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## Perfectionism for Neutralists

This paper explores and defends what I call *public value perfectionism*.<sup>1</sup> This new form of liberal state perfectionism emerges from Sen’s capability critique of Rawls’s doctrine of primary goods, while drawing on some of the methodological insights of Rawls’s idea of public reason. I argue that my view is not only compatible with, but also demanded by, at least one familiar form of liberal neutrality. Public value perfectionism is designed to fulfill a demand of justice that is beyond the reach of neutralist tools, yet my view belongs within a larger neutralist framework in virtue of being justified by the same types of reasons that figure in neutralist arguments. One of the main justifications for state neutrality is that it can serve as a means to remove or reduce disadvantage imposed on vulnerable groups. I will argue that insofar as people with disabilities constitute one such group (which is itself a contentious issue), public value perfectionism is in that case better able than neutrality to serve as a means to remove or reduce imposed disadvantage.

While this paper does not achieve a complete reconciliation between perfectionism and neutrality—since some practical tensions between the two remain, my view does demonstrate that a significant conceptual compatibility can exist between perfectionism and neutrality in liberal egalitarian theory. The bulk of the paper is preparation for my argument set out in the third section. I begin by clarifying the meaning of perfectionism and explaining what version of neutrality I have in view. The second section defends an interpretation of the debate between Amartya Sen and John Rawls concerning the metric of advantage in order to set the stage for my defence of public value perfectionism in the final section.

### 1. The Meaning of Perfectionism and the Type of Neutrality in Question

It is important to take care not to confuse the meaning *perfectionism* now has in political philosophy with other, perhaps more intuitive, senses of the term. For example, in ordinary speech, a perfectionist is someone obsessed with doing things perfectly. In ethics, a moral perfectionist is someone who exalts the importance of perfecting one’s talents or character. Both of those senses have an intelligible connection to the Latin root *perficio*, which is commonly translated as “to bring to completion.” However, in current political philosophy, a state perfectionist is simply someone who objects, in some way, to liberal neutrality. State perfectionism no longer has any necessary connection to the Latin root, and entails neither

ordinary nor moral perfectionism.

In the early stages of the neutrality/perfectionism debate, the theories—real or imaginary—that were labeled *perfectionist* did have some affinity to moral perfectionism. Early defenders of neutrality were concerned to distance themselves from theories that permitted or required a political authority to promote a unitary view of the good life that all members of society would be encouraged to follow. Neutralists defended the idea of state neutrality as a condition of legitimate political authority in order to reject a view of society according to which citizens and society can reach their full value only through the collective pursuit of common ends that form a complete way of life. However, few, if any, current state perfectionists are committed to such a view. They simply oppose, for various reasons and to various extents, the constraints demanded by liberal neutrality; and so perfectionism is now best understood as ‘non-neutrality’.<sup>2</sup> We should therefore clarify the idea of neutrality.

There are different types of neutrality, which can be distinguished in terms of what I will call *scope*, *target*, and *strength*.<sup>3</sup> Neutralist requirements can be of either *unlimited* or *limited* scope. Unlimited neutrality covers all exercises and institutions of political authority. Limited neutrality sets some limit, such as we find in Rawls’s exclusion of perfectionist values from only “questions of constitutional essentials and basic questions of justice.”<sup>4</sup> My concern in this paper is unlimited neutrality, because the arguments that explain the importance of neutrality derive their force from the non-voluntary character of (howsoever just) political authority, and I see no reason not to think that every exercise of political authority participates in that character—even if the importance, for stability, of justifying the actual or implicit coercion of political authority is greater in the case of constitutional essentials and matters of basic justice. Further, by arguing for perfectionism from the starting point of unlimited neutrality I set myself a more difficult task, and so hope for a more significant achievement, than if I were to start with limited neutrality, since the latter, by definition, permits perfectionism beyond whatever limits the view sets on neutrality’s scope.

The target of neutralist requirements can be the *effect* of state actions or the *justification* of state actions.<sup>5,6</sup> Neutrality of effect forbids state actions that would make the flourishing or demise of any conception of the good more likely than it otherwise would have been. Neutrality of justification has been described negatively and positively. Negatively, justificatory neutrality forbids dependence on claims about the good that are controversial in the sense that they are not shared by all reasonable members of society. More specifically, a state action must be justified by a set of reasons whose rational force would be adequate if we were to remove the support those reasons receive from any controversial claims about what gives value and meaning to our lives, about ultimate human nature, or about our relationship to reality understood in the largest sense. Positively, justificatory neutrality requires political authority to act on and respond to what Rawls calls *public reasons* whose rational force can be appreciated by all reasonable members of society.<sup>7</sup> These negative and positive requirements should be considered individually necessary and jointly sufficient for neutrality of justification. My concern in this paper is justificatory neutrality, because in addition to being more plausible than neutrality of effect it is the self-description of choice among most prominent defenders of liberal neutrality.<sup>8</sup>

However, as Michael Pendlebury argues, the distinction between neutrality of effect and neutrality of justification is not as clear as one might suppose.<sup>9</sup> This is because if a

state action or policy brings about some disadvantage to a particular social group, then it is at least in some cases reasonable for the rational force of the albeit negatively neutral justification of that policy or action to be lowered in the eyes of at least the members of that social group. To illustrate, consider Will Kymlicka's defence of, and response to, state nation-building.<sup>10</sup> He argues that the most defensible way to create and maintain the social unity required for public support of egalitarian public policies is to use state power to construct, shape and foster a *societal culture* that binds members of society together by means of a national identity, the content of which includes, among other things, an affirmation of egalitarian values. Such a societal culture will be thin compared to the thicker glue of ethno-religious nationalisms; nonetheless, in order to effectively achieve wide-spread social ties without prohibitive public expense, nation-building efforts will inevitably favour the dominant social group.<sup>11</sup>

The unequal benefits of state nation-building do not violate the negative element of neutrality of justification, because such choices would be made not on the basis of any claim about their superior intrinsic or inherent value, but rather only because of their relatively greater instrumental value, in light of demographic facts, for promoting egalitarian justice by means of securing the necessary social unity for sustainable public support. And yet, such state nation-building is unfair to minority groups.<sup>12</sup> The imposed disadvantage, even though justified by reasons whose rational force does not depend on controversial claims about the good, reasonably lowers that rational force in the eyes of minority groups—and all reasonable members of society. Pendlebury's account of the relationship between effect and justification explains why. State nation-building must therefore be complemented by a suitable set of minority rights in order to satisfy the positive element of neutrality of justification. Note, however, that this does not demonstrate the defensibility of neutrality of effect as a condition of legitimacy. Rather, it shows that even if we reject—as we should—neutrality of effect, differential effect is nonetheless sometimes relevant for legitimacy, because of the weight disadvantage to one's group can reasonably be given in people's judgments about the acceptability of justifications of state actions.

