Colburn, B. (2014) *Disadvantage, autononomy, and the Continuity Test.* Journal of Applied Philosophy, 31 (3). pp. 254-270. ISSN 0264-3758

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Disadvantage, Autonomy, and the Continuity Test

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Forthcoming in the *Journal of Applied Philosophy*

Abstract

The Continuity Test is the principle that a proposed distribution of resources is wrong if it treats someone as disadvantaged when they don't see it that way themselves, for example by offering compensation for features that they do not themselves regard as handicaps. This principle – which is most prominently developed in Ronald Dworkin's defence of his theory of distributive justice – is an attractive one for a liberal to endorse as part of her theory of distributive justice and disadvantage. In this paper, I play out some of its implications, and show that in its basic form the Continuity Test is inconsistent. It relies on a tacit commitment to the protection of autonomy, understood to consist in an agent deciding for herself what is valuable and living her life in accordance with that decision. A contradiction arises when we consider factors which are putatively disadvantaging by dint of threatening individual autonomy construed in this way. I argue that the problem can be resolved by embracing a more explicit commitment to the protection (and perhaps promotion) of individual autonomy. This implies a constrained version of the Continuity Test, thereby salvaging most of the intuitions which lead people to endorse the Test. It also gives us the wherewithal to sketch an interesting and novel theory of distributive justice, with individual autonomy at its core.

Introduction

Suppose we think that it is a proper role for at least some political and social institutions to eliminate or mitigate individual disadvantage, howsoever construed. One question we should ask about this activity is: what ought to be the relation between the judgements of disadvantage encoded in such activity, and the judgements of disadvantage made by the individuals concerned? In particular, is there something wrong with a proposed distribution of resources that treats someone as disadvantaged when they don't see it that way themselves, by offering compensation for features that they do not themselves regard as handicaps?

Answering 'Yes' to these questions is, at least at first sight, an attractive stance for a liberal to take. The alternative (that we treat people as disadvantaged even when they don't regard themselves in that light) is unattractive for a number of reasons, especially if – as seems reasonable – we consider only judgements which don't depend on factual errors or manipulation. For one thing, a distributive scheme which doesn't pay attention to individuals' own views in this way seems unjustifiably paternalistic. For another, it looks like it would be controversially perfectionistic: we would be justifying compensation for a feature (deafness, for example) on the grounds of some value judgements (e.g. that deafness is bad, or impairs one's ability to live a good life) which are controversial and rejected by the individuals concerned. Not all liberal political philosophers oppose all paternalism and perfectionism; but anti-paternalism and anti-perfectionism are central to enough liberal thought that it is worth investigating what are the implications of a 'Yes' answer to the questions above.

One liberal political philosopher who certainly was committed to a 'Yes' answer was Ronald Dworkin. As Matthew Clayton and Andrew Williams point out, Dworkin's defence of his theory of distributive justice works only if we assume the following principle (dubbed the *Continuity Test* by Williams):

> a political community should regard certain conditions as disadvantaging some of its members only if those members' own views about what it is to live well also imply that those conditions disadvantage them.[1]

I argue that – its initial attractiveness notwithstanding – the Continuity Test is indefensible because it leads to contradiction. This poses Dworkin problems, insofar as his arguments relied on the Continuity Test. It also tells us something more general about liberal theories of distributive justice: if we think it important to pay attention to individuals' own views on whether they are disadvantaged, we must do so in a way which doesn't fall foul of the criticisms I develop here.

My plan is as follows. Section 1 explains the content and context of the Continuity Test within Dworkin's work. Sections 2 and 3 then examine the reasons we might have for endorsing the Test, and argue for a crucial claim: any defensible reason will commit one to thinking that the state should protect individual autonomy. Section 4 shows that this commitment to the protection of autonomy reveals something paradoxical about the Continuity Test. Protecting autonomy means treating conditions which undermine autonomy as disadvantageous. However, many people do not themselves value autonomy, hence do not regard conditions undermining their autonomy as disadvantageous. The Continuity Test therefore implies that we treat conditions which undermine autonomy as both disadvantageous (because the Test implies that we must protect autonomy) and not-disadvantageous (because individuals concerned don't regard those conditions as such). I conclude in Section 5 by drawing the moral. Dworkin's use of the Continuity Test – and more generally the liberal temptation towards such principles – should be understood not at face value, but instead as giving reasons to endorse a more explicitly autonomy-minded theory of distributive justice.

1. The Continuity Test

The Continuity Test finds its main articulation and development in the work of Ronald Dworkin; so although it is a plausible and attractive principle to investigate from a broader liberal perspective, it makes sense for now to concentrate on the role it plays in Dworkin's work.

The Test arises in the context of Dworkin's defence of his resource egalitarianism against criticisms by G.A. Cohen. Dworkin's theory, briefly, is that a distribution of resources is just if it matches what would be the outcome of an auction of resources and insurance contracts, conducted against a background of ignorance about people's particular circumstances but with knowledge of their preferences and ambitions.[2] This theory aims, like many other contemporary forms of egalitarianism, to be responsibility-sensitive: that is, to eliminate only those inequalities (or 'irregularities' as Dworkin would rather put it) arising from factors for which it is inappropriate to hold the individuals concerned responsible. Theories of this sort are differentiated by the answers they give to two questions. First, what is the relevant *distribuendum*? Second, what are the necessary and sufficient conditions for responsibility? Or, in other words, where do we draw the line between irregularities we must and must not seek to eliminate?

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[1] A. Williams 'Equality for the Ambitious', *The Philosophical Quarterly* 52 (2002a): 377-389, at 387; and 'Dworkin on Capability', *Ethics* 113 (2002b): 23-39, at 34-35. Clayton calls this the 'First Person Test'. See 'The Resources of Liberal Equality', *Imprints* 5 (2000): 63-84; and 'Liberal Equality and Ethics', *Ethics* 113 (2002): 8–22.

[2] R. Dworkin *Sovereign Virtue* (Cambridge, Mass.: Harvard University Press, 2000), pp. 65-119.

What is relevant here is part of Dworkin's answer to the latter question: one's ambitions – or, more generally, the elements of one's character that have to do with what one thinks worth pursuing – lie on the side of responsibility. So, while it is not appropriate for irregularities in our distribution to arise from (for example) physical disability or the poverty of one's parents, it *is* appropriate for our distribution to reflect the judgements made by individuals about what they want to do with their lives, as represented by their bidding decisions in the hypothetical auction.

