

# **FEMINISM AND GLOBAL JUSTICE: A CASE FOR COSMOPOLITANISM**

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In memory of Scott Halliwell.

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# ABSTRACT

Cosmopolitanism and statism represent the two dominant theoretical standpoints in the current debate on global distributive justice. Cosmopolitans take individuals to be the primary units of equal moral concern and they advocate the application of principles of distributive justice that are global in scope. By contrast, statist take states to be the primary units of equal moral concern and hold that there can be no principles of distributive global justice, recommending instead weaker duties of assistance. The central claim of this thesis is that feminists should reject statism and be cosmopolitans about global justice.

This thesis is divided into four parts. Part I situates this project in the global justice debate and the feminist literature. I begin by introducing some distinctions pertinent to discussions of cosmopolitanism and outlining several approaches to cosmopolitan justice. Following this I sketch the key aims of the feminist agenda being pursued here and argue that my central thesis should appeal to feminists of different theoretical backgrounds. In Part II I offer a feminist critique of statist accounts. This critique involves a critical evaluation of the statist position formulated by John Rawls in *The Law of Peoples* and a more general argument against statist positions that is based on the work of Susan Moller Okin. Having demonstrated that statism is defective from a feminist perspective, and suggested that cosmopolitanism is better placed to address feminist concerns, in Part III I anticipate two feminist objections to cosmopolitanism: (1) cosmopolitan approaches necessarily rely on inaccurate general claims about women; and (2) cosmopolitan approaches represent a form of Western cultural imperialism. I argue that the feminist cosmopolitan can be sensitive to these concerns without abandoning either their feminist or cosmopolitan commitments. Finally, in Part IV, I make some tentative suggestions about the types of cosmopolitanism best equipped to meet the feminist aims outlined in Part I.



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# INTRODUCTION

Feminists from a variety of theoretical backgrounds have long been engaged in a sustained critique of contemporary theories of social justice. This feminist critique has uncovered many flaws in prevailing philosophical approaches to questions of social justice. For instance, feminists have argued, among many other things, that theories of social justice are too abstract,<sup>1</sup> too individualistic,<sup>2</sup> contain a covert male bias,<sup>3</sup> focus too heavily on matters of distributive justice,<sup>4</sup> are inattentive to gender,<sup>5</sup> rest on defective conceptions of personhood,<sup>6</sup> and problematically assume a strict dichotomy between public and private spheres.<sup>7</sup> However, there has been little feminist contribution to the global justice debate; a debate that is the subject of a substantial and flourishing body of work that political philosophers have been developing over the last forty years.<sup>8</sup> This is not to suggest that feminists are not concerned with questions of global justice. Indeed, there are many feminists working on issues of global concern such as gender injustice, oppression, the feminization of poverty,<sup>9</sup> human rights,<sup>10</sup> multiculturalism and women's rights,<sup>11</sup> climate change, and the denigration of the environment,<sup>12</sup> to name but a few. Rather, my claim is that

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<sup>1</sup> This objection can be found in the following: Benhabib (1987, 1992); Held (2006); MacKinnon (1989); Young (1990).

<sup>2</sup> See, for example, Benhabib (2002); Held (2006); Jaggar (1983); Kittay (1999, 2005); Young (1990).

<sup>3</sup> This view is expressed in Benhabib (1987); Benhabib & Cornell (1987); Kittay & Meyers (1987); MacKinnon (1989) Okin (1989a); Pateman (1989).

<sup>4</sup> See, for example, Gilligan (1982); Held (2006); Noddings (2002).

<sup>5</sup> See, for example, Nussbaum (2003a, 2006) and Okin (1989a, 1996, 2005b).

<sup>6</sup> Eva Kittay has pushed this point in numerous works (1999, 2001, 2005, 2009).

<sup>7</sup> For instance, Elshtain (1993); Landes (1998); Okin (1989a); Pateman (1989); Young (1986).

<sup>8</sup> Martha Nussbaum is one of the few feminist theorists working in this area and she has written extensively on women and global justice. Nussbaum both critiques contemporary theories of global justice for their inattention to gender and advocates the capabilities approach as an alternative (2000, 2004, 2006a). Similarly, though not to the same degree, Iris Marion Young (2000, 2006) situates herself in the contemporary global justice debate when she discusses global democracy, self-determination, and global responsibility. Also, see Onora O'Neill (1993) who has emphasised the importance of making women's inequality central to our theorising about global justice.

<sup>9</sup> See Jaggar (2009, 2013) and Okin (2003).

<sup>10</sup> See, for example, Bunch (1994); MacKinnon (2006); Okin (1998); Parekh (2008); Reilly (2009).

<sup>11</sup> For instance, Benhabib (2002); Cohen, Howard, & Nussbaum (1999); Okin (1994a, 1998, 2005a); Phillips (2007, 2010).

<sup>12</sup> Ecofeminists, for instance, see the domination of women and nature as interconnected and attempt to address the global exploitation and denigration of our planet by calling for sustainable development

there has been little feminist challenge to, or engagement with, the dominant approaches in the contemporary debate on global justice.

In light of this gap in the literature, this thesis is motivated, in part, by two thoughts. First, feminist theorists should be more involved in the debate between advocates of contemporary approaches to global justice because there may be resources in those accounts that can further feminist ends and enhance existing feminist theorising about issues of global concern. Second, we cannot hope to develop adequate theories of global justice if we do not pay sufficient attention to gender inequality and oppression. Thus, feminist contributions are essential, just as they have been for improving our theorising about social justice, to improving our thinking on matters of global distributive justice.

The current debate on global distributive justice is dominated by two theoretical standpoints, namely, cosmopolitanism and statism.<sup>13</sup> Cosmopolitans take individuals to be the primary units of equal moral concern and they advocate the application of principles of distributive justice that are global in scope. By contrast, statist take states to be the primary units of equal moral concern and hold that there can be no principles of distributive global justice, recommending instead weaker duties of assistance. I believe that approaching the debate, and the disagreement between advocates of these two positions, from a feminist perspective yields reasons to think that one of these approaches should be abandoned while the other has resources that can be developed to address feminist concerns. More specifically, I will argue that feminists should reject statism and be cosmopolitans about global justice. This is the

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that is ecologically sound, non-patriarchal and non-exploitative (Mies & Shiva (1993); Eaton & Lorentzen (2003)).

<sup>13</sup> One might argue that the distinction and definitions that I offer here are too simplistic since there is no one position that *is* cosmopolitanism and no one position that *is* statism; instead, each label can be applied to a variety of views, which may or may not have much in common. Moreover, there are some cosmopolitan positions that have much in common with other non-cosmopolitan views and vice-versa (Caney (2001a)). However, I take it that this distinction has been, and continues to be, prevalent in the global justice literature with theorists defending and attacking positions in either camp (Barry (1999); Meckled-Garcia (2008)) or rejecting both in favour of more pluralistic approaches (De Bres (2011); Ypi (2010)). What is more, while it is certainly true that some forms of cosmopolitanism have much in common with their non-cosmopolitan counterparts, and that there is much diversity between views located in either camp, a fundamental difference remains: when thinking about what, if any, principles of distributive justice there are at the global level, cosmopolitans start their thinking with individuals and statist begin theirs with states.

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central claim that I will be looking to defend throughout this thesis. In addition, I hope to show that by adopting a feminist perspective, we can develop a distinctively feminist cosmopolitanism that is equipped to deal with the injustice of sex inequality and oppression that is a problem the world over.

This thesis is comprised of four parts, each consisting of two chapters. The first two chapters are dedicated to putting in place the background and locating this project in both the global justice debate and the feminist literature. Thus I begin, in Chapter 1, by setting out the key features of cosmopolitan approaches to global distributive justice and briefly outline a number of different cosmopolitan accounts. In Chapter 2 I detail some key aims that I take to be central to the feminist agenda. I further argue that the feminist position that I advance here should have wide appeal. That is, feminists of different stripes should be able to get on board with much of what I have to say.

In the second part of the thesis I demonstrate why statist approaches to questions of global justice are inadequate from a feminist point of view. By exposing the weaknesses of statism, and highlighting the advantages of cosmopolitanism, I aim to demonstrate why, of the two dominant approaches to questions of global justice, cosmopolitanism is to be preferred. My critique of statism comes in two stages. In Chapter 3, I critically evaluate the statism of John Rawls as he presents it in *The Law of Peoples*. I concentrate on three problematic features of Rawls's theory and argue that these aspects yield consequences that are unacceptable both to cosmopolitans and feminists alike. Namely, I focus on the inclusion of decent peoples in the Society of Peoples, the minimal conception of human rights, and the exclusion of burdened societies and the associated issue of the rejection of a global principle of distribution. Following this critical evaluation of Rawls, Chapter 4 looks to develop a more general critique of statist approaches. There I suggest that the disagreeable elements of Rawls's account originate in the statist foundations that he adopts, and I further argue that any view premised on the idea that states are the primary units of moral concern will ultimately suffer from the same problems. Specifically, I put forward a feminist argument that shows all statist approaches to be theoretically unattractive

because statism necessarily relies on the assumption that there is a strong divide between public and private spheres.

Though I believe that there are good reasons for feminists to reject statist approaches and advocate cosmopolitan accounts, I anticipate that some feminists may have misgivings about the cosmopolitan framework. Consequently, Part III considers two potential feminist challenges to cosmopolitanism. Since there has been little feminist engagement in the debate between statist and cosmopolitans, there are, to my knowledge, no feminist challenges to cosmopolitan approaches to distributive justice. As a result, the objections that I foresee are developed from feminist criticism of views that have features similar to those present in cosmopolitan accounts.

Traditionally, feminist theorists have challenged positions that are underpinned by universal claims and normative individualism. For that reason the two objections that I anticipate focus on both the universal and individualistic nature of cosmopolitan accounts of global justice. Chapter 5 addresses the worry that a feminist cosmopolitan project is inherently flawed because it must, if it is to adequately address gender injustice, invoke general claims about women's experiences. This objection is rooted in the thought that we cannot make accurate general claims about the experiences of women because such claims do not pay sufficient attention to the differences between women and do not truly capture the experiences of all of the women to whom they are supposed to apply. I will argue that the feminist cosmopolitan can be sensitive to these worries while not abandoning general claims about women. More specifically, I develop a set of criteria against which we can assess the acceptability of generalisations about women (and oppressed groups in general). Following this, Chapter 6 examines the objection that a feminist cosmopolitanism represents a form of Western cultural imperialism. The challenge, as I understand it, is directed at the use of normative universal claims that are essential to any feminist cosmopolitanism. In response, I argue that the charge of cultural imperialism does not stick and suggest that the problem essentially boils down to a disagreement about value. Once I have made this argument, I then show why a feminist cosmopolitanism is better placed than some of its perceived opponents to address the aims outlined in Chapter 2.

In the final two chapters I will make some tentative suggestions about the types of cosmopolitanism that are better suited to addressing feminist aims. I will revisit some of the distinctions and approaches outlined in Chapter 1 in an attempt to work towards an explicitly feminist cosmopolitanism. Chapter 7 considers what the proper scope of justice is; in other words, who should be included in the distributive scheme? I will suggest that a feminist cosmopolitanism ought to be non-relational. That is, feminist aims would be better addressed by approaches that take the duties and entitlements of distributive justice to be grounded in some *feature* of human beings as opposed to the particular *relations* that hold between them. Chapter 8 looks at what metric of justice would best meet feminist aims. To be precise: what is the best way to measure how well an individual is doing for the purposes of justice? There I concentrate on the recent debate between resourcists and capability theorists. Ultimately, I will argue that the metric of capabilities is to be preferred to that of resources because capabilities can better address the feminist aims outlined in Chapter 2.

I conclude this project with a brief summary of the arguments made and some suggestions for future avenues of research.



# **PART I**

## **BACKGROUND**

### **INTRODUCTION**

Cosmopolitanism and statism represent the two dominant theoretical standpoints in the current debate on global distributive justice. Cosmopolitans take individuals to be the primary units of equal moral concern and they advocate the application of principles of distributive justice that are global in scope. By contrast statists take states to be the primary units of equal moral concern and hold that there can be no principles of distributive global justice but instead recommend weaker duties of assistance. The central claim of this thesis is that feminists should be cosmopolitans about global justice.

The aim of Part I is to ground this project in the literature on both cosmopolitanism and feminism. I begin, in Chapter 1, by setting out the key features of cosmopolitan approaches to global distributive justice and briefly outline a number of different cosmopolitan approaches. In Chapter 2 I detail some key aims that I take to be central to the feminist agenda. I further argue that the feminist position that I advance here should have wide appeal. That is, feminists of different stripes should be able to get on board with much of what I have to say.

These two chapters provide the essential background for the rest of the thesis. It is here that I establish my core commitments, which are fundamental to both the critical and positive components of this project.



# 1

## COSMOPOLITANISM

In this chapter I start by locating this project in the literature on global distributive justice. Having briefly sketched a picture of some of the challenges facing our world today, I will then set out a distinction between the two dominant theoretical perspectives in the debate, namely, statism and cosmopolitanism. Since Part II of this thesis involves a detailed critique of the statist position, Chapter 1 is mainly concerned with detailing the key features of the cosmopolitan standpoint.

The chapter is divided into two main sections. In Section 1 I outline some key cosmopolitan commitments and introduce several distinctions that will enable us to discriminate between different cosmopolitan views. I then move on, in Section 2, to briefly summarise several different cosmopolitan theories. Following Andrea Sangiovanni (2007: 5-8) I will suggest that, broadly speaking, cosmopolitan approaches to distributive justice can be divided into two camps: relational and non-relational. I then consider the relational cosmopolitan accounts put forward by Charles Beitz and Thomas Pogge, followed by the non-relational cosmopolitan accounts proposed by Brian Barry, Simon Caney, and Martha Nussbaum. This brief exploration of existing cosmopolitan theories will be important for Part IV of the thesis where I work towards developing a feminist cosmopolitanism.

### 1.1 GLOBAL JUSTICE

The world in which we live is shrinking. Development in information and communication technologies has changed the way that we interact with one another and the speed with which we can do so. The growth of telecommunications, the Internet, and extensive global news coverage means that

we now know more about each other than ever before. And one thing that can no longer be denied is the severity, depth, and scope of the gross inequality that exists between individuals across the globe.

According to the World Health Organization, 21,000 children under the age of five die every day from treatable diseases such as malaria, diarrhoea, and pneumonia (WHO, 2011a). Moreover, child mortality rates are disproportionately higher in the developing regions of the world: “in 2011 the under-five mortality rate in developing regions was 57 deaths per 1,000 live births – more than 8 times the rate in developed regions (about 7)” (IGME, 2012: 2). For those who reach their fifth birthday, how long they can expect to live differs hugely depending on where in the world they happen to have been born. The life expectancy of a child born in Malawi, for instance, is 47 years while that of a child born in Japan is 83 years (WHO, 2011b).

Inequalities in child mortality and life expectancy are related to disparities in access to essential resources like safe drinking water, adequate sanitation, food, shelter, healthcare, education, and income. The statistics are shocking. For instance, in 2005 the richest 20 percent of the world’s population claimed 77 percent of all income while the poorest fifth took just 1.5 percent (UNFPA, 2011: 5). In addition, it is documented that today 884 million people do not have access to safe drinking water and 2.6 billion people lack access to flush toilets or other forms of improved sanitation (UN, 2011: 5). Furthermore, around 98 percent of the 852 million people who are chronically undernourished live in developing regions of the world (FAO, 2012). And The United Nations Educational, Scientific and Cultural Organization report that in 2008, 796 million adults worldwide (15 years and older) were unable to read and write - two-thirds of who (64%) were women.

Importantly, there are vast inequities not just between countries but also within them. This point is worth emphasising since there is a tendency when thinking about global justice to think about disparities between citizens of different states. But thinking in this way can serve to obscure the plight of some of the world’s

most vulnerable people. First, thinking about global inequalities in terms of disparities between certain countries neglects the fact that there are many people living in so-called developed regions of the world whose lives are blighted by the effects of poverty and oppression. Take, for example, Scotland, where a child born in Glasgow has a life expectancy of just 54 - that is 28 years shorter than that of a child born just 13 kilometres away (WHO, 2008: 32). Or consider the US, where it is estimated that African-Americans have a 1 in 22 lifetime risk of being diagnosed with HIV while their white co-nationals have a lifetime risk of receiving an HIV diagnosis of 1 in 170 (WHO, 2011c: 42). What makes these disparities most disturbing is that there are no biological or genetic reasons behind them.

Second, the success of measures implemented to meet the United Nations Millennium Development Goals has led to growing inequality between individuals in developing regions. Though progress has been made in, for instance, the availability of adequate sanitation, access to safe drinking water, child nutrition, and access to primary education, the inequality between urban and rural populations is widening. For example, children in developing regions are twice as likely to be underweight if they live in rural rather than urban areas (UN, 2011: 14). The basic worry here is that when efforts are concentrated on reducing inequalities between developed and developing regions, those who are targeted may not be the most vulnerable people. The poorest people, those who live in rural areas, tend to be the hardest to reach and ensuring that their basic needs are met will require considerably more resources. A consequence of this is that the needs of those people may be overlooked in favour of those where efforts will have more immediate effects and improvements can be made more easily. In this case, focusing on inequalities between countries may serve to obscure the plight of the world's most vulnerable by prioritising situations that will see the greatest reduction of the overall inequality.

When confronted with the extensive and egregious inequality that exists between individuals across the globe, we are forced to ask what, if any, responsibilities are owed to human beings globally. This question involves thinking about the moral,

political, and economic duties that may be owed to each and every human being as a matter of justice. It is a question about distributive justice. It asks us to think about the inequalities in our world and consider whether or not the current allocation of resources, opportunities, rights, freedoms and other goods is just. It is with cosmopolitan approaches to questions of global distributive justice that my interest lies.<sup>1</sup>

## 1.2 THE CENTRAL TENETS OF COSMOPOLITANISM

Before I go on to consider some important ways of distinguishing between different types of cosmopolitanism, I will begin with what all cosmopolitan accounts have in common. The foundation upon which all cosmopolitan accounts rest is expressed in the following three central tenets:

- (1) Individualism: Individuals are the primary units of moral concern.
  - (2) Universality: Every individual has the status of being a primary unit of moral concern equally.
  - (3) Generality: Individuals are the ultimate units of concern for everyone.
- (Pogge, 1992: 48-49)

For the cosmopolitan, then, each individual shares equally in being a primary unit of moral concern and having this status generates obligations that are binding on all. Taking individuals as the primary units of equal moral concern requires giving *every human being* in the world equal respect and consideration irrespective of where they happen to live, or what other affiliations they might have. Moreover, adopting the cosmopolitan foundation demands that, because individuals are primary, one focuses on the relations between individuals and on the needs, interests and well-being of individuals.

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<sup>1</sup> In recent years the idea of cosmopolitanism has come to stand for many different things. Accordingly, ‘cosmopolitanism’ should be understood as an umbrella term that encompasses many different positions and is not restricted to the field of political and moral philosophy. However, within the context of contemporary philosophical discourse there are, broadly speaking, six strands of cosmopolitan thought: moral, political, legal, cultural, civic, and economic. Here I am mainly concerned with moral cosmopolitanism and how it pertains to questions of distributive justice. For a discussion of what the other themes in cosmopolitan thought entail, and how they relate to one another, see Brown and Held (2010, Editor’s Introduction).

To make this clearer, consider, by way of contrast, statist approaches to questions of global justice. Statists hold that when we think about questions of global justice our thinking must begin with states since they are the primary units of moral concern at the global level.<sup>2</sup> This means that statists hold that every state in the world, taken as a moral unit, is entitled to equal respect and consideration. Moreover, for statists our theorising about issues pertaining to global justice should be shaped primarily by the relations that hold between states and the interests of states.

At this point it is worth noting that the cosmopolitan position sketched above is often referred to as *moral* cosmopolitanism. As we have seen, then, moral cosmopolitanism asserts that all individuals are the primary units of moral concern and that they share in this status equally regardless of their citizenship, nationality, or other affiliations. What this fairly minimal starting point necessitates is up for grabs and moral cosmopolitanism has been fleshed out in a variety of ways (some of which I will consider later in this chapter). It is important to recognise, though, that moral cosmopolitanism does not demand a particular institutional framework at the global level.<sup>3</sup> On that issue it remains silent. Nor does adopting the moral cosmopolitan standpoint commit one to a specific principle, or set of principles of global distributive justice. Again it is silent on that issue. All that moral cosmopolitanism argues is that there are moral obligations that are global in scope. What principles of justice ought to be adopted, or what institutional framework might be most effective in discharging duties of justice, are further questions.

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<sup>2</sup> Both John Rawls (1999) and Thomas Nagel (2005) have articulated statist approaches to questions of global justice. In Part II I offer a detailed critique of the statist position.

<sup>3</sup> A distinction is often made in the literature between moral and political or institutional cosmopolitanism. Moral cosmopolitanism is taken to be the more general and abstract view described above, whereas political and institutional cosmopolitans argue for particular political structures that they believe will best satisfy the needs of individuals globally and meet the challenges of the international community.

### 1.3 WEAK AND STRONG

Although all cosmopolitan approaches to global justice share the same basic foundation, beyond that they can differ greatly. For example, though all cosmopolitans hold that there are *some* principles of global distributive justice, this claim is made in varying degrees of strength (Caney, 2001a: 975). At one end of the scale weaker versions of the claim maintain that there are *some* duties of justice to those beyond our national borders. This is to be contrasted with stronger versions of the claim that maintain that all obligations of distributive justice extend to everyone. It is useful to think of these two views as the opposing ends of a spectrum with many more moderate views in between.<sup>4</sup> Where a view features on this scale depends on the content and the weight attributed to any obligations that we may have to our compatriots and non-compatriots.

David Miller helpfully explains this distinction in the following:

According to the strong version [...] all moral principles must be justified by showing that they give equal weight to the claims of everyone, which means that they must either be directly universal in their scope, or if they apply only to a select group of people they must be secondary principles whose ultimate foundation is universal. The weak version, by contrast, holds only that morality is cosmopolitan in part: there are some valid principles of equal consideration with a universal scope, even though there may also be independent, nonderivative principles, with a more restricted scope. According to weak cosmopolitanism, then, we may owe certain kinds of treatment to all other human beings regardless of any relationship in which we stand to them, while there are other kinds of treatment that we owe only to those to whom we are related in certain ways, with neither sort of obligation being derivative of the other.

(Miller, 1998: 166-167)

Weak cosmopolitans, then, recognise that there may be some obligations to those outside our borders. For example, one could, as David Miller does, tie the thought that all human beings should be shown equal moral concern to a theory of basic human rights that specifies a global minimum that all human beings are entitled to as a matter of justice (Miller, 2007). The important thing to note about the type of weak cosmopolitanism advocated by Miller is that once the conditions have

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<sup>4</sup> See Pogge (2002b) for a defence of intermediate cosmopolitanism, which lies somewhere between the strong and weak forms of cosmopolitanism outlined by Miller.

been met for human beings to live minimally decent lives, any further inequality is not a concern of cosmopolitan justice.

By contrast, strong cosmopolitans argue that distributive duties that exist between co-nationals must in fact be global in scope.<sup>5</sup> Since the relationship between co-nationals is disregarded as irrelevant to determining the scope of the principles of justice, Miller further suggests that the strongest cosmopolitan position prohibits special obligations to our co-nationals (Miller, 2007: 31). Unlike weak cosmopolitans who aim at some criterion of minimal adequacy, strong cosmopolitans are committed to a much more demanding notion of global equality. Thus, strong cosmopolitans claim that a minimum standard is not sufficient for cosmopolitanism justice since many of the inequalities that would remain if the standard were met would still be unjust.

If we take this distinction seriously, then it has an important consequence: most people are at least weak cosmopolitans. As Miller notes, with the exception of racists and bigots most people are prepared to accept that there are at least some global duties, responsibilities, and/or entitlements that we all have (Miller, 2002: 84). This would seem to suggest that the distinction between cosmopolitanism and statism breaks down. Statists do respect the equal moral worth of human beings and they often recognise some global duties (the duty to uphold a minimal conception of human rights, for example), so shouldn't they be counted as weak cosmopolitans?

If the distinction between cosmopolitans and statist collapses, then my central thesis – that feminists ought to be cosmopolitans about global justice – might not look to be saying anything much at all. I am prepared to cede that *some* statist can be counted as weak cosmopolitans in the sense that they allow for at least some global duties of justice. However, I believe that the distinction between statist and cosmopolitans cannot be entirely dissolved and it remains a useful one

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<sup>5</sup> For example, Charles Beitz (1979) argues that the Difference Principle, a principle of distributive justice originally posited by John Rawls (1999b) and intended to regulate state-level institutions, should be applied globally.

to make. Though statist do not deny that all human beings have equal moral worth, they often reject the thought that human beings are the primary units of moral concern at the global level. This means, for statist, that when we think about what duties of global justice there may be, such duties only exist between states and it is the needs and interests of states that are primary.<sup>6</sup> Moreover, the statist argues that any duties of global distributive justice that there may be (and they are often very minimal), are entirely contingent on the state system. That is, in a world without states there could be no global duties of distributive justice. And for some statist the only institutional framework strong enough to generate duties of *justice* is internal to the state which means that only the weaker duties of humanitarian morality apply at the global level (Nagel, 2005).

Some cosmopolitans are in agreement with statist over the importance of institutions for grounding duties and entitlements of justice (Beitz, 1975; Pogge, 2001b, 2002a, 2005a, 2005b). However, whereas those cosmopolitans think that the current global institutional/economic framework is sufficient to generate such duties, the statist disagree (Rawls, 1999b; Nagel, 2005). Importantly, the foundations of moral cosmopolitanism do not commit one to the view that duties and entitlements of justice can only be generated between those sharing a particular institutional framework.<sup>7</sup> By contrast, adopting a statist position does necessarily commit one to such a view because of its reliance on the state system.

## **1.4 SOME THINGS THAT COSMOPOLITANS ARE NOT (NECESSARILY) COMMITTED TO**

Before going on to outline a number of different cosmopolitan theories, I want to be clear about what cosmopolitans are and are not committed to. As mentioned above, although adopting the cosmopolitan perspective commits one to the equal moral worth of all human beings as the primary units of moral concern, beyond

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<sup>6</sup> I will return to these points in Chapter 3 where I offer a detailed critique of Rawls's statist conception of global justice.

<sup>7</sup> Drawing a distinction between relational and non-relational cosmopolitanism captures the difference between these two types of cosmopolitanism. I will address this distinction in Section 2 of this chapter.

this cosmopolitan theories may differ greatly. For example, as we saw with the distinction between weak and strong cosmopolitanism, cosmopolitans differ considerably over what duties of justice hold between individuals and under what circumstance those duties are generated. This is worth noting because cosmopolitanism has often been criticised for necessarily leading to unpalatable consequences. In this section I aim to allay any initial worries that one might have about moral cosmopolitanism by considering three common objections to the cosmopolitan standpoint.

#### ***1.4A COSMOPOLITANISM AND SPECIAL RELATIONSHIPS***

One worry about cosmopolitan approaches to justice is that they demand that we forsake our special relationships. That is, there is no room for partiality in a cosmopolitan theory of justice because it requires that we consider all humans equally thereby excluding the special treatment or obligations that many argue we owe to our family and friends. This objection to cosmopolitanism can be construed in three different, though related, ways. First, one might argue that the cosmopolitan position seemingly denies that our special relationships can, by themselves, be the *source* of special duties. Second, as Catherine Lu (2000: 249) notes, objections of this sort question the feasibility of the cosmopolitan standpoint. Accordingly, one might argue that since the cosmopolitan perspective downplays our special relationships and emphasises our commitments to the community of humankind it is unfeasible because while most of us feel the tug of duties grounded in special relationships, few of us identify as global citizens with obligations to all other humans. Third, and again suggested by Lu (2000: 249), one might object that a philosophical position that demands that we see ourselves as citizens of the world and forsake our special relationships is undesirable. Thus, even if it were possible for us to recognise global duties stemming from our membership to the community of humankind, working to fulfil those duties would undermine our personal relationships and be too psychologically damaging to represent a desirable course of action.

In response to the first point it should be noted that the foundations of moral cosmopolitanism do not necessarily exclude, or deny the importance of, special obligations. Furthermore, the positive cosmopolitan claim, that there are general duties of justice to all persons regardless of nationality or citizenship, does not commit one to the view that special relationships cannot generate special obligations. Thus, it seems perfectly reasonable to think that a cosmopolitan approach can advocate global duties of justice generated by a commitment to the equal moral worth of all persons, while accommodating the special responsibilities that we incur through the relationships that we have to particular others. However, this may strike some as too quick since a further worry emerges: can one coherently be committed to the equal treatment of all individuals while also being committed to favouring the treatment of some individuals over others?

Borrowing from Samuel Scheffler (1999), I think that there are good reasons to believe that while there may be tensions between these two sets of duties, having these commitments does not degenerate into incoherence. Acting to fulfil our special responsibilities does not represent an unjustified departure from the cosmopolitan commitment to equality. Scheffler argues that we can only value our special relationships in the ways that we do if we see them as providing us with reasons for unequal treatment (1999: 266). But acknowledging that this is a key feature of human relationships does not say anything about what one can justifiably do in the name of special relationships. Thus, accepting that our special relations provide us with reasons for unequal treatment does not necessarily justify always prioritising every need and interest of our near and dear at a cost to those of strangers. As Pogge notes, “special relationships can *increase* what we owe our associates, but they cannot *decrease* what we owe everyone else” (Pogge, 2002b: 90-91).

One might now question the feasibility of cosmopolitanism: is it actually possible for human beings to realise the ideal of cosmopolitan justice? Are we really capable of regarding ourselves as fully signed-up members of the human community subject to any duties that cosmopolitan citizenship may confer upon us? The problem is that we are very much rooted in our families, communities,

local cultures and nations whereas “humanity is too large and abstract a category with which to evoke the passions of moral commitment, obligation and loyalty. Reason may posit a community of humankind, but most people live in much more parochial communities, bounded by kin, culture and state. The human being is an abstraction compared to my brother, my cultural community, or my country” (Lu, 2000: 248-249). The cosmopolitan position, then, is unfeasible because it does not pay sufficient attention to the ways in which are *in fact* motivated to act. While most of us feel the pull of obligations generated by our special relationships, few are motivated to act for the good of the wider human community.

In response I would argue that although many people may find it difficult to be motivated by general duties of justice to strangers, that does not mean that such duties do not exist or that strangers do not have any claims over us. Furthermore, although we may find it difficult to be motivated by our duties to strangers that does not mean that there are no institutional measures that could be put into place to help us discharge those duties. All cosmopolitanism needs to get off of the ground is a commitment to the idea that there are some duties of justice (however minimal). Having that commitment but failing to be motivated by it can be corrected by the implementation of practical measures that would help us to discharge our general duties. For example, Gillian Brock (2009) details several workable proposals including a global system of taxation and increased transparency of global money flows. To the sceptic who contests that such proposals will fail to garner support, Brock notes that there are already some global taxes in place and that the proposals that she discusses do enjoy considerable support (Brock, 2009: 131-140).<sup>8</sup>

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<sup>8</sup> That said, cultivating a sense of cosmopolitan citizenship that motivates us to fulfil our duties to strangers will be an important component of the overarching cosmopolitan vision of which cosmopolitan distributive justice is but one element. Importantly, there is evidence to suggest that such a project is not wildly impracticable. For example, across the globe there are many people working in peace movements, for the protection of human rights, and for the preservation of the environment who can be seen as expressing sentiments associated with the idea of being a global citizen (Carter, 2001: 7).

But even if human beings could identify as citizens of the world would this be desirable? For some it appears that the cosmopolitan perspective has the unpalatable consequence of failing to accommodate the importance that our special relationships have to us. This challenge is slightly different from the first. Here the concern is not that cosmopolitanism denies that our special relationships can be the sources of special obligations, but rather that it is undesirable because it places unreasonable psychological demands on us. The objection can be seen as a specific form of Michael Stocker's more general claim that modern ethical theories divide us by providing reasons for acting which are in direct conflict with our motivations and as such "they fail, not only by putting us in a position that is psychologically uncomfortable, difficult, or even untenable, but also by making us and our lives essentially fragmented and incoherent" (1976: 456). At the heart of this objection is the thought that modern ethical theories generate a split between motives and reasons which results in a sort of 'moral schizophrenia'.

With regard to cosmopolitanism the objection can be construed as follows: many of the motivations that individuals have in their day-to-day lives are non-moral; for example, we are often motivated to act out of love for certain individuals. A cosmopolitan approach to global justice demands that we act in ways which conflict with these non-moral motivations. Cosmopolitanism may, for instance, require an extensive redistribution of resources, which may mean that resources that wealthier individuals would rather share with their near and dear would instead be redistributed to those less fortunate. Moreover, a cosmopolitan principle of distribution may demand that resources be distributed not among fellow nationals but moved across national boundaries. So, though we may feel motivated to act to help our co-nationals before aiding those outside of our borders (a sentiment expressed by the popular idiom 'charity begins at home'), cosmopolitanism seeks to provide reasons that are contrary to those motivations.

Again, though it is conceivable that a position based on the three central tenets of cosmopolitanism could demand that we forsake all special relationships in favour of impartiality (this would count as a strong view on Miller's distinction), it does not follow that all cosmopolitan accounts must be committed to this conclusion.

A cosmopolitan can accept that our ability to form and maintain relationships with other human beings is very important to us. We tend to think that it is important that parents are allowed to care more for their own children than for the children of others, that when we fall in love or form friendships with particular individuals we should be able to give those people priority since we have a greater attachment to them. A cosmopolitan can grant some concession to these special relationships because special relationships are important to almost all human beings. And, as noted above, if we deny that our special relationships provide us with reasons to act in certain ways, then we fail to grasp something essential about the nature of special relationships. Since cosmopolitans take the fundamental needs and interests of individuals as primary, and it is relatively uncontroversial that the ability to form and maintain special relationships is a fundamental interest of human beings,<sup>9</sup> many cosmopolitans recognise that special relationships and their associated obligations must, to some extent, be protected when thinking about global justice. But there is an important caveat: while particular relationships are more important to us than others, there are constraints on what can be done in the name of those relationships.

#### ***1.4B COSMOPOLITAN PRINCIPLES OF DISTRIBUTIVE JUSTICE***

A further common objection rallied against cosmopolitanism is that cosmopolitan approaches are committed to advocating the same principles for both the national and global sphere (Nagel, 2005: 122-125). The thought here is that since cosmopolitans think that the scope of distributive justice extends beyond nation-state borders they are committed to the global application of principles proposed to regulate institutions at the level of the nation-state.

However, as can be seen from the above discussion of strong and weak forms of cosmopolitanism, cosmopolitans are not necessarily committed to this conclusion.

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<sup>9</sup> See, for example, Nussbaum's capabilities approach. On her list of central human capabilities Nussbaum includes "*Emotions*. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger" and "*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" (2006a: 76-77).

Although cosmopolitans are committed to advocating some principles which are global in scope this does not entail that these principles must be the same as those which are intended for the national sphere. While some cosmopolitans (Beitz, 1975; Marchetti, 2008) have argued for the extension of principles intended for the national realm to the global realm, this view is not entailed in the foundational tenets of cosmopolitanism. For example, one might justify different principles at the national level to those at the global level on the grounds that the difference in relationship between compatriots and non-compatriots is morally relevant.

#### ***1.4C COSMOPOLITANISM NECESSITATES A WORLD STATE***

A fairly common objection to cosmopolitanism is that its proponents are committed to a view which requires a world state (Bull, 1966; Wight, 1987). It is argued that since cosmopolitans are committed to principles of global justice they are necessarily committed to a global state to enact and maintain them. Moreover, because cosmopolitans are committed to a global state there is little or no room for the role of the nation-state, as traditionally conceived, or a plurality of cultures in cosmopolitan approaches to global justice.

Though some cosmopolitans (Cabrera, 2004) have argued for a fully integrated world government, most are keen to point out that adopting a cosmopolitan standpoint does not entail a commitment to a particular institutional arrangement. Beitz, for example, emphasises the distinction between moral and institutional cosmopolitanism and stresses that the requirement to treat all human beings as the primary units of moral concern does not entail a particular *political* framework:

The doctrine of universal human rights is cosmopolitan in its foundations without being cosmopolitan in its institutional arrangements [...] Instead, it specifies minimum conditions that any institutions should satisfy. Accordingly, human rights doctrine does not rule out the possibility – indeed it trades on the hope – that its institutional requirements can be satisfied within a political structure containing nation-states more or less as we know them today.

(Beitz, 1994: 127)

So, arguing that we have duties toward all humanity does not commit one to particular institutional structures. This is because the project of moral

cosmopolitanism (establishing that there are duties) and the political cosmopolitan project (establishing which institutional arrangement would best realise those duties) are separate. How one understands the project of moral cosmopolitanism will impact on the sorts of institutional arrangements that one envisages for the global level, but one may embark on the first project without engaging in the second.

#### ***1.4D THE INDETERMINACY OF COSMOPOLITANISM***

It is important to be clear that what follows from the cosmopolitan starting point is largely indeterminate. As I hope to have demonstrated, having a commitment to moral cosmopolitanism means committing oneself to the core values of the cosmopolitan standpoint. However, realising those values requires much more than this bare cosmopolitan commitment gives us. That is to say, moral cosmopolitanism tells us nothing about how our world *ought to be* in order to best reflect the core cosmopolitan values. Thus, each cosmopolitan theorist presents arguments in favour of a cosmopolitan approach to global justice that offers a distinct interpretation of the central tenets of cosmopolitanism. Hence, we are confronted by a variety of cosmopolitan answers to questions of global distributive justice.

The lack of specificity required by the cosmopolitan foundation may again have my reader wondering quite how cosmopolitan approaches to global justice stand apart from other approaches to global justice, say for example, statist accounts. I suggest that the best way to get a handle on where the cosmopolitan stands in the debate on global justice is to consider, as Beitz does, what cosmopolitanism stands opposed to:

The force of moral cosmopolitanism is clearest when we consider what it rules out: cosmopolitanism stands opposed to any view that limits the scope of justification to the members of particular types of groups, whether identified by shared political values, communal histories, or ethnic characteristics. It also stands opposed to any view that allows the justification of choices to terminate in considerations about the non-derivative interests of collective entities such as states or social groups. If one takes [... statism...] to posit that state boundaries are limits to the scope of justification, then cosmopolitanism is plainly incompatible with it.

(Beitz, 2005: 17)

## **1.5 RELATIONAL VERSUS NON-RELATIONAL: CONTEMPORARY COSMOPOLITAN ACCOUNTS**

The indeterminacy of the foundational cosmopolitan standpoint allows for a variety of interpretations. Accordingly, the bare cosmopolitan standpoint gives rise to a variety of substantive cosmopolitan approaches to global justice. These approaches can, broadly speaking, be divided into two categories: relational and non-relational. I will consider several different cosmopolitan approaches through the lens of this distinction.<sup>10</sup>

### ***1.5A RELATIONAL ACCOUNTS***

Following Sangiovanni I take it that those who advocate relational conceptions of distributive justice maintain “that the practice-mediated relations in which individuals stand condition the content, scope, and justification of those principles” (Sangiovanni, 2007: 5). The thought is that duties of justice are grounded in features of relationships, association, and shared institutions. Importantly, this means that “principles of distributive justice cannot be formulated or justified independently of the practices they are intended to regulate” (Sangiovanni, 2007: 5). Thus, relational accounts maintain that duties of distributive justice only arise when certain facts about the world obtain. That is to say, distributive justice is contingent on the existence of particular relationships.

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<sup>10</sup> Though two accounts may be relational (or non-relational) they may differ in other ways.

## *GLOBALIZING THE ORIGINAL POSITION*

Following the publication of Rawls's *A Theory of Justice* (hereafter TJ), Charles Beitz argued that, contrary to Rawls, Rawls's contractarian theory could be extended from the national to the global sphere (Beitz, 1975).<sup>11</sup> Although Rawls later denied that a theory of cosmopolitan justice could be developed using his theoretical framework (Rawls, 1999a: §11.1), it is useful for my purposes to briefly explain the nature of the disagreement between Beitz and Rawls which gives rise to Beitz's subsequent positive position.<sup>12</sup>

In TJ Rawls argues that his two principles of justice only apply at the level of the nation-state because the proper subject of justice is the basic structure of society. For Rawls, the "primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the advantages from social cooperation" (TJ: 4), because of the profound and lasting affects that it has on each citizen's life. Taking the basic structure to be the proper subject of justice means that principles of justice are intended to shape our major social institutions with the aim of arriving at a fair distribution of the benefits and burdens that arise out of social cooperation.

Importantly, when Rawls develops his international theory in *The Law of Peoples* (hereafter LP) he suggests that the global sphere lacks a comparable basic structure. A key reason for this is that there is not the same degree of social and economic interaction at the global level as there is at the national level. For Rawls, the global sphere is characterised by little social cooperation and few, if any, major social institutions. Hence, for Rawls, it does not make sense to consider how just the distribution of benefits and burdens at the global level is because that

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<sup>11</sup> The view that I outline here is more in line with Beitz's early position. In later works Beitz appears to move away from the relational stance. For example, he says in 'Cosmopolitan Ideals and National Sentiment' that "since human beings possess these essential powers [a capacity for an effective sense of justice and a capacity to form, revise and pursue a conception of the good] regardless of whether, at present they belong to a common cooperative scheme, the argument for constructing the original position globally need not depend on any claim about the existence or intensity of international social cooperation" (Beitz, 1983: 595).

<sup>12</sup> I will offer a feminist cosmopolitan critique of Rawls's later theory in Chapters 3 and 4.

question only arises over goods that are a product of social cooperation. Since the global sphere is not underpinned by a basic structure comprised of major social institutions, there is nothing at the global level that can be the proper subject of distributive justice.

However, Beitz thinks that Rawls's theoretical framework naturally extends from the domestic level to the global realm. He provides two main arguments which suggest that Rawls's contractarian approach has cosmopolitan conclusions. The first argument questions Rawls's characterisation of the global original position, which involves representatives of well-ordered societies. More specifically, Beitz questions Rawls's omission of considerations to do with natural resources from the parties' deliberation in the original position (Beitz, 1975: § II).

Rawls uses the original position as a hypothetical device which he believes is capable of justifying conceptions of justice (TJ: 14-15). Rawls requires that we imagine ourselves in an original position where we have to reach a hypothetical agreement about which conception of justice to pursue. In order to secure a fair agreement the hypothetical contract must take place under certain conditions. Consequently, Rawls develops an original position in which rational, self-interested deliberators are behind a veil of ignorance. The veil of ignorance prohibits persons in this initial situation from having any knowledge about the particulars of themselves, or their society. The purpose of this constraint is to create conditions of equality. All deliberators are ignorant of their position outside of the veil, and this prevents people from exploiting their natural or social advantages. Furthermore, the veil of ignorance ensures that there is agreement among parties because it prohibits knowledge of competing interests, which would normally prevent agreement under ordinary circumstances.

Importantly, in Rawls's global original position in which the deliberators are representatives of well-ordered peoples seeking to establish a "political conception of right and justice that applies to the principles and norms of international law and practice" (LP: 3) the deliberators have no knowledge of the extent of the wealth of the society or what natural resources they hold (TJ: 331-

332; LP: 33). Furthermore, the absence of any discussion about the importance of resources to a people, and the way that Rawls downplays the role that a lack of resources might have in limiting a society's ability to be stable and well-ordered (TJ: 108), implies that deliberators in the original position are not concerned with the level of natural resources that the people who they represent may possess. Contrary to this characterisation of the global original position, Beitz argues that issues surrounding natural resources would feature in the deliberations of parties in the original position.<sup>13</sup> He suggests that since natural resources are distributed unevenly across the globe it is quite likely that states will disagree over who has what and who is entitled what and, therefore, it ought to be a matter of concern to parties in the international original position. Furthermore, since the natural distribution of those vital resources is entirely morally arbitrary (no society can be said to deserve the resources that they have access to) and yet possession of those resources can greatly affect the prospects of a society and its citizens, a fairer distribution of those scarce goods would be of concern to parties in the original position (Beitz, 1975: 700).

If we accept that the distribution of natural resources would be important to the deliberations of parties in the original position, then it is easy to see how including the distribution of natural resources as a consideration would be likely to yield a principle of redistribution. Given that representatives in the global original position do not know whether they represent resource-rich or resource-poor societies, they must opt for principles that will guarantee them the resources necessary to establish and maintain a society characterized by just basic institutions whatever their economic situation. Thus, parties in the original position would reason from the thought that the country that they represent may have few, if any, natural sources so they must secure the minimal necessary to ensure the stability of a just basic structure. Consequently, it seems likely that all

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<sup>13</sup> Rawls responds to Beitz in *The Law of Peoples* §16.2. Rawls's response hinges on the rather dubious empirical claim that "there is no society anywhere in the world – except for marginal cases – with resources so scarce that it could not, were it reasonably and rationally organized and governed, become well-ordered" (LP: 108). Rawls suggests that since it is the political culture, and not the amount of resources, which affects a society's ability to be well-ordered, the fact that resources are arbitrarily distributed is not important and should not feature in the deliberators reasoning. For critical discussions of Rawls on this point see, for example, Beitz (2000); Buchanan (2000); Pogge (2002a).

parties in the international original position would opt for some kind of principle of resource redistribution to safeguard against a situation in which they did not have sufficient natural resources to secure and maintain a stable basic structure (Beitz, 1975: 700). So, the first of Beitz's two arguments shows that, contrary to Rawls, Rawls's statist approach can yield a global principle of distributive justice.

The second argument that Beitz makes against Rawls takes issue with the claim that there is no global system of cooperation. As Beitz notes, nation-states are not self-sufficient, independent units. In fact, the level of interdependence at the international level is such that one can hardly fail to consider it a scheme of cooperation. Moreover, the scheme of cooperation at the global level often works to the detriment of poorer countries:

The system of interdependence imposes burdens on poor and economically weak countries that they cannot practically avoid. Industrial economies have become reliant on raw materials that can only be obtained in sufficient quantities from developing countries. In the present structure of world prices, poor countries are often forced by adverse balances of payments to sell resources to more wealthy countries when those resources could be more efficiently used to promote development of the poor countries' domestic economies. Also, private foreign investment imposes on poor countries patterns of political and economic development that may not be optimal from the point of view of the poor countries themselves. Participation in the global economy on the only terms available involves a loss of political autonomy. Third, the global monetary system allows disturbances (e.g. inflation) in some national economies to be exported to others that may be less able to cope with their potentially disastrous effects.

(Beitz, 1975: 374)

The level of economic interdependence is highly problematic for the worst-off nation-states. Given their weak economic status and their dependence on foreign markets, it would be nigh on impossible for them to opt out of the global market. Consequently, the world's most vulnerable economies are locked into the global scheme. Moreover, since the worst-off nation-states are often in a weak bargaining position, this can mean that they incur greater burdens than their more powerful counterparts.

The first of Beitz's two arguments takes Rawls on his own terms and shows how the Rawlsian model can in fact yield principles of global justice. However, the

second of the two arguments involves an empirical dispute over the nature of the interaction between states and individuals at the global level. The outcome of this dispute between Rawls and Beitz gives rise to Beitz's positive view. For Beitz, the high level of interdependence and lack of state self-sufficiency indicate that many states are involuntarily locked into a scheme of cooperation with one another: a scheme that tends to disadvantage economically weak countries. Moreover, this global scheme of economic and social interaction heavily impacts on the lives of individuals. Importantly, what states, as well as their citizens, do in one part of the world can greatly affect the lives of others living elsewhere. What then follows, for Beitz, is that there ought to be one global original position as opposed to the two-stage original (national and international) position favoured by Rawls in LP.<sup>14</sup>

It is important to be clear about why Beitz's position counts as a relational approach to global justice. At the heart of the dispute between Rawls and Beitz is a disagreement over whether or not the right kinds of justice-grounding relations are present at the global level. For Rawls, the global sphere lacks a scheme of background institutions and economic and social interaction sufficient to ground duties of justice, whereas Beitz disagrees. However, both Rawls and Beitz agree that certain relations need to obtain in order for duties of justice to arise. Thus, if tomorrow states ceased to be locked into an interdependent scheme of social and economic cooperation, Beitz would have to concede that any prior duties of justice would be dissolved because the relevant relations would no longer hold.

### *INSTITUTIONAL COSMOPOLITANISM*

Thomas Pogge argues that we have a cosmopolitan duty not to participate in, or maintain, institutional arrangements which harm others. His institutional account

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<sup>14</sup> Ultimately, Beitz thinks that a single global original position will result in deliberators opting for something like a globalized Difference Principle (Beitz, 1975: 271). In TJ Rawls proposes two principles of social justice, the second of which is a distributive principle, which he refers to as the Difference Principle. In short, the Difference Principle allows that some inequality is compatible with a just social arrangement so long as it meets the condition of being the greatest benefit to the least advantaged members of society (TJ: § 11, 12). Beitz suggests that a principle similar to the Difference Principle would be suitable for governing the redistribution of resources at the global level.

focuses on our negative duties not to harm and on our intermediate duties which demand that one tries to prevent harms which may result from past conduct (Pogge, 2005a: 34). Crucial to Pogge's account is the idea that the existing global order continually harms the world's poorest people:

[...] citizens and governments of the affluent countries - whether intentionally or not - are imposing a global institutional order that foreseeably and avoidably reproduces severe and widespread poverty. The worse-off are not merely poor and often starving, but are *being* impoverished and starved under our shared institutional arrangements, which inescapably shape their lives.

(Pogge, 2002a: 207)

In many of his works Pogge extensively details the effects of severe poverty on the global poor, the harm that the current economic order imposes on the global poor, and the attitudes expressed by the world's political leaders on the matter of poverty (Pogge, 2001a; 2005; 2008). Having argued that we have a negative duty not to harm, and having established that the current world order harms the global poor, Pogge concludes that individuals have a duty not to perpetuate unjust institutional schemes because of the harm that they cause. That is, the world's affluent have a duty to stop perpetuating a system which inflicts severe deprivation on the world's poor.

Our continual endorsement of the existing global order violates a negative duty that we have not to uphold injustice by benefiting from, or compounding the unjust abject poverty of the worse-off. In order to prevent harm to the global poor, institutional reforms are imperative. Among some of the reforms that Pogge proposes is his 'Global Resource Dividend' (GRD). In brief, the GRD "envisions that states and their citizens' governments shall not have full libertarian property rights with respect to the natural resources in their territory, but can be required to share a small part of the value of any resources that they decide to use or sell" (Pogge 2002d: 609). Pogge refers to this as a dividend because "the global poor own an inalienable stake in all limited natural resources" (Pogge, 2002d: 609). Whilst this stake does not give holders the right to enter into discussions of how resources should be used, it does entitle them to a share of their economic value.

The fundamental goal is to ensure that all human beings can meet their own basic needs with dignity and the GRD ensures that they can do so (Pogge, 2002d: 610).

Pogge appears to readily admit that his institutional cosmopolitanism is relational. For example, he states that human rights are contingent on the existence of a global institutional scheme:

It is only because all human beings are now participants in a single, global institutional scheme – involving such institutions as the territorial state and a system of international law and diplomacy as well as a world market for capital, goods and services – that all human rights violations have come to be, at least potentially, everyone’s concern.

(Pogge, 1992: 51)

I take this to mean that it is only because a scheme of global institutions is in place that duties to others get generated. That is, it is because individuals stand in the right relation to one another, i.e. they share in an institutional framework, that duties get triggered. If the current institutional framework ceased to exist, then so too would any corresponding duties and obligations.

Caney points out that there is an important distinction between the relational accounts of Pogge and Beitz: “Pogge is what we might term an unrestricted institutionalist: he works on the assumption that *all* principles of justice apply only within systems of cooperation. Beitz, by contrast, is what we might term a restricted institutionalist: *some* principles of distribution (such as the Difference Principle) apply only within systems of cooperation but other principles (such as his principle concerning the distribution of resources) apply even among persons who are not members of the same systems of cooperation” (Caney, 2005: 110). Pogge, then, is making the stronger claim that schemes of cooperation present the only circumstances in which principles of distributive justice apply, whereas Beitz is committed to the weaker claim that some principles of distributive justice apply in circumstances where people’s activities are merely interconnected. So, though both accounts are relational, in that duties of justice only hold when certain relations between individuals exist, Beitz and Pogge disagree about how strong those relations must be before duties of justice arise.

## ***CONCLUDING REMARKS ON RELATIONAL ACCOUNTS***

Hopefully it should be clear to the reader that the above accounts share a common feature: justice applies when certain relations hold between individuals. For Beitz, the level of political and economic *interaction* at the global level is what grounds justice whereas for Pogge it is our *shared institutions*. Ultimately, each of the above accounts share in the idea that duties of justice only arise when certain relations hold.

This emphasis on justice-grounding relationships closes the gap between relational cosmopolitans and statist. As we have seen, many statist argue that there can be no principles of *global* distributive justice since duties of justice are generated when particular relationships hold (Nagel, 2005). The dispute between relational cosmopolitans and statist, then, is about which features of relationships are the relevant ones and whether they do in fact hold. Both Beitz and Pogge dispute the empirical claims that Rawls makes with regard to the lack of a basic structure at the global level. However, because their own positive views assume that duties of justice can only be generated when particular relationships hold, they render justice contingent on the existence of certain states of affairs. This means that the world must either stay the same or the level of interdependence must deepen for cosmopolitan principles of justice to hold. While it is very unlikely that the current global economic structure could break down such that the degree of interdependence, interaction, and functioning institutional framework was not sufficient to ground duties of justice, this does remain a possibility. I will return to this point in Chapter 7 where I develop a feminist argument against relational cosmopolitanism.

In the following section I will consider approaches which do not rely on the relationships between individuals to generate duties of justice at the global level.

### *1.5B NON-RELATIONAL ACCOUNTS*

In contrast with relational accounts, non-relational accounts maintain that duties of justice do not arise in virtue of our relationships with others but in virtue of some common feature/s of human beings.

#### *JUSTICE AS IMPARTIALITY*

Barry's non-relational cosmopolitanism is rooted in his theory of 'justice as impartiality'. Following Thomas Scanlon's version of contractualism, Barry suggests that

[...] we should ask of any rule or principle whether or not it could reasonably be rejected by somebody who was motivated by "the desire to find principles which others similarly motivated could not reasonably reject". We thus posit a hypothetical negotiating situation marked by equality (since everybody stands on an equal footing and is equipped with a veto to protect interests that cannot reasonably be denied) and freedom (since nobody can coerce anybody else into accepting an agreement by the exercise of superior power). Principles of justice are those principles that emerge from a process taking this form.

(Barry, 1999: 146; Scanlon, 1982: 116, n.2)

This method of arriving at principles of justice is pivotal to Barry's theory of justice as impartiality. According to justice as impartiality, the principles that emerge from this procedure are principles of justice. This is because reasonable people who are partly motivated by a desire to reach a fair agreement with others and who, in addition, are equally placed, can freely agree to the resulting principles (Barry, 1995: 51). Barry suggests that Scanlonian contractualism gives us the most suitable means of fleshing out the commitment to impartial treatment that is central to the foundation of moral cosmopolitanism (Barry, 1999:146). If one is committed, as cosmopolitans are, to the primacy and equal worth of all human beings, then all human beings must be included in this hypothetical negotiating situation. Moreover, this procedure involves treating the claims of all human beings equally and prohibits instances where particular claims are privileged due to unbalanced power relations or coercion.

Barry's commitment to moral cosmopolitanism is further reinforced by his view that "membership of a society does not have *deep* moral significance" so people cannot be excluded from the hypothetical negotiating situation on the grounds of national identity or citizenship status (Barry, 1999: 145). However, in line with the above discussion at Section 1.4, Barry does not want to deny the importance of special relations. He acknowledges, as most cosmopolitans do, that our special relationships can be a source of moral obligation but he argues that it is crucial to moral cosmopolitanism that the exclusive treatment of one's friends, family and co-nationals be justified to those who are excluded (Barry, 1999: 145).

