *Oxford Development Studies* 31, no. 3 (September 2003): 243–74.

This is not to say that we will require a clear and agreed-upon conceptualization of poverty in order to measure poverty, as this is manifestly and obviously not the case: poverty is regularly and widely defined and measured without any such clarity or consensus.<sup>31</sup> If we think that poverty is merely a lack of income and/or assets, then we will measure those factors; if we think that it is an absence of capabilities then we must turn to strategies to measure capabilities and their absence; and if we think that it involves both or includes other dimensions, as I suggest is the case, then this will recommend that we engage in multidimensional measurement. As our discussion of poverty measurements establishes clearly, there is no clear consensus on what needs to be measured and those measurements will capture different sets of persons. However, as was noted in Chapter 2 with regard to the naturalist objection to conceptual analysis, empirical research in the social sciences requires concepts on which to base the research, even if those conceptions are only provisional.

With regard to efforts to measure the amelioration of “extreme poverty” internationally, the World Bank has traditionally relied on a measurement of absolute poverty focusing on how many persons in a given jurisdiction are subsisting on an income below certain international poverty lines. These lines are derived based on an examination of poverty in the poorest countries of the world to create an international poverty line by employing a common currency using purchasing power parity.<sup>32</sup> For example, the World Bank

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<sup>31</sup> See Misturelli and Heffernan, ‘The Concept of Poverty: A Synchronic Perspective’.

<sup>32</sup> Purchasing Power Parity has been defined by the world bank as:

*...the rates of currency conversion that equalize the purchasing power of different currencies by eliminating the differences in price levels between countries. In their simplest form, PPPs are simply price relatives that show the ratio of the prices in national currencies of the same good or service in different countries.*

See World Bank, ‘Fundamentals of Purchasing Power Parities (PPPs)’, World Bank Group - Open Learning Campus, accessed 18 June 2022, <https://olc.worldbank.org/content/fundamentals-purchasing-power-parities-ppps-self-paced>; For an explanation of this methodology see for example: Shaohua Chen and Martin Ravallion, ‘The Developing World Is Poorer than We Thought, But No Less Successful in the Fight Against Poverty’, Policy Research Working Paper (The World Bank Development Research Group, August 2008), <https://documents1.worldbank.org/curated/en/526541468262138892/pdf/WPS4703.pdf>; For a recent and



originally introduced a “dollar-a-day” international absolute poverty line in 1990,<sup>33</sup> based on an analysis of the poverty lines of very poor countries to arrive at a stipulative common poverty line in U.S. dollars, and then applying that line to countries employing the purchasing power parity methodology to measure the levels of poverty in those countries,<sup>34</sup> This line has since been revised to \$1.25 US per day in 2011 and then to \$1.90 US per day in 2015.<sup>35</sup>

Such measurements of absolute poverty convey a conceptual position, in the sense that the definition upon which they rely implies conceptual choices about the meaning of poverty, or in this case absolute poverty. For example, defining poverty in this way implies that absolute poverty should be based on how poverty is defined in the poorest societies, and that all countries should measure their levels of absolute poverty by estimating the numbers of persons experiencing poverty in their country based on a standard amount, e.g., \$1.90 U.S. per day, through a currency conversion, thus comparing those in the richest countries to those in the poorest. It is obvious that the measure is an absolute one, rather than a relative measure of poverty such as, for example, a measure which uses a poverty line set at some percentage of median income in a country. Absolute and relative conceptions of poverty will be discussed more fully later in the chapter.

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influential analysis of such measurements as well as suggestions for new ways to measure global poverty see: Anthony B. Atkinson, *Measuring Poverty around the World* (Princeton, NJ: Princeton University Press, 2019).

<sup>33</sup> World Bank, 'World Development Report 1990: Poverty'.

<sup>34</sup> See Martin Ravallion, Shaohua Chen, and Prem Sangraula, 'Dollar a Day Revisited' (Washington, DC: World Bank, May 2008), 164–65, <https://openknowledge.worldbank.org/handle/10986/6781>.

<sup>35</sup> See Francisco Ferreira, Dean Mitchell Jolliffe, and Espen Beer Prydz, 'The International Poverty Line Has Just Been Raised to \$1.90 a Day, but Global Poverty Is Basically Unchanged. How Is That Even Possible?', 4 October 2015, <https://blogs.worldbank.org/developmenttalk/international-poverty-line-has-just-been-raised-190-day-global-poverty-basically-unchanged-how-even>.

Such individual measures of poverty focusing on for example relative income or the ability to buy a certain basket of basic goods, fail to sufficiently capture the multi-dimensional nature of poverty, as well as the aforementioned makeup of the population experiencing poverty, and in fact, as has been pointed out by Wolff and de-Shalit, there may be “surprisingly little overlap” between measures of different criteria.<sup>36</sup> Apart from the distinction between measurements of relative poverty such as for example a threshold of 50% of median income,<sup>37</sup> and absolute measures such as a market basket measure of the costs of basic needs for an adequate standard of living,<sup>38</sup> measures can also be distinguished as a direct measure of living standards, versus an indirect measure of income. All of these factors, from indirect measures such as income to direct measures such a housing or food security, are examples of what might be termed the indicators of poverty, while the aforementioned thresholds such as the conceptually relative Low-Income Measure or the conceptually absolute Market Basket measure represent a poverty standard against which the indicators of poverty are assessed.<sup>39</sup>

The choice of indirect resource indicators in the measurement of poverty is not limited to income, but as Lister and Townsend point out can also focus on other types of resources such as “capital assets, value of employer welfare benefits, value of public services, and private income in kind.”<sup>40</sup> This list illustrates the point made by Jonathan Wolff that the deprivation or disadvantage associated with poverty can be addressed in many ways,

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<sup>36</sup> Wolff and de-Shalit, *Disadvantage*, 123; As mentioned by Wolff, Lamb, and Zur-Szpiro, ‘A Philosophical Review of Poverty’, 35.

<sup>37</sup> Statistics Canada Government of Canada, ‘Low Income Measures’, Statistics Canada, accessed 18 June 2022, <https://www150.statcan.gc.ca/n1/pub/75f0002m/2012002/lim-mfr-eng.htm>.

<sup>38</sup> With regard to the updating of the market basket measure employed by the Canadian Federal Government see: Andrew Heisz et al., *An Update on the Market Basket Measure Comprehensive Review*, 2019, [http://publications.gc.ca/collections/collection\\_2019/statcan/75f0002m/75f0002m2019009-eng.pdf](http://publications.gc.ca/collections/collection_2019/statcan/75f0002m/75f0002m2019009-eng.pdf).

<sup>39</sup> Lister, *Poverty*, 38–39.

<sup>40</sup> See Lister, 40; and Peter Townsend, *Poverty in the United Kingdom: A Survey of Household Resources and Standards of Living* (London: Penguin, 1979).

with such assistance categorized by Wolff as “internal resources, non-financial external resources, and external structures in the role of improving people’s lives.”<sup>41</sup>

The ways in which we think about poverty measurement have manifold dimensions, apparently leaving the concept of poverty in a state of contestation.<sup>42</sup> With regard to the questions around the various dimensions of poverty to be measured and the thresholds by which we define poverty on those measures, Mozaffar Qizilbash builds on the oft-repeated observation that poverty is a vague or fuzzy concept,<sup>43</sup> to distinguish between “horizontal vagueness” with regard to the multiple contested dimensions of poverty and “vertical vagueness” with regard to the poverty thresholds on those dimensions.<sup>44</sup> As an example of developing ways to conceptualize, define, and measure poverty, David Hulme and Andrew Shepherd argue with regard to the conceptualization of ‘chronic poverty’ that a multi-dimensional approach can be employed through a dynamic “livelihoods analysis” that examines households as they convert income into assets and vice versa over time, moving in and out of poverty as well as the intergenerational transfer of poverty.<sup>45</sup> It is argued that such an approach, based on both quantitative and qualitative data, focuses on the vulnerability of the poor and that it also “recognizes human agency and examines the way in which household livelihood strategies are built around protecting, substituting, increasing and using assets to produce security and achieve other goals.”<sup>46</sup>

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<sup>41</sup> Jonathan Wolff, ‘Beyond Poverty’, in *Dimensions of Poverty*, ed. Valentin Beck, Henning Hahn, and Robert Lepenies, vol. 2 (Cham: Springer International Publishing, 2020), 35.

<sup>42</sup> See Misturelli and Heffernan, ‘The Concept of Poverty: A Synchronic Perspective’.

<sup>43</sup> See for example Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Oxford University Press, 1981), 13; as quoted in David Clark and David Hulme, ‘Poverty, Time and Vagueness: Integrating the Core Poverty and Chronic Poverty Frameworks’, *Cambridge Journal of Economics* 34, no. 2 (March 2010): 354.

<sup>44</sup> Mozaffar Qizilbash, ‘Vague Language and Precise Measurement: The Case of Poverty’, *Journal of Economic Methodology* 10, no. 1 (2003): 50; as quoted in Clark and Hulme, ‘Poverty, Time and Vagueness: Integrating the Core Poverty and Chronic Poverty Frameworks’, 354.

<sup>45</sup> David Hulme and Andrew Shepherd, ‘Conceptualizing Chronic Poverty’, *World Development* 31, no. 3 (2003): 414.

<sup>46</sup> Hulme and Shepherd, 414.

Employing a multidimensional approach to measurement and conceptualization, as is recommended by the discussion herein, may provide a richness and depth of analysis, one that reflects the complex nature of the human experience that informs such analyses. Such an approach would include various aspects that inform poverty measurement such as dynamic vs. static approaches, relative vs. absolute conceptions and direct vs. indirect measurements, along with the various indicators of poverty ranging from incomes to deprivations in basic needs to capabilities, and the various standards against which we measure poverty,. That being said, as Lister notes and endorses, there is widespread public support of income as “central to any official measure,”<sup>47</sup> which corresponds with an intuition that income is a necessary condition of any conception of poverty, as well as the dictionary definition relating poverty to ‘destitution’,<sup>48</sup> as will be discussed in the following section.

In the case of our proposed descriptive definition of poverty, it could provide a framework for measuring poverty that helps to focus those measurements on specific aspects of poverty. For example, in further particularizing the definition by identifying the relevant vulnerabilities and capabilities, one might assume that these will include a vulnerability to losing housing, as well as the capability to obtain housing, and we can then choose to measure the prevalence of this vulnerability and this capability, and or even specifically identify those who are particularly vulnerable to losing their housing. Such focused measures and identification strategies can be employed for all vulnerabilities and, as well as all capabilities based on an analysis of basic needs. Those basic needs will however not be determined solely through an empirical analysis, but will instead be based largely

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<sup>47</sup> Lister, *Poverty*, 50.

<sup>48</sup> See ‘Poverty, n. : Oxford English Dictionary’, accessed 18 June 2022, <https://www-oed-com.libaccess.lib.mcmaster.ca/view/Entry/149126?redirectedFrom=povetry#eid>.

on public value judgements, hopefully based upon public moral deliberations. Later in this chapter we will discuss some concepts that are closely related to poverty and which will be operational in our moral/value deliberations.

In addition, common measurements such as those based on income thresholds will also often fail to capture what Hart referred to as the internal perspective.<sup>49</sup> As will be discussed later in the chapter, the internal perspective may take into account issues such as shame and other internal states and emotions relating to less examined aspects of poverty. The determination of which goods or states are required in order to avoid shame or social exclusion will also require qualitative research, perhaps also including participatory research.

## Intuitions and Common Usage

The word “poverty” in the English language borrows from the French “poverté” (from the Middle French “povreté”) which come in turn from the classical Latin term “paupertās”.

The term admits of two groups of definitions, those relating to “destitution” and those relating to “deficiency”.<sup>50</sup>

H.P.P. Lötter has interestingly observed that “in our everyday use of language poverty is a concept uniquely applied to humans.”<sup>51</sup> It may be pointed out that one might observe an animal in a state of material deprivation and exclaim “oh poor animal!”<sup>52</sup> or even that philosophy itself has been described as being in a state of poverty (i.e. that it is deficient

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<sup>49</sup> Hart, *The Concept of Law*.

<sup>50</sup> ‘Poverty, n. : Oxford English Dictionary’.

<sup>51</sup> Lötter, ‘Defining Poverty as Distinctively Human’, 4; Lötter, *Poverty, Ethics and Justice* at Chapter 1.

<sup>52</sup> Lötter addresses such a potential counter-example as instead a metaphorical evaluative use of the term “to express our compassion with its suffering”. See Lötter, ‘Defining Poverty as Distinctively Human’, 4.

in some way).<sup>53</sup> But the point that these uses of the related terms are meant to convey one's evaluative stance toward that non-human animal or academic discipline does not seem to significantly derogate from the point that the concept of 'poverty' as commonly employed tends to describe a particularly human condition of destitution. In addition to the descriptive aspect of the concept, Lötter also points to an evaluative aspect of the concept of 'poverty' "not only as a descriptive concept, i.e. to describe a certain human condition, but also in a prescriptive way to comment on, or evaluate human lives."<sup>54</sup> Thus we can see that poverty contains both descriptive and evaluative aspects. It is perhaps this distinction between the descriptive and evaluative aspects of the concept that provides some insight into the non-human use of the terms "poor" or "poverty" as an essentially evaluative usage indicating the speaker's feelings toward the object of the description, as while there may also be a descriptive element to this usage of the terms, it seems that the descriptive aspect of the non-human usage is secondary to the evaluative aspect. That is, the meaning of that description could point to any sense in which the speaker feels sorry for or is offering a negative evaluation of the non-human object, except for the sense in which that description refers to the condition of lacking material things like a home, income, or possessions. As Lötter points out, we would not refer to an animal as being in a state of poverty.<sup>55</sup> We might exclaim "oh that poor animal," but it would sound strange to observe "that animal is poor" or "that animal is living in poverty." Similarly, while we might for example observe that a painting is a poor example of expressionism, or that an area of study is in a state of poverty, we do not thereby mean that the work of art or the area of study is somehow lacking in financial security. Rather, this descriptive sense in which the terms "poor" or "poverty" refers to a lack of material

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<sup>53</sup> Karl Marx and Friedrich Engels, *The Poverty of Philosophy* (New York: International Publishers, 1963).

<sup>54</sup> Lötter, 'Defining Poverty as Distinctively Human', 4.

<sup>55</sup> Lötter, 3–4.

resources seems to be reserved for descriptions of humans. Further, although it does not appear that this particular descriptive sense can be applied in contexts where the object of that descriptor is non-human, it does however seem that the evaluative sense in which the terms indicate a negative, sympathetic, and/or piteous opinion of the object may also apply to usage where the object is human. It appears from this armchair analysis that the usage of the terms “poor” or “poverty” in the English language as indicating a lack of material resources is a sufficient condition for the fact that the object of those descriptors is human. It is not however a necessary condition, since one might also be using the terms in an evaluative sense indicating a negative, sympathetic, and/or piteous opinion. Relatedly, as we have noted, one could persuasively argue that the concept of poverty in and of itself has normative implications, in the sense that it implies some obligation to act, and that it also generally involves some moral condemnation of the state itself. In fact this observation corresponds with our practice in the sense that many definitions of poverty include such a call to action.<sup>56</sup>

In referring to humans as ‘poor’ or ‘living in poverty’, we are conferring a socially constructed identity on that person. As Ásta has pointed out we are conferring a property or category of status on those persons or groups, and those conferrals are of two types: 1) the institutional classifying of a status upon an individual that “comes with deontic constraints and enablement” such as “rights and privileges”, and 2) the communal placing

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<sup>56</sup> For example, the following definition is widely attributed to the World Bank:

*Poverty is hunger. Poverty is lack of shelter. Poverty is being sick and not being able to see a doctor. Poverty is not having access to school and not knowing how to read. Poverty is not having a job, is fear for the future, living one day at a time.*

*Poverty has many faces, changing from place to place and across time, and has been described in many ways. Most often, poverty is a situation people want to escape. So poverty is a call to action -- for the poor and the wealthy alike -- a call to change the world so that many more may have enough to eat, adequate shelter, access to education and health, protection from violence, and a voice in what happens in their communities.*

See Canada Government of New Brunswick, ‘What Is Poverty? - Economic and Social Inclusion Corporation’, 26 October 2010, [https://www2.gnb.ca/content/gnb/en/departments/esic/overview/content/what\\_is\\_poverty.html](https://www2.gnb.ca/content/gnb/en/departments/esic/overview/content/what_is_poverty.html)  
Thanks to Wil Waluchow for pointing me to this example of a call to action in a definition of poverty.

of a person or group into a social category, and where that social category is also contested.<sup>57</sup>

Given the contingent and otherwise contemporary grounding of our discussion, one might also point out that the tendency to refer to financial resources as a necessary condition for the concept of poverty when discussing that concept in relation to humans, is also a contingent feature of the modern societies in which we find ourselves. It might be pointed out that money itself is a product of social construction, and some may hold this view whether they ascribe to a ‘commodity’ or a ‘credit’ theory of money<sup>58</sup> since even money as commodity requires social valuation and recognition. Thus if our conception of poverty is to aspire to some more universal ontological grounding than merely one that relies on particularly contingent features of our monetized modern societies, then it must transcend these contingent features, by referring more generally to material resources as a means to avoid destitution. Accordingly, although poverty is commonly thought of as a lack of money or financial resources, I have described it instead as “a human state of material/financial deprivation” in order to capture the intuition that our concept of poverty is not necessarily dependent on the presence of money as a social construct, but only insofar as that social construct is indicative, perhaps even a proxy, for material deprivation.

Some might also point out that poverty is about a deprivation or an inequality of power, both in the sense of a metric as well as an analytical tool to describe more systemic or structural accounts of poverty. I would like to suggest however that while the concept of

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<sup>57</sup> Ásta, ‘Précis: Categories We Live By’, *Journal of Social Ontology* 5, no. 2 (2020): 231–32.

<sup>58</sup> See Boudewijn de Bruin et al., ‘Philosophy of Money and Finance’, in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Winter 2020 (Metaphysics Research Lab, Stanford University, 2020), <https://plato.stanford.edu/archives/win2020/entries/money-finance/>.



power is useful in describing the phenomenon of poverty, the highly contested (some argue essentially contested) nature of the concept discounts its utility as a way to describe how we actually conceive of poverty.<sup>59</sup> As an example of compelling work in this area that is at the same time illustrative of the contested nature of the concepts at play, Jay Drydyk argues that the closely related concept of “empowerment” has “three distinct but related dimensions: agency, well-being freedom, and power.”<sup>60</sup> I hope the reader will find that the filling out of our conceptual framework – through our upcoming discussion of the internal perspectives of poverty as well as our discussion of closely related moral concepts of human rights, equality, and freedom – adequately addresses aspects of our conception of poverty that are also central to many accounts of poverty framed in terms of power and power relations.

