

capability-like items to the list of basic goods: for example, the social basis of health and the social basis of imagination and emotional well-being.³⁷ For Rawls is already in difficulty enough through his addition of the social bases of self-respect, which greatly strains the contract doctrine in one way, although in another way it seems to fulfill some of its deeper moral aspirations. He will be in hopeless difficulty, in the terms he has set for himself, if he admits this highly heterogeneous list of “primary goods,” all of which seem highly relevant to the determination of relevant social positions. A desired simplicity, both in indexing relative social positions and in describing the point of social cooperation, will be jeopardized.

In short, the case of people with mental disabilities proves very revealing for the entire structure of Rawls’s contract doctrine and, more generally, for the project of basing principles of justice on reciprocity between rough equals who are imagined as joining together to reap a mutual benefit. Despite the moral elements that go very deep in Rawls’s theory—and in a sense, also, because of them, or the particular Kantian shape they take—Rawls cannot altogether outstrip the particular limitations of the contract doctrine, which derive from its basic picture of why people live together and what they hope to gain therefrom.

3. THE CAPABILITIES APPROACH: A NONCONTRACTARIAN ACCOUNT OF CARE

We now turn to the capabilities approach, as I have articulated it in *Women and Human Development*. My version of the capabilities approach is a political doctrine about basic entitlements, not a comprehensive moral doctrine. It does not even claim to be a complete political doctrine, since it simply specifies some minimal necessary conditions for a just society, in the form of a set of non-negotiable entitlements of all citizens. I argue that failure to secure these to citizens is a particularly grave violation of basic justice, since these entitlements are held to be implicit in the very notion of human dignity and a life that is worthy of the dignity of the human being.

³⁷ See my discussion of this point in *Women and Human Development* (hereafter *WHD*), chapter 1, and in “The Future of Feminist Liberalism.”

A. The Bases of Social Cooperation

The capabilities approach departs from contractarianism in two especially striking ways. First, its account of the benefits and aims of social cooperation is moralized, and socialized, from the very start. Although the approach does not employ a hypothetical initial situation, it envisages human beings as cooperating out of a wide range of motives, including the love of justice itself, and prominently including a moralized compassion for those who have less than they need to lead decent and dignified lives. It would be good if one could show that a society held together in this way could be relatively stable, and I have elsewhere tried to show this.³⁸ But the significant issue for our purposes here is that there is no assumption, either overt or tacit, that justice is relevant only where the Humean circumstances of justice obtain. In other words, we do not assume that only a situation of rough equality, in which people are motivated to make a deal for mutual advantage, can get justice off the ground. We have seen that even Rawls's view, moralized though his initial situation is, is still dependent on the Humean analysis, and thus on the idea of rough equality among participants.

In my view, Hume's account of the conditions under which justice makes sense is too narrow. Human beings are held together by many ties: by ties of love and compassion as well as ties of advantage, by the love of justice as well as the need for justice.³⁹ Real people often attend to the needs of others in a way that is narrow or arbitrarily uneven. But education can do a great deal to make these ties deeper, more pervasive, and more even-handed. Rawls agrees; but then it is unfortunate that he endorsed Hume's account of the circumstances of justice. I would argue that the changes we have seen in recent years toward the greater social inclusion of the disabled are evidence that people do aim at justice for its own sake, and this can make a political difference.

Thus the capabilities approach feels free to use a political conception of the person that views the person, with Aristotle, as a political and social animal, who seeks a good that is social through and through, and who shares complex ends with others, at many levels. The good of others is not just a constraint on this person's pursuit of her own good, it is

³⁸ See *WHD*, chapter 2.

³⁹ See my *Upbeavals of Thought: The Intelligence of Emotions* (Cambridge: Cambridge University Press, 2001), chapters 6–8.

a *part of her good*. She leaves the state of nature not because it is more advantageous in self-interested terms to make a deal with others, but because she can't imagine being whole in an existence without shared ends and a shared life.

B. Dignity: Aristotelian, Not Kantian

The second fundamental departure pertains to the notion of dignity, and thus to Rawls's Kantian contractarianism, which makes a notion of dignity basic. Unlike Kant, the capabilities approach does not contrast the humanity of human beings with their animality. It sees the two as thoroughly unified. Taking its cue from Aristotle's notion of the human being as a "political animal," and from Marx's idea that the human being is a creature "in need of a plurality of life-activities," it sees the rational as simply one aspect of the animal, and, at that, not the only one that is pertinent to a notion of truly human functioning. Truly human functioning is animal through and through, and what makes for the specifically human dignity of this functioning is the combination of practical reasoning and sociability that infuses it. More generally, the capabilities approach sees the world as containing many different types of animal dignity, all of which deserve respect and even wonder. The specifically human kind is indeed characterized, usually, by a kind of rationality, but rationality is not idealized and set in opposition to animality; it is just garden-variety practical reasoning, which is one way animals have of functioning. Sociability, moreover, is equally fundamental and pervasive. And bodily need, including the need for care, is a feature of our rationality and our sociability; it is one aspect of our dignity, then, rather than something to be contrasted with it.

Thus, in the design of the political conception of the person out of which basic political principles grow, we build in an acknowledgment that we are needy temporal animal beings who begin as babies and end, often, in other forms of dependency. We draw attention to these vulnerabilities, insisting that rationality and sociability are themselves temporal, with growth, maturity, and (if time permits) decline. The kind of sociability that is fully human includes symmetrical relations (such as those that are central for Rawls), but also relations of more or less extreme asymmetry; we insist that the asymmetrical relations can still contain reciprocity and truly human functioning.

We can now connect the two fundamental departures from contractarianism, by saying that this new conception of what is dignified and worthy in the human being supports the departure from Rawlsian circumstances of justice. Justice does not begin with the idea that we have something to gain from bargaining together. We have a claim to support based on justice in the dignity of our human need itself. Society is held together by a wide range of attachments, and concerns, only some of which involve productivity. Productivity is necessary, and even good; but it is not the main end of life.

C. Care and the Capabilities List

It is now quite easy to make the role of care in a conception of justice as fundamental as it ought to be. First, we understand the need for care in times of acute or asymmetrical dependency as among the primary needs of citizens, the fulfillment of which, up to a suitable level, will be one of the hallmarks of a decent society. How should this insight be incorporated into the capabilities list? I would argue that care is not a single thing, and therefore that it should not be introduced as a single separate extra capability in addition to the others.⁴⁰ Thinking well about care means thinking about a wide range of capabilities on the side of both the cared-for and the caregiver. Good care for children and adults with mental disabilities will focus on support for capabilities of life, health, and bodily integrity. It will also provide stimulation for senses, imagination, and thought. It supports emotional attachments and removes “overwhelming fear and anxiety”; indeed, good care constitutes a valuable form of attachment. Good care also supports the capacity of the cared-for for practical reason and choice; it encourages affiliations of many other sorts, including social and political affiliations where appropriate. It protects the crucial good of self-respect. It supports the capacity to play and enjoy life. It supports control over one’s material and political environment: rather than being regarded as mere property themselves, the disabled need to be regarded as dignified citizens who have the claim to property, employment, and so forth. Disabled citizens often have diminished opportunities to enjoy nature; good care supports this capability as well. In short, given the intimate and foundational

⁴⁰ See the appendix for the current version of the capabilities list.

role that care plays in the lives of the cared-for, it should address the entire range of the capabilities. Good thought about how to do this must be sensitive to individual needs.

I have just used the same list of capabilities for the mentally disabled that I advocate for the so-called normal citizen. It seems important to do so, although the same level of functioning may not always be possible, in order to stress that people with mental disabilities are full human beings and citizens. This move also reminds us continually of the element of tragedy that persists in many such lives. Sessa is crucially unlike a happy chimpanzee, because her capabilities are tragically out of step with those of most members of her species community. Moreover, in most mentally disabled lives there is a disharmony that does not exist in the life of an animal who flourishes in its own way. Some abilities are developed, others are not; the life doesn't fully fit together without special support and good luck. Including people with mental disabilities on the same list reminds us of the strong reasons we have to address obstacles in the way of their full functioning.

