

parties are choosing principles for a state of some sort. There are strong reasons why no contractarian approach currently on offer is responsive to the changing configurations and loci of power in today's world, including multinational corporations and international agencies alongside states, in its thought about basic justice. But a Scanlonian type of contractarianism can probably include those entities and can also treat domestic basic structures as modifiable by international agreements.

Expressed in Scanlon's way, then, the idea of fair terms of cooperation (terms that cannot be reasonably refused) is a powerful intuitive way of capturing the idea that human beings are moral equals despite their widely differing circumstances in an unequal world. This idea is important in the discussion of global justice. But it can do little work in political thought without a political account of the good, particularly an account that specifies the basic entitlements of all human beings. The capabilities approach begins from such an account.

Martha Nussbaum,
— Forbids Justice — Disability,
Nationality,
Species membership
(2006)

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CAPABILITIES ACROSS NATIONAL BOUNDARIES

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*

i. Social Cooperation: The Priority of Entitlements

We live in a world in which it is simply not true that cooperating with others on fair terms will be advantageous to all. Giving all human beings the basic opportunities on which we have focused will surely require sacrifice from richer individuals and nations. Thus the classic theory of the social contract, even its moralized Kantian form, does not suffice to ground an inclusive form of social cooperation that treats all human beings with equal respect. But the shortcomings of this view of cooperation should not dismay us. Before the doctrine of the social contract was invented we had, and used, richer and more inclusive ideas of human cooperation. Beginning at least from Aristotle, and developed in the international context by Cicero and the Roman Stoics, we have available to us a political conception of the human being as a being capable of ethical reasoning, and also a being who wants and needs to live with others. These two features, ethical reason and sociability, combine in the Grotian idea that we are beings who have a common good and who seek a "com-

mon life . . . organized according to the measure of [our] intelligence.”

This intelligence is a moral intelligence. The three central facts about human beings that this moral intelligence apprehends are the dignity of the human being as an ethical being,¹ a dignity that is fully equal no matter where humans are placed; human sociability, which means that part of a life with human dignity is a common life with others organized so as to respect that equal dignity; and the multiple facts of human need, which suggest that this common life must do something for us all, fulfilling needs up to a point at which human dignity is not undermined by hunger, or violent assault, or unequal treatment in the political realm. Combining the fact of sociability with the other two facts, we arrive at the idea that a central part of our own good, each and every one of us—insofar as we agree that we want to live on decent and respectful terms with others—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 worthy of human dignity.

The capabilities approach is an outcome-oriented approach that supplies a partial account of basic social justice. In other words, it says that a world in which people have all the capabilities on the list is a minimally just and decent world. Domestically, it holds that one central purpose of social cooperation is to establish 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.

In the international case, how should the approach proceed? Once again, we have options. We may begin with the design of a fair procedure, as in the thin Scanlonian contractarianism we imagined at the end of Chapter 4; or we may begin with outcomes, with the basic goods to be realized. I suggested that

Scanlon's theory ultimately needs a political theory of the good. (On the other side, the idea of equal dignity already builds a quasi-contractarian component into my good-based theory, stipulating from the start that any distribution of basic goods must be one that shows equal respect to all. We shall see in section iv that another contractarian notion, the idea of reasonable agreement, will play a role in our theory as well, in articulating the idea of an international overlapping consensus. With these important qualifications, the capabilities approach begins from a theory of the good in terms of an account of basic human entitlements.

Before we can move further in articulating that approach, there is another challenge that we need to face: Is it, after all, coherent to begin from entitlements, or must we not, instead, begin from the idea of duties? One influential approach to global justice, represented most prominently by Onora O'Neill (following Kant), argues that we must begin with duties.¹ We think about what we have a duty to do and not to do to and for human beings, and this reflection informs us about what the recipient is entitled to receive. The other side in this debate, represented by Seneca and Cicero, by Grotius, by the modern human rights movement, and by human-rights-oriented thinkers such as Henry Shue and Charles Jones,² argues that we should begin with entitlements. We consider what people are entitled to receive, and, even before we can say who may have the duties, we conclude that there are such duties, and that we have some sort of collective obligation to make sure that people get what they are due. The capabilities approach begins with entitlements, both in the domestic and in the international case. We need, then, to confront the arguments of the other side.

No real approach is a pure duties-based approach. For we cannot possibly say to whom we owe something without thinking about people's needs, as Kant's example of the maxim of

nonbeneficence famously shows.³ The world without beneficence is not a world that the agent can will—because, on reflection, he sees that in that world he would lack things that he needs, and to which he feels entitled.⁴ Similarly, Rawls's Kantian proceduralism begins from Circumstances of Justice that include the needs of human beings for basic goods of life, and his account of just distribution relies heavily on an account of the "primary goods" that all human beings need to pursue their projects. We have said that the Scanlonian contractarianism that seems preferable to Rawls's as a basis for global justice will need, similarly, a robust theory of the good. Duties, in short, are never generated in a vacuum: the idea of needs, and of entitlements based upon needs, always enters in to inform us why the duty is a duty, and why it matters.

Nor is the duty-based tradition successful when it tries to argue that a duty-based account supplies political thought with a clarity and definiteness that entitlement-based accounts must lack. O'Neill claims that if we begin with people's needs for food and shelter, we have no clear way of assigning transnational duties. If, however, we begin with Kantian duties not to assault, not to lie, not to use another as a means, we have (she claims) no problem assigning those duties to everyone, and everyone can fulfill them. This distinction, however, is less clear than it at first appears.⁵ First of all, the entire Western tradition of reflection about global justice, beginning at least from Cicero, has understood the duty not to assault, and so on, to include, as well, a duty to protect people who are unjustly assaulted. This arm of the nonassault duty imposes taxing requirements, and is as difficult to assign to individuals and institutions as the duty to feed. Indeed, as Shue has argued, the military expenditures required to protect people from assault, torture, and so on are greater than the expense required to give all the world's people enough food.

Second, the duty not to use people as a means cannot be plausibly separated from critical scrutiny of the global economy and its workings, and thus from a consideration of possible global redistribution and other associated social and economic entitlements. People can be treated as means by being enslaved, raped, or tortured. But they are also surely treated as means when corporations put them to work in substandard conditions in order to maximize profit. The idea of treating human beings as ends has been a prominent part of critical reflection about working conditions, since Marx at least if not before. The related idea of protecting human dignity, as it is used in modern constitutional and legal thought, is understood to have clear implications for economic conditions and conditions of work. These concerns are at the heart of the account of entitlement in the capabilities approach, which traces its origins to the early Marx's conception of truly human functioning. And they are intensified by the current globalization of capitalism and profit-taking. It is clear that many people are being used as means, although it is not fully clear who has the duty to prevent this.

Furthermore, the notion of using a human being as a means, which lies at the heart of O'Neill's Kantian account of duty, can hardly be made clear without a related concept of human dignity, and of treatment worthy of it. But that is a concept that belongs to the side of entitlement: we need to have some sense of what it is to respect human dignity, of what treatment human dignity requires from the world, if we are to be clear about what treatment violates it.

I would argue, indeed, that so far as definiteness goes, the shoe is squarely on the other foot: we can give a pretty clear and definite account of what all world citizens should have, what their human dignity entitles them to, prior to and to some extent independently of solving the difficult problem of assigning the duties—although obviously there must be a level of general-

ity in our account of entitlements until we get a sense of how and what we might be able to deliver. The list of capabilities, deriving from the concept of a life worthy of human dignity, is much easier to draw up and justify than any particular assignment of the correlative duties, given the multiplicity of institutional and individual actors with which our account must deal. Furthermore, human need is a relatively stable matter, and thus there is some hope that we can give an account of basic human needs that will remain a reasonably constant one over time, whereas the shifting configurations of power in the global economy entail that any account of duties (unless it ignores institutions) will have to remain flexible and time-sensitive.

We think about human dignity and what it requires. My approach does 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 sociability and, further, the idea of the human being as a being with, in Marx's phrase, "rich human need." We insist that need and capacity, rationality and animality, are thoroughly interwoven, and that the dignity of the human being is the dignity of a needy emattered being. Moreover, the "basic capabilities" of human beings are sources of moral claims wherever we find them: they exert a moral claim that they should be developed and given a life that is flourishing rather than stunted.

We now argue, moving through the various areas of human life in which political planning makes choices that influence people's lives at a basic level, 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. In each case, an intuitive argument must be made that a life without a sufficient level of

each of these entitlements is a life so reduced that it is not compatible with human dignity.

