Climate Change: Why Theories of Justice Matter

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Climate Change Justice is an impressive and sensible book. Often books are sensible but boring, or exciting but implausible. This one, however, is both plausible and exciting, and it has the additional dividend that it shows real care about philosophical theories of justice and takes their claims seriously. It argues well that richer nations owe a lot to poorer nations, but that a certain sort of climate change treaty, designed to redistribute wealth, is not the way to address those obligations. Instead, our situation calls for a different sort of climate treaty, together with independent redistributive measures to address problems of global poverty.

The outcome Posner and Weisbach recommend is actually what I think a correct theory of global justice would also recommend. The philosophical side of the book, however, as regards justice, is respectful and serious but underdeveloped. It is my hope that developing it further can strengthen and refine the argument. So it is in the spirit of alliance and cooperation that I offer these reflections, which in the main will further support the arguments of the book, though in some important respects I shall suggest significant modifications.

The theory of justice I defend has other arguments in its favor, and I do not present them here.\(^1\) Since, however, I hold that political justification is an ongoing and holistic matters, in which we keep testing our evolving theory against other theories and other concrete judgments, hoping eventually to arrive at “reflective equilibrium,”\(^2\) it is a point in favor of the evolving theory if we find that the theory does dovetail with the sensible conclusions that the authors of this book reach by other means, in an area on which my own work has not yet focused.

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\(^1\) See my Women and Human Development: The Capabilities Approach (New York and Cambridge: Cambridge University Press, 2000), and especially Frontiers of Justice: Disability, Nationality, Species Membership (Cambridge, MA: Harvard University Press, 2006).
I. **Duty versus Entitlement**

One section of the book that is clearly in need of more philosophical development is its discussion of deontological and teleological theories, beginning on p. 171. In fact, the authors do not use the word “teleological,” calling the section, instead, “Foundations: Welfarism and Deontology.” However, the standard contrast that introductory philosophy classes offer students is between teleology and deontology; welfarism, which the authors define as the view that one ought to maximize average welfare, is but one variety of teleological theory. So it will prove clarifying if we begin with the large generic contrast.

The typical contrast is as follows: Teleological theories begin by defining a good to be promoted, and then, derivatively, define the right (or right conduct) as that which promotes the good. Deontological theories, by contrast, start with the right, or right conduct, typically captured in notions of duty or moral obligation, and then state that the good is permissibly pursued only within the constraints of the right. The authors do not define deontology, and they offer only a glancing definition of welfarism, so it is worth pausing to get clearer about the landscape of possibilities.

The standard definition of teleology is very general, and includes, potentially, a number of different types of theories. One distinction focuses on the comprehensive/non-comprehensive axis. One may have a political teleology, that is, an account of ends or goals adopted for political purposes, without linking it directly to a comprehensive teleology – if one holds the view that political principles ought to be expressed in a way that is metaphysically and epistemically abstemious, and only partial in extension, in order to leave lots of room for the holders of different “comprehensive doctrines,” both religious and non-religious, to define and pursue the good in their own way. This is the type of theory I myself have defended, following the insights of John Rawls, but developing them in the context of a theory that is basically teleological. As the example of Rawls indicates, one may divide deontological theories along this same axis: some are political theories, abstemious about metaphysics and partial in extension (Rawls), and some

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2 See Women and Human Development, chapter 2. Of course I owe this account to John Rawls: see A Theory of Justice, pp. 38-41.

are comprehensive (Kant, probably). I believe this distinction is extremely important and that the authors ought to incorporate it in a future version of their project, but I shall have little more to say about it for reasons of space.

I now turn to another very important axis of distinction. Some teleological theories define the good as homogenous in qualitative terms, and thus are free (though not required) to use the notion of maximization: the right choices are those that maximize the good. The authors' welfarist theory appears to be of this type, although they do not make explicit their homogeneous account of good. Believing that the good is homogeneous, one might still opt for some other account of the end of choice: for example, a threshold level of good. Still, historically, at least, homogeneity has been linked to the idea of maximization. If, however, one holds that the good is not qualitatively homogeneous, as teleological theorists such as Aristotle and John Stuart Mill have insisted, then the idea of maximizing will not be directly applicable, and one will have to define right choice in a more complicated way. I myself, like Mill and Aristotle, have a teleological theory of the plural-variety sort, and, as we shall see in section III, this changes things considerably when we consider policy choice. (I differ from Aristotle and Mill by being a political-liberal sort of teleological theorist, rather than a comprehensive type.)