On the side of the caregiver, we have, once again, a wide range of concerns covering all the central capabilities. Not a single extra thing, then, but a way of thinking about all the items on the list.

4. PUBLIC POLICY: EDUCATION AND INCLUSION

It is impossible for a discussion of this sort to do more than sketch some of the policy implications that such an approach to the situation of the mentally disabled might have. Here I shall focus on only one issue, education, and on only one nation, the United States.

All modern societies have had gross inequities in their treatment of children with unusual mental disabilities. More, even, than people with many physical disabilities, children with mental impairments have been shunned and stigmatized. Many of them have been relegated to institutions that make no effort to develop their potential. And they are persistently treated as if they have no right to occupy public space. In the congressional hearings prior to the Americans with Disabilities Act (ADA), many examples of this shunning were cited. One case concerned children with Down syndrome who were denied admission to a zoo so as not to upset the chimpanzee.⁴¹

⁴¹ Leslie Francis and Anita Silvers, eds., *Americans with Disabilities* (New York: Routledge, 2000), "Introduction," p. xix.

But the most egregious gap has been, perhaps, in the area of education. Stigmatized as either uneducable or not worth the expense, mentally disabled children have been denied access to suitable education. Early court cases upheld these exclusions. For example, in 1892 the Supreme Court of Massachusetts upheld the exclusion of John Watson, diagnosed with mental retardation, from the Cambridge public schools, citing the disruptive effect of his appearance and unusual behavior (which, they admitted, was not harmful or disobedient) on the experience of the other children.

In the early 1970s, advocates for the mentally disabled began a systematic challenge to the status quo, achieving two influential victories. In *Pennsylvania Association for Retarded Children v. Pennsylvania*,⁴² a federal district court issued a consent decree compelling Pennsylvania public schools to provide “free appropriate education” to mentally disabled children. The plaintiffs alleged that the right to education is a fundamental right and that the school system therefore needed to show a “compelling state interest” in order lawfully to exclude retarded children.⁴³ In the same year, in *Mills v. Board of Education*, the U.S. District Court for the District of Columbia ruled in favor of a group of children with mental disabilities who challenged their exclusions from the District of Columbia public schools. This group was broader than the group of plaintiffs in the Pennsylvania case: it included children with a wide range of learning disabilities. In an analysis that cited *Brown v. Board of Education*, the landmark case that found racial segregation in public schools to be a violation of the equal protection clause, the court held that the denial of free suitable public education to the mentally disabled is an equal protection violation.⁴⁴ It also held that this equal protection violation could not be reasoned away by saying that these children were unusually expensive to include. “The inadequacies of the District of Columbia Public School System, whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the ‘exceptional’ or handicapped

⁴² 343 F. Supp. 279 (1972).

⁴³ The court, however, lightened the plaintiffs’ burden, holding that they had established a constitutional claim even under the less stringent rational basis test: in other words, they did not need to show that education is a fundamental right in order to make their equal protection claim. The plaintiffs’ contention that the exclusions violate both due process and equal protection prevailed.

⁴⁴ 348 F. Supp. 866 (D.D.C. 1972). Technically, because of the legally anomalous situation of the District of Columbia, the court held that it was a due process violation under the Fifth Amendment and that the equal protection clause in its application to education is “a component of due process binding on the District.”

child than on the normal child.” Significantly, the court cited *Goldberg v. Kelly*,⁴⁵ a case that concerned welfare rights, in which the Supreme Court held that the state’s interest in the welfare of its citizens “clearly outweighs” its competing concern “to prevent any increase in its fiscal and administrative burdens.”

Goldberg v. Kelly and *Mills* are highly significant cases, for they articulate a conception of social cooperation and the purposes of political principles that supports the one articulated in the capabilities approach. In *Goldberg*, the court held that

[f]rom its founding the Nation’s basic commitment has been to foster the dignity and well-being of all persons within its borders. We have come to recognize that forces not within the control of the poor contribute to their poverty... Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community... Public assistance, then, is not mere charity, but a means to “promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.”⁴⁶

Justice Brennan argues that the purpose of cooperation is not to gain an advantage: it is to foster the dignity and well-being of each and every citizen.

With this fundamental insight securely articulated, the two cases touched off a national debate, focused on both equal access and funding. In 1975 Congress passed the Education for All Handicapped Children Act (EAHCA), which turned the *Mills* decision into federal law, giving a wide range of mentally disabled⁴⁷ children enforceable rights to free suitable public education and making funds available to the states to help them meet their constitutional obligation.⁴⁸ This law was slightly modified and elaborated in 1997 in the form of the Individuals with Disabilities Education Act (IDEA).

IDEA begins from a simple yet profound idea: that of human individuality. Rather than regarding the various types of disabled persons as faceless classes of persons, the act assumes that they are in fact individuals, with varying needs, and that therefore all prescription for groups of

⁴⁵ 397 U.S. 254 (1969).

⁴⁶ *Ibid.*, pp. 264–65.

⁴⁷ Today the terms “impairment” and “disability” are typically used to describe the pre-social condition of such children, so to speak; the term “handicap” is used to describe their socially disadvantaged situation.

⁴⁸ I wish to thank John Brademas, one of the authors of this legislation, for very helpful discussion about the background and history of the law.

them would be inappropriate. The guiding idea of the act is thus that of the Individualized Education Program (IEP), “a written statement for each child with a disability that is developed, reviewed, and revised....”

In general the act obliges states to educate children with disabilities in the “least restrictive environment” appropriate to meet their needs. It thus urges “mainstreaming.” This practice can be defended both on grounds of the benefit to the mentally disabled child, who will be given more incentives to develop, and also on grounds of benefit to so-called normal children, who learn about humanity and its diversity by being in a classroom with a child who has unusual disabilities. But for purposes of the law, the underlying recognition of individuality is paramount: thus, when a child seems to profit more from special education than from mainstreaming, the state is required to support such a special placement.

IDEA is far from being a perfect law, in theory or in practice. But it is an achievement of which society may be proud. Such achievements are under threat, in an era dominated by economic models of advantage that are the cheap offshoots, in the public mind, of the idea of society as a bargain for mutual advantage.

Why would people ever create such a society that fully includes people with mental disabilities? Bérubé’s question, which I have quoted as my epigraph to this lecture, is urgent, in a world in which, as he observes, we do not even support the full human development of all “normal” children. I have argued that theories of justice, and the conceptions of social cooperation they contain, make a large difference here. If we are to include people with mental disabilities, it cannot be because we think we will gain thereby, in a narrow economic or self-interested sense of “gain.” It can only be out of our attachment to justice and our love of others, our sense that our lives are intertwined with theirs and that we share ends with them. Images of who we are and why we get together do have power in shaping our projects. It is time, then, to see what a new account of social cooperation and its goals can do to advance the search for justice, in one of the most difficult areas of human life.

APPENDIX: THE CENTRAL HUMAN CAPABILITIES

1. **Life.** Being able to live to the end of a human life of normal length; not dying prematurely, or before one’s life is so reduced as to be not worth living.

2. **Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.

3. **Bodily Integrity.** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.

4. **Senses, Imagination, and Thought.** Being able to use the senses, to imagine, think, and 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 works and events of one’s own choice: religious, literary, musical, and so forth. 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 nonbeneficial pain.

5. **Emotions.** Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one’s emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)

6. **Practical Reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one’s life. (This entails protection for the liberty of conscience and religious observance.)

7. **Affiliation**

A. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)

B. Having the social bases of self-respect and nonhumiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of nondiscrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.

