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## Against Normative Nationalism

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Against Normative Nationalism

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## Against Normative Nationalism

The question of how, if at all, national boundaries should figure into accounts of justice is one of the central questions facing any developed account of the distribution of burdens and benefits among people(s). Proponents of the capabilities approach like Martha Nussbaum and Amartya Sen reject normative nationalism, which Will Wilkinson describes as regarding “states as basic units of significance in social morality” (Wilkinson 2010). As Sen puts it, there are those who see nation-states “as being, in some way, fundamental”, and to these theorists the barriers of polities are viewed “not only as practical constraints to be addressed, but as divisions of basic significance in ethics and political philosophy” (Sen 143). Normative nationalism, then, is bound up with the idea that polities possess some trait(s) from which the concepts of legitimacy and justice germinate. What's more, the normative nationalist sees discounting nation-states when trying to formulate a theory of justice across borders renders the whole cosmopolitan project not just wrongheaded, but *self-defeating* as well. Here my aim is to address the arguments of two formidable defenders of normative nationalism. I will (1) draw attention to a blind spot in an argument for basing justice on the nature of polities, (2) emphasize how disparate treatment based on nationality could fall afoul of other antecedent obligations to our fellow human beings, (3) discuss a recent raft of objections to one approach toward distributing resources, and (4) try to point the way forward for the capabilities approach.

### **Nation-States, Demands, and Domination**

Thomas Nagel identifies the relevance of polities for theories of justice in the fact “that we are both putative joint authors of the coercively imposed system, and subject to

its norms, i.e., expected to accept their authority even when the collective decision diverges from our personal preferences” (128-129). There is a Hobbesian flavor to Nagel's position which he himself acknowledges and which manifests itself in an argument that proceeds as follows:

1. Only if there are stable background arrangements allowing individuals to confidently undertake various actions may there be justice (the alternative being the state of war).
2. Only sovereign states provide the stable background arrangements individuals need to confidently undertake various actions.
3. There may be justice only if there are—and only within--sovereign states (115-122).

Nagel makes much of the allegedly robust relationships among individuals created by sovereign states, claiming that “those citizens have a duty of justice toward one another through the legal, social, and economic institutions that sovereign power makes possible” (121). Of course, this need not raise hackles. What matters is the normative commitments that unspool from Nagel's claim. I hope to show that Nagel's contention is actually a gift to his cosmopolitan adversaries, and to do so it will behoove us to delve further into what precisely the relationship is between the nation-state and its subjects. Nagel's argument is intended to make us take note of the cooperation and coordination that is built upon the foundation of the nation-state's reassuring presence and function. This cooperation and coordination serve as building blocks for the construction of justice. But if the stability offered by the nation-state is not as straightforward as it first appears, we may be forced to different conclusions. Specifically, the presence of unseemly domination or opacity in government policymaking may undermine the stability Nagel thinks individuals can rely on from their nation-states. And if that stability is grossly undermined, appealing to it will not suffice to create the contrast so vital to Nagel's argument between the turbulence of the state of war and the calm of the nation-state.

The demands of the nation-state can be divided into two classes. The first of these is a demand of justification. Demands of justification accrue to citizens in virtue of having a status in society. This is a challenge insofar as we must examine who we are and who we would like to be in relation to our fellow members of society to appreciate and, if necessary, change our public identities. It would not be justifiable to hang the millstone of segregation around the neck of every white Southerner during the days of segregation simply because of his or her privilege. It would, however, be justifiable to ask such a person how they interpreted the privilege that was their inheritance simply as a result of the zeitgeist in which they found themselves.

A demand of justification does not require that citizens get entangled in apologetics. We would not fault someone for being abashed by their inability to produce a justification for segregation or for forthrightly admitting that the policy was unjustifiable. But we would hold it against someone if they expressed indifference or ignorance when confronted with the matter. This individual would be guilty of more than mere callowness; what would be at play would be nothing less than an elective alienation from the societal and political circumstances that are at once formative of and responsive to who we become as private citizens and members of the community.

