

THE SIGNIFICANCE OF THE STORIES WE TELL: A FEMINIST APPROACH TO ETHICS AND DEVELOPMENT

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ABSTRACT

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I develop an argument for the justification of global responsibilities based on the capabilities approach and care ethics. While there is no precise algorithm to determine what each individual's responsibility is to others in the world, Thomas Pogge's institutional model based on libertarian justifications and Miller's needs based approach do not take into account the importance of care, relationships and the capabilities necessary to live a life of full human potential. The capabilities approach model is a more justifiable place to ground responsibilities because it recognizes the importance of care, relationships and the importance of the interrelatedness of various capabilities.

The capabilities approach requires both more institutional responsibility than Pogge argues for, along with the collective responsibility that Young advocates. If we shift our focus from blame to responsibility, then we will more likely provide motivation for people to work towards global justice. Further, it seems that people who are responsible for injustice are often not blameworthy for these unjust structural institutions and processes. Instead, a moral orientation towards a virtue care ethics will provide a lens to include other types of unjust structural processes, such as those that care for children, the elderly and so forth. It will also provide an orientation which will not rely solely on what David Miller called a benefit responsibility for justice. Care ethics and the capabilities approach will provide a robust methodology and moral lens through which to work through our responsibilities for justice.

While Martha Nussbaum argues it is morally imperative that primary agents of justice should be relatively democratic nation states, Jane Addams vision of democracy is more closely linked to social ethics. She argues that a robust democracy develops through sympathetic knowledge and experience. Nussbaum agrees that compassion should play a role in how our institutions are structured, too. Yet her approach to this issue is different in some significant ways from Addams' vision. Addams' methodology is more appropriate for a capabilities approach to human development. The role of narrative is crucial to the development of a culture of care. Narratives are designed for a multitude of purposes. Addams, Nussbaum and Lindemann's work highlight different ways in which the capabilities approach can be helped or hindered through varied types of stories.

I examine some of the narratives provided in Nussbaum's work. Primarily I focus on the narratives in *Creating Capabilities* and *Women and Human Development*. By embracing Alison Jaggar's critique of Nussbaum, we can better understand how western complicity and responsibility may change what narratives we use to demonstrate obstacles to human rights. A virtue epistemology, as advanced by Miranda Fricker, will provide a strategy for choosing appropriate counter narratives. Lisa Schwartzman provides a critique of Nussbaum's liberal, individualistic methodology and points out that it has often been helpful to look at issues such as unequal pay for equal work, domestic violence, rape and so forth from a social and political perspective. I will use concrete examples to explore how this methodology can work with the capabilities approach to development.

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Introduction

This work is ultimately a defense of the capabilities approach, which is strengthened by appropriate counter stories that challenge oppressive master narratives. One thread of this argument demonstrates how a feminist methodological approach to examining much of the human rights literature will enrich our understanding of many issues in ethics and development. My central thesis is that Martha Nussbaum's version of the capabilities approach to development is an important start, but there are certain themes within it that can be further developed. For instance, I develop an argument for the justification of global responsibilities based on the capabilities approach and care ethics. While it is clear that respect for the responsibilities needed to work towards creating capabilities for all women is implicit throughout Nussbaum's work, she does not focus on Western responsibility. In *Women and Human Development*, she only uses the word "responsibility" to discuss the overwhelming responsibility of women in India, as well as the need for more responsible behavior from many Indian men and the Indian government in order to actualize more human capabilities. Nowhere in this book does she discuss the need for more responsible behavior from Western citizens, nor does she provide a sustained analysis of the way Western policies and institution are responsible for limiting the capabilities of some people in other parts of the world. Yet there are several compelling reasons why Westerners focusing on their own responsibility for human rights violations and global poverty is to be preferred to the alternative of primarily criticising other practices and policies. Those reasons will be explored in this paper.

I also examine the work of Thomas Pogge and David Miller as it relates to

collective Western responsibility. I argue that the capabilities approach model is a more justifiable place to ground responsibilities than Pogge's libertarian model or Miller's basic needs model. This is because it recognizes the importance of care, relationships and the interrelatedness of various capabilities. There simply needs to be more of a focus on Western responsibility in some of Nussbaum's work. Furthermore, I demonstrate that the capabilities approach requires both more institutional responsibility than Pogge argues for, along with the collective responsibility that Iris Marion Young advocates. The capabilities approach is robust enough to support a conception of justice that not only relies on justice as obligation based on benefits received through institutional arrangements and structural processes, but also as an idea of fairness wherein people have the opportunity to fulfil basic capabilities, whether we rely on Nussbaum's list or argue that these capabilities may vary from one society to another and can't be determined in advance of a participatory democratic consensus.

What is the role of blame in ethics and development? Dr. Nussbaum argues that sometimes blame is appropriate and that assigning blame can have an influential effect on curbing undesirable behavior. For instance, she uses the problem of global warming to illustrate her point. She points out that it is a little too easy and comfortable to look for solutions that don't involve us. We can watch *Who Killed the Electric Car* and point at a few people to blame for contributing to environmental harm. According to Nussbaum, this is a too simplistic. Instead, we should turn to movies such as *An Inconvenient Truth* in order to more deeply understand that most of us are responsible for having such large carbon footprints. She thinks we deserve more individual blame for not doing more to greatly reduce

our own carbon footprint. As an alternative I argue, along with Iris Marion Young, that if we shift our focus from blame to responsibility then we will more likely provide motivation for people to work towards justice. Further, we may still be *responsible* for the environment even if we are not individually blameworthy for the problematic institutions and processes which contribute to environmental degradation and environmental injustices. Care ethics and the capabilities approach will provide a robust moral framework through which we can seriously consider some of the issues surrounding our responsibilities for global justice.

Martha Nussbaum claims that it is morally imperative that primary agents of justice should be relatively democratic nation states. Jane Addams vision of democracy is more closely linked to social ethics. Addams argues that a robust democracy develops through sympathetic knowledge and experience. I will explore how Addams' methodology is more appropriate for a capabilities approach to human development. Furthermore, I will examine the role of narratives in ethics and development. What are their roles in a capabilities approach to development? The role of narrative is crucial to the development of a culture of care. An ethics of care is largely missing from much of the human rights literature. As a result, we have impoverished theories of human rights. Addams, Nussbaum and Lindemann's work highlight different ways in which narratives help us better understand our world. The capabilities approach can be helped or hindered through varied types of counter stories. I argue that Lindemann's and Addams's use of the counter narrative as a strategy to challenge oppressive cultural master narratives is a superior approach to Nussbaum's goal of introducing more people to great classic literature. The use of effective counter stories is necessary if we are to successfully make visible what is often invisible in much of the human rights literature, such as workers in the

informal economy, the idea of a right to give care to loved ones without the risk of poverty and so on.

The capabilities approach will be more robust if we consider the stories we tell *along with the ones we often don't tell*. I examine some of the narratives provided in Nussbaum's work. Primarily I focus on the narratives in *Creating Capabilities* and *Women and Human Development*. Most of Nussbaum's narratives do not focus on Western responsibility. I argue that by embracing Alison Jaggar's critique of Nussbaum, we can better understand how western complicity and responsibility may change what narratives we use to demonstrate obstacles to human rights. Further, I will show how virtue epistemology, as advanced by Miranda Fricker, will provide one strategy for choosing appropriate counter narratives.

Lisa Schwartzman's provides a compelling critique of Nussbaum's liberal, individualistic methodology. This approach may be used for better utilizing the tools and mechanisms of international law. Dr. Schwartzman notes when feminists begin to talk and uncover patterns, then they often realize that what they once thought were individual failings are really the result of oppressive social and political practices. This methodology may be applied to global ethics, too. I will examine international refugee law and show how the concept of gender asylum has been evolving over time. By using a feminist methodology, we can demonstrate how international law can be used in ways that make the invisibility of some human rights violations suddenly more visible. By using a radical feminist methodology and the capabilities approach we can demonstrate why more women are eligible for gender asylum protection. By focusing on *patterns* of sexism, it is possible to develop strategies to better address these issues.

For women facing a forced abortion or the threat of involuntary sterilization, they are legally entitled to refugee protection in the United States. By examining the justifications used to demonstrate why forced abortions are human rights violation of the woman carrying the fetus, we can discern that it logically follows forcing a woman to carry an unwanted pregnancy is a human rights violation for many of the same reasons. By adopting the capabilities approach, which includes women's reproductive rights, along with a feminist methodology which asks where the women are then we can see how to better implement international refugee law to protect *more* women from egregious human rights violations.

The capabilities approach that Martha Nussbaum advocates is an improvement over other ways we have historically thought about ethics and human development. However, by adopting a feminist methodology such as the one Dr. Schwartzman suggests along with an appreciation of the role counter narratives can play in challenging the status quo, we can think differently about what constitutes a human right and why. Furthermore, we can develop a more nuanced and effective way of thinking about the way we see and respond to human rights violations.

Chapter 1

Grounding Responsibilities: A Capabilities Model

Introduction

This chapter develops an argument for the justification of global responsibilities based upon both the capabilities approach and care ethics. It is a comparison and critique of some of the arguments put forward by Thomas Pogge and David Miller. I will critique the libertarian approach to global justice found in Pogge's work, as well as David Miller's basic needs approach to human rights. While there is no single perfect answer to the question of what each person's responsibilities are to others in the world, the parameters sketched in the work of Pogge and Miller are not inclusive enough. Instead, the moral underpinnings of a care ethics will lead to a more robust understanding of urgent moral concerns and provide a stronger justification for using a capabilities model of responsibility.

Grounding Responsibilities: A Libertarian Model

Thomas Pogge provides a compelling argument that global institutional policies need to be reformed. The moral underpinnings for his position are based on a libertarian perspective; that is, you can do what you want as long as your actions don't hurt an innocent. This work focuses on global institutional policies which violate that moral principle. Pogge argues that changing unjust international policy is the best way to address issues of global injustice. In *Politics as Usual*, he provides numerous concrete examples to support his claim that citizens in Western countries

are directly responsible for staggering amounts of poverty and global inequality simply because they have violated a simple libertarian principles: Individuals should have the freedom to do what they want as long as they do not violate anyone else's rights. However, Pogge points out that people in the West often exercise their freedom at the expense of other's rights. Some people in the Western world manipulate data in order to create an impression that Western countries *care* about people's suffering in the Global South. The numbers indicate they actually want to do something to alleviate suffering, when exactly the opposite often happens to be the case. Pogge points out faulty calculations and demonstrates ways in which numbers and words are sometimes tweaked in order to manipulate the data. He has, among other things, demonstrated how various international treaties and institutions such as the World Trade Organization (WTO) and the International Monetary Fund (IMF) have deliberately worked to the advantage of Western citizens and to the detriment of those in the global South. He shows how the impact of globalized trade on the poor has been misrepresented in Western media (8).

There is no doubt that the principles underlying many international policies are not based on a simple libertarian principle, rather they are based on egotism and the quest for power and domination. Pogge argues, rightfully so, that if Westerners legitimately practiced libertarianism then the world's poorest people would be much better off. Pogge claims that people have a right to basic, urgent needs such as food, shelter and some basic freedoms. However, he doesn't provide a strong argument to support this particular claim. Indeed, he seems to argue that it is not an intellectually sound argument. He argues that his *intellectual* sympathies lie with the libertarians. Pogge writes:

My moral sympathies lie with those who are appalled by how the vast majority of affluent people ignore the massive underfulfillment of human rights in the present world-even when they do not doubt that they can prevent terrible deprivations at low costs to themselves. I agree that such disregard is morally impermissible and profoundly wrong. Yet, my intellectual sympathies lie with those who hold that an agent's failure at low cost to protect and to rescue others from extreme deprivation, however morally appalling, is not a human rights violation. ("Politics as Usual" 19).

He goes on to argue that even most ardent right wing conservatives and libertarians will agree that human rights entail negative rights, hence there seems to be nearly universal agreement on that issue. The rest of his argument demonstrates how global institutional structures often violate other's negative rights, especially in some countries in the Global South, and thus we should all agree this is wrong ("Politics as Usual" 10-24). But Pogge doesn't spell out what the difference is between a moral sympathy and an intellectual sympathy. He doesn't explain why intellectual sympathies ought to trump moral sympathies, though he does provide a practical explanation for endorsing a libertarian justification of human rights. We can actualize substantially more human rights simply by changing the egregious policies and institutional arrangements which trample over other's rights. There aren't many counter arguments (if any) to support a principle that some people can violate the rights of others simply because it benefits them to do so. Egotism is not a well justified ethics. It seems correct that rights are often unfairly trampled upon and this ought to be stopped. But why is stopping there appropriate based upon intellectual sympathies? Perhaps a separation of moral sympathies from intellectual sympathies is a problem with enculturation and traditional Western ethics rather than some deep moral/intellectual gulf which cannot be bridged.

Traditional Western ethics has tended to be individualistic and primarily focuses on the protection of negative rights. It is difficult to tease out exactly what Pogge means by this divide because he promptly follows this claim with a libertarian argument. He demonstrates that citizens in more affluent countries owe more to citizens of poorer countries based on their own benefits from unjust Western policies. He goes on to argue there are *collective* responsibilities which Western countries have to people in the rest of the world.

In the introduction to *Politics as Usual*, Pogge mentions that his policy proposals are often met with disdain by other philosophers. Many of his colleagues tell him that it is not really doing philosophy. Pogge's rebuttal is that philosophy means love of wisdom and wisdom may be partially about understanding what really matters. What we *ought* to care about should be of the utmost importance to philosophers (8). This makes it even more puzzling to understand why Pogge dichotomizes moral sympathies and intellectual sympathies. Perhaps he is arguing that anything beyond the basic understanding of negative rights is a supererogatory duty. However, it is still not clear why additional duties would be supererogatory. I will argue that there does not need to be such a radical split between our moral sympathies and our intellectual sympathies and when that split is reconciled, a case can be made for a more robust account of human rights and our responsibilities to one another. The capabilities approach model is a more justifiable place to ground our collective responsibilities.

Grounding Responsibilities: A Human Basic Needs Model

David Miller argues that the capabilities approach is *not* the lens through which to think about who owes what to who. This is because, in part, he believes the

list of things people need in order to live truly fulfilling lives may not be universal. Instead, Miller argues that we should focus on human needs. What are our responsibilities in a “human needs” based approach to actualizing global justice? Miller notes the ambiguous ways in which the word “responsible” is often used. Within the scope of international justice, he believes it is helpful to distinguish two concepts of responsibility. According to Miller, there are outcome responsibilities and remedial responsibilities. Outcome responsibilities are not always easy to sort out, but Miller argues that tort law can give “...concrete shape to the pre-legal idea of responsibility” which he tries to develop (96). Basically, this concept means that we are responsible for the outcome of our various decisions and actions.

On the other hand, remedial responsibility is about remedying a situation. We may need to remedy a situation for the following reasons: We are morally responsible for a situation or we have outcome responsibility, we may have causal responsibility, or we may receive benefits from an injustice. We may have the capacity to accept responsibility or we may have responsibility based on our membership in a community. There is, of course, some intersectionality and ambiguity regarding the separation of some of these responsibilities. While Miller realizes this, he chooses some thought-provoking examples to outline these differences. For instance, he uses a classic trolley problem to demonstrate the difference between outcome responsibility and moral responsibility. Miller argues that if an engineer diverts a flood from one village to another then she is not morally responsible for the damage. This is because she chose the less of the two evil options. However, she still has outcome responsibility. According to Miller, she may owe the inhabitants of the destroyed village an explanation but she does not owe them any monetary compensation. Miller argues that she is not morally responsible because her sphere

of choice is so limited. Of course, the trolley problems are designed to test intuitions. These thought experiments also touch on the divide between deontological and utilitarian ethics. However, Miller doesn't explain why a limited choice means she is not morally responsible for her choice nor why an explanation is required but not monetary compensation. Miller writes, "Here, I follow those authors who caution against attempting to make our concept of responsibility 'metaphysically deep' (96)." The questions of how much we are responsible for our own actions and what type of remedial responsibilities we have are important ones. He simply makes some of these claims without adequately justifying them. According to Miller, the difference between moral responsibility and outcome responsibility hinges upon the agents actions being deliberate or reckless or ignoring pre-existing obligations (100). Outcome responsibility is doing the best you can but sometimes not having good choices or sometimes simply having bad outcomes in spite of good intentions, careful actions and so on.

Causal responsibility is about doing something that has extremely unpredictable results. Miller's example is of a person walking around a corner and bumping into a ladder, which causes the person on the ladder to fall. Benefit responsibility is when a person receives benefits that would not have been possible if someone else had not been deprived. Miller argues that this sort of connection is enough to justify remedial responsibility. Finally, there is capacity and community. Who has the capacity to help and who do we have special obligations to? Miller notes that these specifications can lead to conflicts. If person A is morally responsible for harming person B but does not have the resources to remedy the situation then what is person C's (the person with greater capacity) responsibility for remedying the situation? In an interconnected global world it is difficult to sort these things out. Miller suggests

we rely on our intuitions about such things. He argues that we must balance the ideas of outcome responsibility and remedial responsibility. Miller does not want to develop a culture of victim mentality nor does he want people in need to be denied help. When we are thinking about global justice and nation-states, Miller suggests two models of collective responsibility: "the likeminded group model and the cooperative practice model (114)." The likeminded group model recognizes a sense of shared purpose and their behaviour are moulded by the crowd (or nation) of which they are a member. On the other hand, the cooperative practice model recognizes that members of a group collectively benefit by the groups practices. Miller argues that nations can have remedial responsibilities. Since the members of nations can gain benefits by past unjust practices of previous members of their nation, they may have benefit responsibilities. Also, they may have capacity responsibilities if they have the resources to help others that are in a desperate need.

In his attempt to balance outcome and remedial responsibility, Miller rejects the capabilities approach because it focuses too much on human flourishing. Instead, he argues for a basic needs approach to human rights. He writes, "A minimally decent life, I should stress at once, is something less than a flourishing life (181)" Miller argues that there are some *universal* basic needs, such as oxygen and food. His list, though he claims it is not an exhaustive one, consists of the following: "food and water, clothing and shelter, physical security, health care, education, work and leisure, freedom of movement, conscience and expression (184). Miller believes many other needs are culture specific. He claims there is a difference between basic needs and societal needs. Basic needs are universal, whereas societal needs will vary depending on the particular society. Miller argues that we need to look objectively at research to determine what types of needs are basic, in order to avoid deformed

adaptive preferences and prejudice in general. For instance, he argues that some societies may believe that women should not have the right to paid work or access to contraceptives, but empirical evidence demonstrates that their lives will likely be inadequate. How some of these rights are expressed through laws and policies may differ based upon societal needs. Many of the items that Miller puts on his list of basic needs are similar to the items on Nussbaum's central capabilities list.

Nussbaum's list includes: life, bodily health, bodily integrity, senses, imagination and thought, emotions, practical reason, affiliation, other species, play, control over one's environment (both political and material) ("Creating Capabilities" 33-34).

Miller wants to avoid justifications based on autonomy and equality because he does not believe these principles can be universally grounded. However, this leads to some confusing justifications.

Though Miller does not go into extensive detail, he identifies the difference between human flourishing and a minimally decent life as the difference between being able to develop and exercise the capabilities *you* choose, whereas a minimally decent approach is a set of rights which is limited to everyone "in a given set of social circumstances (181). Miller argues the international community may be remedially responsible for basic universal needs but not for full citizenship rights (which will vary based on each particular society.) There are also some limits on remedial responsibilities. For instance, human rights law should not oblige others to meet the needs of others if their own needs are not met. Miller gives the example of bodily integrity, which was originally not on his list of universal basic needs. He writes

A person whose kidneys or liver are failing has a basic need for an organ transplant (assuming they cannot live a decent life otherwise, but those whose organs might be used for this purpose have the right to refuse to

donate them. This stems from the human right to bodily integrity in order to live a decent life, we must have assurance that our bodies will not be used in significant ways without our consent, even for the benefit of others (187-188).

Miller justifies this by both a consistency test and a compatibility test. The consistency test is that if A has a certain right then everyone else ought to have the same right. The compatibility test simply restates the principle that a need does not have to be met if it imposes a serious obligation on another innocent person. While I agree that bodily integrity is an important basic need, it is certainly not a principle that is universally agreed upon. For instance, in the following countries (both democratic and not), abortion is illegal:

Brazil, Colombia, Chile, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Venezuela, Angola, Benin, Central African Rep. Chad, Congo, Côte d'Ivoire, Dem. Rep. of Congo, Gabon, Guinea- Bissau, Kenya, Lesotho, Madagascar, Mali, Mauretania, Mauritius, Niger, Nigeria, Senegal, Somalia, Tanzania, Togo, Uganda, Afghanistan, Egypt, Iran, Lebanon, Libya, Oman, Sudan (r), Syria, United Arab Emirates, Yemen, Bangladesh, Indonesia, Laos, Myanmar, Papua New Guinea, Philippines, Sri Lanka, Ireland and Malta (Center for Reproductive Rights).

These countries do not think that bodily integrity is an absolute right. In order to show the hypocrisy of protecting the right of bodily integrity *only* when a scenario could potentially affect a male it is important to insist upon a principle of equality. Miller argues "...I have avoided considering justifications that begin from ideas of equality, or of personal autonomy, both of which strike me as sectarian in this way (198). Yet, the compatibility principle which Miller refers to seems to be based on equality. Why is it sectarian to begin a justification invoking its importance but not

so when used as a justification later on in an argument? Miller claims that equality and personal autonomy are not universally accepted concepts. But when he argues in favour of a consistency principle he does not justify *why* it would be universal need *within* every society. Certainly, some would argue this is a sectarian value too. Furthermore, Miller does not demonstrate how (if it does) the compatibility principle differs from a principle of equality.

When comparing these justifications to those found in the capabilities list put forward by Martha Nussbaum, there are reasons for preferring Nussbaum's justifications. Her definition of bodily integrity is broad enough to consider reproductive rights, too. For example, here is what bodily integrity means in her capabilities approach to human development: "*Bodily Integrity*. Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction ("Creating Capabilities" 33). This capability encompasses more than the right of contraception by stating that reproduction rights should include choice. While it is true that many countries do not endorse this approach, this is not an argument that bodily integrity shouldn't be a universal capability for *all* people. Nussbaum is claiming that it *ought* to be a universal right. If the argument is to be raised that pregnant women do not have a right to bodily integrity because the life of a fetus trumps their right to bodily integrity, then Nussbaum's *explicit* capability is more likely to force a discussion about the different justifications for men's right to bodily integrity even when it is at the expense of another life, such as when someone with kidney disease dies because they cannot find a suitable available kidney to use. What is the essential moral difference? This is a question that deserves an answer and Miller's theory seems to

work around this important question.

Religious Freedom: Basic human need or core capability?

Miller also argues the right to religious freedom is not a universal need. After all, many societies have a mostly secular citizenship. Instead, he argues for a more universal right of freedom of conscience. While this freedom would necessarily include freedom of religion, it is not given any special standing. Regarding Miller's argument that freedom of religion should not have any special standing in a list of universal basic human rights, it is helpful to compare his claim to an item on Nussbaum's capabilities list.

Senses, imagination, and thought. ... Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise...("Creating Capabilities, 33).

