
Justice across Borders

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Major progress has occurred in the theory of justice over the last three or four decades, to a great extent initiated by John Rawls's path-breaking work on "justice as fairness."¹ This has involved the use of the "contractarian" method of analysis used in moral and political philosophy. The contractarian approach has strongly Kantian antecedents, and the works of Immanuel Kant have been deeply influential in analyzing how rational social arrangements and reasonable social behavior can be derived. In the Rawlsian theory of justice the contractarian method has been put to elegant and powerful use.

In the Rawlsian version of this approach, a central concept is that of an "original position"—a hypothetical state of primordial equality in which the persons involved do not yet know who they are going to be. The guiding principles for the basic structure of society are chosen in this state of postulated ignorance, which helps to make the deliberations in the original position disinterested. Indeed, this is how the requirement of "fairness" is incorporated into the analysis of justice. Since the process is taken to be *fair* (people are not guided by their respective vested interests), the rules for the basic structure of the society that are chosen—by this exercise of social contract—are taken to be *just*. Rawls's well-known theory of "justice as fairness" is thus grounded, and this analytical structure is used to derive the implications of justice, thus characterized.

Rawlsian principles of justice include the priority of liberty (the “first principle”), giving precedence to maximal liberty for each person subject to similar liberty for all. The “second principle” deals with other matters, including equity and efficiency in the distribution of opportunities. In particular, it invokes the “difference principle” involving the allocational criterion of “lexicographic maximin” in the space of holdings of “primary goods” (or general-purpose resources) of the different individuals, giving priority to the worst-off people, respectively, in each conglomeration. Questions can be raised about the plausibility of the specific principles of justice that Rawls derives from his general principles of fairness, and it can, in particular, be asked whether the device of the original position must point inescapably to these principles of justice.² Furthermore, the adequacy of Rawlsian focus on primary goods, which makes his “difference principle” resource-oriented rather than freedom-oriented, can also be questioned.³ I am not directly concerned with those specific debates in this essay, though they will have to be examined and reassessed once the basic format of the original position has been subjected to critical scrutiny.

My concentration in this essay is on the more fundamental issue of the composition of the “original position” and also on the viability of the notion as a response to the challenging problems we face.⁴ That question has significant relevance for our understanding of fairness and justice as well as in the derivation of their practical implications. There is substantial room for ambivalence as to who the parties are who are assumed to be undertaking this contract. Are they all the people in the world—is it a global social contract? Or is it a contract that is worked out for each nation or each polity on its own? Does the coverage admit all of humanity—irrespective of nationality and citizenship of the persons involved—or is the “original position” to be limited instead to the citizenry of each nation acting separately? Does each country have an original position of its own?

When Rawls’s book *A Theory of Justice* first appeared, I interpreted the argument to be available for application to all the people taken together. But as subsequent writings of Rawls have made clear, he intends to apply the device to each nation—each people—taken separately. There is an additional exercise in which an international con-

tractual undertaking may be considered for obtaining some guidance regarding national policies toward other nations. But this is clearly a subsequent and subsidiary exercise, following the basic operation of distinct original positions for each nation—or each people—taken separately.

These two different conceptions can be identified, respectively, as “universalist” in a grand and comprehensive sense, and “particularist” in its nation-based orientation. Their respective implications for the scope of the theory of justice may be stated as follows:

Grand universalism: The domain of the exercise of fairness is all people everywhere taken together, and the device of the original position is applied to a hypothetical exercise in the selection of rules and principles of justice for all, seen without distinction of nationality and other classifications.

National particularism: The domain of the exercise of fairness involves each nation taken separately, to which the device of the original position is correspondingly applied, though the relations between the different nations may be influenced by supplementary international negotiations.

Even though the original position is no more than a figment of our constructive imagination, the contrast between these rival conceptions can have far-reaching implications for the way we see global justice. The formulation of the demands of global justice as well as the identification of the agencies charged with meeting these demands are influenced by the choice of the appropriate conception of the original position and the corresponding characterization of the domain of justice as fairness.

Grand Universalism

Even though I am attracted to grand universalism, I shall presently argue that neither of these two conceptions—grand universalism and national particularism—can give us an adequate understanding of the demands of global justice. There is a need for a third conception with an adequate recognition of the plurality of relations

involved across the globe. But let me, first, elaborate briefly on the claims of each of these two classic conceptions.

Grand universalism has an ethical stature that draws on its comprehensive coverage and nonsectarian openness. It rivals the universalism of classical utilitarianism and that of a generalized interpretation of the Kantian conception of reasoned ethics. It can speak in the name of the whole of humanity in a way that the separatism of national particularist conceptions would not allow.

And yet grand universalism is hard to adopt in working out the institutional implications of Rawlsian justice as fairness. The explanation of fairness through a device like the original position is used, in Rawlsian analysis, to yield principles that should govern the choice of the basic political and social structure for each society considered as a political unit in which the principles of justice find their application. There are great difficulties in trying to apply this mode of reasoning to the whole of humanity, without an adequately comprehensive institutional base that can serve to implement the rules hypothetically arrived at in the original position for the entire world. Obviously, the United Nations cannot play this role (even if the United States were to come round to paying the money it owes to this international organization). Indeed, even the very conception of the United Nations—as its name indicates—is thoroughly dependent on drawing on the basic political and social organizations prevalent in the respective national states.

Particularist Conceptions and the Law of the Peoples

All this may forcefully suggest that we should opt for the tractability and coherence of the particularist—ultimately nationalist—conception of Rawlsian justice. That is, in fact, the direction in which Rawls himself has proceeded, considering separately the application of justice as fairness in each political society, but then supplementing this exercise through linkages between societies and nations by the use of intersocietal norms. We can even work out a different hypothetical exercise—an international “original position”—in which the representatives of the nations contract together and work out what they might reasonably owe to each other—one “people” to another.

How that reasoning should work has recently been explored by Rawls himself in the form of a theory of what he calls the “law of peoples.”⁵ The “peoples”—as collectivities—in distinct political formations consider their concern for each other and the imperatives that follow from such linkages. The principles of justice as fairness can in this way be used to illuminate the relation between these political communities (and not just between individuals, as in the original Rawlsian conception).