## Counterfactuals and Capabilities

### Relative vs. Absolute Poverty

As Richard Hull has observed: “The term poverty is commonly used in two ways. It is used to describe a state of affairs in an absolute sense or to describe a state of affairs relative to another,”<sup>61</sup> and, as Ruth Lister notes, the distinction between the two “has been central to post-war debates about how to define poverty.”<sup>62</sup> In order to analyse the distinction between these two conceptions of poverty, one must set out to accurately describe the conceptions at play and then look at the relations between those

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<sup>59</sup> For a helpful discussions on the ‘highly contested’ concept of power including an overview of some prominent accounts see Amy Allen, ‘Feminist Perspectives on Power’, in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Metaphysics Research Lab, Stanford University, 2021), <https://plato.stanford.edu/entries/feminist-power/>.

<sup>60</sup> Jay Drydyk, ‘Empowerment, Agency, and Power’, *Journal of Global Ethics* 9, no. 3 (2013): 260.

<sup>61</sup> Richard Hull, *Deprivation and Freedom: A Philosophical Enquiry*, Routledge Studies in Ethics and Moral Theory 8 (New York: Routledge, 2009), 9; as quoted in Wolff, Lamb, and Zur-Szpiro, ‘A Philosophical Review of Poverty’, 28.

<sup>62</sup> Lister, *Poverty*, 20.

conceptions. In this respect, I will argue along the lines of the influential work of Amartya Sen that “the contrast between the absolute and the relative features has often been confused,”<sup>63</sup> while questioning whether Sen is also entirely correct that the concept of poverty can best be understood and approached solely as an absolute conception based on human capabilities.<sup>64</sup>

Peter Townsend, echoing Adam Smith with regard to the necessity of a linen shirt and shoes in the time of the Scottish Enlightenment,<sup>65</sup> sets out his influential conception of relative poverty thusly:

Individuals, families and groups in the population can be said to be in poverty when they lack the resources to obtain the types of diet, participate in the activities and have the living conditions and amenities which are customary, or are at least widely encouraged and approved, in the societies to which they belong. Their resources are so seriously below those commanded by the average individual or family that they are, in effect, excluded from ordinary living patterns and activities.<sup>66</sup>

From this we can see that there is a close relationship between our relative conceptions of poverty and our conceptions of equality which will be discussed later in the chapter. It should be noted however that the concepts are not synonymous, since “inequality is concerned solely with the comparison between groups,” whatever the metric of that comparison, while the concept of relative poverty adds to that comparison some particular conception of “basic needs”<sup>67</sup> as the metric for the comparison. The conception of basic needs within relative poverty generally is multi-dimensional as for example it occurs when persons “cannot obtain, at all or sufficiently, the condition of life – that is, the diets, amenities, standards and services – which allow them to play the roles, participate

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<sup>63</sup> Sen, ‘Poor, Relatively Speaking’, 153.

<sup>64</sup> See Sen, 167–68.

<sup>65</sup> See Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 1168–69.

<sup>66</sup> Townsend, *Poverty in the United Kingdom: A Survey of Household Resources and Standards of Living*, 31.

<sup>67</sup> Lister, *Poverty*, 23.

in the relationship and follow the customary behaviour which is expected of them by virtue of their membership of society.”<sup>68</sup> In this sense we can begin to see that the concept of relative poverty, however it is conceived, is both multi-dimensional and relational, in the sense that it considers multiple aspects of the conditions of human existence, while those aspects are at least partially dependent on the person’s relationships to others and to the larger society in which they exist historically, geographically and culturally.

Two related criticisms of purely relative conceptions of poverty<sup>69</sup> are that they might not accurately describe the existence of poverty in a given group or society, and also that they might not capture the fluctuation in poverty as conditions change over time. With regard to the former, one can imagine a society where the conditions are desperate with regard to absolute measures of poverty such as healthy food and housing, but where the population is relatively equal such that none can meet their basic needs and yet only the very worst-off might be considered relatively poor. As Brenda Shaw has argued, there is a paradox whereby an affluent but unequal society may be seen as more “poverty-stricken” than a society experiencing widespread starvation when applying a purely relative conception of poverty.<sup>70</sup> In regard to changing conditions over time, one can imagine a society where there is “[a] sharp fall in general prosperity causing widespread starvation and hardship,”<sup>71</sup> and yet because the relative distribution has not changed there has been no change in poverty, relatively defined. As Brian Barry has observed,

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<sup>68</sup> See Townsend, *Poverty in the United Kingdom: A Survey of Household Resources and Standards of Living*, 36; as quoted in Lister, *Poverty*, 21–22.

<sup>69</sup> For such an example see Peter Townsend, *The International Analysis of Poverty* (London: Routledge, 1993); as discussed in Lister, *Poverty*, 20–33.

<sup>70</sup> See Beverley Shaw, ‘Poverty: Absolute or Relative?’, *Journal of Applied Philosophy* 5, no. 1 (1988): 30 Shaw also argues against employing relative conceptions of poverty on moral grounds since they will distort our prioritization of responses to absolute poverty elsewhere (see pp. 30-33 and 35).

<sup>71</sup> Sen, ‘Poor, Relatively Speaking’, 157.

these counterfactuals raise serious questions about purely relative conceptions of poverty, and as Sen asserts, an adequate conceptualization of poverty “should be able to deal with a wide variety of counter-factual circumstances.”<sup>72</sup> Aside from the aforementioned counterfactuals that focus on societal-level poverty, similar reasoning applies to the individual case, for as Sen observes, “it would be absurd to call someone poor just because he had the means to buy only one Cadillac a day when others in that community could buy two of these cars each day.”<sup>73</sup> As is common with counterfactuals, when one examines the substantive point being made, one sees that there is an instructive point for our conceptual analysis: a purely and thoroughgoing relative conception of poverty untethered to some non-relative necessary condition leads to absurd possibilities that are counterintuitive to our understanding of the concept of poverty.<sup>74</sup>

## Capabilities

Amartya Sen originally proposed his conception of capabilities as a way to address shortcomings in conceptual approaches to equality in moral philosophy, canvassing common utilitarian approaches focused on welfare, as well as Rawlsian approaches based on “primary goods”. With regard to the former, Sen argued, *inter alia*, that an overall utilitarian approach cannot address the distributional questions necessary to address equality since it does not address “the fundamental diversity of human beings” and “[e]ven the minutest gain in total utility *sum* would be taken to outweigh distributional

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<sup>72</sup> Sen, 157.

<sup>73</sup> See Sen, 159; as referenced in Wolff, Lamb, and Zur-Szpiro, ‘A Philosophical Review of Poverty’, 29.

<sup>74</sup> Sen also makes a further claim that if one takes a “rigidly relativist view” then “poverty cannot – simply cannot – be eliminated, and an anti-poverty program can never really be quite successful.” However, this argument against relative conceptions is in and of itself less compelling, particularly in the realm of possible counterfactuals, since one can at least conceive of a society of equals in which nobody is relatively poor or faces any deprivation in subsistence goods. See Sen, ‘Poor, Relatively Speaking’, 156.

inequalities of the most blatant kind.” [emphasis in original]<sup>75</sup> Even at the level of marginal utility, such an approach does not accord with our moral intuitions of equality since person A, for example someone living with a disability, may derive significantly less welfare or pleasure from any given level of income than Person B who is a “pleasure-wizard”. Person A, would then “be doubly worse off: both since he gets less utility from the same level of income, *and* since he will also get less income.”<sup>76</sup> [emphasis in original]

With regard to welfarism as a type of utilitarianism, Sen concurs with Rawls that such an approach, since it is based solely on the intensity of pleasure, cannot accord with our negative moral intuitions about persons who take pleasure in the deprivation of others.<sup>77</sup>

In addressing the Rawlsian approach to Equality, which is concerned instead with the distribution of primary goods, defined as “‘things that every rational man is presumed to want,’ including ‘rights, liberties and opportunities, income and wealth, and the social bases of self-respect,’”<sup>78</sup> Sen argues that Rawls’ primary goods approach similarly “seems to take little note of the diversity of human beings.”<sup>79</sup> Employing the example of a person with a disability, as well as more generally, Sen argues that Rawls’ approach will ignore individual differences in needs including “health, longevity, climactic conditions, location, work conditions, temperament, and even body size (affecting food and clothing requirements).<sup>80</sup> It will do so because it will take no account of these differences, giving the same amount to persons despite their individual circumstances,<sup>81</sup> focusing as it does

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<sup>75</sup> Amartya Sen, ‘Equality of What?’, in *Tanner Lectures on Human Values*, ed. Sterling M. McMurrin (Cambridge: Cambridge University Press, 1979), 202.

<sup>76</sup> Sen, 203.

<sup>77</sup> Rawls, *A Theory of Justice*, 30–31; as cited in Sen, ‘Equality of What?’, 210–11.

<sup>78</sup> Rawls, *A Theory of Justice*, 60–65; as cited in Sen, ‘Equality of What?’, 213–14.

<sup>79</sup> Sen, ‘Equality of What?’, 215.

<sup>80</sup> Sen, 215–16.

<sup>81</sup> The Difference Principle represents the second part of the Second of Rawls’ two principles of justice which are:

**First Principle:** *Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;*

**Second Principle:** *Social and economic inequalities are to satisfy two conditions:*

*a. They are to be attached to offices and positions open to all under conditions of fair equality of opportunity;*

on the “difference principle” whereby inequalities are permissible only insofar as they benefit the least well off in society. Sen thus proposed a theory of equality of capabilities, whereby the focus is on a person’s ability to do things, providing the examples of “the ability to meet one’s nutritional requirements, the wherewithal to be clothed and sheltered, [and] the power to participate in the social life of the community.”<sup>82</sup> Sen contends that such an approach, by focusing on our relationship to goods, thereby avoids the fetishization of primary goods exemplified by Rawls, as well as the focus on mental reactions exemplified by utilitarianism.<sup>83</sup> Apart from the egalitarian focus of his introduction to the concept of capability, Sen also ties the concept to a particular conception of substantive freedom.<sup>84</sup> For our purposes, we are concerned rather with the idea of capabilities as a currency or metric not necessarily of freedom or equality,<sup>85</sup> but also of living standards,<sup>86</sup> and as a means to meet basic needs.<sup>87</sup>

As previously mentioned, for Sen, one’s standard of living is “a matter of functionings and capabilities”, where “functionings” are “the various living conditions we can or cannot achieve,” and capabilities, “our ability to achieve them.”<sup>88</sup> We can generally think of capabilities as “the doings and beings that people can achieve if they so choose — their

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b. *They are to be to the greatest benefit of the least-advantaged members of society (the difference principle).*

See Leif Wenar, ‘John Rawls’, in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2021 (Metaphysics Research Lab, Stanford University, 2021), <https://plato.stanford.edu/archives/sum2021/entries/rawls/>; referencing John Rawls and Erin Kelly, *Justice as Fairness: A Restatement* (Cambridge, Mass: Harvard University Press, 2001), 42–43.

<sup>82</sup> Sen, ‘Equality of What?’, 218.

<sup>83</sup> Sen, 218.

<sup>84</sup> For some examples of Sen’s work in this area see: Sen, *The Standard of Living*; Amartya Sen, ‘Well-Being, Agency and Freedom: The Dewey Lectures 1984’, *The Journal of Philosophy* 82, no. 4 (April 1985): 169–221; and Amartya Sen, *Development as Freedom* (New York: Alfred Knopf, 1999).

<sup>85</sup> Although no doubt, as will be discussed, both are aspects of poverty.

<sup>86</sup> Sen, *The Standard of Living*.

<sup>87</sup> Sen introduced the idea of basic capabilities “to separate out the ability to satisfy certain elementary and crucially important functionings up to certain levels” such as “the ability to be well-nourished and well-sheltered, the capability of escaping avoidable morbidity and premature mortality, and so forth.” See Amartya Sen, *Inequality Reexamined* (Oxford: Clarendon Press, 1992), 45, and footnote 19.

<sup>88</sup> Sen, *The Standard of Living*, 23.

opportunity to do or be such things as being well-nourished, getting married, being educated, and travelling.”<sup>89</sup> We can understand functionings as “capabilities that are realized,”<sup>90</sup> For example, we might believe that adequate and affordable housing is a basic need for human beings. This basic need would thus be the functioning toward which we might ask whether persons have the capability to secure and retain such housing. In this sense, income can be seen as instrumental to what Lister describes as “the kind of life that a person is able to lead and the choices and opportunities open to her in leading that life.”<sup>91</sup>

The distinction between functioning and capabilities is also a distinction between ends and means. The distinction is further explicated by Sen through the additional concept of ‘conversion factors’ defined as “the degree in which a person can transform a resource into functioning.”<sup>92</sup> If we return to Sen’s oft-employed example of a person with a disability, we can imagine that they may be in a position whereby they must expend a significant amount of their financial resources on a wheelchair or another assistive device in order to approximate a similar level of functioning to those who do not require assistive devices, all other things being equal. Thus, all other things being equal, that person will require a greater amount of resources to achieve the same level of functioning as someone who does not need to purchase an assistive device, such as a wheelchair or a modified vehicle. Another example might be a person who requires a greater than average amount of food because of their metabolism or size. That person would be less efficient in converting resources into a healthy diet. Thus these persons would require greater means, in the form of resources, to achieve the same ends as others, in the form

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<sup>89</sup> Robeyns and Byskov, ‘The Capability Approach’.

<sup>90</sup> Robeyns and Byskov.

<sup>91</sup> Lister, *Poverty*, 15.

<sup>92</sup> Robeyns and Byskov, ‘The Capability Approach’.

of functionings such as being able to sustain a healthy diet. One should note that this is different than the previously-mentioned common distinction between equality of resources and equality of utility, whether of welfare or satisfaction. While it is true that persons may derive differing levels of utility from the same amount of resources, Sen focuses not on the mental reactions of those persons, as is common in the utilitarian approach, but rather on the actual capabilities that can be realized through those resources. One could also focus on the functionings that are actually achieved, but this would miss Sen's focus on substantive freedoms, and the fact that people may of course choose to direct their own capabilities toward a variety of functionings.

Sen does not provide a specific list of capabilities, focusing instead on a number of instrumental freedoms that represent means to achieve "overall freedom of people to live the life they choose,"<sup>93</sup> and "directly enhance the capabilities of people", while also supplementing and reinforcing one another.<sup>94</sup> Martha Nussbaum on the other hand moves beyond Sen's "comparative use of the capability space," whereby one can make comparisons with regard to quality of life, to provide a specific list of "threshold level" capabilities that "can provide the basis for central constitutional principles that citizens have a right to demand from their governments."<sup>95</sup> Nussbaum provides a list of 10 central capabilities "that a decent political order must secure to all at least a threshold level" ranging from a focus on environment which includes control over one's material environment, to living a life of normal length with sufficient health and bodily integrity, to areas that are perhaps not commonly thought of as poverty-related such as "senses,

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<sup>93</sup> See Wolff, Lamb, and Zur-Szpiro, 'A Philosophical Review of Poverty', 10.

<sup>94</sup> Sen lists 5 instrumental freedoms: political freedoms, economic facilities, social opportunities, transparency guarantees, and positive security. See Sen, *Development as Freedom*, 38–40.

<sup>95</sup> Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach*, 1st ed. (Cambridge: Cambridge University Press, 2000), 12.



imagination, and thought,” “emotions,” and “being able to live with concern for and in relation to animals, plants, and the world of nature.”<sup>96</sup> While it is clear that Nussbaum has a normative focus “in a way informed by an intuitive idea of a life that is worthy of the dignity of the human being,”<sup>97</sup> it is clear that both hers and Sen’s formulations of the capability approach articulate a central conceptual distinction for the concept of poverty that was previously obscured by the focus on income and resources: the distinction between resources, capabilities and functioning, or more generally the oft-studied philosophical distinction between means and ends. Although we do tend to think of poverty in terms of financial resources, it is counterintuitive to think of poverty purely in terms of the resources that we provide to persons. To stay with the same example, the person who requires a \$10,000 wheelchair and \$5000 in prescriptions costs but only has an income of \$25,000 would surely be considered poor, while it is possible that we might not consider another person poor who has the same income, depending on the community. This is also recognized institutionally in our social assistance policies which tend to pay higher levels of benefits to those with disabilities.

The previously-mentioned ends/means distinction in this respect is twofold. Human capabilities are means where the ends or functionings are the things that humans succeed in doing or being (based on their capabilities). They are also ends toward which we direct resources, and for Sen in that they represent the substantive freedoms that have intrinsic value in and of themselves.<sup>98</sup> Under, this approach, the resources, such as income or assets, upon which a human might rely to achieve capabilities are also but

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<sup>96</sup> See Nussbaum, 33–34, where the full list of capabilities are enumerated as: 1] Life, 2) Bodily Health, 3] Bodily Integrity, 4) Senses, Imagination and Thought, 5] Emotions, 6) Practical Reason, 7] Affiliation, 8) Other Species, 9] Play, and 10) Control over one’s Environment.

<sup>97</sup> Nussbaum, 5.

<sup>98</sup> Sen, *Development as Freedom*, 75.

instrumental means for achieving capabilities (i.e. the ends of those material resources). Although those financial resources are a necessary aspect of our conception of poverty, it is the capabilities that we imagine they will provide that underpin our understanding of poverty.

As has been pointed out by Rod Hick, the capabilities approach differs significantly from the traditional poverty approaches because of the questions asked: The poverty approach tends to take a conceptual approach (as herein) asking “what is poverty?”, whereas the capabilities approach instead takes an ethical approach asking “what matters?”.<sup>99</sup> To that end, Martha Nussbaum does not focus on poverty *per se* but instead focuses on capabilities, noting that what is at issue is “a life that is worthy of the dignity of the human being”.<sup>100</sup> However, as we can see from Sen’s explication of the capabilities approach whereby he argues that poverty is actually “the deprivation of basic capabilities, and not merely low-income,”<sup>101</sup> Sen does take a position with regard to the conceptualization of poverty. However, as Wolff notes, Sen does acknowledge that deprivations in capabilities are related to income and that there is a “two-way relationship” whereby low income can lead a deprivation in capabilities and a deprivation in capabilities can lead to a low income.<sup>102</sup> However, the point for Sen, Nussbaum, and others employing a capability approach, is that the focus should include the ends of capabilities, rather than only the means of income or other resources. In so doing, one recognizes that instrumental means such as income or other resources are not valued for their own sake but only to the extent that they promote capabilities, and will yield different levels of

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<sup>99</sup> Rod Hick, ‘Poverty as Capability Deprivation: Conceptualising and Measuring Poverty in Contemporary Europe’, *European Journal of Sociology* 55, no. 3 (December 2014): 305.

<sup>100</sup> Nussbaum, *Women and Human Development: The Capabilities Approach*, 5; as quoted in Lister, *Poverty*, 17.

<sup>101</sup> Wolff, Lamb, and Zur-Szpiro, ‘A Philosophical Review of Poverty’, 12.

<sup>102</sup> Wolff, Lamb, and Zur-Szpiro, 12.

capabilities for different persons depending on various conversion factors. Relatedly, one does not assume that only income and resources will always be the appropriate means to achieve any given capability, since there may be other means such as for example socialized medicine and assistive devices, social housing, public transportation, and so on.