While Miller believes there is an important reason to simply declare freedom of conscience as a basic human need, namely there has to be realistic goals of what people will accept and freedom of conscience is easier to justify than freedom of religion. He writes

In some societies religion has been a marginal phenomenon, actively discouraged by the state. In others, there is a strong social norm that everyone should adhere to the same religion, so while freedom to practise that religion is very important for decency, freedom to choose between religions is not (195).

Miller argues it is better to focus on freedom of conscience because everyone is more

likely to agree with this. No one wants to argue that they ought not to have freedom of conscience, whereas they might not feel so strongly or passionately about freedom of religion. Also, he suggests we should not worry too much about this issue since freedom of religion would obviously have to fall under the umbrella of freedom of conscience.

The capabilities approach provides a claim where it can be argued that everyone should not have to adhere to the same religion nor should it be actively discouraged by the state. This is a compelling claim. When the social norms unduly pressure individuals to be part of a particular religion or their state tries to discourage their religious involvement, then their ability to flourish is diminished. Specifically including freedom of religion in a list of human rights explicitly points out its importance. Furthermore, the relationship between capabilities, basic rights and freedom of religion might be quite strong. In *The Price of Freedom Denied*, the authors provide some empirical data which suggests ensuring religious freedom for all members of a society reduces conflict and violent persecution. Their work shows a high correlation between religious freedom and other basic freedoms. While correlation does not prove a cause and effect relationship, it may point in that direction (71).

Equality and personal autonomy are important aspects of the capabilities approach. Miller's argument that we ought to exclude them from a list of basic human rights because they are not universally valued is problematic, especially to marginalized groups in a society wherein the lack of respect for equality and personal autonomy hurts some more than others. Of course, he is aware this is a potential problem. He points out patriarchal societies will often give rights to men which are denied to

women. It is one reason he endorses a humanitarian basic needs approach to human rights rather than an overlapping consensus strategy, such as the one Nussbaum proposes. However, there are some benefits to working towards an overlapping consensus strategy. Miller has argued there is a difference between basic needs and societal needs. Anne Phillips has written about the tensions between what Miller would call “societal needs” and universal basic rights. She notes that the societal needs approach is not always good from a feminist perspective. Institutional, interpersonal and unconscious sexism exist everywhere. There are still stereotypical and traditional attitudes about ‘women’s’ work (such as unequal pay, underpaid and undervalued work) which impede women’s full range of capabilities. Miller notes that women ought to have the right to do paid work. But without equality they may still be paid less than men for equal work and it does not seem there is room in Miller’s theory to address this injustice, as long as her basic needs are met.

Regarding the importance of democratic deliberation, Miller argues political rights *may* be instrumental for achieving and maintaining some basic universal rights. Political rights matter if we need them in order to guarantee other basic human needs. He points out that some people will argue there is an intrinsic value to civil and political rights. They argue the basic needs approach is incomplete. Yet he thinks that focusing on freedom of conscience as opposed to freedom of religion and so forth will be able to address many of these issues. Still there are stronger reasons to demonstrate that principles of autonomy and equality ought to be universal rights. In the case of bodily integrity, arguing for equality and autonomy may be necessary if bodily integrity is genuinely a universal right. We can’t simply say that universal rights are any right that men can lose, too. Furthermore, it will likely be challenging for a woman to make the case that her political participation is important and her

voice should be included if her voice is excluded from the political process *until* she demonstrates that it is instrumentally important to her other basic rights. The fact that equality and autonomy are not universally valued does not prove that they aren't worthy of universal protection. In most countries, women's voices are not equally heard in political deliberation. Women's views are often not considered to be worthy of serious moral consideration. Equality and principles of autonomy are important for reasons of human dignity and flourishing, too. These rights are as important to many marginalized people that don't have them as the societal needs are for people like David Miller.

Beyond Libertarian and Basic Needs Models of Responsibility

The capabilities approach can take us beyond libertarian and basic needs models of responsibilities. Pogge believes this is what the libertarians want. According to Pogge, as soon as liberals overreach, then the libertarians are there to try to dismiss the entire project. Miller believes that all of the capabilities cannot be universally justified. It is certainly true that not all of the capabilities on Nussbaum's list are universally recognized, but this simply calls for a more robust interpretation of the capabilities approach rather than a rejection of it. Many cultural traditions are based on patriarchy and are put into place in order to keep women in subservient positions. Tradition is a powerful force and is not easily broken. The tentative capabilities lists that Nussbaum provides give us a tool to use in a fight against patriarchal enculturation. It can lead to an opportunity to challenge discriminatory ideas which persist through tradition and enculturation. Having a tentative universal list of capabilities which holds bodily integrity as a universal value (even, as in cases of abortion, only women will need it) may put pressure on those that hold other

contrary ideas based on enculturation to challenge their belief system. If a person wants to deny a portion of the capabilities list, then at least a potential space for dialogue has been opened up.

Capabilities and Responsibilities: Recognizing the Importance of Interrelated Capabilities

Miller argues that it is easier to make a case for basic human rights than for a capabilities approach which promotes the conditions for human flourishing. Some of the problems might be that the examples used to demonstrate the importance of universal capabilities in some of Nussbaum's work. They are not robust or nuanced enough to withstand scrutiny from a wide range of perspectives. For instance, in *Sex and Social Justice*, Nussbaum's argument against female genital cutting shows ways in which Westerners sometimes learn of practices which are unfamiliar to them and react in a Western biased way. Nussbaum sometimes focuses too much on cases which support her own position and does not take enough time to comment on findings which are not consistent with her own particular view of the subject. She understands the interrelated web of complexities, but she does not always include it in her case studies. She writes

That tragic aspect could be represented as simply a huge cost; but it is hard to represent clearly in this way the fact that a distinctive good is being slighted. One should not suppose, for example, that the absence of the political liberties would be made up for by tremendous economic growth, although the use of a single measure might easily make one think this way ("Women and Human Development" 81).

However, her example of female genital mutilation does not demonstrate the ways in which helping one person to achieve greater capabilities may cause a loss of

capabilities for another person. Feminists often point out the importance of context and relationships. Keeping this in mind is important when considering some of Nussbaum's examples. While it is challenging to consider what items on her capabilities list shouldn't be the right of every human being, it doesn't mean that issues such as female genital cutting are as easy to address as Nussbaum claims.

Universal Principles and a Multitude of Perspectives: A Case Study

While I (along with Miller, Nussbaum and Pogge) support the notion of bodily integrity, I want to explore Nussbaum's critique of female genital mutilation and contrast it to some footage featured in the documentary *The Shape of Water*. The movie documents the ways in which different groups of women advocate for change around the world and often succeed in their quest to achieve social justice. The film covers a wide range of stories, from Brazil, Senegal, Israel and Palestine and India. I will focus on Senegal and female genital cutting. In *Sex and Social Justice*, Nussbaum examines the case of Fauziya Kassindja. Fauziya was a 17 year old woman from Togo who left her home in order to avoid female genital cutting (FGC) and an arranged polygamous marriage. Her parents were against FGC and her father was wealthy. However, her father died and her mother was thrown out of the house. Fauziya suddenly found herself in the undesirable situation of being pressured to undergo FGC and become a wife in an arranged marriage. She balked at the process and forged some documents in order to enter the United States. She arrived in the United States and was placed in detention. An immigration judge determined that she lied about the documentation. Furthermore, FGC did not constitute a basis for asylum. Once the news media got a hold of this story, public pressure mounted to grant Fauziya asylum protection. It was eventually granted and

it became an important case because it demonstrated that gender based persecution was a legitimate reason to gain asylum protection. Nussbaum explains this plight very well and makes a compelling case against the practice of FGC. She also acknowledges power relations and the exciser's power in the community, but the story is told *only from one point of view*. Nussbaum argues that the strongest argument in favor of FGC is an appeal to cultural continuity. She responds to this appeal as follows

Although one must have some sympathy with these concerns, it is still important to remember that a community is not a mysterious organic unity but a plurality of people standing in different relations of power to one another. It is not obvious that the type of cohesion that is affected by subordination and functional impairment is something we ought to perpetuate...there is reason to think that the practice is kept alive above all by the excisers themselves, paramedical workers who enjoy both high income and high prestige in the community from their occupation (Sex and Social Justice 126).

Nussbaum does acknowledge that countries should provide economic security for those that are suddenly thrown out of business, but this is only one line in her book. It is also qualified by stating that excisers shouldn't be defended by arguments appealing to cultural tradition. The problem with focusing on this one singular case from a single particular perspective is that it may be easy to overlook this line about economic security for the excisers because there is so much more written about the issue of FGC. I am not arguing that the woman experiencing the cutting does not have an important perspective. Nor am I arguing for some sort of false equivalency. Rather, I am pointing out that this issue involves an intersection of many different people's capabilities.

In a documentary entitled *The Shape of Water*, one segment of the film explores the issue of female genital cutting in Senegal. Some women in the community are in favor of the practice while others are opposed to it. Some men weigh in and say that those against female genital cutting are listening too much to Westerners and turning their backs on their own traditions. Other men are joining the discussion in support of ending the practice. Female genital cutting was finally officially banned in the area, but this decision caused severe hardships for the women that did the cutting. They suddenly had no source of income. One woman was told that she should train to become a midwife or 'something'. She was sixty seven years old and felt she was too old to be a midwife. She went back to cutting because that was the only way she could make a living so she was arrested and put into jail. When she was released from jail, she was given a sewing machine and told she should switch to a career in sewing. Nobody ever taught her to use it and it sat, covered in dust, in her modest one room dwelling. The story addresses the issue of not only the girls being cut, but the cultural tradition and pride associated with cutting. It examines the livelihoods of the women doing the cutting, the trauma experienced by mothers that had been cut and had some of their own children cut, as well as those women that refused to have their daughters cut based on cultural pride or their own personal beliefs. This documentary shows the efforts at educating young girls about the practice, through school initiatives and dramatic re-enactments of the procedures. Strategies were considered; do the young people care more about health issues or a fulfilling sex life? The women discuss this and note that lectures about health issues have not been particularly effective so they try to approach the young women about the impact cutting will have on their sex life.

While Nussbaum may well be correct that female genital cutting violates bodily

integrity, simply pointing it out and unwaveringly claiming there should be laws against it will not solve the problem. The law banning cutting inadvertently thwarted the cutter's capabilities to make a living and survive, which I argue violates 10.2 of the capabilities list

Control over one's Environment.

Material. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers ("Creating Capabilities" 33).

Nussbaum clearly understands the importance of case studies and stories which touch the reader emotionally. Yet, she only uses this approach when discussing one side of the story. In order to fully appreciate the complexity of the situation, it would be beneficial to seriously understand the perspectives of all the people that will win or lose when/if this procedure becomes obsolete. It is by focusing on the larger picture that we will be better able to address the issues which occur when balances of power shift. There needs to be a strong focus regarding the interconnection of people's livelihoods with the practice, as well as many other factors when addressing this issue. The approach I suggest might answer Miller's concern that certain capabilities are not justified universally. Furthermore, the fact that some of them have not always been justified well does not necessarily mean that they *cannot* be justified.

As a reply to Pogge's concern that some libertarians will dismiss international

human rights because they don't agree they have any remedial responsibilities, he is correct to show that they often have many more outcome responsibilities than they may have ever realized. However, this insight does not demonstrate that we need to accept this particular false dichotomy. We don't need to separate intellectual sympathies from moral sympathies, just as we don't need to reject Pogge's arguments that Westerners have very serious outcome responsibilities for the benefits they have received based on unjust institutions, policies, regulations and so forth. Rather, a stronger argument can be made that these are false dichotomies and that a case can be made that a more substantial set of responsibilities can be justified.

Moral Sympathies, Intellectual Sympathies: Empathetic Knowledge and Global Justice

Pogge claims that his intellectual sympathy lies with those that argue it is not a human rights violation to avoid helping those facing severe destitution, even if it as little cost to themselves ("Freedom from Poverty 19)." He acknowledges that it may be a morally abhorrent position, though. How is it possible that a person's intellectual sympathies and moral sympathies can be so radically divided? Is it possible to bridge this gap? How would bridging this gap potentially lend more support to the capabilities approach?

By examining some of the work of Adam Smith and Jane Addams', it is possible to develop an understanding of sympathetic knowledge which blurs the lines which radically divide Pogge's sympathies. Addams argues that through sympathetic understanding we have the potential to gain a deeper knowledge about the complexity of the world around us through a combination of experience and

reflection. Addams argues that many of the problems of human cruelty and injustice are the result of a lack of imagination. Furthermore, she makes the case that imagination, experience, reflection, understanding and care work together, providing a type of amplifying effect, which help us to grasp the complexity of the world around us.

While Addams emphasizes the important relationship between experience, global justice and responsibility, Adam Smith argued that abstract reasoning can bridge the gap between intellectual sympathy and moral sympathy. Smith wrote, “Pity and compassion are words appropriated to signify our fellow-feeling with the sorrow of others. Sympathy, though its meaning was, perhaps, originally the same, may now, however, without much impropriety, be made use of to denote our fellow-feeling with any passion whatever (Part 1, Section 1).” Smith’s understanding of sympathy is similar to our modern day understanding of what we call empathy. Jane Addams understanding of sympathy is also what we would generally call ‘empathy’ today. Essentially, Smith argued that we imagine how we might feel if we were in the other person’s predicament and then we have an estimation of how we might feel. It is easier to feel sympathy towards those we know and are closer to, but we can use reason and think about those further away from us and have a less close estimation of how they feel. Addams embraces the concept of using our moral imagination to better understand other people, she would argue that justice depends upon *actively* working to try to understand and care about others. For Addams, action based on sympathetic knowledge is at the core of ethics.

Smith argued that sympathy is based upon natural sentiment that can then be expanded through abstract reasoning. For Addams, it is better to expand upon natural sentiment by actively working to understand people and their problems,

hopes, dreams, worries, and so forth. Both develop a theory wherein empathy and knowledge work together to enhance both our intellectual and moral sympathies. Addams believed we could significantly widen our circle of genuine care. For instance, Addams gained sympathetic understanding by working with immigrants in her community. She learned the stories of their lives, their backgrounds and some of the particular situations they faced in their countries of origin. She continued to learn about the world around her and she came to believe that there was a possibility that immigrants could lead the way to a more cosmopolitan understanding of our shared world. If we have loyalties to our neighbors who have loyalties to their homeland, as well as to their new neighbors, it will become increasingly difficult to remain indifferent towards the 'other'.

Pogge doesn't provide a strong argument to demonstrate why he believes the libertarian position is intellectually compelling, or why intellectual sympathies should take precedence over moral sympathies. If a case could be made that a world where we understood one another a little bit more would lead to more human flourishing and if more human flourishing would lead us to have an opportunity to learn more from each other, care more for each other and so forth, then why wouldn't this be a superior intellectual argument to the libertarian position? The capabilities approach could arguably create such a space for more human flourishing.

Care is both a basic need and a necessary condition for human flourishing. Fiona Robinson, Joan Tronto and others have argued for the necessity of care ethics in any theory of global justice. While I will focus much more carefully on care ethics, global justice and capabilities in a future chapter, it is important to note that this

moral approach to issues of global justice is largely absent in the work of Pogge and Miller. Addams conjunction of moral psychology (sympathy) and epistemology (understanding) can serve as a key component in an ethics of care, which can provide a moral epistemology and orientation wherein we can move to a more inclusive and accurate approach to understanding our responsibilities in this interconnected, globalized world.

Chapter 2

Global Responsibility, Justice and Capabilities: Sorting Out Rights and Duties

Introduction

Regarding the global economic order, Pogge argues “the design of this order is fashioned and adjusted in international negotiations in which our governments enjoy a crushing advantage in bargaining power and expertise (*World Poverty and Human Rights* 26.” While many people are appalled to learn that approximately one third of human deaths annually occur because of poverty related causes, for instance, Pogge primarily emphasizes how much pain and poverty flourish due to unjust global institutional arrangements. If we can reform these institutions then we can solve many of the world’s pressing global problems. The citizens of affluent countries often benefit from these unjust economic arrangements and are thus responsible for reforming these institutions, according to the institutional model of justice.

Iris Marion Young agrees that some of the world’s injustices could be solved by reforming major institutions in the global economic order, but she points out that many structural injustices don’t seem to necessarily be the fault of institutions. Instead, she proposes a “social connection” model of global responsibility. This model does not assign blame to particular institutions or people; rather it calls for collective action to solve some of the injustices that arise from these social processes.

Of course, both of these models are based on what the authors' claim are the primary

causes of social injustice. But they are also based on the author's own understanding of justice. Pogge accepts Rawls' distinction between justice and ethics. Rawls claimed that justice refers to the operation of social institutions. Pogge argues that since philosophers tend to use the word *justice* when evaluating the morality of social institutions, he will continue to use this terminology in the same way. He believes the word *ethics* better describes the study of morality regarding individuals or groups of individuals (*World Poverty and Human Rights* 16). Young argues that structural injustice occurs when structural processes put some people in a position of threat of deprivation to exercise their capacities, while these same processes tend to increase the capacity opportunities of other individuals. This injustice is a moral wrong which occurs when people are living their lives, participating in the current systems that collectively cause this imbalance of opportunities (45). Young argues that while Pogge is surely correct that global institutions are often unjust, this is because state's policies tend to align with those in power. Law tends to follow power, not the other way around. Hence, it is unlikely that institutional policies will change. Young believes individual collective action is more likely to succeed. While Young's work is valuable for understanding issues of responsibility and justice in relation to structural processes, she doesn't demonstrate why individuals in a relatively privileged position would more likely want to work towards ending injustice than political leaders who realize their state's policies are contributing to global injustices. However, she does provide some examples of people that do accept collective responsibility and work together in order to reform certain unjust structural processes. Of course, both institutional reform and individual structural process reform is needed if we are to work towards global justice. How much responsibility do states and individuals have for global justice? In *Responsibility for*

Justice, Young writes

Rather than conceive structures as a *part* of society...I argued...that structural social processes concern the *whole* of a society looked at from a specific point of view. Legal and regulatory institutions are certainly elements of the structural social processes that produce or prevent injustice...To understand how injustice is produced and reproduced, however, we must also look to the rules and practices of business, communications media, and the leisure and consumption tastes of ordinary people (142).

She argues that these connections provide obligations for justice. While this is true, the capabilities approach requires more to achieve justice.

In this chapter, I will argue that the capabilities approach requires both more institutional responsibility than Pogge argues for, along with the collective responsibility that Young advocates. The capabilities approach is robust enough to support a conception of justice that not only relies on justice as obligation based on benefits received through institutional arrangements and structural processes, but also as an idea of fairness wherein people have the opportunity to fulfill basic capabilities, whether we rely on Nussbaum's list or argue that these capabilities may vary from one society to another and can't be determined in advance of a participatory democratic consensus. Finally, I will examine the role of blame in justice systems. If we shift our focus from blame to responsibility, then we will more likely provide motivation for people to work as agents of justice. Further, it seems that people who are responsible for injustice are often not blameworthy for these unjust structural institutions and processes. Instead, a moral orientation towards a virtue care ethics will provide a framework where we can more easily examine other types of unjust structural processes, such as policies that impact those that care for

children, the elderly and so forth. It will also provide an orientation which will not rely solely on what David Miller called a benefit responsibility for justice. Care ethics and the capabilities approach will provide a robust methodology and moral lens through which to work through our responsibilities for justice.

As mentioned in the last chapter, Thomas Pogge has written that many Western institutions are corrupt and unjust. Western institutions often change words and numbers around in order to make it look as if they are making substantial progress towards global justice. For instance, he examines some of the subtle word changes regarding the first Millennium Development Goal (MDG). According to Pogge, at the World Food Summit in Rome, it was declared “We pledge our political will and our common and national commitment to achieving food security for all and to an ongoing effort to eradicate hunger in countries, with an immediate view to reducing the number of undernourished people to half their present level no later than 2015 (“Politics as Usual 58).” The MDG goal declares they will be halving the *proportion* of people in poverty by 2015. As Pogge notes, the wording is deceptive. The goal post has been moved. The proportion of the poor that would have been helped under the proposed Rome summit would have ended up being 58.33% whereas now the target goal of the MDG has decreased to only 50% (“Politics as Usual” 58). There are other examples of problematic measurement tools, which also subtly shift our understanding of the progress being made to eradicate global poverty. People that don’t study indices and statistics often feel quite content when they “learn” that the powerful nations of the world are successfully working towards the goal of eliminating severe poverty. These organizations sometimes play on people’s willingness to maintain a willful ignorance regarding global institutions and their impact on inequality and severe poverty. Of course, Pogge makes an important point

that these institutions need to be reformed and we must work towards this reformation. He knows that this will be a formidable challenge.

However, even if we can develop a moral orientation which includes accepting some collective responsibility for reforming unjust institutions, this will not be enough to address many issues of global injustice. After all, much structural injustice in the world is not a result of unjust policies. Nor is it clear that it is practical to spend so much energy on reforming institutions, when it seems evident the powerful have an undue amount of influence on them and that the influence of average citizens seems minimal. How do we reform global institutions in order to have them align with human rights goals? It is helpful to have a template of what that might look like in order to see how much it would help us to achieve more global justice.

There are a vast number of human rights acknowledged in various treaties, conventions and declarations which provide a list of promises, goals and so forth so that all human beings can live flourishing and dignified lives. A Human Rights approach to justice would fit in well with Pogge's conception of justice as something within the purview of institutions. Here there is a clear gap between the rights people have on paper and the rights they have in actuality. When discussing rights and obligations, questions about who owes who what and why arise. If we were to reform institutions, what would this reform look like? If someone has a right, then someone else usually has some sort of corresponding duty. How is it possible that so many conventions and declarations focus on rights without spending as much time on outlining corresponding duties? We can't talk about a culture of rights without talking about a culture of duties, responsibilities and obligations. Furthermore, if a human right does not have a corresponding obligation-bearer, then

the right may not worth much to the right holder. These sorts of rights are often derided as rights-on-paper. It is true that many human rights are aspirational. We live in a world where there is an abundance of human rights treaties prohibiting discrimination against women, prohibiting genocide, prohibiting torture and war crimes. Yet all of these human rights violations occur with deplorable frequency. As Onora O'Neill has famously pointed out, we can simply say that rights are aspirational and have no normative force. If rights are to have force, then we need to work out who has obligations to ensure that rights bearers can claim them. She raises an important point and the capabilities approach tries to work out some of those issues, too. O'Neill writes

The value of focusing on capabilities is that this foregrounds an explicit concern with the action and with the results that agents or agencies can achieve in actual circumstances, and so provides a seriously realistic starting point for normative reasoning, including normative claims about rights (Agents of Justice 189-190).

She goes on to point out that the capabilities approach often considers the capabilities of individual people but does not always examine the capabilities of weak states, international nongovernmental organizations and transnational corporations. For instance, when weak states fail, it may not always be because they lack power but that they lack other important capabilities. O'Neill argues that some weak states may not have the capabilities to ensure justice within their borders. Yet, unfortunately, they may still have capabilities for injustice. In these cases it is better to rely on the capabilities of international nongovernmental organizations (INGOs) and transnational corporations. She points out that both groups have capabilities to create justice. While many of us focus on the transnational corporation's propensity

to use their capabilities for injustice, the capabilities for justice are still there (Agents of Justice 189-193). O'Neill argues the traditional paradigm is wrong:

There are often implicit assumptions that the primary agents of justice are states, and that all other agents and agencies are secondary agents of justice, whose main contribution to justice will be achieved by conforming to the just requirements of states. This background picture runs into difficulties when states are either unjust or weak (Agents of Justice 180).

