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Reciprocity, Justice, and Disability*

Lawrence C. Becker

The adequacy of a theory of distributive justice is now measured partly by its success in dealing with justice for the disabled. It was not always so. Up to and including Rawls, no major theory of justice in the Western philosophical tradition made disability a prominent issue.¹ No doubt that was partly due to the fact that until the last half of the twentieth century, the number of severely disabled people who had any reasonable hope of long-term survival was small, and until recent medical advances, the medical treatment and social arrangements that could help them were limited and relatively cheap. Thus, until recently it was probably

* An earlier version of this article was presented at the conference on disability at the Jean Beer Blumenfeld Center for Ethics, Georgia State University, May 7–8, 2004. My thanks to Christopher Wellman, the organizer of that conference, and to all of the other participants for their help in improving my arguments. The line of argument here about social contract theory and the “Tough-Crowd Problem” developed from a set of symposium comments on Martha Nussbaum’s paper “Justice for Mentally Disabled Citizens,” American Philosophical Association Pacific Division meetings, San Francisco, March 2003. The re-statement of my work on reciprocity offered here is a much revised version of a paper given to the Virginia Philosophical Association in October 2003.

1. But see the large literature that has grown out of Amartya Sen’s notion of equal capabilities, redescribed in *Inequality Reexamined* (Cambridge, MA: Harvard University Press, 1992), and, more generally, criticism of Rawls on this issue. See, e.g., Martha Nussbaum, “Beyond the Social Contract: Toward Global Justice,” *Tanner Lectures in Human Values*, Australian National University, Canberra, November 12–13, 2002, lecture 1, “Capabilities and the Mentally Disabled”; full text at <http://philrsss.anu.edu.au/tanner/>. An especially impressive rethinking of distributive justice by way of a “dependency critique”—recognizing not only the special demands of caring for the disabled but the ordinary demands of caring for all human beings during their long periods of dependency—may be found in Eva Kittay, *Love’s Labor: Essays on Women, Equality, and Dependency* (New York: Routledge, 1999). That book certainly insists that every theory of justice must be tested with respect to the issues of providing care for the profoundly disabled and of compensating those who care for them. It is also fair to say that Peter Singer has made disability a test case for his utilitarian theory of justice, by, among other things, his efforts to confront problems of infanticide and euthanasia for those profoundly disabled human beings who are not, and can never be, “persons.” See Peter Singer, *Practical Ethics*, 2nd ed. (New York: Cambridge University Press, 1993). And Alasdair MacIntyre has addressed dependency in *Dependent Rational Animals: Why Human Beings Need the Virtues* (Chicago: Open Court, 1999).

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plausible to think that a proper distribution of wealth could handle such matters without special philosophical attention to the extent and nature of people's disabilities.²

Circumstances have changed. In affluent, developed, stable nations with good medical systems, many people with major physical and cognitive disabilities have life expectancies after onset that are 85 percent to 95 percent of that of the population as a whole.³ That is, the disabled have such life expectancies if substantial social resources are committed to them and if the necessary caregivers can be found. Under such circumstances, the number of people who live with major disabilities has increased dramatically, and, in the space of a few decades, it has become implausible to construct a theory of distributive justice that does not take this into account.⁴ Doing so however can be incendiary, at least if

2. The same point has been made about health care generally. See the criticism of it by Norman Daniels, "Health-Care Needs and Distributive Justice," *Philosophy & Public Affairs* 10 (1981): 147–49.

3. Taking the example of a healthy two-year-old male in California in 1997, whose life expectancy from that point on was 71.1 years, a comparable two-year-old male with cerebral palsy had a life expectancy that ranged from 13.5 years (if he was a quadriplegic unable to lift his head and was fed by a gastrostomy tube), to 20.2 years (if he was unable to lift his head and was fed by tube but was not a quadriplegic), to 48.7 years (if he was a quadriplegic but able to roll over and was not fed by tube), to 63.3 years if he was not a quadriplegic and was able to sit up. By comparison, life expectancy after spinal cord injury, with onset at age 10, ranged from 40.5 to 58.2 additional years depending on the severity of the injury. In the general population the life expectancy at age 10 was then 65.9 years. David Strauss and Robert Shavelle, "Life Expectancy: What Lawyers Need to Know," *Clinical Risk* 5 (1998): 25–26, 26. For an analysis of data for cerebral palsy, Down syndrome, and some other disabilities, see David Strauss and Robert Shavelle, "Life Expectancy of Persons with Chronic Disabilities," *Journal of Insurance Medicine* 30 (1998): 96–108. Fifty years ago, life expectancy in the United States after the onset of a major disability was dramatically less, often in the range of less than one year to ten years. But getting precise estimates of life expectancy for the severely disabled is difficult. Survival data are changing rapidly; there are conceptual disputes about the definitions of 'severe' and 'disabled'; there are technical problems about the statistical models used to aggregate and disaggregate the raw data from public health agencies; and neither those agencies nor disability advocacy groups seem very interested in making such estimates. That leaves us with the work of some academic demographers (such as Strauss and Shavelle, above), insurance company actuaries, and trial lawyers.

4. What counts as a disability varies greatly with respect to both the physical and social environment, and worldwide, summary statistics on disability are notoriously hard to get. The United Nations Statistics Division repeatedly warns about the dangers of compiling data from different countries rather than simply listing them country by country. See <http://unstats.un.org/unsd/disability/alldata.htm>. Nonetheless, in some documents of nongovernmental organizations relating to the ongoing negotiations for a UN "convention" on disability, we find statements such as the following: "The UN and the WHO estimate that there are some 600 million people with disabilities worldwide, of those some 80 percent, or 400 million people are living in developing countries." See Disabled Peoples International, "Disability Negotiations Summary," at http://www.dpi.org/en/events/un_conv/un_conv.htm. United

the effort is simply to extend standard utilitarian or contractarian theories of justice to cover disability.⁵

The current philosophical landscape does not make the issue easy. On the one hand, there is the well-established commitment to making justice a matter of fairness and equality for all human beings, plus the well-established lines of argument that urge us to extend theories of justice to nonhuman animals and to the inanimate environment as well. On the other hand, we continue to build theories of justice out of notions of mutual advantage, aggregate welfare, moral agency, human flourishing, membership in the moral community, and participation in social conventions and social institutions. Those theory-building notions inevitably limit or at any rate focus attention on arrangements made by and for capable moral agents who have much to gain and lose from the cooperative arrangements they make or fail to make with each

States president George W. Bush, in the document outlining his “New Freedom Initiative” for the disabled on February 1, 2001, states that “today, there are over 54 million Americans with disabilities, a full 20 percent of the U.S. population. Almost half of these individuals have a severe disability, affecting their ability to see, hear, walk, or perform other basic functions of life. In addition, there are over 25 million family caregivers and millions more who provide aid and assistance to people with disabilities.” See the text at <http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html>. See also Department of Health and Human Services, “Delivering on the Promise: U.S. Department of Health and Human Services Self-Evaluation to Promote Community Living for People with Disabilities,” available at <http://www.hhs.gov/newfreedom/final/>: “In FY 2000, total HHS expenditures for people with disabilities was \$73.5 billion. The largest of these expenditures was for Medicaid (\$43 billion). Medicare spending totaled approximately \$28 billion. The Social Services Block Grant spent \$1.8 billion, while the Substance Abuse Block Grant totaled \$1.6 billion. Another billion dollars was awarded in grants under the Older Americans Act. A total of 24 HHS programs provide services to people with disabilities” (5). The “New Freedom Initiative” was provoked in part by the Supreme Court’s decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), which deals with the following provisions of the Americans with Disabilities Act: “In the Americans with Disabilities Act of 1990 (ADA), Congress described the isolation and segregation of individuals with disabilities as a serious and pervasive form of discrimination. 42 U.S.C. § 12101(a)(2), (5). Title II of the ADA, which proscribes discrimination in the provision of public services, specifies, *inter alia*, that no qualified individual with a disability shall, ‘by reason of such disability,’ be excluded from participation in, or be denied the benefits of, a public entity’s services, programs, or activities. §12132. Congress instructed the Attorney General to issue regulations implementing Title II’s discrimination proscription. See §12134(a). One such regulation, known as the ‘integration regulation,’ requires a ‘public entity [to] administer . . . programs . . . in the most integrated setting appropriate to the needs of qualified individuals with disabilities.’ 28 CFR § 35.130(d). A further prescription, here called the ‘reasonable-modifications regulation,’ requires public entities to ‘make reasonable modifications’ to avoid ‘discrimination on the basis of disability,’ but does not require measures that would ‘fundamentally alter’ the nature of the entity’s programs. §35.130(b)(7)” (quoted from the opening paragraph of the syllabus).

