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## Cognitive Disability, Capabilities, and Justice

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## *Cognitive Disability, Capabilities, and Justice*

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*Abstract:* I argue that capabilities approaches are useful in formulating a political theory that takes seriously the needs of persons with severe cognitive disabilities (PSCD). I establish three adequacy criteria for theories of justice that take seriously the needs of PSCD: A) understanding PSCD as oppressed, B) positing a single standard of what is owed to PSCD-abled individuals, and C) concern with flourishing as well as political liberty. I claim that conceiving valued capabilities as the end of social distribution may help a political theory to meet these criteria.

I posit three further adequacy criteria: D) refusing to see PSCD as less than human, E) valuing moral powers other than practical reason, and F) securing space for care and dependency relationships. I show that how well Elizabeth Anderson and Martha Nussbaum's capabilities approaches meet these criteria depends on their divergent conceptions of what capabilities are for. I sketch another capabilities approach that might better meet the three latter criteria (inspired by Lawrence Becker and Eva Kittay's work), that conceives capabilities as for agency and relationship.

### **Cognitive Disability, Capabilities, and Justice**

Oppressed groups often formulate demands for equal treatment as demands for inclusion. Such demands typically involve showing that members of a given group possess qualities taken to be characteristic of persons-- where persons are those who can make just claims to social entitlements. The qualities in question are often capacities to be rational or productive. The political and moral resonance of these justifications for inclusion reveals the degree to which the liberal political tradition associates moral worth with the values of autonomy, rationality, reciprocity, and productivity.

Yet imagining equality in these terms for some groups seems to confound the very possibility of inclusion. One such group is people with severe cognitive disabilities (hereafter PSCD).<sup>1</sup> Many PSCD do not possess the type of rationality one would need to vote or to hold office, or even live independently. The types of jobs they are able to do are almost always incapable of providing them with decent standards of living, and many cannot work in the formal economy (Kittay 2003, 265; Becker 2000, 61). They may never "pay back" the resources societies put into their education and medical expenses. As Eva Feder Kittay puts it, "The mentally retarded have at times been objects of pity, compassion, or abuse by their caretakers or society at large. But they have rarely been seen as subjects, as citizens, as persons with equal entitlement to fulfillment" (Kittay 2003, 257).

This perception of PSCD also appears in mainstream political philosophy. In a recent article entitled

“Cognitive Disability, Misfortune, and Justice,” Jeff McMahan explicitly claims that PSCD do not belong to the moral community of persons. He argues that a justice that provides PSCD with the goods necessary for their flourishing must also promote the flourishing of comparably abled animals. There is no way to define the political category “person” in a way that includes PSCD but includes high-functioning animals. PSCD lack the psychological capacities constitutive of practical reason, and those who lack practical reason cannot be legitimately defined as persons.

On this view, any project of imagining justice for PSCD is doomed from the outset. What such persons require for flourishing is (to use McMahan’s term) “special compensation” for their natural impairments. This special compensation may be owed as a matter of love, affiliation, or beneficence but certainly not as a matter of justice.

Unlike McMahan, I want to suggest that it *is* possible to justify the social entitlements of the severely cognitively disabled according to the same logic as we justify the social entitlements of abled persons. I argue here that capabilities approaches to social distribution are particularly useful in placing the needs of PSCD within the domain of justice.

In the first section, I define capabilities approaches as those that conceive the goal of social distribution as the promotion of a set of valued capacities to function. In the second, I establish provisional adequacy criteria for a theory of just social distribution that takes the needs of the PSCD seriously. I elaborate the ways in which capabilities approaches are amenable to addressing the special concerns raised by the attempt to include PSCD within the scope of justice. In the third section, I discuss some further adequacy criteria that not all capabilities approaches will meet equally well. In the fourth, I outline and differentiate three different capabilities approaches based on what each approach takes to be the central aim of capability equality. I examine how well each of these capabilities approaches fares at meeting the adequacy criteria for including the cognitively disabled into the moral community of persons.

## I. Capabilities Approaches

The term “capabilities approach” originally appeared in the work of Martha Nussbaum and Amartya Sen to refer to the conception of basic social entitlements as capabilities. Capabilities approaches hold that the priority of a just society “should be the capabilities of citizens to perform various important functions” (Nussbaum 1999, 42). Put simply, just societies owe people certain abilities to be and do.

Nussbaum and Sen have aptly contrasted capabilities approaches to both subjective welfarist approaches and Rawls’ primary goods approach.<sup>2</sup> Unlike subjective welfarist approaches, capabilities approaches do not understand subjective well-being as the central aim of social concern. Instead, capabilities approaches stress that certain capabilities to function are *objectively* valuable. Capabilities approaches dispute the idea that attention to how individuals use goods necessarily entails a move into the domain of subjective preference. Subjective welfarist conceptions arbitrarily equate flourishing with private satisfaction. Capabilities approaches claim that it is possible (either metaphysically or instrumentally) to assign value to certain capacities to function independently of how individuals who possess them *feel* about them. Let us take the capability for adequate nourishment as an example. Welfarist approaches would hold that the social distribution of food is desirable because it produces a certain level of well-being in its possessor. Capabilities approaches

would agree that the desirability of food is related to what individuals *do* with food. But they would hold that being adequately nourished is both objectively determinable and objectively valuable.

Capabilities approaches differ from Rawls' primary goods approach by emphasizing that the distribution of social goods is always a means to promoting capabilities.<sup>3</sup> Goods like "rights and liberties, powers and opportunities, income and wealth, and the bases of self-respect"<sup>4</sup> (Rawls 1972, 62) are meaningful insofar as they provide persons with substantive opportunities to flourish. The capability of political participation, for example, differs from the right to vote. The right to vote simply implies freedom from coercion that would prevent one from voting. The capability of political participation means actually being able to vote, with access to transportation, adequate information, etc. Capabilities approaches maintain that the former is only really significant in terms of the latter.

Since their initial use of the term "capabilities approach," Nussbaum and Sen have developed divergent conceptions of the capabilities approach, and still others have expanded the use of the term.<sup>5</sup> For the purposes of this paper, the terms "capabilities approach" and "capabilities approaches" do not designate particular versions of the capabilities approach with particular sets of moral foundations. Instead, they refer broadly to the conception that social distribution ought to foster certain crucial abilities to be and do. Since capabilities approaches have been articulated largely in the context of Rawlsian liberalism, I also take these terms to entail the idea that these crucial abilities are owed to persons as a matter of right. In this sense, capabilities approaches follow from a loosely Kantian conception of each person as an end possessed of an irreducible dignity that demands respect. Capabilities approaches assert that we do not value social goods for their own sake but because of what they do for people. This entails the notion that all persons are owed equally the social bases of certain abilities to be and do.

