

## **Beyond the Social Contract: Capabilities and Global Justice.**

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*ABSTRACT* The dominant theory of justice in the western tradition of political philosophy is the social contract theory, which sees principles of justice as the outcome of a contract people make, for mutual advantage, to leave the state of nature and govern themselves by law. Such theories have recently been influential in thinking about global justice. I examine that tradition, focusing on Rawls, its greatest modern exponent; I shall find it wanting. Despite their great strengths in thinking about justice, contractarian theories have some structural defects that make them yield very imperfect results when we apply them to the world stage. More promising results are given by a version of the capabilities approach, which suggests a set of basic human entitlements, similar to human rights, as a minimum of what justice requires for all.

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.

(Grotius, On the Law of War and Peace)

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

(Human Development Report 2000, United Nations Development Programme)

### **1. A World of Inequalities**

A child born in Sweden today has a life expectancy at birth of 79.7 years. A child born in Sierra Leone has a life expectancy at birth of 38.9 years.<sup>1</sup> In the USA, GDP per capita is US\$34 142; in Sierra Leone, GDP per capita is US\$490. Adult literacy rates in the top 20 nations are around 99%; in Sierra Leone, the literacy rate is 36%. In 26 nations, the adult literacy rate is under 50%.

The world contains inequalities that are morally alarming, and the gap between richer and poorer nations is widening. The chance of being born in one nation rather than another pervasively determines the life chances of every child who is born. Any

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theory of justice that proposes political principles defining basic human entitlements ought to be able to confront these inequalities and the challenge they pose, in a world in which the power of the global market and of multinational corporations has considerably eroded the power and autonomy of nations.

The dominant theory of justice in the western tradition of political philosophy is the social contract theory, which sees principles of justice as the outcome of a contract people make, for mutual advantage, to leave the state of nature and govern themselves by law. Such theories have recently been influential in thinking about global justice, thanks especially to the influential work of John Rawls. In this article I shall examine that tradition, focusing on Rawls, its greatest modern exponent; I shall find it wanting. Despite their great strengths in thinking about justice, contractarian theories have some structural defects that make them yield very imperfect results when we apply them to the world stage. I shall argue that much more promising results are given by a version of what Amartya Sen and I have called the capabilities approach—an approach that, in my version (rather different here from Sen's), suggests a set of basic human entitlements, similar to human rights, as a minimum of what justice requires for all.

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

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

Before we begin, we need to have before us very clearly three salient features of social contract conceptions on which John Rawls, the most influential modern exponent of that tradition, continues to rely throughout his work—despite the fact that his hybrid theory mixes Kantian moral elements with the idea of a social contract. First, Rawls explicitly endorses the idea that the social contract is made between parties who are roughly equal in power and resources, so that no one can dominate the others. Tracing

this idea to Hume's account of the "circumstances of justice", as well as to classical social contract doctrine, he insists that this rough equality of the parties is an essential element in his theory, and is his own analogue to the idea of the "state of nature" in classical social contract doctrine. Second, and closely connected, the contract is imagined as one made for mutual advantage, where advantage is defined in familiar economic terms, and income and wealth play a central role in indexing relative social positions. Although the "veil of ignorance" introduces moral constraints on the ways in which the parties achieve their own interest, the parties are still imagined as exiting from the state of nature in the first place because it is in their interest to do so. Thus, while the veil sharply limits the role played by interest once they enter the "original position", interest continues to play a large part in determining who is in and who is out at the initial stage: namely, they bargain with rough equals in terms of power and resources, because a contract for mutual advantage makes sense only between rough equals, none of whom can dominate the others. Despite his Kantianism, Rawls remains a contractarian in these two crucial respects. Finally, contract theories take the nation state as their basic unit, conceiving of their contracting parties as choosing principles for such a state. This focus is dictated by their starting point: they imagine people choosing to depart from the state of nature only when they have found principles by which to live a co-operative life together. This starting point is a grave limitation, as we shall see.