Demands of activity flow from demands of justification. They consist of the requirement that citizens seek to recognize the impact their actions have on their communities, deliberate accordingly, and align their behavior with their considered judgments. A conscientious agent who for whatever reason comes to the wrong conclusions can still discharge the demands of justification, though of course that will not inoculate the agent against potential charges of turpitude or wrongdoing. As a result, we

may say that demands of justification track private circumspection rather than the common good. Yet this does not mean that individuals can always maintain the privacy of their demands of activity. When young men received their draft cards during the Vietnam War, they were faced with a formidable demand backed by legal consequences. If a person in that situation had not given much thought to U.S. public policy in Southeast Asia before that moment (a failure, perhaps, of a demand of justification), he still could not avoid making a decision about how seriously to take his new status as a conscript (a demand of activity).

So far, there is nothing in my delineation of Nagel's position to which he need object. The fact that nation-states require their members to orient themselves toward the social hierarchies in which they find themselves and recognize the responsibilities they have as participants in public life is, *prima facie*, an anodyne claim about civic relationships. But it contains the seed of a daunting problem. Nagel is greatly impressed by the alleged importance of the engagement of individual wills in the operation of society. We may identify far-reaching consequences of one nation's immigration policy for foreign nationals, but if we take normative nationalism to be justified we are not required to grant equal consideration to those individuals beyond what is called for by respect for their prepolitical human rights. Immigration policies, Nagel believes, are not imposed on behalf—or with an eye toward the hopeful acquiescence—of foreign nationals; they are enforced against them without engagement. The wills of foreign nationals are, in this respect, largely beside the point. We do not have to justify our policies to those outside the purview of citizenship because no acceptance is demanded of them (Nagel 129-130).

But this begs the question against the opponent of normative nationalism. We are trying to determine whether or not national boundaries are legitimate divisions between peoples. To appeal to "the required active engagement of the will of each member of the society" (Nagel 129) to justify the moral salience of national boundaries is to appeal to a property whose scope may or may not be properly restricted; that is the kernel of the disagreement between the normative nationalist and the cosmopolitan. Nagel cannot cite the status quo in an argument for maintaining the status quo; what is needed is some *independent* support for the idea that the relationship nation-states bear to their citizens now is preferable to alternative cosmopolitan proposals for political organization, including schemes that would accept Nagel's account but seek to expand the class of people to whom it applies.

Nagel's invocation of immigration policy only makes his argument more puzzling. Whether or not a policy is enacted in some group's name and whether or not that group is asked to accept that policy is orthogonal to the connection the policy bears to the will of those whose interests it is allegedly serving. Since Nagel and most of his readers—myself included—have contemporary democracies in mind when they come across his argument, it is easy to lose sight of the import of this fact. But imagine a monarch who bans all immigration into his kingdom. He issues a decree to placate the employers of these foreign workers within his territory. "We are more than a country", the king asserts in the decree. "We are a community. This action is meant to promote stability and unity within our borders. Flouting this law will be tantamount to subversion, and any royal subject caught in violation of the legislation will face imprisonment at my discretion."

The king has undertaken a policy that is (1) imposed in the name of his citizens and (2) contingent on the cooperation of the citizens for successful implementation. (1) accentuates demands of justification insofar as citizens who had previously employed foreigners must now reflect on the merit of this new distinction among peoples introduced by the king.<sup>1</sup> (2) makes a claim about how citizens are to behave in response to governmental policy, thus creating the parameters of a demand of activity. But what is interesting for present purposes about (2) is that it is equally true of the foreigners the law is meant to keep out that *they* are expected to abide by the law. Alternatively, we might say that both the citizens of the kingdom and foreigners who would like to emigrate to the kingdom are equally *ignored* by the legislation and the punitive consequences it brings in its train for transgressors. The government may have more sympathy for the interests of its citizens than for the interests of foreigners, but in the crafting of the law it has effectively set itself in opposition to (at least some) of the interests of both groups, and it is an opposition that has the force of state as its teeth. The king is responsive to neither the citizens nor the would-be immigrants. It is this insularity that taints (1) and (2) with inordinate coercion regardless of what side of the normative nationalism debate one falls on.

