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## Disadvantage, disagreement, and disability: re-evaluating the continuity test

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### ABSTRACT

The suggestion that individuals should be considered disadvantaged, and consequently entitled to compensation, only if they consider themselves disadvantaged (Dworkin's 'continuity test') is initially appealing. However, it also faces problems. First, if individuals are routinely mistaken, then we routinely fail to assist the deserving. Second, if individuals assess their circumstances differently then the state will provide different levels of assistance to people in identical situations. Thus, should we instead ignore individuals' convictions and provide assistance that some, at least, do not feel they need? One set of cases where this dilemma is salient are those in which disabled individuals disagree over whether they are disadvantaged. Focussing on these, I argue that despite objections, individuals *should* have a voice in determining whether they are disadvantaged. However, I contend that our goal should not be ensuring continuity with individuals' *ethical* convictions (concerning the pursuits they deem worthwhile or valuable), but their convictions regarding whether they are *relevantly disadvantaged* (whether they have what they are entitled to).

**KEYWORDS** Disadvantage; disability; continuity test; disagreement; distributive justice

### 1. Introduction

When should inequalities be rectified, and individuals provided with compensation for their comparative disadvantages? Providing a complete answer to this question is the focus of much debate, but one natural – and seemingly uncontroversial – limit on such an answer is that individuals should be considered disadvantaged, and consequently entitled to compensation, only if they consider *themselves* disadvantaged. This, at least, is what Ronald Dworkin argues, insisting that it would be an implausible form of egalitarianism indeed that compensated individuals for tastes, preferences, or abilities, the possession of which they deem a matter of *good luck*, rather than a disadvantage. Consider Dworkin's (2000, pp. 48–59) 'Louis', for

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example, who lowers his welfare by acquiring a taste for expensive plovers' eggs and claret, yet nonetheless believes that his new life is 'more successful overall'. Surely, argues Dworkin, he should not be considered disadvantaged, and entitled to compensation, despite his own convictions to the contrary.

Thus, Dworkin (2000, p. 294) proposes that we should take an approach to distributive justice that 'flow[s] from the rest of our convictions', such that we will 'cite, as disadvantages and handicaps, only what we treat in the same way in our ethical life'. Disadvantages and inequalities should be rectified as a matter of distributive justice only if the affected individual evaluates their deprivation as a misfortune. This has been labelled by Andrew Williams (2002a, 2002b) as 'the Continuity Test'.<sup>1</sup> In his words, 'a political community should regard certain conditions as disadvantaging some of its members only if those members' own views about what it is to live well also imply that those conditions disadvantage them' (Williams, 2002b, p. 287).

The idea that there should be continuity between our ethical convictions (about how our life is going) and political prescriptions (about what we are entitled to) is certainly appealing. First, such an approach seems to ensure that we do not provide individuals with compensation unnecessarily: for conditions that, by their own lights, are not disadvantageous. Second, it avoids advocating that compensation be offered in cases where it may be paternalistic and insulting to do so: 'whilst you do not consider yourself disadvantaged or your life inferior, we, the state, know better'. Third, it enables those demanding their fair share to do so in good faith, avoiding the internal tension in the position of someone who receives compensation for something they in fact consider a beneficial feature of their life. Finally, it allows us to acknowledge pluralism and disagreement about value, and recognise that some individuals will not be disadvantaged by conditions that are disadvantageous to others. Thus, this continuity between individual convictions and political prescriptions avoids a substantive perfectionism that conflicts with individuals' assessments of their own lives.

Yet there are also problems with such continuity. These can be roughly grouped into two categories. First are worries concerning whether or not we should trust individuals to assess their own disadvantage, which we can call *the mistakes objection*. On the one hand, individuals may fail to realise that they are 'really' disadvantaged by their circumstances, and wrongly judge some hardship to be a matter of good fortune. If individuals are routinely mistaken in this way, then we will routinely fail to compensate the deserving. On the other, we may worry that individuals will claim to be disadvantaged by conditions they, in fact, welcome in order to generate an entitlement to state assistance. If we were to simply take individuals' statements at face-value then Louis, for example, may falsely claim to regret his new taste for plovers' eggs to obtain the resources to purchase more of them.

The second set of worries concern operationalizing the continuity test, which we can call *the implementation problem*. If individuals are considered disadvantaged only when they 'see it that way themselves' (Colburn, 2014, p. 254), then if different individuals see things differently, some will be considered disadvantaged and entitled to assistance, and others not, for the same condition. This may seem deeply impractical: must we check with every individual before state assistance can be provided? Further, it may seem problematically inequalitarian insofar as individuals in the same circumstances will be treated differently by the state.

The continuity test has been roundly criticised on the basis of a version of the mistakes objection (Arneson, 2018, p. 49; Lazenby, 2016; Slavny, 2017). The implementation problem led Dworkin (2002, p. 140) himself to shy away from his commitment to the continuity test in practice. Further, Andrew Williams (2002a) uses the individuation of state assistance to demonstrate how Dworkin's approach differs from, and is perhaps less plausible than, the capability approach. The capability approach, claims Williams (Williams, 2002a, p. 37), can provide assistance that is 'unconditional on ... [the] attitudes' of its recipients: individuals that lose the same capabilities will have the same entitlements, regardless of their views.

The goal of this paper is to defend a revised version of the continuity test. One that is, I believe, compatible with Dworkin's wider commitments,<sup>2</sup> and with the capability approach. (As such, I do not think the continuity test creates space between these views.) Specifically, I argue that our focus should not be on continuity with individuals' ethical convictions, but with their convictions about whether their attributes and circumstances render them relevantly disadvantaged. Thus, not on whether they consider themselves to lack some resource or capability they value, but on whether they lack something they should be entitled to. I argue that this can help us respond to the above worries about both mistakes and implementation.

A further motivation concerns the treatment of disabled individuals' preferences, and the form of state assistance disabled individuals are entitled to. Disability is often used as a convenient example of disadvantage, and much of the discussion of the continuity test centres around such cases. Whilst I do believe that arguments made about disability can be applied more broadly, disability should not simply be used as a synonym for disadvantage without considering the particularities of the case. When two disabled people disagree about whether they are disadvantaged it is natural (or, at least, common) to assume that the individual who considers her disability a matter of good fortune is mistaken, really does lack important opportunities, and is duly disadvantaged. The use and discussion of examples often relies on such intuitions. However, this reinforces an unjustifiably negative view of disability, as merely a 'tragedy' that should be eliminated when possible and mitigated when not. Thus, as well as reassessing and defending the continuity test, I will

reassess the unexamined and often ill-informed assumptions made when considering disagreements about the status of disability and what the state owes disabled individuals.

I will begin by outlining the continuity test and the problems it faces (§2), before examining in more detail the examples used in the literature in which individuals disagree over whether disability is disadvantageous (§3). I next present my claim that we should aim to achieve continuity not with individuals' ethical convictions, but with their views of whether they are disadvantaged and what they require to rectify this (§4). I demonstrate the implications of this version of the continuity test by applying it to the specific case of deafness (§5). I then respond to the implementation problem (§6) and the mistakes objection (§7), before concluding (§8).

## 2. The continuity test

To reiterate: the continuity test contends that individuals should be considered disadvantaged, and consequently entitled to state assistance, only if this accords with their own evaluation of their situation. It should be emphasised, first, that the disadvantage here should be understood as comparative rather than *tout court* (Colburn, 2014, p. 257; Parr, 2018). Thus, we cannot claim we are disadvantaged because we lack an opportunity that the state does not provide to anyone.<sup>3</sup> Second, the continuity test constitutes a necessary, rather than sufficient, condition for identifying disadvantage. This means that individuals can choose not to object to some deprivations, but cannot unilaterally add to the list of disadvantages where doing so places demands on others. Explaining why this is so requires some discussion of the role of the continuity test within Dworkin's theory, since at least two interpretations are possible.

The ambiguity centres on whether Dworkin's account of fair shares and his application of the continuity test concerns individual or group preferences. Outlining his 'fantasy answer' (Dworkin, 2011, p. 356) of what constitutes fair resource shares – with shipwrecked individuals bidding with clamshells for bundles of impersonal resources, and for insurance policies against potential personal resource deficits – Dworkin talks in individual terms.<sup>4</sup> On this approach, an individual's fair share is directly determined by their view of what is valuable: the point at which *they* do not envy anyone else's impersonal resources, and the set of insurance policies *they* would purchase given their opinions on risk and on the disadvantage various personal resource deficits would constitute.