These arguments are based in a kind of freestanding reflective intuition, not on existing preferences. For example, the argument that equal access to primary and secondary education is a fundamental human entitlement is based on the intuitive idea that human beings are stunted and "mutilated" (to use Adam Smith's word as he developed just such an argument) by not having the chance to develop their faculties through education. It is not by polling people and asking what they currently prefer that we reach this conclusion, for existing preferences about matters of education (especially, perhaps, women's preferences) are frequently deformed by lack of information, by intimidation, and by adaptation to a view of life according to which boys are entitled to education and girls are not. Nonetheless, as I have argued in criticizing informed-desire approaches in *Women and Human Development*,⁶ it is a good sign if these arguments converge with the deliverances of the best informed-desire approaches, those that build in informational and ethical constraints. Thus, for example, it is a good sign if women's groups, organized in accordance with procedures of adequate information, nondomination, and nonintimidation, are pressing for such entitlements; or if the best constitutional courts (such as those of India and South Africa), interpreting ideas of human dignity that increasingly figure in the world's constitutions, find such entitlements implicit in this idea of human dignity.

If this is so, then we all have entitlements based in justice to a minimum of each of the central goods on the capabilities list. So far, things are very definite, albeit at a high level of abstraction and generality: the idea of what human beings need for fully human living is among the most vivid intuitive ideas we share.

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. We may later find some good reason for delegating this obligation to a subgroup of human beings, but so far no such reason has been given, and we are imagining that we are all trying to find a decent way to live together. So far, then, 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.

Thus we begin with an intuitive conception that has great power and reach, including cross-cultural power. (This means that the freestanding argument can be made anywhere; it doesn't mean that preferences are the same everywhere, although, as I have said, the freestanding argument does derive confirmation from the convergence of constitutional courts, international human rights movements, and so forth.) Although no idea commands universal consensus in this sphere, the capabilities idea can command quite a broad consensus, just as modern human rights conceptions do. It seems likely that we are better thinkers about human functioning, and which lives are so reduced as to be violations of human dignity, than we are about the assignment of moral duties. To put the problem in terms of duty first, asking what duties we have to people in other nations, is likely to make our ethical thinking stop short when we reach a problem that seems difficult to solve.

For example, we think of the huge problem of global hunger and we say, of course we really can't have a duty to feed all the poor in India. Or, how on earth can we bring it about that all children in Africa learn to read? So we can't possibly have any duties related to education in Africa. Or, we say that we in the United States could not possibly have a duty to solve the enormous problem of HIV/AIDS in Africa, since the problem looks

so distant from our sphere of control. Duties and entitlements are ultimately correlative; but starting from duties is likely to make us throw up our hands when we reach a problem that looks unwieldy. Starting from entitlements prods us to think further and more radically, rather than pulling up short, as does O'Neill (like Cicero and Kant before her). We see that the problem has to be solved, if human dignity is to be respected. So there is a collective duty there, which we might have missed if we began simply from asking: "What ought I to do here?" We see duties we might have missed, and we give ourselves a strong incentive to solve the problem of their allocation. Quite simply, our world is not a decent and minimally just world, unless we have secured the ten capabilities, up to an appropriate threshold level, to all the world's people.

ii. Why Capabilities?

The capabilities approach is an outcome-oriented approach. It measures justice (or partial, minimal social justice) in terms of a nation's ability to secure to citizens a list of central capabilities, under some appropriate specification and up to a suitable threshold level. At this point, then, it seems important to ask why capabilities should be the measure chosen, rather than opulence, or utility, or the distribution of resources to individuals. These are familiar issues: indeed it was in connection with these criticisms of previously dominant approaches that the capabilities approach was originally introduced, and the arguments that commend it over standard Utilitarian approaches have been laid out in Chapter I, section vi. Nonetheless, the current international debate still ubiquitously uses other ideas, even though the idea of capability is making inroads. So the arguments need a brief recapitulation, to which we shall now be able to add a critique of resource-based conceptions.⁷

Before the capabilities approach was introduced, the dominant way of measuring well-being or quality of life in a nation (an issue relevant to the question of justice, though not always explicitly connected to it) was simply to ask about GNP per capita. That crude measure, of course, did not even take distribution into account, and thus rewarded nations for growth even if they contained great poverty and high rates of inequality. As Sissy Jupe says of her economics lesson in Charles Dickens' novel *Hard Times*, the dominant approach did not tell one "who had got the money and whether any of it was mine."⁹ The GNP approach also failed to take cognizance of other aspects of the quality of life that are not well correlated with economic advantage, even when distribution is factored in: aspects such as health, education, political and religious liberty, gender, and racial justice.

Slightly less inadequate was the common device of measuring well-being in terms of total or average utility, construed as the satisfaction of preferences. This account of social outcomes is in many ways very powerful, and it has certainly generated important work that promotes transnational redistribution.⁸ But it has a number of problems, on which the defenders of capabilities have long focused.⁹ First, it treats the individual as an input into a social calculus, and thus is insufficiently sensitive to the distinctness of each individual life. The misery of a few at the bottom can in principle be bought off by the exceeding well-being of many at the top. In general, thinking about total or average utility does not seem to be a good way of thinking about social justice, which ought to treat each and every person as an end, none as a means to the ends of others. Capabilities theorists and contractarians are utterly in agreement about that criticism.

Second, Utilitarianism in most of its forms treats all the important goods in a human life as commensurable with one another and fungible in terms of one another.¹⁰ But, once again,

that approach does not seem to be a very adequate way of thinking about social justice. One cannot atone for denials of the freedoms of speech and press by simply giving people a large amount of leisure time or some other social good. Each important entitlement is a distinctive thing in its own right.

Third, human preferences are highly malleable; they are particularly likely to adapt to expectations and possibilities. People often learn not to want things that convention and political reality have placed out of their reach. Economists call this the phenomenon of "adaptive preferences"; we observe it particularly often in women's aspirations, which adjust to time-sanctioned depictions of a woman's proper role, a woman's bodily weakness, and so forth. Even at the level of basic health and strength, women may come to be content with a bad state of affairs, if no better one is available. In this way, preference-based approaches frequently end up supporting an unjust status quo and opposing real change.¹¹

Finally, by focusing on the state of satisfaction, Utilitarianism shows a deficient regard for agency. Contentment is not the only thing that matters in a human life; active striving matters, too.

Far more adequate than the GNP and Utilitarian approaches is an approach to justice in distribution that measures social positions in terms of resources, adopting some account of the distribution that is required by justice. This approach, of which the economic part of Rawls's theory of justice is an instance, comes much closer to adequacy, when combined with a plausible account of distribution. There are problems, however, with Rawls's reliance on income and wealth as indices of relative social positions: social position is also affected by a variety of goods that are noncommensurable with wealth and income, and for which wealth and income are not good proxies. Furthermore, people vary in their need for resources of different sorts, and also in their ability to convert resources into actual functioning.

People who use wheelchairs need more resources than “normal” people if they are to become fully mobile, and some of the relevant resources will have to involve redesigning society, not just doling out money to individuals. In general, promoting the human development of traditionally deprived groups requires more money than promoting the development of the advantaged, and often it requires expensive structural changes as well. The resource-based approach thus can also reinforce the status quo.

iii. Capabilities and Rights

The capabilities approach, as should by now be evident, is closely allied to the human rights approach. Indeed, I regard it as a species of the human rights approach. The capabilities that I include in my capabilities list, like those that Ananya Sen mentions in illustration of his approach, include many of the entitlements that are also stressed in the human rights movement: political liberties, freedom of association, the free choice of occupation, and a variety of economic and social rights. And capabilities, like human rights, supply a moral and humanly rich set of goals for development, in place of “the wealth and poverty of the economists,” as Marx so nicely put it. In effect, capabilities cover the terrain occupied by both the so-called first-generation rights (political and civil liberties) and the so-called second-generation rights (economic and social rights). And they play a similar role, providing an account of extremely important fundamental entitlements that can be used as a basis both for constitutional thought within a nation and for thinking about international justice.