Two more terminological issues that need cleaning up. The term “teleological” is often used to suggest that all choices are merely instrumental to the good, and that the good can be defined independently of choice and action. Neither Aristotle nor Mill holds that, and I certainly don’t hold that. Actions, or in my case opportunities for choice, have intrinsic value, as constituent parts of the good. So, in my book Frontiers of Justice I do not use the word “teleological,” preferring the less misleading term “outcome-oriented.” Sen, similarly, has often stressed that the capabilities that are the central goals of policy have intrinsic importance.4

A second term that is frequently used as a synonym of “teleological” is “consequentialist,” and “consequentialism” is standardly defined as the view that the right choice is the one that produced the best overall consequences.5 (As Bernard Williams notes, Utilitarianism is but one variety of consequentialism.) I avoid the term “consequentialism” for my own view, for two

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4 Sen, Development as Freedom.
5 See Williams, “A Critique of Utilitarianism.”
reasons: first, because, like “teleological,” it suggests that choice is but instrumental to some consequences independently defined; second, because it suggests that the account of “overall consequences” takes the form of a comprehensive, rather than a political-liberal, theory. Sen, who has not embraced political liberalism, is less reluctant to use the term “consequentialist” for his own theory, though he insists that some areas of freedom and opportunity have intrinsic importance.

So: one may have, as Mill, Aristotle, and I all do, a theory that defined right choice as that which promotes the good, and yet insist that at least some of those actions (or, in my case, the opportunity to choose them) are parts of the end, not means to the end. Another related contention is Amartya Sen’s argument that a reasonable consequentialism should include the preservation of rights as part of the account of the consequences to be promoted. Sen’s view is not advanced as an interpretation of Mill, but it is, to my mind, the most plausible way of reconciling Mill’s defense of rights with his overall consequentialism. One may insist, further, that the idea of maximizing does not apply straightforwardly, because of the plurality and non-homogeneity of the good, a position we shall consider further in section III. And one may hold such a theory in a partial and metaphysically abstemious “political-liberal” manner, thus not as a comprehensive theory. Still, the initial contrast between teleology and deontology survives, albeit in a more subtle form: one may begin reflection by thinking of the outcome to be promoted, or one may begin with the fulfillment of categorical duties, and then allow good outcomes to be promoted at people’s discretion, within the constraints of the right (as Kant does).

Some philosophers have doubted that the contrast does survive. James Dreier, for example, has argued that once we allow things like the intrinsic worth of actions and the preservation of rights into the account of consequences, then any theory one likes may be “consequentialized,” cast in consequentialist form. Technically, he seems on strong ground, but in terms of the spirit of theories and the way they order the relevant notions, it seems to me that the contrast still has value, in ways that will shortly become apparent.

One other term used by the authors that requires comment is “cosmopolitanism.” Standardly, "cosmopolitanism" is defined as the view that one should always view the good of
humanity as a whole as one’s goal, giving that priority over local and national goals. Since I am repeatedly described as “cosmopolitan,” it seems worth pausing a moment to explain why this is not and cannot be the case. A cosmopolitan, so defined, has a comprehensive theory of choice, and thus cannot be a political liberal. Moreover, a cosmopolitan seems to be debarred from giving personal love, national love, and other forms of local attachment more than derivative value: they are just ways of fulfilling locally our cosmopolitan duties. Such is not my view. As we shall see in Section II, I have a more complex view of the role of the nation. One may advocate a robust concern for the well-being of people in other countries without cosmopolitanism, simply by holding that one part of the complex good that right action promotes is the well-being (in my case the capabilities) of people in other nations – but a part that must be balanced against the claims of the national, where the political view is concerned, and against the claims of personal and local ties, where one’s own comprehensive doctrine is concerned.