It must be noted, however, that in this particularist conception, the demands of global justice—in so far as they emerge—operate primarily through *inter-societal* relations rather than through *person-to-person* relations, which some may see as central to an adequate understanding of the nature and content of global justice. This effectively nation-based characterization of justice identifies the domain of *international* justice, broadly defined, but the basic work of the inter-individual original position is done within each nation, acting separately. The imperatives that follow, despite the limits of the formulation, have far-reaching moral content, which has been analyzed with characteristic lucidity by Rawls.⁶ However, the restrictions of an “international”—as opposed to a more directly “global”—approach set narrow limits to the reach of the Rawlsian “law of peoples.”

How should we take account of the role of direct relations between different peoples across borders whose identities include, *inter alia*, solidarities based on classifications *other than* those of nationality or political unit, such as class, gender, or social convictions? How do we account for professional identities (such as being a doctor or an educator) and the imperatives they generate across frontiers? These concerns, responsibilities, and obligations may not only not be parasitic on national identities and international relations, they may often run in contrary directions to international relations. Even the identity of being a human being—perhaps our most basic identity—may have the effect, when fully seized, of broadening our viewpoint, and the imperatives that we may associate with our shared humanity may not be mediated by our membership of collectivities such as “nations” or “peoples.”

Aside from this basic issue of different identities, our practical interactions across the borders often involve norms and rules that

are not derived *through* relations between nations. This applies powerfully to economic and social relations across borders, with their own conventions and mores. Obviously, when the need for legal enforcement arises, the national laws must still be important in giving force to some of these relations. And yet so much of global commerce, global culture, even global protests (like those on the streets of Seattle, Washington, or Prague) draw on direct relations between human beings—with their own ethics and priorities. These ethics can, of course, be supported or scrutinized or criticized in terms of intergroup relations, but the inter-group relations need not be confined to international relations only. They may involve very many diverse groups, with identities that vary from seeing oneself as a businessman or a worker, as a woman or a man, as being poor (or being committed to the poor) or rich, or as a member of one professional group or another (such as, say, doctors or lawyers). Thus collectivities of many different types may be invoked as bases of commitments and obligations that reach across national borders.

Plural Affiliations

We need a different conception of global justice that is neither as ambitious and uninstitutionalized as the grand universalism of *one* comprehensive “original position” encompassing the whole world (despite its obvious ethical interest and possible relevance at the level of some very general principles), nor as separatist and restrictive as national particularism (even when supplemented by international relations). The starting point of an alternative approach, drawing on plural affiliations, can be the recognition of the fact that we all have multiple identities, and that each of these identities can yield concerns and demands that can significantly supplement, or seriously compete with, other concerns and demands arising from other identities. The implications of this approach for the theory of justice can be stated as follows:

Plural affiliation: The exercise of fairness can be applied to different groups (including, but not uniquely, the nations), and

the respective demands related to our multiple identities can all be taken seriously (there may be different ways in which their conflicting claims are ultimately resolved).

The exercise of “fairness,” which can be illustrated with the device of the original position, need not look for a unique application. The original position is a rich way of characterizing the discipline of reciprocity and within-group universalization, and it can be used to provide insights and inspirations for different group identities and affiliations. Nor is it entirely necessary, to benefit from Rawls’s foundational characterization of fairness, to work out an elaborate system—as in Rawls’s own theory—through a detailed specification of a stage-by-stage emergence of basic structures, legislation, and administration. The device of the original position can be employed in less grand, less unique, and less fully structured forms, without giving complete priority to one canonical formulation involving national particularism.

For example, a doctor could well ask what kind of commitments she may have in a community of doctors and patients, where the parties involved do not necessarily belong to the same nation. It is well to remember that the Hippocratic oath was not mediated—explicitly or by implication—by any national or international contract. Similarly, a feminist activist could well consider what her commitments should be to address the special deprivation of women in general—not necessarily only in her own country. There may well be conflicting demands arising from different identities and affiliations, and these respective demands cannot all be victorious. The exercise of assessing the relative strength of divergent demands arising from competing affiliations is not trivial, but it would beg a very large question if we were to deny our multiple identities and affiliations just to avoid having to face this problem. The alternative of subjugating all affiliations to one overarching identity—that of membership of a national polity—misses the force and far-reaching relevance of the diverse relations that operate between persons. The political conception of a person as a citizen of a nation—important as it is—cannot override all other conceptions and the behavioral consequences of other forms of group association.⁷

Contractarianism versus the Impartial Spectator

Pursuing the idea of plural affiliation is both possible and important within the general contractarian approach involving different groups and plural pluralities. But one might still ask whether this is the most sensible way of going about incorporating the demands of justice and of impersonality in these relations? Is the original position the right framework?

Here I want to suggest a possible departure, which can be seen, to some extent, as a move from Immanuel Kant to Adam Smith. Like Kant, Smith was convinced of the need for impersonality in ethical reasoning in working out the demands of justice, but he invoked a different notion—that of the “impartial spectator”—to do this job rather than using the contractarian method.⁸

Although Smith argued that “the general rules of morality” were “ultimately founded upon experience of what, in particular instances, our moral faculties, our natural sense of merit and propriety, approve, or disapprove of,” he emphasized the importance of moral reasoning in an adequately broad framework. Indeed, he argued that it is “from reason . . . we are very properly said to derive all those general maxims and ideas.” Smith went on to emphasize the role of reasoning in the process of systematizing our ideas of what is or is not acceptable, drawing on observations “in a great variety of particular cases” of “what pleases or displeases our moral faculties, what these approve or disapprove of,” and using reasoned induction to “establish those general rules.”⁹

The process of reasoning can draw on a variety of devices to bring out our reflected moral judgments. A crucially important device Adam Smith used in this context was that of the “impartial spectator.” We are asked to imagine how a spectator who is not directly involved in the competing claims, and who is impartial, may view a situation of conflict, or more generally a situation in which there are both some congruence and some conflict of interest. The demand now is to work out how they would look to an outsider who disinterestedly seeks a just solution. It should be obvious that this too—like the contractarian model (such as that of the Rawlsian original position)—involves impersonality and decisions based on suppress-

ing the diverting influence of vested interests. But in contrast with the contractarian approach, the impartial spectator is not himself or herself a party to the contract. Smith's model of the impartial spectator relates to that of the Kantian-Rawlsian contractarian model in much the same way a model of *arbitration* relates to that of *negotiation*.