However, as Dworkin is very well aware, this fantasy will not be the reality: the direct relationship between individual preferences and entitlements cannot be maintained in a plausible distributive policy. Most significantly, when the approach is operationalized, individuals will not have the bundle of

insurance contracts that align with their own particular preferences and ambitions, but that which the average person would purchase (Dworkin, 2000, p. 80). Thus, our fair share is not determined by our particular view of what is valuable. Individuals are not entitled to compensation based on the insurance policies they would have purchased, given their idiosyncratic opinions and preferences, but the personal resource deficits the average person would insure against.<sup>5</sup>

This will mean some individuals are entitled to compensation that they do not feel they need, which is the counterintuitive implication that motivated the continuity test. We can then see the continuity test as allowing those who have a resource deficit that *could* ground a claim to compensation (would on average be insured against) to reject this offer. Thus, there is a sense in which the theory of distributive justice is 'prior' to the application of the continuity test on this view insofar as the hypothetical insurance market first determines the kinds of deprivations that might warrant compensation, which may then be rejected. Resource deficits not insured against are, at least, those that are relatively insignificant, that cannot be fixed with resource compensation, or that there are insufficient resources to efficiently insure against. If deafness, on which much subsequent discussion will focus, is amongst the personal resource deficits that *would* be insured against then the fair share of a deaf person includes a (refusable) entitlement to compensation for this 'deficit' (unless they are responsible for their circumstances). Hence, the continuity test as I will understand it functions as a way of rejecting offered compensation, not a way of directly determining our fair shares.

This interpretation of Dworkin has the benefit of avoiding the implication that individuals are able to unilaterally determine what constitutes a disadvantage. This is an advantage given that such determinations are not purely self-regarding when to be disadvantaged is to be entitled to assistance from the state and so, ultimately, one's fellow citizens.<sup>6</sup> Further, this fits with the central case of Dan and Ella (discussed below), which identifies two people with a resource deficit that grounds a claim to compensation that one wishes to reject.<sup>7</sup> Finally, the continuity test can also play this role in other theories of distributive justice, such as the capability approach. In a process analogous to Dworkin's market we might identify a list of universal capabilities, distinguishing the opportunities individuals are entitled to from those they are not, perhaps determined in part on the basis of an overlapping consensus on the features of a decent or dignified human life (see §4). Individuals cannot unilaterally add items to the list of central capabilities, but they can choose not to utilise available opportunities.

Even with these limitations on its scope, the continuity test remains vulnerable to the implementation problem and mistakes objection. Though only operating as a limit on group-determined accounts of appropriate compensation, there may still be practical difficulties with allowing individuals to reject

offered compensation, and worries about the inegalitarianism of providing assistance to individuals who consider themselves disadvantaged and not to identically-situated individuals who do not. Further, this approach still places a great deal of power in the hands of individuals who often seem to be mistaken about their own interests.

Such mistakes may mean, first, that individuals fail to recognise their own disadvantage. This may be the result of adaptive preferences: in conditions of great hardship or deprivation individuals may cope with their circumstances by claiming to prefer – and, indeed, coming to prefer – their situation to any alternative. For example, malnourished individuals who are satisfied with their health (Sen, 1999a, p. 53), citizens satisfied with their inability to engage politically (Nussbaum, 2011, p. 55), and women who uphold sexist norms (Khader, 2012, p. 302). Individuals in these circumstances may not consider themselves disadvantaged, yet it would be highly implausible to think such preferences should legitimate these practices or determine what individuals are entitled to (Begon, 2020). Further, it would be deeply unfair if individuals' who are subject to such unjust treatment then undergo the further wrong of not having their disadvantages rectified because they have so downgraded their expectations.

Even setting these cases aside, we may still have reason to mistrust individuals' assessments of their interests 'given their limited epistemic situations' (Lazenby, 2016, p. 194): their flawed reasoning, their vulnerability to framing effects, biases, the influence of emotions, and so on. Second, we may worry that individuals will make spurious claims of disadvantage to generate an entitlement to state assistance. Whilst they cannot unilaterally add to the set of distributive entitlements owed by the state, they can claim to consider themselves badly-off even if they do not believe this to be the case.

One initial response to these problems would be to move from individuals' actual stated beliefs to a more idealised version of their preferences or judgements. Thus, rather than focussing on whether an individual explicitly considers themselves disadvantaged by some condition, we focus on whether this is entailed by their conception of the good. An individual in an abusive relationship, for example, may not recognise the relationship as bad for them, but if they value bodily autonomy and freedom from emotional abuse, it would still be disadvantageous by their own lights. The goal would not be to ensure that individuals' choices and preferences are wiser or, indeed, 'correct'. Rather, that individuals' judgements about their disadvantage are reflective of, and consistent with, their considered goals and convictions. This is in line with Dworkin's (2000, p. 160) focus on authentic judgements: those that have arisen in sufficiently favourable circumstances that they can be said to be authentic to the individual's personality. In other words, judgements individuals would endorse on further reflection, and would not reject if more informed of relevant empirical facts of the matter.<sup>8</sup>

This move goes some way towards resolving the mistakes objection. First, as the above example shows, it will deal with those cases of adaptive preferences where there is an inconsistency between individuals' values, and the choices they make and views they express. Second, it will likely resolve three of the four forms of epistemic error that Lazenby (2016, p. 193) discusses: mistakes about facts, mistakes in reasoning, and mistakes in the application of judgment. Finally, it will eliminate the possibility of individuals falsely claiming that they consider themselves to be disadvantaged in order to reap assistance from the state.

However, this does not provide a response to cases in which individuals are mistaken about values (this is Lazenby's fourth category), which may arise as a result of adaptive preferences or other epistemic error.<sup>9</sup> Whilst many adaptive preferences are restricted in scope, some involve individuals having 'a near-completely distorted worldview' (which Serene Khader (2013, p. 311) calls 'paradigmatic adaptive preferences'). That is, an individuals' adaptation to mistreatment and oppression is sufficiently thoroughgoing that their adaptive preferences cohere with their more general conception of the good.<sup>10</sup> For example, a disabled individual may internalise a complete set of ableist norms about disabled individuals' capacities, such that they do not consider their lack of opportunities for meaningful work, education, and leisure to disadvantage them. Although such paradigmatic adaptive preferences are less common than often supposed (Begon 2015, 2020; Khader, 2011), such cases do exist and would not be eliminated by idealisation. I will return to this case in §7.

### 3. Disagreement about disability as disadvantage

The problems of implementation and mistakes leave us with a dilemma: if we adopt the continuity test we choose an approach that apparently cannot be operationalized, and which fails to adequately compensate individuals who do not recognise their own misfortune. However, if we abandon it, we ignore individuals' convictions about their disadvantage, and advocate providing assistance that, at least some, do not feel they need. This dilemma, regarding whether to incorporate the continuity test into our theory of justice, is most clearly seen in cases in which individuals or groups disagree about a putative instance of disadvantage. I will focus, here, on disagreements about the status of disability, before considering how this apparent dilemma can be resolved with a revised version of the continuity test.

This disagreement is particularly deep and controversial. The dominant characterisation of disability is as sub-optimal and disadvantageous. Yet many disability rights activists argue that disability is a neutral feature: one 'that's bad for you with respect to some aspects of your life ... [and] good for you with respect to other aspects of your life' (Barnes, 2016, p. 79). The point,

here, is not that disability has no effect on individuals' lives, nor even that it has no *bad* effects. On the contrary, in an ableist society, many physical and cognitive impairments will likely be disadvantageous. Rather, the point is to emphasise that impairments are not always and necessarily disadvantageous, but often contingently so, as the result of social norms and infrastructure, and individuals' (lack of) access to resources. Further, that disability is not reducible to such bad effects. The point, then, is to challenge the 'unexamined assumption that disabled people are inherently "worse off," that we "suffer," that we have lesser "prospects of a happy life"' (McBryde Johnson, 2003).

As already noted, I believe using disability as a convenient and uncontroversial example of disadvantage is problematic. This is not to say that it cannot be discussed, but that we should not do so without considering the specifics of the cases used, and how disability should be understood. Whilst I cannot defend a complete account of disability here, there is broad philosophical consensus on two central features that are worth noting. First, the distinction between *impairment* as physical or cognitive features that cause deviation from a biological or statistical norm of species functioning, and *disability* as a restriction in our ability to perform tasks.<sup>11</sup> Second, disability is caused in part by impairment, and in part by individuals' social, political, and environmental context, and the resources they have access to. In other words, we should reject both a medical model (according to which disability is straightforwardly caused by individual impairment), and a social model (which denies this causal relationship, insisting instead that disability is solely the result of unjust social structures). Whilst social structures can certainly be disabling, it is also clear that disability could not be eliminated by social changes alone.<sup>12</sup> Hence, we should adopt a hybrid account, which acknowledges the influence of internal and external factors.<sup>13</sup> A complete account of disability would require determining *which* of the restrictions in individuals' abilities should be considered disabling, but this need not be provided here.<sup>14</sup> We need only accept that, whichever inabilities matter, these result from an impairment *in combination with* an individual's political and material environment, the prevailing social norms, and the resources they have access to. Thus, identical impairments will not always be identically disadvantageous.

