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## THE DISCORDANT SINGER How Peter Singer's Treatment of Global Poverty and Disability Is Inconsistent and Why It Matters

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Peter Singer is well known for having made a powerful case for a vastly greater commitment, by each of us individually and by society, to the alleviation of global poverty.<sup>1</sup> He is also well known for his views regarding the lives of “profoundly intellectually disabled humans,” going so far as to make the case that

[t]here will surely be some nonhuman animals whose lives, by any standard, are more valuable than the lives of some humans. A chimpanzee, dog, or pig, for instance, will

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This piece is dedicated to Professor Michael Ashley Stein, with whom I founded the Harvard Law School Project on Disability (HPOD) in 2004. I am grateful for the deft editorial hand of Randall Kennedy and the insightful reading of drafts by Nikolas Bowie, I. Glenn Cohen, Jessica Eisen, John C.P. Goldberg, Jonathan Kempner, Jim Yong Kim, Eva Feder Kittay, Martha Minow, Gerry Neuman, Tim Scanlon, Hezzy Smith, Michael Ashley Stein, Konstantin Tretyakov, Dick Wasserstrom, and Sara Zucker. I also want to thank C.V. Chen for encouraging me to take on this topic; my colleagues on disability work in China—Juliet Bowler, Fengming Cui, Alonzo Emery, Rui Guo, and Dayuan Han; and my many friends at Special Olympics, including Eddie Barbanell, Angela Ciccolo, Loretta Claiborne, David Evangelista, Mary Davis, Ben Haack, Kim Samuel, and Tim Shriver, among others. At Harvard, I want to acknowledge Law School deans Martha Minow and John Manning for their heartfelt support for work on disability, Rachael Goodyer for her excellent research assistance, the Law School library for its valuable bibliographic assistance, and Emma Johnson for her insight and patience with endless drafts. Naturally, all opinions, errors and infelicities are mine.

1 Bill and Melinda Gates, for example, have written that “Singer challenges every one of us to do more, to be smarter about the ways we go about giving, and shows us that, working together, we can make a profound difference in the lives of the world’s poorest.” Bill and Melinda Gates, *Review of Peter Singer’s book “The Life You Can Save,”* FACEBOOK (Sept. 8, 2012), <https://www.facebook.com/TheLifeYouCanSave/posts/bill-and-melinda-gates-review-of-peter-singers-book-the-life-you-can-save/140853409392259/>.

have a higher degree of self-awareness and a greater capacity for meaningful relations with others than a severely retarded infant or someone in a state of advanced senility.<sup>2</sup>

The case Singer makes for global poverty alleviation is in sharp tension with his treatment of disability in three important interrelated respects. First, Singer's argument for poverty alleviation exemplifies well his call for a reason-based ethics grounded in an equal consideration of the interests of all parties affected by one's decisions. However, his treatment of disability is troublingly imprecise as to matters of life and death. At times, he seeks to parry opposing positions more rhetorically than substantively, and he also evidences rigid preconceptions, impervious to the experience of persons with a disability, that lead to self-reinforcing conclusions. Second, whereas he readily and admirably challenges conventional constructs in discussing poverty alleviation, he embraces them when considering disability. And third, although he clearly states that he expects his writing to spur concrete action with regard to poverty alleviation, when taken to task for the implications of his writing about disability, he resists engaging with consequences it may have. This is not only concerning for those who urge greater attention to dignitarian concerns but also raises questions about the manner in which he has applied his own utilitarian analysis.<sup>3</sup>

This article proceeds by first laying out the rationale for and essence of Singer's argument that there is an obligation to do what one can to alleviate global poverty. In Part 2, it sets forth the foundations for his treatment of disability, culminating in his conclusion that, should parents wish, "killing a disabled infant is not morally equivalent to killing a person. Very often it is not wrong at all."<sup>4</sup> Part 3 examines tensions between these two positions before concluding that Singer might better advance his goal of global poverty alleviation were he to approach disability with a blend of rigor, imagination, and concern for the impact of his work comparable to that which characterizes his treatment of poverty.

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2 PETER SINGER, *ANIMAL LIBERATION: THE DEFINITIVE CLASSIC OF THE ANIMAL MOVEMENT* 53 (40th anniv. ed. 2015). For more on Singer's views about killing in general and the differences in how he approaches humans with and without a severe cognitive disability, see *infra* Part 3.