G.A. Cohen attacked this element of Dworkin's view.[3] Cohen argued (contra Dworkin) that the correct criterion of responsibility, for the purposes of distributive justice, is whether a factor is chosen or not. Unchosen elements of one's character – which can include ambitions and beliefs about what it is worth doing with one's life – are factors for which we should *not* be held responsible: we should seek to eliminate irregularities that arise from them.

Dworkin's response to this iteration of Cohen's argument – others appeared later[4] – was to argue that Cohen was wrong in making the cut in the place he suggested, as it commits one to an implausible view of the relationship between individuals and the ethical and moral convictions that shape their lives. Dworkin argued that Cohen's stance committed him to the following unacceptable position: we acknowledge that individuals endorse the ambitions they have, and regard pursuit of those ambitions as worthwhile even in light of the costs, but hold that the state ought nevertheless to treat those ambitions as disadvantages: which is to say, as conditions which provide at least *prima facie* justifications for compensation.[5] Dworkin rejected this second position because he believed that an individual's own viewpoint on what is good or bad for them plays a role in determining what constitutes a disadvantage to them:

> Equality of resources ... proposes a politics which we can embrace as flowing from the rest of our convictions ... It allows us to cite, as disadvantages and handicaps, only what we treat in the same way in our own ethical life.[6]

This principle is unnamed in Dworkin's own argument, but – as Clayton and Williams point out – it is crucial to the success of his argument against Cohen, and hence to the defence of his theory of distributive justice in general.[7] Williams calls it the 'Continuity Test', in view of the central contention that the views about disadvantage built into our politics should be continuous with individuals' own convictions. He states the test as follows:

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[3] G.A. Cohen 'On the Currency of Egalitarian Justice', *Ethics* 99 (1989): 906-944, at 916-934.

[4] See e.g. G.A. Cohen 'Expensive Taste Rides Again', in J. Burley ed. *Dworkin and His Critics* (Oxford: Blackwell, 2004), 3-30; and Dworkin 'Replies' in the same volume, pp. 339-395, at pp. 339-350.

[5] Cohen (2004 op. cit., pp. 13-15) himself disagreed that this was the right way to characterise his view, which is that while we should not compensate for ambitions themselves, we should sometimes compensate for their having a welfare-damagingly high market price.

[6] Dworkin 2000 op. cit., p. 294.

[7] Clayton 2000 op. cit., 75-81; Clayton 2002 op. cit., 11-12; Williams 2002a op. cit., 386-389, and Williams 2002b op. cit., 34-36.

> a political community should regard certain conditions as disadvantaging some of its members only if those members' own views about what it is to live well also imply that those conditions disadvantage them.[8]

Clayton (who calls this 'the First Person Test') formulates it slightly differently, when he says that the Test rules out 'proposing a metric for interpersonal comparison that [an individual] rejects as a guide in his own ethical life',[9] but I take it that the same idea is being expressed. The Test constrains particular state actions, general policies, and institutions, including proposals for the distribution of resources and opportunities. Hence, on the theoretical level it also acts as a constraint on what accounts of distributive justice are acceptable.

The Test comes with four important provisos. First, the disadvantage in question is comparative rather than *tout court*.[10] So, we are not interested in the sort of judgement exemplified by an agent who thinks herself badly-off because she may not take the Mona Lisa to decorate her bathroom: there's a natural sense in which she might say she is disadvantaged, but not that she is disadvantaged relative to others (for everyone is subject to the laws which constrain her from plundering the Louvre). Second, the judgements which count are those of the putatively disadvantaged individual herself. That is, we ask of a particular agent whether her own views about what it is to live well imply that that she is comparatively disadvantaged, rather than paying attention to the views of third parties;[11] and we take care to 'highlight the description that most accurately describes the individual's own ethical values'.[12] This means identifying what is valuable in terms which the individual herself would recognise as capturing what is important. It also – and this is the third proviso – involves a small measure of idealization, since the question is not whether an individual herself explicitly *thinks* that a given condition is disadvantageous, but rather whether her considered views about what counts as the good life imply as much. So, the Test does not say that we mustn't treat a condition as disadvantageous if the individual doesn't judge it to be so due to some factual error, or being manipulated or otherwise misled into mistaking the implications of her own comprehensive views.[13] Fourth, the Continuity Test identifies only a necessary condition for treating a factor as disadvantageous, rather than a sufficient condition.

Even if one sees little point in scorekeeping for the lengthy philosophical boxing match between Dworkin and Cohen, the Continuity Test is – for the reasons I gave in the introduction – something that many liberals might want to endorse on its own merits. So, the problem that I pose in subsequent sections for the Test is interesting because it reveals something about the liberal intuitions that might lead one to support the Test on its own merits, as well as identifying a latent inconsistency in Dworkin's work.

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[8] Williams 2002a op. cit., 387.

[9] Clayton 2000 op. cit., 77. Williams (2002a op. cit., 388) notes that Cohen himself defended the thought that this thought experiment is a constraint on what counts as a good policy (in 'Incentives, Inequality, and Community', in G.B. Petersen ed. *The Tanner Lectures in Human Value XIII* (Salt Lake City: University of Utah Press, 1992), pp. 263-329, at p. 280).

[10] Clayton 2000 op. cit., 77-78; Williams 2002a op. cit., 387.

[11] Williams (2002a op. cit., 387) insists on this to avoid the implausible conclusion that we that we require unanimity across the whole of society before a factor is treated as disadvantaging for an individual, even if they are the only one for whom it obtains.

[12] Clayton 2000 op. cit., 78.

[13] Hugh Lazenby ('Mistakes and the Continuity Test', unpublished MS) takes the possibility of such mistakes to count against the plausibility of the Test, but – as my remarks here make clear – I disagree. In particular, the Test doesn't require that we must always take it at face value when an agent claims that she is, or is not, comparatively disadvantaged.

2. Autonomy and the Continuity Test

In this section I set out a position which might motivate someone to adopt the Continuity Test, a position I call *autonomy-minded liberalism*. In its full form, this is the view that the state should promote individual autonomy, understood as a value which consists in an individual deciding for herself what is valuable and living her life in accordance with that decision. For present purposes, I need appeal only to the weaker position that the state should *protect* individuals from threats to their autonomy in this sense (though, as with the stronger version, the reason for this that autonomy is conceived of as a value which makes people's lives go better). This position, I argue, makes the Continuity Test look very attractive.