### The Capability to Avoid Shame due to Social Exclusion

As Ruth Lister points out, the term “absolute” poverty is employed in different ways: while the term “absolute” is often employed to refer to a level of poverty below subsistence level, the term can also be employed as an antonym of relative. In the latter sense, Sen employs the related concept of “capabilities” to show how ‘poverty’ can be conceived in a way that has “an irreducible absolutist core” and yet accounts for the relative necessity of certain commodities.<sup>103</sup> Sen thus proposes a significant conceptual shift in our conception of poverty from a focus on financial/material resources that someone has to “the ability to do various things by using that good or those characteristics”<sup>104</sup> such that:

At the risk of oversimplification, I would like to say that poverty is an absolute notion in the space of capabilities but very often it will take a relative form in the space of commodities or characteristics.<sup>105</sup>

Sen elaborates on the absolute nature of his conception of poverty by pointing to the concept of ‘shame,’ such that if someone cannot obtain those goods that are customary in their contemporary society, then the result is shame for the impoverished: “... escape from poverty has an absolute requirement, to wit, avoidance of this type of shame. Not so much having equal shame as others, but just not being ashamed, absolutely.” In this

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<sup>103</sup> Lister, *Poverty*, 28–30.

<sup>104</sup> Sen, ‘Poor, Relatively Speaking’, 160.

<sup>105</sup> Sen, 161.

way Sen, purports to address the issue of poverty in relatively affluent states where incomes may be much higher than in developing countries, and where there may not be significant levels of starvation for example, but where we would still commonly understand some persons to be poor. This apparent incongruity between the conceptualization of poverty between states with significantly different living standards is thus resolved, Sen argues, by: 1) the introduction of the concept of capabilities as “the right focus for assessing standard of living”,<sup>106</sup> and 2) the introduction of the human capability for the ‘the avoidance of shame’ with regard to the demands of convention in the commodity space.<sup>107</sup> The latter move underpins Sen’s argument that there will be varying levels and types of commodities that may be required to avoid shame in any given society and culture at any given time. It is by this latter move that Sen argues he can address the previously mentioned counterfactual arguments with regard to a “thoroughgoing relativity of the kind associated with seeing poverty as ‘an issue of inequality’”:<sup>108</sup> For example, a country experiencing famine will necessarily see a decline in capabilities regardless of whether there is a change in the distribution of resources. In addition, with regard to international comparisons, the capabilities approach will capture aspects of poverty commonly associated with absolutist conceptions, such as the ability to meet subsistence nutritional requirements, while also capturing traditional relative conceptions with regard to the goods required to avoid shame in a given country and culture and time.

The issue of shame as it relates to poverty will be addressed more fully in the following section with regard to the internal experience of poverty, but there are some important

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<sup>106</sup> Sen, 160.

<sup>107</sup> See Sen, 160–63.

<sup>108</sup> Sen, 163.

aspects that should be addressed now regarding this conceptual move by Sen with respect to poverty, i.e the idea that there is an absolute foundation to the relative conceptualization of poverty between societies over time and space, namely the capability to avoid the shame associated with the inability to afford or obtain the commodities that are conventionally required in a given society, culture and time in order to participate in various aspects of that society including the community, education, etc.. Perhaps first we should address what he means by 'shame', which is not explicitly set out. It has been noted that "a standard philosophical analysis of shame characterizes shame as an emotion of self-assessment that causes the subject to feel anxiety at the thought of how he or she is seen and judged by others."<sup>109</sup> Sen himself seems to suggest that the avoidance of shame is closely related to the Rawlsian notion of "self-respect, or what Rawls calls 'the social basis of self-respect.'"<sup>110</sup> Whether Sen means that self-respect entails the absence of shame, or whether he means it as a separate but perhaps related capability, for our purposes it seems clear from the context of his argument that he is offering conceptions of both that are primarily social in that they are reactions to the expectations arising from social norms and customs and the perceived judgement of others if one is not able to meet those expectations.

Sen gives the example of televisions in societies where most have televisions and thus a child might be expected to have access to a television<sup>111</sup> to fully engage in even the basic

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<sup>109</sup> See Luna Dolezal, 'Shame, Vulnerability and Belonging: Reconsidering Sartre's Account of Shame', *Human Studies* 40, no. 3 (June 2017): 423 and footnote 3; referencing J. David Velleman, 'The Genesis of Shame', *Philosophy & Public Affairs* 30, no. 1 (2001): 28–29 and footnote 1. As Dolezal notes, Velleman's "characterization of the 'standard philosophical analysis' of shame ... is intended to encompass the views of several philosophers including John Deigh, Gabrielle Taylor, Roger Scruton, Simon Blackburn and Richard Wolheim".

<sup>110</sup> Sen, 'Poor, Relatively Speaking', 164.

<sup>111</sup> Another more contemporary example may be a personal computer or tablet which is now required at all levels of education.

primary and secondary educational curricula in their society.<sup>112</sup> In addition to the required goods to participate in education activities, Sen also provides the example of transportation, noting that it might be a marker of poverty to have no car in a society where most have cars and where there are few public transportation options.<sup>113</sup> This category of goods where the inability to acquire them would occasion shame includes goods other than those required for basic subsistence, and thus the conceptual move is particularly salient in discussions of relatively affluent societies where most conditions of subsistence might have been met, particularly since it has oft been argued that such societies do not really experience poverty.<sup>114</sup> It should be noted that the term “goods” is used in a broad sense and would include activities where the inability to engage in those activities would occasion the shame to which Sen refers. For example, the inability to afford to take part in school trips might be seen as a marker of poverty which occasions shame.

The examples provided by Sen raise the question of why these examples are included but not others. Why might one require a computer to avoid the type of shame to which Sen refers, but not for example a designer handbag seen on “Keeping Up with the Kardashians”. This raises a critical point with regard to Sen’s account: although the shame is an internal emotion based on our self-assessment of how we are judged by others, this internal state is not a sufficient condition for the type of shame to which Sen refers. Rather, the type of shame to which Sen refers is based on how a given society perceives those goods; it is a necessary condition that society sees those goods as necessary, and that in particular the absence of the ability to afford those goods is seen

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<sup>112</sup> Sen, ‘Poor, Relatively Speaking’, 162.

<sup>113</sup> Sen, 162.

<sup>114</sup> See Shaw, ‘Poverty: Absolute or Relative?’

as a marker of poverty. Although the collectively perceived necessity of those goods may relate to some instrumental utility, for the purpose of articulating the collective perception as a necessary condition for the type of shame that is in turn a sufficient condition for saying that someone is poor, the point is only that the inability to obtain those goods is perceived as a marker of poverty. For example, the collective perception may relate to values such as for example equality, or dignity, or autonomy, or in some case they may only be related to irrational stereotypes and the resulting prejudiced beliefs. Another key point that the reader may notice is that the necessary condition requires that one be able to afford the particular goods. Although some goods may be provided through various social programs, such as for example programs in school that provided laptops or tablets to students who cannot afford them, those programs do not necessarily avoid the potential shame of not being able to afford those goods, particularly if the student perceives that others are aware of their inability to afford the goods. This is of course not an exact science, and the goods which may fall into this category are debatable, but the salient point is that any given society will have some customary understanding of goods that all should be able to afford, unless they are poor. As Sen points out, there are large differences in the standards of living in rich and poor countries, as well as the capabilities to meet those standards of living.<sup>115</sup> In poorer countries these goods will tend to be more closely related to commonly understood basic human needs such as nutrition or shelter, while in relatively more affluent societies where such needs may be more commonly met, the set of such goods may involve goods less related to subsistence, such as a computer, or an automobile. For the purposes of our non-moral framework conception of poverty, I have added the qualifier “shame due to social exclusion” as a necessary condition for the shame condition which is a sufficient condition for poverty. Although

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<sup>115</sup> Sen, ‘Poor, Relatively Speaking’, 162.

“social exclusion” is itself a highly contested concept, and one that we will briefly discuss later in this chapter with regard to the internal perspectives of poverty, for our purposes the point is that it is a reaction to one’s inability to acquire certain goods in society, where that inability is seen as a marker of poverty. Thus, the type of shame to which Sen refers, where the absence of the ability to avoid that shame entails that one is in poverty, must necessarily be accompanied by some form of social exclusion in order for it to be a sufficient condition for poverty.<sup>116</sup> The reader will note that one may perhaps summarize the conclusion: if you are seen as poor, then you are poor. This circularity is not surprising since our project is, at least in part, to describe what is already known. As will be discussed, poverty is relational and the shame of poverty comes from being seen as poor.

While it may be objected that this leaves relational aspects of our concept of poverty as arbitrary, the societal conventions that mark the inability to meet certain basic needs as indicative of poverty are not merely random or based on whim. Neither are they wholly rational, being that they will be socially (including politically) determined based not only on the constituent elements of our non-moral framework and closely-related moral concepts, but also on phenomena such as stereotyping and othering.<sup>117</sup> As will be discussed later in the chapter, the societal stigma that underpins the social exclusion in

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<sup>116</sup> There is much more that can be said about the contested concept of “social exclusion” as an effect of poverty beyond the stipulative sense in which I have employed it here. Such a discussion largely lay outside the scope of this thesis, except to the extent that some related effects of poverty are discussed later in the chapter with regard to the internal perspective of poverty. However social exclusion is not, in and of itself, a necessary or sufficient condition for poverty. Like the phenomenon of shame due to social exclusion, social exclusion itself is not a necessary condition since one may be poor due to their material deprivation without being socially excluded whether that exclusion is related to a tendency to occasion shame or not. Significantly, it is also not a sufficient condition for poverty since one may experience social exclusion that is unrelated to poverty, such as for example social exclusion due to a language barrier. It is the social exclusion that is particular to poverty, a social exclusion that would tend to cause shame for the subject of that exclusion, that is a sufficient condition for poverty.

<sup>117</sup> Some of these closely related moral concepts, as well as phenomena such as stereotyping and othering will be discussed later in the Chapter.



our non-moral framework will be influenced by such commonly unreflective phenomena. Those aspects will however not be wholly dispositive of such conventions, since they will also be informed by considered public and private deliberations around the set of basic needs and the reasons why such goods are needed.<sup>118</sup> For example, some goods that facilitate education or participation in the workforce might generally be seen as necessary to avoid poverty, whereas goods that relate purely to entertainment or to fashion will be less likely to be considered necessary. Thus, our concept of poverty contains within it a nested folk understanding that is political, and at least partially considered and partially unreflective. It should also be noted that such phenomena as stereotyping may tend to deflate the relational aspect of the concept of poverty, since those phenomena tend to paint the poor as the authors of their own misfortune.

The conceptual point made by Sen regarding the inescapable absolute aspect of any relative conceptualization of poverty goes some way toward dealing with the arguments for a thoroughgoing relative conceptualization of poverty, as well as the aforementioned *reductio ad absurdum* counterfactuals that bring into question such conceptions. The overarching argument for a relative conception of poverty, that is that the goods required to be considered non-poor will be at least somewhat contingent on time, culture or society that one finds oneself in, is accommodated by the absolute notion of the shame that said person will experience (“an absolute deprivation in the capability space”)<sup>119</sup> due to not being able to meet the expectations for a non-poor member of that society; in other words:

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<sup>118</sup> Jonathan Wolff suggests that the set of basic needs might include those required “to achieve a normal human life in the circumstances in which they live,” and references Jiwei Ci as breaking this down into “three ‘stakes’ of poverty: subsistence, status and agency.” See Jonathan Wolff, ‘Poverty’, *Philosophy Compass* 14, no. 12 (2019): 3–4; and Jiwei Ci, ‘Agency and Other Stakes of Poverty’, *Journal of Political Philosophy* 21, no. 2 (2013): 125.

<sup>119</sup> Sen, ‘Poor, Relatively Speaking’, 162; see also Sen, *The Standard of Living*.

The capability to live without shame emphasized by Adam Smith, that of being able to participate in the activities of the community discussed by Peter Townsend, that of having self-respect discussed by John Rawls, are examples of capabilities with extremely variable resource requirements.<sup>120</sup>

Similarly, it might be argued that the counterfactuals of comparing societal poverty longitudinally and geographically no longer lead to absurd consequences if we accept Sen's absolutist core since presumably the absolute shame felt by the individuals and families involved will thus provide a stable comparator.<sup>121</sup> However, not all who lack the capability to acquire the goods customary to their society to be seen as free from poverty will feel shame. For example, as Lister notes with regard to influential research in the United Kingdom by Peter Townsend, a minority of low-income respondents "with extremely low resources [denied] feelings of deprivation,"<sup>122</sup>

## Vulnerabilities<sup>123</sup>

When one considers the related concept of "vulnerability", or more particularly "vulnerabilities," it may seem that it is the obverse of capabilities; although the opposite of capabilities might better be identified as incapacities, the vulnerabilities that one faces might still be seen as the other side of capabilities. As Nussbaum notes, "[t]he notion of vulnerability also signals the actual or potential harm that may result from particular capability deficits and highlights the obligation to address those deficits in order to

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<sup>120</sup> Sen, 'Poor, Relatively Speaking', 163; Also see Peter Townsend, 'The Development of Research on Poverty', *Social Security Research: The Definition and Measurement of Poverty* (London: Department of Health and Social Security, HMSO, 1979); and Rawls, *A Theory of Justice*, 440–46.

<sup>121</sup> In this regard, it has been argued that Sen articulates a form of 'constructive universalism' that is 'sensitive to people's differences' and which pays 'attention to the social construction of need and capability.' See Toru Yamamori, 'Constructive Universalism: Sen and Sensitivity to Difference', *Ethics and Economics* 1 (2003): 12–13.

<sup>122</sup> Townsend, 'The Development of Research on Poverty', 426; as quoted by Lister, *Poverty*, 46.

<sup>123</sup> Some of the writing in this section is either directly lifted from or based upon my work in my final essay in PHILOS 759 "Applied Ethics: Vulnerability", taken with Prof. Ariella Binik in the Winter academic term of 2020.

remediate vulnerability.”<sup>124</sup> Although vulnerability is often conceptualized as an undifferentiated concept whereby it is something inherent in all human beings “as a condition of our embodied humanity”,<sup>125</sup> or as a label applied to specific groups of persons, it is particularly helpful to differentiate specific vulnerabilities if one is to employ that concept as a means to protecting human capabilities. In this sense of conceptualizing vulnerabilities, one can look to the extensive work on vulnerability in the area of applied ethics in research on human subjects, and in particular the work of Florencia Luna with regard to the concept of layered vulnerabilities.

The “economically disadvantaged” have historically been marked out as a vulnerable group that may require special protection,<sup>126</sup> as well as other overlapping subgroups such as the “unemployed” or “impoverished”, “homeless persons”, and “people receiving welfare benefits or social assistance and other poor people”.<sup>127</sup> As Florencia Luna notes, the practice of focusing on the characteristics of the participants has historically led to a “subpopulation approach” in research ethics, an approach which she describes by employing the “metaphor of labels.”<sup>128</sup> Luna sets out the standard criticisms of the subpopulation approach, ranging from the charge that such an approach results in overinclusive stereotyping (as well as exclusion from research studies), to the eliminativist critique that the proliferation of vulnerable groups has caused the concept to

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<sup>124</sup> Catriona Mackenzie, ‘The Importance of Relational Autonomy and Capabilities for an Ethics of Vulnerability’, in *Vulnerability: New Essays in Ethics and Feminist Philosophy*, ed. Catriona Mackenzie, Rogers Wendy, and Susan Dodds (New York: Oxford University Press, 2013), 50.

<sup>125</sup> Mackenzie, 37.

<sup>126</sup> See Christine Grady, ‘Vulnerability in Research: Individuals with Limited Financial and/or Social Resources’, *Journal of Law, Medicine & Ethics* 37, no. 1 (2009): 19; and also Florencia Luna, ‘Elucidating the Concept of Vulnerability: Layers Not Labels’, *International Journal of Feminist Approaches to Bioethics* 2, no. 1 (2009): 124.

<sup>127</sup> See Hurst, ‘Vulnerability in Research and Health Care: Describing the Elephant in the Room?’, 93, Table 1; In Canada, “poverty” is currently mentioned with regard to irresistible inducements. see Interagency Advisory Panel on Research Ethics Government of Canada, ‘Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans – TCPS 2 (2018) – Chapter 4: Fairness and Equity in Research Participation’, 1 April 2019, 54, Article 4.7, [https://ethics.gc.ca/eng/tcps2-eptc2\\_2018\\_chapter4-chapitre4.html](https://ethics.gc.ca/eng/tcps2-eptc2_2018_chapter4-chapitre4.html).

<sup>128</sup> See Florencia Luna, ‘Elucidating the Concept of Vulnerability: Layers Not Labels’, *International Journal of Feminist Approaches to Bioethics* 2, no. 1 (2009): 121–28.

become “too nebulous to be meaningful.”<sup>129</sup> Luna argues for an approach to vulnerability that instead employs the metaphor of layers, whereby layers of vulnerability are “multiple and different”, “and “may be removed layer by layer”.<sup>130</sup> For Luna’s layered conception of vulnerability, there are multiple factors or sources of vulnerability ranging from issues of capacity, to human rights, to social circumstances. Further, the layers of vulnerability are “deeply related to the context” and so an individual may be vulnerable in certain contexts and not in others, thus their vulnerability “is not an essential property of the research subject or groups *per se*.”<sup>131</sup> As opposed to the standard approaches to vulnerability that seek to identify the necessary and sufficient conditions, Luna argues that “the concept should be understood dynamically and relationally.”<sup>132</sup> Luna’s layered conception of vulnerability also “challenges idealized views of the agent, human agency, and even justice that are so common in contemporary ethics”,<sup>133</sup> offering instead the concept of a non-idealized, fallible and sometimes irrational agent, a point I would suggest that is particularly apposite to the concept of poverty, since human beings do not always become poor due to circumstances beyond their control, but also because of bad decisions.

Whether or not it is true that the potential instrumental utility of the layered conceptualization recommends it to us, and even though, as Joseph Raz argues (with regard to the concept of law) that we cannot judge the success of our conceptual analysis of social facts by the fruitfulness of the concept,<sup>134</sup> it is nevertheless true that the

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<sup>129</sup> See Luna, 127–28; as well as Carol Levine et al., ‘The Limitations of “Vulnerability” as a Protection for Human Research Participants’, *The American Journal of Bioethics* 4, no. 3 (2004): 45.

<sup>130</sup> Luna, ‘Elucidating the Concept of Vulnerability: Layers Not Labels’, 128.

<sup>131</sup> Florencia Luna, ‘Identifying and Evaluating Layers of Vulnerability – a Way Forward’, *Developing World Bioethics* 19, no. 2 (2019): 88.

<sup>132</sup> Luna, ‘Elucidating the Concept of Vulnerability: Layers Not Labels’, 128.

<sup>133</sup> Luna, 134–35.