## **2. *A Theory of Justice: The Two-stage Bargain Introduced***

The pre-contractarian "natural law" tradition held that relations between states, like the rest of the world of human affairs, are regulated by "natural law", that is, binding moral laws that supply normative constraints on states, whether or not these dictates are incorporated into any system of positive law. The social contract tradition, by contrast, understood the situation that exists between states as a state of nature, and imagined principles of justice being contracted as if between virtual persons. The clearest example of this two-stage approach, and the most significant for Rawls, is Kant, who writes in *The Metaphysics of Morals* that a state is like a household situated alongside others. Under the Law of Nations, he continues, a state is "a moral Person living with and in opposition to another state in a condition of natural freedom, which itself is a condition of continual war". States ought to "abandon the state of nature and enter, with all others, a juridical state of affairs, that is, a state of distributive legal justice" (p. 307). The social contract, then, is applied in the first instance to persons, enjoining that they leave the state of nature and enter a state. It is then applied a second time to states,<sup>2</sup> enjoining that they enter some kind of juridical state of affairs.<sup>3</sup>

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

We now imagine a second-stage original position, whose parties are "representatives of different nations who must choose together the fundamental principles to adjudicate conflicting claims among states" (p. 378). They know that they represent nations "each living under the normal circumstances of human life", but they know nothing about the particular circumstances of their own nation, its "power and strength in comparison

with other nations". They are allowed "only enough knowledge to make a rational choice to protect their interests but not so much that the more fortunate among them can take advantage of their special situation". This second-stage contract is designed to "nullif[y] the contingencies and biases of historical fate".

Rawls says little about the principles that would be chosen in this situation, but he indicates that they would include most of the familiar principles of the current Law of Nations: treaties must be kept; each nation has a right of self-determination and non-intervention; nations have a right to self-defence and to defensive alliances; just war is limited to war in self-defence; conduct in war is governed by the traditional norms of the law of war; the aim of war must always be a just and lasting peace (pp. 378–379).

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

A second problem concerns the fixity of the domestic basic structure. Rawls seems to accord legitimacy to the status quo, even when it is not fully accountable to people. One of the things people themselves might actually want out of international relations is help in overthrowing an unjust regime, or winning full inclusion in one that excludes them. There is no place for this in Rawls's early scheme. But the gravest problem with the analogy is its assumption of the self-sufficiency of states. In designing principles at the first stage, the society is assumed to be "a closed system isolated from other societies" (p. 8). (Thus it is no surprise that the relations between states are envisaged as occupying a very thin terrain, that of the traditional law of war and peace.) This is so far from being true of the world in which we live that it seems most unhelpful. Rawls's structure has no room even for a supranational political/economic structure such as that of the EU, far less for the complex interdependencies that characterize the world as a whole.

The assumption of the fixity and finality of states makes the second-stage bargain assume a very thin and restricted form, precluding any serious consideration of economic redistribution from richer to poorer nations. Indeed, Rawls waves that problem away from the start by his contractarian assumption of a rough equality between the parties: no one is supposed to be able to dominate the others. Of course, in our world these conditions are not fulfilled: one probably can dominate all the others. At any rate, the G8 do effectively dominate all the others. To assume a rough equality between parties is to assume something so grossly false of the world as to make the resulting theory unable to address the world's most urgent problems.

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

### **3. *The Law of Peoples: The Two-stage Bargain Reaffirmed and Modified***

*The Law of Peoples* "is an extension of a liberal conception of justice for a domestic

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

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

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

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

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

On some vexing issues left over from *A Theory of Justice*, however, the new work makes progress. Recall that the analogy between states and persons suggested that

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

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

So: Rawls makes only a little progress toward a richer conception of international society. In so far as he does make progress, we can now observe, this progress is made possible not by the contractual approach itself, but by some very dramatic departures from it, in the direction of an approach more like the one I shall favour, which defines a minimal conception of social justice in terms of the realization of certain positive outcomes, what people are actually able to do and to be. The criteria used to judge who is part of the bargain and who is not are ethical outcomes-oriented criteria: respect for human rights. Moreover, it appears that Rawls has jettisoned the traditional Humean criterion of rough equality, in the sense of similar economic circumstances. For clearly enough, nations that uphold human rights are not rough equals at all. Rawls seems to imagine the bargain as taking place between the USA and the nations of Europe and Australasia, which might at least be claimed to be rough equals. But where do we place nations such as India, Bangladesh and South Africa, liberal rights-respecting democracies that are grossly unequal to Australia and the others in basic economic advantage? The GDP per capita of the USA is US\$34 142, that of Bangladesh US\$1602, that of India US\$2358 and that of South Africa US\$9401. So these nations are extremely far from being rough equals of the nations of the USA, Europe and Australasia, and also far from being rough equals of one another.