5. The disability rights advocacy group Not Dead Yet protested Peter Singer’s appointment at Princeton on this ground. For an account of a later encounter, see Harriet McBryde Johnson, “Unspeakable Conversations,” *New York Times Magazine*, February 16, 2003, 50–67.

other.⁶ Any theory of justice founded on the notions of impartiality and individual well-being (whether consequentialist or perfectionist) threatens to discount the welfare of the disabled. Any theory of justice founded on the notions of self-interest and mutual advantage (whether consequentialist or contractarian) threatens to exclude some disabled people from social conventions or contracts altogether.⁷

To many disabled people or their advocates, what seems to be wrong with standard theories of justice, at least in the case of profound cognitive disabilities, is that they do not adequately or securely locate entitlements in the interests, claims, or persons of the disabled individuals themselves. Rather, in social contract theory for example, it seems that rational agents get together and make contracts among themselves which may or may not deal with the disabled in a derivative way, by proxy or through trustee arrangements. Moreover, in theories designed to maximize aggregate welfare, it seems that the interests of humans with profound cognitive disabilities are so heavily discounted that they are effectively uncounted in the aggregation procedure. For that reason, advocates for the disabled may initially be more comfortable with a vaguely Kantian or theological theory of justice founded on the infinite moral worth or dignity of every human being, which concept of dignity is then often translated into a doctrine of inalienable human rights—rights not only to life, liberty, and property but also to health and habilitation. Even granting that such rights can be given a convincing philosophical foundation (a large grant to make), this leaves us with seemingly interminable arguments about positive versus negative rights, claim rights versus liberties, and conflicts of rights in situations of scarcity.

In what follows I will take a different course. I will argue that an adequate conception of reciprocity goes a long way toward answering the challenge that disability poses to theories of justice. I believe this is true for both impartialist and mutual advantage theories, but I will focus here on the latter because they seem to me to present the most interesting challenges.⁸ I will begin with some remarks about mutual advantage theories and why it is important not to give up on them. I will

6. Much to gain and lose, at least, under conditions of moderate scarcity, limited altruism, and rough equality of power and vulnerability—i.e., in the so-called circumstances of justice in which Hume argued that it makes sense to formulate a concept of justice. See David Hume, *A Treatise of Human Nature*, bk. 3, pt. 2, sec. 2, and “Of Justice,” in *Enquiry concerning the Principles of Morals*, pt. 1, sec. 3.

7. Nussbaum, “Beyond the Social Contract,” lecture 1, “Capabilities and the Mentally Disabled,” sec. 2, “Rawlsian Contractarianism.”

8. Here I accept, for convenience, Brian Barry’s division of possibilities for theories of justice. See Brian Barry, *Theories of Justice*, vol. 1 of *A Treatise on Social Justice* (Berkeley: University of California Press, 1989).

follow this with some arguments about reciprocity and justice and why it is important to operate with a well-developed conception of reciprocity in this context. Then I will outline a candidate conception of reciprocity and close with some reflections on its consequences for justice for the disabled.

I. THE TOUGH-CROWD PROBLEM AND JUSTICE AS MUTUAL ADVANTAGE

For good historical reasons, mutual advantage theory in the modern era addresses the task that Socrates begins in the first two books of Plato's *Republic*—namely, trying to convince political realists like Thrasymachus that they should endorse a way of life based on a conception of justice rather than one based on the unfettered exercise of power. And like Socrates, modern theorists have relied on the notion that norms of justice are compatible with self-interest. Unlike Socrates, however, modern theorists have decided to confront Thrasymachus in a serious way rather than to humiliate him and push him out of the discussion.

Mutual advantage theorists have thus faced squarely what we may call the Tough-Crowd Problem in political theory: the problem of persistent, life-and-death conflicts between people who are politically engaged and willing to deal with each other—rather than fight as a first resort—but who have irreconcilable views about human good and the good life. The aim has been to find common ground that yields agreement on a substantive theory of justice. Rational self-interest is one obvious piece of common ground, and mutually advantageous arrangements made upon that ground are generally more stable than a mere *modus vivendi*.

Moreover, we can make a plausible case for thinking that self-interest is the most inclusive piece of common ground capable of generating stable political arrangements in any society where there is significant diversity. It is not that the political world is full of sociopaths or psychological egoists. Almost everyone who is able to deliberate at all has a sharp sense of injustice and at least a vague general conception of fairness, for example. And almost everyone who is competent and willing to deliberate about such matters has an elaborate combination of egoistic and nonegoistic interests—interests in the common good, the general welfare, the perfection of social organization and forms of government, for example, in addition to concerns about the dear self. Moreover, even many of our egoistic interests are linked causally to the welfare of others and present themselves to us as primarily about the welfare of those other people rather than about our own. Nonetheless, decision making in a political context—especially in discussions about the basic structure of society—often brings frankly self-interested con-

cerns to the forefront, making their satisfaction a necessary condition of political agreements. The anthropology and ethnology, not to mention the historical record, suggest that this is so in human societies generally, from Stone Age cultures to contemporary industrial ones. More than that, it appears that in foundational political contexts self-interest has lexical priority for a wide range of powerful political actors. There are plenty of people who, if not satisfied on this score, will repeatedly scuttle other political arrangements at the constitutional level.

Social contract theory aimed at achieving arrangements for mutual advantage is part of what Ronald Dworkin calls the great liberal settlement of the seventeenth and eighteenth centuries in Europe. Settlement, we might think, is the wrong word, given the slaughter in Europe ever since, especially in the globalized conflicts of the twentieth century. But it is important to notice that people rarely ride into battle under the banner of mutual advantage. Rather, they go to war under the flag of some form of ideological or theological perfectionism, or for patriotic reasons, national or self interest, self-defense, glory, or simply because they like to fight. They make peace for mutual advantage—at least when they cannot get or give unconditional surrender.

I suggest that as a philosophical project in political theory the idea of justice as mutual advantage is as important today as it was during the Thirty Years' War. If we cannot solve this Tough-Crowd Problem, if we cannot build robust and sustainable commitments to justice between ourselves and those whom we regard as powerful but evil, powerful but amoral, powerful but unreasonable, or powerful but badly wrong in their conception of the good life, then we have little chance, short of perpetual warfare, of protecting the disabled or anyone else. Whatever else we do, surely we must continue the struggle to find a theory of justice that will get the reflective endorsement of hard-boiled political realists, opportunistic free riders, enthusiastic anarchists, resourceful skeptics, cultural relativists, ideologues of all stripes, members of militant religions, relentless advocates for special interests.

This is a tough crowd—a long way from the congenial company that Socrates had after Thrasymachus fell silent or from the company of adult men of good character that Aristotle imagined was necessary for productive political philosophy. In pliant, like-minded company we have the luxury to consider political arrangements that are fully satisfying—even, perhaps, to pursue some form of ethical perfectionism. But just as modern social contract theorists have supposed, successful profers to the tough crowd have to be ones that the strongest, most ruthless, most energetic, and self-reliant parties will endorse as in their own best interest, given their strategic situations. And (in theory) the only sort of strategic situation in which every member of this crowd would make an agreement with the others is one in which no other individual can

dominate anyone else or can dominate a few into forming a coalition against the rest. The result is one of the major features of the bargaining situation imagined by social contract theorists: namely, one in which all parties to the bargaining are roughly equal, free, and independent.

The role of political philosophy, then, is first and foremost to convince the tough crowd that there is more to making agreements in this situation than pure power politics and that the range of legitimate social contracts is defined by the norms of deliberative rationality and procedural justice. This may seem unduly limited. Mutual advantage theories aimed at convincing the tough crowd seem like an attempt to find the lowest common denominator. This raises the possibility that there might be a stubborn theoretical gap (e.g., with respect to the disabled) between genuinely “political” conceptions of justice (mutual advantage theories) and justice construed as an a priori ideal (supreme principle or perfectionist theories). It behooves political philosophers in the mutual advantage tradition to try to close gaps of that sort by showing that the lowest common procedural denominator does not have to yield mean-spirited or miserly principles.

A standard opening move toward doing that is to expand the franchise—in particular, to convince the tough crowd that the group of free and independent equals with whom they need to negotiate is very large. Hobbes famously does this by arguing that all adult human beings in the rather wide normal range of physical and intellectual abilities are roughly equal, if for no other reasons than that the weak can kill the strong by stealth and that the strong will always have to depend on others for protection while they sleep, eat, have their backs turned, or their pants down. And in a state of nature, of course, everyone is free and solitary as well. Others have made this opening move first by defining the class of moral agents who have something to offer in reciprocal exchanges and then by arguing for the cooperative advantages of dealing with them as equals.

The history of mutual advantage theories (and theories of justice generally) is replete with mistakes on this topic—restriction of the franchise to healthy, nondisabled, property-owning adult males, for example. But such mistakes are capable of self-correction within mutual advantage theory, since it is easy to show (and many, perhaps most, people are now capable of seeing) that such restrictions of the franchise are self-defeating. This is not so, or at least not obviously so, with the restriction of the franchise to free, independent, and roughly equal parties. That is something that the tough crowd is likely to hold out for, and it may seem to exclude or marginalize the disabled at the outset. But does it?