At this point it is worth repeating that I do *not* think we should adopt the Continuity Test: as I show in Section 4, doing so leads to contradiction. So, what follows is not an argument that the Continuity Test follows from autonomy-minded liberalism. Rather, my aim is to show that the latter might (erroneously) lead one to find the Continuity Test attractive, and hence to lay foundations for the rescue plan I propose in Section 5.

To repeat, I understand autonomy to be a value which consists in an agent deciding for herself what is valuable, and living her life in accordance with that decision, where that amounts to an agent successfully pursuing values which she endorses under conditions of judgemental independence.[14] It is central to this conception of autonomy that it consists in individuals not just shaping their own lives through their actions and decisions, but also having authority over what counts as success or failure in their lives, in the sense that it is their judgement about what is valuable which sets the relevant standard. This doesn't mean that believing one's life to be valuable is sufficient for it to be so, because one's judgements may have been influenced in some malign way; but – on this conception of autonomy, at least – it is necessary.

That means that the autonomy-minded liberal is committed to anti-perfectionism, the position that the state ought not to act intentionally to promote things on the basis that it deems them valuable for citizens. This is for two reasons. First, a perfectionist state runs the risk of causing its subjects' lives to develop in ways contrary to those they themselves deem valuable. Admittedly, there's no inevitable conflict here; given sufficient information-gathering power, a perfectionistic state might manage to ensure that its promotion of values always coincided with the decisions made by each individual citizen affected. However, the epistemic safeguards required would be terribly costly, in terms both of resources and of lost privacy for the citizenry. And even if those costs could be borne, a perfectionistic state would still be incompatible with respect for autonomy in another way: by acting on judgements about what is good for its citizens it would be usurping the authority that individuals have over questions of what is or is not good for them.[15]

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[14] I discuss this conception of autonomy at length in B. Colburn *Autonomy and Liberalism* (New York: Routledge, 2010a), pp. 21-42. I take this to be in the same tradition as e.g. John Stuart Mill's ideal of individuality, and Joseph Raz's conception of autonomy as 'self-authorship' or 'self-creation'. See Mill, J.S. *On Liberty*, originally published 1859, reprinted in *On Liberty and other writings*, ed. S. Collini (Cambridge: Cambridge University Press, 1989), pp. 56-74; and Raz *The Morality of Freedom* (Oxford: Clarendon Press, 1986), pp. 369-399.

These aspects of the ideal of autonomy explain why an autonomy-minded liberal might be attracted to the Continuity Test. The Test rules out distributive schemes which ignore individuals' own views on whether or not a feature of their situation is disadvantageous. The autonomy-minded liberal will also reject distributive schemes with this feature, because it looks like they violate anti-perfectionism: they encode a judgement on what counts as disadvantageous for individuals that disregards those individuals' own beliefs on the matter. So, as with perfectionistic policies more generally, the autonomy-minded liberal will want to eschew such distributive schemes, on the grounds that they will tend impermissibly to thwart some individuals' ability to live their lives as they see fit, and that a state implementing such a scheme would be usurping the individual authority which is recognised by our concern for autonomy in the first place.[16]

3. Alternative motivations for the Continuity Test

The preceding section argued that there is a plausible motivation for the Continuity Test on the basis of autonomy-minded liberalism. In what follows, I argue that this is the *only* plausible motivation for the Test, and hence that someone endorsing the Test is thereby committed – either overtly or covertly – to the state protection of autonomy. My argument is inductive: I inspect various putative motivations for the Continuity Test, and show that they either fail, or work only because they are covertly committed to the state protection of autonomy. Necessarily, an argument of this form is inconclusive: case-by-case inspection, however lengthy, is always vulnerable to the possibility that counterexamples lurk round the next corner. Still, an examination (and rejection) of possible alternative motivations for the Test shifts the burden of proof to the person who wants to disagree with my conclusion; and the pattern of the failure of those motivations will itself give us reason to expect that any other possible motivation will fail in the same way.

One way we might seek to motivate the Test is to find some independently attractive theory of distributive justice, and show that it implies the Continuity Test. So, for example, when discussing his reasons for rejecting the rival theory of Equality of Capabilities,[17] Dworkin himself asked:

> Why should the community provide [a deaf man who doesn't regard his deafness as a disadvantage] with the funds needed for an expensive operation that would restore his

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[15] This argument is more fully developed in Colburn 2010a op. cit., pp. 65-67, and in B. Colburn 'Anti-perfectionisms and Autonomy', *Analysis* 70 (2010b): 247-256.

[16] I have not, in this paper, engaged with Dworkin's later statement of his views in *Justice for Hedgehogs* (Cambridge, Mass: Harvard University Press, 2011), because there is little he said there which was directly relevant to the particular point at issue. It is worth remarking, however, that his comments there on the importance of authenticity for the good life support my contention that a commitment to autonomy is what motivates the Continuity Test, for example when he says that 'Each person has a special personal responsibility for identifying what counts as success in his own life' (p. 204).

[17] This position is defended, most notably, by Amartya Sen and Martha Nussbaum. See, for example, A. Sen 'Equality of What?' in S. McMurrin ed. *The Tanner Lectures on Human Values* vol. 1 (Salt Lake City, University of Utah Press, 1980); and M. Nussbaum *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000).

> hearing, when he not only would not use those funds for that purpose but also would refuse the operation even if it were free?[18]

I take it that the point of this rhetorical question is imply that there would be something wrong or unfair about compensating the deaf man for the deafness which he doesn't regard as a disadvantage: perhaps either disrespectful to him, or unjust to his fellow-citizens. However, this is no better than a simple appeal to brute intuitions unless we are given a prior account of what is fair or unfair.