The upshot is as follows. Either Rawls will have to admit that the principles and circumstances that bring societies together to form the second-stage bargain are very different from the Humean “circumstances of justice”, with their focus on rough equality and mutual advantage, or he will stand firm on those conditions. If he departs from Hume, relaxing the condition of rough equality and the associated understanding

of the motivation of the parties (they can all expect to gain from co-operation), then he can include all the nations I have mentioned, with their staggering inequalities; but then he will have to offer a new account of why they co-operate, since the bargain can no longer be seen as one for mutual advantage. Peace, of course, is in the interests of all human beings, but, as with the “outlaw states”, peace can be promoted externally, so to speak, and need not be promoted by including the poor democracies in the bargain itself. So we must have a richer account of the purposes they pursue together. If, on the other hand, Rawls stands firm with Hume, then he ought to say that India, Bangladesh and South Africa do not belong in the second-stage bargain, much though his other criteria tell in favour of their inclusion. They are just too poor for the richer nations to gain anything from treating them as rough equals.<sup>4</sup> Rawls has not thought this through; his lack of clarity on this point makes *The Law of Peoples* an unsatisfactory work.

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

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

(*The Law of Peoples*, pp. 42–43)

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

Let us now examine this analogy. In fact, there are both analogy and disanalogy. Inside a liberal society, there are many hierarchical conceptions of the good. These conceptions will be respected as reasonable provided that their adherents accept, as a constituent part within their comprehensive doctrine, the principles of justice that shape the basic structure of their society.<sup>5</sup> In other words, the religious conceptions must include Rawls’s principles of justice, even if originally they did not do so. Comprehensive doctrines that promulgate teachings conflicting with those will not find their speech suppressed, except in the exceptional conditions Rawls specifies in his doctrine of free political speech. None the less, they will not be respected, in the sense of being regarded as members of society’s constitutional structure; nor will their proposals be allowed to come forward for straightforward majority vote, since contradictory ideas will be entrenched in the nation’s constitution.

In the transnational case, things are very different. The religious or traditional doctrine is tolerated, in the sense of being recognized as belonging to the community of peoples, whenever certain far weaker conditions obtain. There must still be respect for a small list of human rights; but it is clear that a people may win respect in the community of peoples even if property rights, voting rights and religious freedom are unequally assigned to different actors within the society—men and women, for instance.<sup>6</sup> The requirements of political democracy, equal liberty and universal suffrage<sup>7</sup> are replaced by the weaker requirement of a “reasonable consultation hierarchy”. Even free speech need not be accorded to all persons, so long as certain “associations and corporate bodies” allow them to express dissent in some way, and take their views seriously.

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

Furthermore, in the domestic case any concessions that are made to the group are made against the background of exit options: persons are free to depart from one religion and to join another, or to have no religion at all. Rawls knows well that the basic structure of a nation offers no, or few,<sup>8</sup> exit options; this is why he thinks it is so important that the institutions that form part of the basic structure should be just. The basic structure shapes people’s life chances pervasively and from the start. Yet in the transnational case, Rawls has lost sight of this insight, allowing a local tradition to shape people’s life chances pervasively, in ways that depart from principles of justice, even though there are no exit options for those who do not endorse that doctrine.