Nussbaum holds a somewhat similar point of view regarding weak states. However, her focus for assigning duties for justice rely more heavily on relatively democratic nation states than O'Neill's theory does. Nussbaum argues that "the nation is not just a convenient starting place: it has moral importance ("Creating Capabilities 113)." She argues that democratic nations are morally legitimate because their power is gained through the people. The goal should be to protect national sovereignty so transnational corporations and "too big to fail" financial networks do not have undue influence on these countries. She believes there is a role for transnational corporations and international nongovernmental organizations to act as agents of justice. However, because our world is constantly changing in ways we cannot always adequately anticipate, it is not wise to assign wide scale duties of justice to them.

Problems of Human Rights and the Symmetry of Rights and Obligations

O'Neill argues that liberty rights and rights to goods and services are usually seen as valid claim rights. There ought to be a symmetrical relationship between rights holders and obligation-bearers. Kantian deontological ethics underlies her

position. There are direct and indirect duties, duties of justice and beneficence.

When declarations claim that people have a universal right to food, shelter, access to health services and so forth they simply don't provide a justification for supporting the claim that these are universal rights. This is a dilemma, according to O'Neill, because 1) we can argue that rights to goods and services are universal and can be justified without universal declarations and so forth or 2) we can argue that human rights are grounded in whatever is conventionally supported by institutions. This would leave human rights on precarious moral ground, though. She wonders how many human rights can realistically be entrusted to the state. Furthermore, she wonders how successful it would be for states to impose complex obligations on ordinary citizens (The Dark Side of Human Rights 427-439).

Regarding the first point, the capabilities approach does argue that good and services are universal and can be justified without relying on whatever happens to be conventionally supported by institutions. Nussbaum has argued that human rights should come about from a theory of capabilities; not the other way around. She argues that the capabilities approach is more nuanced and unified than that of the various human rights treaties, conventions and all of the documents, laws and so forth that make up the human rights paradigm ("Women and Human Development" 96-101). In *Creating Capabilities*, Nussbaum argues that the capabilities approach is compatible with human rights approaches, which are not always unified by one theory in the way the capabilities approach is. She writes

There is a conceptual connection between the idea of the Central Capabilities as fundamental human entitlements and the idea of duties. Even before we can assign the duties to specific people or groups, the existence of an entitlement entails that there are such duties.

Domestically, those duties belong in the first instance to the nation's basic political structure, which is responsible for distribution to all citizens an adequate threshold amount of all entitlements. But poor nations cannot meet all their capability obligations without aid from richer nations. Richer nations consequently have such duties of aid. Other duties ...are assigned to corporations, international agencies and agreements, and, finally the individual (63).

O'Neill and Nussbaum have the right list of players as agents of justice, though I disagree with the particular order of assignments. It isn't always possible to know in advance which approach will work. What is the likelihood that transnational corporations are going to be significant agents of justice? Surely, O'Neill is correct that it is a logical possibility. But is it likely to happen? If it is likely to happen, how will it happen? The capabilities approach is about overlapping consensus and multiple realizability. We live in a diverse, pluralistic world. This world contains socialists, libertarians, social democrats and staunch conservatives. It contains people mistrustful of the government and other people that believe government is the only hope. It contains people hostile to transnational corporations and people who think they have no obligations to anyone other than themselves. How likely is it that we have to worry that everyone is going to start following the advice of philosophers such as Singer and Unger? While the language of human rights is important for acknowledging that every human being should have access to food, shelter, be free from violence, have the ability and space to speak freely, it is never going to be enough to actualize capabilities. Human rights are there because we need them. But we should work towards a world we way will need to rely on them less and less.

Both O'Neill and Nussbaum look at achieving capabilities through the lens of a top

down hierarchical approach. I argue that approaches to issues of global justice need to be more complicated. Young has more of a grass roots approach to achieving justice. For Young, individuals have a much larger role as agents for justice. I think this is a better approach as long as we don't focus *too* much on addressing structural processes. It is often going to take a creative combination of nation states, international treaties, transnational corporations, international nongovernmental organizations and individuals to create a more just world.

While it is important to look at the normative value of a capabilities approach, for instance it goes far beyond Pogge's libertarian argument; it may not be as important or helpful to try to define the agents of justice and then require them to perform their assigned duties. Of course, the idea of assigning some duties is important. However, these issues are sometimes worked out beautifully without reliance on a strong philosophical theory of duties and obligations. If we give a more prominent role to bottom up approaches, without undermining the important role of other agents of justice, then we create more possibilities for expanding human rights. A good example of how this can work is demonstrated in the case of women's reproductive rights in Columbia.

Maria Isabel Plata writes about how important the Women's Convention, which essentially created CEDAW, was to the women in Columbia. Due to the resources given to women in Columbia by the non-profit, Profamilia (an international arm of Planned Parenthood), women of Columbia became active participants in the development of their own constitution. They demanded reproductive rights, as well as an active voice in the development of laws which affected them. By feminists working at all levels, international law, international promotion of reproductive

rights, Columbian law and so forth, they worked together in a way where everyone felt empowered and Columbians developed their own progressive reproductive health care policies which has further empowered Columbian women. The CEDAW framework could have been derided as aspirational, and sometimes it still is still far too aspirational. However, the will of some people helped to change the aspirational to the actual. These advocates were able to justify and demand their own specific rights which they felt were most appropriate for their own needs and reflective of their own values (Plata 515-531).

Even though the United States has not ratified CEDAW, the 2011 working group meeting was held at the United Nations Headquarters in New York. Many women from the United States contribute to these meetings. There are certainly ways in which feminists in the United States can work towards promoting the ratification of CEDAW in the United States, or to contribute their own knowledge to the working groups, or work for other transnational feminist causes. The reproductive rights proclaimed in the Columbian constitution demonstrate how people can work at a transnational level for women's rights while still being respectful of the agency of all women.

On the other hand, the capabilities list is far more aspirational than some human rights treaties. It is a modest proposal, put in the public domain, providing some potential guidelines which capability advocates believe may be the best way to think about human rights, care and justice. It provides a possible way to think through ways to formulate or interpret international treaties, public policies and so forth. The strength of the capabilities approach is that it provides a way of thinking about development that goes beyond traditional human rights or utilitarian approaches.

According to Nussbaum, the core of the capabilities approach is

...that of the human being as a dignified free being who shapes his or her own life in in cooperation and reciprocity with others, rather than passively being shaped or pushed around by the world in the manner of a “flock” or “herd” animal. A life that is really human is one that is shaped throughout by these human powers of practical reason and sociability (“Women and Human Development” 72).

If we take that as the core of capabilities, then we need to ask if democratic institutions are always the best way to organize agents of justice. Certainly democratic institutions have an important role as an agent of justice, as Nussbaum suggests. In her defense of nation states as the primary agents of justice, Nussbaum criticizes the work of Peter Unger and Peter Singer (“Creating Capabilities 114-117). They encourage people to donate money to charities such as Oxfam, UNICEF and so forth. For example, in *The Life You Can Save*, Peter Singer argues that people that are relatively well off should give at least 5% of their income to charities. He donates the proceeds of his book to the Life you Can Save organization. Charities supported by that organization include Oxfam, Against Malaria Foundation, Deworm the World, GIVEDIRECTLY and many more (44-47). Nussbaum points out that if everyone did this then the world would be run by nongovernmental organizations. If we all followed the advice of Singer or Unger than these organizations would eventually be richer and more powerful than nations. However, then they might be beholden to big donors. She believes this would lead to the global elite having power rather than democratically elected governments (“Creating Capabilities” 119).

But democratically elected governments face similar problems to the ones that

Nussbaum claims that Unger and Singer's philanthropic utopian world would face. They are often corrupted by rich and generous donors, too. If we attempt to form a hierarchy of agents of justice, then we may inadvertently move away from considering the potential capabilities of individuals as agents of change. For instance, we don't know in advance how influential the global permaculture movement or the seed saving and sharing initiatives developed by Shiva and others will be until we see how the future unfolds. Certainly, given the way we have structured our world, it seems that institutional answers are needed to address grave environmental concerns. However, we don't know what alternative technologies may be developed (though we shouldn't count on this) nor do we know in advance how effective local food movements and so forth may be. Nussbaum writes

Suppose a nation attempted to solve its distributional problems through private philanthropy. It doesn't work and we know that. First, it creates enormous collective-action problems. Nations, when they are just, find ways of assigning to each a fair share of benefits and burdens, but individuals acting on their own will act ineffectively and without coordination...(“Creating Capabilities 118).

This quote is problematic for a few reasons. First, we want to carefully consider whether or not private philanthropy can ever resolve distributional problems. If it is unlikely to be able to do, then we might want to consider if we should be convinced by the arguments set forth by Unger and Singer. However, to say “it doesn't work and we know that” is not in keeping with the *spirit* of the capabilities approach. To paraphrase Hume, how do we know that future futures will look like past futures? We don't have a crystal ball. Second, it may be true that nations, when they are just, assign benefits and burdens in a fair and systematic matter. But this does not address the problem of weak states, the influence of large financial networks and

transnational corporations on democratic governments and so forth. What do we do in the meantime when democratic nation states (with varying degrees of injustice) simply do not exist?

The Limits of Institutional Reform

In *Responsibility for Justice*, Young argues that the problem of global justice goes far beyond institutions. She argues that we need to focus on structural processes, too. For instance, she points out that many times institutions aren't the problem. For a local perspective, she asks us to consider a hypothetical case of a woman she calls Sandy. Sandy is a single mother. She lives in an apartment and has to take two buses to get to work as a sales clerk in a suburban mall. Her landlord decides to turn the low income rentals into condominiums, which will attract people with higher incomes. The landlord tells her about the plan and gives her proper legal notice. She asks a rental agency for help. The agent works hard to find an affordable place for Sandy and then tells her that she must pay three months' rent in advance because that is standard policy. Sandy doesn't have the money. She can't afford to live in the suburbs near her job. If she buys a car, then she will have even less rent money. The deadline to leave her apartment is looming. Will she and her children end up homeless? To most of us, it may sound unfair that Sandy might end up homeless. But what should be changed? Is it Sandy's fault that she is in this situation? We don't know enough about her but it doesn't seem likely on the face of it. What institutional policy needs to be changed? On the face of it, there is no evidence that the landlord was wrong, the real estate agent was wrong and so on. However, most of us would agree that some injustice is about to occur. Sandy doesn't *deserve* to be homeless. Of course, the rent rates might be so expensive

because landlords are tearing down old homes and catering to richer people. Are the richer people responsible for Sandy's plight? There is a tangled interconnectedness of all of our actions, even our blameless actions, which contribute to the problem of both local and global injustice (43-47).

Elizabeth Ashford makes a similar point. She provides an analogy in order to make these complex obligations more understandable. This is her variation of Parfit's harmless tortures thought experiment:

...the Torturers' Union': a large group of torturers fear they may one day be prosecuted for human rights violations. They therefore arrange a new system whereby they act together in such a way that the electric shock each administers is spread out over a huge number of prisoners and so causes only a very small incremental amount of pain to each of the prisoners, though the total quantity of pain inflicted by each torturer and suffered by each prisoner remains the same as under the previous system (!95).

Nobody is directly causing the prisoner extreme pain, yet everyone is responsible for the end result. We may each be minding our business, going about our lives and so forth. Yet the cumulative impact of us all going about our lives can end up creating a society where these types of structural injustices occur. Ashford believes that for people whose rights are violated in cases similar to the torturers dilemma, victims have a claim against large groups of individuals. These individuals have a moral responsibility (based on either Kantian deontological ethics or utilitarianism) to figure out how to best reform the various types of processes and institutions which have been caused the structural violence (216).

How do we, as part of the Torturer Union, stop hurting people? Iris Marion Young

has argued that the anti-sweatshop movement provides a template for how it might be done. When Western citizens began to learn about sweat shops, they began recognizing their complicity in a pattern of structural injustice and taking some collective responsibility for this situation. Young's understanding of political responsibility is based upon structural social connections. She points out that when people in the West were properly informed about these connections, many were motivated to protest these sweatshop conditions. People started protesting. These protests eventually led many universities to support fair trade and monitoring organizations, such as the Fair Labor Association and the Worker Rights Consortium (123-151). These types of actions were motivated by a feeling of collective responsibility, which may have been grounded in the fact that people believe that if they receive benefits because of the violation of the rights of others then they have an obligation to speak out. Responsibility requires an attentive response to unjust situations. For example, we can demand more fair trade products and protest arrangements wherein the products we are enjoying were made by people that are working long days, often being sexually harassed and being otherwise exploited in a variety of ways. We can inform other Western citizens of our own complicity in these unjust institutions and processes. We can think about how we ought to be changing our own patterns of behavior that contribute to worldwide injustices (123-151).

According to Young, we need to address some of our own complicity in processes and attempt to address them instead of relying *too much* on cleaning up institutional corruption. In the case of sweatshops, the problem goes much deeper. It is not clear that institutions have the capacity to see these processes and effectively change them. When individual citizens change their own buying patterns, when they

recognize how their clothes are made in sweatshops, for example, they can make more informed purchasing choices which are more efficient and effective. This is preferable to expecting institutions to catch up with all of these issues. Of course, Young does not provide a compelling argument to demonstrate why people would be more likely to let go of privilege and make choices that, from a classic economic perspective, might seem irrational in order to work towards global justice in a way that owners of transnational companies would not. If people are willing to address issues of injustice if the conditions are right, then might it be possible for them to put the same type of influence on institutions? What sort of conditions would have to occur if this were to happen?

Finally, Pogge and Young are focusing on structural processes and institutions when writing about our responsibility for justice. But if justice involves deserts and fairness, then we still have responsibilities for making sure people have a fair opportunity to live lives of dignity even if we can't see just how much our actions or institutions directly harm their lives. This notion of dignity is part of the normative force of the capabilities approach. It is an intuitive idea that human beings should live in a world wherein they have the ability to reach some important human potentials. Nussbaum argues that the theories underlying her own position are primarily a combination of Rawlsian, Aristotelian and Marxist philosophy. I argue there is a practical aspect to the capabilities approach, too. It provides a starting point for dialogue. Why are other approaches superior to the capabilities list?

Regarding Nussbaum's capabilities list, rather than have a strong theory underlying this list we can use it as a tool against prejudiced enculturation. If someone rejects the list, we can ask what particular item they think should not be on the list and why. It provides one potential start to a very important conversation.

The capabilities approach provides a space for a broader notion of justice, which includes more than addressing unjust structural processes and institutions. It doesn't rely on arguments from mutual advantage, it creates a space for care and benevolence, and it can take us beyond more traditional mainstream understandings of justice (such as those of Rawls, Nozick, Mill and so on).

Nussbaum argues that her version of capabilities approach is compatible with human rights law. She maintains that her list of central capabilities already have a clear cut relationship between obligation-bearers and rights holders. According to Nussbaum, domestically, first order duties belong to the nation states. If a nation is too poor to uphold its duties, then richer countries are obligated to uphold human rights. She argues "Other duties to promote human capabilities are assigned to corporations, international agencies, and, finally to the individual ("Creating Capabilities" 64)." Her argument is that most first order obligations should fall to nation states based upon the important role that democracy plays in autonomous decision making. She challenges arguments that individuals should donate to Oxfam and other charitable organizations rather than trying to reform institutions. She argues this approach is problematic because it has been demonstrated repeatedly that charity is not an efficient vehicle to ensure that all rights are met. It is also not just because individuals pick and choose which rights will be protected. Finally, placing power in the hands of non-governmental organizations is actually undemocratic ("Creating Capabilities 118-119). However, the capabilities approach does not have to be so narrow. In fact, it is not *prima facie* undemocratic for individuals to support Oxfam. It is also in the spirit of the capabilities approach to encourage people to do what they can to promote and create conditions for human development. Indeed, it allows for a plurality of approaches.

While it might be best to assign responsibilities to nation states, it is not always best to expect them to take care of human rights. While we should certainly work towards reforming institutions so their duties more closely align with the human rights they have pledged to uphold, the point is to create a world where people have the opportunities to exercise core capabilities. If individuals assign themselves to do the task they are most passionate about, most knowledgeable about and so forth, then there are roles for charities, for institutional reform, for individuals to create effective change. For instance, charities do not have to focus their energies mainly on providing emergency stop gap measures for communities in crisis. They can also play a vital role by challenging and changing various forms of structural injustices. The role of formal duties being assigned to nation states is important. However, formal duties are usually assigned when they are necessary. Someone may have to claim them once their rights have been violated. It is certainly not the only way to assign duties. Much good in the world has been done by assigning informal duties to one another. I have no formal duty of gratitude to my parents, but I exercise it quite conscientiously because I want to do so. Most people do much of the caring in the world without relying on formal duties and obligations. We have to increase the roles of bystanders to maintain justice without relying and resorting too heavily on formal procedures, too. The European Court of Human Rights announced it had a backlog of about 150,000 cases in 2012 (*Reform of the European Court of Human Rights*). So formal procedures may only go so far in actualizing capabilities. Charities face the same pressures as governments do. They are often backlogged and are just as open to power plays and corruption as any other human organization or institution. But it doesn't mean that it is not democratic to support them.

What is “justice” in the capabilities approach to development?

In *Creating Capabilities* and *Women and Human Development*, Nussbaum doesn't speak of justice. The term does not come up once in either of the indexes of these books. However, she does speak of it comprehensively in *Frontiers of Justice: Disability, Nationality, and Species Membership*. The capabilities approach is compatible with the idea that justice not only involves looking at institutional and social connections but also at what a basic human being deserves to expect in a decent society. Amartya Sen has written a great deal about justice and capabilities. He addresses the topic thoroughly in *The Idea of Justice*. He argues that we need to move beyond transcendental institutional theories of justice and focus on issues of comparative social justice. There may be different conceptions of fairness which are all compatible with a comparative understanding of justice. Sen argues

Any substantive theory of ethics and political philosophy, particularly any theory of justice, has to choose an informational focus, that is, it has to decide which features of the world we should concentrate on in judging a society and in assessing justice and injustice (231).

According to Sen, what is just or unjust is not self-evident. For example, Sen uses an analogy of three children wanting the same flute to illustrate his point. Anne, Bob and Carla are arguing about who should get the instrument. Anne argues that she should get it because she's the only one who knows how to play it. It is true that Anne is the only one that knows how to play it. However, Bob steps up and claims he should have the flute. After all, he is very poor and has no toys at all. In a third scenario, Carla makes a case that the flute should be hers because she is the one that made it (*The Idea of Justice* 12-14). Sen argued that reasonable people could pick any of the three arguments which are presented because they all contain claims

supported by rational and relevant reasons. This may be true, but if we put it in context of capabilities, then this may narrow down our range of possibilities.

For Nussbaum, “what the theory says is: *all ten of these plural and diverse ends are minimum requirements of justice* (“Frontiers of Justice” 175).” She points out the capabilities approach uses intuition in determining the capabilities approach. This is similar to the intuition Rawls used in his reliance on institutions and considered judgements in formulating his original position idea (“Frontiers of Justice” 173). In most versions of the capabilities approach, justice requires respecting and creating a space for all humans to have the opportunities (as far as it is possible) to live a dignified life. When thinking about justice, there are still other issues to consider. For instance, not only must we consider who the agents of justice may be but also what their responsibilities are and also the problem of blame in theories and practices of justice.

Responsibility and the Problem of Blame

Young thinks many rules and regulations must be changed, she thinks it is done by people demanding different rules, regulations and processes. Pogge argues for sweeping institutional reforms but suggests that this probably will not happen for quite some time; indeed, “...they are quite unlikely to have much influence on state conduct unless there is a substantial moralization of the citizenries of the developed countries (“Politics as Usual” 182). These positions raise some interesting questions. Are individuals to blame for participating in these processes and institutions? To what extent are they even aware that they are participating in some of these processes? What are the links between blame, capabilities and human rights?

In order to think about how to best understand the relationship between responsibilities and capabilities and ways to encourage appropriate and morally relevant responsibility, it is important to examine accounts of blame, guilt, responsibility and accountability so we can better determine their place in a human rights and capabilities approach to global justice. In *Responsibility for Justice*, Young argues that blame is often not a fruitful way to frame issues of structural injustice. It often involves blame-switching or pointing fingers at a few people in power which doesn't generally get to the root of the problems. In the forward to *Responsibility for Justice*, Nussbaum criticizes some of Young's points. Nussbaum summarizes Young's pragmatic arguments as follows:

Young argues, first, that focusing on blame distracts us from our future tasks. Second, she argues that it does worse than that, focusing our attention on a few likely culprits while apparently exonerating many other people who really ought to get involved in the task of making things better. Third, a focus on blame, because it targets individuals, tends to distract us from the background conditions from which injustice arises. Fourth, playing the "blame game" produces a squirming defensiveness rather than a helpful cooperativeness. Finally, fifth, guilt turns the mind inward, so that we become unhelpfully focused on the state of our own characters, rather than on the task that lies ahead of us (xx).

Nussbaum disagrees with Young on all of these points. She argues that sometimes blame is appropriate and that assigning blame can have a powerful deterrent effect. Nussbaum argues that the second point does not have to be true. For instance, she uses the problem of global warming to demonstrate her point. We can look at films such as *Who Killed the Electric Car* and point at a few people to blame for contributing to environmental harm. However, we don't have to adopt such a

simplistic point of view. Instead, we can look at *An Inconvenient Truth* and realize that most of us are responsible for having such large carbon footprints. We might deserve some blame for not doing more to greatly reduce our own carbon footprint. So while Young's point might sometimes hold true, it does not follow that it is always the case (*Responsibility for Justice* xxiii). Of course, Young is not claiming this is always true. Rather, she is simply claiming that collective responsibility will likely be needed in order to enact meaningful policies which will help us resolve major social challenges. If blame for our own individual huge carbon footprint is appropriate, then what should an individual do to alleviate her blame?

This does not mean there is not a place for individual responsibility, too. It simply means that Nussbaum's view that guilt can often motivate responsibility and that "a good analysis of each person's contribution to global warming applies blame to all Americans who have not made major efforts to reduce their contribution" does not sufficiently acknowledge these issues (*Responsibility for Justice* xxiii). It also does not acknowledge that sometimes feeling guilty because you can do things a little bit differently is a problem that privileged people tends to have. It does not address the larger structural problems nor does it address the psychology of blame.

In *Blame and Responsibility*, Garrath Williams has written about some of the problems of blame. He points out that blaming often is retrospective and focuses on the attributes of the culprit rather than the complexity of the situation she may have found herself in at the time. As Young also states, blame is backward looking when solutions tend to be forward looking. Instead of asking about how the situation caused the actor to behave as she did, it is much more common to point out a character flaw of the person as a reason the blamer believes she is blameworthy. He

writes that blame

...fails to acknowledge that we are all subject to the contingencies that inhere between will and deed, between character and situation, between choice and result; and that dealing with those contingencies is not a task that can fairly be off-loaded onto any given culprit (441).