With regard to strength, we should distinguish, again following Pendlebury, between *strict* and *moderate* neutrality. Strict neutrality is “a commitment to an absolute and uncompromising prohibition of nonneutral state action.”<sup>13</sup> Moderate neutrality claims that “the nonneutrality of a measure establishes a presumptive burden on those who support it to show that it does not unreasonably violate the principles of impartiality, equality, and consent; that it does not undermine personal autonomy or the conditions required for the safety and security of the state without adequate justification; and that it is broadly consistent with reasonable beliefs about the nature of the good.”<sup>14</sup>

This is a worthwhile distinction, but there is an ambiguity that needs to be addressed. It is not clear whether the distinction is meant to apply to the requirement of neutrality itself or to the considerations marshaled in defence of the requirement of neutrality. In line with Pendlebury's discussion, I suggest that the strict/moderate definition is intended to be applied to both the requirement and the considerations. Accordingly, strict neutrality can be described, more precisely, as the claim that the requirement of neutrality always prevails *because* the considerations marshaled by neutralists always prevail; whereas moderate neutrality can be described as the claim that the balance of reasons is sometimes in favour of lifting the requirement of neutrality *because* the considerations in favour of neutrality are sometimes outweighed by other considerations related to justice. However, there is an

intermediate position, which rejects the first half of strict neutrality without rejecting the second half. *Moderately strict* neutrality, as I will call it, claims that the considerations marshaled by neutralists always prevail, yet in some cases those considerations actually favour lifting the requirement of neutrality.

While remaining agnostic about the merits of moderate neutrality, I will argue that moderately strict neutrality is more defensible than strict neutrality. To do that, my starting point will be strict neutrality, and I will defend public value perfectionism on the basis of the reasons that are meant to support strict neutrality. This will provide an argument against strict neutrality and for limited state perfectionism that is distinct from, though not necessarily inconsistent with, Pendlebury's defence of moderate neutrality.

In summary, the version of neutrality that serves as my starting point is unlimited, justificatory and strict.<sup>15</sup> Neutrality so understood makes two general claims: (i) an exercise of state authority is legitimate only if it satisfies justificatory neutrality; and (ii) all matters of justice can be adequately addressed while respecting neutralist constraints. Therefore, since perfectionism is best defined as the rejection of neutrality, I will consider a theory perfectionist if it rejects at least one of those main claims. That is, if a theory argues that in at least some cases the state can legitimately justify its actions by appeal to non-neutral claims about the good life, then it is perfectionist. Likewise, if a theory argues that neutralist constraints prevent us from adequately addressing at least some matters of justice, then it is perfectionist. Of course, a theory could fulfill both of those conditions and not be at all committed to the idea that the state should promote a single way of life for all citizens. Perfectionism is best understood to mean simply that neutralist constraints are, in at least some cases, either needless or harmful.

There are two importantly different ways to defend perfectionism: as something that justice demands, or as something that justice permits. The first strategy can be found, for instance, in autonomy-based defences of perfectionism.<sup>16</sup> This is the view that the state should be involved in subsidising valuable activities that would not survive in the market, because otherwise individual autonomy would be undermined due to an overly narrow range of seizable options. The second strategy can be found in arguments that defend optimism about identifying common ideas of the good.<sup>17</sup> This is the view that, *pace* neutralists, there are indeed robust common views about the good life, and so a perfectionist state that acts on such views does not violate requirements concerning political legitimacy.

My defence of public value perfectionism (PVP) is of the first sort. I argue that PVP is demanded by justice, because PVP is an irreplaceable part of any adequate response to issues of justice and disability. I doubt that state perfectionism is simply permitted by justice, because I am persuaded by neutralist arguments that there are strong reasons why neutrality is unlimited in scope and to be taken seriously in all state actions. I will now briefly outline those arguments.

Kymlicka provides good presentations of what I consider to be the two strongest arguments in favour of neutrality: the endorsement constraint and the norms of articulateness argument. Concerning the first of these, he argues that engaging in genuinely worthwhile activities contributes to a person's well-being only if she experiences them as valuable. "[N]o life goes better by being led from the outside according to values the person does not endorse."<sup>18</sup> The state's efforts to promote well-being will be effective only if they are done in ways that are consistent with people being ultimately left by the state to

choose in light of their own beliefs about value—that is, to lead their lives from the inside.<sup>19</sup>

It has been pointed out, however, that the endorsement constraint is compatible with some forms of state perfectionism.<sup>20</sup> Kymlicka concedes this. He writes,

One way to get people to pursue something for the right reasons is to get them to pursue it for the wrong reasons, and hope they will then see its true value. This is not inherently unacceptable, and it occurs often enough in the cultural marketplace. So the endorsement constraint argument, by itself, cannot rule out all forms of state perfectionism.<sup>21</sup>

However, these temporary state interventions require prior evaluation of the good by—or at least within—the institutions of the state. He objects to this by presenting the norms of articulateness argument, which I will now explain.

Kymlicka places great importance on the social sphere as a third area of human life between the public and the private. The social sphere is the domain of civil society, characterised by various kinds of groups, such as associations, clubs, businesses, churches, and so on, in which membership is voluntary in a way that citizenship acquired by birth is not.<sup>22</sup> The non-state forums of civil society produce a cultural marketplace of ideas. Against a background of civil and political liberties, a fair distribution of advantage, and state neutrality, groups espousing competing conceptions of the good are each free to extol the virtues of their way of life, seeking to gain further adherents to their conception. Under these conditions, the hope is that genuinely worthwhile ways of living will show themselves to be so, and trivial or harmful ones will lose out. In this way, neutrality expects to facilitate the improvement of people's beliefs about value. Kymlicka calls this *social perfectionism*.

Marginalised groups, however, face certain disadvantages in the cultural marketplace. One reason has to do with a society's norms of articulateness.

The dominant cultural practices of our community were defined by one section of the population—that is, the male members of the upper classes of the white race—and were defined so as to exclude and denigrate the values of subordinate groups. Members of these excluded groups—women, blacks, Hispanics—have been unable to get recognition for their values from the cultural mainstream and have developed (or retained) subcultures for the expression of these values, subcultures whose norms, by necessity, are incommensurable with those of the mainstream.<sup>23</sup>

To have an effective voice, one must not only be listened to, but also understood. This is a real problem in the cultural marketplace. Social perfectionism is thus imperfect. In response, one might be tempted to expand discussion of the good beyond civil society and into the political sphere. Doing so, however, would, Kymlicka argues, only worsen the situation.

He is concerned that state perfectionism would intensify the disadvantage of marginalised groups for two reasons. First, state perfectionism forces minority groups to adopt mainstream norms of articulateness. But doing so would likely fail to capture the real meaning and value of their practices, and fail to remove their disadvantage, since the mainstream's norms have been defined by and for the mainstream. Second, the stakes of the competition among conceptions of the good are higher under state perfectionism. State power would be exercised in various ways to subsidise the activities that win out in public debates. In addition, special tariffs on disfavoured activities might be imposed. Even without such tariffs, all non-subsidised activities would become more difficult to maintain, because the mere fact of subsidies—funded by taxes collected from all—makes such

activities more expensive in relative terms.