Matters would be no less fraught if the king were in fact acting as his subjects would like him to. The responsiveness I am concerned with here pivots around a procedural constraint on legitimacy, not a populist one. Harry Frankfurt's discussion of second-order volitions possesses a neat symmetry with regard to this point. Frankfurt distinguishes between second-order desires and second-order volitions. The former

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<sup>1</sup> To be sure, citizens always have demands of justification, but those demands may become more exigent when, *inter alia*, social stratification is heightened or exclusionary practices proliferate. Such changes multiply the distinctions a society makes, and with more distinctions comes a more pervasive, if not a more tractable, minefield of potential breaches in etiquette, custom, or obedience to the law.



category comprises an agent's having a certain desire *or* his or her wanting to have a certain desire be his or her will. The latter category, which is a species of the genus first-order desire, is occupied only by the second half of the disjunct (Frankfurt 70-71). Second-order volitions are essentially the engine behind the persons we want to be because they serve as the intersection between acting and reflecting on how we would like to act.

If the king determines state policy without consulting his subjects, the government is essentially shorn of any pretense to being a collective enterprise. Just as Frankfurt's wanton goes after "whatever course of action he is most strongly inclined to pursue, but he does not care which of his inclinations is the strongest", my hypothetical monarchy is reduced to the caprices of a single individual, relying on that person's inclinations without constraining which inclinations should be strong and which should be weak.

The comforting thought that things would play out differently in a 21st-century democracy is hard to sustain when one considers the functions of contemporary government. Although the range of public policy issues citizens can direct with their votes, lobbying, activism, and financial contributions is impressive, the sheer *number* of public policy questions nation-states have to settle will inevitably result in opacity, and many of the decisions governments make with little or no transparency will be of great consequence.<sup>2</sup> This gives rise to a problem of legitimacy: If the active engagement of

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2 We could not circumvent this problem simply by becoming libertarians and paring back the size of government until we were left with a nightwatchman state interested solely in protecting rights of property and physical safety. Opting for this route, it is true, would offer fewer opportunities for government abuse. But so long as the government employs agents with any degree of unaccountable authority over the interests of others, abuses will occur. To paraphrase Jimmy McNulty, the protagonist of *The Wire*, the critically acclaimed television show often cited as a brief against confidence in government institutions: The only dictatorship in America is the policeman patrolling his beat.

the will of citizens is disregarded or circumvented in some significant cases, then why should citizens accede to the demands states impose at all?

Call this the problem of democratic incoherence, and let Kate be its protagonist. Kate is a humble, law-abiding taxpayer who slowly but inexorably discovers that she has not had the slightest clue about what it is that federal, state, and local governments actually do for most of her life. When she reads about the colossal breadth of the U.S. prison system, the theory of blowback in U.S. foreign policy circles, and the mismanagement of American cities, she marvels not just at the battery of dilemmas the country faces, but also at her own apparent powerlessness. Why, she wonders, are these issues largely settled by people with limited accountability? Why do we entrust so much influence to people beyond the reach of censure or replacement? Kate's anxiety goes deeper than an inchoate resentment of "elites." Her worry is not that people unlike her have the reins of power. Kate's apprehension is over the fact that leaving far-reaching decisions to people who don't have to even make feints at justifying themselves to the broader public will cause those decision-makers to succumb to other less salutary institutional pressures. And if she cannot, on pain of self-deception, accept the authority the government wields over her in these arenas, why should she accept the authority of the state in other arenas?

It will not do for Nagel or any other defender of normative nationalism to advert to an alleged compartmentalization of government functions by which one domain of government policy may be rife with caprice or corruptibility while other, more numerous functions of state are immune to such vices. "Although some opaque government powers are vulnerable to misuse," we can imagine the normative nationalist arguing,

“that is no reason to look askance at the power your government holds over you simpliciter. Governments, like people, cannot help but fail from time to time. But the authority of the state is still a force brandished for the people, and the fact that potential and actual government misconduct provokes the pique of citizens is itself evidence of just how intimately—indeed, perhaps *inextricably*--that force is part of our identities.”