## **II. Capabilities, Approaches and Adequacy: Criteria for Justice for the Severely Cognitively Disabled**

Capabilities approaches generally show promise for including PSCD within the scope of justice. However, not all capabilities approaches show *equal* promise in doing this. In order to show how this is so, we must elaborate what thinking justice for PSCD would require. In this section, I establish some provisional criteria that theories of justice must meet in order to respect the personhood of those with severe cognitive disabilities. The first four criteria reveal an affinity between capabilities approaches in general and justice for PSCD. The latter three are criteria for justice for the severely cognitively disabled that not all capabilities approaches will meet equally well.

A theory of justice that successfully incorporates PSCD should **A)** understand PSCD as members of an oppressed group, **B)** use the same standard to evaluate what is owed to them as it uses for "normally" abled individuals, **C)** respect human diversity, and **D)** distribute the social basis of at least some type of flourishing as well as political liberty.

**A) *Respecting the dignity of persons with cognitive disabilities requires understanding them as members of an oppressed group.*** To call the cognitively disabled oppressed does not entail claiming that cognitive disabilities are entirely socially constructed or that living with a cognitive disability is

an inherently debased form of existence. Instead, it articulates the basis for the demand that society take responsibility for the flourishing of PSCD. Oppression “by definition is socially imposed” and the “proper positive aim of egalitarianism is to end oppression” (Anderson 1999, 289). Taking the oppression of persons with cognitive disabilities seriously also means refusing to see disability as nothing but an instance of bad moral luck. The lived meaning of a disability is a product of both the sheer luck of biology and the social arrangements in which a disabled person lives.

Refusing to see disability as mere bad moral luck allows justice to express the same type of concern for disabled citizens as for those who are not. As Anderson cogently argues, the problem with understanding distributive justice as compensation for bad luck is that it excludes some citizens from the scope of justice claims on the grounds that they are responsible for their conditions and that it assumes that some types of lives are inferior to others (1999, 289). In relation to cognitive disability, moral luck egalitarianism is guilty of the former, because it relies on a distinction between “brute luck” and “option luck” that inevitably blames some disabled people (or their parents) for their disabilities. However, all disabilities have social components, and to blame the disabled or their parents for their disabilities outright denies this.

A moral luck perspective also devalues the lives of the disabled by trivializing their needs in a way that makes their basic functioning appear less important than that of normally abled persons. Luck egalitarians claim that resources should be distributed in the interests of increasing overall well-being. The problem with this view is that it implies that needing extra resources in order to achieve a valued functioning for a person with a disability is analogous to needing an expensive desire to be fulfilled in order to make one happy (Anderson 1999, 302). So needing extra resources to receive special education, for example, is not distinguished from wanting extra resources because one wants to consume only champagne and caviar. As Anderson points out, this type of thinking involves both a type of extreme condescension to the disabled and a willingness to compensate public oppression with privately appropriated goods. She says that such a state might write a letter like this to a disabled person:

Your defective native endowments or current disabilities, alas, make your life less worth living than the lives of normal people. To compensate for your misfortune, we the able ones, will give you extra resources, enough to make the worth of your life good enough that at least one person out there thinks its comparable to someone else’s life. (1999, 305)

The moral luck perspective is able to displace the entire responsibility for the flourishing of disabled persons from social distribution onto the realm of private satisfaction.

Moreover, attributing the standard of living a PSCD experiences entirely to the brute luck of biology often functions to absolve the state from the responsibility for taking the needs of PSCD seriously at all. This may happen in one of two ways: the state may not hold itself responsible for disadvantages it did not cause, or it may think attempting to offset disadvantages that are purely biological as futile. An example of the former might be seen in McMahan’s assertion that the justice claims of persons with cognitive disabilities rest on an unwarranted counterfactual that imagines that “normal” individuals would exist in the place of all severely cognitively disabled individuals (1996, 15). McMahan asserts this against the idea that the state should help every person to maximize their natural possibilities. How can the state be responsible for compensating for a biological impairment,

when it is absurd to imagine that person absent their impairment, he asks? Yet this question is only rhetorical if all of the disadvantages that accrue to PSCD are attributed biology. Understanding social arrangements as complicit in the oppression of the severely cognitively disabled widens the scope of society's responsibility to them.

The state may also excuse itself from providing for the flourishing of PSCD by assuming that it is simply no use to attempt to offset the consequences of certain impairments. For example, twenty years ago, children with Down Syndrome were taken to be not worth educating (Berubé 1996, 30). If nothing could be done to incorporate them into the world of education, the state did not have to ask what types of education would allow children with Down Syndrome to develop their potential. The refusal to take any component of disability as the result of social oppression allowed society to give up on children with Down Syndrome. We know today that persons with Down Syndrome can benefit greatly from education that is designed to meet their needs. Saying this does not mean that there is no biological component to cognitive disability. It means only that the state must maintain a type of agnosticism about the relationship between impairment and disability in order to attempt to do justice to the disabled. Imagining equality for PSCD means understanding their condition as resulting from oppression.

**B) *Thinking justice for the cognitively disabled means refusing to generate a separate standard for what is owed to them.*** We would disavow the dignity of persons with cognitive disabilities were we to begin theorizing justice for them with the claim “all human beings are owed x by virtue of their humanity, but insofar as the cognitively disabled do not fit into our picture of humanity, they are owed something else.”<sup>6</sup> An egalitarian vision of justice that lays any claim to universality must contain some vision of what *every* person is owed as a matter of right. Although this may seem too obvious to posit as an explicit criterion, many liberal theories of justice suggest otherwise. John Rawls, for instance, claims that if physical diversity causes some persons to need more basic primary goods than others, we can justifiably postpone their concerns to after the contractual process that designs the principles of justice (the judicial and legislative stages).<sup>7</sup> More radically, David Gauthier explicitly claims that PSCD do not have entitlements that issue from justice.<sup>8</sup> In general, liberal theories of justice tend to assume that persons' entitlement issues from their status as rational contractors, and insofar as PSCD are not rational contractors, their demands fall outside the scope of justice.

Even in nonliberal theories, social desert may be based upon productive membership in the economy, which may also not be possible for many PSCD. On this view, people who cannot fulfill important roles as workers must be owed something other than justice. A conception of justice that places the concerns of persons PSCD at its heart must refuse to take this type of route. It must prefer a notion of personhood that can accommodate persons with a plurality of abilities without abandoning the single conception of what is owed to all persons as a matter of right.

**C) *Imagining justice for PSCD requires respect for human variation.*** Imagining justice for PSCD entails understanding them as differently situated vis-à-vis social goods in comparison with the cognitively abled.<sup>9</sup> Schools are designed for persons who are cognitively abled; educating persons with cognitive disabilities may often require extra resources. PSCD may require more care from dependency workers throughout their lives than those who are cognitively abled. Hence, different persons may need different combinations of or different amounts of goods to achieve certain

functionings.