The element of Dworkin's theory which can shed light on his own motivations is his view of the good life: that is, his Challenge Model of ethics, according to which living well means responding in the right way to the appropriate challenge.[19] Central to Dworkin's view is a distinction between limitations and parameters. The former are factors which make it difficult to respond well to the challenges in our lives; the latter are constraints which (at least partially) define what those challenges are.[20] The boundary between these things is vague, but we can point to some intuitive cases to make the distinction plausible. Some factors which limit what we can achieve in our lives – mortality, finitude of consciousness, bonds of human affection, and so on –seem to define what it is for those lives to be human; it is odd, therefore, to regard them as limitations on, rather than definitive components of, the good life. Clayton points out that, crucially, Dworkin took justice to be a parameter, rather than a limitation: part of what defines the 'right challenge' is that we live under just circumstances, with a fair set of resources and opportunities. And this means that our theory of distributive justice must be formulated prior to our theory of the good life, on pain of definitional circularity.[21]

Clayton doesn't make the link with the Continuity Test explicit, but it's easy to see what the argument would be. If our theory of distributive justice must be capable of being formulated prior to any conception of the good life, then so must our position on what the state should treat as a disadvantage; the latter is nothing more or less than our answer to the question of what background factors people can potentially be held consequentially responsible for.[22] Any theory of distributive justice which *didn't* pass the Continuity Test would – either implicitly or explicitly – take a stand on what makes people's lives go well, which would mean relying on some particular conception of the good life. So, no such theory is permissible, and the Continuity Test is vindicated.

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[18] Dworkin '*Sovereign Virtue* revisited', *Ethics* 113 (2002): 106-143, at 139.

[19] Dworkin 2000 op. cit., pp. 237-284. Other versions of this strategy seem to me unfruitful because plainly circular. Suppose, for example, that someone says: we accept Dworkin's theory of distributive justice, and since the Continuity Test is part of that theory, we should accept the Test. The problem is that the intuitive plausibility of the Test – or, at least, the set of judgements that flows from it – is one of the things adduced in favour of Dworkin's resource egalitarianism, showing that it needn't have counterintuitive consequences. For similar reasons, I worry about the proposal (offered by an anonymous referee) that we justify the Continuity Test as part of a general package which passes reflective equilibrium. The question is whether the Test can be given some non-circular vindication. Showing that we are inclined (on reflection) to consider it vindicated is a promissory note, not itself a vindication: in which case, the argument depends on the success of other purported justifications for the Test, like those I consider elsewhere in this paper.

[20] Dworkin 2000 op. cit., pp. 260-263.

[21] Clayton 2002 op. cit., 18-22, and see also R.J. Arneson 'Cracked Foundations of Liberal Equality', in Burley op. cit., 79-98.

[22] Clayton makes this connection elsewhere (2000 op. cit., 74-5).

If it worked, this argument would serve to justify the Continuity Test without explicit appeal to the value of autonomy.[23] However, the appeal to the Challenge Model is guilty of circularity. According to Dworkin, the true theory of distributive justice is required to give the Challenge Model content, since it identifies one of the central parameters we face. But the Continuity Test is a crucial component of that theory, on Dworkin's view. Hence, it too must be defined and motivated prior to our attempts to specify what makes for a good life. The Challenge Model was Dworkin's attempt to specify precisely that; so, it would be impermissible to rely on the Model to justify some account of the parameters imposed by justice, including the Test itself.

Might one jettison the insistence that justice acts as a parameter, while still endorsing the Challenge Model as an account of the good life? The two claims here (that the good life consists in responding well to the right challenge, and that part of what makes the right challenge is living justly) seem independent, and if we abandon the second claim then the circularity disappears. However, so then does the justification for the Continuity Test: if justice no longer acts as a parameter, then there's no reason to think that our theory of distributive justice (and hence our account of disadvantage) must be justified prior to accounts of the good life. So, this attempt at giving a non-autonomy minded justification for the Continuity Test is another dead end.

An alternative motivation for the Continuity Test, somewhat along the same lines as the one just rehearsed, has been suggested in a recent article by Rasmus Sommer Hansen and Søren Flinch Midtgaard.[24] Hansen and Midtgaard's argument is as follows. With Dworkin, they claim that equality is an *integrated value*, with an integral connection to our lives going well.[25] This means that equality 'has some of the value it has because recognizing it and organizing our lives around it enhances our lives in various ways.'[26] One reason for this is that, as I explained above, Dworkin thought that justice is a parameter which helps define the challenge of living well, and hence contributes to the good life.[27] Hansen and Midtgaard claim that equality is also valuable because it contributes to 'the realization of other political ideals such as the ideal of community'.[28] This ideal of community is not fully explained when it is first introduced, but the authors point to a passage in Dworkin's work where he ruminated on ways in which the liberal might accommodate an ideal on which a community is 'more than a Hobbesian association for mutual benefit [and instead] an association in which each takes some special interest in the well-being of others for its own sake.'[29] This ideal of community is also an integrated value, said Dworkin, once we realise that the idea of a 'sharp distinction between people's own welfare ... and the well-being of the political community to which they belong' is mistaken: 'the success or failure of a community's communal life is part of what determines whether its members' lives are good or bad.'[30] This means, say Hansen and Midtgaard, that a proposed scheme of distributive justice should be assessed partially in light of its effect upon our sense of community:

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[23] It is an interesting question, but one that I don't propose to tackle here, whether it escapes an implicit appeal to that principle. Some ways of fleshing out what criteria determine what counts as 'the right challenge' for an individual – in particular, those which focus on the individual's attitudes and ambitions as at least partially definitive of the right challenge – might end up being effectively the same as the ideal of autonomy I sketched above.

[24] R.S. Hansen & S.F. Midtgaard 'Sinking Cohen's Flagship – or Why People with Expensive Tastes Should not be Compensated', *Journal of Applied Philosophy* 28 (2011): 341-354.

[25] Cf Dworkin *Justice in Robes* (Cambridge, Mass.: Belknap Press, 2006), p. 156; and also 2000 op. cit., pp. 222-230.

[26] Hansen & Midtgaard op. cit., 345.

[27] Dworkin 2000 op. cit., pp. 237-284.

[28] Hansen & Midtgaard op. cit., 346.

[29] Dworkin 2000 op. cit., pp. 211-37, at p. 216.