8. Other Species. Being able to live with concern for and in relation to animals, plants, and the world of nature.

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 right of political participation, protections of free speech and association.

B. Material. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

II. BEYOND NATIONAL BOUNDARIES: CAPABILITIES AND GLOBAL JUSTICE

But among the traits characteristic of the human being is an impelling desire for fellowship, that is for common life, not of just any kind, but a peaceful life, and organized according to the measure of his intelligence, with those who are of his kind.... Stated as a universal truth, therefore, the assertion that every animal is impelled by nature to seek only its own good cannot be conceded.

HUGO GROTIUS, *On the Law of War and Peace*

Global inequalities in income increased in the 20th century by orders of magnitude out of proportion to anything experienced before. The distance between the incomes of the richest and poorest country was about 3 to 1 in 1820, 35 to 1 in 1950, 44 to 1 in 1973 and 72 to 1 in 1992.

Human Development Report 2000,

UNITED NATIONS DEVELOPMENT PROGRAMME

What was at issue, then, . . . is a matter of ideas, and conceptions of the role of the government that derive from those ideas.

JOSEPH STIGLITZ, *Globalization and Its Discontents*

I. A WORLD OF INEQUALITIES

A child born in Sweden today has a life expectancy at birth of 79.7 years. A child born in Sierra Leone has a life expectancy at birth of 38.9 years.¹ In the United States, Gross Domestic Product (GDP) per capita is \$34,142; in Sierra Leone, GDP per capita is \$490. Adult literacy rates in the top twenty nations are around 99 percent. In Sierra Leone, the literacy rate is 36 percent. In twenty-six nations, the adult literacy rate is under 50 percent.

The world contains inequalities that are morally alarming, and the gap between richer and poorer nations is widening. The chance of being born in one nation rather than another pervasively determines the life chances of every child who is born. Any theory of justice that proposes political principles defining basic human entitlements ought to be able to confront these inequalities and the challenge they pose, in a world in which the power of the global market and of multinational corporations has considerably eroded the power and autonomy of nations.

The dominant theory of justice in the Western tradition of political philosophy is the social contract theory, which sees principles of justice as the outcome of a contract people make, for mutual advantage, to leave the state of nature and govern themselves by law. Such theories have recently been influential in thinking about global justice, thanks especially to the influential work of John Rawls. In this lecture I shall examine that tradition, focusing on Rawls, its greatest modern exponent; I shall find it wanting. Despite their great strengths in thinking about justice, contractarian theories have some structural defects that make them yield very imperfect results when we apply them to the world stage. I shall argue that much more promising results are given by a version of what Amartya Sen and I have called the capabilities ap-

¹ All data in this paragraph are from *Human Development Report 2002* (New York: Oxford University Press, 2001), pp. 141–44. Data are from 2000. Australia overall ranks number 5 in the weighted Human Development Index, behind Norway, Sweden, Canada, and Belgium. It is fifth in life expectancy, behind Japan at 81.0 years, Sweden with 79.7 years, Hong Kong with 79.5 years, and Iceland with 79.2 years, and tied with Switzerland. Sierra Leone ranks last overall among the 173 countries in the Human Development Index.

proach—an approach that, in my version (rather different here from Sen’s), suggests a set of basic human entitlements, similar to human rights, as a minimum of what justice requires for all.

I shall ultimately be arguing that something like my version of the capabilities approach provides us with a promising way of thinking about the goals of development in this increasingly interdependent and interconnected world. Before we reach the positive proposal, however, we must first confront the best attempts made by contractarians to confront the issue of global justice. I shall first describe the two different strategies used by contractarians to address the problems of justice between nations: the strategy of what I shall call the *two-stage bargain* and the strategy of what I shall call the *global bargain*. Taking John Rawls’s *The Law of Peoples* as a best case of the former strategy, I shall argue that this approach cannot provide an adequate account of global justice. The strategy of the *global bargain* looks more promising; but it cannot defend redistribution from richer to poorer nations without departing in major ways from the contractarian approach.

Although my arguments in this lecture are directed against contractarian approaches to global justice, I choose these approaches because they are stronger than some others we have—stronger, in particular, than models of global development based on contemporary economic Utilitarianism. The “human development approach” that I favor can make an alliance with contractarians, up to a point, against that crude approach. It is this subtle debate between two worthy opponents that concerns me here. And my main contention will be that we cannot solve the problem of global justice by envisaging international cooperation as a contract for mutual advantage among parties similarly placed in a state of nature. We can solve them only by thinking of what all human beings require to live a richly human life—a set of basic entitlements for all people—and by developing conception of the purpose of social cooperation that focuses on fellowship as well as self-interest. Contractarian ways of thinking, especially the idea that we ought to expect to profit from cooperation with others, have untold influence on public debate. My aim is to supply something both new and old, resurrecting the richer ideas of human fellowship that we find in Grotius and other exponents of the natural law tradition.

Before we begin, we need to have before us very clearly three salient features of social contract conceptions on which John Rawls, the most influential modern exponent of that tradition, continues to rely

throughout his work—despite the fact that his hybrid theory mixes Kantian moral elements with the idea of a social contract. First, Rawls explicitly endorses the idea that the social contract is made between parties who are roughly equal in power and resources, so that no one can dominate the others. Tracing this idea to Hume’s account of the “Circumstances of Justice,” as well as to classical social contract doctrine, he insists that this rough equality of the parties is an essential element in his theory and is his own analogue to the idea of the State of Nature in classical social contract doctrine. Second, and closely connected, the contract is imagined as one made for mutual advantage, where advantage is defined in familiar economic terms, and income and wealth play a central role in indexing relative social positions. Although the Veil of Ignorance introduces moral constraints on the ways in which the parties achieve their own interest, the parties are still imagined as exiting from the State of Nature in the first place because it is in their interest to do so. Thus, while the Veil sharply limits the role played by interest once they enter the Original Position, interest continues to play a large part in determining who is in and who is out at the initial stage: namely, they bargain with rough equals in power and resources, because a contract for mutual advantage makes sense only between rough equals, none of whom can dominate the others. Despite his Kantianism, Rawls remains a contractarian in these two crucial respects. Finally, contract theories take the nation-state as their basic unit, conceiving of their contracting parties as choosing principles for such a state. This focus is dictated by their starting point: they imagine people choosing to depart from the State of Nature only when they have found principles by which to live a cooperative life together. This starting point is a grave limitation, as we shall see.

2. *A Theory of Justice: THE TWO-STAGE BARGAIN INTRODUCED*

The precontractarian “natural law” tradition held that relations between states, like the rest of the world of human affairs, are regulated by “natural law,” that is, binding moral laws that supply normative constraints on states, whether or not these dictates are incorporated into any system of positive law. The social contract tradition, by contrast, understood the situation that exists between states as a State of Nature and imagined principles of justice being contracted as if between virtual

persons. The clearest example of this two-stage approach, and the most significant for Rawls, is Kant, who writes in *The Metaphysics of Morals* that a state is like a household situated alongside others. Under the Law of Nations, he continues, a state is “a moral Person living with and in opposition to another state in a condition of natural freedom, which itself is a condition of continual war.” States ought to “abandon the state of nature and enter, with all others, a juridical state of affairs, that is, a state of distributive legal justice” (p. 307). The social contract, then, is applied in the first instance to persons, enjoining that they leave the State of Nature and enter a state. It is then applied a second time over to states,² enjoining that they enter some kind of juridical state of affairs.³

In *A Theory of Justice*, Rawls continues this Kantian approach. He assumes that the principles of justice applying to each society have already been fixed: each has a “basic structure” whose form is determined by those principles (p. 377). The “basic structure” of a society is defined as “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation” (p. 7). It is said to be equivalent to those structures that have effects that are “profound and present from the start,” affecting “men’s initial chances in life” (p. 7).