Having outlined a procedure rooted in the idea of fundamental equality and designed to yield principles of justice, Barry proposes the following four guiding principles:

*First principle: the presumption of equality.* All inequalities of rights, opportunities, and resources have to be justifiable in ways that cannot reasonably be rejected by those who get least. [...]

*Second principle: personal responsibility and compensation.* It is prima facie acceptable for people to fare differently if the difference arises from a voluntary choice on their part; conversely, victims of misfortunes that they could not have prevented have a prima facie valid claim for compensation or redress. [...]

*Third principle: priority of vital interests.* In the absence of some compelling consideration to the contrary, the vital interests of each person should be protected in preference to the nonvital interests of anyone. Vital interests include security from physical harm, nutrition adequate for the maintenance of health, clean drinking water and sanitary arrangements, clothing and shelter appropriate to the climate, medical care, and education to a level sufficient to function effectively within one's society. [...]

*Fourth principle: mutual advantage.* Whenever it would be to the prospective advantage of everyone to depart from the application of the above principles (compared with the results of applying them), it is permissible to do so. [...]

(Barry, 1999: 147-149)

To be clear Barry does not intend for these principles be taken as substantive principles of global justice, rather they are meant to lend structure to the debate over more substantive issues. That is, these guiding principles place limits on the kinds of arguments that can be put forward in debate, and arguments and considerations that fail to meet the criteria established by these guiding principles must be excluded from the deliberations.

The more substantive component of Barry's cosmopolitanism sees a global system of distribution based on a distributive scheme similar to that seen in the federal structure of the United States. On Barry's model, a global income tax would be imposed on each nation while simultaneously allowing each nation to further implement whatever other taxes they wish. The revenue collected from the tax would then be redistributed mostly to individuals but also to the improvement of communal facilities in areas of deprivation (Barry, 1998: 153).

Barry's position clearly differs from those put forward by Beitz and Pogge. Although Barry makes recommendations about how best to organise the global institutional framework, he does not attempt to ground justice in shared institutions or economic/social interaction.<sup>15</sup> As we have seen, justice for Barry consists in that which can be agreed to by those who are free, equally placed, and motivated by a concern for fairness. This has nothing to do with the relationships that actually exist between people. Moreover, the claim that belonging to a society has no *deep* moral significance, suggests that for Barry it makes no difference, from the point of view of justice, how global structures and interaction currently are.

Instead, Barry argues that "the value of any political structure (including a world state) is entirely derivative from whatever it contributes to the advancement of human rights, human-well-being and the like" (Barry, 1999: 37). This thought points us toward a non-relational conception of justice that is grounded in the rights and well-being of human beings as opposed to the relationships that hold between them. Importantly for Barry, the rights and well-being of all human beings matter equally. It is this commitment to fundamental equality that means that principles of justice must have universal application. Regardless of one's nationality, citizenship status, or the scheme of cooperation that one happens to be a part of, as a human being one counts equally among all other human beings

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<sup>15</sup> This is a clear illustration of how moral and institutional cosmopolitanism can come apart (see Section 1.4c above). For Barry questions of institutional design and global taxation are separate to what grounds our cosmopolitan duties of justice.

and as such principles of justice must apply to all equally. Ultimately, on Barry's view, justice does not require the existence of some form of relationship or association and consequently duties of justice are not contingent on the fulfilment of particular empirical conditions.

### *HUMANITY-CENTRED COSMOPOLITANISM*

Simon Caney argues that "[...] standard justifications of principles of distributive justice entail that there are cosmopolitan principles of distributive justice" (Caney, 2005: 107). Hence, for Caney, global distributive justice naturally flows from the justifications offered in defence of principles of distributive justice at the level of the nation-state. Having argued that standard theories of distributive justice entail cosmopolitan conclusions, Caney notes that this says very little about the content of a cosmopolitan account of justice. In effect, all that has been established is that the scope of justice is global. What remains to be worked out is what distributive principles of justice should be adopted at the global level. Caney himself suggests the following four principles:

- Principle 1: persons have a human right to subsistence.
- Principle 2: persons of different nations should enjoy equal opportunities: no one should face worse opportunities because of their nationality.
- Principle 3: persons have a right to equal remuneration for equal work
- Principle 4: "benefitting people matters more the worse off those people are" (Parfit 1998: 12: cf. further pp.11-15).  
(Caney, 2005: 122-123)

In defence of Principle 1 Caney argues that rights are meant to protect important human interests and that it is uncontroversial that people have an interest in good health and avoiding malnutrition, starvation and death (Caney, 2005: 120). Thus, persons have a right to subsistence. The second principle, according to Caney, is entailed by the logic that underpins arguments made by liberal egalitarians in defence of equality of opportunity at the level of the nation-state: "If one thinks [...] that it is unjust if persons fare worse because of their class or ethnic identity one should surely also think that it is unjust if persons fare worse because of their nationality" (Caney, 2005: 123). Caney further argues that Principle 3 is

necessary to ensure that people are not paid much worse because they are foreign. This is important since Principles 1 and 2 are not sufficient to exclude that kind of discrimination. Importantly, Caney recognises that talking about ‘equal pay’ throws up an obvious problem: it might “not be appropriate to provide people with the same amount of money in two different countries without examining what that money could be put to” (Caney, 2005: 123). To avoid the pitfalls associated with a focus on equalizing pay, Caney suggests that we speak of equal remuneration by which he means equality in the benefits received for undertaking certain kinds of work. Finally, Caney introduces Principle 4 to protect the less naturally talented from being forced to live their lives in extreme poverty to the benefit of others who are more naturally gifted.

Caney offers us several reasons to think that his four principles of global justice are suitable. First, he suggests that the principles are neither overdemanding nor too minimal. Second, Caney claims that the four principles he has proposed have ecumenical appeal. The thought here is that principles are acceptable from different ethical and theoretical points of view. Third, Caney argues that if we accept these principles at the level of the nation-state, then we have no choice but to accept them at the global level. That is, for Caney, these principles are “an inescapable implication of our domestic commitments” (2005: 124).

As with Barry, Caney’s approach is non-relational since the principles of justice are not grounded in any particular relations that hold between persons. Caney labels his own brand of cosmopolitanism a ‘humanity-centred’ approach which holds that “one has obligations of justice to others because they are fellow human beings – with human needs and failings, and human capacities for, and interests, in autonomy and well-being – and facts about interdependence do not, in themselves, determine the scope of distributive justice” (Caney, 2009: 391). For Caney, then, human beings have obligations and entitlements of justice simply because they are human beings. Thus, one’s entitlements are not grounded in the relationships in which one stands to others, but rather in virtue of one’s humanity.

As we have already seen, an important part of Caney's project is to draw out the full implications of our established commitments and show how principles of global justice flow from them, and it is by this strategy that he justifies his own cosmopolitan view:

The best argument in favor of this humanity-centred conception of cosmopolitan justice starts from the observation that there is a strong conviction that persons should not fare worse in life because of morally arbitrary characteristics such as their ethnicity or their regional identity. Distributive justice, we hold, should be blind to such features of persons. [...] Now humanity-centred cosmopolitanism adopts the same intuition and concludes that persons should not also face worse opportunities because of their nationality or their citizenship. To do so would also be to penalize people for morally arbitrary reasons.

(Caney, 2009: 394)

Caney acknowledges that the relational cosmopolitan (or, as he refers to them, the interdependence-based cosmopolitan) would agree with this argument for cosmopolitanism. Both Beitz and Pogge agree that since nationality and citizenship are morally arbitrary they should not be used to determine what life prospects an individual has. However, Caney further notes that this creates a tension within the relational cosmopolitan position: why if we agree that both nationality and citizenship are morally arbitrary from the point of view of justice, should we then think that schemes of cooperation are morally relevant? The point for Caney, put simply, is that just as the place of one's birth is morally arbitrary from the point of view of justice, so too is the scheme of cooperation in which we may find ourselves.<sup>16</sup> Thus, relational cosmopolitanism is inconsistent because it is committed to the thought that morally arbitrary features should not affect one's life prospects, and yet it is also committed to the view that membership to a cooperative scheme, itself an arbitrary feature, is morally relevant. Consequently, Caney suggests that our commitment to standard justifications of distributive justice not only entail cosmopolitan conclusions but, furthermore, they entail humanity-based cosmopolitan approaches.

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<sup>16</sup> I will return to this argument in Chapter 7 where I consider the non-relational cosmopolitan's rejection of relational cosmopolitanism.

## *THE CAPABILITIES APPROACH*

The final non-relational view that I will consider is the capabilities approach (hereafter CA). At heart, CA is concerned with what human beings are able to do and what they are able to be, that is, with their capabilities. Martha Nussbaum contends that her understanding of human capabilities is “informed by an intuitive idea of a life that is worthy of the dignity of the human being” (2006a: 70). For Nussbaum, human dignity is something that can only be achieved when a human is able to live their life in a truly human way. That is, they must have opportunities available to them that allow them to function in ways that we can identify as truly human. Starting from this ‘intuitive idea’ of human dignity Nussbaum suggests ten central human capabilities: (1) Life; (2) Bodily health; (3) Bodily integrity; (4) Senses, Imagination, and Thought; (5) Emotions; (6) Practical reason; (7) Affiliation; (8) Other species; (9) Play; and (10) Control over one’s environment (2000: 78-80; 2006a: 76-78).<sup>17</sup> The basic thought, for Nussbaum, is that when people lack any one of these central capabilities, their lives are no longer worthy of human dignity. Consequently, justice demands protecting and enabling human capabilities and Nussbaum further suggests that human capabilities underpin political principles that should be the foundation of each and every nation-state’s constitution (2006a: 70).

Nussbaum’s articulation of CA is unmistakably cosmopolitan about distributive justice. To see this, consider how CA exemplifies the three fundamental tenets of cosmopolitanism outlined above in Section 1.2; namely, individualism, universality, and generality. It is clear that the capabilities approach takes all individuals to be the primary units of moral concern. Nussbaum asks us to “notice that the approach makes each person a bearer of value, and as an end” (2000: 73) and explicitly states that “the capabilities approach remains focused on the person as the ultimate subject of justice” (2006a: 295). Moreover, the capabilities approach specifies that individuals hold this status equally and that individuals are the primary units of moral concern for everyone:

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<sup>17</sup> It is important to note that Nussbaum takes this list to be open-ended and subject to continual revision, making the itemisation of fundamental human capabilities an on-going project.

[...] the capabilities sought are sought for *each and every person*, not, in the first instance, for groups or families or states or other corporate bodies. Such bodies may be extremely important in promoting human capabilities, and in this way they may deservedly gain our support: but it is because of what they do for people that they are so worthy, and the ultimate political goal is always the promotion of the capabilities of *each person*.

(Nussbaum, 2000: 74)

From this we can also see that CA is a type of non-relational cosmopolitanism. Duties and entitlements of justice are not generated because particular relationships hold between individuals; rather, they obtain in virtue of the fact that all humans deserve to live lives worthy of human dignity. As with Barry and Caney, Nussbaum is committed to the thought that the cooperative or interactional scheme to which one belongs is irrelevant from the point of view of justice. What matters is that as a human being one has certain fundamental human capabilities and in order to live a life worthy of human dignity one is entitled to freedoms and opportunities that are essential for achieving valuable human functionings. Thus, universal duties and entitlements of justice are grounded in the idea of human dignity and the fundamental human capabilities are what people are entitled to as a matter of justice.

Although there seems to be much evidence to suggest that CA is a non-relational cosmopolitan position, Nussbaum argues that her support of Rawls's political liberalism excludes the capabilities approach from being considered a form of cosmopolitanism (2007: 124). In *Political Liberalism* Rawls argues that in order for a society to be well-ordered by a conception of justice, that conception must be the focus of an overlapping consensus (2005: 38-39). That is, reasonable citizens, despite their diverse and competing views about what makes a good life, must each endorse the conception of justice that regulates their society. If no consensus can be achieved, then the society would be unstable and thus the conception of justice inadequate. However, this requirement gives rise to the following problem: how can a consensus be reached when, within any given society, there may be a plethora of reasonable competing moral, philosophical, and religious doctrines?

Rawls's solution to the challenge of reasonable pluralism is political liberalism. He argues that only a political conception of justice can be the subject of an overlapping consensus because it is 'freestanding'. That is, a political conception of justice is free from any comprehensive ethical, epistemological, or metaphysical claims (Rawls, 2005: xlv, 12-13, 389; 2003: §9.1). Since a political conception of justice does not have its roots in any specific comprehensive doctrine, Rawls claims that it will be acceptable to all reasonable citizens regardless of their individual ethical, epistemological or metaphysical commitments.

For Nussbaum, bringing the capabilities in line with political liberalism is attractive because it guarantees that regardless of where a person lives in the world, or what their comprehensive doctrine may be, they should be able to endorse CA (2006a: 70; 2007: 124-125). This means that CA, as a freestanding political conception, could plausibly be the subject of a global overlapping consensus. However, Nussbaum takes her commitment to political liberalism to be in direct conflict with understanding CA as a form of cosmopolitanism:

Thus my capabilities approach, as I have developed it in two books and numerous articles, is not and could not be a form of cosmopolitanism. It could be at most a part of cosmopolitanism, and I think it is in the sense that someone whose comprehensive ethical doctrine is cosmopolitanism can endorse the political principles contained in the capabilities approach. But so, too, could many people who reject my form of cosmopolitanism as too demanding, or as not demanding enough. Or so I hope.

(Nussbaum, 2007: 124-125)

It is not my intention to defend or critique political liberalism; my aim is much more modest. Contrary to Nussbaum, I take CA to be a form of cosmopolitanism and in what follows I will suggest two reasons as to why.<sup>18</sup> First, Nussbaum construes cosmopolitanism in a particularly narrow way, which fails to capture all views considered to be cosmopolitan. For Nussbaum, cosmopolitanism is a full ethical doctrine (2007: 123), but as I noted in Section 1.4, the foundations of moral cosmopolitanism are fairly minimal and are therefore a long way off

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<sup>18</sup> That CA can be considered a cosmopolitan approach to global justice is crucial for Part IV of this project.

representing a fully worked out conception of the good life. Thus, it would seem that regarding Nussbaum's CA as a version of the cosmopolitanism with which this project is concerned is not incoherent.

Second, even if Nussbaum is correct to suggest that *all* cosmopolitan views are committed to ethical, metaphysical, or epistemological claims, which means that they cannot be understood as purely political, there are reasons to think that CA is perhaps not as freestanding as Nussbaum purports. Although it is true that Nussbaum later downplays the deep-rooted connection to Aristotelian philosophy, CA still appears to rest on some metaphysical claims that one could contest. Hence, CA is arguably just one among many possible reasonable comprehensive doctrines.

But what kind of metaphysical claims might CA rest on? Since Nussbaum's CA is, broadly speaking Aristotelian, it is both based on a notion of the 'good life' and invokes the language of 'human flourishing'. The position is intuitively appealing and plausible: human beings because they are human (i.e. they have human brains and bodies) have certain needs and certain capacities, which if unmet render their lives unworthy of human dignity. What is more, human lives that lack fundamental human capabilities tend not to go so well and in some instances maybe end all together. Since all human beings are in the same boat (we all have human brains and bodies), there are things that are of central importance to us all regardless of what other individual life projects we may have. Thus, we ought to try and make sure that each human being has the capabilities necessary for living a 'good human life'. But this is where problems begin to emerge.

Nussbaum readily admits that CA is a "thick vague theory of the good" (1992: 214). It is thick in the sense that it rests on a conception of the good life i.e. human flourishing, but since it says nothing about how people should live their lives it is sufficiently vague to be supported by people who hold a variety of competing conceptions of the good. But upon closer inspection CA looks to be a much thicker conception of the good than Nussbaum would have us believe.

CA is ultimately focused on what is good for human beings and when Nussbaum moves away from talking about very basic human needs it is difficult to see how metaphysical claims about humans can be kept out of the picture. For example, it is generally accepted that for a person's life to go well they must have access to food and clean drinking water, but it is far more controversial to claim that truly human lives include the capability for sexual satisfaction (Nussbaum, 2000: 78). Fabre and Miller do an excellent job of teasing out some of the metaphysical ideas implicit in Nussbaum's CA:

[...] Nussbaum tells us that we should all have 'opportunities for sexual satisfaction and for choice in matters of reproduction' (WHD, p. 78): in the context of her book, this particularly applies to women. Whether or not that claim is true, it is clear that it must involve denying, contrary to what many people think, that God has allocated women the task of reproduction. To take the issue even further, if (as one might reasonably surmise) having reproductive choice means, for Nussbaum, having access to reliable contraception (perhaps, even, to abortion), this particular capability presupposes a certain relationship between mind and body (and, in the case of abortion, confers a status on the embryo) with which many people would take issue. More generally and fundamentally still, her account rests on the central assumption that individuals are autonomous beings, capable of shaping their own destiny. This in turn rests on a set of metaphysical presuppositions about what a person is, whether or not a person has free will, whether or not there is a God who determines the course of her life, etc.

(Fabre & Miller, 2003: 8)

CA's metaphysical commitments dampen the force of Nussbaum's initial claim that all cosmopolitan views have comprehensive commitments and thus CA could not be a form of cosmopolitanism. What the above discussion shows is that if Nussbaum is correct and no cosmopolitan position is purely political, and if my assertion that CA is not purely political also stands, then the tension that Nussbaum sees between cosmopolitanism and CA appears to dissolve.

Before I move on, I will consider a final problem with my inclusion of CA as a theory of global justice. Caney argues that although Nussbaum convincingly defends principles of distributive justice which protect people's capabilities thus preserving human dignity and allowing the possibility for human flourishing, she does not specify exactly what principles of distribution should be adopted (Caney, 2005: 118). That is, CA fails to tell us how goods should be distributed. Since CA

is incomplete it cannot be considered a “sound theory of global economic justice” (Caney, 2005: 118). For Caney, then, CA requires a great deal of supplementation before it can be utilised as a theory of global distributive justice.

I think that there are several things to say in response to this. Firstly, although it is true that my focus is on cosmopolitan theories of global distributive justice, and one might think that a theory of global justice can only be adequate if it posits some principle of distribution, it does not seem essential to this project that a theory must be fully worked out in order to garner feminist support. The aim of this project is to suggest that cosmopolitan approaches to global justice are more compatible with feminist aims than alternative perspectives engaged in the global justice debate.

Moreover, Caney’s remarks on Nussbaum’s CA are largely based on *Women and Human Development*. Subsequently, in *Frontiers of Justice*, Nussbaum does briefly outline ‘Ten Principles for the Global Structure’ (Nussbaum, 2006a: 315-324). Importantly, although she again defends redistribution she does not argue in support of any particular principle of distribution. Nussbaum’s reluctance to endorse a specific principle stems from her understanding of the scope and role of political philosophy: “The principles are the next step, a set of suggestions to conceive [...of the] partnership among nations, institutions, and individuals. It is precisely at this point that, for me at least, philosophy gives out, turning the reins over to other disciplines about the next steps and the refinement of the ones already taken” (Nussbaum, 2006b: 1324). So, while Nussbaum agrees with Caney that CA needs to be supplemented by economic principles of distribution, she suggests that it is not the job of the philosopher to come up with precise principles of distribution.<sup>19</sup> Thus, CA seeks to shape the design of principles of distribution, but the design itself is best left to those who possess the expertise for such a task.

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<sup>19</sup> Presumably because most philosophers are unlikely to be trained economists, and thus are unlikely to be equipped to formulate such principles.

I am sympathetic with Nussbaum's concerns and I take it that the prescription of specific principles of distribution will in the end be necessary for a fully worked out conception of justice, but that an incomplete theory of justice is by no means inadequate. The ten principles that Nussbaum puts forward for guiding interactions between nations, institutions, and individuals illustrate why the "philosophical part of the inquiry is not useless" as we can see how they may be used to shape public policy (Nussbaum, 2006a: 323). While this may be all that the philosopher can reasonably put forward it is no paltry offering.

*CONCLUDING REMARKS ON NON-RELATIONAL COSMOPOLITAN  
ACCOUNTS*

This brief discussion of the Barry, Caney, and Nussbaum's approaches demonstrates how non-relational views differ from their relational counterparts and how non-relational cosmopolitans ground global duties and entitlements of justice. Two crucial things have emerged from this comparison: (1) non-relational cosmopolitans argue that duties and entitlements of justice are generated not by the relations that hold between humans, but in virtue of their humanity; and (2) as a direct consequence justice is not contingent on particular relationships obtaining. That is, as a human being I have certain entitlements and duties to others regardless of the relationships that exist between us.

## **1.6 SUMMARY**

In this chapter I have outlined some of the key features of the type of cosmopolitanism being defended in this thesis. To summarise, I take it that when we adopt the cosmopolitan standpoint we are committed to the following:

- All individuals are the primary units of moral concern – the needs and interests of individuals come before those of groups.
- All individuals are of equal moral worth – each individual is due equal respect and consideration.

- There are duties of justice that are global in scope and binding on everyone.

As I have mentioned, the cosmopolitan foundation is fairly minimal and in order to arrive at a cosmopolitan conception of justice these central tenets will need to be built upon. This is something that I will be making tentative steps toward throughout this thesis but most explicitly in Part IV. There I will show how feminist arguments can be used to evaluate cosmopolitan conceptions of justice and how approaching the topic of global distributive justice from a feminist perspective can shape the theories that we adopt. However, I must first outline the feminist agenda that I am advancing in this project and that is the topic of the next chapter.

## 2

# FEMINISM

In order for us to assess the suitability of approaches to global justice from a feminist point of view we need some idea of what the key feminist goals are. Hence, in what follows I endeavour to outline some of the key ideas and aims that I take to be central to the feminist agenda as I understand it.

The feminism invoked in this project has its roots in, broadly speaking, the liberal tradition insofar as it involves a basic commitment to the freedom and equality of women as individuals. Subsequently, I will explain, in Section 1, how I understand these two values and why they are important for the feminist project.

Having outlined what I take to be the key elements of the feminist project, I will go on, in Section 2, to argue that the position outlined here should not be regarded as having appeal only to those who already identify as liberal feminists. My argument here is twofold. First, I suggest that there is much overlap among the many feminist positions held; and second, I show how two proponents of alleged alternatives to liberal feminism can get on board with much of what I put on the table.

## 2.1 FEMINISM

Sadly the status of women as free and equal human beings is often not recognised or is forthrightly denied. The problem is global. It is global both in that the freedom and equality of women are not fully recognised or realised in most of the world, and because women are not regarded as the free equals to men in many spheres of human activity. From birth to death the life chances of men and women differ greatly. For example, in countries where boys are preferred to girls, sex-selective abortions are more likely to be carried out on female foetuses than

male foetuses and baby girls are more likely to be the victims of infanticide and deliberate neglect than baby boys.<sup>1</sup> Women and girls across the globe have lesser access to basic goods like nutrition, healthcare and education; they are more vulnerable to poverty; they have lesser opportunities in employment; they receive less remuneration for the work they carry out; they have lower status before the law<sup>2</sup>; they have more restrictions on freedom of movement; they are more vulnerable to violence;<sup>3</sup> their lives are more greatly affected by the negative effects of climate change and natural disaster;<sup>4</sup> and, they are more vulnerable to poverty and hardship in old age.<sup>5</sup> Inequality between men and women permeates all aspects of human life. Though these inequalities may not all occur in the same place at the same time, there is no society today in which men and women share, across all aspects of life, the status of free and equal human beings.<sup>6</sup>

The current condition of the world's women is of grave concern to any feminist who seeks to secure the freedom and equality of all women as individuals. Thus, I

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<sup>1</sup> It has been argued that these factors have contributed to the now often cited '100 million missing women' (Sen, 2010b). It should also be noted that the problem of sex-selective abortion currently appears to be, for the most part, targeted at female foetuses. There is no example of a country with cultural norms that favour girls over boys, where there is a corresponding disproportionate occurrence of sex-selective abortions carried out on male foetuses.

<sup>2</sup> The legal system in many countries discriminates against women in the areas of family law, inheritance, property and land ownership, citizenship and criminal law.

<sup>3</sup> For more information on the types and extent of violence against women globally see *The United Nations Secretary-General's In-depth Study on All Forms of Violence Against Women* (2006).

<sup>4</sup> See, for example, Cannon (2002); Nelson et al (2002); Neumayer and Plumper (2007). These works draw attention to the social construction of vulnerability to natural disasters and climate change. The key point being made is that the gender inequality arising from societal norms and expectations is what renders women more vulnerable to the effects of natural disasters and climate change. For example, Nelson et al (2002: 55) suggest that gender norms significantly contributed to the disproportionate number of female deaths (71 per thousand compared with 15 per thousand men) in the 1991 cyclone in Bangladesh. Norms concerning the preservation of female honour through seclusion, resulted in many women simply not leaving their homes early enough. Moreover, expectations about the kinds of behaviour acceptable for women to engage in meant that many were less likely than men to know how to swim. The majority of those who died drowned.

<sup>5</sup> Globally women tend to live longer than men with the majority of the world's population of older women living in developing regions (WHO, 2009 esp. Ch. 6).

<sup>6</sup> Though women in general are more negatively affected by unjust inequalities between the sexes this does not mean that all men are better off than all women. There are particular individual women, and indeed particular groups of women (especially when we consider other factors such as class and race), that do better than particular individual men or particular groups of men. However, acknowledging this does not detract from the current condition of the world's women in general. Moreover, though being an upper-class woman may confer many benefits that are not available to a working-class man, the woman may still suffer instances of sexist oppression. In addition, a working-class woman may face two types of oppression: class oppression and sexist oppression.

take it that feminists are engaged in the emancipatory project of achieving freedom and equality for women by “end[ing] sexism, sexist exploitation and oppression” (hooks, 2000: 1). Sexism involves the oppression of, or discrimination against, members of a group on the grounds of their sex.<sup>7</sup> For example, a society in which the unfair distribution of benefits and burdens is justified on grounds of sex is a sexist one.<sup>8</sup> As noted above, sexism is systematic. Almost all societies in the contemporary world are marked, in varying degrees, by the subjection and oppression of women.<sup>9</sup> That is, women in most (if not all) societies are systematically subordinated to men socially, economically, and politically.

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<sup>7</sup> Traditionally, feminists have argued that there is a distinction between sex and gender. Advocates of this distinction hold that sex refers to the biological categories of ‘male’ and ‘female’ and that gender refers to the social roles, norms and expectations associated with these categories. Thus, what it is to be a ‘man’ or a ‘woman’ is a social construct applied to the biological sexes ‘male’ and ‘female’ (Saul, 2003: 19). However, there has been much critical discussion of the strength and usefulness of this distinction, and of what ‘sex’ and ‘gender’ mean (see Stone, 2007: Ch. 1 & 2) for a clear overview of the key points in this debate). Providing a definition of sex and gender is beyond the scope of this project but very roughly I am interested in all forms discrimination against members of the group ‘women’ where members of that group are discriminated on grounds of either sex or gender.

<sup>8</sup> Some feminists reject such a neutral use of ‘sexism’ because it assumes that originally men and women were equal and denies that sexism both throughout history and across the globe has been the subjugation of women to men (Thompson, 2001: 63; Cudd & Jones, 2003: 103-104). However, it seems to me that ‘sexism’ as a theoretical term ought to be considered neutral with regard to who is being oppressed because a society in which men were subjugated to women (even if this has never been the case and is, for the foreseeable future, unlikely to ever be the case) would also be sexist. Regardless of whether it is men or women who are oppressed, a sexist society is an undesirable state of affairs.

But understanding sexism in this way gives rise to a further worry. A failure to equate sexism with patriarchy or male domination, so the objection might go, may result in some people labeling arguments and policies which are supposed to challenge the sexism which women experience as sexist towards men. For example, positive discrimination policies such as electoral gender quotas, which are intended to increase the level of women’s representation in elected legislative bodies, may be alleged to be an instance of sexism where men are the victims. This is troubling and may appear to be permitted by my suggested definition.

However, though there may be legitimate concerns with such policies - for instance, how effective they are and to what extent they undermine equality of opportunity - it is difficult to see how they can be construed as sexist towards men. Positive discrimination policies are introduced in an attempt to challenge the deeply entrenched sexism that has served to exclude women from various areas of public life. Moreover, it is possible to design positive discrimination policies in gender-neutral ways. Take again the example of electoral gender quotas: many are neutral between the genders in that a minimum and maximum is set for both men and women. Thus, positive discrimination policies, whatever the pros and cons, should not be considered sexist because they do not represent part of a systematic pattern of inequality which has served to disadvantage men to the benefit of women, and they can be framed as neutral to both sexes.

<sup>9</sup> It is at this point that one might want to invoke the notion of ‘patriarchy’ but given that this term has been the subject of great dispute I will refrain from using it.

Before I move on, it should be noted that I also follow hooks in thinking that feminism has the more wide-reaching goal of ending *all* forms of oppression. This is an important qualification since it acknowledges that sexism cannot be taken in isolation from other forms of oppression. Each of us has many facets to our identity beyond our sex. For example, besides being female one may be working-class and white, or one may be upper-class and black. How a woman experiences sexist oppression may vary in important ways depending on other features of her social identity and context. Thus, race, class, and sexist oppression cannot be taken separately because they each influence the ways in which other forms of oppression are manifested. Given the interrelatedness of class, race and sex, feminists must, therefore, be committed to ending all forms of oppression.

### ***2.1A EQUALITY***

Bearing all of the above in mind, I am taking it that the core dual aim of feminism is to end sexism and achieve full equality for women. But what does equality entail? Most obviously feminists must be committed to the idea of moral equality. Moral equality, as discussed in Chapter 1, holds that all individuals are of equal worth and demands that each individual be treated with equal concern and respect. Given that feminists oppose the subordination of women, it seems fair to suggest that it would be inconsistent for a feminist to have the goal of ending the subordination of women whilst denying women's equal moral worth.

Understanding equality in this broad sense is going to be too vague here. For us to be able to clearly determine the differences between theories of global justice, and evaluate those differences, we need to say more about the type of equality being pursued in this project. Many feminists have convincingly argued that the notion of formal equality, which has had much influence in the history of legal and political thought, is not sufficient for actual equality and can even serve to justify oppressive practices (MacKinnon, 1987, 1989, 2006: Ch. 13; Okin, 1989: 16-17; Kymlicka, 2002: Ch. 7).<sup>10</sup>

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<sup>10</sup> In Section 3.3 I will discuss how formal equality may serve to justify injustice.

The doctrine of formal equality is concerned only with the legal barriers that may prevent a person's access to certain social goods. To argue that there is a problem with the notion of formal equality is not to suggest that formal equality is not important. Of course it is important that women and men receive equal treatment under the law. But the problem with formal equality, as many have noted, is that it allows for gross inequality. For example, if employment law allowed employers to discriminate against certain potential employees on the grounds of race or sex, formal equality would demand that the law be changed to rule this out. However, a commitment to removing the legal barriers to equality of opportunity does not guarantee that individuals are free to take up, or can actually realise, certain opportunities. There are many social factors, external to the body of law that regulates a society's legal, political, and economic institutions, that will affect the range of opportunities available to a person and their ability to realise them.

Consider a society where sexist attitudes are prevalent and widely held. Although there may be no legal barriers to women occupying the same positions as men or having equal access to other social goods (as demanded by formal equality), there may be many other mechanisms at play which prevent, or hinder, women from actually occupying the same positions accessing the same goods. For instance, there may be a plethora of social norms that dictate what women should and can be: that women should concentrate their efforts and attention on being the primary caregiver, that women are only suited (because of their nature) to certain jobs, and that certain jobs are inappropriate for women (because of their nature). The effects of these social norms should not be underestimated. They not only make it difficult for women to pursue certain paths but they also have the effect of making women unaware that certain options are available to them. Moreover, in a sexist society there is likely to be a long history of male privilege that will make it more difficult for women to gain access to social positions previously dominated men. Employment opportunities in a sexist society may sometimes be organised around men with no childcare responsibilities and thus inaccessible to women who have such responsibilities. Employment opportunities of this kind can be difficult for many women to access since they are inflexible, over-

demanding, and in general incompatible with the responsibilities that come with having children to care for.

Accordingly, a feminist agenda that seeks to end sexism and gender inequality must have in its sights the goal of substantive equality. Substantive equality requires more than putting an end to legal barriers that may prevent a person's access to certain social goods; it requires that we all have an equal share in opportunities, entitlements, and access to other public goods. Unlike formal equality, which limits its focus to how we are treated under a system of law, substantive equality is concerned with making sure that there are no further limits to our achieving full equality to one another. Taking substantive equality as our goal means that *all* social barriers to equality must be challenged and ultimately broken down. Having a commitment to ending sexism, then, ties one to substantive equality where the aim is to eradicate any barriers that undermine a person's equal status or result in unjust unequal treatment.

### ***2.1B FREEDOM OF CHOICE***

Along with a commitment to substantive equality, this feminist project also recognises that women's freedom of choice is of key importance. The value of freedom of choice is in individuals being able to live out a life of their own choosing and to have control over the choices that they make within those lives.<sup>11</sup> Many of us value the experience of choosing for ourselves and having the sense that we have some control over the path that our lives take is important to us. Crucially, this often holds even in cases where we make bad choices. Though with hindsight we may come to think that a particular decision has made us worse-off in some way, we are often prepared to take responsibility for the outcome rather than wishing that someone else would make our decisions for us.

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<sup>11</sup> Freedom of choice as it is described here is often referred to as personal autonomy. There are many ways of understanding what it is to be autonomous and I cannot do justice to that debate here. I am not committed to any one of these pictures and it seems, to me at least, that the value of autonomy is multi-faceted. However, I do take it that being able to live a life of our own choosing is important to many human beings.

Freedom of choice should feature highly on the feminist agenda because women across the globe continually and systematically have their capacity to make free choices about their lives restricted. For some women their freedom of choice is restricted when they are forced by others to engage in practices that they might otherwise have not chosen. Family members, husbands, and other members of the community, may physically force such women to submit to the social mores of the societies in which they live. For example, women may have been forced to undergo female genital cutting (FGC) when they were young girls<sup>12</sup>; they may be forced to pass up employment opportunities because they are forbidden to leave their homes without a male escort; they may be forced by their husbands to have sex<sup>13</sup> and they may be forced to undergo an abortion if the foetus is not the desired sex.<sup>14</sup>

However, while having the capability to freely pursue a life of one's own choosing is important to most of us, certain choices are problematic because they perpetuate sex injustice and serve to undermine women's equality. For example, some women may claim to have freely chosen to participate in any of the social practices and traditions listed above. And lest one think that such problematic 'free' choices are the preserve of women living in non-liberal societies (which of course would ignore the multicultural nature of most Western liberal democratic societies), consider women who choose to pass up employment opportunities to focus on raising children (thereby often putting themselves at considerable economic risk), who undergo harmful cosmetic surgical procedures like breast augmentation, who wear high heels which both restrict mobility and harm the

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<sup>12</sup> I have abandoned the more common label 'female genital mutilation' because 'mutilation' is an emotive word that implies that the procedure is carried out with evil intent and has often been criticised by African feminists for being ethnocentric. Moreover, the label is used to cover a variety of procedures some of which are less extreme than others. It is not altogether clear that the less intrusive variations can accurately be described as a mutilation. For a description of the variety of genital surgeries and issues concerning the labelling of these procedures see Gruenbaum (2001).

<sup>13</sup> While many countries do legally penalize rape, of those, some take forced marital sex to be a formal exception to that law (e.g. China, Morocco, Egypt and Honduras (Martinez, 2012: 334-335)). Furthermore, legally recognizing that marital rape is a crime is often not sufficient for protecting women since customary practice may dictate that women's subordinate status renders forced marital sex permissible in spite of the formal laws prohibiting marital rape.

<sup>14</sup> Conversely, women may be forced to carry a pregnancy to term where abortion is not permitted.

body, who wear clothing that restricts mobility, and who follow harmful diets with the hope of achieving the 'ideal' body.

Consequently, it seems, at first glance, that pursuing an unrestricted freedom of choice is in direct conflict with achieving women's full equality. However, attempting to restrict women's freedom of choice in instances where it is believed that the outcome of their choices will result in the perpetuation of sexist oppression is arguably oppressive in itself. Interfering with another's capacity for decision-making by preventing them from making their preferred choice undermines their experience of being an agent who chooses the path that their life will take. Both those acting to preserve sexist oppression, and those acting to end it, will be equally guilty of undermining a woman's sense of herself as a chooser, and as a person who has control over her life, when they forcibly make her decisions for her.

All that said, it is now well documented that we ought not always trust that when a person expresses a preference for something that it truly reflects what they desire or need. As Martha Nussbaum notes, ignorance, malice, "habit, fear, low expectations, and unjust background conditions deform people's choices and even their wishes for their own lives" (Nussbaum, 2000: 114). One such way that our preferences may be deformed is through the phenomenon of 'adaptive preference'. People may adapt their preferences to fit with the world in which they live and more often than not adaptive preferences are formed in the absence of full information. Put simply, we adapt our preferences to the world in which we find ourselves because we know no different and when adaptive preferences are harmful it is because we know no better.

Deepa Narayan explains that in cases of problematic adaptive preference "a woman's perception of herself and her world may be so skewed by her circumstances and cultural upbringing that she may say and believe that she genuinely prefers certain things that she would not prefer if she were aware of

other possibilities” (Narayan, 2005: 34).<sup>15</sup> For example, Sen has detailed in many works how the most deprived women often do not desire access to basic goods like physical health, nutrition and security because they have long adapted to the absence of such goods or they have been socialized to believe that such goods are not for them (Sen, 1984; 1995).

A perverse feature of deformed preferences, whether they are adapted or deformed in other ways, is that they often serve to enlist the oppressed and the vulnerable in the reinforcement of their own subjugation. Not all people who are oppressed resist their oppression. In fact, most do not. Instead, many of the world’s most vulnerable people acquiesce to their own deprivation. They do not protest but accept their lot in life, and will quite often, at least initially if not wholly, reject efforts made by outsiders to improve their situation. Thus, “oppressed and deprived people sometimes become complicit in perpetuating their own deprivation” (Khader, 2011: 4).

It should come as no surprise that there are powerful social forces that shape our preferences, but what should be done to tackle deformed preferences remains contested. Institutional interference in the lives of women on the grounds that they have ill-formed preferences runs the risk of committing two wrongs. First, failing to respect a person’s preferences amounts to failing to respect their status as the kind of agent capable of taking control of their life and making their own decisions about how their life should go. By preventing someone from doing what they would choose, one in effect denies them the status of an agent capable of making their own decisions in accordance with what is valuable to them. Moreover, preventing women from being able to make certain choices begins to look very similar to the very oppression that is being tackled. The second problem with institutional interference in women’s decision-making capacities is that

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<sup>15</sup> I am aware that the account of adaptive preference offered here is far too simplistic and underdeveloped. For a more extensive analysis of adaptive preference see Khader (2011). Although the account of adaptive preference offered here lacks the complexity necessary to explain the phenomenon of adaptive preference I merely intend to illustrate how the shaping of our preferences by social norms can have problematic consequences.

interference suggests that those intervening have it right while the chooser has it wrong. But what determines when preferences and choices are problematic?

So we arrive at a stalemate: some preferences are harmful (in many ways, including perpetuating sex injustice and limiting a person's ability to make free choices in the future) to the agents who hold them and given that they are shaped by unjust social factors, it would be unjust to do nothing about them. Yet intervention carries with it the further dangers of undermining autonomy and acting imperialistically. The account that I find most persuasive in negotiating these two problems is that advanced by Clare Chambers (2008) and in what follows I will briefly outline the key features of her position.

Chambers argues that since our preferences are formed against a backdrop of social norms and expectations they cannot be used as guides to justice. Many have assumed that when a person freely chooses something, the act of choosing guarantees that the situation is a just one. But for Chambers choice is not a normative transformer. That is, the fact that an agent has chosen something does not change a situation from an unjust one to a just one.

To better understand the position that I am endorsing it is worth quoting Chambers at length:

If individuals are subject to influence that threatens their equality, then it is a requirement of justice that the influence be limited where possible. This intervention will take place not in the name of autonomy alone but in the name of *justice*, as a combination of autonomy and equality. Autonomy functions as a premise to the argument: given that preferences have already been socially influenced, then protecting autonomy cannot *simply* be a matter of allowing individuals to follow their preferences, and preferences cannot determine the justice of a state of affairs. In order to distinguish between influence that does and influence that does not threaten justice, we must consider whether individuals are encouraged to make choices that threaten their equality.

(Chambers, 2008: 172)

The basic thought is that since we do not form our preferences, or make our choices, in a social vacuum, our seemingly free choices do not indicate that a situation is just. However, that our preferences, and the choices that arise from

them, are shaped by social norms is not across-the-board problematic. Only preferences and correlating choices that threaten the equality of the chooser are a concern for justice. Thus, in cases where social norms deform preferences in ways that affect a person's equality, justice demands that something be done to lessen the effect of the harmful norm. This demand may be met by, for example, adopting educational strategies that seek to undermine the social norm, and strategies that seek to compensate those whose equality has been undermined by the social norm.

For example, many feminists have called attention to the ways in which gender norms prevent us from achieving genuine equality of opportunity. Part of what makes the gendered and hierarchical family the 'linchpin of gender injustice' for Susan Moller Okin (a claim that I will examine in detail in Chapter 4), is that it is where "most of our early socialisation takes place" (Okin, 1989a: 131). Traditional forms of the family, which are both gendered and hierarchical, shape the expectations and preferences of boys and girls differently. It is in the family that we learn important information about ourselves: what our status is and what we can expect to be. Since gender norms shape the preferences of both men and women by ascribing to each sex a rigidly designated set of roles and expectations, they present a barrier to achieving substantive equality. Take, for instance, norms that dictate which types of work women are most suited to. One such norm is that women are more suited to the role of primary caregiver than men. Gender norms that dictate what men and women can and cannot be, threaten the equality of women because certain options may not be available to them. In the case of norms to do with the type of work suitable for men and women, the injustice is not simply that certain options are not available to women (because the same can be said for men) but that the options available to women are ones that disadvantage women as a group.<sup>16</sup> When a woman chooses to take on the responsibilities

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<sup>16</sup> Chambers argues that certain instances of so-called 'free' choice are problematic when two factors hold: the disadvantage factor and the influence factor (Chambers, 2008: Ch. 4). The disadvantage factor obtains when the choice that an individual makes harms them as the chooser whereas those who choose differently are not harmed. Moreover, "the position is worsened, from the perspective of justice, if the benefit accruing to one group is dependent on the other group choosing that which disadvantages them" (Chambers, 2008: 120). The influence factor holds when individuals are under pressure to make certain choices. The amount of pressure that

associated with being a primary caregiver she limits her opportunities for paid employment and as a consequence she may become either wholly or partially economically dependent on some other; that other is most commonly a man. Moreover, given the strength and pervasiveness of gender norms the situation is not made more just by many women professing to have chosen to be the primary caregivers.

Importantly, meeting the demands of justice does not necessarily require that we prevent women from making certain choices. This is particularly important because prohibiting women from making certain choices may be as oppressive as the effects of those choices. Where we can, we should look to avoid blocking the choices of individuals because such intervention serves to undermine our experience of ourselves as agents who have the capacity pursue a life of our own choosing. But looking to avoid intervention in the choices of individual women does not render us unable to address those norms that are problematic from the point of view of justice. Instead of advocating laws and policies designed to prohibit those choices influenced by problematic norms, we should switch our attention to the norms themselves.<sup>17</sup> Thus, we should concentrate our efforts on improving the background conditions (problematic norms included) against which women make their choices. Here I am in agreement with Chambers when she says “justice is about enabling people to make autonomous choices about their way of life in conditions of equality” (2008: 195).

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individual is under can be a matter of degree and cases where the group who benefit from others making a certain choice put pressure on those others to in fact make that choice should set alarm bells ringing. According to Chambers, each of these conditions is necessary for us to infer the occurrence of an injustice but only when taken together are they sufficient.

<sup>17</sup> It would be naïve to think that we can always tackle problematic norms without such measures potentially coming into conflict with the choices that individual women make. However, what I am suggesting here is that by switching our focus from the problematic choices that individual women make to the problematic norms that inform those choices, we are not blocking certain options available to women and not, therefore, preventing them from making the choices that they deem important to their lives. For example, even in times of gender inequality the state could allow FGC for adult women who have access to full information regarding the procedure. Yet at the same time the state could actively seek, perhaps through some educational program in schools and raising public awareness about the harms, to reduce the number of procedures carried out. I think that it is plausible that some of those who take FGC to be part of their conception of the good may feel that such measures undermine the value of that conception. This is unfortunate, but where conditions of genuine equality do not exist justice requires such measures. What is important is that the option to undergo FGC remains a live one and that the state respects each woman’s capacity to choose for herself.

So, in the case of gender norms that shape men's and women's preferences with regard to the types of jobs they pursue and their role within the family, justice requires that we look at challenging the norms as opposed to intervening in the choices of individuals. Women who choose to be the primary caregiver should not be vilified for perpetuating gender injustice or pressured into taking employment outside of the family. Instead, as Okin suggests, public policies and laws designed to mitigate the effects of gender norms ought to be implemented (Okin, 1989a: Chapter 8). Policies and laws that encourage shared parenting and educational measures that seek to make children aware of the politics of gender, are among several proposals that Okin suggests to minimise the effects of gender norms.

Before I move on I want to be clear about what it is that I am not saying. I am not saying that certain choices are always problematic from the point of view of justice and that therefore certain choices must always be prohibited. Take for example, FGC. What makes the free choices of those who undergo FGC problematic, is not that they may permanently end their capacity for sexual fulfilment, but that they undertake a harmful procedure against an unjust backdrop of social norms which undermine women's equality and put pressure on women to engage in harmful cultural practices. In a society unmarked by sexism or other forms of oppression a woman could freely choose to undergo FGC and it would not be in conflict with social justice.

Women's free choice is important since women continue to have their capacity to choose undermined or denied. Not only is the value of being able to pursue the life of our own choosing important to us but often when women's capacity for free choice has been undermined or denied this has served to disadvantage women. Thus we should seek to preserve and promote women's capacity to make free choices about how their lives should go and avoid preventing women from making certain choices in the name of justice. This may mean that individual women will make choices that make their lives go worse. It may also mean that women, by making the same decisions, help to prop up and perpetuate systems of injustice that ultimately undermine women's equality. But, and importantly, what

this does not mean is that justice demands that we do nothing. On the contrary, justice makes strong demands on us to alter the unjust background conditions against which we all do our choosing.

## **2.2 ISN'T THIS JUST LIBERAL FEMINISM?**

At this point one might argue that the feminist position that I have outlined is a plainly liberal conception and one that only liberal feminists can find acceptable. Moreover, my imagined protagonist might push the point by arguing that since my understanding of feminism is distinctively liberal, my overall thesis – that feminists ought to be cosmopolitans about global justice – only applies to liberal feminists. While I accept that my project will not be appealing to all feminists I do believe that my account, thus far, will appeal to others besides those who identify as liberal feminists.

One reason for my optimism about the wider appeal of my project is that it is not clear, to me at least, that all of the many different brands of feminism can be so neatly defined and distinguished from one another. Since there is often dispute over whether such and such a position is an instance of x or y brand of feminism, and since at times the extent of the overlap between positions means that one brand becomes barely distinguishable from another, I find the labelling of various feminist positions unhelpful. Now, one might think that the fault here lies with me since a quick perusal of many of the books on feminist theory will likely reveal clearly defined sections labelled 'Liberal Feminism' 'Socialist Feminism' 'Radical Feminism', and so on. However, there are many critical papers questioning the ways in which feminist positions have been set-up in opposition to one another. For example, some have argued that liberal feminism can incorporate the key elements of radical feminist thought (Graham, 1994) while others have argued that radical feminism invokes liberal ideals (Schaeffer, 2001). Accordingly, I think that the differences between the positions are often overstated and rely on a very fixed understanding of what it is to hold a 'liberal', 'socialist' or 'radical' position. Moreover, as Alison Stone notes, "many individual feminist thinkers combine elements of several different positions – few

thinkers endorse any single feminist position in its pure form” (Stone, 2007: 16). Given that there is much flexibility and overlap among the innumerable feminist positions, I am hopeful that feminists of various stripes will be sympathetic to the feminist aims that I have put forward.

I cannot here demonstrate all of the numerous ways in which I believe that non-liberal feminisms could accept much of the account outlined in this section – that task would be too great for this project. However, I will briefly consider two cases of non-liberal feminism and suggest that some forms of those feminisms are compatible with the aims of the feminist project presented here. This discussion is not intended to be exhaustive. My hope is that the reasons provided give us good grounds to be optimistic that the arguments presented in this thesis will have some appeal to feminists other than those fully signed up to a liberal feminism.

## 2.2A *ETHICS OF CARE*

I will begin with those who advocate an ethics of care, concentrating primarily on the work of Virginia Held (2006).<sup>18</sup> What fundamentally motivates an ethics of care is the fact that all of us are, for significant periods of our lives, dependent on others. Each of us is dependent on others in the initial stages of our lives, and across a lifetime we are likely to require, and enjoy, care from others in a variety of ways. For some, the role of care will be crucial to their ongoing survival and they will be highly dependent on others throughout the course of their lives. These undeniable facts about the human condition make care, for the care ethicist, a (if not *the*) fundamental value.

Care theorists suggest that a morality that takes the practice and value of care as fundamental demands the promotion of the well-being of caring relations. Consider the following remarks by Held:

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<sup>18</sup> I am going to limit my discussion to more recent articulations of care theory because I believe that they offer the strongest defence and avoid the many of the pitfalls that befell early care theory. For discussions of early care ethics and its problems see Maihofer (1998: 383-392) and Stone (2007: 20-21).

Persons in caring relations are acting for self-and-other together. Their characteristic stance is neither egoistic nor altruistic; these are the options in a conflictual situation, but the well-being of a caring relation involves the cooperative well-being of those in the relation and the well-being of the relation itself.

(Held, 2006: 12)

Care [...] is more the characterization of a social relation than the description of an individual disposition, and social relations are not reducible to individual states. Caring relations ought to be cultivated, between persons in their personal lives and between the members of caring societies. [...] The values of caring are especially exemplified in caring relations, rather than in persons as individuals.

(Held, 2006: 42)

By ensuring that caregivers are well supported in their caring roles their well-being is enhanced. Likewise, the well-being of care-receivers is enhanced because an ethics of care emphasises the responsibility that we have to those in need of care. For Held, among others, the focal point for an ethics of care is the network of caring relationships that human beings constitute (and are constituted by) and the protection, promotion, and development of those relations is considered to be essential for human flourishing (Held, 2006: 10-13).

Care ethicists have often presented an ethics of care as an alternative to liberalism (Engster, 2009; Held, 2006; Slote, 2007). But many liberal feminists have suggested that there is no sharp contrast between the two views. One way of interpreting the question at the heart of the debate is as follows: does the ethics of care really represent a theoretical alternative to liberalism or does it, if understood as an internal critique of the liberal tradition, suggest ways in which liberalism can be modified and improved? Although I believe that the ethics of care should be regarded as an internal critique rather than as an alternative to liberalism, I do not have the space to argue for that conclusion here. Instead, I will suggest that care theorists, notwithstanding their deep commitment to the practice and value of caring, value equality and freedom of choice as outlined in Section 2.1a above.

Although many contemporary care ethicists are keen to distance themselves from liberal theories of justice, they do not deny that women are, even if they are not treated as such, equal to men (Held, 2006: 80). However, this only gets us to the

more general claim that women and men have equal moral worth. Can the care ethicist get on board with a more substantive understanding of equality? Many care theorists are keen to point out that discourses of equality and rights have played a crucial role in securing feminist ends, which suggests that they are committed to more than basic moral equality. Held, a case in point, notes that “feminist morality is surely concerned with the equality of women and with women’s rights” (2006: 66). She then goes on to detail the numerous ways in which utilising the discourse of rights has led to advances in achieving truly human rights that reflect the experiences of both men and women.<sup>19</sup> Furthermore, she also recognises that “much more than law is needed to promote gender equality generally” (2006: 148). I take this to mean that Held supports a notion of substantive equality over mere formal equality since she is committed to more than equality before the law. Consequently, I think it plausible that at least some, if not most, contemporary care ethicists would accept the feminist aim of achieving substantive equality for women.

Having argued that an ethics of care does not rule out a commitment to substantive equality, I will now suggest that the same is true of the value of freedom of choice as outlined above in Section 2.1b. Consider the following statement by Held:

Thinking of persons as relational does not mean that we cannot make autonomous choices to resist various of the social ties we grew up with or find ourselves in and reshape any relations we maintain. On the contrary, it often requires that we do so. The ethics of care suggests that we can conceptualize these choices as taking place within social relations that partially constitute us as what we are. We maintain some relations, revise others, and create new ones, but we do not see these as the choices of independent individuals acting in the world as though social ties did not exist prior to our creating them [...]

(Held, 2006: 84)

It is clear from this passage that being able to freely choose which social relations we maintain is a crucial element of the care ethicist’s project. Moreover, I contend that the understanding of free choice outlined in Section 2.1b is compatible with this conception of the moral agent as someone who is ‘embedded’

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<sup>19</sup> I will return to the issue of women’s rights in Chapter 3.

in and 'encumbered' by relations with others. By recognising that our preferences are shaped by the many forces in our social world, the conception of free choice that I propose does not regard individuals as abstractedly independent and free. On the contrary, understanding that we are not born into a social vacuum is important to this project throughout.

Given that most care ethicists are committed to freedom and equality, it is far from obvious that they should be located outside of the liberal tradition. The main area of disagreement seems to be in the priority that a feminist liberalism places on the values of justice, equality, and freedom. This is not to say that care ethicists deny the importance of social justice, women's rights movements, and securing women's freedom, but rather that for them these goals do not, and should not, always take priority.

In response, it is worth emphasising that although I advance the freedom and equality of women as being key features of this feminist project, this should not be taken to suggest that these are the only values at stake. Something to keep in mind is that this thesis is fundamentally concerned with the scope of justice. As such the value of justice will dominate much of the discussion but that does not mean that I believe that all of morality is reducible to that one value. Those working in the care theory tradition have, to my mind, successfully demonstrated the importance of care as a value and as an activity and have drawn attention to the neglect of caring relations in political theory. However, to repeat, this thesis is located within the ongoing debate about the scope of distributive justice, and it is from this perspective that I argue that feminists should be cosmopolitans about global justice.

At this point a care theorist may respond by arguing that although I claim to have acknowledged the importance of care, my approach is nonetheless wrongheaded. They may maintain that when we think about the relations between individuals at the global level we should begin from the perspective of care and not justice. Held herself suggests that the ethics of care represents an alternative to liberal theories of global justice. A global ethics of care, Held argues, looks to promote

“a globalization of caring relations [that] would help enable people of different states and cultures to live in peace, to respect each other’s rights, to care together for their environments, and to improve the lives of their children” (2006: 168). One could take this to mean that holding justice, rights, freedom, and equality to be central to tackling widespread deprivation, climate change, environmental degradation, unlawful violence, systemic oppression, and the many other ills of this world, is misguided.

At this juncture it is important to remember the actualities of our world. In the previous Chapter I detailed but a handful of the inequalities that persist between people across the globe which illustrate the appalling conditions that are faced by millions every day. Given the dire situation facing the world’s poorest people, I find the suggestion that we ought to focus our attentions primarily on the cultivation of a global network of caring relations deeply troubling. Individuals have basic needs and interests that must be met if they are to lead at least minimally decent lives. Currently, the basic needs and interests of millions of people are not met. This is a dire situation from both the perspective of justice and that of care. However, focusing on caring relations obscures the plight of the global poor. Placing the emphasis on caring relations as opposed to individuals has two effects: first, it makes the needs and interests of individuals secondary to the requirements of the relations that hold between them; and second, it tells us nothing about who has the responsibility to care.