3 The literature on Singer is immense. Particularly stimulating for purposes of this paper were AMIN JOHN ABOUDD & GEORGE MENDZ, *PETER SINGER'S ETHICS: A CRITICAL APPROACH* (2018); ELIZABETH BARNES, *THE MINORITY BODY: A THEORY OF DISABILITY* (2016); Licia Carlson, *Philosophers of Disability: A Taxonomy*, 40 *METAPHILOSOPHY* 552 (2009); Eva Feder Kittay, *At the Margins of Moral Personhood*, 116 *ETHICS* 100 (2005); Eva Feder Kittay, *The Ethics of Philosophizing: Ideal Theory and the Exclusion of People with Severe Cognitive Disabilities*, in *FEMINIST ETHICS AND SOCIAL AND POLITICAL PHILOSOPHY: THEORIZING THE NON-IDEAL* 121 (Lisa Tessman ed., 2009); and PETER SINGER *UNDER FIRE: THE MORAL ICONOCLAST FACES HIS CRITICS* (Jeffrey Schaler ed., 2009).

4 PETER SINGER, *PRACTICAL ETHICS* 167 (3rd ed. 2011).

## I.

In work both general and highly specific, written for scholarly and popular audiences, Singer grounds in ethical reasoning his argument for a vastly expanded individual and societal commitment to global poverty alleviation. Ethical reasoning, contends Singer, enables us to detach ourselves from the immediate emotional pull of that which is in front of us (e.g., our own situation or that of our fellow citizens) and instead appreciate that “the good of others is, from a more universal perspective, as important as our own good.”<sup>5</sup> The foundation for this lies in what he terms “the principle of equal consideration of interests,” which does not contend that we are all equal but rather that “we give equal weight in our moral deliberations to the like interest of all those affected by our actions,” positive or negative.<sup>6</sup> If we are truly committed to the principle of equal consideration of interests, argues Singer, such features of an individual’s identity as race, gender, or nationality ought not to matter as we consider that individual’s interest in our moral deliberations.<sup>7</sup> As he writes in *One World Now: The Ethics of Globalization*,

[t]here are few strong grounds for giving preference to the interests of one’s fellow citizens, at least when subjected to the test of impartial assessment, and none that can override the obligation that arises whenever we can, at little cost to ourselves, make an absolutely crucial difference to the well-being of another person in real need.<sup>8</sup>

Singer faults such distinguished scholars as John Rawls and Michael Sandel for being insufficiently global in their orientation. To Singer, Rawls’s emphasis on “peoples” leads him to be too accepting of national boundaries,<sup>9</sup> while Sandel’s emphasis on an obligation of solidarity with those “in groups that we identify with” fails to discern “what is wrong with the idea of loyalty as a virtue.”<sup>10</sup> Instead argues Singer, “we should be developing the ethical foundations of the coming era of a single world community.”<sup>11</sup> The rationale for this is that “[i]f we accept any principle of impartiality, universalizability, equality, or whatever, we cannot discriminate against someone merely because he is far away from us (or we are far away from him).”<sup>12</sup>

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5 PETER SINGER, THE MOST GOOD YOU CAN DO: HOW EFFECTIVE ALTRUISM IS CHANGING IDEAS ABOUT LIVING ETHICALLY 85–95 (2015).

6 SINGER, *supra* note 4, at 20.

7 *Id.* at 16–24.

8 SINGER, ONE WORLD NOW: THE ETHICS OF GLOBALIZATION 206 (2004).

9 *Id.* at 204–06.

10 *Id.* at 194.

11 This idea is developed in *id.* at 224.

12 Peter Singer, *Famine, Affluence, and Morality*, 1 PHIL. & PUB. AFFS. 232 (1972).

Pushing further, Singer questions favoring one's own child over children far away. He makes his point by faulting *New York Times* columnist David Brooks for suggesting "that there is something odd or unnatural about being moved by a 'strictly intellectual' understanding that a child in Pakistan or Zambia is just as valuable as your own child."<sup>13</sup> This is erroneous, Singer writes, for "loving your own child does not mean you have to be so dazzled by your love that you are unable to see that there is a point of view from which other children matter just as much as your own."<sup>14</sup>