> [I]t should be consistent with a notion of community in which people can, in good faith (ie consistently with their own assessment of their relative well-being), justify to one another their claims to fair shares.[31]

We should accept the Continuity Test, therefore, because it is the criterion that ensures such consistency: it 'tests notions of equality [or distributive justice more widely, we might add] for consistency with a certain kind of community'.[32]

I will not here take issue with Hansen and Midtgaard's central claims, viz. that equality and the ideal of community are both integrated values, and that the Continuity Test helps to rule out distributive schemes which would undermine the latter. The problem is that, as a strategy for providing the Continuity Test some independent motivation, their argument fares no better than the appeal to the Challenge Model that I considered, and rejected, above. The problem there, remember, was that the purported motivation for the Test turned out to be circular: the Test is supposedly motivated on the basis of Dworkin's theory of the good life, as represented in the Challenge Model, but the Challenge Model itself (because it includes the claim that justice is a parameter on the good life) presupposes the Test in the first place. The same is true here, because Hansen and Midtgaard's construal of the ideal of community is one that presupposes the truth of the Continuity Test. To repeat, on Hansen and Midtgaard's definition that ideal requires that people can justify to one another their claims to fair shares, consistently with their own assessment of their relative well-being, or (put another way later in the paper) 'people can present their claims on each other in terms that are consistent with their personal or first-person ethical conceptions'.[33] It would be false, however, to claim that this is necessary for us to have a moral community in which we (to use Dworkin's words) 'take some special interest in the well-being of others for its own sake'.[34] So, accepting the ideal of community will commit us to the Continuity Test only if we believe, further, that taking the right sort of interest in others' well-being requires us to treat them as authoritative over what counts as a disadvantage for them; which is to say, if we are already inclined to endorse the Continuity Test. So, Hansen and Midtgaard's work is illuminating about how an antecedent commitment to the Test might help inform a particular sort of conception of an attractive moral community, but it fails (on the grounds of circularity) to provide any independent grounds to think the Continuity Test is true.

A third possibility is raised by Clayton, who claims that Dworkin's theory of liberal equality (and hence, *inter alia*, the Continuity Test) might be justified on the basis of a prior commitment to political liberalism: that is, 'the liberal norm that ideally political principles and their justification should be capable of endorsement by individuals who hold different and possibly inconsistent comprehensive commitments.'[35] Might this provide a counterexample to my claim that only autonomy-minded liberalism is a plausible motivation for the Continuity Test?

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[30] Dworkin 2000 op. cit., p. 223.

[31] Hansen & Midtgaard op. cit., 347.

[32] ibid.

[33] Ibid, 349.

[34] Dworkin 2000 op. cit., p. 216.

[35] Clayton 2000 op. cit., 79-80; and see also Williams 2002a op. cit., 388.

The answer is 'no'. The constraints of political liberalism, even if we accept them, themselves presuppose a state commitment to protecting individual autonomy, understood (to repeat) as a value which consists in an individual deciding for herself what is valuable and living her life in accordance with that decision.

To see why, we must ask: why should we accept an injunction against state action premised on comprehensive doctrines with which individuals disagree? Rawls – the principal expositor and defender of political liberalism – was never entirely explicit about his answer. However, some interpretive spadework suggests the following account. The constraint arises because the state must treat us as free and equal persons; free and equal, that is, in respect of possessing two fundamental moral powers, namely a sense of justice (a willingness to 'act in relation to others on terms that they also can publicly endorse') and 'the capacity to form, to revise, and rationally to pursue a conception of one's rational advantage or good'.[36] These moral powers are part of citizens' essential nature, and their exercise an important good: it is for this reason that state action and policy must be justifiable to the individuals who possess and exercise them.[37]

If this *is* Rawls' answer to the question, then it commits him to autonomy-minded liberalism. Here is why. Rawls' second moral power is as near as makes no difference to the capacity for autonomy, as I define it. If that's so, then saying that the exercise of the moral powers is an important good amounts to saying that the state should be concerned with ensuring that people exercise autonomy: which is to say, at least with protecting autonomy (conceived of in the non-neutral way I've described above), and probably also with promoting it (though I shan't argue as much here). This is the crucial assumption in Rawls's argument. Without this tacit appeal to autonomy, his theory is unable to show what would be wrong with a state riding roughshod over people's reasonable disagreement on questions of what is valuable. Hence, it would be unable to justify the claim that we should treat factors as disadvantages unless the individual concerned does too.

So, if my interpretation of Rawls is correct, the putative counterexample to my claim has failed. Political liberalism isn't an independent and non-autonomy-minded motivation for the Continuity Test, because it is committed (either explicitly or implicitly) to the protection of autonomy, and it is that commitment which explains why the Continuity Test seems to follow from it.[38]

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[36] J. Rawls *Political Liberalism* (New York: Columbia University Press, 1993), p. 19.

[37] Rawls op. cit., pp. 202-203, 313-314, 322.

[38] Though I haven't space to argue as much here, I think my point stands for any interpretation of Rawls's argument in *Political Liberalism*, or at any rate any interpretation on which that argument doesn't turn out to be straightforwardly unsound. By way of illustration, consider the rival interpretation offered (as it happens) by Clayton in *Justice and Legitimacy in Upbringing* (New York: Oxford University Press), pp. 8-10. On Clayton's reading, Rawls thought that we should eschew controversial state action (that is, state action based on comprehensive principles with which people might reasonably disagree) because of the need to ensure stability and social unity in the face of ineliminable disagreement over conceptions of the good. There are two ways of understanding Rawls's theory, on this reading, depending on why we think disagreement over conceptions of the good is ineliminable. On the one hand, we could understand this as a factual claim: realistically, we can't seek stability any way save by avoiding controversial foundations, because people aren't going to come to agree any time soon. Understood this way, however, Rawls's argument fails, because his proposed remedy – to limit political principles to those with which there is no *reasonable*

My discussion has concentrated on Rawls. However, the basic point applies more generally to anyone who would seek to ground the Continuity Test in the concern for neutrality which lies at the heart of the political liberal project.[39] A motivation of this sort bears a burden of proof: one must explain why state action should be constrained in this way, and why action which violates neutrality is bad. My discussion of Rawls shows that in this influential case a tacit commitment to autonomy is what actually does the justificatory work, and this gives some reason to expect the same phenomenon in respect of other neutrality-based motivations for the Continuity Test.[40]

In light of this, I suggest a cautious endorsement of the claim with which I started this section. Autonomy-minded liberalism is a plausible motivation for the Continuity Test. Inspection of various other motivations that might be offered suggests that either they involve a tacit commitment to autonomy, or fail to motivate the Test, by dint either of being false or (on close

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disagreement – won't prevent the disagreement which actually exists precluding stability, if that disagreement is (as seems likely) to some degree unreasonable. Alternatively, we might think that disagreement between conceptions of the good *shouldn't* be eliminated, even if that were possible, because seeking to do so would fail to respect the moral powers of the citizens amongst whom the disagreement obtains. Such an argument might work, but only by relying once again on Rawls's claim that the two moral powers should be respected, which – for reasons I go through in the main text – involves a tacit commitment to the protection of autonomy. So, we can leave aside the question whether Clayton's is a better interpretation of Rawls than mine. Even if it were, the theory still wouldn't provide a non-autonomy-based motivation for the Continuity Test, either because it fails on its own ground, or because (once again) it presupposes exactly the commitment to autonomy which I argue underlies all motivations for the Test.