Martha Nussbaum may very well be correct that individuals deserve some blame for not doing things that they ought to do, or for doing things that they ought not to do, but blame assigners don't adequately take into consideration the complexity of the web of relationships in which we often find ourselves. As Williams has pointed out, social psychologists have documented that when assigning blame there is a tendency to overestimate internal factors of the culprit and to underestimate the situational factors. Furthermore, blaming tends to distract us from our own co-responsibility (however great or small) for complex problems. We may give ourselves the job of being responsible for assigning blame for others without asking ourselves who we are to offer our own judgment and suggest that it should substitute for the 'culprit's' own judgment of the event (433-439). Given all of the problems of blame and the few benefits it may bestow, it seems wise to focus less on blame and more on responsibility for future events, while acknowledging that we can't know exactly what our responsibility will be for future events because we don't quite know what the complex web of events and relationships will look like in the future.

So far, the moral principle underlying the theories proposed by Pogge and Young is to *do no harm*. Part of the problem of blame is that there are many people that simply do not understand the ways in which their own actions are complicit in some of these unjust arrangements. If we accept the idea that human rights and capabilities are best actualized through the collective responsibility of individual citizens, then

we have to address this issue.

In Ashford's torture union example, it is not so much that an individual is to *blame* for the person being tortured. Indeed, they may be completely unaware that their actions are part of a larger problem. This may be due to the way most Americans receive their information. There is currently not a large amount of focus regarding American responsibility for global structural injustice in the mainstream media. As Steve Esquith has pointed out,

...often [everyday bystanders] operate out of richer countries, where their shareholders, owners, managers, donors, vendors, and staff are occasionally disturbed by the poverty and violence they hear about in the media, but are only dimly aware of how the lives they lead depend on this suffering and how their acquiescence to state and other institutions legitimates it (45).

Esquith's comments can help us to recognize that we may have more responsibilities for injustice than we realized at first glance. People are often not aware of the impact their purchasing decisions and voting record sometimes have on people living thousands of miles away from them. If there is not enough information for most people to even be aware of what they don't know in order to seek more knowledge about the topic, then blame is not an appropriate reaction to this problem. If people are made aware of these connections, what amount of responsibility do they have to address issues of global injustice?

For Young, she does not believe anybody can set out a specific set of rules, or an algorithm for discharging responsibilities. She writes, "No philosophy can tell actors just what we ought to do to discharge our responsibility, nor can philosophy provide a formula for decision (*Responsibility for Justice* 124)." Young is simply providing

a framework to think about *our role* in structural processes which result in unjust outcomes so that we might begin to develop a responsibility approach paradigm to issues of global justice. What each of us does to discharge our responsibilities will be based upon our own unique position in the world, our own talents and so on.

When discussing human rights, it is important to note that it has a complex and rich history, which is not easily captured in a few paragraphs. Many of the underlying concepts can be found throughout the writings in all of world history. These ideas are not primarily western, and they have been a part of most religious and philosophical traditions. Poets and novelists have written about them and compassion has often inspired them. However, human rights are now often associated with human rights law. There are critics to this more modern understanding of human rights. People such as Onora O'Neill argue that this right based approach leads to an unhealthy culture of blame.

Human Rights and a Culture of Blame

While Nussbaum may believe that blame is sometimes a productive response to bad actions, there are other concerns regarding blame and human rights. For instance, in *The Dark Side of Human Rights*, Onora O'Neill addresses the issue of human rights and blame from a different perspective. She points out that there is an asymmetry between obligation-bearers and right-holders. She argues that a human rights based approach to ethics may not be the best approach to take because it often results in nothing more than blame games. She states that individuals only act as right-holders when something has gone wrong. They may complain and possibly seek compensation. However, seeking some sort of compensation is a long and arduous process, which does not often end in success. She believes that it is not

a positive experience because, among other things, people have to see themselves as victim. She believes that in addition to taking on the role of victim in order to try to achieve some compensation, it provides an opportunity for people to take pleasure in blaming others for their situation. She writes

Blaming by contrast is readily available and cheap pleasure-even for complainants whose case is not upheld. Those who cast blame can appropriate, enjoy and prolong their role and status as victims, can enjoy indignation and a feeling of superiority, even if they cannot quite identify or demonstrate the feelings of others (438).

She goes on to mention that if a person does not know who to blame than she may blame the system or the institutional framework. However, is O'Neill correct about this point? Are people that demand respect for their human rights really enjoying their role as victims? There are certainly limits to the human rights paradigm, as O'Neill accurately points out when she reviews various human rights conventions. O'Neill also acknowledges that creating a psychology of blame is not all that human rights conventions, treaties and rhetoric can achieve, but she notes that it is something that is of concern and worth paying attention to. However, I think O'Neill is wrong about this because the fact that there is a complicated web of responsibilities, right bearers and duty bearers does not mean that human rights talk will likely lead to a psychology of blame. People often demand their rights simply because they believe they deserve to have certain human rights and these rights are important to their capacity to live a happy and fulfilling human life. Feinberg has written, "A right is something a man can stand on, something that can be demanded or insisted upon without embarrassment or shame (94)." Often, people fight for *other's* human rights. O'Neill does not provide empirical data to demonstrate that a

psychology of blame is prevalent in those that fight for human rights. On the contrary, there have been empirical studies in children's rights literature, which show children do not think about human rights in a way that would concern O'Neill. Actually, there have been several studies that demonstrate if children learn about their rights, they tend to become better citizens. They often will point out when *other* children's rights are being violated. There is no evidence that they engage in the psychology of blame, though they often become more comfortable speaking up when they – or others- are being treated in a way that violates these human rights (109). So while blame may be a serious problem for some of the other reasons discussed earlier in this essay, it does not seem to be an innate reaction, or one that develops frequently when people are immersed in human rights education. So there is no reason to become overly worried about this issue as we move forward to promote human rights.

Conclusion

The role of justice in a capabilities approach goes beyond a benefit account of responsibility. Instead, justice involves institutions, transnational corporations, international and local NGOs, as well as individuals. We should work towards aligning global institutional policies more closely with human rights, but not rely too heavily on human rights. O'Neill has provided some compelling objections to a human rights based ethics. She points out that many states violate human rights. We ought not to be overly optimistic that they will suddenly start to respect them. She demonstrates that some states override many of the Convention rights. Some states ratify various human rights Conventions but then make little effort to work seriously towards their full actualization. These are legitimate concerns but there will need to

be institutional reform if we want capabilities to be actualized. There will also need to be individuals accepting collective responsibility for global justice. Blaming people will probably not be effective. Instead, we need to include care ethics in our capabilities approach. I will discuss care ethics and capabilities in the next chapter. If we attempt to understand our responsibilities for justice through the lenses of capabilities and care, then we will see that our responsibilities are complex, multi-layered and never fully discharged.

Chapter 3

Capabilities and Care Ethics: The Role of Care and Counter Narratives in Ethics and Development

Introduction

I will argue that the role of care is not featured prominently enough in much of the human rights literature. The sustained care of people day in and day out is an essential part of human life. It is a necessary requirement for human flourishing. Yet the concept of care has not been carefully examined in so far as it relates to human rights. If we focus on the concept of care with as much intensity as we analyze concepts of *justice*, *truth* and *rights* then we will see the world through a different lens. This will be a world where care earns its rightful place in the human rights literature.

Ideal humans are reasonable, independent and autonomous, according to the cultural master narrative. If we peer too closely at care ethics, we see that this ideal is impossible to obtain. Humans are also emotional, interdependent and needy. Care often responds to this part of the human experience. Since the neediness of human beings is an uncomfortable truth, it is understandable that people tend not to want to focus on care. However, by avoiding thinking about care we end up with an impoverished theory of human rights.

Fortunately, there are ways of challenging oppressive cultural master narratives. We can introduce counter narratives. In this chapter, I will demonstrate the way good counter narratives can help us develop a more accurate understanding of the role of care in our lives. Finally, I will explain what makes a *good* counter narrative and

how this approach will lead us to think about human rights in a way that takes into account complex, deeply rich human experiences. The role of narrative is crucial to the development of a culture of care. Narratives are designed for a multitude of purposes. Jane Addams, Martha Nussbaum and Hilde Lindemann's work highlight different ways in which the capabilities approach can be helped or hindered through varied types of stories. I will explore which types of narratives are helpful to a capabilities approach to human rights which is adequately and properly informed by care.

Nussbaum on Compassion, Sympathy, Empathy and Sympathetic Knowledge

In *Upheavals of Thought: The Intelligence of Emotions*, Nussbaum defines empathy as "an imaginative reconstruction of another person's experience, without any particular evaluation of that experience." For Nussbaum, the concept of sympathy is closer to that of compassion. She writes, "If there is any difference between "Sympathy" and "compassion" in contemporary usage, it is perhaps that "compassion" seems more intense and suggests a greater degree of suffering, both on the part of the afflicted person and on the part of the person having the emotion (301-302)." In order to properly evaluate another's experience, according to Nussbaum, we need proper compassion. That is, it cannot be parochial or partial in the sense that our emotions cloud our judgments. Rather, by using reason and normative frameworks (such as the capabilities approach) combined with a compassionate understanding of the particulars of a situation we can act more justly. Nussbaum goes on to claim that there is a role for compassion in public life. She asserts that laws and institutions shape our sense of even our most intimate

relationships. Our public understanding, according to Nussbaum, of who should be taken care of and who should do the caring is developed and maintained through these laws and institutions (“Upheavals of Thought” 423).

While Nussbaum argues that just institutions are important she also acknowledges they can’t do all the heavy lifting for civil society. Rather, there are many instances when we need to develop a compassionate citizenry in order to address issues of elder care, love, death, separation and so on. For Nussbaum, “Compassion requires the judgment that there are serious bad things that happen through no fault of their own (“Upheavals of Thought” 405).” She focuses much of her attention on victims, agents, blame, forgiveness, criminal justice and how to get our judgments right.

When thinking about how to get our judgments right, she advocates her capabilities list. She argues that we need to recognize our own capacity for evil (“Upheavals of Thought” 452), avoid relying on lopsided narratives where we tend to over-identify with people most like us and avoid feeling disgust for people that commit violent criminal acts. If we can do this, then we can develop correct judgments and appropriate compassion. Nussbaum believes narratives, art and poetry can help us become more just and compassionate citizens.

Nussbaum on Institutions, Capabilities and Compassion

For Nussbaum, institutions and laws play a prominent role in shaping our compassion. Literature, art and poetry help us to develop a deeper appreciation of the human experience, for example they may lead us to a better understanding of human fragility. Furthermore, if narratives, music, art and poetry are chosen wisely then they can help us stretch our moral imagination. In *Political Emotions: Why Love Matters for Justice*, Nussbaum points out that law is necessary to guard against

“bad civil passions”. She argues “...law often precedes and guides the creation of decent sentiments (“Political Emotions” 315).” She claims that through court decisions such as *Brown vs. Board of Education*, where it was determined that separate public schools for black and white children would be illegal, that emotions and moral sentiments slowly began to change. While guards and weapons were necessary to make sure desegregation occurred, this force ended up creating a space wherein hearts and minds slowly started to change, though there is still a long way to go (“Political Emotions” 315-316). In *Upheavals of Thought*, Nussbaum provides another example of the role of institutions in shaping compassionate emotion. She provides an example of a child with Down syndrome. Nussbaum argues that laws requiring “mainstreaming” of people with this particular genetic disorder into public classrooms helped to change the hearts of students. Through integration, students learned about this particular student and developed compassion for him. She argues that our laws and institutions are “dramatically reshaping our eudemonistic judgments” regarding the treatment of people with such genetic disorders. The student with Down syndrome said value should be measured by the love and compassion we have. Nussbaum writes, “But that compassion, as he knows, is not spontaneous; it is shaped by social and legal structures (422).” It is not clear from the anecdote that the young man actually drew this particular conclusion which aligns nicely with her own position, but her argument is that institutions are responsible for creating conditions where compassion is more likely to develop.

As seen in most of Nussbaum’s work, she argues this can be successfully linked to the capabilities approach. A just nation embraces the list of capabilities she offers, they invite citizens through art, education, memorials and so forth (some of her examples are Millennium Park and the Vietnam Veterans Memorial) to cultivate

compassion and respect for democracy and diversity through these projects. She writes

Any good society has definite ideas of what is good and bad: for example, that racism is bad and equal respect is good...As for public artworks, monuments and parks, it's not even possible for them to be emotionally neutral: they have to be organized in one way rather than another...this, however, is not an objectionable type of paternalism, because it does not remove critique or choice ("Political Emotions" 389-390).

Of course, this may be a circular problem. Nussbaum argues that democratic nation states should have the primary duty to protect capabilities. For Nussbaum, capabilities are justified primarily but not completely by an Aristotelian/Marxist philosophy (*Women's Capabilities and Social Justice* 219-47). She promotes capabilities and encourages democratic nation states and their institutions to keep them in mind when designing laws, policies and institutions. She argues that relying on these institutions instead of more informal approaches is morally appropriate because these institutions are supported by democratic citizens ("Creating Capabilities" 114-117). Elsewhere, she argues that these nation states should cultivate feelings of proper compassion to make citizens more amenable to endorsing the capabilities approach ("Upheavals of Thought" 401-454). However, if the strength of democratic nation states lies in the fact that they reflect the will of the people, then it may be a little bit tricky to argue that the job of the government is to push its citizens in a certain direction. It is also not clear that if a government truly reflected the will of the people that it would want to nudge people in a different direction. However, it is also seems reasonable to argue that government has a responsibility to ensure the rights of all its citizens, so decisions such as *Brown vs.*

the Board of Education are *sometimes* justified. Regarding the relationship between compassion and social institutions, Nussbaum writes

The relationship between compassion and social institutions is and should be a two-way street: compassionate individuals construct institutions that embody what they imagine; and institutions, in turn, influence the development of compassion in individuals (“Upheavals of Thought” 405).

Still, it is clear that she believes nation state institutions should play a large role in shaping the compassion of its citizens.

Jane Addams, Democracy and Sympathetic Understanding

Jane Addams believed there was a role for institutions to protect human rights, too. Addams worked tirelessly with others in her community to promote child labor laws, sanitation laws, immigration laws, women’s right to vote and more.¹ However, she takes a grass roots approach to developing more compassionate citizens. As I will demonstrate later in this paper, in a story about the Pullman strikes she provides a counter narrative that challenges attempts by benevolent leaders to do good for the people instead of doing good with them. For Addams, democracy is more *social* than institutional. She believes democracy is a model of ethics. While her work is compatible with Nussbaum’s and she certainly fought for institutional reform too, her work focuses more on the relational aspect of human life. Addams agrees with John Dewey that “a democracy is more than a form of government; it is primarily a mode of associated living, of conjoint communicated experience (“Democracy and Education” 101).” This focus is not, as Nussbaum

¹ Please see *Twenty Years at Hull House* (page 75 and 185-188), Addams, Jane. *A New Conscience and an Ancient Evil*. Urbana: University of Illinois, 2002 (87-89), Addams Jane. “Why Women Should Vote,” *Ladies Home Journal*, January 1910 (21-22).

says, because we cannot create perfectly just institutions. Rather, it is because Addams and Dewey see that institutional rules and safeguards are necessary in as far as we don't have a sympathetic understanding of one another's lives, challenges, hopes and dreams. Addams argues that action based on sympathetic knowledge is the foundation of a moral life. Sympathetic knowledge is a symbiotic relationship between standpoint epistemology and ethics. She has written, "We continually forget that the sphere of morals is the sphere of action, that speculation in regard to morality is but observation and must remain in the sphere of intellectual comment...until we...are obliged to act upon our theory (*Democracy and Social Ethics* 119)." It is a key component of competent citizenship and is necessary for the development of a strong democracy.

According to Addams, our ethics and our epistemology are intertwined and democracy flourishes when we develop a sympathetic understanding of one another's lives. This involves seriously taking the time to listen to one another and invoking the principle of charity when interpreting one another's actions. She writes, "We know instinctively that if we grow contemptuous of our fellows, and consciously limit our intercourse to certain kinds of people to whom we have previously decided to respect, we not only tremendously circumscribe our range of life but also limit the scope of our ethics (*Democracy and Social Ethics* 8)."

Regarding a search for truth, Addams believes that we can only discover it when we adopt a thoughtful, open and democratic approach to the world around us. We learn to become good democratic citizens through experience, understanding diverse viewpoints, understanding that care is particular rather than general, the importance of challenging conventional narratives and the way abstract moral principles are traditionally applied. We understand that our fate is tied to other views, too. She

embraced the same type of objective standpoint feminist epistemology that Sandra Harding has famously developed. According to Harding,

Feminist standpoint proposes starting research from the daily lives of women (or others who didn't design the dominant frameworks) for three reasons: first, to understand women's lives through concepts and terms that come from those lives. Sociologist Dorothy Smith says the term "housework" would never be coined by people who do it—it clearly comes from the lives of people who work outside the home, for whom the household is not a place of work. Secondly, to "study up": to critically analyze the dominant institutions, their cultures and practices through the lens of people who receive few benefits from those institutions. Third is to understand how the assumptions and practices of those institutions—such as the Pentagon, the Department of Education, the State Department, Wall Street—shape the daily lives of women, and how does what women do shape those institutions (An Interview with Feminist Philosopher Sandra Harding)?

Harding argues that many times the dominant views do not always encompass the views of marginalized people. The views can be expressed by those that are marginalized but it can also be appreciated by those that are in a more privileged position. She points out that Hegel, though he was not a slave, advocated that the master/slave relationship could be better understood if examined from the perspective of the slave. This coincides with Addams argument that through sympathetic understanding and listening we can find a system that is more just and progressive; that transcends one designed only from the perspective of a dominant group.

Moral Motivations: The Promise and Perils of Narratives

The Perils of Oppressive Master Narratives

Nussbaum has argued that narratives are a necessary tool for understanding the intricate layers of particular personal experiences and ideas that make us fully human. Addams would agree with Nussbaum about the importance of narratives. She used classic narratives to present her points poignantly and with an emotional impact usually not felt through reciting abstract principles and theories. However, she believed selecting the appropriate narrative is learned through experience. For instance, Addams had grown up learning the narrative of the middle and upper class people of America. This narrative included people pulling themselves up by their bootstraps, a moral obligation to try to avoid accepting charity from others, thriftiness, and a dedication to hard work. She dutifully accepted this narrative and tried to convince others to turn their lives around by following the instructions contained within it. Through tragic experience, she learned of the shortcomings contained in this narrative. Addams had known a shipping clerk that had been out of work for a long time. He had come by the Hull-House several times to get help for his family. She heard of some work on a drainage canal and told him that he really should try to get that work (or any work) before he bothered to come to a charity asking for help. The man mentioned that he was an indoor worker and that the cold winters were too hard on him. Addams stood by her instructions. Instead of asking the Hull-House for help, he worked for two days digging on the canal. He caught pneumonia and died a week later. It was through this painful experience that Addams realized she needed to gain knowledge about the specifics of people's lives before she could work with them to address the problems they were trying to overcome (*Twenty Years at Hull-House* 109). The narrative she shares with others

has drastically changed from the previous master narrative she passed along to others because of this experience. Addams eventually argued that abstract moral rules applied can do more harm than good. There is no shortcut to seriously listening to one another and developing a sympathetic understanding of the particular, concrete situation.

The Promise of Counter Narratives

Nussbaum argues that philosophers need to spend more time writing about themes in literature. Philosophical concepts are not enough to get at complex truths about love. She argues that writing moral narratives involves finding the appropriate link between conception and expression. Certain aspects of the human experience simply cannot adequately be understood through abstract principles, concepts and rules. Sometimes our ordinary language doesn't have the capacity to uncover and express important truths, either. It takes a "narrative artist" to capture some sort of the truths that are part of the human condition ("Love's Knowledge" 5). However, it is not clear that this approach will have widespread appeal. In *Damaged Identities: Narrative Repair*, Hilde Lindemann argues that some of the examples Nussbaum chooses may be too challenging for even the well-educated readers. Lindemann's point is that Nussbaum seems to assume that most of us have a high level of narrative competence, when this may simply not be the case (44). What is to be done if this is not the case? Nussbaum argues that if we select the right narratives then we will develop the rationally justifiable compassion that is important for a just society. Regarding capabilities, development and global justice, Nussbaum believes novels such as Joyce's *Ulysses* provides a roadmap to thinking about such things.

Nussbaum writes that it may be to claim too much to state *Ulysses* contains a political theory. Yet it does have a political point of view. She writes

This stance combines scientific rationalism with a nonreductive concern for “the soul,” for human emotion and aspiration; a concern for kindness with a passionate defense of sexual liberty (protection of the “law of copyright”); compassion for human suffering with an intense dislike of religious parochialism and obscurantism and of their relative, militant nationalism (“Upheavals of Thought” 708).

She believes the complexity of life, love and political theories can sometimes only be uncovered through this type of narrative art. This is good as far as it goes. But how many people are going to uncover these types of sophisticated truths through this type of literature? As Lindemann has convincingly argued, this approach raises some other questions. There is an epistemological question which is raised; how do we *know* whether or not we are choosing the correct reading material? Nussbaum’s work does not address this question. Furthermore, it may be difficult for some people to find the time and resources to deeply immerse themselves in such narrative art. Finally, Lindemann points out that there is usually an important gap between fiction and real life moral dilemmas. We often have much more knowledge of the motivations, desires, conflicts and so forth of fictional characters than we do of our colleagues, fellow citizens and fellow human beings with unfamiliar customs in locations far away from us. There is not always a way to take what we have learned from reading novels and apply it neatly to the moral dilemmas we face in our own lives. Instead, Lindemann believes a focus on counter-narratives will avoid some of the perils she highlighted in Nussbaum’s approach to narrative art and moral progress. Counter narratives are instructive for several reasons. First, people can create their own counter narratives regardless of social status. They don’t need

some special literary skills in order to fully comprehend the messages contained within the narrative. Finally, there is the problem of linking fiction with the problems of her actual life. While counter narratives may be sparked from reading, they need not be. This provides expansive possibilities for challenging oppressive master narratives without all of the obstacles which might arise with Nussbaum's account (41-46 and 64-68).

Jane Addams already brilliantly incorporated both the theories of Nussbaum and Lindemann into her work. Addams often developed counter stories to challenge mainstream narratives. Marilyn Fischer demonstrates how Addams's interpretation of a devil baby story provides a powerful counter narrative. At the Hull House, a story was being told about a devil baby. According to this story, a baby had been born with cloven hooves. She could speak the moment she was born; she had a tail and so on. Many curious people heard this story and rushed to the Hull House demanding to see this baby. Gawkers and spectators were intrigued by this story. Some older, immigrant women had been excitedly talking about it for some time. Outsiders wanted to learn more about this baby. Of course, on the face of it, these older, marginalized women may have seemed to be crazy or liars. However, Addams offers a counter narrative. The women telling these stories had very little social power and many of them had often been horribly abused. They were seldom listened to or consulted for advice. When men came to inquire about the devil baby, these women used the opportunity to teach moral lessons, to communicate their own pain or sometimes to maintain some family discipline. Addams came to understand the *spirit* of these stories and the truths that were uncovered by sympathetically listening and *actively* trying to understand the meaning behind them. As Fischer points out, Addams accurately portrayed these women as artists and knowledge

makers without romanticizing their methods or ‘feminist consciousness’ (“Trojan Women” 81-105).

Addams uses her experience with these women, combined with sympathetic interpretation to demonstrate how there can be a deeper, truer counter narrative that we may be blind to if we have bought into the web of beliefs promoted by powerful people in our own cultures. Addams also relies on classic stories appreciated by the mainstream culture in order to challenge master narratives that were current in her time and place. For example, in *A Modern Lear*, she sets up the dilemma of a group of workers going on strike against their employer with the following observation

During the discussions which followed the Pullman strike, the defenders of the situation were broadly divided between the people pleading for individual benevolence and those insisting upon social righteousness; between those who held that the philanthropy of the president of the Pullman company had been most ungratefully received and those who maintained that the situation was the inevitable outcome of the social consciousness developing among working people (*A Modern Lear* 69).