Armed with this exacting utilitarian approach, Singer insists, in both his scholarly and popular writing, that persons who have sufficient means to support themselves have an abiding obligation to do what they can to alleviate poverty in the developing world. As he argues in *The Life You Can Save*,

it may not be possible to consider ourselves to be living a morally good life unless we give a great deal more than most of us would think it realistic to expect human beings to give. . . . [There is] a reasonable standard that, for 95 percent of Americans, can be met by giving no more than 5 percent [of their income]. . . . I should say up front that I believe you should be giving more than 5 percent.<sup>15</sup>

Singer's *The Life You Can Save*, *The Most Good You Can Do*, and other of his works are replete with examples,<sup>16</sup> meant to inspire, of individuals who have chosen to do appreciably more than meet the five percent standard. In them, he includes portraits of several persons, both rich and of modest means (at least by American standards), who have done much more. Some have given away the vast majority of their wealth, including Zell Kravinsky, an American who has "given almost his entire \$45-million real estate fortune to charity"<sup>17</sup> and Celso Vieira, a Brazilian with

a cognitive disability, probably autism. . . . He now speaks nine languages and is writing a thesis on Plato for his doctorate in philosophy. In 2008, after reading my *Practical Ethics*, he became a vegan and started donating 10 percent of his modest income. . . . He plans to raise his level of donations to 20 percent.<sup>18</sup>

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13 SINGER, *supra* note 5, at 88.

14 *Id.*

15 SINGER, *THE LIFE YOU CAN SAVE: ACTING NOW TO END WORLD POVERTY* xiii–xiv (10th anniv. ed., 2019).

16 *See, e.g.*, SINGER, *supra* note 5.

17 *Id.* at 14.

18 *Id.* at 34.

Singer does not exempt himself or those institutions of which he is a part, as he gives away a sizable portion of his income annually<sup>19</sup> and makes the case that the money donated to his home university, Princeton, or the one at which he gave lectures that led to both *One World Now* and *The Most Good You Can Do*, Yale, “could probably do more good elsewhere.”<sup>20</sup>

Singer addresses what he sees as likely objections to his proposal. He offers several examples in *The Most Good You Can Do* and other work of individuals, even of modest means, who, through relatively minor adjustments in their consumption practices, are able to set aside money on a regular basis to support those in greater need. To those who would contend “that the rich are entitled to keep their wealth because it is all a result of their hard work,” he invokes Nobel Economics Laureate Herbert Simon, who “estimated that ‘social capital’ is responsible for at least 90 percent of what people earn in wealthy societies.”<sup>21</sup> Singer also appreciates that, in the past, some donors may have been deterred from supporting poverty alleviation in distant lands with which they were unfamiliar for fear that their funds would go astray, but points to the rise of entities such as The Life You Can Save (which he founded), GiveWell, Giving What We Can, and 80,000 Hours, which endeavor to direct donations to their most effective use. And although he acknowledges some people are concerned that universities, museums, and other such entities will suffer if donations are directed to poverty alleviation, he counters by referring to the size of Princeton’s endowment and suggesting that, as a practical matter, at least leading institutions will survive. “At the moment,” he wrote in 2015, “there are enough alumni donating to these universities to ensure that they will continue to be outstanding educational institutions.”<sup>22</sup>

## II.

Singer’s position regarding the permissibility of taking the life of an individual with a severe cognitive disability can be traced to his determination to end what he terms “speciesism”—which, he writes, leads us “to sacrifice . . . the most important interests of other species in order to promote the most trivial interests of our own species.”<sup>23</sup> Those human interests include the eating of meat and laboratory experimentation on animals, the latter of which he describes as akin to “the atrocities of the Roman gladiatorial arenas or the eighteenth-century slave trade.”<sup>24</sup>

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19 In *THE MOST GOOD YOU CAN DO*, Singer recounts that, having started decades ago giving away at least a tenth of his salary, he has since steadily increased his donations. *Id.* at 15–16.

20 *Id.* at 11.

21 SINGER, *supra* note 15, at 58.

22 SINGER, *supra* note 5, at 11.

23 SINGER, *supra* note 2, at 39.

24 *Id.* at 152.