Limitations of the Contractarian Approach: An Illustration

It is interesting that the fair-arbitration model of the impartial spectator has a reach that the fair-negotiation oriented model of the original position lacks. Consider, for example, the ethics of population policy. The basic problem for the mode of reasoning involving the original position arises from the incoherence of trying to include in the original position all the affected parties where some people would be present in one society if one decision were taken about population, who would never exist if a different decision were to be taken. People who would not be born under some social arrangement cannot be seen to be evaluating that arrangement—a “non-being” cannot assess a society from the position of never having existed (even though there would have been such a person had history been different).

For example, consider a case in which there would be a million people if one decision were taken and a million and a half people if another population policy were to be pursued. Do the extra half a million people participate in the original position in deciding on which society to choose, including which population decision to take? Suppose we presume that they should be involved. If that is the case and if, it so happens, that the decision that emerges is to have the restrictive population policy, then these people would simply not be brought into existence, and it would then not be obvious what status to accord these people who allegedly participated in the original position without actually existing. On the other hand, if they are not to be included in the original position and the decision to emerge is that the more expansive population policy is to be followed, then this additional half a million people would actually exist, but would not have participated in the deliberations in the original

position. Indeed, since the deliberations are held together as an integral whole, their fate and their future would be decided without their participation. In either formulation, therefore, the original position is quite incapable of dealing with such issues as the population problem, and an as-if contract between the affected parties is, thus, not possible.

The same difficulty applies to other uses of the contractarian approach. Consider, for example, the powerful approach that Thomas Scanlon has explored as a discipline of moral reasoning. He sees the contractarian requirement as a matter of selecting general rules “which no one can reasonably reject as a basis for informed, unforced general agreement.”¹⁰ The problem, in this case, lies in identifying the potential “rejecters” (*who* are to be accorded the standing of being able to “reasonably reject”?). People who would never exist if a particular substantive arrangement were selected cannot be invoked as rejecting (or refusing to reject) rules that yield that arrangement. Indeed, the difficulty is endemic in the contractarian approach that is now so dominant in contemporary moral philosophy. Since the contractarian method requires the congruence of the set of judges and the set of lives that are being judged, it is fundamentally ill-suited for helping us resolve any problem that deals with a varying set of participants. But it is hard to think of any substantial economic or social decision that will not have an influence—direct or indirect—on the size or composition of the population.

Can Adam Smith’s model of the impartial spectator deal with the population problem? Would it not be subject to the same difficulty as the contractarian reasoning? The answer is no. The impartial spectator is impartial between the parties (or would-be parties), but is not required to do her observing—not to mention negotiation—in the form of *being* each of the parties, as in the contractarian method. There is, therefore, no similar problem in this mode of reasoning as it would apply in the contractarian approach. The impartial spectator can place herself in different situations (without having to be present in any of them), and thus the problem of varying participants does not cripple the Smithian approach.

There are, thus, real advantages in taking a leaf from Adam Smith’s book, rather than Immanuel Kant’s, and I hope I am not being influ-

enced by the fact that I am primarily an economist and only secondarily a philosopher. The reach of the impartial spectator model is larger, at least in this respect. This is an issue that is quite important in dealing with plural affiliations, since there too the groups would be to some extent ambiguously defined. Also the same person can easily belong to different groups, for example as a citizen of a nation, on the one hand, and as a feminist activist, on the other. Both roles may be important in different contexts, and the person involved can invoke the more permissive model of impersonality both to help in the analysis of justice within each group and also to assess possibly competing loyalties to which individuals are subject as members of two different groups.

Institutions and Multiplicity of Agencies

Leaving aside these issues of philosophical formulations, the important question that needs major emphasis in understanding global justice is the presence of different groups and different associations, with their respective delineations of “borders.” Many of the associations are informal, and include loyalties related to one’s identity, say, as a worker, or as a peasant, or as a person with liberal convictions (or conservative ones), or as a woman (or as a feminist), and so on. These associations have significance in the understanding of justice across borders that must not be submerged in the allegedly canonical grouping of individuals as members of particular nations and citizenry.

There are also many associations that are formal and organizationally structured. A great many agencies can influence global arrangements and consequences. Some of them are clearly “national” in form, including domestic policies of particular states, and also international relations (contracts, agreements, exchanges, etc.) between states, operating *through* the national governments. Other cross-border relations and actions, however, often involve units of economic operation quite different from national states, such as firms and businesses, social groups and political organizations, non-governmental organizations (NGOs), and so on, which may operate locally as well as beyond national frontiers. Transnational firms

constitute a special case of this. There are also international organizations, which may have been set up directly by the individual states acting together (such as the League of Nations or the United Nations), or indirectly by an already constituted international organization (such as the ILO, UNICEF, or UNDP). Once formed, these institutions acquire a certain measure of independence from the day-to-day control of the individual national governments.

Still other institutions involve the working of nongovernmental, nonprofit entities that operate across borders—organizing relief, providing immunization, arranging education and training, supporting local associations, fostering public discussion, and a whole host of other activities. Actions can also come from individuals in direct relation to each other in the form of communication, argumentation, and advocacy that can influence social, political, and economic actions (even when the contacts are not as high profile as, say, Bertrand Russell’s writing to John Kennedy and Nikita Krushchev on the nuclear confrontations of the cold war).

The demands of justice—and that of fairness—can be investigated in several distinct though interrelated ways, invoking various groups that cut across national boundaries. These groups need not be as universally grand as the collectivity of “all” the people in the world nor as specific and constrained as national states. Many policy issues cannot be reasonably addressed in either of these two extremist formats. Individuals live and operate in a world of institutions, many of which operate across borders.¹¹

Concluding Remarks

Let me end with some general remarks. First, I have argued that justice across borders must not be seen merely as “international justice”—as the issue is often formulated. Even though that is the way mainstream ethical thinking (led by Kantian-Rawlsian contractarian analysis) has gone, that line of reasoning is fundamentally defective. It is normatively unsatisfactory, since not all of our ethical commitments and obligations are mediated through relations between nations. A feminist activist in America who wants to help, say, to remedy some features of female disadvantage in Africa or Asia, draws

on a sense of identity that goes well beyond the sympathies of one nation for the predicament of another. A person can see herself as an Italian, as a woman, as an agnostic, as a doctor, and so on; there is no contradiction in this richer understanding of a person's identity.