Each of us is limited in the number of people we can actually care for, and most of us will prioritise those with whom we are closest to as the beneficiaries of the care we can give. We may be involved in wider networks of care beyond our families. We may engage in networks of care in our local communities and these networks of care may even extend to our compatriots. But how much care is left for those who live beyond our borders? What happens when those in privileged positions simply fail to care for those who live in conditions of dire poverty? When we fail to care for one another, justice demands that we do. Central to the version of cosmopolitanism that I will tentatively argue for in Chapter 7, is the idea that justice demands that we meet the basic needs of all human beings

wherever they may live and irrespective of the relation (caring or otherwise) that they stand in to us.

I do not want to deny the importance of cultivating certain dispositions and I am, as are many cosmopolitans, committed to the idea that developing a sense of cosmopolitan citizenship will be essential to the success of realising a cosmopolitan conception of justice. And I agree with Held that emphasising the interdependence and interconnectedness of individuals at the global level, fostering some degree of caring relations, and cultivating a sense of attachment between all persons will be vital for achieving a better world (Held, 2006: 159). But I do not believe, for the reasons stated above, that the demands of distributive justice should be taken as secondary to the value of care in the global context.

Few, if any, of those working in the care theory tradition deny that women should be regarded as the free equals to men and having this commitment to the freedom and equality of women suggests that care theorists can get on board with the feminist agenda outlined here. While I accept that some care theorists will find my conclusions (both here and elsewhere in this thesis) unappealing, I believe that the feminist agenda being pursued here is compatible with many of the commitments that they hold. Moreover, I think that it is essential that care theorists engage in the debate on global distributive justice because considerations about the value and practice of care should feature in our thinking on these questions. An extensive examination of how best to integrate the values of care and justice at the global level is necessary if we are to move towards a better world. Care theorists have provided invaluable critiques of liberal theories of social justice that have influenced many changes in that area of political philosophy. It is important that the lessons learned are not forgotten, and that the value of care does not get lost when the scope of justice is extended to the global realm.

## **2.2B RADICAL FEMINISM**

The second type of feminism that I will consider is so-called ‘radical’ feminism. Again, I cannot hope to provide an extensive review of the literature on radical feminism, but it is plain that there are recurrent themes in radical feminist thought which suggest that it stands in opposition to liberal feminism. To demonstrate that at least some radical feminists can get on board with the feminism advocated in this project I will concentrate on the work of Catharine MacKinnon (1987, 2006). MacKinnon rejects liberal feminism in favour of the dominance approach, which might lead one to think that my feminist commitments, because they are associated with the liberal tradition, are incompatible with MacKinnon’s view. Hence, in what follows I will argue that the notions of equality and freedom spelled out in Sections 2.1a and 2.1b are compatible with MacKinnon’s dominance theory.

As noted in Section 2.1, equality has traditionally involved a commitment to ensuring that everyone enjoys equal treatment under the law. MacKinnon takes this notion of formal equality to be an essential element of liberal political thought (1987: 22). As discussed earlier formal equality does not guarantee substantive equality and where formal equality is upheld there may remain vast inequalities between men and women. However, despite the problems with concentrating solely on formal equality, some feminists have continued to focus on the legal barriers to equality but instead of stressing how men and women should be treated the same under law they emphasise the differences between men and women. MacKinnon labels this version of formal equality as the ‘difference’ approach. Those who adopt the difference approach argue that the reason that formal equality fails to secure sex equality is that it fails to pay sufficient attention to the differences between men and women. For advocates of the difference approach, then, though men and women are the same in many basic ways, we must also be attentive to the fact that women are, and have become (as a result of the processes of socialization), distinctively different to men in other respects. Moreover, difference theorists argue that women need to be compensated for those differences (MacKinnon, 1987: 33).

MacKinnon argues that those who adopt the difference approach to sex equality want to challenge the notion of formal equality at play but they do not want to abandon it. Instead, they merely want the differences between the two sexes to be acknowledged and where necessary compensated. The trouble with the difference approach, as MacKinnon rightly points out, is that fighting to get the difference between the sexes acknowledged, and somehow shoehorned into the traditional conception of equality, results in a contradiction: on the one hand men and women are the same, and yet on the other we are different (1987: 33). This confusion, Mackinnon argues, has troubling consequences. If we take a body of law, which more accurately reflects the experiences of only half of the population, and then try to incorporate the experiences of the other half into it, one presupposes the gender neutrality of the existing law. This is problematic because “by treating the status quo as ‘the standard,’ [the difference approach] invisibly and uncritically accepts the arrangements under male supremacy” (MacKinnon, 1987: 43).

Contrary to the difference approach MacKinnon argues that:

The fundamental issue of equality is not whether one is the same or different; it is not the gender difference; it is the difference gender makes. In this perspective, equality is not exclusively or even primarily an issue of differentiation that is rational or not. To be on the bottom of a hierarchy is certainly different from being on the top of one, but it is not simply difference that most distinguishes the two. It is, in fact, the lesser access to resources, privileges, credibility, legitimacy, authority, pay, bodily integrity, security, and power that makes the two unequal. The issue here is not entirely how to make access to those things nonarbitrary, because the situation we are confronting is anything but arbitrary [...] Confronting the problem requires a less abstract and more substantive approach to equality. Under it, to be equal is not to be subordinated on a group ground.

(MacKinnon, 2006: 74)

Adopting this view of equality gives us what MacKinnon labels the ‘dominance’ approach. The dominance approach is primarily concerned with the distribution of power within society. When a society is structured around men’s dominance and privilege and women’s subordination, the basic institutions and social norms that govern a society will reflect that power dynamic. Hence for the dominance theorist one will not achieve justice and equality for women by finding them a

place in existing institutions because the existing institutions are built around a problematic power dynamic i.e. one that supports male privilege. The dominance approach, then, acknowledges the complex ways in which power relations operate and sex equality can only be achieved when women have equal power in social life (MacKinnon, 1987: 91). When men and women share equally in social power they can together shape social institutions that accurately reflect their experiences, needs, and interests, as opposed to the privileging of one sex's experiences, needs, and interests over those of the other.

Since MacKinnon takes formal equality to be central to liberal political thought, the implication is that the difference approach is the only viable option for a liberal feminist to take. Thus, feminists working within the liberal tradition have, to MacKinnon's mind, hopelessly limited resources. This is, however, untrue on both counts. First, as Nussbaum notes, the notion of formal equality is not essential to liberal thought. Nussbaum points out that although formal equality has been central to the work of some liberal legal theorists, liberal philosophers have often rejected formal equality because they "standardly grant that the equality of opportunity that individuals have a right to demand from their governments has material prerequisites, and that these prerequisites may vary depending on one's situation in society" (Nussbaum, 1999: 68). Second, given that formal equality is not essential to liberalism those who identify as liberal feminists can unproblematically adopt a more substantive conception of equality.

As I explained in Section 2.1a, the notion of equality being advanced here is not that of formal equality but rather a more substantive notion of equality, which I believe falls in line with what MacKinnon argues for. I agree with MacKinnon that achieving genuine equality will require that we focus on the realities of our social context and on those things that actually represent barriers to equality. This will often demand not simply that we 'add women' but that we radically restructure existing basic institutions. Moreover, it is also important to note that the problematic power dynamic is not limited to the basic institutions of the state but pervades all aspects of our lives. Thus, social norms, attitudes, and

expectations will also have to be altered in order to arrive at genuine equality between men and women.

Having demonstrated that the conception of equality endorsed in this project should be considered acceptable to at least some radical feminists, I will now argue that the same is true of the notion of freedom of choice. Following Denise Schaeffer, I believe that MacKinnon's radical feminism is committed to an understanding of freedom of choice similar to that outlined in Section 2.1b for three key reasons: (1) MacKinnon recognises the important role that social context plays in shaping our desires, preferences, and choices; (2) MacKinnon is committed to the thought that in order for women to be genuinely free, the background conditions against which women make their choices must be altered; and (3) MacKinnon respects the human agency of women even when the choices that women make perpetuate systematic disadvantages. That is, MacKinnon does not suggest that the state, or anyone else, should interfere with the choices of individual women in order to prevent them from making choices that may disadvantage them.

As we have seen, it is central to MacKinnon's project that we recognise the social realities that confront us. Furthermore, we must scrutinise all aspects of our social world if we are to achieve genuine freedom and equality for women:

Feminists say that women are not individuals. To retort that we "are" will not make it so; it will obscure the need to *make change so that it can be so* [...] It acts as if the purpose of speech is to say what we really want reality to be like, as if it already is that way, as if that will help move reality to that place. This may work in fiction, but it won't work in theory. Rather, if this is reality, nothing needs changing: *this* is freedom; we choose *this*. To me, this answer is about denial and is the opposite of change.

(MacKinnon, 1987: 59)

To deny that women are individuals, in this instance, does not mean that women do not have separate bodies with separate needs. Rather, for MacKinnon, women are yet to achieve genuine freedom as individuals and thus are yet to realise an individuality that is not written for them in a social context marked by male dominance (1987: 92). The point that MacKinnon is making is that we are products of our social world. That is, our beliefs, desires, and preferences are all

influenced and shaped by the world around us. When our social world is structured around power relations that support male privilege and female subordination this undermines women's capacity for free choice.

For MacKinnon, then, women can only achieve freedom as individuals who are genuinely self-determining when the background conditions against which they live their lives are such that women and men share in equal social power. So in order for women to be genuinely self-determining they need, at the very least, background conditions of equality; equality that women have had a hand in developing. This too is compatible with what I argued for in Section 2.1b.

This brings me to my final point of comparison with MacKinnon's account. Having argued that the understanding of equality and freedom that I am employing is compatible with that proposed by MacKinnon, I will briefly consider cases where equality and freedom conflict. Schaeffer notes that MacKinnon has often been accused of paternalism (Schaeffer, 2001: 704). Now, while Schaeffer is keen to dismiss this charge it should be noted that the objection is not without grounds. MacKinnon makes many comments that have a worryingly paternalistic feel to them.<sup>20</sup> This is most evident in her discussions of pornography where she quite often adopts the language of prohibition. However, it should also be noted that MacKinnon does not call for the prohibition of the sale and consumption of pornography but rather she and Andrea Dworkin have sought to establish a law that "gives victims a civil action when they are coerced into pornography, when pornography is forced upon them, when they are assaulted because of specific pornography, and when they are subordinated through the trafficking of pornography" (MacKinnon, 1987: 210). So instead of a blanket prohibition on pornography MacKinnon argues in favour of providing people with the legal tools necessary to sue pornographers for the harms that pornography causes. Thus MacKinnon's approach should be considered as one of empowerment and consciousness-raising as opposed to one of prohibition and paternalism.

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<sup>20</sup> I remain agnostic as to whether paternalism is in itself wrong. All I want to suggest here is that MacKinnon often seems to be endorsing some pretty heavy-duty state intervention in order to achieve the ideal feminist state.

Given MacKinnon's general commitments to women's freedom and equality, Schaeffer's interpretation of MacKinnon on this point seems to be the most consistent reading. Moreover, as Schaeffer notes, "MacKinnon explicitly rejects [a paternalistic state-sponsored, top-down process of social transformation] criticizing those who claim to miss women's voices so much that they (paradoxically) 'proceed to imagine for them the world they should be a part of building'" (Schaeffer, 2001: 704; MacKinnon, 1987: 219). Hence, we can see MacKinnon as taking the position that although women's lives, identities, and choices are shaped and influenced by a society characterised by an unjust power dynamic, intervening in the lives and choices of individual women in an attempt to redress the balance, fails to respect that women must also be authors of the background conditions against which we live our lives if they are to be the true bearers of equal social power.

While I do not profess to agree with all aspects of MacKinnon's feminism, I do agree with the central elements discussed here. And, as I have demonstrated, the feminism advanced in this project supports MacKinnon's key ideas. Consequently, I am hopeful that at least some 'radical' feminists can get on board with this project thus far.

## **2.3 SUMMARY**

To summarise, the key features of the feminism that I am advancing here are:

- Women should be regarded as free and equal human beings.<sup>21</sup>

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<sup>21</sup> Importantly, arguing for the recognition of the status of women as free and equal human beings does not exclude the fact that there are some important differences between the male and female human body. Moreover, it is entirely consistent with what I am saying that these differences may, at times, necessitate unequal treatment. For example, pregnant women may need more resources than men and non-pregnant women, and women who choose to breastfeed their babies may need more flexible working arrangements. In these cases the physical differences between the sexes are important and relevant to our thinking about social justice. However, gender cannot provide adequate justification for the unequal distribution of social goods.

- Substantive equality is necessary for overcoming sexism: substantive equality demands that one pay attention to all barriers that stand in the way of achieving *full* equality. It is not just a case of ensuring that there are formal laws in place to protect women's equal rights, liberties and opportunities but that women do in reality have equal rights, liberties, and opportunities.
- Protection of freedom: It is important that the feminist agenda does not undermine women's freedom in ways similar to the oppression that is being tackled. Thus, a feminist project, which seeks to challenge the wrongs of gender injustice, must also respect the choices of women even when those choices serve, in part, to perpetuate the injustice. However, this does not mean that there is nothing to be done. Justice requires that people are able to make decisions about how their lives go against background conditions of equality.

I argued in Section 2 that this understanding of the key features and aims of feminism should not be seen as having a limited appeal. While it is in no doubt true that emphasising freedom of choice is suggestive of a project located firmly in the liberal tradition, these values are not only important to liberals. Moreover, nothing in what I have said excludes other values that may, in certain contexts, be as important. Thus, I am optimistic that some feminists who assert that they are endorsing feminisms other than liberal feminism will be able to accept much of what I have set out here.



## PART II

### A FEMINIST CRITIQUE OF STATISM

#### INTRODUCTION

Part I of this thesis situated the project in the literature on both feminism and cosmopolitanism in order to lay the foundations for my central thesis that feminists ought to be cosmopolitans about global distributive justice. By arguing that feminists should advocate cosmopolitan approaches to global justice, I maintain that feminists must hold that (1) individuals are the primary units of moral concern; (2) that individuals are of equal moral worth; and (3) that there are global duties of justice that are binding on all.

As I explained in Chapter 1, cosmopolitanism stands directly opposed to approaches that take states, tribes, cultures, or other groupings to be the primary units of moral concern. This section of the thesis consists of two chapters through which I develop a feminist critique of theories that take states to be the primary units of moral concern.

In Chapter 3, I critically evaluate the statism of John Rawls as he presents it in *The Law of Peoples*. I will concentrate on three problematic features of Rawls's theory and argue that these aspects yield consequences that are unacceptable both to cosmopolitans and feminists alike. Namely, I will focus on the inclusion of decent peoples in the Society of Peoples, the minimal conception of human rights, and the exclusion of burdened societies and the associated issue of the rejection of a global principle of distribution. Following my critical evaluation of Rawls, in Chapter 4 I look to develop a more general critique of statist approaches. There I suggest that the disagreeable elements of Rawls's account originate in the statist foundations that he adopts, and I further argue that any view premised on the idea that states are the primary units of moral concern will ultimately suffer from the

same problems. Specifically, I put forward a feminist argument that shows all statist approaches to be theoretically unattractive because statism necessarily relies on the assumption that there is a strong divide between public and private spheres.

The main aim of this part of the thesis is to show that of the two dominant approaches to questions of global justice, cosmopolitanism is to be preferred. By highlighting the shortcomings of statist approaches to global justice I hope to convince my reader that if you are a feminist, then you really ought to be a cosmopolitan about global justice.

### 3

## **RAWLS AND THE LAW OF PEOPLES: TOLERATION, HUMAN RIGHTS, AND THE DUTY TO ASSIST**

In this chapter I will evaluate John Rawls's *The Law of Peoples* as a theory that takes nation-states to be the primary units of moral concern. The chief objective of this examination is to demonstrate why feminists ought to reject Rawls's approach to global justice. This discussion will also bring out some of the benefits of adopting a cosmopolitan position and help us to see why, as feminists, a cosmopolitan approach to global justice is to be preferred.

Martha Nussbaum has devoted much time to critically evaluating Rawls's international theory (Nussbaum, 2004a, 2004b, 2006a). In what follows I will consider three of Nussbaum's main concerns: the toleration of decent peoples, Rawls's minimal conception of human rights, and the exclusion of burdened societies. I have decided to frame these problems from the perspective of Nussbaum's critique for two reasons. First, her critique of Rawls's international theory is fairly unique in that she raises explicitly feminist objections to the Rawlsian project. Second, Nussbaum can, and often is, taken to be sympathetic to the cosmopolitan standpoint, which makes her a likely ally to my central thesis.<sup>1</sup> Through discussing and developing Nussbaum's critique I aim to demonstrate why we should, both as feminists, and as cosmopolitans, reject the arguments presented by Rawls in *The Law of Peoples*.

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<sup>1</sup> My previous discussion of Nussbaum's positive account (§1.5b The Capabilities Approach) showed that although Nussbaum has tried to distance herself from the label of cosmopolitanism, her account is clearly an instance of cosmopolitan distributive justice.

In Section 3.1 I will provide a brief overview of Rawls's *The Law of Peoples*. Next I go on, in Section 3.2, to discuss Nussbaum's challenge to Rawls's inclusion of decent societies within a Society of Peoples. This discussion involves a general examination of the notion of decent peoples and includes a consideration of the problems brought about by Rawls's move to a general principle of toleration. Part of Nussbaum's worry with Rawls's toleration of decent peoples originates from his 'pared down' conception of human rights. Consequently, in Section 3.3, I will evaluate Rawls's minimal conception of human rights and argue that it is both inconsistent with his own framework and with the concept of human rights as it is generally understood. Section 3.4 deals with Rawls's exclusion of burdened societies from the Society of Peoples and the related issue of his rejection of a global principle of distribution. Again, I will begin with Nussbaum's critique of Rawls as a starting point, and from this I will develop a thorough examination of this issue taking into consideration recent attempts to defend Rawls's position. Ultimately, I will argue that because Rawls takes nation-states to be the primary units of concern, *The Law of Peoples* yields unpalatable consequences; consequences that feminists should find fundamentally unsatisfactory.

### **3.1 RAWLS AND THE LAW OF PEOPLES – AN OVERVIEW**

In *The Law of Peoples* (hereafter, LP), Rawls outlines a liberal theory of foreign policy for liberal societies. Rawls begins by distinguishing his concept of a society from the traditional idea of a state by referring to it as a 'people'.<sup>2</sup> Rawls

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<sup>2</sup> Rawls goes to great lengths to distinguish the concept of a people from that of state. Part of his motivation for adopting the term 'people' is that he wants to move away from the traditional understanding of the state as an amoral agent that possesses unlimited sovereignty (LP: 17, 25-26). However, his discussion is unconvincing because, as Allen Buchanan argues, the traditional idea of a state has already been successfully challenged by international law and liberal international relations theorists (Buchanan, 2000: 699-700). Buchanan further notes that despite the challenges and development of the traditional view, the term 'state' has not been abandoned, but rather reconceived. Moreover, many argue that the term 'people' is unhelpful, largely because it has often been used to pick out ethnic and national groups, including those which may not have their own states (Buchanan, 2000: 699).

While I believe that Rawls's notion of a people is very close to how we currently understand states, peoples and states are not strictly the same thing. Kok Chor Tan points out that Rawls's notion of a people is more accurately reflected by the frequently used 'nation-state' because it includes the feature of shared culture – a feature specific to nationality (2006: 77-78).

envisages a Society of Peoples, which is a confederation of well-ordered societies who share an allegiance to the Law of Peoples. The Law of Peoples itself is a “particular political conception of right and justice that applies to the principles and norms of international law and practice” (LP: 3). LP can be seen as an extension of Rawls’s earlier work. In *A Theory of Justice* and *Political Liberalism* Rawls is engaged in the project of constructing a stable and enduring conception of justice aimed at regulating the background institutions of a liberal democratic society. In LP the next step is to work out how such a society should interact with other societies, and what kind of principles should govern the relations between them.

LP is divided into three main parts. In the first two parts Rawls is dealing with ideal theory. The aim of ideal theory is to identify principles of justice that should govern relations between societies who already enjoy conditions necessary for them to be well-ordered. A well-ordered society is one which advances the good of its citizens, and which has a system of law guided by a common good conception of justice (LP: 65). In a well-ordered society, “achieving political justice for all its citizens over time and preserving the free culture that justice allows” signifies a pursuit of the common good (LP: 71n).<sup>3</sup> Furthermore, the interests of all members of the society are considered and all citizens are able to have some say politically. In addition, well-ordered societies adhere to a minimal set of human rights, and are non-aggressive in their relations with other societies. From the ideal standpoint, justice between well-ordered societies is attainable.

In Part I, Rawls claims that the first step to developing the Law of Peoples is to establish what principles of justice are required, and can be justified for domestic society. In a sense he begins LP from the point of view that his arguments in *Political Liberalism* are successful. Hence, Part One of LP involves the

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So, for the purpose of this chapter I will adopt Rawls’s terminology; when referring to nation-states I will use either ‘people’ or ‘society’, which he uses interchangeably.

<sup>3</sup> In *A Theory of Justice* Rawls defines a well-ordered society as a society which “is not only designed to advance the good of its members but [...] is also effectively regulated by a public conception of justice. That is, it is a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles” (TJ: 4).

“extension of the general social contract idea to the society of liberal democratic peoples” (LP: 4-5). It is at this stage that the principles of the Law of Peoples are arrived at through the first of two global original positions. I will return to the statement of these principles, and their selection, in Section 3.1a.

The second part of LP is dedicated to showing that some non-liberal, but well-ordered societies can accept and follow the Law of Peoples. Here the claim is that there could be societies which, though not liberal democratic regimes, should be considered well-ordered. Rawls refers to these societies as decent peoples. Rawls argues that it is intrinsic to the liberal conception that non-liberal, but decent societies, should also find the Law of Peoples acceptable (LP: 10, 58).

Rawls takes the principle of toleration to be essential to political liberalism and he further argues that it must be expressed in the foreign policy of a liberal democratic people (LP: 16, 18-19). At the national level the principle is expressed when citizens acknowledge that there are various reasonable views and ways of life. No one view is taken to be superior; nor is any view imposed on others. All reasonable views and ways of life, and those who hold them, are to be respected and tolerated equally. This principle is expressed at the global level through the toleration of decent peoples. If liberal societies refused to tolerate decent peoples (by, for example, requiring them to be liberal), then they would fail to express sufficient respect for other reasonable ways of ordering a society (LP: 59). Consequently, the principles agreed to should be acceptable to some societies other than those founded upon a liberal democratic framework.

Importantly, Rawls’s discussion of decent societies advises liberal peoples on how they should interact with non-liberal societies, and the extent to which non-liberal societies should be tolerated. Decent peoples are regarded as non-liberal because they do not endorse the range of rights associated with the liberal democratic tradition. Freedoms of expression, association, and religion may all be limited in some way under the regime of a decent society. Persons in a decent society may “not [be] regarded as free and equal citizens, nor as separate individuals deserving equal representation (according to the maxim: one citizen,

one vote)” (LP: 71). However, while decent peoples may not be democratic they must incorporate a ‘consultation hierarchy’ whereby representatives of various groups in the society can make their views known to state officials on political decisions (LP: § 9). Furthermore, these societies honour basic human rights, and are respectful of other peoples.

While decent peoples are not fully just, they are non-aggressive, and their institutions are legitimate. Hence, liberal peoples have no justification to interfere in their affairs. Moreover, liberal peoples should find decent peoples acceptable. Besides being non-aggressive decent peoples share other reasonable interests with liberal peoples. Liberal and decent peoples both seek to protect their territory and ensure the security and safety of all their citizens. They also desire to preserve their political independence, free political institutions, and the liberties and free culture of their societies (LP: 34). Neither type of society seeks power; they are not concerned with their capacity (military, economic, diplomatic, or otherwise) to influence other nation-states, they have no interest in enlarging their empire or territory, and they do not endeavour to convert other societies to their own state religion (LP: 28). Finally, neither liberal nor decent peoples have a desire to be wealthier than is necessary to sustain just (or decent) background institutions (LP: 106).

Rawls argues that if a society fulfils the criteria for decency, then they should be recognized as “equal participating members in good standing of the Society of Peoples, with certain rights and obligations” (LP: 59). It is important to be clear about what Rawls means when he argues that liberal peoples must tolerate non-liberal, but decent peoples. For Rawls toleration should not be understood as something that liberal peoples do simply to maintain the peace with their less than liberal neighbours. Liberal and decent peoples share the same interests, and they are both considered legitimate because their governments respect basic human rights, apply their own laws impartially, and are responsive to the grievances of

their citizens.<sup>4</sup> Consequently, Rawls argues that decent peoples deserve their due respect.

Self-respect and self-determination are crucial goods of peoples and feature among their interests. For Rawls, refusal to tolerate decent societies undermines their self-respect, and interfering with a people in order to make them liberal violates the good of self-determination, which is itself a liberal value. Given that decent peoples meet the conditions of a well-ordered society, Rawls argues that this makes them acceptable from a liberal point of view and that they are thus owed the due respect that they deserve. Furthermore, including decent peoples into the Society of Peoples will encourage their development into fully liberal peoples whereas not tolerating them as equals will only hinder their progress (LP: 61). In sum, Rawls suggests that there are no good reasons to justify disrespect for decent peoples, and that promoting the goods of self-respect and self-determination are reasons strong enough to permit some level of injustice in societies that are not yet fully just (LP: 62).

Finally, let us consider Part III of LP. Unlike Parts I and II, where Rawls is involved in ideal theory, Part III is concerned with *nonideal* theory. Hence, Rawls states that “we must consider, though we cannot do so wholly adequately, the questions arising from the highly nonideal conditions of our world with its great injustices and widespread social evils” (LP: 89). Since only liberal and decent peoples are well ordered, it is at this juncture that Rawls turns his attention to those societies which are not well-ordered, and considers how well-ordered peoples should interact with them.

Rawls identifies three types of non-well-ordered society. First, there are outlaw states; those regimes that refuse to comply with the Law of Peoples. Second, there are societies burdened by unfavourable conditions; otherwise referred to as ‘burdened societies’. These societies are victim to unfavourable historical, social, and economic conditions, which make their achieving a well-ordered society very

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<sup>4</sup> See Wenar, 2004, for a detailed discussion on how legitimacy is the central unifying theme of Rawls’s work.

difficult (LP: 5). Third, Rawls characterises benevolent absolutisms as non-well-ordered. Although benevolent absolutisms honour human rights, they are not considered well-ordered because their citizens are excluded from having a meaningful role in political decision-making.

The role of nonideal theory in LP is to show how liberal and decent peoples who comply with the Law of Peoples are to treat these other non-well-ordered societies. In particular, Rawls is keen to establish what measures liberal and decent peoples can take to defend themselves from outlaw states, and how they should proceed to recognise the further goal of bringing everyone into the Society of Peoples. Accordingly, Rawls is concerned to establish the duties liberal and decent peoples have to burdened societies who do not have the resources to bring themselves up to the standard of being well-ordered peoples.

### ***3.1A THE PRINCIPLES OF THE LAW OF PEOPLES AND THE INTERNATIONAL ORIGINAL POSITION***

Rawls proposes that the principles of the Law of Peoples ought to be selected using the now familiar device of the original position.<sup>5</sup> In LP Rawls envisages three original positions. The first original position, call this OP1, takes place among deliberators contracting on principles to govern a liberal society. Deliberators in OP1 are representatives of individual citizens at the national level. Rawls then extends the notion of the original position to the ‘second-level’, which denotes the international domain. At the second-level the focus of deliberations are principles suitable for governing relations between well-ordered societies and the deliberators are no longer representatives of individual citizens, but representatives of peoples. Rawls claims that negotiations at the second-level will consist of two original positions and thus will involve two distinct processes of deliberation.

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<sup>5</sup> I previously explained Rawls’s use and articulation of the original position in §1.5a – A Globalized Original Position.

In the first of the second-level original positions, call this OP2, the parties are representatives of liberal societies. Similar to OP1, parties are subject to a veil of ignorance. However, at the second-level this means that they are unaware of the size of their territory, the size of their population, their relative strength, the extent of their natural resources, and the level of their economic development. In addition, though parties are subject to the veil of ignorance, they are privy to the fact that they represent liberal societies, and that reasonably favourable conditions obtain to make constitutional democracy possible (LP: 33).

In the second of the second-level original positions, call this OP2\*, parties are representatives of decent peoples. Again parties are subject to the veil of ignorance. While Rawls is not explicit about what parties in OP2\* know, I think that we can assume that parties are aware that at the very least they represent a decent society.<sup>6</sup> Thus, representatives in OP2\* must also know that reasonably favourable conditions obtain to ensure the stability of a well-ordered society.

From this we can see that Rawls envisages two original positions for liberal societies (one at the level of the nation-state and one at the international level), and one for decent societies (at the international level). This raises several important questions: Why do liberal societies engage in two original positions while decent peoples only engage in one? Why do liberal and decent peoples engage in two distinct second-level original positions? That is, why does OP2 not include representatives of both liberal and decent peoples deliberating together?

Responding to these questions requires a closer look at how the original positions are constructed. The original position, as a hypothetical device, and the principles that are derived from it, are constructed using ideas found in the public political culture. The public political culture is a shared culture, which is constituted by the

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<sup>6</sup> I think that this is a fairly sound assumption. Even if representatives in OP\* were for some reason prevented from knowing that they were representatives of decent peoples, they could easily work this out for themselves. The parties in OP2\* know that they are not representatives of liberal peoples because if they were, they would know so. Moreover, since no other type of society, except decent ones, meet the conditions necessary to be members of the Society of Peoples, they are not represented in a second-level original position. Hence, those in OP2\* will be able to deduce that because they are not liberal, but are participating in a second-level original position, they must be decent.

traditions of interpretation of a society's constitution and basic laws (Rawls, 2001: 5). Decent peoples, being non-liberal, do not have a shared public political culture that contains liberal democratic ideas. Since Rawls takes the original position argument for domestic justice to be a liberal idea, he concludes that decent peoples will not apply the original position at the national level (LP: 70). Thus, liberal peoples will engage in two original positions while decent peoples will only engage in one.

The reason why Rawls proposes two second-level original positions, as opposed to one, is because he wants to show that liberal and decent peoples would independently opt for the same principles of the Law of Peoples. Furthermore, one could argue that two second-level original positions are required because the veil of ignorance is thinner at the second-level. Parties know what type of society they represent. Unlike in OP1 where parties are placed under a much thicker veil, and hence do not know which philosophical or religious comprehensive doctrine they hold, in OP2 parties know that they represent liberal societies, and in OP2\* parties know that they represent decent societies. Given that parties have access to this information, two distinct original positions are required to ensure that parties are not coerced, and that an agreement is reached.

At this point I want to highlight the clear dissimilarity between OP1 and the second-level original positions. As mentioned, parties in OP1 represent individual citizens, whereas parties in OP2 and OP2\* represent peoples. This difference is of fundamental importance to this project because it is what sets Rawls in opposition to many cosmopolitans. By taking representatives of peoples to be the parties deliberating in the second-level original positions, Rawls prioritises the interests and needs of nation-states over individuals. That is, nation-states, not individuals, are the primary units of moral concern at the global level. Importantly, the second-level original positions and the principles of the Law of Peoples are shaped by the fact that the parties in the original position are not individuals but representatives of peoples.

The second-level original positions and the principles derived from them are constructed from ideas taken from the global public political culture. Since the Law of Peoples must be acceptable to decent, as well as liberal peoples, and seeing as the global public political culture does not include a shared tradition of liberal ideas, the Law of Peoples is not founded on liberal principles. In addition, peoples do not have the same characteristics as individuals, and the fundamental interests of peoples differ from individual persons. Given that a people's interests are what guide them in their selection of principles, how their interests are characterized has a significant effect on the principles selected.

Rawls claims that parties situated in the second-level original positions will find the following eight principles acceptable for regulating the relations between well-ordered peoples:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right to self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.

(LP: 37)

Rawls readily admits that the list of principles that he presents is incomplete. For example, since there is a likelihood of serious human rights abuses within outlaw states, (4) would have to be qualified to enable members of the Society of Peoples to justly intervene. Rawls also suggests that there will be additional "principles for forming and regulating federations (associations) of peoples, and standards of fairness for trade and other cooperative institutions" (LP: 38). However, while Rawls notes that the list is incomplete, and proposes some areas for development, he does not provide any details about these amendments.

### 3.2 DECENT PEOPLES

Before I begin my critique of Rawls, I want first to respond to a potential objection to my strategy. At the beginning of this chapter I stated that the main aim of my examination of LP is to show why feminists ought to reject Rawls's statist approach to global justice. Now, one could argue that pointing to the shortcomings of LP as a theory of global justice misses the mark because the aim of LP is to propose foreign policy for a liberal democratic state. So, my critic might insist, one cannot argue that the Law of Peoples is an inadequate account of global justice, because it was never intended to be an account of global justice.

Since Rawls mostly refers to the Law of Peoples as the foreign policy for liberal and decent peoples, and he reiterates that elaborating on the foreign policy of a liberal people is the fundamental concern of LP, this challenge is not without force (LP: 10 82, 92-93). However, I contend that Rawls is engaged in far more than the mere development of foreign policy. First, Rawls himself states in the opening lines of LP that The Law of Peoples is itself a "particular political conception of *right* and *justice* that applies to the principles and norms of international law and practice" (LP: 3 emphasis added). As we have seen, Rawls is in effect extending his early theory to the international level. For this reason Rawls invokes the hypothetical device of the original position to justify moral principles of international justice, not to describe guidelines for foreign policy (this latter task does not require the original position). Moreover, the long term aim of the Law of Peoples is to bring all societies up to the standard required for entry to the Society of Peoples; and thus, ultimately to establish a decently just international basic structure (LP: 93). These features clearly demonstrate that there is more to Rawls's project than merely describing the foreign policy of a liberal democratic state.

Having established that LP is the proper target of my criticisms, I now turn to one of the more controversial claims that Rawls makes in LP, namely, the assertion that liberal toleration extends to non-liberal but decent peoples. This feature of Rawls's view is often rejected by liberal cosmopolitans. It is argued that the

principle of toleration applied at the global level fails to recognise the basic rights that all individuals are entitled to regardless of where they happen to have been born. At the heart of this objection are two claims: (1) the principle of toleration adopted at the global level – call this, the general principle of toleration - is inconsistent with the liberal principle of toleration adopted at the national level; and (2) the basic human rights which define the limits for toleration should include more than Rawls allows. In this section I will discuss and develop Nussbaum’s articulation of (1).

### ***3.2A THE ANALOGY BETWEEN INDIVIDUAL CITIZENS AND PEOPLES***

In an attempt to illustrate why liberal peoples should tolerate decent but non-liberal societies Rawls draws an analogy between individual citizens living within a liberal society, and liberal societies as members of the Society of Peoples. Rawls’s analogy runs as follows:

Surely tyrannical and dictatorial regimes cannot be accepted as members in good standing of a reasonable society of peoples. But equally not all regimes can reasonably be required to be liberal, otherwise the law of peoples itself would not express liberalism’s own principle of toleration for other reasonable ways of ordering society nor further its attempt to find a shared basis of agreement among reasonable peoples. Just as a citizen in a liberal society must respect other persons’ comprehensive religious, philosophical, and moral doctrines provided they are pursued in accordance with a reasonable political conception of justice, so a liberal society must respect other societies organized by comprehensive doctrines, provided their political and social institutions meet certain conditions that lead the society to adhere to a reasonable law of peoples.

(Rawls, 1993: 42-43)

Nussbaum argues that Rawls’s comparison between peoples and individual citizens is a disanalogy. To understand why, we need to take a closer look at the comparison he is making.

Let us begin with whom Rawls is considering when he talks of citizens. The individuals that Rawls refers to are citizens of a liberal society, presumably of the kind assumed in *Political Liberalism*. If this is correct, then we know that citizens

in a liberal society are capable of endorsing a political conception of justice.<sup>7</sup> Recall that political liberalism assumes the fact of reasonable pluralism, which recognises that citizens do not all share the same comprehensive doctrine. Furthermore, it is not just the case that there is a plurality of comprehensive, religious, philosophical and moral doctrines but more importantly there is a “plurality of *reasonable* but incompatible comprehensive doctrines” (Rawls, 2005: xvii emphasis added).<sup>8</sup>

The political conception of justice, as presented in *Political Liberalism*, is freestanding. A freestanding political conception should not rely upon, and must be distinguishable from, any particular comprehensive doctrine. This feature allows all reasonable citizens to endorse the political conception because it is not made up of elements that might conflict with their own comprehensive doctrines. Accordingly, Rawls claims that reasonable people, with reasonable comprehensive doctrines, are able to embed the political conception of justice within their comprehensive doctrines – that is, support the political conception of justice with reasons found in their personal comprehensive doctrine. So all reasonable people, according to Rawls, endorse the political conception of justice despite the plurality of viewpoints and the disparity among their comprehensive doctrines. In addition, given that we know that the citizen resides in a liberal society we can safely assume that principles of justice already regulate that society. Consequently, we know that all reasonable people adhere to the political conception of justice, and that each individual is entitled to an extensive set of rights.

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<sup>7</sup> In Chapter 1 I briefly explained the key elements of political liberalism. Here I will recap, and add a little more detail because it is essential to understanding much of Rawls’s international theory.

<sup>8</sup> Although I recognise that much debate has surrounded Rawls’s use of the word ‘reasonable’, I believe that it is sufficient, for the present discussion, to understand ‘reasonable’, with regards to citizens and comprehensive doctrines, as follows: A reasonable person is “ready to propose, or to acknowledge when proposed by others, the principles needed to specify what can be seen by all as fair terms of cooperation. Reasonable persons also understand that they are to honour these principles, even at the expense of their own interests as circumstances may require, provided others likewise may be expected to honour them” (JF, 7). Furthermore, a reasonable person is also willing to recognize the burdens of judgement, which are accounts of the sources of disagreement between reasonable persons.

How does this characterisation of the citizen residing in a liberal society compare with that of a liberal people sharing membership to the Society of Peoples with decent societies? Unlike the case of the citizen, liberal societies must tolerate other non-liberal societies which may be guided by a comprehensive conception of the good that is based on the predominant religion. Whereas individual citizens in a liberal society in some sense share liberal ideas,<sup>9</sup> irrespective of which comprehensive doctrine they may hold, the same cannot be said of non-liberal peoples. One possible outcome is that liberal peoples must tolerate and respect societies that permit gross injustice.

### ***3.2B FROM THE LIBERAL PRINCIPLE TO THE GENERAL PRINCIPLE OF TOLERATION***

Rawls acknowledges that there could be inequality within decent societies. For instance, he claims that citizens may be excluded from public offices if they do not practice the dominant religion of the society (LP: 65n). Rawls characterises such inequalities as not fully unreasonable limitations on liberty (LP: 74). However, Nussbaum disagrees, finding these limitations fully unreasonable, and argues that women in particular would be greatly affected. For example, while decent societies may not be democratic they must incorporate a ‘consultation hierarchy’ whereby representatives of various groups in the society can make their views known to state officials on political decisions (LP: §9). Under this picture it is conceivable that although men must consult them, women may not have the vote. They may also have unequal property rights, and might have no right to divorce. Thus, Nussbaum claims that women who reside within liberal societies are counted as fully equal persons, whereas women at the international level are not (Nussbaum, 2004: 159). Consequently, “Rawls’s theory of international justice does what his domestic theory of justice persuasively argues against; it neglects the inviolability of each person that was a key to Rawls’s

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<sup>9</sup> For example, irrespective of their comprehensive doctrines, reasonable citizens in a liberal society hold that individuals are free and equal. Since this is a liberal conception of the person it cannot be assumed that citizens of decent but non-liberal peoples also hold this view.

domestic theory. But persons are persons, and violation is violation, wherever it occurs” (Nussbaum, 2004: 160).

So, what has gone wrong? How do we get from respecting an extensive set of rights for individuals at the national level, to failing to grant them full consideration at the international level? The key reason for this dissimilarity stems from the fact that, though he is not explicit about it, there are two principles of toleration in operation in Rawls’s theory. At the national level, and essential to the liberal conception of justice, is the liberal principle of toleration whereas at the international level we find a different principle of toleration in use. The consequence of adopting two different principles is that, as Nussbaum argues:

In the domestic case, Rawls’s principle of toleration is a person-centered principle: it involves respecting persons and their conceptions of the good. In the transnational case, although Rawls depicts himself as applying the same principle, the principle is fundamentally different: it respects groups rather than persons, and shows deficient respect for persons, allowing their entitlements to be dictated by the dominant group in their vicinity, whether they like that group or not.

(Nussbaum, 2006: 253)

At the national level, a political conception of justice would be deemed unjust and intolerant if it were based on any one particular comprehensive conception of the good. This is because it would fail to respect other comprehensive doctrines and the persons that hold them. This is why Rawls goes to great pains to show that his political liberalism is just that: political. Political liberalism is intended to be a liberal framework that is neutral, freestanding, and independent of any comprehensive doctrine. Thus, political liberalism expresses full toleration.

However, when we move to the global level things are different. The Law of Peoples appears neutral because it extends toleration to decent peoples, and in doing so does not require them to become fully liberal. Thus, the Law of Peoples, by being neutral between all well-ordered societies, does not favour liberal peoples over decent peoples. However, while at first glance the Law of Peoples seems neutral, closer inspection reveals that it is not.

Since the principles of the Law of Peoples must be acceptable to decent peoples (in order to demonstrate genuine toleration of non-liberal societies and be neutral between them and other liberal peoples), there are some instances where the principles are far more limited than liberal peoples might otherwise opt for. For example, in the case of human rights the Law of Peoples includes a limited set of basic human rights, as opposed to the extensive set adopted by liberal societies at the national level (I will return to this in the following section). As a result, the Law of Peoples can no longer be considered neutral because it attends to what decent peoples, as holders of particular comprehensive doctrines, can find acceptable (Kuper, 2000: 650). This suggests that the liberal principle of toleration adopted at the national level is violated at the global level.

The Rawlsian might respond by arguing that the liberal principle of toleration is simply too narrow for the global realm. The move to a more general principle of toleration could be justified by appealing to the thought that there is arguably greater diversity at the global level, and that, therefore, the fact of reasonable pluralism is more evident. Moreover, the Rawlsian might say, seeing as the subjects of justice are different, and we are now dealing with peoples and not individuals, this shift necessitates the adoption of a more general principle of toleration.

However, following Kok-Chor Tan, I would argue that even if we accept that there is more diversity at the global level, why should we extend the scope for reasonable disagreement? For Rawls reasonable disagreements are those which take place between reasonable people because of what he refers to as the “burdens of judgement”. All reasonable people accept the burdens of judgement. That is, for example, they accept that evidence can often be difficult to evaluate, open to interpretation, and complex (PL: 56-57). What makes a disagreement reasonable, then, is that it arises from the burdens of judgement. This is different from unreasonable disagreement, which arises out of, among other things, self-interest, prejudice, irrationality, and folly. However, by shifting to a more general principle of toleration, Rawls is in effect changing the boundaries of what counts as a reasonable disagreement:

Disagreements about conceptions of justice that are not necessarily reasonable in the domestic realm can be reasonable in the global realm. A person who insists on a theocratic government within the confines of a liberal society is proposing an unreasonable position from the perspective of political liberalism, though the same view advocated and indeed institutionalized in a different country is acceptable.

(Tan, 2006: 90)

So those disagreements deemed unreasonable at the national level suddenly become reasonable at the global level. But why should we accept this move? Even if we grant Rawls the claim that there exists a greater level of diversity at the global level why does it follow that the scope of reasonable disagreement should be extended? Yes, it might be the case that non-liberal societies would reject a liberal political conception of the Law of Peoples, but why should we treat their refusal to comply as having its basis in reasonable disagreement, especially when we do not treat the same kind of refusal as reasonable at the national level.

### **3.3 RAWLS'S MINIMAL CONCEPTION OF HUMAN RIGHTS**

The dispute over whether or not decent peoples should be tolerated hinges on Rawls's minimal conception of human rights. Commitment and adherence to the set of basic human rights that Rawls advocates is what defines the limits of toleration. This means that human rights set the limit to what can be tolerated by liberal peoples. A necessary condition of decency is that basic human rights are fulfilled, and furthermore, if a society upholds basic human rights, then they are excluded from justified forceful intervention (LP: 80). Hence, societies are tolerated if they fulfil basic human rights, and the Society of Peoples will not tolerate societies that abuse the basic human rights of their citizens.

Since Rawls argues that principles agreed to in OP2 and OP2\* cannot be based on liberal principles – because they must be acceptable to non-liberal but decent peoples - his account of human rights omits rights which are considered uniquely liberal. Thus, Rawls outlines a minimal set of basic human rights which include “the right to life (to the means of subsistence and security; to liberty (to freedom

from slavery, serfdom and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought; to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly)” (LP: 65). Rawls argues that conceiving of human rights in this more limited way will mean that representatives of decent peoples will be unable to reject human rights on the grounds that they are expressions of Western or liberal values; rights conceived in this way are not “politically parochial” (LP: 65).

However, as we have seen, one consequence of operating with a limited set of basic human rights is that by accepting decent societies, liberal societies will be endorsing the denial of full freedom and equality to certain individuals within those societies. This is particularly problematic from a feminist perspective because there is no society in the world in which women have full equality to men - economically, politically, culturally or otherwise - and Rawls’s account does not adequately address the full extent of the inequality that exists between men and women in non-liberal societies.<sup>10</sup> While Rawls’s account does demand that individuals have a right to formal equality, this might not adequately protect women from discrimination and oppression. The level of equality among citizens prescribed by the notion of formal equality very much depends on who is taken to be similar. For example, if men and women are considered to be significantly dissimilar then it could follow that they should not be treated similarly. Thus, for instance, while the men of a decent people may be regarded as similar to other men in that society and thus receive equal treatment, the women might not be regarded as similar to men and so only receive equal treatment with other women. The problem is that formal equality is entirely consistent with discriminatory and oppressive practices because it depends upon who is identified as being similar. When certain members of society are deemed by the majority, or ruling elite, to be at best ‘different’, or at worst ‘alien’, formal equality allows for scenarios where these individuals suffer unequal treatment under the law. Thus, formal

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<sup>10</sup> This is not to suggest that Rawls’s liberal theory at the level of the nation-state successfully deals with sex inequality. In the next chapter I will detail some of the ways that Rawls’s liberal conception of justice is limited in its capacity to deal with sex inequality within liberal democratic societies.

equality allows for morally abhorrent states of affairs including, potentially, slavery.

At this point one might argue that my interpretation of what Rawls means when he refers to formal equality is unfair. Formal equality need not allow discriminatory laws and practices if we ensure that stereotypes and over-generalizations do not determine who is taken to be similar to whom. The Rawlsian might contend that this reading is more in line with Rawls's account because he is careful to stipulate that the domestic law of decent peoples must not favour one group to the extent that another is totally excluded, thus ruling out slavery as an acceptable state of affairs.<sup>11</sup> However, even if we accept that his account does not permit slavery, this does not undermine the claim that his conception of a decent society allows for scenarios in which individuals, despite their right to formal equality, could be the victims of discrimination and unjust treatment.

In Section 3.2b I briefly mentioned some of the inequalities between men and women that Nussbaum anticipates being characteristic of a decent society. In such a society although women are granted certain basic rights they remain heavily discriminated against. This discrimination manifests itself in many ways: women do not have equal voting rights to men, they do not have equality of opportunity in the workplace – this may mean (in the event that they are permitted to leave the house) that they are excluded from all political positions and the most desirable jobs. Additionally, women could have unequal property rights so that, for instance, what property women possess would, upon marriage, be passed over to the husband and his family.

If this picture is consistent with Rawls's characterisation of decent peoples, and I believe that it is, then it suggests that Rawls is *not* working with a notion of formal equality that requires decent peoples to question the underlying

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<sup>11</sup> Although slavery and genocide are excluded by Rawls's account, Simon Caney argues that Rawls's account permits the forcible relocation of an ethnic community and therefore allows ethnic cleansing (Caney, 2002: 102).

assumptions determining who is considered to be alike. This would be too stringent a requirement because it would demand that decent peoples justify – with reference to empirically accurate facts – the discrimination directed at those individuals who are not considered sufficiently similar to the privileged group. Decent peoples are not likely to accept this demand since it may conflict with the dominant comprehensive doctrine of the population. For example, this requirement could not be met in a sexist society where the sexist discrimination is largely justified by appealing to the idea that women are inferior to men in the eyes of the god/s worshipped by the majority of the population. Thus, Rawls appears to interpret formal equality in a rather loose way, which allows certain groups in decent societies to be privileged at the cost of others.

For most cosmopolitans the above scenario exhibits serious restrictions on liberty and human dignity, and tolerating societies that allow such inequality is tantamount to endorsing these inequities, or at the very least being complicit in the structural perpetuation of systems of injustice (Pogge, 2002a). Instances of injustice in decent societies do not become more tolerable because they are happening elsewhere; injustices which liberals find unacceptable are unacceptable regardless of where they take place. Furthermore, the above scenario demonstrates that Rawls’s statism cannot meet the feminist goals detailed in Chapter 2. The feminism advocated in this project is committed to the idea that women are entitled to substantive equality wherever they happen to have been born. What I have shown here is that Rawls’s account not only fails to provide us with the tools necessary to achieving that goal, but also potentially allows and reinforces practices and laws that oppress women.

### ***3.3A WOMEN AND RAWLS’S BASIC SET OF HUMAN RIGHTS***

Rawls’s account of human rights differs significantly from traditional statements such as the Universal Declaration of Human Rights (UDHR)<sup>12</sup> in that it omits so-

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<sup>12</sup> See also the United Nations International Convention on Civil and Political Rights (UNICCPR) and the United Nations International Covenant on Economic, Social and Cultural rights (UNICESCR).

called liberal rights.<sup>13</sup> For example, missing from Rawls's account are "full equality under the law (since unequal liberty is permitted), the freedom of speech and opinion, the freedom of assembly, the free choice of employment, the right to equal pay for equal work, and the right to education" (Nussbaum, 2006a: 248). The problem, then, is that the argument for toleration in LP permits the violation of many of the human rights that the international order currently recognises.

As well as being anti-cosmopolitan, the minimal set of human rights proposed by Rawls will be particularly disconcerting to advocates of the feminist human rights movement because his account excludes those rights that feminist human rights scholars and activists seek to establish. Thus, endorsing such a restricted set of rights serves to repudiate many ideas advanced in the feminist rights literature (if not the entire discipline) and subverts the women's rights campaign more generally.

"Women's rights as human rights" is a now familiar slogan within feminist literature (Peters & Wolper, 1995; Bunch, 1995; Okin, 2000; Parekh, 2008). This slogan expresses the idea that much of the traditional and contemporary human rights discourse fails to protect women's human rights. Feminist women's rights advocates argue that there are two ways in which women's rights are not protected. First, feminists argue that when women have their human rights violated these are often not recognised as genuine human rights violations (Parekh, 2008; MacKinnon, 2006). Second, feminists find traditional declarations of human rights wanting because these declarations fail to identify human rights that are specifically crucial to the well-being of women.

The first claim - violations of women's human rights are often not recognised as such - is comprised of two worries. Part of the concern is that when women have their human rights violated the violation is not recognised because the victim is a

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<sup>13</sup> Rawls's claim that the extensive set of human rights are founded on Western liberal ideas, and are therefore unable to be derived from non-Western, non-liberal societies, is controversial. Nussbaum has argued extensively against this claim. In particular, she demonstrates that the pervasive differences in culture and tradition that Rawls claims render liberal values parochially Western do not exist to the extent that he is asserting (Nussbaum, 2000; 2006a).

woman. This is coupled with the further worry that “human rights theory has failed to incorporate the specific violations that women face as women” (Parekh, 2008: 140). The standard examples of gender-specific violations are domestic abuse, rape, and sexual harassment. So women’s human rights violations may not be recognised because the victims are women, or because violations that predominantly affect women are not recognised as violations of human rights, or both.

With regard to the second claim - that traditional statements of human rights fail to identify human rights that are specifically crucial to the well-being of women - feminists argue that despite the gender neutral language of traditional human rights statements, human rights have been constructed after a male model. For example, feminists argue that the gender neutral language of traditional accounts of human rights has failed to attend to issues such as “maternity leave, pregnancy-related health care, and affirmative action for women in education and employment” (Okin, 1998: 33-34). Here we can see that the feminist concern is that women’s human rights are not fully protected because standard conceptions of human rights omit rights that are tied to the well-being of women.

During the last forty years there has been a sustained commitment to establishing women’s rights as human rights. This has happened at a number of levels with the task being taken up by grassroots organisations, NGOs, and feminist academics. Subsequently, several significant steps have been taken, including the development of declarations dedicated to explicitly outlining women’s rights. Perhaps the most notable of these are The Universal Declaration of Women’s Rights (UDWR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>14</sup>

How does Rawls’s minimal conception of human rights sit with the movement to establish women’s rights as human rights? There are many women actively campaigning worldwide to secure women’s rights as human rights (including

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<sup>14</sup> It is important to be aware that though the majority of countries have ratified these documents, in many violations continue to occur. However, this should not undermine what progress has been made with regard to the way in which we think about human rights.

those excluded by Rawls's account). Human rights as documented by UNDHR and CEDAW are supported and promoted by people around the globe from many and varied cultural traditions. What should be of fundamental concern here is that by excluding a number of important rights, Rawls's proposal conflicts with the global campaign to secure women's rights as human rights. For example, Rawls's account omits rights that are particularly valuable to women living in societies marred by sex inequality; in such societies having equal property rights and equal grounds for divorce will be particularly important. Not only does this ignore feminist human rights advocates concerns about how human rights have been traditionally conceived, but it also undermines the work that has been done to rectify these problems. For example, CEDAW, which is The Treaty for the Rights of Women, has been ratified by 185 countries and includes women's rights to property, and equal rights with regard to divorce; rights excluded on Rawls's account.

Despite the apparent tension between feminist human rights advocates and Rawls's minimal set of human rights, the Rawlsian could still maintain that a thicker set of rights would be too demanding and essentially intolerant. Adopting a thicker set of rights would entail including rights which are peculiarly Western, and demanding that non-liberal societies - who do not share the values upon which certain rights are based - uphold a more extensive set would fail to show them due respect and toleration.

However, I think that we should be wary of the attempt to exclude a number of important rights on the grounds that they are uniquely liberal. Even if we assume that Rawls is correct (and arguably he is not) in his assertion that some rights are based on values more familiar to the Western liberal tradition, why should liberals restrict these values at the global level, especially when doing so excludes many individuals who share and defend those values but who happen to live in non-liberal societies. The fact that a set of values and ideas originates from a specific cultural tradition, does not entail that they should not, or could not, be promoted globally. Acknowledging the cultural origins of an idea does not tell us anything about the scope of its applicability, relevance, suitability, or value. This

poses a serious problem for Rawls's account because beyond claiming that received human rights are parochial, he provides no good argument for why human rights should be limited in the way that he suggests.

**3.3B FURTHER PROBLEMS WITH RESTRICTING THE CONCEPT OF  
HUMAN RIGHTS: INCONSISTENCY WITHIN THE RAWLSIAN  
FRAMEWORK**

While the considerations in the preceding section raise some initial concerns for feminists, I will now make use of the cosmopolitan critique to reject Rawls's account of human rights as wholly inadequate. What I aim to show is that Rawls's conception of human rights is inconsistent both with his own framework, and with the inherent nature of human rights. In this section I shall focus on why Rawls's account of human rights is inconsistent with his own framework, and in doing so present two key objections: (1) representatives of liberal peoples would be unlikely to adopt the minimal set of human rights; and (2) even though Rawls takes peoples as the primary units of moral concern, promotion of a minimal set of human rights does not make sense in light of his conception of the individual, which is crucial to his work on social justice at the national level.

In view of the objections raised in the previous sections, the Rawlsian might point out that Rawls's methodology suggests that even if there were no decent peoples, liberal peoples would still opt for the same Law of Peoples. That is, even if only liberal peoples populated the Society of Peoples, representatives of those peoples would not opt for a more extensive set of human rights. Recall that Part 1 of LP involves the "extension of the general social contract idea to the society of liberal democratic peoples" (LP: 4-5). Here representatives of liberal peoples deliberating in OP2 opt for the Law of Peoples prior to (or at least separate to) decent societies in OP2\*, and they do not adopt a more extensive set of human rights. Since the minimal set is adopted by liberal peoples before the extension of the general social contract idea to decent peoples, it cannot be claimed that the account of human rights is restricted to make it more appealing to decent peoples.