Singer calls for an end to factory farming and to the routine killing of and experimentation on all animals, arguing that “mere membership in our own biological species cannot be a morally relevant criterion” for according *Homo sapiens* a right to life while withholding the same from animals.<sup>25</sup> Relying on this criterion alone “is exactly the kind of arbitrary difference that the most crude and overt kind of racist uses in attempting to justify racial discrimination.”<sup>26</sup> Rather, any justification for differential treatment between *Homo sapiens* and other animals must instead lie in the most important capability that members of the former generally have in far greater abundance than the latter—namely, the “capacity for self-awareness and the ability to plan for the future and have meaningful relationships with others.”<sup>27</sup> He calls individuals who have these attributes “persons” or “normal” human beings to distinguish them from “merely conscious beings,” including human beings who, lacking these capabilities,<sup>28</sup> “cannot see themselves as entities with a future [and so] do not have any preferences about their own future existence.”<sup>29</sup>

Emerging from these differences, Singer tells us, are four reasons why it would be “especially serious” to take the life of “persons” and “normal” human beings as opposed to other humans. They include respect for autonomy (which requires “the capacity to choose and to act on one’s own desires”); the frustration of plans and hopes; an undermining of “the capacity to conceive of oneself as existing over time;” and the impact that taking the life of a person might have on other persons (because of the anxiety it would produce that would diminish the quality of life of those other persons).<sup>30</sup>

Singer, on occasion, does group together “many nonhuman animals, . . . newborn infants and some intellectually disabled humans” as “merely conscious beings.”<sup>31</sup> And at points he does treat newborn infants in a unitary fashion, irrespective of disability, at least through the first month of life,<sup>32</sup> saying that killing an infant “cannot be equated with killing normal human beings or any other self-aware beings.”<sup>33</sup> Yet when making the case that the killing of some *Homo sapiens* may not be wrong, Singer repeatedly distinguishes between those, on the one hand, he calls normal and, on the other, individuals with a severe intellectual disability (or, as he sometimes calls them, those who are “defective”),

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25 *Id.* at 51.

26 *Id.*

27 *Id.*

28 SINGER, *supra* note 4, at 74–75.

29 *Id.* at 82.

30 *Id.* at 76–85.

31 *Id.* at 85.

32 *Id.* at 153.

33 *Id.* at 160.

whether they are infants, “older children or adults whose mental age is or has always been that of an infant.”<sup>34</sup> To wit,

[i]f we had to choose to save the life of a normal human being or an intellectually disabled human being, we would probably choose to save the life of a normal human being . . . . [W]hen we consider members of our own species who lack the characteristics of normal humans, we can no longer say that their lives are always to be preferred to those of other animals.<sup>35</sup>

Indeed, Singer has written, if one compares “a severely defective human infant” and certain animals (e.g., a pig or a dog), we will “often find the nonhuman to have superior capacities, both actual and potential, for rationality, self-consciousness, communication, and anything else that can plausibly be considered morally significant.”<sup>36</sup>

Singer is not advocating the mandatory killing of all infants with an intellectual disability but rather arguing strongly for a permissive standard. He acknowledges that “some parents may want even the most gravely disabled infant to live as long as possible and their desire is then a reason against killing the infant.”<sup>37</sup> But he sees such cases as unusual and, for the remainder of this discussion, assumes “that the parents do not want the disabled child to live” and that it is a “realistic assumption” that there are “no other couples keen to adopt the infant.”<sup>38</sup> After all, he tells us,

the difference between killing disabled and normal infants lies . . . [m]ost obviously . . . in the attitudes of the parents. The birth of a child is usually a happy event for the parents. . . . It is different when the infant is born with a serious disability. . . . [It can] turn the normally joyous event of birth into a threat to the happiness of the parents and of any other children they may have.<sup>39</sup>

As a consequence, a “total” version of utilitarianism [means] we have to take account of the probability that when the death of a disabled infant will lead to the birth of another infant with better prospects of a happy life, the total amount of happiness

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34 *Id.*

35 SINGER, *supra* note 2, at 54.

36 Peter Singer, *Sanctity of Life or Quality of Life?*, 72 PEDIATRICS 128 (1983).

37 SINGER, *supra* note 4, at 161.

38 *Id.*

39 *Id.*

will be greater if the disabled infant is killed. The loss of happy life for the first infant is outweighed by the gain of a happier life for the second.<sup>40</sup>