I would argue, however, that the language of capabilities, as both Sen and I have developed it, gives important precision and supplementation to the language of rights. The idea of human

rights is by no means a crystal-clear idea. Rights have been understood in many different ways, and difficult theoretical questions are frequently obscured by the use of rights language, which can give the illusion of agreement where there is deep philosophical disagreement. People differ about what the *basis* of a rights claim is: rationality, sentience, and mere life have all had their defenders. They differ, too, about whether rights are prepolitical or artifacts of laws and institutions. The capabilities approach has the advantage of taking clear positions on these disputed issues, while stating clearly what the motivating concerns are and what the goal is. As one can see from the analysis already provided in Chapter 3, the capabilities approach holds that the basis of a claim is a person’s existence as a human being—not just the actual possession of a set of rudimentary “basic capabilities,” pertinent though these are to the more precise delineation of social obligation, but the very birth of a person into the human community. Thus Sesha’s entitlements are not based solely upon the actual “basic capabilities” that she has, but on the basic capacities characteristic of the human species. Even if Sesha herself does not have the capacity for language, then, the political conception is required to arrange vehicles of expression for her, through adequate forms of guardianship. Such entitlements would not exist were capabilities based only on individual endowment, rather than on the species norm. Most human rights approaches fail to give definite answers to such questions.

Moreover, the capabilities approach, again as both Sen and I have developed it, holds very clearly that the relevant entitlements are prepolitical, not merely artifacts of laws and institutions. Thus a nation that has not recognized these entitlements is to that extent unjust. Most human rights approaches in today’s world also hold this, but one significant tradition in thought about rights disagrees, holding that rights are political artifacts. Once again, the capabilities approach is a species of

rights approach that provides clear answers to some urgent questions.

There are two ambiguities in rights talk that seem more important than others, in thinking about why we need capabilities language as well. One involves the issue of "negative liberty," the other the relationship between first-generation and second-generation rights. Some thinkers about rights hold that securing a right to a person requires only the inhibition of interfering state action. Fundamental entitlements have often been understood as prohibitions against such state action. If the state keeps its hands off, those rights are taken to have been secured; the state has no further affirmative task. Indeed, if one reads the U.S. Constitution, one sees this conception directly. Negative phrasing concerning state action predominates, as in the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances." Similarly, the Fourteenth Amendment's all-important guarantees are stated in terms of what the state may not do: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This phraseology, deriving from the Enlightenment tradition of negative liberty, leaves things notoriously indeterminate as to whether impediments supplied by the market or by private actors are to be considered violations of fundamental rights of citizens. Although the United States has to some extent moved beyond this thin conception of entitlements, through its tradition of constitutional interpretation, the thin approach is still evident in some areas.

The capabilities approach, by contrast, understands the securing of a right as an affirmative task. This understanding has been central to both Sen's and my version of the approach. The right to political participation, the right to the free exercise of religion, the right of free speech—these and others are all best thought of as secured to people only when the relevant capabilities to function are present. In other words, to secure a right to citizens in these areas is to put them in a position of capability to function in that area. To the extent that rights are used in defining social justice, we should not grant that the society is just unless the capabilities have been effectively achieved. Of course, people may have a prepolitical right to good treatment in this area that has not yet been recognized or implemented; or it may be recognized formally and yet not implemented. But by defining the securing of rights in terms of capabilities, we make it clear that a people in country C don't really have an effective right to political participation, for example, a right in the sense that matters for judging that the society is a just one, simply because this language exists on paper; they really have been given the right only if there are effective measures to make people truly capable of political exercise. Women in many nations have a nominal right of political participation without having this right in the sense of capability: for example, they may be threatened with violence should they leave the home. In short, thinking in terms of capability gives us a benchmark as we think about what it really is to secure a right to someone. It makes clear that to do this involves affirmative material and institutional support, not simply a failure to impede.

The Indian Constitution, unlike the U.S. Constitution, typically specifies rights affirmatively. Thus, for example: "All citizens shall have the right to freedom of speech and expression; to assemble peaceably and without arms; to form associations or unions" (art. 19). These locutions have usually been understood

to imply that impediments supplied by nonstate actors may also be deemed violations of constitutional rights. Moreover, the Constitution is quite explicit that affirmative action programs to aid the lower castes and women not only are not incompatible with constitutional guarantees, but are actually in their spirit. Such an approach seems very important for full justice: the state needs to take action if traditionally marginalized groups are to be treated fairly. Whether a nation has a written constitution or not, it should understand fundamental entitlements in this way. The capabilities approach, we may now say, sides with the Indian Constitution, and against the neoliberal interpretation of the U.S. Constitution. It makes it clear that securing a right to someone requires more than the absence of negative state action. Measures such as the recent constitutional amendments in India that guarantee women one-third representation in the local *panchayats*, or village councils, are strongly suggested by the capabilities approach, which directs government to think from the start about what obstacles there are to full and effective empowerment for all citizens, and to devise measures that address these obstacles.

A related ambiguity in the tradition of rights talk concerns the relationship between the first-generation and second-generation rights. Can political and civil liberties be secured prior to, and independently of, the securing of social and economic rights? So one very influential strand in the tradition of liberal political philosophy suggests, and so the very use of these terms in international human rights talk also suggests. Rawls's theory of justice is part of that tradition: his conception of justice gives liberty lexical priority over economic principles, although he also holds that at a lower stage of economic development the denial of equal liberty can be accepted "to enhance the quality of civilization so that in due course the equal freedoms can be enjoyed by all" (TJ 542). Both assertions strongly suggest the

conceptual independence of the two spheres, and the lexical ordering suggests that after a certain stage of development, liberty is causally independent of economic redistribution. One might, however, think differently: one might believe that an adequate account of freedom of speech involves discussion of economic distribution (for example, the distribution of education); even if one did not believe the two spheres to be conceptually interdependent, one might hold that freedom of speech and political freedom have material prerequisites, even in a developed society. One might argue, for example, that people who have inadequate or unequal access to education have not been fully given freedom of speech, since illiterate people are unlikely to be able to exercise political speech on a basis of equality with others. As Justice Marshall wrote in his dissenting opinion in a case concerning unequal educational funding, "Education directly affects the ability of a child to exercise his First amendment rights, both as a source and as a receiver of information and ideas."¹² Influential human rights thinkers have frequently stressed this interdependency, but it has not altogether been incorporated into documents and the discourse around them, which often rely on the (to my mind misleading) first-generation/second-generation distinction. In *Political Liberalism*, Rawls appears to grant this point, though with a tantalizing brevity: he suggests that the first principle covering equal basic liberties might be preceded by a lexically prior principle requiring that citizens' basic needs be met, "at least insofar as their being met is necessary for citizens to understand and to be able fruitfully to exercise those rights and liberties" (7). Rawls does not elaborate on the requirements imposed by this principle, but at least here he acknowledges the interdependence of liberty with economic factors.

The capabilities approach insists throughout on the material aspects of all the human goods, by directing our attention to

what people are actually able to do and to be. All the basic liberties are defined as abilities to do something. They have not been secured to people if, because of economic or educational deprivation, people are unable actually to function in accordance with the liberties that are guaranteed to them on paper. Thus the approach stresses the interdependency of liberties and economic arrangements.

A further advantage of the capabilities approach is that, by focusing from the start on what people are actually able to do and to be, it is well placed to foreground and address inequalities that women suffer inside the family: inequalities in resources and opportunities, educational deprivations, the failure of work to be recognized as work, insults to bodily integrity. Traditional rights talk has neglected these issues, and this neglect is no accident, I would argue: for rights language is strongly linked with the traditional distinction between a public sphere, which the state regulates, and a private sphere, which it must leave alone. More recently, feminists have won international recognition of many important human rights of women. But to do so they have had to challenge the public/private distinction, which is deeply bound up with traditional liberal rights thinking.¹³

The language of rights still plays an important role in public discourse, despite its unsatisfactory features. It emphasizes the idea of an urgent claim based upon justice. To say that people have a right to something is to say that they have an urgent entitlement to it. The idea of capability all on its own does not yet express the idea of an urgent entitlement based on justice. However, the capabilities approach makes this idea of a fundamental entitlement clear, by arguing that the central human capabilities are not simply desirable social goals, but urgent entitlements grounded in justice:

Like the human rights approach, the capabilities approach is a partial account of social justice. In my version of the approach, it

specifies not only a list of the ten central capabilities, but also (in a general way) a minimum threshold level to be met by the world community. Like the human rights approach, it insists that each and every human being in the world has entitlements to these important goods, and it assigns to humanity generally the duty of realizing these entitlements. Like the human rights approach, it is in one way nation-centered, recommending that the capabilities list be used as a criterion of social justice internally to each society, as in an account of basic constitutional entitlements.¹⁴ But it also supplies, as do human rights documents, goals for the international community as a whole, and for humanity as a whole. As we shall see, these two aspects are simultaneous and complementary: the world community and nation-states should be working toward these goals together.