Second, the international contractarian line of reasoning is also institutionally obtuse in taking little note of the variety of institutions (such as markets, religious groupings, political organizations, etc.). These institutions operate through affiliations that may be quite different from national groupings, and they certainly can influence relations between people across borders. Indeed, many NGOs—Médecins sans Frontières, OXFAM, Amnesty International, Human Rights Watch, and others—explicitly focus on affiliations and associations that cut across national boundaries.

Third, turning to somewhat more general theory, the contractarian line of reasoning is inherently defective in dealing with variable groups and cannot deal at all adequately with some standard problems of ethical and political decision *even* for a given society. The difficulty it has in dealing with population policy—or any decision that influences the size or the composition of the population—illustrates its limited reach.

Fourth, if we shift our philosophical focus from Immanuel Kant's influential line of thinking to that of the more neglected theories of his contemporary, Adam Smith, we get a model of reasoning that is better able to cope with these problems of variable and varying groups. The discipline of the "impartial spectator" has much to offer to this range of ethical issues, and this applies also to justice across borders.

Finally, it is very important to note that "grand universalism" is not the only alternative to "national particularism." The noninstitutional and utopian nature of grand universalism is sometimes invoked to provide an alleged justification of the nationally particularist line of thinking, based on the false presumption that national particularism would be the only alternative left if grand universalism were taken to be unduly demanding. This is not the case.

I have argued in favor of a line of reasoning that is geared to the existence of multiple institutions and the presence of plural

identities in the way we see ourselves. This makes it impossible to resolve all problems of justice by one all-encompassing original position (as under grand universalism), or even by two sets of overarching original positions—one within each nation and another among the representatives of all nations (as in the combination of national particularism and the “law of peoples”). The coexistence of many affiliations and diverse identities is a central feature of the world in which we live and cannot be ignored in exploring the demands of global justice. Each of our plural associations entails some general concerns about justice across borders as well as within those respective borders. The borders are defined differently for different groups, and our reasoning about justice has to reflect that reality.

Requirements of global justice offer guidance in diverse voices and sometimes in conflicting directions. Although we cannot escape the need for critical scrutiny of the respective demands, this is not a reason for expecting to find one canonical superdevice that will readily resolve all the diversities of obligations that relate to our various affiliations, identities, and priorities. The oversimplification that must be particularly avoided is to identify global justice with international justice. The reach and relevance of the former can far exceed those of the latter.

Acknowledgments

This essay draws on my lecture for the Centennial Year Celebrations of the De Paul University in Chicago in September 1998 and also on an earlier presentation at a conference of the United Nations Development Programme in New York in 1997.

Notes

1. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971); *Political Liberalism* (New York: Columbia University Press, 1993); *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999).
2. My own combination of admiration and scepticism of the particular Rawlsian formula can be found in my book, *Collective Choice and Social Welfare* (San Francisco: Holden-Day, 1970; republished, Amsterdam: North-Holland, 1997). I was in fact responding to Rawls's papers that preceded his book, which explains how my response could have been published before Rawls's own book.

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...Unlike the type of liberal approach that focuses only on the distribution of resources, the capability approach maintains that resources have no value in themselves, apart from their role in promoting human functioning. It therefore directs the planner to inquire into the varying needs individuals have for resources and their varying abilities to convert resources into functioning. In this way, it strongly invites a scrutiny of tradition as one of the primary sources of such unequal abilities.¹

But the capabilities approach raises the question of cultural universalism, or, as it is often pejoratively called, “essentialism.” Once we begin asking how people are actually functioning, we cannot avoid focusing on some components of lives and not others, some abilities to act and not others, seeing some capabilities and functions as more central, more at the core of human life, than others. We cannot avoid having an account, even if a partial and highly general account, of what functions of the human being are most worth the care and attention of public planning the world over. Such an account is bound to be controversial.

II. Anti-Universalist Conversations

The primary opponents of such an account of capability and functioning will be “anti-essentialists” of various types, thinkers who urge us to begin not with sameness but with difference — both between women and men and across groups of women — and to seek norms defined relatively to a local context and locally held beliefs. This opposition takes many forms, and I shall be responding to several distinct objections. But I can begin to motivate the enterprise by telling several true stories of conversations that have taken place at the World Institute for Development Economics Research (WIDER), in which the anti-universalist position seemed to have alarming implications for women’s lives.²

At a conference on “Value and Technology,” an American economist who has long

been a leftwing critic of neoclassical economics delivers a paper urging the preservation of traditional ways of life in a rural area of Orissa, India, now under threat of contamination from Western development projects. As evidence of the excellence of this rural way of life, he points to the fact that whereas we Westerners experience a sharp split between the values that prevail in the workplace and the values that prevail in the home, here, by contrast, exists what the economist calls “the embedded way of life,” the same values obtaining in both places. His example: Just as in the home a menstruating woman is thought to pollute the kitchen and therefore may not enter it, so too in the workplace a menstruating woman is taken to pollute the loom and may not enter the room where looms are kept. Some feminists object that this example is repellant rather than admirable; for surely such practices both degrade the women in question and inhibit their freedom. The first economist’s collaborator, an elegant French anthropologist (who would, I suspect, object violently to a purity check at the seminar room door), replies: Don’t we realize that there is, in these matters, no privileged place to stand? This, after all, has been shown by both Derrida and Foucault. Doesn’t he know that he is neglecting the otherness of Indian ideas by bringing his Western essentialist values into the picture?³

The same French anthropologist now delivers her paper. She expresses regret that the introduction of smallpox vaccination to India by the British eradicated the cult of Sittala Devi, the goddess to whom one used to pray to avert smallpox. Here, she says, is another example of Western neglect of difference. Someone (it might have been me) objects that it is surely better to be healthy rather than ill, to live rather than to die. The answer comes back; Western essentialist medicine conceives of things in terms of binary oppositions: life is opposed to death, health to disease.⁴ But if we cast away this binary way of thinking, we will begin to comprehend the otherness of Indian traditions.