But the problem of democratic incoherence is potent because it asks us to invert the normal direction of demands of justification and demands of activity. As noted earlier, demands of justification and demands of activity present citizens with crucial questions about what relationships they bear to their countries and their compatriots. This does not, however, exhaust their scope. Governments are also responsible for justifying the social relationships they structure in their populaces and the activities they undertake in the name of the ruled. To return to the vivid example of Jim Crow, I take it as uncontroversial that government at all three levels—local, state, and federal-- bore responsibility for explaining their repugnant tolerance of segregation, even if this was an obligation they would have preferred to shirk. The reciprocity of the demands of justification and the demands of activity is, however, asymmetrical; the demands weigh more heavily on states than they do on individuals.

Henry S. Richardson deploys the concept of *domination* to describe the objectionable state of affairs that coincides with the exercise of arbitrary power. As he cogently puts it:

The slavemaster, whether kindly and hoodwinked or nasty and keen, has the capacity to exercise arbitrary power over the slave. In employing the analogy to slavery, the early republicans meant to point up the degree to which monarchs were able to exercise arbitrary power, unconstrained by any concern for the public good. Someone who is dominated has no effective means of resisting arbitrary impositions, should they occur. Even if they occur only seldom, domination exists where some can exercise arbitrary power (Richardson 33).

We are no more obligated to afford respect to a dominating government than we are an abusive spouse, a cruel parent, or, for that matter, a man who purports to be our master while we are to be his slaves. If, as I have contended, no government can realistically hope to avoid dominating citizens, then no citizenry should feel obligated to limit their perspective to their own borders. This is not to say that we must perforce become anarchists if we are confronted with domination. But it is to say that where domination arises, normative nationalism cannot be robustly defended by grounding boundaries in *sui generis* associative obligations because these duties are vitiated in practice by a failure of governments to reciprocate. If citizenship is to be germane for considerations of justice, it must be so for some other reason.<sup>3</sup>

It is worth distinguishing between the special obligations people may owe to one another as members of the same polity and the special obligations people may owe to one another for reasons which often get bundled together as the *basis* for a polity's existence. A group of people who live in the same geographic area, speak the same language, share the same customs, and so forth may have duties to one another in virtue of their common heritage. But while nation-states have historically appealed to such factors to justify their actions and boundaries, it is worth pointing out that special obligations can be grounded in these shared characteristics without also being rooted in the further fact of political arrangements being constructed around these bonds.

### **Scheffler's Distributive Objection and Miller's Response**

The special responsibilities allegedly conjoined to national communities generate

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<sup>3</sup> I have been concerned with normative nationalism alone. I do not have room here to address other forms of moral demarcation that may arise with different communal substrates—normative pan-Arabism, say, or normative Roman Catholicism. Although I am skeptical a case can be made for such identities as morally justifiable markers of group membership, whatever defects such accounts suffer, they will be rather different from those afflicting normative nationalism.

disparities. It is this detail of nation-states that Scheffler harnesses to great effect in his attempt to highlight the tension between normative nationalism and antecedent apolitical notions of justice. He labels this worry the distributive objection, and it runs roughly as follows.

Imagine three people: Alice, Beth, and Carla. The three of them have certain general responsibilities—for Scheffler's purposes and, for the moment, ours it does not need not to be specified what they are—toward each other. The notable fact about these responsibilities is that they are distributed equally. No one is entitled to anything more or anything less than the others are. But if Alice and Beth decide to form a group of their own and come over time to value their membership in this group a great deal, they might acquire responsibilities to each other that they do not owe to Carla. These responsibilities could prevent them from giving any optional assistance to Carla when their interests within their newly formed group override duties to outsiders. Perhaps more seriously, they may have to grant their responsibilities to one another more weight than they do their general responsibilities to Carla, resulting in Carla being deprived of benefits she would have received were it not for the formation of the In Group (Scheffler 83-84).

This is worrisome for Scheffler because Carla now bears responsibilities to Beth and Alice that they only bear in an attenuated form toward her. The fact that Carla is not a member of the In Group has not diminished her general responsibilities to the other two women, but their responsibilities to her are now defeasible by considerations of the In Group. “All things considered, then, it would seem that if Alice and Beth do indeed acquire special responsibilities to each other by virtue of their membership in the In

Group, the overall distribution of responsibility that obtains once they have joined the group is both inegalitarian in character and notably unfavourable to Carla”, Scheffler notes (84).