Hence, my opponent could argue, the restriction of human rights is not a consequence of the extension of the Law of Peoples to decent peoples.

However, I believe that if we accept the Rawlsian framework, then it seems unlikely that representatives of liberal societies in OP2 would in fact adopt the proposed minimal set of human rights. In Rawls's domestic theory he describes individual citizens as having certain fundamental interests. Among these, Rawls claims, is that they have the capability to develop and exercise what he refers to as the two moral powers. The 'two moral powers' are crucial to Rawls's conception of the person. Persons are regarded as free and equal and in possession of the two moral powers: (1) persons have the capacity for a sense of justice, which means that they have the capacity to "understand, to apply, and to act from (and not merely in accordance with) the principles of political justice" (Rawls, 2001: 19); and (2) persons have a capacity for a conception of the good. That is, persons rationally pursue a conception of the good which is "an ordered family of final ends and aims which specifies a person's conception of what is of value in human life or, alternatively, of what is regarded as a fully worthwhile life. The elements of such a conception are normally set within, and interpreted by, certain comprehensive [...] doctrines" (Rawls, 2001: 19).

One fundamental interest of persons is to secure basic rights and liberties. Rawls argues that securing and protecting basic rights and liberties is important to individuals for two reasons: "first, [...] the equal political liberties and freedom of thought enable citizens to develop and to exercise [their moral] powers in judging the justice of the basic structure of society and its social policies; and second, [...] liberty of conscience and freedom of association enable citizens to develop and exercise their moral powers in forming and revising and in rationally pursuing (individually or, more often, in association with others) their conceptions of the good" (Rawls, 2001: 45). Furthermore, without adequate economic means citizens would be unable to advance their conception of the good and the development of the two moral powers would be stymied. Consequently, Rawls suggests that besides securing an extensive set of rights and liberties, individuals

also have a vital interest in securing as much wealth as they can so that they may comfortably pursue their conception of the good (Rawls, 2001: 85, 169).

Given this account of persons and their fundamental interests it is difficult to see why the representatives of liberal peoples would adopt a more minimal set of basic human rights. Patrick Hayden argues that:

It is unlikely that that liberal societies made up of individuals matching Rawls's political conception of the person – and thus concerned about preserving the worth of a demanding set of rights, liberties and opportunities – would agree to principles of international justice that allow for indefinite inequalities among peoples and to the narrower, unequal set of human rights and means ascribed to non-liberal peoples.

(Hayden, 2002: 133 -134)

The thought here is that if we accept Rawls's characterisation of individual persons at the national level, then it is difficult to see why persons, characterised in this way, would opt for a limited set of human rights at the global level. Thus, Hayden concludes that representatives of liberal peoples in OP2 would reject the minimal conception of human rights advanced by Rawls.

In addition, I contend that representatives of liberal peoples have a further reason to adopt a more extensive set of rights. By ensuring that a more extensive set of human rights is included in the Law of Peoples, representatives of liberal peoples would in effect safeguard their own rights (and the rights of future generations) from potential violations by their governments. Since it remains perfectly plausible that a liberal society could become a decent society, making sure that the Law of Peoples protects an extensive set of human rights acts as a form of insurance for individuals in liberal societies against that outcome.

At this point the Rawlsian might respond that these considerations would not arise because the deliberating parties in OP2 are representatives of peoples and not individuals. Thus, they might say, parties only take into consideration the interests of peoples, not those of individuals. Moreover, they could argue that the interests of individuals must be excluded at the level of OP2 and OP2\* since decent societies could not accept conditions which were otherwise. So, the claim

that Rawls's conception of human rights is inconsistent within his own framework - because representatives of liberal peoples would be unlikely to adopt the minimal set of human rights - is unsuccessful since it relies on the interests of individuals not peoples.

This Rawlsian response rests on the thought that the interests of individuals must be excluded from the deliberations of OP2 and OP2\* in order to accommodate decent societies. This claim forms part of Rawls's rejection of cosmopolitan justice (LP: 82-83). For Rawls the interests of individuals can only feature in the deliberations on the Law of Peoples if individuals are taken as the primary units of moral concern. He argues that situating *all* individual persons behind a veil of ignorance akin to that found in OP1 would amount to saying that all persons are free and equal, a condition that decent societies may not be able to accept.

However, I think we should question why the rejection of the cosmopolitan starting point of taking individuals as the primary units of moral concern necessitates excluding any or all of the interests of individual persons from the deliberations in OP2 and OP2\*. Moreover, as Pogge highlights, it would seem, under Rawls's characterization of decent peoples, that they would in fact demand the inclusion of the interests of individuals in the second-level deliberations:

Just as liberal societies are said to be concerned for the "well-being of their citizens" (LP: 34), so decent hierarchical societies are, by definition, committed to a common good idea of justice that involves a concern for "the human rights and the good of the people they represent" (LP: 69; here "people" can only be read as "persons"). Accommodating decent societies is thus necessarily compatible with incorporating into the international original position a concern for at least the jointly recognized interests of individuals, alongside the interest of each people in maintaining a stable well-ordered domestic regime.

(Pogge, 2006: 212-213)

The crucial point here is that representatives of peoples are also in an important sense representative of the individual persons who constitute that people. If one interest of a people is to secure conditions necessary for the well-being of their citizens, then the representatives ought to be clear about what that "well-being"

entails. Failure to attend to this question could result in an unstable society so its importance should not be underestimated.

Thus, to conclude this discussion I suggest that there is no sense in talking of the interests of peoples without reference to the interests of the individuals who, when taken together, make up those peoples. Rawls's commitment to taking peoples as the basic units of moral concern results in a theory of international justice which fails to attend adequately to the needs and requirements of individuals both within and beyond liberal democratic societies. For a theory of global justice to be more successful it must fully incorporate, or at least make reference to, the interests of the individual citizens. Moreover, Rawls's attempt to exclude the needs and interests of individuals from deliberations in the second-level original positions is inconsistent with his overall theoretical framework.

### ***3.3C THE NATURE OF HUMAN RIGHTS***

A further problem with Rawls's minimal conception of human rights is that his account runs counter to our understanding of the concept. Human rights by their very nature are supposed to be universal; they are supposed to apply to all human beings irrespective of, for instance, their gender, race, sexuality, and geographical location. However, Rawls's proposal of a minimal set of basic human rights could be construed as a descent into relativism about human rights. By excluding so-called liberal rights from his account he seems to be suggesting that there are entitlements that most people acknowledge as human rights, but that as it turns out only a subset of them are applicable to *all* human beings and the remainder are ascribed to persons depending on where they happen to live. Consequently, Rawls's account of human rights conflicts with our understanding of human rights as universal rights which apply to *all* human beings in virtue of the fact that they are human.

As we have seen, Rawls rejects a more extensive conception of human rights because he believes that the Law of Peoples should be acceptable to decent societies, which means that international human rights cannot depend on any

comprehensive doctrine. Effectively, Rawls takes the idea of human beings as free and equal to be a uniquely liberal idea, which decent societies may not accept. Accordingly, any rights that depend on the claim that human beings are free and equal must be excluded as truly human rights and instead described as liberal rights. However, since liberal citizens residing within a liberal society regard each other as free and equal, how should they view those humans who live beyond their national borders? A person who lives in a decent society may not be regarded as free and equal by that society's system of law or by the international law established by the Law of Peoples. Thus, Rawls's minimal account of human rights seems to suggest that a person born into a decent society is somehow of less worth. Hayden argues a similar point:

[...] although Rawls's theory is motivated by a well-intentioned tolerance of cultural differences, it is ultimately discriminatory since individual persons living in hierarchical societies are deprived not only of an equal status in the international community, but also of a philosophical and moral justification for challenging the inequalities that they must endure.

(Hayden, 2002: 138)

Individuals residing outside of liberal societies are denied equal moral status because Rawls's account of human rights rejects the liberal aspiration of Article 1 of the UDHR: "All human beings are born free and equal in dignity and rights". However, this manoeuvre appears in tension with the notion of human rights because it threatens the universality of the concept (Hayden, 2002: 139). Providing that each society upholds the Rawlsian minimum, accounts of human rights could vary hugely depending on where in the world one happens to be. This means that an individual could have more or less rights depending on where they happen to live.

Not only does Hayden's argument support my initial concern - that Rawls's account of human rights is relativistic - but it also draws our attention to the question of what purpose human rights serve. Since Rawls ties human rights closely to foreign policy, he seems to regard them as a mere standard by which we can determine the limits of toleration and intervention at the global level. Thus, human rights act as a yardstick by which we can determine whether a society should be tolerated, and whether intervention into another state's affairs can be

justified. But this is a very limited understanding of the function of human rights. In particular, Rawls's account ignores the role of human rights as a tool for use by individuals. Human rights discourse enables groups and individuals to express themselves in situations where their rights are being denied. As such one role of human rights is to provide means by which groups and individuals can protect themselves from other groups and individuals, including their own governments and other actors in the international order. Hence, Rawls's account of human rights is in conflict with what many take the role of human rights to be (Nickel, 2006).

### **3.3D DEFENDING RAWLS AGAINST THE CHARGE OF RELATIVISM**

Samuel Freeman takes Nussbaum's critique of the toleration of decent peoples, and the associated concern with Rawls's thin conception of human rights, to involve the charge that Rawls is a relativist about justice. Freeman describes this relativist interpretation as the view "that (except for minimal human rights) a person's rights are relative to his or her society, and that a society without liberal traditions may with justice treat its members unequally so long as Rawls's minimal human rights are respected" (Freeman, 2006: 425). While Nussbaum does not openly state that this is her charge, others, such as Hayden, do explicitly argue that Rawls is a relativist about human rights (Hayden, 2002: 139). Freeman rejects this interpretation of Rawls and argues that Rawls's account of human rights makes sense in light of the purposes of LP:

The role of human rights in the *Law of Peoples* is not (by contrast with Nussbaum's account) to define an account of justice every society must afford if it is to be minimally just. The role of human rights for Rawls is to set limits to the injustice that non-liberal societies, decent or otherwise, can do and still retain their legitimacy.

(Freeman, 2006: 426)

Here Freeman seems to be claiming that if we emphasise the primary purpose of LP, namely, that of establishing foreign policy for a liberal democratic society, then Rawls's arguments avoid the charge of relativism.

In response I would like to return to the observations that I made at the beginning of Section 3.2. There I noted that it is misleading to interpret LP as mere foreign policy for a liberal society. Among the reasons that I put forward, was the fact that Rawls argues that the long-term goal of the Society of Peoples is to bring all societies up to the level whereby they can qualify for membership. One way of understanding this is that when a society has achieved the standard required for membership we can point to it as a society which is minimally just. So, contrary to Freeman, I would argue that LP is an account of justice which every society must afford if it is to be minimally just, precisely because it sets the limits to toleration.

The problem for the cosmopolitan is that the Society of Peoples allows for gross inequalities between peoples and persons which liberals then have to accept. This has been perceived as a betrayal of liberalism, where liberal rights and freedoms are sacrificed in the name of toleration. Nussbaum could be read as expressing this attitude when she argues that “[Rawls’s] toleration argument justifies as *fully and equally just* systems that violate many of the human rights that the international order currently recognises” (2006a: 263 emphasis added). Nussbaum is not, as Freeman suggests, concerned with whether or not Rawls accepts decent peoples as fully just, because as Freeman points out it is clear from Rawls’s account that he takes neither decent nor liberal societies to be *fully* just. Rather, Nussbaum’s worry is that by tolerating decent peoples as *full* and *equal* members in the Society of Peoples, liberal peoples would be endorsing the illiberal practises of decent societies. It is not a concern, as Freeman takes it to be, which can be explained away by emphasising the motivation behind LP. Even if we stress that LP is primarily the foreign policy for a liberal democratic society, this does not detract from the worry shared by cosmopolitans.

However, the Rawlsian could argue that tolerating decent peoples as free and equal members of the Society of Peoples does not entail endorsing illiberal practices. Both liberal and decent peoples can share membership to the Society of Peoples, and in doing so treat one another as full and equal members while at the same time being aware that at the national level some are less just than others.

But a problem remains: how are liberal peoples to treat decent peoples who allow gross injustice? This is a question on which Rawls is unhelpfully vague.

At this point one might wonder what the problem is. Surely members of the Society of Peoples, whether liberal or decent, can voice their disapproval by expressing criticism of their neighbours' actions. Granting this, liberal peoples do not have to fully endorse the actions of their less than liberal neighbours, and they can speak out critically against the illiberal practices carried out in decent societies. However, it is far from clear that Rawls's account allows members of the Society of Peoples to openly criticise other members, especially if the intention behind the criticism is to coerce other societies into becoming more liberal.

Rawls claims that self-respect, and receiving due respect from other member societies, are crucial to the interests of peoples and securing stability in the Society of Peoples: "most important is maintaining respect among peoples. Lapsing into contempt on the one side, and bitterness and resentment on the other, can only cause damage" (LP: 62). Rawls appears to believe that if liberal peoples continually pass judgement on the practices of decent societies, then those decent peoples may feel as though they are not being shown due respect and consider such judgments to be attempts to undermine their self-respect. This outcome is undesirable since it might threaten the stability of the Society of Peoples. Furthermore, Rawls's general principle of toleration requires that decent peoples are shown their due respect; failing to show due respect violates the principle of toleration (LP: 61). I take all this to suggest that publicly speaking out against the practices of a decent people could undermine both their self-respect and the liberal pursuit of genuine toleration.

One might argue that I have interpreted Rawls's conception of toleration too strongly here and that toleration merely involves "refrain[ing] from exercising political sanctions – military, economic, or diplomatic – to make a people change its ways" (LP: 59). However, it remains unclear what Rawls has in mind here, and precisely what modes of conduct are excluded. For example, if one takes the

public criticism that one government could make of another as an instance of a “diplomatic sanction”, then public criticism could be construed as an act of intolerance (Nickel, 2006: 271). Thus I suspect that on Rawls’s view liberal peoples cannot legitimately criticise the illiberal practises of decent societies without being intolerant.

The outcome of prohibiting liberal peoples from passing judgment on the actions of decent peoples is that they must treat them as equally just. Thus, we return to Nussbaum’s point. In a Society of Peoples comprised of both liberal and decent peoples, where liberal peoples cannot speak out against the unjust and illiberal practices of their decent neighbours, liberal peoples are forced to tolerate, and treat as fully and equally just, regimes which commit, or at least allow, acts which the global community currently recognises as abuses of human rights.

### ***3.3E WHY THIS IS IMPORTANT***

The account of human rights proposed in the Law of Peoples is far from progressive. In fact, Rawls’s minimal set of human rights is at odds with the way in which current human rights discourse has developed. Consequently, to adopt Rawls’s minimal set of human rights would be to undo much of the progress achieved by human rights advocates worldwide. This should be of particular concern to feminist human rights advocates because not only does Rawls’s account undermine the progress made by the global campaign to secure women’s rights as human rights, but it also omits rights that greatly affect the well-being of women.

Despite Rawls’s assertion that the minimal set of human rights would be adopted by liberal peoples even if there were no decent peoples, one cannot help but feel that there is something back to front about his approach (my argument at 3.3b supports this). Part of the problem with Rawls’s account is that while he claims that human rights define the limits of toleration, it seems that in fact what is going on is that toleration defines the set of human rights. Instead of starting with an account of human rights which specifies a list of rights designed to protect the

well-being and dignity of all human beings, Rawls starts with what he thinks decent peoples will be able to accept and constructs an account of human rights on that basis. This yields a limited set of human rights which is not only inconsistent with his own theoretical framework, but inconsistent with contemporary human rights discourse, and, most importantly, inadequate as a tool in the fight against abuse and oppression.

### **3.4 THE EXCLUSION OF BURDENED SOCIETIES AND THE REJECTION OF A GLOBAL PRINCIPLE OF DISTRIBUTIVE JUSTICE**

A further feature of Rawls's account that has been heavily criticised by cosmopolitans, and which I also believe looks especially problematic from a feminist perspective, is his treatment of burdened societies. In particular, opponents of LP have been critical of the exclusion of burdened societies from the Society of Peoples and the related issue of Rawls's rejection of a global principle of distributive justice. In this section I will outline some of the key objections to these aspects of Rawls's theory and explain why I think Rawls's view ought to be unattractive to feminists.

As I briefly mentioned in Section 3.1, burdened societies are those societies hindered by unfavourable conditions that make establishing a well-ordered regime difficult to achieve. Importantly, burdened societies are not aggressive and they seek to be well-ordered (this is very different from outlaw states who may act aggressively toward other nation-states and/or do not seek to be well-ordered) (LP: 90). Since burdened societies are not well-ordered, due to the unfavourable circumstances that they face, they do not meet the criteria necessary to gain membership to the Society of Peoples. The main aim of the Society of Peoples is to bring about a world in which all societies are in a position to maintain either decent or liberal regimes (LP: 5). This means that the Law of Peoples must include some principles that determine how liberal and decent peoples can assist

burdened societies in their efforts to become well-ordered. Recall Principle 8 of the Law of Peoples:

Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.

(LP: 37)

It is crucial to note that this duty of assistance demands only that liberal and decent peoples assist burdened societies, and that burdened societies are only owed assistance up to the point of establishing a well-ordered regime.

Two questions immediately come to mind: why, when Rawls advocates a principle of distributive justice at the level of the nation-state, is there no global principle of distribution in the Law of Peoples? And why does Rawls insist that the duty of well-ordered peoples to assist burdened societies only extends up to the point of establishing a well-ordered regime? To understand the answer to the first question we must consider a case that Rawls argues illustrates what he regards as the “unacceptable results” of implementing a global distribution principle (LP: 117).

Rawls envisages two societies that have the same size population and the same level of wealth. While the first chooses to “industrialize and increase its rate of (real) saving” (LP: 117), the second opts to concentrate on its social values “preferring a more pastoral and leisurely society” (LP: 117). After some time the first society is twice as wealthy as the second. Rawls argues that if a global distributive principle were in operation the first society would be taxed to give funds to the second, and this, he claims, is unacceptable. For Rawls this outcome is unacceptable because the people in the second society are free, responsible, and able to make their own decisions. Political autonomy and self-determination are two key interests of peoples but they come at a cost: peoples must be held responsible for the choices that they make. It seems to me that the thought, implicit in Rawls’s view, is that the imposition of a global distributive principle would undermine the political autonomy and self-determination of both burdened societies (who would end up relying on redistribution rather than taking

responsibility for their decisions) and well-ordered societies (who would rather not foot the bill for the ill choices of others).

Rawls further argues that most global principles of distribution would lead to unacceptable results because they offer no 'target' or 'cut-off' point (LP: 106). That is, global distributive principles often lack a clear goal or aim and they do not tell us when distribution should cease. Rawls favours the duty of assistance because it has both. Since it is only intended for burdened societies - societies that have not developed just background institutions - those societies are the *target* of the duty of assistance. The *cut-off* point is reached when the duty of assistance is fulfilled, that is, when burdened societies have established well-ordered regimes and gained entry to the Society of Peoples.

The second question has to do with the cut-off point: why do liberal and decent peoples opt to help burdened societies only up to the point that they can establish well-ordered regimes? Or, put another way, why, when having a well-ordered regime is perfectly compatible with barely being able to meet the basic needs of the society's citizens, wouldn't decent and liberal peoples opt for a principle that secures more than just the basic minimum? In a nutshell, it is the interests of peoples which shape the principles of the Law of Peoples, and, importantly, Rawls suggests that peoples do not have an interest in acquiring any more wealth than is necessary to sustain their just and stable background institutions (LP:28, 160).

In short, the goal of the Law of Peoples is to have a world in which all societies are well-ordered. Consequently, decent and liberal peoples have an interest in bringing burdened societies up to their level. However, this is not to be achieved by implementing a global principle of distributive *justice*. Instead, Rawls argues, liberal and decent peoples opt for a duty of assistance which has a clear target and cut-off point. Having a clear target and cut-off point is important because it better reflects the interests of well-ordered peoples. In what follows, I will consider some of the criticisms raised against Rawls's position.

### 3.4A *NUSSBAUM: BURDENED SOCIETIES ARE OWED JUSTICE NOT CHARITY*

I will begin with Nussbaum's insightful observation that a troubling similarity exists between Rawls theory of social justice and his approach to global justice:

There is a striking parallel between the situation of poorer nations and the situation of people with disabilities. In both cases, the human dignity of people who are fully human is omitted from the crucial stage of the political contract in which basic principles are chosen, because they are not "rough equals" of the contracting parties in power and capacity. For that reason a contract for mutual advantage cannot include them as equal participants. They are a drag on the whole system, and different principles will have to be chosen to deal with them.

(Nussbaum, 2006a: 250)

Nussbaum claims that burdened societies are excluded from the Society of Peoples because they cannot be considered rough equals. The idea that parties contracting in the original position are taken to be rough equals is prevalent throughout Rawls's work. In *A Theory of Justice*, Rawls describes individuals as "roughly similar in physical and mental powers; or at any rate their capacities are comparable in that no one among them can dominate the rest [...] they have roughly similar needs and interests [...] so that mutually advantageous cooperation among them is possible" (TJ: 109-110). This is a feature of the Humean circumstances of justice that Rawls adopts and describes as "the normal conditions under which cooperation is both possible and necessary" (TJ: 109). Nussbaum takes Rawls's claim that people are roughly similar to entail the exclusion of those who are not rough equals. Explicitly, those who are roughly similar or equal are in relations of justice with one another, whereas those who are not regarded as rough equals stand outside justice relations. Moreover, Nussbaum suggests that since burdened societies are not rough equals, it is not in the interest of liberal or decent peoples to enter into a contract with them because the arrangement would not be mutually beneficial (2006a: 249-250).

Alyssa Bernstein takes Nussbaum's objection to be that Rawls unjustifiably excludes burdened societies from the Society of Peoples, and thus in effect denies that they are entitled to assistance from wealthier societies as many

cosmopolitans insist.<sup>15</sup> Bernstein takes Nussbaum to be arguing that since burdened societies do not have the resources to become well-ordered, they are excluded from the Society of Peoples; and given that burdened societies have been excluded, better-off societies need not assist them (Bernstein, 2008).

Bernstein points out that this is obviously false because one of the principles of the Law of Peoples is the duty of assistance which, as we have seen, clearly states that “well-ordered peoples have a *duty* to assist burdened societies” (LP: 106). However, Bernstein’s response here is problematic because she appears to have misunderstood the target of Nussbaum’s objection. The concern is not that well-ordered societies will exclude and ignore the needs of burdened societies in their policy making, but a more fundamental worry about the exclusion of burdened societies from the deliberation process at the level of the global original position. Nussbaum rightly notes that if Rawls excludes burdened societies from the second-level original position then “[...]he will be right in line with the current world order, in which most decisions about important economic matters are made with little input from the poorer nations, which are certainly not heard as equals, even when they are heard” (Nussbaum, 2006a: 250).

A further claim made by Bernstein is that the duty of assistance is more demanding, and its implications more wide reaching, than Nussbaum cares to acknowledge. This appears to be a response to the concern that the duty of assistance is nothing more than a duty of charity. To counter this worry Bernstein lists a variety of means by which Rawls believes that well-ordered peoples should provide assistance (Bernstein, 2008: 130). Besides financial assistance, the duty of assistance involves well-ordered societies educating and advising policy makers in burdened societies. For example, Rawls suggests that it is important to educate policy makers on population policy to ensure that a people is not burdened by a population larger than it can sustain (LP: 106). Additionally, well-ordered peoples should promote human rights in burdened societies with a view

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<sup>15</sup> While it is true that Nussbaum argues that burdened societies are unjustifiably excluded from the Society of Peoples, it is unclear where Nussbaum alleges the second part of this objection. Unfortunately, Bernstein does not provide a reference for this. Therefore, I am going to take this objection to be representative of Nussbaum’s view that the duty of assistance is closer to an act of charity than a duty of Justice (Nussbaum, 2006a: 250).

to establishing more effective governments, and relieving population pressures (LP: 108-109). So, the duty of assistance requires that well-ordered societies advise and support burdened societies in their transition from being burdened to well-ordered, while this will undoubtedly require some distribution of resources, Rawls foresees the duty of assistance requiring many other means of support.

But this does not get at the heart of the objection. Nussbaum is concerned with the fact that the duty of assistance is more a principle of charity than a principle of distributive justice (Nussbaum, 2006a: 247-250). This raises a serious concern shared by many cosmopolitans who argue that Rawls's duty of assistance assumes that the current world order is just: "if we accept that rich countries have *only* a duty of humanity to poorer countries, we are also accepting that the *existing* baseline resource and wealth distribution is a just one, and that the global basic institutions organized around legitimizing the prevailing allocation of wealth and resources are acceptable" (Tan, 2004: 66). The bottom line is that stressing how demanding the duty of assistance is does not detract from the objection that tackling global poverty is a matter of justice and not charity.

The lack of a global principle of distributive justice is especially problematic when approached from a feminist perspective because poverty and its effects disproportionately affect women. In 1995 the United Nations Human Development Programme observed that "poverty has a woman's face – of 1.3 billion people living in poverty 70 percent are women" (UNDP, 1995: 4). The status of women is particularly critical in the developing world. Not only do these women have the misfortune of being born into an impoverished country, but in addition they will often suffer unequal treatment on the grounds of their sex. As a result, women and girls who live in resource-poor societies will lose out time and again in the bid to secure scarce valuable resources. Girls who live in developing regions are more likely to miss out on primary education. Women are likely to be less well nourished than men because they often go without food to feed their families. Women have their employment opportunities limited by the fact that they are largely responsible for care giving and household duties. Since women tend to live longer than men, old age can pose particular problems for women in

developing countries.<sup>16</sup> Elderly women may face greater financial hardships because they are often not protected by inheritance and property laws and thus may lose control of any family resources (UNICEF, 2006).

Not only does Rawls's theory serve to exclude representatives from the world's poorest societies but in so doing it further silences the world's most vulnerable women. What is more, by excluding a global principle of distributive justice Rawls's theory not only fails to recognise the current wealth distribution as unjust, but it also fails to acknowledge the further injustice of the feminization of poverty. If we are to adequately address the unjust distribution of resources, tackling both the unjust inequalities between states and the individuals within them, then we will need a principle of distributive justice designed to redistribute resources to individuals.

### ***3.4B RAWLS'S REJECTION OF A GLOBAL PRINCIPLE OF DISTRIBUTION***

Since we have good reason, both as feminists and cosmopolitans, for thinking that justice requires a global principle of distributive justice, Rawls's rejection of such a principle warrants further scrutiny. As we have seen, the central goal of the duty of assistance is to help burdened societies develop their basic institutions so that they may become well-ordered and hence meet the criteria for decency. One worry with this is that once burdened societies become well-ordered wealthier nations are absolved of any further duty to assist. This may strike one as problematic since there could still be vast inequalities in resources and opportunities both between citizens within a society and between societies in the Society of Peoples. As Nussbaum notes:

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<sup>16</sup> In societies where gender bias in favour of boys is more extreme, female foetuses are more likely to be the target of sex-selective abortions, and baby girls are more likely to be the victims of infanticide and deliberate neglect (contributing to the now often cited '100 million missing women' (Sen, 2010b)). However, though this may affect female life expectancy at birth, particularly in certain parts of Asia, globally women do tend to live longer than men with the majority of the world's population of older women living in developing regions (WHO, 2009: esp. Ch. 6).

If justice requires the mitigation of global inequality, justice is not satisfied even if poor nations can promote the capabilities internally - any more than domestic justice is satisfied without redistribution just because thrifty poor families may eke out a minimally acceptable existence. Without endorsing any specific principle of redistribution [...], we can say that it is unjust if poorer nations have to struggle against greater obstacles than rich nations in order to meet their fundamental commitments.

(Nussbaum, 2006a: 316)

The thought then is this: even if burdened societies are brought up to the level of decency required for entry into the Society of Peoples, it does not follow that justice has been realized. Moreover, although a burdened society may have reached the threshold for decency, there is still plenty of room for gross inequality in resources and opportunity.

Rawls's rejection of a global principle of distribution has been the subject of much criticism, especially among cosmopolitans. Beitz suggests that Rawls's argument depends on an implicit analogy with the redistribution of wealth between individuals (Beitz, 2000: 692). In the case of individuals we generally feel that society has no obligation to protect people from the unfavourable consequences of their choices since individuals are responsible for their informed decisions. However, attempting to draw an analogy between individuals and peoples will not work because in the case of the individual the disadvantages are suffered by the very person who made the decisions which caused them, whereas citizens within a society cannot be held responsible in the same way (if at all) for the choices made by their present or past governments. Consequently, Rawls's argument fails because it rests on a flawed analogy and a further argument is required to show us that it is unfair to demand that wealthier societies should redistribute their wealth to those with less.

In addition, it is not obvious that burdened societies can be held solely responsible for their current circumstances. Pogge describes the attitude expressed by Rawls and others as 'explanatory nationalism'. Adopting such a perspective "makes us look at poverty and oppression as problems whose root causes and possible solutions are domestic to the foreign countries in which they occur" (Pogge, 2002: 141). Explanatory nationalism suggests that only national

factors are important. Pogge suggests that institutions, officials, policies, culture, and natural environment are examples of the natural factors that are often held to be the causes of a society's problems. However, adopting this viewpoint neglects many important questions about why national factors are the way they are, and why they have the effects that they do. Importantly, explanatory nationalism fails to consider the influence of the existing global structure on individual countries:

Global factors significantly affect national policies and institutions especially in the poorer and weaker countries. It is quite possible that, in a different global environment, national factors that tend to generate poverty, or tend to undermine the fulfilment of human rights more generally, would occur much less frequently or not at all.

(Pogge, 2002a: 141)

Rawls's account of burdened societies assumes that the challenges faced by those societies are internal and that the duty of assistance can help to overcome their problems. Again, the problem is that Rawls relies on an implicit analogy between peoples and individuals; peoples should be held responsible for the unfavourable outcomes of their choices just as individuals are. But here we see that it is unlikely that peoples can be held solely responsible for the unfavourable conditions in which they find themselves because the unfavourable conditions that they face are brought about by factors beyond their control. Not only does this render their exclusion from OP2\* more problematic (since the global structure could be preventing them from meeting the conditions for membership in the Society of Peoples; membership which they would welcome), but it also gestures towards the need for a global principle of distribution to rectify the harms and injustices of the current global order.

### **3.5 SUMMARY**

In this chapter I have shown why Rawls's statist approach to questions of global justice is problematic from the point of view of both cosmopolitanism and feminism. I have explored three key features of Rawls's work that have been subject to much cosmopolitan critique and further demonstrated why these characteristics of Rawls's should be unattractive to feminists. To summarise:

- By demanding that those in liberal societies treat the regimes of non-liberal but decent societies as equals in the Society of Peoples, Rawls asks us to overlook many of the injustices that occur in such societies. From a feminist perspective this is particularly troubling since many of the rights afforded to women in liberal societies may be absent or routinely violated in decent societies. Moreover, Rawls's theory may serve to reinforce the status quo of oppression and discrimination against women in sexist societies.
- The Rawlsian conception of basic human rights undermines efforts made by feminist human rights campaigners worldwide and it omits many of the rights crucial to securing women's well-being.
- Excluding burdened societies from deliberations over global principles of justice serves to further silence the voices of those in the world's poorest societies; the most vulnerable of whom are often women.
- In order to adequately address the economic injustices of our world a principle/s of global distributive justice needs to be adopted which redistributes justly to all individuals not simply to states.

Hopefully I have convinced my reader of the shortcoming of Rawls's theory. Moreover, it should be clear that many of the problems with Rawls's account originate in the statist foundations that underpin his project. By choosing to take states as the primary units of moral concern Rawls relegates the interests of individuals to the margins and hence they barely feature in his view. In the following chapter I will spell out why adopting a statist starting point for our theorising about global justice will inevitably yield unsatisfactory results.



## 4

# THE PUBLIC/PRIVATE DIVIDE IN THEORIES OF GLOBAL JUSTICE

In the previous chapter I examined John Rawls's *The Law of Peoples* as an example of a statist account of global justice. There I argued that feminists should reject this approach to international justice because it does little to challenge sexist laws and practices, undermines the women's human rights movement, and unsatisfactorily addresses the issue of global poverty which disproportionately affects women. Ultimately, I showed that because Rawls takes states to be the primary units of moral concern his account is not only insufficient as an account of global justice, but that this starting point is often in conflict with his overall framework. In this chapter I will discuss some wider reservations that I have with statist approaches in general. I aim to demonstrate that approaches that take states to be the primary units of moral concern are fundamentally flawed and should be rejected in favour of cosmopolitan approaches.

The main focus of this chapter is to develop an analogue of Susan Moller Okin's critique of liberal theories of social justice which can be applied to statist theories of justice. In *Justice, Gender and the Family*, Okin argues that many liberal egalitarian theories of social justice are inadequate because they assume a strict division between public and private spheres. I begin, in section 4.1, by establishing what Okin means by the public/private divide. In section 4.2 I present Okin's critique of Rawls's *A Theory of Justice* (hereafter TJ). I am particularly interested in Okin's claim that principles of justice ought to be applied to the family (Okin, 1989a: 23-24). Following this I will consider Rawls's response to the feminist critique; moreover I will argue that his reply is unsatisfactory. In section 4.3 I demonstrate how an analogue of Okin's critique of TJ can be extended to *The Law of Peoples* (hereafter LP). Finally, in section 4.4 I argue that conclusions drawn in sections 4.2 and 4.3 can be applied to other

approaches to justice which takes states as the primary units of concern. To demonstrate this point I will consider the statism advocated by Thomas Nagel.

I will conclude that theories of justice which take states as the primary units of moral concern effectively render permissible gross injustices which may occur within state units. Having shown that the adequacy of theories of domestic justice depends on them being responsive to problems of injustice raised by the family, I will make the analogous argument that for any theory of global justice to be effective, it must be responsive to the needs and interests of individuals within states, as opposed to dealing solely with injustices which occur in the relations between states.

#### **4.1 THE PUBLIC/PRIVATE DISTINCTION**

The public/private distinction has been central to the feminist critique of Western political theory. Traditionally the public domain has been taken to include the 'political' and this has been contrasted with the private domain which is associated with the 'personal'. One consequence of taking the private sphere, including the domestic, to be non-political is that it has, until recent decades, been largely unexamined politically. This omission has motivated feminists to highlight and challenge the assumed divide between the public and the private.<sup>1</sup> In particular feminists have argued that theorists who assume a divide between public and private treat the family as non-political and do not address potential injustices within that domain; injustices to which women and children are particularly vulnerable.

Feminists have noted that the relegation of the family to the private sphere raises particular difficulties for women because women have been traditionally associated with the family. There are three central feminist concerns that suggest that assuming the public/private divide is problematic:

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<sup>1</sup> For feminist examinations of the use of the public/private distinction in Western political thought see, for example, Elshtain (1993), Okin (1989), Pateman (1989, esp. Ch. 6), and Landes (1998).

1. Identifying women with the private sphere has served to exclude women from the public sphere, including the realm of the political.
2. Placing an emphasis on the public sphere has led to the devaluation of work generally undertaken within the private sphere; work traditionally assumed to be the responsibility of women.
3. Familial relations are commonly taken as private family matters as opposed to something that should be a matter of public concern and within the purview of the state. Hence, assuming the public/private divide, and taking the family to be a purely private institution, has the consequence of shielding familial relationships including those characterised by violence and domination.

The assumed separation between the public and the private, and the related divide between the domains of men and women, has been uncovered in many works of political philosophy, and, for the reasons noted above, feminists have sought to demonstrate that works which assume this divide are flawed. These feminist analyses of both traditional and contemporary political philosophy have given rise to the slogan that the 'personal *is* political', a slogan which encapsulates the view that the private sphere, where we live out our personal lives, and which includes sexuality, reproduction, child care, domestic responsibilities, and other things associated with family life, is political. That is, what has traditionally been viewed as private, personal, non-political and therefore beyond state concern or jurisdiction, is in fact political and requires political scrutiny and legal regulation in much the same way as other areas of public life to prevent inequality and injustice.

## 4.2 OKIN, RAWLS, AND THE FAMILY

Commenting on TJ, Okin claims that Rawls “in line with a long tradition of political and moral philosophers [...] regards the family as a school of morality, a primary socializer of just citizens. At the same time, along with others in the tradition, he neglects the issue of the justice or injustice of the gendered family itself” (Okin, 1989b: 230-231). The fault in Rawls’s account lies not just in that the problems presented by the family are generally overlooked, but that, as Okin suggests, principles of justice are not extended to families because Rawls assumes families to be just when this is simply not the case (Okin, 1989a: 94).

The injustice generated by the family is largely understood by Okin as a consequence of the gendered division of labour within the family. For example, since women are principally responsible for care of children, other dependents, and any remaining domestic responsibilities, their paid employment options are limited. If women are able to find flexible employment, the work is often low paid and undertaken on top of their domestic responsibilities, hence, the ‘double-day’. For those women who do not work, and even for those who do - given that the majority of work available to working mothers is low paid – the situation can render women economically dependent on their spouses.<sup>2</sup> Many women feel that the difficulty in meeting the demands of simultaneously raising a family and embarking upon a career presents them with the dilemma that they must choose one or the other. This is a choice that men do not have to make. These points suggest that the family can be a source of injustice. Consequently, Okin argues that to achieve a more just society, and assure equality for women, Rawls’s conception of justice should be extended to families.

If the family is a source of injustice, then why, and in what ways, does Rawls assume that the family is just? Rawls’s treatment of the family is complicated by

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<sup>2</sup> For example, in the UK women without children earn about 9% less than men, but the situation is worse for women with children since they earn about 22% less than men, even if they work full-time. Moreover, for each year that a woman is out of employment while caring for children, her future wages will reduce by 4% (Woodroffe, 2009).

the fact that throughout his work he makes various ambiguous and often contradictory statements regarding the status of the family, and how principles of justice relate to it. In TJ, Rawls argues that a just society is one whose basic structure conforms to, and is regulated by the principles of justice as fairness. Rawls takes the basic structure to be the primary subject of justice because its major institutions profoundly affect the lives of citizens, “their life prospects, what they can expect to be and how well they can hope to do” (TJ: 6).

Initially Rawls recognises that the family has profound effects on our lives and life prospects because he takes the monogamous family to be a major social institution, and thus part of the basic structure of society (TJ: 6). However, as Okin observes, in Part Two of TJ, where Rawls discusses the key basic social institutions, the family gets no mention. Okin argues that by failing to include the family in a deeper examination of the basic structure Rawls neglects a central question about the family (Okin, 1989a: 94): is the monogamous family a just social institution?

Rawls’s treatment of the family becomes even more problematic in his discussion of the moral development of children where he relies upon the assumption that the family is a just institution. Providing a sketch of the moral development of children is crucial to Rawls’s account since it explains how citizens acquire a sense of justice. When addressing the problem of stability Rawls claims that a well-ordered society, regulated by justice as fairness, would be stable and enduring because its citizens have a sense of justice. Conversely, if citizens do not acquire a sense of justice then the likelihood of achieving a stable and enduring just society would be significantly reduced. So, it is necessary for the stability of justice as fairness that a sufficient number of citizens possess a sense of justice. This sense of justice, Rawls argues, is initially developed in the family, which, as Okin aptly notes, makes the family the first school of moral development (Okin, 1996: 65).

Importantly, during his account of the family’s role in the moral development of children, Rawls unquestioningly assumes the structure of the family to be both

gendered and hierarchical (TJ: 409). For example, Rawls states that the family is “normally characterized by a definite hierarchy, in which each member has certain rights and duties” (TJ: 409). Thus, children are taught what is expected of them given their position in the family. Moreover, parents communicate to their children the virtues of a good son or a good daughter (TJ: 409). Okin argues that “Rawls means to imply that the goodness of daughters is distinct from the goodness of sons, and that of wives from that of husbands” (Okin, 1989a: 96). Since children learn from their parents the virtues of being a good son or daughter Rawls’s model of the family is not simply hierarchical with regard to generation, but importantly the hierarchical structure of the family is informed by gender stereotypes.

Having established that Rawls presupposes the gendered and hierarchical nature of the family with its rigidly designated sex roles, Okin argues that this is problematic for his account of the family as the first school of moral development for children. A crucial step in Rawls’s account of moral development is that children learn to adopt the points of view of others. Okin argues that it is unlikely that citizens will develop this ability since the roles and expectations for each sex are very different. Children in families characterised by a gendered division of labour, where girls and boys are raised with different expectations, are unlikely to recognise any injustice when they have been raised to accept the status quo (Okin, 1989a: 100). Moreover, it is questionable that boys raised in families where women are subordinate to men will be able to fully empathise with their female counterparts. Thus, Okin concludes that citizens will find it difficult to develop the sense of justice articulated by Rawls if they are raised in families with a gendered hierarchical structure.

Okin suggests that the problems with Rawls’s account of the family and its role in the moral development of children ultimately undermine his use of the original position (Okin, 1989a: 100–101). She notes that individuals in the original position must be able to reason from the perspective of other persons. This suggests that empathy is a crucial component of an individual’s reasoning behind the veil of ignorance in the original position. However, as Okin notes this can

only really be achieved if individuals are raised in families that truly enable them to see things from the perspective of others. Families characterised by a gendered hierarchical structure are unlikely to bring about individuals with a level of empathy sufficient for reasoning in the original position.

For Okin, part of the problem with Rawls's account is that he paints the family as a domain where justice already prevails. That is, where relations among family members are ones of love, affection, and altruism, and where the benefits and burdens of family life are justly distributed. But this, as we saw above, is not true of many actual families. Given this, Rawls is not entitled to claim that the family provides the conditions necessary for an adequate moral education. Only when family structure and practice have been made subject to the principles of justice (I will explain what I mean by this in Section 4.3) can the family be suitable for the role of the first school of moral development.

Ultimately, Okin's critique challenges Rawls's assumption that there is a strict divide between the public and the private. Though Rawls initially includes the family as part of the basic structure, and thus part of the public political sphere, his later discussions of the major social institutions and the moral development of citizens do not include an examination of the ways in which families might or might not be just. At no point in his account does Rawls consider whether the family is just, or how principles of justice ought to apply to it. All this suggests that, despite his initial claim, Rawls's account does in fact rely on the implicit assumption that the family belongs to the private sphere and is thus beyond state coercion. But as Okin argues, this is problematic since any attempt to relegate the family exclusively to the private sphere fails to address injustices that arise from the traditional structure and practices of the family. Thus, principles of justice must be applied to the family, that is, "family justice must be of central importance for social justice" (Okin, 1989a: 100).

### 4.3 APPLYING PRINCIPLES OF JUSTICE TO THE FAMILY

What does it mean to argue that principles of justice ought to be *applied to* the family? This question is relevant to my extension of Okin's critique to Rawls's theory of global justice. Specifically, it will be crucial to understanding what it means to say that principles of global justice ought not be restricted solely to the relations between states. I will begin by considering how Rawls responds to the feminist critique of TJ in 'The Idea of Public Reason Revisited' (IPRR). Then, building upon Okin's initial objections, I will argue that Rawls's remarks are insufficient and clarify what it means to apply principles of justice to the family.

In IPRR Rawls emphasises the role of the family as the first school of moral development by focusing on its vital role in the production and maintenance of a stable and just society over generations (IPRR: 157). For Rawls, the family plays an essential role in securing a stable and enduring society by enabling the cultivation of a sufficient number of just citizens without whom no such society would be possible. Thus, Rawls argues, a stable and enduring society can only be achieved through reasonable and effective forms of the family (IPRR: 157).

Although Rawls still takes the family to be part of the basic structure, he resists the idea that the internal life of the family should be regulated by principles of justice.<sup>3</sup> Motivating this resistance is the thought that applying principles of justice to the internal life of basic associations would conflict with many of the fundamental liberties which liberals seek to protect. In the case of religious associations, Rawls claims that it is undesirable to apply political principles of justice to the internal workings of a church since it would be inconsistent with liberty of conscience and freedom of association (IPRR: 158). Furthermore, he claims that a direct application of principles of justice to associations, including the family, would inhibit citizens' ability to pursue a "free and flourishing internal life" (IPRR: 159).

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<sup>3</sup> On this point Rawls sets himself up as being in direct opposition to Okin (IPRR: 158 n.61).

However, as Okin notes, Rawls's position may have grave consequences for individual family members, especially women and children, who are left vulnerable to unjust inequality and oppression. In response, Rawls argues that although principles of justice do not apply *directly* to the family, equal justice for individuals within family units would be secured. Since the principles of justice are manifest in a just system of law the basic rights and liberties of individual citizens would be protected. The protection of each citizen's basic rights and liberties by political principles of justice ensures that all forms of association are necessarily indirectly constrained by the very same principles (IPRR: 159). So, whatever the form of association, practices which violate the fundamental rights and liberties of individuals are prohibited. In this respect principles of justice do regulate forms of association, including the family, while not applying directly to the internal life of those associations.

Nonetheless, Rawls allows that a gendered division of labour may be permissible, which given the discussion in the preceding sections, is baffling since a gendered division of labour is not obviously compatible with the basic rights and liberties of women. However, in fairness to Rawls, the permissibility of a gendered division of labour is conditional: "[...] a liberal conception of justice may have to allow for some traditional gendered division of labour within families – assume, say, that the division is based on religion – provided it is *fully voluntary* and does not result from or lead to injustice" (IPRR: 161 emphasis added). This, however, is problematic. How are we to interpret 'fully voluntary'? Individuals do not make their choices in a social vacuum. We each live out our lives in particular social contexts; contexts governed by specific sets of social norms and expectations that influence the choices that we make.

Rawls acknowledges that the issue of when choices are voluntary is controversial, and in an obscure footnote states that an action is only fully voluntary if it is the rational thing to do "when all the surrounding conditions are reasonable or, fair". He goes on: "affirming one's religion is voluntary when all of the surrounding conditions are reasonable, or fair. In these remarks I have assumed that the subjective conditions of voluntariness (whatever they may be) are present and

have only noted the objective ones. A full discussion would lead us far afield” (IPPR: 162 n.68). But it seems to me that this is a discussion that needs to be had, especially if the permissibility of an unequal gendered division of labour is conditional on it being voluntary.

Since Rawls is most concerned with the ‘objective’ conditions of voluntariness I too shall concentrate on these. The objective conditions are the background conditions against which an individual’s choice is made. I take it that Rawls is largely referring to the major basic institutions of society, which, when taken together, form the backdrop to our lives. The problem with Rawls’s focus on *these* ‘objective’ conditions is that even if the basic structure of society is fair and reasonable, it may not be the case that one’s decision to perform one action over another is fully voluntary.

Rawls overlooks the fact that there are powerful and pervasive gender norms that also affect an individual’s “life prospects, what they can expect to be and how well they can hope to do” (TJ: 6). These norms, while obviously not basic institutions, do form part of the surrounding conditions against which we make our choices.<sup>4</sup> So, the objective conditions must include more than the basic social, legal and economic institutions specified by Rawls if we are to judge whether or not a gendered division of labour is to be permissible. We saw in Section 4.2 that it is primarily because of the gendered division of labour that the family has come to be regarded by many feminists as a source of injustice. Importantly, a key problem with a gendered division of labour is that it is caused by, and perpetuates, stereotypes about the roles of men and women. These gender stereotypes negatively impact on the lives of both men and women because they limit a person’s opportunities and undermine women’s equality to men. A woman’s *free choice* to be primarily responsible for domestic labour and care giving is

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<sup>4</sup> Given that almost all of us are subject to social norms, one might wonder whether any of our choices are *fully* voluntary. I do not have the space to develop a satisfactory answer here. However, even if it turns out that very few, if any, of our choices can be considered *fully* voluntary, this thought does not commit one to the view that the state must intervene in all of our choices. Following Clare Chambers (2008 esp. Ch. 5), I take it that when social norms deform preferences in ways that affect a person’s equality, justice demands that something be done to lessen the effect of the harmful norm. Thus, in instances where a person’s equality is not threatened by the choices that they make, no intervention is required on the grounds of justice.

troubling when executed against a social backdrop where women are pervasively stereotyped as care givers and home-makers.

Since the gendered division of labour relies on gender stereotypes about the roles, behaviour, and abilities of men and women, it is likely that such an arrangement will always either arise out of, or lead to some further injustice. If 'gender' continues to be taken as an important feature of human beings it is likely that stereotypes about 'men's work' and 'women's work' will persist.<sup>5</sup> Girls will be raised with the expectation that they will, in the future, undertake 'women's work' and thus the stereotypes will reinforce the gendered division of labour and shape the *voluntary* choices of women. It seems to me that despite Rawls's claim that the gendered division of labour may be permissible it is difficult to imagine a scenario which fulfils the criteria of being both (1) a state of affairs in which all who participate do so fully voluntarily, and (2) a state of affairs which does not evolve out of, or generate injustice.

In Rawls's defence one might argue that he merely suggests that a gendered division of labour *may* be permissible. If it is the case that a gendered division of labour will always evolve out of, or generate some further injustice, then Rawls could accept that it must be rejected as unjust. However, Rawls is unlikely to find this option appealing. Since ways of ordering the family are often of cultural and religious importance, a political conception of justice, which favours some ways of ordering the family over others, may be seen to be favouring particular comprehensive doctrines and thus not politically neutral. This could have dire consequences for the stability of the political conception of justice, which hinges on it being the subject of an overlapping consensus in which the majority of citizens come to affirm it from within their own comprehensive doctrines. If the political conception of justice rules out popular ways of organising the family, it

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<sup>5</sup> To be clear, a world devoid of gender in which, by mere coincidence, most of the females undertake domestic labour and most of the males engage in paid employment outside of the home would be a just one. In this case there would merely be a division of labour among people. The problem for Rawls is that by allowing for a *gendered* division of labour he is underestimating the power that gender has in influencing the choices, and determining the opportunities of both men and women.

is unlikely to be acceptable enough for an overlapping consensus, and thus neither stable nor legitimate (Rawls, 2005: 140-149).

It is the emphasis that Rawls places on establishing a stable and legitimate political conception of justice, which prevents him from an outright rejection of a gendered division of labour. If, for cultural or religious reasons, it is standard practice in a society that there is a gendered division of labour within the family, then it is unlikely that a conception of justice which demands that this practice be discouraged could be the subject of an overlapping consensus. But if the aim of principles of justice is to guide us in choosing just social arrangements, then it would seem that an adequate theory of justice ought to rule out a society marked by an unjust gendered division of labour.<sup>6</sup> Consequently, Rawls faces a dilemma: he must either accept that a gendered division of labour must be rejected and dilute his criteria for stability and legitimacy, or he must allow that injustice that arises from a gendered division of labour is acceptable. I think that it is fair to assume that given the importance that Rawls ascribes to legitimacy he would be more inclined to take the latter stance.<sup>7</sup>

However, if Rawls's theory does allow a gendered division of labour, then it cannot be considered a successful response to the feminist critique because it fails to address the serious injustices between the sexes that result from certain family structures and practices. I believe that for a theory of justice to successfully meet the feminist critique and meet the feminist aims outlined in Chapter 2, principles of justice must be applied to the family. To be clear, I am not proposing that the state intervene heavily in the internal affairs of each individual family.<sup>8</sup> On this

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<sup>6</sup> Rawls says of the role of principles of justice that they are "required for choosing among various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares. These principles are the principles of social justice: they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation" (TJ: 4). Given that Rawls grants the family a place in the basic structure it follows that some ways of arranging the family will be more desirable than others in establishing a just social arrangement.

<sup>7</sup> For more on the importance of legitimacy throughout Rawls's work see Wenar (2004).

<sup>8</sup> To do so would, in most cases, be incompatible with my remarks about the feminist concern for protecting women's freedom of choice (Section 2.1b). For example, some women may value gendered hierarchical family structures and wish to organise their own families in such ways. To try and prevent women from organising their family lives in these ways would be contrary to the aims of the feminist agenda being pursued here since it fails to adequately respect those women as

point I agree with Rawls. However, as I have shown, treating the internal affairs of the family as largely non-political leaves unjust social arrangements as potentially permissible. The family's place in the basic structure means that it should be evaluated in the same way as other basic institutions. This means that principles of justice ought to enable us to discriminate between those ways of arranging the family that realise and promote the aim of the political conception of justice, and those that do not. If principles of justice are to qualify as principles of justice at all, then they must provide us with the tools necessary for determining which family structures are to be preferred. I will not suggest here which family practices or structures are to be preferred, or what policies might be pursued in encouraging them, but I do think that the state should have an active role in their promotion. It is in this sense that principles of justice should be applied directly to the internal affairs of the family.

#### **4.4 EXTENDING OKIN'S CRITIQUE TO *THE LAW OF PEOPLES***

As we saw in the previous section, Rawls attempts to keep the internal affairs of families beyond the direct application of principles of justice because he assumes that such affairs are private and non-political. That is, the internal affairs of families cannot be legitimately criticised or influenced by political principles of justice beyond what is necessary to secure the basic rights and liberties of each citizen. I have demonstrated that this is not sufficient for an adequate account of social justice. In this section I will show how an analogous critique can be extended to LP. I note some points of comparison between Rawls's treatment of the family at the national level and the nation-state at the international level and ultimately suggest that the three most troubling aspects of Rawls's account, namely, (1) the toleration of decent peoples, (2) the minimal conception of human rights and (3) the rejection of a global principle of distribution, are a product of

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agents with the capacity for choice. However, that does not mean that problematic family structures should be left to persist unchallenged, but rather, as I suggested in Chapter 2, we should shift our attention away from the choices of individual women and focus on the policies, norms, and social attitudes that influence the choices that women make.

the assumption that there is a strict divide between public and private spheres of the sort that I have just examined.

There are several similarities between Rawls's treatment of the family at the national level and his treatment of peoples at the international level. To start with, we should note that in TJ Rawls suggests that parties contracting in the original position are heads of households (TJ: 111, 256). Similarly, at the international level we find that parties in the second-level original positions are representatives of peoples, which one could take to mean heads of nation-states. In both cases the interests of the individuals within these units barely feature at all in the parties' deliberations in the original position.

However, more importantly we can see that a strict divide between private and public spheres, similar to that discussed in the previous sections of this chapter, is assumed at the global level. Whereas justice as fairness is intended to regulate the relations between citizens and their shared public institutions, the principles of LP are intended to regulate relations between nation-states and their shared institutions, therefore in both cases principles of justice are intended to regulate the public sphere. However, as in the case of the family, the internal affairs of nation-states (except in cases of extreme human rights atrocities – although it is hard to know how extreme they have to be) are considered private.

I argue that adopting this view of international politics for the purpose of theorising about global justice is problematic because it fails to adequately address the injustices that may occur within these units leading to a defective theory of justice. Both the family at the national level, and the nation-state at the international level, may contain gross inequalities and oppression, which particularly affect women. When these spheres are relegated to the private, much of what goes on within them does not have to be justified to anyone outside; nor (except in cases of extreme human rights violations) does anyone outside have the right, or duty, to intervene. Moreover, because these units are held to be beyond the scope of theories of justice, duties to individuals within these units are either denied or considered to be very minimal. Any injustice suffered by oppressed

groups within a nation-state's boundaries is not the business of any other nation-state, just as any injustice that occurs within the family is not the business of any other citizen.