Respect for human variation also means acknowledging that there exist different ways to flourish as human. This does not imply that justice ought to apply different standards to different human beings. It insists that to live with a cognitive disability is not necessarily to live a tragically debased sort of life—that PSCD can live in ways that are recognizable as human. Persons with the most severe cognitive disabilities are not simply owed goods like food that sustain life; they are owed what allows them to flourish as individuals, as persons with unique “worlds” and “imaginative possibilities” (Kittay 2003, 266). Flourishing will definitely mean different things for a person who is severely mentally retarded and one who is not, but that does not mean that it is impossible for a person who is severely mentally retarded to flourish.

**D)** *Justice for the severely cognitively disabled requires some attention to flourishing in addition to the traditional liberal emphasis on political liberty.*<sup>10</sup> Exercising political freedoms, like the right to vote or the right to speak out freely against one’s government, may never be part of the life-projects of PSCD.<sup>11</sup> Yet this should not be seen to imply that there is no type of freedom that should be seen as central to the lives of PSCD; indeed, they may even be seen to equally deserve freedom of expression, though the resources needed to realize it and the arenas in which it manifests itself may be different from those of “normally” abled persons. What traditional liberal theories often designate as mere negative freedoms imply valued capabilities to function.<sup>12</sup> PSCD often need positive support and not just negative freedom to exercise these functionings. They may also exercise them in different ways from the cognitively abled. A theory of justice that respects PSCD, then, must be able to formulate social entitlements in a way that emphasizes the continuity between PSCD and cognitively abled persons.

I turn now to the ways in which capabilities approaches show promise in attending to the above adequacy criteria for justice for the cognitively disabled.

**A)** How well do capabilities approaches address the need to see PSCD *as members of an oppressed group* rather than victims of bad moral luck? Capabilities approaches understand that abilities to function have social components and that it is reasonable for just societies to provide the social bases of these functionings. They distinguish between what Nussbaum has called the “social bases” of a functioning and the actual functioning (88). Although functionings may have components that society cannot change (such as components determined by natural endowment) or that it is unjustified for society to change (such as components that fall within the scope of the individual’s choice), they also have social components that the state is obligated to offer. For example, the functioning of bodily health for any individual is certainly conditioned by heredity and life choices, but this does not absolve the state of responsibility to provide healthcare. In this case, healthcare is a social basis of the good of bodily health. Since capabilities approaches acknowledge both natural and social components of functioning, they allow us to understand cognitive disability as partially socially imposed. For example, limits on PSCD’s capacity for practical reason can be understood as imposed by a lack of education appropriate to their needs in addition to biological impairment.

Moreover, delimiting a space of capabilities, rather than a space of rights or a welfare set, suggests that we cannot replace public capabilities with private satisfactions. This is because some capabilities, such as education and mobility, have inherently public significances. More deeply, it is

because capabilities approaches hold that all persons equally deserve the capacities to achieve certain valued potentials. Insofar as these capacities to function are valued as distinct, replacing one capacity with another type of capacity remains a form of deprivation. For example, we can say on a capabilities approach that having enough to eat and being able to appear in public without shame are both valued functionings—and that even a society that provides much of the former to PSCD is not necessarily absolved of the responsibility of providing them with the latter.

**B)** Capabilities approaches also enable the use of a *single standard of equality for the cognitively disabled and the cognitively abled*. Disability complicates equality theories based on the distributions of goods, because disabled persons often need more assistance than nondisabled persons to transform goods into functionings. Theories that say, for example, that every person deserves an education may miss the fact that providing an education for a person with severe autism will require more and different resources than providing an education for a cognitively abled child. This is not to suggest a fundamental conflict between distributing goods and distributing capabilities. Instead, it is to highlight the ways in which an equal distribution of goods is not an equal distribution of capabilities. An equal distribution of goods may fail to give the severely cognitively disabled what they need to flourish. Capabilities approaches say that every individual equally deserves to be able to meet their potential levels of functioning in a certain set of areas. So the fact that different persons need different combinations of and amounts of goods to flourish does not mean that the special needs of some must be covered by separate principles of justice.

**C)** Capabilities approaches imply *respect for human variation*. The arguments under criterion **B** (using a single standard of equality to determine the entitlements of the severely cognitively disabled) apply similarly to the first part of the diversity criterion, respecting the diverse processes by which individuals transform goods into functionings. However, not all capabilities approaches may guarantee the second component of the variation criterion—respect for different ways of flourishing as human—equally. I return to this point in the second section of the paper, but it is worth noting that capabilities approaches open up the possibility for calling a wide range of capabilities to function valuable and worthy of social promotion. If the range of valued functionings is wide enough to include functionings that do not require the highest levels of rationality, it is more likely that PSCD's lives can appear as flourishing human lives.

**D)** Capabilities approaches concern themselves with *both freedom and persons' abilities to flourish*. Capabilities approaches tend to think of liberties as valuable because they bring about certain positive ends. The right to vote, for example, is valuable, because it brings about authentic political participation. This valuation of liberties in terms of their contribution to flourishing opens the door to including a wide variety of positive ends within the scope of political concern. It also opens the door to asking how PSCD might achieve the same positive ends as the cognitively abled. PSCD may not be able to achieve them at the same level or in the same ways, but they may be able to achieve some version of them if we focus on functioning rather than negative liberty.

### **III. Criteria for Differentiating Among Capabilities Approaches**

It might be noted that the adequacy criteria stipulated above are not tailored narrowly to the needs of PSCD. Indeed the above criteria might apply quite well to persons with physical disabilities and members of many other kinds of socially disadvantaged groups. Not all capabilities approaches will take the needs of PSCD equally seriously. Some may even omit their concerns from the scope of



justice by conceiving the capabilities too narrowly or by prioritizing capabilities that are less relevant to the lives of PSCD.

The degree to which a given capabilities approach is amenable to the concerns of the cognitively disabled depends on the “evaluative space”<sup>13</sup> it employs, or in Anderson’s terms, its conception of “the central aim of equality.” Since not all capabilities approaches include PSCD equally well, it is useful to elaborate adequacy criteria by which to compare them. I propose these: **E)** the rejection of conceptions of personhood that would see PSCD as less than human, **F)** the refusal to privilege independent practical reason as the most important capability, and **G)** the need to secure nonexploitative dependency relationships for persons who must be dependent on others.

**E)** *A vision of equality for the severely cognitively disabled should not see them as less than human.* This criterion is similar to the earlier criterion that disability be viewed as something other than bad moral luck but is not identical to it. Treating disability as moral luck means reducing the needs of the cognitively disabled to the arena of subjective preference and absolving society of the responsibility to provide for their flourishing. The problems raised by calling PSCD less than human are more profound. A conception of justice that respects the dignity of PSCD cannot see them as inferior human beings. It must understand that persons with cognitive disabilities possess very real, human potentialities for flourishing and that they can develop meaningful relationships with human others. Berubé convincingly shows that the other children in Jamie’s (who has Down Syndrome) class expand their worldviews and relational capacities (206-7). Kittay reminds us that her daughter’s inability “to articulate a ‘language’ as publicly defined does not indicate a lack of anything to say” (2003, 266).