Now let’s try to see what difference it makes, in connection with the authors’ project, to have an outcome-oriented theory rather than a deontological theory. The best attempt to give a deontological account of global justice is Onora O’Neill’s. O’Neill, following Kant, holds that ethical thought in the international sphere ought to begin with an account of our duties, rather than an account of people’s entitlements. Her account of those duties closely follows the account already given in 44 B. C. E. by Cicero in De Officiis, although the substance of this view is probably also endorsed by Kant, whose ethical doctrines O’Neill closely tracks. For O’Neill, then, we do not begin with an account of what people are entitled to receive. Instead, we think about what we have a duty to do and not to do to and for human beings.

No real approach is a pure duties-based approach. For we cannot possibly say to whom we owe something without thinking about people’s needs, as Kant’s example of the maxim of

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6 Sen, “Rights and Agency.”
7 See for just one example Noah Feldman, Yale Law Journal.
8 See my contribution to the Ashgate Companion to Cosmopolitanism.
non-beneficence famously shows. The world without beneficence is not a world that the agent can will – because, on reflection, he sees that in that world he would lack things that he needs, and to which he feels entitled. Similarly, Rawls's Kantian proceduralism begins from "circumstances of justice" that include the needs of human beings for basic goods of life, and his account of just distribution relies heavily on an account of the "primary goods" that all human beings need to pursue their projects. Duties, in short, are never generated in a vacuum: the idea of needs, and entitlements based upon needs, always enters in to inform us why the duty is a duty, and why it matters.

O'Neill argues, however, that a duty-based account supplies political thought with a clarity and definiteness that entitlement-based accounts must lack. O'Neill claims that if we begin with people's needs for food and shelter, we have no clear way of assigning transnational duties. If, however, we begin with Kantian "perfect" duties of justice -- duties not to assault, not to lie, not to use another as a means -- we have (she claims) no problem assigning those duties to everyone, and everyone can fulfill them. Indeed, it is just part of being a moral human being to have such duties, so, even prior to knowing anything about individuals and how they are situated, we can conclude that they have such duties. By contrast, she argues, if we begin from the site of rights or needs, then we have great difficulty saying who ought to do what.

O'Neill’s account of duties of justice, however, is less clear than it at first appears -- as is the distinction between "perfect" and "imperfect" duties from which it derives. Perfect duties have a specific assignable recipient, and they bind without exception: they are "duties of justice." "Imperfect duties" or “duties of beneficence,” are duties that everyone ought to fulfill in some way, but they have no assignable recipient, and thus we have a lot of latitude about how far and to whom we fulfill them. First of all, however, the entire Western tradition of reflection about global justice, beginning at least from Cicero, has understood the duty not to assault, etc., to include, as well, a duty to protect people who are unjustly assaulted. This arm of the non-assault duty imposes taxing requirements, including economic requirements, and is as difficult to assign to

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10 O'Neill’s duty-based approach, similarly, makes at least implicit reference to need, for example in its assumption that violence and deception are bad: for, as Aristotle said, such things would not be bad for gods, who would have no need of promises, contracts, etc.
11 See the excellent treatment of this example in Wood (1999).
specific individuals and institutions as the duty to feed. Indeed, as Henry Shue has argued, the military expenditures required to protect people from assault, torture, etc. are greater than the expense required to give all the world’s people enough food. So if it is a fatal objection to an account of global morality that there is considerable difficulty assigning the duties to specific actors, her account ultimately suffers from this problem just as much as the accounts she rejects – if she follows Cicero’s sensible proposal that extends duties of non-aggression to include the duty of protecting others from unjust aggression.

Second, the duty not to use people as a means – O’Neill’s general Kantian account of “perfect duties” -- cannot be plausibly separated from critical scrutiny of the global economy and its workings, and thus from a consideration of possible global redistribution and other associated social and economic entitlements, a central concern of Posner and Weisbach. People can be treated as means by being enslaved, raped, or tortured. But they are also putatively treated as means when corporations put them to work in substandard conditions and deprived of a decent living wage. At least one needs to make an argument, if one wishes to deny this. The idea of treating human beings as ends has been a prominent part of critical reflection about working conditions, since Marx at least if not before. The related idea of protecting human dignity, as it is used in modern constitutional and legal thought, is understood to have clear implications for economic conditions and conditions of work. (These concerns are at the heart of the account of entitlement in the capabilities approach, which traces its origins to the early Marx’s conception of truly human functioning.) It is sure that many people are being used as means, although it is not fully clear who has the duty to prevent this.