I will now turn to the first troubling aspect of Rawls's account, namely the toleration of decent peoples, and demonstrate how this inadequacy in his account is a product of the assumed divide between private and public spheres. As I detailed in Chapter 3, Rawls suggests that because decent societies meet certain conditions they should be recognised as internally minimally just. Crucially, they must honour the laws of peace, uphold the basic human rights of their citizens, and have a system of law that follows a common good idea of justice and imposes duties and obligations on all persons residing in their borders (LP: 65 - 67). The structure and practice of decent societies, then, are constrained by the Society of Peoples, which has a duty to ensure that the basic human rights of all human beings are protected regardless of where they live. Should a nation-state authorise grave violations of the basic human rights of its citizens then the Society of Peoples would be justified in intervening whether through the imposition of sanctions or military force. So we can see that in both the domestic and the international case it would seem that since families and decent societies honour basic rights they are minimally just. Accordingly, the nation-state, at the domestic level, and the Society of Peoples, at the international level, have no right or duty to intervene in the private affairs of these units despite the fact that they may harbour gross injustice and oppression.

Rawls himself does not explicitly use the phrase 'minimally just' so one may be hesitant about ascribing this stronger claim where perhaps he intended decent to merely mean 'acceptable'. This caution is not without warrant since Rawls does suggest that peoples are either just *or* decent (LP: 27). However, there is textual support for the view that decent peoples, in virtue of the fact that they meet the criteria for decency, should be recognised as minimally just. Rawls states that "what distinguishes peoples from states - and this is crucial - is that *just* peoples are fully prepared to grant the very same proper respect and recognition to other peoples as equals" (LP: 35 emphasis added). Here Rawls is referring to both

liberal and decent peoples. But, one might argue, this feature is only a necessary condition. It is not sufficient to make a people just. Perhaps this is correct, but I am inclined to interpret this as Rawls emphasising the moral nature of peoples (both liberal and decent), which differentiates them from states.

Furthermore, when describing decent societies Rawls frequently implies that while decent societies are not fully just, they are at least minimally so. In his discussion of the imagined decent people Kazanistan, Rawls states that though not “perfectly just” this society is decent (LP: 78). What is Kazanistan if not *perfectly* just? I propose that Kazanistan, because it fulfils the conditions for decency, is to be considered minimally just. In addition, Rawls is clear that a “decent society is [not] *as* reasonable and just as a liberal society” (LP: 83 emphasis added). Again, I take it that Rawls is implying that while decent peoples are not *as* just as liberal societies they are at least minimally so.

Given this evidence, it would seem that Rawls intended for decent societies to be recognised as minimally just. However, as we saw in the previous chapter the instances of injustice present in decent societies could be very high indeed. Although Rawls assumes that his criteria for decency mean that decent peoples are at least internally minimally just, the potential injustices faced by individuals residing in decent societies are beyond what can be tolerated by liberal peoples.

This leads us to the second troubling feature of Rawls’s account, which concerns the minimal conception of human rights that he advances. Rawls opts for a much more limited set of human rights than those found in current human rights documents because the Law of Peoples can only be stable and legitimate if it is acceptable to both liberal and decent societies (irrespective of what individuals within those societies would have chosen) (LP: 65). This parallels Rawls’s reasoning for allowing a gendered division of labour at the level of the state: international human rights cannot depend on any comprehensive doctrine. Rawls takes the idea of human beings as free and equal to be a uniquely liberal idea, which decent societies may not accept. Accordingly, any rights that depend on the

claim that human beings are free and equal should be excluded as human rights and instead described as liberal rights.

In Chapter 3 I argued that Rawls's conception of human rights is far from progressive: it undermines the feminist human rights movement, and omits rights which are crucial to the well-being of women. Again, I believe that this problematic feature of Rawls's view is born out of assuming a strict divide between public and private spheres at the global level. Human rights in the Law of Peoples set the limits of toleration between states in the global public domain. Rawls advocates a more minimal conception because it must be acceptable to decent as well as liberal societies. But adopting this minimal conception of human rights ignores many of the injustices currently recognised by the global community. By concentrating on the relations between states and by being insensitive to the injustices that occur within states, Rawls undermines the capacity of already vulnerable people to resist oppressive regimes through the tools provided by current human rights discourse. Both in the case of the family and that of the state, placing the internal affairs of those entities largely beyond the reach of principles of justice leaves those within those entities potentially subject to numerous injustices. A theory of global justice must take the private, internal affairs of states into greater consideration if it is to adequately address the many instances of injustice and oppression in our world.

Lastly, we can see how assuming a strong divide between public and private spheres plays into the third problematic feature of Rawls's account - the rejection of a global principle of distribution. As we have seen, Rawls argues that since peoples are the primary units of moral concern, and peoples do not have the same interests as individuals, no principle of distribution would be chosen (LP: 28, 160). Peoples are said to have no interest in securing wealth beyond that required to establish stable and legitimate background institutions, and they have an interest in protecting their political autonomy and right to self-determination. Consequently, they would not opt for a global principle of distribution since it would be in conflict with these interests. However, the cost of protecting these interests is that peoples are then responsible for their economic status.

In effect two things are being said here: (1) the private, internal affairs of peoples should be protected from principles which may encroach on their autonomy or constrain their right to self-determination; and (2) the economic status of a people is its own affair, that is, the worst-off societies are largely, if not solely, responsible for their circumstances thus no other people is obliged to assist beyond the minimal level set out by the duty of assistance. In essence, representatives in the second-level original positions would reject a global principle of distribution because it would interfere too heavily in the internal affairs and interests of peoples. Thus, again we can see how assuming a strong divide between the public affairs among states and the private affairs internal to states has potentially disastrous economic consequences for the global poor. By focusing on the interests of peoples, and ignoring the needs and interests of the individuals who reside within them, Rawls's statism simultaneously silences and ignores the needs of the world's poor, the majority of whom are women.

#### **4.5 TAKING THE FEMINIST CRITIQUE BEYOND THE *LAW OF PEOPLES*: THOMAS NAGEL'S STATISM**

In this section I will show how the objections raised thus far are not limited to Rawls's LP. To demonstrate this I will consider the statist approach advocated by Thomas Nagel. Ultimately my aim is to show that these objections apply to all theories which take states to be the primary units of concern. The essential point is that statist approaches to international justice share a view of the world which involves taking independent state units as primary. I argue that this perspective is not only unrealistic, but fails to address, as a matter of justice, the needs of human beings everywhere.

Like Rawls, Nagel adopts a view of the world which is characterised by independent sovereign states where the interests of individuals feature only through representation, if they feature at all. In this world states appear to be largely stable, autonomous, self-determining entities which are "entitled to be left to their own devices" (Nagel, 2005: 130). International institutions are only

concerned with mediating the interactions between states and they have no interest in, nor any responsibility to individuals (Nagel, 2005: 138). States freely choose whether or not to interact with one another and the global economic order is assumed to be a voluntary association. The trouble with this view, as with Rawls's, is that it serves to reinforce a divide analogous to the public/private divide at the global level. Once again we can see the internal affairs of the state are taken to be private and not subject to principles of justice. How the state treats its citizens (although Nagel, like Rawls, makes an exception in the case of extreme human rights violations), is not the business of any other state, nor does any state have a duty to others to redistribute wealth and resources in cases where states are burdened by poverty.

Contrary to many cosmopolitans who argue that the level of global interdependence demands principles of justice that are global in scope<sup>9</sup>, Nagel argues that the current level of interdependence is not high enough to sustain a global sovereign authority (Nagel, 2005: 137). He goes on to suggest that this is an insurmountable problem for theorists of global justice because justice *requires* a global sovereign authority. Justice can only be legitimately achieved and sustained through a framework which is collectively imposed and enacted by all those governed by it. This is a necessary condition for justice and as yet such a framework does not exist on a global scale. Thus, the scope of justice cannot be global.

The state, for Nagel, gives rise to a special type of relationship among nationals which they do not share with those who reside outside of their borders. This special relation is institutional since “justice is something we owe through our shared institutions only to those with whom we stand in a strong political relation” (Nagel, 2005: 121). To get to grips with what Nagel means by a ‘strong’ political relation we must consider the following:

A sovereign state is not just a cooperative enterprise for mutual advantage.  
The societal rules determining its basic structure are coercively imposed: it

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<sup>9</sup> See, for example, Charles Beitz (1975, 2005) and Thomas Pogge (1992).

is not a voluntary association. I submit that it is this complex fact – that we are both putative joint authors of the coercively imposed system, and subject to its norms, i.e., expected to accept their authority even when the collective decision diverges from our personal preferences – that creates the special presumption against arbitrary inequalities in our treatment.

(Nagel, 2005: 128-129)

On the face of it Nagel seems to be suggesting that the strong political relation which co-nationals share is one of coercion. Nagel's account specifies that norms of justice only apply within bounded territories where (1) citizens are subject to constant coercion; and (2) that the "active engagement of the will of each member of society is in operation" through which coercion is in some sense carried out in their name (Nagel, 2005: 129).

I argue that Nagel's attempt to restrict the scope of justice to situations in which this understanding of coercion obtains is unconvincing. First, what are we to say about cases where individuals are coerced by the state, but where the state does not govern in the name of its citizens? In the case of colonial rule Nagel argues that norms of justice still apply:

[...] if it can be said that if a colonial or occupying power claims political authority over a population, it purports not to rule by force alone. It is providing and enforcing a system of law that those subject to it are expected to uphold as participants, and which is intended to serve their interests even if they are not its legislators. Since their normative engagement is required, there is a sense in which it is being imposed in their name.

(Nagel, 2005: 129, n.14)

Colonial rule is problematic for Nagel since it raises the question of whether justice is still owed to the colonized despite the fact that they are not co-authors of the regime. Nagel suggests that standards of justice still apply because the colonial power seeks to rule in the interests of those on whom the colonial regime has been imposed. However, this is problematic since the claim that colonial rule is intended to serve the interests of the colonized is a highly questionable empirical claim.

But even if we grant that Nagel is correct in the sense that at the very least the colonial power rules in what they believe to be the interest of the colonized population, there seems to be something puzzling about his response here.

Consider the case of a colonial power which chooses to rule by force alone and not in the interests of the subjugated population. It would seem, according to Nagel, that in this instance norms of justice do not apply. That is, in this scenario, despite the harms and wrongs inflicted upon the indigenous people, we must conclude that the regime is not unjust.

A further related problem with Nagel's account concerns his claim that current international institutions are not coercive in the relevant sense. The problem for Nagel is that even though there is a current international framework of institutions, there is only an indirect relation between such institutions and individuals. Put another way, current international institutions do not act in the name of all individuals, they are merely a means through which states can cooperate at the international level, and thus they are not collectively imposed by all and need not be justified to all.

However, if we accept what Nagel says about colonial rule, then it would seem that the current international order is an appropriate subject of justice. Cohen and Sabel ask us to imagine the following case:

[...] assume that a country changes its trade policies to remain in compliance with WTO agreements, which are binding on all member states. Why not say that citizens in member states are expected to take account of WTO decisions, which have binding legal force: that they ought not to oppose a new trade regulation that is made pursuant to a WTO finding? Of course in all these cases the citizens of the affected states are not consulted. But the same is true with the occupying power.

(Cohen and Sabel, 2006: 167-168)

The basic thought, then, is that as in the case of colonial rule although individuals are not co-authors of the system of law under which they find themselves (in the first case, colonial rule; in the second, legally binding international agreements), they are still *expected* to obey and uphold those laws and agreements. Moreover, in both cases the system of law can still be understood as in some sense being imposed in the name of the individuals coerced by it.

These objections show how the restriction of standards of justice to the state level by an appeal to coercion fails. However, if we reconsider Nagel's argument it is clear that relations of justice obtain not just because societal rules are *coercively imposed* but because state membership is *non-voluntary*. Andrea Sangiovanni argues that the coercive imposition of societal rules is not crucial to Nagel's argument since all that is required is the *imposition* of societal rules in a non-voluntary association (Sangiovanni, 2007: 15).

The distinction that Sangiovanni draws between coercion and nonvoluntariness is that there may be a total lack of coercive force and yet we might still wish to maintain that we stand in relations of justice to one another. He asks us to imagine an internally just state which, due to a terrorist attack, has lost all coercive power i.e. police and armed forces. Despite the lack of coercive power, citizens on the whole continue to obey the law and they go on cooperating in much the same way. Furthermore, the state, with the exception of coercing citizens, continues to do all the things that it did prior to the terrorist attack.

Sangiovanni argues that even though the state lacks the coercive power to impose a just system of law, since nothing else has changed it seems wrong to think that citizens no longer stand in a relation of justice with their compatriots. He considers the possibility that one might argue that citizens now only participate and obey the laws voluntarily. Motivating this objection is that thought that if citizens' participation is voluntary, then questions of justice would not arise since citizens, in virtue of their voluntary membership, could choose to opt out of the scheme. But Sangiovanni argues that there are no feasible alternatives for citizens in his example. Although the very rich may be able to eke out an existence outside of the legal system the cost of opting out would be too high for the vast majority of citizens (Sangiovanni, 2007: 12). Given that citizens have no feasible alternatives to the system that they find themselves in, questions of justice do arise. So, while there may be no coercive force at play it may be the case that citizens' membership, including their participation and obedience, is non-voluntary. Consequently, because citizens' cooperation is non-voluntary they do stand in a relation of justice to one another.

What this example shows is that characterising ‘strong’ political relations as coercive is not enough to establish that those relations generate duties of justice. However, Nagel does think that we stand in a strong political relation with our co-nationals so something else besides coercion is at work here, namely, the notion of voluntariness. Recall that part of Nagel’s reason for why we have special duties to our fellow citizens is that membership to a state, including the demand that we obey the rules and norms of the state, is not voluntary (Nagel, 2005: 28).

Since one could argue that the notion of voluntariness is more crucial to Nagel’s account than coercion I will now consider whether this amendment strengthens his argument. To begin with, why should we think that justice applies only to those systems and associations which are non-voluntary? In short, justice, for Nagel, is closely tied to legitimacy. In the case of the state, citizens must obey laws and policies that when coercively imposed may infringe on their freedoms, be contrary to their individual preferences, and generate costs which they must pay. The state can only legitimately regulate with coercive force if its laws and policies can be justified to its citizens who stand in a relationship of equal co-authorship to one another. Such a stringent condition is necessary since the state is not a voluntary association. That is, since citizens lack practicable alternatives to compliance it is crucial that each citizen finds the system of law acceptable. Only a just state could be acceptable to all who are governed by it, so justice is a necessary condition for determining legitimacy.

Unlike non-voluntary schemes Nagel argues that justice does not apply to “voluntary association or contract among independent parties concerned to advance their common interests” (Nagel, 2005: 140). Voluntary associations are not coercively imposed. So, Nagel’s account specifies that questions of justice can only arise between individuals who are subject to a non-voluntary, coercively imposed system of laws and policies. The upshot is that whatever international norms and rules there may currently be, they are voluntary and states can choose to opt out. Thus, questions of justice do not arise at the global level.

A problem immediately springs to mind: in what sense can participation in the international order be said to be voluntary? As we saw in Chapter 1, many cosmopolitans point to the level of interdependence at the international level as evidence that the scope of justice extends beyond the boundaries of the nation-state. These considerations render Nagel's claim that forms of global association are voluntary highly questionable. For one, there are substantial incentives to engage cooperatively in the global institutional framework. Furthermore, it is not clear that exiting the international order is a viable option for a nation-state because, aside from the practical issues, the costs of opting out would be very great indeed. When the costs of both noncompliance and exiting are so high, how can we regard international institutions as merely voluntary?<sup>10</sup>

There is an important similarity between the feminist critique of Rawls's domestic theory and this objection to Nagel's restriction of the scope of justice to those institutions that he takes to be non-voluntary. In *IPRR* Rawls states that although principles of justice apply to the basic structure of society, of which the family is a part, they do not apply to the internal life of families and other associations such as churches, universities and business firms (*IPRR*: 158). Nussbaum argues that by comparing families to churches and universities Rawls implies that the family is a voluntary organisation. The suggestion that the family is a form of voluntary association is extremely mistaken:

For adult women, membership in a family may be voluntary (though this is not always clear), and Rawls's protection of their exit options may suffice to ensure their full equality. But children are simply hostages to the family in which they grow up, and their participation in its gendered structure is by no means voluntary.

(Nussbaum, 2003a: 504)

Moreover, Nussbaum notes that whereas families are taken to be part of the basic structure of society, universities and churches are not. This is a significant

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<sup>10</sup> This argument is also made by Sangiovanni (2007: 17-18).

dissimilarity which, Nussbaum argues, demands an account of why it makes no difference to how principles of justice apply.<sup>11</sup>

In Nagel's account we find that it is the relations at the global level which are taken to be voluntary in a way which relations between fellow citizens are not. But as we have seen it is not clear that such a claim can be substantiated. In both the accounts of Rawls and Nagel voluntary associations are seen to be beyond the scope of justice primarily because those participating have the opportunity to opt out. Yet in both cases it is clear that associations which are deemed to be voluntary are in fact involuntary. Thus, principles of justice should be applied to families and they should be extended beyond the scope of the nation-state.

I have demonstrated why Nagel's coercion argument fails and I have argued that if Nagel were to appeal to the notion of voluntariness instead, his statism would be susceptible to criticisms analogous to those raised by feminists against Rawls's domestic theory. However, it should be noted that if Nagel were to concede these points then it would not follow that he would have to turn to a cosmopolitan approach to global justice. In fact it is likely that he would advocate a minimal set of principles of justice to regulate the relations between states. This would accommodate his commitment to the view of the world as constituted by independent, self-determining, autonomous state units, while conceding that there are at least some duties of justice at the international level. Consequently, I predict that, should he concede my arguments, Nagel would probably endorse a set of principles not too dissimilar from Rawls's. However, as I argued in the last chapter, feminists and cosmopolitans ought to find this insufficient since it fails to address the unjust inequalities and oppressive practices which affect individuals across the globe. Any view which takes states to be the primary units of concern permits gross injustice by failing to address the needs of individuals within the

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<sup>11</sup> Of course two further questions might be raised here: (1) is membership to a church truly voluntary? and (2) should voluntary associations be beyond the scope of principles of justice? Clare Chambers argues that though liberals often take religious freedom as an expression of choice and therefore shrink away from state intervention in religious traditions and practice, they ought in fact keep state intervention open as an option (Chambers, 2008: Ch.4). Cultural contexts can seriously limit a person's choices and often those limitations are placed upon members unequally (for example, inequality based on gender) thus the state should intervene in order to protect equality and autonomous choice.

private realm of state borders. Hence, even if Nagel modifies his statism it must still be rejected.

It should now be clear that just as nation-state level principles of justice must apply to families, principles of justice at the global level must apply to the internal affairs if we are to achieve a just or at least a minimally just world. As I have argued, carving the world up into nation-states lends itself to a view of international politics whereby relations between states are taken to be public, and affairs internal to states are assumed to be private. Adopting this view when theorising about global justice leads to a theory that inevitably neglects the rights and needs of individuals because they are counted as belonging to the private, internal affairs of the state. Only by taking individuals as the primary units of moral concern can we avoid forsaking fundamental rights and liberties and address the needs of individuals across the globe. Taking seriously the needs and rights of all individuals regardless of where they happen to have been born, demands that we address injustice and oppression wherever it occurs. Therefore, for the most part, a state's internal affairs should not be considered private. Moreover, principles of global justice should not be restricted to merely regulating the relations between states, since justice may demand that some principles should apply to the internal affairs of states.

## **4.6 SUMMARY**

In this chapter I have shown how Okin's initial critique of Rawls's *A Theory of Justice* can be extended to *The Law of Peoples*. Moreover, I have suggested that Okin's argument can be used to formulate a more general objection which applies to all approaches to international justice which take states to be the primary units of moral concern.

In summary, key to Okin's critique is the idea that liberal theories of justice assume a strict divide between public and private spheres. This has had the consequence of placing the family beyond principles of justice. In TJ Rawls assumes the family to be a domain of love, affection and altruism where justice

already prevails and this justifies its exemption from being regulated by principles of justice. Okin demonstrates that this is problematic for Rawls's account because it undermines his account of the family as the first school of moral development and his use of the original position. Moreover, she suggests that Rawls runs into problems because he takes the family to belong to the private sphere.

I have argued that Rawls's response to Okin's initial critique is unsatisfactory. Rawls resists any attempt to apply principles of justice directly to the family because he feels that to do so would infringe upon fundamental rights and liberties. However, he notes that the family and other institutions are indirectly constrained by principles of justice since they protect the basic rights and liberties of family members as citizens. This as I have shown is not sufficient since Rawls's account, by his own admission, permits circumstances which disadvantage and limit the opportunities of women.

I have suggested that the cases of the family at the domestic level and the nation-state at the international level are analogous. Affairs internal to both families and nation-states are assumed to be private whereas the relations outside of these units are taken to be public. Since principles of justice prevent individual family members from having their basic rights and liberties violated Rawls's account ensures that the family is at least minimally just. In the same way he assumes that decent societies, because they meet the criteria for decency (i.e. they do not violate basic human rights), are minimally just. Yet in both instances individuals can be subject to unjust inequality and oppression. Feminists and cosmopolitans ought to find this consequence objectionable and reject accounts which remain silent about these issues.

Having demonstrated how Okin's critique can be extended to Rawls's international theory, I then considered how it might apply Nagel's statism. Nagel's account shares Rawls's view of the world as constituted by fairly independent, self-determining, autonomous state units. As I have shown, Nagel also resists the idea that the internal affairs of nation-states should be of concern

to the international community and subject to principles of global justice. I have shown why Nagel's case against principles of global justice fails arguing that both an appeal to coercion and an appeal to voluntariness do not suffice to restrict the scope of justice to the national level. While I have only considered two approaches which take states to be the primary units of moral concern, I am confident that the objections raised can be applied to any theory which shares this picture of the world.<sup>12</sup> Any theory that holds states to be the primary units of concern inevitably assumes a distinction between the private affairs internal to states and the public affairs between them.

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<sup>12</sup> I also believe that these arguments can be extended to the brand of nationalism advocated by David Miller (Miller, 2007). While I do not have the space to fully explore this avenue here, one reason that I have for believing that such an extension is possible is that although Miller asserts that he is talking about nations his account still depicts the world as being carved up into self-contained, bounded units which shares obvious similarities with the statist depiction of the international arena. Furthermore, Miller is even more explicit about national interests (where one might read *state* interests) and these are often taken to trump those of individuals.

## PART III

### FEMINIST OBJECTIONS TO COSMOPOLITANISM

#### INTRODUCTION

Thus far, I have demonstrated through a critique of John Rawls's *The Law of Peoples* that theories which take states to be the primary units of moral concern are unsatisfactory. In Chapter 3, I argued that *The Law of Peoples* should be rejected by feminists not only because it undermines the movement to secure women's human rights, but also because it fails to adequately address the problem of global poverty which disproportionately affects women. In Chapter 4, I showed how Susan Okin's critique of Rawls's earlier work, *A Theory of Justice*, could be extended to *The Law of Peoples*. There I argued that taking states to be the primary units of moral concern commits one to a particular picture of the world: a picture in which the world is carved into self-contained, independent bounded units where only the affairs between these units are subject to principles of justice, not the private internal affairs of states. The upshot of my argument is that any approach to global justice that takes states to be the primary units of moral concern will be inadequate because the private affairs internal to states may harbour gross injustice and oppression that greatly affects the lives of those who reside therein. Ultimately, I have, over the course of the last two chapters, demonstrated that feminists ought to reject statist approaches to global justice.

Throughout my critique of statist approaches to global justice I have emphasised the importance of taking individuals as the primary units of concern. I am hopeful that any feminist reading this will now have good reasons to reject approaches that take states to be the primary units of moral concern, and I believe that this should lead them to support a cosmopolitan approach to global justice. However, while I have argued that there are compelling reasons in support of my central

thesis, I recognise that there may be some feminist unease with the cosmopolitan standpoint. Furthermore, since cosmopolitanism shares much with the liberal tradition, about which feminists have often been very critical, one may be doubtful about the possibility of harmony between the two. Consequently, though cosmopolitanism is better placed to deal with the criticisms raised thus far, further work needs to be done to show that it is fully compatible with feminist aims.

In this part of the thesis I will consider two potential feminist challenges to cosmopolitanism. Traditionally feminist theorists have challenged positions that are underpinned by universal claims and normative individualism. For that reason the two objections that I anticipate focus on both the universal and individualistic nature of cosmopolitan accounts of global justice.

In Chapter 5 I address the worry that a feminist cosmopolitan project is inherently flawed because it must, if it is to adequately address gender injustice, invoke general claims about women's experiences. This objection is rooted in the thought that we cannot make accurate general claims about the experiences of women because such claims do not pay sufficient attention to the differences between women and do not truly capture the experiences of all of the women to whom they are supposed to apply. I will argue that the feminist cosmopolitan can be sensitive to these worries while not abandoning general claims about women. More specifically, I develop a set of criteria against which we can assess the acceptability of generalisations about women (and oppressed groups in general).

In Chapter 6 I explore the objection that a feminist cosmopolitanism represents a form of Western cultural imperialism. The concern, as I understand it, has to do with the normative universal claims that are essential to any feminist cosmopolitanism. In response, I argue that the charge of cultural imperialism does not stick and suggest that the problem essentially boils down to a disagreement about value. Once I have made this argument, I then show why a feminist cosmopolitanism is better placed, than some of its perceived opponents, to address the aims outlined in Chapter 2. In particular, I look to defend the

normative individualism that is crucial to the feminist cosmopolitan project but that has been a subject of consternation for many feminists.

Despite these potential worries I will argue that feminism can be reconciled with cosmopolitanism, and I further believe that working through these issues will be insightful with regard to identifying those forms of cosmopolitanism that are most compatible with the feminist project.



## **FEMINISM AND THE PROBLEM OF GENERALISATIONS: POLITICAL RISK AND UTILITY**

In this chapter I will consider the potential feminist objection that cosmopolitanism, because of its commitment to general claims, will be blind to the differences between women. What I am most concerned with here is the idea that feminist cosmopolitan project should be rejected because we are unable to make accurate generalisations about women's experiences because each individual is limited by their own particular standpoint. Ultimately, I take this objection to be that we cannot describe or claim to know of other people's experiences through use of generalisations because the general claims that we make can never be accurate.

This chapter is structured as follows. I will begin in Section 5.1 by outlining the problem. In order to clarify the objection and present it in its strongest possible form I have identified three different aspects that I take to be central to the feminist worry about generalisations. In Section 5.2 I will discuss the importance of this objection to the current project. I will suggest that adopting a broad mistrust of all general claims is problematic for the feminist cosmopolitan since descriptive generalisations are often used to inform our universal normative principles. Consequently, the critic could argue that the universal principles advocated by a cosmopolitan approach to global justice are either without foundation or rely on faulty premises. After this I go on, in Section 5.3, to consider Susan Okin's attempt to defend the use of generalisations and, following others, argue that Okin's defence is insufficient since she fails to grasp the full force of her opponents' worry. While Okin's defence is not without merit, it is not sufficient to assure us that the generalisations that we are using are acceptable. As a consequence, I propose a set of criteria against which we can judge the

acceptability of the generalisations that we might employ. The most fundamental of these is prompted by a brief discussion by Uma Narayan, and relates to the political utility or risk of any given generalisation. In Section 5.4 I develop these notions more fully.

The overall aim of this chapter is to suggest that while incredibly important, we should not allow the feminist worry about generalisations to render us politically powerless. What is more, I argue that by taking these feminist concerns seriously we can arrive at criteria that will enable us to assess the acceptability of generalisations. With such criteria in place, a feminist cosmopolitanism can avoid making the kinds of generalisations that have troubled many feminists.

## 5.1 THE PROBLEM

Many feminists have criticised views that appeal to generalisations about women's experiences for failing to pay attention to the differences between women.<sup>1</sup> Though this objection is sometimes understood to be concerned with 'essentialism' I will not be using the term here since how it should be understood is contentious and its use is likely to end in confusion. Instead I will concentrate on what I take to be a key element of the anti-essentialist critique, namely, the rejection of generalisations.<sup>2</sup>

Some feminists have argued that we ought to reject views that rely on general claims about women's experiences because it is not possible to arrive at accurate generalisations. They maintain that since we are all limited to our own unique

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<sup>1</sup> See for example: Flax (1995); hooks (1982, 2000); Lazreg (1988); Mohanty (1988); Spelman (1988); Spivak (1981).

<sup>2</sup> To be clear I am not strictly speaking concerned with the metaphysical worry posited by anti-essentialist feminists that because there is no one feature that *all* women share it makes no sense to speak of *women* as a category. I want, for the purposes of this project, to bracket the metaphysical worry and begin with the assumption that it does make sense to talk of *women* and *men*, that is, that these are legitimate categories of analysis. For a defence of gender realism - the view that the general categories of 'men' and 'women', and their particular instantiations 'man' and 'woman' do make sense since there is, for example, some feature shared by all women which makes them women - see Mari Mikkola (2006) who demonstrates that Elizabeth Spelman's attempt to show that it makes no sense to speak of women is problematic and that there is still room for gender realism.

perspective, any attempt to generalise out from that particular perspective, and the experiences therein, will invariably fail to capture the experiences of all women. Thus, any given generalisation cannot accurately reflect the experiences of all those to whom it is supposed to apply because each individual occupies a distinct perspective and the person making the generalisation inhabits but one of these.

I believe that the feminist rejection of generalisations has three important aspects and I will discuss each of these in what follows.

**5.1A *THERE CAN BE FEW, IF ANY, ACCURATE GENERALISATIONS ABOUT THE EXPERIENCES OF WOMEN SINCE ACCURATE GENERAL CLAIMS CAN ONLY APPLY TO THOSE WHO ARE SIMILARLY SITUATED.***

Some feminists have argued that there can be no accurate generalisations because general claims are always developed from a particular perspective. For example, generalisations about women's experiences made from the perspective of a wealthy, white, Western woman will likely ignore the perspectives of all those women who fall outside of that socio-economic group. Now, arguably this might not be so much of a problem if those making such generalisations were to restrict the scope of the claim to just those women who occupy a similar social position (although one might think that restricting one's attention like this detrimentally dilutes the feminist project) but often this is not their intention.<sup>3</sup>

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<sup>3</sup> While someone could defend the use of general claims in cases where people are sufficiently similarly situated, those who are truly sceptical about our ability to formulate accurate general claims about women's experiences may reject this possibility. If one is committed to the idea that each perspective is unique and that we can only have knowledge of our own experiences, then it would seem that even if someone shared a similar social positioning to oneself we would be unable to say anything about their position since it would still be significantly – because of its 'uniqueness' – different from our own. So, even if I am a white, Western, middle-class woman I should not presume to make general claims about all individuals who share this social position because each person will have a different experience of what it is to be a white, Western and middle-class woman. There are many more factors involved, which will affect how we experience our social life, for example: whether we have children, whether we have a disability, not just where we live in the world but where we live in a particular country, town, and community, what our parents did for a living, what kind of schooling we had, what, if any, religious beliefs we hold, if we are employed, and what employment we hold. All of these factors are important in shaping our experiences of the world and our understanding of what it is to be a 'white, Western middle-

Take for example bell hooks's critique of Betty Friedan's *The Feminist Mystique* (hooks, 2000: 1-4; Friedan, 1965). hooks argues that:

Friedan's famous phrase, "the problem that has no name," often quoted to describe the condition of women in this society, actually referred to the plight of a select group of college-educated, middle- and upper-class, married white women – housewives bored with leisure, and the home, with children, with buying products, who wanted more out of life. Friedan concludes her first chapter by stating: "We can no longer ignore that voice within women that says: 'I want something more than my husband and my children and my house.'" That "more" she defined as careers. She did not discuss who would be called in to take care of the children and maintain the home if more women like herself were freed from their house labor and given equal access with white men to the professions. She did not speak of the needs of women without men, without children, without homes. She ignored the existences of all non-white women and poor white women.  
(hooks, 2000: 1-2)

In effect, Friedan's account takes the experiences of white middle-class women to be reflective of the experiences of *all* women in America at that time. The problem with the generalisations that she makes is that they ignore the many women, especially those who are not white, who do not share experiences similar to those that she discusses. Friedan assumes that the problems that affect her and those who are similarly socially situated are problems that affect *all* women. As a result, her account fails to capture the different problems faced by women who do not share that social position.

Importantly, Friedan not only makes inaccurate descriptive generalisations about women's experiences but she prescribes general solutions that overlook the realities faced by women who do not share her social position. Friedan proposes a 'new life plan for women' which recommends that women seek to combine marriage and family with work outside of the home (Friedan, 1965: Ch. 14). She argues that it is only through work outside of the home that many women will find satisfaction since this work will be more suited to their natural abilities. However, the scope of Friedan's project is limited to white middle- and upper-

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class woman' and for that reason some might maintain that there can be absolutely no general claims about the experiences of women even if we limit the scope of the claim to those who are similarly positioned in a given society.

class housewives and, as hooks notes, over a third of American women were in employment at the time Friedan was writing (hooks, 2000: 2). hooks further argues that many of these women were concerned not with pursuing a project of self-fulfilment but with simply surviving economic hardship and racial discrimination.

The crucial point here, for those who reject generalisations, is that many, if not all, generalisations about women's experiences are likely to be inaccurate because they falsely claim to capture the experiences of all women when in fact they only capture the experiences of the most dominant (read privileged) group. The trouble with Friedan's account is that it relies on false generalisations about women's experiences. Claims that she suggests apply to *all* women in America, in fact, only apply to *some* women in America. Moreover, while the concerns that she raises are without doubt genuinely problematic, the concerns facing the most economically vulnerable section of the female population are far more pressing.

***5.1B THERE CAN BE FEW, IF ANY, ACCURATE GENERALISATIONS ABOUT THE EXPERIENCES OF WOMEN WHERE THOSE MAKING THE GENERAL CLAIMS ARE IGNORANT OF THE EXPERIENCE THAT THEY ARE TRYING TO CAPTURE.***

The second key feature of arguments against the use of generalisations is connected to, but different from, the first aspect. Many who demand that feminists reject the use of generalisations worry about cases where Western feminists make false generalisations about the situation of women in other cultures. So, in this case it is not that Western, white, middle-class feminists falsely pass off their own experiences as the experiences of all women, but rather that they attribute experiences – experiences which are different from their own, but still inaccurate – to women whose lives and experiences they have little or no knowledge of.

To better clarify the difference between the previous aspect and this, consider the following criticisms raised by Chandra Talpade Mohanty (1988) against some of

the Western feminist discourse on women in non-Western countries. While Mohanty analyses several texts here I will note just one, namely, Maria Rosa Cutrufelli's *Women of Africa: Roots of Oppression* (1983). Mohanty observes that Cutrufelli's work is littered with false generalisations (Mohanty, 1988: 67). For example, Cutrufelli writes that her "analysis will start by stating that all African women are politically and economically dependent" (Cutrufelli, 1983: 13) and that "prostitution is still the main if not the only source of work for African women" (Cutrufelli, 1983: 33). Mohanty takes these claims to suggest that "All African women are dependent" and that "prostitution is the only work option available to women as a *group*" (Mohanty, 1988: 67), generalisations which are false.<sup>4</sup>

To sum up this concern, there are many examples of generalisations that falsely describe the experiences of groups of women because individuals who are not members of those groups formulate them. The problem comes when individuals try to describe circumstances that they have no experience of. Moreover, these generalisations are often informed by studies that involve only a few representatives of the group. This means that they cannot be extended to accurately reflect the experiences of the group at large. The outcome is, as Narayan notes, that generalisations of this type are often not only "empirically false but also offensive and dangerous" (Narayan, 2000: 97).<sup>5</sup>

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<sup>4</sup> Someone making general claims may be ignorant to a greater or lesser degree. Some general claims may have no evidential grounds in which case they may be simply false in all cases. However, there may be some general claims that have some evidential grounds. Take, for example, Cutrufelli's claim that "prostitution is still the main if not the only source of work for African women" (Cutrufelli, 1983: 33). Cutrufelli makes this general claim based on several sociological studies and interviews with women from various parts of Africa. This suggests that her generalisation, though false (because it does not apply to all African women) may still (if appropriately qualified) accurately describe the experience of some women who live in Africa. However, we still need to be cautious about accepting that Cutrufelli can make a more restricted general claim since, as I will discuss later, there are further issues about how research is conducted and how its results are interpreted. Moreover, I will argue in Section 5.4 that even in cases where there is seemingly strong evidential support for a generalisation, the generalisation should be further assessed according to its political risk and utility.

<sup>5</sup> The problem with generalisations made by members of one group to apply to members of another is connected to a further feminist concern about the ways in which some 'Western' feminists have fetishised certain 'traditional' or 'authentic' non-Western cultural practices. In so far as we can talk about 'Western' and 'non-Western' cultures, practices like *sati*, foot-binding, and female genital mutilation have received much attention by Western feminists as examples of cultural practices which are harmful to women. The trouble, as a number of Third World feminists have argued, is that the Western feminists have tended to pick out 'exotic' practices that they take

**5.1C    *THERE CAN BE FEW, IF ANY, ACCURATE GENERALISATIONS  
BECAUSE GENERAL CLAIMS FAIL TO PAY ATTENTION TO THE  
DIFFERENCES BETWEEN WOMEN.***

The third key aspect of the objection is borne out of the first two and relates to the emphasis that its proponents place on difference. An important part of the critics' claim is that making, and using, inaccurate generalisations about women's experience is a consequence of not paying sufficient attention to the differences between women. Women cannot be bundled together into one unified group since there are differences between them, significant differences such as class, race, religion, culture, sexuality, geographical location. Not only does the process of generating generalisations ignore important differences between women, but using these generalisations to, for instance, support normative claims, results in a further blindness to difference which can be harmful to those excluded from the dominant social perspective.

As we have seen in the two examples noted above, a key problem with the generalisations criticised is the failure by those who use them to pay attention to the significant differences between women. In the first case we saw that Friedan's analysis of the experiences of women in 1960's America excluded all those who were situated outside of the group 'white and middle- to upper-class'. Friedan fails to acknowledge that being black or being poor is going to affect your experience of what it is to be a woman and may change the nature of the problems encountered. Thus, the generalisations that Friedan makes about the experiences of American women at that time are false because she is not attentive to the *differences* between *all* of the women within the society.

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to be authentic expressions of the traditions of a cultural group when in fact they are not. The problem is that these customs are not practiced to the extent that Western feminists suggest, and many within the culture are critical of practices that Western feminists take to be authentic. What is more, the Western feminist's fetishisation of particular cultural practices has served to reinforce the image of the average non-Western woman as a passive victim, it has resulted in misidentification of the problems which non-Western women take to be the most pressing, and it has obscured the fact that non-Western cultures have strong feminist movements which address many of the same problems that Western feminists challenge within their own cultures (Hoodfar, (1993); Jaggar (2000); Mohanty (1988); Narayan (1997, 2000)).

In the second example, we saw how Cutrufelli's analysis of the experiences of women in Africa resulted in false generalisations because the observations were based on the experiences of a select few and then falsely applied to all members of the group. Again, failure to pay attention to the differences between all of the women in the given context leads to false generalisations. In this instance, the false generalisations are especially problematic because they are formulated by someone outside of the group (and normally by someone who occupies a privileged position relative to those who they commenting on).

Fundamentally, generalisations about women's experiences must be rejected since they cannot adequately accommodate the differences between women. General claims about women's experiences attempt to pick out something which each woman shares. Feminists who raise this challenge argue that we cannot do this without obscuring the innumerable differences between women and thus misrepresenting the experiences of many. So, argues the critic, it is unlikely that we can ever arrive at any accurate generalisations about women's experiences because once we acknowledge the differences between women it becomes improbable that any generalisation can be formulated, which can accommodate that degree of difference.

## **5.2 WHY IS THE REJECTION OF GENERALISATIONS PROBLEMATIC FOR THE FEMINIST COSMOPOLITAN?**

To be clear, the challenge I anticipate is that there are unlikely to be any accurate generalisations because (1) we each occupy a particular perspective so what we can *know* of other people's experiences is limited; and (2) once we acknowledge the differences between women it is extremely unlikely that we will be able to formulate a generalisation that accurately reflects these differences. In this section I will suggest that this challenge is one that that the feminist cosmopolitan should be sensitive to.

How is the feminist concern about generalisations relevant to the feminist cosmopolitan project? As we saw in Chapter 1 all cosmopolitan approaches share three basic tenets: (a) All individuals are the primary units of moral concern; (b) All individuals are of equal moral worth; and (c) There are duties of justice that are global in scope and binding on everyone. Importantly, the foundational claims of cosmopolitanism are universal in scope, which means that the central tenets of cosmopolitanism apply to *all* human beings. Now, the feminist objection that I anticipate here is not that these claims are problematic. Truly cosmopolitan claims, that is, claims that refer to *all* human beings should not be problematic for feminists since these claims make no reference to sex or gender. Thus, claims like “all individuals are of equal moral worth” should not be problematic from a feminist point of view because they are inclusive of all humanity and are not only fully compatible with, but also support feminist aims.

However, many of the general claims formulated and used by cosmopolitans are not limited to the three central tenets of moral cosmopolitanism. Cosmopolitans repeatedly make use of generalisations about the world’s poor, the world’s wealthy, poor children, economic migrants, refugees, corrupt elites etc., to inform their accounts, including any principles of global justice that they advocate. Still, these generalisations do not look obviously problematic from a feminist perspective. Since many cosmopolitans do not pay special attention to gender, their accounts, as they currently stand, tend to rely on general claims about humans or groups of humans defined by features other than sex or gender.

For example, take the following claims by Gillian Brock: “Consider how we all need a reasonably protective ozone layer to be shielded from the otherwise devastating effects of exposure to high levels of damaging ultraviolet radiation. We all need flourishing rainforests to mitigate the worst effects of certain kinds of pollutants.” (Brock, 2009: 87). Brock uses these descriptive generalisations to support the normative claim that resources such as the ozone layer and rainforests ought to be “regulated for the use and benefit of all”. So, because all humans need the ozone layer and rainforests these resources should be viewed as communal goods and their use should be regulated in order to prevent dominant groups from

using up or destroying resources which are necessary to the well-being of all. Now, feminists are unlikely to take issue with the descriptive claims (though they may, depending on their political views, take issue with the normative claims, but not because it falsely represents the experiences of women) but regardless of whether these generalisations are accurate or not one might wonder whether generalisations of this type – that is generalisations which make no reference to sex or gender – raise a unique problem for feminists. If they do not, then it is difficult to see how the objection discussed through Sections 5.1 to 5.1c is relevant to this project.

Remember that the problem raised was that generalisations about the experiences of women are problematic from the point of view of some feminists since it is extremely unlikely, in light of the fact that there are important differences between women, and because one can never *know* of each woman's experiences, that we can ever arrive at accurate generalisations. Thus, generalisations are likely to mischaracterise the experiences of some, if not all, of the women to whom they are supposed to apply. However, claims which refer to the 'world's wealthy' or the 'world's poor', while they may not accurately reflect the experiences of all of those to whom they are supposed to refer, do not sort people along sex or gender lines and so it is difficult to see why this is a feminist issue. So, one might say, although feminist concerns about generalisations teach us to proceed with caution when formulating and utilizing generalisations - regardless of whether they pick out men, women, or humans - these worries, when applied to cosmopolitan approaches to global justice, stop being a uniquely feminist concern because cosmopolitans are concerned with the needs and well-being of all human beings and do not discriminate along lines of sex and gender.

In response I suggest that the feminist concern about generalisations is relevant to this project because, as I argued in Chapter 2, given the realities of global gender injustice it is not enough for a cosmopolitan approach to global justice to be humanist. To start, it is important to note that throughout the history of political thought theorists have often used the term 'human' to refer only to white, educated, middle- to upper-class men (Okin, 1980). Hence, a feminist

cosmopolitan account must ensure that when we speak of all humans that we really are speaking about *all* humans.

Moreover, while a humanist account of global justice is of course the ultimate aim, approaches that neglect questions of gender injustice will be insufficient. A humanist account of global justice is something which must be strived for but which cannot be attained without careful attention to the condition of the world's women. While it is true that the cosmopolitan commitment to the world's poor necessarily entails a commitment to the women who make up the majority of that group, that commitment can only be realised when cosmopolitans pay special attention to the condition of the world's women and acknowledge that, amongst other things, gender inequality is a direct cause of poverty (Okin, 2003: 284).

A consequence of paying attention to the problems posed by gender injustice is that cosmopolitan approaches to global justice will necessarily involve general claims about the world's women. Moreover, principles of global justice are bound, in part, to be informed by generalisations about women's experiences. Take as a case in point Nussbaum's work on the capabilities approach. A quick survey of *Women and Human Development: The Capabilities Approach* and *Frontiers of Justice: Disability, Nationality and Species Membership* throws up a whole host of instances in which Nussbaum utilises general claims about the experiences of the world's women. For example, she states that "however we conceptualize the "primary goods" that a just society ought to distribute justly [...] women have grossly unequal access to them" (Nussbaum, 2004:149). Moreover she suggests that in general "women have fewer opportunities than men to live free from fear and to enjoy rewarding types of love – especially when, as often, they are married without choice in childhood and have no recourse from a bad marriage" (Nussbaum, 2004: 148).<sup>6</sup> Importantly, Nussbaum makes use of generalisations such as these to show why rights-based theories of social justice are inadequate, to propose an alternative view of justice which uses capabilities as its metric, to

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<sup>6</sup> For more examples of generalisations about the experiences and circumstances of the world's women see Nussbaum (2004: 150; 2006a: 73, 283, 287).

reject Rawls's LP, and to inform the ten principles that she proposes for shaping and regulating the global structure (Nussbaum, 2006a: 315-324).

Following my arguments from preceding chapters, I suggest that in order for a cosmopolitan approach to global justice to be considered adequate from a feminist perspective it must address the issue of gender and focus (at least in significant part) on the world's women. Equally, if cosmopolitans are to ever achieve their humanist aims they must be attentive to gender as a core source of the inequality that they endeavour to tackle. Essential to this project will be the use of general claims about the experiences of women because it is only by identifying and analysing patterns of inequality and oppression that the cosmopolitan project can begin to address global injustice. Since the use of generalisations is essential to the feminist cosmopolitan project, its proponents must be able to respond to the claim that it is unlikely that we can ever formulate generalisations that accurately reflect the experiences of all to whom they apply and that the use of generalisations must therefore be abandoned. Failing to provide an adequate response to the concerns discussed through Sections 5.1 to 5.1c will leave the feminist cosmopolitan open to criticism since their normative claims are often informed by descriptive generalisations.

### **5.3 A POTENTIAL DEFENCE OF GENERALISATIONS?**

Thus we arrive at an impasse. On the one hand, feminists need to be able to make use of generalisations if they are to be able to address the oppression and injustice which afflicts the lives of women across the globe. Sex injustice is endemic and systematic. Thus, any attempt to address sex inequality necessitates the ability to identify patterns of oppression. As Susan Okin maintains, gender injustice affects women as a group (1994a, 1995). In order to understand and address the problems which face individual women we have to be able to analyse patterns of injustice and this will involve making general claims about the experiences of women. Yet, on the other hand, as discussed above, some generalisations are extremely problematic because they fail to represent the experiences of all those to whom they are supposed to apply or they are simply false.

Given that generalisations can be problematic, but that abandoning them completely would render feminists politically powerless, what is the solution? One possible way to go, as suggested by Okin, is that we take care to provide good quality empirical evidence to support our generalisations (1994a: 20). For Okin, though it is true that there are important differences between women, empirical evidence suggests that focusing on the inequalities between men and women across class, race, culture, and nationality may enable us to identify similarities, which may in turn help us to understand how these inequalities arise and how they can be tackled (1994a). While women may experience these inequalities in manifestly different ways, it will often also be the case that some aspect of the inequality that they experience will be shared with many other women across the globe. This leads Okin to generalise that “the situation of poor women in poor countries is not qualitatively *different* from that of most women in rich countries but, rather ‘similar but worse’” (Okin, 1994a: 11).

However, as Spelman notes, even if we are sensitive and conduct our research in light of the aforementioned concerns, the empirical evidence that we use may still be tainted by the situatedness of the researcher:

[...] I don’t necessarily correct my picture of what is true of women “as women” by doing “empirical research” rather than simply generalizing from my own case. For I can’t simply “look and see” to find out what we have or don’t have in common. First of all, I have to have decided what kind of similarity or difference I am interested in. It makes no sense to ask simply whether women are similar or different – I have to specify in what way they might be similar or different - I have to use some measure by which I decide whether they are the same or different in the specified way. And finally, I have to determine the significance of the similarities and differences I find.

(Spelman, 1988: 140)

This point here is that while it is tempting to appeal to empirical evidence to support generalisations regarding inequality between the sexes, there are many problems with the way in which the empirical evidence is conducted and interpreted. The trouble for Okin is that her positive proposal for enabling feminists to make general judgements does not avoid the worry that some feminists have about generalisations. The problem reappears when we consider

how empirical research is planned (research into what?), conducted (how should we carry out this research?), and interpreted (what does this research show us?) from a limited perspective.

## **5.4 BUT DOES THAT MEAN THAT WE MUST REJECT ALL GENERALISATIONS?**

We can see from the discussion so far that for generalisations to be acceptable they must at least meet the following conditions:

- (1) Generalisations that are meant to apply to all women ought to be inclusive of all women.
- (2) When we make generalisations about the experiences of all women we ought to take care that the experiences of the most marginalized women are included.
- (3) Generalisations should not falsely represent the experiences of women. We should be particularly aware of this when generalisations are being made about individuals who are not part of the group making the generalisation.
- (4) Generalisations should be able to accommodate the differences between women.
- (5) Generalisations must be empirically corroborated.

Judging the acceptability of generalisations by checking that they meet these criteria will go some way to allaying the feminist's concerns. However, these conditions alone do not fully address all of the worries discussed in the previous sections. I think that we must accept that evidence will always be collected and interpreted from a particular perspective and I suggest that the above criteria will help to prevent us from forming unreliable generalisations. That said, I also think that there could be instances of general claims about women's experiences that can more or less meet these conditions while still being a source of unease.

Consider the following example.<sup>7</sup> In 2011 Dr Satoshi Kanazawa, an evolutionary psychologist at the London School of Economics, claimed that findings from a study of physical attractiveness showed that “black women are [...] far less attractive than, white, Asian and Native American women” (Sample, 2011).<sup>8</sup> This claim will strike many as a paradigmatic case of a bad generalisation that ought to be rejected outright. However, I believe that one could argue that this generalisation does meet the criteria outlined above and is hence acceptable.<sup>9</sup> To start, one might argue that this generalisation does not violate (1) or (2) because it is not a general claim that applies to all women. In addition, the proponent of this generalisation might argue that the empirical evidence reveals that women (including black women) as well as men find black women less attractive. This would suggest that the generalisation does not violate (3) because it reports on the experiences of women by appealing to testimony given by women. The defender of this general claim might further argue that (4) is met because the claim that black women are in general seen to be less attractive than women from other racial groups does not entail denying the differences between individual women. Finally, and most importantly, the defender of this general claim is likely to say that this generalisation must be acceptable because it is corroborated by empirical evidence.<sup>10</sup> I draw on this example, and the ways in which one might argue for its acceptability, to show why appealing to empirical evidence and meeting the other four conditions that I outlined above cannot guarantee the acceptability of a generalisation; many of us would find it difficult to view Kanazawa’s claim as acceptable. Thus, even when generalisations like Kanazawa’s can meet the above criteria, there might be further reasons to reject them.

Consequently, I am going to propose a further condition, gestured at by Narayan, which requires that generalisations be assessed not just with regard to their

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<sup>7</sup> I would like to thank Heather Arnold for bringing this case to my attention.

<sup>8</sup> The blog post on Psychology Today caused outrage and was quickly removed. For more on this story see BBC (2011); Sample (2011); Alleyne (2011).

<sup>9</sup> To be clear, I do not take this to be an acceptable generalisation. My point is rather that someone might try to argue that it is.

<sup>10</sup> It is important to note that the empirical ‘evidence’ and research methods that Kanazawa employed have since been discredited.

empirical accuracy, but also to their political risk or utility (Narayan, 2000: 97). The further condition that I have in mind is the following:

- (6) Risky generalisations should be subject to close critical scrutiny. Such generalisations must be avoided until we are satisfied that they do not work to the detriment of the oppressed group to whom they apply.

But what does it mean for a generalisation to be politically useful or risky? In the subsequent sections I will explore this distinction in more detail.

#### *5.4A POLITICAL RISK AND UTILITY*

Narayan takes Cutrufelli's statement that "prostitution is still the main if not the only source of work for African women" to be an example of a politically risky generalisation. By contrast Narayan considers a statement by the Committee on the Elimination of All forms of Discrimination Against Women, that "Women continue to be discriminated against all over the world as regards the recognition, enjoyment, and exercise of their individual rights in public and private and are subject to many forms of violence", to be politically useful (Narayan, 2000: 97; Bunch, 1994: 35).

For Narayan, the difference between these two types of generalisation is that the first is empirically false, odious and potentially harmful whereas the second is "arguably true and politically useful in calling attention to human rights violations against women in a multiplicity of national contexts" (Narayan, 2000: 97). The distinction between those generalisations that are politically risky and those that are politically useful is intuitively appealing. However, upon further examination Narayan's distinction proves underdeveloped. In what follows I will try to flesh out this distinction a little more.

#### 5.4B POLITICAL RISK EXAMINED

On Narayan’s account, a politically risky generalisation is one that “is not only empirically false but also offensive and dangerous” (Narayan, 2000: 97). But what about generalisations which seem to have evidential support? It will be obvious to many that generalisations such as ‘All African women are prostitutes’ and ‘All fat people are lazy’ should be rejected, but what about general claims which are allegedly backed up by empirical evidence?

Some examples: Recall Kanazawa’s statement that ‘black women are less physically attractive’ or consider other claims that maintain the biological superiority of men over women or white people over black people. One does not have to do much digging to find stories in our shared public culture that report scientific studies suggesting that there are innate differences between men and women. Take, for instance, claims that ‘women’s brains respond to pain differently to men’s (BBC, 2003) and that ‘men are more intelligent than women’ (BBC, 2005). As we have seen, general claims are not limited to picking out differences between the sexes. Other studies, also well documented in the media, suggest that there are innate differences between races. For example, Herrnstein and Murray’s *The Bell Curve* (1994) controversially suggests that differences in IQ scores between racial groups reflect innate biological differences; and Richard Lynn suggests in *The Global Bell Curve: Race, IQ, and Inequality Worldwide* (2008) that racial differences in IQ is one of the most important explanations as to why there is significant economic inequality between nation-states.

Now, many of these claims may strike some people as too implausible to count as potentially acceptable generalisations. One might just dismiss such claims as informed by bad science or bad reporting of science. But from the perspective of the layperson just how good or bad the science is will often be difficult to ascertain.<sup>11</sup> It is simply not clear to many of us what we ought to think about such

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<sup>11</sup> Though I am approaching this issue from the perspective of a non-scientist I assume that there is much disagreement among scientists about what counts as good and bad science. Thus, what counts as a justified or unjustified empirical scientific claim is also likely to be controversial between experts.

generalisations especially when there is wealth of scientific research to lend an air of credibility. So, although we may find generalisations to do with placing racial groups on an IQ hierarchy offensive, it would be too quick for us to dismiss it as empirically false. However, that some people do take offense at such generalisations should be enough to set alarm bells ringing and indicate that that what is being said is politically risky.

Let us take another instance of problematic generalising. Consider claims which assert that there are innate differences between men and women's capacity for care and empathy. In the ethics of care literature much has been made of studies that suggest that women have a greater capacity for empathy than men.<sup>12</sup> In his book *The Ethics of Care and Empathy* Michael Slote puts forward a version of the ethics of care in which he claims that women are in general more empathic than men. To support this claim he appeals to scientific research that suggests that because men have more testosterone than women they are more likely to be aggressive and less empathic.