She lays this event out as a conflict between an individualistic capitalist with benevolent intentions versus the collective will of the workers. Furthermore, she uses the story of King Lear to bring an imaginative literary element to this problem of misguided benevolence. She works to show how there is a larger lesson to be learned in our understanding of the Pullman strikes. Addams claims that Pullman was doing what he thought was best, he seemed to have a benevolent good will towards those that worked for him. He believed he was doing a great deal more for his employees than many employers of the time. Why did the workers turn against

him? Addams relates this to the story of King Lear, a literary figure who also found his benevolent intentions rejected. In both cases, a benevolent leader tried to do good 'for' others instead of doing good 'with' them. Both Lear and Pullman knew they were extremely powerful individuals and they felt confident that their superior position made it possible for them to successfully direct the lives of those that were considered lower in the social (or familial) hierarchy. They thought they knew better what these people wanted than these people knew for themselves. Hence, both King Lear and Pullman meant well but their stories point to the same tragic flaw. They became too confident of their own personal conception of what is good and they ceased to inquire what others want, or to look at the ethics of the larger social group. Once they went down that path, their most benevolent intentions turned into action had disastrous results. In the Pullman case, his incompetent understanding of care-as-paternalistic endeavors inadvertently led to a path where democracy was compromised. When oppressed workers are not given a voice, then this is a direct threat to the spirit of democracy. The story of King Lear is an example of a respectable narrative which is accepted by the culture yet challenges a master narrative in Chicago politics at the time. Namely, that those with money and power know better than those at the margins of society. This counter narrative challenges the oppressive master narrative endorsing paternalistic policies.

These types of stories are counter narratives which will expand our range of sympathetic knowledge. For Addams, we don't have a duty to care. Rather we have a duty to expand our range of experiences beyond our traditional understandings of the human experience, which is often limited by oppressive master narratives.

Addams often worked with people that were in a different socio-economic class from her. She paid attention to people that at first glance may have seemed different

from her, she sympathized with them and expected to learn from these conversations and experiences. She then was able to construct compelling counter narratives that challenged mainstream values.

Lindemann asks us to use experiences from our own personal lives in order to create counter narratives, too. By linking our own lives to those with similar experiences, we can shift our web of beliefs that connect with a master narrative to a new, more accurate narrative. According to Lindemann, master narratives do not have to be oppressive. However, counter stories are a means to resist those master narratives that do oppress people. A counter story is told in a way "...to make visible the morally relevant details that the master narrative suppresses (7)." For instance, Lindemann writes her own counter narrative to challenge the master narrative of doctors and nurses and provides a powerful example of how some identities are damaged through these master narratives. But she also suggests that counter narratives can repair our identities. For instance, she tells the story of a nurse named Virginia Martin. This nurse had internalized her job from the doctors' perspectives. She believed her job was not as serious or important as a doctor's job. She also dismissed behavior that discounted her ethical viewpoints and her side of the story as simply docs being docs. However, as she joined a committee of nurses and they talked, she began to start to challenge these enculturated beliefs. She heard stories from other nurses who were indignant of being treated like children, who resented the ways in which they were sometimes exploited. Virginia Martin started to feel indignant for them in a way she was unable to feel for herself. By linking her experiences to those of other women with similar experiences but with different interpretations of events, she began to develop her own counter narrative over time (1-10). These counter narratives help us form identities which are important to us.

Our stories also help other people form their own identities outside of the master narratives. For instance, in Virginia Martin's case the doctors saw the nurses as mother figures. Lindemann writes

When...the physicians at Virginia Martin's hospital think about the nurses at all, the picture in their minds, seemingly so normal and ordinary that it crowds out other possible representations, is that of the loving mother who tends to the bodily and emotional needs of the sick. The image is latent rather than manifest, not even fully acknowledged even by the doctors themselves, but its latent quality is what gives it much of its power (146-147).

Lindemann goes on to point out that these nurses do not think of themselves as mothers nor do they think of their patients as children. The point of counter stories are to expose oppressive structures found in the master narratives and replace them with more liberating, fuller and accurate stories. This applies to many of Addams's stories, too. Lindemann recognizes that in order for these stories to be successful they have to get at the root of the problem, they should be widely circulated, "culturally digestible" and both sides of the power equation should be able to relate to them (150-188). While some portions of Addams's examples and stories seem outdated today, she was working to make them "culturally digestible" for the time and place in which she existed.

While Lindemann does not identify with care ethics, her work on repairing damaged identities by thinking about the role of narrative in ethics provides a powerful methodology for incorporating compassion and care in local, national and global politics. A large part of the work that is still needed to be done in global justice will involve shining a light on what is often unseen. By making these latent

images of care workers manifest, by appropriately challenging various narratives such as pulling oneself up by one's bootstraps, of a work ethics that does not consider what sort of capabilities are necessary to do the required work in a society, by providing counter narratives to demonstrate examples of the “privileged irresponsibility” introduced in Joan Tronto’s work, we can create a space where care is more adequately and appropriately featured in both our global and domestic political landscapes.

Global Justice, Capabilities and Care Ethics

Care ethics demands effort, experience, knowledge, imagination, and empathy for the totality of the moral context to be effectively understood. The result is not exoneration of personal responsibility but a richer understanding of the human condition whereby we are all actors and acted upon (*Feminist Interpretations of Jane Addams* 15).

In the field of global justice, Thomas Pogge has made an enormous contribution. He has provided compelling statistics and reasons to demonstrate that global institutional policies need to be reformed. Pogge has provided powerful counter stories, too. For example, he challenges the “purely domestic poverty thesis” (“Politics as Usual” 32) by arguing that some people still maintain that when societies are not thriving, then it is the fault of local politics, philosophies, religious views and so forth. But this overlooks the role of colonization, global trade, trade policies and even genocide. Pogge provides a compelling counter narrative to challenge this master story. He demonstrates how Western nation states are creating unjust global institutions which primarily benefit the powerful. He argues, providing case studies, that it is evident that these global institutional arrangements are causing severe deprivation in poorer regions of the world (“Politics as Usual” 32). However,

as Fiona Robinson has correctly pointed out, Pogge's approach to global ethics is rights-based and ignores the rich relational nature of human life. He tells some compelling counter stories but he doesn't tell a broad enough range of them. According to Robinson, his account is "procedural, individualistic, universalistic - it focuses on the procedures for arriving at a theory of justice which privileges individuals as autonomous, and seeks to extend this principle to all individuals in the world (11)." She argues that this approach is fatally flawed, in part, because it is not possible to simply add women and stir (5-25). I do not believe that Pogge's approach is fatally flawed. However, Robinson is surely correct that it does not go far enough. He has not successfully made the case that an institutional negative rights model is the best way of achieving global justice. Additionally, he has not included issues of care into his theory, and until he does it is woefully incomplete. A case can be made that the popular neo-liberal model of global trade, policy and so forth *is* an oppressive master narrative. While Pogge challenges an extremely important part of this narrative, he leaves part of the oppressive structure (the invisibility of care work) fully intact. As Lindemann has noted, "Oppressive master narratives commonly construct the identities of certain classes of people from the perspective of an arrogant eye, dismissing and degrading anything about the members of the class that does not bear directly on their value to the dominant group (173)." This is a clue to how so many issues related to care have been overlooked with the solely individualistic approach to global justice. I am not arguing against individual rights but rather that this is a truncated approach to thinking about complex, deeply rich human experiences. This approach averts some important issues, which simply can't be avoided when thinking about global justice.

Counter Narratives and Global Justice: Making the Invisible Visible

For example, an area of trade that prima facie appears gender neutral, but is really gender biased, is the informal economy. It is virtually ignored in world trade policy. According to the 2009 World Survey on the Role of Women in Development, the informal trade sector needs to be addressed. Often, women working in the informal economy lack the income to gain from tariff exemptions, are uninformed about taxation policies, and are unaware that they have any labor rights. Additionally, they are not protected by standard safety regulations nor are they eligible for social security. Furthermore, they are generally excluded from the decision making process. They do not participate in the development of trade, investment, or labor policies. Those participating in the informal economy, which includes a high percentage of women, are often working informally because of a variety of reasons, though I will only briefly focus on two issues here: 1) Stereotypical attitudes towards traditional notions of ‘women’s’ work (housework, child care, and other unpaid and undervalued work) often confine women to the informal sector of the economy. 2) Certain trade agreements, such as NAFTA, lead to retrenchments and radical changes in production, which lead to more women becoming part of the informal economy. Women are often the last hired and the first fired, which thrusts them back into the informal economy. Often times, men are seen as the bread winner, which is an excuse to let women go first. “This (the informal economy) has become the last resort not only for the increasing number of retrenched workers, but also for factories through subcontracting to the informal sector in order to cut labor costs (*Bridge*).” As more and more women are becoming members of the informal sector due to unfair trade agreements, they become increasingly marginalized *and invisible*. Those most negatively impacted by these policies are the poor and

marginalized women. Since the poor and marginalized groups of people are the ones *most affected* by the world trade policies, their stories need to be told. If we adopt Harding's objective feminist standpoint theory, which focuses on the relationship between women's daily lives and the institutions which govern their lives, then we will see that a focus on care and an ethics of care must be included in any human rights ethics.

I chose to focus on stereotypical attitudes of care work and the way that some trade agreements render many women virtually invisible because these stereotypical attitudes about women are often grounded in oppressive master cultural narratives. These entrenched problems are a reflection of both domestic and global institutions, policies and systems that do not value care. As Tronto has pointed out, they may not value it because they may not *see* it. People tend not to see that which frightens them or makes them feel less than human in their current cultural master narrative. In much of the traditional western philosophical literature, these ideal humans are not in need of care. By peering too closely into the ethics of care, that false philosophical ideal is shown to be impossible to obtain. For those that are successful by society's standards, focusing on care can raise some troubling questions about their own moral right to great wealth and the importance of the work their care givers do.

Tronto argues

Care work is devalued; care is also devalued conceptually through a connection with privacy, with emotion, and with the needy. Since our society treats public accomplishment, rationality, and autonomy as worthy qualities, care is devalued insofar as it embodies their opposites (117).

It is easy to see *why* many people want to devalue care but a thorough investigation reveals the important role care has in all of our lives. How can we incorporate an ethics of care into our political conceptions of capabilities and human development? Nussbaum's capabilities list addresses this issue. She includes the right of affiliation:

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 and to have compassion for that situation; to have the capability for both justice and friendship ("Women and Human Development" 79).

The ways care has been devalued in both global and domestic politics has been well documented. Care givers are often forced into poverty when they provide care to family members for an extended period of time, for example.² Robin West argues that Nussbaum's capabilities approach is the best argument for a liberal welfare state. West proposes a right of caregivers "to give care to dependents without incurring the risk of severe impoverishment or subordination (Rights, Capabilities, and the Good Society)."

While this is an important right and, as both West and Nussbaum point out, the language of rights has some rhetorical benefits, there still needs to be a foundation which makes people appreciate the significance of this right. Yet, as we know, rights that aren't internalized by the majority of people are often unenforced. This does not mean that unenforced rights are not necessary, merely that they are not sufficient for actualizing the capabilities of people to live free from these threats. There are plenty of examples of unenforced rights in the United States, too. For instance, American

² See *Love's Labor* (1999) by Eva Kittay, Joan Tronto's work *Moral Boundaries*, Robinson, Fiona. *Globalizing Care: Ethics, Feminist Theory, and International Relations* for some examples.

women are supposed to be considered for jobs based on their qualifications, yet studies shows that applications with typically female first names are more likely to be rejected. Women with exactly the same qualifications as men are often viewed as inferior candidates (“Through the Labyrinth”). Legally, women are supposed to be paid the same as men for comparable work. Yet, women earn on average about three quarters of what men do for equal work (“Through the Labyrinth”). Legally, women have reproductive rights including abortion. Yet, in rural areas, 97% of the counties have no abortion provider (Women in County without Abortion Provider). This demonstrates that an ethics of care, an ethics of responsibility, and an understanding of power structures and groups are necessary for the creation of a space wherein there is the opportunity for more of these capabilities to be actualized. An ethics of care can be encouraged through a capabilities approach and a counter narrative methodology. For example, Addams mentions that a master narrative among charity workers is that saloons are places of horror. However, when charity workers express their beliefs about saloons their warnings often do not ring true. Instead, many clients remember the kindness they received at saloons. They recall the drinks that they were given until they got back on their feet, the warm room and kind words. They are reminded of the care that was exhibited in the saloon that was not always exhibited by the charity worker. Addams challenges the traditional charity worker’s understanding of situations by providing these types of counter narratives, which focus on the importance of care in people’s lives (*The Subtle Problems of Charity*).

Addams also would recognize Nussbaum’s point that care needs to be political, though she might balk at the claim that an ethics of care is developed through institutions. Addams wrote

Doubtless we all fled something distasteful in the juxtaposition of the two words "organized" and "charity." The idea of organizing an emotion is in itself repelling, even to those of us who feel most solely the need of more order in altruistic effort and see the end to be desired (*The Subtle Problems of Charity*).

Our emotions often motivate us to organize, not the other way around, according to Addams. So while a capabilities approach to human development is helpful, we want to keep in mind the importance of experience and sympathetic understanding in developing our political conceptions of care and capabilities.

Capabilities, Care Ethics: A Right to Care and Beyond

“In the unceasing ebb and flow of justice and oppression we must all dig channels as best we may, that at the propitious moment somewhat of the swelling tide may be conducted to the barren places of life (“Twenty Years at Hull-House” 40).”

Jane Addams argued that justice, rights and care are all part of a democratic society. While she did not argue for a strict duty to care, she did believe that once we gained a fair amount of sympathetic knowledge about a situation, then we ought to act. She worked in her community as an individual citizen to promote human rights and issues of economic justice, while also recognizing the extreme importance of collective action. Addams conjunction of moral psychology (sympathy) and epistemology (understanding) can also serve as a key component in both an ethics of care, as well as an ethics of justice. Though Addams did not use the same terminology, her concept of sympathetic understanding is grounded in an ethics of care. As Carol Nackenoff has pointed out, Addams’s concern that the democratic

process includes all voices can be helpful when thinking about democracy from a care ethics perspective. Nackenoff writes

Feminist arguments for an ethic of care and at least some strains in the recent civic engagement debate in the United States share the premise that meaningful democratic politics requires transcending notions of the autonomous individual whose self-interest is an adequate expression of citizenship (119-142).

Addams's approach is consistent with contemporary care ethics, which tends to emphasize the importance of personal relationships, compassion, love and sympathy. She demonstrates how caring social relations are necessary for engaged citizens to build a strong and agile democracy. While Addams's philosophy is relational and promotes engaging in one's own community, it is also about challenging institutional injustice. A duty to care is too abstract for Jane Addams. The capabilities approach, while often abstract, also acknowledges the importance of care to a proper human life. This means both a stronger ethics of care, as well as respect for those that do the caring, in addition to the recommendations made by Thomas Pogge. It often requires a creative combination of individuals, organizations and nation states to create a more just world. It will take the same type of creativity to create a more caring world. Addams approach to political projects is consistent with some of Iris Young's work in *Responsibility for Justice*, too. Young points out that it is often inappropriate and ineffective to blame others. In cases of structural injustices, it is easy to oversimplify the complexity of the various processes, institutions, policies and so forth which contribute to serious problems. Many people tend to become defensive when they are blamed for things that they may only be partially or indirectly responsible for and a blame game begins. In public discourse,

this often results in different sides pointing at each other and this approach often distracts us from taking positive action to solve the complex problems which arise in this increasingly interrelated and globalized world (116-117). Addams did not focus on blame, either. For instance, in *The Spirit of Youth and the City Streets*, Addams considers the reasons so many children get into trouble with the law. Some of these reasons include: relief from boredom, wanting to fit in with other children, a quest for adventure, an escape from the bleakness of their own lives and so forth. She writes

Out of my twenty years' experience at Hull-House I can recall all sorts of pilferings, petty larcenies, and even burglaries, due to that never ceasing effort on the part of boys to procure theater tickets. I can also recall indirect efforts towards the same end which are most pitiful (51).

Addams's is not arguing that what these children are doing is morally justified. Rather, she is trying to better understand the motivations underlying their actions instead of simply dismissing their actions as inappropriate or immoral. It is through caring and sympathetic knowledge that we gain an understanding of what sort of policies and institutions we need in order to actualize capabilities.

Conclusion

Through compassion beyond parochialism as advocated by Nussbaum and by the counter stories advocated by Lindemann and demonstrated by Addams, we can develop a framework for the possibility of care earning its rightful place in development ethics. Through accessible narratives we can make the case for the importance of care in human rights and capabilities. Care plays an important role in all of our lives and ought not to be made invisible by our political processes and

institutions, both domestic and global. We need to address the fear and disgust sometimes surrounding the idea of care through powerful counter stories. Resistance to an ethics of care may be partially based on a fear of thinking about those on the frontline giving care. These issues must be addressed. Addams writes about the dangers of human beings turning away from topics that produce negative visceral reactions. While she doesn't focus particularly on care in this example, it is clear that her thoughts would be helpful to this issue. Regarding prostitution and the white sex slave business, Addams points out that the idea of "commercialized vice" is something many men and women don't seriously contemplate. It puts them "into a state of indignant revolt." Addams argues that people may use these feelings to justify not thinking about it. These feelings cause some to justify a willful ignorance to uncomfortable topics. However, it is vital that we go beyond discomfort and address uncomfortable issues. Addams writes:

Some of the writers who are performing this valiant service are related to those great artists who in every age enter into a long struggle with existing social conditions, until after many years they change the outlook upon life for at least a handful of their contemporaries. Their readers find themselves no longer mere bewildered spectators of a given social wrong, but have become conscious of their own hypocrisy in regard to it, and they realize that a veritable horror, simply because it was hidden, had come to seem to them inevitable and almost normal ("A New Conscience" 7-8).

She encourages writers to write about these issues, to provide counter narratives, and to provide those stories which address issues of social justice. Regarding her retelling of King Lear, she is reminding people of the importance of standpoint epistemology. It is helpful to pay careful attention to marginalized points of view in order to avoid paternalism, or other undesirable -isms. By sympathetically listening

to the old women's tales of a devil baby, she provides a counter narrative that demonstrates the wisdom and human dignity of the story tellers. Her counter narratives force us to consider morally relevant features of a situation which we might otherwise prefer to ignore. Addams's counter narrative reveals the oppressive structures that rendered the story teller's lives virtually invisible (*The Long Road of Woman's Memory*). Through sympathetic understanding and political activism we can create a symbiotic activism through which care earns its rightful place as a centerpiece in a conversation about capabilities and global justice. Through this symbiotic activism, it will become evident that the institutional negative duty approach of Pogge (wherein he argues that those in the West have violated the negative rights of others through their institutions and hence must work collectively to reshape or dismantle these institutions) and Miller's basic needs approach are insufficient to address the scope of issues involved in a baseline understanding of global justice.

Chapter 4

Choosing Narratives in Development Ethics: Beyond Nussbaum's Narrative Choices

Introduction

In this chapter, I will examine some of the narratives provided in Nussbaum's work. While she is challenging several master narratives in other cultures with counter stories, narratives demonstrating Western responsibility are largely missing. In *Women and Human Development* and *Creating Capabilities*, Nussbaum argues that unequal social and political arrangements often results in human beings having unequal abilities to achieve human capabilities. Throughout these books, she presents stories from several Indian citizens' lives in order to illustrate the importance of promoting such universal capabilities; she also addresses environmental issues and challenges of population growth. Many of the cases she explores are about the challenges women face from corrupt local governments, patriarchal culture and severe poverty. What seems to be missing from Nussbaum's narrative accounts is the role many Westerners have in contributing to, as well as benefitting from, global structures which exacerbate the problems of women in countries such as India. She certainly addresses this issue emphatically in some of her later work. For instance, in *Frontiers of Justice* she notes an adequate theory of justice must address "...inequalities between richer and poorer nations, and between human beings whatever their nation (9)." She fully believes a capabilities paradigm is robust enough for a critical analysis of Western power, which seriously addresses the roles of Western governments and transnational corporations in global justice issues. Yet there needs to be much more focus on developing a responsibility

approach in the capabilities paradigm. Alison Jaggar's provides a daunting critique of a portion of Nussbaum's argument for global responsibility (185-200). Jaggar agrees with Nussbaum that gender discrimination is a global problem. For instance, there is no nation on earth where women are paid the same as men for equal work.

Further, Jaggar agrees with Nussbaum that western feminists are often especially horrified at some of the challenges women in the global south face, such as arranged marriages and female genital cutting. However, according to Jaggar, western feminists don't often carefully examine Western complicity and power and the role it plays in women's oppression in the global south. Jaggar argues that if western feminists want to work with women in the global south it would be most helpful to challenge economic and political global injustice, which contribute to the severe oppression of many of these women. Another challenge to capabilities is the master narratives found in development and aid work. There are, of course, reasons for these narratives. Some narratives tend to take a hold of our imagination more than others. We tend to like explanations that are short and to the point. We also tend to appreciate narratives that don't take us too far out of our area of comfort and seem to have clear solutions. This is how, in part, some master narratives are born. The obvious problem is that these master narratives sometimes inadvertently reinforce ways of doing things which are counterproductive to actualizing capabilities. In this chapter, I will examine some of the cases illustrated in Nussbaum's work and demonstrate how considering western complicity and responsibility in these examples may lead us to different conclusions regarding what some of primary obstacles are to the actualization of capabilities around the world. Further, I will demonstrate how virtue epistemology, as advanced by Miranda Fricker, will provide a strategy which is useful for choosing appropriate responsibility focused counter

narratives when thinking about how to best promote capabilities and development.

Challenging Master Narratives by Recognizing Western Responsibility

In *Women and Human Development*, Nussbaum writes about many injustices women face worldwide. She provides a compelling argument for considering individual universal rights in development policy. She points out that the most prominent life quality assessment used to be the Gross National Product (GNP). However, this is not the best measure of human development. There are countries that do very well on GNP per capita but still have other serious human rights problems. For instance, two countries may have identical GNP's but have very different female literacy rates(60-61). If we want to work towards measuring an individual's capacity to live a flourishing life, as Nussbaum defines it, then we certainly need to consider factors beyond GNP. Next, Nussbaum also examines Gary Becker's model of the family. In his book entitled *A Treatise on the Family*, Becker devotes an entire chapter to altruism in the family. His book contains a great deal of economic theory and introduces utilitarian calculations to show that families tend to be altruistic. He writes, "Altruism is common in families not only because families are small and have many interactions, but also because marriage markets tend to "assign" altruists to their beneficiaries (63-64)." Nussbaum correctly points out that it is problematic to assume that family dynamics are always based on altruism and that heads of households are always concerned with how to distribute resources fairly to ensure every member can exercise their capabilities. She writes

The upshot of this assumption is that we need not ask how each and every individual in the family is doing, even with regard to utility: we only need to ask about the whole, and assume that the distribution has been altruistic. For this reason, development workers influenced by

Becker's model have typically sought information about households, rather than about individual household members... ("Women and Human Development" 64).