A central case used in discussions of the continuity test is Williams's (2002a, p. 37) example of Dan and Ella. These are two deaf individuals who 'live in a society where most people can hear and prefer to use that capacity in everyday communication', and who disagree over whether they are disadvantaged by their deafness:

Dan is convinced that the value of being able [to] hear is overrated and that the benefits of membership in the community of the deaf are vastly underrated. Despite his reduced capability to communicate with those who can hear, he firmly denies that deafness constitutes a disadvantage or makes him less well-equipped to lead a successful life than them.

Meanwhile, Ella 'on balance ... regrets being deaf' and would 'gladly forgo' the goods deaf people enjoy if she could remedy her deafness.

If we adopt the continuity test, then whether Dan or Ella are disadvantaged and entitled to assistance will depend on 'how each treats deafness within his or her ethical life' (Williams, 2002a, p. 37). Hence, Ella would be entitled to assistance, whilst Dan would not. Williams uses this example to show that Dworkin (2000, pp. 299–303) is wrong to suggest that the capability approach will collapse into equality of either welfare or resources. Capability theorists, says Williams, will compensate for the 'inequality in communicative capabilities' regardless of the attitudes of the individuals involved. They do not provide these capabilities to achieve welfare, so the approach is not welfarist; and they would provide the compensation to whoever lacks the capability (both Dan and Ella), so it differs, too, from equality of resources, which would only compensate Ella.

Considerations of practicality and fairness may move many to prefer the capability approach's response (as Williams describes it) to the implications of the continuity test, according to which only those who 'recognise' their disadvantage will receive compensation for it. Indeed, even Dworkin shies away from the consequences of the continuity test in this case. He acknowledges that it would be 'perversely paternalistic' to insist that Dan was comparatively disadvantaged: paternalist to assume that 'hearing is objectively more important than the capacity to participate in the world of the deaf', and perverse to provide compensation Dan will 'refuse' (Dworkin, 2002, p. 140). Nonetheless, he notes that 'in practice' Dan *would* receive compensation on his view, since it would be prohibitively expensive to adopt an approach that provided entitlements continuous with each individual's convictions.

I dispute both these supposed implications of this example. First, it does not demonstrate the gap between the capability approach and equality of resources. This is not, as Dworkin suggests, because equality of resources will provide a standardised bundle of state assistance in practice. On the contrary, both approaches should offer differentiated assistance to Dan and Ella. This more individuated approach need not be impractical, unfair, or implausible if our goal is to achieve continuity with individuals' views about whether they are relevantly disadvantaged. Second, we should not assume that disagreement in cases like Dan and Ella's implies that one or the other is wrong: there need not be a single answer to the question of whether deafness is disadvantageous, given that individuals in different circumstances may experience their impairments differently. We should acknowledge, then, that the same impairment might be disadvantageous to some and not others. I will now defend the focus on continuity with individuals' convictions about their entitlements rather their preferences, before reassessing Dan and Ella-type cases in §5.

#### 4. Preferences and entitlements

To pass the continuity test, a theory of distributive justice must give some role to individuals' convictions and preferences, such that individuals are only considered disadvantaged if they 'see it that way themselves'. But what does it mean to see ourselves as disadvantaged? Should any unfulfilled preference or thwarted desire be considered a potential disadvantage? This is accepted by at least some welfarist approaches to distributive justice: if the goal is equality of welfare, say, than anything that brings us below this threshold – whether state oppression or stubbing our toe – is a relevant disadvantage from the point of view of justice. That is, a disadvantage that entitles us to make claims from the state. However, for most non-welfarist approaches there will be a distinction between what individuals prefer and what they are entitled to.

There is a tension in the continuity test over which should be our focus. On the one hand, the suggestion that there should be continuity with our 'ethical convictions' might seem to imply that an individual can consider themselves disadvantaged by an inability to achieve anything they value.<sup>15</sup> Yet, on the other hand, if the continuity test acts as a constraint on a prior theory of distributive justice, which specifies the scope of state assistance, then individuals cannot simply dictate their entitlements on the basis of their personal convictions. If our focus is already restricted in this way, it might be natural to think that the continuity we want is not with what individuals value, prefer, and regret – much of which has already been ruled to be beyond the scope of justice (if the average individual would not insure against it, say). Rather, it is continuity with individuals' views concerning whether they have what they are entitled to.

My suggestion is that if, like Dworkin, we have a non-welfarist approach to distributive justice, then our understanding of 'disadvantage' in the continuity test should be similarly non-welfarist. Thus, when we ask an individual whether they see themselves as disadvantaged we should have in mind conditions that warrant state assistance, and not any thwarted preference. If, for example, we ask deaf individuals whether deafness is disadvantageous, this does not entail asking whether they would prefer to hear. Rather, it means asking whether being deaf deprives them of opportunities or resources they are entitled to, assuming a prior account determining the scope of these entitlements. This takes seriously individuals' convictions regarding whether their specific condition disadvantages them, whether state assistance is appropriate, and the form this should take.<sup>16</sup> I will argue that this version of the continuity test is consistent with Dworkin's other commitments, is independently plausible, and better placed to respond to the implementation problem and mistakes objection than standard versions.

Central to this view is the distinction between preferences and entitlements. I will not defend this against its welfarist critics. I merely note that it seems plausible to suggest that individuals should be entitled to be able to vote in elections, and to be mobile even if paraplegic, but that they should not be entitled to have access to an expensive musical instrument, or a particular rollercoaster, or a sports car, even if they would prefer these opportunities, and they would have a greater positive impact on their welfare.<sup>17</sup> As Anderson (1999, p. 332) puts the point: '[s]ome deprivations of capabilities express greater disrespect than others, in ways any reasonable person can recognize'. How entitlements are identified varies, of course, on different theories of distributive justice. For Dworkin, roughly, our entitlements are generated by those disadvantages considered, on average, sufficiently important to insure against. For capability theorists, the capabilities we are entitled to may variously be identified by the use of public reason within political communities (Sen, 1999b, 2009), determined to be the necessary constituents of any decent or dignified human life (Nussbaum, 2000, 2006, 2011), or are those opportunities necessary to function as an equal citizen in a democratic society (Anderson, 1999, 2010).

Capability theorists' focus on providing capabilities rather than promoting functionings retains a role for individual discretion in the use of government provisions, since individuals can choose whether to exercise a capability. This is important if we wish to ensure state assistance is not forced on individuals, as §7 considers. Indeed, I take this to be consistent with many of Dworkin's views, rather than a point of departure. For example, his focus on equality of personal *and* impersonal resources mirrors capability theorists' focus on the importance of internal capabilities and appropriate external conditions (Nussbaum, 2000, pp. 84–85). I will not, though, attempt to convince resourcists to be capability theorists, but it remains for resourcists to demonstrate why the language of resources is worth keeping given the advantages focussing on capabilities can bring (as §7 outlines).

Whatever our method or our metric, these views all generate an account of what all individuals are entitled to, which is not a list of what each individual most wants. Each ensures that '[e]veryone has an entitlement to the same package of capabilities [or resources], whatever else they may have, and regardless of what they would prefer to have' (Anderson, 1999, p. 331). A further shared feature of these approaches is that there is a role for the judgements of the collective in determining the content of these entitlements. In other words, entitlements are determined intersubjectively as opposed to either objectively – independent of the views of recipients – or individually subjectively. As such, individuals can choose whether they exercise their capabilities or use their resources, but they cannot individually choose which capabilities or resources they are provided with.

When asking individuals whether they consider themselves disadvantaged, we should not switch to a more welfarist meaning of this term. To be disadvantaged, on these views, is to lack certain capabilities or resources. Having determined what these are, we should seek continuity with individuals' views about whether they possess them, *not* with their desires and preferences. Mere thwarted preferences do not justify compensation on any of the non-welfarist views considered but, I argue, if we adopt the standard version of the continuity test then some individuals may end up being compensated for mere regrets. As well as being inconsistent with the central anti-welfarist distinction between preferences and entitlements, I will show that this proves to be problematically inequalitarian. These problems, and the benefits of my version of the continuity test, can best be illustrated by reassessing Dan and Ella.