Why is this politically risky? I argue that there are two major ways in which Slote's use of these generalisations - generalisations about the natures of men and women - is problematic. First, his account suggests that men are not fully responsible for aggressive actions. Second, it could be used to argue that women should be confined to societal roles which require empathy i.e. the caring roles with which women have traditionally been associated. Slote himself acknowledges the first worry and considers what his view would mean for the moral culpability of men:

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<sup>12</sup> Carol Gilligan's *In A Different Voice* (1982) has influenced many philosophers who have worked towards developing an ethic of care. Gilligan, a developmental psychologist, suggests that the male moral voice is distinctively different to the female moral voice. When women engage in thinking about particular moral problems they are more concerned with the context in which the problem occurs and the actual relationships which exist between those involved. By contrast, Gilligan claims, when men reason about particular moral problems they are more likely to do so by appealing to abstract principles and individual conscience. The alleged difference between the male and female moral voice is often characterised as the distinction between justice and care (where these two things are often taken to be incompatible). The language of justice emphasises the role of rights and principles whereas the language of care emphasises the role of relationships and responsibilities. Theorists working in the ethics of care tradition, then, seek to elevate the role, value, and practice of care in our moral thinking. For more on the ethics of care see, for example, Noddings (1984); Kittay & Meyers (1987); Held (2006); Engster (2009).

The literature on testosterone and human behavior indicates that autistic (including Asperger’s syndrome) males are incapable of empathy and have even higher testosterone levels than typical males. Since we are inclined to excuse the moral failings of autistic people, don’t we then have reason, though to a lesser extent, to excuse the moral failings of men generally? If we do, an ethics of care might hold men to be less morally responsible or accountable than women.

(Slote, 2007: 23)

Slote’s response to the worry is to suggest that men should feel relieved that their aggressive behaviour has a scientific explanation which provides them with a kind of ‘moral excuse’. Moreover, if women feel as though they have drawn the short straw since they are, on this view, to be held more morally accountable for their actions than men, then they can take solace in the fact that they are morally superior to men. I suspect that, despite Slote’s optimism, many people will not find solace in these remarks; I, for one, certainly do not.

The trouble with these types of generalisations, that is, generalisations that suggest that there are innate psychological differences between men and women or racial differences in IQ, is that although some empirical evidence may support them, they are politically risky because they involve categories that are politically loaded. Both ‘sex’ and ‘race’ are social categories that have been used to the detriment of particular groups. For example, historically women across many cultures have been regarded as subordinate to men. This has been reflected in, among other things, women's limited legal status and their restricted employment opportunities. My reader need only call to mind the gender inequalities that I detailed in Section 2.1 to appreciate the scale and gravity of the discrimination and oppression that women across the globe face because they are women. For that reason, any claim which suggests that there are innate differences between men and women requires considerable critical scrutiny since categorising people in these ways has, in the past, been harmful to those individuals who identify as, or who have been identified as, women.

Slote’s appeal to research on the innate difference between men and women’s capacity for empathy relies on politically risky generalisations because it reinforces traditional stereotypes about men and women’s behaviour and abilities. One could interpret his account as suggesting that while men are aggressive and dominant, women - the more caring, compassionate, and sensitive of the sexes – should invest their time and efforts in social roles which will make the most of their empathic natures. These stereotypes about men and women have been challenged by many for being harmful to both men and women. In particular, feminists have fought to show that these stereotypes are not only unrepresentative of many women but they are harmful to women because they can place constraints on what women need, want, or what they can be.<sup>13</sup> This means that we ought to be especially wary of views that are founded on generalisations that have the potential to be harmful because they trade on stereotypes that have been harmful to particular groups in the past.

However, all that said, I am not suggesting that there are no innate differences (though there may in fact not be) but merely that given that the categories 'men' and 'women' have a history of being damaging to both men and women, generalisations that trade on these categories may be politically risky. It might be the case that a convincing body of evidence emerges in support of Slote’s view,<sup>14</sup> but I would argue that generalisations about men and women, when formulated and utilised in social contexts marked by gender inequality, will continue to be politically risky.<sup>15</sup> More generally, I think that when members of a social group

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<sup>13</sup> See, for example, Bartky (1990 esp. Ch. 7); Chambers (2008); Millet (1971); Okin (1989a).

<sup>14</sup> Though Slote appeals to a range of scientific studies to support his claim, there are good reasons to find his arguments less than convincing. For an excellent critical evaluation of the research used by Slote and others to suggest that women are by nature more empathic than men see Cordelia Fine’s (2010) *Delusions of Gender: The Real Science Behind Sex Difference* (esp. Chapters 1 and 2). Fine mounts a compelling challenge to badly executed science, poor interpretation of science and what she terms the ‘neurosexism’ (sexism supported by neuroscience where differences between the sexes are attributed to differences in male and female brain function) that it feeds. Also see Rebecca Jordan-Young (2010) who demonstrates why most of the science used to support gender stereotypes and roles is flawed.

<sup>15</sup> However, I believe that one could use some of the empirical evidence that Slote appeals to without trading on harmful stereotypes. For example, it is unclear why Slote chooses to make use of the idea that *women* in general are more empathic than *men*. It would perhaps be better for his approach (assuming that the science is right) to suggest that an *individual’s* testosterone may affect their capacity for empathy. It just so happens that men, in general, have higher testosterone levels but there are some women who have testosterone levels higher than some men, and some men who have a greater capacity for empathy than some women. Talking about the issue in more

are oppressed because of their group membership, generalisations about that group should be taken, in the first instance, as politically risky and subject to close critical scrutiny.<sup>16</sup>

Before I go on to examine the notion of political utility, I want first to sum up what I have said here about generalisations and political risk. The motivation for including this idea in the criteria by which we should assess the acceptability of generalisations is that many of us are not in a position to evaluate the empirical evidence often used to corroborate generalisations. Considering the political risk of a generalisation gives us a way of evaluating those general claims that are seemingly evidenced by scientific research without having to be in a position to evaluate the research itself.<sup>17</sup> When generalisations are made about social groups in circumstances where members of those groups are oppressed because of their group membership, we must be alert to the fact those generalisations may be politically risky. Indeed, we must treat such generalisations as *prima facie* politically risky until we are sufficiently satisfied that they do not work to the detriment of the groups to whom they apply. At this stage it is likely that the empirical evidence used to support risky generalisations will have to be evaluated and this will be a task beyond the capabilities of many of us who do not have the necessary scientific training. However, until the evidence and the interpretation of that evidence have been subject to close critical scrutiny the feminist

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general human terms captures the fact that there is not a straightforward divide between the sexes and it avoids the worry about reinforcing traditional stereotypes. All that said, we should note that the generalisation may be empirically faulty (see Fine, 2010) and thus inadequate.

<sup>16</sup> I do not have the space to develop a theory of oppression but borrowing from Ann Cudd, whose account I find plausible, I am taking it that “oppression names an objective social phenomenon which is characterized by

1. *the harm condition*: individuals are harmed by institutional practices (e.g., rules, laws, expectations, stereotypes, rituals, behavioral norms);
2. *the group condition*: individuals suffer harm in (1) because of their membership (or perceived membership) in a social group;
3. *the privilege condition*: there is another social group that benefits from the institutional practice in (1);
4. *the coercion condition*: there is unjustified coercion or force that brings about the harm.

(Cudd, 2005: 23)

<sup>17</sup> Given that there may dispute among scientists about the empirical evidence gathered through scientific methods, I would suggest that they also consider the ways in which the disputed research is politically risky.

cosmopolitan ought to avoid appealing to generalisations supported by that empirical research.

#### *5.4C POLITICAL UTILITY EXAMINED*

Having considered the notion of political risk, I now look to develop the notion of political utility. In short, I take it that a generalisation is politically useful insofar as it is useful to the political agenda being pursued. This brings two worries immediately to mind. First, people with objectionable political agendas may try to justify the use of harmful generalisations because they are politically useful to them. Second, one might wonder just how useful very general claims about women can be. I will consider each of these objections in turn.

The first worry has to do with those setting the political agenda. Consider, for example, a white supremacist who argues that all black people are lazy and that this generalisation is useful to their political agenda and hence justified. Importantly, this move is blocked because the generalisation that they have in mind does not meet the criteria that I outlined earlier. This generalisation is simply false. However, imagine a slightly different case where the white supremacist argues that generalisations about racial differences in IQ are useful to their political agenda and hence justified. Further imagine that the white supremacist appeals to empirical evidence, of the sort discussed in the previous section, to support their general claims. This time their attempt to justify the use of problematic generalisations is provisionally blocked by my inclusion of the notion of political risk into the criteria. If a generalisation is *prima facie* politically risky, it must be subject to close critical scrutiny regardless of how politically useful it may be to the agenda being pursued.<sup>18</sup> This goes for both feminist cosmopolitans and white supremacists alike.

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<sup>18</sup> The blocking of politically risky generalisations will not always be permanent. For example, once one has subjected the generalisation in question to close critical scrutiny, one may find ways to rearticulate the claim without making reference to problematic social categories or stereotypes. In addition, one may decide that the social benefits of the generalisation outweigh its political riskiness. However, there are likely to be many politically risky generalisations that must be permanently avoided due to the fact that they rely on insufficient or flawed evidence, or because the harm that they do to oppressed groups outweighs their political utility.

The second worry has to do with how politically useful acceptable generalisations can be. The thought here is that the kinds of generalisations that can meet the criteria that I have been developing are too vague to do any real work. To get a handle on the problem recall Narayan's example of a politically useful generalisation:

Women continue to be discriminated against all over the world as regards the recognition, enjoyment, and exercise of their individual rights in public and private and are subject to many forms of violence.

One might question the utility of this claim on the basis that it actually says very little; the statement is very general and it is difficult to see how it can be used to inform principles of global justice and practical policy proposals. The question then is why it is important to defend generalisations that appear so vague that it is difficult to see how they can be of any use to the feminist agenda. At this point I think it is worth restating why general claims are necessary to the feminist project being pursued here. In order to be able to address gender injustice a feminist cosmopolitanism needs to be able to make generalisations about the situation of the world's women. Moreover, a feminist cosmopolitanism can only adequately attend to gender injustice if we are in a position to identify and analyse the patterns of injustice that affect women as a group. This process will inevitably involve making general claims about women's experiences because of the systemic nature of sexism.

## **5.5 SUMMARY**

In this chapter I have identified three key aspects of the feminist rejection of generalisations. In light of that discussion, I outlined some basic criteria for assessing general claims about women. Despite Okin's optimism that generalisations supported by sensitive and well-researched empirical evidence must be acceptable, I believe that the problem does not go away. My suggestion is that we add a further condition that demands that we assess the acceptability of generalisations by considering how politically risky they are. I have expanded on

Narayan's brief remarks in an attempt to flesh out what it means for a generalisation to be either politically useful or politically risky. The upshot of this chapter is the following criteria against which we should assess the acceptability of generalisations:

- (1) Generalisations that are meant to apply to all women ought to be inclusive of all women.
- (2) When we make generalisations about the experiences of all women we ought to take care that the experiences of the most marginalized women are included.
- (3) Generalisations should not falsely represent the experiences of women. We should be particularly aware of this when generalisations are being made about individuals who are not part of the group making the generalisation.
- (4) Generalisations should be able to accommodate the differences between women.
- (5) Generalisations must be empirically corroborated.
- (6) Politically risky generalisations should be subject to close critical scrutiny. Such generalisations must be avoided until we are satisfied that they do not work to the detriment of the oppressed group to whom they apply.

I do not think that we can fully avoid the pitfalls associated with making generalisations about women's experiences, but given that general claims are essential to most feminist projects, including this one, we need some way of avoiding as many instances of bad generalising as is possible. Hopefully the criteria outlined above will help us to do just that; simultaneously enabling the feminist cosmopolitan to appeal to general claims in their theorising about global justice while also attempting to preclude, as far as possible, problematic generalisations.

## FEMINISM, COSMOPOLITANISM, AND THE PROBLEM OF CULTURAL IMPERIALISM

In this chapter I continue my defence of feminist cosmopolitanism. In the previous chapter I considered the worry that some feminists might have with advocating a position that necessarily makes use of general claims about the condition of the world’s women. Here I will consider the potential objection that a feminist cosmopolitan approach to global justice is a form of Western cultural imperialism. The wrong of cultural imperialism, as I understand it here, is that norms expressing the viewpoint and experience of privileged groups are imposed upon oppressed and marginalized groups and “the oppressed group’s own experience and interpretation of social life finds little expression that touches the dominant culture” (Young, 1990: 60). This is so even when the norms of the dominant and privileged groups are alleged to be impartial and universal in their application.

I will begin, in Section 6.1, by distinguishing the problem discussed here from the worry discussed in the previous chapter. Essentially, the key difference between the two objections is that one is a concern about *descriptive* general claims and the other is a concern about *normative* universal claims. Following this I show, in Section 6.2, why objections to normative universal claims represent a challenge to feminist cosmopolitanism. My chief motivation for considering this objection is that the feminist position that I am advancing in this thesis has much in common with those of other feminists who have been accused of cultural imperialism.<sup>1</sup> In Section 6.3 I will set out three ways of understanding the objection that a feminist cosmopolitanism represents a form of cultural

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<sup>1</sup> Many Third World, postcolonial, and postmodern feminists have accused Western feminist theorists of being cultural imperialists. (I remain unconvinced about the helpfulness of these labels but I use them as they are commonly employed in the literature.) See, for example, Al-Hibri (1999), Flax (1992, 1995), Mohanty (1988), and Lugones & Spelman (1983).

imperialism. I will argue that the first two ways of interpreting this objection are both internally incoherent and rest on flawed understandings about the nature of culture. However, I will suggest that the third interpretation of the objection represents a legitimate challenge to my view. Ultimately I cede that any feminist cosmopolitan approach to global justice, while not *culturally* imperialistic, is committed to the global application of principles of distributive justice and the values expressed by those principles. Consequently, Section 6.4 provides some reasons, further to those given in Chapters 3 and 4, for why a feminist cosmopolitanism is best placed to meet the feminist aims outlined in Chapter 2. Thus, I contend that insofar as a feminist is committed to those aims, they should (and can without being imperialistic) adopt a cosmopolitan approach to justice.

## 6.1 THE PROBLEM

The charge of cultural imperialism is often run together with the objection that we cannot make any general claims about peoples' experiences. This is largely because some who reject generalisations (and, more broadly, universal claims) do so in order to avoid cultural imperialism. Conversely, those who defend the use of generalisations sometimes do so on the grounds that such claims are not instances of cultural imperialism.<sup>2</sup> However, I want to clearly distinguish between the objection considered in the preceding chapter and the charge of cultural imperialism. There are at least two reasons for thinking that these two charges are different and I take these reasons to suggest that any adequate defence of feminist cosmopolitanism must recognise and meet both objections.

First, the crux of the objection considered in the previous chapter was that we cannot make acceptable generalisations about women's experiences because how we come to those generalisations will be deeply affected by our own unique perspective on the world. That is, because each of us is restricted to our own limited viewpoint, any attempt to generalise out from that perspective is doomed to be inaccurate and insensitive to the differences between individual women.

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<sup>2</sup> These two views are evident in the exchange between Okin (1994a, 1995) and Flax (1995).

Importantly, I believe that the type of generalisation that was the focus of Chapter 5 is different from that considered in this chapter. I take the main target of the critic in Chapter 5 to be *descriptive* generalisations and the evidence used to support them. A paradigm example of the sort of generalisation under attack in the last chapter is Okin's claim that in certain circumstances "the situation of poor women in poor countries is not qualitatively *different* from that of most women in rich countries but, rather 'similar but worse'" (Okin, 1994a: 11). Okin's claim is a descriptive generalisation: it is describing the situation of women in the world and the lack of specificity about which women makes it a fairly general claim. The critics discussed in Chapter 5 are addressing this type of generalisation when they speak of our inability to conduct and interpret empirical research without it being biased by our own particular perspective. Though it is true that the objection explored in Chapter 5 has implications for our ability to form *normative* generalisations - because the more adequate normative generalisations will be informed by well-evidenced descriptive generalisations - I take it that the focus is in fact on those that are descriptive.

By contrast, I take the charge of cultural imperialism to be concerned with *normative* generalisations. Normative generalisations are general claims that tell us how things *ought* to be. Consider, for example, human rights as they are currently recognised. In the Universal Declaration of Human Rights (UDHR) the first sentence of Article 7 is that "All are equal before the law and are entitled without any discrimination to equal protection of the law". Here we have a general claim about the status of all human beings and what they ought to be entitled to. Importantly, whereas the descriptive generalisations do not place demands on us, normative generalisations do: they are prescriptions for how we ought to act in the world.

Why is this distinction between descriptive and normative generalisations important? Well, for the critics in Chapter 5 it is not just the generalisations that tell us how we ought to act that are flawed, but also the generalisations that merely *describe* peoples' experiences. That is a slightly different worry to the one I anticipate here. For the opponent that I am now addressing, certain

generalisations should be rejected because they represent a form of cultural imperialism. To be clear, this critic views generalisations as problematic because of how and what they *prescribe*. The difference, then, between these two objections can be seen as a shift in focus from thinking about *descriptive* generalisations to *normative* generalisations. The type of generalisation that worries those concerned about cultural imperialism is not descriptive. I take it that the anti-imperialist is concerned chiefly with normative generalisations because one must be doing something more than just providing a description if it is to count as an imperialistic imposition.<sup>3</sup>

The second reason I have for thinking that there is a difference between the objection raised in Chapter 5 and the charge of cultural imperialism is that those who allege that certain values or norms are instances of Western cultural imperialism do not have to be committed to the thought that there can be no acceptable generalisations about people. It is likely that people who have strong feelings about their own cultural values, and who seek to protect them from the perceived threat of Western values, will still be committed to general claims within their own cultural context. For, example they may believe that *all* women should cover their hair in public. By contrast, many of the critics discussed in Chapter 5 are sceptical about our ability to formulate any acceptable generalisations concerning women's experiences.

I believe that these reasons provide sufficient grounds for thinking that the concerns discussed in the previous chapter and the charge of cultural imperialism should be addressed separately. In the next section I will explain why a feminist cosmopolitan might be vulnerable to the charge of Western cultural imperialism.

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<sup>3</sup> This is not to suggest that the anti-imperialist is only concerned with normative generalisations. Indeed they may also be troubled by descriptive generalisations (for reasons similar to those discussed in Chapter 5) and the two worries may be related. However, I think it would be misguided to see the formulation of descriptive generalisations as culturally imperialistic. To repeat, descriptive generalisations merely describe they do not prescribe and hence should not be taken as requiring certain ways of being. Even when used to support normative generalisations, the descriptive claims should not be viewed as expressions of cultural imperialism in themselves.

## **6.2 WHY A FEMINIST COSMOPOLITAN MIGHT BE ACCUSED OF CULTURAL IMPERIALISM**

Most obviously, cosmopolitan approaches to justice are global in scope and recommend principles of justice that are to be recognised by all and universally applied regardless of where one might happen to live. That is, cosmopolitan approaches advocate normative universal principles. Any view that proposes the universal application of normative principles must address the challenge of cultural imperialism since not everyone will agree with the principles and values being pursued. Moreover, since it could be argued that any given cosmopolitan principle of global justice originates in a particular cultural context, the onus is on the feminist cosmopolitan to show why the principles that they recommend do not represent a form of cultural imperialism.

In addition, the feminist cosmopolitan agenda being pursued in this thesis shares much with the liberal tradition. It is committed to the freedom and equality of women worldwide and the protection of women's rights and liberties. Though I have argued that this project should appeal to feminists other than those who identify as liberal feminists (Section 2.2), I recognise that the type of project that I am engaged in is vulnerable to some of the objections directed against liberal feminism in general. For instance, Seyla Benhabib notes that "theorists like Okin and Martha Nussbaum who raise liberal concerns about women's equality and rights in multicultural contexts are accused of Eurocentricism, imperialism, patriarchal feminism, or simply arrogance, ignorance, and insensitivity vis-à-vis other cultures" (Benhabib, 2002: 101). Importantly, many of those critical of Nussbaum and Okin (including Benhabib herself) are themselves working within the feminist tradition so if I am to get those feminists on board with my project I must address their reservations.

It is worth reiterating that the charge of cultural imperialism is often run together with other worries to do with general claims. I am hopeful that I have already satisfactorily shown how a feminist cosmopolitan can avoid formulating or using

offensive or empirically false generalisations. Consequently, I believe that because some critics misapply the charge of cultural imperialism I have perhaps by this time responded to many of their concerns. However, the charge of cultural imperialism remains a separate point and to see why some feminists might be suspicious of the kind of feminist cosmopolitanism that I am arguing for let us consider two examples of values that a feminist cosmopolitanism will necessarily express but which may seem undesirable to others.

First, as we saw in Chapter 1, at the heart of the cosmopolitan standpoint is a set of universal claims about the moral status of all human beings. Of significance to us here is that cosmopolitanism commits us to idea that *individuals* are the primary units of moral concern and that each of us is equal in moral worth. In Section 1.5b where I argued that Nussbaum's capabilities approach should be viewed as a cosmopolitan approach to global justice, we saw that integral to her account is the thought that persons are the ultimate subjects of justice and each person is an end in themselves. However, Nussbaum acknowledges that liberal feminists have often been criticised for promoting individualism (Nussbaum, 1999: 59-67; 2000: 56). What is more, Nussbaum tells us that a commitment to the principle of each person as an end has been perceived as a uniquely Western idea:

It has been claimed by Veena Das that even this very intuitive idea that each person has her own dignity and that questions of well-being should be considered one by one, rather than in aggregate, is a Western intrusion: Indian women are simply unable to form the concept of their own personal well-being as distinct from the well-being of family members.

(Nussbaum, 2000: 56)

I return to this dispute between Das and Nussbaum in Section 6.4 but for now it will suffice to note that the individualism inherent in cosmopolitanism makes the feminist cosmopolitan vulnerable to the charge of cultural imperialism.

The second example that I would like to consider is that of human rights. My reason for choosing human rights is twofold: (1) human rights are a set of universal norms which have often been described as an instance of Western

cultural imperialism;<sup>4</sup> and (2) many cosmopolitans are committed to human rights as they are currently recognised in human rights documents. The anti-imperialist's objection to human rights is directed at the underlying assumption that human rights are universal. This assumption, it is claimed, ignores the specific social and historical context from within which the concept was generated. In its strongest form the objection contends that human rights are exclusive to the Western liberal tradition and that to extend them globally would be to impose unfamiliar ideals in an imperialistic fashion.<sup>5</sup>

While few feminist theorists are committed to this strong claim, there continues to be much dispute among feminists about the nature of human rights and how they ought to be interpreted.<sup>6</sup> Jill Marshall notes that there is a “general suspicion of a search for universalism and abstraction in law: feminist legal scholars have highlighted and critiqued the gendered dimension of such an approach. [...] Criticisms of rights have taken a variety of forms with rights being seen as too individualistic, reinforcing existing power imbalances, failing to account for women's experiences and focusing too much on the public sphere” (2009: 87). Furthermore, many feminists are troubled by theories which they feel over-emphasise the importance of rights and justice and subsume the whole of moral theory into the discourse of rights and justice.<sup>7</sup> Importantly, these theorists argue that there are other important values besides justice that are more suitable for addressing many of the social challenges that we face and that there are different ways of theorizing about morality.

All this suggests that it is likely that some feminists will take this project, because of its focus on substantive equality, free choice, and respect for women's rights

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<sup>4</sup> See, for example, Pollis & Schwab (1979). Also, in what has come to be known as the Asian values debate, many academics and government officials have attacked human rights for being a purely Western construct. I will return to this in Section 6.3c.

<sup>5</sup> In Chapter 3, Sections 3.3 - 3.3e, of this thesis, we saw something similar to this view, though not as strong, expressed by John Rawls. Recall that Rawls rejects current declarations of human rights for being parochially Western. However, as discussed before, Rawls does not think that human rights should be fully rejected but he instead recommends a more minimal set of universal human rights that he believes can be endorsed by the global community.

<sup>6</sup> Many feminists of various stripes have criticised dominant conceptions of human rights and the universalism that underpins them. See, for example, Schneider (1986) and Smart (1989).

<sup>7</sup> See Held (2000, 2006).

and liberties, to be yet another instance of Western or patriarchal cultural imperialism. While I cannot hope to satisfy all of their concerns, in the rest of this chapter I endeavour to show that a feminist cosmopolitanism is not an instance of cultural imperialism.

### **6.3 THE FEMINIST COSMOPOLITAN RESPONSE**

Given that those who might accuse the cosmopolitan of cultural imperialism may do so for different reasons, I will consider three different interpretations of the objection. My aim is to demonstrate that while the first two interpretations are incoherent, the third poses a legitimate challenge that the feminist cosmopolitan must address.

#### **6.3A COSMOPOLITANISM IS A FORM OF CULTURAL IMPERIALISM:**

##### ***CLAIM 1***

*(C1) There can be no universal principles of justice because there is no such thing as a universal value. Values are context-specific, which means that they originate in particular cultural contexts and hence are relative to, and can only apply to, the culture in which they originate. Since there are no universal values, there is no objective standard by which societal codes can be judged which means that no societal code is superior; each is just one among many.*

##### ***UNDERSTANDING (C1)***

The proponent of this view rejects all universal values. (C1) is informed by the idea that values are relative to the culture from which they spring. That is, proponents of (C1) are extreme cultural relativists since they argue that moral values cannot be universal in scope because each cultural group has its own values and standards of what is right. Even if, by chance, all cultural groups were

to agree that a certain value was important, say, equality for example, the ‘pseudo-universality’ of the value of equality would be entirely contingent upon whether all cultural groups happen to accept it. Though all cultural groups may have agreed yesterday that equality was an important value (and they had a shared understanding of what was meant by equality), and therefore one might be tempted to say that equality is a universal value, it is important to note that the view expressed by (C1) suggests that should any cultural groups change their mind tomorrow about the value of equality, then it will no longer be a value which applies to all people, and not therefore universal. Values are only relevant in situations where people take them to be so.

A person endorsing the type of cultural relativism expressed in claim (C1) acknowledges that others in cultures different from their own will likely have values and an understanding of what is right and wrong which differs greatly from their own. However, the emphasis placed on the context specificity of values means that proponents of this view recognise that the ways in which others rank and prioritise certain values is as legitimate as their own. That is, there can be no set of values that trumps another since it is acknowledged that they all originate in widely disparate cultural contexts and are thus equally legitimate. Since all normative standards of morality are culturally relative, they are all equally legitimate and equally deserving of respect. Consequently, no one culture should try to impose its values on another because to do so would not only be intolerant but it would wrongly assume that its cultural background was in some way superior to that of others.

Having established what is meant by the attitude expressed in (C1), we are now in a position to see why a person who holds this view will reject a cosmopolitan approach to global justice. A feminist cosmopolitanism relies on universal values and principles, which, for the holder of (C1), do not exist. These values, such as the value of equality, are not universal since they are only supported in certain cultural contexts. Thus, the value of equality can only be applied in those cultures that already hold it to be an important value. A cosmopolitan account that expresses universal values and advocates the universal application of principles of

distributive justice is misguided because it falsely asserts that there can be universal values. It is, therefore, intolerant because it assumes that one normative standard of morality is superior to all others. Thus, any attempt to realise a cosmopolitan account of global justice through the administering of universal principles will be an instance of cultural imperialism: one culture attempting to impose its values and norms on another.

### ***REJECTING (C1)***

On the face of it the view expressed in claim (C1) is appealing because it is tolerant of the views of others; however, it is problematic for several reasons.

Let us start with the idea, implicit in (C1), that cultures represent monolithic homogenous groups, which map on to state boundaries. The fact that ‘cultures’ are not static, bounded, or internally uniform entities, is a problem for proponents of this strong cultural relativist thesis. Those who want to reject universal principles of global justice while maintaining that there are principles that apply within their own cultures, gloss over the fact that cultural groups already contain considerable diversity. When they claim that universal principles are only acceptable in the cultural context within which they were generated what exactly do they mean? If proponents of (C1) mean that principles applied within the context of a cultural group are acceptable because all who are affected by them share the same values, then this surely cannot be right. There is no society in the world that is unaffected by political disputes between citizens – there will always be a conflict about which values should be prioritized in particular instances.<sup>8</sup>

Moreover, if the prescribed ‘home-grown’ principles are formulated and enforced by a dominant minority in a cultural group, what reason do we have to think that they are acceptable to all those who are subordinate? One might respond by arguing that when principles are founded on religious doctrine they are acceptable

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<sup>8</sup> See Narayan (1997, Ch.1) for a discussion on political disagreement in third-world national contexts about what constitutes ‘inappropriate westernisation’. Importantly, Narayan’s discussion highlights the fact that there are feminists in all societies actively challenging dominant attitudes, norms, and conceptions of what is valuable. This plainly shows that there is no society in the world where there is across-the-board agreement on matters of value.

to all of the followers within the corresponding religious society. However, this response rests on the unlikely claim that there is a correct and undisputed interpretation of religious texts. Given the diversity and disagreement within cultural groups, we have little reason to believe that the dominant values are shared and agreed to by all, especially when a small minority imposes those values.

The take home point is that (C1) rests on a flawed understanding of culture. Benhabib argues that unsound epistemological assumptions about culture, similar to those that underpin (C1), form a ‘reductionist sociology of culture’ (Benhabib, 2002: 4). She goes on to illustrate what is wrong with such a view by citing the following passage from Terence Turner:

[a reductionist sociology of culture] risks essentializing the idea of culture as the property of an ethnic group or race; it risks reifying cultures as separate entities by overemphasizing their boundedness and distinctness; it risks overemphasizing the internal homogeneity of cultures in terms that potentially legitimize repressive demands for communal conformity; and by treating cultures as badges of group identity, it tends to fetishize them in ways that put them beyond the reach of critical analysis.

(Turner, 1993: 412)

Hence, understanding culture in a way similar to that expressed in (C1) gives you an empirically unsound foundation upon which to base a normative theory. Theorising that starts from a conception of culture as fixed, bounded and internally self-consistent is likely to yield the unacceptable theoretical consequences detailed by Turner as well as innumerable falsehoods about cultural groups and practices. As a result, we must, if we are to avoid such a problematic view of culture, think of culture in more flexible ways as complex, dynamic, fluid, unbounded, contested, changing, and shaped by innumerable forces.<sup>9</sup>

A further reason to be sceptical about (C1) is that it is unclear why we should take the fact that standards of morality originate in different cultural contexts to suggest that one standard cannot be better than another. I briefly touched on this

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<sup>9</sup> For an excellent critical discussion of the use of ‘culture’ in normative political theory and the literature on multiculturalism see Phillips (2010, esp Ch. 4).

issue in Chapter 3 (Section 3.3a) where I considered Rawls's attempt to restrict human rights to a more minimal conception. There I suggested that even if a set of values and ideas does originate from a particular cultural context that alone does not entail that they should not, or could not, be promoted globally. This is because understanding where an idea has originated from says nothing about the scope, relevance, applicability and value of that idea.

Finally, and perhaps most importantly, (C1) is self-contradictory. Consider the second half of the claim: 'since there are no universal values, there is no objective standard by which societal codes can be judged which means that no societal code is superior; each is just one among many'. That no one societal code is superior, and no objective standard exists by which to judge societal codes, implies a doctrine of toleration. However, the defender of (C1) cannot simultaneously be committed to the claim that there are no universal principles, and yet maintain that there is a universal principle of toleration.<sup>10</sup>

Now, a defender of (C1) might deny that they are committed to a principle of toleration. They may, instead, reassert that values are context-specific and insist that this says nothing about whether or not alternative sets of values must be tolerated. But this would be a curious move to make. Remember the defender of (C1) would reject a feminist cosmopolitanism because such a view advocates the application of universal principles and that this application would represent a form of cultural imperialism. However, if they are not committed to a universal principle of toleration, then the claim no longer says anything about the wrong of cultural imperialism. A feminist cosmopolitan might then respond by asking why it would be wrong to impose their values on others?

In the next section we will consider a similar, but slightly different claim.

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<sup>10</sup> This argument is a common objection to cultural relativism and has been made in numerous places, for an example, see Zechenter (1997).

**6.3B COSMOPOLITANISM IS A FORM OF CULTURAL IMPERIALISM:  
CLAIM 2**

(C2) *There can be no universal principles of justice because there is no such thing as a universal value. Values are context-specific, which means that they originate in particular cultural contexts and hence are relative to, and can only apply to, the culture in which they originate. Since there are no universal values, there is no objective standard by which societal codes can be judged which means that no societal code is superior; each is just one among many. However, it is often the case that particular principles and norms that apply in specific cultural contexts involve a commitment to the universal 'truth' or 'rightness' of the values that they express.*

**UNDERSTANDING (C2)**

The proponent of (C2), as with (C1), rejects the idea that there can be universal moral principles that apply to all human beings. Moreover, they believe that moral principles and values only apply within the culture that they originate. However, (C2) differs from (C1) in that proponents of (C1) deny outright that there are universal principles, values and norms whereas proponents of (C2) admit that though principles and norms may be context-specific the content of those principles may involve a commitment to the *universal* 'truth' or 'rightness' of the values that they express.

To help make the contrast clearer consider the following example: Take Oliver who has an attitude similar to that stated in claim (C1). Oliver believes that all moral values and principles are relative to the cultural contexts in which they originated. For Oliver no standard of morality is superior to any other and he believes that the normative standards adopted by others are due the same respect as his own. Now consider Sophie who holds an attitude similar to that expressed in claim (C2). Sophie too believes that all moral values and principles are relative

to the context in which they originate. Moreover, Sophie also thinks that standards of morality different from her own ought to be respected and that it would be wrong for one group to try to impose their values on another. However, Sophie differs from Oliver because many of the principles and norms that Sophie adheres to involve a commitment to universal ‘truth’ or ‘rightness’ of the values that they express. For instance, Sophie believes that social harmony can *only* be achieved if people respect and obey their superiors, which means that children must obey their parents and wives their husbands.

### ***REJECTING (C2)***

The reason that I have separated claim (C1) out from claim (C2) is that while (C1) represents a general cultural relativist thesis, (C2) more accurately describes what is going on when people internal to a particular culture appeal to cultural relativism to reject the values of others with whom they disagree.

The most obvious problem with (C2) is that it is incoherent. Those who appeal to (C2) are committed to the idea that no societal code is superior to any other while at the same time adhering to principles and norms that involve a commitment to the universal ‘truth’ or ‘correctness’ of the values that they express. In addition, aside from the thought that it is implicit in the content of many norms and principles that they are universally true, (C2) is essentially (C1) and so falls prey to the criticisms I raised against the first claim.

At this point one might wonder what, if any, virtue there is to considering this further claim. The reason that I believe that (C2) is important is that it shows that there is something inherently problematic with the cultural relativist thesis characterised in (C1). As Nussbaum notes,

[...] normative relativism is self-subverting: for, in asking us to defer to local norms, it asks us to defer to norms that are in most cases strongly nonrelativistic. Most local traditions take themselves to be absolutely, not relatively true. So in asking us to follow the local, relativism asks us not to follow relativism.

(Nussbaum, 2000: 49)

The basic thought, then, is that the proponent of (C1) maintains that no system of morality is superior and that people should follow the values that have originated in the cultural context in which they live since they are the only values that can be legitimately applied in that domain. However, as Nussbaum notes, the problem with (C1) is that it undermines the status that many cultural relativists do in fact give to their chosen system of morality. When a person asserts that it would be wrong for one to impose their values on to another because all values are context-specific and no set is superior to another, they often do not abandon the conviction that the set of values and norms that they adhere to are the right ones. However, as (C2) demonstrates when we state this view explicitly it is simply incoherent.

Proponents of either, or both, of the first two claims that I have considered are resistant to cosmopolitanism because they hold the thesis that moral values and principles are culturally relative. Thus, because there are no universal values any attempt by members of one culture to impose their values on another represents a paradigmatic case of cultural imperialism. Since the feminist cosmopolitan advocates values and principles which they believe apply globally, their approaches will likely be met with the charge of cultural imperialism. However, as I have shown the cultural relativist position is not only undesirable but it makes little sense in light of a more accurate understanding of culture and what it is to hold a system of morality to be valuable.

**6.3C COSMOPOLITANISM IS A FORM OF CULTURAL IMPERIALISM:  
CLAIM 3**

The following claim, unlike the first two, is not based on cultural relativism but it still appeals to the idea that cosmopolitanism is a form of cultural imperialism:

*(C3) There are universal principles of justice, which can be applied to all human beings, but they are not the principles found in the accounts advocated by Western academics.*

### *UNDERSTANDING (C3)*

The proponent of (C3) rejects the values associated with cosmopolitanism and argues that cosmopolitan approaches to global justice represent instances of Western cultural imperialism. However, unlike the previous two opponents, the holder of (C3) insists that there can be universal values but that the cosmopolitan has the wrong ones. For example, in the 1990s Asian scholars and government officials attacked human rights in defence of the so-called Asian values thesis. Prominent figures like the Prime Minister of Singapore, Lee Kuan Yew, and the Malaysian Prime Minister, Mahathir bin Mohamad, argued that many of the fundamental values associated with the human rights tradition ought to be replaced with alternative 'Asian values' (Carter, 2001). The dispute between so-called 'Western values' and 'Asian values' hinges on the idea that human rights have their basis in a Western culture of rights, individualism, and liberty, which are both foreign to non-Western cultures and, perhaps more importantly, that undermine the value of community which some cultures take to be primary. It is further alleged that since human rights encapsulate a set of values of less importance to those in Asian societies, they are an inappropriate standard to apply to those societies.<sup>11</sup>

### *OVERCOMING THE CHALLENGE OF (C3)*

Since both the exponent of C3 and the feminist cosmopolitan advocate universal norms and principles, pointing to some inconsistency internal to C3 cannot solve the dispute. Moreover, the task of settling the conflict will take much more than I can endeavour to do here. However, in the following section I will provide some reasons that, while not conclusive, go some way to suggesting that the universal values central to a feminist cosmopolitanism do not represent instances of cultural imperialism, and that, moreover, they better equip us to address the cornerstone concerns of many feminists than rival views do.

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<sup>11</sup> For more on the Asian values debate see Bauer and Bell (1999) and Van Ness (1999).

## **6.4 WHY A FEMINIST COSMOPOLITANISM IS NOT A FORM OF WESTERN CULTURAL IMPERIALISM**

In this section I will advance a two-pronged strategy. The first ‘prong’ will recommend that we see the challenge of C3 not as alleging that feminist cosmopolitanism represents a form of cultural imperialism, but rather as a disagreement about the weight attributed to certain values and the normative principles that express those values. The second ‘prong’ of the strategy will involve providing reasons for why the universal values inherent to a feminist cosmopolitanism are to be preferred to others. In advancing this second line of argument, I will argue that the value of equality and the individualism of the cosmopolitan standpoint are better placed to address the core feminist aims outlined in Chapter 2.

### ***6.4A THE FIRST ‘PRONG’: A FEMINIST COSMOPOLITAN THEORY IS NOT A FORM OF WESTERN CULTURAL IMPERIALISM***

To start, recall my brief discussion about the nature of culture in Section 6.3a (Rejecting (C1)). There I drew on Benhabib’s rejection of views that rely on a reductionist sociology of culture and we saw that a more accurate conception of culture holds that cultures are fluid, changing, unbounded, contested and internally diverse. Given that the charge of cultural imperialism often relies on the more problematic understanding of cultures as static, clearly defined, unchanging, and internally uniform, we might question the legitimacy of the current objection. When my opponent alleges that the feminist cosmopolitanism that I advance here is just another instance of Western cultural imperialism, what do they really mean? What counts as ‘Western’, and can ideas inherent to a feminist cosmopolitanism be straightforwardly categorised as unique to ‘Western culture’?

There are several reasons to doubt that my opponent can offer satisfactory answers to these questions. For one, many people located in what is referred to as

the ‘Western’ world and who consider themselves to be a part of ‘Western’ culture contest the values of universal equality, rights and freedom of choice. The key thought here is that there is unlikely to be consensus among people residing in cultures typically regarded as ‘Western’ on values that are alleged to be ‘Western’. Part of the reason for this, as discussed earlier, is that cultures are not homogenous groups of people where each member shares in the same attitude about which values are important and why. There is much diversity among people regardless of whether they happen to have, for example, shared traditions, customs, language, history, political institutions or not. A good case in point is human rights. As we have seen, human rights are often heralded as being a uniquely Western concept that should not be globally imposed (Section 6.2 and Section 6.3c). However, although human rights enjoy much support in the so-called West (as they do elsewhere in the world) they have also been the source of much disagreement. There are many instances where individuals, private corporations, non-governmental organisations, nation-states,<sup>12</sup> supranational organisations, international organisations, and other political entities, have clashed over how human rights should be understood and who is entitled to what.

Conversely, many people located in societies that they, and others, consider outside of the ‘West’ do in fact endorse the values of equality, rights, democracy and liberty. For example, both Nussbaum and Sen detail the ways in which ideas central to the capabilities approach are manifest in many cultural traditions, both past and present, outside of the ‘West’ (Nussbaum, 2000: 71-83; Sen, 2006; 2010a). Sen in particular is keen to illustrate the ways in which ideas typically labelled as Western pervade Indian history. Chris Brown eloquently summarises Sen’s work in the following:

Sen has argued that, contrary to the stereotype of Indian culture as spiritually-oriented and mystical (and therefore unconcerned with issues of social justice), there are strong Indian philosophical traditions that stress the importance of rational argument and the value of tolerance. Classic Sanskrit texts such as the *Laws of Manu* and the *Bhagavad Gita* are as

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<sup>12</sup> For instance, the UK government has clashed with the European Court of Human Rights (ECtHR) over prisoner enfranchisement. Under UK law prisoners do not have the right to vote in domestic elections or European parliamentary elections. However, the ECtHR ruled in 2005 that the UK law breached the European Convention on Human Rights. The issue is yet to be resolved. For more on this see Amos (2012).

illuminating on the subject of justice as most works within the Western canon, and rulers such as Ashoka and Akbar were considerably more tolerant and rational than their Western contemporaries. Sen is a strong supporter of so-called Enlightenment values, but he resists the idea that these values are necessarily tied to Western ways of thought. Reason, justice, and liberty are not uniquely Western ideas that the rest of the world are invited to acknowledge and adhere to; they are part of the common heritage of humanity. In this, his position contradicts Western triumphalism but also the kind of post-colonial theory that denigrates these notions as the product of Western imperialism.

(Brown, 2010: 311)

Although it might be claimed that Sen and Nussbaum are looking to defend projects different from mine, our starting points are similar enough that I can reasonably co-opt their arguments in support of the claim that a feminist cosmopolitanism does not represent a form of cultural imperialism (especially granting my argument in Chapter 1 that Nussbaum's capabilities approach is a cosmopolitan account of global justice). That is, a feminist cosmopolitanism is not culturally imperialistic because the values of equality, liberty, justice and democracy are not uniquely 'Western'.

I am hopeful that these observations have served to undermine the charge of cultural imperialism expressed in (C3). Here I have demonstrated that the charge of cultural imperialism rests on a flawed understanding of culture that draws strong divides between bounded, static, homogenous cultural entities. This weakens the objection that a feminist cosmopolitanism represents a form of Western cultural imperialism because it is difficult, despite the allegation, to identify the fixed, uncontested and uniquely Western values that the view endorses. As we have seen, so-called Western values can be located in paradigmatic non-Western traditions and there may be significant disagreement about 'Western' values in paradigmatic Western cultures and even an outright rejection of them.

All this shows that while one may disagree about the values being pursued by a feminist cosmopolitan project, it is far from obvious that such a position is guilty of the crime of cultural imperialism.

**6.4B THE SECOND ‘PRONG’: A FEMINIST COSMOPOLITANISM IS  
BETTER EQUIPPED TO MEET KEY FEMINIST OBJECTIVES**

Having demonstrated why a feminist cosmopolitanism is not an instance of Western cultural imperialism, I believe that we should now see the dispute between the feminist cosmopolitan and the proponent of (C3) as a disagreement about the values prioritized. At this point I need to be clear about whom I am addressing here. Since my central thesis is that feminists ought to be cosmopolitans about global justice, I am speaking now to feminists who disagree with the values prioritized by a feminist cosmopolitan. My aim here is to suggest that the values central to a feminist cosmopolitanism provide us with the tools necessary to addressing the key feminist goals outlined in Chapter 2; goals that I have argued are important to feminists of various stripes. Moreover, I will argue that putting alternative values at the centre of the feminist project will work to the detriment of those ends. To illustrate these points I return to Veena Das’s criticism of liberalism as too individualistic. After setting out Nussbaum’s initial response, I will develop the objection by appealing to the work of Virginia Held who raises a similar but slightly different challenge. I ultimately argue that focusing on the community or caring relations over the individual is inadequate from the point of view of justice. In addition, I reject the claim that having a commitment to justice, rights and liberty entails the exclusion of other values or the collapse of all morality into the realm of justice.

Recall Das’s view, that the idea of persons as ends in themselves is a Western intrusion and that “Indian women are simply unable to form the concept of their own personal well-being as distinct from the well-being of family members” (Nussbaum, 2000: 56). In response, Nussbaum says the following:

If Das simply means that Indian women frequently judge sacrifice for the family to be a good thing, and frequently subordinate their own well-being to the well-being of others, it is plausible enough, but hardly an objection to the type of political focus on the individual that I have recommended; there is no incompatibility between the idea that politics should treat each person as an end and the idea that some people may choose to make sacrifices for others. If, however, Das really means to say that Indian women cannot distinguish their own hunger from the hunger of a child or a

husband, cannot really distinguish their own body and its health from someone else's body and its health, then she does not have a leg to stand on. [...] extremely poor people are likely to be especially keenly aware of the separateness of each person's well-being – for hunger and hard physical labor are great reminders that one is oneself and not someone else.

(Nussbaum, 2000: 56-57)

Nussbaum rejects the accusation that liberalism is *too* individualistic and argues that women require normative individualism so that the importance of their needs and well-being are recognized (Nussbaum, 1999: 63). For Nussbaum placing an emphasis on individualism highlights the importance of the fact that almost all human beings are physically distinct and separate to others. This, she believes, is essential to meeting the needs and interests of women whose needs can often go neglected because they get subsumed into the needs of their children, husbands, families, communities, and the nation-states in which they live. The fundamental point is that women should be treated as ends in themselves as opposed to a means through which others achieve their ends. Moreover, as Anne Phillips notes, “insisting on the importance of each individual does not commit one to a view of human beings as rational calculating machines, self-interested egoists, or misanthropic hermits” (Phillips, 2001: 251). So even if individualism is necessary to ensuring that the needs and interests of women are met, adopting theories that have this feature does not entail an undesirable and inaccurate view of human beings.

Importantly, because a feminist cosmopolitanism takes individuals to be the primary units of moral concern, it prevents the needs and interests of women from being subsumed into those of others. To see this, consider the critique of statism that I presented in Chapters 3 and 4. As I argued there, statist approaches can mask many injustices that affect the world's women because the needs of individuals are largely taken as secondary to the interests of the state. By taking states to be the primary units of concern, statist put the interests of states ahead of the interests of individuals (except in cases of extreme human rights violations) and, therefore, ahead of the needs and interests of women. What this means is that women, because of their sex, may be systematically disadvantaged in their countries of residence by a discriminatory body of law. For example, women may have no right to primary education, they may have unequal access to divorce,

they may have no property rights, they may have no right to vote, they may have no right to employment and in cases where they can work they may not be protected in the work place from sexual harassment and exploitation. Women may not have any of this, and much less besides, and yet men might enjoy access to all of these things. Still, statisticians do not see these injustices as a matter of concern to the global community.

We can only work towards the feminist goals outlined in Chapter 2 if we take individuals, and not states or other groups, to be the primary units of moral concern. First and foremost, women should not be discriminated against by law regardless of where in the world they happen to live. The fact that some women are discriminated by law is unjust and this matters from the perspective of global justice. Moreover, the feminist agenda that I am pursuing here holds that women's equality to men will only be genuinely achieved if they have substantive equality. Having this commitment means that we must pay attention to all of the barriers that stand in the way of women achieving *full* equality. In Section 2.1a we saw that formal laws do not guarantee the protection of women's equal rights, liberties and opportunities and that other aspects of society such as social norms, habits, and customs, will need to be challenged to realise genuine equality for women. The feminist cosmopolitan, unlike those who do not take individuals to be the primary units of moral concern, is sensitive to all barriers to women's equality because the view starts with what individual women can do and be.

Although abandoning individualism may leave women vulnerable to sexist oppression and fail to protect the interests of individual women as beings with separate bodies and needs, I anticipate that my opponent will not be entirely swayed by my arguments thus far. In Section 2.2a I gave a rough sketch of Held's ethic of care in which she presents persons as relational and interdependent, and partly constituted by their relations, as opposed to independent and autonomous. As I noted there, Held is critical of the liberal tradition of adopting an impartial, universal, and individualistic viewpoint in moral and political theory because it is too abstract and too far removed from our social reality. Despite the above

considerations I suspect that Held might not be fully satisfied because she criticises Nussbaum for not feeling the full force of the care ethicist's objections:

The feminist critique of liberalism that a view such as a Nussbaum's misses is the more fundamental one that turning everyone into a liberal individual leaves no one adequately attentive to relationships between persons, whether they be caring relations within the family or social relations holding communities together. [...] it is not satisfactory to think of care, as it is conceptualized by liberal individualism, as a mere personal preference an individual may choose or not.

(Held, 2006: 95)

At this point, it worth restating several of the points that I made in Section 2.2a. First, the feminist agenda that I have put forward recognises that each of us is embedded in a complex network of relationships with other people. Moreover, since we are deeply rooted in our social contexts none of us is unaffected by our social world. Second, focusing our attention on the needs and interests of individuals does not entail ignoring the value of caring relationships or excluding their preservation from our considerations when we theorise about justice.

At the heart of this project is a concern for global distributive justice motivated by the desperate plight of the world's most vulnerable people and the vast scope of unjust inequalities that exist between individuals worldwide. While I am very sympathetic to the care ethicists' critique of liberalism, and the call to promote and protect the value and practice of caring, I think that we must resist (on this occasion) the claim that caring relations must be normatively prior to individuals. Individuals have basic needs and interests that must be met if they are to lead at least minimally decent lives. Throughout this thesis I have detailed the ways in which the basic needs and interests of millions of people are not met. Furthermore, we have seen how women are disproportionately affected by poverty and its effects. Though the current situation is disastrous from the perspective of both justice and care theorists, I believe that only by prioritizing the needs and interests of individuals can we begin to address sexist oppression and unjust global inequality more generally.<sup>13</sup>

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<sup>13</sup> For a recap on why focusing on caring relationships obscures the plight on the world's most vulnerable and does little to address the immediacy of their suffering see Section 2.2a.

## 6.5 SUMMARY

In this chapter I have defended feminist cosmopolitanism against the charge that it is an instance of Western cultural imperialism. I began by distinguishing this objection from that examined in Chapter 5. There I argued that despite the fact that many feminist critics have run the two together, the objection in Chapter 5 was directed at *descriptive* generalisations whereas the target discussed in this chapter was *normative* universal claims. Having established this distinction, I then demonstrated why a challenge to normative universal claims is a challenge to feminist cosmopolitanism.

In what followed, I sketched three ways that we might interpret the objection. The first two of these rested on a conception of culture as static, bounded, unchanging, and internally uniform, which is empirically false and does not reflect the actual nature of culture as complex, dynamic, unbounded and contested. Moreover, both of these interpretations are internally inconsistent. (C1) fails because it is committed to a universal principle of toleration despite denying that there can be universal normative claims; and (C2) fails because it asserts that there are no universal values while simultaneously admitting that many context-specific norms involve a commitment to the universal 'truth' or 'rightness' of the values that they express. Consequently, I rejected the first two ways of interpreting the objection because they rely on a flawed understanding of culture and they are internally incoherent.

However, I took the third way of interpreting the objection to be a legitimate challenge to the feminist cosmopolitan position that I am advancing in this thesis. To dissolve the challenge I employed a two-pronged strategy that demonstrated that (1) the charge of cultural imperialism is not accurate and is better construed as a disagreement about values; and (2) the values advanced by a feminist cosmopolitan can better address the aims outlined in Chapter 2 than the alternatives proposed by the critics.

I cannot hope, in this brief discussion, to have fully addressed all of the concerns that feminists may have with feminist cosmopolitanism. However, I am optimistic that what I have done over the course of the last two chapters is show how a feminist cosmopolitan can overcome some fairly standard objections, and how they can proceed in a way that is sensitive to the concerns discussed. Moreover, it should be clear to my reader that a feminist cosmopolitanism is essential to achieving the key objectives that most feminists support.



# PART IV

## A FEMINIST COSMOPOLITANISM

### INTRODUCTION

In the preceding chapters I have argued that feminists ought to reject statist approaches to global justice in favour of cosmopolitan accounts. Having situated this project in the context of the literature on cosmopolitanism, and outlined the key elements of the feminist project being pursued here, my argument began, in Chapter 3, with a feminist critique of Rawls's *The Law of Peoples*. There I argued that Rawls's international theory is inadequate not just for cosmopolitans but for feminists as well. In Chapter 4, I developed a feminist argument, based on Okin's critique of theories of liberal social justice, against statist approaches to global justice more generally. Moreover, I suggested that cosmopolitanism is better placed than statism to address the concerns that many feminists have. In Chapters 5 and 6, I considered two feminist objections to the cosmopolitan standpoint and argued that feminism and cosmopolitanism are in fact compatible.

In the final two chapters I will make some tentative suggestions about the types of cosmopolitanism that are better suited to addressing feminist aims. I will revisit some of the distinctions and approaches outlined in Chapter 1 in an attempt to work towards an explicitly feminist cosmopolitanism. These final chapters are shaped by two fundamental questions to which any theory of distributive justice must provide an answer. Using Simon Caney's analysis of distributive justice as a springboard, I will focus on the first two of the following central questions (2005: 103-104):

- (1) What is the scope of justice?
- (2) What is the metric of justice?
- (3) By what standard should goods be distributed?

Unfortunately I do not have the space here to develop an adequate answer to the third question, but I am hopeful that the arguments that I develop in response to the first two will enable my reader to see how a feminist cosmopolitan response might begin to be formulated.

In Chapter 7, I will consider what the proper scope of justice is; in other words, who should be included in the distributive scheme? I will suggest that a feminist cosmopolitanism ought to be non-relational. That is, feminist aims would be better addressed by approaches which take the duties and entitlements of distributive justice to be grounded in some *feature* of human beings as opposed to the particular *relations* that hold between them.

In Chapter 8, I will consider which metric of justice would best meet feminist aims. To be precise: which is the best way to measure how well an individual is doing for the purposes of justice? There I concentrate on the recent debate between resourcists and capability theorists. Ultimately, I will suggest that of these two measures the metric of capabilities can better address the feminist aims outlined in Chapter 2.

These two chapters are largely exploratory. My main aim is to demonstrate how approaching the global justice debate from a feminist perspective can help us to develop a more adequate approach. While I will be suggesting that some brands of cosmopolitanism are more acceptable than others, I am not attempting to put forward a comprehensive theory of global justice. That said, I do believe that my arguments here go some way to laying out part of the basic foundations for a feminist cosmopolitanism.

## **WHAT IS THE SCOPE OF JUSTICE? RELATIONAL VS. NON-RELATIONAL APPROACHES TO GLOBAL JUSTICE**

Which sorts of entities fall under the scope of justice? Since I am starting from a cosmopolitan standpoint, the answer to this question is *all* human beings. However, as I discussed in Chapter 1, cosmopolitan approaches to global justice fall, broadly speaking, into two camps: relational and non-relational. Relational accounts ground justice in features of relationships, association, and shared institutions. By contrast, non-relational accounts ground justice in some feature or features of human beings. The fundamental difference between these two ways of grounding justice is that for relational accounts, duties of justice are entirely contingent on certain relationships holding whereas non-relational accounts do not take justice to be contingent in this way since duties of justice are grounded in being human.

Consider the following example. In our world, World A, the relational cosmopolitan maintains that we have duties to our fellow human beings because we are locked into a global economic, social, and cultural scheme with one another. One could, for example, cash this out by arguing that we are all a part of a shared global economic system or by demonstrating how the actions of individuals in one part of the world greatly affect the lives of others living in different parts. Ultimately, for the relational cosmopolitan, we have a cosmopolitan duty of justice to tackle any injustice arising from our shared institutions, interactional practices, or other social arrangements. By contrast, the non-relational cosmopolitan thinks that we owe justice to those who suffer injustice in World A, not because as individuals we stand in particular relationships with others, but because we are all human.