<sup>134</sup> See Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics*, 237:

conception of layered vulnerabilities as set out by Luna does offer significant opportunities to design fruitful responses to those vulnerabilities related to a lack of resources. In this way the concept's instrumental usefulness recommends it to us as a constituent concept in our non-moral conceptual framework for the concept of poverty. The potential fruitfulness of this conception may also recommend it to other possible concepts or conceptions of poverty; for example the social sciences or the law where precision and the specific identification of risks may be particularly important.<sup>135</sup> There will forever be conceptions of poverty that are based on their instrumental utility such as conceptions in the social sciences, and relatedly legal conceptions of poverty that one hopes would be related to those social sciences conceptions. These conceptions may require more precision as one moves from the previously described process of conceptualization, to more precise definitions, to precise categories and thresholds for measurement. For example, within our own proposed non-moral conceptual frameworks, a social science conception of poverty might require the identification of a list of specific capabilities that need to be protected (such as for example the capability to obtain and retain adequate housing, or the ability to purchase a healthy food basket), and then set thresholds for the meeting of those capabilities to facilitate the measurement of whether those capabilities have been met. Hopefully, the law would then employ that research to inform legislation, such as for example the legislation setting social assistance rates, or the legislation around evictions from residential tenancies.

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*But it would be wrong to conclude ... that one judges the success of an analysis of the concept of law by its theoretical sociological fruitfulness. To do so is to miss the point that, unlike common concepts like 'mass' or 'electron', 'the law' is a concept used by people to understand themselves. We are not free to pick on any fruitful concepts. It is a major task of legal theory to advance our understanding of society by helping us understand how people understand themselves.*

As quoted in Giudice, *Understanding the Nature of Law*, 44.

<sup>135</sup> Thanks to Wil Waluchow for pointing out the salience of the question of fruitfulness to other such concepts or conceptions of poverty. For a helpful discussion of conceptual frameworks in the social sciences and their utility to analysis of social phenomena "linked to multiple bodies of knowledge that belong to different disciplines", see Yosef Jabareen, 'Building a Conceptual Framework: Philosophy, Definitions, and Procedure', *International Journal of Qualitative Methods* 8, no. 4 (2009): 49–62.

However, this is not the only reason recommending vulnerability to us as a constituent concept in our conceptual framework of the concept of poverty: I would suggest rather that the way we actually think about poverty includes a necessary aspect of vulnerability in the sense that we would not see someone as poor but for the perception that they are somehow vulnerable. This might be obvious with regard to absolute conceptions of poverty based on very basic subsistence, where we would worry that one is at risk of starvation or exposure as two of the more extreme examples, but I would suggest that it is also true with regard to relative conceptions since those who cannot obtain the goods required by convention in any given society would be seen as vulnerable to the shame due to social exclusion discussed in the previous section with regard to the concept of capabilities. While the point with regard to subsistence level capabilities may be seen as commonplace, the other categories with regard to non-subsistence level goods although contestable, will also obviously be necessarily seen as related to poverty since they will have been necessarily already understood within that society as basic and/or required by convention. If we did not see someone as being vulnerable in some way, whether with regard to our understanding of basic subsistence needs or other goods or services that are commonly accepted as basic, or with regard to the goods which one would be expected to have in society in order to participate, and the absence of which would be seen as marker of poverty resulting in shame due to social exclusion, then we would not see that person as being in poverty. For example, religious vows of poverty would not normally bring those persons within our conception of poverty any more than a vow of silence would cause us to consider a person to be mute. This can be seen particularly with regard to the aspect of our concept that is a moral call to action, an aspect that clearly would not apply to one who has taken such a religious vow. Vulnerability is thus, I would suggest, a necessary condition for poverty, although as with capabilities the

vulnerabilities that would constitute poverty will depend on certain societal values, and the process for filling in that constituent concept will be informed through related moral concepts which will be discussed in the following sections.

As Luna notes, layers of vulnerability are “dispositions,” and thus are dependent upon “stimulus conditions.” If we can identify the stimulus conditions then “we can eradicate, avoid or minimize” them, and if we can estimate their probability then this will help us to prioritize vulnerabilities.<sup>136</sup> For example, one might wish to consider the vulnerability of “being at an increased likelihood of experiencing homelessness” as one of the layers that can be mitigated through public policy, and we can identify subgroups in society who would tend to experience this increased likelihood of losing their home, such as for example those in receipt of social assistance, and then identify various stimulus conditions or triggers that will tend to manifest this likelihood such as for example experiencing an administrative suspension of social assistance benefits, facing an eviction hearing, or being discharged from a long term stay in institutions such as jails or mental health facilities.<sup>137</sup> Luna also discusses related conceptions of ‘cascading’ and ‘pathogenic’ vulnerabilities, where ‘pathogenic’ vulnerabilities are those where responses thereto may potentially “exacerbate existing vulnerabilities or generate new vulnerabilities”<sup>138</sup> through various injustices,<sup>139</sup> and where that pathogenic aspect of a vulnerability layer thus shows “a replication or consecutive deployment of harmful effects:

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<sup>136</sup> Luna, ‘Identifying and Evaluating Layers of Vulnerability – a Way Forward’, 91.

<sup>137</sup> As Luna points out, we can also estimate, through empirical research, the likelihood that the vulnerability layer will become manifest. See Luna, 92.

<sup>138</sup> Wendy Rogers, Catriona Mackenzie, and Susan Dodds, ‘Why Bioethics Needs a Concept of Vulnerability’, *International Journal of Feminist Approaches to Bioethics* 5, no. 2 (Fall 2012): 25; as quoted in Luna, ‘Identifying and Evaluating Layers of Vulnerability – a Way Forward’, 91.

<sup>139</sup> See Luna, ‘Identifying and Evaluating Layers of Vulnerability – a Way Forward’, 91:

*There are a variety of sources of pathogenic vulnerability. Pathogenic vulnerability may be generated by morally dysfunctional interpersonal and social relationships characterized by disrespect, prejudice or abuse or by socio political situations characterized by oppression, domination, repression, injustice, persecution or political violence.*

*a cascade effect.*”[emphasis in original]<sup>140</sup> For example, a person may be vulnerable to losing their home because they do not have enough income to pay their rent, a situation which in and of itself can trigger other vulnerabilities related to for example health and intimate partner violence. Aside from the other vulnerabilities that one can imagine might arise from such a precarious situation, the actual losing of one’s home through an eviction, whether legal or illegal, can result in additional vulnerabilities such as for example a vulnerability to losing one’s government identification which in and of itself will present other potentially cascading vulnerabilities; more seriously, the loss of one’s home leaves one at a potential vulnerability to exposure in poor weather conditions if that person is not able to obtain shelter. The stimulus conditions will thus involve an analysis of the potential triggers for the manifesting of that vulnerability, i.e. the eviction of a person who was vulnerable to that possibility, as well as an analysis of the likelihood that the vulnerability would have become manifest.<sup>141</sup>

Again, one can immediately see the potential fruitfulness of this aspect of the conception of layered vulnerabilities whereby one can evaluate and prioritize various vulnerabilities and even ascribe duties and obligations to remove or remediate individual layers of vulnerabilities. Just as the concept of capabilities is closely related to the metaphorical concept of layered vulnerabilities, the former relating to one’s various capacities to realize related functionings and the latter to layers of increased likelihoods of harms, so too is the conception of pathogenic vulnerabilities leading to cascading vulnerabilities related to the conceptions of the “interpersonal, social, and institutional *scaffolding*” [emphasis added]<sup>142</sup> needed to counteract the effects of “social domination, oppression, and

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<sup>140</sup> Luna, 92.

<sup>141</sup> Luna, 92.

<sup>142</sup> Mackenzie, ‘The Importance of Relational Autonomy and Capabilities for an Ethics of Vulnerability’, 42.



disadvantage,” and thusly (at least in part) ground one’s autonomy from a relational perspective.<sup>143</sup> To build on our earlier example, the capability to obtain and retain adequate housing can provide the scaffolding to the abilities to for example obtain a bank account, or obtain and retain employment. Although slightly modified to focus on the realized ends of functionings and disadvantage, rather than the means and dispositions thereto of capabilities and vulnerabilities, these ideas are also closely related to Jonathan Wolff and Avner de Shalit’s theories of “fertile functionings” and “corrosive disadvantage”.<sup>144</sup>

The vulnerabilities which will be relevant to our conception of poverty will be closely related to the basic needs which one must have the ability to meet in order to be free of poverty. It is the vulnerabilities related to these basic needs that are a constituent part of our conceptual framework since we understand someone in poverty to be vulnerable to harm due to the potential that those basic needs will not be met, whether related to subsistence goods or the goods required to avoid shame due to social exclusion, as well as the potential of other vulnerabilities if indeed they are not met (i.e. cascading vulnerabilities).

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<sup>143</sup> See Mackenzie, 41-42:

*Relational theories aimed to develop a theoretical framework for understanding autonomy that does justice to three main convictions. First, the capacity to exercise some degree of self determination is crucial for leading a flourishing life. Second, the development and sustained exercise of this capacity requires extensive and ongoing interpersonal, social, and institutional scaffolding and can be thwarted by social domination, oppression, and disadvantage third, such thwarting constitutes social injustice; Therefore, the state has an obligation to develop social, political, and legal institutions that foster citizen autonomy.*

<sup>144</sup> See Jonathan Wolff and Avner de-Shalit, ‘On Fertile Functionings: A Response to Martha Nussbaum’, *Journal of Human Development and Capabilities* 14, no. 1 (2013): 161–65; and Wolff, Lamb, and Zur-Szpiro, ‘A Philosophical Review of Poverty’.

## Some Closely Related Moral Concepts

The concept of Poverty is socially constructed, multi-dimensional, and even vague. As Michael Giudice has suggested with regard to the concept of Law, the concept of Poverty, and our conceptions thereof, “are difficult to grasp because the phenomenon they seek to explain or determine shares similarities and connections with other closely-related phenomena.”<sup>145</sup> One will recall the statement by Hart with regard to his analysis of the concept of Law that it “will advance legal theory by providing .. a better understanding of the resemblances and differences between law, coercion and morality, as types of social phenomena.”<sup>146</sup> Similarly, the concept of poverty is also closely related to a number of other concepts, some of which are sometimes even mistaken for the concept of poverty or seen as a sufficient basis in and of themselves to conceptualize poverty. Three of these closely-related concepts are the concepts of human rights, equality, and freedom.

## Human Rights<sup>147</sup>

It has become increasingly common for us to approach poverty as an issue that implicates our human rights.<sup>148</sup> This is not just a relationship between related concepts, but rather ‘human rights’ are a part of our understanding of the concept of poverty. Specifically, they are increasingly a part of our folk understanding of the concept of poverty insofar as we conceive of our moral obligations vis-à-vis poverty in terms of

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<sup>145</sup> Giudice, *Understanding the Nature of Law*, 77.

<sup>146</sup> Hart, *The Concept of Law*, 17; as quoted in Giudice, *Understanding the Nature of Law*, 78, at footnote 35.

<sup>147</sup> Certain passages in this section, particularly those relating to international human rights instruments, originally appeared in my paper entitled “The Right to Subsistence and the Unfettering of Human Rights Justification” as presented at the “Special Session: Revisiting the Idea of Human Rights” of the 10<sup>th</sup> Meeting on Ethics & Political Philosophy, University of Minho, Portugal, June 13-15, 2019, and the 8<sup>th</sup> Annual Conference of the University of Ottawa Graduate Students in Law Association, April 20, 2019, which in turn was based on my final paper for Professor Violetta Ionescu, in Philosophy 764 “Selected Topics in Social and Political Philosophy; Rights and Duties: Foundational Questions and Political Applications”, 12December2018.

<sup>148</sup> See Misturelli and Heffernan, ‘The Concept of Poverty: A Synchronic Perspective’.

societal obligations to respond to a violation of human rights. Thus, any articulation of for example the basic needs which we believe persons should be able (i.e. have the capability) to meet will also have some bearing, if not being entirely dispositive of, an articulation of our understanding of the human right to non-poverty. This observation may seem banal on its face, since of course how we define poverty will determine any right to non-poverty. But the point is that the concept of poverty in and of itself also contains a call to action, a call to action which we now increasingly and, I will argue, commonly understand as an appeal to a human right to be free from poverty.

The right to be free from poverty is, if not explicitly expressed by, then closely related to certain human rights instruments at the international level, and also at the national and sub-national levels.<sup>149</sup> At the international level we have for example paragraph 1 of Article 11 of the International Covenant on Economic, Social and Cultural Rights which looks remarkably like a right to be free from poverty (as commonly conceived):

The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.<sup>150</sup>

We can also see the links in the human development context between human rights, poverty, and the related concept of capabilities. As Lister points out, “Sen was responsible for providing the conceptual framework for the 2000 [United Nations Development Program] Report entitled “Human Rights and Human Development,”<sup>151</sup>

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<sup>149</sup> Ruth Lister refers to these non-universal rights as “citizenship rights”. See Lister, *Poverty*, 163–65.

<sup>150</sup> See Article 11 of the United Nations, ‘International Covenant on Economic, Social and Cultural Rights’, Treaty Series, 999, 171 (United Nations (General Assembly), 1966); the Right to an Adequate Standard of Living is also guaranteed in Article 25 of the United Nations, ‘The Universal Declaration of Human Rights’ (United Nations, 1948).

<sup>151</sup> Lister, *Poverty*, 160.

wherein Sen argues that human rights “are ultimately grounded in the importance of freedom for human lives.”<sup>152</sup>

The Office of the High Commissioner of Human Rights has conceptualized poverty from a human rights perspective which:

... gives due attention to the critical vulnerability and subjective daily assaults on human dignity that accompany poverty. Importantly it looks not just at resources but also at the capabilities, choices, security and power needed for enjoyment of an adequate standard of living and other fundamental civil, cultural, political and social rights.<sup>153</sup>

Ruth Lister suggests that “two key tenets underpin this statement”: first that such a conception is based in an inherent dignity of human beings, and second, the notion that human rights are indivisible and interdependent.<sup>154</sup>

Lister contends that the “conceptualisation of poverty in terms of human rights, citizenship, voice and powerlessness strengthens the analysis of poverty.”<sup>155</sup> From the perspective of this project of conceptual analysis, it is not entirely clear whether this contention is a form of ameliorative analysis seeking to develop a “target concept” based on theorizing “about our ‘legitimate purposes’ in using a concept,” or whether it is a descriptive inquiry that investigates the real-world phenomena that the concept is meant to track with an eye to identifying the “operative concept.”<sup>156</sup> One suspects it is both, since it draws “on the narratives of people in poverty themselves” and thus “opens up a new way of thinking about the politics of poverty,” while, in seeking to ameliorate the

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<sup>152</sup> Amartya Sen, ‘Human Rights and Human Development’, in *Human Development Report 2000* (New York: United Nations Development Program, 2000), 20, [http://hdr.undp.org/sites/default/files/reports/261/hdr\\_2000\\_en.pdf](http://hdr.undp.org/sites/default/files/reports/261/hdr_2000_en.pdf).

<sup>153</sup> Office of the High Commissioner of Human Rights United Nations, ‘OHCHR and the Human Rights Dimension of Poverty’, accessed 20 June 2022, <https://www.ohchr.org/en/poverty>; as noted in Lister, *Poverty*, 161.

<sup>154</sup> Lister, *Poverty*, 161.

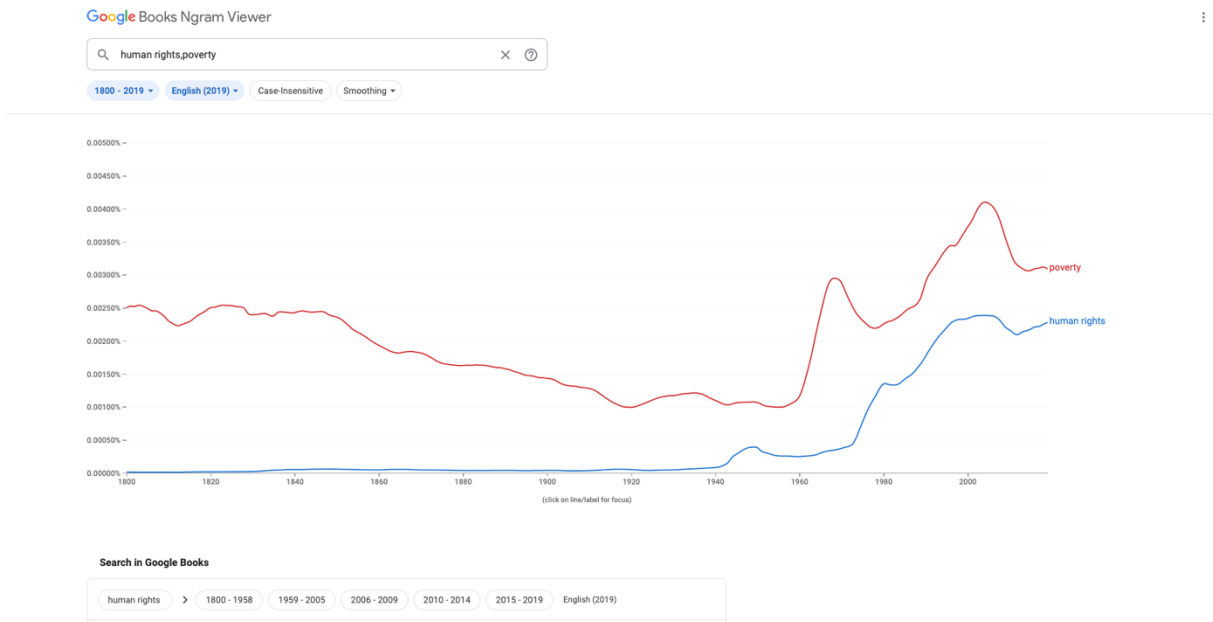
<sup>155</sup> Lister, 175.

<sup>156</sup> Stoljar, ‘What Do We Want Law to Be? Philosophical Analysis and the Concept of Law’, 232; and Haslanger, ‘What Are We Talking About? The Semantics and Politics of Social Kinds’.

material conditions of the poor through conceptual analysis or engineering, “it points to rights-based and participatory approaches to antipoverty policies.”<sup>157</sup> Perhaps most importantly for our purposes, we do actually conceive of poverty in terms of human rights, at least insofar as the concept of poverty is a call to action and we conceive of that call to action in terms of human rights.

It seems clear that there is a close relation between human rights discourses and discourses around poverty. If one accepts that the mentioning of these terms in books in the English language can give some indication of the prevalence of the concept in societal discourse in at least the English-speaking countries, then the Google Ngram viewer confirms a correlation between the discourses:<sup>158</sup>

Figure i: Google Ngram of the search terms “poverty” and “human rights”



<sup>157</sup> Lister, *Poverty*, 175. Lister, *supra*. note ??, at p. 175.