## 5. Relevant disadvantage, individual experience, and disability

The continuity test captures the idea that it is pointless (indeed, 'perversely paternalistic') to give assistance to someone who does not desire or feel they need it. This is also at least part of the motivation behind capability theorists' insistence on ensuring that individuals have substantive opportunities to achieve certain functioning outcomes, but are not compelled to function. In both cases, what matters is that individuals have access to what they are entitled to. It is up to them whether they utilise what is available. A second shared commitment of Dworkin's equality of resources and the capability approach is the limit to the scope of state assistance: there are some opportunities or resources we are entitled to, and some we cannot demand from the state.

If we accept these twin goals, then in devising our account of distributive justice we should aim to ensure both that we do not impose assistance on those who do not want it, and that the state's responsibilities are limited to providing what individuals are entitled to and not everything they prefer. The Dan and Ella case is designed to illustrate the former point, but as it is presented and discussed it can occlude the latter. This ambiguity stems from two assumptions: first, that any individual with an impairment must be relevantly disadvantaged; and, second, that Ella regrets her deafness because of the loss of opportunities she is entitled to. Both assumptions should be questioned, and the case duly re-examined.

Recall that Dan 'firmly denies that deafness constitutes a disadvantage', whilst Ella 'regrets being deaf and would gladly forgo those goods [of deafness] if it were possible to remedy her deafness' (Williams, 2002a, p. 37). Williams (2002a, p. 37) assumes that Dan and Ella's impairment deprives them both of a central capability: equal 'communicative capabilities' with the non-deaf majority. Thus, we are expected to understand the case as follows: (a)

deaf individuals lack an opportunity they are entitled to, thus (b) they are entitled to state assistance, which should be provided unless (c) they claim not to be disadvantaged. (The final clause, of course, applies only if we accept the continuity test. Williams believes capability theorists would reject this and provide assistance to both.)

However, there is an ambiguity in what Dan means by claiming his deafness is not disadvantageous, and why it is Ella regrets her deafness. Imagine she regrets her deafness not because she lacks communicative capabilities (to which, I assume, she is entitled), but because she regrets being unable to listen to music (to which, I assume, she is not). Hence, her regret is not motivated by a deprivation of her entitlements, but by a thwarted desire. This would not usually be enough to warrant state assistance (according to the non-welfarist views that are my focus). If an ugly person preferred to be beautiful, or a tone-deaf person wished they could hold a tune – and duly regretted their current conditions – this would not lead us to advocate state-sponsored plastic surgery or singing lessons.<sup>18</sup> However, since we assume that deafness – and, indeed, disability in general – must be disadvantageous, we also assume that all disabled individuals' regrets are legitimate claims to be disadvantaged.

This assumption is an interesting consequence of the widely-held prejudice against disability. The ugly person, we think, is not entitled to state assistance on our prior theory of justice, so their regrets are irrelevant: they cannot unilaterally add to the list of entitlements on the basis of their mere 'frivolous' preferences to be beautiful. Deaf individuals, though, *are* disadvantaged by the lights of our theory, and so *are* entitled to state assistance. They can refuse it, but we do not delve into their reasons for accepting. These assumptions are grounded in the failure to acknowledge that individuals with impairments are not identically or necessarily disadvantaged by them. Thus, rather than making the simplistic assumption that all deaf individuals are disadvantaged, we should acknowledge that the reality is more complicated: Dan may be right (he is not disadvantaged), Ella might be wrong (*she* is not disadvantaged), or perhaps both are right – or wrong. Our aim, then, should be to allow *individuals* to determine whether they are *relevantly* disadvantaged.

This requires three changes in the application of the continuity test. First, our focus should be on lack of entitlements rather than unfulfilled preferences. Determining whether deafness is a relevant disadvantage is not identical with determining whether all deaf individuals regret their deafness, and would prefer to hear. Second, we should focus on how particular individuals are affected, rather than making a general judgment. We should not assume that all individuals with impairments are disadvantaged, or that individuals with the same impairments will be equally disadvantaged. Thus, we should not assume that all deaf people lack communicative capabilities and have a *prima facie* claim to assistance,

which they can choose to refuse. Some deaf people may not be disadvantaged at all, and so would not be entitled to assistance, regardless of their regrets. Finally, individuals should be free to choose whether they make use of what they are entitled to, be this resources or capabilities, and should be allowed to determine for themselves whether they currently have access to these entitlements and, if they do not, what form of assistance they require to achieve them.<sup>19</sup> For example, deaf individuals would determine whether they (individually) have communicative capabilities; if they do, whether to exercise them; and if they do not, whether they would prefer, say, access to cochlear implants or better education in, and accommodation of, Sign language.

These three claims can be explicated by reconsidering Dan and Ella. In this specific context, these claims are that we should focus on whether deafness is disadvantageous rather than regretted; on how deafness disadvantages specific individuals given it is not necessarily or identically disadvantageous; and that individuals should judge how their deafness affects them. To be disadvantageous means to deprive individuals of capabilities or resources they are entitled to. Whether this is true of deafness will depend on what these entitlements are. For simplicity I will focus on capabilities. Elizabeth Barnes (2009) has argued that deaf (and blind) individuals cannot possess the capability to 'use the senses' (Nussbaum, 2011, p. 33) and, as noted, Williams has suggested they will lack 'communicative capabilities'. On either view, deaf individuals will necessarily lack capabilities, and so be disadvantaged.

However, this interpretation of capabilities is deeply implausible.<sup>20</sup> The central capabilities should be individuated by appealing to the principle that is used to identify them: if an individual is entitled to the opportunities necessary to lead a dignified human life, a decent life, or to participate as a democratic equal, then they must have these capabilities to the degree necessary to lead such a life. For example, if these principles pick out as central the general capabilities for sensory and aesthetic experiences, and communication, then deaf individuals are entitled to be able to enjoy such experiences and capacities at the level necessary to lead a dignified or decent life, or participate as a democratic equal. Capabilitarian justice does not require the elimination of all differences in individuals' capacities, but instead advocates ensuring universal access to those opportunities that we determine all people should be entitled to. Whilst deafness (like other impairments) will lead to the loss of some opportunities to function, there is no reason to think it will necessarily undermine individuals' abilities in ways that preclude their living a decent or dignified life, or participating as a democratic equal. Certainly, being unable to listen to music, or finding it harder to communicate with the non-deaf majority than they do to communicate

between themselves need not be a barrier to decency, dignity, or democratic equality and so need not form the basis for redistributive claims under the capability approach.<sup>21</sup>

Being deaf is not *necessarily* disadvantageous, then, but in a society designed for the hearing majority it may lead to capability deprivation. For example, being able to form emotional attachments (if communication with others is difficult, or they are stigmatised and excluded), political participation (if the relevant information is not available in an accessible form), the ability to use imagination and reason (if improperly educated), or access to meaningful employment (if accommodations are not made and/or they are subject to discrimination). An individual *may* be part of a vibrant deaf community and, as well as enjoying the distinct goods this brings, have the capabilities to communicate, form emotional attachments, engage politically, use their imagination and reason, and undertake meaningful employment. Yet others may not.

The point is that when we examine a disagreement like Dan and Ella's we should not assume only one is right.<sup>22</sup> There is no 'true' experience of deafness that only one has access to. Instead, we should examine individuals' specific experiences and, in doing so, focus on whether they lack opportunities or resources they are entitled to. Deafness, like many impairments, need not be disadvantageous, and when it is it is the *disadvantage* that warrants a state response (lack of access to education, say), and not just the existence of regrets (over being unable to listen to music, perhaps). Thus, the first two of the above claims – that our focus should be disadvantage, and that impairments are not necessarily or identically disadvantageous so we should consider how specific individuals are affected – demonstrate that much of the debate on Dan and Ella-type disagreements is conducted at the 'wrong level': on whether *deafness* is a disadvantage, and on what individuals *regret*, rather than on whether particular individuals have the capabilities (or whatever else) they are entitled to.

The final claim reintroduces the importance of continuity with individuals' convictions: having clarified what we mean by disadvantage, we should not simply assume that individuals with similar impairments will be similarly disadvantaged, but allow them to determine for themselves whether this is true in their case. Further, given the diverse causes of disadvantage, even when state assistance is appropriate it may take various forms, including changes in social structures, additional resources to enable engagement in social institutions, and medical treatments and cures. We should use individuals' testimony not just to determine whether they are disadvantaged, but also what they require to rectify this lack. A further, related role for such testimony is in determining how the content of entitlements should be understood. For example, as evidence that communication may not require speech, aesthetic experience may not require hearing, and emotional

engagement may not require neurotypical cognitive functionings. This avoids perpetuating the ableist assumption (rife in Dworkin's work) that the goal of redistributive policies should be to eliminate or mitigate the consequences of impairment. Instead, all individuals are entitled to function at an adequate *level*, such that they have sufficient opportunities to form and pursue their own conception of the good, and should have a role in determining what this level is and the different means by which it can be reached.