Now, imagine that astronomers discover another world that is populated by human beings. On this other world, World B, the human beings are suffering from the effects of extreme poverty: malnutrition, starvation, and disease. Moreover, imagine that scientists in World A develop new technologies that allow us to transport goods to World B. Do we, on our relatively prosperous world, have a duty of justice to redistribute resources to those on World B? I want to be clear that this is not a question of aid. One might think that the morally right thing to do would be to rush to the aid of the inhabitants of World B, but yet deny that we owe them anything as a matter of justice. The question here is whether we have any duties of distributive justice to the inhabitants of World B.

Though both relational and non-relational cosmopolitans agree that there are duties of justice that are global in scope, the case of worlds A and B illustrates where and how the two views diverge. For a relational cosmopolitan it seems like we owe the inhabitants of World B very little, if anything, as matter of *justice*. Worlds A and B are not interdependent, there are no institutions shared by the inhabitants of A and B, and there is little social interaction between the inhabitants of World's A and B. Since individuals on World A share no relations with those on World B, there is nothing to ground a duty of justice and those on World B have no claim on those on World A.<sup>1</sup>

A non-relational cosmopolitan, on the other hand, will be committed to the idea that we do in fact have duties of justice to people on World B because, like us, they are human and they share in some feature or features of humanity that ground duties and entitlements of justice to us on World A. It remains to be seen what the duties will consist in, and it is perfectly consistent with a cosmopolitan approach that our duties to those in World B will be considerably weaker, or in

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<sup>1</sup> Although relational cosmopolitans may not accept that those on World A have duties of distributive justice to those on World B, they may still believe that the inhabitants of World A have some humanitarian, or charitable, duties to World B. As we saw in Chapter 3, the non-cosmopolitan accounts of both Rawls and Nagel reject global duties of justice but instead maintain that there are weaker duties of humanitarian morality. Relational cosmopolitans are thus arguably much closer to the statist accounts that they reject than to their non-relational counterparts.

some way less demanding, than our duties to fellow inhabitants of World A (see Chapter 1, Sections 1.4a and 1.4b). Setting these issues aside, the take home point is that for a non-relational cosmopolitan what is owed to those on World B is a matter of *justice* and not merely the weaker demands of a humanitarian morality.

In what follows I will argue that we should, as both feminists and cosmopolitans, be suspicious about the relational picture for several reasons. I aim to suggest that only cosmopolitan accounts that are non-relational in character can fully meet the aims of the feminist project outlined in Chapter 2.

## **7.1 THE MORAL RELEVANCE OF SOCIAL AND ECONOMIC INTERACTION**

One compelling objection to relational accounts focuses on the moral relevance of social and economic interaction. As noted above, those who advocate relational accounts argue that duties of justice only arise when certain relationships hold between individuals. Often the kinds of relationships that are held to be important are those that come about when individuals engage in schemes of social cooperation; relationships involving social and economic interaction. However, following Caney, it strikes me that when we think about distributive justice “it is difficult to see how and why the fact that one group of people is linked by interaction should impact on their entitlements” (Caney, 2005: 111). Importantly, Caney argues that this difficulty applies not only when we think about what individuals are justly *entitled* to but also when we think about what *duties* of distributive justice we have to one another. That is, when we think about what global distributive justice entails we need to look in both directions: (1) for what reasons are people entitled to certain goods? And (2) for what reasons are people are obligated to others?

Caney asks us to imagine two individuals living in separate systems of interaction (Caney, 2005: 111). Recall my example of Worlds A and B. Individuals on World A have knowledge that World B and its inhabitants exist and, conversely,

individuals on World B have knowledge of World A and its inhabitants. However, there is no interaction between them. Consider an individual, let us call her Mollie, living in World A and an individual, let us call her Millie, living in World B. Mollie and Millie are identical in their abilities, efforts, and needs and yet Mollie receives more benefits from the prosperous scheme of interaction in which she is a part. By contrast, Millie receives very little since the scheme of interaction in which she is a part cannot meet the basic needs of its members. Since Mollie and Millie are identical with respect to their abilities, efforts, and needs, the only difference between them is that Mollie had the luck of being born into a prosperous world while Millie did not. Like Caney, I too find it difficult to see *why* Mollie is entitled, on the grounds of justice, to more and I have a hard time seeing the situation as a fair one.<sup>2</sup>

To be clear, the non-relational picture claims that in instances where there is more than one human being it is appropriate to ask whether the situation is just or not.<sup>3</sup> This does not mean that circumstances will always be sufficient to generate duties and entitlements of justice. For example, if inhabitants of World A were unaware of the existence of World B, or if they had no means of fulfilling any redistributive duties, then the situation would not be marked by injustice. In this scenario the disparity between Worlds A and B should be considered merely unfortunate. I am assuming that ‘ought’ implies ‘can’ where ‘can’ means that it is both physically and psychologically possible. Thus, it would be meaningless to hold that citizens of World A have a duty of justice to those in World B when they either have no knowledge of the existence of World B, or no means of fulfilling that obligation. Importantly, though, the duties and entitlements of individuals on World A and B will always be subject to revision. If circumstances change such that the inhabitants of World A become (a) aware of those on World B, and (b) have the technology to redistribute resources, then duties of justice would be generated.<sup>4</sup>

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<sup>2</sup> It should be noted that to my knowledge Caney does not himself discuss a ‘two-worlds’ scenario. Thus, although I believe the conclusions that I draw here follow from his view he might have other reasons for resisting the idea that the inequality between Millie and Mollie is an unjust one.

<sup>3</sup> I remain agnostic about whether there are duties of justice that one owes to oneself.

<sup>4</sup> This is not uncontroversial but I do not have space here to argue for it further.

As I specified, Mollie lives on prosperous World A where most inhabitants are aware of the plight faced by inhabitants on World B. Moreover, technological advances made on World A mean that resources can be distributed to World B. As noted above, the distinguishing factor between Mollie and Millie is that one was born into a prosperous scheme of cooperation while the other was not. What the relational cosmopolitan must show is that this fact is morally relevant to our theorising about the justness of the situation.

However, as Caney suggests, this poses a big problem for relational accounts because the logic internal to cosmopolitanism, which most relational cosmopolitans endorse, undermines the relational perspective (Caney, 2005: 111-112). Most are agreed that when thinking about justice we should not let our thinking be influenced by morally arbitrary features of our world. This thought is paradigmatically reflected in Rawls's construction of the original position complete with the veil of ignorance, which prevents deliberators from knowing the particulars about themselves and their societies (TJ: § 24). By denying deliberators this knowledge, the veil of ignorance ensures fairness and equality; it would be imprudent for deliberators to opt for principles of justice that favour particular conceptions of the good over others since they do not know which exact one they will hold once the veil is lifted. When a feature of our world is morally arbitrary from the point of view of justice it should not play a role in determining what each individual is entitled to and what duties we, as individuals, have. Cosmopolitans have been keen to emphasise that just as a person's sex, race, class, physical attributes, and conception of the good should not affect their entitlements, life prospects, opportunities, and duties of distributive justice, neither should the matter of where one is born. This is a fundamental cosmopolitan thesis. None of us chooses the country into which we are born so the fact of where one is born is irrelevant to our reasoning about justice.<sup>5</sup>

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<sup>5</sup> Caney puts it in the following way: "The core intuition, then, maintains that persons should not face worse opportunities in life because of the community or communities they come from. This point can be expressed negatively: people should not be penalized because of the vagaries of happenstance, and their fortunes should not be set by factors like nationality or citizenship" (Caney, 2001b: 115). See also, Pogge (1989: 247) and Nussbaum (1996: 133).

However, as Caney argues, if we think that the fact of where one is born is irrelevant to moral thinking about questions of distributive justice, then why should we consider the scheme of interaction or association that one is a member as morally relevant? That is, “can someone not equally persuasively argue that ‘one’s life prospects or one’s access to opportunities’ should not depend on ‘morally arbitrary considerations’ such as which associational scheme one is born into?” (Caney, 2005: 112). The problem for the relational cosmopolitan is that they appear committed to the view that individuals who are born into an impoverished scheme of interaction isolated from more prosperous schemes, have no entitlement on the grounds of justice, and, conversely, individuals living in more prosperous schemes of interaction have no duties to those who live in impoverished schemes. But this is in conflict with a key cosmopolitan premise: people should not be penalized because of the circumstances of their birth (Caney, 2005: 112).<sup>6</sup>

Having argued in the preceding chapters that feminists ought to be cosmopolitans about global justice, it seems sensible to further recommend that feminists commit to an internally consistent cosmopolitanism. Though I take this to be a compelling reason in support of my claim that feminists should adopt non-relational versions of cosmopolitanism, I think that there are further considerations that strengthen this conclusion. In what follows, I will outline additional difficulties that come with adopting relational accounts. My aim here is to demonstrate that even if one were to attempt to argue that schemes of interaction are morally relevant, limiting the scope of justice to them remains theoretically unappealing.

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<sup>6</sup> This is not intended to be a full discussion about the possibility of taking interaction to be relevant to our moral thinking about distributive justice. Indeed, despite what I have said here, it might turn out that institutional frameworks and schemes of interaction are morally relevant when it comes to, say, determining the content of the principles of justice. However, I have tried to suggest that when we consider the *scope* of justice, relational cosmopolitans who attempt to restrict the scope of justice to institutional/interactional schemes do so contrary to the logic of cosmopolitanism.

## 7.2 THE DANGER OF MAKING JUSTICE CONTINGENT ON RELATIONSHIPS

Part of the problem with making interaction a morally relevant factor in our thinking about the scope of distributive justice, is that it has the effect of making justice contingent on certain relationships holding. That is, duties and entitlements of justice only arise when individuals stand in the correct relations to one another. In this section I want to draw out the implications of being committed to such a view. I will begin by considering why taking justice to be contingent in this way is problematic from the perspective of entitlement-bearers, before going on to argue that the consequences for duty-bearers are also theoretically unattractive.<sup>7</sup>

One outcome of the relational picture is that some individuals may potentially be denied entitlements to goods that they had previously been entitled to. The case of Millie and Mollie discussed in the previous section involved individuals participating in separate schemes of interaction where each is aware that the other scheme exists, but where there is no interaction between the two schemes. In that case, for the relational cosmopolitan, the justice grounding feature – some kind of interactional/associational/institutional relationship – is missing so there are neither entitlements nor duties of justice generated between individuals of the two schemes.<sup>8</sup> But this is not the only way in which the correct justice grounding relations may fail to hold.

We can imagine many circumstances in which groups of individuals become isolated from schemes of interaction. These cases are different from my fictional World B, or a hitherto ‘lost’ indigenous tribe of Amazon Indians who have never

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<sup>7</sup> I borrow the terms ‘duty-bearer’ and ‘entitlement-bearer’ from Caney (2005) as a useful way of highlighting that distributive justice is concerned both with what people are entitled to and what duties they have to others.

<sup>8</sup> Though there may not be duties between inhabitants of different schemes, there will of course be duties and entitlements between individuals within a scheme. So, whereas individuals on World A may not owe anything to those on World B, and those on World B can make no just claim on those on World A, individuals on World A will have duties to other inhabitants on World A, and all citizens of World A will be justly entitled to have their basic needs and interests met.

been part of the system of interaction in our world. The cases I have in mind here are those where groups of individuals become isolated from the scheme of interaction.<sup>9</sup> For example, imagine that the government of a state, call it State X, does successfully manage to isolate the state and its citizens from the rest of the global economic and social order. They close their borders allowing no one in (I am assuming that people can leave but they cannot return), they neither import nor export goods, and they allow little to no communication between those inside and those outside of the state boundaries. Now, prior to isolation, the state, and therefore the individuals constituting the state, were part of the global economic and social scheme of interaction. As members of the global scheme, citizens of the state were entitled, on the grounds of justice, to certain goods and they had certain duties of justice to others. However, following the success of the state government's policy of isolation, individuals within that state lose their previous just entitlements, and those outside no longer have a duty of justice to those individuals.

One might argue that there is no injustice here since State X has chosen to isolate itself from the global economic order. However, as I discussed in Chapter 3, what those in power do does not always reflect the views or interests of the citizens. In the present case, though State X does not intentionally violate its citizen's human rights it may fail (through lack of resources or an ineffective scheme of distribution) to secure a decent standard of living for its citizens. What is troubling about this case is that the citizens of State X are not eligible, because of the state's successful separation from the global scheme, to have anything more than their basic rights met on the grounds of justice.

This may seem to some to be entirely acceptable. A commitment to basic human rights, for example the minimal conception advanced by Rawls, ensures that individuals are safeguarded against state violence and that the international

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<sup>9</sup> Incidentally, though it is doubted that there any lost tribes, there are about one hundred 'uncontacted' tribes. Uncontacted tribes are peoples who have no peaceful contact with mainstream society and resist efforts made by mainstream or dominant societies to make contact. Thus, they are in fact good examples of the types of group that I discuss next: those who choose to disassociate themselves from the global social and economic scheme. For more information on uncontacted tribes see <http://www.survivalinternational.org/> (accessed 13/01/12).

community has a duty to provide the minimum necessary to uphold those basic rights. However, as I discussed in Chapters 3 and 4, a minimal conception of human rights leaves many already vulnerable people open to further injustice and oppression. Putting that worry to one side, my concern here is that individual citizens on the relational picture are entitled to certain goods under a global scheme of redistribution and yet they lose those entitlements should they become isolated from the scheme. This seems particularly problematic given that the fundamental needs and interests of these individuals remain the same both prior to, and after, the split of their state from the global scheme. While citizens of State X have claims of distributive justice before separation, following separation their claims on others beyond their state borders no longer hold even when the state in which they live fails to secure for them a decent standard of living.

Let us consider a different case. In State Y citizens enjoy a prosperous scheme of interaction. Moreover, citizens of State Y are aware of the dire poverty faced by those in other societies. Being aware of the plight of others and having the capacity to redistribute resources, citizens of State Y have a duty of justice to redistribute. But given that citizens of State Y only have this duty if State Y remains a part of the global scheme of cooperation, they could potentially evade the acquisition of such a duty if they can successfully separate the state from the global order. Ultimately, my worry here is that it seems possible on the relational view that agents can absolve themselves of duties of justice simply by refusing to cooperate or interact in the right ways. This strikes me as deeply inadequate.

It is important to note that on the relational picture State Y cannot violate the basic human rights of those who reside outside of their borders without legitimating intervention from other states. However, beyond having a duty to uphold basic human rights, citizens of State Y and their respective government will not have any further redistributive duties to individuals outside of their borders if the correct justice-grounding relationship fails to hold.

There are, I am sure, many possible ways in which the relational cosmopolitan may respond to my imagined case of State Y. Here I will consider two. First,

even if State Y broke its obligations and successfully disengaged itself from the global scheme, its citizens would still have obligations of distributive justice to individuals in other states because they had, up to that point, enjoyed the benefits of a shared scheme and thus remain in the correct justice-grounding relationship with individuals of that scheme.

I am prepared to accept that it may indeed be very difficult for the citizens of State Y to absolve themselves of all duties immediately (without violating their obligations to others) but it does not seem impossible. While it seems plausible that State Y, because of the prior relationship that its citizens stood in to other individuals globally, still has an obligation to distribute resources to those with whom it shared the benefits and burdens of the global cooperative scheme, there may be ways in which the state can compensate those individuals while not incurring any further duties to newcomers. So, having followed a successful policy of isolation, citizens of State Y only have duties to those with whom they shared a relationship with up to the point of separation. What this means is that no individual born outside of State Y, after the point of separation, can make claims of distributive justice against State Y. Again, we should find this troubling because the fundamental needs and interests of human beings will not be radically different from generation to generation. Future generations will have as much of an interest in, say, being well-nourished as we do now.

Second, one might argue that by pursuing a policy of isolation, State Y violates an inviolable obligation to other members of the global scheme. The thought here is that the existing obligation is fundamentally binding and is not of the sort that can be broken. Thus, it is just not possible for the citizens of State Y to extricate themselves from their duties to non-compatriots in this way.

However, I think that this response undermines the relational picture. The principles of distributive justice are expressed in international law, they govern the global institutional framework, and they regulate the interactions between individuals, states, and other agents at the global level. The laws and policies that articulate the principles of distributive justice are binding on all – but only on

those who are a part of the global community. While it would be appropriate to hold members of the global scheme accountable if they violate international law, it would not be appropriate to seek redress from a group of people completely isolated from the global scheme.

If, on the relational picture, the principles of distributive justice, as expressed in international law, are said to preside over the shared social and economic institutional order, then their scope must be limited to just that. Those who fail to fulfil their obligations as required by the laws of global society can be legitimately criticised and penalized for their failure to comply. But those who opt out of the global scheme, who do not consider themselves a part of global society and who do not interact as a part of it, cannot be similarly treated because they have, on the relational view, moved beyond the scope of justice.

The relational picture, then, is problematic both from the perspective of entitlement-bearers and duty-bearers. Those who stand outside, or who come to stand outside, the global scheme of interaction do not have, or lose, entitlements grounded in principles of distributive justice that would otherwise be owed to them by those in the global scheme of interaction. Similarly, those who stand outside, or who come to stand outside, the global scheme of interaction do not have, or lose, any duties of distributive justice otherwise owed to those within the global scheme of interaction. Thus, it seems to me that relational approaches leave room for individuals to lose (or never have) their just entitlement to have their basic needs and interests met because they fail (through their own choice or otherwise) to stand in the correct relation to others in our world. In addition, it also appears that resource-rich and prosperous countries could either freeze out resource-poor countries from the global scheme of interaction or, indeed, exclude themselves, so that they have no distributive duties of justice to individuals who inhabit those societies. This is particularly problematic when we consider the entitlements of those locked outside of the prosperous scheme since it looks as though, on relational accounts, the prior entitlements of individuals in those societies quite simply vanish into thin air.

At this point I anticipate two objections. The relational cosmopolitan might first respond by arguing that my examples are too fanciful. As we saw in Chapter 1, both Beitz and Pogge hold that the current level of interaction between states and individuals at the global level is sufficient to ground principles of justice that apply to all. Indeed, many cosmopolitans hold that the level of interconnectedness at the global level makes it nigh on impossible for a government to completely isolate the state from the global order (Held, 1995). But even if this is true, there remains something deeply unsatisfying about the claim that justice holds because our social world just so happens to be structured in the correct way, especially when we can so easily imagine it being structured otherwise.

The second objection that a relational cosmopolitan might make is that non-relational cosmopolitanism is also vulnerable to the arguments that I have laid out here. They might argue that despite how I set up the distinction between relational and non-relational cosmopolitanism, the latter also takes justice to be contingent on the correct relationships holding. The worry that I am anticipating here is that by taking non-relational cosmopolitanism to require certain conditions to hold before it is appropriate to consider the situation as one that potentially generates duties and entitlements of justice, I too render individual duties and entitlements contingent. I think that this is, to some extent, right. If there was an apocalyptic event which caused inhabitants on World A to lose their ability to redistribute to those on World B, then they would no longer be obligated to fulfil duties of distributive justice to those on World B. Moreover, those on World B would no longer have a claim on the inhabitants of World A. That is, the inhabitants of World B would no longer be justly entitled to certain goods owed to them by inhabitants of World A. So, my opponent might say, just as, on the relational picture, justice is contingent on the correct relationships holding between individuals, something very similar is going on for the non-relational cosmopolitan. Though non-relational cosmopolitans do not require interaction their account still sets certain conditions that render justice contingent in similar ways. On non-relational accounts, my opponent might argue, it remains a possibility that one's entitlements could vanish into thin air!

However, there remains an important difference between relational and non-relational views. Non-relational cosmopolitanism, as I have construed it here, sets very minimal conditions on what counts as a justice-apt situation: first, one must be aware of the other agent(s); and second, it must be possible to redistribute goods. Moreover, these are important conditions; without them the language of justice, entitlements, and duties gets stretched too far. Allowing people to have entitlements that it is impossible for anyone to meet or duties that are impossible to execute would render the ideas of entitlement and duty nonsensical. However, that aside, the important thing is that there is no room on the non-relational view for people to absolve themselves of duties that they have to others or lose their entitlements when it is possible for them to fulfil those duties or have their just entitlements met. So, yes, non-relational approaches do place conditions on justice that are necessary to preserve the strength and meaning of our concepts, but they do so in ways that exclude problematic cases where agents suffer loss of entitlement or attempt to unjustly avoid being duty-bearers.

### **7.3 FEMINISM, RELATIONAL COSMOPOLITANISM, AND THE PROBLEM OF EXCLUSION**

Having suggested that relational cosmopolitanism is both internally inconsistent and theoretically unappealing, I will now consider some feminist arguments that lend additional support to the preceding concerns. My aim here is twofold. First, I think that non-relational cosmopolitans can make use of feminist arguments to strengthen their critiques of relational views; and second, I think that these arguments further demonstrate that feminists ought to be non-relational cosmopolitans about global justice since non-relational accounts better suit feminist aims.

Feminists have always sought (even if sometimes unsuccessfully) to ensure that theories of justice encompass all those affected by the realm of the political. This, as we saw in Chapter 3, has often taken the form of a challenge to existing theories that, for one reason or another, neglect certain social groups by excluding

them from their theorising. An early concern for feminists was with the ways in which women were largely absent from political theory, meaning that their perspectives were not considered and their voices went unheard. Okin, commenting on the tradition of political philosophy, notes that it “consists, generally speaking, of writings by men, for men, and about men. While the use of the supposedly generic terms like ‘man’ and ‘mankind’, and of the allegedly inclusive pronoun ‘he’, might lead one to think that philosophers have intended to refer to the human race as a whole, we do not need to look far into their writings to realize that such an assumption is unfounded” (Okin, 1992: 5). Examples of false gender neutrality can be found among both past and contemporary theorists of justice, and feminists have demonstrated not only how frequently male philosophers have taken the experiences of men to be representative of *all* humans, but also how gender is an important consideration in our thinking about social justice (MacKinnon, 2006; Nussbaum, 1999, 2000; Okin, 1989a, 1992).

A key factor in the omission of women from most works in the history of political thought is that women have often been taken to have very different natures from men. For example, as discussed in Chapters 4 and 5, women have been traditionally associated with the non-political sphere of the family because their nature is one characterised by passivity, empathy, emotion, and so on. These features have been considered more suitable for the domestic sphere since it requires care and compassion. By contrast, men are often depicted as being active, aggressive, non-emotional, rational, and so on. This makes them better suited to the public sphere which involves the cut and thrust of politics and the marketplace. The assumption that men and women differ fundamentally in nature has often underpinned the justification of unequal treatment. By assuming a difference in the natures of men and women, theorists have been able to justify relegating women to the private sphere of the family. This has the unfavourable consequence of placing women outside of the domain of justice because justice was traditionally thought to apply only to the realm of public life. Again, by contrast, men, because of their male characteristics, were traditionally taken to be the rightful constituents of the public sphere and thus the proper subjects of justice.

The feminist critique of dominant discourses, and their goal of securing inclusion, is not limited to women alone. In Chapter 4, I discussed the disagreement between feminists over the use of generalisations that serve to obscure the differences between women. There we saw how some feminists have been guilty of making generalisations about *all* women which at best only apply to white, heterosexual, middle-class women. The crux of the worry is that the experiences of the socially privileged come to represent the experiences of all, which in turn serves to exclude individuals of socially vulnerable groups and their disparate experiences. This is problematic not only because many people are excluded from the picture, but also because a picture that purports to capture all yet only reflects reality for a few is clearly unsatisfactory. Consequently, much emphasis has been placed on the thought that no individual is just a man or a woman and this means that we have to be sensitive to other social features of our identities. Again, feminists can be seen to be challenging the authority of dominant voices and seeking the inclusion of all.

This trend in feminist thought shows that it is crucial to many feminists that our theories are as inclusive as possible and that they are not merely representative of those doing the theorising. Insofar as this applies to theories of justice, it seems to me that one feminist aim is to bring all of the relevant agents under the scope of justice and to challenge theories of social justice that arbitrarily exclude those who do not fit the dominant conception of a member of the moral community. In what follows I will discuss a concrete example of feminist theorizing that challenges the relational picture on the grounds that it excludes many individuals who fail to meet certain conditions.

## **7.4 JUSTICE AND THE DISABLED**

That feminists strive for inclusion can be seen in continued efforts to include, or challenge the exclusion of, disability in political theory. In her critique of social contract theorists, Nussbaum notes that, until fairly recently, people with atypical physical and mental impairments were:

[...] excluded and stigmatized; there was no political movement to include them. [...] So it was not surprising that the classical social contract thinkers failed to imagine them as participants in the choice of political principles, nor, indeed, that they were willing to sign on to foundational assumptions (for example, a rough equality of power and physical and mental ability) that ensured that they would not be included at the initial, foundational stage.

(Nussbaum, 2006a: 15)

While today disability activists across the globe are working for the empowerment, inclusion, and equality of disabled people, contemporary social contract theorists have failed to adequately account for the disabled. Nussbaum traces the inability of the social contract tradition to accommodate disability to two deeply held commitments: “the idea that parties to the social contract are roughly equal in power and ability, and the related idea of mutual advantage as the goal they pursue through cooperating rather than not cooperating” (Nussbaum, 2006a: 68). Theories shaped by these commitments inevitably have difficulty accommodating disability because many disabled people (owing to the extent of their impairment and/or because of how society is structured) are not equal in power and ability and some (owing to the extent of their impairment and/or because of how society is structured) cannot cooperate in a scheme for mutual advantage.<sup>10</sup> Being committed to the idea that contracting parties in the initial choice situation are rough equals, who cooperate for mutual advantage, hinges on the assumption that the parties are representatives of ‘normal’ citizens. This is problematic from the point of view of social justice because the needs and interests of all those who do not fit the paradigm of ‘normality’ do not factor into the parties’ reasoning nor do they inform the conception of justice agreed upon.

I take it that a key factor in the exclusion of those with disabilities from the initial choice situation is that they are deemed unable to *cooperate* with others in

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<sup>10</sup> It is also worth noting that there are not in fact any human beings who can fulfil these two commitments fully over the whole course of a human lifetime. Nussbaum points this out when she suggests that a theory of social justice must recognise that non-disabled people also have periods of their lives where they are entirely dependent on others (as in infancy) and that many suffer from temporary impairment and disability (2006a: 99). Importantly she argues that it is essential to our thinking about social justice that we recognise “the continuity between the situation of people with lifelong impairments and phases of ‘normal’ lives” (2006a: 100).

a scheme for mutual advantage. This seems suggestive of a relational approach to social justice. The thought, then, is that the scope of justice extends to include all of those engaged in the cooperative scheme. Hence, such approaches are relational because duties and entitlements of justice are generated between those who stand in particular cooperative *relationships* with others i.e. mutually advantageous cooperative relationships. The difficulty for many people with disabilities is that they may (owing to the extent of their impairment and/or because of how society is structured) not be able to cooperate in ways that are deemed mutually advantageous to other members in the scheme, or they may not be able to cooperate at all. Consequently, many people with disabilities will be viewed as being unable to stand in the correct justice grounding relationship of cooperation for mutual advantage, and will, therefore, stand beyond the scope of justice.

The challenge that disability poses for social contract theory suggests that social contract theory cannot provide us with a viable theoretical framework for conceptions of justice. The exclusion of the disabled from the initial choice situation is particularly objectionable when we consider that many people with disabilities have the capacity for political participation. Given this, their exclusion from the initial choice situation is clearly inadequate. A theory of social justice ought to encompass all actual citizens not just the theoretical ideal of a citizen. As Nussbaum argues, the disabled “are not being treated as full equals of other citizens; their voices are not being heard when basic principles are chosen” (Nussbaum, 2006a: 15). This is a question of scope. The proper subjects of justice are those represented by parties in the initial choice situation. All those who are not represented fall outside of the scope of justice and their needs and interests can only be factored in at a later stage.

These points serve to show that equality more generally, and not just the equality of women specifically, is of central importance to the feminist agenda. Attempts to undermine the equality of individuals on the basis of arbitrary factors, such as sex, race, and disability have been challenged time and again. It is this deep-

rooted commitment to equality, which suggests that a non-relational cosmopolitanism is more compatible with feminist goals than relational accounts.

I have shown that when the duties and entitlements required by justice are made contingent on the existence of certain relationships it is possible that some individuals could be excluded. On relational approaches to global justice it is possible for certain individuals to fall outside of the appropriate scheme of institutions or interaction and thus be beyond the scope of justice, and on social contract theories of social justice it is possible for individuals to stand outside of the scope of justice because they cannot cooperate with others in a mutually advantageous way. Given the commitment to the equality of women to men, and the more general commitment to equality between all individuals, this should be of concern to feminists. Individuals who fall outside of the scope of justice are not the full moral equals of those considered to be within its bounds. As outliers they do not share in the status of being a primary unit of moral concern and they are not considered to have equal moral worth. Moreover, their exclusion tells us that they are not the proper subjects of justice.

All of this demonstrates that relational accounts will have a harder time meeting the demands of those committed to substantive equality. Relational cosmopolitanism permits a situation in which two human beings similar in need, interests, and capacity can be unequal in both moral worth and their status as the proper subject of justice, when the only difference between them is the scheme of interaction in which they live out their lives.<sup>11</sup> This possibility conflicts with the feminist commitment to substantive equality which challenges all barriers that undermine a person's equal status. When a theoretical perspective allows that the place of one's birth can affect one's moral status and entitlements such a view is

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<sup>11</sup> I do not mean to imply that all human beings, in virtue of their membership to the species, necessarily fall inside the scope of justice. Though that may indeed be the case, further argument is required to establish that conclusion. Whether or not fetuses, those in a permanent vegetative state, non-human animals, and other so-called 'marginal' cases fall under the scope of justice is a difficult issue and one that I do not have the space to deal with here. The key point that I am trying to make is that relational accounts allow that two relatively similar human beings can be unequal in moral worth and that this conflicts with a commitment to both moral and political equality.

plainly incompatible with a feminism that seeks to preserve the equal moral worth of all.

Moreover, the above discussion highlights a further feminist concern with relational cosmopolitanism. Nussbaum's critique of contractarian theories of justice demonstrates that grounding justice in *particular* relationships is problematic. As we have seen, taking cooperative relationships to be the right sorts of relationships to generate duties of distributive justice excludes all those deemed to be outside of the cooperative sphere (irrespective of whether an individual is unable to cooperate directly because of impairment or because of the way that society is structured). This will at the very least include children and some disabled, and may include more depending on how cooperation is understood. For example, if the type of cooperation taken as necessary to ground justice is peculiar to the public (read: non-domestic) realm, then many types of interaction that are crucial for the continuation of a stable society may also be excluded (like, for example, non-paid childcare and domestic labour).

At this point the relational cosmopolitan might appeal to the idea that the types of relations necessary to ground duties and entitlements of global distributive justice are considerably weaker than those stipulated by social justice theorists. Recall the relational accounts of both Beitz and Pogge (see Chapter 1). For them duties of justice arise out of the global institutional order and the high level of socioeconomic interdependence/interaction therein. Moreover, since the global framework encompasses all human beings the scope of justice extends to all human beings. Simply by going about our daily lives we are participating in the global scheme. Nothing as strong as cooperation is required and hence the relational cosmopolitan can avoid the worry to do with the type of exclusion that Nussbaum is concerned with.

My response here is to suggest that Nussbaum's critique is not merely concerned with the *type* of relationship that is being picked out. It is not enough to argue that the justice-grounding relationship that you are defending does in fact capture all because, as we have seen, even if this were currently true, it may cease to be the

case. At the heart of the objection is the sense that there is something deeply unsatisfactory about making the scope of justice contingent on certain relationships holding. To see this, consider that central to Nussbaum's positive account (her articulation of the capabilities approach) is the notion of human dignity (Nussbaum, 2000: 71-73; 2006a: 74, 159-160). For Nussbaum, the thing that grounds your basic entitlements as a matter of justice is that as a human being you are entitled to a life worthy of human dignity (2006a: 70-71). To live a dignified human life certain basic entitlements must be guaranteed. To be clear, for Nussbaum, it is not the relation you stand in to others that secures your basic entitlements but the fact that certain basic entitlements are necessary for a life worthy of human dignity. Failure to secure the basic capabilities necessary for human dignity is a grave violation of justice regardless of the relations that hold between individuals.

## **7.5 A FEMINIST OBJECTION TO NON-RELATIONAL COSMOPOLITANISM**

One might argue that while I have provided some feminist arguments for thinking that non-relational cosmopolitanism is to be preferred to relational cosmopolitanism, there is a long history of feminist thought that suggests the contrary. In particular, I have in mind theorists working in the ethics of care tradition who reject the normative priority that is given to individuals in much of contemporary political philosophy. As discussed in Chapters 2 (§ 2.2) and 6 (§ 6.4b), these theorists take caring relationships as prior to the individuals that constitute them because caring relationships are “normatively prior to the individual's well being” (Held, 2006: 102). Basically, for the care theorist, without caring relationships it would be impossible to secure individual well-being and so we must prioritise the relationship over the individuals who form the relationship.

At first glance these accounts look to be more compatible with relational cosmopolitanism than with the non-relational approaches that I have been arguing for. There are several reasons that might lead one to think that care theorists

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would be drawn to relational views. Some of the most obvious are that relational cosmopolitans are keen to emphasise our interdependence at the global level; they argue that we are all enmeshed in a global network of relationships; they acknowledge that some relationships are problematic because they render already disadvantaged people vulnerable to further abuses; and they stress the need to foster better relationships with one another and seek to eliminate the harms that the privileged do to the world's worst off. Importantly, relational cosmopolitans reject the statist picture of states as independent, self-sufficient units because to accept such a picture would be to hold a false view of the actual world in which we live. Given that care theorists are also keen to emphasise the interdependence of individuals, the importance of relationships, the importance of fostering good caring relationships, and they reject the view of persons as independent, self-sufficient beings, there looks, initially, to be a lot that the care theorists would find appealing in relational accounts.<sup>12</sup>

I will now argue that although relational accounts initially appear to be more compatible with some strands of feminist thought, namely those connected with the ethics of care tradition, upon closer inspection the aims of those feminists would be better met by a non-relational approach. To show this I will consider Eva Kittay's work on the moral status of the severely cognitively impaired (Kittay, 2001; 2005). Grounding her position in an ethics of care Kittay argues that the category of personhood should be extended to encompass individuals with severe cognitive impairments. The conception of personhood put forward by Kittay is relational and her reasons for favouring a relational approach suggest that relational cosmopolitanism would better reflect some of her concerns. However, as I will argue, a relational view has problematic consequences and renders the moral status of the severely cognitively impaired insecure in ways that a non-relational approach does not.

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<sup>12</sup> One might object that to suggest that there could be a possible allegiance between care theory and any type of cosmopolitanism is misguided. Since care theorists reject the language of rights and justice, so the objection could go, their views are fundamentally incompatible with theories of distributive justice. I think that this objection falsely represents much of the recent work in care ethics. Many care theorists now agree that justice is an important value but disagree about the weight attributed to it in our moral thinking. Given this, it would be wrongheaded to argue that a care theorist could not, or would not want to, endorse an approach to questions of global distributive justice.

It is often argued, or implied, in moral theory that those with severe cognitive impairments stand outside of the moral community because they lack certain crucial capacities that are necessary for moral reasoning. Kittay's main target is Jeff McMahan who she understands as arguing that the severely cognitively impaired fall below the threshold for personhood and that the death or killing of those below the threshold does not have the same moral significance as the death or killing as those who count as persons (Kittay, 2005: 101). But there are plenty of other moral and political philosophers whose understanding of personhood is such that they either explicitly or implicitly exclude the cognitively impaired. For example, Rawls claims that all persons possess two moral powers i.e. they have a capacity for a sense of justice and they have a capacity for a conception of the good. Moreover, persons have higher-order interests in developing and exercising these two powers (TJ: xii-xiii). Since some individuals with severe cognitive impairments are unable to develop a sense of justice or conceptualize an idea of the good they cannot, on Rawls's understanding, be viewed as persons. As we have already seen this is problematic because individuals who do not count as persons do not have their needs and interests represented by deliberators in the original position.

I am broadly sympathetic to much of Kittay's critique. She persuasively challenges standard conceptualisations of personhood by questioning why certain human characteristics are taken to be important from the point of view of morality while others are not. In addition, she argues perceptively against overly simplistic characterisations of the severely cognitively impaired that are offered up by many moral and political philosophers (Kittay, 2005: 26-30).<sup>13</sup> However, though I find her comments insightful, it seems to me that she takes her positive account in the wrong direction.

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<sup>13</sup> Though I am sympathetic to many of Kittay's arguments, I remain unconvinced about the plausibility of her conception of personhood and thus this discussion should not be taken as a wholehearted endorsement of her view. The point that I am trying to make, irrespective of whether or not her view is correct, is that her aims would be better met by a non-relational account over the relational one that she at times seems to favour.

Kittay rejects the idea that personhood can be fixed solely on the basis of certain capacities and instead argues that duties and entitlements of justice are generated by the human relationships that we engage in. Since many human beings with severe cognitive impairments engage in human relationships, they should be considered persons. This thought is captured by the following:

*We do not become a person without the engagement of other persons— their care, as well as their recognition of the uniqueness and the connectedness of our human agency, and the distinctiveness of our particularly human relations to others and of the world we fashion.*

(Kittay, 2001: 568 emphasis added)

For Kittay, then, personhood is constituted by the scheme of human relationships that an individual finds themselves embedded in. On this account, ‘persons’ are created by the interpersonal network of human relationships. That is, without the network of human social relations there would be no persons. Kittay notes that many of those who are most profoundly cognitively impaired are capable of saying a few words, engaging with others, and being responsive to the world around them and, hence, on her account they are persons.

It is clear that Kittay’s position seemingly shares more in common with relational cosmopolitanism than with non-relational cosmopolitanism. Moreover, because non-relational cosmopolitanism grounds duties and entitlements of justice in features of human beings, there is good reason to suspect that Kittay, and others who hold similar relational views, will find non-relational positions unappealing. However, following on from the arguments made in this chapter thus far, we should be concerned about relying on certain relationships to ground duties and entitlements of justice because the claims of certain individuals may be undermined when the correct relationship fails to hold.

We need only think of the severely cognitively impaired of both past and present who are rejected by the communities into which they are born and who go on to live very isolated lives. These individuals may receive little more than the human contact necessary to keep them alive and it would be difficult to argue that they are engaged in a network of human relationships in any meaningful sense.

Moreover, across the globe it is all too common for those born with severe physical and/or mental impairments to not be given the requisite care for survival. In the above quotation Kittay seems to suggest that a person is a being who has the ‘uniqueness and the connectedness of their human agency’ recognised by others. I worry that in a world in which disability is stigmatized, this condition of personhood may be too demanding since there is much evidence to suggest that many disabled people are not recognised in these ways.<sup>14</sup>

It seems to me that in these cases Kittay would hold that the personhood of these agents is preserved and that they remain the proper subjects of justice even though they cannot easily be said to be part of a meaningful network of human relationships. Thus I believe her aims would be better met by emphasizing the *capacity* of the severely cognitively impaired to engage in human relationships, rather than on them actually being engaged in human relationships. By focusing on the capacity to engage in certain relations with other persons it makes no

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<sup>14</sup> A 2011 report by WHO details the many barriers that prevent disabled people, worldwide, from having equal access to healthcare, education, employment, and many of the daily activities that non-disabled people take for granted. Among the barriers recognised by WHO are the negative social attitudes that affect the ways in which disabled people are treated: “health-care workers cannot see past the disability, teachers do not see the value in teaching children with disabilities, employers discriminate against people with disabilities, and family members have low expectations of their relatives with disabilities” (WHO, 2011: 262). The British Equality and Human Rights Commission’s (EHRC) report *Hidden in Plain Sight – Inquiry into Disability-Related Harassment* is an inquiry into violence and harassment against disabled people living in Britain. In the Foreword, the Lead Commissioner for the inquiry, Mike Smith, comments on how in the worst cases of violence and cruelty, disabled people are not regarded as human beings by their abusers. Moreover, the inquiry demonstrates that disability harassment is widespread. The harassment and violence suffered by disabled people is carried out against a backdrop of

[...] societal attitudes and laws that tell people to treat disabled people differently: you can be excluded from being a company director, you can be prevented from doing jury service; you can be aborted much later [...]; you’re not allowed to sit on certain seats in aeroplanes, or go to certain public places, because you will be a health and safety risk to others. People with mental health issues can be forced to take medication to keep everyone else ‘safe’, or if they refuse, be locked up. As disabled people we even have different toilets. Something as fundamental as going to the loo, and we are separated rather than making regular toilets accessible.

(EHRC,

2011: 6)

Though there is much work being done globally to secure the equal human rights of disabled people and adequate provisions to enable those with disabilities to lead full and flourishing human lives, we are a long way off achieving social justice for people with disabilities. For many with disabilities, stigmatisation, discrimination, and harassment because of their impairment(s) are commonplace, thus, it seems unlikely that people with disabilities really have their ‘uniqueness and the connectedness of their human agency recognised by others’.

difference whether those relations are actualized and thus people do not lose their status as persons just because they have been socially excluded or are deemed to be unworthy of care.

Kittay may try to argue against me here. She suggests that social relations are not ad hoc relationships requiring two fully conscious agents:

By a 'social relation' I mean a place in a matrix of relationships embedded in social practices through which the relations acquire meanings. It is by virtue of the meanings that the relationships acquire in social practices that duties are delineated, ways we enter and exit relationships are determined, emotional responses are deemed appropriate, and so forth. A social relation in this sense need not be dependent on ongoing interpersonal relationships between conscious individuals.

(Kittay, 2005)

Given this understanding of social relation, Kittay could argue that my challenge misses the mark because her account does not require that persons stand in *actual* relations with one another. While there may be failures of care for certain individuals, and though some individuals cannot be said to be engaged in human relations in any meaningful sense, this does not change their status as persons. I take it that the thought is roughly that social practices give meaning to social relations in some way. When certain individuals are socially excluded, isolated, and left generally uncared for, the failure can be located in a breakdown in our understanding of what is appropriately required in those relationships. So, the severely cognitively disabled who are isolated, neglected and excluded from socially meaningful relationships may still count as persons just in virtue of being embedded in a social world that gives particular meaning and understanding to our relationships.

It is difficult to ascertain exactly what Kittay means here but she does provide us with an example that helps to illuminate her account. For Kittay the parents of an anencephalic child may care for their child and feel that the child has suffered a loss even though the child is incapable of engaging with them (Kittay, 2005: 109-110). The reason for this is that they remain, in spite of the tragedy of the situation, parents to the child, and the social network within which they live determines that

their responses are appropriate to the parent-child relationship. A social relation, in this case the parent-child relationship, is given meaning by the social practices of the community and so even in cases where there is no longer an ongoing interpersonal relationship, there are still a set of appropriate and inappropriate behaviours and attitudes associated with that relationship. For example, we tend to think that someone who places flowers at their child's graveside is behaving in an unproblematic way, but that someone who ignores the wishes of a deceased relative by, say, throwing their ashes in the bin as opposed to scattering them on Warwick racecourse as requested, has behaved inappropriately. In both of these cases the interpersonal relationship has ceased and yet the social relation continues to exist and its meaning is determined through social practices.

But Kittay's account has troubling consequences. Although the situation for some of the world's cognitively and physically impaired has improved, there is no society today that fully protects the basic rights of, and secures substantive equality for, those with disabilities:

In every region in the world, in every country in the world, persons with disabilities often live on the margins of society, deprived of some of life's fundamental experiences. They have little hope of going to school, getting a job, having their own home, creating a family and raising their children, enjoying a social life or voting. For the vast majority of the world's persons with disabilities, shops, public facilities and transport, and even information are largely out of reach.

(United Nations Department of Economic and Social Affairs et al, 2007)

Since people with physical and cognitive impairments are frequently stigmatized and discriminated against, rendering their personhood contingent on social attitudes strikes me as a strategy with potentially disastrous consequences. There are pervasive negative stereotypes and discriminatory social attitudes towards disability in most societies. Unfortunately it is not uncommon for those with physical and mental impairments to have their agency undermined, and to not be respected as the full moral and political equals to those who are not disabled. Given the prevalence of harmful attitudes towards those with disabilities, it is not obvious that the network of human relations into which people with disabilities are born will be sufficient to secure their personhood.

Recall that on Kittay's picture social practices shape the network of human relationships into which an individual is born and they give meaning to our social relations. Thus, our social practices in some sense define our social relations; giving them meaning and marking out appropriate and inappropriate behaviours associated with those relationships. Moreover, our social practices determine the duties that we have to one another in virtue of the particular relations that we share. If we grant that in general the cognitively and physically impaired are subject to negative and discriminatory social attitudes that rely on implicit assumptions about the inferiority of those with disabilities, then we have good cause to be sceptical about Kittay's account to secure personhood for the severely cognitively impaired.

Though social practices may determine the meaning of, say, child/parent, wife/husband, teacher/pupil, employer/employee relationships, there is little to suggest that the socially determined meanings of these relationships will be the same for those with disabilities as they are for those without disabilities. In fact, given the prevalence of negative attitudes towards disability it seems likely that there will be an alternative set of social meanings for relationships involving those with disabilities and those meanings will determine an alternative set of associated behaviours and duties.

This is well illustrated in WHO's *World Report of Disability* (2011). The report suggests that negative social attitudes are manifested in the relationships between disabled people and healthcare workers, teachers, employers, and family members (WHO, 2011: 262). A good example of how this works is in the education of disabled children:

Negative attitudes are a major obstacle to the education of disabled children. In some cultures people with disabilities are seen as a form of divine punishment or as carriers of bad fortune. As a result, children with disabilities who could be in school are sometimes not permitted to attend. A community-based study in Rwanda found that perceptions of impairments affected whether a child with a disability attended school. Negative community attitudes were also reflected in the language used to refer to people with disabilities.

The attitudes of teachers, school administrators, other children, and even family members affect the inclusion of children with disabilities in

mainstream schools. Some school teachers, including head teachers, believe they are not obliged to teach children with disabilities.

(WHO, 2011: 216)

Here we can see how social practices and attitudes shape an alternative set of meanings for relationships involving disabled people. In this case, the teacher/pupil relationship can differ radically when it involves a disabled pupil. The above statement indicates that social attitudes to disability can lead to the exclusion of disabled children from the teacher/pupil relationship altogether. When there are negative attitudes and hostility towards disability, disabled children may not be the right kind of beings who can be pupils. And, importantly, the duties that teachers have as teachers may not extend to disabled children. Thus, the negative social attitudes and practices affect the nature of the relationships that disabled people can have, and may, in certain contexts, undermine their agency, equal moral worth, and ultimately their status as persons.

A more general point to note is that the social meaning of human relationships is in constant flux and we can point to countless examples where social attitudes and practices have defined particular social relations in ways that are harmful to members of particular social groups. In Britain it is not all that long ago (and the residue of some of these attitudes and practices remain) that social attitudes and practices associated with the wife/husband relationship put married women in a position of political and economic vulnerability. In a society where ‘a man’s home is his castle’ in which he is to rule over his wife and children, where domestic violence is widespread, where women have no say politically, and where it is only right and proper that the husband controls the family income, on what grounds could it be claimed that the meaning of social relations secure the status of women as the full equals to men? Moreover, it is not clear that those living in the society just outlined would be prepared to concede that women are in fact persons.<sup>15</sup> The

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<sup>15</sup> In William Blackstone’s portrayal of 18<sup>th</sup> century English law he describes how marriage alters the status women:

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whole wing, protection, and *cover*, she performs everything [...] For this reason, a man cannot grant any thing to his wife, or enter into covenant with her: for the

trouble with Kittay's account is that an individual's status as a person is tied to how society perceives them. If you happen to be a member of a socially marginalised group about whom negative stereotypes and attitudes are prevalent, then there is no guarantee that you will be recognised as a person and it is unlikely that the meaning of social relations can help to secure that status for you.

Though Kittay is at pains to stress that relationships are pivotal to the concept of personhood, I have suggested that the *capacity* to be in certain relationships with other persons would better secure the status of the severely cognitively disabled as persons. Not only do I think that grounding personhood in capacity would more successfully achieve Kittay's aims, but I also believe that this suggestion is not completely at odds with her view. At times Kittay herself implies that it is the capacity to be in certain relationships with other persons that is crucial to personhood:

I propose that being a person means *having the capacity* to be in certain relationships with other persons, to sustain contact with other persons, to shape one's own world and the world of others, and to have a life that another person can conceive of as an imaginative possibility for him- or herself.

(Kittay, 2001: 568 Emphasis added)

Although relationships do in many important ways come to constitute who we are as people, it seems to me that without the *capacity* to be in certain relations with others it is doubtful that a human being could meaningfully engage with other persons in ways that seem essential to Kittay's definition. If a human being lacks the capacity to engage in distinctively human relations with other persons, then they seemingly do not qualify for personhood since the capacity for engagement

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grant would be to suppose her separate existence; and to covenant with her, would be only to covenant with himself [...]

(Blackstone, 1775: 442)

Although the law does not constitute the totality of social practices and attitudes surrounding a particular relation, it does have a significant role in defining what practices are legally acceptable and which are not. Moreover, the law will, to some extent, reflect social attitudes; just as social attitudes will reflect, to some extent, what is given in laws and legal convention. Knowing what we do about the position of women in 18<sup>th</sup> century England, Blackstone's writings on the marriage relation support the thought that in general social attitudes held women to be inferior to men and not suitable agents for personhood (at the very least in the legal sense).

in distinctively human relationships with other persons is essential for such relationships to get off of the ground.

The important thing is not that a person stands in particular relationships with others but that they have the capacity to do so. It should also be clear that having the capacity to be in certain relationships with others is indicative of a non-relational approach. A conception of personhood grounded in capacity, irrespective of whether that capacity is rationality or the capacity to engage in certain relationships, is non-relational since it fixes personhood in some feature of individuals. It does not require, unlike relational views, that human beings stand in certain relations to others before they count as persons. Despite Kittay's attested commitment to a relational view of personhood, there is room in her account to ground her conception of personhood on a human capacity rather than human relationships.

Consequently, I hope to have demonstrated that Kittay's position, and the views of others who argue similarly, should not be seen as incompatible with the non-relational view that I have been pushing here. Moreover, I think that in order to more accurately reflect the capacities of the severely cognitively impaired, and avoid the worry that some cognitively impaired individuals may not be owed anything on grounds of justice because society fails to view them as beings capable of certain kinds of valuable relationships, Kittay would be better off adopting a non-relational view. On this view, what confers someone the moral status of a person, and thus secures them the status of a being entitled to goods as a matter of justice, is the *capacity* to be in certain relationships with other persons.

## **7.6 SUMMARY**

In this chapter I have tried to show that there are good reasons for both feminists and cosmopolitans to abandon relational approaches in favour of those that are non-relational. Having argued that relational cosmopolitanism is inconsistent with a core cosmopolitan commitment, I then spelt out some of the problematic consequences of taking a relational approach. My main concern has been to

highlight the dangers of making justice contingent on certain relationships. There are two sides to this: (1) individuals may lose their just entitlements when the relationship, for whatever reason, cannot be sustained; and (2) individuals may absolve themselves of their duties of justice by disengaging from relationships - this will be particularly disastrous for those dependent on the fulfilment of those duties.

Following this I then considered Nussbaum's critique of social contract theory and its inability to appropriately accommodate disability. My aim was to show that there is an existing feminist critique of theories of justice that require the existence of certain relationships to generate duties and entitlements. I suggested that this critique supports my earlier arguments against relational cosmopolitanism and should give feminists further reason to be wary of such approaches.

Finally, I argued that though one might think that certain strands of feminist thought may in fact be more compatible with relational accounts. I then considered the work of Kittay as someone who is rooted in the ethics of care tradition and who has articulated a view that looks to be relational in nature. I argued that Kittay's relational approach suffers from problems similar to those outlined in Sections in 1-4 and that her aims would be better met by adopting a non-relational approach to moral personhood. I am hopeful that this discussion goes some way to showing that a non-relational cosmopolitanism need not be in conflict with the goals of those working in the ethics of care tradition.



## WHAT METRIC OF JUSTICE?

When we think about distributive justice one of the key questions that we must ask is what is it that people should have a fair share of? Put another way, when we say that a situation is marked by an unjust distribution we have to specify what it is that has been unfairly distributed. So what we need is a metric; a measure that we can apply to the world in order to assess whether everyone has received what they are justly entitled to. In this chapter I will look at the recent debate between capability theorists and resourcists (sometimes referred to as primary goods theorists). I have restricted the scope of my discussion to these two approaches not only because they have enjoyed the most influence in recent debates (Brighthouse and Robeyns, 2010), but also because the capabilities approach (hereafter CA) has often been regarded as better suited to dealing with gender injustice than approaches that take resources to be the metric of justice (Robeyns, 2010). However, in recent years some have argued that resourcism is in fact better equipped to deal with the systematic nature of gender injustice (Browne and Stears 2005; Pogge, 2010).

Here I will examine the dispute between proponents of these two metrics and suggest that the capabilities metric is more compatible with the key feminist goals outlined in Chapter 2. I begin in 8.1 by briefly outlining the two views and drawing out the fundamental points of difference between the two. In 8.2 I provide a more detailed exposition of Nussbaum's position to show why it has generally been thought to be better equipped to deal with gender injustice. Section 8.3 considers a recent challenge mounted by Thomas Pogge who argues that not only does CA serve to undermine the feminist agenda, but that resourcism is a much more preferable alternative. I will demonstrate why Pogge's challenge fails, by arguing that his critique rests on a flawed understanding of CA

and that the resourcist position that he advocates cannot deal with more covert forms of gender injustice. In Section 8.4 I will use an example put forward by Ingrid Robeyns to illustrate the weaknesses of the resourcist account and the strengths of CA. To be clear, I am not arguing that resourcism is unimportant. Indeed, I take it that a fair distribution of resources is essential to CA; however, although the fair distribution of resources is a necessary component of any adequate theory of justice, adopting resources as the metric of justice is not sufficient to fully address many of the underlying mechanisms of gender inequality and oppression.

## 8.1 RESOURCES VS. CAPABILITIES

To start, I will briefly outline, starting with resources, what it means to take either resources or capabilities as the metric of justice. Those who adopt a resourcist approach tend to base their understanding of what counts as a resource on the ‘primary goods’ account given by Rawls. For Rawls, primary goods “are various social conditions and all purpose means that are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers,<sup>1</sup> and to pursue their determinate conceptions of the good” (Rawls, 2001: 57). The kinds of things he has in mind as primary goods are detailed in the following:

- (i) The basic rights and liberties: freedom of thought and liberty of conscience, and the rest [...]. These rights and liberties are essential institutional conditions required for the adequate development and full and informed exercise of the two moral powers [...].
- (ii) Freedom of movement and free choice of occupation against a background of diverse opportunities, which opportunities allow the pursuit of a variety of ends and give effect to decisions to revise and alter them.

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<sup>1</sup> In Chapter 3 we saw that Rawls regards persons as free and equal and in possession of two moral powers: (1) persons have the capacity for a sense of justice, which means that they have the capacity to “understand, to apply, and to act from (and not merely in accordance with) the principles of political justice” (Rawls, 2001: 19); and (2) persons have a capacity for a conception of the good. That is, persons rationally pursue a conception of the good which is “an ordered family of final ends and aims which specifies a person’s conception of what is of value in human life or, alternatively, of what is regarded as a fully worthwhile life. The elements of such a conception are normally set within, and interpreted by, certain comprehensive [...] doctrines” (Rawls, 2001: 19).

- (iii) Powers and prerogatives of offices and positions of authority and responsibility.
- (iv) Income and wealth, understood as all-purpose means (having an exchange value) generally needed to achieve a wide range of ends whatever they may be.
- (v) The social bases of self-respect, understood as those aspects of basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence.

