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Universalism, Vulnerability, and Egalitarianism

Increasingly, issues of justice in allocation have moved disability ethics from the sphere of applied health ethics to the deeper and richer territory of political philosophy, where concerns of distributive justice and the implications of equality predominate.¹

Universalism about disability asserts that “disability is not something that happens to some people, it is a universal human trait, it is fully part of what it means to be a human being.”² While defending this important insight, Jerome Bickenbach notes that it supports, and is supported by, the claim that political philosophy should take as its starting point a view of people as vulnerable and interdependent, as opposed to the traditional liberal conception of the person.³ I agree with universalism about disability and that the vulnerability view is a better starting point for a theory of justice, but I am hesitant to abandon the liberal conception of the person.⁴ My hesitation comes from a worry, the grounds for which I will explain, that any theory of justice that relies only on the vulnerability view is ill-suited to defend egalitarianism, and is instead best interpreted as a form of sufficientarianism.⁵ Although sufficientarian reasoning probably has enough practical power in most advocacy settings for arguing for a more equal society for people with disabilities, it is insensitive to certain kinds of disability-related unfairness that egalitarianism is able to identify and condemn. Luckily, we are not faced with the choice of simply choosing either the vulnerability view or the liberal conception. Between the horns of that dilemma is the idea of a multi-level account of justice that uses the vulnerability view for one level of justice (which I call *basic*⁶ *justice*) and something like the liberal conception for another level (which I call *economic justice*).⁷ One of the merits of such an account is that it can endorse universalism about disability and take the vulnerability view as the starting point for a

¹ Jerome Bickenbach, “Ethics, Disability and the International Classification of Functioning Disability and Health,” *American Journal of Physical Medicine & Rehabilitation* 91/2 Suppl (2012): S164.

² Ibid.

³ For a helpful analysis of the liberal conception of the person, see Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Belknap, 2006), 28-34.

⁴ There are, of course, multiple competing views of people as vulnerable and interdependent, just as there are multiple competing liberal conceptions of the person as free, equal and independent. See, e.g., Eva Feder Kittay, *Love’s Labor: Essay on Women, Equality, and Dependency* (London: Routledge, 1999); Nussbaum, *Frontiers*; Martha Albertson Fineman, “The Vulnerable Subject: Anchoring Equality in the Human Condition,” *Yale Journal of Law and Feminism* 20/1 (2008): 1-23; and Fineman, “The Vulnerable Subject and the Responsive State,” *Emory Law Journal* 60/2 (2010): 251-275.

⁵ Sufficientarianism is the view that if people ‘have enough’ in the relevant sense, then any remaining inequalities are not unjust. See, e.g., Harry Frankfurt, “Equality as a Moral Ideal,” *Ethics* 98/1 (1987): 21-43.

⁶ In previous work, I have called this *protective justice*, but I think *basic* is a better label. See Christopher Lowry, “Commentary on Ben Berger’s *Attention Deficit Democracy*,” in *Civic Virtues, Divided Societies, and Democratic Dilemmas*, edited by Jeff Gauthier, *Social Philosophy Today*, Volume 29, 159-168 (Charlottesville, VA: Philosophy Documentation Center, 2013), DOI: 10.5840/socphiltoday201329115.

⁷ Actually, my view has four levels. The other two are *personal justice* and *communal justice*.

theory of justice while at the same time upholding a Rawlsian defence of egalitarianism. That is something I do not think can be achieved in a single-level theory that takes seriously universalism about disability.

Universalism about Disability and Conceptions of the Person

Bickenbach argues that the World Health Organization's *International Classification of Functioning, Disability and Health* (ICF) represents an ethically significant paradigm shift in the conceptualisation of disability and health.⁸ This is due to three features: universalism about disability, the interactional model of disability, and etiologic neutrality. I will quickly explain these before focusing on universalism.

The interactional model of disability seeks to capture the virtues of two earlier models: the *biomedical* model (according to which a person is disabled because of health conditions that impede or prevent normal body functions) and the *social* model (according to which a person is disabled as a result of his physical, social, and attitudinal human environment having been designed in a way that restricts his participation). The interactional model is multi-dimensional. Health conditions lead to impairments in body functions or body structures, which interact with environmental factors to produce disability in the form of activity limitations and/or participation restrictions.⁹

The ICF is etiologically neutral in the sense that it assesses a person's level of health and disability without giving special weight to the nature of the underlying health conditions. So, for example, if two people experience the same participation restrictions, one whose impairment is caused by a physical health condition and the other whose impairment is caused by a mental health condition, their level of disability is considered the same.

Universalism about disability is in opposition to the view that disability is an identity category that picks out a discrete minority group, whose interests are best furthered by means of a civil rights approach. Universalism is, instead, a human rights approach that is based on the insight that impairment is a normal feature of the human condition. Everyone has, or can expect to have, some level of impairment over their life span, which, in interaction with their physical, social, and attitudinal environment, will lead to some level of disability.

This universalism calls into question the traditional liberal conception of the person. The many versions of that conception share three main features: natural freedom, descriptive equality, and independence.¹⁰ The freedom feature claims that human beings should be thought of as naturally free in a way that entails that coercion and lesser forms of heteronomy always stand in need of moral justification. The clearest manifestation of this point is the idea that government authority can be legitimised only by reconciling it with each citizen's natural freedom, which we find, for example, in Locke's tacit consent argument and, later, in Rawls, as I will explain below. What is objectionable about this feature of the liberal conception is not the claim that coercion always stands in need of moral justification, but rather the sociologically naïve claim that individual freedom is a

⁸ Jerome Bickenbach, "Ethics, Disability and the International Classification of Functioning Disability and Health," *American Journal of Physical Medicine & Rehabilitation* 91/2 Suppl (2012): S163-S167.