At this point Eric Hobsbawm, who has been listening to the proceedings in increas-

ingly uneasy silence, rises to deliver a blistering indictment of the traditionalism and relativism that prevail in this group. He lists historical examples of ways in which appeals to tradition have been politically engineered to support oppression and violence.⁵ His final example is that of National Socialism in Germany. In the confusion that ensues, most of the relativist social scientists — above all those from far away, who do not know who Hobsbawm is — demand that Hobsbawm be asked to leave the room. The radical American economist, disconcerted by this apparent tension between his relativism and his affiliation with the left, convinces them, with difficulty, to let Hobsbawm remain.

We shift now to another conference two years later, a philosophical conference on the quality of life.⁶ Members of the quality-of-life project are speaking of choice as a basic good, and of the importance of expanding women's sphere of choices. We are challenged by the radical economist of my first story, who insists that contemporary anthropology has shown that non-Western people are not especially attached to freedom of choice. His example: A book on Japan has shown that Japanese males, when they get home from work, do not wish to choose what to eat for dinner, what to wear, and so on. They wish all these choices to be taken out of their hands by their wives. A heated exchange follows about what this example really shows. I leave it to your imaginations to reconstruct it. In the end, the confidence of the radical economist is unshaken: We are victims of bad universalist thinking, who fail to respect "difference."⁷

The phenomenon is an odd one. For we see here highly intelligent people, people deeply committed to the good of women and men in developing countries, people who think of themselves as progressive and feminist and antiracist, people who correctly argue that the concept of development is an evaluative concept requiring normative argument⁸ — effectively eschewing normative argument and taking up positions that converge, as Hobsbawm correctly saw, with the positions of reaction, oppression, and sexism. Under the banner of their fashionable opposition to universalism march ancient religious taboos,

the luxury of the pampered husband, educational deprivation, unequal health care, and premature death.

Nor do these anti-universalists appear to have a very sophisticated conception of their own core notions, such as "culture," "custom," and "tradition." It verges on the absurd to treat India as a single culture, and a single visit to a single Orissan village as sufficient to reveal its traditions. India, like all extant societies, is a complex mixture of elements.⁹ Hindu, Muslim, Parsi, Christian, Jewish, atheist; urban, suburban, rural; rich, poor, and middle class; high caste, low caste, and aspiring middle caste; female and male; rationalist and mystical. It is renowned for mystical religion but also for achievements in mathematics and for the invention of chess. It contains intense, often violent sectarianism, but it also contains Rabindranath Tagore's cosmopolitan humanism and Mahatma Gandhi's interpretation of Hinduism as a religion of universal nonviolence. Its traditions contain views of female whorishness and childishness that derive from the Laws of Manu.¹⁰ But it also contains the sexual agency of Draupadi in the *Mahabharata*, who solved the problem of choice among Pandava husbands by taking all five, and the enlightened sensualism and female agency of the *Kama Sutra*, a sacred text that foreign readers wrongly interpret as pornographic. It contains women like Metha Bai, who are confined to the home; it also contains women like Amita Sen (mother of Amartya Sen), who fifty years ago was among the first middle-class Bengali women to dance in public, in Rabindranath Tagore's musical extravaganzas in Santiniketan. It contains artists who disdain the foreign, preferring, with the Marglins, the "embedded" way of life, and it also contains Satyajit Ray, that great Bengali artist and lover of local traditions, who could also write, "I never ceased to regret that while I had stood in the scorching summer sun in the wilds of Santiniketan sketching *simul* and *palash* in full bloom, *Citizen Kane* had come and gone, playing for just three days in the newest and biggest cinema in Calcutta."¹¹

What, then, is "the culture" of a woman like Metha Bai? Is it bound to be that deter-

mined by the most prevalent customs in Rajasthan, the region of her marital home? Or, might she be permitted to consider with what traditions or groups she wishes to align herself, perhaps forming a community of solidarity with other widows and women, in pursuit of a better quality of life? What is “the culture” of Chinese working women who have recently been victims of the government’s “women go home” policy, which appeals to Confucian traditions about woman’s “nature”?¹² Must it be the one advocated by Confucius, or may they be permitted to form new alliances — with one another, and with other defenders of women’s human rights? What is “the culture” of General Motors employee Mary Carr? Must it be the one that says women should be demure and polite, even in the face of gross insults, and that an “unladylike” woman deserves the harassment she gets? Or might she be allowed to consider what norms are appropriate to the situation of a woman working in a heavy metal shop, and to act accordingly? Real cultures contain plurality and conflict, tradition, and subversion. They borrow good things from wherever they find them, none too worried about purity. We would never tolerate a claim that women in our own society must embrace traditions that arose thousands of years ago — indeed, we are proud that we have no such traditions. Isn’t it condescending, then, to treat Indian and Chinese women as bound by the past in ways that we are not?

Indeed, as Hobsbawm suggested, the vision of “culture” propounded by the Marglins, by stressing uniformity and homogeneity, may lie closer to artificial constructions by reactionary political forces than to any organic historical entity. Even to the extent to which it is historical, one might ask, exactly how does that contribute to make it worth preserving? Cultures are not museum pieces, to be preserved intact at all costs. There would appear, indeed, to be something condescending in preserving for contemplation a way of life that causes real pain to real people.

Let me now, nonetheless, describe the most cogent objections that might be raised

by a relativist against a normative universalist project.

III. The Attack on Universalism

Many attacks on universalism suppose that any universalist project must rely on truths eternally fixed in the nature of things, outside human action and human history. Because some people believe in such truths and some do not, the objector holds that a normative view so grounded is bound to be biased in favor of some religious/metaphysical conceptions and against others.¹³ *But* universalism does not require such metaphysical support.¹⁴ For universal ideas of the human do arise within history and from human experience, and they can ground themselves in experience. Indeed, those who take all human norms to be the result of human interpretation can hardly deny that universal conceptions of the human are prominent and pervasive among such interpretations, hardly to be relegated to the dustbin of metaphysical history along with recondite theoretical entities such as phlogiston. As Aristotle so simply puts it, “One may observe in one’s travels to distant countries the feelings of recognition and affiliation that link every human being to every other human being.”¹⁵ ...