We now imagine a second-stage original position, whose parties are “representatives of different nations who must choose together the fundamental principles to adjudicate conflicting claims among states” (p. 378). They know that they represent nations “each living under the normal circumstances of human life,” but they know nothing about the particular circumstances of their own nation, its “power and strength in comparison with other nations.” They are allowed “only enough knowledge to make a rational choice to protect their interests but not so much that the more fortunate among them can take advantage of their special

² Kant says, rightly, that “Law of Nations” is a misnomer: it ought to be “Law of States” (in his Latin, *ius publicum civitatum*).

³ See also “Idea for a Universal History,” where Kant speaks of the “barbarous freedom of established states” (p. 49); “Theory and Practice,” where he speaks of a “state of international right, based upon enforceable public laws to which each state must submit (by analogy with a state of civil or political right among individual men)” (p. 92); “Perpetual Peace,” where he speaks of the “lawless condition of pure warfare” between states and continues: “Just like individual men, they must renounce their savage and lawless freedom, adapt themselves to public coercive laws, . . .” (p. 105). (All translations from these works are from *Kant: Political Writings*, ed. Hans Reiss, trans. H. B. Nisbet [Cambridge: Cambridge University Press, 1970]. Pages are given for that edition, since it does not include the Akademie pagination.)

situation.” This second-stage contract is designed to “nullif[y] the contingencies and biases of historical fate” (p. 378).

Rawls says little about the principles that would be chosen in this situation, but he indicates that they would include most of the familiar principles of the current law of nations: treaties must be kept; each nation has a right of self-determination and nonintervention; nations have a right to self-defense and to defensive alliances; just war is limited to war in self-defense; conduct in war is governed by the traditional norms of the law of war; the aim of war must always be a just and lasting peace (pp. 378–79).

Let us now consider the analogy between states and “moral persons.” One of its problems is that many nations of the world do not have governments that represent the interests of the people taken as a whole. Even when a nation has a government that is not a mere tyranny, large segments of the population may be completely excluded from governance. Thus Rawls’s device of representation is indeterminate. In such cases, if representatives represent the state and its basic structure, as Rawls strongly implies, they are likely by this very fact *not* to represent the interests of most of the people.

A second problem concerns the fixity of the domestic basic structure. Rawls seems to accord legitimacy to the status quo, even when it is not fully accountable to people. One of the things people themselves might actually want out of international relations is help overthrowing an unjust regime, or winning full inclusion in one that excludes them. There is no place for this in Rawls’s early scheme.

But the gravest problem with the analogy is its assumption of the self-sufficiency of states. In designing principles at the first stage, the society is assumed to be “a closed system isolated from other societies” (p. 8). (Thus it is no surprise that the relations between states are envisaged as occupying a very thin terrain, that of the traditional law of war and peace.) This is so far from being true of the world in which we live that it seems most unhelpful. Rawls’s structure has no room even for a supranational political/economic structure such as that of the European Union (EU), far less for the complex interdependencies that characterize the world as a whole.

The assumption of the fixity and finality of states makes the second-stage bargain assume a very thin and restricted form, precluding any serious consideration of economic redistribution from richer to poorer nations. Indeed, Rawls waves that problem away from the start by his

contractarian assumption of a rough equality between the parties: no one is supposed to be able to dominate the others. Of course, in our world, these conditions are not fulfilled: one probably can dominate all the others. At any rate, the G8 do effectively dominate all the others. To assume a rough equality between parties is to assume something so grossly false of the world as to make the resulting theory unable to address the world's most urgent problems.

Notice, too, that starting from the assumption of the existence and finality of states, we do not get any interesting answer to the question why states might be thought to matter, why it might be important to make sure that national sovereignty does not get fatally eroded by the power of economic globalization. Let us now see whether *The Law of Peoples* solves these problems. I believe that it makes a little progress on some, but none on others; and it introduces new problems of its own.

3. *The Law of Peoples:*

THE TWO-STAGE BARGAIN REAFFIRMED AND MODIFIED

The Law of Peoples "is an extension of a liberal conception of justice for a domestic regime to a Society of Peoples" (*LP*, p. 9). As in *TJ*, Rawls takes the domestic principles and policies of liberal societies as fixed, including their economic policies, and simply inquires into their foreign policies. At the same time, however, Rawls devotes some attention to real-world problems, if only to reassure the reader that these problems can be solved through a structure that fixes the domestic basic structure first and then addresses, at a second stage, problems between nations. Thus he mentions immigration, only to reassure us that the need for immigration would "disappear" (*LP*, p. 9) if all nations had an internally decent political structure. Among the causes of immigration he mentions religious and ethnic persecution, political oppression, famine (which he holds to be preventable by domestic policies alone), and population pressure (which, again, he holds to be controllable by changes in domestic policy). In "the Society of liberal and decent Peoples" these causes would not exist. Absent from his list, however, is one of the greatest causes of immigration, economic inequality—along with malnutrition, ill health, and lack of education, which so often accompany poverty.

Similarly, discussing the "burdened peoples," who on account of their poverty will not be part of the Society of Peoples, he justifies not

discussing economic inequality between nations by insisting that extreme poverty can be eradicated by reasonable domestic policies: the main causes of wealth are, he says, the political culture of a people, their religious and ethical traditions, and their talents and “industriousness.” Such an analysis ignores the fact that the international economic system creates severe, disproportionate burdens for poorer nations, who cannot solve their problems by wise internal policies alone. Clearly in the domestic case Rawls would not consider it sufficient to point out that poor families can get by on thrift and virtue. Even to the extent that this may be true, it does not dispose of the question of justice.

Let us now investigate Rawls’s central argument. As in *TJ*, the device of the Original Position is applied in two stages: first domestically within each liberal society, and then between those societies. A major new feature of the book, however, is that Rawls also holds that a decent Society of Peoples includes as members in good standing certain nonliberal peoples, who have “decent hierarchical societies.” But of course these societies, being nonliberal, do not apply the Original Position domestically. They have other ways of establishing their political principles (*LP*, p. 70). So there are three applications of the Original Position device: domestically by liberal peoples, then internationally by liberal peoples, then, in a further step, internationally by the nonliberal peoples who decide to sign on to the Society of Peoples.

As in *TJ*, the traditional concerns of foreign policy are the focus of both second-stage bargains, and a stable peace is at the core of their aspiration. Thus, among the eight principles of the Law of Peoples, six deal with familiar topics of international law, such as independence and self-determination, nonaggression, the binding force of treaties, nonintervention, the right of self-defense, and restrictions on the conduct of war. But Rawls expands his account to include agreement on some essential human rights and a duty to assist other peoples living under unfavorable conditions.

Once again, Rawls treats the domestic principles of justice as fixed and not up for grabs in the second-stage bargain. For none of these states, then, will the second-stage bargain call into question anything about their assignment of liberties and opportunities, or, importantly, about their domestic economic arrangements.

On some vexing issues left over from *TJ*, however, the new work makes progress. Recall that the analogy between states and persons suggested that states somehow represent the interests of the people within

them; but this, we said, is not true of many nations in the world. Rawls now officially recognizes this fact and gives it structural importance. The second-stage Original Position includes only states that respect human rights and have either a liberal-democratic constitution or a “decent hierarchical” arrangement that includes a “common good conception of justice” and a “decent consultation hierarchy.” On the outside of the Society of Peoples are “outlaw states,” which do not respect human rights, and “burdened societies,” which are defined as not only poor but also politically badly organized. Rawls holds that one important task of the Society of Peoples is to restrain the outlaw states. In this way, the argument has at least some bearing on the opportunities of people who are oppressed by these societies. All members, moreover, have duties to assist the burdened societies, which primarily means, for Rawls, helping them to develop stable democratic institutions, which he takes to be the main ingredient of their eventual prosperity. As I have already said, this is a limited understanding of what we owe other nations, but at least it is something.