⁹ See also Tom Shakespeare, *Disability Rights and Wrongs* (London: Routledge, 2006).

¹⁰ My analysis of the liberal conception of the person follows Nussbaum's closely but not entirely. See Nussbaum, *Frontiers*, 28-34.

naturally occurring phenomenon rather than a complex social achievement, as defenders of relational accounts of autonomy have compellingly argued.¹¹

The equality feature is the claim that for the purpose of constructing an account of justice there are no relevant inequalities in people's physical and mental abilities. For example, Hobbes argues that it is equally true of the physically weakest and the strongest that each poses a lethal threat to the other in the absence of an effective political authority, and that no one is willing to acknowledge any inequality in mental abilities that would rationally compel him to follow another's judgment of what is in his own best interests.¹² Rawls defends rough descriptive equality as a methodologically warranted idealising assumption to be removed after the conception of justice has been shown to be generally defensible.¹³ We ought to be doubtful, however, that a theory that explicitly ignores the fact of impairments at the start will be able to adequately address disability-related injustices later on.¹⁴

The independence feature is the claim that people should be thought of as being in control of the extent and manner of their cooperation with others. We see this in Locke's empirical claim that people can simply emigrate if they do not accept their society's government.¹⁵ More generally, social contract theory is based on the idea that the demands of justice can be determined by imagining what terms of cooperation for mutual advantage fair-minded people, who could choose not to cooperate, would reasonably accept. But such independence is an illusion, as Rawls in fact largely acknowledges.¹⁶ Moreover, the independence feature falsely suggests that unchosen interdependence is either problematic *per se* or outside the realm of justice.

The vulnerability view is more in line with universalism about disability. As Bickenbach notes, "The inherent respect embodied in universalism has recently been well captured by another idiom—the universal vulnerability and interdependence of people."¹⁷ Traditional liberal theory has emphasised our vulnerability to external threats, especially human aggression, but also environmental dangers, including resource scarcity. Largely ignored, however, is the fact that extreme dependency is experienced by all at birth and by many before death, as well as varying degrees of interdependence throughout our lives.

¹¹ I first encountered this line of thought in Robin Dillon, "Self-Respect: Moral, Emotional, Political," *Ethics* 107/2 (1997): 226-249. For an overview of positions on relational autonomy, see Natalie Stoljar, "Feminist Perspectives on Autonomy," in *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), edited by Edward N. Zalta, <http://plato.stanford.edu/archives/spr2014/entries/feminism-autonomy/> (Accessed 13 May 2014).

¹² Concerning the second point in this sentence, Hobbes writes that: "there are very few so foolish that had not rather govern themselves than be governed by others: nor when the wise, in their own conceit, contend by force with them who distrust their own wisdom, do they always, or often, or almost at any time, get the victory. If nature therefore have made men equal, that equality is to be acknowledged: or if nature have made men unequal, yet because men that think themselves equal will not enter into conditions of peace, but upon equal terms, such equality must be admitted." (*Leviathan*, Part 1, Chapter 15, Paragraph 21)

¹³ John Rawls, *Justice as Fairness: A Restatement*, edited by Erin Kelly (Cambridge, MA: Belknap, 2001), 176, note 59.

¹⁴ Christopher A. Riddle, *Disability & Justice: The Capabilities Approach in Practice* (Lanham: Lexington Books / Rowman & Littlefield, 2014), 2-4, 91, and 96-97.

¹⁵ John Locke, *Second Treatise of Government*, Chapter 8.

¹⁶ "[T]he bonds of society and culture, of history and social place of origin, begin so early to shape our life and are normally so strong that the right of emigration (suitably qualified) does not suffice to make accepting [the state's] authority free, politically speaking" (Rawls, *Restatement*, 94).

¹⁷ Bickenbach, "Ethics," S165.

There is a tendency to assume that such interdependence must necessarily be a barrier to each person's human flourishing. The language of vulnerability risks suggesting this. For example, Bickenbach writes that "the ICF presumes that humans are, by their nature, subject to decrements in health that create some measure of vulnerability. As such, all of us share a common interest in having our present and future needs met, either by way of resources (such as health care) or accommodations to enhance participation in all areas of human life."¹⁸ However, the desire to reduce our vulnerability does not imply that interdependence is inherently regrettable. Rather, it too should be affirmed as part of what it means to be a human being. As care ethicists have taught us, the fact that we are born, live and die in a web of changing dependent relationships, in which we care, and are cared for by, others, is itself a source of value.¹⁹ To uphold that value it is important to think of autonomy more in terms of agency than independence per se. Martha Nussbaum takes such a view when she argues that an account of justice should think of human beings as beings with agency and needs that make us interdependent. She is explicit about this point, arguing that our human needs are themselves a source of our dignity, together with our capacity for agency.²⁰

The Vulnerability View and Sufficiencyarianism

This section aims to show that the vulnerability view is well-suited to defending sufficiencyarianism rather than egalitarianism. What do I mean by *sufficiencyarianism* and *egalitarianism*? Consider two claims: (i) justice demands that social arrangements express recognition of the equal worth of all human beings, and (ii) justice demands that social arrangements resulting in unequal life prospects be justified on grounds of fairness. Egalitarianism is the claim that satisfying (ii) is a necessary precondition for satisfying (i). Sufficiencyarianism is the view that we can fully satisfy (i) without satisfying (ii) by ensuring that everyone 'has enough' in some specified sense, after which point any remaining inequalities are not unjust. Sufficiencyarian and egalitarian reasoning are importantly different. Sufficiencyarian reasoning is absolute, rather than comparative. Inequality is not bad per se; it is bad only insofar as it leads to deprivation (defined as lacking some of what one needs in order to be said to have enough), which is what is bad. Egalitarian reasoning goes farther, objecting to situations in which a person has less than others for no good reason, even if he or she has enough. This is a comparative requirement.