Refusing to see PSCD as less than human has important political consequences. It means seeing PSCD as participating in the same humanity as abled persons. It constitutes a commitment that “physical and mental impairments should not result in lives devoid of the satisfactions for which we all yearn and which make life worth living” (Kittay 2003, 268) must be central to any conception of justice that aims to include the persons who live with them.

**F)** *A conception of justice that includes PSCD into the community of persons must value moral powers other than independent practical reason.* Basic to many liberal theories of justice is the claim that persons deserve respect because they possess certain moral powers. In the Kantian tradition, rationality, or practical reason is the most important moral power. Such theories place PSCD outside of moral considerability, because they lack sufficient reason. But, as Kittay puts it, “it is not at all clear that their moral powers are adequately captured in this (Kant’s) picture of moral life, or that this conception of the moral powers is adequate to provide them with the protection, care, and resources they require to flourish” (2003, 263). This indicates that an evaluation of the central capabilities that takes the concerns of the severely cognitively disabled seriously must assign moral worth to capabilities other than self-legislation.

**G)** *A theory of justice that takes the needs of PSCD seriously must secure space for relationships of dependency.* Some PSCD may never acquire the capacities to live independently. Therefore, meeting their needs may require that they be represented politically by significant others who are transparent<sup>14</sup> enough to their needs and know them well enough to make claims about their flourishing. Moreover, securing flourishing for these persons will almost certainly require providing

support for relationships with others who can care for them. This is as important for ensuring their survival as it is for guaranteeing them the space in which to express their unique personhood. Kittay claims that part of being a person “means having the capacity to be in certain relationships with other persons, to sustain contact with other persons, to shape one’s own world and the world of others” (2003, 266). If a conception of justice is to incorporate PSCD, it must not foreclose the possibility of leading a flourishing life in constant dependency on significant others.

This third proposal probably departs the most radically from the tradition of liberal political theory and may elicit the objection that it is excessively concerned with the needs of a small percentage of the population. However, feminist ethicists remind us that the need for care is universal and that the capacity to care is a distinctively moral power. Kittay’s work, for example, has explored the degree to which we all experience periods of radical dependency in our lifetimes—regardless of cognitive ability. Our moral personhood would not be possible without the care of others. “We do not become a person without the engagement of other persons—their care, as well as their recognition of the uniqueness and the connectedness of human agency, and the distinctiveness of our particularly human relations to others and the world we fashion” (Kittay 2003, 266).<sup>15</sup>

#### **IV. Assessing the Evaluative Spaces of Three Capabilities Approaches,**

Not every capabilities approach will prove equally capable of **E** *refusing to see PSCD as less than human*, **F** *valuing moral powers other than independent practical reason*, and **G** *securing space for relationships of dependency*. In this section, I examine three different capabilities approaches in order to determine how successfully they address these criteria. Each of these theories employs a different “evaluative space”—a different conception of what capabilities are for and what types of capabilities ought to be valued. I examine Anderson and Sen’s “democratic equality” approach, Nussbaum’s “rich plurality of human life activities” approach, and an agency and relationality-centered approach derived from the work of Kittay and Becker.

##### **1) Anderson’s “Democratic Equality”**

Anderson’s notion of democratic equality uses the evaluative space of “the construction of a community of equals” (Anderson 1999, 289) or “a set of capabilities necessary to functioning as a free and equal citizen” (1999, 327). Persons are owed the capabilities that will allow them to participate in civil society as equals. This view may be seen as an elaboration of Sen’s understanding of capabilities (or sets of freedoms) as central to protecting a space of political contestation in which individuals secure increasing control over their material and political environments.<sup>16</sup>

Anderson argues that a true democratic equality respects citizens as responsible agents capable of making decisions in their lives. This emphasis on responsibility is central to Anderson’s conception of equality, because it affects how she delimits the capabilities space. On one hand, democratic equality must not make intrusive judgments about what is good for individuals in their private lives. The capability set that democratic equality is designed to promote, then, will not promote flourishing in private life, because Anderson does not want her theory to slide into a type of subjective welfarism. She rightly insists upon a distinction between what people happen to want and what society is obligated to give to them. She repeatedly claims that items in the capabilities set should not aim to provide goods like happiness, the pleasure of hearing, or compensation for

personal suffering,<sup>17</sup> because these goods do not bear on individuals' capacity to participate as equals in public life.

Now, let us examine how well Anderson's democratic equality does at meeting the three criteria above. Her theory seems not to pose any obvious problems for criterion **E**, *refusing to see PSCD as less than human*, but its ability to meet criteria **F** and **G** may be more problematic.

To ascertain how well democratic equality responds to criterion **F** (*valuing moral powers other than independent practical reason*), it is instructive to examine how well she thinks her theory handles the needs of persons with disabilities in general. Anderson uses the example of justice for deaf persons to say that guaranteeing the basis of public agency can respond to their needs without transgressing the boundary between capabilities worthy of public promotion and capabilities important only for public satisfaction. For her, public response to the particular needs of the disabled is justified—not because disability is a type of misfortune—but because disability affects one's ability to participate in, and be perceived as members of, the democratic community of equals.

The Deaf, she says “resent being cast as poster children for the able to pity.... Many deaf people identify as part of a separate Deaf community that repudiates the intrinsic choiceworthiness of hearing itself” (Anderson 1999, 333). If this is the case (and present social movements tell us that it is), it is patronizing for a just society to attempt to compensate persons for a loss that they do not perceive as a loss. Anderson contends that the oppression of the Deaf should not be understood as a result of their impairments but rather as the result of a society that does not accommodate them as equal sources of “self-originating claims.”<sup>18</sup> What do the Deaf want? “They want to make claims on the hearing in a manner that expresses the dignity they see in their lives and community rather than in a manner that appeals to pity for their condition.”

In refusing to view disability as necessarily a loss, Anderson's view seems to fulfill the criterion for justice for PSCD that says that PSCD should not be understood as less than human. But if we put cognitive rather than physical disability at the center of our thinking, we see that Anderson's democratic equality does not meet the criterion of valuing moral powers other than practical reason (criterion **F**) as well as one might hope. Some PSCD can look forward to a time in the near future when they can represent their claims in the sphere of justice and take a place as active participants in the public. Michael Berubé says that he has “no sweeter dream” than to imagine that one day his son, Jamie, “will be his own best representative” (264). But, as Kittay observes, “for many with severe mental retardation, such a demand for voice appears futile” (2003, 258). It appears futile because it depends too heavily on a level of reason some PSCD cannot achieve.