Nussbaum correctly points out that it is problematic to assume that family dynamics are always based on altruism and that heads of households are always concerned with how to distribute resources fairly to ensure every member can exercise their capabilities ("Women and Human Development" 63-64). The examples she uses to illustrate the problematic nature of this utilitarian calculation are interesting. For instance, she mentions that it is difficult to find out how widows in India are doing, since the data usually appear in measurements of other heads of households. If we look at this from Nussbaum's individualistic model at the micro level, it makes sense to dig deeper to ask how the widows are doing.

If we examine global responsibility from a western responsibility approach, then it will be fruitful to ask why some of these women are widows in the first place. Jaggar's perspective can illuminate the structural injustices which cause some Indian women to become widows. For instance, Vandana Shiva has spoken about "Monsanto widows." She points out that there used to be no farmer suicides in India. Rather, suicides in the Indian farming communities emerged in 1997. She writes, "The policies of corporate-driven globalized and industrialized agriculture deliberately destroys small farms, dispossess small farmers, and render them disposable ("Earth Democracy" 120)." Shiva points out that there are a couple of different forces working against these peasant farmers. In 1998, the World Bank's structural adjustment policies forced India to include global corporations such as Cargill, Syngenta and Monsanto into their seed sector. According to Shiva, everything changed overnight. The seeds that farmers had been saving for centuries

were suddenly replaced with these new corporate seeds, which could not be saved. They would also have to purchase large amounts of fertilizers and pesticides in order to continue farming. These farmers were pressured to go into debt and they were promised great profits. Instead of the 1,500 kilos per acre promised by companies to the farmers, the harvest was sometimes as low as 200 kilos per acre. There were new pests introduced into India, which required more and more pesticides. Seeds that had been a free resource to these farmers now cost money.

The second serious problem that farmers face is the stunning drop in prices for farm produce, which was the result of World Trade Organization (WTO) policies. The policies were essentially put into place in order to allow more powerful countries to subsidize their crops while simultaneously not allowing less powerful countries to protect their farmers from this cheaper imported produce. The result is that many Indian peasant farmers became indebted to Western corporations and could not afford to repay these debts. As they had no collateral other than their farms to put up, these global corporations seized their farms. Some of these farmers became so distraught and humiliated that they chose to commit suicide. Their wives either found them or were told that their husbands were lying dead in the field. Most of the farmer's preferred method of suicide was drinking the pesticides that they bought when they had hopes of getting rich ("Earth Democracy" 120-130). While this is a tragedy for the entire family, it would miss the point to simply inquire how the widows of these farmers are doing. These women might mention their impossible workloads, crushing poverty and so forth but the question of how they are doing is much different from the question about how this situation occurred in the first place. The latter question is one that is more appropriate for Western feminists to ask.

There are compelling counter narratives to support the claims that globalization and the Green Revolution were not without severe costs. PBS has provided counter stories, such as *Seeds of Suicide: India's desperate farmers* which documents some of the complexities of this issue and demonstrates how some Indian farmers are used as guinea pigs in what many experts in the field are calling “experimental farming.” *Harvest of Grief* is a counter narrative documentary which also examines the causes of Indian farmers' suicides in southern Punjab's Sangrur district. It explores issues of debt, liberalized trade agreements and globalization. These trade agreements have helped some people, but have also taken away the capabilities of many farmers in this area. Without examining the role of Western policies and the complex global arrangements which have led to tremendous losses for some people, it is not possible to adequately address the issue of how to successfully create a space for more capabilities. To ask how the widows are doing is, of course, important. But telling the individual stories of some of these widows and understanding their stories through the lens of unjust global corporate and trade policies is different from simply asking how the widows are doing. We need to ask how the widows are doing. But we also need to ask how we can we stop so many people from unnecessarily becoming widows. In *Harvest of Grief*, widows and members of families where someone committed suicide are interviewed. Their voices and their stories are told. There are also accounts from survivors who tried to kill themselves by drinking pesticide. When these stories are put into the context of global trade, the problems with the soil, the demand for expensive pesticides (which in turn eventually create new problems for farmers) and the way that farmers are put into debt tells a complex story from a perspective that should not be excluded when examining capabilities through the lens of Indian women.

Critics of Shiva's Narrative

Many scholars argue that Shiva is prone to essentialism, oversimplification of complex topics and that her scientific methodology is not rigorous enough to support her case. There is some truth to these critiques. Regarding essentialism, Shiva has tried to defend herself against this charge. However she often laments the loss of “the feminine principle” and argues that environmental problems occurred due to the “masculinization of agriculture (*Women and the Gendered Politics of Food* 17-32).” Even people sympathetic to her views have acknowledged that she tends to oversimplify her case. For example, Christopher Kirby and Sally Scholz observe that Shiva makes numerous claims that need empirical evidence. They tested one of her hypotheses; “gender earnings inequality is higher in countries that are more integrated into the world economy.” They note that their regression results provide some support for Shiva's argument, though their results also demonstrate that the situation is much more complex than Shiva has reported and different countries may have different results. There *is* a relationship between global trade and gender earnings inequality but it is not as straightforward as Shiva argues. Rather there is more of an inverted U relationship between gender earnings inequality and globalization (2011).

Opponents of Shiva's hypotheses often provide harsher criticism of her work. Ronald Herring calls her an “epistemic broker.” According to Herring, epistemic brokers are “intermediaries of knowledge” that try to convince people to be afraid of that which they don't understand. He argues that these epistemic brokers have “...played a significant role in creating, energizing and sustaining opposition to transgenic crops. Within networks and between networks, intermediaries translate information into terms conducive to political action (614).” He goes on to argue that

Dr. Shiva is the primary epistemic broker in an anti-globalization network. He claims that in her narrative “there are no choices, no experimentation in the fields, no farmer choices, no institutional mediation, only compulsion and traps (616).” He also maintains that she does not provide empirical evidence to support her claims. The Boston Review provided articles on GMOs and while Shiva was not specifically mentioned, many well respected scientists argue for a less polemic view. Pamela Rowland argues that GMOs are safe for human consumption and do not harm the environment. There are serious social policies which need to be seriously considered. Rowland writes

It is time to change the debate about food production. Let’s frame discussions about agriculture in the context of environmental, economic, and social impacts—the three pillars of sustainability. Rather than focusing on how a seed variety was developed, we must ask what most enhances local food security and can provide safe, abundant, and nutritious food to consumers. We must ask if rural communities can thrive and if farmers can make a profit. We must be sure that consumers can afford food. And finally we must minimize environmental degradation. This includes conserving land and water, enhancing farm biodiversity and soil fertility, reducing erosion, and minimizing harmful inputs. We must work together to identify the most appropriate technology to address a particular agricultural problem.

Shiva may choose to advance a compelling narrative that is simple, easy to understand and easily digestible to people that have been negatively impacted by globalization. However, these sorts of simple narratives can backfire. Shiva has raised some interesting points about the impact globalization has on *some farmers and their families*. As an activist, Shiva has provided narratives that have generated much support for her cause. On the other hand, the lack of nuance and rigorous

scientific methodology found in her work is problematic. These deficiencies make it easy for opponents to reject her arguments out of hand. Jane Addams and Miranda Fricker both argue that we should listen empathetically to counter narratives and work to avoid unfairly dismissing views that we may not agree with at first glance. Fricker argues that we ought to develop the virtues necessary for testimonial justice. If we engage in Shiva's work with the spirit of testimonial justice, then we can better determine which parts of her counter narratives are compelling challenges to oppressive master narratives. If we examine her work on its merits, without fully rejecting it when we find passages which are inaccurate or not adequately supported by evidence, then we can better judge which part of the narrative *is* accurate. We can also more charitably consider the *spirit* of the narrative.

Gender, the Environment and Western Responsibility

In *Creating Capabilities*, Nussbaum writes about the importance of the environment to human development. While Nussbaum believes that sentient creatures are intrinsically valuable, she argues that most people around the world do not hold that view. Nussbaum argues that since environmental sustainability issues are so vital now, it is best to adopt an anthropocentric approach today and move forward with environmental policy. For example, she writes

...since action protecting the environment is not a matter on which we can afford to wait, it is important to develop anthropocentric positions...as effectively as possible (165).

She examines population control arguments advocating the need to slow down environmental degradation. She also briefly examines the argument about our responsibility to protect the capabilities of future generations in her short passage on

the relationship between the capabilities approach and environmental sustainability. Nussbaum argues that population issues will probably resolve themselves with education and women's empowerment. She notes that we need to take future generation's rights and capabilities seriously and the capabilities approach is a good way to address these issues. This is because it "...encourages the disaggregated consideration of a wide range of effects on different parts of human lives ("Creating Capabilities" 164)." For example, it allows health and economics to be measured separately.

While it is true that a capabilities approach informing a human development report is better than aggregated economic reports, it is still problematic that the items she mentions when discussing the environment are population control and future generations. Regarding the brief section on population control, she never mentions the fact that the United States has less than 5% of the world's population and yet consumes 20% of the world's energy (International Energy Statistics). Further, she does not demonstrate how this inequitable activity is hurting poor people now. Greater focus should be on how to reduce United States energy consumption patterns rather than focusing on population control in countries such as India. While it is important to think about future generations, there also needs to be serious and specific consideration regarding how environmental sustainability projects tend to be focused on countries in the global South and how many of these projects currently tend to disproportionately negatively impact poor women in these countries. There are so many counter narratives one could provide. I will only briefly mention a few here. These are narratives about how power and privilege contribute to environmental degradation and who the winners and losers are in such arrangements.

For example, Bina Agarwal has written extensively about how the dependence of the poor is high for fuel and fodder. She has demonstrated how poor women have traditionally relied upon common areas to get these vital resources, yet these commons are decreasing at an alarming rate. Due to the lingering effects of colonial rule and continuing into the postcolonial period, there has been increased state control over forests. Selective access tends to be given to richer people, there is exploitation by both European and Indian private contractors and privatization has led to increased hardships for rural women in many of these areas. Women were already working ten to twelve hours a day in most of these places. At the time of the report, there had been a several-fold increase in firewood collection time (119-158). The Human Development Report, founded on the Capabilities Approach, acknowledges this is a problem and that excessive and unsustainable use of natural resources generally hurts poor women and children.

Dams and displacement has been discussed extensively in work about India and environmental justice, along with how these projects frequently hurt some women disproportionately, especially those that are widowed or unmarried. In some of the states involved in this project, control is ultimately given to the eldest male in the family ("Displacement by Development" 271). The role of the World Bank to originally fund these projects resulting in being displaced without adequate compensation is well documented. Arundhati Roy and others successfully put enough pressure on the World Bank so that they finally withdrew their funding support for the Narmada Valley Dam Project. Roy wrote passionately about this project. She certainly placed blame on the Indian government when she wrote

It's time to spill a few State Secrets. To puncture the myth about the inefficient, bumbling, corrupt, but ultimately genial, essentially

democratic, Indian State. Carelessness cannot account for fifty million disappeared people. Nor can Karma. Let's not delude ourselves. There is method here, precise, relentless and one hundred per cent man-made (13).

Still she blamed the World Bank, too. She famously argued that the bank can effectively keep control of the Indian people by keeping them in a vicious cycle of debt. Roy argued the developers and financiers of these projects did not genuinely listen to the people's concerns; rather they pretended to listen and then rationalized what they were doing and then tried to convince opponents with rhetorical flourishes and vague arguments.

Larry May claims that we have a shared responsibility for projects such as this. He argues that the concept of responsibility needs to go beyond individual responsibility, though shared responsibility still involves individual responsibility. He writes that the concept of shared responsibility is important because it expands standard lexical definitions of responsibility and allows the concept to include for harms that are committed within the framework of our society. For May, it does not matter if we directly participated in creating these harms. The concept of shared responsibility is important to May because when we act, we are often mindful of the reaction those in our culture will have to our actions. We tend not to engage in those activities which our culture aggressively disapproves of, for example. We may be responsible for our collective inaction, too. May notes that some cultural attitudes allow for a space wherein injustice can flourish. He uses racism as an example, but his justification for shared responsibility applies to any cultural narratives which ignores or encourages injustice (40-46). If we don't speak up when our government, our transnational corporations and global institutions engage in unjust environmental

practices then we are individually partially responsible for these unjust actions. In the case of the World Bank and the Narmada dam project, Roy wrote in 1999 that the dam industry was worth 20 billion dollars a year. Bankers, politicians, “environmental consultants” and dam construction businesses (many of them from western countries) worked together in order to create these dams regardless of the consequences to some of the people living in the area. We are a part of a culture. Our actions, as well as corporation’s actions, are largely shaped by the operational beliefs and attitudes of our culture. Hence, according to May, individuals have a shared responsibility to address and work towards addressing the unjust consequences which result from dam projects such as these because we all tend to empower each other through the reinforcement of cultural attitudes.

On the other hand, Iris Young argues that May’s argument is too backwards looking. As I mentioned in the last chapter, Young believes that given that people become defensive when they feel blamed for something, she promotes a social connection model of responsibility to address situations such as this. She argues that May’s position is similar to a liability model of responsibility, which she rejects in cases such as this. She argues that the social connection model of responsibility is superior to other liability models for the following reasons:

It does not isolate perpetrators; it judges background conditions of action; it is more forward-looking than backward-looking; its responsibility is essentially shared; and it can be discharged only through collective action (180).

Young believes that people are more psychologically motivated to accept responsibility for things when issues are framed in forward looking language. She also thinks it is a fact that many people may not have had proper knowledge of past

actions, they may not be aware of these dam projects and so on. This is not to excuse ignorance, of course. Rather, it is to point out that once people know they are connected to these dams in ways that may not have originally been obvious, then they have responsibilities to change things for the better from that point forward. It is unfruitful, and sometimes unfair, to blame them by looking backwards.

Regardless of whether we accept May's liability model or Young's social connection model of responsibility, a case can be made that western citizens have a responsibility to work towards ending their countries involvement in projects that are unjust or at the very least we must work to ensure that these types of projects don't egregiously hurt innocent bystanders.

In the case of the Narmada dam project, people from all around the world did react. Both local and international pressure finally caused the World Bank to review their policies and eventually they withdrew their support for the project. By focusing more on dam projects that governments and transnational corporations make money from and how pressure can cause them to withdraw from unjust projects, westerners can work in solidarity to limit *our own* tacit contribution to environmental degradation and work to end projects that create hardships for some women internationally.

Beyond India, climate change is disproportionately impacting people that are not gaining much from the technology largely responsible for environmental degradation, yet they are facing the most negative externalities. The Carteret Islands, which are off the coast of Papua New Guinea, are the subject of a documentary entitled *Sun Come Up*. These are some of the first groups of people facing the most severe consequences of climate change. They are the first group of environmental

refugees. They don't use much carbon, but their islands have been disproportionately impacted by high tides. The documentary follows these citizens as they plead for other communities to let them live with them. They have to give up their homes and way of life due to climate change. According to United Nation estimates, the Carteret people will be the first but not the last of environmental refugees. "By 2010 the number of environmental refugees could grow to 50 million, the UNU-EHS predicts. According to other estimates, there could be as many as 150 million by 2050 (*Climate Change Creating Millions of "Eco Refugees," UN Warns*)."

If westerners want to advance women's capabilities and environmental sustainability issues from an international perspective, we can challenge the policies of western based transnational corporations and world organizations that frequently contribute to these harms. Nussbaum's examples, which incidentally align with some oppressive western cultural master narratives about environmental sustainability issues, do not adequately address these issues.

Regarding Nussbaum's brief comments in *Creating Capabilities* about the importance of population control to environmental sustainability, this theory is disputable. As a matter of fact, it still seems part of what may be an unintentionally oppressive master narrative. There are certainly many alternative accounts regarding the primary causes of environmental degradation. According to many feminist ecological accounts, issues such as overconsumption and the laws which allow largely unregulated disposal of toxic chemicals are much larger problems. Joni Seager argues

Given the precarious state of the earth –and the urgent need to come to terms with the real causes of environmental destruction-the fierceness with which many environmentalists cling to populationist

explanations itself needs explanation. At its core, the attachment to populationism is a deeply patriarchal obsession... (968-969).

For many feminist environmentalists, overpopulation concerns are really attempts to control marginalized women's bodies. Rather than focus on patterns of western consumption, attention is turned to population growth in areas of the global south. This calls out for a counter narrative. Instead of following Nussbaum's lead on this topic, it would be better to challenge the patriarchal structures which contribute to so many environmental harms.

Feminism, Power and Western Responsibility: Challenging the Master Narrative

Westerners need to critically reflect upon what our own place in the power structure when considering 'humanitarian' interventions into other countries where human rights violations occur. Nussbaum believes there are times to intervene. Nussbaum writes, "Where particularly egregious violations of human dignity and personhood are at issue it seems appropriate for nations to use economic and other strategies to secure compliance ("Women and Human Development" 104)." Yet the United States' foreign policies sometimes result in particularly egregious violations of human dignity and personhood. Who is going to intervene when powerful countries use such heavy handed policies? This is where it becomes necessary to explicitly point out the nature of power structures. It is often powerful countries that intervene in less powerful countries, not the other way around. We need to put much more focus on ways that interventions actually operate in international law. People employed by the World Trade Organization have pointed out that they often disagree with Western policies, yet the most they can do is pen strongly worded

objections detailing the reasons for their displeasure with the decisions. The most powerful countries in the world tend to dictate what types of international trading policies, environmental regulations and so forth exist. If we don't acknowledge these differences at a fundamental level, if we don't contribute appropriate counter narratives to the dialogue, then we won't be able to address some of the deep changes necessary to create spaces for actualizing capabilities.

Alison Jaggar argues that Western feminists need to be aware of the possible political consequences of criticizing Southern cultural practices (185-200). Within the structures of oppressive master narratives, it may be easy to co-op the ideas of capabilities and women's right. It is instructive to carefully examine what Nussbaum says about humanitarian intervention. Nussbaum argues that when egregious human rights violations occur it may be morally acceptable to use economic pressures and other strategies to ensure compliance. However, we need to think about how this is likely going to be interpreted in the mainstream western narrative structure.

Nussbaum does not provide a narrative in *Women and Human Development* to illustrate how this recommendation might be applied. The idea that women's rights are human rights, along with the acceptance of the value of humanitarian intervention within the current western patriarchal culture can become problematic. For instance, the story of women's rights in Afghanistan can demonstrate how 'women's rights' issues are sometimes co-opted by the powerful patriarchal structures which they are fighting. On November 30th 2008, Laura Bush was on *Meet the Press*. Here is an excerpt from that interview:

MRS. LAURA BUSH: (From videotape.) Life under the Taliban is so hard and repressive, even small displays of joy are outlawed. Children aren't allowed to fly kites. Their mothers face beatings for laughing out

loud. Women cannot work outside the home or even leave their homes by themselves. Only the terrorists and the Taliban forbid education to women. Only the terrorists and the Taliban threaten to pull out women's fingernails for wearing nail polish. The plight of women and children in Afghanistan is a matter of deliberate human cruelty carried out by those who seek to intimidate and control.

In America, next week brings Thanksgiving. After the events of the last few months, we'll be holding our families even closer, and we will be especially thankful for all the blessings of American life. I hope Americans will join our family in working to ensure that dignity and opportunity will be secured for all the women and children of Afghanistan.

MR. BROKAW: Not too long after that, great progress was made in Afghanistan.

MRS. BUSH: That's right ("First Lady Laura Bush").

This television program is seen by millions of Americans. The argument is that only terrorists and the Taliban oppress women in horrible ways. These horrible ways must stop. The Bush family is working to better the lives of these women. Hence, it is important that you work with their family to end this oppression. What is the other side of this argument? Where is the counter narrative to this story? How many Americans are aware that there *is* a counter narrative?

Malalai Joya provides one counter narrative in *A Woman Among Warlords*. In 2007, she became the youngest member of the Afghan parliament. She survived five assassination attempts and became a vocal critic of the Hamid Karzai government. She argues that many of her opponents in parliament were part of the Northern Alliance, which, she claims, is made up of warlords and ethnic groups who are anti-Taliban. She argues that while the warlords are not terrorist threats to the United States, they harm ordinary Afghan citizens. Joya is an advocate of women's rights

and argues that the United States' invasion of Afghanistan helped to install local puppets, who she believes are just as dangerous to Afghans as the Taliban. Joya writes:

In the past thirty years, every kind of atrocity has been committed in Afghanistan in the name of socialism, religion, freedom, democracy and liberation. Now these acts are justified by a so-called war on terror (196).

She also claims that women's rights have often been violated in the name of women's rights. For example, Joya points out that Laura Bush provided justification for the Bush administration to invade Afghanistan on the pretense of women's rights. However, they didn't plan to invade Saudi Arabia. There is mistreatment of minority communities and women in Pakistan, but there is not enough outrage to invade these countries. So the concern for women's rights does not ring true to many Afghan women. While calling for solidarity with Afghan women is complicated because Afghan women are individuals that have different ideas about how to best approach complex problems, it is still important to consider narratives counter to most western sensibilities in order to better ensure that our human rights work is not counterproductive.

Development Work and Obstacles to Challenging Master Narratives

In development work, development master narratives are frequently based on western cultural understandings. They also tend to ask donors to "act now" and they commonly offer simple solutions for what are actually wicked problems. Emery Roe has written about narrative policy analysis and the way we tend to use repetitive memes when telling a story. Budgets tend to have a repetitive structure and we are

told that they should be efficient. But what does it mean to be efficient? According to some current wisdom, the best master narratives suggest that there should only be one or two readings of what this means and it is best if the explanation is simplistic and fits into our cultural paradigm.

One example Roe gives in *Narrative Policy Analysis: Theory and Practice* is that of the Tragedy of the Commons. He points out that this famous story is a narrative which predicts what will happen when people share resources communally. It is often told and retold and many people believe they know what will happen if they attempt such a thing. Roe notes that Hardin's narrative is often over simplified. However, if we accept the full blown version then empirical evidence does not indicate that the conclusions drawn from this narrative are necessarily true. How much evidence is there that successfully demonstrates desertification is caused by overgrazing? Roe argues that the evidence is not clear and may often be contradictory. He demonstrates how we can use literary theory to analyze policy in a new and more nuanced manner (37-38). If we understand the way these narratives are constructed then we can better understand how to more accurately analyze and critique them.

Roe gives the example of the 'aid crisis narrative' which usually features some natural disaster, appeals are made for immediate help and potential donors are told that there will be dire consequences without their help ("Development Narratives" 22). Of course, this often leads to emergency funding with little or no focus on long term or systemic changes. It simplifies the situation to the point of ignoring necessary issues. In *Aid on the Edge of Chaos* Ben Ramaligngan argues that a reliance on simplistic mainstream narratives is a significant obstacle to successful

humanitarian aid projects. For instance, he writes “Although the UN estimates that only 8 percent of all the conflicts in the Democratic Republic of Congo relate to natural resources, the conflict mineral narrative often eclipses all the others. As a result, the dominant solution to the problem of violence in this country is to end the illegal trafficking of resources (32).” This approach has caused the problem to be exacerbated. The fact that the focus is on a narrative about conflict minerals, this means the focus is taken away from such things as conflict resolution, tackling corruption, and some of the other political challenges facing that region.