The answer is a qualified no. In mutual advantage theories, the bargaining group will necessarily include (*a*) a large range of disabled people (those who are perfectly capable of lethal attacks on the strong,

or of free and independent deliberation and action, or of valuable reciprocal exchanges) and (b) all caregivers. This is so because, in any philosophically plausible mutual advantage theory, the bargaining group must include at least everyone that the tough crowd must include for strategic reasons—everyone, for example, whose exclusion from the process is likely to undermine the effectiveness or stability of the conventions, contracts, and institutions that are advantageous to the tough crowd.⁹ That has significant consequences for the disabled. To see this, consider the following.

II. DISABILITY, STRATEGIC DECISIONS, AND THE TOUGH CROWD

Suppose it is the case that in mutual advantage bargaining with the tough crowd, the agents who design the basic structure are “free, equal, and independent” adults of roughly equal powers (or perhaps idealized rational powers), motivated by rational self-interest. Perhaps they are also, as Rawls would have it, thinking of themselves as “fully cooperating members of society over a complete life.” But it does not follow from this that such bargaining agents would think they were in a strategic situation in which they could afford to design the basic structure of society only for themselves—or only for people like themselves elsewhere in the world, or even (perhaps) only for human beings. How could they possibly think this, except perhaps as a temporary theoretical simplification to be revised later?¹⁰ Ideal bargaining agents will know that any arrangements they make will provoke responses from outside the bargaining circle—creating feedback loops that will generate both opportunities and problems. They will therefore be aware that they must design institutions strategically, so as to manage these feedback loops.

The sort of strategic thinking the bargainers will have to do with respect to the disabled depends very much on facts about the world in which the bargainers live. In any era or social circumstance in which costly medical interventions are about as likely to harm as they are to help, access to such health care is not likely to be a high priority for theories of justice. Today, in something like our situation, mutual advantage bargainers will be aware that there are many long-lived human beings who temporarily or permanently lack the ability to participate

9. I am grateful to Russell Hardin, whose conversation, correspondence, and books have helped me understand how important it is for moral and political theory to be self-consciously strategic rather than merely parametric in its reasoning. See, e.g., his books *Morality within the Limits of Reason Alone* (Chicago: University of Chicago Press, 1988) and *Indeterminacy and Society* (Princeton, NJ: Princeton University Press, 2003).

10. Rawls postpones a number of things in this way, in addition to problems of the disabled. For example, he postpones problems of “partial compliance.” See John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 8.

in the bargaining, and they will be aware that they themselves are vulnerable to disease or injury or accident that can put them in this class. They will be aware that medical care—both acute care and rehabilitative care—together with special education and the now impressive range of assistive technology, can do a great deal to offset the limitations of some physical and mental disabilities. Moreover, they will understand how it may happen that they themselves, while fortunate in their own abilities, might have long-lived but seriously disabled children, friends, and neighbors—people whom they love deeply and whose welfare is inextricably connected, psychologically, to their own. They will understand that many of their fellow citizens, including perhaps themselves, but especially, and disproportionately, women, might be seriously burdened with the care of disabled people they love. And each bargainer will understand that even if she herself escapes disability and caring for the disabled, the fact that many others will not escape these things poses a strategic problem.

The strategic problem is simply this: the basic institutions of society will have to be designed not only to deal with the disabled themselves but to accommodate the people who love and care for the disabled, both for the sake of efficiency and for the sake of stability. So the basic structure that idealized bargainers design not only will be designed *from the beginning* with the disabled in mind but will be designed *for* the disabled and *for* their caregivers as well as for the bargainers themselves. These considerations will not be derivative matters but central ones—every bit as central as dealing strategically with Thrasymachus and his crowd.

The question that remains is whether such strategic bargaining with the tough crowd will lead to institutions that satisfy our broader ethical concerns about the disabled. It is fairly easy to show that, *for strategic reasons alone*, mutual advantage theories will justify robust, flexible, stabilizing social institutions and strong social insurance schemes and to show that those schemes will (given our circumstances) address at least some of the needs of the disabled.¹¹ What I want to explore next is whether taking more careful account of the sort of reciprocity appropriate for mutual advantage bargaining will do enough beyond that to satisfy the concerns that would otherwise push us toward problematic notions of human dignity.

The aim is not to “moralize” mutual advantage theories before the

11. I have explored some of this in “Afterword: Disability, Strategic Action, and Reciprocity,” in *Disability, Difference, and Discrimination*, ed. Anita Silvers, David Wasserman, and Mary Mahowald (Lanham, MD: Rowman & Littlefield, 2000), 293–303. This is perhaps the place to thank Anita Silvers for pressing me repeatedly, beginning in the mid-1990s, to address philosophical questions about disability more directly.

discussion begins.¹² That is unlikely to impress the tough crowd. Rather, the aim is to show the tough crowd that when they bargain with others for mutual advantage, they will need to do so in terms of a developed conception of the *mutual* advantage (reciprocity) already implicit in their aims. It turns out, I believe, that such a developed conception of reciprocity—simply in order to avoid being self-defeating—will endorse significant, supportive arrangements for the disabled.

III. RECIPROCITY AND JUSTICE

Reciprocity is a matter of making a fitting and proportional return for the good or ill we receive. That is the general concept of it, common to social norms everywhere. Within that general concept there are competing “conceptions” of reciprocity—attempts to turn the general concept into a more determinative set of norms and standards.¹³ It is worth remembering (by referring to the anthropology) that every society of record has an elaborate set of social practices that amounts to a pre-theoretical conception of reciprocity, that such pretheoretical conceptions differ significantly from each other, and that they are everywhere regarded as defining something fundamental to human life. This poses an important problem for social and political philosophers—namely, deciding which conception of reciprocity is best, all things considered. It is difficult to understand why this problem, compared to the similar one about justice, has received so little attention.¹⁴

Consider Rawls, who made increasing reference to reciprocity over the years. In *A Theory of Justice*, in 1971, he says that “the difference principle expresses a conception of reciprocity. It is a principle of mutual benefit.”¹⁵ He explains that when the difference principle is satisfied,

12. I am grateful to Richard Arneson for pressing me to make this point clear.

13. Rawls, *A Theory of Justice*, makes this point with respect to justice (5). He notes that he is following a distinction made by H. L. A. Hart, in *The Concept of Law* (Oxford: Clarendon, 1961), 155–59.

14. Eva Kittay (*Love’s Labor*, 67–68, 106–9) is a prominent exception. She formulates a conception of reciprocity she calls *doulia*, or reciprocity-in-connection, which is designed to capture an aspect of generalized reciprocity in which “what goes around comes around” with respect to providing dependency care for all human beings (not just the disabled) and care as well for those who do “dependency work”—where ‘work’ is defined in this context as what is morally required of others for the survival and health of dependent ones. The term *doulia* is one she derives from *doula*, “a postpartum caregiver who assists the mother, and at times relieves her. . . . Instead of the timeworn paid help—the ‘baby nurse,’ who displaces the mother by taking over care of the infant—the *doula* assists by caring for the mother as the mother attends to the child.” Extending this concept to cover dependency relationships generally, and conceiving of it as a form of reciprocity, Kittay proposes the following principle of *doulia*: “Just as we [ourselves] have required care to survive and thrive, so we need to provide conditions that allow others—including those who do the work of caring—to receive the care they need to survive and thrive.”

15. Rawls, *A Theory of Justice*, 102.

the least advantaged will benefit from the inequalities produced or left in place by the scheme for social cooperation, and the most favored members of society will benefit also, from the willing cooperation of all the others.¹⁶ This is one of the reasons he thinks the difference principle is superior to utilitarianism, since the latter does not guarantee mutual or reciprocal benefits and therefore does not provide a self-interested motive for adopting its supreme principle.¹⁷ He repeats these arguments more pointedly in *Justice as Fairness: A Restatement*, published in 2001, but does not develop the underlying conception of reciprocity that he is using.¹⁸ In fact, one could argue that he is not using a “conception”

16. Ibid., 103. He says, “We have seen that, at least when chain connection holds, each representative man can accept the basic structure as designed to advance his interests. The social order can be justified to everyone, and in particular to those who are least favored; and in this sense is egalitarian. . . . Now what can be said to the more favored man? To begin with, it is clear that the well-being of each depends on a scheme of social cooperation without which no one could have a satisfactory life. Secondly, we can ask for the willing cooperation of everyone only if the terms of the scheme are reasonable. The difference principle, then, seems to be a fair basis on which those better endowed, or more fortunate in their social circumstances, could expect others to collaborate with them when some workable arrangement is a necessary condition of the good of all.”

17. Ibid., 14. He says, “Once the principles of justice are thought of as arising from an original agreement in a situation of equality, it is an open question whether the principle of utility would be acknowledged. Offhand it hardly seems likely that persons who view themselves as equals, entitled to press their claims upon one another, would agree to a principle which may require lesser life prospects for some simply for the sake of a greater sum of advantages enjoyed by others. Since each desires to protect his interests, his capacity to advance his conception of the good, no one has a reason to acquiesce in an enduring loss for himself in order to bring about a greater net balance of satisfaction. In the absence of strong and lasting benevolent impulses, a rational man would not accept a basic structure merely because it maximized the algebraic sum of advantages irrespective of its permanent effects on his own basic rights and interests. Thus it seems that the principle of utility is incompatible with the conception of social cooperation among equals for mutual advantage. It appears to be inconsistent with the idea of reciprocity implicit in the notion of a well ordered society.”