It seems right to say that most persons with physical disabilities possess the practical reason required to participate in political communities and should not be barred from participating in them. But some PSCD do not. Anderson makes most politically important the capabilities that enable participation in a public life shared by rational agents. Her view of social distribution thus focuses on the moral powers of rational public life—moral powers that will not be particularly important in the lives of many PSCD. Anderson wants to avoid social promotion of other moral powers because she worries that doing so entails a slide into subjective welfarism. But it is not clear that it does. Providing the social bases of capabilities other than political reason need not be conceived as public

compensation for a private lifestyle. Perhaps it only seems so in Anderson's theory because she has adopted a public/private distinction that reduces participation in human communities to participation in economics and politics. In other words, Anderson's capabilities are designed only to promote functionings that may not occupy central places in the lives of PSCD. Capabilities to participate in politics, narrowly construed, require a high level of practical reason to enjoy. Anderson associates all of the valued capabilities with practical reason in a way that is problematic for criterion **F**.

Let us move to the criterion **G**, *securing space for dependency relationships*. Anderson is mixed on this. She explicitly concerns herself with dependency workers in her criticisms of moral luck egalitarianism. She derides moral luck egalitarians, who would call the bond a dependency worker has to her charge an instance of option luck, for placing this bond in the domain of subjective welfare (Anderson 1999, 297). It is therefore clear, that she does not want those who care for dependents to be exploited by bad social arrangements. But ensuring the nonexploitation of the dependency worker is not identical with ensuring that dependent PSCD will receive the care that they need. The two concerns are certainly intimately related, but the question of what is owed to the dependent person is irreducible to what is owed to the dependency worker, absent a mechanism of social distribution that incorporates both of their needs.<sup>19</sup> Such a mechanism is unlikely to completely do away with discrepancies between the needs of the dependency worker and her charge. Dependents make demands upon dependency workers that they may not be able to or may justifiably choose not to fulfill. Moreover, since the aim of care in the case of persons who are dependent on others over lifetimes is probably not directed at preparing these persons to enter the political sphere (as care in the case of children may be), it is unclear that Anderson's theory can understand the need for care as anything more than a slip into the space of welfare. Thus, democratic equality's attention to the need for care and relationship in attaining the flourishing of the dependent person with PSCD is conspicuously neglected.

The capabilities space afforded by democratic equality says little about the need for care (and therefore does not address criterion **G**) and dramatically privileges practical reason over other moral powers (and therefore does not address criterion **F**). This suggests that a more adequate vision of justice for the cognitively disabled will have to expand its capabilities set beyond capabilities needed for public self-representation.

## 2) Nussbaum's "Truly Human" Capabilities

Perhaps Nussbaum's description of the capabilities as central to human flourishing widens the capabilities space sufficiently. Nussbaum argues that "the guiding political conception of the person should be an Aristotelian/Marxian conception of the human being as in need of a rich plurality of life activities, to be shaped by both practical reason and affiliation" (Nussbaum 124).<sup>20</sup> Already this constitutes a significant departure from Anderson's conception of the capabilities as those abilities needed to foster inclusion into a democratic community of equals. For Nussbaum, the claims of justice do not begin and end where circumstances of equal participation in markets or political institutions do. Her capabilities include life, bodily health, bodily integrity, senses, imagination and thought, emotions, practical reason, affiliation, being able to live in relation with other species, play, and control over one's material and political environment (Nussbaum 2002, 206), and the claims of individuals to each and every one of them are claims founded in justice.

Nussbaum asserts that the list derives from the ethical question that underlies all theorizing about justice. We ask, “What activities characteristically performed by human beings are so central that they seem definitive of a life that is truly human” (Nussbaum 1999, 39)? We look at functionings performed by human beings and ask which seem so fundamental to living as human that they exert undeniable moral claims upon us. Although Nussbaum ultimately claims that just societies owe individuals capabilities and not functionings, the list must proceed from an evaluation of functionings, because it is access to the functionings that allow persons to flourish. Nussbaum’s conception of flourishing begins with a Marxian impulse: “The human being is the human being in need of a rich plurality of life activities” (Nussbaum 2002, 124). Conceiving a just society as distributing capabilities for flourishing as human means that nobody ought to be coerced into flourishing in a particular way (a smoker, for example, is free to damage their health if they choose), but it also means that there exists a generalizable standard of what it means to flourish as human.

The notion of flourishing *as human* highlights two further distinctive aspects of her theory. First, flourishing as human means flourishing as a particular type of animal with a particular type of nature. However the capabilities list does not arise out of a purely objective conception of our nature; the capabilities have moral worth because they arise out of human self-evaluation. <sup>21</sup> Nussbaum’s claims about the origins of the capabilities list commit her to a conception of justice that is founded in intuitions about human nature rather than procedural justice. Second, her notion of flourishing as human requires Nussbaum to insist that there is a way for persons to function that is not as human. Species membership is not the sole condition for flourishing as human. Indeed, oppression, degradation, and biology may all reduce a life to no longer worthy of being called “human.”

Living a life that is less than human occurs when at least one of the capabilities to function is entirely cut off (Nussbaum 2000, 33). A person has been degraded to less than human when even one of the capabilities has been cut off, because the capabilities are indivisible and equally central to living a flourishing human life. Yet though they are equally important, the capabilities remain discrete in the sense that they cannot be exchanged for one another (Nussbaum 2000, 81). A society that does not protect its citizens’ bodily integrity cannot make up for the lack of bodily integrity with a surplus of time to play or greater healthcare. The capabilities are also held together by their status as capabilities rather than functionings, that is, as abilities that one can use one’s practical reason to choose or choose not to exercise. Capabilities are the innate abilities and social circumstances that make valued functionings possible.

How well does a conception of the capabilities space as the space of availability of truly human functionings promise to address the concerns of persons with cognitive disabilities? Let us first examine criterion **G**, *securing space for relationships of dependency*. It would seem initially that Nussbaum’s understanding of capabilities is in line with the concern with relation, because it does not focus exclusively on the capabilities necessary to function as autonomous within the public sphere. Nussbaum, like Anderson, is explicitly concerned with the exploitation of dependency workers and has been a strong proponent of the position that being a dependency worker should not unfairly limit one’s chances for flourishing. Nussbaum even states that the capabilities list as a whole is shaped by affiliation, though she says little about what this means.