The most important development beyond the approach of *TJ* lies in Rawls’s recognition of the transnational force of human rights. Membership in the Society of Peoples requires respect for a list of such rights, which constrain national sovereignty. The list is understood to be only a subgroup of those rights that liberal societies typically protect internally, “a special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide” (p. 79). Although this is a clear progress beyond *TJ*, it is important to notice how thin the list of rights is: it explicitly omits more than half the rights enumerated in the Universal Declaration. Moreover, the fixity of the basic structure entails that no international agreement in the area of human rights going beyond this thin menu will have the power to alter domestic institutions.

So: Rawls makes only a little progress toward a richer conception of international society. Insofar as he does make progress, we can now observe, this progress is made possible not by the contractual approach itself, but by some very dramatic departures from it, in the direction of an approach more like the one I shall favor, which defines a minimal conception of social justice in terms of the realization of certain positive outcomes, what people are actually able to do and to be. The criteria used to judge who is part of the bargain and who is not are ethical outcomes-oriented criteria: respect for human rights. Moreover, it appears that

Rawls has jettisoned the traditional Humean criterion of rough equality, in the sense of similar economic circumstances. For clearly enough, nations that uphold human rights are not rough equals at all. Rawls seems to imagine the bargain as taking place between the United States and the nations of Europe and Australasia, which might at least be claimed to be rough equals. But where do we place nations such as India, Bangladesh, and South Africa, liberal rights-respecting democracies that are grossly unequal to Australia and the others in basic economic advantage? The GDP per capita of the United States is \$34,142; that of Bangladesh \$1,602; that of India \$2,358; that of South Africa \$9,401. So these nations are extremely far from being rough equals of the nations of the United States, Europe, and Australasia and also far from being rough equals of one another.

The upshot is as follows. Either Rawls will have to admit that the principles and circumstances that bring societies together to form the second-stage bargain are very different from the Humean “circumstances of justice,” with their focus on rough equality and mutual advantage, or he will stand firm on those conditions. If he departs from Hume, relaxing the condition of rough equality and the associated understanding of the motivation of the parties (they can all expect to gain from cooperation), then he can include all the nations I have mentioned, with their staggering inequalities. But in that case he will have to offer a new account of why they cooperate together, since the bargain can no longer be seen as one for mutual advantage. Peace, of course, is in the interests of all human beings, but, as with the “outlaw states,” peace can be promoted externally, so to speak, and need not be promoted by including the poor democracies in the bargain itself. So we must have a richer account of the purposes they pursue together. If, however, Rawls stands firm with Hume, then he ought to say that India, Bangladesh, and South Africa do not belong in the second-stage bargain, much though his other criteria tell in favor of their inclusion. They are just too poor for the richer nations to gain anything from treating them as rough equals.⁴ Rawls has not thought this through; his unclarity at this point makes *LP* an unsatisfactory work.

⁴ See Joseph Stiglitz, *Globalization and Its Discontents* (New York: W. W. Norton, 2002), who describes a notorious photograph in which a French representative of the International Monetary Fund (IMF) stands over a seated Indonesian leader, arms crossed, in a posture of high colonial condescension, delivering the wisdom of the rich nations and their agencies.

One more aspect of its inadequacy remains to be noted. As we have said, Rawls's Society of Peoples admits "decent hierarchical societies," justifying this move by appeal to a principle of toleration that makes a highly questionable use of the state-person analogy. Rawls argues as follows:

Surely tyrannical and dictatorial regimes cannot be accepted as members in good standing of a reasonable society of peoples. But equally not all regimes can reasonably be required to be liberal, otherwise the law of peoples itself would not express liberalism's own principle of toleration for other reasonable ways of ordering society nor further its attempt to find a shared basis of agreement among reasonable peoples. Just as a citizen in a liberal society must respect other persons' comprehensive religious, philosophical, and moral doctrines provided they are pursued in accordance with a reasonable political conception of justice, so a liberal society must respect other societies organized by comprehensive doctrines, provided their political and social institutions meet certain conditions that lead the society to adhere to a reasonable law of peoples. (*LP*, 42–43)

In other words: just as Americans are required to respect the comprehensive doctrines of believing Roman Catholics, and Buddhists, and Muslims, provided they respect the reasonable political conception of justice defended in *PL*, so too a liberal society is required to show respect both for other liberal societies and for decent hierarchical societies, provided that these societies adhere to the constraints and standards spelled out in the Law of Peoples. Toleration is said to require not only refraining from exercising military, economic, or diplomatic sanctions against a people, but also recognizing the nonliberal societies as equal members of the Society of Peoples.

Let us now examine this analogy. In fact, the case is both analogous and disanalogous. Inside a liberal society, there are many hierarchical conceptions of the good. These conceptions will be respected as reasonable, provided that their adherents accept, as a constituent part within their comprehensive doctrine, the principles of justice that shape the basic structure of their society.⁵ In other words, the religious conceptions must include Rawls's principles of justice, even if originally they did not do so. Comprehensive doctrines that promulgate teachings

⁵ For this language, see *PL*, pp. 144–45: "the political conception is a module, an essential constituent part, that in different ways fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it."

conflicting with those will not find their speech suppressed, except in the exceptional conditions that Rawls specifies in his doctrine of free political speech. Nonetheless, they will not be respected, in the sense of being regarded as members of society's constitutional structure; nor will their proposals be allowed to come forward for straightforward majority vote, since contradictory ideas will be entrenched in the nation's constitution.

In the transnational case, things are very different. The religious or traditional doctrine is tolerated, in the sense of being recognized as belonging to the community of peoples, whenever certain far weaker conditions obtain. There must still be respect for a small list of human rights. But it is clear that a people may win respect in the community of peoples even if property rights, voting rights, and religious freedom are unequally assigned to different actors within the society—men and women, for instance.⁶ The requirements of political democracy, equal liberty, and universal suffrage⁷ are replaced by the weaker requirement of a “reasonable consultation hierarchy.” Even free speech need not be accorded to all persons, so long as certain “associations and corporate bodies” allow them to express dissent in some way, and take their views seriously.

In the domestic case, Rawls's principle of toleration is a person-centered principle: it involves respecting persons and their conceptions of the good. In the transnational case, although Rawls depicts himself as applying the same principle, the principle is fundamentally different: it respects groups rather than persons and shows deficient respect for persons, allowing their entitlements to be dictated by the dominant group in their vicinity, whether they like that group or not. Rawls still focuses on persons to the extent of insisting on a small list of urgent human rights. But he allows groups to have a power in the national case that they do not have in the domestic theory.

Furthermore, in the domestic case, any concessions that are made to the group are made against the background of exit options: persons are free to depart from one religion and to join another, or to have no reli-

⁶ See *LP*, p. 65, n. 2: “this liberty of conscience may not be as extensive nor as equal for all members of society: for instance, one religion may legally predominate in the state government, while other religions, though tolerated, may be denied the right to hold certain positions.”

⁷ See *LP*, p. 71: “. . . all persons in a decent hierarchical society are not regarded as free and equal citizens, nor as separate individuals deserving equal representation (according to the maxim: one citizen, one vote). . . .”

gion at all. Rawls knows well that the basic structure of a nation offers no, or few,⁸ exit options; this is why he thinks it is so important that the institutions that form part of the basic structure should be just. The basic structure shapes people's life chances pervasively and from the start. And yet in the transnational case, Rawls has lost sight of this insight, allowing a local tradition to shape people's life chances pervasively, in ways that depart from principles of justice, even though there are no exit options for those who do not endorse that doctrine.

I conclude that Rawls's analogy is deeply flawed. So far as his argument goes, at least, there seems to be no moral obstacle to justifying a single far more expansive set of human rights, or human capabilities, as fundamental norms for all persons.