18. Here is what he says in John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, Belknap Press, 2001), 124: “[The difference principle] meets the following reciprocity condition: those who are better off at any point are not better off to the detriment of those who are worse off at that point. Since the parties represent citizens as free and equal, and thus take equal division as the appropriate starting point, we say this is an (not the only) appropriate reciprocity condition. We haven’t shown there is no other such condition. But it is hard to imagine what it might be. [new paragraph] To sum up: the difference principle expresses the idea that, starting from equal division, the more advantaged are not better off at any point to the detriment of the less well off. But since the difference principle applies to the basic structure, a deeper idea of reciprocity implicit in it is that social institutions are not to take advantage of contingencies of native endowment, or of initial social position, or of good or bad luck over the course of life, except in ways that benefit everyone, including the least favored. This represents a fair undertaking between the citizens seen as free and equal with respect to those inevitable contingencies.” This is an elaboration of the idea from Rawls, *A Theory of Justice*, that

of reciprocity at all but rather an incompletely stated version of the general concept. I say incompletely stated, because his references to reciprocity make no explicit mention of fittingness and proportionality but only of the much vaguer notion of a fair return in kind, which is a common oversimplification. This may be deliberate on his part, since if he gave a fully articulated conception of fittingness and proportionality he would then have to show how it is reflected in the difference principle. Inequalities would have to be not only beneficial for the least advantaged members of society but beneficial in a way that is demonstrably fitting and proportional to what those members are asked to contribute. This introduces significant complications that Rawls may well have wished to postpone.

To be fair, however, this oversimplification in Rawls is not surprising. In Western political philosophy, the concept of reciprocity is routinely oversimplified and then either abandoned or abused. It is oversimplified in at least four ways.

Direct, one-to-one exchanges.—One of these oversimplifications is the frequent but usually unstated assumption that the standard case of reciprocity is direct, one-to-one exchange. We often see this in discussions of collective action problems, fair play, and prisoner's dilemmas. The assumption seems to be that rational actors will cooperate with others only if those very others play fair and that playing fair means contributing to the project at hand. But in any large and complex social structure, a large percentage of our reciprocal behavior is indirect, or round-about, or many-to-many. Some of us give money, say, to support Oxfam, in the devout hope of never having to use its services, and what comes around to us reciprocally, at 106 degrees of separation, is something so remote from our contribution that we are unlikely to recognize it as reciprocity for anything in particular. Moreover, many of the people and institutions in the intervening links of the chain may themselves have made no contribution to Oxfam or even be aware of its existence. Yet we all understand the importance of these long chains of generalized reciprocity and dutifully throw our various contributions to the wind in the expectation that what goes around comes around. Direct, one-to-one exchanges are no more central to the practice of reciprocity than

reciprocity is a matter of mutual benefit. What it adds is the interesting remark about the "deeper idea of reciprocity" implicit in the difference principle. Nonetheless, this is cryptic and quite possibly misleading. It is true that in reciprocal relationships we have a measure of control over our lives that helps us transcend the "contingencies of native endowment, or of initial social position, or of good or bad luck over the course of life." That is a reason for thinking people would choose, from behind the veil of ignorance, to organize their lives in terms of reciprocity rather than status and luck. But it is startling to hear, without analysis or argument, that a conception of reciprocity includes the notion that "social institutions are not to take advantage of contingencies of native endowment," etc. There is clearly some deep connection here, but it is not an immediately clear connection.

indirect and diffuse ones. Forgetting this—oversimplifying reciprocity in this way—can be seriously misleading. It can mislead us into thinking that people who don't join us in contributing to our worthy causes are ipso facto getting some benefit from us for free, when we actually might be getting a roundabout reciprocal benefit from them in ways we haven't considered. This in turn can lead us to mischaracterize collective action problems, even at the theoretical level, by isolating them from each other and concluding, for example, that because a significant percentage of the population doesn't vote, or doesn't give blood, or doesn't vote for school bond issues, a significant percentage of the population is riding free.

In-kind returns.—Another oversimplification is the frequent assumption that reciprocity (direct or generalized) is equivalent to tit for tat, in which you get back, roughly in kind, more or less what you put in. But it is easy to find examples that embarrass that practice and then to jump to the conclusion that reciprocity is at most some kind of regulative rule of thumb, rather than a fundamental principle of justice. Cephalus, recall, in book 1 of Plato's *Republic*, offers the opinion that justice is a matter of speaking the truth and paying your debts, and Socrates produces a well-known counterexample—namely, that we don't want to return a weapon that a friend has left in our care if the friend is deranged when he asks for it back.¹⁹ One consequence of this is clearly a difficulty for reciprocity narrowly construed. How can we possibly think that some principle like tit for tat undergirds justice or right conduct? It must be the other way around.

Cephalus's son Polemarchus doesn't immediately see this difficulty and proposes that justice is a matter of helping your friends and harming your enemies—which is pretty close to saying outright that justice is a matter of behaving reciprocally, returning good for good and harm for harm. In this case Socrates tackles the idea of returning harm for harm. He famously argues that it is unwise to inflict genuine harm on one's enemies, since that would only make them worse.²⁰

But what Socrates in turn neglects is the way in which a failure to reciprocate at all, in some more complicated sense than tit for tat, also tends to make one's enemies worse. They take advantage and never learn. We can make them worse by harming them with punishment, but we can also make them worse by turning the other cheek. Similarly, we can ruin positive relationships by reciprocating too simply. If I give you a pair of binoculars, that doesn't mean it would be appropriate for you to give me a pair in return—or in fact that it would be appropriate

19. Plato, *The Republic*, at 331c.

20. *Ibid.*, at 335a–335e.

for you to make a special, immediate effort to give me some tangible thing directly linked to the binoculars.

Scope restrictions.—A third oversimplification is a restriction on the scope of reciprocity. In particular, people are often uneasy with the idea that they “owe” a reciprocal return of good for good to just anyone who might benefit them. In the ancient and medieval worlds the scope was limited mostly by status. Reciprocity among equals was routinely endorsed, but reciprocity among unequals was judged to be unworkable, unnecessary, or unseemly. (See Aristotle on friendship.²¹) At the moment, in the Western world at least, the scope is more frequently limited to voluntary transactions. We are ready to accept the notion that if people are engaged in an arrangement for mutual advantage, then they have to do their fair share, and that involves reciprocating. But it is also now common to think that we ought to be able to opt out of these reciprocal obligations. Others may shower us with gifts, but if we don’t ask for them and don’t accept them willingly, we should not be under an obligation to make returns. Socrates, in Plato’s *Crito*, was concerned about the contrapositive of that—the way in which accepting benefits generates obligations. In these more individualist times, the leading concern seems to be the other side of things. We want to keep our escape routes open and our moral baggage packed.

What this neglects is the fact that the practice of reciprocity is a feature of a very general human project—nothing less than living a good life in concert with others. Reciprocal social relationships are an important part of this, and we need a definition of reciprocity that can handle the full range of our concerns. Restricting it to voluntary transactions won’t work. Many of our most rewarding (as well as most burdening) reciprocal relationships are not fully voluntary, either in origin or in continuance. Think of parental and filial relationships and of those growing out of one’s cultural and political heritage. To exclude the norm of reciprocity from such relationships seems unwise, even if it does close off some escape routes.

Equal absolute value.—A final oversimplification of reciprocity is the assumption that the things exchanged must be of equal value in some agent-independent sense. If I give you a beautiful work of art, for example, then the assumption seems to be that you will have to respond with something that is comparable in taste and market value. And if that is the case, then it is easy to show again that reciprocity cannot be a rock-bottom principle of justice because, left unchecked, it will generate seriously unfair burdens on the young, old, poor, powerless, unlucky, and disabled. If a child “owes” a thing of equal monetary value and personal importance to his parents in return for his breathtakingly

21. Aristotle, *Nicomachean Ethics*, 1162b (bk. 8, chap. 13).

beautiful and liberating first bicycle, he will be burdened with this debt for years, even though it might have cost his affluent parents little or nothing, relative to their resources. Further, on a grander scale, such obligations of reciprocity can create lasting hierarchical arrangements in social and political life. The rich get richer in such exchanges, and the powerful get more powerful, simply by engineering debts in others. That result seems to drive yet another wedge between reciprocity and justice and to suggest that we want the principles of justice to regulate reciprocal exchanges, not the other way around.

That is also based on oversimplification—this time about the scale of the returns that reciprocity requires. Once again, we need to address the question in terms of the way reciprocal relationships contribute to human flourishing generally. Then we will see that the appropriate rate of exchange is not a simple one.