Furthermore, the notion of using a human being as a means can hardly be made clear without a related concept of human dignity, and treatment worthy of it. But that is a concept that belongs to the side of entitlement: we need to have some sense of what it is to respect human dignity, of what treatment human dignity requires from the world, if we are to be clear about what treatment violates it.

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12 For a longer discussion, see Nussbaum, Frontiers, ch. 5..
O’Neill’s account runs into difficulty in two further and related ways. First, caught in the grip of the Cicero/Kant distinction between duties of justice and duties of beneficence, she fails to generate any account of duties of material redistribution. This difficulty plagues Kant’s own account. Indeed, the whole point of Kant’s liberal theory of the right and the good was to give people lots of room to pursue the good as they see fit, within the constraints of a very thin account of perfect duties. Kant was not just a liberal, he was in this sense a libertarian, and he did not favor material redistribution, even within a nation, except in the minimal form of charity to widows and orphans. John Rawls uses the materials of Kant’s ethics to construct a much more exacting account of duties of redistribution within a nation – but in his account of global justice he remains a Ciceronian: transnational duties occupy the thin Cicero/Kant terrain of war and peace.\textsuperscript{16} Posner and Weisbach rightly reject this narrow approach.

A further difficulty with theories of the duty-based type is that they are typically very inflexible in their assignment of duties to actors. They look at each agent and ask whether, on grounds of pure morality, that agent has a duty to perform a certain action – rather than thinking of agents as shouldering, in various and often flexible ways, the job of producing a good end-product. This flexibility is rightly seen by Posner and Weisbach as a desideratum in a theory of global justice.

What is the upshot for the authors’ project? Posner and Weisbach argue convincingly that we do have duties of material redistribution in the transnational context. I hope to have shown here, however, that a standard account that begins from the notion of duty is unable to explain or justify those duties. Insofar as it assigns duties at all, it does so in an inflexible way, and that sort of inflexibility is rightly viewed with skepticism by the authors. This result won’t disappoint the authors, because they are consequentialists, not Kantians, but it is worth stating clearly.

By contrast, theories of an outcome-oriented sort begin with the outcome to be promoted. If they include an idea of urgency or entitlement, they may even say, the reason this outcome is the one to focus on is that people have a right to these things, or an entitlement to these things, or urgent needs for these things, or an expectation grounded in human dignity that they would

\textsuperscript{15} Cicero attaches the proviso that one can do this, which includes economic feasibility.
\textsuperscript{16} Rawls, \textit{The Law of Peoples}. 
have these things, or some other such account. (Thus, although the notion of a right is often associated with deontological theories, it is perfectly at home in theories of an outcome-oriented or even a welfarist sort, as Amartya Sen showed long ago.\textsuperscript{17} The outcome to be promoted, in such a theory, is the one in which people have what their human dignity requires, or their entitlements are fulfilled. (That may be only a partial account of the good to be promoted; for example, it may not include peace and security, very important goods; but the fulfillment of entitlements will be a very central part of the good.)

Saying this much about the good shows us already that there are duties: for rights and entitlements are correlative with duties. If X has a right to Y, someone has a duty to promote Y for X. But we can state the entitlements side and describe them rather precisely, without being at all clear about who may have those duties and when, and certainly, also, without holding that the assignment of duties is fixed and inflexible. Indeed, theories of an outcome-oriented type will usually prize flexibility in the assignment of duties: for if the whole point is to make sure that people get what they are due, we should surely prefer the arrangement that does this best.