Yet it may be objected that insofar as we are simply checking whether individuals meet a predetermined set of criteria their testimony plays a contingent rather than necessary role: it is simply one source of evidence as opposed to having independent normative force. Thus, it might seem that the centrality of subjective judgements, distinctive to the continuity test, is lost. In response, it should first be emphasised that it is far from straightforward to determine whether someone has what they are entitled to. This has been illustrated by reflecting on disability but is not unique to this case. For example, determining whether someone has even an apparently straightforward capability like adequate control over their mobility does not just require knowing certain simple facts about them – whether they have an impairment and how accessible their public transport links are, say – but awareness of a much more complex web of factors, some of which may be internal to the person. We might, for example, conclude that a person with a moderate mobility impairment living in London will have the capability to be mobile if given free access to public transport. Yet we may be unaware that their anxiety in crowded spaces means they lack the internal capability to use a bus, though physically accessible, or that they have a principled objection to using any fossil-fuel-powered transportation. Thus, not only are relevant external features complex and interrelated in ways that are hard to predict, but they interact too with internal features that may be even harder to access. As such, even when it is evidentiary, testimony is not *inessential* to determining whether individuals have what they are entitled to.

Further, insofar as our entitlements are open to specification and interpretation, testimony will have a more fundamental role in identifying disadvantage. Determining, for example, whether someone has adequate communicative capabilities or opportunities for sensory experiences whilst deaf requires not just knowing all there is to know about their particular context, their other features and capacities, but also what it means to function adequately in these domains. Thus, disabled individuals' demands for accommodation (not cures) does not merely provide information regarding how disadvantage should be redressed, but also how disadvantage should be understood. Most obviously, in this case, it means that continuing to have an impairment, and so functioning in a non-standard way, is not incompatible with having what we are entitled to. In other words, it gives reason to conclude both that having an impairment need

not be a disadvantage in general, and that in this specific case, for this individual, it is not disadvantageous. Thus, we can conclude that for them (though perhaps not for others) a cure is not part of what they are entitled to, on the basis of continuity with their judgements about how the entitlement list should be interpreted and applied. Individuals are being asked to judge their lives against a list, then, but part of this process involves filling out how the list itself should be understood. Testimony is used to determine both what it is to be disadvantaged – what level of functioning is acceptable and how it can be reached – *and* when particular individuals meet these criteria – given their individual features and circumstances.<sup>23</sup>

Given what we are asking, I do not think that, as Lazenby (2016, p. 201) suggests, it is ‘a wild conceit to believe that one always knew better than experts and the general population’. Individuals with the same impairments, and even in the same circumstances, might have different capabilities, and we should (if possible) vary assistance accordingly. To do so, we must use individuals’ assessment of their situation – both of whether they are in need and what they need – and avoid relying on sweeping judgements – for example, that the lives of those with impairments are sub-optimal, and necessarily warrant assistance. The continuity advocated here does differ significantly from original iterations of the continuity test: our goal is no longer to align public provision with individual preferences, but with their *judgements* about how their lives are going, what they need to rectify any disadvantages they experience, and how general entitlements should be specified. However, this does not mean the advantages of the original continuity test are lost. As noted at the outset, these include not providing unnecessary compensation, avoiding objectionable paternalism, allowing people to demand assistance in good faith, and acknowledging pluralism of values and that not all people are disadvantaged by the same conditions. These benefits are retained by this view.

## 6. The implementation problem

My proposal, then, is that political prescriptions should not be continuous with individuals’ ethical convictions about what makes their life go well in a general sense, but with their convictions about whether they are relevantly disadvantaged. This version of the continuity test is, I believe, compatible with its original motivation and rationale, as well as being consistent with Dworkin’s other (anti-welfarist) commitments. However, it may seem that it still faces the problems that were raised against it in its original form: that individualised entitlements are impractical and unfair; and that individuals cannot be trusted to identify whether they are disadvantaged. I will consider the former objection here, and the latter in §7.

Dworkin, despite believing it would be perversely paternalistic to provide state assistance to Dan, nonetheless demurs from the complete consequences of applying the continuity test. Thus, he insists that Dan would, in practice, receive the same assistance as Ella, despite his different convictions. I have argued against the assumption that we must make a general judgment about whether impairments (and, indeed, other potentially disadvantageous features and conditions) are disadvantageous in a particular case.<sup>24</sup> Whether this is so will depend on a combination of factors – including social norms and infrastructure, and personal resources, characteristics and goals – which vary from person to person. Thus, our judgements about disadvantage should be much more fine-grained, focussing on whether a *specific* individual is *relevantly* disadvantaged.

Our distributive goal, then, should be identifying and responding to these particular cases, rather than advocating a one-size-fits-all approach. This is not to say that every policy must be individually tailored: many social structures and institutions will affect many people in similar ways. Thus, improving access to public buildings and workplaces, expanding educational opportunities for those with physical or cognitive impairments, and increasing the formats in which public information is available will mitigate disadvantage for many people. Nonetheless, this is an unapologetically individualised approach, requiring that individuals explain how their particular impairment impacts on their lives and limits their opportunities, and what they individually require to have or regain the capabilities or resources they are entitled to. The likely result will be that individuals with the same impairments will receive assistance in different levels and forms. For example, an individual with a mobility impairment in an isolated rural community may be entitled to an appropriately modified car, whilst someone with the same impairment in an urban area with excellent, accessible public transport may only be entitled to a free transport pass.<sup>25</sup>

Whilst this may be more difficult to achieve than an approach that provides an identical bundle of goods to every individual (or to every individual with the same impairment), a more individuated approach is first, more appropriate to the lives of its recipients, and second, avoids the insulting implications that to have an impairment is always and necessarily disadvantageous. Further, even when the state must tailor its response to an individual, rather than mitigating systemic injustice, this approach is far from wholly impractical. This goal of providing individual support packages is what underlies the theory (if certainly not the practice) of the UK Government's Personal Independence Payments. To be clear, I by no means endorse these policies as they are currently practiced. However, if motivated by a concern to assist (rather than cut costs) making individual assessments is surely the right approach, and evidently not a utopian policy proposal. Thus, administrative costs will likely be similar, and if a new approach avoids

exacerbating individuals' conditions, increasing hospitalisation, and leaving them unable to participate economically, socially, and politically, then even if greater initial outlays are required, overall costs may be reduced.

As a further response to practicality concerns, we can emphasise that our goal need not be equality of outcome. If, for example, we believe individuals are entitled to those capabilities necessary to lead a decent life, we do not need to erase all differences in opportunities to function, we need only ensure each individual has an acceptable set of options. Further, this threshold can be reached in a variety of ways: giving individuals the capability for mobility, for example, does not mean giving everyone the opportunity to walk.

I should stress that my goal is not to undermine legitimate claims for assistance, nor to force individuals to undergo insulting and degrading tests. However, if we are to get away from the clearly false assumption that all impairments are uniformly disadvantageous, we should consider more carefully the ways in which our particular impairments limit particular opportunities, and should surely allow impaired individuals a voice in ascertaining when they are thus disadvantaged. This may mean that some disabled individuals are no longer entitled to state assistance but, more likely, it will mean that individuals who are not disabled in a traditional sense will be eligible for assistance. I would, then, dispute the claim that the approach I have advocated is wholly impractical, and defend its higher level of difficulty as a price well worth paying for an approach to distributive justice that takes account of the views of those most affected by it.<sup>26</sup>

The second strand of the implementation problem is that even if it were possible to provide individuals with state assistance continuous with their own convictions regarding whether they are disadvantaged, it would be inequalitarian and unfair to do so. However, if we challenge the assumption that all individuals with impairments are necessarily and identically disadvantaged (as I have argued we should) then the natural outcome must be that their entitlement to assistance will also vary. There is nothing unfair in one deaf person being entitled to cochlear implants and another not if only one is relevantly disadvantaged by their impairment.

It should be noted that this response is not available to versions of the test that seek continuity with individuals' ethical convictions. Indeed, these approaches *will* advocate unfairly individualised entitlements, though not in the way usually supposed. As §5 considered, these approaches treat the regrets of disabled individuals (and others assumed to be disadvantaged) differently from others'. Ella, for example, is entitled to assistance if she regrets her deafness even if this is only because she wishes she could hear music, whilst a tone-deaf person would not be entitled to assistance for an identical regret over his inability to enjoy music. The same is true of a blind person and a colour-blind person, both of whom regret being unable to

appreciate great works of art. Compensating some individuals and not others for their thwarted preferences *does* seem inequalitarian and unfair (indeed, by Dworkin's (2000, pp. 61–62) own lights). Compensating individuals only insofar as they are actually disadvantaged does not.