Singer offers as further support what he describes as the attitudes of prospective parents faced with the possibility of having a child with a disability such as Down syndrome (that is significant but does not preclude reason and self-awareness). “The overwhelming majority of pregnant women who are told that their child will have Down syndrome end their pregnancy. . . . Yet . . . birth does not mark a morally significant dividing line.”<sup>41</sup> Accordingly, he argues, the logic permitting abortion of a fetus diagnosed with a disability justifies permitting killing an infant with the same disability. Indeed, he argues that because “[p]renatal diagnosis still cannot detect all major disabilities” and other major disabilities may result from premature birth or in the process of birth, “regarding newborn infants as replaceable, as we now regard fetuses, would have considerable advantages over prenatal diagnosis followed by abortion.”<sup>42</sup>

To be sure, Singer at points states that he appreciates the high level of accomplishment of some persons with a disability, deplors what he terms unjustifiable discrimination against the disabled, and believes that the principle of equal consideration of interests may call for giving “much greater weight” to their needs than to “the more minor needs of others.”<sup>43</sup> His belief in “abortion and euthanasia in the case of a fetus or an infant with a severe disability” emanates from his understanding that no one, given a choice, would want to live with a disability. After all, he writes,

[i]f disabled people who must use wheelchairs to get around were suddenly offered a miracle drug that would, with no side effects, give them full use of their legs, how many of them would refuse to take it on the grounds that life with a disability is in no way inferior to life without a disability.<sup>44</sup>

He adds that “[i]f we *really* believed that there is no reason to think the life of a disabled person is likely to be any worse than that of a normal person, we would not have regarded the use of thalidomide by pregnant women as a tragedy”<sup>45</sup> (the emphasis is in the original) and could have left that drug on the market.

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40 *Id.* at 162–63.

41 *Id.* at 164.

42 *Id.* at 166.

43 *Id.* at 44–47. For a further discussion of Singer’s understanding of what counts as unjustifiable discrimination, see *infra* text accompanying notes 96–108.

44 SINGER, *supra* note 4, at 44–47.

45 *Id.* at 165.



## III.

Peter Singer's stated goal has been to create a universal ethics that "allows reason to play an important part in ethical decisions."<sup>46</sup> Ethics for him is not based on "subjective taste or opinion" or on religion, but instead is grounded in a consistent preference utilitarianism, rigorously ascertained and applied.<sup>47</sup> To do that, he says, it is crucial that we understand the preferences of others well enough to "know what it is like to be in their position" so that we can "take account of the preferences of all those affected" by our decisions.<sup>48</sup> We "must imagine how hungry they are," as it were, so that we can engage in an equal consideration of interests and avoid privileging our own interests. And ethics must be more than "an ideal system that is all very noble in theory but no good in practice. . . . An ethical judgment that is no good in practice must suffer from a theoretical defect as well, for the whole point of ethical judgments is to guide practice."<sup>49</sup>

Singer follows his own injunction well with respect to global poverty alleviation. Urging us to eschew the subjective and emotional in favor of a rigorous fact-based ethical reasoning, he argues that we not allow the bonds that may tie us to family or community to take priority over our responsibility to assist distant strangers who may be in greater need and who would derive more material benefit from the same expenditure. In that vein, he readily acknowledges "the warm glow" that the Make-A-Wish Foundation (which provides children with terminal illnesses a chance to have one wish fulfilled) evokes but, nonetheless, urges his readers instead to direct their donations to the Against Malaria Foundation because a gift to the latter will, as a practical matter, do more good.<sup>50</sup> And through his impressive work in establishing The Life You Can Save and in promoting what he terms effective altruism, he has sought to take account of the preferences of others across the globe affected by his decisions while also creating vehicles to bring his vision of ethics into practice.

Yet when it comes to disability, Singer falls short of the exacting standard he espouses in three important respects. First, his depiction of human beings he believes it may be permissible to kill is troublingly imprecise. Second, he at times dismisses critics in a peremptory manner. And third, he is unwilling to credit the experience of persons with a disability when it does not conform to what he imagines it to be. These together raise questions about the capacity of the ethics he espouses to guide practice as concerns disability, undercuts claims about imaginatively taking account of the preferences of others affected by his decisions, and leads to conclusions that, at points, are essentially reiterations of his preconceptions.

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46 *Id.* at 8.

47 For Singer's definition of preference utilitarianism, see *id.* at 11–15.

48 *Id.* at 12.

49 *Id.* at 2.