Rawls clearly thinks that if we conclude that another nation has defective norms we will intervene, whether militarily or through economic and political sanctions. But that need not be the case. For we may, and I believe must, separate the question of justification from the question of implementation. We may justify a set of benchmarks of justice for all the world's societies, in public debate, and yet hold that we are not entitled to use military force or even, perhaps, economic sanctions to impose these standards on a state, except in very exceptional circumstances, so long as that state meets some minimal conditions of legitimacy. The rationale for this deference to the nation is both prudential and moral. Its moral part, well expressed by Grotius, is the idea that national sovereignty is a key expression of human autonomy. When people join together to give laws to themselves, this is a human act that ought to be respected, even if the decision that is reached is one that is not fully justified from the moral point of view.

4. THE GLOBAL BARGAIN: BEITZ AND POGGE

A far more appealing use of a contractarian approach is made by Charles Beitz and Thomas Pogge.⁹ For both of them, the right way to use Rawlsian insights in crafting a theory of global justice is to think of the Original Position as applied directly to the world as a whole. The insight

⁸ None in his formulation, since the society is assumed to be closed.

⁹ Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979); Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989) (hereafter *RR*).

guiding this strategy is that national origin is rather like class background, parental wealth, race, and sex: namely, a contingent fact about a person that should not be permitted to deform a person's life.¹⁰ Pogge and Beitz argue convincingly that the only way to be sufficiently respectful of the individual as subject of justice, within a Rawlsian framework, is to imagine that the whole global system is up for grabs, and that the parties are bargaining as individuals for a just global structure. Both argue, in different ways, that the resulting structure will be one that optimizes the position of the least well off. Pogge's view (which he calls "only illustrative speculation")¹¹ envisages an initial global agreement on a list of human rights, which, over time, becomes more robust, including a system of global economic constraints. The list of human rights is considerably thicker than that defended by Rawls: it includes the entirety of the Universal Declaration, plus an effective right to emigrate.¹² Natural resources are also subject to redistribution.

The Pogge-Beitz proposal is a big improvement over the two-stage bargain. The global Veil of Ignorance is an insightful way of capturing the idea that a just global order will not be based on existing hierarchies of power, but will be fair to all human beings. One significant difficulty with these proposals is their vague and speculative nature. We are not told in detail exactly how the global bargain will work, what information the parties will and will not have. The world we live in exhibits changing configurations of power at the level of the basic structure itself; even one hundred years ago it would have been difficult to predict what those structures would be. The new structures (multinational corporations, for example) govern people's life chances pervasively and from the start. If the parties do not know their own era and its economic structures, they can hardly choose well. A related area of unfortunate vagueness concerns the role of the nation-state. Pogge and Beitz set out to question the finality and closed character of domestic state structures. But they do not tell us how far they really want to go. Are we standing back so far from current events that the very concept of the state will have to be reinvented and considered against other options for arranging people's lives? But it is hard to arrange human lives in a complete vacuum. How can we say whether the state is or is not a good structure,

¹⁰ *RR*, p. 247.

¹¹ *Ibid.*, p. 273.

¹² *Ibid.*, p. 272.

without first assessing its relation to other aspects of life, such as trade, the flow of information, the presence of international agencies and agreements? Finally, we need know more about what primary goods the parties are imagined as pursuing. Pogge depicts himself as following Rawls closely, and yet he also thinks that his parties will agree on a long list of Human Rights and will recognize a material basis for liberty. How far does he really intend to depart from Rawls's idea?

These are all questions that might be answered, although an adequate response will probably require departures from the Rawlsian framework. At this point, however, we arrive at the most serious difficulty with the Pogge-Beitz proposal: what is the bargain all about? The Rawlsian social contract takes place in Humean circumstances of justice, and it is a bargain for mutual advantage. Pogge has focused on the requirement of fairness that is built into Rawls's Veil of Ignorance and simply omitted Rawls's endorsement of Humean circumstances of justice as the starting point for the bargain. As Rawls insists, the requirement of equality among the parties is his analogue to the State of Nature in classical social contract doctrine, so if that is omitted we have a major departure from the contract tradition.

We have already seen that when the bargain is envisaged as taking place among nations, it cannot be cast in this form unless we omit not only nonliberal states but also pretty much everyone except the G8. If we imagine the bargain as taking place among individual persons, things are indeed different: for the individual persons of the world are at least morally equal, and in some ways they—all those who are not disabled, that is!—might be argued to be roughly equal in basic economic productivity and life chances, before the contingencies of life begin to affect them. But when is that? Surely not at any time after birth, for every child is born into a world that begins to affect its life chances directly and dramatically, through differential nutrition, differential cognitive stimulation, differential exposure to kindness or violence, and so on. As we have seen, life expectancy at birth in the poorest nations is half what it is in Australia; this aggregate figure derives from all kinds of differences at the level of individual lives.

Are individuals equal in life chances before birth? Surely not. Whatever account we give of the fetus, we must say that by the time a human being is born, differences in maternal nutrition, health care, bodily integrity, and emotional well-being, not to mention HIV status, have

already affected its life chances. For that matter, even getting the chance to be born is not a matter with respect to which there is rough equality: the staggering rise in sex-selective abortion in many developing countries means that females conceived in some parts of the world are grossly unequal in life chances both to boys in that same part of the world and to girls and boys in other parts of the world.

Unfortunately, then, the inequalities between nations that make the two-stage bargain exclude some nations in order to conform to the Humean circumstances of justice are translated into inequalities between persons in basic life-chances. There is no time when a human or even a potential human is alive that such inequalities do not obtain.

Pogge and Beitz abhor such inequalities in basic life chances. To cope with them, providing a philosophical rationale for an ambitious commitment to global redistribution, is the whole point of their project. But what I am trying to bring out is that this commitment is not so easily reconciled with the Rawlsian framework, even in the improved non-Rawlsian way in which they use it. It is all very well to say that the Original Position should be applied at the global level; as I have said, that idea does dramatize some important issues of fairness. But once we go into things in more detail, we find that the global bargain they propose actually requires a departure of major proportions from the Rawlsian framework. For it requires abandoning the Humean circumstances of justice as setting the stage for the bargain and including from the start all who are currently unequal in power. Above all, it requires admitting from the start that the point of the bargain is not, and cannot be, mutual advantage among "rough equals." It must be human fellowship, and human respect, in a more expansive sense.

5. SOCIAL COOPERATION: THE PRIORITY OF ENTITLEMENTS

Because we live in a world in which it is simply not true that cooperating with others on fair terms will be advantageous to all, we must boldly insist that this account of social cooperation, even in its moralized Kantian form, is not the one we need to guide us. We have and use ideas of cooperation that are much richer than this. These richer ideas already inhabit the precontractarian natural law tradition, as my epigraph from Grotius makes clear. With Grotius, we ought to think of ourselves as people who want to live with others. A central part of our own good,

the good of each and every one of us, is to produce, and live in, a world that is morally decent, a world in which all human beings have what they need to live a life with human dignity.

The capabilities approach is an outcome-oriented approach. It says that a world in which people have all the capabilities on the list is a minimally just and decent world. Domestically, it interprets the purpose of social cooperation as that of establishing principles and institutions that guarantee that all human beings have the capabilities on the list or can effectively claim them if they do not. It thus has a close relationship to institutional and constitutional design, and the capabilities on my list are understood as informal recommendations to nations that are making or amending their constitutions.

In the international case, how should the approach proceed? Some theories, such as Rawls, begin with the design of a fair procedure. My capabilities approach begins with outcomes: with a list of entitlements that have to be secured to citizens, if the society in question is a minimally just one. Especially in the current world, where institutions and their relations are constantly in flux, I believe it is wise to begin with human entitlements as our goal. We think what people are entitled to receive; and, even before we can say in detail who may have the duties, we conclude that there are such duties and that we have a collective obligation to make sure people get what they are due.