However, this all assumes that individuals' self-assessments are reliable. Thus, that we will assist all and only those who are relevantly disadvantaged. If this is not the case, my continuity test may result in individuals who 'really are' disadvantaged, but do not see it that way themselves, being denied assistance to which they are entitled. It is to this problem that I now turn.

## 7. Mistakes, autonomy, and capabilities

There is ample evidence to suggest that individuals' can, in various ways and for various reasons, make mistakes. As Lazenby (2016) has argued, this speaks against the desirability of achieving continuity between individuals' convictions and political prescriptions. I argue that mistakes might not be as serious a problem as Lazenby supposes if: first, we focus on convictions about relevant disadvantages rather than general preferences; and second, we adopt some form of proceduralism, and move from actual to authentic preferences. However, neither move will eliminate the possibility of mistakes. Thus, I argue that in the end we should bite the bullet: individuals should be allowed the space to make mistakes, and to live with the consequences.

First, then, there is a benefit to clearly delineating what it means to ask someone whether they believe they are disadvantaged. Individuals cannot merely assert that they 'regret' their deafness (or whatever else); they must demonstrate that they lack some opportunity or resource they should be entitled to. This not only prevents someone like Ella being compensated for a regret when a tone-deaf person would not be, but also prevents individuals from spuriously claiming that they regret their condition in order to claim state assistance.<sup>27</sup> Focussing on disadvantage can also help with the more concerning problem of adaptive preferences. Consider, for example, Sen's (1999a, p. 53) case of the self-reported health levels of widows and widowers in India in 1944, following the Great Bengal Famine. Although widows suffered a greater rate of malnutrition and associated health problems, only 2.5% reported their health to be 'ill' or 'indifferent', as opposed to 48.5% of widowers. The problem is that the questions were framed in a way that invited individuals to rate their healthcare against their expectations.<sup>28</sup> This naturally leads to widows underrating their suffering, since this is no more than they expect.

Certainly this testimony should not lead us to conclude that the widowers were worse-off and more deserving of assistance. Yet we also should not conclude that their testimony was wholly useless. Individuals should not be asked 'how they are doing' or whether they have 'adequate' opportunities or

resources but, more specifically, whether they have the particular opportunities or resources they are entitled to. In other words, our goal should not be to ascertain how they *feel* about their health – for example, ‘are you satisfied?’ or ‘is it adequate?’ – but what they are able to do – for example, ‘do you have access to medical professionals and clinics?’, ‘what is your caloric intake?’, or ‘how varied is your diet?’. Using individuals’ testimony to determine whether they are disadvantaged means asking whether their attributes and circumstances mean that they meet the criteria of disadvantage, given a prior account of distributive entitlements. Again, though, it should be emphasised that insofar as this prior account is broadly specified, this is not a mere box-ticking exercise, but allows scope for testimony to flesh out the content of our entitlements. For example, this does not allow someone to assert that the inability to hear music should be compensated, despite their sincere personal regrets, but *would* allow them to argue that making cochlear implants available does not provide adequate opportunities for communication for those who have a principled objection to them on the basis of their potential impact on Deaf culture.<sup>29</sup> Thus, such testimony could demonstrate that individuals in these circumstances are disadvantaged, despite superficially appearing to possess all central capabilities.<sup>30</sup>

Second, as §2 considered, we should aim to ensure continuity with individuals’ authentic (not actual) preferences, thus ruling-out mistakes about facts, reasoning, and applications of judgment. Lazenby, however, objects to any degree of idealisation of preferences. His concern is, first, that as the ‘the conditions [of authenticity] become more heavily specified the difference between Dworkin’s account and the welfarist accounts he rejects becomes harder to detect’ (Lazenby, 2016, p. 195). However, whether an approach collapses into welfarism depends not on whether preferences are informed, but on the role they play in the account. On the capability approach, or Dworkin’s, the realm of state assistance is decided prior to the application of the continuity test, which then allows individuals to refuse assistance they would otherwise be entitled to. On welfarist theories, meanwhile, this realm is directly determined by individual preferences, any of which might generate a claim to state assistance. This distinction remains regardless of whether we use actual or authentic preferences.

Lazenby is also concerned that focussing on authentic preferences will result in the loss of what he takes to be the key motivation behind adopting the continuity test: that it grounds an approach to distributive justice that each individual can endorse. If, Lazenby argues, authentic preferences differ from actual preferences, individuals will no longer see the approach as reflective of, and continuous with, their core ethical convictions. In response, first, it is not clear that the plausibility of the approach is lost with the move to authentic preferences. The point is that individuals should not be compensated for conditions that, by their own lights, do not disadvantage them. If an

individual's actual preference does not reflect her considered, authentic judgment due to some mistake in facts or reasoning, it does not follow that the assistance offered is not continuous with her core convictions. Imagine, for example, a deaf individual who believes that she has access to education and work on an equal footing to the hearing, but whose belief is based on a lack of awareness of systematic ableist bias. Given she lacks access to knowledge of these systems, structures, and norms, her current beliefs are based on a mistaken set of facts, and so do not authentically reflect her deeper convictions. Ideally, the state should take steps to enable her to correct these mistakes and form more authentic preferences. However, even if this cannot be achieved, and her authentic preferences continue to diverge from her actual preferences, acting in line with the former, and ensuring that she really does have the access she believes she has, still demonstrates respect for her convictions (that bias can undermine equality of opportunity).<sup>31</sup> If she were aware of the relevant facts about her circumstances she would agree she is disadvantaged.

However, two problems remain. First, will the continuity test entail (perversely paternalistically) forcing state assistance on those who do not *actually* consider themselves disadvantaged if this follows from their authentic preferences? Second, we have not eliminated the convictions of individuals who seem to be mistaken about values. Recall that authentic preferences should be a true representation of individuals' views, devoid of mistakes about facts, reasoning, or the application of judgements. The goal is not to discover what individuals ought to prefer, but to apply their judgements consistently. As such, this does nothing to weed out individuals whose judgements have been affected by adaptation to comprehensive mistreatment and oppression (as §2 discussed).<sup>32</sup> Imagine the above deaf individual does *not* believe deaf people should have equal access to education and work. Moving towards her authentic preferences would merely ensure this conviction is applied consistently.

Throughout, I have emphasised that the version of the continuity test I defend is consistent with Dworkin's wider commitments, even if not with how he cashes them out. As such, I have tried to remain relatively neutral between resourcist and capability approaches to distributive justice. However, I believe these final two problems provide some reason to opt for the capability approach, and will briefly consider why this is so. First, the capability approach far more explicitly emphasises that people will not be forced to do anything that conflicts with their actual preferences, since they can choose whether to exercise the opportunities provided to them.<sup>33</sup> It is true that the central capabilities (however identified) would be provided to all individuals, so if capabilities for education or work were included on this list they would be *offered* even to those who do not want them. Yet, since these are opportunities, they need not exercise them.

An additional benefit is that since capabilities are substantive opportunities, or 'real freedoms', if the reason someone rejects these opportunities is systematic bias and oppression, ensuring access to these capabilities would speak in favour of eliminating this. Thus, in the long-run, a system designed according to the principles of the capability approach would work to eradicate the systematic injustice that distorts individuals' expectations and views of their capacities (Begon, n.d.). In the short-run, when such preferences still exist, we should simply bite the bullet. Providing capabilities means allowing people to choose not to function, and if we value autonomy and avoiding paternalism then we should allow people to make decisions for themselves even when we think their choices are mistaken, and even when their decisions are grounded in distorting influences that justice demands should ultimately be eliminated.<sup>34</sup> This, after all, is part of the motivation behind the continuity test, and I believe the capability approach best encapsulates it. Providing a set of general opportunities, which individuals can exercise or not, allows for continuity with their convictions without invasive state assessments or individual lists of entitlements (also providing a further response to the implementation problem).

Finally, there should be scope, too, to allow individuals to determine not just whether they have the capabilities they are entitled to, and whether they wish to exercise them if they do, but also what they need if they do *not* already have access to them. As §5 considered, the first and third of these elements are closely related: judgements about the different ways our entitlements might be fulfilled also help to specify what these are. Returning, again, to the example of deafness: individuals' convictions should play a role in determining, first, if they are disadvantaged (whether they have access to meaningful work, say); second, whether they make use of the state assistance offered (whether they choose to engage in said meaningful work); and third, what they would need to mitigate disadvantage if it exists, thus determining what constitutes acceptable functionings, and hence the boundaries of disadvantage (for example, playing a role in identifying appropriate forms of accessibility arrangements, training, or other accommodation).