The process Kymlicka describes, by means of which state perfectionism risks imposing disadvantage on vulnerable groups, is not limited to constitutional essentials and matters of basic justice. Every exercise of political authority is susceptible to this process, especially because detecting the problem involves questioning mainstream values that are regularly taken for granted. Neutrality is offered as the best way to prevent state power from being used in ways that impose unfair disadvantage on vulnerable groups.

But what should be done if there is a clear matter of justice that cannot be adequately addressed within neutralist constraints? One response is to hold firm on the importance of neutrality, and to say that the alleged matter of justice is not really a matter of justice. However, a better response is to judge, for the case at hand, whether neutrality or perfectionism better serves the goal of not imposing unfair disadvantage on vulnerable groups. If we accept the reasoning behind neutrality, then we should be open to the possibility that the reasoning will lead us away from neutrality in certain cases. The cases I have in mind are those that concern disadvantage that is associated with disability. In the discussion to follow, I will keep in mind that not all conditions that are labeled as disabilities are disadvantageous—either experientially or objectively—to all people with that condition, such as deafness.<sup>24</sup>

Ultimately, I aim to show that public value perfectionism should be included as an element in efforts to use Sen's idea of capability to revise Rawls's theory in order to allow justice as fairness to more adequately set out the requirements of egalitarian distributive justice for a world that includes people with disabilities. Before I can argue that a capability-based revision of Rawls should make use of PVP, I need first to explain why Sen's idea of capability offers a promising way to address issues of distributive justice and disability. The next section takes on that latter task with the help of an idea that I call *broad opportunity*.

## 2. Rawlsian Distributive Justice, Broad Opportunity, and Sen's Capabilities

In this section, I will use the idea of what I call *broad opportunity* to defend an interpretation of Rawls's theory that clarifies why justice as fairness should be revised to incorporate Sen's idea of capability in order to empower Rawls's theory to more adequately address issues of justice and disability. In short, I view the idea of capability as a conceptual tool that can make it possible for Rawls's theory to recognise disadvantage associated with disability. Like any tool, there are risks of error if it is used together with inadequate information, understanding or judgment about disability. However, obtaining the capacity to recognise disadvantage is significant, since it is a theoretical prerequisite for setting out what justice demands in response.

The idea of *broad opportunity* should be explained. When we are examining a theory of justice, we can ask: What is the range of application of the account's opportunity principle? Here I think it is useful to distinguish between opportunities in three domains: (i) *political* opportunities to participate in political life and to affect the outcomes of collective political decisions; (ii) *economic* opportunities to acquire marketable skills through education and to exercise them through employment; and (iii) *civil* opportunities to participate in the social and cultural life of a community, both in the context of private life

and civil society. I consider an account's concern with opportunity to be *narrow* if its ultimate target is one or both of the first two domains (i.e., political and economic), and *broad* if it also encompasses civil opportunities.

One might be tempted to think that Rawls's theory is concerned only with narrow opportunity. This mistake could easily be made if one were to assume that Rawls's concern with opportunity is contained entirely within his principle of fair equality of opportunity. His opportunity principle is meant to apply only to economic opportunities—those having to do with education and employment. It is designed to make sure that desirable *social positions* (i.e., rungs on the socioeconomic ladder) are not more attainable for some citizens simply in virtue of social contingencies related to their upbringing or the status and power of their family. However, Rawls's remarks concerning the worth of liberties make it clear that he is concerned with broad opportunity.

[T]he basic liberties ... are the same for all citizens. ... But the worth, that is, the usefulness of these liberties, which is estimated by the index of primary goods, is not the same for all. ...

[T]he equal political liberties, and only these liberties, are to be guaranteed their fair value. ... This guarantee means that the worth of the political liberties to all citizens, whatever their economic or social position, must be sufficiently equal in the sense that all have a fair opportunity to hold public office and to affect the outcome of elections, and the like.<sup>25</sup>

Talk about the worth of liberties is indeed talk about opportunity. Although Rawls chooses not to use opportunity talk when discussing the political and civil domains, the content of his claims can and should be cast in terms of opportunity.

Consider the remarks concerning the fair value of the political liberties. The fair value of a person's political liberties can be said to be guaranteed just in case she has fair opportunity to make use of those liberties—namely, “to hold public office and to affect the outcome of elections, and the like.” This claim can be formalised as follows:

S's liberty to pursue X has fair value  
if and only if

fair equality of opportunity to pursue X is secured for S (and others).

More generally, this means that a person's liberties have value insofar as she has substantive opportunity to pursue those things her liberties permit. Concern for the value of liberties is concern for opportunity. Therefore, the worth of a liberty is the magnitude of a person's opportunity to pursue the activities that the liberty renders permissible. And since primary goods are used to measure the worth of liberties, a person's share of primary goods is supposed to act as an indicator of the magnitude of her opportunities.

With this analysis, we can recast Rawls's account of justice in opportunity terms. Since he defends fair equality of employment-related opportunities, and argues that society should guarantee the fair value of political liberties, his account is committed to fair equality of what I have called *economic* and *political opportunities*. The fair value of civil liberties, however, is not guaranteed in justice as fairness.<sup>26</sup> Inequality in the worth of these liberties is measured by primary goods. The unequal distribution of primary goods is meant to be egalitarian in virtue of the difference principle. The difference principle is thus responsible for ensuring that the unequal worth of people's civil liberties is reconcilable with civic equality—the equal political standing and moral importance of all citizens. Rawls is therefore committed to an unequal yet egalitarian distribution of *civil opportunities*.

It is not unjust that people have better or worse civil opportunities as a result of their different social positions, provided the process by which people come to occupy different positions is governed by fair equality of economic opportunity and does not undermine fair equality of political opportunity. Under those conditions, *inter-positional* civil inequality is not unjust; but *intra-positional* civil inequality is unjust—at least if it tracks morally arbitrary differences. We can think of this as a labour rights issue. If two people with the same earning power have significantly different magnitudes of civil opportunity as a result of one of them having a disability (which might be the case even if their salaries are identical), this is unfair.<sup>27</sup> If the distribution of civil opportunity is not egalitarian, then the legitimacy of the political authority that reinforces it by means of the basic structure is called into question.

Rawls's theory is indeed concerned with broad opportunity, but there are various features of his account that attempt to deal with broad opportunity at a distance. One of those features is called the normal and fully cooperating assumption (NFCA), which I will now explain.

Rawls's NFCA is an idealisation that confines our attention to only those members of society who are fully cooperating participants in fair social cooperation, and whose physical and mental abilities fall “within the normal range.”<sup>28</sup> Rawls acknowledges that this idealisation brackets many concerns about justice for citizens with disabilities.<sup>29</sup> What role does the NFCA play in Rawls's view? What contribution is it intended to make? The best way to describe the purpose of the NFCA is to say that if it is granted, then it allows Rawls's theory to flesh out egalitarian principles of distributive justice without being forced to make comparative evaluations of particular opportunities. More precisely, the NFCA, if granted, allows Rawls to defend the doctrine of primary goods as a way to measure the unequal magnitude of people's civil opportunity *indirectly*.