50 SINGER, *supra* note 5, at 5–6.

Singer rightly rebukes commentators who suggest he is an active proponent of non-voluntary euthanasia. Instead, in his effort to overcome speciesism and to ease suffering, his intention is to establish when it may be permissible to take the life of “merely sentient” members of the human race. However, he does not display the precision as to whom this applies, and under what circumstances, that one might expect from a reason-based practical ethics. In *Animal Liberation*, he tells us that “it is not arbitrary to hold that the life of a self-aware being, capable of abstract thought . . . is more valuable than the life of a being without these capacities,” in which category he includes “a severely retarded infant or someone in a state of advanced senility,” and that this should have consequences for decisions about nonvoluntary euthanasia.<sup>51</sup> In *Should the Baby Live: The Problem of Handicapped Infants*, he and his coauthor Helga Kuhse suggest that 28 days after birth “should be long enough to confirm the presence of major defects” that may warrant taking a newborn’s life,<sup>52</sup> whereas in *Practical Ethics*, he writes that “no infant—disabled or not—has as strong an intrinsic claim to life as beings capable of seeing themselves as distinct entities existing over time”<sup>53</sup> and, therefore, suggests that no one, whether they have a disability or not, should enjoy “a full right to life” within the first month after birth.<sup>54</sup> In *Practical Ethics*, at one point he includes in the category of merely conscious beings “the severely disabled infant or the older human being who has been profoundly intellectually disabled since birth,” indicating that “everything” he has to say about nonvoluntary killing of such infants “would apply to older children or adults whose mental age is and has always been that of an infant.”<sup>55</sup> And elsewhere in *Practical Ethics*, he makes the argument that it is permissible for parents to end the life of an infant with haemophilia or Down syndrome (neither of which precludes self-awareness) or other “major disabilities,” seemingly beyond the aforementioned one-month deadline, if they intend to have another child and there is no one to adopt the infant.<sup>56</sup>

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51 SINGER, *supra* note 2, at 53.

52 See HELGA KUHSE & PETER SINGER, *SHOULD THE BABY LIVE: THE PROBLEM OF HANDICAPPED INFANTS* 195 (1985).

53 SINGER, *supra* note 4, at 160.

54 *Id.* at 152. In *Practical Ethics*, Singer mentions several societies “from Tahiti to Greenland and . . . from nomadic Australian aborigines to . . . ancient Greece or mandarin China or Japan”—in some of which (he doesn’t specify) “infanticide was not merely permitted, but in certain circumstances, deemed obligatory.” *Id.* at 153. To the extent that he is correct in his characterizations of these societies, it is not clear why their example regarding infanticide should be compelling for behavior today. After all, as he notes in *Should the Baby Live* (where he cites anthropological accounts of some of these societies), we do not feel bound by the practices of ancient Greece with respect to slavery. See KUHSE & SINGER, *supra* note 52.

55 SINGER, *supra* note 4, at 159–60.

56 *Id.* at 160–67. Singer contends that his views on haemophilia are “misrepresented” by virtue of a single “quotation” being “plucked” from his argument about a particular view of utilitarianism and that he is not advocating killing children with haemophilia as a matter of “public policy.” See PETER SINGER, *WRITINGS ON AN ETHICAL LIFE* 324–25 (2001). I do not doubt that he is sincere in wanting to spare pain—but that does not speak either to his repeated statements that his system of ethics is meant to have practical effect or to the fact that he

The grounds for this lie in the fact “that a fetus known to be disabled [with either of those two conditions] is widely accepted as grounds for abortion” and his view that “birth does not mark a morally significant dividing line.”<sup>57</sup> These are, indeed, much contested matters, but given that he is the one advancing what he hopes will be a practical ethics, one might have expected greater clarity with respect to life and death decisions.<sup>58</sup>

Further complicating efforts at precision is Singer’s view about not requiring parents to discharge a responsibility they no longer wish to fulfill. As he writes in *Practical Ethics*,

the difference between killing disabled and normal infants lies . . . [m]ost obviously . . . in the attitudes of the parents. The birth of a child is usually a happy event for the parents. . . . It is different when the infant is born with a serious disability. Birth abnormalities vary, of course. Some are trivial and have little effect on the child or its parents, but others turn the normally joyous event of birth into a threat to the happiness of the parents and of any other children they may have. Parents may, with good reason, regret that a disabled child was ever born.<sup>59</sup>

A generous reading suggests that Singer likely intends “disabled” here to be limited to those infants whose cognitive disability is so profound as to preclude the possibility of developing self-awareness and rationality. But that is not what this passage or the many others that inconsistently intermingle “disabled,” “intellectually disabled,” “major disability,” “severely retarded,” or “brain dead” say or necessarily clearly indicate. It also fails to enlighten us as to whether parental unhappiness with a newborn resulting from severe illness that is not permanently disabling (be it of the child or parent), extreme poverty, or other extraordinary circumstance could be sufficient justification to permit killing it if the possibility of adoption were not available.