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

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

#### **4. The Global Bargain: Beitz and Pogge**

A far more appealing use of a contractarian approach is made by Charles Beitz and Thomas Pogge.<sup>9</sup> For both of them, the right way to use Rawlsian insights in crafting a theory of global justice is to think of the original position as applied directly to the world



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

The Pogge–Beitz proposal is a big improvement over the two-stage bargain. The global veil of ignorance is an insightful way of capturing the idea that a just global order will not be based on existing hierarchies of power, but will be fair to all human beings. One significant difficulty with these proposals is their vague and speculative nature. We are not told in detail exactly how the global bargain will work, or what information the parties will and will not have. The world we live in exhibits changing configurations of power at the level of the basic structure itself; even 100 years ago it would have been difficult to predict what those structures would be. The new structures (e.g. multinational corporations) govern people's life chances pervasively and from the start. If the parties do not know their own era and its economic structures, they can hardly choose well. A related area of unfortunate vagueness concerns the role of the nation-state. Pogge and Beitz set out to question the finality and closed character of domestic state structures; but they do not tell us how far they really want to go. Are we standing back so far from current events that the very concept of the state will have to be reinvented and considered against other options for arranging people's lives? But it is hard to arrange human lives in a complete vacuum. How can we say whether the state is or is not a good structure, without first assessing its relation to other aspects of life, such as trade, the flow of information, the presence of international agencies and agreements? Finally, we need to know more about what primary goods the parties are imagined to be pursuing. Pogge depicts himself as following Rawls closely, yet he also thinks that his parties will agree on a long list of human rights, and will recognize a material basis for liberty. How far does he really intend to depart from Rawls's idea?

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

We have already seen that when the bargain is envisaged as taking place among nations, it cannot be cast in this form unless we omit not only non-liberal states, but also pretty much everyone except the G8. If we imagine the bargain as taking place among individual persons, things are indeed different: for the individual persons of the world are at least morally equal, and in some ways they—all those who are not disabled,

that is—might be argued to be roughly equal in basic economic productivity and life chances, before the contingencies of life begin to affect them. But when is that? Surely not at any time after birth, for every child is born into a world that begins to affect its life chances directly and dramatically, through differential nutrition, differential cognitive stimulation, differential exposure to kindness or violence, and so on. As we have seen, life expectancy at birth in the poorest nations is half what it is in Sweden; this aggregate figure derives from all kinds of differences at the level of individual lives.

Are individuals equal in life chances before birth? Surely not. Whatever account we give of the foetus, we must say that by the time a human being is born, differences in maternal nutrition, health care, bodily integrity and emotional well-being, not to mention HIV status, have already affected its life chances. For that matter, even getting the chance to be born is not a matter with respect to which there is rough equality: the staggering rise in sex-selective abortion in many developing countries means that females conceived in some parts of the world are grossly unequal in life chances both to boys in that same part of the world and to girls and boys in other parts of the world.

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

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

## **5. Social Co-operation: The Priority of Entitlements**

Since we live in a world in which it is simply not true that co-operating with others on fair terms will be advantageous to all, we must boldly insist that this account of social co-operation, even in its moralized Kantian form, is not the one we need to guide us. We have, and use, ideas of co-operation that are much richer than this. These richer ideas already inhabit the pre-contractarian natural law tradition, as my epigraph from Grotius makes clear. With Grotius, we ought to think of ourselves as people who want to live with others. A central part of our own good, each and every one of us, is to produce, and live in, a world that is morally decent, a world in which all human beings have what they need to live a life with human dignity.

The capabilities approach (as I have defended it in *Women and Human Development*) is an outcome-oriented approach. It says that a world in which people have all the capabilities on the list is a minimally just and decent world. Domestically, it interprets the purpose of social co-operation as that of establishing principles and institutions that guarantee that all human beings have the capabilities on the list, or can effectively claim them if they do not. It thus has a close relationship to institutional and constitutional

design, and the capabilities on my list are understood as informal recommendations to nations that are making or amending their constitutions.