Moreover, the capability of affiliation is on Nussbaum's list. However, affiliation is not quite the same as care. Nussbaum defines affiliation as "being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another" (2002, 206). This definition of affiliation is close to Kittay's definition of care as an attitude, "the open responsiveness to another that is so essential to understanding what another requires" (Kittay 2003, 260). Yet the care that persons who may be dependent all of their lives require reminds us that care is not merely a virtue; it is a labor. "It is the work of maintaining ourselves and others when we are in a condition of need" (Kittay 2002, 259). So, when Nussbaum treats care as a component of affiliation, she suggests that it is something that all persons should be given an opportunity to do. Insofar as being with others and sharing affective ties with others is an important way for all persons-- and especially many PSCD-- to express their personhood, Nussbaum has come farther than Anderson on this point. One might still object, though, that Nussbaum has not accorded a high enough priority to care and affiliation since it is so central to the flourishing of PSCD. Emphasizing care as something it is desirable to be able to do, rather than as something all persons need, may understate its importance, especially for PSCD.

Let us now look at criterion **F** and the degree to which Nussbaum privileges practical reason. Although practical reason is but one item on the capabilities list, Nussbaum acknowledges that it also holds the list together. What makes a capability a capability rather than a functioning is that one can use practical reason to choose whether or not to exercise it. Thus, practical reason is both on the list and somehow a condition of it. Nussbaum describes practical reason as "being able to form a conception of the good and to engage in critical reflection about the planning of one's life" (206). This definition of practical reason as rational deliberation excludes many PSCD, despite the fact that they may exercise or not exercise certain capabilities on the list without reference to elaborate life plans or without significant critical reflection. Recognizing that PSCD may make worthy determinations that do not involve the type of rational deliberation with which Nussbaum is concerned suggests that such a narrow definition of practical reason may not actually be required to hold the list together. Still, Nussbaum's account of practical reason privileges a strong conception of rationality that may be unattainable for many PSCD. We can say Nussbaum's approach is partially successful in meeting criterion **F**.

Is Nussbaum's evaluative space of capabilities consistent with criterion **E**, *refusing to call PSCD less than human*? This is perhaps where Nussbaum's theory becomes most problematic for the cognitively disabled. Since her conception of capabilities proceeds from a conception of the truly human, it seems that persons who exercise some capabilities less fully than others do are less human than them—at least in cases where persons' limitations keep their level of capability below the threshold of "truly human functioning." It may be possible for Nussbaum to explicate the metaphysical grounds of her doctrine in a way that averts this consequence, but she has yet to do so. If exercising the capabilities above a threshold is what leading a human life requires, it is difficult to see how to escape the judgment that the lives of PSCD below the threshold are less than human.<sup>22</sup>

Since Nussbaum assigns such a high value to practical reason, it seems that persons whose physiological capacities for practical reason fall below Nussbaum's threshold are lesser persons as a result. I do not raise this point to suggest that practical reason should not be seen as a valuable

functioning for the cognitively abled. Instead, I raise it to say that a conception of human dignity that issues from an evaluative conception of what it would mean to be a “normal human being” runs the risk of reducing the dignity of those who do not come under that norm. For, as Kittay says, many abled persons might look at her daughter, Sesha’s, life and say, “‘Oh, but should that happen to me, I would rather be dead.’ But from the vantage point of my daughter, that is wasteful of what life has to offer, a failure to appreciate the gifts of being” (2003, 271). The position that PSCD live as less than “truly human” seems incompatible with criterion **E** (*refusing to call PSCD less than human*).

Nussbaum and Sen (whom I read through Anderson here) are the foremost exponents of capabilities approaches today. Applying the preliminary criteria for justice for persons with cognitive disabilities I developed earlier in this paper to versions of Sen and Nussbaum’s theories illuminated deficiencies in their evaluative spaces. This is not reason to abandon the hope for an alliance between capabilities approaches and visions of justice for persons with intellectual disabilities altogether, however.

### **3) Towards a “Relational Agency” Approach**

The search for a new conception of what capabilities are for and what the aim of capability equality is will require a new conception of what is owed to persons. Evaluative spaces based upon teleological accounts of what is normal for the human species or accounts of the citizen exclusively as participant in public realms of reciprocity insufficiently incorporate PSCD. I suggest here that it is possible to think a capabilities approach that meets criteria **E**, **F**, and **G** by thinking a new evaluative space. I will call this space the space of “relational agency.”

My suggestion that sustaining agency and relationship are appropriate ends of capability equality derives from the centrality of these two capabilities to personhood in the work of Becker and Kittay. Becker contends that our moral commitment to human beings expresses a primary commitment to protecting and sustaining agency (2000, 56). This claim resonates with part of Kittay’s conception of the person that is designed to incorporate the cognitively disabled, that being a person means “being able to shape one’s world and the world of others, and to have a life that another person can conceive of as an imaginative possibility for him- or herself” (2003, 266). But I would add, as Kittay does, that the agency a just society promotes for its citizens is a relational agency, and agency that takes on new meaning in being with others. “Being a person means the capacity to be in certain relationships with other persons, to sustain contact with other persons” (Kittay 2003, 266).

Both Becker and Kittay indicate that their concepts of personhood follow from our commitment to human life. Becker asserts that “a commitment to life entails a superordinate commitment to agency” (2000, 57). Kittay similarly states that our recognition of the value of the lives of other persons flows from our ability to understand them as also “some mother’s child” (Kittay 1999, 32). This means that recognizing the value of persons is related to recognizing their constitution through a care relationships and their participation in a web of affective ties. Since they proceed from intuitive conceptions of what we want to protect life for, these conceptions of the person are justified differently from Nussbaum and Sen’s. The conception of the person as an agent-in-relation does not arise out of a particular conception of a species norm. Instead, it posits agency and relationship as general desiderata that acquire different sorts of meanings in different types of

flourishing lives. Nor does the conception of the person as an agent-in-relation presume that agency and relationship are only worthy of social and moral consideration in the domain of public reciprocity.<sup>23</sup> It is open to agency and relation being valued in multiple incarnations and contexts.

What is the connection between a political conception of personhood that stresses agency and relation and capabilities approaches? Both stress some notion of flourishing (abilities to be and do) as well as freedom. Protecting agency means both protecting persons' abilities to make choices and their abilities to realize meaningful ends. Securing capabilities of relationship and caring cannot be conceived without some conception of flourishing, but flourishing in care relationships will also always require certain types of negative freedom, like freedom from violence and humiliation. Deriving a capabilities approach from Becker and Kittay's ideas would involve considering agency and relation as two of the most central human capabilities and insisting that just societies provide a threshold level of both. The threshold would function as an ideal rather than as an actual expectation tied either to the possibility of public citizenship or "truly human functioning." A list of capabilities, then, might serve to describe the arenas in which justice is responsible for ensuring these capabilities. Although, I do not begin to imagine that I can outline a list in this essay, it seems reasonable that a list like Nussbaum's could function in this way.