But the problem is even more pressing than this in circumstances in which the advantages of the In Group are multiplied by an unequal resource distribution that comes about through factors independent of the formation of the In Group or because of some function of the In Group itself. For if Beth and Alice receive benefits from participation in the group while also enjoying a markedly higher level of available resources, their heightened responsibilities to each other will serve as a further source of inequality relative to the objectively needier Carla (Scheffler 85).

Miller points out, reasonably enough, that the distinction between general and special responsibilities can be interpreted to be about equal treatment, or, less stringently, about a fixed level of resources. If the opponent of normative nationalism intends to fortify the distributive objection by simply positing an obligation to treat all people everywhere the same in certain ways, then he or she will be begging the question against those who think the In Group described above is morally neutral or positive (Miller 43). If Scheffler opts for the latter, Miller believes we could fulfill this obligation while still providing members of in-groups with a higher level of resources. And if Beth and Alice are in an In Group with limited resources, there would be no injustice to Carla if the two privileged each other's subsistence over Carla's. After all, if Carla loses out, it is not in virtue of any unseemly discrimination but rather because the resources are limited. It would seem, then, that however we view the connection between general and special responsibilities, the normative nationalist will not be vulnerable to the distributive

objection as it stands (Miller 42).

This second rebuttal to the distributive objection is misguided. To see why, it will be worthwhile to modify the original contours of the distribution objection. As before, imagine Beth and Alice in a group and Carla outside it. But this time, suppose that all three suffer from severe poverty with little hope of ameliorating their circumstances in either the short- or long-term. The three live on the same plot of land in adjacent shacks. They find their lives very drab, perhaps most of all when they eat the same flavorless meals day after day or dream of far away lands.

One day while returning from a walk Beth comes across an envelope filled with one hundred dollar bills at her front door, and she is confident that there is enough money inside to feed the three of them well (i.e., like far more affluent people) for one year. However, if the money is only divided between Beth and Alice, it can last them two years. Doing so would not mean Carla would starve. She would merely have to maintain her meager current diet, resulting perhaps in tedium and dissatisfaction, but no life-threatening repercussions. So here we have a case where the In Group will get significant benefits, Carla's absolute position will not be harmed, and everyone's basic needs will be met.

Yet we may still feel compelled to say that something is amiss here if Beth decides to share the money only with Alice. Perhaps most conspicuously, the In Group will reap advantages from a discovery that was (1) entirely a matter of chance and (2) such that, had it transpired that Carla was the one who found the envelope, Beth and Alice would still have obtained significant benefits. Recall that if Beth and Alice had kept the money for themselves, it would have fed them well for two years. Now imagine

that money going entirely to Carla. She would then be in a position to eat well above her socioeconomic status for an even longer period of time.

However, it seems intuitive that the more benefit one can derive from X if one uses it alone, the more one is obligated to take general responsibilities to others into consideration in one's use of X. If Carla only had enough money in the envelope for one good meal, it would be hard to begrudge her a gourmet expedition. But since Carla has general responsibilities toward the In Group and she can now offer Beth and Alice pleasures of gustatory variety they would not have known before without a cumbersome sacrifice on her part, we should be inclined to say that she is obligated to share her windfall with her housemates in a way that, per the dictates of In Group exclusivity, they would not be. In short, Carla's general responsibilities toward Beth and Alice confer on them something worthwhile that Beth and Alice's special responsibilities toward each other rule out for Carla when the scenario is reversed.

But what is this something? We do not want to say it is equal treatment, for as we've seen Miller has a pointed rejoinder to any attempt to go down that path. Nor can it be a minimal level of resources. Although the money in Carla's envelope is instrumental to the goal of lifting Beth and Alice's spirits, it is not constitutive of what is *meaningful* about any inclination to share on which Carla might act. We can see this by imagining that instead of receiving an envelope full of cash, Carla discovers she can produce in herself and others startlingly realistic simulated experiences of traveling anywhere. Simply by thinking of Paris or Hawaii, she can conjure vacations that she and her destitute neighbors don't have the money to actually go on. Surely Carla should share her good fortune to some extent with Beth and Alice, but not because they are



entitled to some level of *resources*. What they are entitled to is the *experience* of something worthwhile. Carla, too, may be able to claim a general entitlement to such a power if it is Beth or Alice who possesses it, but the valence of her claim is weaker than it would be if she had group membership. That it is to say, it is a far more defeasible claim than it otherwise would be.