The capability approach, then, seems better placed to pass the continuity test than a resourcist approach. However, this will not, of course, constitute a decisive reason to reject resourcism for those committed to it. This is not the place to attempt to provide such a reason, and the version of the continuity test I defend is anyway consistent with resourcism. However, I will finish by responding to an objection that the capability approach, far from being consistent with the continuity test, ignores individuals' convictions and paternalistically imposes a perfectionist doctrine, since it only provides individuals with *specific* capabilities. (Indeed, this may be a general worry about my focus on *relevant* disadvantage.)

Capability theorists argue that individuals should be entitled to capabilities rather than a particular bundle of resources, since the latter does not take account of differences in individuals' abilities to convert these resources into opportunities to function. Thus, we offer the 'capability to be mobile', for example, where this will require the provision of wheelchairs, prosthetics, crutches, medical treatment, lifts, ramps, stairs, scooters, or paved walkways, in different cases. Yet there is a sense in which the provision of a resource bundle *better* caters to individual diversity. If we are provided with a bundle of resources – rather than whatever resources we need to have a particular capability – then we can use these resources as we wish. If we would rather have a Stradivarius than mobility, or access to the Fun House rather than a voting booth, then we can choose to spend our resources in this way.

One response would be to return to a central theme of this paper, and say again that individuals need not be enabled to dictate their entitlements, or have all their preferences satisfied. The continuity test should apply only after we have made a judgment about the realm of state assistance. If this is set at opportunities for mobility and not for Stradivariuses, then leaving preferences for the latter unsatisfied is no violation of the continuity test. However, we may independently worry about this outcome. For similar reasons that we adopted the continuity test in the first place (a respect for individuals' own judgements about how their lives are going) we may object to an account of distributive justice that seems to prioritise some conceptions of the good over others.

In response, I would first emphasise that even if we restrict the domain of individuals' entitlements to central capabilities, this will still leave individuals with a range of opportunities. For example, if we follow Nussbaum and include the capability for 'play' on the list, then individuals will be entitled to opportunities for recreation and leisure (even if not necessarily a sports car or a Stradivarius). Second, I can only appeal again to the intuitive pull of these Stradivarius-type examples, and assert that we would not consider ourselves as disadvantaged – deprived of something to which we should be entitled and the state should provide – in these cases, and that it is only disadvantage *from the point of view of justice* that should be our concern. Third, allowing individuals to help specify the range of acceptable functionings within capabilities, and so when they are disadvantaged, as well as the most appropriate method to remedy it, retains a space for a plurality of views, though limited to the realm of justice-relevant concerns.

## 8. Conclusion

Theories of distributive justice have a long history of excluding the voices of those they aim to assist. Whilst we cannot always take individuals' perspectives on their own disadvantage at face value, surely our goal should be to

give these perspectives the most prominent position we can. It is for this reason that I think it is worth pursuing continuity between individuals' convictions about their disadvantage, and what they are entitled to from the state. Disagreement amongst similarly situated individuals makes this goal harder to achieve, but the cases that have dominated the literature are not those that should concern us. The disagreement between Dan and Ella is only a dilemma if we assume that we need to find an answer, and corresponding distributive policy, to the question of whether deafness is a disadvantage. We should not. Impairments are neither necessarily nor uniformly disadvantageous, and our distributive response to them should reflect this. We should not ask whether individuals regret their impairment, but whether they are relevantly disadvantaged by it; and we should not ask whether specific impairments are disadvantageous, but whether a particular individual, in particular circumstances, is disadvantaged, and what they require to overcome this. This leaves us with an approach that provides all individuals with the same central entitlements, yet also allows compensation to be tailored depending on individuals' own understanding of their circumstances. This will not entail giving each individual what they most want, since not every lack of opportunity is properly a concern of justice. However, they should play a central role in determining what it is they need, and this they are entitled to receive.

## Notes

1. Matthew Clayton (2000, pp. 76–77) also discusses this feature of Dworkin's account, labelling it the 'first-person test'.
2. I do not, however, stake the success of my argument on demonstrating its consistency with Dworkin's views, or on my interpretation of Dworkin being the only one possible.
3. Note also that to be disadvantaged means to lack what we are entitled to, and so have at least a *prima facie* claim to assistance (though this might be outweighed by competing claims if resources are limited).
4. See Dworkin (2000, pp. 65–119). Dworkin argues that individuals' bundle of impersonal resources should pass the envy test (we would not prefer another's share). This test is not appropriate for personal resources because they cannot simply be transferred, and because eliminating the envy Dworkin (2011, p. 359) assumes the 'blind and crippled' would feel for the able-bodied would leave us with 'nothing to spend on anything else'. (Also see Clayton, 2000, pp. 66–70).
5. Arneson (2018, pp. 53–56) argues that fair insurance determines the distribution of *all* resources on Dworkin's account, but I need not accept this stronger claim here.
6. Those who favour the former interpretation of Dworkin may consider it a disadvantage insofar as individuals' compensation no longer directly reflects their individual ambitions (for example, Parr, 2018). However, they would then face the challenge of explaining how a non-averaged version of the insurance market could plausibly be operationalized.

7. It fits, too, with Dworkin's discussion of Jude who initially achieves equal welfare to others with fewer resources, then develops more expensive tastes though he still has less than his 'equal share' (Dworkin, 2000, p. 58). If it were individually determined Jude *would* have his fair share of resources – he would not envy anyone else's bundle – and his later-acquired tastes would be no different to Louis's (also see Clayton, 2000, p. 72).
8. Ben Colburn (2014, p. 257) also assumes that the continuity test involves this 'small measure of idealisation'. Also see Parr (2018, p. 308).
9. A clarification is necessary. Whilst I have followed Lazenby in using the language of facts and values, the central distinction is not between those claims that are truth-apt, and so potentially factually mistaken, and those that are not. Rather, it is between claims about which there will, or will not, continue to be reasonable disagreement given the burdens of judgment. Thus, 'mistakes about facts' should be narrowed to include only those on which reasonable disagreement is not possible (such as the connection between smoking and cancer), and 'mistakes about values' should be broadened to include everything about which reasonable people might disagree (such as religious beliefs).
10. Such cases would be problematic, too, for accounts like Parr's (2018, p. 315), which draw a distinction between mistakes that occur in forming and pursuing one's values. Simply biting the bullet (as Parr (2018, p. 318) suggests) in cases where background injustices cause distortions in value-formation can perpetuate serious injustice (Begon, 2009).
11. For example, (Buchanan et al., 2000; Nussbaum, 2006; Shakespeare, 2006; Terzi, 2004).
12. For example, (Barclay, 2010, p. 161; Shakespeare, 2006, p. 46; Terzi, 2004, 2009).
13. For example, (Daniels et al., 2009; Kahane & Savulescu, 2009; Shakespeare, 2006; Terzi, 2004, 2009; Wolff, 2009).
14. My view is that the relevant disabilities are those we should be entitled to be able to perform as a matter of justice (Begon, 2015). Alternatively, we may think these are those entailed by 'normal' species functioning (Buchanan et al., 2000; Daniels, 1985), those that decrease welfare (Kahane & Savulescu, 2009), or those considered relevant by disability activists (Barnes, 2016).
15. Assuming others can achieve it, given the test is comparative.
16. It may be objected that if we are merely checking whether individuals fit the relevant criteria of disadvantage then all they can offer is information, not judgments. However, as §5 will argue, this is not so: determining the content of entitlements and when they have been provided is complex, and will require judgment, even in the presence of a prior theory.
17. Examples from: Dworkin, 2000, p. 61; Anderson, 1999, p. 332; Carter, 2014, p. 91).
18. This is because we are unlikely to deem individuals entitled to compensation merely for lack of beauty, say. On the Dworkinian view, this means assuming the average person would not insure against this possibility. However, if this lack has seriously detrimental effects on their life chances then we might compensate them for these effects (see Hammermesh, 2011). For example, individuals might insure against the possibility of being subject to significant discrimination in the labour market. On the capability approach such guesses about insurance purchasing decisions are unnecessary: individuals are simply compensated for the justice-relevant detrimental consequences of their differences (being unable to earn income, say).