We think about human dignity and what it requires. My approach suggests that we ought to do this in an Aristotelian/Marxian way, thinking about the prerequisites for living a life that is fully human rather than subhuman, a life worthy of the dignity of the human being. We include in this idea the idea of the human being as a being with, in Marx's phrase, "rich human need," which includes the need to live cooperatively with others. We insist that a fundamental part of the good of each and every human being will be to cooperate together for the fulfillment of human needs and the realization of fully human lives. We now argue that this fully human life requires many things from the world: adequate nutrition, education of the faculties, protection of bodily integrity, liberty for speech and religious self-expression—and so forth. If this is so, then we all have entitlements based on justice to a minimum of each of these central goods. So far, things are very definite: the idea of what human beings need for fully human living is a vivid intuitive idea, realized in many human rights documents.

But if human beings have such entitlements, then we are all under a

collective obligation to provide the people of the world with what they need. Thus the first answer to the question “Who has the duties?” is that we all do. Humanity is under a collective obligation to find ways of living and cooperating together so that all human beings have decent lives. Now, after getting clear on that, we begin to think about how to bring that about. The focus on capabilities reminds us that we will need to make special efforts to address the unequal needs of those who begin from a position of social disadvantage. Moreover, a focus on capabilities, although closely allied with the human rights approach, adds an important clarification to the idea of human rights: for it informs us that our goal is not merely “negative liberty” or absence of interfering state action—one very common understanding of the notion of rights—but, instead, the full ability of people to be and to choose these very important things. Thus all capabilities have an economic aspect: even the freedom of speech requires education, adequate nutrition, and so forth.

Although the approach remains focused on the person as goal, and is committed to securing the basic goods of life for each, it is respectful of cultural difference in several ways: in the role carved out for nations in implementing and more concretely specifying the list; in the prominence, on this list, of the major liberties of speech and conscience; and in the idea that capability, not functioning, is the appropriate political goal—once an opportunity is given to people, they may choose what to do with it.

6. GLOBALIZING THE CAPABILITIES APPROACH: THE ROLE OF INSTITUTIONS

So far, the capabilities approach has announced some ambitious goals for the world and some general principles regarding pluralism and national sovereignty. Obviously, however, a great deal more remains to be said about precisely how the approach can be used to generate political principles for today’s world. To some extent, this job is a practical job, a job for economists, political scientists, diplomats, and policy-makers. Philosophy is good at normative reasoning and at laying out general structures of thought. In a rapidly changing world, however, any very concrete prescriptions for implementation need to be made in partnership with other disciplines.

To say this is not at all to say that philosophy is not urgently practi-

cal. Ideas shape the way policy-makers do their work. That is why, from its very inception, the capabilities approach contested the idea of development as economic growth and insisted on the idea of “human development.” That is why it seems crucial, now, to call into question the idea of mutual advantage as the goal of social cooperation. The capabilities approach is not remote and impractical, but urgently practical, when it urges us to rethink our ideas of social cooperation. For we can see that many short-sighted policies in development and international financial policy flow from such ideas.¹³

We can certainly go somewhat further than this, in speaking about realizing the capabilities in our world. We must, indeed, confront the question of how to allocate the duties of promoting the capabilities, in a world that contains nations, economic agreements and agencies, other international agreements and agencies, corporations, and individual people. To say that “we all” have the duties is all very well, and true. But it would be good if we could go further, saying something about the proper allocation of duties between individuals and institutions and among institutions of various kinds.

Institutions are made by people, and it is ultimately people who should be seen as having moral duties to promote human capabilities. Nonetheless, there are three reasons why we should think of the duties as assigned, derivatively, to institutional structures. First of all, there are *collective action problems*. Think of a nation. If we say that the citizens have duties to maintain the system of property rights, the tax structure, the system of criminal justice, and so forth, we are in one sense saying something true and important. There are no living beings in the state other than its people; there is no magical superperson who will shoulder the work. Nonetheless, if each person tried to choose individually, massive confusion would ensue. It is far better to create a decent institutional structure and then to regard individuals as delegating their ethical responsibility to that structure. Much the same is true in the international sphere.

Second, there are issues of *fairness*. If I care a lot about the poor in my country, and give a lot of my personal money to support their needs, I am thus impoverishing myself and my family, relative to those who begin in the same place but who do nothing for the poor. Any system of voluntary philanthropy has this problem. As long as others are not made

¹³ See George Soros, *New Republic* (August 2002).

to pay their fair share, whatever that is, the ones who do pay both have to do more (if the problem is to be solved) and have to incur a relative disadvantage that they would not incur if the system imposed a proportional burden on everyone.¹⁴

Finally, there is a more subtle issue about the personal life. In Utilitarianism, given that all moral responsibility is understood as personal responsibility to maximize total or average welfare, there is a large question about what becomes of the person and the sense that a person has a life. People are just engines of maximization. More or less all of their energy has to be devoted to calculating the right thing to do and then doing it. They will have to choose the careers that maximize total or average well-being, the friendships, the political commitments. The sense that there is anything that is really them or their own is difficult to maintain.¹⁵ This worry is really a set of closely related worries: about personal integrity, about agency, about friendship and family, about the sources of the meaning of life, and about the nature of political agency.

We do not need to elaborate all of these concerns further here in order to see that there is a great deal in them—and from the perspective of the capabilities approach itself. The capabilities approach aims at giving people the necessary conditions of a life with human dignity. It would be a self-defeating theory indeed if the injunction to promote human capabilities devoured people's lives, removing personal projects and space to such an extent that nobody at all had the chance to lead a dignified life.

A good solution to this problem is to assign the responsibility for promoting others' well-being (capabilities) to institutions, giving individuals broad discretion about how to use their lives apart from that.¹⁶ Institutions impose on all, in a fair way, the duty to support the capabilities of all, up to a minimum threshold. Beyond that, people are free to use their money, time, and other resources as their own conception of the good dictates. Ethical norms internal to each religious or ethical comprehensive doctrine will determine how far each person is ethically responsible for doing more than what is institutionally required. But

¹⁴ See Liam Murphy, *Moral Demands in Non-Ideal Theory* (New York: Cambridge University Press, 2001).

¹⁵ In one form, this family of objections is eloquently pressed by Bernard Williams, in "A Critique of Utilitarianism," in J. J. C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), pp. 77–150.

¹⁶ See Thomas Nagel, *Equality and Partiality* (New York: Oxford University Press, 1991).

the political task of supporting the capabilities threshold itself is delegated to institutions.

In the domestic case, we can easily say quite a lot about what institutions bear the burden of supporting the capabilities of the nation's citizens: the structure of institutions laid out in the nation's constitution, together with the set of entitlements prescribed in the constitution itself. This structure will include legislature, courts, administration and at least some administrative agencies, laws defining the institution of the family and allocating privileges to its members, the system of taxation and welfare, the overall structure of the economic system, the criminal justice system, and so forth.

When we move to the global plane, however, nothing is clear. If a world state were desirable, we could at least describe its structure. But it is far from desirable. Unlike domestic basic structures, a world state would be very unlikely to have a decent level of accountability to its citizens. It is too vast an undertaking, and differences of culture and language make communication too difficult. The world state is also dangerous: if it should become unjust, there would be no recourse to external aid. Moreover, even if those problems could be overcome, there is a deep moral problem with the idea of a world state, uniform in its institutions. National sovereignty, I have argued, has moral importance, as a way people have of asserting their right to give themselves laws.

If these arguments are good, the institutional structure at the global level ought to remain thin and decentralized. Part of it will consist, quite simply, of the domestic basic structures, to which we shall assign responsibilities for redistributing some of their wealth to other nations. Part of it will consist of multinational corporations, to whom we shall assign certain responsibilities for promoting human capabilities in the nations in which they do business. Part of it will consist of global economic policies, agencies, and agreements, including the World Bank, the International Monetary Fund, various trade agreements, and so forth. Part will consist of other international bodies (such as the United Nations, the International Labor Organization, the World Court, and the envisaged new world criminal court) and of international agreements in many areas (such as human rights, labor, and the environment). Part of it will consist of nongovernmental organizations, ranging from the large and multinational to the small and local.