<sup>158</sup> 'Google Books Ngram Viewer', accessed 21 June 2022, [https://books.google.com/ngrams/graph?content=human+rights%2C+povetry&year\\_start=1800&year\\_end=2019&corpus=26&smoothing=3&direct\\_url=t1%3B%2Chuman%20rights%3B%2Cc0%3B.t1%3B%2Cpovetry%3B%2Cc0#t1%3B%2Chuman%20rights%3B%2Cc0%3B.t1%3B%2Cpovetry%3B%2Cc0](https://books.google.com/ngrams/graph?content=human+rights%2C+povetry&year_start=1800&year_end=2019&corpus=26&smoothing=3&direct_url=t1%3B%2Chuman%20rights%3B%2Cc0%3B.t1%3B%2Cpovetry%3B%2Cc0#t1%3B%2Chuman%20rights%3B%2Cc0%3B.t1%3B%2Cpovetry%3B%2Cc0); I have borrowed this strategy of using the Google Ngram viewer to look at the prevalence of conceptual discourse from Samuel Moyn. See for example: Samuel Moyn, 'Human Rights in the Neoliberal Maelstrom' (Duke Franklin Humanities Institute, 28 September 2018), <https://www.youtube.com/watch?v=rkDzcrzG4TA>.

One must of course approach such correspondence with caution as it is not clear how the discourses are related, although one suspects the discourses are reflexive given the ways in which we know that discourses tend to operate. From the perspective of an ameliorative approach to conceptual analysis, it must however raise a serious question in terms of the suggested focus on a rights-based conception of poverty to point out that during the post- 1970s time period when written discourses around “human rights” and “poverty” reached repeated usage apexes in the English-speaking parts of the world,<sup>159</sup> poverty (however defined) was not in fact decreasing in the ways in which one might imagine given the concomitant discursive focuses, and in fact there instead occasioned significant increases in the proportions of persons who existed in the deepest levels of poverty.<sup>160</sup> The ineffectiveness of human rights-based conceptions to make significant progress in the eradication of poverty might also be related to practical and theoretical arguments against rights-based moral obligations to address poverty because arguably the duties cannot be perfected by being assigned to duty bearers.<sup>161</sup>

With regard to poverty, Henry Shue argues that a right to subsistence is a necessary foundation for the enjoyment of any other human rights,<sup>162</sup> noting that such basic rights

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<sup>159</sup> The reader will note that the graph in fact shows a prior sustained increase in the mentions “poverty” during the 1960s which suggests that those poverty discourses may have influenced the increase in human rights discourses in the English-Speaking world.

<sup>160</sup> With regard to the United States, for example, see: Ajay Chaudry et al., ‘Poverty in the United States: 50-Year Trends and Safety Net Impacts’ (Washington, DC: Office of Human Services Policy, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, March 2016), 19:

- *The proportion of persons in deep poverty based on the official poverty measure has doubled during the past four decades, from 3.3 percent in 1976 (the low point for this measure) to 6.6 percent in 2014 (Figure 12).*
- *The proportion of the poor in deep poverty has been rising steadily since the late 1970s. About 30 percent of the poor lived in families with incomes lower than one-half of the official poverty line in 1975. By 2014 the proportion had increased to 44.6 percent (Figure 13).*

<sup>161</sup> For a discussion of such arguments, see Violetta Ionescu, ‘The Human Right to Subsistence and the Collective Duty to Aid’, *The Journal of Value Inquiry* 51, no. 1 (March 2017): 33–50.

<sup>162</sup> See Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton: Princeton University Press, 1980), 22–29.

“specify the line beneath which no one is to be allowed to sink,” and “are a restraint upon economic and political forces that would otherwise be too strong to be resisted.”<sup>163</sup> It should be noted that this is a different argument than the moral arguments for some human right(s) to meet basic needs. Although Shue might also be sympathetic to such arguments, he is arguing that the right to have some threshold of one’s basic needs met is also logically and morally justified by providing a foundation for the enjoyment of other rights. This is not just a moral argument to meet basic needs or an observation based on human rights practice, but is also a conceptual argument linking a right to subsistence as a necessary condition for the enjoyment of other rights that we might see for example as necessary prerequisites for a democratic society.<sup>164</sup> In this sense, Shue’s argument has significant bearing on the moral deliberations that must go into determining the basic needs in our previously-discussed non-moral framework for the concept of poverty in the sense that the basic needs analysis should include an analysis of how the related (perhaps resultant) right to be free of poverty relates to other human rights, and even perhaps to a bundle of human rights related to democratic participation. For example, the capability to obtain basic legal services may be seen as a pre-requisite to due process rights. Further, apart from such largely procedural rights, a capability to meet such basic needs such as for example to communicate with ones elected representatives (including perhaps access to a telephone, a computer, and basic transportation) may be seen as a basic prerequisite to democratic participation. Perhaps pointing to the lowest levels of such foundations, the ability to obtain and retain housing might be seen as a precondition to democratic participation. The absence of any of these capabilities might in turn lead to shame due to social exclusion.

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<sup>163</sup> Shue, 18.

<sup>164</sup> For a discussion of how poverty threatens democratic values, see H. P. P. Lötter, ‘Poverty as a Threat to Democratic Values’, *Public Affairs Quarterly* 22, no. 2 (2008): 175–93.

The notion of human rights as guaranteeing a threshold level of basic needs below which there is some societal obligation to provide resources, is one of “sufficientarianism.” Although seemingly neglected at the national level of human rights, Samuel Moyn has argued that there has been a move at the international level to focus on human rights and basic needs, but that this has come at the expense of a prior focus on equality and egalitarianism,<sup>165</sup> while Julia McClure argues that the act of entrenching property rights as human rights in the Universal Declaration of Human Rights,<sup>166</sup> “simultaneously cemented an understanding that protecting private property is compatible with the realization of human rights, and weakened any possibility of ending poverty through redistribution.” These two theories foreshadow our discussions of equality and freedom in the following sections.

In the context of discussing the phenomenon of homelessness and the capability to engage in basic human biological functions such as sleeping, eating and expelling urine and feces, Jeremy Waldron points out that the freedom to engage in these “actions basic to the sustenance of a decent and healthy life, in some cases basic to the sustenance of life itself” are generally not considered significant in the “high-minded sense” afforded to other positive rights such as ‘freedom of speech’ or ‘freedom of religion’ and “[y]ou will not find them listed in any Charter.”<sup>167</sup> That the rights of humans to engage in even these most basic human activities are generally not protected as a matter of existing

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<sup>165</sup> See Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge: The Belknap Press of Harvard University Press, 2018).

<sup>166</sup> See United Nations, ‘The Universal Declaration of Human Rights’ at Article 17 which reads:  
(1) Everyone has the right to own property alone as well as in association with others.  
(2) No one shall be arbitrarily deprived of his property.

<sup>167</sup> Jeremy Waldron, ‘Homelessness and the Issue of Freedom’, *UCLA Law Review* 39, no. 1 (1991): 320.



enforceable legal human rights,<sup>168</sup> again raises questions about the effectiveness, at least thus far, of employing the lens of human rights to respond to the most severe manifestations of poverty. Although it appears that there exist a number of ameliorative conceptual projects advocating a conceptualization of poverty that is based on human rights, I suggest that such projects have not thus far not born fruit in the form of widely-recognized enforceable legal human rights at the national and subnational levels (where enforcement of rights commonly happens). Nevertheless, such conceptualizations have been very influential to the way in which we understand poverty. They have thus been successful to the extent that insofar as we understand poverty as in part a call to action, that call to action is not only conceived in terms of moral obligations, but also in terms of some human right to be free from poverty.

## Equality

Equality is similarly a concept that is both a constituent part of the concept of poverty in and of itself, and is also a related concept that is employed to determine the basic needs that one must have the capabilities to meet in order to be considered free of poverty. It is an aspect of the concept of poverty in and of itself because, as others have argued (and I concur), there is a relative aspect to poverty. Poverty is not only about falling below a threshold of basic subsistence level resources, but it is also about the conventions of a particular time, culture and place with regards to the capabilities that one requires to be free of poverty. That is, as well as being an absolute concept, it is also a relational concept that takes account of our positions vis-à-vis others including how we are perceived by them and whether one has the capabilities to meet the basic needs required

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<sup>168</sup> For a discussion of the increase of the clearing of homeless encampments during the COVID-19 Pandemic see: Nicholas Olson and Bernadette Pauly, 'Homeless Encampments: Connecting Public Health and Human Rights', *Canadian Journal of Public Health* 112, no. 6 (2021): 988–91.

to avoid shame due to social exclusion. That is not to say that conceptually if there is poverty then there must also be inequality, even if practically that is always the case. One can for example conceive of a society in which all persons are equally poor due to equal below-subsistence material deprivation. However, as I have argued, one can also be considered poor because of their relative position to others in society, despite having the capability to acquire adequate resources for subsistence. Both the absolute and the relative aspects of the concept of poverty represent sufficient but not necessary conditions for the presence of poverty.

Our conception of equality will also inform how we perceive poverty as a moral call to action. Depending on how we think about equality, whether focusing solely of formal equality of opportunity or some of the more substantive conceptions that we will discuss, we may see poverty as for example something inevitable, something that is the fault of the poor (or some of the poor), or alternatively as an urgent call to remedy an egalitarian injustice.

Equality is also a closely related concept to poverty that is instrumental in the way that we determine through moral deliberation and argument what are the vulnerabilities and basic needs that one must have the ability to avoid and meet respectively in order to be free of poverty. Like the concept of poverty itself there is a sense in which the very concept of a basic need implies some moral obligation. Basic needs are also related to questions of distributive justice, although some contemporary accounts thereof ignore the concept of basic needs.<sup>169</sup> There will be some needs that are considered categorical in that the

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<sup>169</sup> See Gillian Brock and David Miller, 'Needs in Moral and Political Philosophy', in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Metaphysics Research Lab, Stanford University, 2019), 22, <https://plato.stanford.edu/archives/sum2019/entries/needs/>.

ends for which those needs are required are so universally accepted that they need not be articulated, such as for example the need for food and shelter, but regardless whether the needs are categorical or instrumental, our conceptions of equality will have significant bearing on the basic needs which we see as necessary for one to have the ability to meet in order to be considered free from poverty. Since our approach requires filling out the constituent concept of basic needs within our conceptual framework for poverty, it will therefore aid our understanding of the concept of poverty to understand some of the approaches to equality that inform those moral deliberations and arguments. Such theories are known as egalitarian theories. This overview will be wholly inadequate as a summary in broad strokes of this vital and vibrant area of theoretical inquiry, but I nevertheless hope to tease out some major themes and how the moral choices that are made with regard to equality will bear on how we conceive of poverty.

Similar to discussions of poverty, one must also ask how one measures equality, what G.A. Cohen has described as “the currency of egalitarian justice.”<sup>170</sup> With regard to ‘equality’, we could technically be speaking of equality based on any metric, such as for example welfare, resources, capabilities, or opportunity, although it is perhaps most common to speak of status equality or some form of welfare or resource equality.<sup>171</sup> Theories of egalitarianism may see equality as an end in itself and/or as a means to achieve some other end(s). Some egalitarian theories may demand very little of us either individually or as a society. For example, formal equality of opportunity may be achieved without any form of redistribution, even where persons are vastly unequal with regard to their financial, social and natural resources.<sup>172</sup>

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<sup>170</sup> See G. A. Cohen, ‘On the Currency of Egalitarian Justice’, *Ethics* 99, no. 4 (1989): 906–44.

<sup>171</sup> See Richard Arneson, ‘Egalitarianism’, in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Metaphysics Research Lab, Stanford University, 2013), 16, <https://plato.stanford.edu/archives/sum2013/entries/egalitarianism/>.

<sup>172</sup> See Arneson, 6–11.

Much of the philosophical work on egalitarianism, whether focused on resources or welfare, might be best described as luck egalitarianism whereby the aim is to compensate for “brute unchosen” bad luck,<sup>173</sup> and where there is an attempt made to account for personal responsibility by distinguishing between brute unchosen luck, such as genetically inherited traits or circumstances, from option luck where one’s bad luck arises from free choices they have made. Much of the scholarship on luck egalitarianism rests on conceptions of justice and fairness that are at least related to, if not based upon, the work of Robert Nozick in his influential *Anarchy State and Utopia*, wherein he argues, *inter alia*, that “to give to one person is to take from another.”<sup>174</sup> This point, taken with an understanding of equality as ‘fairness’ and in which an independent and predetermined conception of ‘fairness’ is best understood as having equal opportunities to obtain resources,<sup>175</sup> prescribes an end for egalitarian theorizing that is based on what one might describe as a fairness in distribution of our natural right to property. The reader may take notice that such claims of natural rights are not purely the domain of libertarian political philosophers, but are commonly held, at least in the modern English-speaking western societies that are the demographic basis for the conceptual analysis herein. As alluded to earlier, we can see that certain theories such as those of Nozick, which focuses on

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<sup>173</sup> See for example: Richard Arneson, ‘Rawls, Responsibility, and Distributive Justice’, in *Justice, Political Liberalism, and Utilitarianism*, ed. Marc Fleurbaey, Maurice Salles, and John A. Weymark, 1st ed. (Cambridge: Cambridge University Press, 2008), 80:

...the concern of distributive justice is to compensate individuals for misfortune. Some people are blessed with good luck; some are cursed with bad luck, and it is the responsibility of society – all of us regarded collectively – to alter the distribution of goods and evils that arises from the jumble of lotteries that constitutes human life as we know it. Some are lucky to be born wealthy, or into a favorable socializing environment, or with a tendency to be charming, intelligent, persevering, and the like. These people are likely to be successful in the economic marketplace and to achieve success in other important ways over the course of their lives. However, some people are, as we say, born to lose. Distributive justice stipulates that the lucky should transfer some or all of their gains due to luck to the unlucky.

As quoted in part in Elizabeth S. Anderson, ‘What Is the Point of Equality?’, *Ethics* 109, no. 2 (January 1999): 289–90.

<sup>174</sup> See Jonathan Wolff, ‘Fairness, Respect, and the Egalitarian Ethos’, *Philosophy & Public Affairs* 27, no. 2 (1998): 99; in reference to Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 2006), 160–64.

<sup>175</sup> See Wolff, ‘Fairness, Respect, and the Egalitarian Ethos’, 103, where Wolff identifies these three premises as the “Lexical Priority of Fairness Thesis,” the “Opportunity Thesis,” and the “Resources Thesis”.

equality of opportunity and the primacy of property rights, would tend to minimize the moral call to action inherent to the concept of poverty, as well as the basket of basic needs constituent therein. Conceptions of equality that focus on welfare or as I have argued (following Sen and others), capabilities, will on the other hand necessarily recommend a more robust call to action that is inherent to our conception of poverty. While theories of luck egalitarianism need not necessarily afford the same primacy to property rights as does Nozick, they will nevertheless tend to deflate claims for redistribution by requiring as a precondition of that redistribution a determination whether it is fair or deserved in each individual case, thus turning the call to action inherent to the concept of poverty into one that is conditional: that is, the presence of poverty morally obligates us to act only if it is not the result of poor choices.

Regardless of its currency or whether it is based in an analysis of individual opportunities and choices, distributive equality itself can be distinguished from what is often described variously as relational equality and social equality (hereinafter “social equality”). Proponents of social equality, such as Elizabeth Anderson and Jonathan Wolff, reject the view that equality is about eliminating brute non-chosen luck, claiming instead that “society is just if, and only if, individuals within it relate to one another as equals.”<sup>176</sup> Such theories are thus relational in that they focus on the “social relation between persons – an equality of authority, status, or standing,”<sup>177</sup> opposing “hierarchies of social status,” where “a behaviour, social practice or policy expresses a particular kind of unequal relationship between a person or group of people, and others.”<sup>178</sup> Perhaps the most obvious example

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<sup>176</sup> Stefan Gosepath, ‘Equality’, in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Metaphysics Research Lab, Stanford University, 2001), 31, <https://plato.stanford.edu/archives/sum2021/entries/equality/>.

<sup>177</sup> See Elizabeth S. Anderson, ‘The Fundamental Disagreement between Luck Egalitarians and Relational Egalitarians’, *Canadian Journal of Philosophy Supplementary Volume* 36 (2010): 1.

<sup>178</sup> See Carina Fourie, ‘What Is Social Equality? An Analysis of Status Equality as a Strongly Egalitarian Ideal’, *Res Publica* 18, no. 2 (2012): 109.

of these hierarchies is the result of poverty itself. Other obvious examples are those based in what are commonly understood as discrimination on protected grounds found in various human rights statutes and constitutions, such as “race”, “sex” or “disability”.<sup>179</sup> More strikingly they might take account of hierarchical relations such as owners and workers, husbands and wives, and of course class distinctions.

Anderson argues that the luck egalitarian fails to treat the victims of bad option luck “with equal respect and concern,”<sup>180</sup> thus failing to address “the wretchedness of the imprudent,”<sup>181</sup> while with regard to the victims of brute luck “the reasons it offers for granting aid to the worst off are deeply disrespectful of those to whom the aid is directed.”<sup>182</sup> She suggests that this disrespect is manifested through processes that are degrading and stigmatizing to the victim of brute luck by, for example, identifying them with the misfortune of their internal disadvantages, while she also makes a distinction between compassion, “which is based on an awareness of suffering, an intrinsic condition of a person,” from the pity that the luck egalitarian displays which “is aroused by a comparison of the observer’s condition with the condition of the object of pity.”<sup>183</sup> Wolff makes a related point about the forced disclosures of benefit claimants where “one is required not merely to admit but to make out a convincing case that one is a failure, unable to gain employment even when there is no difficulty for others,” thus being required to “reveal facts that one finds demeaning or shameful, even humiliating.”<sup>184</sup>

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<sup>179</sup> Many have sought to add the concept of “social condition,” a concept that is related to the concept of poverty, as a protected ground under domestic human rights instruments in Canada which focus on prohibiting discrimination. For a helpful discussion see Ontario Human Rights Commission, ‘Human Rights Commissions and Economic and Social Rights’, Research Paper (Toronto: Ontario Human Rights Commission, 2001), <https://www.ohrc.on.ca/en/human-rights-commissions-and-economic-and-social-rights>. Thanks are owed to Violetta Ighneski for noting these important efforts.

<sup>180</sup> Anderson, ‘What Is the Point of Equality?’, 295.

<sup>181</sup> Anderson, 300.

<sup>182</sup> Anderson, 303.

<sup>183</sup> Anderson, 306–7.

<sup>184</sup> Wolff, ‘Fairness, Respect, and the Egalitarian Ethos’, 114.