Becker would probably object to this use of his conception of the good of agency, since he insists that he is not writing an "equal-capability theory" (2000, 61). He indicates that an equal capability-theory is not particularly well-suited to thinking justice for the disabled because it is overly indebted to an Aristotelian conception of the person. He is uncomfortable with the Aristotelian conception for two reasons: first, because it implies that one can replace "natural" capabilities with social goods, and second, because it attaches value to things that are not "natural and necessary life activities" (Becker 2000, 61). I would reply to the former that, though it may currently be true that no amount of education will currently place the cognitive capacities of a severely mentally retarded child at the level of a cognitively abled child, a just society should do everything it can to maximize the mentally retarded child's cognitive potential. This is not because the mentally retarded child is being compensated to make up for the fact that she does not flourish in the same exact way as the abled child; it is because there is a field of life, in this case education, where both of them deserve to be able to maximize their potentials—a field of life that cultivates agency.

To Becker's second objection to capabilities approaches (and I think this is the one that separates him from Nussbaum and Sen most dramatically), I would reply that it takes much more to "develop and sustain agency" (Becker 2000, 61) than he seems to think. It is not inconceivable that capabilities like the capability to express one's sexuality or to be in relation with others are necessary to sustain agency, particularly in a society in which certain persons are denied (to use Rawls' term) "the social bases of self-respect" because of their sexual orientations and where many PSCD must live in dependency relationships throughout their lives. Realizing that sustaining agency and relation will require capabilities in various life areas opens up the possibility of generating a capabilities approach based on the superordinate values of agency and relation.

I will now begin to ask how such a capabilities approach might fare in response to the three earlier criteria for imagining justice for persons with cognitive disabilities. Let us turn first to criterion E, that the evaluative space chosen *refuse to see PSCD as less than human*. Since the source of capabilities I have extrapolated from Becker and Kittay's work is not ethically foundationalist<sup>24</sup>, it



does not posit an ideal of human being that persons with cognitive disabilities must always be measured against. It simply asks what the most basic qualities we demand for persons are when we demand that their lives be saved or respected.

This relational agency approach, however, might do slightly less well in relation to the criterion **F**, that a conception of justice for the cognitively disabled should *value other moral powers in addition to practical reason*. Becker's ideal of agency endorses a fairly robust conception of rationality. According to Becker, the class of agents includes:

everyone who is (while awake) persistently conscious and goal directed, who represents and deliberates achieving such goals in a language, remembers prior activities, makes choices and takes action to accomplish goals, is typically effective in making at least local changes in the world as a result of those actions, and (with the help of others and circumstance) sometimes successful in achieving those goals. (2000, 56)

The standard of practical reason implied here is less demanding than Anderson and Nussbaum's. Not everyone who can do these things will necessarily be able to participate fully in a political community or formulate a rational life-plan. Yet Becker's understanding of the bond between rationality and agency remains too strong to apply to many PSCD who may not be able to express their desires in language or formulate long term goals and achieve them.

I would argue, however, that combining Becker's idea of agency with Kittay's idea of relationship might make it possible to detach agency from its association with a thick conception of rationality. Perhaps one might use Kittay's conception of the person to define agency—"the ability to shape one's world and the world of others," to have one's way of flourishing be recognizable by others as an "imaginative possibility." So the agency we desire for all persons is tied to the potential for affecting one's world and for being in relation with other persons. Understanding agency in this context makes room for the agency of those who cannot fully exercise practical reason. Incorporating this perspective on agency into a capabilities approach would mean claiming that every person is owed the ability to achieve their potential level (or a threshold level) of ability to shape their world and the worlds of others. This does not imply that abled persons are not owed the social bases of practical reason; practical reason, strongly construed, is crucial to realizing the potential for agency of cognitively abled persons. Conceiving agency as intertwined with relationality suggests that it may be possible for an agency-centered capabilities approach to meet criterion **F** (*valuing moral powers other than practical reason*).

I now examine adequacy criterion **G**: *securing space for care and dependency relationships*. Making Kittay's understanding of personhood as characterized by relation central the evaluative space means understanding affiliation as not merely a means to the end of other capabilities or something that ought not infringe on other capabilities. The capability to be with others who recognize us as human ranks alongside agency among the most important capabilities. In the case of persons who live in lifelong dependency relationships because of severe cognitive disabilities, ranking relationality with agency indicates that relationality is necessary for the sustenance of agency (and vice-versa). Understanding relationality as necessary for the sustenance of agency means understanding caring as a labor, not simply as a virtue one develops in pursuit of one's own life-project or conception of the good.

Of course, it remains to be seen how well such a conception of capabilities as issuing from agency and relationality deals with questions of the distribution of care absent a working list of capabilities. Still, it is significant that a starting point that takes being in relation with others as one of the most valuable functionings and understands relation as central to cultivating agency entails that social distribution will have to support dependency relationships as well as relationships among political equals. This promise suggests that the relational agency approach may respond more adequately to criterion **G** (*securing space for care and relationships of dependency*) than the two earlier capabilities approaches.

The relational agency approach may prove to meet adequacy criteria **E**, **F**, and **G**. It promises to protect care and dependency relationships, cultivate moral powers other than practical reason, and for respecting the worth of the lives of persons with cognitive disabilities. The evaluative space it opens up suggests a conception of personhood that can include PSCD within a theory of capability equality. The particular fit of the approach I have abstracted from Becker and Kittay with the needs of PSCD can be seen when contrasting it Anderson and Nussbaum's approaches. Anderson's reading of Sen privileged practical reason in its account of capabilities as directed toward ensuring equal participation in the political and failed to say much about the need for care in the sustenance and development of capabilities (criterion **G**). Though Nussbaum's conception of capabilities as directed toward "truly human life" expanded the list of worthy capabilities, it also implied that the lives of PSCD were less than fully human (and hence did not meet criterion **E**), adhered too closely to a robust conception of practical reason (thereby ignoring parts of criterion **F**), and did not afford relation a high enough status on the list (thus not adequately meeting criterion **G**).

Moreover, the potential suggested by the agency/relationality approach indicates that the alliance between justice for the cognitively disabled and capabilities approaches is worth pursuing further. Positing concern with agency and relationality as a capabilities approach also maintains the possibility of meeting the first four adequacy criteria I placed upon a theory of justice that incorporates PSCD. It places cultivating the capabilities of the severely cognitively disabled within the charge of society (criterion **A**), posits single capabilities list for the cognitively abled and disabled (criterion **B**), and appreciates the diverse ways in which individuals transform goods into functionings (criteria **C** and **D**). Now that we have discussed how well three different versions of the capabilities approach fare at incorporating the concerns of PSCD, we can summarize their strengths and weaknesses in the table below.

## **How Different Capabilities Approaches Incorporate the Concerns of PSCD: A Comparison**

### **Evaluative Space: What Capabilities are For**

*Anderson's Democratic Equality:* Participation in democratic community of equals.