Here, then, is my proposal for another way to interpret the insight of the distributive objection. In Scheffler's original formulation, the fact that agents who already benefited from In Group membership were further benefited by the network of responsibilities attendant to membership in the group was troubling because it served to amplify inequality. But the distributive objection may also be incarnated in a concern about how much attention members of the In Group grant the experiential qualities that make life worthwhile for members outside the group—learning, enjoying art, platonic and romantic love, and a panoply of others in this vein. So construed, the distributive objection's target is the confluence of material advantage and mutual attentiveness, and its aim is to get us to be aware of how In Groups with these advantages may not take proper notice of—or take seriously at all--what outsiders need, let alone move with any appreciable alacrity toward fulfilling these needs. Once again, we see normative nationalism and analytic nationalism germinating and cross-fertilizing in tandem.

We may now see how the distributive objection is intimately connected to the moral status of patriotism. On the global stage in groups will, of course, be countries, but members of the in group may or may not play along with conceptions of rights and responsibilities supposedly attached to in group membership. To a significant extent one's willingness to participate as a member of an in group is will align with one's

patriotism. But as Simon Keller notes in his discussion of the topic in *The Limits of Loyalty*, patriotism predisposes people to behave in bad faith (77). Keller writes: “The patriot's belief that her country has certain attractive features presents itself as having been formed through an unbiased set of opinions about the nature of her own country plus some neutrally endorsed criteria for what properties of countries count as valuable, but this is not really the full story. Driven by her loyalty to country, the patriot will hide from herself the true nature of the procedure through which she responds to evidence that bears upon the question of what her country is really like” (75).

Keller argues that the patriot who regards her patriotism as a virtue would esteem the trait as one that every ideal person has (74). Meanwhile Miller asserts that a condition of special duties is that the attachments on which the duties are based avoid injustice (36). Both claims are plausible, yet if they are true they will generate a tension it will be difficult for the normative nationalist to fend off. To see this, we need only bring to mind the patriot's likely opinion of foreign patriots who are cool to expressions of patriotism on the part of Americans or anyone else. The patriot holds the following opinions:

1. Patriotism is laudable and, in fact, required for an ideally virtuous life.
2. An American (French, Dutch, Canadian, etc.) patriot is uniquely virtuous for holding the right attitude toward the most admirable country.
3. Those who are not American patriots fall short of the highest virtue.

Keller's identification of the patriot's bad faith offers good reason to believe (2). It is in the nature of the patriot to be prone to exaggerate her country's positive attributes and to downplay its negative ones. We may then very easily picture the momentum acquired by exclusionary practices of members of the In Group.<sup>4</sup> After all, if members of

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<sup>4</sup> Keller argues that the patriot who regards her patriotism as a virtue would esteem the trait as one that every ideal person has (74).

the In Group are more likely to misrepresent to themselves what the character of the In Group is, they may also wind up more likely to detach themselves from obligations to members outside the In Group, especially if the outsiders allegedly lack virtue. Groups warped by insularity or groupthink are likely to become indifferent or hostile to the moral consideration of outsiders—not least of all because they are far less likely to *interact* with outsiders than are clusters of people who do not adopt exclusionary practices.

In the case above, Carla's objects of concern are just two people. But if we embrace cosmopolitanism at the global level our concern will be for so many countries and so many people that it may seem wildly farfetched to imagine that prosperous nations can pay heed to the multifarious needs of impoverished ones. Indeed, the normative nationalist might take it as axiomatic that the requirement that we be attentive to the needs of non-citizens cannot but veer off into a challenge of such anthropological depth that it would baffle all the world's social scientists. To be invested in the experiential qualities of people from such varied backgrounds is to ask too much of us. What is needed is a method by which we can bridge the gap between what people need and what needs we can accurately identify.