Neglect of Historical and Cultural Differences

The opponent charges that any attempt to pick out some elements of human life as more fundamental than others, even without appeal to a transhistorical reality, is bound to be insufficiently respectful of actual historical and cultural differences. People, it is claimed, understand human life and humanness in widely different ways, and any attempt to produce a list of the most fundamental properties and functions of human beings is bound to enshrine certain understandings of the human and to demote others. Usually, the objector continues, this takes the form of enshrining the understanding of a dominant group at the expense of minority understandings. This type of objection, frequently made by feminists, can claim support from many historical examples in which the human has

indeed been defined by focusing on actual characteristics of males.

It is far from clear what this objection shows. In particular it is far from clear that it supports the idea that we ought to base our ethical norms, instead, on the current preferences and the self-conceptions of people who are living what the objector herself claims to be lives of deprivation and oppression. But it does show at least that the project of choosing one picture of the human over another is fraught with difficulty, political as well as philosophical.

Neglect of Autonomy

A different objection is presented by liberal opponents of universalism. The objection is that by determining in advance what elements of human life have most importance, the universalist project fails to respect the right of people to choose a plan of life according to their own lights, determining what is central and what is not.¹⁶ This way of proceeding is “imperialistic.” Such evaluative choices must be left to each citizen. For this reason, politics must refuse itself a determinate theory of the human being and the human good....

IV. A Conception of the Human Being: The Central Human Capabilities

The list of basic capabilities is generated by asking a question that from the start is evaluative: What activities¹⁷ characteristically performed by human beings are so central that they seem definitive of a life that is truly human? In other words, what are the functions without which (meaning, without the availability of which) we would regard a life as not, or not fully, human?¹⁸

The other question is a question about kind inclusion. We recognize other humans as human across many differences of time and place, of custom and appearance. We often tell ourselves stories, on the other hand, about anthropomorphic creatures who do not get classified as human, on account of some feature of their form of life and functioning. On what do we base these inclusions and exclusions? In short, what do we believe must be there, if we are going

to acknowledge that a given life is human?¹⁹ The answer to these questions points us to a subset of common or characteristic human functions, informing us that these are likely to have a special importance for everything else we choose and do....

I introduce this as a list of capabilities rather than of actual functionings, because I shall argue that capability, not actual functioning, should be the goal of public policy.

Central Human Functional Capabilities

1. *Life.* Being able to live to the end of a human life of normal length,²⁰ not dying prematurely or before one’s life is so reduced as to be not worth living.
2. *Bodily health and integrity.* Being able to have good health, including reproductive health; being adequately nourished;²¹ being able to have adequate shelter.²²
3. *Bodily integrity.* Being able to move freely from place to place; being able to be secure against violent assault, including sexual assault, marital rape, and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. *Senses, imagination, thought.* Being able to use the senses; being able to imagine, to think, and to reason — and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training; being able to use imagination and thought in connection with experiencing and producing expressive works and events of one’s own choice (religious, literary, musical, etc.); being able to use one’s mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech and freedom of religious exercise; being able to have pleasurable experiences and to avoid no beneficial pain.
5. *Emotions.* Being able to have attachments to things and persons outside ourselves; being able to love those who love and care for us; being able to grieve at

their absence; in general, being able to love, to grieve, to experience longing, gratitude, and justified anger; not having one's emotional developing blighted by fear or anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.²³)

6. *Practical reason.* Being able to form a conception of the good and to engage in critical reflection about the planning of one's own life. (This entails protection for the liberty of conscience.)
7. *Affiliation.* (a) Being able to live for and in relation to others, to recognize and show concern for other human beings, to engage in various forms of social interaction; being able to imagine the situation of another and to have compassion for that situation; having the capability for both justice and friendship. (Protecting this capability means, once again, protecting institutions that constitute such forms of affiliation, and also protecting the freedoms of assembly and political speech.) (b) Having the social bases of self-respect and no humiliation; being able to be treated as a dignified being whose worth is equal to that of others. (This entails provisions of nondiscrimination.)
8. *Other species.* Being able to live with concern for and in relation to animals, plants, and the world of nature.²⁴
9. *Play.* Being able to laugh, to play, to enjoy recreational activities.
10. *Control over one's environment.* (a) *Political:* being able to participate effectively in political choices that govern one's life; having the rights of political participation, free speech, and freedom of association. (b) *Material:* being able to hold property (both land and movable goods); having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure.²⁵ In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

The "capabilities approach," as I conceive it,²⁶ claims that a life that lacks any one of these capabilities, no matter what else it has, will fall short of being a good human life. Thus it would be reasonable to take these things as a focus for concern, in assessing the quality of life in a country and asking about the role of public policy in meeting human needs. The list is certainly general — and this is deliberate, to leave room for plural specification and also for further negotiation. But like (and as a reasonable basis for) a set of constitutional guarantees, it offers real guidance to policymakers, and far more accurate guidance than that offered by the focus on utility, or even on resources.²⁷

The list is, emphatically, a list of separate components. We cannot satisfy the need for one of them by giving a larger amount of another one. All are of central importance and all are distinct in quality. This limits the trade-offs that it will be reasonable to make and thus limits the applicability of quantitative cost-benefit analysis. At the same time, the items on the list are related to one another in many complex ways. Employment rights, for example, support health, and also freedom from domestic violence, by giving women a better bargaining position in the family. The liberties of speech and association turn up at several distinct points on the list, showing their fundamental role with respect to several distinct areas of human functioning ... strenuous fasting. Whether for religious or for other reasons, a person may prefer a celibate life to one containing sexual expression. A person may prefer to work with an intense dedication that precludes recreation and play. Am I saying that these are not fully human or flourishing lives? Does the approach instruct governments to nudge or push people into functioning of the requisite sort, no matter what they prefer?