[39] For example, Bruce Ackerman in *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980) and in 'Political Liberalisms', *The Journal of Philosophy* 91 (1993): 364-386; Charles Larmore in *Patterns of Moral Complexity* (New York: Cambridge University Press), and 'Political Liberalism', *Political Theory* 18 (1990): 339-360; and Jonathan Quong in *Liberalism Without Perfection* (New York: Oxford University Press, 2011).

[40] I think the same is true for some other possible motivations for the Continuity Test. So, for example, we might imagine a capability theorist considering the Test a natural addendum to her theory. One reason might be that, like Martha Nussbaum (op. cit., 89-90), she emphasises the centrality of the capacity of practical reason, and thinks this requires that we treat the individual as sovereign over what counts as disadvantageous to her. Alternatively, it might be because, like Amartya Sen (on some interpretations, at least) she thinks the Test an implication of the ideal of individual agency, which constrains our ability to specify a universally valid set of capabilities for all societies and times. See A. Sen 'Well-being, Agency and Freedom', *Journal of Philosophy* 82 (1985): 169-221, esp. at 182-14 and 200-2; and also D. A.Crocker & I Robeyns 'Capability and Agency' in C.Morris ed. *The Philosophy of Amartya Sen* (Cambridge: Cambridge University Press, 2009), pp. 60-90. I lack the space to address these possibilities fully, but I think the same point can be made here as I have made against Rawls. In each case, the element of the Capability Approach which motivates the Continuity Test is an ideal (of practical rationality or of agency) which looks remarkably similar to the ideal of autonomy as I have defined it. So, without prejudice to the question of how far the Capability Approach is compatible with autonomy-minded liberalism, it seems clear that motivations for the Test which rely on the former don't count as counterexamples to my claim here that those motivations all end up appealing to the protection of autonomy to do the real justificatory work. My thanks to an anonymous referee for the suggestion.

inspection) being unable to do the necessary justificatory work. So, we have inductive grounds to accept that autonomy-minded liberalism is the only plausible motivation for the Continuity Test. That isn't decisive, of course. But it does mean that – absent further arguments being provided – someone who endorses the Test should accept that the state must protect autonomy.

3. A *reductio ad absurdum*

The argument in the previous section gives me the necessary resources to show why we should not endorse the Continuity Test, at least in the basic form introduced discussed so far. My argument is as follows.[41] In all cases, by 'autonomy' I mean the value defined earlier, which consists in an individual deciding for herself what is valuable and living her life in accordance with that decision.

> (1) (Assumption) The Continuity Test is true.
> (2) (Premiss) If the Continuity Test is true, the state should protect autonomy.
> (3) (Premiss) If the state should protect autonomy, then it must always treat autonomy-undermining factors as disadvantages.
> (4) (Premiss) If the Continuity Test is true, then the state must not always treat autonomy-undermining factors as disadvantages.
> (5) (from 2 and 3) If the Continuity Test is true, the state must always treat autonomy-undermining factors as disadvantages.
> (6) (from 4 and 5) If the Continuity Test is true, the state both must and must not always treat autonomy-undermining factors as disadvantages.
> (7) (from 1 and 6) The state both must and must not always treat autonomy-undermining factors as disadvantages. (Contradiction.)
> hence
> (8) (RAA) The Continuity Test is false.

The argument is valid. The question of its soundness, then, depends on the truth of the premisses.

Premiss 2 follows from my conclusion in Sections 2 and 3 of this paper. There, I showed that we have strong (though inductive) grounds for thinking that the only plausible justification for the Continuity Test is a prior commitment to autonomy-minded liberalism. So, on pain of inconsistency, someone who endorses the Continuity Test must think that the state should protect autonomy.

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[41] I don't mean to imply that this is the only reason one might want to reject the Test. Lazenby (op. cit.) and Williams (2002a op. cit., 389, and 2002b op. cit., 38) discuss some other reasons why the Test might be thought unjustified. One might also worry that there are cases of subordination in which people's situations are unjust precisely because they have come to have views on what is good for them which prevent them from recognizing that their situations are genuinely disadvantaging. To adapt a case suggested by Marilyn Friedman (in 'Autonomy and the split-level self', *Southern Journal of Philosophy* 24 (1986)), consider a downtrodden housewife who has been conditioned into regarding obedience and subservience to her husband as the ideal way for her life to go. Her views on what is valuable would *not* imply that her oppressive conditions are disadvantaging, in which case the Continuity Test implies that it would be impermissible for proposed state action to treat them as such. That, though, would be a very unpalatable conclusion: by insisting on taking such views about what is valuable at face value, a state heeding the Continuity Test would be colluding in unjust oppression.

Premiss 3 claims that, at the very least, such a state must treat things that undermine people's autonomy as disadvantages which it has a *prima facie* reason to eliminate, or to offer people the resources to counteract. It doesn't seem possible to deny this without thereby eschewing any concern for autonomy whatsoever. It is consistent, for example, with thinking that that reason might be outweighed by other considerations in particular cases. In practice, of course, a commitment to protecting autonomy will imply a lot more than this, especially if it goes hand in hand with the stronger commitment to *promoting* autonomy. However, even the weak claim is sufficient to generate a contradiction, and so it is all that is required to show that Premiss 3 is true.

Premiss 4 requires a little more explanation. To show that it is true, I need to show that there is a possible situation in which the Continuity Test forbids us to treat autonomy-undermining factors as disadvantages.

To generate such a situation, consider someone who doesn't value autonomy, and moreover views it as something that detracts from rather than contributes to (or constitutes) the good life. We might, for example, remember the Native Americans on the Longest Walk, who protested at the general presumption in American society in favour of a life of self-sufficiency and individualism over one of communal interdependence.[42] Such people deny that autonomy is valuable, have ideals of the good life which do not imply that autonomy is valuable, and hence presumably would deny that autonomy-undermining circumstances are disadvantageous.