Practically speaking with regard to the implementation of the luck egalitarian position in policy, Anderson also points out that such policies would, like the previous poor laws,<sup>185</sup> give “individuals *an incentive to deny personal responsibility for their problems*, and to represent their situation as one in which they were helpless before uncontrollable forces,” [emphasis in original] failing which they will be abandoned “through their own choices to their miserable fates.”<sup>186</sup>

Anderson argues that the historic goal of egalitarian political movements was not “to eliminate the impact of brute luck from human affairs,”<sup>187</sup> but to oppose oppressive hierarchies.<sup>188</sup> and establish, positively, that the basis of any “claims to distributed goods is that [people] are equals, not inferiors, to others.”<sup>189</sup> Anderson suggests that the “fundamental obligation of citizens to one another is to secure the social conditions of everyone’s freedom,” and that unlike the negative freedoms (which will be discussed in the following section), “the social condition of living a free life is that one stand in relation of equality with others,” which positively requires a sufficient level of means to achieve that freedom.<sup>190</sup> Thus, Anderson’s theory of democratic egalitarianism is a sufficientarian theory whereby all have a threshold level of means, but avoids the common charge that it is not therefore egalitarian by basing the metric of sufficiency not on whether their means

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<sup>185</sup> See for example Thomas Peregrine Courtenay arguing for extension of assistance to those employed who could not sustain their own subsistence:

*But in point of expediency, and moral feeling, perhaps no individual has a stronger claim upon the public than he who without any fault of his own, or providence in his parents, finds himself without the means of obtaining in his own country, the food which he is able and willing to earn by labour.*

See Thomas Peregrine Courtenay, *A Treatise Upon the Poor Laws* (London: John Murray, 1818), 72, <https://archive.org/details/treatiseuponpoor00couruoft/page/72/mode/2up>.

<sup>186</sup> Anderson, ‘What Is the Point of Equality?’, 311.

<sup>187</sup> Anderson, 288.

<sup>188</sup> Anderson notes the work of Iris Marion Young with regard to identifying such hierarchies including “marginalization, status hierarchy, domination, exploitation, and cultural imperialism.” See Anderson, 312; in reference to Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990).

<sup>189</sup> Anderson, ‘What Is the Point of Equality?’, 314.

<sup>190</sup> Anderson, 314–15.

“bring them over the threshold of decent life prospects,”<sup>191</sup> but rather whether it allows one to stand in relation of equality with others. In focusing on the means to achieve such a level of functioning, Anderson’s theory is thus based on Amartya Sen’s capabilities approach where with regard to their negative freedoms “people are entitled to whatever capabilities are necessary to enable them to avoid or escape entanglement in oppressive social relationships,” and with regard to their positive freedom “they are entitled to the capabilities necessary for functioning as an equal citizen in a democratic state.”<sup>192</sup>

With regard to basic needs, our approach to equality will greatly influence how we determine the basic needs which we expect persons to have the ability to meet in order to be considered free of poverty. If one takes a Nozickian approach then those basic needs might be only those that are categorical. While it might be assumed that such an approach would negate the inclusion of the capabilities to avoid shame due to social exclusion from the conceptual framework of poverty, it seems unlikely that even the most ardent defender of a property rights-based approach to equality would not perceive certain non-subsistence-level characteristics as being markers of poverty. For example, although one might not view the capability to acquire a computer as a marker of poverty, it seems likely that all would see the incapacity to adequately clean one’s clothes as a marker of poverty despite one’s views on the primacy of property rights in a conception of equality, and despite the scope of any perceived moral call to action.

Social, or relational, conceptions of equality have significant implications for the implied call to action contained within our common understanding of poverty. If one accepts such theories then not only does the focus of equality shift from metrics and fairness to the

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<sup>191</sup> Arneson, ‘Egalitarianism’, 61.

<sup>192</sup> The conceptual distinction between positive and negative freedom will be discussed in the following section.



removal of hierarchies and oppression, but equality itself is conceived from a sufficientarian perspective where equality means not only that everyone is somehow treated the same but also that they are able to achieve a sufficient level of capabilities “to stand in relation of equality with others.” Thus, we can posit that the moral arguments based on social equality to determine the content of the basic needs which one must be able to meet in order to be free of poverty will be considerably more robust and expansionary than would be the case for an approach focused on categorical basic needs.

## Freedom

The concept of freedom or liberty (I will use both interchangeably) is also a concept that is used in our moral deliberations of how to respond to poverty. Like the concept of equality it does so in two ways: 1) our particular conception of freedom will have significant bearing on the determination of the basic needs that one considers a person must be able to meet if they are to be free of poverty, and 2) our particular conception of freedom will partially determine how we perceive poverty as a call to action. Unlike equality and human rights, however, it is not clear that the concept of freedom is part of our conception of poverty in and of itself.

Jeremy Waldron has argued that the phenomenon of homelessness “is a matter of utmost concern” with regard to “the most basic principles of liberty,”<sup>193</sup> including with regard to negative conceptions of freedom,<sup>194</sup> to an extent that for the homeless, “[t]heir homelessness *consists* in unfreedom.” [emphasis in original]<sup>195</sup> Waldron’s argument

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<sup>193</sup> Waldron, ‘Homelessness and the Issue of Freedom’, 296.

<sup>194</sup> See Waldron, 304–8.

<sup>195</sup> Waldron, 306.

about the liberty of the homeless is unique in that it focuses not only on the implications to their liberty from a positive conception of freedom and related rights, such as for example a right to an adequate standard of living, but rather focuses primarily on the implications for their liberty employing a common liberal negative conception of freedom and associated rights, such as for example the right to be free from physical assault or coercion.<sup>196</sup>

The distinction between negative and positive liberty or freedom was influentially articulated by Isaiah Berlin, such that negative freedom “is simply the area within which a man can act unobstructed by others,”<sup>197</sup> while positive freedom is the extent to which someone can describe themselves as being “conscious of [themselves] as a thinking, willing, active being, bearing responsibility for [their] choices by reference to [their] own ideas and purposes,” such that they are their “own master.”<sup>198</sup> Other writers have since reformulated these conceptions of liberty in ways that locate positive liberty as involving “essentially the exercising of control over one’s life,” as opposed to the negative conception and its sole focus on rights and the absence of constraints on action.<sup>199</sup> It is also common to speak of negative rights and positive rights, although the distinction does not map directly on to the distinction between negative and positive freedom. Rather, in the context of rights the distinction is typically set out such that “[t]he holder of a negative right is entitled to non-interference, while the holder of a positive right is entitled to

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<sup>196</sup> Although some philosophers have tried to distinguish the two, for the purpose of this thesis I use the terms “liberty” and “freedom” interchangeably. For an example of distinguishing the two in an effort to elucidate what regime of property one ought to favour, see Jonathan Wolff, ‘Freedom, Liberty, and Property’, *Critical Review* 11, no. 3 (summer 1997): 345–57.

<sup>197</sup> Isaiah Berlin, *Two Concepts of Liberty: An Inaugural Lecture Delivered before the University of Oxford on 31 October 1958* (Oxford: Clarendon Press, 1958), 3.

<sup>198</sup> Berlin, 8.

<sup>199</sup> See for example: Charles Taylor, ‘What’s Wrong with Negative Liberty’, in *Philosophical Papers: Volume 2: Philosophy and the Human Sciences*, vol. 2 (Cambridge: Cambridge University Press, 1985), 211–29, where Taylor labels the negative conception of freedom as an “opportunity concept”, and the positive conception as an “exercise concept”.

provision of some good or service.”<sup>200</sup> Although the negative right appears to be merely a restatement of negative freedom, the concept of a positive right appears to be indirectly related to Berlin’s conception of positive freedom as the freedom to be the master of one’s true self (and his related question of the course of control that will facilitate the process of this being so). However, the connection between positive rights and positive freedom is commonly made in relation to capabilities and promoting and securing autonomy.<sup>201</sup>

These differing conceptions of freedom will necessarily inform our moral deliberations and argument with regard to the content of the basic needs that one must have the ability to meet in order to be free of poverty. While a negative conception of liberty in and of itself may not recommend more than categorical basic needs, a positive conception of liberty will recommend those basic needs which are related to our finances and/or material resources and which put a person in the position of being their own master and thus allows them to exercise their freedom. The moral deliberations and argument for poverty-related basic needs based on a positive conception of freedom will tend to focus on a more robust basket of the basic needs that one must have the ability to meet in order to avoid shame due to social exclusion. For example, one might make arguments based on a positive conception of freedom that financial consideration should not be an impediment to attending any post-secondary educational institution to which they are accepted, and that a limitation in the ability to choose in this regard would be seen as a

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<sup>200</sup> Leif Wenar, ‘Rights’, in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Metaphysics Research Lab, Stanford University, 2005), 11, <https://plato.stanford.edu/archives/spr2021/entries/rights/>.

<sup>201</sup> See for example: Amartya Sen, *The Idea of Justice* (Cambridge, Mass: Belknap Press of Harvard Univ. Press, 2009), 282; Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, Mass.: Belknap Press of Harvard Univ. Press, 2011); Ruth Lister, *Understanding Theories and Concepts in Social Policy*, *Understanding Welfare: Social Issues, Policy and Practice* (Bristol: Policy Press, 2010), 228–30; Catriona Mackenzie, ‘Three Dimensions of Autonomy’, in *Autonomy, Oppression, and Gender*, ed. Andrea Veltman and Mark Piper (Oxford: Oxford University Press, 2014), 15–41.

marker of poverty that leads to shame due to social exclusion. However, it must be noted that the soundness of such arguments will depend not only on the how compellingly and convincingly they are made with regard to positive freedom, but will be necessarily limited by the way that society generally perceives such a situation: that is, if the inability to choose where one goes to university is not generally seen as a marker of poverty then then no amount of argument on the basis of a positive conception of freedom, no matter how convincing, will immediately make that inability a marker of poverty, because in the absence of such societal convention one would not feel the requisite shame due to social exclusion.<sup>202</sup> That being said, such societal conventions are themselves informed by our conceptions of freedom. A clearer example where arguments may be made from a positive conception of liberty might be the ability to access transportation, while a clearer example that would clearly fall outside the concept of poverty in our current societies might be the ability to own one's home.

As previously noted, our conception of freedom will also have bearing on our attitude toward poverty. If we ascribe to a positive conception of freedom then we will surely condemn poverty and see its very presence as a call to action, whereas if we only employ a negative conception of poverty then then we may not condemn poverty, at least on the basis of its implications for one's freedom, and may not see it as a call to action (at least on the basis of freedom). This however ought not be the case for homelessness, the level of poverty where one does not have the capability to obtain and/or retain a home, due to the logical implications for such a position given how our current property law regime functions. Waldron argues that the homeless are unfree even on a negative conception of liberty, noting:

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<sup>202</sup> Although it should also be noted that such arguments, particularly public discourse, may eventually shift societal conventions in this regard.

the familiar claim that, in the negative sense of “freedom,” the poor are as free as the rest of us – and that you have to move to a positive definition in order to dispute that – is simply false.<sup>203</sup>

The argument relies on some salient truisms about property law and homelessness:

... if a person is in a place where he is not allowed to be, not only may he be physically removed, but there is a social rule to the effect that his removal may be facilitated and aided by the forces of the state. In short, the police may be called and he may be dragged away.<sup>204</sup>

The right to exclude others, a fundamental one of the bundle of rights that one has as an owner of property,<sup>205</sup> is thus an ever-present potential claim against the homeless since they themselves *ipso facto* have no property rights,<sup>206</sup> and all of the property available is owned by someone or something else,<sup>207</sup> whether that ownership is private or public. The homeless may thus move through the landscape of public and private spaces in our society, but only to the extent that the “small scale sovereigns”<sup>208</sup> who own those places exert their power to forego their legal claim rights to exclude the homeless, for the homeless have no legal privilege right to be there.<sup>209</sup> That this conclusion may arguably

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<sup>203</sup> Waldron, ‘Homelessness and the Issue of Freedom’, 304.

<sup>204</sup> Waldron, 297.

<sup>205</sup> See Amnon Lehavi, *The Construction of Property: Norms, Institutions, Challenges*, 1st ed. (Cambridge: Cambridge University Press, 2013), 1–2; as cited in Sarah E Hamill, ‘Common Law Property Theory and Jurisprudence in Canada’, *Queen’s Law Journal* 40, no. 2 (2015): 684.

<sup>206</sup> While this perhaps overstates the point since a homeless person may nevertheless have some property rights, the point is that, generally speaking, one who is homeless does not have an exercisable property right to occupy a livable home.

<sup>207</sup> Konstanze von Schütz argues that this is more than a statement of observable fact but that the fear of proprietary voids is also a central feature of at least the common law, and she refers to this as “the horror vacui of the common law of property.” See: Konstanze von Schütz, ‘Keeping It Private: The Impossibility of Abandoning Ownership and the Horror Vacui of the Common Law of Property’, *McGill Law Journal* 66, no. 4 (2021): 721–62 I had the privilege of commenting on an earlier version of this paper as part of Von Schütz’s presentation of it at the 2018 Ontario Legal Philosophy Partnership Graduate Student Conference, held at McMaster University.

<sup>208</sup> H. L. A. Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Oxford: Clarendon Press, 1982), 183; as quoted in Wenar, ‘Rights’, 16.

<sup>209</sup> Wesley Hohfeld set out his influential classification of rights over a century ago which still in predominant use today in order to describe rights. See Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, ed. Walter Wheeler Cook (New Haven: Yale University Press, 1919); Under his classification system there are 4 types of rights: privileges, claims, powers and immunities. Hart points out that the former two are established by primary rules, “rules requiring that people perform or refrain from performing particular actions,” while the latter two are established by secondary rules, “rules that specify how agents can introduce and change primary rules.” See Wenar, ‘Rights’, 6–7; discussing Hart, *The Concept of Law*.

be implied by the very notion of private property does not derogate from the implications it has for the humanity of persons finding themselves without rights to real property.<sup>210</sup>

Waldron argues that since “anything a person does has to be done somewhere”: “It follows, strikingly, that a person who is not free to be in any place is not free to do anything; Such a person is comprehensively unfree.” As Waldron unpacks his argument, it becomes clear that this unfreedom is not just an abstract concept for the homeless but is a material and daily dilemma: a human being must perform certain biological activities in order to avoid death, and these include sleeping, eating and drinking, urination, and defecation. As Terry Skolnik argues, a prohibition on some of these acts is also at the same time an affirmative duty to act due to the biological necessity of these acts (often requiring the person to break the laws in doing so):<sup>211</sup> if one is prohibited from doing such acts in public, and all of the real property is in either public or private hands, then it must be that they have a resultant duty to do them in private.<sup>212</sup> Some of these acts do

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<sup>210</sup> The argument that the poor and landless will have nowhere to go once all of the real property is owned is not new. See for example Herbert Spencer, *Social Statics: Or the Conditions Essential to Human Happiness Specified, and the First of Them Developed* (London: John Chapman, 1851), 114-115:

*Equity, therefore, does not permit property in land. For if one portion of the earth's surface may justly become the possession of an individual, and may be held by him for his sole use and benefit, as a thing to which he has an exclusive right, then other portions of the earth's surface may be so held; and eventually the whole of the earth's surface may be so held; and our planet may thus lapse altogether into private hands. Observe now the dilemma to which this leads. Supposing the entire habitable globe to be so enclosed, it follows that if the landowners have a valid right to its surface, all who are not landowners, have no right at all to its surface. Hence, such can exist on the earth by sufferance only. They are all trespassers. Save by the permission of the lords of the soil, they can have no room for the soles of their feet. Nay, should the others think fit to deny them a resting-place, these landless men might equitably be expelled from the earth altogether. If, then, the assumption that land can be held as property, involves that the whole globe may become the private domain of a part of its inhabitants; and if, by consequence, the rest of its inhabitants can then exercise their faculties—can then exist even—only by consent of the landowners; it is manifest, that an exclusive possession of the soil necessitates an infringement of the law of equal freedom. For, men who cannot “live and move and have their being” without the leave of others, cannot be equally free with those others.*

<sup>211</sup> See Terry Skolnik, ‘Homelessness and the Impossibility to Obey the Law’, *Fordham Urban Law Journal* 43, no. 3 (2016): 741–87.

<sup>212</sup> See Terry Skolnik, ‘How and Why Homeless People Are Regulated Differently’, *Queen's Law Journal* 43, no. 2 (2018): 297–324; In Canada, the COVID 19 Policing and Homelessness Initiative has mapped 217 By-Laws across Canada which have 365 vagrancy-type offences that punish people who are homeless, including with regard to sheltering and loitering. See Alexander McClelland and Alex Luscombe, ‘Policing the Pandemic: Tracking the Policing of COVID-19 Across Canada’, 2020, <https://borealisdata.ca/citation?persistentId=doi:10.5683/SP2/KNJLWS>.

regularly fall under prohibitions against their exercise in public places, such as sleeping, urinating and defecating, but as noted there is “no private place where [the homeless have] a right to be”:

So what is the result? Since private places and public places between them exhaust all the places that there are, there is nowhere that these actions may be performed by the homeless person. And since freedom to perform a concrete action requires freedom to perform it at some place, it follows that the homeless person does not have the freedom to perform them. If sleeping is prohibited in public places, then sleeping is comprehensibly prohibited to the homeless. If urinating is prohibited in public places (and if there are no public lavatories) then the homeless are simply unfree to urinate. These are not altogether comfortable conclusions, and they are certainly not comfortable for those who have to live with them.<sup>213</sup>

Indeed, there are such prohibitions, and there is currently a heightened attention to these issues as homeless persons are evicted from public spaces<sup>214</sup> during a global pandemic while homeless shelters are often full and/or unsafe.<sup>215</sup> With regard to urination or defecation, persons are generally forbidden from engaging in these necessary human biological processes in public,<sup>216</sup> thus resulting in an aforementioned duty to engage in them in a private place (since one cannot refrain from them). But the homeless person has no right to access any private place but must rely on the availability of public facilities for engaging in these biological processes (e.g. a homeless shelter or public facilities such as public washrooms), or on the charity of others who have the power to grant them access to private property.<sup>217</sup> Waldron makes the point that the homeless are thus not

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<sup>213</sup> Waldron, ‘Homelessness and the Issue of Freedom’, 315.

<sup>214</sup> For a discussion of the increase of the clearing of homeless encampments during the COVID-19 Pandemic see Olson and Pauly, ‘Homeless Encampments: Connecting Public Health and Human Rights’.

<sup>215</sup> See for example Shelter and Housing Justice Network, ‘Toronto’s Shelter System Has Collapsed COVID Is Spreading Quickly through the Shelter System’, Press Release, 7 January 2022, <http://www.shjn.ca/torontos-shelter-system-has-collapsed-covid-is-spreading-quickly-through-the-shelter-system/>.

<sup>216</sup> From my own city, see for example City of Hamilton, ‘To Repeal and Replace By-Law No. 09-110, Being a By-Law to Prohibit and Regulate Certain Public Nuisances within the City of Hamilton; and to Amend By-Law No. 17-225, a By-Law to Establish a System of Administrative Penalties’, By-Law No. 20-077 City of Hamilton By-Laws § 3 (2020); for other examples see Skolnik, ‘How and Why Homeless People Are Regulated Differently’, 304–5.