19. Although talking in terms of capabilities (which individuals can choose to exercise or not) helps to emphasise this point, resourcists can also incorporate a degree of vided with. revisions at p.24 where I again consider the value of allowing individuals to choose how they use what they are proindividual control.
20. See Begon (2015). It may not, however, be an unreasonable interpretation of Nussbaum's approach to compensating individuals with impairments (see Nussbaum, 2006, pp. 179–194), but this is a flaw in Nussbaum's account rather than the capability approach.
21. See Anderson (1999, p. 333) for a similar claim.
22. Usually Dan is assumed to be mistaken for failing to acknowledge the disadvantage that 'must' accompany deafness (Lazenby, 2016, p. 194; Nussbaum, 2006, p. 193; Williams, 2002a, pp. 37–38).
23. Insofar as we have an inter-subjective approach to entitlement identification, testimony also has a role in determining the prior list – as part of an overlapping consensus, say.
24. Though my focus is disability, we should take a similar approach whether disadvantage is the result of impairment, lack of educational opportunities, discrimination against one's cultural or racial group, or sexual or gender identity, or simply resource poverty.
25. Depending, of course, on other features of their case, as §5 considered.
26. I have defended my approach against others that direct redistribution towards specific individuals. An alternative approach would avoid much costly administration by simply providing all individuals with a basic income. Though I will not enter the debate over the merits of this approach here, I would flag the difficulty of setting a level that will fully accommodate those with additional needs without disincentivising work for those who do not face such costs.
27. I am sceptical that this would occur often (or at all), but given that the possibility concerns both state and citizens, it is worth demonstrating that the supposed risk is eliminated.
28. This is complex case, wherein the widows may have various motives for their apparent satisfaction, as I discuss elsewhere (Begon, 2015; also see Khader, 2011).
29. See, for example, Sparrow (2005).
30. I consider this case in detail elsewhere Begon, n.d. .
31. This is not the place to defend a specific form of proceduralism, but such cases provide reason to think that the standard of authentic preferences should be such that individuals can possess them in the right conditions, rather than being highly idealised.
32. We need not commit to the view that only some ways of life are 'correct' or worth pursuing, and that individuals' choices or goals might therefore be wrong. Rather, I only claim, first, that there are domains in which reasonable people will disagree and, second, that we might reasonably worry about some influences on individuals' convictions. In response, I will suggest that in the face of such disagreement a liberal state ought not intervene and that ultimately justice demands the removal of some distorting influences.
33. As §5 mentioned, resourcists also need not compel the uptake of the goods they provide. However, the capability approach ensures individuals have the substantive ability to control their functioning outcomes, however many resources this requires.

34. A benefit of an approach where people collectively, not individually, determine the content of their entitlements is that all will continue to be entitled to opportunities or resources even if a minority do not utilise them. Such continued availability may further encourage their future uptake and undermine distorting influences (see Begon, 2020).

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No potential conflict of interest was reported by the author(s).

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## References

- Anderson, E. (1999). What is the point of equality? *Ethics*, 109(2), 287–337. <https://doi.org/10.1086/233897>
- Anderson, E. (2010). Justifying the capabilities approach to justice. In H. Brighouse & I. Robeyns (Eds.), *Measuring justice: Primary goods and capabilities* (pp. 81–100). Cambridge University Press.
- Arneson, R. (2018). Dworkin and luck egalitarianism: A comparison. In S. Olsaretti (Ed.), *The oxford handbook of distributive justice* (pp. 41–64). Oxford University Press.
- Barclay, L. (2010). Disability, respect and justice. *Journal of Applied Philosophy*, 27(2), 154–171. <https://doi.org/10.1111/j.1468-5930.2010.00489.x>
- Barnes, E. (2009). Disability and adaptive preference. *Philosophical Perspectives*, 23, 1–22. <https://doi.org/10.1111/j.1520-8583.2009.00159.x>
- Barnes, E. (2016). *The minority body: A theory of disability*. Oxford University Press.

- Begon, J. (2015). What are Adaptive Preferences? Exclusion and Disability in the Capability Approach. *Journal of Applied Philosophy* 32(3), 241–257
- Begon, J. (2020). Disability, Rationality, and Justice: Disambiguating Adaptive Preferences. In D. Wasserman, & A. Cureton (Eds.), *The Oxford Handbook of Philosophy and Disability* (pp. 343–362). Oxford University Press.
- Begon, J. (2021). 'Disability: A Justice-Based Account', *Philosophical Studies* 178(3), 935–962
- Begon, J. (no date) Disability Through the Lens of Justice [Unpublished manuscript].
- Buchanan, A., Brock, D. W., Daniels, N., & Wikler, D. (2000). *From chance to choice: Genetics and justice*. Cambridge University Press.
- Carter, I. (2014). Is the capability approach paternalist? *Economics and Philosophy*, 30 (1), 75–98. <https://doi.org/10.1017/S0266267114000054>
- Clayton, M. (2000). The resources of liberal equality. *Imprints*, 5(1), 63–84.
- Colburn, B. (2014). Disadvantage, autonomy, and the continuity test. *Journal of Applied Philosophy*, 31(3), 254–270. <https://doi.org/10.1111/japp.12060>
- Daniels, N. (1985). *Just health care*. Cambridge University Press.
- Daniels, N., Rose, S., & Daniels Zide, E. (2009). Disability, adaptation, and inclusion. In K. Brownlee & A. Cureton (Eds.), *Disability and disadvantage* (pp. 54–85). Oxford University Press.
- Dworkin, R. (2000). *Sovereign virtue*. Harvard University Press.
- Dworkin, R. (2002). *Sovereign virtue revisited*. *Ethics*, 113(1), 106–143. <https://doi.org/10.1086/341579>
- Dworkin, R. (2011). *Justice for hedgehogs*. Harvard University Press.
- Hammermesh, D. S. (2011). *Beauty pays: Why attractive people are more successful*. Princeton University Press.
- Kahane, G., & Savulescu, J. (2009). The welfarist account of disability. In K. Brownlee & A. Cureton (Eds.), *Disability and disadvantage* (pp. 14–53). Oxford University Press.
- Khader, S. J. (2011). *Adaptive preferences and women's empowerment*. Oxford University Press.
- Khader, S. J. (2012). Must theorising about adaptive preferences deny women's agency? *Journal of Applied Philosophy*, 29(4), 302–317. <https://doi.org/10.1111/j.1468-5930.2012.00575.x>
- Khader, S. J. (2013). Identifying adaptive preferences in practice: Lessons from post-colonial feminisms. *Journal of Global Ethics*, 9(3), 311–327. <https://doi.org/10.1080/17449626.2013.818379>
- Lazenby, H. (2016). Mistakes and the continuity test. *Politics, Philosophy, and Economics*, 15(2), 190–205. <https://doi.org/10.1177/1470594X15573462>
- McBryde Johnson, H. (2003, February 16). Unspeakable Conversations. *The New York Times Magazine*. <http://www.nytimes.com/2003/02/16/magazine/unspeakable-conversations.html>
- Nussbaum, M. C. (2000). *Women and human development: The capabilities approach*. Cambridge University Press.
- Nussbaum, M. C. (2006). *Frontiers of justice: Disability, nationality, species membership*. Harvard University Press.
- Nussbaum, M. C. (2011). *Creating capabilities: The human development approach*. Harvard University Press.
- Parr, T. (2018). How to identify disadvantage: Taking the envy test seriously. *Political Studies*, 66(2), 306–322. <https://doi.org/10.1177/0032321717720377>
- Sen, A. (1999a). *Commodities and capabilities*. Oxford University Press.

- Sen, A. (1999b). *Development as freedom*. Oxford University Press.
- Sen, A. (2009). *The idea of justice*. Oxford University Press.
- Shakespeare, T. (2006). *Disability rights and wrongs*. Routledge.
- Slavny, A. (2017). On being wronged and being wrong. *Politics, Philosophy, and Economics*, 16(1), 3–24. <https://doi.org/10.1177/1470594X16683382>
- Sparrow, R. (2005). Defending deaf culture: The case of cochlear implants. *Journal of Political Philosophy*, 13(2), 135–152. <https://doi.org/10.1111/j.1467-9760.2005.00217.x>
- Terzi, L. (2004). The social model of disability: A philosophical critique. *Journal of Applied Philosophy*, 21(2), 141–157. <https://doi.org/10.1111/j.0264-3758.2004.00269.x>
- Terzi, L. (2009). Vagaries of the natural lottery? Human diversity, disability, and justice: A capability perspective. In K. Brownlee & A. Cureton (Eds.), *Disability and disadvantage* (pp. 86–111). Oxford University Press.
- Williams, A. (2002a). Dworkin on capability. *Ethics*, 113(1), 23–39. <https://doi.org/10.1086/341323>
- Williams, A. (2002b). Equality for the ambitious. *The Philosophical Quarterly*, 52(208), 377–389. <https://doi.org/10.1111/1467-9213.00276>
- Wolff, J. (2009). Disability among equals. In K. Brownlee & A. Cureton (Eds.), *Disability and disadvantage* (pp. 112–137). Oxford University Press.