Thus the capabilities approach should not be seen as a rival of the human rights approach. Especially as that approach is used in international discourse, for example in the *Human Development Reports* of the United Nations Development Programme, the approach dovetails well with the emphases of the capabilities approach, so that it seems best to regard the capabilities approach as one species of a human rights approach. But important work is still done by the emphasis on capabilities, which emphasizes the affirmative tasks of the public sphere and the interdependence of liberty with economic adequacy. Such an emphasis is particularly important in the United States and nations influenced by U.S. traditions of thinking about "negative liberty."

iv. Equality and Adequacy

The capabilities approach uses the idea of a threshold: for each important entitlement, there is some appropriate level beneath which it seems right to say that the relevant entitlement has not

been secured. The intuitive idea of a life with human dignity already suggests this: people are entitled not only to mere life, but to a life compatible with human dignity, and this entitlement means that the relevant goods must be available at a sufficiently high level. Up until now, however, the approach has insisted only on the idea of adequacy or sufficiency, and has stated that the question of what to do with inequalities above this minimum threshold is a further question that the approach has not yet answered. It is in that way as yet incomplete.

It seems crucial, however, to say more about the threshold: for we must indicate where, and to what extent, equality is part of the very idea of the threshold itself. The list itself suggests that there are some instances in which we will not tolerate inequality. Capability 7B, for example, speaks of "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." And it connects this idea to the idea of nondiscrimination. It seems crucial to go further at this point, spelling out the role of an idea of *equal* entitlement in the approach.¹⁵ Addressing the problem seems especially urgent in the international context, given the staggering inequalities we have mentioned.

The touchstones should be, I believe, the idea of human dignity and the closely related idea of the social bases of self-respect and nonhumiliation. Equality of capability is an essential social goal where its absence would be connected with a deficit in dignity and self-respect. We have seen that the idea of dignity is spelled out from the beginning in terms of equality: it is the *equal dignity* of human beings that demands recognition. Here the idea of equality is essential: we must add it to the bare idea of dignity in order to articulate the goal in an adequate way. But this idea has implications for many of the capabilities on our list as well. It appears that all the political, religious, and civil liber-

ties can be *adequately* secured only if they are *equally* secured. To give some groups of people unequal voting rights, or unequal religious liberty, is to set them up in a position of subordination and indignity vis-à-vis others. It is to fail to recognize their equal human dignity.

On the other side, there are other capabilities, closely connected with the idea of property or instrumental goods, where what seems appropriate is *enough*. For example, an *adequate* house or other shelter seems to be inherent in the idea of human dignity, and it seems right that constitutions all over the world are beginning to recognize the right to housing as a constitutional entitlement, following the creative lead of South African jurisprudence. It is not at all clear that an *equal* house is required by the very idea of human dignity or even of equal human dignity; for indeed a mansion may not be better than a modest house. House size, above a certain threshold, does not seem intrinsically related to equal dignity. Insofar as envy and competition make people *feel* that an unequal house is a sign of unequal dignity, we might wonder whether these judgments are not based on an excessive valuation of material goods, which a just society might decide not to honor. The case is not clear. As Adam Smith observed, what is compatible with human dignity may itself vary from society to society. In England, the ability to appear in public without shame requires a shirt; in some other nations it does not. We might add that the ability to sit in the front of the bus is connected to human dignity not timelessly, but through a set of social norms and practices. Thus the fact that house size is connected to dignity through social norms does not suffice to undermine the connection. It does, however, prompt a further inquiry. At least sometimes we may find that excessive valuation of competitive goods lies behind a social norm; a just society could decide not to honor that valuation.

This is surely one area where different nations with their different traditions will need to work out the problem for themselves through ample public deliberation.

In some areas that seem to fall on the material side, however, it does seem clear that grossly unequal shares fail to meet the adequacy condition. If education, for example, is arranged as it currently is in the United States, in such a way that students in a rich school district may have as much as 75 or 100 times as much spent on them as is spent on students in a poor district, such an allocation does seem to be an intrinsic violation of a norm of equal dignity and equal political liberty.¹⁶ At least where primary and secondary education are concerned, adequacy does appear to require something close to equality, or at least a very high minimum (perhaps allowing for divergences in aspects of education that are not firmly linked to basic opportunity and political participation). The same is true of basic essential health care: Whether higher education and nonessential health care are matters in which we may accept unequal shares as compatible with the threshold of adequacy, remains a question that societies will have to hammer out. In the international case we should aggressively pursue equality between nations in capabilities that are especially closely linked to the idea of equal human dignity, including primary and secondary education and access to basic health care. Whether inequalities elsewhere in the systems of education and health, and other material inequalities, are compatible with the recognition of equal human dignity will properly be a topic of ongoing cross-national debate.

Harry Frankfurt influentially argues that equality all on its own is not a distinct political value; it becomes important when it affects some other capacity, such as the capacity for speech, or self-respect, or a life with dignity, or for relationships not predicated on hierarchy.¹⁷ Apart from its connection to the content of these values, it remains a bare formal notion. The matter is very

difficult to think about, and all statements ought to be tentative. For the capabilities approach, at any rate, equality is important at the very base of the theory; for it is not just human dignity that must be respected, it is equal human dignity. This role for equality, however, does not entail that equality is a reasonable goal with regard to all the central capabilities, a position that has been the target of reasonable criticism by Ronald Dworkin and others.¹⁸ Some capabilities must be secured to citizens on a basis of equality, or equal dignity has not been respected. Others, however, do not seem to have this intrinsic relationship to dignity; with these, the capabilities approach supplies a threshold of adequacy. Some nations and individuals may prefer a more egalitarian solution with these capabilities as well. But it seems likely that if we want a political conception that can achieve an overlapping consensus among people who differ in their comprehensive ethical and religious doctrines, especially when we are considering transnational transfers of wealth, this conception is more likely to prove broadly acceptable than one that insists on equality in all the central capabilities. Individuals whose comprehensive doctrine is more exigent can at least recognize the political conception as compatible with their own doctrine, though it does not deliver everything that they would favor.¹⁹

v. Pluralism and Toleration

As we have seen, Rawls adopts a highly problematic principle of toleration in order to accommodate a wider range of traditional views and practices, in the international realm, than he was willing to accommodate in the domestic case. The capabilities approach remains focused on the person as the ultimate subject of justice, and thus refuses to compromise on the justification of the capabilities list itself. Nonetheless, a concern for cultural variety (both within a nation and across nations) has been a promi-

ment part of my version of the approach. This concern is internal to the capabilities list itself, with its robust protections for religious freedom, freedom of association, and so forth.

The rationale for this concern is, once again, the all-important idea of dignity and the associated idea of respect. All modern nations contain, internally, a wide range of religious and other views about human life. And the international community contains an even greater variety than does any single nation. So it is important to be respectful of the many ways citizens choose to live, provided that those do not cause harm to others in areas touched upon by the central capabilities. Such respect is what human dignity requires. Pluralism is therefore protected in six different ways in the content and use of the list. We may summarize them briefly here, showing how they affect the extension of the approach to the space between nations.

First, the list is understood as open-ended and subject to ongoing revision and rethinking. This open-endedness is even more important when we extend the approach to the international community, because we are more likely to hear in such debates good ideas that we did not hear before, or criticisms of our own ways of life that we had previously not taken seriously.

Second, the items on the list are specified in a somewhat abstract and general way, precisely in order to leave room for the activities of specifying and deliberating by citizens and their legislators and courts in each nation. Once again, leaving space here is particularly important in the international arena. Respecting differences in the way nations specify a given capability, with attention to their histories, is part of the respect for human autonomy that is involved in allowing the nation to play a large role on the world stage. Because respect for nations derives from respect for persons, it has limited latitude. Thus I have not endorsed Rawls's far broader principle of toleration, which allows nations to restrict religious liberty unequally or to deny certain

groups voting rights. On the other hand, in the gray area where there appear to be several different permissible ways of specifying the capability in question, respect for persons does seem to require respect for national differences.