(Rawls, 2001: §17.2)

These goods “are things which it is supposed a rational man wants whatever else he wants” (TJ: 79). That is, they are the means (i.e. resources) that each individual, regardless of their specific conception of the good, needs in order to be able to carry out their life plans. What is more, given that primary goods are crucial to an individual’s life prospects, they are something that the rational individual will always want more of rather than less.

By contrast, and as we saw in Chapter 1, CA focuses on what people are able to do or, adopting the capability terminology, what kinds of functionings people are able to achieve. Unlike Sen, who does not endorse a specific set of capabilities, Nussbaum offers a list of ten central human capabilities that are necessary for truly human functioning. Nussbaum has persuasively argued that a serious and sustained commitment to social justice requires a specific list of capabilities; without such a list our theorising will be too vague to be useful. Theories of justice should enable us to evaluate how just our world is and the ways in which it falls short, and, as a result, such theories must have some definite content that allows us to do that (Nussbaum, 2003b: 40-50). In accordance with this thought, Nussbaum’s list provides us with a way of assessing the nation-states of our world and the ways in which they are defective. Thus, while much of the literature in this area examines Sen’s articulation of CA, I will mainly refer to Nussbaum’s account since she offers a more comprehensive view.

Recall that central to Nussbaum’s view is the idea of human dignity. For Nussbaum, human dignity is something that can only be achieved when a human is able to live their life in a truly human way. That is, they must have

opportunities available to them that allow them to function in ways that we can identify as truly human. Since they are important for this discussion, I will briefly restate the ten human capabilities that Nussbaum takes to be essential to a life worthy of human dignity: (1) Life; (2) Bodily health; (3) Bodily integrity; (4) Senses, Imagination, and Thought; (5) Emotions; (6) Practical reason; (7) Affiliation; (8) Other species; (9) Play; and (10) Control over one's environment (2000: 78-80; 2006a, 76-78).<sup>2</sup> The basic thought, for Nussbaum, is that when people lack any one of these central capabilities, their lives are no longer worthy of human dignity. However, it is important to note that Nussbaum is not suggesting that in order for a person's life to count as fully human they must *exercise* all of the central capabilities. A key feature of CA is that it is capability rather than functioning that is the political goal (Nussbaum, 2000: 87).

I take it that there are at least two fundamental differences between resourcism and CA. First, resourcists concentrate on what people have or what they might have, namely, the bundle of resources that people have available to them, whereas CA theorists, on the other hand, are more concerned with what a person *can do* with the resources available to them. Elizabeth Anderson sums up this point of departure well:

The fundamental difference between capability theorists and resource theorists lies [...] in the degree to which their principles of justice are sensitive to internal individual differences, and environmental features and social norms that interact with these differences. Resourcism calls on the basic structure to provide, to each person, access to a *standardized* package of resources that an individual is expected to need to order to achieve relevant functionings. By contrast, capability theorists insist that the basic structure should provide, to each person, access to a package of resources adjusted to that person's individual ability to convert resources into relevant functionings, and sensitive to environmental factors and social norms that also affect individuals' conversion abilities.

(Anderson, 2010: 87)

This suggests a second important difference between the two. Resourcists, because of their concern with what goods people have, focus more heavily on what is external to the individual. Whereas CA theorists, because of their

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<sup>2</sup> It is important to note that Nussbaum takes this list to be open-ended and subject to continual revision, making the itemisation of fundamental human capabilities an on-going project.

emphasis on each individual's needs and interests, are concerned with factors both external and internal to the individual. That is, since resourcists are largely concerned with the resources that people have access to, their focus tends to be on those resources and the external factors that affect the distribution of those goods. By comparison, because CA theorists are concerned with the capabilities that people have, they are interested in all barriers to functioning. This means that CA theorists also look to sources internal to the individual that may disadvantage them and damage their capabilities. Thus, for example, the CA theorist will find the internalisation of harmful social norms that prevent some individuals from enjoying the capability for valuable functionings, to be problematic from the perspective of justice.

In what follows I will examine Nussbaum's CA in more detail so as to clarify the differences between CA and resourceism. Moreover, the subsequent discussion will illuminate why these theoretical differences matter to each approach's ability to deal with the challenge posed by sex inequality, discrimination, and oppression.

## **8.2 CAPABILITIES AND GENDER INJUSTICE**

Since its emergence, CA has often been presented as superior to other approaches to distributive justice in its ability to deal with gender injustice (Sen, 1995: 125; Nussbaum; 2000). One key feature of CA, which its advocates believe gives it an advantage, is that it explicitly acknowledges human diversity. That is, an individual's race, age, ethnicity, gender, sexuality, geographical location and so on, are relevant when establishing what capabilities an individual has. This is important because it recognizes that (a) some people need more resources than others; and (b) the rate at which people are able to convert the resources available to them will vary from individual to individual, and over the course of an individual's lifetime.

That some people have difficulty converting the resources allocated to them into valuable functionings is a problem from the point of view of justice because some will have the capacity for the functionings that are valuable to them, while others

will not. For example, in certain circumstances women and men may have an unequal capability to achieve valuable functionings despite having equal rights, liberties, and access to education. We can see this most clearly in societies where a gendered division of labour, which systematically disadvantages women over men, persists because of the prevalence of powerful gender norms and the processes of gender socialisation. Although men and women may begin with equal resources, if they live in a sexist society that values gendered family structures, a woman may find it more difficult to convert those resources into functionings that are valuable to her - say, having both a family and pursuing a career as a high court judge - because of gender norms that constrain her choices and conflict with her ultimate goals.<sup>3</sup>

By accommodating human diversity, CA avoids a weakness that simple articulations of resourcism have been susceptible to. A resourcism that takes a just distribution of primary goods to be one where all the goods are divvied up into equal bundles and shared out, not only ignores the fact that some individuals will have difficulty converting those goods, but also overlooks that individuals vary greatly in need and some will require far more resources than others. By placing the emphasis on what individuals are able to do, CA is far more sensitive to the range of human diversity and is better equipped to identify features of a person's circumstances that impede their capacity to function in certain crucial ways.

Unlike a simple resourcism that takes all people to be similar in need and ability, and which assumes that each of us is influenced in the same way and to the same extent by personal, social, and environmental features, CA makes room for all of the idiosyncratic characteristics and circumstances that may affect the capabilities of any given individual. In short, because CA is concerned with all barriers to capability, it is sensitive to the many ways in which people differ, and the many different ways in which our capabilities may be limited. To see how CA can accommodate and respond to the multitude of differences between individuals

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<sup>3</sup> I will return to this case in Section 8.3 where I will argue that the resourcist cannot identify, and thus hope to resolve, the more covert forms of gender injustice.

and their circumstances, it is necessary to explore Nussbaum's account in more detail. Thus, let us now consider her tripartite distinction between basic, internal, and combined capabilities.

For Nussbaum, the 'basic' capabilities are "the innate equipment of individuals that is the necessary basis for developing the more advanced capabilities, and a ground of moral concern. These capabilities are sometimes more or less ready to function: the capability for seeing and hearing is usually like this" (Nussbaum, 2000: 84). Basic capabilities, then, are those that require no development. They are essentially those that we are born with and that we are able to convert into functionings almost from birth. Nussbaum points out that there are few capabilities like this since most require development and the right kind of external conditions before they can be converted into actual functionings. For example, a newborn may have the physical capability for speech and language but this capability cannot be converted into a functioning without the right kind of external conditions (e.g. a language community and education).

In addition to basic capabilities, there are what Nussbaum calls 'internal' capabilities which she describes as the "developed states of the person herself that are, so far as the person herself is concerned, sufficient conditions for the exercise of the requisite functions" (Nussbaum, 2000: 84). The key difference between basic and internal capabilities is that internal capabilities take time to develop (for example, being capable of sexual functioning) or they require "support from the surrounding environment" (Nussbaum, 2000: 84). Just as in the case of speech and language there are many capabilities that require further, external conditions to enable us to achieve actual functioning. For example, the capability for love requires external conditions that foster our capability to enter into loving relationships with others; we learn to love, and can only do so, in the right conditions.

Lastly Nussbaum introduces the notion of combined capabilities, which she explains are "internal capabilities *combined with* suitable external conditions for the exercise of the function" (Nussbaum, 2000: 84-85). Combined capabilities

require not only that the capability be sufficiently developed for functioning but that the external conditions are such that a person can convert the internal capability into actual functioning. Nussbaum acknowledges that the distinction between internal and combined capabilities is blurred by the fact that most internal capabilities require further external conditions for their development. However, she goes on to argue that the two types of capability are importantly different:

We see the distinction most sharply when there is an abrupt change in the material and social environment: a person accustomed to exercising religious freedom and freedom of speech is no longer able to do so. Here we feel convinced that the internal capability is present, but the combined capability is not. Where there is life long deprivation, the distinction is not so easy to draw: persistent deprivation affects the internal readiness to function. A child raised in an environment without freedom of speech or religion does not develop the same political and religious capabilities as a child who is raised in a nation that protects these liberties.

(Nussbaum, 2000: 85)

Understanding the central human capabilities in these three ways helps us to see how CA is sensitive to human diversity and how it can help to identify the many barriers that prevent people from achieving valuable functionings. The fact that we have both internal and combined capabilities demands that we look at *all* of the conditions necessary to secure each capability, and consider how the features of a person's circumstances may prevent them from having the genuine capability to function in valuable ways. Hence CA is not just concerned with features unique to the physical and mental constitution of any given individual, but also with the background conditions against which each individual lives their life. These conditions include, though are not restricted to, their access to material resources and other social goods, the social climate in which they live including pervasive social norms, their physical environment, and their familial and communal relations.

Before I go on to show why these features make CA better equipped to tackle gender injustice, I will briefly explain where resourcism fits in with what has been said so far and how Nussbaum's tripartite distinction can shed some light on the difference between the two views. At the level of basic capabilities (and

perhaps some internal capabilities), there is little disagreement between CA theorists and resourcists about what justice requires. This is because basic capabilities necessarily require a certain amount of resources so as to not be fundamentally compromised, and the resourcist grants that some resources are vital insofar as they are essential for human well-being. For example, children require certain vitamins and minerals in order to enjoy good bodily health; without vitamin A an infant's basic capacity for sight will not be able to flourish and they may suffer a loss of vision or lose their sight altogether. Both CA theorists and resourcists can pick out the injustice in a situation where goods are distributed so unevenly that some individuals have their bodily health undermined because CA theorists see bodily health as a fundamental capability, and resourcists see basic nutrition as an essential primary good.

However, when we move to combined capabilities (and I suspect many internal capabilities) there will be less agreement between CA theorists and resourcists about what justice requires. As we have seen, internal and combined capabilities require certain external conditions to obtain in order for individuals to flourish. For the CA theorist, what justice requires will be fairly demanding since they focus on what central human capabilities each individual has and any limits to those capabilities, which involves investigating what resources people have access to *and* how easily individuals can convert resources into valuable functionings. Consequently, justice, on CA, will demand changing all external conditions that affect an individual's ability to sufficiently develop their central human capabilities. By contrast, the resourcist account looks to be significantly less demanding because the resourcist operates with a fixed and standardized bundle of resources as their metric. This means that many of the external conditions necessary to securing central capabilities will not count as valuable resources and thus, on the resourcist picture, are not a concern for distributive justice.

As a result, I believe that the resourcist will find it difficult to identify *unjust* inequality in cases where, for example, everyone has access to the same bundle of resources but members of a particular social group continue to make choices that

systematically disadvantage them.<sup>4</sup> This means, for the resourcist, that an unequal distribution of resources caused by prevalent social attitudes and norms, where individuals of oppressed groups believe that they are not entitled to certain resources, or that those resources are not meant for them and other members of their social groups, is not a matter of justice.

We are now in a position to see why CA has often been regarded as superior to other theories of justice in its ability to deal with gender injustice. Because the emphasis of CA is on what one can do and be, as opposed to what resources one has access to, it is much more sensitive to the ways in which social structures can hamper an individual's capacity to achieve valuable doings and beings. As we saw in Chapter 2, though state laws may protect women's rights to equal opportunity in employment and equal pay, there may be pervasive social norms that thwart women's attempts to pursue jobs of their choosing. When women are discouraged from working, or informally excluded from certain jobs, this undermines their fundamental capability to control their environment, which includes "having the right to seek employment on an equal basis with others" and being able to engage in "meaningful relationships of mutual recognition with other workers" (Nussbaum, 2006a: 78). Moreover, when women are discouraged from working outside of the home, their capability to be treated as dignified human beings of equal moral worth to others is also impaired. CA, with its focus on capability rather than functioning is sensitive to societal pressures that limit an individual's capability for valuable functionings and so can deal with problematic social structures that unjustly impede a person's ability to live the life that is valuable to them. As a result, CA is well equipped to identify all of the barriers to substantive equality; the attainment of which is crucial to the feminist agenda being pursued here.

Furthermore, CA is well placed to deal with the fact that gender inequality does not simply involve the imposition of external constraints on women. The

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<sup>4</sup> See Chambers (2008 Ch. 4) for an account of why some choices made by members of particular social groups can lead to systematic disadvantage and why their *free* choices should be seen as problematic by theorists of social justice. In Section 8.4, I look at Robeyns's case of Fabienne and Marc which strikes me as a particular instance of the kind of situation (though perhaps slightly more idealised) that Chambers has in mind.

“circumstances [in which people live] affect [their] inner lives [...], not just their external options: what they hope for, what they love, what they fear, as well as what they are able to do. [...] We should not underrate the extent to which such differences in options construct differences in thought” (Nussbaum, 2000: 31). As we saw in Chapter 2, people will often adapt their preferences to fit with the circumstances in which they live. Sen discusses how the world’s most deprived women often do not desire basic goods like healthcare, nutrition, and security because they have become accustomed to living without such goods or they have been socialized to believe that they neither need or are entitled to such goods (Sen, 1984; 1995).

CA can recognise and be responsive to many of the internal constraints that result from living in a world marred by gender injustice. Since CA is concerned with what women can do and be, as opposed to what they actually do and are, it does not take the testimony of individual women as sufficient for justice. For instance, though a woman may say that she does not desire access to adequate healthcare (because she has never had access to adequate healthcare) this would not be taken by the CA theorist to mean that the absence of adequate healthcare is unproblematic from the point of view of justice. Whether or not a situation is just is measured by what capabilities individuals have, not by the satisfaction that they feel with their actual level of functioning.

Internal constraints, like problematic adaptive preferences, pose a challenge for any theory of justice. Societies characterized by sex injustice, where powerful gender norms are prevalent, are likely to result in some of the choices that women make being systematically disadvantageous. For example, in societies where girls are discouraged from pursuing education, women are likely to be systematically disadvantaged. This remains true even if women in such societies identify with their decision not to pursue education. In addition, we have seen how women can become complicit in their own subordination when they continuously make choices that disadvantage them as a group, or reject measures that would lessen sex inequality (Section 2.1b). Thus, gender inequality in capability and functioning can be, and often is, perpetuated by women’s exercise of free choice.

If we recall the discussion of freedom of choice in Chapter 2, then the importance of this becomes clear. There I noted that a key feminist goal is to promote women's capacity for free choice. There are many ways in which a woman may have her ability to make free choices undermined; these range from her being forcibly prevented from acting in the ways that she wishes, to her forming disadvantageous adaptive preferences because of the circumstances in which she lives. However, as I argued then, we should resist the thought that choices that make a person's life go badly should be prevented by others, even when those choices are a result of systematic oppression. Many of us value the experience of choosing for ourselves, and having the sense that we have control over the path that our lives take is important to us. Any approach that demands intervention in the problematic choices of women will inevitably undermine women's sense of themselves as choosers, as agents who have control over their lives and the decisions they make. This would be antithetical to the feminism being advanced in this project.

An advantageous feature of CA is that it can accommodate problematic preference formation yet still be respectful of the individual choices that women make. Since CA is concerned with having the capability to achieve valuable functionings and not with actual functioning, in most cases it does not demand interference in women's choices.<sup>5</sup> Focusing one's attention on capabilities rather

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<sup>5</sup> There are, however, difficult cases where people may choose to permanently remove a fundamental capability. Since we care about the capability, in those cases we might think that people should be prohibited from making such choices. For example, in some brief remarks on FGC Nussbaum argues that:

Again, it seems plausible for governments to ban female genital mutilation, even when practiced by adults without coercion: for, in addition to the long-term health risks, the practice involves the permanent removal of the capability for most sexual pleasure, although individuals should of course be free to choose not to have sexual pleasure if they prefer not to.

(Nussbaum, 2000: 94)

Here Nussbaum is suggesting that the loss of a fundamental capability is inherent to FGC (at least in those cases where there is a permanent loss of sexual pleasure) which makes choosing such procedures problematic and thus intervention in the choices of women who wish to undergo such procedures can be justified. This is a thorny issue and one that I do not have the space to go into here. The depth of the paternalism evident in Nussbaum's account is unclear, and the extent to which it is undesirable also requires further analysis, however, the important point is that in most

than functionings means that we are concerned with what people *can* do rather than what they *actually* do. Given that disadvantageous adaptive preferences are formed against unjust background conditions, and that CA is sensitive to all of the constraints placed on peoples capabilities, it is compatible with CA that we concentrate our efforts on the background conditions against which women make their choices and not the actual choices made by individual women.

### **8.3 CAN THE METRIC OF RESOURCES DO A BETTER JOB?**

The assumption that CA can more adequately deal with gender injustice has, until fairly recently, gone unchallenged. In what follows I will consider Thomas Pogge's (2002, 2010) critique of CA in which he defends the metric of resources. Pogge makes two claims that I will focus on here: (1) that CA works against feminist aims; and (2) that resourcism has the necessary tools to address gender inequality.

#### ***8.3A DOES THE CAPABILITIES APPROACH WORK AGAINST FEMINIST AIMS?***

To begin I will evaluate Pogge's first claim that rather than being an asset to feminism, CA serves to undermine the feminist cause. I quote the following passage at length because it is essential to my response:

In fact, the capability approach may even weaken the feminist case by suggesting - falsely - that women's terrible and disproportionate suffering in most of this world is due to their being insufficiently compensated for their inferior natural endowments. Women's suffering in the world as it is does not result from social institutions being insufficiently sensitive to the special needs arising from their different natural constitutions. Rather, it overwhelmingly results from institutional schemes and cultural practices being far *too* sensitive to their biological difference by making sex the basis for all kinds of *social* (legal and cultural) exclusions and disadvantages. Women and girls have a powerful justice claim to the removal of these barriers, to *equal* treatment (in a resourcist sense). If these barriers were removed, if our social institutions assured women of equal and equally

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cases CA does not require intervention in the choices of women. For further discussion of paternalism in Nussbaum's CA see Deneulin (2002), Jaggar (2006), and Qizilbash (2009).

effective civil and political rights, of equal opportunities, of equal pay for work, women could thrive fully even without any special breaks and considerations. So why detract from this irresistible demand for equal treatment in a resourceist sense by staking claims to compensations for greater needs or special disabilities? Why open the door to all sorts of counter-claims invoking the special needs and disabilities of males, based perhaps on their naturally lower life expectancy or on their larger bodies in need of additional food and clothing?

(Pogge, 2010: 24-25)

The allegation, as I see it, is that by arguing, for instance, that during pregnancy and breastfeeding women require more resources than at other times, CA theorists seem to suggest that women, because of the *inferiority* of their physical constitution, need to be compensated.

Pogge finds this undesirable for three reasons. First, CA's emphasis on difference wrongly implies that women are physically inferior to men because, for example, they require more resources in pregnancy and when breastfeeding. Second, CA's emphasis on difference lends support to current sexist institutional schemes that are overly sensitive to sex difference. By drawing attention to the difference in the requirements between certain women and others, the CA theorist gives those opposed to women's equal status and treatment biological grounds to justify unequal treatment. Third, CA permits men to make counter-claims by appealing to biological differences to justify a greater entitlement to certain resources.

Anderson (2010) convincingly argues that Pogge's critique of CA is based on a misunderstanding of the view. Pogge attributes to CA theorists the assumption that people need to be compensated for any bad luck that befalls them in the natural lottery of physical and mental endowments. However, as Anderson notes, thinking that a central set of capabilities is required for human beings to live dignified human lives does not commit one to some kind of principle or rule of compensation. Furthermore:

Those who reject the principle of compensation for natural bad luck, and adopt some other principle, [...] attribute any individual's avoidable shortfall in the level of capability to which they are justly entitled to discriminatory failures of society to provide them with the resources and social environment they need. They do not attribute shortfalls to any supposed inferiority in the innate endowments of the individual.

(Anderson, 2010: 96)

The CA theorist, then, does not have to view shortfalls in capability as resultant of inferior constitutions. Rather, the CA theorist can view any *avoidable* shortfalls that place individuals below the threshold for sufficient capability as being unjust. In addition, it is difficult to understand why Pogge takes CA's sensitivity to difference to entail the conclusion that women in need of extra resources to meet biological difference, or address past inequality, are naturally inferior to men. Acknowledging that there are differences between human beings – for example, that some women, while no men gestate – does not equate to saying that one group is inferior to another. Put another way, recognising that a person requires more goods to secure a fundamental capability does not necessarily entail the view that they require those goods because they have inferior natural endowments. Thus, being sensitive to human diversity does not require ranking human beings in terms of superiority in capability.

We can see, then, that CA does not entail the view that women have inferior natural endowments that require compensation. First, avoidable shortfalls in the level of capability are the focus of CA theorists; this is a matter of distributive justice and not compensation. Where there are avoidable shortfalls in capability then justice requires that the deficit be met. Failure to meet an avoidable shortfall indicates that society is structured in unjust ways. Second, any shortfalls in the level of capability, whether the individuals in question are women or men, are not seen as a product of inferior natural endowments. Rather, shortfalls in capability are merely a product of the heterogeneity of human need and endowments. Since CA theorists are not necessarily committed to some kind of principle of compensation, and given that acknowledging that someone requires greater resources to secure their basic capabilities does not equate to saying that they are inferior, Pogge's suggestion that CA works against the feminist cause is unfounded. Consequently, CA cannot easily be exploited by anti-feminists to defend the idea that women are naturally inferior to men.

Pogge also suggests that CA opens the door to all kinds of counter-claims made on behalf of males. I think that this last claim further evidences the way that

Pogge misconstrues CA. Why should we view the claims of some males who require more resources because they have larger bodies and greater caloric requirements as unreasonable counter-claims? People do, after all, have different needs: both women and men included. Talk of compensation and counter-claims undermines a fundamental element of CA, namely, that the basic needs of *all* are important and that these needs will vary. Irrespective of sex, it is essential to meet the needs of those with faster metabolisms and greater caloric requirements in order to secure their basic capability for bodily health.

Having rejected Pogge's reasons for thinking that CA is detrimental to feminist aims, I will now argue that his optimism that resourcism can do a better job is misplaced. Pogge suggests that resourcism should be favoured over capabilities because instead of highlighting the differences between men and women - which he believes has problematic consequences - it more simply demands equal treatment for women. Achieving equal treatment for women is one of the key aims of the feminist project that I am advancing here, but in what follows I will show that Pogge's account is ill-equipped to promote that goal.

### ***8.3B IS RESOURCISM BETTER PLACED TO MEET FEMINIST AIMS?***

For Pogge, unjust inequalities between men and women are a result of social institutions and cultural practices being far too sensitive to biological difference. While this may be true, it is important that we recognise that there are in fact differences (both biological and social) between men and women. Sex and gender differences are almost always irrelevant from the point of view of justice.<sup>6</sup> That is, a person's sex or gender should not determine what they are entitled to or what they owe to others. However, and this is important, given that sex and gender do

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<sup>6</sup> It could be argued that pregnancy and lactation are cases where biological sex difference determines an individual's just entitlements. In part this seems right because only women, while no men, gestate and lactate. However, since not all women become pregnant and not all women breastfeed, it is unnecessary to determine the entitlements of the pregnant and the breastfeeding on the grounds of biological sex difference. Why refer to sex categories at all? All that is required from the point of view of justice is that pregnant individuals receive the resources that they need, which may mean that they require a greater share than non-pregnant individuals.

present barriers to people's well-being, they must feature in our thinking about whether circumstances are just and how justice can be achieved.

Though Pogge argues that CA puts *too* much emphasis on sex differences, this does not entail that he thinks that sex difference should play *no* part in our thinking about social justice. He acknowledges that institutional schemes can be 'facially sex neutral' insofar as they do not openly discriminate against women, but that there may still be barriers to women's substantive equality because jobs can be structured in ways that make it very difficult for pregnant women and women caring for small children to be eligible for them (Pogge, 2010: 25). And, moving from the real world to theory, Pogge notes that theories of social justice can also have a male-bias because the principles advocated can be similarly 'facially sex neutral' in that the standard needs and endowments picked out are specified for all human beings. However, upon deeper inspection, he argues, it can be the case that the recommended principles better reflect the needs and interests of men than of women. Moreover, "such a male-centred criterion of social justice may blind its adherents to the ways in which their institutional order is covertly discriminatory against women" (Pogge, 2010: 25). All this suggests that while Pogge believes that CA pays too much attention to sex differences, he is aware that ignoring sex and gender differences is problematic both in practice and theory.

While Pogge is clearly aware of the ways in which sex and gender can undermine our efforts to tackle gender injustice, one might worry that the metric of resources cannot be sensitive to the differing needs of men and women, unjust institutional schemes, or discriminatory cultural practices and problematic gendered social norms, because they are committed to a picture of standard human needs and interests. That is, resourceists look to allocate a bundle of resources to each individual based on the standard needs and interests of human beings and it is difficult to see how differences in sex and gender can be accommodated by the 'standard' view of a human being. As Pogge has highlighted, there are two worries here. First, the conception of a 'standard' human being might be implicitly male. Thus, the model of the standard needs, interests and endowments

will better reflect the life experiences of men, leaving women and their needs, interests, and endowments poorly represented. Second, the ways in which differences in sex and gender negatively impact on the lives of women through, say, processes of gender socialisation and the institutionalisation of gender norms can be obscured by a view that takes the ‘standard’ model of a human being to be implicitly male. Despite these concerns Pogge argues that:

It is possible to formulate a resourcist criterion of social justice that, in selecting, formulating, and weighting valuable resources, takes full account of any divergences in the needs of males and females and also is appropriately sensitive to covert forms of discrimination by assessing any institutional order by how it works in its social and natural context. Such a resourcist criterion would employ *an unbiased conception of the standard needs and endowments of human beings* [emphasis added] and would count an institutional order as just only if it secured *genuinely* equal treatment to its female and male participants.

(Pogge, 2010: 25)

Although Pogge believes that there is space within a resourcist metric of justice to accommodate biological sex differences and covert sex discrimination, there is, as Anderson (2010: 91-93) notes, a tension in his account that casts doubt on this. The tension lies in Pogge’s commitment to (1) taking full account of any divergences between human beings; and (2) using an unbiased conception of the standard needs and endowments of human beings. It is difficult to see how these two features of his resourcist approach fit together. How is it possible to arrive at, and then apply, an unbiased conception of standard needs and endowments to each person that is fully sensitive to the vast spectrum of individual variations? Or, more directly, how can a metric of justice be both unbiased and biased all at once?

The problem, as Anderson suggests, is that although Pogge’s unbiased conception of the standard needs and endowments of human beings is supposed to take into account the full range of human diversity, once that standard is achieved each individual then has access to the same standard bundle of goods. But having access to the standardized package, Anderson argues, does not take into account individual variations (Anderson, 2010: 92). The trouble, then, is this: it is difficult to see how a conception of human needs and endowments can simultaneously be offered as a *general* standard and yet be sensitive to the *specific* variations

between individuals. If we take an ‘unbiased conception of the standard needs and endowments of human beings’ to reflect the needs and endowments of typical human beings, then such a standard will inevitably be *biased* in favour of those human beings. As such, a standard conception cannot be sensitive to the full range of human diversity.

A resourcist might try to get around this by arguing that the conception of standard human need and endowment is really very broad and that it does in fact take into consideration all of the variations between individuals. But subsuming all differences into an unbiased standard has equally undesirable consequences. Anderson uses the example of parking spaces for the disabled to show why an unbiased conception of standard needs and endowments will not always guarantee resources to those who need them the most:

Disabled persons have a just complaint against lots that lack such [disabled] parking spaces: like buildings that lack wheelchair ramps, they are based on a biased conception of human needs and endowments, tailored to the fully ambulatory. Yet their claim cannot be accommodated by devising an “unbiased” parking space, and then including that type of space in the standardized package of resources to which all are entitled to access, disregarding individual variations in need and endowment. If everyone were entitled to such spaces, then the disabled would no longer have regular access to a space close enough to enable them to reach points of interest.  
(Anderson, 2010: 92-93)

The take home point is that “differences must sometimes be recognized as differences because there is no unbiased norm that equally serves everyone’s objective interests” (Anderson, 2010: 93). Consequently, Pogge cannot have his cake and eat it; one cannot advance a conception of the standard needs and endowments of human beings while remaining appropriately sensitive to the fact that individual human beings vary greatly in needs and endowments.

I believe that one of the reasons that Pogge’s account seems so muddled is that he tries too hard to distinguish his brand of resourcism from CA. Moreover, when we look closely at the resourcism he is advancing it is difficult to see how it does not ultimately collapse into capabilities. A resourcist needs to know what goods or resources are essential to meet human needs and endowments. They also need to

know how much weight each of the primary goods should be given when it comes to distribution. That is, they need some way of working out whether certain goods are more valuable than others. In order to determine answers to these questions the resourcist appeals to the standard needs and endowments of human beings. But in what way is this different from CA? Effectively, what the resourcist must do is provide an account of human needs and interests that specifies which are important from the point of view of justice in order to justify the inclusion and weighting of various resources. The key thought here is that a large part of the reason that we have for caring about resources in the first place, is that they are necessary for meeting certain fundamental human needs and interests.

Once the resourcist begins the process of setting out those human needs and interests that are crucial to enabling each person to “reach their full human potential” (Pogge, 2010: 24), their position becomes barely distinguishable from CA. In fact, it seems to me that much of the confusion and ambiguity in Pogge’s account arises from his attempt to smuggle something akin to the capabilities approach in through the back door. The only way to make sense of the idea of a standard conception of human need and endowment that is sensitive to individual variation is to advance a position similar to CA.

With CA what we get is a list of central capabilities that are important to any human life irrespective of the particular lives that actual individuals lead. In that sense, then, Nussbaum’s list of central human capabilities represents some kind of standard. And, as we have seen, CA is sensitive to variation between individuals because of its focus on capability rather than actual functioning. Having the capability to function is what is crucial for the CA theorist. If a person cannot convert available resources into valuable functionings, then they do not have the capability and the situation is unjust. If a person chooses not to pursue a particular functioning, but nonetheless has the capability, then the situation may or may not be just depending on the background conditions against which the individual made their choice.

I anticipate that Pogge will argue that there is still an obvious difference between CA and resourcism. Namely, that the injustice of a situation is measured by the CA theorist with reference to a person's capabilities whereas the resourcist looks to the resources available to that person. But it is unclear what advantage this difference gives to the resourcist position. As I have argued above, CA does not undermine feminist aims nor does it rely on the unattractive and confusing idea of an unbiased conception of standard human needs and endowments.

Moreover, one might think that choosing resources as the metric over capabilities is a puzzling move since what makes the resources valuable is that they support capability and opportunity for valuable functionings. The resources, then, are the means to the end of enabling individuals to satisfy their objective interests, specifically, fundamental human capabilities. Following Anderson, it seems to me "to make sense to measure the justice of a society in terms of the end – capabilities – rather than the means. For why choose an indirect measure, when a direct measure is available?" (Anderson, 2010: 88).

## **8.4 WHY WE SHOULD PREFER A CAPABILITIES METRIC**

Thus far I have argued that contrary to Pogge's critique, CA does not undermine the feminist cause. I have also highlighted some of the key confusions in Pogge's resourcism and suggested that a sensible reading of his claims renders his resourcism barely distinguishable from CA. In this section I will go a step further and argue that measuring how just a situation is solely with regard to the availability of resources is insufficient for the feminist project.

In her defence of CA, Robeyns provides us with an example that brings out some of the more covert dimensions of gender injustice and demonstrates why the resourcist has difficulty adequately responding to these kinds of challenges. Let us, then, consider the case of Fabienne and Marc:

Fabienne and Marc are similarly educated. They have two children. They live in a society where women have the same rights as men. Suppose Fabienne has the same hourly wage as Marc, but she holds a half-time job, while he has a full-time position. The couple pool their income and consider

it joint income. As with most couples in their situation, Fabienne will work fewer hours for pay, but does many more hours of unpaid household and care work. She has often asked Marc to share this burden more equally, but even though he officially espouses gender egalitarian values, he denies that any unfairness exists and is annoyed when Fabienne raises the issue again. After many unsuccessful attempts, she stops complaining, as she doesn't want to initiate another dispute, and certainly doesn't want to jeopardise her marriage. (Robeyns, 2010: 225)

Fabienne's interests are frustrated. She would like to work longer hours outside of the home, developing her talents in a job she loves, but is unable to do so because of the unequal share of household and care work that she must undertake because Marc refuses to do more. Importantly, Fabienne and Marc live in a society where attitudes and norms about the different social roles of men and women are prevalent. Thus, whenever Fabienne broaches the subject with Marc he relies on gendered social norms about what it is 'normal' for men and women to do in their situation, often arguing that it is 'normal' for the man to be in full-time employment (Robeyns, 2010: 226).

Robeyns explains that this is a situation marked by gender injustice because Fabienne has a total workload which is higher than Marc's and she would also like to do more paid work yet is unable to because Marc refuses to share the burden of domestic labour. What is more, Fabienne's role as primary caregiver to their children puts her in a vulnerable position because "she is dependent on the marriage to maintain her material standard of living and that of her children, and this considerably weakens her bargaining position within the household" (Robeyns, 2010: 226).

Robeyns's example can help us to see the shortcomings of Pogge's resourcist account. On Pogge's view sexism, sex discrimination, and oppression result largely from institutional schemes and cultural practices (2010: 24). And although Pogge notes the important role that cultural practices play in generating and perpetuating sex discrimination, it is difficult to see how his resourcism can recognise the wrongs that arise from sexist cultural practices and harmful social norms more broadly. In the case of Fabienne and Marc there is a clear injustice but the discrimination present is covert. Note that both Fabienne and Marc have the same basic rights and liberties, they share their income, and they have equal

access to the other primary goods outlined in Pogge's account.<sup>7</sup> Yet there remains injustice because there are barriers to Fabienne being able to pursue her conception of the good that are not present for Marc, simply because she is a woman and he is a man.

Pogge contends that the resourcist can pick out "covert forms of discrimination by assessing any institutional order by how it works in its social and natural context" (Pogge, 2010: 25), but it is hard to see how he can identify the injustice of Fabienne's situation. As we have seen, the institutional scheme does not work in discriminatory ways against Fabienne since she and Marc have equal access to social resources. Thus I contend that when Pogge looks at the case of Fabienne and Marc, he will be led to conclude that there is no injustice present. At this point I think that it is important that we remind ourselves of the motivating question of this chapter: what is the correct metric of justice? Whether or not Fabienne's situation is just will depend very much on the metric that one adopts. For the Poggeian resourcist, Fabienne has her fair share of entitlements because she has equal access to social resources and the institutional scheme does not discriminate against her, thus, her domestic situation should be considered just. But this is plainly mistaken for, as the reasons given above indicate, Fabienne suffers a clear injustice.

I think that there are at least two ways that Pogge might respond here. First, he might argue that since the resourcist is focused on the distribution of resources, they would of course make sure that women in Fabienne's situation have the requisite resources available to them should they wish to leave the relationship. As a result, the resourcist account does not leave women vulnerable to economic hardship and thus women do not inhabit a weak bargaining position in their relationships. Put another way, the state will provide women with adequate resources should they choose to leave the relationship, which means that they will, in the event that their relationship fails, be able to provide a decent material standard of living for themselves and their children. Since a resourcist criterion of

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<sup>7</sup> Pogge states that when he talks of resources he is adopting a Rawlsian conception of *social* primary goods (Pogge, 2002c). For Rawls, the social primary goods include rights, liberties, opportunities, income and wealth, and the social bases of self-respect (Rawls, 1999: 54).

justice requires that the state make such provisions, the resourcist does not leave women vulnerable to economic hardship and as a result women are not entirely financially dependent on their partners. Second, Pogge might further argue that the resourcist can pick out the injustice in Fabienne and Marc's situation by appealing to 'leisure time' as a primary good. In her defence of CA, Robeyns also anticipates that the resourcist might make this move.<sup>8</sup> In his later work Rawls suggests that 'leisure time' might potentially be added to his list of primary goods if doing so is "the best way to express the idea that all citizens are to do their part in society's cooperative work" (Rawls, 2001: 179). If a resourcist like Pogge were to add leisure time to their metric of resources, then they could point to an unjust inequality in the amounts of leisure time that Fabienne and Marc enjoy. Since Fabienne works many more hours than Marc, she enjoys far fewer hours of leisure time, which means that leisure time is unfairly distributed between the two. Thus, by adding leisure time to his metric of resources Pogge could argue that the resourcist is able to identify the injustice in Fabienne and Marc's case.

Though I think that this response improves the resourcist position, there remain reasons to find resourcism inadequate. To start, it is worth noting that while ensuring that Fabienne has an exit option is a vital step toward putting her on equal footing with Marc, it does little to address the subtleties of the situation. For instance, providing Fabienne with an exit option means that she does not have to stay in the relationship with Marc, but it does not really get at the heart of the problem. Looking again at their situation, one might think that Fabienne does not really want to leave Marc, but rather she just wishes that he would do more of his fair share. However, as we saw, whenever she tries to talk to him about it he gets annoyed. Let us imagine further that Marc accuses her of 'nagging' him and he

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<sup>8</sup> She makes the interesting observation that Rawls's introduction of leisure time to the primary goods metric likely rests on the assumption that there are "two ways to allocate one's time – either paid work or leisure. It is unclear how he [Rawls] would handle time devoted to care and household production – which tends to be about the same time that we devote to formal paid work [...] Unpaid care work doesn't neatly fit the category of "society's cooperative work," nor does it fit the category leisure. Still, if we were to add genuine leisure, then including leisure in the index of social primary goods would allow us to detect one more dimension of gender inequality" (Robeyns, 2010: 226). Robeyns goes on to argue that adding leisure time and care to the primary goods metric would bring the resourcist much closer to CA and make them vulnerable to objections usually directed at CA. I will take a different approach and argue that these additions do not get to the heart of what is wrong with systematic gender injustice and oppression.

threatens to, or she feels that he may, leave should they continually argue over how much time he contributes to household and care work. It seems to me that having an exit option in place does not significantly improve Fabienne's bargaining position (though it does of course provide her with the essential means to leave if she wants to and this renders her less dependent on the marriage). Part of the reason that Fabienne is in a weak bargaining position is that Marc contributes more money to the family funds - even though she does more hours of work. Moreover, Fabienne finds it difficult to get Marc to cooperate because he appeals to social attitudes and norms that are prevalent in their society to defend his position. Faced with a choice between the huge upheaval of leaving Marc (or him leaving her) or putting up with the situation, it seems likely that Fabienne will opt for the latter. Their domestic/work arrangement is, after all, 'normal' for people like them.

A further reason that the resourcist's response is unsatisfactory is that it does not really identify the gendered nature of the injustice in Fabienne and Marc's circumstances. Though ensuring that Fabienne can leave and still provide a decent material standard of living for her children is an important measure, this move merely serves to mitigate the *effects* of gender injustice. It does little to address the gendered nature of the systematic disadvantage faced by many women in situations similar to Fabienne's. Resourcists like Pogge might again try to appeal to the idea that what disadvantages women in Fabienne's situation is the lack of leisure time, which, once fairly distributed, would resolve any injustice. But this still doesn't quite seem to get at the heart of the problem. Aside from being difficult to calculate and enforce, allotting equal bundles of leisure/paid work/unpaid work time is likely to have little effect in a society where there are sharply demarcated roles for men and women. In a society where men and women are heavily influenced by pervasive social norms and attitudes about the roles of women and mothers, it is likely that injustices similar to that characterised by Fabienne and Marc's situation will persist. And, what is more, since each member of society has equal access to social goods the resourcist will have nothing further to say.

A key concern with Pogge's resourcism lies in its institutional focus. While Pogge pays lip service to the importance of social norms and practices, his attention is centred mainly on how individuals fair under the institutional scheme narrowly construed.<sup>9</sup> We can see this in his brief remarks on covert discrimination where the only example that Pogge mentions concerns institutions: "access to certain positions can be subject to certain restrictions that are not substantially related to the demands of the job and, while not excluding women as such, make it much harder or rarer for women to qualify (2010: 25). Though he mentions the importance of assessing an "institutional order by how it actually works in its social and natural context" (2010: 25) he does not recognise the importance of assessing the social context itself. This should trouble many feminists because this institutional focus overlooks other important mechanisms that underlie gender injustice and that are pervasive both inside and outside of the institutional framework. Throughout this thesis I have called attention to the presence of powerful social norms and attitudes that are prevalent in most societies concerning the different social roles of men and women. These norms and attitudes influence our choices and may place limits on what we can do and be. We have already seen, in Chapter 4 (Section 4.3), that a woman's choice to stay at home and look after the children should be viewed as problematic when it is made against a backdrop of social norms and attitudes that involve stereotypes of women as caring homemakers.

Since these dimensions of gender injustice are beyond the tools of Pogge's resourcism, I maintain that it is more helpful to return to the language of capabilities: when women are discouraged from undertaking certain occupations or pursuing certain ways of life because of their sex, then they may have their capabilities for valuable functionings undermined. If prevalent social attitudes and norms work to constrain the choices of women and disadvantage them as a group, then justice may require that we work to undermine the power of those attitudes and norms.

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<sup>9</sup> Pogge's characterisation of the institutional order is similar to the account that Rawls gives. As we saw in Chapter 4, reducing the site of justice to the main political and economic institutions is not sufficient for justice. Not only should the family and other so-called voluntary institutions be shaped by principles of justice, but so too should all aspects of society that affect a person's life prospects.

All this shows that while CA theorists are equipped to pick out more covert forms of gender injustice, the Poggeian resourcist, because of their emphasis on resources, is not. Thus, I believe that any resourcism similar in kind to that advocated by Pogge cannot hope to meet the feminist aims outlined in Chapter 2. If we are to achieve substantive equality for women, then all barriers to the fair distribution of resources and opportunities, regardless of whether those obstacles are institutional or social, must be challenged. Whereas the resourcist has difficulty dealing with the injustice generated by pervasive and powerful gender norms, CA has the tools to do so. CA theorists are concerned with all barriers to capability and so they can easily identify problematic features of a person's social circumstances.

## **8.5 SUMMARY**

In this chapter I have presented some reasons to think that a feminist cosmopolitan ought to adopt the metric of capabilities for assessing whether a situation ought to be considered unjust. By considering arguments in the recent debate between resourcists and CA theorists I have demonstrated that although CA has been challenged over its ability to deal with gender injustice, it remains superior to resourcism in this respect.

Ultimately, the metric of capabilities is to be preferred to that of resources because it is more compatible with the key aims of feminism that I outlined in Chapter 2. I have suggested that CA does a better job of recognising injustice that arises from problematic background conditions. That is, CA is better placed to identify the presence of powerful and pervasive social norms that influence the choices of women and lead to systematic disadvantage. Focusing on what people can do and be demands attention to all of the barriers that may hamper their capabilities. This means that a CA theorist can recognise that gender affects women's capabilities not just with regard to external constraints (like norms that restrict women's freedom of movement or access to education) but also that gender can help to produce internal constraints which hamper the development of

certain capabilities (when women internalise the norms which place constraints on the freedom of movement or access to education, thus they do not ‘desire’ to leave the house or be literate). This feature of CA makes it well-equipped to work towards the goal of substantive equality which is crucial to the feminist project being pursued here.

Furthermore, while CA is sensitive to the existence of harmful social norms it does not necessarily require that the state intervene in the choices of individual women who may be affected by those norms. There are two reasons why this is the case. First, CA is concerned with capabilities and not actual functionings. This means that it is not concerned with what women actually do but with the opportunities that women have for valuable functionings. Second, my concern here has been to establish the correct metric of justice. That is, I have been concerned with the best way to measure how well an individual is doing for the purposes of justice. What justice *requires*, whether that be state intervention in the choices of its citizens or otherwise, is a separate question.

Thus, unlike resourcism, which has difficulty identifying the non-institutional dimensions of gender injustice, CA can address the challenge that gender poses for thinking about justice. Importantly, CA ticks all of the boxes required of the feminist project set out in Chapter 2:

- CA is committed to the freedom and equality of all human beings and requires that all humans should be treated as ends in themselves.
- CA is committed to challenging all barriers to capability. This demands the breaking down of all barriers to women’s *substantive* equality.
- CA is respectful of the choices that individual women make while recognising that their choices may not result in just outcomes and may serve to perpetuate gender injustice. CA is committed to challenging the background conditions against which women make their choices rather than interfering with women’s choices.

# CONCLUSION

Throughout this thesis I have sought to show that feminists should reject statism and be cosmopolitans about global justice. I began in Chapters 1 and 2 by situating this project in the context of the literature on cosmopolitanism, and outlining the key elements of the feminist project being pursued here. Importantly, I argued that though this project has its roots in, broadly speaking, the liberal tradition, it should have appeal to feminists of differing theoretical perspectives.

In Part II I offered a detailed critique of statist approaches to global justice. The first part of this argument was made in Chapter 3 where I put forward a feminist critique of Rawls's *The Law of Peoples*. There I argued that Rawls's international theory is inadequate not just for cosmopolitans but for feminists as well. In particular, I sought to show how critically evaluating Rawls's position from a feminist perspective gives feminists good reasons to reject his account because it does little to challenge sexist laws and practices in non-liberal but decent societies, undermines the women's human rights movement, and unsatisfactorily addresses the issue of global poverty which disproportionately affects women. The second part of my challenge to statism came in Chapter 4 where I developed an analogue of Okin's critique of Rawls's domestic theory that I then applied to statist approaches to global justice more generally. The crux of my argument there was that statist conceptions of international justice inevitably assume a distinction between the private affairs internal to states and the public affairs between states. This feature, I argued, makes statist theories unacceptable to both feminists and cosmopolitans because it renders statism insufficiently responsive to the needs and interests of individuals, and it allows gross injustices that occur within states to go unchallenged.

Part III of this thesis anticipated two feminist objections to the cosmopolitan standpoint that I have been defending. In Chapter 5 I examined the worry that a feminist cosmopolitanism will necessarily rely on unacceptable general claims about the experiences of women. In response, I put forward a set of criteria against which we can judge the acceptability of our generalisations. I ultimately argued that though

we must be sensitive to the concerns feminists have raised, we need to make use of general claims about women if we are to address the systematic nature of women's oppression. Following this, Chapter 6 looked at the objection that we should avoid advocating a feminist cosmopolitanism because it is an instance of Western cultural imperialism. To address this challenge I argued that the best way to understand it is as a disagreement about value and I then suggested that the values inherent in a feminist cosmopolitanism are better equipped to address the aims outlined in Chapter 2 than those prioritised by feminists who are likely to be critical of the cosmopolitan project.

Finally, in Part IV, I made some tentative steps toward developing a feminist cosmopolitan position. More specifically, I considered two questions that should be central to any analysis of distributive justice, namely, 'what is the scope of justice?' and 'what is the metric of justice?' In response to the first question I argued, in Chapter 7, that feminist arguments in other areas of philosophy lend support to the idea that the scope of justice extends to all human beings irrespective of the relationships that hold between them. In accordance with this, I maintain that a feminist cosmopolitan ought to advocate a non-relational approach to global justice. In the final chapter of this thesis I looked at the debate between resourceists and capability theorists in an attempt to see which of these two metrics can best meet the feminist aims outlined in Chapter 2. Though Pogge has mounted a challenge to the capabilities metric and questioned its ability to deal with gender injustice, I argued that Pogge's challenge fails and that the metric of capabilities is to be preferred to that of resources.

Aside from defending my central claim that feminists should be cosmopolitans about global justice, a further aim of this project was to remedy the lack of critical feminist engagement with contemporary approaches to global justice. I am hopeful that this thesis has gone some way to showing why a sustained feminist critique is needed in this area. This thesis also demonstrates that there are resources in the feminist literature that can be used to support many of the arguments made by cosmopolitans and I would recommend that cosmopolitans engage more with feminist theory. A more general suggestion for cosmopolitans, and others working on questions of

global justice, is that we must pay more attention to gender in our theorising because overcoming sexism and sexist oppression will be essential to achieving a more just world.

In addition, I have, during the course of writing this thesis, become aware of many avenues for future research that will be essential to shaping both a feminist cosmopolitanism and cosmopolitan thought more generally. Of the many ways that one might further develop this project I will briefly outline three interconnected possibilities.

### ***WHO (OR WHAT) COUNTS AS A PRIMARY UNIT OF MORAL CONCERN?***

‘Human’, ‘person’, and ‘individual’ are terms often used interchangeably by most cosmopolitans. However, though there is an intuitive sense in which we might understand the claim ‘all humans are the primary units of moral concern’, I believe that a more comprehensive account of what we mean by ‘humans’, ‘persons’, and ‘individuals’ is required. There are at least two reasons for thinking that such an account is required. First, Kittay’s work has called attention to the ways in which fixing who counts as a ‘human’, ‘person’, or ‘individual’ is extremely important for determining who has entitlements and obligations of justice. Moreover, we have seen how our understanding of ‘human’, ‘person’, or ‘individual’ can serve to wrongfully exclude many people from the scope of justice. Second, an obvious challenge to the cosmopolitan starting point is ‘why should we take *humans* as opposed to states to be the primary units of moral concern?’ This question highlights the human-centric nature of cosmopolitan justice and challenges the assumption that it is humans that are the primary units of moral concern.

These thoughts generate several worries about current cosmopolitan theory. When we refer to humans as the primary units of moral concern do we really mean *all* humans? Put another way, do the severely cognitively impaired, fetuses, babies, and small children all count equally from the point of view of distributive justice? Obviously these questions also apply to our understanding of ‘persons’ and I think that when we consider who or what counts as an ‘individual’ the idea is far too vague

to stand up to much scrutiny. Moreover, if we are to restrict the scope of distributive justice to human animals, then we ought to be able to provide good reasons for why. I will return again to the issue of nonhuman animals in a moment but for now it suffices to note that cosmopolitans should be able to justify why it is that nonhuman animals or (more abstractly) aliens who are like humans in all relevant respects but who do not have human biology, are excluded from the scope of justice.

I do not doubt that many cosmopolitans will have thoughts about who does and does not fall within the scope of justice and why certain beings can be justifiably excluded, but there is not, to my knowledge, much discussion of this in the literature. Given the problems associated with excluding or including marginal cases, the great harms done to nonhuman animals and their habitats, and the theoretical inadequacy of merely asserting that justice applies exclusively to humans, I believe that cosmopolitans ought to be clearer about exactly who or what they are referring to when they say, for example, that individuals are the primary units of moral concern. What is more, I think that feminist work in this area will be invaluable to answering that question.

*CARING IN A GLOBAL CONTEXT: TAKING CARE SERIOUSLY IN A  
COSMOPOLITAN FRAMEWORK*

Throughout this thesis I have made reference to the recent work of care theorists and the perceived tensions between care theory and liberal political philosophy. Although I think there are good reasons to view care theory as an internal critique of liberalism, as opposed to an alternative to liberalism, I am sympathetic to many of the challenges that care theorists raise against contemporary liberal political philosophy and I believe that political philosophers have a long way to go before it can be said that they have taken the value and practice of care as seriously as they have justice. As a result, I think that cosmopolitan theorists need to begin thinking about the ways in which the value and practice of care can be adequately integrated into their approaches. For example, given how care is vital to human well-being, i.e. without care none of us would survive, then if one is a cosmopolitan resourceist, care should be listed as a basic resource. Moreover, I anticipate that taking the value and practice

of care seriously will involve rethinking the specific principles, policies, and institutional schemes that cosmopolitans advocate at the global level. Additionally, I believe that there is great deal of similarity in the sentiments of cultural cosmopolitans who look to cultivate a sense of cosmopolitan citizenship (Appiah, 2007; Nussbaum, 2010) and care theorists who look to cultivate global networks of care (Held, 2006). Though not straightforward, the similarity between these two projects suggests a way in which these viewpoints might be seen as mutually supporting and an argument combined of the two could be made to strengthen their respective positions.

### *NONHUMAN ANIMALS AND THE ENVIRONMENT*

Finally, despite my general enthusiasm for Nussbaum's capabilities approach I find her treatment of animals in *Frontiers of Justice: Disability, Nationality, Species Membership* confused and unworkable.<sup>1</sup> Nussbaum claims that we have positive duties of justice to animals, a claim that when fleshed out becomes increasingly implausible. To see this most clearly consider the following:

The death of a gazelle after painful torture is just as bad for the gazelle when torture is inflicted by a tiger as when it is done by a human being. That does not mean that the tiger is blameworthy; obviously it is not. But it does suggest that we have similar reasons to prevent it, if we can do so without doing greater harms.

(Nussbaum, 2006a: 379)

This will strike many as absurd: can justice really require that we make efforts to prevent nonhuman animals from killing one another? Nussbaum herself notes the practical difficulties of trying to prevent tigers from killing gazelles, and she acknowledges that it might be wrong to undermine the predatory capacities and needs of the tiger. But she is nonetheless committed to the thought that if there were a way to prevent this kind of harm, without doing greater harms, then justice demands that we do so. Ultimately this counterintuitive claim is yielded by

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<sup>1</sup> This aspect of Nussbaum's theory has received much criticism. See, for instance, Cripps (2010), Hailwood (2012); Schinkel (2008); Wissenburg (2011).

Nussbaum's extension of capability theory, and thus the scope of justice, to nonhuman animals.<sup>2</sup> Thus, while I think that Nussbaum is to be commended for her inclusion of our relationship to, and treatment of, nonhuman animals into her cosmopolitan theory, I find her attempt to address the needs and interests of nonhuman animals unconvincing,

As I suggested above, I think that cosmopolitans need to be clearer about who or what gets to count as a primary unit of moral concern, and that they must be able to justify the anthropocentrism of their views. However, even if this can be achieved it still seems desirable, from a cosmopolitan perspective, that our theorising allows the space for the protection of nonhuman animals, eco-systems, and the environment more broadly conceived.<sup>3</sup> We do, after all, share this planet with other beings that feel pain and that are harmed by our actions. Moreover, protecting nonhuman animals and the environment is also important from a human point of view; we are just as dependent on the environment and the delicate balance of nature as other animals are.

My thoughts about how to proceed with incorporating the needs and interests of nonhuman animals into our cosmopolitan theories are borne out of the first two potential routes for future research. Very tentatively, I think that it might be more productive for us to restrict duties of justice to human relations (the justification for such a restriction would come from our answer to the first question – who (or what) counts as a primary unit of moral concern?) and then cover human relations with nonhuman animals and the environment by appealing to the value of care. To be clear I am not suggesting a hierarchy of value with justice at the top and care as secondary. Nor am I assuming the absolute priority of humans over nonhuman animals and the environment. I make these remarks in light of the fact that the language of rights and justice cannot easily accommodate nonhuman animals and the environment, and that the value of care must be taken more seriously in our

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<sup>2</sup> That said, Elizabeth Cripps (2010) has attempted to show how a capabilities theorist can avoid making the claim that we have a duty to prevent the tiger from killing the gazelle. Even if Cripps's suggestion is correct, and that remains to be seen, I think that there are many other problems with extending the language of justice and capabilities to animals that are not easily overcome.

<sup>3</sup> Though there are few cosmopolitans working on accommodating the needs and interests of nonhuman animals, there have been some recent developments in this area, see Cochrane (2013).

theorising. Indeed, I anticipate that meshing justice and care in these ways will sometimes mean that the interests of nonhuman animals and the environment will outweigh our duties of justice to fellow humans.

In conclusion, while I have demonstrated that feminists ought to be cosmopolitans about global justice, all of the above serves to reinforce my initial thought that more feminist work needs to be done in this area.



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