IV. RESTATEMENT OF A CONCEPTION OF RECIPROCITY

Here, in outline, is a conception of reciprocity—one way of developing its vague, general concept that avoids the oversimplifications just discussed.²² In this conception of reciprocity, the standards for fittingness and proportionality each have two parts—one part for the good we receive and another for the bad—giving us four moving parts in all. Both parts of the fittingness standard come from the range of things that count as goods for the recipients, and in the case of reciprocating for bad things, the standard is to return corrective good for bad received. The two parts of the proportionality standard are that (*a*) for the good we receive, we respond with an equal marginal sacrifice and (*b*) for the bad, our corrective responses be directed to restoring and sustaining productive reciprocal relationships. In this conception, moreover, the norm of reciprocity covers all the good and bad we receive from others, rather than just what is received in the course of voluntary transactions. And it covers both direct, one-to-one relationships and indirect, generalized forms of reciprocity.

An elaborate justification can be given for endorsing this conception of reciprocity as a fundamental element of moral character, but here I offer only the sort of brief, nonmoralized justification that would presumably interest the tough crowd. Specifically, I appeal to the “general justifying aim” implicit in social arrangements for mutual advantage and argue that, in order to avoid defeating our pursuit of that aim, we

22. This section is a very compressed restatement of my earlier views, with some new twists. See Lawrence C. Becker, *Reciprocity* (New York: Routledge, 1986; reprinted in paperback by the University of Chicago Press, 1990). I do not think there is anything here that is inconsistent with that book, but of course that might be wishful thinking.

need to adopt either this conception of reciprocity or something very like it.²³

Fitting Returns for Good Received

Take fittingness first, in cases where we are responding to goods we have received. Say that you are setting up a household, and I try to help, uninvited. At considerable expense, I give you a spiffy toaster oven—my very favorite kind of small appliance. How should you respond? If you dislike toaster ovens, never use them, and already have three of them from other busybodies, my fourth will not be welcome. It won't be a good for you, given your situation, and even my gesture in giving it will be exasperating.

Suppose our conception of reciprocity in such cases simply amounts to this: if no good is *received*, no return of good needs to be made. This seems plausible, since strictly, in those cases, a return of good *for good received* is not even logically possible. This conception of reciprocity directs our attention to the value of the thing *for the recipient*, not for the giver. It is pretty clear that my gift hasn't given you a good to respond to, apart from my good intentions. If you want to continue your relationship with me for the long haul, despite my blunder this time, my good intentions will need to be reciprocated. But not the toaster oven.

It is important to notice here that if, as usual, recipients recognize many things as goods, we have many options in making fitting returns to them.²⁴ We can return a friendly kiss with a friendly shove, a neighbor's kindness with a gift to a cause he admires, and a toaster oven with a cautionary book about reciprocity. We can return money from the March of Dimes with our time and energy in fund-raising activity for them (a pretty direct, in-kind return), but also, perhaps, by participating as subjects in the medical research they sponsor or by becoming actively involved in another charitable organization. Moreover, in many cases we reciprocate most effectively by "passing it on"—by treating the good we receive as part of the fabric of generalized rather than direct reciprocity.

Careful attention to this standard of fittingness removes some of the worries we may have about getting trapped in a bog of unwanted, uninvited, and burdensome reciprocal exchanges—especially those initiated by busybodies or reciprocity entrepreneurs. And it also leaves

23. I borrow the phrase "general justifying aim," and the distinction between a general justifying aim and a distributive principle, from H. L. A. Hart, "Prolegomenon to the Principles of Punishment," in his *Punishment and Responsibility* (New York: Oxford University Press, 1968), 8–11.

24. I am grateful to Sophia Wong for suggesting that I emphasize this point in my exposition.

exactly the escape routes individualists want, even at the political level. Living in a political system we did not choose and cannot leave, or a system which showers us with things we despise, does not by itself create obligations of reciprocity in us.

Fitting Returns for Bad Received

The next issue is reciprocity for wrongs, harms, and bad things generally. A conception of reciprocity must define fittingness in this context as well. Here the most plausible conception requires making a *corrective* response designed to restore and sustain productive reciprocal relationships.

We usually think of this in terms of dealing with individual wrongdoers, but it is important to remember that generalized reciprocity is as essential to arrangements for mutual advantage as direct, tit-for-tat exchanges may be. Passing on the harms we receive can sometimes disrupt long chains of generalized reciprocity, just as direct retaliation can sometimes make our enemies worse. A fitting response will have to take both of these things into consideration.

Take the direct, individual case first—the case in which we have received some intentional or negligent harm (perhaps through a crime or a tort) from another. This is remote from the leading issues of justice for the disabled, but it is instructive. With respect to crimes and torts, an effective, corrective response may involve punishing the offender. But that should not mislead us into thinking that retaliation, *in the context of managing arrangements for mutual advantage*, could reasonably be anything but an instrumental goal. As Plato points out, it is unreasonable to make a genuinely harmful response—a response that makes the offender genuinely worse than he already is, as opposed to temporarily worse off. This is so, at least, as long as there is a reasonable possibility of restoring mutually advantageous relationships. It is obvious that an endless cycle of retaliation and counter-retaliation is self-defeating. The reasonable thing to do is to try to correct the situation, both by getting restitution for our loss and by restoring productive reciprocal relationships with the offender. This is reasonable, at any rate, for anyone disposed to restore mutually advantageous arrangements, and I assume that includes the tough crowd. Turning a losing situation into a genuinely productive one will be better than merely minimizing one's losses.

As a first approximation, the fitting return to the wrongdoer is therefore not “bad for bad received” but rather “corrective good for bad received,” where the correction turns the wrongdoer into a productive partner in reciprocal arrangements for mutual advantage—or failing that, simply prevents further harm. The usual complications arise when the offender continues to pose a danger to us and we cannot think of (or be sure of) a way of restoring a mutually advantageous arrangement.

As I mentioned earlier, however, we have more to think about than correcting the wrongdoer. Specifically, we have to address the extent to which our response to the harm will affect generalized reciprocity. Here we reach issues central to justice for the disabled. Suppose the tough crowd focuses on the burdens or harms imposed by the inability of others to enter into direct, mutually advantageous arrangements with them or to contribute to such arrangements through generalized reciprocity. Here the principle of corrective good is even more straightforwardly justifiable. Corrective steps to turn our own disadvantage into mutual advantage are clearly preferable to ignoring the situation, or to allowing it to get worse, or to simply eliminating it. This has obvious consequences for dealing with the disabled and for dealing with those who care for them, because it commits us to programs of rehabilitation for the disabled and to programs that provide respite for caregivers—insofar as such programs are mutually advantageous.

Proportionality in Returning Good for Good Received

Here it helps to think first of simple commercial agreements and contracts. We sometimes assume that such transactions will automatically be balanced—proportional, fair—if they are fully voluntary. Contractualists, including Rawls, trade on this idea. But we cannot reasonably assume that the notion of “balance” here involves equal, dollar-for-dollar values for the parties. It is quite the opposite, even in ordinary commerce. If the things exchanged didn’t have different relative values, there would be no economic motive for the transaction. I have cash; you have a car to sell for cash. The economic motive for the deal is the fact that your car is more valuable to me than my cash, while the opposite is true for you. The notion of balance or proportionality in reciprocal transactions generally can also have an agent-relative standard. In fact, it is fairly easy to see that it ought to have such a standard.

We can see this if we again put reciprocity into its larger context—specifically, into its role in the project of creating and sustaining mutually advantageous social relationships generally. In that context (rather than in the special case of exchanging commodities) it is clear that a dollar-for-dollar exchange rate will often be self-defeating for the disadvantaged. The young, old, poor, powerless, unlucky, and disabled will not be able to “afford” many such exchanges for long and will thus often have to withdraw from them and from the relationships in which they are embedded, thus defeating the mutual advantage project.

Either that or they will have to accept a redefinition of their reciprocal relationships in which their service, subservience, and deference to the rich and fortunate count as goods. This is also self-defeating, along two dimensions. One is that the disadvantaged are likely to exhaust their ability to make such substitutions long before they exhaust their

need for reciprocal relationships. The other is that such exhaustion is likely to lead to class or caste resentments that produce social instability and economic inefficiency—things that reciprocal relationships are supposed to prevent.

Proportionality as equal sacrifice.—Suppose instead that our conception of reciprocity adopts an equal marginal sacrifice rule, under which we make a return that is proportional to the sacrifice made by the givers rather than proportional to the benefit we have received. This is hardly a novel principle or even a controversial one in our personal, non-economic dealings with each other. The parents who give a bicycle to their five-year-old son can readily appreciate, as fully reciprocal affection, the son's hand-painted thank-you card. Similarly, the rich person who gives to the poor can readily appreciate, as fully reciprocal, a response that represents a marginal sacrifice roughly equal to her own and appreciate the way in which expecting more than that would be expecting some kind of unjust enrichment.