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frequently writes about how he thinks doctors, officials, judges, and society itself should resolve issues of life and death, going so far as to provide his own “New Commandments.” See SINGER, *RETHINKING LIFE AND DEATH: THE COLLAPSE OF OUR TRADITIONAL ETHICS* (1994) (particularly Chapter 9, entitled *In Place of the Old Ethic*). Nor does his motivation address the impact that many persons with disabilities believe his views to have on their lives—which I discuss further in this article. See *infra* text accompanying notes 109–28. Singer’s discussion of haemophilia that several readers have found troubling is much longer than a single quotation of “a sentence or two.” It is unfortunate that he imputes ill motive to those who disagree with him and refrains from incorporating in *Practical Ethics* (which has gone through three editions) points of qualification that he makes when defending himself in interviews.

57 SINGER, *supra* note 4, at 164.

58 To be sure, in *Should the Baby Live* and *Rethinking Life and Death*, Singer does explore several end-of-life scenarios, but in a manner that leaves unresolved the definitional tensions discussed in this paragraph. See KUHSE & SINGER, *supra* note 52; SINGER, *RETHINKING LIFE AND DEATH*, *supra* note 56. Harry Gensler has also noted Singer’s vagueness. See Harry J. Gensler, *Singer’s Unsanctity of Human Life: A Critique*, in PETER SINGER UNDER FIRE, *supra* note 3, at 169.

59 SINGER, *supra* note 4, at 161.

A second respect in which Singer's treatment of disability would seem concerning, in light of his call for a reason-based ethics in which we seek to take account of the preferences of others in our decisions, lies in his tendency to dismiss rhetorically, rather than engage seriously, positions regarding disability with which he takes issue. We can see this, for example, in his counter to ethicist Tom Koch's argument that society's belief in what counts as "normal" may lead it to view persons with a serious disability in terms of what they lack rather than what they have, which too often can lead to "devaluing" their status.<sup>60</sup> This is a position also advanced by several persons with a disability, including the late author, lawyer, and activist Harriet McBryde Johnson<sup>61</sup> (with whom Singer describes himself as having had a special affinity).<sup>62</sup> After scolding Koch for what he labels "prejudiced misreadings" of his position,<sup>63</sup> Singer writes:

If we were unequivocally to reject the idea that it is a bad thing for a child to have a serious disability . . . pregnant women could feel entirely free to drink as much as they wish, . . . rubella immunizations programs could be dropped[, and] . . . pharmaceutical manufacturers would not have to test new drugs to see if they produced fetal abnormalities. Doctors could once again prescribe thalidomide as a useful sleeping aid, even for pregnant women.<sup>64</sup>

Here Singer mocks, rather than engages, the heart of Koch's argument. The language of "unequivocally to reject the idea that it is a bad thing for a child to have a serious disability" is his, rather than Koch's. It sidesteps the thrust of Koch's paper, which is that our definitions of normalcy devalue individuals with a serious disability in a way that "endangers both [their] social and existential worth" and overwhelmingly places responsibility for addressing disadvantages they may experience on them and their families rather than society.<sup>65</sup>

Nor is the specter Singer invokes in his response to Koch a hastily penned one-off. Consider his exchange with Johnson, who had a neuromuscular disorder necessitating wheelchair use. In resisting what she saw as Singer judging her life through a conventional prism of normalcy

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60 Tom Koch, *The Ideology of Normalcy: The Ethics of Difference*, 16 J. DISABILITY POL'Y STUD. 123 (2005).

61 Harriet McBryde Johnson, *Unspeakable Conversations*, N.Y. TIMES MAG. (Feb. 16, 2003). A version of Johnson's piece, entitled *Unspeakable Conversations or How I Spent One Day as a Token Cripple at Princeton University*, is reprinted in PETER SINGER UNDER FIRE, *supra* note 3, at 195.