To explain what I mean by saying that the measurement is indirect consider the following alternative. The magnitude of civil opportunity could be measured directly by judging the value of particular social and cultural activities that individuals in a given social position in fact have the opportunity to pursue. However, doing so would involve evaluating the relative merits of various civil activities—judging which are such that it is (most) valuable for individuals to have the opportunity to pursue them. As I argue below in the third section, such an evaluation cannot be adequately accomplished within neutralist constraints. Instead Rawls develops an indirect approach that relies on primary goods. He uses primary goods as an indicator of a person's level of advantage, which is the same as saying that primary goods serve as a proxy for the magnitude of their civil opportunities.<sup>30</sup>

Primary goods would be an adequate indicator of civil opportunity if it were the case that a given share of primary goods adds worth to liberties in roughly the same way for everyone, or, in other words, provides roughly equally effective means to pursue the activities that the liberty renders permissible. Primary goods are supposed to be able to do this because of their all-purpose nature. No matter what your conception of the good, primary goods are instrumentally valuable for pursuing it. However, differences in conceptions of the good are not the only important differences among people. Another important difference is what I call *conversion ability*. This is the focus of Sen's capability critique. He is concerned with “what power [a person] has to convert primary goods into the fulfillment of [her] ends.”<sup>31</sup>

Discussions about variation in physical and mental abilities sometimes emphasise the



impact on economic opportunities—that is, they focus on how various disabilities can be obstacles in the process of coming to occupy a rung on the socioeconomic ladder. Sen's point, in contrast, focuses on what happens after that process. Does the bundle of primary goods that is attached to a social position provide equivalent levels of advantage to all occupants of that rung? He rightly argues that it does not, because of differences in conversion ability. The disadvantageousness of a disability can thus manifest in two stages: it can make it more difficult for one to attain a desirable social position, and it can reduce the value, in terms of civil opportunities, of the rewards that come with that social position. Rawls's NFCA blinds his theory to this.

We should consider, therefore, what consequences abandoning the NFCA would bring for Rawls's theory. The result would be that primary goods could no longer be defended as an adequate way to measure the magnitude of people's civil opportunity. Instead, evaluative judgments would need to be made about the different sets of seizable civil opportunities that people actually have. This is precisely Sen's idea of *capability*. Advantage should be measured in terms of the value of a person's range of genuine opportunities. But, how do we do that? Consider two views: (i) the value of a range of seizable civil opportunities depends on the number of opportunities—the more the better; and (ii) the value of a range of seizable opportunities depends on the value of the opportunities themselves. Sen argues against the first approach, since one beneficial opportunity is obviously more valuable than two harmful ones.<sup>32</sup> As a result, he concludes that the capability metric can be put into political use only if we can judge the value of opportunities so as to create a public ranking.

Not only is a public ranking of valuable opportunities needed, a robust one is needed. It is important for the public list of valuable *functionings* (i.e., valuable actions or states of being) to be as extensive in scope as is feasible. Why is that? The reason is fairly simple. The point of the capability approach, and the public list it requires, is to make it possible for society to respond to inequalities in conversion ability that are overlooked by the doctrine of primary goods. Society will be able to respond to those inequalities only to the extent that they are recognised by the capability metric. The capability metric's capacity for recognising *conversion impairments*—particularly those associated with disabilities—extends only as far as the content of the public list.

To put the point in a more concrete way, the disadvantage that is associated with a disability will be recognised by the capability metric only if, and insofar as, that disadvantage manifests in ways that involve one or more of the activities whose value is affirmed by the public ranking. If the disadvantage manifests only in ways that involve other activities not on the list, then the capability metric will overlook that instance of inequality, and so will not provide a justification for society to respond to it. The power of the capability metric to achieve its goal concerning the mitigation of disadvantage associated with disabilities is thus dependent on the scope of the public ranking. The more extensive the list, the more instances of this type of disadvantage can be recognised by the capability metric.<sup>33</sup>

For those reasons public debate concerning the creation or revision of a public ranking should encompass political, economic and civil opportunities—that is, broad opportunity. If we were to confine our attention to only political and economic opportunities when taking on that task, we would greatly limit the ability of the capability metric to remedy the shortcomings in Rawls's theory. In the next and final section, I will argue that public value

perfectionism is better suited than neutralism to the task of creating a public ranking of civil opportunities.

However, before moving to the next section, it is worth reflecting on the risks of errors in the above proposal. Is the view I have been defending guilty of an objectionably negative view of disabilities? Does the view lead to an objectionably compensatory understanding of justice and disability?<sup>34</sup> To respond to these concerns, I will briefly outline the understanding of disability that I am working with, and then discuss some of the ways in which what I am defending could go amiss in some cases.

To conceptualise disability, I am persuaded that some hybrid of the social and biomedical models is warranted.<sup>35</sup> On a view of this sort, the analysis begins with the mere idea of a statistically *uncommon physical or mental trait* in a person. The mere fact that a trait is rare or atypical does not make it good or bad. If, however, the trait causes pain or impedes or prevents valuable physical or mental functions, then it is considered in a negative light and is labeled an *impairment*. The concept of impairments is largely or wholly biomedical; however, the concept of disability cannot be captured fully from a purely biomedical perspective. *Disability* refers not to an impairment itself, but rather to the disadvantage experienced by a person as a result of the interaction between her impairment(s) and her physical and social environment(s). That is the primary insight of the social model, the significant force of which comes from the fact that most people—with disabilities or without—spend most of their time in physical and social environments the design of which has been largely or entirely determined by human choices. Most human activities are secured, blocked, created, and/or shaped by those choices. A non-painful trait becomes a disability only insofar as there are valuable activities—valued by people with and without that trait—that the constructed environment opens up to people without the trait while failing to do so for people with the trait.<sup>36</sup> With that in mind, a disability exists when there is an impairment that, given the current design of the individual's physical and social environment, impedes or prevents some valuable opportunities.<sup>37</sup>

To assess the risk that the proposal I defend would express an objectionably negative view of disability, we can consider four scenarios: (i) the activity impeded or prevented by the interaction of the uncommon trait and the environment is valued by the people with the trait and is on the public list of valuable functionings; (ii) the activity is valued, but is not on the list; (iii) the activity is not valued and is on the list; and (iv) the activity is not valued and is not on the list. In the first and fourth scenarios, the evaluations expressed by the list match the judgment of the people with the trait, which is good, because what really is disadvantageous and what is not are both recognised as such. The error in the second scenario is that a genuine disadvantage is not recognised and is therefore likely to be neglected. To remedy this, the public list would need to be expanded accordingly. The error in the third scenario is that the public list assumes an uncommon trait to be the source of a disability when it is not, and so expresses an objectionably negative view of that trait. To remedy this, the public list should be revised in a way that attends more carefully, and gives more weight, to the opinions and experiences of people with that trait. If those two strategies are pursued wholeheartedly, the hope is that the use of capability as the metric of advantage for a theory of justice would not express an objectionably negative view of disability.