More important, the young, old, poor, powerless, unlucky, and disabled will be able to sustain an equal marginal sacrifice relationship over time without going deeper into debt. In terms of mutual advantage, we can all understand how this is a good thing for everyone. (We have, after all, abandoned debtor's prisons and constructed bankruptcy law on that understanding.) In fact, we understand this principle even in the case of exchanging commodities. Henry Ford raised wages. Sam Walton lowered prices. Both are forms of discounting that keep the economy rolling. What the poor and the middle class get out of it is the Ford Escort, not the BMW; the Wal-Mart experience, not the Neiman Marcus one. But we get workable things, and the rich certainly do not suffer for it. In fact, it is much to their advantage. Welfare liberalism embraces a similar understanding of the value of Social Security, price supports, disaster relief, food stamps, medical care, and so forth.

What the economic and political analysis of such discounting may lack, however, is an explicit appreciation of the way in which satisfying the equal marginal sacrifice rule is a form of full reciprocity—one that exemplifies a form of fully balanced, equal exchange. It is not the only form of equal exchange, and there are clearly cases in which we ought to insist on a dollar-for-dollar rule. (See below.) But it is not wise to regard those as the standard cases.

Objection about the most advantaged.—The equal marginal sacrifice rule works well for the disadvantaged and presumably would interest the tough crowd as a form of insurance against the possibility that they themselves might lose their advantages. But might not this initial interest evaporate with the thought that, under this rule, the well-off would soon impoverish themselves in making equal marginal sacrifices to the poor or disabled? After all, the declining marginal utility of goods would mean

that in return for G provided by a disadvantaged person, the more advantaged one would have to return G times x (where x is greater than 1) in order to equalize the “sacrifices.” Over time, it looks as though that would result in a massive redistribution of wealth—and to avoid that, wouldn’t the well-off soon withdraw into enclaves in which they deal reciprocally only with themselves?²⁵

Reply in terms of opportunity costs.—It is true that in fiscal policy equal marginal sacrifice is associated with progressive tax rates and that such rates (in theory) can have a leveling effect. But there is no such consequence for reciprocity in general. Under the equal marginal sacrifice rule there are almost always “advantage-preserving” options for the well-off when they engage in reciprocal exchanges with the disadvantaged.

To see this, we need to remind ourselves that “sacrifice” is a metaphor here and is a seriously misleading one if it suggests that the point is to equalize the subjective suffering involved on each side of a reciprocal exchange. Suffering is not the issue. Comprehensive economic and noneconomic opportunity costs, in the context of mutually advantageous exchanges, are the issue. One assumes that when such opportunity costs exceed the benefits of reciprocal exchanges, the tough crowd is going to want to withdraw from them. But how often is that going to be a problem in their dealings with the disadvantaged? Not often.

This is so because, for the disadvantaged, the opportunity costs that measure the sacrifice will typically be low and easily reciprocated by the well-off. Think of a wealthy person receiving the benefit of a year’s labor (let’s say, in caring for an elderly parent) from an otherwise unemployable twenty-eight-year-old. What constitutes an equal marginal sacrifice in return? Paying a living wage for the year, plus benefits and a leg up for the next job? A little more? A little less? To assess that, we have to assess the extent of the caregiver’s comprehensive economic and noneconomic opportunity costs versus the comprehensive benefits she derives. And when we do that, an equal marginal return in this case is not likely to be very steep for the well-off. For Bill Gates, the rate would be steep only if he returned the opportunity costs of a year of, say, Warren Buffet’s time, not if he returned the costs of mine.

Objection about exploitative conditions.—It might be objected that exchanges between the rich and the poor often take place under exploitative background conditions, in which the opportunity costs for the poor are kept artificially low. (Think about what happens when the wealthy arrange to deal with a class of undocumented workers living under the

25. I am grateful to several people for pressing me to clarify this point, in particular Jonathan Wolff, Agnieszka Jaworska, Ann Davis, Dan Brock, and Richard Arneson. I do not mean to imply that they are convinced by my clarification.

threat of deportation. Or when the male members of the tough crowd arrange a set of gender-structured institutions that exploit women, perhaps in various forms of caregiving for the young, old, and disabled.) Reciprocity as I have described it seems designed to sustain, rather than correct, such background conditions.

Reply in terms of the basic structure.—The reply is that the overall project here is to convince the tough crowd to define the background conditions, as well as the transactions within them, in terms of mutually advantageous arrangements. Will the tough crowd balk at the equal sacrifice rule with respect to designing the background conditions—the basic structure? It is again hard to see why they would, as long as they remain convinced to pursue mutually advantageous arrangements. An equal benefit rule is not mutually advantageous, for the reasons given earlier, and thus does not provide the well-off with insurance against misadventure. An equal sacrifice rule, however, is mutually advantageous, and consistent with the preservation of one’s advantages, whether great or small. This is so because an equal sacrifice reflects both costs and benefits. Those who benefit more than others have to contribute more than others (in absolute terms) but, by the definition of the enterprise here, not in a way that fails to preserve a net advantage in doing so. The well-off typically have many alternatives for making fitting returns and thus can find ways to do it that are wealth- or advantage-preserving for them under an equal sacrifice rule.

Could the well-off get a better deal for themselves? Certainly they could by force or fraud. But for strategic reasons those things are off the table, theoretically. Moreover, the disadvantaged would not agree to a better deal for the well-off unless someone could think of one that was better for them as well. And withdrawal from the basic structure isn’t a winning option for anyone, well-off or not. Good help is hard to find in a state of nature—or, for that matter, even among one’s friendliest peers, if the conditions of labor one is offering are exploitative.

Objection about in-kind returns.—But doesn’t the fittingness standard sometimes require effort in return for effort, time in return for time, love in return for love? And wouldn’t that effectively cost the rich much more than the poor, in opportunity costs? Think again of the young caregiver case and suppose the “employer” must respond with a year’s service to the caregiver.

Reply in terms of fittingness.—Sometimes fittingness does require in-kind returns. It is possible to construct cases in which this puts the well-off at a temporary disadvantage under the equal sacrifice rule, but it is hard to see how this yields a serious objection to it. Many such cases can be dealt with by again referring to differentials in the opportunity costs involved, which often favor the well-to-do. (If it is an equal sacrifice of time that a philosophical genius needs to give me, and we measure

that in opportunity costs, the exchange is going to be much briefer on her side than on mine.) But perhaps there are more interesting cases.

For the young caregiver, we would need additional details to make it plausible to assert that an in-kind return is required or even appropriate. (The same is true of every case in which we are restricted to in-kind returns.) So suppose the caregiver is the employer's estranged son and that his offer of help is part of an effort to establish a compassionate relationship with a cold, mostly absent, and exploitative father. In that case, assuming that the new relationship is a genuine good for the father, a cold cash arrangement is not going to bring it about for either father or son, and it may be that time with the son is the only thing that will do it.

Here it is a stretch to think that reciprocity is even a primary concern in setting things right, but suppose it is. Then I suggest that if we think of it in corrective terms (as something done to rectify years of emotional neglect), and if we assume that an adequate corrective response from the father would require a massive change in the father's life—in his priorities, commitments, and moral psychology—reciprocity may well entail a more massive sacrifice for the father than for the son, simply because an effective reciprocal response cannot be limited, in practice, to an equal sacrifice. But by hypothesis, since nothing other than this in-kind sacrifice is fitting, and nothing less than massive change on the father's part will do, we would have the same burdensome result for the father under an equal benefit rule as we do under an equal sacrifice rule.

In addition, we need to recall that mutual advantage in this context remains the general justifying aim. If it costs the son a great deal to make the overture, and if reciprocity for that in addition to the corrective response for the past seems overwhelming, then reciprocity by any hard-and-fast rule may be self-defeating. If so, persons who are fundamentally interested in mutually advantageous relationships would want to adjust the burdens accordingly, subordinating the rule to the general justifying aim. Again, it is hard to fault the equal sacrifice rule. We reach a similar result if the corrective issue is removed, and our only concern is with the father's response to the son's overture.

In sum, equal marginal sacrifices will, as a general rule, sustain generalized reciprocity, prevent the increased exploitation of some at the expense of others, preserve the advantages people already have, sustain most of our direct one-to-one reciprocal transactions, and promote the mutual advantage project. Moreover, as a general rule, equal sacrifice is better in all these respects than an equal benefit rule. It is a fully reciprocal response.

Proportionality in Reciprocating for Bad Received

The question now is what counts as a proportionate amount of corrective good in return for the bad we receive. This is complicated in practice, but the idea is roughly this. The general justifying aim of the corrective response is to restore mutually advantageous reciprocal relationships between the wrongdoer and the wronged, and between those who are unable to reciprocate and those who are able. Proportionality is a distributive principle that limits our pursuit of this aim by focusing corrective responses on the size of the harm or disadvantage at issue and on choosing the responses that promise to be restorative and productive. In the case of intentional or negligent wrongdoers, we will address the marginal injury done in order to make the injured party whole if possible, but also with the aim of producing maximally productive reciprocal relationships in the future. In the case of those who are unable to reciprocate, or to reciprocate fully, the corrective response will be focused entirely on the future, on ways of achieving the general justifying aim.