The debate between these two views has implications for the ICF, because it is important to keep in mind the need for value inputs for the ICF. In order to describe a particular activity limitation or participation restriction as disadvantageous, we need to say how important that activity or type of participation is and why. To do that, a sufficiencyarian would ask: Does this activity limitation or participation restriction make a person's opportunity for flourishing fall below a threshold that is defined by reference to defensible ideas about what counts as a decent quality of life? In contrast, an egalitarian would ask: Does this activity limitation or participation restriction make a person's opportunity for

¹⁸ Ibid.

¹⁹ See, e.g., Nel Noddings, "The Language of Care Ethics," *Knowledge Quest* 40/4 (2012): 52-56. http://www.ala.org/aasl/sites/ala.org.aasl/files/content/aaslpubsandjournals/knowledgequest/docs/KO%20MayJun12_PRESS.pdf (Accessed 13 May 2014).

²⁰ Concerning the relationship between dignity and need, Nussbaum writes that "bodily need, including the need for care, ... is one aspect of our dignity, ... rather than something to be contrasted with it." (Nussbaum, *Frontiers*, 160)

flourishing less than her unimpaired counterparts?²¹ For current political advocacy purposes, it might be strategically effective to focus only on cases where the answer to both question is affirmative; but in terms of articulating an ideal, it is worthwhile to look for means to argue for enablement efforts in cases where the answer is ‘no’ to the sufficientarian question, but ‘yes’ to the egalitarian one.

I will discuss Martha Nussbaum’s theory as a paradigm example of a vulnerability-based account that aims to address injustices related to disability. Her theory is built on the idea of human dignity. From this, she develops the idea of a life worthy of human dignity. Her argument is grounded in our inherent vulnerability, understood as needs that human dignity demands be adequately satisfied so that each person can be empowered to exercise his or her agency. She gives content to that idea by developing her list of the ten core human capabilities. She argues that justice demands *at least* that everyone be guaranteed an adequate level of each of the ten core capabilities. What counts as an adequate level is determined by asking what minimum threshold of each capability is required for a life worthy of human dignity. Note that this is an absolute requirement, not a comparative one. Nussbaum’s position is that living in social conditions that fail to guarantee the minimum threshold of any of the ten core capabilities is an affront to human dignity; but she does not defend a fairness requirement for inequalities above the threshold, leaving that an open question. I believe that a significant part of the motivation for this is that defending even the incomplete account of justice that she does gives grounds for demanding very significant social and political reforms; but more importantly, I believe that she chooses not to complete her account of justice (yet) because the sufficientarian form of her argument cannot proceed much farther.

Nussbaum’s threshold-oriented defence of the core capabilities suggests that an adequate institutional response to our vulnerability would be less than full-blown egalitarianism. In order to see why, it is helpful to look more closely at the idea of vulnerability, which is open-ended in two ways. First, the mere idea of vulnerability does not specify the possible sources or causes of our vulnerability. We can say with intelligibility that a person is vulnerable to many things: natural forces, the actions of others, his own psychology, the physical design of his environment, social attitudes, and much else. This raises the question: Does human dignity require that we seek to reduce everyone’s vulnerability to all possible causes or only some subset of causes? Second, the mere idea of vulnerability does not specify the possible outcomes of our vulnerability. We can say with intelligibility that a person is vulnerable to losing some or all of her ability to engage in any of the activities or forms of participation which she would otherwise be able to undertake. This raises the question: Does human dignity require that we seek to reduce everyone’s vulnerability of experiencing any loss of capacity or only some subset of losses? Phrasing these points differently, we can understand vulnerability in terms of a person being at risk of losing²² X (a capacity) as a result of Y (a cause). Does the dignity-based imperative to reduce vulnerability hold for all values of X and for all values of Y ?

Capability as a metric of advantage is an attempt to pay attention to as many causes as possible when assessing people’s level of advantage. The idea of a person’s capability aims to describe the value of the activities and physical and mental states that are real

²¹ A person’s counterparts would be other people in an equivalent social position, or, roughly, people in the same income bracket.

²² Or lacking.

options for her, taking into account the enabling and disabling effects of ideally all significant factors. Nussbaum's remarks on the variety of societal actions that would need to be taken in order to guarantee at least the threshold levels of the core capabilities are in line with this position. We can conclude, then, that the dignity-based imperative to reduce vulnerability holds for all values of *Y*—that is, for all causes. This matches up well with the ICF's defence of an interactional model of disability (which directs our attention to the significance of both biomedical and social causes) and etiologic neutrality (which asserts the equal importance of any type of underlying cause of impairment).

Nussbaum's defence of thresholds for the core capabilities implies that the dignity-based imperative to reduce vulnerability does not, however, hold for all values of *X*—that is, for all capacities. The thresholds are, first and foremost, claims about what level of each capability would be *adequate* for a life worthy of human dignity. Although Nussbaum argues that for some core capabilities adequacy demands equality, this is not true across the board.

Some capabilities must be secured to citizens on a basis of equality, or equal dignity has not been respected. Others, however, do not seem to have this intrinsic relationship to dignity; with these, the capabilities approach supplies a threshold of adequacy.²³

Political, religious and civil liberties are examples of the first sort of capabilities.