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

We think about human dignity and what it requires. My approach suggests that we ought to do this in an Aristotelian/Marxian way, thinking about the prerequisites for living a life that is fully human rather than subhuman, a life worthy of the dignity of the human being. We include in this idea the idea of the human being as a being with, in Marx's phrase, "rich human need", which includes the need to live co-operatively with others. We insist that a fundamental part of the good of each and every human being will be to co-operate together for the fulfilment of human needs and the realization of fully human lives. We now argue that this fully human life requires many things from the world: adequate nutrition, education of the faculties, protection of bodily integrity, liberty for speech and religious self-expression, and so forth. If this is so, then we all have entitlements based on justice to a minimum of each of these central goods. So far, things are very definite: the idea of what human beings need for fully human living is a visit intuitive idea, realized in many human rights documents. But if human beings have such entitlements, then we are all under a collective obligation to provide the people of the world with what they need. Thus the first answer to the question "Who has the duties?" is that we all do. Humanity is under a collective obligation to find ways of living and co-operating together so that all human beings have decent lives. Now, after being clear on that, we begin to think about how to bring that about. The focus on capabilities reminds us that we shall need to make special efforts to address the unequal needs of those who begin from a position of social disadvantage. Moreover, a focus on capabilities, although closely allied with the human rights approach, adds an important clarification to the idea of human rights: for it informs us that our goal is not merely "negative liberty" or absence of interfering state action—one very common understanding of the notion of rights—but, instead, the full ability of people to be and to choose these very important things. Thus, all capabilities have an economic aspect: even the freedom of speech requires education, adequate nutrition, etc.

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

## **6. Globalizing the Capabilities Approach: The Role of Institutions**

So far, the capabilities approach has announced some ambitious goals for the world, and some general principles regarding pluralism and national sovereignty. Obviously, however, a great deal more remains to be said about precisely how the approach can be used to generate political principles for today's world. To some extent, this job is a practical job, a job for economists, political scientists, diplomats and policy-makers.

Philosophy is good at normative reasoning and at laying out general structures of thought. In a rapidly changing world, however, any very concrete prescriptions for implementation need to be made in partnership with other disciplines.

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

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

Institutions are made by people, and it is ultimately people who should be seen as having moral duties to promote human capabilities. None the less, 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 the citizens have duties to maintain the system of property rights, the tax structure, the system of criminal justice, and so forth, we are in one sense saying something true and important. There are no living beings in the state other than its people; there is no magical superperson who will shoulder the work. None the less, if each person tries to choose individually, massive confusion would ensue. It is far better to create a decent institutional structure and then to regard individuals as delegating their ethical responsibility to that structure. Much the same is true in the international sphere.

Second, there are issues of *fairness*. If I care a lot about the poor in my country and give a lot of my personal money to support their needs, I am thus impoverishing myself and my family, relative to those who begin in the same place but who do nothing for the poor. Any system of voluntary philanthropy has this problem. As long as others are not made 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.<sup>14</sup>

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

We do not need to elaborate all of these concerns further here in order to see that there is a great deal in them—and from the perspective of the capabilities approach itself. The capabilities approach aims to give people the necessary conditions of a life

with human dignity. It would be a self-defeating theory indeed if the injunction to promote human capabilities devoured people's lives, removing personal projects and space to such an extent that nobody at all had the chance to lead a dignified life.

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

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

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

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

The form this structure has assumed up until now is the result of history, rather than of deliberate normative reflection. There is thus an odd fit between normative political philosophy and the details of a set of institutions as oddly assorted as this. It is also clear that the allocation of responsibility among different parts of the global structure must remain provisional, and subject to change and rethinking. Notice, as well, that the allocation is an ethical allocation: there is no coercive structure over the whole to enforce on any given part a definite set of tasks. None the less, we can articulate some principles for a world order of this kind, which can at least help us think about how capabilities can be promoted in a world of inequalities.