Lastly, let us consider the whether the proposal I defend would be objectionably compensatory. This objection rejects the claim that having a disability is something for

which a person should be compensated. I agree that enablement is a better response than compensation. Enablement is basically the claim that efforts should be made by society to counteract the tendency of impairments to diminish the overall value of a person's range of opportunities.<sup>38</sup> These efforts can be social, which aim to improve the accessibility of physical and social environments; or they can be biomedical, which aim to reduce or cancel the impairment itself. The capability approach does not have a principled reason to favour one or the other type of enablement. But for such a choice, surely the preferences of people with impairments should be given the most weight, assuming that considerations of cost-effectiveness do not push very strongly for the other option, whichever that may be.

### 3. In Defence of Public Value Perfectionism

Here is a recap of the discussion so far. Neutrality is motivated by a concern about the legitimacy of political authority. If (unlimited, justificatory, strict) neutralists are correct, then any state action is legitimate only if it satisfies the negative and positive requirements of neutrality of justification. Following Rawls, egalitarian distributive justice is also a condition of legitimacy. The coercive state enforcement of a system of social cooperation is legitimate only if that system secures fair equality of political opportunities, fair equality of economic opportunities, and an unequal distribution of civil opportunities that can be given an egalitarian justification.<sup>39</sup> Rawls tries to meet both the neutralist and distributive requirements by using primary goods—a neutralist tool—to measure inequalities in civil opportunities; but I have argued, following Sen, that capabilities should be used instead, and as a result I have defended the need for a public ranking of civil opportunities.

In the present section, I consider whether neutralism would be able to provide an adequate ranking of civil opportunities, and conclude that it cannot.<sup>40</sup> I argue that public value perfectionism has a necessary role to play in two aspects of the task of creating a public ranking of civil opportunities. First, PVP is needed to adequately evaluate the importance that particular civil opportunities have for inclusion (which in turn is important for securing fair equality of political and economic opportunity for citizens with disabilities). Second, PVP is needed for judging the well-being value of particular civil opportunities insofar as this is important for securing a fair distribution of relative advantage for citizens with disabilities. This shows that in this case legitimacy pulls in two directions, towards neutrality (for the reasons presented by Kymlicka as described in the first section) and—more strongly—towards perfectionism.

I begin by contemplating a possible neutralist strategy for creating a public ranking of valuable civil opportunities. The strategy is to judge the value of civil opportunities *via* assessments about the value of political or economic opportunity.

This strategy is prompted by the fact that the opportunities that contribute to the magnitude of a person's political and economic opportunity are not all themselves straightforwardly political and economic. This is where I think the idea of inclusion has a role to play. In order for citizens to have equal standing in the public political forum, in the workplace and in school, people need not only opportunities that relate immediately to these areas of life, but also opportunities to engage broadly in valued aspects of civil society. If one is denied civil opportunities and thereby excluded from many aspects of the social and cultural life of the community, this has effects that spill over into political and

economic areas of life.<sup>41</sup> When people have poor opportunities to participate in the life of the community, this weakens their political voice, creates a less welcoming or supportive atmosphere for educational pursuits, and impedes an open and equal work environment.

So, what determines the importance that particular civil opportunities have for inclusion? Consider the following claim: Lacking the opportunity to do  $x$  (where  $x$  is some activity in civil society or private life) damages a person's level of inclusion insofar as  $x$  is important for a good life. According to that claim, the importance that a particular civil opportunity has for inclusion would be determined by the well-being value of the associated activity. If that claim is correct, then appealing to the idea of inclusion would not help neutrality avoid the need to engage in perfectionist assessments of the well-being value of different civil opportunities.

To make neutrality work in this case, then, requires denying that claim. In its place, one could argue that something like being commonplace—which can be judged without violating neutrality—rather than well-being is what determines the value that particular civil opportunities have for inclusion. This would be the claim that: Lacking the opportunity to do  $x$  (where  $x$  is some civil activity) damages a person's level of inclusion insofar as  $x$  is widely engaged in by her fellow citizens.

To attempt to defend that position, let us compare two kinds of cases. First, imagine a civil activity that is widely engaged in yet of dubious value for well-being—for example, dining at McDonald's. Second, imagine a civil opportunity that is not widely engaged in but arguably does contribute to a good life—for example, dining at Charlie Trotter's.<sup>42</sup> Now, from many perspectives having the opportunity to go to Trotter's is more valuable than having the opportunity to go to McDonald's. But from the perspective of inclusion, one might be tempted to conclude that the reverse is true. Many (in fact, most) people lack the opportunity to dine at Trotter's, yet this does not undermine a person's ability to see herself as an equal citizen.<sup>43</sup> In contrast, if a small group of people were barred from McDonald's when millions of their fellow citizens are served daily with a smile, one could argue that their sense of being peers and equal citizens would justifiably be damaged. The conclusion here would be that the more common an activity, the greater is its ability to produce a sense of exclusion in those who lack the opportunity to engage in it.

I have two reasons for thinking that this strategy would not work. First, the connection between commonplaceness and importance for inclusion is not as tight as the argument takes it to be. A civil activity has importance for inclusion if that activity is in some way an important part of the life of community, which is typically the case when its value is widely acknowledged by the community in question. However, there are many civil activities that are statistically common but do not play such a role in the life of the community. For example, going to the gas station and being stuck in a traffic jam are common civil activities, but they do not plausibly make up a part of the life of the community such that they help the individuals who engage in them to achieve inclusion.

I think that the commonplaceness strategy confuses the nature of the connection between a civil activity's being widely engaged in and being important for inclusion. Civil activities are not valuable because common; they are common because valuable. That is, civil activities whose value is widely recognised are thereby important for inclusion, and this wide recognition of value causes them to be statistically common. What is needed, then, is a direct evaluation of the importance that particular civil activities have for the life of the community. I suspect that what makes them important is that they are widely

believed to contribute to well-being or are considered to be meaningful in some other way.

The second reason why I do not think that the neutralist strategy would work is that it would not actually achieve for all citizens the inclusion that is required for fair equality of political opportunity. This is because what is required is a range of opportunities that would enable two different kinds of inclusion, which I will refer to as *general* inclusion and *specific* inclusion. In order to engage actively in political life, one must be able to see oneself as both a fellow of all other citizens—general inclusion—and as a peer of the members of the smaller political group with which one has the closest affinities—specific inclusion.