Here we must answer: No, capability, not functioning, is the political goal. This is so because of the very great importance the approach attaches to practical reason, as a good that both suffuses all the other functions, making them human rather than animal,²⁸ and figures, itself, as a central function on the list. It is perfectly true that

functionings, not simply capabilities, are what render a life fully human: If there were no functioning of any kind in a life, we could hardly applaud it, no matter what opportunities it contained. Nonetheless, for political purposes it is appropriate for us to shoot for capabilities, and those alone. Citizens must be left free to determine their course after that. The person with plenty of food may always choose to fast, but there is a great difference between fasting and starving, and it is this difference we wish to capture. Again, the person who has normal opportunities for sexual satisfaction can always choose a life of celibacy, and we say nothing against this. What we do speak against, for example, is the practice of female genital mutilation, which deprives individuals of the opportunity to choose sexual functioning (and indeed, the opportunity to choose celibacy as well).²⁹ A person who has opportunities for play can always choose a workaholic life; again, there is a great difference between that chosen life and a life constrained by insufficient maximum-hour protections and/or the “double day” that makes women in many parts of the world unable to play....

The aim of public policy is production of *combined capabilities*. This means promoting the states of the person by providing the necessary education and care; it also means preparing the environment so that it is favorable for the exercise of practical reason and the other major functions.³⁰

This clarifies the position. The approach does not say that public policy should rest content with *internal capabilities* but remain indifferent to the struggles of individuals who have to try to exercise these in a hostile environment. In that sense, it is highly attentive to the goal of functioning, and instructs governments to keep it always in view. On the other hand, we are not pushing individuals into the function: Once the stage is fully set, the choice is up to them....

A preference-based approach that gives priority to the preferences of dominant males in a traditional culture is likely to be especially subversive of the quality of life of women, who have been on the whole badly treated by prevailing traditional norms. And one can see this clearly in the Marglins' own

examples. For menstruation taboos, even if endorsed by habit and custom, impose severe restrictions on women's power to form a plan of life and to execute the plan they have chosen.³¹ They are members of the same family of traditional attitudes that make it difficult for women like Metha Bai to sustain the basic functions of life. Vulnerability to smallpox, even if someone other than an anthropologist should actually defend it as a good thing, is even more evidently a threat to human functioning. And the Japanese husband who allegedly renounces freedom of choice actually shows considerable attachment to it, in the ways that matter, by asking the woman to look after the boring details of life. What should concern us is whether the woman has a similar degree of freedom to plan her life and to execute her plan.

As for Metha Bai, the absence of freedom to choose employment outside the home is linked to other capability failures, in the areas of health, nutrition, mobility, education, and political voice. Unlike the type of liberal view that focuses on resources alone, my view enables us to focus directly on the obstacles to self-realization imposed by traditional norms and values and thus to justify special political action to remedy the unequal situation. No male of Metha Bai's caste would have to overcome threats of physical violence in order to go out of the house to work for life-sustaining food.

The capabilities approach insists that a woman's affiliation with a certain group or culture should not be taken as normative for her unless, on due consideration, with all the capabilities at her disposal, she makes that norm her own. We should take care to extend to each individual full capabilities to pursue the items on the list — and then see whether they want to avail themselves of those opportunities.

Women belong to cultures. But they do not choose to be born into any particular culture, and they do not really choose to endorse its norms as good for themselves, unless they do so in possession of further options and opportunities — including the opportunity to form communities of affiliation and empowerment with other women. The contingencies of where one is born,

whose power one is afraid of, and what habits shape one's daily thought are chance events that should not be permitted to play the role they now play in pervasively shaping women's life chances. Beneath all these chance events are human powers, powers of choice and intelligent self-formation. Women in much of the world lack support for the most central human functions, and this denial of support is frequently caused by their being women. But women, unlike rocks and plants and even horses, have the potential to become capable of these human functions, given sufficient nutrition, education, and other support. That is why their unequal failure in capability is a problem of justice. It is up to all human beings to solve this problem. I claim that a conception of human functioning gives us valuable assistance as we undertake this task.

¹ See Amartya Sen, "Equality of What?" in *Choice, Welfare, and Measurement* (Oxford: Basil Blackwell, 1982), 353–72; and M. Nussbaum, "Aristotelian Social Democracy," in *Liberalism and the Good*, Bruce Douglass, Gerald M. Mara and Henry S. Richardson eds., (New York & London: Routledge, 1990), pp. 203–252.

² Much of the material described in these examples is now published in *Dominating Knowledge: Development, Culture, and Resistance*, ed. Frédérique Apffel Marglin and Stephen A. Marglin (Oxford: Clarendon Press, 1990). The issue of "embeddedness" and menstruation taboos is discussed in S. A. Marglin, "Losing Touch: The Cultural Conditions of Worker Accommodation and Resistance," 217–82, and related issues are discussed in S. A. Marglin, "Toward the Decolonization of the Mind," 1–28. On Sittala Devi, see F. A. Marglin, "Smallpox in Two Systems of Knowledge," 102–44; and for related arguments, see Ashis Nandy and Shiv Visvanathan, "Modern Medicine and Its Non-Modern Critics," 144–84. I have in some cases combined two conversations into one; otherwise things happened as I describe them.

³ For Sen's account of the plurality and internal diversity of Indian values, one that strongly emphasizes the presence of a rationalist and critical strand in Indian traditions, see M. Nussbaum and A. Sen, "Internal Criticism and Indian Relativist Traditions," in *Relativism: Interpretation and Confrontation*, ed. M. Krausz (Notre Dame: Notre Dame University Press, 1989), 299–325 (an essay originally presented at the same WIDER conference and refused publication by the Marglins in its proceedings); and A. Sen, "India and

the West," *The New Republic*, June 7, 1993. See also Bimal K. Matilal, *Perception* (Oxford: Clarendon Press, 1995) (a fundamental study of Indian traditions regarding knowledge and logic); and B. K. Matilal, "Ethical Relativism and the Confrontation of Cultures," in Krausz, ed., *Relativism*, 339–62.

⁴ S. A. Marglin, "Toward the Decolonization," 22–23, suggests that binary thinking is peculiarly Western. But such oppositions are pervasive in Indian, Chinese, and African traditions (see M. Nussbaum, "Human Capabilities, Female Human Beings," in *Women Culture, and Development: A Study of Human Capabilities*, M. Nussbaum and Jonathan Glover, eds., (Oxford: Clarendon Press; New York: Oxford University Press, 1995). To deny them to a culture is condescending; for how can one utter a definite idea without bounding off one thing against another?