To give some groups of people unequal voting rights, or unequal religious liberty, is to set them up in a position of subordination and indignity vis-à-vis others.²⁴

Nussbaum's key example of a capability of the second sort is housing. Inadequate housing is an affront to equal human dignity, but merely unequal housing is not. If everyone were to have adequate shelter, then there would not be a dignity-based need to place demands of fairness on the unequal distribution of housing size and quality.²⁵ There is a dignity-based imperative to reduce people's vulnerability to lacking adequate housing, but there is not any such imperative to reduce their vulnerability to lacking as large or as nice housing as other people.

Does the cause of why a person comes to lack as large or as nice housing as others matter to Nussbaum's theory? I do not think it does. It is clear that her view is that when *from any cause* a person falls below the threshold it is an affront to equal human dignity. The reasonable flipside to this is that when *from any cause* a person experiences an inequality that does *not* push him below the threshold of adequacy it is *not* an affront to equal human dignity. Consider how this applies to housing. Suppose, first, that the cause of one person having the capability to have larger or nicer housing than another is the first person's superior wealth. This inequality is not a threat to the second person's dignity so long as she has at least adequate housing. But suppose, instead, that the cause of one person's having the capability to have larger or nicer housing than another person is that, although they have the same wealth, the second person must devote a significant portion of her housing budget to pay for expensive retrofits due to a lack of accessibility requirements in building codes for private dwellings and a lack of public subsidies for such retrofits. An implication of Nussbaum's theory is that this too is not a threat to the second person's dignity so long as she has at least adequate housing.

²³ Nussbaum, *Frontiers*, 295.

²⁴ *Ibid*, 293.

²⁵ Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Belknap, 2011), 41.

This has implications for Nussbaum's ability to defend societal actions aiming to address biomedical and social factors in order to reduce or remove the disadvantage associated with disabilities. I will refer to such actions as *enablement actions*. Consider two kinds of scenarios. First, without a certain enablement action some people would be worse off than their nondisabled counterparts, and because of this, they would be below the threshold of at least one of the core capabilities. Second, without a certain enablement action some people would be less advantaged than their nondisabled counterparts, but despite this they would be above the threshold in each of the ten core capabilities. For example, suppose a society decided not to approve a proposal to provide a full or partial public subsidy of sit-skis, a type of adaptive device that allows people with certain forms of paralysis to downhill ski. A person who could afford to ski with the subsidy, but could not without, would be thereby disadvantaged relative to his nondisabled counterparts. Being able to enjoy recreational activities is a part of Nussbaum's ninth capability, play. His play-related capabilities would be comparatively less extensive, but would they be inadequate (that is, below the threshold) in absolute terms? I do not think so. Downhill skiing is a relatively expensive recreational activity that is unaffordable to many nondisabled people as a result of low income in a way that is not obviously an affront to their equal human dignity. Lacking the capability to downhill ski does not push low income nondisabled people below a threshold of adequacy for play-related capabilities, because there are many more affordable worthwhile recreational activities. In light of the points above, being unable to downhill ski is a type of loss that would not be covered by dignity-based arguments even if the cause is a lack of enablement actions.

Nussbaum's theory, which starts from and relies on the vulnerability view, provides a strong basis for demanding that society should aim to make sure that no person with an impairment is made badly off by a lack of enablement actions. But a society that achieves that aim might still leave significant disability-related inequalities intact. Such inequalities would exist because of decisions to limit enablement actions and would make people with impairments less well off than their nondisabled counterparts in ways that, while they are compatible with equal human dignity, may violate our sense of fairness. If we want to argue for such enablement actions, and if we want disability ethics to be about equality rather than sufficiency, then we cannot be content to rely only on vulnerability-based sufficientarian arguments.

The Liberal Conception and Rawlsian Egalitarianism

This section aims first to explain in what way Rawls's political liberal version of justice as fairness is egalitarian, and then to show that Rawls's egalitarianism relies on his conception of society, which in turn relies on the liberal conception of the person.

A good place to start is Rawls's view of advantage, which depends on his distinction between liberties and the worth of liberties. You have a liberty, such as freedom of movement, if it is formally guaranteed in a negative sense, meaning that, for example, the government uses its authority to prevent others from intentionally blocking your attempts to travel from place to place on public routes (and private routes you have obtained permission to use). The *worth* or *value* of that liberty to you, however, depends on your ability to make use of it. The main source of variation in this respect that Rawls takes into account is income and wealth. For example, if you have more travel options than me in virtue of having more disposable income, then the value of freedom of movement to you

is greater than it is to me. So, the right question to ask is not whether Rawls defends equal liberty. (He does: all the basic liberties are to be formally guaranteed in an equal way to all members of society.) Rather, the right question to ask is whether Rawls defends the equal value of liberties. To reach an answer it is helpful to distinguish between three kinds of basic liberties: political, civil, and what I will call occupational.²⁶ Rawls does not distinguish the last from the other two.

Rawls's first principle (the liberty principle) includes a demand for a guarantee of the *fair value* of the political liberties. This use of *fair* is equivalent to its use in Rawls's distinction between formal equality of opportunity and fair equality of opportunity. The main implication of the guarantee of the fair value of the political liberties is that society should work to remove all inequalities in people's likelihood of influencing public policy or being elected except those that come from a person's genuine talent for, and commitment to, politics. Nussbaum defends much the same thing when she argues that the only adequate level of the capability for political participation is an equal one. This component of Rawls's theory does not distinguish him from sufficientarians.