My own view suggests that we therefore begin with a specification of a threshold of entitlement that seems commensurate with the respect we have for human dignity, and that seems inherent in the idea of a life worth of people’s human dignity. The Ten Central Capabilities that I have long defended\textsuperscript{18} are supposed to be a specification of that notion, which can and should be further specified in accordance with national and global circumstances. The list itself already makes forward reference to the idea of duties, since it is supposed to be aspirational and yet feasible: thus we must first inform ourselves about what may be possible. Having set out the goal, we conclude right away that we are all (all citizens of the world) under a collective responsibility to fulfill that goal. We think of our responsibility as forward-looking, and as generated by the goal. Thus, as the authors recommend, and as Iris Marion Young eloquently argued in her final book, Responsibility for Justice, we do not see duties as generated by previous bad conduct and do not waste time pinning blame on people.\textsuperscript{19} Instead, we see the

\begin{itemize}
\item\textsuperscript{17} Sen, “Rights and Agency.”
\item\textsuperscript{18} See Appendix fọt the list.
\item\textsuperscript{19} See Young, Responsibility for Justice (New York: Oxford University Press, 2011). Young’s example is in fact responsibility for environmental quality.
\end{itemize}
question of duties as that of shouldering a burden looking to the future. And that means that it is
simply natural, as a next step, to look around the world at the capacities of different structures –
nations, corporations, individuals, NGOs – and to favor the allocation of duties that seems most
likely to fulfill the goal, given the actors we have on the scene. It’s rather like casting a play: we
have a script, and we have some auditioners, and we assign each one the role or roles that seem
to promise the best performance.

Thus an outcome-oriented approach of the type I recommend generates a flexible and
comparative approach of the sort that Posner and Weisbach recommend: “if redistribution is the
goal, one should make comparisons of the different ways of redistributing wealth and choose the
best.”20 I would, however, rather say that it is capabilities that are the goal, and redistribution a
means to achieve those goals.

In such an approach it is entirely perverse to carve off one part of the goal and to try to
promote that in an isolated way, before figuring out what the whole package of goals is and what
strategies would best deliver the whole package. To pursue my metaphor, that is like casting a
role with a particular actor, just because she has a very aggressive agent, and not looking ahead
to how this affects the totality of the casting, the interactions among the players, and the overall
success of the production. The authors are entirely correct that pressure for a particularly
stringent type of climate agreement, without considering the totality of global goals and the overall
best strategies for achieving these, is counter-productive and not what justice recommends. Of
course ultimately their own approach will require them to say much more about the entire
package of goals and ends to be delivered. Without that we can’t easily see how environmental
quality figures in the overall good we are trying to promote.

II. The Moral Importance of National Sovereignty

Throughout the book, Posner and Weisbach clearly attach considerable importance to
national sovereignty, but they do not theorize it as part of their account of justice, telling us why
they think it so important. Their preference for the nation therefore has a look of the ad-hoc that
might undermine confidence in their overall theory unless we can say more. Indeed, their very

20 P/W p. 97.
brief account of the current positions on p. 172 is rather misleading, suggesting that we have to choose between people who think that national boundaries have no relevance for questions of justice and people who seem to be Hobbesian realists, holding that justice is pertinent only within national boundaries and that extra-national relations are governed only by norms of prudence.  

This far too simple dichotomy simply omits a view that is both of great influence historically and, I believe, the most appealing one today: that is the position of Hugo Grotius, founder of the modern system of international law. Grotius wrote shortly before Hobbes and therefore is not aware of his work, but he does attack a proto-Hobbesian opponent who holds that there are no moral requirements outside the nation. At the same time, he argues that the nation has important moral relevance. How does this balanced account go?

For Grotius, the equal humanity of all human beings anywhere in the world is a source of important moral requirements. However, he also reasons that the world system is best organized as a system of nations, because the nation is a unit that expresses people’s capacity to give themselves laws of their own choosing, a very important part of the human good. He does not even consider the possibility that a world state might come into being, but today his argument still have weight, because we still have not seen and cannot have confidence in any supra-national entity that would be decently accountable to people and expressive of their desire to give themselves laws. If a world state were to exist, chances are high that it would not have a high enough level of accountability. (Even the EU seems flawed in this respect.) This being the case, we have reasons to support the system of nations and to make sure that it is not undermined by transnational entities, whether corporations or international agreements. Any international agreements we make ought to be thin and decentralized, so as to preserve national sovereignty.