⁵ See Eric Hobsbawm and Terence Ranger, eds., *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983). In his *New Republic* piece, Sen makes a similar argument about contemporary India: The Western construction of India as mystical and "other" serves the purposes of the fundamentalist Bharatiya Janata Party (BJP), who are busy refashioning history to serve the ends of their own political power. An eloquent critique of the whole notion of the "other" and of the associated "nativism," where Africa is concerned, can be found in Kwame Anthony Appiah, *In My Father's House: Africa in the Philosophy of Cultures* (New York: Oxford University Press, 1991).

⁶ The proceedings of this conference are now published as M. Nussbaum and A. Sen, eds., *The Quality of Life* (Oxford: Clarendon Press, 1993).

⁷ Marglin has since published this point in "Toward the Decolonization." His reference is to Takeo Doi, *The Anatomy of Dependence* (Tokyo: Kodansha, 1971).

⁸ See S. A. Marglin, "Toward the Decolonization."

⁹ See Nussbaum and Sen, "Internal Criticism," and A. Sen, "Human Rights and Asian Values," *The New Republic*, July 10/17, 1997, pp. 33–34.

¹⁰ See Roop Rekha Verma, "Femininity, Equality, and Personhood," in *Women, Culture, and Development: A Study of Human Capabilities*, M. Nussbaum, ed., (New York: Oxford University Press, 1995).

¹¹ Satyajit Ray, "Introduction," in *Our Films, Their Films* (Bombay: Orient Longman, 1976; reprinted, New York: Hyperion, 1994), 5.

¹² Personal communication, scholars in women's studies at the Chinese Academy Social Sciences, June 1995.

¹³ Note that this objection itself seems to rely on some universal values such as fairness and freedom from bias.

¹⁴ See HF for a longer version of this discussion.

- ¹⁵ Aristotle, *Nicomachean Ethics* VIII. I discuss this passage in M. Nussbaum, "Aristotle on Human Nature and the Foundation of Ethics, in *World, Mind, and Ethics, Essays on the Ethical Philosophy of Bernard Williams* (Cambridge & New York: Cambridge University Press, 1995), pp. 86-131, and *Non-relative Virtues: An Aristotelian Approach*, (Helsinki, World Institute for Development Economics Research, 1987).
- ¹⁶ This point is made by the Marglins, as well as by liberal thinkers, but can they consistently make it while holding that freedom of choice is just a parochial Western value? It would appear not; on the other hand, F. A. Marglin (here differing, I believe, from S. A. Marglin) also held in oral remarks delivered at the 1986 conference that logical consistency is simply a parochial Western value.
- ¹⁷ The use of this term does not imply that the functions all involved doing something especially "active." See here A. Sen, "Capability and Well-Being," in *The Quality of Life*, 30-53. In Aristotelian terms, and in mine, being healthy, reflecting, and being pleased are all "activities."
- ¹⁸ For further discussion of this point, and for examples, see HN.
- ¹⁹ See HN for a more extended account of this procedure and how it justifies.
- ²⁰ Although "normal length" is clearly relative to current human possibilities and may need, for practical purposes, to be to some extent relativized to local conditions, it seems important to think of it — at least at a given time in history — in universal and comparative terms, as the *Human Development Report* does, to give rise to complaint in a country that has done well with some indicators of life quality but badly on life expectancy. And although some degree of relativity may be put down to the differential genetic possibilities of different groups (the "missing women" statistics, for example, allow that on the average women live somewhat longer than men), it is also important not to conclude prematurely that inequalities between groups — for example, the growing inequalities in life expectancy between blacks and whites in the United States — are simply genetic variation, not connected with social injustice.
- ²¹ The precise specification of these health rights is not easy, but the work currently being done on them in drafting new constitutions in South Africa and Eastern Europe gives reasons for hope that the combination of a general specification of such a right with a tradition of judicial interpretation will yield something practicable. It should be noticed that I speak of health, not just health care; and health itself interacts in complex ways with housing, with education, with dignity. Both health and nutrition are controversial as to whether the relevant level should be specified universally, or relatively to the local community and its traditions. For example, is low height associ-
- ated with nutritional practices to be thought of as "stunting" or as felicitous adaptation to circumstances of scarcity? For an excellent summary of this debate, see S. R. Osmani, ed., *Nutrition and Poverty* (Oxford: Clarendon Press, WIDER Series, 1990), especially the following papers: on the relativist side, T. N. Srinivasan, "Undernutrition: Concepts, Measurements, and Policy Implications," 97-120; on the universalist side, C. Gopalan, "Undernutrition: Measurement and Implications," 17-48; for a compelling adjudication of the debate, coming out on the universalist side, see Osmani, "On Some Controversies in the Measurement of Undernutrition," 121-61.
- ²² There is a growing literature on the importance of shelter for health; for example, that the provision of adequate housing is the single largest determinant of health status for HIV-infected persons. Housing rights are increasingly coming to be constitutionalized, at least in a negative form — giving squatters grounds for appeal, for example, against a landlord who would bulldoze their shanties. On this as a constitutional right, see proposed Articles 11, 12, and 17 of the South African Constitution, in a draft put forward by the African National Congress (ANC) committee adviser Albie Sachs, where this is given as an example of a justiciable housing right.
- ²³ Some form of intimate family love is central to child development, but this need not be the traditional Western nuclear family. In the development of citizens it is crucial that the family be an institution characterized by justice as well as love. See Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989).
- ²⁴ In terms of cross-cultural discussion, this item has proven the most controversial and elusive on the list. It also properly raises the question whether the list ought to be anthropocentric at all, or whether we should seek to promote appropriate capabilities for all living things. I leave further argument on these questions for another occasion.
- ²⁵ ASD argues that property rights are distinct from, for example, speech rights, in the sense that property is a tool of human functioning and not an end in itself. See also M. Nussbaum, "Capabilities and Human Rights," *Fordham Law Review* 66(2): 273-300 (1997).
- ²⁶ Sen has not endorsed any such specific list of the capabilities.
- ²⁷ See Sen, "Gender Inequality and Theories of Justice," in WCD, 259-73; Becker, "The Economic Way of Looking at Behavior."
- ²⁸ See HN. This is the core of Marx's reading of Aristotle.
- ²⁹ See Chapter 4.