Rawls's second principle (the equality principle) has two parts: fair equality of opportunity and the difference principle. Fair equality of opportunity is about the value of occupational liberties, which are those related education and employment that are significant for the process through which people come to have the particular occupational type and rank they have at any given time. Rawls's fair equality of opportunity demands the fair value of occupational liberties, meaning that society should work to remove all inequalities in people's likelihood of obtaining a particular occupational type and rank except those that come from a person's genuine talent for, and commitment to, the job in question. Nussbaum's view is similar in that she argues for "the right to seek employment on an equal basis with others," but more lax in that she allows for the possibility that what some societies would deem adequate is something less than fair equality of educational opportunities.²⁷ In other (perhaps most) cases, however, fair equality of opportunity is required by sufficientarianism, and hence this component of Rawls's theory also is not what makes his view egalitarian.

The difference principle is about the value of the civil liberties, which are those that protect the possibility of pursuing many different activities in our personal and social lives. The fair value of civil liberties is not guaranteed by the difference principle or by any other part of justice as fairness. What would a society that guaranteed the fair value of civil liberties look like? Such a society would need to work to remove inequalities in people's likelihood of engaging in activities—any and all activities that people pursue in their personal and social lives—except those inequalities that come from people's genuine talent for, and commitment to, the activity in question. So, for example, ski hills would tend to be populated by the best and keenest skiers, rather than disproportionately by high earners and their families. In contrast, Rawls acknowledges that people's ability to make use of civil liberties will be affected not only by talent and commitment, but also by the unequal distribution of occupational rewards—namely, income and wealth, and positional goods, such as having authority and responsibility. However, Rawls demands that inequalities in the worth of the civil liberties be justified on grounds of fairness even when such

²⁶ In earlier work, I used the term *economic* instead of *occupational*. See Christopher Lowry, "Perfectionism for Neutralists," *Journal of Social Philosophy* 42/4 (2011): 382-402.

²⁷ Nussbaum, *Frontiers*, 76.

inequalities occur well above any reasonable dignity-based threshold of adequacy. Confusion might understandably result from the statement that Rawls does not demand the fair value of civil liberties yet does demand that the unequal value of civil liberties be justified as fair.²⁸ The discussion above and below hopefully clarifies well enough the distinct meanings of those phrases. The fairness demand for civil liberties is fulfilled, Rawls argues, by satisfying the difference principle. This is what makes justice as fairness egalitarian. Nussbaum's theory has no corresponding component.

Why does Rawls include the difference principle? His defence of it presupposes the fair value of political and occupational liberties, but one might argue that a society that has already satisfied those two conditions (which would take more than what Rawls suggests) has already done enough to give adequate recognition to people's equal worth. The necessary preconditions for guaranteeing the fair value of political and occupational liberties would be extensive, and would arguably include a threshold-level guarantee of eight of Nussbaum's ten core capabilities—the two exceptions being “Other Species” (outside of Rawls's anthropocentric theory) and “Play” (a matter of civil liberties), which would quite likely be *de facto* realised up to the thresholds as a side-effect.

The answer is in Rawls's conception of society and how it differs from Nussbaum's. In each case, the conception of society at work in the theory is not meant to capture everything we might want to say about what society is and what society is for. Nussbaum follows Rawls in defending a *political* conception of society *for the purposes of a theory of justice*. With that in mind, she argues that we should consider the aim of society to be to live decently together such that everyone has adequate opportunity to flourish. She arrives at this conception of society because she starts from the idea of equal human dignity. Each person's mere humanity gives him or her dignity in equal measure with anyone else, and our common humanity is by itself a strong enough moral tie to demand that we each must aim to collectively enable every person to have a life that is worthy of that dignity. That aim is fulfilled by guaranteeing people a decent life by securing an adequate level of the ten core capabilities. For capabilities whose adequacy does not demand equality, a morally arbitrary unequal distribution of capability above the threshold is not, Nussbaum's account suggests, an affront to equal human dignity.

As we saw earlier, housing-related capabilities, for instance, must be adequate but need not be equal. So, suppose one person had larger or nicer housing than another entirely because of the first person having been born into a wealthier family or the second person having had to pay for accessibility retrofits. On Nussbaum's account this morally arbitrary

²⁸ To *guarantee the fair value* of a liberty is to make sure that the unequal value of that liberty results only from people's relevant talents and degree of commitment. The question of whether the unequal value of a liberty can be *justified as fair* is a more general question. To justify the unequal value of a liberty as fair is to show that the inequality is for the benefit of all. (For a discussion of what Rawls means by *for the benefit of all*, see Christopher Lowry, “Humanitarian Aid Allocation: Should Oxfam Canada Give Priority to the Worst Off?” forthcoming.) In the case of political and occupational liberties, the lexical priority of Rawls's principles—according to which the liberty principles trumps both parts of the equality principle, and fair equality of opportunity trumps the difference principle—expresses Rawls's view that there are no inequalities in the value of those two kinds of liberties that are for the benefit of all save those that results from people's unequal relevant talents and degree of commitment. (This assumes that we are talking about a society with *favourable conditions*, see Rawls, *Restatement*, 101.) The guarantee of the fair value of political and occupational liberties is required—in the case of these liberties—to justify their unequal value (related to talent and commitment) as fair. In the case of civil liberties, however, Rawls's view is that further inequalities in their value, as specified by the difference principle, are for the benefit of all.

inequality raises no justice-related concerns so long as it does not stand in the way of the second person having at least adequate housing. The same can be said of play-related capabilities. Suppose one person, but not another, had access to an exclusive country club simply because of the first person's family connections or the club's refusal to renovate for accessibility. Nussbaum's theory would not identify an injustice here unless this inequality stood in the way of the second person having at least adequate options for recreation.²⁹

Rawls argues that for the purposes of a theory of justice we should think of society as aiming to be a fair system of social cooperation for mutual advantage.³⁰ That aim requires that unequal levels of advantage (which, we have seen, are found primarily in the unequal worth of civil liberties) must be justified on grounds of fairness, even if everyone already has a decent life. This is because fellow members of a society are bound together not only by their common humanity, but also by what Rawls refers to as *the political relationship*. Common humanity prompts a dignity-based demand for a decent life for all. The political relationship prompts a fairness-based demand for public justification of any inequalities caused by our system of mutually advantageous social cooperation, and this demand originates from, and is owed to, each *fully cooperating participant* in that system.