At the same time, we ought to remember at all times that all human beings have equal worth and all are entitled to well-being (as specified, in my theory, by the capabilities list). It is in this sense, and this sense only, that national boundaries are morally irrelevant: they are not sources of differential moral worth among individuals, any more than are race and gender.

Thinking that all human beings have equal moral worth, we may still support the nation-state system for Grotius’ reasons, and we will therefore reach the authors’ sensible conclusion

21 P. 172, and see also Thomas Nagel, PAPA.
that redistribution should be done in ways that respect national sovereignty and are often, indeed usually, channeled through the policies of nations.

Notice that a comprehensive welfarist will probably think of nations as having only instrumental importance toward the fulfillment of welfarist goals. I imagine that is the authors’ view. In my view, however, nations have both instrumental and intrinsic importance. They promote human welfare, but the human autonomy that constitutes them is also of intrinsic importance and a part of the goal. I believe that this view is preferable, because giving laws to oneself does seem to be an aspect of human life that is not merely a means to other parts, but a constituent part of a reasonable conception of the human good.

Indeed, because most people think that nations are not mere instruments toward maximizing average welfare, utilitarians typically have to hold that people should not know the real sources of the principles that guide the public policies that affect them. For Sidgwick, for example, most people should continue to believe and be motivated by ordinary beliefs about the virtues and intrinsic value, and only a few insiders should know the principle of utility, because most people would not know how to apply it and would be better off following a more benighted view. I agree with Bernard Williams that this part of Sidgwick is morally objectionable, because it entails a lack of transparency in the entire public culture. I think that the view I hold, which ascribes intrinsic value to national sovereignty, is fully compatible with political transparency, and is thus superior as the basis for a democratic society.

People, then, value their own nation intrinsically and non-derivatively, but they also value all human beings, and seek a world in which all are raised up above a threshold of capability. This dual allegiance is complicated, but so is life. Just as most parents think that all children in their own society have certain basic rights and should be raised above a certain threshold, even though they love their own children most and want their children to flourish -- not because they are their own special precinct of utility, but because they love them -- so too with the world: we may love our own country most, and even seek more prosperity for it than for others, so long as we also seek a reasonable threshold level of capability for all.

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22 Williams on Sidgwick in Making Sense of Humanity.
Of course this is very abstract and does not answer any concrete empirical questions about foreign aid. But these are empirical questions that philosophers are ill-equipped, on their own, to answer. Certainly, as the authors suggest (p. 87), foreign aid should itself be given in a way that respects national sovereignty, and that often will mean allowing duly elected governments to choose how to allocate it. In some cases, however, concerns about corruption should lead us in the direction of targeting aid to particular agencies (public or nongovernmental) dealing with specific aspects of welfare. In that case, we should, however, respect the will of the nation about priorities and not subvert those. Thus, we (both governments and their citizens) should not give aid in ways that accomplish an undemocratic transformation of the nation’s basic value system. (The massive aid given to Hindu Right organizations by foreign nationals is a huge democratic problem, since it supports organizations that wish to subvert the nation’s constitution.)

III. Plural Ends

Welfarism often treats different areas of life as fungible. Even to speak of “total” or “average” welfare we need to think in this way: the different goods are commensurable on a single quantitative scale. But a sensible theory of justice does not think this way. It recognizes (as did John Stuart Mill, the greatest outcome-oriented theorist) that different aspects of human life have intrinsic value and cannot be cashed out in a common coin. All are important, and none can be replaced by a large amount of another – if we have really gotten the account of intrinsic value right.\(^{23}\) Just as in personal life it would be deeply irrational to suppose that an absence of friendship could be made up for by an especially large amount of food (indeed, we view it as sad when people compensate for loneliness in that way), so too in the political life it is irrational to suppose that an absence of employment opportunities, or religious liberty, can be made up for by simply giving people a larger amount of physical safety or health care, good though these things undoubtedly are.