The form this structure has assumed up until now is the result of history, rather than of deliberate normative reflection. There is thus an odd

fit between normative political philosophy and the details of a set of institutions as oddly assorted as this. It is also clear that the allocation of responsibility among different parts of the global structure must remain provisional, subject to change and rethinking. Notice, as well, that the allocation is an ethical allocation: there is no coercive structure over the whole to enforce on any given part a definite set of tasks. Nonetheless, we can articulate some principles for a world order of this kind, which can at least help us think about how capabilities can be promoted in a world of inequalities.

7. TEN PRINCIPLES FOR THE GLOBAL STRUCTURE

1. *Overdetermination of Responsibility: the Domestic Never Escapes It.* Most nations, well and honestly run, can promote many or even most of the human capabilities up to some reasonable threshold level. I have said that if justice requires the mitigation of global inequality, justice is not satisfied even if poor nations can promote the capabilities internally. Nonetheless, we can begin by insisting that they do all that is in their power. If the fulfillment of capabilities is overdetermined, so much the better.

2. *National Sovereignty Should Be Respected, within the Constraints of Promoting Human Capabilities.* In talking about justification and implementation I have already outlined the ideas behind this principle. In general, coercive intervention is justified in only a limited range of circumstances. But persuasion and persuasive use of funding are always a good thing. This brings me to my next principle:

3. *Prosperous Nations Have a Responsibility to Give a Substantial Portion of Their GDP to Poorer Nations.* The prosperous nations of the world have the responsibility of supporting the human capabilities of their own citizens, as Principle 1 asserts. But they also have additional responsibilities. They can reasonably be expected to give a great deal more than they currently give to assist poorer nations: the figure of 1% of GDP, while arbitrary, is a good sign of what might be morally adequate.

Less clear is the form that such aid ought to take: should it be given in the first instance to governments or also to NGOs? This must be left for contextual determination: the general principle would be not to undermine national sovereignty if the recipient nation is democratic, but

at the same time to give aid in an efficient way and also in a way that shows respect for the capabilities on the list.

4. *Multinational Corporations Have Responsibilities for Promoting Human Capabilities in the Regions in Which They Operate.* The understanding of what a corporation is for, until now, has been dominated by the profit motive. This understanding has not prevented corporations from devoting quite a lot of money to charity domestically, but there is no generally accepted standard of moral responsibility. The new global order must have a clear public understanding that part of doing business decently in a region is to devote a substantial amount of one's profits to promoting education and good environmental conditions. There are good efficiency arguments for this: corporations do better with a stable, well-educated workforce. Education also promotes political engagement, crucial for the health of a democracy; and corporations do well under conditions of political stability. Nonetheless, those arguments should be subsidiary to a general public understanding that such support is what decency requires. At the same time, corporations should undertake to promote good labor conditions, going beyond what local laws require.

5. *The Main Structures of the Global Economic System Must Be Designed to Be Fair to Poor and Developing Countries.* As I have said, the fact that many nations can feed all their people does not mean that it is fair for some countries to have additional burdens placed in their way. Exactly what this principle involves is a matter that economists debate and will long continue debating.¹⁷ But there is pretty general agreement that the ways in which the IMF and various global trade agreements have been operating are insufficiently informed by careful ethical reflection about these issues.

6. *We Should Cultivate a Thin, Decentralized, and Yet Forceful Global Public Sphere.* A world state is not, I have argued, an appropriate aspiration. But there is no reason why a thin system of global governance, with at least some coercive powers, should not be compatible with the sovereignty and freedom of individual nations. This system should include a world criminal court of the sort currently proposed, to deal with grave human-rights violations; a set of world environmental regulations, with enforcement mechanisms, plus a tax on the industrial

¹⁷ See, for example, Stiglitz, *Globalization and Its Discontents*, and the review of his book, summarizing pertinent criticisms, by Benjamin Friedman in the *New York Review of Books*, August 22, 2002.

nations of the North to support the development of pollution controls in the South; a set of global trade regulations that would try to harness the juggernaut of globalization to a set of moral goals for human development, as set forth in the capabilities list; a set of global labor standards, for both the formal and the informal sector, together with sanctions for companies that do not obey them; some limited forms of global taxation that would effect transfers of wealth from richer to poorer nations (such as the global resource tax suggested by Thomas Pogge); and, finally, a wide range of international accords and treaties that can be incorporated into the nations' systems of law through judicial and legislative action.¹⁸

7. *All Institutions and Individuals Should Focus on the Problems of the Disadvantaged in Each Nation and Region.* I have observed that national sovereignty, while morally important, risks insulating from criticism and change the situation of women and other disadvantaged groups within each nation. The situation of people (whoever they are, at any given time) whose quality of life is especially low, as measured by the capabilities list, should therefore be a persistent focus of attention for the world community as a whole. Although coercive sanctions will be appropriate in only some cases, our ability to justify a richer set of norms should lead to tireless efforts of persuasion, political mobilization, and selective funding.

8. *Care for the Ill, the Elderly, and the Disabled Should Be a Prominent Focus of the World Community.* A growing problem in today's world, as the population ages and as more and more people are living with HIV/AIDS, is the need to care for people in a condition of dependency. The state, the workplace, and the family must all change so that needs for care are met without crippling the well-being and the aspirations of women.

9. *The Family Should Be Treated as a Sphere That Is Precious But Not "Private."* The world community should protect the individual liberties of people, which includes their right to choose to marry and form a family and various further rights associated with that. But the protection of the human capabilities of family members is always paramount. The millions of girl children who die of neglect and lack of essential food and care are not dying because the state has persecuted them; they are dying because their parents do not want another female mouth to feed (and an-

¹⁸ In several cases, for example, the norms of sex equality in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) have been held to be binding on nations that have ratified it, in a way that has affected the outcome of legal disputes and also generated new legislation.

other dowry to pay), and the state has not done enough to protect female lives.

10. *All Institutions and Individuals Have a Responsibility to Support Education, As Key to the Empowerment of Currently Disadvantaged People.* Education is a key to all the human capabilities.¹⁹ It is also among the resources that is most unequally distributed around the world. Domestic governments can do much more in almost all cases to promote education in each nation; but corporations, nongovernmental organizations (funded by individual contributions, foreign aid from governments, etc.), and the global public sphere (in international documents and fora) can do a great deal more than they now do to promote universal primary and secondary education everywhere.

There is no natural place to stop this list of principles. One might have had a list of twenty principles, rather than ten. Nonetheless, the principles, together with the theoretical analysis that supports them, are at least a sign of what the capabilities approach can offer, as we move from goals and entitlements to the construction of a decent global society. If our world is to be a decent world in the future, we must acknowledge right now that we are citizens of one interdependent world, held together by mutual fellowship as well as the pursuit of mutual advantage, by compassion as well as self-interest, by a love of human dignity in all people, even when there is nothing we have to gain from cooperating with them. Or rather, even when what we have to gain is the biggest thing of all: participation in a just and morally decent world.

III. BEYOND “COMPASSION AND HUMANITY”: JUSTICE FOR NONHUMAN ANIMALS

Certainly it is wrong to be cruel to animals.... The capacity for feelings of pleasure and pain and for the forms of life of which animals are capable clearly impose duties of compassion and humanity in their case. I shall not attempt to explain these considered beliefs. They are outside the scope of the theory of justice, and it does not seem possible to extend the contract doctrine so as to include them in a natural way.

JOHN RAWLS, *A Theory of Justice* (p. 512)

¹⁹ See my “Women and Education: A Global Challenge,” forthcoming in *Signs*.