The idea of this political relationship comes from a set of ideas related to Rawls's view of the circumstances of justice, which closely follows Hume's account.³¹ The main features of those ideas include the following. Human beings and their natural environment are such that we cannot achieve a decent standard of living without social cooperation on a scale large enough that its stability cannot be secured by trust based on familial and communal affective ties between participants. People therefore have created democratic political institutions to facilitate large scale social cooperation, in which each *fully cooperating participant* is viewed both as an author and a subject of this political power. The resulting system of social cooperation is able, however, to do more than secure a decent life for each; it also facilitates the cooperative pursuit of further prosperity. Citizens see themselves therefore as bound together not only in the pursuit of decent living, but also in the pursuit of further mutual advantage. This is the political relationship.

But what is the reason for the fairness demand? When two or more people voluntarily cooperate merely as individuals for the purpose of mutual advantage, no such demand applies. But when social cooperation is achieved by means of a system that is shaped and sustained by the collective use of political power, the cooperation is involuntary in an important sense. For the purposes of a theory of justice, all political power is considered coercive, because a person's political membership as a citizen of a nation is not considered to be the result of voluntary choices. Although emigration and immigration do,

²⁹ Nussbaum does not specify entirely which capabilities are ones whose adequacy requires equality. Here is my attempt. 1. Life: adequacy. 2. Bodily health: adequacy. 3. Bodily integrity: adequate mobility, equal security against violence, adequate sexual and reproductive opportunities. 4. Senses, imagination, and thought: adequacy, except equality for political and religious expression. 5. Emotions: adequacy. 6. Practical reason: equality. 7. Affiliation: (A) adequacy, (B) equality. 8. Other species: adequacy. 9. Play: adequacy. 10: Control over one's environment: (A) equality, (B) adequate property holdings, equal property and employment rights, adequate working conditions. The list of the 10 central capabilities is given in many publications—see, e.g., Nussbaum, *Frontiers*, 76-78; and *Creating Capabilities*, 33-34.

³⁰ Rawls distinguishes between mutual advantage and reciprocity, which is why it is necessary to include *fair* as a modifier in this statement. Alternatively, one could say that society is a system of social cooperation for reciprocal advantage (in which case *fair* can be left out).

³¹ John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap, 1971), §22, pp. 126-130.

of course, occur, Rawls argues that emigration is costly enough that the choice to not emigrate is not a voluntary one (in contradiction to Locke's tacit consent argument).³² Further, emigration is not a genuine option for every citizen: some lack the means to relocate or the permission to reside elsewhere. The exercise of political authority to facilitate the pursuit of further advantage therefore cannot, politically speaking, be freely accepted. The best we can do to reconcile our political membership with our individual freedom is to make it possible for each member of society to be able to reasonably accept the terms of social cooperation (i.e., the conception of justice that justifies the basic structure of society). Rawls describes the satisfaction of that condition as "the outer limit of our freedom."³³

If the aim of social cooperation were only to achieve a decent life, then that justificatory demand would be discharged by sufficientarian requirements. However, citizens also use political power in pursuit of further mutual advantage in the form of increasing the value of their civil liberties. This additional prosperity is made possible by the collective action of all fully cooperating participants and so the fairness of its distribution must be justified to each of them. This is where egalitarianism comes in. The unequal value of civil liberties must be justified as fair in order to be reasonably acceptable to all citizens. Rawls argues (in his arguments about the natural lottery) that this fairness demand can be satisfied only by the difference principle's egalitarian requirements. Human dignity is not the source of the demand for egalitarianism; the conception of society as a fair system of social cooperation for mutual advantage is.

Could the conception of people as vulnerable and interdependent form the basis for a defence of the liberal conception of society as fair social cooperation instead of, or in addition to, the view of society as aiming to live decently together? I do not think it can. The liberal conception of society relies on a problematisation of nonvoluntary cooperation. Cooperation that originates from anything other than the free choices of individuals is considered to be in tension with our natural freedom—a tension that motivates the fairness demand leading to egalitarianism. That problematisation, however, is one of the very points in liberal theory that the vulnerability view is meant to call into question. The vulnerability view urges us to consider our interdependence, whether voluntary or not, to be a natural feature of the human condition that is not to be regretted so long as it can be made compatible with a decent life for all. In order to motivate the fairness demand that yields egalitarianism we must be able to have a view of social cooperation that—whatever else it includes—sees cooperation itself as a burden in need of compensating benefits. That is what enables a citizen to demand, in return for being a fully cooperating participant, a fair share of prosperity over and above what she needs for a decent life.

The Prosperity Prerogative

The liberal conception of the person as free, equal and independent can make sense of the view that social cooperation is—among other things—itself a burden in need of compensating benefits. The liberal conception is able to do this by defending what I will call *the prosperity prerogative*. This is something similar to, but more conditional than,

³² On page 94 of the *Restatement* Rawls writes in note 15 that "it is no defense of the principles of political justice to say to those protesting them: You can always leave the country."