Instead of the idea of maximizing, then, we have the idea of a composite, all of whose pieces are of intrinsic value, but which also complement and reinforce one another in many ways. A (to me) disgusting but apt example was given by the English philosopher John Ackrill, discussing Aristotle: an English breakfast consisting of eggs, that especially fatty and undercooked sort of bacon loved by the English, sausage, and cold toast has parts that are intrinsically delicious (to the English), but they also complement one another in many ways. So producing the right outcome is like producing that great (or awful) breakfast, and we would never suppose that having five eggs would be as good (or bad) as having the traditional heterogeneous ensemble. You simply have to go get some fatty English bacon and some cold toaast, and you should not think that five eggs equals that.

There is, however, one salient difference between human capabilities and breakfast foods: they have causal properties, so they don’t just reinforce one another, they also help one another come into being. Health contributes causally to employment; education contributes causally to almost everything else on the list. Protecting women’s bodily integrity from violence in the home enhances their ability to participate in employment and in politics.

The importance of getting clear about the plural ends that compose the goal is that we then can work back from that to say how to realize them, and we can also be flexible about that, seeing how they contribute to one another. In the process, we should recognize that all the ends we have identified as central have intrinsic value: thus we are striving, ultimately, to produce a threshold level of each one of them. Nonetheless, we can also recognize that some starting points are more productive, causally, than others. This is the idea called fertile functionings by Jonathan Woolf and Avner De-Shalit. They really are talking about capabilities, as their discussion makes clear, but they like alliteration.) Giving people capabilities, we should think about which ones will ramify out and cause the presence of others. This is an empirical question, and may vary with time and place. I have argued that in many contexts where we are confronted with gender inequality, producing women’s education is “fertile”, leading to enhanced participation in many other areas. Woolf and De-Shalit argue that, for the immigrant populations they studied, producing affiliations is particularly fertile, since those solidaristic relationships lead to enhanced
ability to struggle for other goals. So the capabilities approach recommends a close study of the context, asking always what the most productive strategy is in each context.

This would be true with environmental goals, as just one part of the total goal set. Thus, the approach naturally dovetails with the authors’ sensible recommendation that we focus broadly on our overall goal and choose policies that will get us closer to that goal. But, to return to a theme of Section I, we then need a lot richer account of the overall goal set, since only that will help us see what causal properties other goals have that will contribute to the realization of environmental goals, and only then will we also see what causal support environmental quality gives to other goals. (Bina Agarwal’s recent book about women’s community forestry, for example, argues that promoting environmental quality and promoting women’s autonomy and participation are mutually supportive in the India/Nepal context.25)

In one important way, however, it seems that we must diverge from the authors’ approach, if we take plural ends seriously. That is, we must not think of our goal as that of maximizing welfare, but rather as that of getting people up above some specified level in all the important areas. As I’ve often noted, this way of thinking is closely linked to the idea of implementing fundamental constitutional entitlements, where we usually take each of them one by one, and do not think in terms of maximizing the whole set of rights.

We must also, then, regard the idea of Pareto optimality as less than helpful. There are certainly many choices that make everyone better off with respect to all ten (or however many we recognize) of the fundamental entitlements that are our goals. (If, however, our goal is not to maximize, but to get everyone up above a threshold level, we will not focus on such cases.) Far more often, however, we will be confronted with situations where improving people’s lot with respect to goal A is in tension with improving their lot with respect to goal B. These cases call for a specific type of analysis and response.

First, we must recognize that where such tragic tensions are common, there can be no total ranking of social states: at best we will have an incomplete ordering. This is the point that Sen

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powerfully made with respect to the idea of tragic choice in On Ethics and Economics, criticizing a single-minded focus on Pareto optimality as inadequate to the complexity of our task.26

I, however, would go yet further: we must recognize that choice in such situations often involves doing grave injustice -- whenever some people are being deprived of their fundamental entitlements.27 This means that in addition to thinking about trade-offs and traditional analysis of costs and benefits, we must also be thinking in a different way: about how to prepare the way for a future in which nobody will face such terrible choices, and in which the fundamental entitlements of all will be fulfilled. (That way of looking at tragic conflict was pioneered by Hegel, although it certainly has its roots in ancient Greek drama, where he found it.) That sort of thinking is very different from thinking in terms of Pareto optimality, but it is akin in one important way: for it involves the idea that nobody should (ultimately) be made worse off, at least not worse off than the threshold, and at least not in matters central to basic justice.