Some or most of these smaller political groups will be within the social mainstream. In those cases, the particular civil opportunities that are important for specific inclusion are included in the common ones that are given priority by the neutralist strategy. However, in order for fair equality of political opportunity to be satisfied, people should also be able to achieve specific inclusion in groups that differ from or challenge the mainstream. This would include some cultural groups as well as some trait-based groups such as the deaf community. Now, because such groups are outside of the mainstream, at least some of the civil activities that are important for them are also likely to be outside what is commonplace. The survival and development of such groups depend in part on their ability to distinguish themselves from what is thoroughly in the mainstream. If so, then the neutralist strategy would likely fail to enable specific inclusion in those cases, because it would fail to appropriately value the uncommon civil activities that are important for specific inclusion in that group. To rectify that shortcoming, we need to directly evaluate what is important for inclusion, rather than merely ascertaining what is statistically common. This evaluation is quite difficult in some cases, because there can be conflicts between what is needed for general and specific inclusion. For instance, cochlear implants improve general inclusion while at the same time diminishing specific inclusion.<sup>44</sup> I am not sure how best to resolve such conflicts; but it seems clear that what is needed is improvements in our evaluations (which PVP supports), rather than a neutralist strategy that aims to side-step evaluative questions.

My arguments in defence of the claim that neutrality cannot satisfactorily evaluate civil opportunities have now been presented. Neutrality needs to be supplemented with public value perfectionism in order to rectify that shortcoming.

What is PVP? It involves a particular kind of public evaluation of the good that aims to create a public ranking of valuable activities. It is important to appropriately describe the task of creating a public ranking and the idea of *public values*. Public values are public in a technical sense similar, but not identical, to the sense in which Rawlsian public reasons are public. This use of *public* is not equivalent to saying that they are widely popular among many citizens. Rawlsian public reasons are reasons whose relevance and force *for political purposes* should be recognised by reasonable people—that is, people who are willing to live with others peacefully by working out terms of cooperation that do not take advantage of morally arbitrary strengths and weaknesses. Rawls does not claim that public reasons are the only ones that have relevance and force for political purposes. There are other reasons that have rational force coming from unconstrained self-interest, but it would not be reasonable to rely on these when trying to work out fair terms of cooperation. Further, Rawls does not claim that public reasons must be granted relevance and force outside of political purposes. Comprehensive liberals will uphold many of the values of justice and

fairness as part of their worldview, as do I; but one need not agree with the liberal worldview in order to accept public reasons for political purposes. In addition, Rawlsian public reasons are, by definition, based only on values that are *political* in a technical sense used by Rawls, meaning that they are worked up from a moral analysis of what he calls *the political relationship* that yields a *political conception* of society, upon which many other aspects of his political liberalism are based. I will not, however, venture into the many theoretical issues surrounding the understanding and defence of political liberalism.<sup>45</sup>

Public values do not rely only on political values as public reasons do; however, public values do share the property of being defended as suitable for serving a public political purpose. They are designed to be such that their importance can be publicly affirmed, without thereby making any claim to their exhaustiveness (since there are other values) or universal applicability (since one need not accept public values for purposes other than the political ones for which they are defended).

When creating a public ranking citizens are not being asked to draw up a list of valuable activities for general use. They are not being asked to arrive at a full shared account of well-being. Rather, they are being asked a very specific question for a specific purpose. *Which activities are such that having one's opportunity to pursue them reduced or removed by a physical or mental impairment (and its interaction with physical and social environments) would have a significant negative impact on one's (general and specific) inclusion or equal importance and standing as a citizen?* This is significantly different than the question: Which activities contribute to well-being? The question that PVP seeks to answer is different in two respects: it has an evaluative focus on opportunities and a confined political purpose concerning enablement.<sup>46</sup>

Consider the evaluative focus on opportunities. The public ranking is supposed to be about not the value of particular activities, but rather the value of the opportunity to pursue particular activities. This focus on opportunities facilitates a greater degree of agreement among many people. Although it does not facilitate agreement between people who disagree about whether an activity has value at all, it does facilitate agreement between people who disagree about how much value an activity has. Let me explain.

If I think that an activity is entirely and irreparably trivial and so lacks value altogether, then I will not think that the opportunity to pursue that activity is valuable—for me or anyone else.<sup>47</sup> In this case, an evaluative focus on opportunities does not facilitate agreement. However, if I think that an activity has some value, while you are convinced that it has great value and strive with considerable commitment to live according to that judgment, then it is reasonable for me to grant more value to the opportunity to pursue that activity than I grant to the activity itself. For example, in connection to the earlier discussion concerning inclusion, I might personally see little value in pursuing an activity, e.g., religious worship, that is valued by one of the smaller political communities in my larger society, yet I should reasonably grant that the opportunity to pursue it is of significant value, because of the role it plays in others' ways of life.

Next, consider the explicitly defined purpose of the public ranking. Citizens are not being asked to create a list of valuable opportunities for general use in state business or in their own lives, but rather only for use in enablement efforts. That difference is significant because one may deny that state power should be used to widely improve everyone's opportunity to pursue a particular activity, and yet be persuaded that state power should be used to remove or reduce disability-related impediments to that opportunity. One might

think that there is an important difference in the justifiability of general subsidies for an opportunity and enablement efforts. Why? The explanation is neutralist in character.

If we accept that the argument about norms of articulateness is sound, then the public ranking—because of its public evaluation of the good—risks imposing disadvantage on vulnerable groups. Who, then, might be disadvantaged by PVP when it is used for enablement? There are at least two groups to consider in this regard. First, we might worry that the public ranking would be unlikely to reflect what is important to groups whose conceptions of the good are at some distance from the mainstream. For example, it is plausible to expect that a public ranking would give considerably higher priority to accessibility projects in residential areas rather than the countryside, or on land rather than out at sea (i.e., on ships); but those preferences, even if defensible, would add less value to the liberties of people with disabilities whose non-mainstream conceptions of the good strongly favour the outdoors or the sea. Therefore, in general, enablement efforts would have less of an impact on the lives of people with disabilities from such groups. They are less likely to have their views about the value of civil opportunities reflected in the public list. This might also occur for groups whose members can less easily present their interests articulately, such as people with cognitive disabilities or mental illness. If the imposed disadvantage is significant and the size and concentration of the group is substantial, then some form of neutralist counter-measure may be appropriate. This might involve empowering the group or their advocates to implement enablement services and projects differently for their own group.<sup>48</sup>

Second, there are people with ‘unpopular’ disabilities. Some conditions tend to produce empathetic responses more easily or have enjoyed more successful public awareness campaigns than others. In order to prevent excessive prioritisation of ‘popular’ disabilities, it would be important to think about how best to ensure accountability and fair representation for all types of disabilities. Committees whose members represent or advocate for a wide range of conditions might be useful in this regard. Despite these potential problems, there are strong neutralist reasons in the background that support PVP’s limited foray into perfectionism. We should not shrink away from these perfectionist endeavours, but should instead pursue them with the relevant goals of justice firmly in mind, and with an eye for the possible dangers. Because enablement efforts themselves aim to mitigate the disadvantage of a vulnerable group (i.e., people with disabilities in general), and are likely to do so to a greater degree than the disadvantage they are at risk of imposing, the risk is acceptable.