It might be objected, at this point, that in many such cases the positive disavowal of the value of autonomy depends on mistakenly conflating it with something else, and that if such mistakes were eliminated nobody would fail to value autonomy, and hence that nobody would deny that autonomy-undermining circumstances are disadvantageous. This extravagant psychological claim is never adequately substantiated by those who seek to defend a commitment to autonomy. Even if it *were* true, it is irrelevant. The fact is that many people either don't see autonomy as valuable, or regard it as disvaluable. Even if they would not do so under different circumstances, we must understand these claims at face value if we are to take seriously people's actual beliefs about what is valuable to them (as the Continuity Test surely requires).

If we apply the Continuity Test in cases like this, then we get the following result: since there will be some autonomy-undermining factors which the individual's views about what is valuable in their life would *not* imply are disadvantageous, there will be some autonomy-undermining factors which fail to meet the necessary condition for the state treating them as disadvantages. So, there are possible (indeed, existent) cases where the Continuity Test rules out the autonomy-minded concern for those factors in distributing resources, and Premiss 4 is correct.

So, assuming we accept the conclusion of Sections 2 and 3, we have good reason to believe all of Premisses 2, 3 and 4. Since we can then derive a contradiction, the argument is a *reductio ad absurdum* of Premiss 1, the claim that the Continuity Test is true.

The argument I have given here depends throughout on the controversial conclusion I drew in Section 2 about the connection between autonomy and the Continuity Test. However, it is possible to construct a more generic version of the argument which does *not* depend on that: even if one rejects my claim that endorsing the Test commits one to the state protection of autonomy, so long as one has some justification or other for the Test, it will be possible to construct a structurally identical *reductio*.

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[42] *Congressional Record*, 27 July 1978.

There may be many different motivations for the Test, beyond the ones I surveyed in Section 3. One might – as I have – seek to motivate it by appealing to a substantive value (autonomy, in my case). Or one might – as Clayton hints – try to do so by showing that it follows from a broader account of justice or legitimacy like Rawls's. It doesn't really matter which. The point is that any putative motivation is going to imply some judgements about when people are disadvantaged by a situation: given that by 'disadvantage' we mean just '*prima facie* grounds for compensation', a claim which implied no such judgements would be so normatively inert that it would seem unable to justify anything (much less a substantive political principle like the Continuity Test). But then, contradiction will once again arise when we imagine the Test as applied to an individual whose views on the good life do not imply those same judgements. Taking the Continuity Test seriously means *not* treating such situations as disadvantageous; but doing so is required by those deeper commitments implied by endorsing the Test in the first place.

This suggests the following more schematic argument against the Continuity Test:

(1) (Assumption) The Continuity Test is true.
(2*) If the Continuity Test is true, then there exists some justification for it.
(3*) A justification for the Continuity Test will imply that there exist factors which must always be treated as disadvantages.
(4*) If the Continuity Test is true, then there are no factors which must always be treated as disadvantages.
(5*) (from 2* and 3*) If the Continuity Test is true, there are factors which must always be treated as disadvantages.
(6*) (from 4* and 5*) If the Continuity Test is true, there both are and are not factors which must always be treated as disadvantages.
(7*) (from 1 and 6*) There both are and are not factors which must always be treated as disadvantages. (Contradiction.)
Hence
(8*) (RAA) The Continuity Test is false.

I can see no way that a defender of the Continuity Test can evade this argument, once it is made clear that the Test does indeed stand in need of some sort of independent justification. Hence, the Test is false, and we should not endorse it.

5. Conclusion: what to believe instead

Sections 2 and 3 explored various possible motivations for the Continuity Test and concluded that the only plausible one is a tacit commitment to autonomy; but Section 4 went on to show that – plausible motivation notwithstanding – the Continuity Test should be abandoned, because it leads to contradiction. If the second of the two arguments in Section 4 is persuasive, then this follows even if one rejects the connection I draw between autonomy and the Continuity Test in Sections 2 and 3. So, what now? I conclude on a conciliatory note, by discussing what we can rescue from the wreckage, and what lessons we might draw for distributive justice more broadly.

Section 2 was important in establishing Premiss 2 of my first argument against the Continuity Test. However, it is also significant in showing how the defender of the Test might respond to the discovery that it is contradictory. In particular, it suggests that the motivations for endorsing the Test should, on closer inspection, push us instead towards autonomy-minded liberalism, and the constraints on distributive justice that it implies.[43]

To start with, doing so will capture a lot of the intuitions about particular cases on which the commitment to the Continuity Test was founded, for the reasons given in Section 2. In particular, a commitment to the state protection of autonomy rules out any welfarist theory of distributive justice, since (as I noted above) any such theory would involve a violation of the autonomy-minded commitment to individual authority over questions of what is valuable in life. To the extent that the Continuity Test was motivated by a desire to rule out such presumption, a concern for autonomy will do just as well. Indeed, autonomy-minded liberalism implies a principle identical to the Test, except that it treats autonomy-undermining disadvantages as exceptional: *their* moral status – unlike all other putative disadvantages – is unconditional on the individual's attitude to them. A revised Test of this sort is enough to play the requisite role in Dworkin's argument against Cohen, as explained in Section 1. So, it may be that Dworkin, and other defenders of the Test, would be happy to regard my proposed shift to autonomy-minded liberalism as a painless revision of their theory.[44]

Nevertheless, the revision is not trivial. As I've just made clear, the implications of the Test and of autonomy-minded liberalism diverge when considering situations which undermine autonomy itself. Unlike the Test, autonomy-minded liberalism is committed to saying that in such cases we should *not* be restricted by people's own views on whether or not they are disadvantaged. This means, in practice, that policies designed to protect individual autonomy will take priority over other elements in our provision of social welfare, and should be provided irrespective of individuals' attitudes. Amongst other things, this will involve the provision of a robust autonomy-facilitating education in childhood, with the possibility of further education and retraining being offered (though not forced) in adulthood too, even for those who judge (either for themselves or for their children) that resources spent on such education are wasted, or disrespectful, or actively damaging to their chances of living a good life. So, we are led towards policies which insist on an autonomy-facilitating education even against parental wishes (and so disagreeing with the Amish parents who demanded to be allowed to shield their children from such an education in the famous *Yoder* case);[45] and we are given reason to favour policies which secure life-long educational opportunities to support autonomy, rather than those which are satisfied by a 'one-off' equality of opportunity at the age of majority.[46]

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[43] For more detail on the autonomy-minded theory of distributive justice, see Colburn 2010a op. cit., pp. 82-93; and also C. Mills 'Can liberal perfectionism generate distinctive distributive principles?', *Philosophy and Public Issues* 2 (2012): 123-152.