Third, the list represents a freestanding "partial moral conception," introduced for political purposes only, and without any grounding in metaphysical ideas of the sort that divide people along lines of culture and religion, such as the idea of the immortal soul, or the idea of god or gods. It provides the basis for an overlapping consensus. With regard to overlapping consensus, the very definiteness of the list is actually an asset, not a liability. We show respect for others when we make explicit and public the items concerning which we want their agreement. Moreover, the fact that it is a relatively short list is itself respectful: we ask you to agree on these ten basic entitlements, but as for the rest, we leave you to your own devices. Thus I prefer my own definite list, for such reasons, to Sen's general defense of a "perspective of freedom," which might suggest the kind of comprehensive preference for free or autonomous lives that we find in liberal thinkers such as Joseph Raz and John Stuart Mill, a preference that usually ends up not showing equal respect for people who adhere to authoritarian religions. My approach, by contrast, says, "We ask you to sign on to this short list, but we say nothing about what makes lives go well in general." In this way, we allow the Amish, the Roman Catholic, and other believing citizens to join the international consensus without feeling derogated.²⁰

Fourth, if we insist that the appropriate political target is capability and not functioning, we protect pluralism here again.²¹ Many people who are willing to support a given capability as a fundamental entitlement would feel violated were the associated functioning made basic. Once again, this sensitivity seems particularly important when confronting the variety of cultures in

today's world. A Muslim woman may prefer to remain veiled, and the approach says nothing against this, provided that there are sufficient political, educational, and other capabilities present to ensure that the choice is a choice.

Fifth, the major liberties that protect pluralism are central items on the list: freedom of speech, freedom of association, freedom of conscience. A nation that does not protect these is halhearted about pluralism, or worse.

Sixth and finally, the approach, as we have already said, makes a strong distinction between issues of justification and issues of implementation. I believe that we can justify this list as a good basis for political principles all around the world. But this does not mean that we thereby license intervention with the affairs of a state that does not recognize them. It is a basis for persuasion.

In all these ways, the approach can claim to be respectful of pluralism and difference, without compromising on the basic entitlements of each person.

vi. An International "Overlapping Consensus"?

One of the features of Rawls's *Political Liberalism* that troubles many of his readers is his apparent shift in the direction of something like cultural relativism: the political conception is to be justified in terms of certain ideas understood to be implicit in the traditions of a liberal constitutional democracy. Rawls's frequent discussions of the history of Europe and North America indicate that he thinks of these Western traditions as in certain ways *sui generis*, and of the aftermath of the Reformation and the Wars of Religion as a distinctive cultural formation (see *PL* xxiii–xxviii). So it may be that Rawls believes his political conception justified only for democracies that are the heirs of that tradition, or even defined in terms of ideas that belong to that tradition.

This result would be disappointing to people who believe that something like his political liberalism can be justified as a good one for nations all around the world and even as a basis for transnational agreements.²² The ideas of Rawlsian political liberalism are ubiquitous in international discussions of peace and reconciliation among nations. I have heard them defended as bases for a stable peace between Israel and Palestine; for a stable evolution toward democracy in the Arab world; for the ongoing pursuit of pluralism in the Indian constitutional tradition. One may, of course, appropriate Rawls's ideas for these purposes no matter what he says, if they seem good ones for the job. But it seems important to ask whether he has any good arguments for his restriction, arguments that ought to make us think that nations outside Europe and North America cannot reasonably pursue a political liberalism along Rawlsian lines.

We must begin by distinguishing several distinct questions:

1. Does Rawls really relativize the justification of political liberalism (insofar as it goes beyond the human rights norms defended for all decent nations in *LP*) to the Western tradition, or does he admit all liberal constitutional democracies? And, if the former, does he give a good analysis of what he takes to be the distinctive history of these Western democracies?
2. Can a Rawlsian who accepts his political conception detach it from these limits and commend it as a good norm for societies worldwide, and how would such a Rawlsian answer Rawls's legitimate concerns about justification and stability?
3. Can a Rawlsian reasonably commend something like his norms as good norms for transnational society?

Rawls's idea of political justification is always holistic and "internal." In *A Theory of Justice*, the search for reflective equilibrium begins with "considered judgments" and systematically considers the alternative conceptions with those convictions in

play, striving for the best overall coherence and fit in the set of judgments and theories taken as a whole. What is new in *PL* is, first, a shift from a one-to-one "Socratic" conception of justification to a public political conception, in which "all citizens can examine before one another whether their political and social institutions are just" (9); and, second, the insistence that the conception to be justified must be built from, and expressed in terms of, "certain fundamental ideas seen as implicit in the public political culture of a democratic society" (13); elsewhere, and most often, Rawls adds that the democracy is "constitutional." The "tradition of democratic thought," whose content is "familiar and intelligible to the educated common sense of citizens generally," serves as "a fund of implicitly shared ideas and principles" (14). In that sense, the conception "starts from within a certain political tradition."

These two shifts are clearly connected with the central issue of stability. Rawls plainly believes that a conception cannot be justified unless we can show that it can be stable over time for the right reasons; and he also seems to think that we cannot show that it can be stable unless the conception uses materials that are already implicit in the political tradition. Of course he knows that these ideas (of "free and equal citizens," "fair terms of cooperation," and so forth) are far from the only ideas embedded in the tradition; many ideas that are in tension with these ideas are present also in the nations he is considering. But he does rely on the salience and longevity of the ideas on which he builds.

In his "Reply to Habermas," published along with *PL* in the expanded edition, Rawls distinguishes three types or levels of justification. *Pro tanto* justification takes place when the political conception is duly laid out and it is shown how it answers a wide range of political questions, so that it seems to be complete (*PL* 386). Second, full justification is carried out "by an individual

citizen as a member of civil society," by "embedding [the political conception] in some way into the citizen's comprehensive doctrine as either true or reasonable" (*ibid.*). This part of the justification process corresponds most closely to the Socratic account of justification in *TJ*. At this stage, the person does not yet ask whether other people accept the political conception. Finally, the doctrine must be justified publicly by political society. That final justification happens only "when all the reasonable members of political society carry out a justification of the shared political conception by embedding it in their several reasonable comprehensive views," in the process taking one another into account (*PL* 387). For this stage to occur, the society must be one that is already well ordered by the political conception. Justification requires the existence of an overlapping consensus and records the fact of that consensus.

In Rawls's view, then, none of the existing nations, Western or nonwestern, can as yet carry out the third stage of justification, because none is well ordered in accordance with his political conception. So the fact that there is not currently an overlapping consensus about Rawls's ideas in a given society does not disqualify that society from being the sort of society for which such a conception may over time be fully justified. As Rawls explicitly says, "political liberalism looks for a political conception of justice that we hope can gain the support of an overlapping consensus of reasonable religious, philosophical, and moral doctrines in a society regulated by it" (*PL* 10). That is of course very different from claiming that the society must already have such a consensus. All that seems to be required is that the requisite ideas be embedded there in some form.

At times, however, Rawls suggests a further narrowing: the core ideas of the conception are to be drawn from the political tradition of a constitutional democracy. In other words, only a nation that is already a constitutional democracy can use these

ideas, not one in which such ideas are present without as yet having brought about the transition to constitutional democracy. At times, in talking about the Reformation and its aftermath, he indicates yet a further restriction: "the historical origin of political liberalism (and of liberalism more generally) is the Reformation and its aftermath, with the long controversies over religious toleration in the sixteenth and seventeenth centuries" (*PL* xxvi). He argues that the Reformation introduced something "new," namely, the idea of "a transcendent element not admitting of compromise." He argues that neither the Greco-Roman world nor the medieval world contained this idea (xxiii-xxviii). So these historical ruminations, if we connect them closely to the definition of political liberalism, suggest that political liberalism must be made up from the traditions of nations that experienced the particular sort of clash that the Reformation inaugurated. This limitation might mean not only that the account is justifiable only within Western constitutional democracies, but also that it is justifiable only within democracies that were seriously marked by the experience of the Reformation and the Wars of Religion: thus, perhaps not the Nordic countries, or Italy, or Russia, or the nations of Eastern Europe, or Greece, all of whose histories are significantly different from those of Germany, France, the Netherlands, Great Britain, Ireland, Canada, and the United States, which are the central cases for Rawls's historical idea.