Reciprocating for All the Good (and Bad) We Receive

The last issue is about scope. The question is whether our conception of reciprocity will restrict the norm to voluntary or invited transactions, thus making it a synonym for the notion of fair play, or whether we want the norm to cover our responses to all the good and bad we receive. The argument for the unrestricted conception of reciprocity can be made in three steps.

First step.—Reciprocal relationships, especially those of a generalized sort, are an essential part of the social conditions necessary for flourishing as human beings. They are necessary for a good life. This is so because human beings have elaborate conceptions of themselves as separate persons with individual interests; because our individual interests often compete with those of others, yielding cooperation problems that only reciprocity reliably solves; because even the strongest among us are dependent for long stretches of our lives and are vulnerable to misfortune, yielding recurrent needs for help that only reciprocity—especially generalized reciprocity—reliably solves; and because (although there are logical alternatives to it) a general pattern of fully reciprocal relationships appears to be psychologically and sociologically necessary for creating and sustaining the social conditions in which human beings can flourish.²⁶

26. See the social science literature referenced in the scholium to chap. 3 of Becker, *Reciprocity*. In his typically fluid way, Rawls makes the point in *A Theory of Justice* as follows, at 494–95: “The active sentiments of love and friendship, and even the sense of justice, arise from the manifest intention of other persons to act for our good. Because we rec-

Second step.—It is good to have essential social norms such as reciprocity embedded in stable, pervasively potent character traits—that is, embedded in pervasive dispositions to be sensitive to when and why reciprocity is appropriate, to appreciate the range of methods for appropriate reciprocation, and to have strong, almost reflexive, motives to behave reciprocally.²⁷ This is so for two reasons: first, because the range, subtlety, and pervasiveness of occasions for reciprocity are so great that a general readiness to reciprocate is needed—especially for handling all the occasions for generalized reciprocity; second, because a deeply embedded motive to reciprocate is effective in reestablishing cooperative and reciprocal relationships that have been disrupted. Someone has to make the first move after a rupture. It helps if everyone wants to get back to cooperating.²⁸

Third step.—It is good to have an unlimited form of the disposition to reciprocate, rather than one restricted to voluntary arrangements for mutual advantage. This is so because restricted forms of reciprocity cannot reliably sustain the social conditions for which generalized reciprocity is necessary. It is generalized reciprocity that gives us a mechanism for dealing with the way in which injustice anywhere is (at least sometimes) injustice everywhere and that gives us a way of avoiding or ending tit-for-tat spirals of noncooperation, by making it possible to shift our cooperative efforts to other projects rather than to end them. And

ognize that they wish us well, we care for their well-being in return. Thus we acquire attachments to persons and institutions according to how we perceive our good to be affected by them. The basic idea is one of reciprocity, a tendency to answer in kind. Now this tendency is a deep psychological fact. Without it our nature would be very different and fruitful social cooperation fragile if not impossible. For surely a rational person is not indifferent to things that significantly affect his good; and supposing that he develops some attitude toward them, he acquires either a new attachment or a new aversion. If we answered love with hate, or came to dislike those who acted fairly toward us, or were averse to activities that further our good, a community would soon dissolve. Beings with a different psychology either have never existed or must soon have disappeared in the course of evolution. A capacity for a sense of justice built up by responses in kind would appear to be a condition of human sociability.”

27. This is compatible with the important argument about situational determinants of behavior made by John Doris, *Lack of Character: Personality and Moral Behavior* (New York: Cambridge University Press, 2002). While it may be true that the cardinal virtues of moral character are normally much less fixed than we have traditionally assumed, it is still the case that we have many sorts of stable, pervasive dispositions or character traits, ranging from language acquisition and use to dispositions to adjust to what situations demand. The disposition to reciprocate appears to be one of these stable and pervasive traits.

28. The so-called Stockholm syndrome, often presented as the tendency of long-held hostages to become attached to their captors, is more complicated than that. Captors in such situations also may become attached to their hostages, and some of this seems to come about because minor reciprocal relationships spontaneously emerge from initiatives on both sides. An imaginative and convincing account of this can be found in the novel by Ann Patchett, *Bel Canto* (New York: HarperCollins, 2001).

it is so because a restricted norm seems inconsistent with the moral education needed to embed reciprocity in our character. Think of teaching a child how to respond to unexpected, uninvited good from others, such as a gift from a new neighbor. Not, presumably, with an insult or injury, or even indifference, but rather with something neighborly. Not, presumably, with something excessive, but rather with something proportional. Making a fitting and proportional return is what defines reciprocity.

V. WHERE THIS RESTATEMENT LEADS, FOR JUSTICE AND THE DISABLED

Justice and Self-Interest

Think again about the central problem of the opening books of *The Republic*. That problem is how to show that justice and individual well-being coincide. At one point the conversation turns to the reasons people might have, at bottom, for cooperating with each other and for organizing themselves into societies in the first place. In the neighborhood of what has become the individualist tradition in political theory, Glaucon and Adeimantus argue that we must cooperate in order to reduce interference from each other—in order to get the peace and security we need to get on with our individual lives and projects. Socrates, by contrast, moves over into the neighborhood of what has become the collectivist tradition in political theory. We must cooperate, he says, in order to accomplish things together that we cannot accomplish by ourselves. He points to the benefits of a division of labor as an example.

Now in one sense individualism has won the day in Western secular philosophy. Almost everyone of our acquaintance measures the success of social organizations and political institutions in terms of their consequences for the welfare of their members or in terms of their ability to reflect the values and choices of their members (including religious choices). Yet in another sense collectivism has won, since we seem thoroughly committed to a form of life that can be sustained only by elaborate systems of cooperation. This is reflected in persistent divisions in political theory. In liberalism alone, for example, we have a libertarian wing and a welfarist wing, and it is disturbing to see how difficult it has been to bridge that divide. Recent philosophical work on justice for the disabled illustrates this, with its debates about equality of resources versus opportunity versus welfare versus capabilities.²⁹

29. See Sen, *Inequality Reexamined*, esp. chaps. 1–5; and Martha Nussbaum and Amartya Sen, eds., *The Quality of Life* (Oxford: Clarendon, 1993), esp. pt. 1; Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000), chaps. 1, 2, and 7; and Richard Arneson, “Luck and Equality II,” *Supplement to the Proceedings of the Aristotelian Society* 75 (2001): 73–90.

I suggest that work on the appropriate conception of reciprocity holds the promise of bridging this gap. This is so, however, if and only if we can eliminate the oversimplifications I mentioned earlier. In particular, we need to get beyond the idea that the paradigm case of reciprocity is direct, tit-for-tat exchange and to focus every bit as much attention on indirect, generalized reciprocity. And we need to understand the way in which a plausible understanding of fittingness and proportionality, in the context of generalized reciprocity, can make plain how varied and surprising fully reciprocal relationships can be. My assumption is that the libertarian wing will be impressed by the necessity for and the payoffs of reciprocal relationships of a generalized sort (as well as by the exits they leave open for people who tire of social obligations) and that the welfare wing will be impressed by the inclusiveness and supportiveness of such relationships (as well as by their robustness in maintaining the social fabric). While the general “concept” of reciprocity is not terribly impressive, some conceptions of reciprocity provide common ground for designing, motivating, and assessing social and political institutions.

Theories of Justice Need Conceptions of Reciprocity

If justice is fundamentally about fairness and reciprocity is a form of fairness, then perhaps we should insist that elaborate conceptions of justice have comparably elaborate conceptions of reciprocity. A case in point, as I have mentioned, is Rawls’s theory of justice, which makes central references to reciprocity but lacks a developed conception of it. Rawls’s theory is certainly not unique in this respect. This shortcoming bedevils not only mutual advantage theories but also impartialist ones, making it unnecessarily difficult to see the disabled as more than people who lack the capacity for direct, tit-for-tat transactions at a dollar-for-dollar rate of exchange, or as people who are other than a net drain on aggregate welfare, or as people who lack the potential to thrive and flourish as human beings. When we focus on a developed conception of reciprocity we see things differently. At least we do if that conception calls our attention to the importance of generalized reciprocity, an equal marginal sacrifice standard of fully reciprocal exchanges, and a corrective response for people’s inability to enter into productive, reciprocal social relationships.

Health as a Basic Good: Corrective Health Care and Reciprocity

All of this leads me to be optimistic about the possibilities of mutual advantage theory for dealing adequately with the issue of justice for the disabled. This is especially so if we consider one further point: the mutual advantage (in modern, industrial societies) of a strong social commitment to *corrective* health care, broadly conceived, as a basic good.