## 7. Ten Principles for the Global Structure

- (1) *Over-determination of responsibility: the domestic never escapes it.* Most nations, well and honestly run, can promote many or even most of the human capabilities up to some reasonable threshold level. I have said that if justice requires the mitigation of global inequality, justice is not satisfied even if poor nations can promote the capabilities internally. None the less, we can begin by insisting that they do all that is in their power. If the fulfilment of capabilities is over-determined, so much the better.
- (2) *National sovereignty should be respected, within the constraints of promoting human capabilities.* In talking about justification and implementation, I have already outlined the ideas behind this principle. In general, coercive intervention is justified in only a limited range of circumstances; but persuasion and persuasive use of funding are always good things. This brings me to my next principle.
- (3) *Prosperous nations have a responsibility to give a substantial portion of their GDP to poorer nations.* The prosperous nations of the world have the responsibility of supporting the human capabilities of their own citizens, as principle 1 asserts; but they also have additional responsibilities. They can reasonably be expected to give a great deal more than they currently give to assist poorer nations: the figure of 1% of GDP, while arbitrary, is a good sign of what might be morally adequate. Less clear is the form such aid ought to take: Should it be given in the first instance to governments, or also to NGOs? This must be left for contextual determination: the general principle would be not to undermine national sovereignty if the recipient nation is democratic, but at the same time to give aid in an efficient way, and a way that shows respect for the capabilities on the list.
- (4) *Multinational corporations have responsibilities for promoting human capabilities in the regions in which they operate.* The understanding of what a corporation is for, 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 in a region is to devote a substantial amount of one's profits to promoting education and good environmental conditions. There are good efficiency arguments for this: corporations do better with a stable, well-educated work-force. Education also promotes political engagement, crucial for the health of a democracy; and corporations do well under conditions of political stability. None the less, 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 labour conditions, going beyond what local laws require.
- (5) *The main structures of the global economic system must be designed to be fair to poor and developing countries.* As we have said, the fact that many nations can feed all their people does not mean that it is fair for some countries to have additional burdens placed in their way. Exactly what this principle involves is a matter that economists debate, and will long continue debating.<sup>17</sup> But there is pretty general agreement that the ways in which the IMF and various global trade agreements have been operating are insufficiently informed by careful ethical reflection about these issues.
- (6) *We should cultivate a thin, decentralized, yet forceful global public sphere.* A world state is not, we argued, an appropriate aspiration; but there is no reason why a thin

system of global governance, with at least some coercive powers, should not be compatible with the sovereignty and freedom of individual nations. This system should include: a world criminal court of the sort currently proposed to deal with grave human-rights violations; a set of world environmental regulations, with enforcement mechanisms, plus a tax on the industrial 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 labour standards, for both the formal and the informal sector, together with sanctions for companies that do not obey them; some limited forms of global taxation that would effect transfers of wealth from richer to poorer nations (such as the global resource tax suggested by Thomas Pogge); and, finally, a wide range of international accords and treaties that can be incorporated into the nations' systems of law through judicial and legislative action.<sup>18</sup>

- (7) *All institutions and individuals should focus on the problems of the disadvantaged in each nation and region.* We have observed that national sovereignty, while morally important, risks insulating from criticism and change the situation of women and other disadvantaged groups within each nation. The situation of people (whoever they are, at any given time) whose quality of life is especially low, as measured by the capabilities list, should therefore be a persistent focus of attention for the world community as a whole. Although coercive sanctions will be appropriate in only some cases, our ability to justify a richer set of norms should lead to tireless efforts of persuasion, political mobilization and selective funding.
- (8) *Care for the ill, the elderly and the disabled should be a prominent focus of the world community.* A growing problem in today's world, as the population ages and as more and more people are living with HIV/AIDS, is the need to care for people in a condition of dependency. The state, the workplace and the family must all change so that needs for care are met without crippling the well-being and the aspirations of women.
- (9) *The family should be treated as a sphere that is precious but not "private".* The world community should protect the individual liberties of people, which includes their right to choose to marry and form a family, and various further rights associated with that; but the protection of the human capabilities of family members is always paramount. The millions of girl children who die of neglect and lack of essential food and care are not dying because the state has persecuted them; they are dying because their parents do not want another female mouth to feed (and another dowry to pay), and the state has not done enough to protect female lives.
- (10) *All institutions and individuals have a responsibility to support education, as key to the empowerment of currently disadvantaged people.* Education is a key to all the human capabilities.<sup>19</sup> It is also among the resources that are 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, NGOs (funded by individual contributions, foreign aid from governments, etc.) and the global public sphere (in international documents and fora) can do a great deal more than they now do to promote universal primary and secondary education everywhere.