<sup>217</sup> Putting aside the moral norms with regard to public decency, it is nevertheless perhaps relevant to note that municipal by-laws will unerringly prohibit public defecation by humans, while public defecation by domestic animals is allowed so long as the owner cleans up. In my own city these by-laws are set out in for example: City

free, even under a negative conception of freedom, since they are always at risk that “someone else will forcibly prevent their action,”<sup>218</sup> and/or that they will be forcibly removed from a place, whether public or private.

Waldron’s argument suggests that homelessness is a particular type or level of poverty based on the implications for the freedom of the homeless, and the foregoing discussion points to it being a threshold beyond which a person exists in a state of legal-existential poverty whereby they do not have any right (at least a present and *de facto* right) to engage in biological processes necessary to human existence.<sup>219</sup>

## The Experiences of Poverty

### Standpoint perspectives

It is beyond the scope of this thesis to address in any detail the important ways in which differing perspectives of intersecting marginalized identities might recommend amendments to our conceptualization, such as for example those particular to women, black or other racialized persons, those living with disabilities, or Indigenous persons. That is not to say that I do not think that such perspectives cannot sharpen, or even correct, the conception of poverty advocated herein. On the contrary, I would suggest

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of Hamilton, To Repeal and Replace By-law No. 09-110, being a By-law to Prohibit and Regulate Certain Public Nuisances within the City of Hamilton; and to Amend By-law No. 17-225, a By-law to Establish a System of Administrative Penalties, 12121112; and City of Hamilton, ‘For Responsible Animal Ownership (Official Consolidation as of January, 2018)’, By-Law No. 12-031 City of Hamilton By-Laws § 8.1 (2022).

<sup>218</sup> Waldron, ‘Homelessness and the Issue of Freedom’, 306.

<sup>219</sup> For example, in a recent interview with a tent encampment resident facing eviction in my own city, she stated:

*“There’s nowhere to go. Anywhere you go it’s ‘How dare you exist,’” she said.*

*“You’re to disappear out of sight.”*

See Dan Taekema and Sebastian Leck, “‘It Makes You Feel Worthless,’” Says Woman Living in Gage Park as Hamilton Moves to Clear Tents’, CBC News, 23 February 2022, <https://www.cbc.ca/news/canada/hamilton/gage-park-encampment-eviction-1.6361713>.



that a pluralist multi-perspective approach is vital work for understanding concepts, and although this modest attempt to sketch a non-moral conceptual framework of our folk understanding of poverty cannot hope to also address these other important perspectives in any satisfactory way, I welcome any such clarifications and/or corrections.

Compelling arguments can be made that the experiences of historically marginalized (also often povertized) groups, who are regularly overrepresented amongst those experiencing poverty, should be given particular attention if we are to develop an understanding of at least the internal experiences of poverty and how those perspectives relate to the conceptions of poverty, as well as other concepts, perhaps concepts as yet to be coined.<sup>220</sup> Such approaches to conceptualizing are related to the work of feminist theorists on “standpoint epistemology”, whereby the claim is oft made that “the perspectives of subordinated social groups have an epistemic advantage regarding politically contested topics related to their subordination, relative to the perspectives of the groups that dominate them.”<sup>221</sup> While it is outside the scope of this thesis to interrogate the various ways in which the experience of individuals from historically-marginalized groups inform their, and our, conceptions of poverty, it is important to identify that these conceptions are part of the ways that poverty is conceptualized, and it is hoped that the project herein will in some small way contribute to this work as well as to

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<sup>220</sup> In her influential work on “epistemic injustice,” whereby “a wrong is done to someone specifically in their capacity as a knower,” Miranda Fricker identifies two types of such injustices: “testimonial injustice” and “hermeneutical injustice”. She defines the former as a situation whereby “prejudice causes a hearer to give a deflated level of credibility to a speaker’s word,” and describes the latter as occurring “at a prior stage, when a gap in collective interpretive resources puts someone at an unfair disadvantage when it comes to making sense of their social experiences.” With regard to “hermeneutical injustice,” Fricker provides the compelling example of the concept of “sexual harassment” and in particular the time (within this writer’s lifetime) before that concept was named or articulated such that the “hermeneutical disadvantage” of a person who experiences such harassment rendered “her unable to make sense of her ongoing mistreatment, and this in turn prevents her from protesting it, let alone securing effective measures to stop it.” See Fricker, *Epistemic Injustice: Power and the Ethics of Knowing*, 1 and 147–69.

<sup>221</sup> Elizabeth S. Anderson, ‘Feminist Epistemology and Philosophy of Science’, in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Metaphysics Research Lab, Stanford University, 2000), 10, <https://plato.stanford.edu/archives/spr2020/entries/feminism-epistemology/>.

the more general ways in which we conceptualize poverty and thus lead to better, more informed, theorizing with regard to poverty, which is itself a category of marginalization.

### The Internal Perspective

The phenomenon of poverty has to be understood both as a painful reality experienced by millions of human beings and as a construction of competing conceptualizations, definitions and measures.<sup>222</sup>

The foregoing discussion begins to highlight some of the ways in which poverty is experienced not only as a material deprivation, but also at structural and psycho-social levels. Poverty is experienced by individuals in both material and non-material ways. Some of the non-material ways in which poverty is experienced by the individual include stigma, shame and humiliation. Although we are not directly addressing the important perspectives of many historically marginalized groups and how those perspectives might inform our understanding with regard to the concept of poverty, we still must nevertheless look more generally at the internal perspective of one historically marginalized group that are the subject of our inquiries: the poor. We must try to understand the ways in which those who are experiencing poverty perceive their own poverty. In addition, it is important to look at the ways in which the non-poor view the poor. That is, in order to understand the concept of poverty we must try to generally understand the perspectives that inform our folk understanding, while acknowledging that those internal perspectives might differ, or even be at odds.

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<sup>222</sup> Lister, *Poverty*, 36.

As Hart famously pointed out regarding the distinction between purely predictive theories of rules (the external point of view) versus theories that account for the internal point of view of the rule followers, “the distinction is not a slight one”:

Indeed, until its importance is grasped, we cannot properly understand the whole distinctive style of human thought, speech, and action which is involved in the existence of rules and which constitutes the normative structure of society.<sup>223</sup>

Although the object of inquiry for Hart was of a different category from our present inquiry (that is, Hart’s inquiry into the functioning of rules and obligation with an eye to illuminating the concept of law, as opposed to our present inquiry into conceptions of poverty and some primary constituent concepts therein), the stated importance of considering both the external and internal aspects of the objects of our inquiry maintains: a sustained effort into understanding the experience of poverty, particularly by those who experience it, is a necessary condition for understanding our conceptions of poverty, and thus the concept of poverty. It should be noted however that it is not a sufficient condition, since if our aim is toward a comprehensive understanding of the concept or conceptions, then we will also need to take into account how the concept has traditionally been understood, as well as how the conceptions functions in larger society, and its relations, commonalities and distinctions to other related concepts.

In order to understand the internal perspectives of those who experience poverty we must also understand the discourses that circulate with regard to poverty and to which the poor will react, including at times through internalization of the discourses. As Lister points out those discourses include the notions of “underclass”, “welfare dependency,” and the ‘othering’ involved in discourses of poverty.<sup>224</sup> The ‘othering’ can include the previously-mentioned social processes such as classification and categorization, as well as more

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<sup>223</sup> Hart, *The Concept of Law*, 88–89.

<sup>224</sup> Lister, *Poverty*, 100.

obviously harmful processes of stereotyping and stigmatization. Lister defines stereotyping, as: “a discriminatory form of labeling, which attains a taken-for-granted quality and serves to portray particular social groups as homogeneous,”<sup>225</sup> and stigmatization refers to a process of applying stigma or disgrace to a person or group, both of which are related to the aforementioned communal conferring of social status. These processes of othering are also experienced by groups such as women, black, indigenous and other racialized persons, and person with disabilities, in ways unrelated to poverty, thus meaning that the othering will often be an intersectional process whereby persons will have overlapping identities which may form the basis of oppressions such as ‘othering,’<sup>226</sup> and where that othering is often thereby compounded.

As has been noted, poverty is not only a lack of resources, but it is also about shame. Recall that, in approaching poverty conceptually as capability deprivation, Sen argues that there is an “irreducible absolutist core in the idea of poverty,”<sup>227</sup> and that this includes the capability to absolutely avoid the type of shame that arises from the “inability to meet the demands of convention.”<sup>228</sup> The point that shame is part of the absolutist core of poverty is in fact supported by empirical studies in the social sciences. For example,

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<sup>225</sup> Lister, 101.

<sup>226</sup> The term “intersectionality” was coined by Kimberlee Crenshaw. See Kimberle Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’, *University of Chicago Legal Forum* 1989, no. 1 (1989): 139–67.

The term has since been included in the Oxford English Dictionary where it is defined as a sociological term meaning:

*The interconnected nature of social categorizations such as race, class, and gender, regarded as creating overlapping and interdependent systems of discrimination or disadvantage; a theoretical approach based on such a premise.*

See ‘Intersectionality, n.’, in *OED Online* (Oxford University Press), accessed 23 June 2022, <http://www.oed.com/view/Entry/429843>.

It should however be noted, as Crenshaw and others have pointed out, that the overlapping identities can also form the basis of empowerment. See for example: Kimberle Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color’, *Stanford Law Review* 43, no. 6 (1991): 1241–99.

<sup>227</sup> Sen, ‘Poor, Relatively Speaking’, 159.

<sup>228</sup> Sen, 161.

Robert Walker and a team of other researchers have empirically tested this very assertion of Sen by examining the experience of adults and children experiencing poverty in 7 countries and settings that would oft be considered disparate with regard to poverty: rural Uganda and India, urban China, Pakistan, South Korea, the United Kingdom, and small town and urban Norway.<sup>229</sup> Their research found the “lived experience of the participants to be very similar despite “dramatically different degrees of material deprivation and extremely varied life chances”:<sup>230</sup>

Though socially and culturally nuanced, shame was found to be associated with poverty in each location, variably leading to pretense, withdrawal, self-loathing, ‘othering’, despair, depression, thoughts of suicide and generally to reductions in personal efficacy. While internally felt, poverty related shame was equally imposed by the attitudes and behavior of those not in poverty, framed by public discourse and influenced by the objectives and implementation of antipoverty policy.<sup>231</sup>

Walker has argued that both shame and stigma have significant relational aspects due to their social nature,<sup>232</sup> and both Lister and Walker cite research on harmful public discourses, including in the media and government.<sup>233</sup> Without delving too deeply into the nature of these concepts which involve complex human emotions as well as complex social processes and structures, we can generally observe that we usually use the term ‘shame’ to refer to something felt by the person who is the object of the description, something closely related though not identical to guilt and embarrassment, while we tend to use ‘stigma’ to refer to a social judgement that is imposed upon someone. In his early influential work on ‘stigma,’ Erving Goffman observes that shame is often the consequence of stigma.<sup>234</sup> Thus, there appears to be what might be described as an

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<sup>229</sup> Robert Walker et al., ‘Poverty in Global Perspective: Is Shame a Common Denominator?’, *Journal of Social Policy* 42, no. 2 (April 2013): 215–33; also see Elaine Chase and Grace Bantebya-Kyomuhendo, eds., *Poverty and Shame: Global Experiences*, First edition (Oxford: Oxford University Press, 2015).

<sup>230</sup> Walker et al., ‘Poverty in Global Perspective: Is Shame a Common Denominator?’, 230.

<sup>231</sup> Walker et al., 215–16.

<sup>232</sup> See Robert Walker and Grace Bantebya-Kyomuhendo, *The Shame of Poverty*, First edition (Oxford: Oxford University Press, 2014) See Chapter 4 ‘Poverty, Shame and Stigma’.

<sup>233</sup> See Walker and Bantebya-Kyomuhendo, 57–60; and Lister, *Poverty*, 115–17.

<sup>234</sup> Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (Englewood Cliffs, NJ: Prentice Hall, 1963), 18; as referenced in Walker and Bantebya-Kyomuhendo, *The Shame of Poverty*, 1–2.

internalization of 'stigma' that manifests 'shame'. This accords closely with our earlier discussion of the type of shame discussed by Sen as one that is relational. As previously noted, Sen's conception of shame is of a human state that arises in relation to social conventions that mark the inability to afford certain goods as deserving a particular type of stigma, where that stigma is attributed because that inability is a marker of poverty. The circularity of this explanation is acknowledged, but is also not surprising because, as discussed, a large part of our project is to articulate what we already mean by the concept of poverty. Thus, it is not surprising that the concept of poverty includes a sufficient condition (i.e., the inability to meet the basic needs required to avoid shame due to social exclusion) based on one being generally perceived as poor.

While often used interchangeably, Walker however argues that "the differences lie in the underlying intent and the structural processes that lead to either shame or stigma," with shaming having an ostensible aim "to ensure individuals conform to group attitudes and behavioral norms by preventing behavior that might threaten the group as a whole," while stigma "serves to differentiate between groups, the 'us' and the 'them', the acceptable and the unacceptable, rather than to ensure cohesion between them."<sup>235</sup> In discussing the widespread stigma associated with the receipt of social assistance benefits, Walker provides the example of Charles Murray succinctly setting out a common argument for the employment of stigma and shame to shape behaviour:

Stigma is the only way that a free society can be generous... Stigma does three things. First,... children are taught that accepting charity is a disgrace, they also tend to be taught the kinds of things they should and shouldn't do to avoid that disgrace. ... Second, stigma encourages the right kind of self-selection... people ask whether the help is really that essential. ... Third, stigma discourages

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<sup>235</sup> Walker and Bantebya-Kyomuhendo, *The Shame of Poverty*, 52.

dependence – it induces people to do everything they can to get out of the situation that put them in need of help.<sup>236</sup>

Regardless of the stated instrumental intentions described by Murray with regard to the deliberate imposition of stigma upon children, to the extent that these views are commonly shared, one can begin to imagine the damaging effects upon those persons who are the object of the social stigma and resultant shame. These include the effects on the individuals as evidenced through the aforementioned empirical research, but also structurally through phenomena such as social exclusion.<sup>237</sup> As Lister notes, the terms ‘poor’ and ‘poverty’ themselves construct “‘the poor’ as different or deviant,”<sup>238</sup> and are often unwelcome to the poor themselves.<sup>239</sup> The views on the phenomenon of dependency expressed by Murray are longstanding and commonly held, in some cases even among those purportedly seeking to help the poor, despite the harmful ways in which that term is repeatedly deployed in ways that hurt the poor by, for example, using it as a reason to decrease financial assistance.<sup>240</sup> A related conception is that of the “underclass” which Murray also employs, noting that it is “a type of poverty, defined by behaviour,” describing “people who are at the margins of society, unsocialized and often violent.”<sup>241</sup> The concept of “the underclass” has itself been described as “an exercise in

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<sup>236</sup> Murray Charles, ‘Stigma Makes Generosity Feasible’, *American Enterprise Institute - AEI* (blog), 30 November 2009, <https://www.aei.org/society-and-culture/stigma-makes-generosity-feasible/>; as quoted in Walker and Bantebya-Kyomuhendo, *The Shame of Poverty*, 62.

<sup>237</sup> As Nancy Fraser has pointed out, social exclusion occurs not only at the national scale where most measurements thereof are focused, but also at the transnational scale and the global scale. See Nancy Fraser, ‘Injustice at Intersecting Scales: On “Social Exclusion” and the “Global Poor”’, *European Journal of Social Theory* 13, no. 3 (2010): 363–71.

<sup>238</sup> See Michael B. Katz, *The Undeserving Poor: America’s Enduring Confrontation with Poverty* (New York: Pantheon Books, 1989); as quoted in Lister, *Poverty*, 113.

<sup>239</sup> See Lister, *Poverty*, 112–115. Lister however also discusses the various arguments for continued use of the terms as “a moral and political challenge” (p. 115) rather than employing more sanitized terms which may blunt the force of the moral and political arguments to help the poor.

<sup>240</sup> For a compelling discussion of the use of the term “dependency” in this respect, see Nancy Fraser and Linda Gordon, ‘A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State’, *Signs: Journal of Women in Culture and Society* 19, no. 2 (1994): 309–36.

<sup>241</sup> See Charles Murray, ‘The Emerging British Underclass’, in *Charles Murray and the Underclass: The Developing Debate*, ed. Ruth Lister (London: IEA Health and Welfare Unit, 1996), 23 and 2; as cited in Lister, *Poverty*, 108–9.

conceptual containment,”<sup>242</sup> such that the discourse around it “re-frames the problem of poverty as the twin behavioral threats of dependency and delinquency.”<sup>243</sup> Murray is at any rate correct that the effects of the stigma and shame associated with poverty upon children are profound, often resulting in low self-esteem,<sup>244</sup> and even resulting in them despising their parents for their mutual poverty.<sup>245</sup>

Multiple studies have found that poverty is consistently associated with an increased prevalence of mental disorders in various countries from low-income to high-income, and that the effects of poverty on mental illness are even more pronounced among women and adolescents, with various effects ranging from relatively minor mental disorders to suicidal behaviours affecting various demographics.<sup>246</sup> For example, studies show that “[h]omelessness is associated with increased risk of depression, anxiety, and suicidal ideation in school aged children and adolescents.”<sup>247</sup> There is also evidence of causation with randomized studies showing that cash transfers to the poor decreased stress and depression.<sup>248</sup> The relation between poverty, mental health, and cognitive function is also multi-directional.<sup>249</sup> Apart from the obvious ways in which a mental disorder might impede a person’s ability to obtain the financial and other material resources to lift themselves out of poverty, the aforementioned studies tend to suggest that poverty also causes mental health issues for the poor. Poverty also consumes cognitive resources,<sup>250</sup> causing

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<sup>242</sup> Lydia Morris, ‘Dangerous Classes: Neglected Aspects of the Underclass Debate’, in *Urban Poverty and the Underclass*, ed. Enzo Mingione (Oxford: Blackwell Publishers Ltd, 1996), 161; as cited in Lister, *Poverty*, 110.

<sup>243</sup> See Hartley Dean and Peter Taylor-Gooby, *Dependency Culture: The Explosion of a Myth* (New York: Harvester Wheatsheaf, 1992); as cited in Lister, *Poverty*, 110.

<sup>244</sup> See Lister, *Poverty*, 119.

<sup>245</sup> See Walker et al., ‘Poverty in Global Perspective: Is Shame a Common Denominator?’, 224.

<sup>246</sup> See Crick Lund et al., ‘Social Determinants of Mental Disorders and the Sustainable Development Goals: A Systematic Review of Reviews’, *The Lancet Psychiatry* 5, no. 4 (2018): 360.

<sup>247</sup> Lund et al., 360–61.

<sup>248</sup> Lund et al., 361.

<sup>249</sup> Lund et al., 360.