There are many difficulties with Rawls's reading of European and U.S. history. For one thing, it underestimates the amount of conflict over comprehensive doctrines within the Greco-Roman world. But let us leave this issue to one side, since it is not relevant to our question about the extension of political liberalism. What is more serious is that Rawls seems totally to neglect the existence of nonwestern constitutional democracies with their own traditions of toleration and accommodation: India, Bangla-

desh, South Africa, Turkey, Japan, and by now many others. In the cases of Turkey and India, the history of clashes and accommodations is long and complex. For India one may plausibly argue that ideas of religious respect and toleration are far older than they are in the so-called Western tradition: the edicts of Ashoka, himself a convert from Hinduism to Buddhism in the third century B.C.E., promulgate a norm of mutual respect and toleration. So, too, did the official policies, much later, of several leading emperors of the Moghul Empire. In the case of Turkey, the Ottoman Empire had well-known policies of religious accommodation. None of these is identical with the norms favored by Rawls, but then no norm that old is identical with Rawls's norms. Even the Peace of Westphalia established religious pluralism *among* nations, allowing repression within each nation. So, too, with the founding of the United States, which permitted individual states to continue establishing a particular religion and disfavoring others. Even the free exercise clause was not applied to the states until after the Civil War, although all state constitutions favored the idea.

In short, if we hold that a political tradition of relevant ideas is a necessary basis for political liberalism, we ought to hold that this condition is fulfilled by India and Turkey and, I would say, many if not most of the existing constitutional democracies of the world, all of which have traditions, longer or shorter, of committing themselves to similar ideas—not only the idea of toleration itself, but also ideas of equality, respect, and human dignity. Indeed, one might argue that equality of capability is a far more prominent feature of the Indian and South African constitutional orders than of the U.S. constitutional order.

What about nations that are not currently liberal constitutional democracies? Can't one argue that Rawls's ideas are good ones for them, too? After all, there is nowhere in today's world where ideas of human rights, human dignity, human equality,

and fair terms of cooperation are not widespread. Even in China, where there is not yet a liberal constitutional democracy and where tradition is in some ways at odds with the key ideas in Rawls's conception, there are also long-standing seeds of such ideas, and the modern debate has drawn on them, moving liberal ideas into the forefront of political thinking.²³ It seems not implausible to think that we may build on these ideas, offering public arguments in the international arena that these ideas are the ones that ought to prevail within nations where they do not yet prevail.

At this point, we run into the key issue of stability: the more radical a conception is, within a given society, the more difficult it will be to maintain that Rawls's conception can over time become the object of an overlapping consensus. But it seems to me that in the modern world the ideas of human rights are by now so deeply rooted and so widespread that it is not possible to say of any nation that it cannot achieve such a consensus over time. (Nor it seems to me, is it possible to affirm with confidence that a nation such as our own cannot move in the opposite direction. Indeed, on many of the issues of concern to Rawls, the United States has been moving further and further away from anything like consensus.) So I am inclined to say that the elastic requirement of hope-for-consensus that Rawls introduces is good enough for any nation living under modern conditions in a world characterized by a world culture of human rights. People need only draw on the ideas inherent in that world culture, whether or not their own nation currently exhibits the structure of a constitutional liberal democracy.

What of transnational agreements? May we hope that a conception of international society based on the central human capabilities could over time achieve a consensus of the Rawlsian type? In fact the ideas of political liberalism are even better established in the international realm than they are in the domestic

setting. The Universal Declaration of Human Rights was framed with reference to just such ideas. Well before the Rawlsian idea of "political liberalism" had currency, Jacques Maritain, one of the architects of the Universal Declaration, maintained that people who differed about metaphysical matters could agree for practical political purposes on a list of human rights.²⁴ And in the actual framing of the declaration this distinction between a practical agreement and the metaphysical realm proved extremely important as participants from different religious traditions tried to show respect for one another's differences.²⁵

The Universal Declaration offered only a thin basis for international society, in that it still envisaged the securing of human rights as a matter for individual state action, not for the international community as a whole. But the trend toward cooperation and mutuality in enforcement suggests that these ideas have gradually taken center stage as bases for international agreements, institutions, and organizations.

I conclude that there is no barrier of principle or argument against pursuing the central human capabilities as goals for every nation, and also for international society. Indeed, what makes Rawls's conception particularly attractive in this context is its deep respect for religious traditions and its careful distinction between comprehensive doctrines and the domain of the shared political conception. Many people who would not sign on to a comprehensive liberalism of the traditional Western sort can, let us hope, support a consensus that allows metaphysical matters to remain on the outside of the political, a part of each person's comprehensive doctrine. The chance for such a consensus is increased by the content of the capabilities approach itself, which includes many items that have been central to discussion in the international community, such as education, health care, housing, and labor conditions, all items that are not discussed in Rawls's conception.

vii. 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 policymakers. 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 to say that philosophy is not urgently practical. Ideas shape the way policymakers do their work. That is why, from its very inception, the capabilities approach has contested the idea of development as economic growth, insisting on the idea of "human development." Reconceiving development as "human development" does influence the goals that policymakers pursue and the strategies they choose. Similarly, it is of urgent practical importance to challenge the idea that mutual advantage is 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 the development area and even in the area of international financial policy flow from such ideas.²⁶ There is perhaps nothing more urgent, in a world increasingly driven by multinational corporations and the power motive that is built into their operations, than to articulate a set of humanly rich goals for development, and a set of more general attitudes about the purposes of cooperation that will be needed to sustain people in the pursuit of these goals.

There remains, however, a legitimate question about where the sphere of philosophical normative thinking leaves off and the sphere of the more empirical disciplines begins. Philosophy seems best at articulating basic political principles at a rather high level of abstraction, leaving it to other disciplines to think how, as institutions and their configurations change, those principles can be made reality.

Nonetheless, we can certainly go somewhat further than we have in speaking about the realization of the capabilities in the modern world. One question that must certainly be confronted is the question of how to allocate the duties of promoting the capabilities in a world that contains nations, transnational economic agreements and agencies, other international agreements and agencies, corporations, NGOs, political movements, 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 at least 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 four 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 its 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 tries to think individually what is to be done, this would be a recipe for massive confusion and failure. It is far better to create a decent institutional structure and then to regard individuals as having del-

egated their personal ethical responsibility to that structure. Much the same would seem to be true of the international sphere, although the analogy is not precise, as we shall see.

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 in comparison 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 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.²⁷

Third, there is a point about *capacity*: it is possible to argue cogently that institutions have both cognitive and causal powers that individuals do not have; powers that are pertinent to the allocation of responsibility. If we think about a harm such as global warming, the share contributed by each individual may be so small as to be causally insignificant, whereas a nation or a corporation will have a recognizable causal role. Moreover, nations and corporations have powers of prediction and foresight that individuals in isolation do not have. It seems plausible that such facts give us a further reason to think of responsibilities for promoting human capabilities as institutional rather than personal.²⁸

Finally, there is a more subtle issue, or set of issues, about the personal life. In classical Utilitarianism, with all moral responsibility being 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 careers, friendships, and political commitments that maximize total or average well-being. The sense that there is anything that is really them or their own is difficult to maintain.²⁹ This worry is really a set of closely related worries, for the unlimited sense of responsibility in Utilitarianism raises questions 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. Moreover, there is a great deal in them from the perspective of the capabilities approach itself. The capabilities approach aims at giving people the necessary conditions of a truly human life. It would be a self-defeating theory indeed if it were understood in such a way that the injunction to promote human capabilities devoured the life of each person, removing personal projects, concerns, and space to such an extent that nobody at all had the chance to lead a truly human life (assuming such concerns are part of a truly human life, as the capabilities list suggests).

We can see that these worries are closely related to the collective action problem and the fairness problem. One reason why Utilitarian calculation looks so costly and time-consuming is that it involves calculations in which the likely behavior of others is highly uncertain; one reason why its removal of personal liberty seems unusually extreme is that we typically imagine the Utilitarian agent as shouldering the burden of maximizing good in a world in which most people are going their own selfish ways.

It seems plausible that a good solution to this problem, as to its relatives, 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 the sphere in

which institutions exact duties.³⁰ Institutions impose on all, in a suitable fair way, the responsibility to support the capabilities of all, up to a minimum threshold. Beyond that (so far as fundamental entitlements go), people are free to use their money, time, and other resources as their own comprehensive conception of the good dictates. (The full requirements of justice, once spelled out, may alter the picture, but on those the jury is still out.) There will be ethical norms internal to each religious or ethical comprehensive doctrine that determine how far each person is ethically responsible for doing more than what is institutionally required. But the political task of supporting the capabilities threshold itself is assigned in the first instance to institutions.