Reflecting on the needs of the disabled—indeed, the disadvantaged generally—suggests to many people that the “capabilities approach” taken most prominently by Amartya Sen and Martha Nussbaum is on the right track. And it certainly puts the theory of justice squarely in line with the aims held by advocates for the disabled. The controlling idea is that our fundamental social institutions should be designed not only to permit but to promote, when necessary, the development of the physical and psychological capabilities that make human flourishing possible. To proceed with this, of course, we need to specify what those capabilities are; we need to make a list. But this poses a serious difficulty for solving the Tough-Crowd Problem if the list is tied to a particular comprehensive view of human flourishing, such as an Aristotelian or a Stoic one, since there is unlikely to be consensus in the tough crowd in favor of any particular comprehensive view. The best we can do is hope that most of the list will be found in what Rawls calls an overlapping consensus. However, if the list is detached from a comprehensive view it threatens to look ad hoc, and this ad hoc quality is likely to generate persistent disagreement.

There is a less contentious route. The capabilities we care about are closely connected to human physical and psychological health—health for human individuals, that is, of varying stages of development and of varying constitutions. Even for the tough crowd, health is now ripe for inclusion in the list of basic goods. And it may be that a robust social commitment to human health will adequately address questions of justice for the disabled—as long as we are careful to include fundamental aspects of psychological health (i.e., those associated with active rational agency) and to connect these matters properly to various stages and types of human development. In doing this, we will have to understand health as something more than the absence of disease or life-threatening injury. We will have to understand it also as including habilitation and rehabilitation. If we do that, then the needs of the disabled—and those who are unhealthily burdened with their care—will be included in an appropriate way. As a political project, I suspect this is roughly equivalent to the capabilities approach—at least if our current medical understanding of human health is roughly right—and it strikes me as more promising politically, since we already have so many medical and educational institutions devoted to human health. Briefly, here are some reasons for thinking along these lines.

Problems of distributive justice arise only for goods that cooperative efforts can in principle distribute. To restate a point made earlier: contemporary medicine, psychology, and education have raised the stakes for theories of distributive justice in this respect. We can now do much more to secure and sustain human health than previously, when there was not much to be done in this area that would improve the result of simply

seeing to it that people had adequate shelter; nutrition; rest; clothing; personal hygiene; knowledgeable midwifery for childbirth and care of newborns; knowledgeable nursing care for infections of various sorts; somewhat more technical help with managing broken bones, open wounds, and a few surgical operations that could be done without anesthesia; methods of diagnosing and managing shock; sterile technique; or antibiotics. In those days, and probably well into the 1950s in the United States, it was plausible to think that justice in health care could be treated as a by-product of justice in the distribution of the goods necessary for healthy people's other fundamental projects—as a by-product of even modest economic resources, for example, in a context of liberty, opportunity, and basic education for literacy and citizenship.

This no longer seems plausible. Dealing with the tough crowd by way of a social contract tends to drive down the extent of redistributive schemes proposed by welfarists. But the economic resources that it seems reasonable (to the tough crowd) to guarantee to healthy people, as a matter of justice, for the pursuit of their non-health-related projects are pretty obviously not going to cover the cost of doing everything we can do these days to restore them to health from the many diseases, injuries, and disabilities we all face. Rational bargainers for mutual advantage are going to want access to at least some of this care. We therefore cannot plausibly treat health as a by-product of the distribution of other basic goods. The argument for a social subsidy or an insurance scheme is now a very strong one. (Something similar has happened to education.) The arguments within the tough crowd are surely, now, mostly about the details—about the best means for providing health care—rather than substantive ones about the need for it.

Add to this, finally, the response required by reciprocity to the burdens imposed (on the healthy) by others' disabilities. It is plausible to think that any defensible, developed conception of reciprocity will direct us to make a corrective response to those burdens—one that is aimed at restoring and sustaining a mutually advantageous level of reciprocal transactions but also one that is limited by that goal, and not by a commitment to make every possible medical procedure available to all. That means, obviously, providing capability-building rehabilitation wherever it can be effective in restoring or sustaining reciprocal social life. It means providing the extra care and extra health care for the disabled that are necessary for achieving the rehabilitative goals. It means providing for the care of those for whom capability-building rehabilitation is not possible, through a mutually advantageous form of social insurance. And it means providing unpaid caregivers, especially long-term family caregivers, with the respite and resources necessary to restore and sustain their ability to have productive, mutually rewarding

reciprocal relationships with others. It is hard to see how one could ask more of a mutual advantage theory of justice on this issue.

VI. A RESIDUE OF INJUSTICE?

We need to consider, finally, a persistent source of dissatisfaction with mutual advantage theories of justice altogether—not to mention impartialist ones. That source of dissatisfaction is the way in which all such theories appear to impose unfair arrangements on individuals (especially the powerless) for reasons unrelated to those individuals' particular interests, needs, or claims. A theory does this when it locates the crucial determinants of individual entitlements and just distributive arrangements "outside" some individuals—for example, by defining a bargaining procedure that effectively excludes some people, or an aggregation of expected consequences that discounts their interests, or a conception of excellence or flourishing that is inappropriate for them. A theory also does this by limiting (as Hume does) the circumstances in which its basic principles apply—leaving people to fend for themselves, as it were, in circumstances of great political or economic instability.

People who have this dissatisfaction recognize that factors beyond human control often impose burdens and benefits as if by chance, and that bad luck is not by itself an injustice. Theories of justice, however, are aimed in part at coping with the effects of this natural lottery, insofar as that is possible. Thus, when theories shrink from dealing with bad luck that does have a remedy—or worse, when theories effectively ratify or amplify some of that bad luck—they appear to turn it into injustice deliberately. If the standard theories cannot avoid doing that, then we will not be able to deal adequately with the residue of injustice they leave unless we find a way to modify them or replace them. In particular, we would have to find a way to argue "outward" to a theory of justice from within the interests, needs, claims, and capabilities of each individual, and to do that in a way that remains fair to each at every step in the process, no matter what the natural, political, social, or personal circumstances may be.

That is a tall order. Too tall, probably. The only serious possibility for carrying it out seems to be to supplement standard theories of justice with a strong doctrine of inherent human dignity, moral worth, or individual rights.³⁰

Consider rights, for example, that originate in the rights holders,

30. I assume that attempts to supplement standard theories with norms about caring or benevolence will not be enough to satisfy advocates for the disabled, even if those norms are norms of justice rather than of supererogation, since they make the welfare of the disabled a derivative matter, elicited from the moral excellence of others rather than required directly by the dignity or worth of the disabled themselves.

as opposed to rights that derive from the duties or interests or benevolence of others, and rights that apply in every circumstance, not simply in the circumstances of justice. These inherent rights might then trump or constrain social contracts for mutual advantage, or impartial maximizing principles, on behalf of individuals who would otherwise be treated unjustly. The problem is that such rights are themselves likely to be contingent (e.g., on the resolution of prima facie conflicts) in ways that reintroduce contracts for mutual advantage or impartial maximizing principles. As follows:

First step.—Any theory of inherent rights for individuals will either allow the possibility of prima facie conflicts among rights in conditions of scarcity or it will not. If not, then it will be restricted to such minimal rights to freedom and well-being that it will not solve the problem at issue. A person's right to life that cannot in principle conflict with another's is a very weak one. Similarly for rights to liberty, well-being, health, or property. Such minimal rights will not support strong redistributive claims by the disabled on the time, attention, care, and resources of others.

Second step.—If the theory of inherent rights does allow prima facie conflicts of rights, it will either resolve them or not. If not, then it will not solve the problem at issue but rather leave it in place for resolution by another theory of justice, such as a mutual advantage one. In that case, it is fair to think that the inherent rights are theoretically idle and that mutual advantage (or utility) is the fundamental issue after all.

Third step.—Similarly, if the theory does resolve conflicts, it will either do so on its own terms or not. If not, then again it will have to appeal to principles that will leave the disabled vulnerable to changes in circumstances, or changes in the social contract, or changes in the interests, needs, or claims of others.

Fourth step.—Moreover, if the rights theory resolves conflicts on its own terms it will have to construct interpersonal rankings of inherent individual rights that will yield a unique solution to every priority problem between the disabled and others. Otherwise it will not solve the problem at issue. So the question comes down to whether we can get a theory of inherent individual rights of this very strong sort.

Fifth step.—That seems unlikely, for reasons expressed so convincingly by Mill in chapter 5 of *Utilitarianism*. Every attempt to set up a right or a duty of justice that is independent of its consequences raises the specter of indefensibility. If the right or duty is understood to be absolute and without exceptions, it will either be aimless (ungrounded in any larger, underlying enterprise) or self-defeating. Either option leads to indefensibility. If the right or duty is understood to be conditional or to have exceptions, however, then the definition of those conditions or exceptions will in effect appeal to consequences. In that case,

again, it is fair to think that the rights or duties involved are, at the most fundamental level, theoretically idle and that mutual advantage (or another consequentialist consideration) is the fundamental issue after all.

I suggest that a similar argument can be constructed for any notion of human dignity or moral worth that is meant to avoid the contingency objection and to trump or constrain arrangements for mutual advantage regardless of consequences. If this is correct, then on the question of disabilities, conflict and contingency force us to return to standard theories of justice. However, if the arguments here about reciprocity are correct, mutual advantage theories, at least, have a good deal to say about justice for the disabled.