There is no natural place to stop this list of principles. One might have had a list of 20 principles, rather than 10. None the less, the principles, together with the theoretical analysis that supports them, are at least a sign of what the capabilities approach can offer, as we move from goals and entitlements to the construction of a decent global

society. If our world is to be a decent world in the future, we must acknowledge right now that we are citizens of one interdependent world, held together by mutual fellowship as well as the pursuit of mutual advantage, by compassion as well as self-interest, by a love of human dignity in all people, even when there is nothing we have to gain from co-operating 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.

### Notes

1. This article derives from a book in progress, entitled *Global Justice and Fellowship: Disability, Nationality, Species Membership*. The book, under contract to Harvard University Press, is based on my Tanner Lectures 2003. All data in this paragraph are from *Human Development Report 2002* (New York, Oxford University Press, 2001), pp. 141–144. Data are from 2000. Sierra Leone ranks last overall among the 173 countries in the HDI.
2. Kant says, rightly, that “Law of Nations” is a misnomer: it ought to be “Law of States” (in his Latin, *ius publicum civitatum*).
3. See also: *Idea for a Universal History*, where Kant speaks of the “barbarous freedom of established states” (p. 49); *Theory and Practice*, where he speaks of a “state of international right, based upon enforceable public laws to which each state must submit (by analogy with a state of civil or political right among individual men)” (p. 92); *Perpetual Peace*, where he speaks of the “lawless condition of pure warfare” between states, and continues, “Just like individual men, they must renounce their savage and lawless freedom, adapt themselves to public coercive laws ...” (p. 105). (All translations from these works are from *Kant: Political Writings*, in: H. Reiss (Ed.) translated by H.B. Nisbet (Cambridge, Cambridge University Press, 1970). Pages are given as in that edition, since it does not include the Akademie pagination.)
4. See Stiglitz, who describes a notorious photograph in which a French representative of the IMF stands over a seated Indonesian leader, arms crossed, in a posture of high colonial condescension, delivering the wisdom of the rich nations and their agencies.
5. For this language, see *The Law of Peoples*, pp. 144–145: “the political conception is a module, an essential constituent part, that in different ways fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it”.
6. See *The Law of Peoples*, p. 65 n. 2: “this liberty of conscience may not be as extensive nor as equal for all members of society: for instance, one religion may legally predominate in the state government, while other religions, though tolerated, may be denied the right to hold certain positions”.
7. See *The Law of Peoples*, p. 71: “... all persons in a decent hierarchical society are not regarded as free and equal citizens, nor as separate individuals deserving equal representation (according to the maxim: one citizen, one vote) ...”.
8. In his formulation, none, since the society is assumed to be closed.
9. Charles Beitz, *Political Theory and International Relations* (Princeton, Princeton University Press, 1979); Pogge, *Realizing Rawls*.
10. *Realizing Rawls*, p. 247.
11. *Realizing Rawls*, p. 273.
12. *Realizing Rawls*, p. 272.
13. See George Soros, *The New Republic*, August 2002.
14. See Liam Murphy, *Moral Demands in Non-ideal Theory* (New York, Cambridge University Press, 2001).
15. In one form, this family of objections is eloquently pressed by Bernard Williams, in “A critique of utilitarianism”, in: J.J.C. Smart & B. Williams, *Utilitarianism For and Against* (Cambridge, Cambridge University Press, 1973), pp. 77–150.
16. See Thomas Nagel, *Equality and Partiality* (New York, Oxford University Press, 1991).
17. See, e.g. Stiglitz, and the review of his book, summarizing pertinent criticisms, by Benjamin Friedman in *The New York Review of Books*, 22 August 2002.
18. In several cases, for example, the norms of sex equality in the Convention on the Elimination of All Forms of Discrimination Against Women have been held to be binding on nations that have ratified it, in a way that has affected the outcome of legal disputes, and also generated new legislation.
19. See my “Women and education: a global challenge”, (2004), in *Signs*, 29, pp. 325–355.