We can see that this division between the institutional and the ethical corresponds to a familiar distinction, in liberal (and especially political-liberal) theory, between the political sphere and the spheres of people's own personal (or shared) comprehensive conceptions of value.³¹ Indeed, liberalism, understood as a political liberalism committed to respect for a wide diversity of religious and other comprehensive conceptions of value, requires such a division. The principles that citizens endorse for the political sphere are but a subset of the ethical principles that they endorse in their lives as a whole. Were that not the case, there would not be enough room in the system for plurality and diversity, and that system would be dictatorial, rather than respectful of the diversity of people's comprehensive value-commitments. So the general structure of political liberalism requires a sphere of ethical choice outside that which is politically compulsory. Such a bifurcation between political values and broader social values is also required by some more specific precepts that lie at the heart of the capabilities approach, such as freedom of association, the free choice of occupation, freedom of religion, and freedom of travel.

viii. Globalizing the Capabilities Approach: What Institutions?

Institutions, then, must play a large role in promoting human capabilities. But here the analogy between the domestic situation and the global situation begins to break down. In the domestic case, we can easily say quite a lot about the set of institutions that have the responsibility of supporting the human capabilities of the nation's citizens. The responsibility-bearing structure is what John Rawls has called a nation's "basic structure," that set of institutions that determines people's life chances pervasively and from the start of a human life. 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 of the nation, the general outlines of the criminal justice system, and probably other structures as well. Although what belongs in the "basic structure" changes over time, in the sense that a given part of the administration (for example, the Environmental Protection Agency or the Department of Education) might come to seem a more fundamental and basic part of the structure of promoting human capabilities at one time than at another time, there is general clarity about what the institutional structure involves, and even some clarity about what duties belong to each of its parts.

We can go somewhat further. Some general principles concerning institutions and their relationships can be defended as crucial to the promotion of human capabilities.³² *Separation of powers*, along with *judicial review*, has emerged over time as a structure that is essential to the protection of citizen capabilities. (Nowhere is this clearer than in India's Emergency—1975–1977—in which Indira Gandhi's assault on judicial review led to

a suspension of many Fundamental Rights. The current system, highly protective of the judiciary's role, is a response to that grave failure.) An appropriate degree of *federalism* or *decentralization* also seems an important aspect of making the governmental structure responsive to people's voices and protective of their capabilities. The very arguments that lead us to support the nation as a structure expressive of people's autonomy also lead us, especially in very large nations such as India and the United States, to favor a certain measure of federalism or local autonomy, which, however, should not have the power to compromise the equality of citizens or to abrogate fundamental entitlements.³³ Another important feature of a modern nation protective of human capabilities will be *independent administrative agencies*, whose expertise is essential to protecting capabilities in health, environment, and other areas, and whose independence from partisan control is therefore an important structural feature of a nation adequately designed to protect capabilities. Since corruption is one of the problems, in modern nations, that most severely threaten human capabilities, *mechanisms to detect and prevent corruption*, both in government and in business, are absolutely essential to the stability of the capabilities and the conception based on them. We can also insist that *legal education* and the *training of law enforcement officers* should be done with the protection of citizen capabilities in mind. Thus, where discrimination on the basis of race, religion, or sex is a pressing social problem, education should incorporate a focus on race and gender issues.

Finally, and most generally, we should insist that the whole public order be designed so as to prevent gross inequalities of access and power. A nation may have an admirable constitution but be, in daily life, a plutocracy, if the media and political campaigns are unduly controlled by wealthy individuals and groups.

Such is the case in today's United States; for that reason, human capabilities are gravely at risk.

³³ Thus the capabilities approach is rights-centered, in the sense that the entitlements of persons based on human dignity lie at the core of the conception, and structural features are judged good or bad in relation to these. But this does not mean that the capabilities approach can have nothing to say about structure: indeed, the very fact that the promotion of human capabilities is the central goal gives the debate about structure a point and a focus, and gives us clear reasons for preferring some structures to others.

When we move to the global plane, however, nothing is clear. If a world state were desirable, we could at least describe what its structure might be like. But it seems that such a state 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 just too vast an undertaking, and differences of culture and language make the requisite communication too difficult, at least at present. Nor does it seem clear that we ought to promote the sort of cultural and linguistic homogeneity that would make such a state more workable. Diversity is a valuable part of our world, and is already under threat. We should not further undermine it without very strong reasons.

A world state would also be dangerous. If a nation becomes unjust, pressure from other nations may prevent it from committing heinous crimes (whether against its citizens or against other nations). If the world state should become unjust, there would be no corresponding recourse; the only hope would be for rebellion from within. In history that hope has not always proven reliable: the worst tyrannies in modern times have not fallen without external pressure.

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 and requirements. National sovereignty, I have argued, has moral importance, as a way people have of asserting their autonomy, their right to give themselves laws of their own making. If we think about this moral importance historically, we can see that one very important part of this autonomy was the right to do things differently from one's neighbors. To be sure, this freedom assumed a particular salience because each nation was internally not respectful of different religions and ways of life. Thus the only way for a Protestant to enjoy religious liberty was to live in a Protestant nation, and so on. To the extent that respect for pluralism is a part of each domestic structure, the case for national variety grows somewhat weaker. And yet it does not disappear: for there are differences of language, culture, and history that still may legitimately be defended as salient. The capabilities approach insists that certain core entitlements should be part of domestic constitutions the world over. But it leaves a great deal of room for diversity of interpretation and institutional structure, and for diversity in areas outside the core. To protect national sovereignty in a world of pluralism is an important part of protecting human freedom. In that sense, any world state is *ipso facto* tyrannical.

If these arguments are good ones, 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 which 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, and various trade agreements. Part will consist of other international bodies, such

as the United Nations, the International Labour Organization, the World Court and the new world criminal court, and of international agreements in many areas, such as human rights, labor, and environment. Part of it will consist of nongovernmental organizations of many kinds, ranging from the large and multinational (such as OXFAM) to the small and local.

The form this structure has assumed up until now is the result of a combination of historical factors, 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 these different parts of the global structure must remain provisional and informal, and subject to change and rethinking. Notice, as well, that the allocation is an ethical allocation, and political only in the sense that it is aspirational and we should try to bring it about, since there is no coercive structure over the whole that would enforce on any given part a definite set of tasks. In that sense, my approach is a version of the old natural law approach: the requirements at the world level are moral requirements, not captured fully in any set of coercive political structures.

Nonetheless, we can articulate at least some principles for a world order of this kind, which can at least help us think about how human capabilities can be promoted in a world of inequalities.

ix. 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. As Amartya Sen has stressed, famine can be avoided by a decent system of entitlements, together with a free

press and political democracy. I have argued against the use John Rawls makes of Sen's theory, for he uses it to deny that richer nations need to give economic aid to poorer nations. If justice requires the mitigation of global inequality, justice is not satisfied even if poor nations can promote the capabilities internally—any more than domestic justice is satisfied without redistribution just because thrifty poor families may eke out a minimally acceptable existence. Without endorsing any specific principle of redistribution, such as the Rawlsian Difference Principle, and operating only with our idea of the social minimum as expressed in the capability threshold, we can say that it is unjust if poorer nations have to struggle against greater obstacles than rich nations in order to meet their fundamental commitments. Nonetheless, we can begin by insisting that they do all that is in their power. Assigning responsibility to the world economic structure does not mean that we excuse the domestic structure from responsibility. 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 my section on justification and implementation (Chapter 4, section iv) I have already outlined the ideas behind this principle. In general, coercive intervention is justified only in a limited range of circumstances; international treaties and agreements can also play a coercive role, as discussed in Principle 6 below. But persuasion and persuasive use of funding are always a good thing. This brings us to the 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. In a world in which so many human beings have luxuries that do not meet any central human

need and so many more are deprived of what they need, it seems unconscionable that a world based on the ideas of mutual cooperation and respect for human dignity should not commit itself to very significant redistribution. Richer nations can reasonably be expected to give a great deal more than they currently give to assist poorer nations: the figure of 2 percent of GDP, though arbitrary, is a good sign of what might begin to be morally adequate. (The United States currently devotes .01 percent of GDP to foreign aid; the European nations devote something less than 1 percent, though some, such as Denmark and Norway, come close.) The precise figure is debatable; the general principle is not.