³³ Rawls, *Restatement*, 94.

Hobbes's *right of nature*.³⁴ Hobbes asserts the individual freedom to pursue your own advantage according to your own judgment without limitation. The prosperity prerogative is more limited, asserting the right of individuals to choose to include or exclude others when choosing to cooperate for prosperity, provided that such exclusions do not violate dignity-based sufficientarian requirements towards those so excluded. This is a prerogative that follows from the understanding of independence and freedom in the liberal conception of the person. Moreover, this is a prerogative that a system of social cooperation inevitably violates, because members of society who participate in social cooperation are participants in their particular system without having chosen to be so (because the choice not to emigrate is not voluntary, politically speaking). Being a fully cooperating participant can thus be seen as itself a burden because it involves an involuntary abdication of the prosperity prerogative.

There might be good reason to oppose this idea of a prosperity prerogative, but note that supposing it allows us to explain how a Rawlsian political liberal account can get from the modest claim that political power is ultimately coercive to an ambitious defence of egalitarianism without needing to assume an altruistic moral psychology or morally demanding duties of impartial beneficence. Sufficientarianism is appealing in large part because it avoids making such assumptions. Sufficientarianism asks you to be willing to have less advantage so that everyone can be assured of having their needs met. Fully impartial beneficence goes farther, asking you to be willing to have less advantage whenever this allows other people's advantage to increase more than yours would decrease. But if the other people in question already have what they need, it is unclear why the *mere* fact that they could do more with resources currently belonging to you gives you an obligation, grounded on common humanity, to transfer those resources (or, more precisely, to endorse a system that has that kind of result). For example, if, in a world where everyone's needs were met, you had a piano that you (or your child) enjoyed playing, would the mere fact that someone else would play and enjoy the piano even more warrant its transfer? Such an obligation would go strongly against what we normally think about the partiality we may, and ought to, show towards ourselves and the people in our lives with whom we have particular attachments. The appeal of sufficientarianism is that it relies only on reasons that are arguably strong enough to trump otherwise reasonable partiality. A defence of egalitarianism that does the same—as I think Rawls's does if we assume a prosperity prerogative—should not be abandoned lightly.

Multi-Level Justice

This section aims first to explain a key feature of the methodology in Rawls's political liberalism, and then to provide a rough sketch of how that method can be developed in a new way to yield a multi-level account of justice that can take seriously universalism about disability while holding on to Rawlsian egalitarianism.

The key methodological feature has already been hinted at above during the discussion of the political relationship. Rawls's conception of justice as fairness is worked up from an understanding of this relationship. Further, Rawls argues that there is more than one type of justice, because there is more than corresponding type of relationship. In his view, there are three types of justice: social justice (based on the political relationship),

³⁴ Thomas Hobbes, *Leviathan*, Part 1, Chapter 14.

global justice (based on the relationship among nations or ‘peoples’), and local justice (based on the relationship groups of individuals have in virtue of belonging to associations in civil society). I endorse the relationship-based method, but I am not convinced by Rawls three-part division. Instead, I propose a four-part division.³⁵

I understand justice to be based on an understanding of the moral significance of different kinds of voluntary and involuntary relationships that are created as a result of the use (or abuse) of collective power to shape the (physical and social) human world. On my account, the core feature of all demands of justice is that they must be explained by reference to morally significant power-born relationships. I distinguish between four power-born relationships, and so four kinds of justice: basic, economic, personal, and communal. They are defined by means of two distinctions. First, there is the question of the origin of the power-born relationship: is it natural or anthropogenic? A power-born relationship is natural if it is created by the use of collective power to meet a need or desire that is an inevitable part of the human condition. If, instead, the need or desire was created and shaped by human choices over time, the relationship is anthropogenic. Second, there is the question of the end of the relationship: does it aim to bring about freedom or flourishing? A use of collective power aims to achieve freedom if it seeks to achieve material and social conditions that have (perhaps in addition to intrinsic value) instrumental value for a wide variety of world views. A use of power may, instead, directly aim to achieve things of intrinsic value (i.e., constituents of the good life) and so promote flourishing. This leads to the following division.

		END	
		Freedom	Flourishing
ORIGIN	Natural	<i>Basic Justice</i>	<i>Personal Justice</i>
	Anthropogenic	<i>Economic Justice</i>	<i>Communal Justice</i>

The basic relationship aims at freedom and is natural in origin. People, aware of their vulnerability to human aggression, animal predation, and environmental dangers, as well as to the multidimensional causes of disability, use collective power to create systems of authority to coordinate joint security efforts and to achieve sufficientarian goals, including rehabilitation and accommodation aiming at decent life for all. Those needs are an inevitable part of the human condition, and securing their satisfaction has all-purpose instrumental value. Basic justice fits well with the vulnerability view and shares Nussbaum’s conception of society as aiming to living decently together.

With security and decent living achieved by means of the basic relationship, human beings further develop their cooperation to satisfy acquired desires that are less vital. The economic relationship is similar to what Rawls calls the political relationship. People seek to enhance their substantive freedom by using collective power to create systems of productive cooperation and to infuse them with authority so that such systems can operate in the absence of personal trust between participants. This relationship is anthropogenic,

³⁵ The remainder of this section is a revised version of work originally published in Lowry, “Commentary.”

because it is concerned with material and social conditions that could be and sometimes are forsaken. Prosperity, unlike security and decent living, is an acquired desire, not an inevitable one. That being said, prosperity—assuming it is measured in a way that does not privilege any particular conception of the good—has all-purpose instrumental value, and so the end of the economic relationship is freedom. Economic justice shares Rawls's conception of society as a fair system of social cooperation for mutual advantage. The economic relationship applies between fully cooperating participants (understood more broadly than Rawls's theory suggests) and is the source of egalitarian requirements.