### **Enter The Capabilities Approach**

A person's needs will largely be a matter of his or her biological endowment conjoined with his or her social environment. The former is completely beyond a person's control, and the latter is sometimes unresponsive to our agency as well, especially during the formative years of early childhood. Thomas Pogge summarizes the striking difficulty for theories of justice that results from these facts:

Because our endowments are so multidimensional, it is generally true, for any two persons, that one is more talented than the other in some respects and less talented in others. Still, it may nonetheless often be true that one has, on the whole, better work-relevant natural endowments than the other with

respect to the existing system of economic cooperation. This means, roughly, that if each chooses from among what are the most lucrative jobs for him or her, and if both work equally hard then one will make a greater marginal contribution to the social product than the other. And the question is then how, if at all, a criterion of social justice should accommodate such endowment-induced interpersonal productivity differentials in its metric (40).<sup>5</sup>

He goes on to contrast the horizontal outlook on natural human diversity held by resourcists with the vertical outlook of the capabilities theorists. The horizontal outlook rejects the idea of superior or inferior human endowments while the vertical outlook sees natural inequality as a brute fact that calls for redress by an equitable structuring of our social and political institutions. Anticipating objections that some are simply dealt a better hand of cards than others for dealing with social situations that operate on the basis of traits like physical appearance and intellectual aptitude, Pogge highlights our tendency to give greater weight to the traits we ourselves possess. Evaluating a person's *overall* endowments can, Pogge believes, defang the threat of a natural hierarchy shading into more unsavory sentiments concerning the right sort of people and the bad (44-45).

Pogge believes that the vertical conception of human attributes is a step backward in the history of our understanding of diversity. The capabilities theorists seek special resources for the disadvantaged, but in creating a special category whose members allegedly merit unique attention, they have marked those whom they are trying to help as inferior in comparison to their benefactors (46).

This criticism is off the mark. Capability theorists are only signaling the inferiority of certain groups of people if one believes that any attempt at helping those without widely prized traits is to make a normative judgment about the value of the traits themselves. Suppose I am an elementary school teacher whose children enjoy their music lessons with the recorder. I notice that one student does not have a recorder, and

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5 “The social product” can, *mutatis mutandis*, be converted to “the global product” since we are looking for solutions to the problem of global justice in the present discussion.

he is accordingly left out of the fun. That evening I buy a recorder and leave it where the student—and only this particular student—will find it the next morning. The upshot is that the child has an opportunity to participate during the music lesson the next day alongside his peers.

Have my actions ratified the propriety of the exclusion the student so acutely felt the day before? Or have I merely recognized an instrumental good necessary to avoid social isolation? If it is the former, this case leaves us with the absurd consequence that *any* provision of goods necessary for full civic and social participation will have the effect of taxonomizing people into two camps: those who are to be admired and those who are to be pitied. But surely this is not how we regard the range of public services provided by the government, even—or perhaps especially—when we are fully aware of the urgent demand for these services among the socioeconomically underprivileged segments of the population. Affording the indigent respect is manifestly not incompatible with recognizing their need. Surely we can realize the same synthesis when dealing with those who are in need because of defects in their natural endowments.

Pogge insists there is a contradiction in the capabilities approach on this score. Capabilities theorists want to simultaneously give the naturally disadvantaged the confidence to claim special aid as what is due to them by the dictates of justice while making claimants efface themselves to be granted the help they need. “To have a valid claim that she is owed compensation as a matter of justice,” Pogge writes of the claimant, “she must present her special limitation, need, or handicap as one that outweighs all other particular vertical inequalities and entitles her to count as worse endowed all things

considered” (46).

But this is to misunderstand the nature of the claim that the naturally disadvantaged have against those in a position to help. It is certainly true that, as members of society whose unique needs are everywhere and always apparent to those without such needs, claimants may interpret their appeals in the disheartening manner Pogge describes. But it doesn't follow from this that the naturally disadvantaged are being made to think of themselves this way by institutions.

There is a commonsensical and, I think, ultimately correct way to interpret the appeals of the claimant and the hurdles accompanying any bureaucratic system that the capabilities approach will engender. We should think of claimants not as groveling members of a natural lower caste, but rather as petitioners who do both themselves and society a service by pointing out the incongruities in public accommodation. The thought that the blind woman who protests about a prohibition against seeing eye dogs in government buildings is admitting her inferiority can only pass muster if we place the burden of explanation on the citizen rather than the state.