<sup>250</sup> See World Bank, ‘World Development Report 2015: Mind, Society and Behavior’ (Washington, DC: The World Bank, 2015), 80–84, <https://www.worldbank.org/en/publication/wdr2015>.



persons to focus more on the present in decision-making than the future, and studies have even shown that poverty in and of itself significantly adversely affects scores on cognitive tests such as IQ tests.<sup>251</sup> Further, studies also tend to show a correlation between poverty and a lack of aspiration, with evidence that poverty itself changes the cognitive frame in which a person views their future and their options.<sup>252</sup>

While much of the foregoing discussion and empirical evidence addresses the effects of poverty, the reader may ask how these points relate to the conceptual framework of poverty that we are developing, and which I am advocating. The answer is that the harms of poverty, which demonstrably can be profound, are related not only to the direct biological effects of material deprivation such as malnutrition for example, but relate to the ways in which the poor are often portrayed and perceived, even sometimes by themselves as a result of the internalization of these narratives. If we return to the conceit of a non-moral conceptual framework for the concept of poverty which I have tried to construct throughout this chapter, the shame due to social exclusion that arises out of an inability to afford certain goods is a function of the process of social stigma and resultant shame, or put differently, othering and internalization. That is, although Sen may be correct that there is an absolute core to the conception of poverty, there is also a relative one: Poverty is also a relational concept. Whether in developing or affluent countries, those who are considered poor experience their poverty as something that is not only about their own internal state of shame, but is about how they are perceived by

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<sup>251</sup> See Anandi Mani et al., 'Poverty Impedes Cognitive Function', *Science* 341, no. 6149 (2013): 976–80 where the researchers studied sugar cane farmers in India, including, inter alia, administering IQ tests before and after harvest, and finding that IQs increased by 10 points after the harvest, and also administered tests to person in the United States and finding that those who had to think about a financially stressful situation performed 13 points worse later on an IQ test; as cited in World Bank, 'World Development Report 2015: Mind, Society and Behavior', 83–84.

<sup>252</sup> World Bank, 'World Development Report 2015: Mind, Society and Behavior', 84–85.

themselves and others, rather than being established purely through their own material deprivation.

## Some Comments on Poverty and Legal Agency

[L]a majestueuse égalité des lois ... interdit au rich comme au pauvre de coucher sous les ponts...<sup>253</sup>

As Lister and others point out, poverty also affects a person's agency, or their capacity to act, regardless of where one's conception of poverty falls on a continuum between more structuralist accounts of poverty with limited room for individual agency, and individualistic accounts where poverty is seen as largely the result of one's own actions. A poor person will have reduced options and, as discussed, will experience psychological and cognitive affects that will mediate their agency in assessing those limited options. These observations also have implications for legal authority and obligation, which the reader will recall is the subject of Hart's elucidation of the distinction of the internal and external perspectives. As Jonathan Wolff and Avnir de Shalit have argued, the ability to comply with the law is itself a capability.<sup>254</sup> This is particularly significant for the poor since, as has been noted by Stephen Wexler: "Poor people do not lead settled lives into which the law seldom intrudes; they are constantly involved with the law in its most intrusive forms ... poor people are always bumping into sharp legal things."<sup>255</sup> If our aim were to construct a legal conception of poverty, a conception that thus governs the poor, then much of the material for that project would come not from the thoroughly-considered and

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<sup>253</sup> Anatole France, *Le Lys Rouge* (Paris: Calmann-Lévy, 1894), 117–18 ("The law in its majestic equality forbids the rich as well as the poor to sleep under the bridges"); as quoted in Waldron, 'Homelessness and the Issue of Freedom', 313.

<sup>254</sup> See Wolff and de-Shalit, *Disadvantage*, 47–48; For an example where poor persons might not have this capability, see Stephen D'Arcy's argument for a moral obligation to commit welfare fraud in certain circumstances: Stephen D'Arcy, 'Is There Ever an Obligation to Commit Welfare Fraud?', *The Journal of Value Inquiry* 42, no. 3 (2008): 377–87.

<sup>255</sup> Stephen Wexler, 'Practicing Law for Poor People', *The Yale Law Journal* 79, no. 5 (1970): 1050. Thanks are owed to Michael Ollier for introducing me to this quotation, and this paper.

measured responses of the higher courts or the well thought out advocacy of parties represented by experienced (and expensive!) counsel, but rather from the routine and seemingly banal decisions of lower courts and administrative tribunals, the legislative and bureaucratic drafting of regulations, policies and guidelines, and perhaps most importantly the *de facto* ways in which the law is deployed in ways that adversely affect poor persons.<sup>256</sup> While it might be answered that a person is not forced to break the law, their agency in this regard can perhaps better be understood as the ability to comply with the law “in the circumstances necessary to achieve a minimally decent standard of living.”<sup>257</sup>

However we define poverty, there is no question that it is a vital concept for the way in which our societies and our legal systems function, touching as it does on issues ranging from economic matters with an obvious bearing on poverty issues such as tax law and social assistance law, to human rights, to criminal justice, to child protection and laws concerning marriage and divorce. As has been noted by Felicia Kornbluh and Karen Tani with regard to the history of the legal treatment of poverty in the United States:

Where does “the legal history of poverty” begin and end? Virtually all law may be seen as the law of poverty. Property law is, in its unstated obverse, the law of poverty; the law of marriage is, among other things, the law of property distribution between and mutual obligation between husband and wife; tax laws may impoverish the taxpayer or, by collecting paltry revenues, may prevent the state from remediating others’ distress.<sup>258</sup>

While this may overstate the relationship between poverty and the law since the set of “law[s] of poverty” is probably not identical to the set of all laws, Kornbluh and Tani do make an important observation about that relationship: many, if not most, laws have a

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<sup>256</sup> For an illuminating discussion of the ways in which the homeless often find themselves unable to obey the law, see Skolnik, ‘Homelessness and the Impossibility to Obey the Law’.

<sup>257</sup> Wolff and de-Shalit, *Disadvantage*, 47.

<sup>258</sup> Felicia Kornbluh and Karen Tani, ‘Siting the Legal History of Poverty: Below, Above, and Amidst’, in *A Companion to American Legal History*, ed. Sally E. Hadden and Alfred L. Brophy, 1st ed. (Oxford: Blackwell Publishing, 2013), 329.

significant bearing on matters of poverty whether the relationship be obvious, such as for example with regard to human rights to subsistence and the administrative laws around social assistance, or less obvious such as with regard to legal subject areas such as criminal law and property law. Many of these decisions made within our legal systems – both those that are made by the adjudicators and those that underpin the regulations, policies and guidelines -- may seem almost Millgrammian<sup>259</sup> in the legal-political hierarchy of authority when considered from the removed and meta-legal perspective of the ethical implications of poverty, something that most people care about, but which often falls outside the decision-makers range of applicable considerations or is given less priority than one might otherwise accord it.

As Joseph's Raz argues, "every legal system claims that it possesses legitimate authority."<sup>260</sup> Whether that claim is true or the legal system only possesses *de facto* authority, it will nevertheless be true that the ways in which the law conceives of poverty will also claim that authority. At any rate, one can begin to see how these apparent conflicts between the law and basic needs might cause one who is experiencing poverty to themselves adopt an externalist point of view with regard to legal obligation, and perhaps to ask what legal authority has ever done for them.<sup>261</sup>

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<sup>259</sup> See Stanley Milgram, 'Some Conditions of Obedience and Disobedience to Authority', *Human Relations* 18, no. 1 (1965): 57–76.

<sup>260</sup> Raz, 'Authority, Law and Morality':, 300.

<sup>261</sup> Perhaps, the most influential contemporary account of how political legitimacy functions is Joseph Raz's "Service Conception of Authority" where the law can claim legitimate authority to the extent that it helps us to make better decisions than we could otherwise make ourselves. See Raz, 297.

## Chapter 4 – Conclusion

The goal of the foregoing discussion has been to improve our understanding of the concept of poverty employing the methodology of conceptual analysis. The discussion has taken the form of advocacy as I have advocated for a particular conception of poverty among competing conceptions. In order to explicate this conception I have attempted to excise a non-moral conceptual framework for poverty, from a concept that admittedly contains moral aspects, in a way that I hope elucidates our folk understanding of poverty, while at the same time reconciling some of the apparent contradictions between absolute and relative conceptions of poverty. I have relied heavily on the more original work of other thinkers to make many if not most of the arguments herein, hoping to bring those analyses together in a way that helps to articulate a conception of poverty that is at the same time recognizable to us as the way we already understand poverty, and also incisive in the sense that it is based on arguments that work through the implications of our folk understandings such that we can then articulate a conception that is able to address any significant counterfactual objections to those folk understandings. The aim is ultimately to improve our understanding of a concept that we already know by interrogating what it is that we know. As Joseph Raz has observed, although our concepts “are not very idiosyncratic” we nevertheless “may not know all their features.”<sup>1</sup>

The excision of a non-moral conceptual framework for the concept of poverty is a conceit in the sense that poverty is an evaluative concept that admittedly has normative and moral aspects to it. These aspects include the fact that we generally understand the term

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<sup>1</sup> Raz, ‘The Problem of Authority: Revisiting the Service Conception’, 1011. See Joseph Raz, “The Problem of Authority: Revisiting the Service Conception,” *Minnesota Law Review* 90 (2006): 1003-1044 at p. 1011

poverty to imply at the same time a moral condemnation as well as a call to action. Also, in order to specifically define poverty such that we can operationalize our conceptualization through measurement, we must first determine the vulnerabilities which are indicative of poverty as well as the basic needs which one must generally have the ability to meet in order to avoid shame due to social exclusion. I have attempted to further elucidate these moral aspects of the concept of poverty by discussing three other concepts that I suggest are integral to at least our current understanding of the moral aspects of poverty: human rights, equality, and freedom. While I have no doubt provided a wholly inadequate discussion of these related concepts given the enormous amount of serious scholarship that they have occasioned, I hope that I have nevertheless at least drawn some broad strokes that help the reader to understand how they relate to the concept of poverty and to our moral argument and deliberation that go into specifying the constituent elements of that conceptual framework. Ultimately, I hope that my descriptive explanation of a non-moral conceptual framework for the concept of poverty as well as these related moral concepts will lead to improved understanding which can assist us in our moral reasoning.

In employing the methodology of conceptual analysis I have attempted to do so in the manner exemplified by the work of H.L.A. Hart with regard to the concept of Law. In order to set the stage for that conceptual analysis I have therefore tried to elucidate the descriptive explanatory approach of Hart relying heavily on the description of the Hartian methodology by Wil Waluchow, while also addressing some of the significant objections to such an approach, relying heavily on a discussion of those objections by Michael Giudice. Ultimately, I have argued that the methodology of conceptual analysis can be responsive to the contingencies of time and place, including the conceptual revisions that can be occasioned in the face of social science evidence, without becoming something

else entirely, whether the “constructive conceptual explanation” of Michael Giudice or the ameliorative analysis of Natalie Stoljar and Sally Haslanger.

I have proposed the following non-moral conceptual framework for the concept of poverty:

*a human state of material/financial deprivation that results in vulnerabilities and adversely affects one's capabilities to meet basic needs, including the capabilities to acquire the goods generally required to avoid shame due to social exclusion.*

In arguing for this conceptual framework, I have addressed the arguments for the constituent elements of that framework.

With regard to concepts, conceptions, definitions and measurements generally, I have made the following points:

- Concepts are how we convey meaning, and definitions add specificity to our concepts by for example setting out necessary and sufficient conditions for the concept. Definitions are operationalized by measurement.
- A conception is a theory that one might hold about the content of a concept and the concept itself is the object of one's theorizing.
- There is a reflexive relationship between the processes of poverty conceptualization and poverty measurement. Although our measurements of poverty depend on how we conceive of poverty, those measurements will also influence our conceptions of poverty and may also have normative implications.
- Although empirical studies show some trends with regard to the conceptualization of poverty by governments, NGOs and funders, those same studies also show that there is little consensus with regard to those conceptualizations.

With regard to our intuitions and common usage and how these relate to our common folk conception of poverty, I have argued:

- Poverty, in the sense of material deprivation, is a concept that is uniquely applied to humans.
- Our concept of poverty is not necessarily dependent on the presence of money as a social construct, but only insofar as that social construct is indicative, perhaps even a proxy, for material deprivation.
- Poverty is a concept which has both descriptive and evaluative aspects, including moral and normative aspects in the sense that it can be perceived in and of itself as a call to action in response to poverty.
- The evaluative aspect of poverty also involves placing individuals into socially-constructed categories.

With regard to relative and absolute conceptions of poverty, and Amartya Sen's arguments for a conception of poverty that is based on capabilities:

- Poverty is often conceived absolutely with regard to the ability to afford to meet a set of basic goods, as well as relatively as a state in relation to others, where the latter takes account of goods where the inability to obtain those goods in a given society would be seen as a marker of poverty.
- Relative conceptions of poverty are common in more affluent societies where basic subsistence needs may generally be met more than in less affluent societies.
- A purely relative conception of poverty leads to absurd counterfactuals that do not accord with our intuitive understanding of poverty both with regard to the



existence of poverty at a point in time, as well as comparatively and longitudinally.

- The concept of capabilities better accords with the ways we understand both equality and poverty, given that it focuses not only on the resources at our disposal (or how we feel) but what we are actually able to do with those resources.
- The capability to avoid a state of shame and social exclusion due to the inability to afford certain goods, an inability which society sees as a marker of poverty, is in fact an absolute indicator of poverty, and as such thus resolves many of the counterfactual objections to relative conceptions of poverty.

With regard to Florencia Luna's conception of layered vulnerabilities and how it relates to and is I suggest a constituent concept in our common folk conception of poverty:

- Conceiving of layers of vulnerabilities, rather than static labels whereby one categorizing persons into vulnerable groups, accords better with our understanding of human vulnerability as being dynamic and multi-faceted;
- The concept of layered vulnerabilities is a necessary constituent concept within our non-moral conceptual framework for the concept of poverty because our common understanding of poverty entails some perception of vulnerability to harm whether related to basic subsistence level resources and capabilities, or to the shame due to social exclusion related to goods, where the absence of those goods is seen as a marker of poverty;
- Although not dispositive for the purposes of our conceptual analysis of what we mean when we speak of poverty, the concept of layered vulnerabilities as a constituent concept in our conceptual framework, will be instrumentally useful for

responding to poverty and developing more specific social science conceptions of poverty, that will hopefully be used to inform legal conceptions of poverty.

- Some vulnerabilities may be pathogenic in that they can lead to other harmful consequences exacerbating existing vulnerabilities and/or creating new vulnerabilities, and thus have potential cascading effects, that can be seen as an opposing phenomenon to the concept of scaffolding capabilities.

With regard to the closely-related moral concept of human rights I have argued that:

- There has been an increasingly common tendency to conceptualize poverty in terms of human rights, including a human right to be free from poverty;
- These conceptual approaches, at least some of which are ameliorative approaches to conceptual analysis, despite having been largely unsuccessful in creating enforceable legal human rights to be free from poverty, have nevertheless been successful with regard to our understanding of the concept of poverty;
- Our common understanding of poverty as in part a call to action, includes not only a moral obligation but now also includes an understanding of that call to action as relating to a human right to be free from poverty;
- The right to subsistence (I suggest also the right to be free from poverty) is a foundational right that is necessary for the enjoyment of other human rights, including not only procedural rights but also substantive human rights to democratic participation. This foundational relationship will have bearing on the determination of poverty-related basic needs where the incapacity to meet those basic needs is indicative of poverty;

With regard to equality and egalitarianism, I have argued that:

- Equality is a relational concept that is both a constituent part of the concept of poverty in and of itself and is also a related concept that is employed to determine the basic needs that one must have the capabilities to meet in order to be considered free of poverty.
- Much work on egalitarianism focuses on property rights and issues of fairness in distribution. The most prominent such theories are 'luck egalitarian' theories which seek to compensate or equalize for brute unchosen luck while ignoring circumstances that are the result of poor choices. Such approaches to equality deflate the moral call to action contained in our concept of poverty since that call to action is bifurcated into a conditional where the moral arguments to remedy poverty based on equality apply only if that poverty is not the result of poor choices.
- Proponents of social or relational equality reject the view that equality is about eliminating brute non-chosen luck, claiming instead that "society is just if, and only if, individuals within it relate to one another as equals."<sup>2</sup> They are also sufficientarian because they aim for persons to be able to surpass "the threshold of decent life prospects"<sup>3</sup> that will allow one to "stand in relation of equality with others."<sup>4</sup> Thus, such an approach to equality will recommend a stronger call to action within the concept of poverty, and a more robust set of basic needs that are constituent therein.

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<sup>2</sup> Stefan Gosepath, "Equality", *The Stanford Encyclopedia of Philosophy* (Summer 2021 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/sum2021/entries/equality/>, at p. 31

<sup>3</sup> Arneson, 'Egalitarianism', 61.

<sup>4</sup> Anderson, 'What Is the Point of Equality?', 314–15.

With regard to the concept of freedom, I have argued that:

- The concept of freedom is also a concept that is used in our moral deliberations of how to respond to poverty both with regard to the basic needs that one considers a person must be able to meet if they are to be free of poverty, and how we perceive poverty as a call to action. It is not however clear that the concept of freedom is part of our conception of poverty in and of itself;
- A distinction is commonly made between negative and positive liberty or freedom, such that negative freedom merely denotes a lack of obstruction, whereas positive freedom involves one being able to be their own master through the ability (and not just the opportunity) to actually exercise choices;
- While a negative conception of liberty in and of itself may not recommend more than categorical basic needs, a positive conception of liberty will recommend those basic needs that one must have the ability to meet in order to avoid shame due to social exclusion;
- Given our currently property law regime, particularly in common law countries, the homeless are always at risk of removal because they have no property right to be anywhere. The fact that their removal can generally be effected by mere communication of their unlawful presence to authorities thereby infringes on the negative freedom of the homeless. This thereby leaves the homeless without a clearly enforceable right to engage in basic human biological functions such as eating, sleeping, urinating and defecating, since those functions require a place to be in order to engage in them;

Our discussion of the internal perspectives with regard to the concept of poverty leads to the following conclusions:

- In order to understand the concept of poverty it is necessary to understand the internal perspectives of poverty, including the ways in which the poor perceive their poverty, as well as the ways in which the non-poor view the poor. That is, in order to understand the concept of poverty we must try to generally understand the standpoint perspectives that inform our folk understanding, while acknowledging that those internal perspectives might differ, or even be at odds;
- Empirical evidence suggests that Sen is correct that there is an absolute core of shame to the concept of poverty in widely differing countries, and also shows that the adverse effects of poverty can be profound, including effects on mental health and cognition;
- Poverty is a relational concept. Although Sen may be correct that there is an absolute core to the conception of poverty, there is also a relative one. Whether in developing or affluent countries, those who are considered poor experience their poverty not only as a purely internal state of shame, but as something that is about how they are perceived by themselves and others, rather than being established purely through their own material deprivation.
- This necessary relational aspect of the concept of poverty also has implications with regard to how the poor function in our society, particularly with regard to the law. The poor regularly experience adverse interactions with the law and may at times lack the capability to comply with the law.

I hope that these observations, discussions, and arguments prove helpful by improving our understanding of the concept of poverty, and our moral deliberations with regard to that important and tragic social phenomenon.

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