Security needs, however, are not the only natural ones we have. There are also needs for friendship and intimacy. These are equally inevitable, and yet, unlike security needs, they are neither uniform (i.e., the same for everyone) nor primarily instrumental. Rather, intimacy and friendship are constituents of the good life important for flourishing. Whether intentionally or not, people use collective, usually non-state, power to create and reshape social norms in ways that deeply affect patterns of and opportunities for friendship and intimacy. The personal relationship and personal justice are concerned with our collective responsibility for these social norms and their effects on individuals.

The good life is pursued not only in personal life, but also in larger social groups. People use collective, usually non-state, power to fashion and pursue ways of life together. Culture, understood in its broadest sense, is surely anthropogenic and equally clearly aims at flourishing. The communal relationship and communal justice are concerned with our collective responsibility for our cultural world and its effects.

The advantage of this multi-level account of justice is that it provides a unified yet multi-faceted understanding of what justice demands. Instead of forcing us to choose between the two conceptions of person and society discussed above, it defends the validity of each by reference to distinct morally significant relationships relevant to understanding justice. The vulnerability view fits within basic justice, and the liberal conception fits within economic justice.

The appeal of the vulnerability view is its unconditional inclusion: every being with needs and agency is recognised as having equal dignity that grounds his or her claim to a decent life together with others. As Bickenbach rightly notes, this fits very well with universalism about disability. They inform and reinforce each other. The downside is that the vulnerability view does not have the theoretical resources to recognise disability-related injustices that occur above the decent-life threshold.

The liberal conception addresses that limitation, but introduces another of its own. Rawls's theory is able to include individuals within the scope of its egalitarianism only if they can be argued to be fully cooperating participants in social cooperation for mutual advantage. Although this condition for inclusion is surely much more compatible with disability than Rawls's writings suggest, the condition does not easily allow for the inclusion of absolutely all people with disabilities.

The appeal of the multi-level account of justice is that citizens whose claims cannot be made on the basis of economic justice have recourse to basic justice, and vice versa. Further, although very little has been said here about personal and communal justice, they may provide an avenue for incorporating insights from the social model of disability more fully into an account of justice than would be possible in single-level theories like Rawls's and Nussbaum's that focus primarily on legitimising the use of state power.

Concluding Remarks

The upshot of this view is that basic justice, which starts from the vulnerability view (including the premise of universalism about disability), makes sufficientarian demands that are owed by and to every human being, and the satisfaction of these requirements is a precondition for the moral permissibility of the prosperity prerogative. The global human community must therefore take all reasonable actions to ensure that disability-linked disadvantage is reduced enough so that no person anywhere falls below the sufficientarian threshold as a result of disability. If sufficientarian requirements have been met, however, individuals should then be viewed as free to make choices about whom to cooperate with in pursuit of further prosperity. This legitimises limited national sovereignty and other forms of exclusive cooperation, which give rise to an economic relationship between the participants of each exclusive system, and hence egalitarian requirements. Each society (or other cooperative group) must therefore take all reasonable actions to meet an egalitarian imperative to maximally reduce disability-linked disadvantages among fully cooperating participants.³⁶

There is, however, a potentially significant limitation of this egalitarianism as it applies to disability-related injustice. The egalitarian requirements are owed in virtue of the economic relationship, which holds only between fully cooperating participants of a particular system of social cooperation. We might worry that only fellow citizens are bound together by a system of social cooperation, and so egalitarian requirements end at national borders. This worry can largely be dispelled by the abundant and growing literature on transnational political and economic institutions associated with globalisation.³⁷

A second worry, however, is harder to overcome. The idea of a fully cooperating participant in social cooperation does not seem to cover all members of society. Rawls's use of the term is especially exclusionary. He writes always of 'normal and fully cooperating participants', where 'normal' means that participants have physical and mental abilities 'within the normal range'.³⁸ This is an explicit bracketing of disability-related issues of justice. To counter this, we should argue that a person need not be 'normal' in Rawls's sense in order to be a fully cooperating participant. That still leaves us with a need to explain what fully cooperating participation involves. Fruitful participation in economic or political life is a sufficient condition, but should not be regarded as a necessary one. There are many forms of unpaid labour that play a facilitating role in a society's pursuit of further prosperity, and so should be considered instances of fully cooperating participation in social cooperation for mutual advantage. However, if a person's level of disability is severe enough that he lacks the capacity to have such a role (even though he can lead a meaningful life involving social connections), then his relationship to his fellow citizens is not properly characterised by the economic relationship. Sufficientarian arguments apply, but not Rawlsian egalitarian ones. Whether this limitation is significant, or even exists, depends on a more complete articulation of the idea of fully cooperating participation than I can provide here. Problematic though that idea may be, holding on to it and the other key

³⁶ Except where the measures needed to do so would cause a greater amount of unfairness. For a discussion of this, see Lowry, "Perfectionism."

³⁷ Two key texts on this are Charles R. Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979); and Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity, 2002).

³⁸ See, e.g., Rawls, *Restatement*, 170.

features of the liberal conception of the person and of society allows us, by means of the multi-level account sketched above, to take seriously universalism about disability without relinquishing the Rawlsian approach to defending egalitarianism.³⁹

³⁹ The presentation and content of the arguments in this chapter benefitted from very helpful comments from Chris Riddle, for which I owe him thanks.