Epistemic Obstacles to Challenging Master Narratives

Nussbaum generally does not address issues of western responsibility through the narratives she chooses in her work. Writers such as Vandana Shiva and Chandra Mohanty have pointed out that it is a challenge for women in the global south to be heard. While Nussbaum does present narratives in her books about women’s lives, she seems to choose stories that support *her own* narrative. An anecdotal story illustrates how consciousness raising helped Indian woman recognize their own worth, for example. The narratives don’t tend to touch on the ways in which westerners contribute to global environmental harm, gender injustice and poverty in the south. Shiva and Mohanty both write about the World Trade Organization’s (WTO) bias towards a western science epistemology. They argue that it is difficult for women in the Global South to be heard in the epistemological space such as that of the WTO. Mohanty (2003) writes

...it would be impossible to generate an analysis that values indigenous knowledge anchored in communal relationships rather than profit-based hierarchies. Thus, poor tribal and peasant women, their knowledges and interests, would be invisible in this analytic frame because the very idea

of an intellectual commons falls outside the purview of privatized property and profit that is a basis for corporate interests (234).

While it is certainly good when people's consciousness is raised and they recognize their own self-worth, the focus in Nussbaum's work is too much on the need to raise the consciousness of the women in India and not enough on the importance of raising the consciousness of westerners regarding their epistemological biases. The *primary* focus of westerners working towards actualizing global capabilities should not be so much on cajoling other governments to find how the widows are doing or encouraging these governments to enforce rights for women and so on, though this is important work. Rather, we can better address issues of western complicity and power if we focus on institutional arrangements, western privilege and how it is impeding people's capabilities.

The work of Shiva and Mohanty is still relevant because we see the number of times that WTO policy has adversely affected poorer communities in the global south. Agricultural subsidies and dumping are just a few of the well-known issues which support this inductive claim. Westerners interested in international social justice issues must consciously pay serious attention to these critiques of epistemic bias in order to combat them. Miranda Fricker writes about how we can consciously *respond* to critiques of epistemic bias. She provides a virtue epistemological account of justice, which aligns nicely with Nussbaum's own affinity for Aristotelian ethics.

While Fricker's work doesn't deal directly with development ethics, it can certainly be successfully applied to this area. She provides various accounts of injustice in *Epistemic Injustice: Power & the Ethics of Knowing*. For instance, we commit an injustice when we incorrectly dismiss credible narratives based on false cultural

biases. Fricker writes, “Testimonial injustice occurs when prejudice causes a hearer to give a deflated level of credibility to a speaker's word... (1).” Testimonial injustice occurs when certain people’s testimonies are dismissed because of false beliefs about who can be trusted and why, among other things.

Fricker provides a fictional example of how testimonial injustice operates through the story of a fictional police officer (from *The Talented Mr. Ripley* screenplay) to illustrate her argument. This officer is misled from the truth by a con man because the con artist is manipulating the police officer’s prejudiced stereotypes about women. The wife of the deceased man tries to relay vital information about the case to the police officer but she is stymied every time. The murderer suggests to the officer that a husband will tell things to a buddy that he won’t tell to his sweetheart and a wife can’t look at her husband’s flaws clearly because she looks through rose colored glasses. Hence, what she says must be taken with a grain of salt. She can’t be taken seriously.

When the woman understandably becomes upset by the officer’s immediate dismissal of her knowledge, his prejudices allow him to immediately attribute her behavior to hysteria. He comes to this conclusion based on his idea that women tend to get a little hysterical during times of crisis and do not always think clearly. The police officer listens to the con man and ignores the wife even though the officer seeks truth because, according to Fricker, he has accepted the prejudiced oppressive master narrative about women’s lack of testimonial credibility, which has led to undesirable moral outcomes. The officer has probably had some bad luck because of the socio-historical context in which he finds himself. It makes it unlikely that he will bother to critically reflect on his prejudices. But the manipulation of these

prejudices causes the police officer to miss out on learning the truth. He also inadvertently helps a murderer commit a crime and he betrays a person he genuinely cares about because of this type of testimonial injustice (86-90). This is a fictional story but it is easy to see how the moral of the story can be applied to development ethics.

Western master narratives often argue that the problems in developing countries lie primarily within their own corrupt governments; that overpopulation in developing countries is a threat to long term environmental sustainability and sometimes powerful countries must intervene in less powerful developing countries. As responsible hearers, it is helpful to reflect upon whether there might be prejudices seeping into our thinking. Fricker claims that a responsible hearer has an ethical responsibility to critically reflect upon how she has been enculturated. She needs to be aware of how difficult it is to overcome prejudices that we have been socialized to accept without serious reflection. A virtuous listener must think carefully about whom she is granting credibility to and who she is not. With practice and effort, we can adjust our attitudes to better avoid prejudicial judgments.

Fricker argues that there are proper ways to think about our responsibility as hearers. She claims that responsible hearers should develop testimonial sensibility. Fricker believes that virtue ethics can provide a model for developing the habits of a responsible hearer. She writes

But once light has dawned for a hearer, she will come to find that sometimes her experiences of testimonial exchange are in tension with the deliverances of the sensibility she has passively taken on, in which case responsibility requires that her sensibility adjusts itself to accommodate the new experience (83).

She notes that testimonial justice is both an intellectual and moral virtue. Aristotle is wrong, according to her, to divide these into two separate categories. She points out that the essential disposition underlying this exercise is to remove prejudice so that it doesn't negatively impact credibility judgments. This will function as a way to achieve both justice and truth. There is no algorithm which we can follow to make sure we avoid prejudice seeping into our credibility judgments. Rather, we have to be open to the idea that we are not always responsible hearers and try to develop the habits to reflect on the underlying causes which determine how we decide which testimony is credible, which is not so credible, and why. Do we do so for good reasons? This epistemological perspective aligns closely with Nussbaum's own ethics.

While Nussbaum argues that "virtue ethics" is a confused category and we would be better off to examine different philosopher's moral philosophy independently, she does think there is some common ground in virtue ethics which can also apply to Kantian and utilitarian ethics. According to virtue ethics, moral philosophy should be concerned with the agent. Further, moral philosophy ought to focus on emotions, motives and character. It should adopt a holistic approach to ethics and focus "on the whole course of the agent's moral life, its patterns of commitment, conduct, and also passions ("Virtue Ethics" 163-201)." If we pay serious attention to philosophers such as Mohanty and Fricker, we will reflect more carefully about what sort of narratives we are excluding from our understanding of the world. By developing the intellectual and moral virtue of a responsible hearer, the narratives we chose to examine will more likely be complex, nuanced and accurate.

Some feminists argue that human rights theory, such as the one Nussbaum endorses,

is flawed because it is rights-based, universal and individualistic.³ According to philosophers such as Joan Tronto and Fiona Robinson, it is not enough to declare allegiance with nice sounding universal principles.⁴ We must also include a sustained study of particular practices and how they work to actualize or diminish human rights. Abstract moral principles are not enough to lead to human flourishing. Rather, we must look at particular practices and change the ways we understand the role of care and responsibility in all of our lives in order to actualize human's capabilities. Care, responsibility, truth and justice all require thinking carefully about how to best challenge oppressive master narratives. By incorporating care ethics and feminist epistemology into our moral philosophy, we can better uncover important counter narratives that challenge oppressive stories which impede the progress of human development.

³ For instance, see Charlesworth, Hilary, and C. M. Chinkin. *The Boundaries of International Law: A Feminist Analysis*. Executive Park, NY: Juris Pub., 2000.

⁴ Please see Robinson, Fiona. "Care, Gender and Global Social Justice: Rethinking 'ethical Globalization'." *Journal of Global Ethics* 2.1 (2006): 5-25 and Tronto, Joan C. *Moral Boundaries: A Political Argument for an Ethic of Care*. New York: Routledge, 1993, 153.

Chapter 5:

Radical Feminist Methodology, International Law and Actualizing Capabilities

Introduction

Lisa Schwartzman has provided a critique of Nussbaum's liberal, individualistic methodology and points out that it has often been helpful to look at issues such as unequal pay for equal work, domestic violence, rape and so forth from a social and political perspective. When feminists begin to talk and uncover patterns, then they often realize that what they once thought were individual failings are really the result of oppressive social and political practices. This methodology may be applied to global ethics, too. If we choose to adopt a responsibility-focused and capabilities approach to development ethics, then this methodology can help us identify issues of gender and global injustice. In this chapter, I will examine international refugee law and demonstrate how the concept of gender asylum has been evolving over time. Finally, I will argue by using a radical feminist methodology and the capabilities approach we can expand the parameters of who should be eligible for gender asylum. For instance, I will argue that women seeking abortions while living in countries which prohibit them are members of a particular social group.

Feminist Methodology and International law

Lisa Schwartzman provides a valuable critique of Nussbaum's liberalism. She writes

Knowledge about women's problems in the context of male dominance was not uncovered by simply focusing on individuals as individuals. In a context where male ideologies of male superiority are entrenched, liberalism's focus on individuals will be insufficient for the discussion and development of critical feminist perspectives (160).

There are numerous examples to demonstrate this argument. I will choose one example about hiring practices to illustrate the importance of focusing on groups rather than individuals to understand systemic sexism. In *Through the Labyrinth: the truth about how women become leaders*, case studies are explored wherein men and women provide résumés with similar qualifications. In some experimental studies, one résumé will include a typical female name and one will contain a typical male name. The résumé's with a typical male name are frequently judged to be the better résumés. The male candidates are perceived to be better candidates. For instance, even with similar qualifications, résumés with male names on them are often perceived to represent candidates with more leadership skills (75-81). In an actual job search, it would be perfectly reasonable for a female *individual* to justify being rejected for a job. After all, the résumés were equal. Perhaps she lost a coin toss or it was just a very close call. It is only when examining it through the lens of radical feminism that we can see a pattern. Why do so many women lose the coin toss, for example? It is then that we can start uncovering patterns of systemic sexism. We can begin to see the sexist assumptions which underlie many employer's hiring decisions. By focusing on patterns of systemic sexism, it is possible to develop strategies to address these issues. We can use this methodology to explore sexism in international law.

The Capabilities Approach, Care and Refugee Law

The feminist methodology that Dr. Schwartzman advocates works nicely with issues of gender asylum. The history of gender asylum has not followed a straight trajectory, largely because the mainstream view is not one that generally recognizes links between gender and politics. Alice Edwards notes that mainstream means “from the dominant androcentric male-as-norm paradigms at play (22).” Hence, while there have been victories, there have also been substantial setbacks. An examination of the history of refugee protection will demonstrate how radical feminist methodology can inform the topic of gender asylum. A responsibility and a care-centric approach towards justice entails that we should utilize refugee and asylum law in order to provide greater gender justice. Alison Jaggar has argued that people in the west spend too much time focusing on the faults of the “Other” and ignoring their own human rights violations. We critique other people rather than changing our own undesirable behavior. From a responsibility-centric approach, we may avoid some of the “finger wagging” at other cultures and other people that Alison Jaggar has warned us against. Instead, we can work with people whose rights have been severely violated. It is better to work in solidarity with those that want protection from human rights violations.

From a care-centric approach, we can do much more to actualize capabilities if our ethics is grounded in care rather than based on the work of Rawls or Pogge for example. Social contract theories such as Rawls, and to some extent Pogge, tend to argue that it is a mutually advantageous arrangement. It is not clear that most asylum protections, as well as other humanitarian immigration laws, are always mutually advantageous. Regarding immigration laws, it is not always economically advantageous for richer countries to have open immigration policies or to offer

protection to those whose human rights have been violated. Regarding gender claims, some people worry that if we take women's rights seriously in immigration law then we might have a floodgate problem.⁵ Nussbaum argues that these are not valid concerns if we reject ethical egoism or mutually advantageous social contract theories. Ethical systems found in books such as *A Theory of Justice* are prominent in political philosophy but have a component of self interest in them that may not always be reconcilable with the protection of refugees ("Beyond the Social Contract" 9-10). These types of theories tend to presuppose that people are basically equal and that they will make decisions that are mutually beneficial. When this theory is applied internationally, then it runs into some significant challenges.

Nussbaum notes that Rawls makes progress in *The Law of Peoples* because he acknowledges that there is a list of some human rights which ought to be protected. She writes:

The list is understood to be only a subgroup of those rights that liberal societies typically protect internally, "A special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and

⁵ For example, Karen Musalo footnotes an example in *A Short History of Gender Asylum in the United States: Resistance and Ambivalence May Very Slowly be Inching Towards Recognition of Women's Claims* *Refugee Survey Quarterly* (2010) 29 (2): 46-63. doi: 10.1093/rsq/hdq02. "David Ray of the Federation for American Immigration Reform (FAIR) was quoted in an article as saying that the asylum "was never meant to be divorce court [...]. To expect asylum law to address family issues is impractical and invites huge abuses of the system.... The disparagement for such claims is illustrated by a comment reported in *Newsweek*, where one anti-immigrant activist snidely commented, "You get a punch in the mouth, and you're home free." A. Quindlen, "Torture Based on Sex Alone". *Newsweek*, 10 Sep. 2001, 76."

genocide.” Although this is a clear progress beyond TJ, it is important to notice how thin the list of rights is: it explicitly omits more than half the rights enumerated in the Universal declaration (“Beyond the Social Contract” 9).

Nussbaum shows that even this list is a departure from Rawls original argument in *A Theory of Justice* because he moves away from the Humean “circumstance of justice” when he states that people have at least some basic rights that transcend justification based on his theory. Furthermore, Charles Beitz and Thomas Pogge run into a similar problem. They both use the Original Position and the Veil of Ignorance and apply it globally. While this seems much more fair then simply applying it locally, it is still not clear that this is in-line with Rawlsian theory. Pogge considers his philosophy to be closely aligned with Rawls, though certainly not completely Rawlsian. Nussbaum points out that Pogge focuses on the Rawlsian conception of fairness and simply ignores Rawls’ argument that we are all roughly equal people working towards mutual advantage. When this position is accepted, then it is based on something much different than a social contract constructed for mutual advantage, though constrained by some level of fairness, as introduced by the Veil of Ignorance. Rather, it is based on human fellowship, according to Nussbaum (“Beyond the Social Contract” 12-15). This concept of human fellowship is similar to care.

What is the justification for such fellowship? Nussbaum argues that most people intuitively agree that every individual person should have a right to function in a way that is particular to being human. We care about human functioning simply because we think it is good to live in a world where people are able to function as humans. Since the justification is mostly intuitive, it should be put forward as a

claim that is subject to critical scrutiny (“Women and Human Development” 76-80). Perhaps in an ideal world every country would provide a political system where human beings have the opportunity to actualize their capabilities. Since this is not the case, we can direct care in a way that expands human capabilities. For instance, we can use refugee protections more aggressively in the meantime to advance human rights. Some tools we can use are the 1951 Convention relating to the Status of Refugees and subsequent gender asylum guidelines.

For instance, according to the 1951 Convention relating to the Status of Refugees, a refugee, *inter alia*, is a person:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

This Convention does not mention gender. Many scholars have noticed that the refugee convention should be rewritten because the way it currently stands excludes many women from refugee protection. It is too easy to label the human rights violations that women experience as domestic or cultural, instead of political. Yet these women are still the victims of profound human rights violations. It is generally agreed that there are a lot of problems with the wording of the refugee convention and ideally it should be revised. However, as Joseph Carens has pointed out:

From a moral perspective, what should matter the most is the seriousness of the danger and the extent of the risk, not the source of the threat or the motivation behind it. So, in principle, the definition should be revised to

reflect this wider perspective. In practice, however, any attempt to modify the definition would be a mistake because, in the current political climate, any change would almost certainly lead to a contraction, not an expansion of those covered (103).

Since Carens may well be correct regarding this point, we are still able to examine, redefine and interpret various laws and concepts that are already in place. We may also still be able to redirect our arrow and aim in a different direction towards the goal of non-discriminatory refugee protection.

The gender asylum debate has been controversial since the word ‘gender’ does not appear in the original 1951 Convention. Still, gender related claims for refugee status have slowly evolved over time. Karen Musalo, Director, Center for Gender and Refugee Studies explains that part of the reason for such a slow evolution is because there have been interpretive barriers. For instance, in cases involving forced marriage or female genital cutting, judges often interpret these practices as standard cultural and social norms. Hence, they do not believe these practices are examples of persecution (“A Short History of Gender Asylum” 46-63). The Convention is confounding because of the vagueness of some of the wording. There is no precisising definition for the word “persecuted” for example. When is someone being persecuted? Judges certainly do not agree; there is no consensus on what definiens should be accepted. As Musalo points out, in the *Matter of Kasinga* case the “Immigration and Naturalization Service (INS) argued that it was difficult to consider female genital cutting (FGC) as persecution since “most its practitioners believe they are simply performing and important cultural rite that bonds the

individual to society.”⁶ Persecution is an imprecise and vague term. Aaron Morris, legal director at Immigration Equality, states

So the definition of persecution is a really nebulous term in immigration law. Generally, it's been seen as something - it doesn't necessarily have to shock the conscience, but it's something more than discrimination or harassment. Generally, we would say physical abuse by the government or by agents of the government or even by people who the government won't control is sufficient to establish a fear of persecution (“How Will Ugandan Gay Refugees Be Received By U.S.?”).

Others argue that persecution does not have to be viewed from such a strict perspective. The drafters of the convention seem to have deliberately not provided a clear definition of persecution. According to Hathaway and Foster,

...the intension of the drafters was not to protect persons against any and all forms of even serious harm, but was rather to restrict refugee recognition to situations in which there was a risk of a type of injury that would be inconsistent with the basic duty of protection owed by a state to its own population (103).

Elsewhere they state “The dominant view, however, is that refugee law ought to concern itself with actions which deny human dignity in any key way, and that the sustained or systemic denial of core human rights is the appropriate standard (108).” The international bill of rights contains rights that are supposed to be upheld without exception. These include freedom of thought and freedom of conscience. Given that

⁶ The case involves Fauziya Kasinga, who was part of a family that was opposed to the practice of female genital cutting. Her father had protected her from the practice until he died. Upon his death, her mother was effectively cut out of her community. Fauziya Kasinga refused to sign a marriage certificate but was told she was to be married to a much older man that already had other wives. She was also told that she was to undergo female genital cutting against her wishes. A judge decided that the situation “does not reveal any past or future or present persecution.” The decision was eventually overturned by the BIA, but their decision did not mention that the case was based on persecution.

some women choose to have abortions based on conscience, in addition to issues of bodily integrity, a case can be made that not allowing women to legally obtain abortions goes against the spirit of international human rights. If a woman is being forced to have an abortion then she is eligible for refugee asylum in the United States. There have been cases where women have been granted refugee asylum based on this law.⁷

Refugee law has been progressing and becoming more receptive to hearing claims for refugee protection based on gender claims. In 1985, the Executive Committee of the UNHCR's Programme (EXCOM) concluded that women that faced harsh treatment for transgressing the social mores of a society could be considered a "particular social group" and the UNCHR Guidelines on the Protection of Refugee Women in 1991 states gender should not be excluded for establishing refugee status.⁸ Through the years, there have also been significant setbacks. For example,

⁷ Please see: I.N.A. Section 101(a)(42)(B). at <http://www.uscis.gov/iframe/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101.html>. It reads (B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well-founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well-founded fear of persecution on account of political opinion.

⁸ Please see: "UNHCR - Guidelines on the Protection of Refugee Women." *UNHCR News*. N.p., n.d. Web. 28 Feb. 2014 and "ExCom Conclusions on International Protection." *UNHCR News*. N.p., n.d. Web. 28 Feb. 2014. For more analysis, please see Musalo, Karen. A Short History of Gender Asylum in the United States: Resistance and Ambivalence May Very Slowly be Inching Towards Recognition of Women's Claims *Refugee Survey Quarterly* (2010) 29 (2): 46-63. doi: 10.1093/rsq/hdq02.

the BIA has introduced concepts such as “social visibility” and “particularity” into their decisions of what makes a persecuted social group. The BIA’s analysis “suggests that under the “social visibility” test, the group members must be recognizable by the general public, it is not enough for the group to be recognized (Marouf 64).” The concept of particularity is introduced to ensure the group can be defined in fairly clear cut manner. What actually counts as being socially visible or particular is still being debated. In 2002, the United Nations High Commissioner for Refugees (UNHCR) provided guidelines which included “social perception” as possible criteria for determining if someone is a member of a particular social group. According to Fatma Marouf, the BIA’s interpretation changed from its original definition in *Acosta*. In *Matters of Acosta*, a taxi driver’s life was threatened in El Salvador. Three of his friends had received death threats and were murdered shortly thereafter. He was part of a COTAXI group. Guerillas, according to the complaint, thought the group was too socialist and wanted to kill the members. The taxi driver “has argued that the persecution he fears at the hands of the guerrillas is on account of his membership in a particular social group comprised of COTAXI drivers and persons engaged in the transportation industry of El Salvador and is also on account of his political opinion.”⁹ The court eventually interpreted "persecution on account of membership in a particular social group" to mean persecution that is directed toward an individual who is a member of a group whom all share “a common, immutable characteristic.” The characteristic may be innate, but it may also be some shared set of experiences or circumstances, which must be decided on a case by case

⁹ *Matter of Acosta* A-24159781, United States Board of Immigration Appeals, 1 March 1985.

basis.¹⁰ This ruling was important because it opened the door to gender based claims for asylum protection.

Traditional international law generally “focused on the visibility of group *members* rather than whether the group *as a whole* was recognized by society, and stressed a subjective rather than an objective standard (Marouf 49).” The problems with “social visibility” and groups more generally, as a criterion for refugee protection are complex and deep. We know the lives of marginalized people are often invisible to the mainstream culture. For instance, domestic abuse is an often under reported and under recognized problem in most countries. It may not be obvious to most people that women involved in domestic abuse situations are members of a particular social group. However, many may not realize that domestic abuse feeds into a larger oppressive cultural master narrative, which often plays into stereotypes about both men and women. People might also be inclined to accept the historically troublesome private/public dichotomy, which tends to categorize women’s human rights violations as non-political violations. Marouf points out that this approach does not seem to be grounded on the principle of non-discrimination, rather it looks to other seemingly arbitrary factors, such as how society perceives people and how they are related to groups. This is problematic for many reasons. For example, the former president of Iran famously announced that homosexuality did not exist in his country (Goldman). In the United States, many people claim not to see color and do not acknowledge that systemic racism exists. These are just a few examples of willful ignorance obstructing the social visibility of groups. This type of ignorance can be a serious impediment to recognizing legitimate claims for asylum. To ask that

¹⁰ *Matter of Acosta* A-24159781, United States Board of Immigration Appeals, 1 March 1985.

a society sees what has been made invisible through oppressive master cultural narratives in order to respect someone's human rights is to add a requirement that seems arbitrary and capricious. Why is it necessary when examining whether or not someone meets the *legal* requirements for asylum protection? It is also doubtful that the *spirit* of human rights law requires this sort of social recognition of marginalized groups.

The BIA argues that in order to be granted refugee protection based on there should be highly visible traits. However, it is not clear that groups of people that want abortions would be recognized by countries in which abortion is a crime.

Furthermore, it is *highly* unlikely that members of this group are socially visible, let alone highly visible. There is simply too much stigma attached to the issue of abortion in order to make this likely. Even in the United States, where abortion is legal, there is much secrecy surrounding the topic. According to the Guttmacher Institute, "At least half of American women will experience an unintended pregnancy by age 45, and at 2008 abortion rates, one in 10 women will have an abortion by age 20, one in four by age 30 and three in 10 by age 45 (Induced Abortion in the United States)." If approximately 30% of American women have had an abortion by the age of 45, then some people may wonder how such a large group and its members could be hidden. The answer, in a country where abortion is legal, is that many women keep their abortions a secret and hence a lack of transparency creates conditions which render these women largely invisible to the rest of society.