Less clear is the form such aid ought to take: Should it be given in the first instance to governments, or also to NGOs? Again, this decision should 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 a way that shows respect for the capabilities on the list. If the democratic nation has serious problems of governmental corruption, there may be good reason to give aid through NGOs rather than through the government. Another reason for bypassing the government might be that it deals unfairly with deprived minorities. Thus nations seeking to fund education in India in 2003 might have been better advised to give to NGOs rather than to the national government, if an education ministry was focusing on Hinduizing the curriculum, for example, rather than on extending basic opportunities to all.³⁴ Efficiency, concern for the capabilities on the list, and concern with the disadvantaged and excluded all suggest a focus on groups that provide education for women and other neglected groups.³⁵

4. *Multinational corporations have responsibilities for promoting human capabilities in the regions in which they operate.* The

understanding of what a corporation is for, up 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 is to devote a substantial amount of one's profits to the promotion of education and good environmental conditions in the regions in which the corporation does business. There are good efficiency arguments for this: for example, 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 may require of them.

To some extent corporations can be controlled by domestic laws in each country. But the difficulty is that all countries want to attract them, and there is sometimes a race to the bottom as each one seeks to offer cheaper labor and less burdensome environmental regulations than its competitors. So the main responsibility must rest on the members of the corporation themselves, their lawyers, and, very importantly, their consumers, who may bring pressure to bear on a corporation to perform better than it has been performing.

In some instances a corporation, or type of corporation, may face special responsibilities inherent in its subject matter. Thus today pharmaceutical companies face special responsibilities to address the global AIDS crisis, by marketing their products at affordable prices in the countries most affected, and by contributing to the development of a health infrastructure sufficient to

enable delivery of them. Again, the consumer is a crucial agent in enforcing this responsibility: so at this point we do come back to the question of individual responsibility, as the source of the pressure to assume a corporate responsibility already allocated (in our ethical argument).

5. *The main structures of the global economic order must be designed to be fair to poor and developing countries.* The fact that many nations can feed all their people does not mean that it is fair for some countries to have additional obstacles placed in their way. Exactly what this principle involves is a matter that economists debate, and will long continue debating.³⁶ 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. The World Bank has recently been somewhat more attentive to ethical issues and issues of poverty, and its development in this direction continues. In part, the problem is that of any bureaucratic structure: the norms of the most thoughtful people typically seem too complicated to give a clear and immediate policy prescription that the bureaucrat can go out and implement.³⁷ In part, too, there is the persistent sense that ethical norms are "soft" and not what the hardheaded policymaker should be thinking about. The world community must continue to apply pressure to these agencies, since voices of protest have been quite important in getting the voices of deprived people to be heard. In the area of trade, particularly, protest and public pressure are likely to be the only mechanisms that will successfully promote attention to urgent moral norms.

6. *We should cultivate a thin, decentralized, and yet forceful global public sphere.* A world state is not 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 being initiated, to deal with grave human rights violations; a set of world environmental regulations with enforcement mechanisms, plus a tax on the industrial 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);³⁸ and, finally, a wide range of international accords and treaties that, once ratified by the nations, can be incorporated into the nations' domestic systems of law through judicial and legislative action.³⁹ Existing global institutions such as the World Health Organization, the ILO, and the UN Development Programme, UNICEF, and UNESCO can all play a valuable role, but it seems a bad idea to assume that the current structure of such institutions will remain fixed, since we can see how new institutions have in many cases emerged to deal with new problems.

7. *All institutions and (most) individuals should focus on the problems of the disadvantaged in each nation and region.* We have observed that national sovereignty, though 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: not just for institutions but for all individuals who are not themselves unusually burdened. (Members of disadvantaged groups frequently play a very creative role

in mobilizing world action, as has happened in the international women's movement. Nonetheless, it seems that the duty to solve grave problems should rest primarily with those whose lives are not lived in desperate circumstances.) 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 and political mobilization, as with the work that led to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Selective use of funding can greatly assist the process of raising the living standard of these people and groups.

8. *Care for the ill, the elderly, children, 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. Chapter 3 has already discussed the problems of sex equality posed by currently inadequate arrangements for care. 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. Again, this is a task that requires both domestic and international work, and it is one in which richer countries have a duty to assist poorer ones, for example by developing the nursing and health infrastructure requisite to cope with the HIV crisis.

9. *The family should be treated as a sphere that is precious but not "private."* Social contract theories have long segmented the world into a "public sphere" and a "private sphere," and such theorists have typically treated the family as a domain off-limits to political justice. Rawls's complex and tortuous engagement with this question shows how difficult it is for even the most concerned such theorist to solve the problems posed by inequalities of resources and opportunity within the family.⁴⁰ The world community should protect the individual liberties of people, in-

cluding their right to choose to marry and form a family,⁴¹ and various further associated rights, including some parental rights over choices regarding their children. But the protection of the human capabilities of family members is always paramount. The millions of female 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 another dowry to pay), and because the state has not done enough to protect female lives. The world community has been very slow to respond to the problem of differential care for girls and boys, precisely because both Western and nonwestern traditions have constructed the home as an inviolable domain of personal prerogative.⁴² Finding a new approach to the family that is both respectful of associational liberty and protective toward the capabilities of children should be a priority of the global public sphere, as of domestic political debate in each nation.

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.⁴³ And, as we have seen, it is among the resources most unequally distributed around the world. Domestic governments can do much more in more or less all cases to promote education in each nation; but corporations, nongovernmental organizations (funded by individual contributions, foreign aid from governments, and so on), and the global public sphere (in international documents and fora) can do a great deal more to promote universal primary and secondary education. Nothing is more important for democracy, for the enjoyment of life, for equality and mobility within one's nation, for effective political action across national boundaries. Education should be construed not merely as a provider of useful technical skills, but

also, and more centrally, as a general empowerment of the person through information, critical thinking, and imagination.

Taken as a group, these principles (and the capabilities approach that lies behind them) seem to fulfill very well the criteria we set out at the end of our critique of Rawls. *Equal respect for persons* is shown by the commitments to promote the human capabilities of each and every person and to remove those structural features of the world system that stand between people and decent life opportunities; also by the commitment to promote such and every one of the capabilities, rather than treating some important human matters as merely instrumental to the pursuit of wealth. The *moral importance of state sovereignty* is recognized clearly in the theory. *Justice* is realized in *multiple relations*, in that responsibilities for promoting human capabilities are assigned to a wide range of distinct global and domestic structures. *Flexibility in domestic institutions* is insisted on by the requirement that all nations do a great deal more to promote the well-being of people in the poorest nations: they will need to alter their domestic structures in order to do this, and thus they cannot and should not insist that their domestic structure is fixed and final. Finally, as we have seen, a *new account of the purposes of international cooperation* animates the spirit of the entire enterprise, with ideas of human development and human global fellowship taking the place of the thinner idea of mutual advantage.

There is no natural place to stop this list of principles. One might have had a list of twenty principles, rather than ten. Moreover, the principles are extremely general, and many hard questions wait in the wings as soon as we begin to implement them. At this point philosophy must turn the job over to other disciplines. But the philosophical part of the inquiry is not useless. Ideas shape public policy at a deep level, influencing what alter-

natives get onto the table and are taken seriously.⁴⁴ These 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 by 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.

6

BEYOND “COMPASSION AND HUMANITY”

JUSTICE FOR NONHUMAN ANIMALS

In conclusion, we hold that circus animals . . . are housed in cramped cages, subjected to fear, hunger, pain, not to mention the undignified way of life they have to live, with no respite and the impugned modification has been issued in conformity with the . . . values of human life, philosophy of the Constitution. . . . Though not homosapiens, they are also beings entitled to dignified existence and humane treatment sans cruelty and torture . . . Therefore, it is not only our fundamental duty to show compassion to our animal friends, but also to recognise and protect their rights . . . If humans are entitled to fundamental rights, why not animals?

—*Nair v Union of India*, Kerala High Court, no. 155/
1999, June 2000

i. “Beings Entitled to Dignified Existence”

In 55 B.C.E. the Roman leader Pompey staged a combat between humans and elephants. Surrounded in the arena, the animals perceived that they had no hope of escape. According to Pliny, they then “entreated the crowd, trying to win their compassion with indescribable gestures, bewailing their plight with a sort of lamentation.” The audience, moved to pity and anger by their plight, rose to curse Pompey—feeling, writes Cicero, that the elephants had a relation of commonality (*societas*) with the human race.¹

We humans share a world and its scarce resources with other intelligent creatures. We have much in common with these crea-