But this is not the case with general subsidies, whose aim is not to rectify an injustice, but rather to enhance the well-being of all.<sup>49</sup> In that case, the objection to perfectionism that stems from the norms of articulateness argument—namely, that it risks imposing disadvantage on vulnerable groups—does apply. In contrast, when PVP is used for purposes concerning enablement, the above objection is countered, because PVP is in that case itself justified by the reason that grounds the objection (viz., the importance of mitigating the disadvantage of vulnerable groups).

Why would PVP improve liberal theory’s ability to extend justice to citizens with disabilities? A theory can respond to instances of disadvantage only if it is first able to recognise them. A public ranking of valuable opportunities would make this possible for disadvantage that is associated with disability. If we confine our attention to neutralist values, then the public ranking would only include straightforwardly political and

economic opportunities. The problem with that is that it leaves out many valuable civil activities. Public value perfectionism allows the theory to include those otherwise neglected activities in the public ranking. This, in turn, broadens the range of impairments and environments that can be the focus of state enablement efforts. Since the importance of enablement is grounded in considerations of justice, so too is the need for public value perfectionism.

## Conclusion

This paper considered the extent to which theories of justice must take a stand on the nature of valuable ways of living. I have argued that the problem of disadvantage associated with disability illustrates how some ranking of activities and pursuits is required to ameliorate inequality. What is required, in my view, is a form of perfectionism that I call *public value perfectionism*. Public value perfectionism is a way of understanding the import of Sen's capability critique of Rawls's theory of justice. I have argued that public value perfectionism is not only compatible with, but also demanded by, a general defence of liberal neutrality. Though it is not espoused by neutralists, it belongs within a larger neutralist framework in virtue of being justified by the same types of reasons that support neutrality.

The fact that PVP is intended to fit within neutrality raises the question of the extent to which PVP poses a threat to neutrality. Is PVP a stepping stone to wider forms of state perfectionism? The feature of PVP that is most in tension with neutrality has to do with the promotion of deeper and wider agreement on a more robust public list. The more robust the list, the greater the theory's capacity to address disadvantage will be. Disadvantage, after all, takes a variety of forms. Disability is one source of disadvantage, which has been my focus in this paper. However, once we broaden our understanding of disadvantage, to include shortfalls in wellbeing more generally, then there is more potential for greater tension with neutrality. There is no reason, however, within PVP to justify working toward removing the limits that relate to the political purpose of the public ranking.

Nonetheless, PVP does encourage (and hopes for) more robust agreement for the public ranking. It assumes that that agreement will be feasible only when the narrow justice-oriented purpose is stipulated; but if agreement happened to be less constrained than expected or effective strategies for mitigating the risks of perfectionism were developed, then this would make a wider perfectionism appealing. This is because if those things came to pass, then the standard neutralist objections to perfectionism would lose much of their force. I am not claiming that those things are likely to happen. Rather, my arguments merely suggest that such developments should be welcomed if they materialise. This is perfectly in keeping with the neutralist considerations whose force I strongly acknowledge.

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<sup>1</sup> This paper is based on my dissertation carried out at Queen's University and supervised by Christine Sypnowich with Will Kymlicka as second reader. I owe them many thanks. Helpful comments on earlier drafts have also come from Jerome Bickenbach, Joseph Chan, Amanda Gibeault, Rahul Kumar, Henry Laycock, Andrew Lister, Alistair Macleod, Jim Molos, Margaret Moore, Doug Paletta, Geneviève Rousselière, William Smith, Cynthia Stark, Jenny Szende, Steven Wall, Sophia Wong, two anonymous reviewers from this journal, and participants at the *International Conference on Liberal Neutrality* organised by the Centre de Recherche en Éthique de l'Université de Montréal, as well as Queen's



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Department of Philosophy Colloquium, University of Hong Kong Philosophy Seminar, and at the annual meetings of the North American Society for Social Philosophy, the Canadian Philosophical Association, the Western Canadian Philosophical Association, and the Society of Value Inquiry. For the dissertation, see Christopher Lowry, "Perfectionism within Neutrality: Extending Liberal Justice to Citizens with Disabilities," PhD diss., Queen's University, Kingston, Canada, 2009. <http://hdl.handle.net/1974/1991>.

<sup>2</sup> And that means that my position is, in a way, 'non-neutrality for neutralists'. Although that seems self-contradictory, it isn't, since what I argue for is the view that reasons that, in standard cases, call for neutrality are reasons that, in certain other cases, call for non-neutrality.

<sup>3</sup> I thank one of the anonymous reviewers for recommending that I clarify the various types of neutrality.

<sup>4</sup> John Rawls, *Justice as Fairness: A Restatement*, edited by Erin Kelly (Cambridge, MA: Belknap Press, 2001), 151-152.

<sup>5</sup> This distinction is made in a number of works, including Alan Montefiore, ed., *Neutrality and Impartiality: The University and Political Commitment* (Cambridge: Cambridge University Press, 1975), Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), Will Kymlicka, "Liberal Individualism and Liberal Neutrality," *Ethics* 99/4 (1989): 883-905, among others.

<sup>6</sup> Rawls draws the distinction differently in terms of procedural neutrality (requiring a fair process without appeal to substantive moral values), neutrality of aim (requiring, on Rawls's defended view, a system justified by a conception of justice that all reasonable members of society can reasonably be expected to accept while at the same time continuing to affirm their own permissible conceptions of the good and to view themselves and each other, for political purposes, as free and equal), and neutrality of effect (which forbids differential impact on the likelihood that conceptions of the good will flourish or be abandoned). He defends neutrality of aim, which should be read as a version of neutrality of justification. See John Rawls, *Political Liberalism*, paperback edition (New York: Columbia University Press, 1996), 191-194.

<sup>7</sup> There is a question within liberal theory about how to understand the sense in which public reasons are said to be uncontroversial. On the one hand, comprehensive liberals (e.g., Kymlicka, Dworkin) would identify public reasons as those that achieve adequate rational force on the basis of comprehensive claims about the good that are shared among all defensible conceptions of the good. On the other hand, political liberals (e.g., the later Rawls) identify public reasons as those that achieve adequate rational force on the basis of values that are dubbed political in virtue of being worked up from a political conception of society, which in turn is constructed from a moral analysis of what Rawls calls *the political relationship*, and for that reason can be the object of an overlapping consensus among reasonable comprehensive doctrines, in the context of the public political culture of a modern constitutional democracy. I will not, however, comment here on the debate between comprehensive and political liberalism.

<sup>8</sup> Such as John Rawls, Ronald Dworkin, Charles Larmore, and Will Kymlicka.

<sup>9</sup> See Michael Pendlebury, "In Defense of Moderate Neutrality," *Journal of Social Philosophy* 33/3 (2002): 360-376.

<sup>10</sup> Will Kymlicka, *Politics in the Vernacular* (New York: Oxford University Press, 2001).

<sup>11</sup> Nation-building efforts include such things as the choice of official language, public holidays, encouraged national pastimes, national images, historical narratives, and so on.

<sup>12</sup> I will not here detail the different ways in which unconstrained state nation-building would be unfair to different minority groups.