Women in the United States voice complex emotions after abortion, and not all women feel stigmatized by it. Many, however, follow the "implicit rule of secrecy": Women are expected to keep quiet about

abortion (Ellison, 2003). Recent research indicates that two out of three women having abortions anticipate stigma if others were to learn about it; 58% felt they needed to keep their abortion secret from friends and family (Shellenberg, 2010). The experience of stigma varies by individual characteristics, such as religious beliefs, cultural values, and economic status (Kumar et al., 2009). Major and Gramzow (1999) examined effects of individual-level abortion stigma, finding that the more a woman perceived others were looking down on her for having an abortion, the more she felt a need to keep the abortion secret. More than two thirds of women talked about their abortions “only a little bit” or “not at all Norris, Bessett, Steinberg, Kavanaugh, De Zordo, & Becker.)

This is a country where abortion is legal and still there are so many reasons to remain an invisible member of that group. In a country where it is illegal to have an abortion, there are concerns to consider far beyond stigma. It is likely that many people will not express a public opinion in support of abortion. Hence, there is good reason to challenge the subjectivity underpinning the BIA’s interpretation of social visibility. In the meantime, though, there are other ways to demonstrate that forcing a human being to have a forced pregnancy is a human rights violation and covered under the protection of refugee asylum protection.

Refugee law and Particular Social Groups: A Case Study

Some more general links between gender, particular social groups and international refugee law can be explored through the case of Rodi Alvarodo. Ms. Alvarodo’s home country is Guatemala. In her home country, her husband subjected her to horrible physical and sexual abuse for ten years. She was raped almost daily. She was beaten so badly that her jaw was dislocated on one occasion. On other occasions, her head was smashed into windows. This is just to name a few of the

horrible abuses she was subjected to over the years. She complained to the police twice. Her husband ignored the summons and the police never followed up on her complaints. Rodi Alvarado consulted a judge who told her that the court would not interfere with domestic issues. She sought asylum protection in the United States arguing that she was a member of a particular social group.

Rodi Alvarado argued she was a member of a particular social group, namely the group of “Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination (Arnett 962).” The case was ultimately rejected because the BIA claimed that she did not prove that domestic abuse was an important part of Guatemalan culture. Of course, there is no United States asylum law that states it is necessary to prove that a human rights violation is an integral part of the culture. There was a public outcry about this decision and due to intense pressure from the public Janet Reno overturned the BIA's decision. The Department of Justice proposed regulations on the issue of gender asylum Reno ordered the BIA to issue a new decision in Rody's case after the regulations were finalized. However, those regulations were not finalized during the Bush administration. Finally, the Center for Gender and Refugee Studies reported that on December 9, 2009 Rodi Alvarado was granted asylum in the United States.

On September 2008, Attorney General Mukasey certified Matter of R-A- to himself and issued a decision ordering the BIA to reconsider it, removing the requirement that the BIA await the issuance of proposed regulations. This decision meant that the BIA could immediately begin to consider Matter of R-A-, as well as many other cases that had been placed on hold pending a decision in Matter of R-A- (“Documents and Information on Rody Alvarado's Claim for Asylum”).

In a separate case, DHS attorneys under the Obama Administration filed a brief stating that “women who have suffered domestic violence may qualify for asylum based on membership in a particular social group if they meet certain, clearly defined criteria (“Documents and Information on Rody Alvarado's Claim for Asylum”).” The DHS brief in the case provided guidance for what would count as refugee protection from domestic abuse. The DHS brief provided a roadmap for the Center for Gender and Refugee Studies to follow when preparing their case for Rody Alvarado, which turned out to be successful. This means that the United States is developing a precedent in this one particular area which should lead to more gender equality when considering the merits of asylum cases. This opens *one* door to gender based asylum claims by allowing us to think more carefully about special groups, such as “women who do not want to be forced to carry a fetus in a country where they are expected to do so”.

Gender and Refugee Law: More Relevant Case Studies

It has been ruled that women forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion. Even people that have a well-founded fear that they will be forced in the future to undergo one of these procedures can be granted refugee protection under the law. ¹¹ Further, Musalo and Knight have provided an overview of 30 successful cases based

¹¹ See Musalo, Karen, Jennifer Moore, and Richard A. Boswell. "Refugee Law and Policy A Comparative and International Approach." *Carolina Academic Press*. N.p., 2008. Web. 03 Mar. 2014 and U.S. Department of Justice Executive Office for Immigration Review Board of Immigration Appeals Interim Decision: <http://www.justice.gov/eoir/vll/intdec/vol21/3299.pdf>.

on claims of “domestic violence, female genital cutting, restrictive social norms, forced marriage, forced servitude and/or prostitution, and beatings, rape or sexual assault (“Asylum for Victims of Gender Violence” 3-12).” Reasons for refugee protection included persecuted social groups and political opinion among others. “An applicant’s belief she should not be abused by her husband was characterized as “feminism” and as the expression of a qualifying political opinion by one IJ (“Asylum for Victims of Gender Violence” 10).” If we look at the reasoning for what makes forced abortions a human rights violation of *the woman carrying the fetus*, then we can discern that it logically follows forcing a woman to carry an unwanted pregnancy is a human rights violations for many of the same reasons.

For countries that have ratified CEDAW (Convention to Eliminate All Forms of Discrimination Against Women), there is the opportunity to use CEDAW and the Optional Protocol to challenge laws which criminalize abortions. As the Global Justice Center reports, “in countries where abortion is illegal in all circumstances, it is often one of the leading causes of death for women (“Using CEDAW to Advocate for Reproductive Rights”).” They also point to the success of using CEDAW to stop the criminalization of abortion in Columbia. However, while CEDAW may be a powerful tool to ensure abortion rights in some countries there are ways to potentially link the criminalization of abortion to the persecution of special groups (namely, pregnant women that do not want to be pregnant), as well as respect for freedom of conscience and freedom of opinion. In many gender based asylum cases, there is an overlap of these rights violations. I will argue that this is the case for abortion rights, too. There are strategic considerations, though. Should abortion rights fall under the broad umbrella of freedom of conscience rights (for example) in general or should they fall under a special category of women’s rights (such as those

enumerated in CEDAW)? An examination of the benefits and perils of gender mainstreaming will help to provide a possible answer to this important question.

Feminist Methodology, Gender Mainstreaming and International Law

Gender mainstreaming is a concept that gained popularity in international development. An impetus for this approach was a concern that the women's convention, once so full of promise and hope, may have ended up inadvertently marginalizing women's issues. The separation between the United Nations mainstream human rights and so called "women's" rights has often not been to the benefit of women. The mechanism used to address women's issues have often led to "...the creation of a 'woman's ghetto', where these legal instruments and mechanisms are given less power, fewer resources and a lower priority than 'mainstream' human rights bodies ("The Boundaries of International Law" 219)." While the goal of the separation was to illuminate women's concerns and not allow them to be ignored while more conventionally "universal" human rights were discussed, this did not always happen. Instead, this marginalization seemed to obscure, rather than illuminate, human rights abuses against women.

Regarding refugee law, the results of focusing on women as part of a special group have been mixed. For instance, there have been criticisms that focusing on women as persecuted social groups contributes to the problem of essentializing women.

Alice Edwards writes

Although the Guidelines readily acknowledge that women may have claims to refugee status on any of the five grounds in the 1951 Convention, the emphasis is nonetheless on PSG. Even the substance of the paragraphs on political opinion underpins an "essentialist" or

“gendered” depiction of women claimants as less than political in nature, and certainly less political than their male counterparts (27).”

Furthermore, she questions why it is necessary to categorize women as a special group in order to protect them when their human rights have been violated.

Wouldn't it be better to simply say that domestic abuse is a crime against their person or that refusing female genital cutting is a political statement? Regarding the essentialization of women, why do we always talk about “women and children” in one breath? Many times, in the human rights literature, women are perceived as victims and in need of special protections. This perception brings its own negative baggage along with it (31-32). So, with the problems of separate and unequal, along with concerns about essentializing women, gender mainstreaming started to be introduced into United Nations programs.

The goal was to “mainstream” gender so that this separate but not equal system would be challenged. Unfortunately, gender mainstreaming has had some unintended consequences too. For instance, some people started to notice that rape and sexual assault on women were sometimes used as means of torture, but these incidents were often unreported. Regarding the impact that climate change will have on women, there was a Women and the United Nations Framework Convention on Climate Change (UNFCCC) Conferences of the Parties (COPs). For instance, in 1995, there was an international women's forum “Solidarity in the Greenhouse” parallel to COP1. The members of the forum wrote a letter with recommendations for consideration and so forth, assuming that gender mainstreaming issues would be included in all future policy considerations by the United Nations. However, this was not the case. In fact, women and gender issues were conspicuously off the agenda for the next five years. At COP6, the first time that gender issues appeared in

the deliberations again, the women were “Banished to the back corner of the exhibition hall outside of the conference’s center (“Engendering the climate-change” 22-25).”

Some of the main concerns are that the process of gender mainstreaming in bureaucratic male oriented institutions tends to be that women’s concerns can still be seen as peripheral and may be easily subsumed by larger, more ‘universal’ issues. There is still the problem of “add women and stir” which often obscures women’s issues. As Hilary Charlesworth has pointed out, “A 1993 study of the work of the then UN Commission on Human Rights’ Special rapporteur on Torture, Professor Kooijamns, found that he rarely considered the application of norms of international law on or international human rights law to women (“The Boundaries of International Law” 218).” The ideas of rape as torture were not considered until many years after these rapes occurred. Charlesworth notes that many experts are simply not trained to properly understand the purpose of gender mainstreaming. For instance, the people working on these issues may report human rights violations of individual women now and then without considering, evaluating and analysing how these particular violations are related to the way women are regarded in the private and public spheres more generally (“Not Waving but Drowning” 11). While it is difficult to measure, Charlesworth points out that funding has often been reduced in women specific United Nations agencies (“Not Waving but Drowning” 14). Other problems include the watering down of gender issues as other groups get added into the mix and intersectionality is ignored. Ruth Pearson has pointed out that Save the Children has eliminated a position of gender advisor instead adopting a position of diversity advisor. This is in spite of the overwhelming number of gendered human rights issues. On average, girls receive less education than boys. Girls are often

encouraged to marry early and they are much more at risk to be trafficked or prostituted. These issues are slowly being submerged into a generic abstract category of diversity (157-159). Further, Alice Edwards writes

“Gender” and “gender mainstreaming” have been too frequently employed neutrally as superficial insights into the relations between men and women based on social and cultural assumptions about being born with one set of sexual organs, rather than about structural inequality. “Gender” is not synonymous with equality (“Transitioning Gender” 45).”

The problems with gender mainstreaming are that they may take the focus away from the male dominated structural inequality. In cases where torture of women through rape is not considered, gender mainstreaming simply may not be the proper lens from which to view this issue. Lisa Schwartzman has argued that a radical feminist methodology, one that asks where the women are is an important approach if we are to maintain a just liberal democracy. By asking where the women are as a starting point, we can more clearly see that rape may belong in the domain of torture crimes. When examining the issue of bodily integrity, it will occur to us to ask *why* people such as David Miller argue that bodily integrity is a universal basic human right in a basic needs based approach to these issues. He has argued that people shouldn't be forced to give blood or organs, even if the risk of harm to them is low. As I mentioned in a previous chapter, Miller argues that people have a universal right to bodily integrity. He argues that before a need can ground a right, we need to ensure that the right would not violate the duty bearer's own human rights. However, Miller does not specifically mention abortion. This may be why a feminist methodology, wherein the starting point is to ask where the women are, is so important for gender justice in international law. It allows issues such as abortion to

become more visible.

Abortion Rights and the *Spirit* of International Law

Margaret Little argues that there are layers of complexity to the abortion rights issue, which are often unaddressed. A pregnant woman and her fetus are related, she is biologically its mother. Yet, she may feel she has stronger duties to her children which have already been born. If she is having trouble feeding them, or is homeless, or in some financially or emotionally precarious position, then she may feel it is unfair to them if she goes through another pregnancy. Little points out, among many other things, many women see pregnancy as a moral choice. Some women believe that bringing a child into a world that they cannot care for would be morally wrong. To do so would violate their conscience. Many women don't see abortion as ending a life, but rather as a responsible choice to not create a being they cannot properly care for at this time. Little points out women that want to have abortions for many reasons. However, it is not so much that some women are worried about imposing a specific harm on a potential future child, rather she may not want to bring into existence a person that she is going to reject. She references Barbara Katz Rothman's point that it is not always a decision to destroy but a conscientious decision not to create. For some women, choosing to abort a fetus might be a matter of conscience, for which there is a strong precedence in refugee law.

Little examines different sides of the issue and writes about the virtues of some women choosing abortion. She writes

For another woman, the virtues to be exercised may tug in just the opposite direction: loyalty to treasured life plans, a commitment that it

be she, not the chances of biology that should determine her life's course, bolstering self-direction after a life too long ruled by serendipity and fate (322).

In 1996, Congress passed an amendment, which formally claimed that a threat of forced abortion or involuntary sterilization is an instance of persecution. The underlying anger in the United States regarding China's one-child policy helped to ensure this amendment's success. In the case of *Guo Chun Di v. Carroll*, the court argued that involuntary sterilization is a violation of the right to procreate. If someone refuses to comply with the one-child policy then this is based on political opinion, which is a criterion for refugee asylum. Forced abortion is worthy of refugee protection because it goes against freedom of conscience and political opinion. If someone has a right to procreate, then what is the foundation of the right? If the foundation is that of conscience or political opinion, then the right not to procreate should be equally respected. A violation of either one of these rights ought to be a human rights violation. A woman that becomes pregnant and wants the burgeoning human life would have her fundamental human rights violated if the fetus was forcibly removed. Her beliefs may be that life starts at conception, that abortion is destruction of life or that God has a plan and she wants to follow it. There are many reasons why women might choose not to have an abortion just as there are many reasons a woman might choose to have an abortion. In many cases, freedom of conscience applies to both sides of this issue. The decision to have an abortion may be a political opinion based on conscience, it may be based on feeling strong obligations and duty to the family one already is committed to.

It may also be a matter of human dignity. Drucilla Cornell writes

What does it mean to deny a woman the right to abortion as a matter of law? It means that she is denied her equivalent worth as a person -- the very moral status that rights are meant in this conception to recognize. Put as strongly as possible: the fact of a woman's sexual difference is used to justify her treatment as a violable object. Since this treatment denies women equality as persons, it denies us the fair conditions of cooperation in which acceptance of any law as rightful could be legitimately imposed upon us("Boston Review").

While bodily integrity is controversial in international law, there are still some declarations and conventions that are relevant. For instance, The United Nations Universal Declaration of Human Rights Article 3 states "Everyone has the right to life, liberty and security of person." From the International Covenant on Civil and Political Rights Article 1, part 1: "All peoples have the right to self-determination" and The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 12 (1) states that "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning."¹² There are benefits and potential pitfalls when thinking about what conventions to turn to and what arguments to make when thinking about abortion, refugee protection and international law. While gender mainstreaming may have *some* benefits, there are reasons to avoid it. It may lead to a decrease in funding and resources for the mechanisms that focus primarily on women's issues. It may submerge women's issues until the less controversial so called "universal rights" are taken care of and it

¹² Please see: "Convention on the Elimination of All Forms of Discrimination against Women." *UN News Center*. UN, n.d. Web and "International Covenant on Civil and Political Rights." *International Covenant on Civil and Political Rights*. Web. 18 Nov 2013.

may lead to the reinforcement of an idea that women can be added and stirred into existing legislation. Of course, this is problematic because without a strong use of feminist methodology we have seen that attempting to “stir women” into a system filled with patriarchal assumptions and oppressive master narratives often make women’s human rights violations invisible. If we use the capabilities approach, which includes women’s reproductive rights, along with a feminist methodology such as the one Dr. Schwartzman outlines in her work, we can see how to better implement international refugee law to protect *more* women against egregious human rights violations, such as forcing them to carry a fetus to term which may violate their rights to political opinion, freedom of conscience and bodily integrity.

The timing may not be right for the argument I have presented. Certainly, abortion rights are heavily contested in the United States. According to the Guttmacher Institute, more state abortion restrictions have been passed in 2011-2013 than in the past decade. “Over the course of the year, 39 states enacted 141 provisions related to reproductive health and rights. Half of these new provisions, 70 in 22 states, sought to restrict access to abortion services (“More State Abortion Restrictions”).” Yet this is simply a practical fact of the matter. It still follows that universal rights to bodily integrity, freedom of conscience and freedom of political opinion applies to everyone, not just those that fit into certain master cultural narratives. These cherished *and legal* rights apply to women that want abortions, too. The same legal instruments and mechanisms that have been used to argue that people are entitled to refugee protection when faced with forced abortions or forced sterilization can be used to argue that women that want abortions are entitled to the same refugee protection on the same grounds for which there is already precedence. By using a feminist methodology to make these rights more visible, we can develop more

compelling and accurate counter arguments and counter narratives to demonstrate what other rights need to be recognized in order to actualize capabilities and protect the bodily integrity, freedom of conscience and political opinions of *all* people.

Pogge and Miller are correct that we have a responsibility to address issues of global injustice based on our own participation in unjust global systems and the benefits we receive from our participation. Still, our responsibilities extend beyond the libertarian model of justice which Thomas Pogge endorses and the human basic needs model endorsed by David Miller. Pogge points out that philosophy means love of wisdom. Genuinely understanding what really matters is a key component of wisdom. He argues that wisdom involves seriously considering what issues are worth caring about. Yet he goes on to put aside his moral sympathies in his argument for global justice. He notes that his intellectual sympathies are with the liberation model of justice and he proceeds to defend an argument based on this position. Yet he does not provide an argument demonstrating why intellectual sympathies trump moral sympathies. Aren't his moral sympathies worthy of consideration, too?

Furthermore, Dr. Pogge does not explain why he thinks there is a necessary bifurcation between one's moral and intellectual sympathies. By exploring the work of Adam Smith and Jane Addams, it is possible to develop an account of sympathetic knowledge which blurs the lines which radically divide Pogge's sympathies. This approach creates a space wherein Pogge's moral sympathies carry weight when thinking about ways to address global injustice. This approach will take us beyond the libertarian model of global justice.

Miller endorses a basic human needs approach to global justice. He avoids justifications that begin from ideas of equality or of personal autonomy because he

does not think those are universal values. Yet he argues for a consistency principle as an important underpinning for his theory. When Dr. Miller argues for a consistency principle he does not justify *why* it is a *universal* value. Upon close examination, it seems that his consistency principle is implicitly based on a principle of equality. We need to make this point more explicit. In order to achieve the human rights of women in patriarchal societies, we *need* principles of equality and autonomy. Hence, Nussbaum's conception of the capabilities approach is superior to Miller's human basic needs model.

When thinking about how to create a more just order, it is helpful to look at the work of Onora O'Neill, Iris Marion Young and Martha Nussbaum. Iris Marion Young agrees with Pogge that some of the world's injustices can be solved by reforming major institutions in the global economic order. Yet she points out that many structural injustices don't seem to necessarily be the fault of institutions. Instead, she proposes a "social connection" model of global responsibility. This model does not assign blame to particular institutions or people; rather it calls for collective action to solve some of the injustices that arise from these social processes. Young's work is valuable for understanding issues of responsibility and justice in relation to structural processes, as well as why providing an account of the pitfalls of assigning blame to individuals for wider collective issues. Yet she does not provide a compelling argument to demonstrate why individuals in a relatively privileged position would want to work towards ending injustice any more than political leaders who realize their state's policies are contributing to global injustices. She mentions that moving away from a strategy of blame will be helpful but I argue that we also need to move towards an ethics of care. By looking at the work of Jane Addams and Joan Tronto, among others, we can begin to think about how to make

care a more integral part of our thinking about global justice.

Onora O'Neill and Martha Nussbaum believe we can best actualize capabilities by taking a top down hierarchical approach. Iris Young argues that a grass roots approach is more appropriate. However, it may take a *creative* combination of nation states, global cooperation, transnational corporations and individuals in order to create a space where more people can actualize their capabilities. Dr. O'Neill argues that we should rely more on transnational corporations, but it is not clear *why* the leaders of those corporations would choose to work harder to achieve a more level playing field. Dr. Nussbaum argues that democratic nation states need to take the lead in addressing issues of global justice. She argues that non-governmental organizations are non- democratic and we *know* they don't work. However, we also know that democratic nation states don't always work so well either. We don't know what will work in the future and it makes sense to keep many avenues open on the paths to global justice.

According to many cultural master narratives, we are told that humans are reasonable, independent and autonomous. Through the lens of care ethics, it becomes clear that humans are also needy, emotional and interdependent. Being needy and vulnerable can be frightening so it is not surprising that we tend to avoid looking carefully at this part of the human experience. Yet, by averting avoiding this issue we end up with an impoverished theory of human rights. By focusing on this part of what it means to be human, we can see ways in which care has been made invisible in much of the human rights literature. Furthermore, narratives play an important part in the advancement of a care ethics in a capabilities approach to human development. Nussbaum argues that just institutions are an essential part of

her capabilities approach to development. Yet she knows that they can't solve all our problems. We also need to develop a compassionate citizenry. While she suggests reading great works of literature, Lindemann and Addams' argue that we can tell our *own* stories which will contribute to a more knowledgeable and caring society.

It is important to note the significance of the stories being told in the ethics and development literature. For instance, in *Women and Human Development* Nussbaum writes about the importance of asking how individuals are doing. She correctly notes that relying on other people to tell the stories of individuals is problematic. The stories Nussbaum tells in order to demonstrate her point are illuminating. She argues that it is often difficult to find out how Indian widows are doing. This is because the data usually appear in measurements of other heads of households. Examining the issue from Nussbaum's individualistic model at the micro level, we see a much improved method for determining how people are functioning. This is clearly an improved perspective and it *is* important to find out how the widows are doing. Yet, when we look at the issue from a macro level it will lead to a different set of stories. These macro stories will focus on how some of these women became widows in the first place. Sorting out how to tell these stories is difficult. If we turn to the virtues necessary for testimonial justice then we may better learn how to understand important counter narratives.

By using a feminist methodology, which focuses on the relationship between women's daily lives and the institutions which govern their lives, then we will see that a focus on an ethics of care must be included in any human rights ethics. A large part of the work that needs to be done in human rights will be to make invisible human rights violations more visible. Furthermore, a responsibility and a care-

centric approach towards justice entails that we should utilize appropriate laws, treaties and so forth to ensure the protection of human rights. We may be able to use refugee and asylum law in order to provide greater gender justice.

If we adopt the capabilities approach, which includes women's reproductive rights, along with a feminist methodology, we can learn how to better implement international refugee law to protect *more* women from egregious human rights violations. The United States has made it clear that the threat of forced abortion or involuntary sterilization is a human rights violation worthy of refugee protection. By using the instruments and mechanisms found in international law to support this position, we can demonstrate that forcing a woman carry a fetus to term violates those same fundamental human rights. By understanding the important role care has in our lives, as well as ways it has been traditionally rendered virtually invisible, we can develop a human rights theory, which is more nuanced and leads to a deeper understanding of the various ways in which we can better support human flourishing.

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