[44] My thanks to an anonymous referee for this suggestion.

[45] See *Wisconsin v. Yoder*, 1972. 406 U.S. 206. Amongst those philosophers who have approved of the court's decision to grant the parents' request, and who would therefore disagree with this implication of autonomy-minded liberalism, see e.g. B. Almond 'Education and Liberty: Public Provision and Private Choice', *Journal of Philosophy of Education* 25 (1991): 193–202; W. Galston 'Two Concepts of Liberalism', *Ethics* 105 (1995): 516–534, at 527-8; C. Kukathas 'Are There Any Cultural Rights?', *Political Theory* 20 (1992): 105–139, at 122; and B. Parekh *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Basingstoke: Palgrave, 2000), p. 333.

[46] This involves siding with e.g. Alexander Brown, Clare Chambers, and Norman Daniels, who argue that a 'one-off' moment of equal opportunity at majority is indefensible, against e.g. Bruce Ackerman and Anne Alstott, Harry Brighouse, and David Miller. See A. Brown 'Equality of Opportunity for Education: One-off or Lifelong?', *Journal of Philosophy of Education* 40 (2006): 63-84;

Let us suppose that some defenders of the Continuity Test are made uncomfortable by the fact that autonomy-minded liberalism has implications of this sort. Indeed, they might go as far as to say that they reveal exactly what is wrong with understanding liberalism as being fundamentally committed to either the protection of or promotion of individual autonomy. Autonomy (as defined in this paper) is a controversial value, and some people reject it: exactly those people, in fact, whose views about disadvantage I propose to ignore. How can we justify this use of state power to such people, when they reject the value on which it is premised?[47]

The liberal discomfort articulated here is real. Nevertheless, it doesn't give us reason to reject my proposal to abandon the Continuity Test in its pure form and instead embrace autonomy-minded liberalism. To see why, reflect on the reasons we have for being uncomfortable about protecting the autonomy of those who reject it as a value. Those reasons must have to do with the importance of the individual herself deciding what is valuable in her life, and being able to live her life accordingly, which means (*inter alia*) being the arbiter of what counts as a disadvantage for her. To appeal to those reasons, then, is just to rely once again on the importance of individual autonomy. So, my opponent is faced with a dilemma. Either their discomfort (when faced with the cases where autonomy-minded liberalism diverges from the Continuity Test) is groundless, or it is grounded in a tacit commitment to the protection of individual autonomy. If the former is true, we need not worry. If the latter is true, paying heed to it can only demand just what was being proposed anyway, which is to say the institution of a political system which seeks to take everyone's autonomy seriously, so far as is possible. Either way, the objection ends up being self-defeating.

For that reason, liberal discomfort in these circumstances shouldn't make us abandon autonomy-minded liberalism. Rather, we should see it as a symptom of the fact that it is impossible to take people's perspective on their own disadvantage seriously in all possible respects and circumstances. There are constraints imposed by the very need to take their disadvantage seriously at all: that doesn't count against the theory, so long as the constraints go no further than what is implied solely by the desire to respect people's perspective in the first place. Treating threats to people's autonomy as unconditionally disadvantaging, and then deploying a weaker version of the Continuity Test with respect to all other putative disadvantages, draws the line in exactly this place.

The theory we end up with is one which occupies an interesting novel position in the literature on disadvantage. For example, it suggests a stable middle position between Nussbaum and Sen on the question of whether the Capability Approach must specify a basic list of capabilities as part of its theory of distributive justice. The view defended here, if put in terms of capabilities, sides with Nussbaum insofar as it puts at least one thing on that list, namely autonomy;[48] but beyond that it agrees with Sen, since we should refuse to specify further any purportedly universal set of capabilities whose status doesn't depend on the individual's perspective.[49] It also offers an additional

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C. Chambers 'Each outcome is another opportunity: Problems with the Moment of Equal Opportunity', *Politics, Philosophy & Economics* 8 (2009): 374-400; N. Daniels *Just Health* (Cambridge: CUP, 2008), p.53; B. Ackerman and A. Alstott *The Stakeholder Society* (New Haven, CT: Yale UP, 1999); H. Brighouse *School Choice and Social Justice* (Oxford: OUP, 2000), p.115; and D. Miller 'Liberalism, Equal Opportunities, and Cultural Commitments' in P. Kelly ed. *Multiculturalism Reconsidered: Culture and Equality and its Critics* (Malden: Polity, 2002), p. 47.

[47] My thanks to an anonymous referee for this objection.

[48] See Nussbaum op. cit., pp. 89-90. It remains an interesting question how far Nussbaum's capability of practical reason is to be identified with an ideal of autonomy of the sort I defend here.

[49] Sen 1985 op. cit.

line of support for the theory of disadvantage developed by Jonathan Wolff and Avner de-Shalit, which is pluralistic and seeks to ground intra- and inter-personal comparisons of disadvantage in a way which is sensitive to individuals' evaluation of the circumstances they face.[50]

These reflections, and the promise of some eminent philosophical company, may do little to sweeten the pill for the stalwart defender of the Continuity Test. However, even if it is still bitter, it must be swallowed. The Test as originally stated *is* contradictory, and no alternative motivation for it has been found save autonomy-minded liberalism, with the revised and weakened version of the Test that it implies.

So, the defender of the Continuity Test faces a dilemma. They might reject the commitment to autonomy that I have excavated. If they do so, they lose entitlement to even the plausible implications of the Test. Inter alia, this would mean that a load-bearing part of Dworkin's political theory is unsound. Or, they can accept the commitment to autonomy. That will allow them to salvage at least some of their intuitions. However, it also seems to demand a shift in focus: they must now acknowledge the crucial role that a commitment to autonomy plays in their views, and then continue the task (begun in sketched form above) of working out what implications that commitment has for their political theory as a whole.[51]

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[50] See J. Wolff & A. de-Shalit *Disadvantage* (Oxford: Oxford University Press, 2007), especially chapters 5 & 6. I am very grateful to an anonymous referee for pointing out these implications.

[51] My thanks – for discussion or comments on earlier drafts – to some anonymous referees, Kimberley Brownlee, Matthew Clayton, Daniel Elstein, Hugh Lazenby, Chris Mills, Serena Olsaretti, Jason Park, Tom Porter, and participants in a seminar at the University of Manchester in March 2011.