*Nussbaum's Human Capabilities:* Truly human functioning

*The Relational Agency Approach:* Sustaining agency and relationship

### **Compatibility with Criterion E (Refusing to treat PSCD as less than human)**

*Anderson's Democratic Equality:* Idea of the human plays no role; disability conceived mostly as socially imposed.

*Nussbaum's Human Capabilities:* PSCD may function at levels that are less than "truly human"

*The Relational Agency Approach:* Most PSCD capable of agency and relationship

### **Compatibility with Criterion F (valuing moral powers other than rationality)**

*Anderson's Democratic Equality*: Excessive emphasis on moral powers necessary for participation in political/economic spheres.

*Nussbaum's Human Capabilities*: Places very high value on practical reason but also includes many other moral powers

*The Relational Agency Approach*: Being in relation with others very important moral power

### **Compatibility with Criterion G (securing space for care and dependency relationships)**

*Anderson's Democratic Equality*: Insufficient, care justifiable mostly as means to political participation

*Nussbaum's Human Capabilities*: Care not explicitly addressed, but not logically excluded either

*The Relational Agency Approach*: Ensuring space for relationship is central

I have said little about how one might generate a full capabilities theory from concern with relationship and agency, but I hope I have elaborated some of the ground for the possibility of doing this and for preserving an affinity between capabilities approaches and concern for justice with persons who live with severe cognitive disabilities. Justice for PSCD begins with attention to their flourishing and imagines evaluative spaces that might make it possible in hopes that the exercise leaves us all with a clearer vision of what just societies owe to us and what we owe to one another.

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### **References**

Anderson, Elizabeth. 1999. "What is the Point of Equality?" *Ethics* 109: 287-337.

Becker, Lawrence. 2000. "The Good of Agency." In *Americans with Disabilities*, ed. Francis and Silvers, 54-64. New York: Routledge.

Berubé, Michael. 1996. *Life as We Know It*. New York: Pantheon Books.

Gauthier, David. 1991. *Morals by Agreement*. Oxford: Oxford University Press.

Kittay, Eva Feder. 2003. "When Caring is Justice and Justice is Caring: Justice and Mental Retardation." In *The Subject of Care*, ed. Kittay and Feder, 257-277. New York: Rowman and Littlefield.

-----1999. *Love's Labor: Essays on Women, Equality, and Dependency*. New York: Routledge.

McMahan, Jeff. 1996. "Cognitive Disability, Misfortune, and Justice." *Philosophy and Public Affairs* 25: 3-35.

Nussbaum, Martha Craven. 2006. *Frontiers of Justice*. Cambridge, MA: Belknap.

-----2002. "The Future of Feminist Liberalism." In *The Subject of Care*, ed. Kittay and Feder, 186-215. New York: Rowman and Littlefield.

-----2000. *Women and Human Development: The Capabilities Approach*. New York: Cambridge University Press.

-----1999. *Sex and Social Justice*. New York: Oxford University Press.

-----1992. "Human Functioning and Social Justice." *Political Theory* 20: 202-46.

Rawls, John. 1971. *A Theory of Justice*. Cambridge: Harvard University Press.

Sen, Amartya. 1999. *Development as Freedom*. New York: Knopf.

-----1993. "Capability and Well-Being." In *The Quality of Life*, edited by Nussbaum and Sen, 30-53. Oxford: Clarendon.

### Notes

1. I use the term "disability" rather than "impairment" to imply that disability consists not of biological impairment alone but rather of biological impairment that significantly limits a major life functioning.

2. See Nussbaum 2000 and Sen 1993.

3. Capabilities approaches can also be said to differ from approaches that emphasize the distribution of commodities in this way. Although few philosophical approaches are strict commodities approaches, the language of development economics, against which Sen has defined his capabilities approach, often assumes the intrinsic value of goods. See Sen 1999.

4. Nussbaum has shown that Rawls implicitly values capabilities by promoting the distribution of goods like self-respect. See Nussbaum (2000, 89).

5. Nussbaum explicitly discusses the differences between her approach and Sen's. See Nussbaum (2000, 4-11).

6. This argument may be seen as parallel to Nussbaum's argument that we need a single capabilities list for men and women. See Nussbaum (1999, 51-55).

7. See Rawls 1972 for a description of these stages.

8. See Gauthier 2001 for the substance of this argument.

9. This claim is a version of Sen's diversity criticisms against Rawls. See Sen 1993.

10. This is implicit in Kittay's criticisms of liberalism in both 1999 and 2003.

11. The fact that persons with severe cognitive disabilities may not be able to represent themselves politically does not imply that they do not have rights to political representation. Kittay has alluded to the possibility of dependents' claims to social entitlements being expressed by their dependency workers (1999, 93-100).

12. Nussbaum has pointed this out in relation to Rawls. See Nussbaum (2000, 89).
13. See Sen 1993 for a discussion of the term “evaluative space.”
14. Kittay uses the term “transparent self” to refer to the self that responds to the needs of a dependent without confusing them with one’s own. See Kittay 1999.
15. See also Kittay 1999.
16. Sen elaborates his understanding of capabilities as central to political contestation in Sen 1993 and Sen 1999.
17. Anderson is careful to point out that suffering that is caused by oppressive relationships with others does fall within the domain of political concern. This is because relations of domination—both public and private—work against the creation and maintenance of a community of equals (316).
18. Anderson does not use this term. I have recast her claim in Rawlsian terminology.
19. Kittay outlines the beginnings of such a mechanism in her concept of “nested rights” (1999).
20. Nussbaum’s capabilities approach is a work in progress, and she has developed it differently in different works. For the purposes of this paper, I focus on her elaborations of the approach between 1999 and 2002.
21. See Nussbaum 1992.
22. Certainly, the extent to which Nussbaum’s theory denies the humanity of PSCD depends on where the threshold of humanity is. A high threshold of rationality will exclude more PSCD from humanity than a low one. Nussbaum does not explicitly set the threshold. In her most recent defense of her capabilities approach, she insists that PSCD (or at least her exemplar, Kittay’s daughter, Sessa) is human even if she cannot exercise the capabilities above the threshold (2006, 188). This seems to me to be a move in the right direction. However, Nussbaum needs to further explain the relationship between the threshold and human functioning if her position about PSCD is to be tenable.
23. I realize that I am not being entirely fair to Anderson here. Anderson limits the scope of the capabilities space to the domain of public reciprocity precisely to combat the charge that egalitarian theories are necessarily welfarist. The beginnings of the evaluative space that I am outlining are almost certainly susceptible to the charge of welfarism. I do want to suggest, however, that Nussbaum’s understanding of the possibility of distributing the social basis of goods might be of use in defending it against such a charge. See Nussbaum (1999, 187).
24. Of course, to adequately make the case for this approach one would need to say more about its ethical foundations. I would suggest that parts of these foundations might be found in the works of contemporary feminist ethicists of care.