The often daunting circumstances in which the naturally disadvantaged find themselves is a blemish on institutions that are slow, reluctant, or ineffectual in providing solutions, but it does not render those institutions mechanisms of humiliation.

Pogge's argument would be more cogent if he focused on the intersection of institutions and civil society. A government that strives to provide all citizens with equal access to public goods could still be vulnerable to Pogge's worry about the potential shame of the naturally disadvantaged if it made no effort to integrate such citizens as fully equal participants in civic and social life beyond what bare accommodation

required. This caveat would force institutions to strive to alter public opinion and make the naturally disadvantaged more visible in the public sphere so as to reduce the confusion and ignorance surrounding their abilities and limitations.

### **Concluding Remarks**

Nagel's error is to attach more substance to the relationship between the governed and the governing than is actually there. Miller goes astray when he downplays the extent to which group membership may erode our conception of the good of outsiders—or, at the very least, make us less likely to put in the effort to identify and aid others in the pursuit of their good. Both mistakes are symptoms of the same problem. Nagel and Miller have no intention of letting normative nationalism crowd out prepolitical rights for non-citizens. But they have misdiagnosed these rights as sturdy enough to withstand inimical political circumstances. It is within the nature of polities that they abrogate the claims of justice and fairness that we would, as individuals, regard as natural. Normative nationalists have, in effect, placed a heavy weight on a formerly even scale while expecting it to make a disproportionately small change in the balancing to follow.

The capabilities approach is an antidote to this tendency. Nussbaum memorably writes, “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 enmattered being” (278). As the preceding discussion of the distributive objection shows, the normative nationalist cannot acknowledge this fact without undermining his or her own political conception of distinctions between citizens and foreigners. But Nussbaum's emphasis on flourishing offers a framework by which we can recognize our duties to others without feeling the strain of being tethered to dubious national gerrymandering.

Nussbaum's account has one major blemish, though it is not an ineradicable one. In emphasizing the role of institutions in securing rights (306-315), it can seem as though there is little room in Nussbaum's version of the capabilities approach for a thoroughly deliberative exchange between those in need and those in power. Any theory of justice will have to address the actors who are to implement proposed methods of remedying inequities. But it is equally important to draw on the wealth of information, skill, and experience that local communities can provide. This will often require that we come to global problems under the auspices of local encouragement and advice, which in turn means that leaders of nonprofit groups, aid agencies, and international organizations like the World Bank should defer to grassroots activism—appropriately leavened by ample resources--to attain various goals. So when Nussbaum writes that “the political task of supporting the capabilities threshold itself is assigned in the first instance to institutions” (310), we should add a proviso that this can only be practicable if the pertinent institutions are aligned with organic outgrowths of local aspirations to secure capabilities.

Naturally, this should not mean heeding illiberal voices for the sake of local cooperation. When the only way to acquire local know-how is to abjure our concern for women's rights, we may simply be at an impasse if we want to both avoid domination *and* maintain fidelity to promoting capabilities for all. These will be the most unfortunate cases the capabilities approach can encounter, but perhaps institutions can circumvent intransigent or reactionary elements in needy societies by going directly to the marginalized with their support. Since a reform of society writ large is out of the question in these scenarios, a provision of succor to those most in need will be at best a



stopgap measure. We can, however, hope that increased visibility for formerly excluded groups in society will erode hostility to more ambitious campaigns in the future.

Because many of the societies most in need of reform are still wary of Western influence because of the legacy of colonialism and U.S. interventionism, we may have to be extremely patient in our wait for the emergence of cooperative and committed local activism.

I have tried to emphasize that the demands of justification and the demands of activity must be suitably distributed in institutional structures so as to avoid domination. The capabilities approach, with its focus on what people need to flourish, is equipped with a first-rate tool for respecting the dignity of persons. Though much more remains to be said about just how institutions working under the aegis of the capabilities approach can avoid domination, I will be satisfied if my remarks here have brought into relief the need for a strategy of international development that eschews opacity and seeks input from as many of those in need as it can. Ultimately, the success of the capabilities approach will be proportional to its self-understanding, so it should go without saying that the more aware its practitioners are of the underpinnings of their project, the better their work will go.

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