<sup>13</sup> Pendlebury, "Moderate Neutrality," 367.

<sup>14</sup> *Ibid.*, 368.

<sup>15</sup> My end point, in this paper, is unlimited, justificatory, moderately strict neutrality combined with public value perfectionism.

<sup>16</sup> See, e.g., Raz, *Morality of Freedom*; and Steven Wall, *Liberalism, Perfectionism and Restraint* (Cambridge: Cambridge University Press, 1998).

<sup>17</sup> This is found in Wall, *Liberalism, Perfectionism and Restraint*, and more so in George Sher, *Beyond Neutrality: Perfectionism and Politics* (Cambridge: Cambridge University Press, 1997).

<sup>18</sup> Will Kymlicka, *Contemporary Political Philosophy: An Introduction*, 2<sup>nd</sup> edition (Oxford: Oxford University Press, 2002), 216.; cf. Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000), 217-218, 269.

<sup>19</sup> This argument does not imply that a person's own beliefs must be the result of critical personal reflection. The endorsement constraint argument is fully consistent with a person who unreflectively endorses inherited beliefs from his community, provided that he does genuinely see those beliefs as his own,

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and provided that his social conditions are such that he has the opportunity, should he choose to seize it, to question, reject or revise his beliefs.

<sup>20</sup> Thomas Hurka, "Indirect Perfectionism: Kymlicka on Liberal Neutrality," *Journal of Political Philosophy* 3/1 (1995): 36-57.

<sup>21</sup> Kymlicka, *Contemporary Political Philosophy*, 277, n. 6.

<sup>22</sup> See Rawls, *Restatement*, 92-94.

<sup>23</sup> Kymlicka, "Liberal Individualism and Liberal Neutrality," 900-901.

<sup>24</sup> See, e.g., Adam M. Samaha, "What Good is the Social Model of Disability?" *University of Chicago Law Review* 74/4 (2007): 1251-1308; and Shelley Tremain, "On the Government of Disability," *Social Theory and Practice* 27/4 (2001): 617-636.

<sup>25</sup> Rawls, *Restatement*, 149.

<sup>26</sup> *Ibid.*, 150-151.

<sup>27</sup> As I explain below, the response that justice calls for is not to increase the salary of the person with a disability in order to 'compensate', but rather to publicly fund enablement efforts of various sorts to reduce the disadvantage associated with the person's impairment.

<sup>28</sup> *Ibid.*, 170; cf. Rawls, *Political Liberalism*, 183.

<sup>29</sup> Critics of this bracketing include Eva Feder Kittay, *Love's Labour: Essay on Women, Equality and Dependency* (New York: Routledge, 1998); and Martha Minow, *Making all the Difference: Inclusion, Exclusion and American Law* (Ithaca, NY: Cornell University Press, 1990).

<sup>30</sup> In Rawls's well-ordered society, inequalities in primary goods would reflect inequalities in civil opportunity, rather than broad opportunity in general, because, as I argued above, Rawls is committed to fair equality of political and economic opportunity.

<sup>31</sup> Amartya Sen, *Inequality Reexamined* (New York: Russell Sage, 1992), 85.

<sup>32</sup> Amartya Sen, *Rational and Freedom* (Cambridge, MA: Belknap Press, 2002), 13-14; cf. "Capability and Well-Being," in *The Quality of Life*, edited by Martha Nussbaum and Amartya Sen, 30-61 (Oxford: Clarendon Press, 1993), 34-35.

<sup>33</sup> One of the anonymous reviewers raised the worthwhile concern that this discussion might be overlooking the fact that "[t]he unit of concern for capability theorist (among others) is generally taken to be the individual, not the group." The reviewer is right that the ultimate unit of concern is the individual. However, the capability approach should make use of information about differences in conversion ability that track membership in different social groups or statistical groups, including people with disability. If there is a correlation between having a disability and lowered conversion ability, then attention to the group and membership therein is a useful part of a response to such capability inequality.

<sup>34</sup> My thanks to the anonymous reviewers for raising these concerns.

<sup>35</sup> See, e.g., Jerome E. Bickenbach, Somnath Chatterji, E. M. Badley, T. B. Üstün, "Models of Disablement, Universalism, and the International Classification of Impairments, Disabilities and Handicaps," *Social Science & Medicine* 48/9 (1999): 1173-1187.

<sup>36</sup> An atypical trait that impedes or prevents a function that is not valued by the people with that trait should not be considered an impairment and so cannot lead, as a result of interaction with the environment, to a disability; even if people who do not have that trait judge otherwise. This issue becomes more complicated when the people with the trait do not all share the same view concerning its value.

<sup>37</sup> Perhaps we should add: "without at the same time opening up other opportunities of equal or greater value." I am not sure.

<sup>38</sup> One of the anonymous reviewers raised the important question of how the importance of inclusion in the broader political community compared to the importance of inclusion within the community of people with a share uncommon trait, such as deafness. I would say that the best option is whichever one provides, all things considered, a more valuable range of seizable opportunities to the individuals with the trait. I am not sure, however, which option that would be.

<sup>39</sup> By an egalitarian justification, I mean a justification that all citizens regarded as free and equal can reasonably be expected to accept insofar as they are reasonable.

<sup>40</sup> I focus on civil opportunities, because I suspect that adequate public rankings of political and economic opportunities could be created within neutralist constraints. Yet, as I have argued, the public ranking should also include civil opportunities, lest it overlooks important instances of disadvantage associated with disability. For my discussion of neutrality and political and economic opportunities, see Lowry, "Perfectionism within Neutrality."

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<sup>41</sup> This point is made quite forcefully in Elizabeth S. Anderson, “What is the Point of Equality?” *Ethics* 109/2 (1999): 287-337.

<sup>42</sup> Charlie Trotter’s is a well-known high-end restaurant in Chicago.

<sup>43</sup> If one thinks that the price at Trotter’s—approximately US \$300 per person or more—is a formidable but not complete impediment to most people, then we can imagine instead a dining hall in an exclusive club where membership is by invitation only.

<sup>44</sup> I owe thanks to one of the anonymous reviewer for pointing this out to me.

<sup>45</sup> See Rawls, *Political Liberalism*, and Rawls, *Restatement*.

<sup>46</sup> That is, the question PVP seeks to answer when it is applied to the issue of enablement. PVP could, in principle, be applied to other issues as well if there are other demands of justice that neutrality cannot adequately recognise or to which it cannot satisfactorily respond. Determining whether there are such demands is, however, beyond my aims in this discussion.

<sup>47</sup> That thought does not imply that efforts to prohibit the activity are warranted, but only that efforts to secure the opportunity to pursue it are wasteful.

<sup>48</sup> This would be similar in some ways to Kymlicka’s defence of minority rights as a way of mitigating the risks and dangers of state nation-building.

<sup>49</sup> Of course, if general subsidies could be defended as being required to rectify an injustice that neutrality is ill-equipped to recognise or address, PVP may be applicable there as well. But determining whether that is the case is beyond the scope of my discussion here.