And of course there is one more large difference, to which I alluded earlier, between the sort of outcome-oriented approach I am recommending here and the authors’ approach: political liberalism. This means that we never ask about overall welfare, thinking that people’s comprehensive doctrines and their overall sense of the purpose and meaning of life vary. Out of respect for them, government does not presume to dictate what welfare is for all, not in a comprehensive way. Instead, certain political goals are identified that seem of central importance for all, and that seem to be possible objects of an overlapping consensus among all the reasonable comprehensive doctrines.28

If the authors were to be convinced by my arguments in favor of political liberalism and plural ends, they would need to make the following modification in their approach: instead of talking about maximizing they would need to identify a set of central goals and talk in terms of a threshold level of each dictated by basic justice; they would then also need to refrain from making any comprehensive statements about overall welfare. But in other respects, the sensible idea of striving to produce a satisfactory overall package, rather than considering environmental ends in

26 Sen, On Ethics and Economics.
28 See "Perfectionist Liberalism and Political Liberalism."
isolation, would remain. Indeed, part of thinking this way would involve what the authors recommend, good empirical research about how the different goals interact causally, and thus how environmental quality impacts other major ends. At the same time, they would need to suggest what level of environmental quality seems to be an intrinsically good goal.

The specification of each goal and its threshold may certainly be done provisionally, with flexibility as conditions change, but some important conceptual matters will have to be settled at, or near, the outset. First, are the capabilities of humans our only goal, or are we attaching intrinsic value to the capabilities of non-human animals (or even plants) as well? Second, are we attaching intrinsic or merely instrumental value to non-individuals, such as eco-systems and species, or are we focusing only on living individuals? Third, what discount rate are we using for future generations? This third question is undertaken by the authors, but they are silent about the other two. There is no space for me to provide my own arguments about these important matters here, but since they are particularly tentative, and in need of input from others, that is perhaps not a loss.

IV. Strategy and Norm

I've talked about setting a threshold that seems to be demanded by justice, but I've also suggested that this process should be flexible, taking circumstances and possibilities into account. This brings me to a final issue about the Posner/Weisbach book. The book is about justice, and it certainly talks in normative terms for much of its length. It is also, however, about strategy and feasibility, and some of its arguments against alternatives involve the idea that they have not recommended a sensible strategy. Nowhere, however, is there a discussion of how issues of justice and issues of feasibility are connected. Since this is one of the most difficult issues in political philosophy, and one that virtually nobody says much about, it may be a little unfair to raise it at all. And yet it is surely important in the environmental context.

A norm should be non-utopian but aspirational. Nobody denies this. Some (for example Sen) do, however, hold that the whole idea of creating a strongly aspirational normative theory is misguided, and that our only legitimate task as philosophers of justice should be to talk in
comparative terms about how things might be better done.\textsuperscript{29} My own view is that a suitably flexible and realistic normative theory is actually very valuable, as a road map that will help us move toward our destination. I think the authors need to talk about this. At times, the strategy proposed is pretty utopian, and no comment is made about how the unlikelihood of realization affects our confidence in the norm they advance. For example, the likelihood that people will support extensive redistribution from richer to poorer nations is small for the foreseeable future, and I am not sure how this is factored into the author’s normative thinking. This whole issue deserves more study.

It’s to the credit of this fine book that it opens onto so many issues of depth and relevance that what is unsaid is just as stimulating as what is said.

\textsuperscript{29} Sen, \textit{The Idea of Justice}.  

Appendix

The Central Human Capabilities

1. **Life.** Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.

2. **Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.

3. **Bodily Integrity.** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.

4. **Senses, Imagination, and Thought.** Being able to use the senses, to imagine, think, and reason -- and to do these things in a "truly human" way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid non-beneficial pain.

5. **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. Not having one's emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)

6. **Practical Reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)

7. **Affiliation.** A. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)

   B. Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of non-discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.

8. **Other Species.** Being able to live with concern for and in relation to animals, plants, and the world of nature.

9. **Play.** Being able to laugh, to play, to enjoy recreational activities.

10. **Control over one's Environment.**

    A. **Political.** Being able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association.

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