62 See PETER SINGER, ETHICS IN THE REAL WORLD: 82 BRIEF ESSAYS ON THINGS THAT MATTER (2016), for a reprint of Singer's 2008 *New York Times Magazine* year-end obituary note for Johnson entitled *Happy, Nevertheless*, and see Elizabeth Barnes' critique thereof in *The Minority Body*, *supra* note 3, ch. 8.

63 Peter Singer, *Ethics and Disability: A Response to Koch*, 16 J. DISABILITY POL'Y STUD. 130, 133 (2005).

64 *Id.*

65 Koch, *supra* note 60, at 124. See also *infra* text accompanying notes 87–108 (discussing Singer's views of society's responsibilities).

and disability, she wrote that “the presence or absence of a disability gives no indication of whether that person’s life is likely to be better or worse than the life of an otherwise similarly situated person without a disability.”<sup>66</sup> Notwithstanding Singer describing Johnson as “a critic who was often sharp, but always fair,”<sup>67</sup> he responded to her by invoking the same points about alcohol consumption by pregnant women, rubella, and thalidomide before concluding that “[i]f this sounds grotesque, that is because the view that implies it is so difficult to take seriously.”<sup>68</sup> Although one might argue that the position espoused by Koch and Johnson could, as a logical matter, lead to the outcome Singer suggests, that clearly is not what either intended and hardly is the type of fair-minded reading that Singer claims he was not afforded.<sup>69</sup>

We also see Singer resort to rhetoric in his dismissal of efforts by persons with a significant physical disability to speak on behalf of individuals who have an intellectual or developmental disability that may preclude their speaking for themselves. “It isn’t clear to me,” Singer writes, “why the fact that an articulate, intelligent person is in a wheelchair makes that person a better representative of someone who has profound intellectual disabilities than someone equally articulate and intelligent who is able to walk unaided.”<sup>70</sup> That fails to acknowledge, let alone refute substantively, the possibility that the actual experience of disability might be informative about stigma and discrimination faced by other individuals with a disability or create greater empathy and understanding. And it begs the question of why Singer himself would necessarily be a comparable or better representative (as his piece implies he is) of someone who has a profound intellectual disability than an articulate, intelligent person in a wheelchair.<sup>71</sup>

This unwillingness of Singer to give any particular credence to the experience of individuals with a disability pervades his work, and would seem to make it difficult for him to meet his own requirement of knowing “what it is like to be in their position” so that their preferences can be given equal consideration. We see this most poignantly in his exchanges with Harriet McBryde Johnson. He seems genuinely caring about her as an individual, and she urges that he be seen as terribly wrongheaded (resisting those who would label him “monstrous”).<sup>72</sup> Nonetheless, she finds his efforts to convince her that she and other persons with a disability

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66 Johnson, *supra* note 61.

67 Peter Singer, *Reply to Harriet McBryde Johnson*, in PETER SINGER UNDER FIRE, *supra* note 3, at 212.

68 *Id.* at 207.

69 See *infra* text accompanying notes 87–95. We see a similar move in Singer’s discussion of the social model of disability.

70 Peter Singer, *Response to Mark Kuczewski*, 1 AM. J. BIOETHICS 55 (2001). This is also the piece in which Singer contends that “[t]he issues relating to people with profound intellectual disabilities cannot be resolved by discussions of autonomy.” That seems hard to square with his repeated emphasis in *Practical Ethics* and elsewhere that a capacity for autonomy is crucial to distinguishing between persons and merely sentient beings.

71 Nor does Singer consider the possibility, raised by Licia Carlson in 2009, that “the voices of persons with mild intellectual disabilities” might be informative both about their own situation and as respects individuals with a profound intellectual disability. Carlson, *supra* note 3, at 557.

72 Johnson, *supra* note 61.

are, perforce, “worse off” than people without a disability to evidence a deep failure to take account of her understanding of her life. As she wrote in response,

[a]re we [individuals with a disability] worse off? I don’t think so. Not in any meaningful sense. There are too many variables. . . . We take constraints that no one would choose and build rich and satisfying lives within them. We enjoy pleasures other people enjoy, and pleasures peculiarly our own.<sup>73</sup>

Much the same attitude is also evident in Singer’s more general treatment of the experience of individuals with a disability.<sup>74</sup> After admitting to being surprised by studies in which individuals with a disability report having a higher degree of happiness than he had assumed, he casts doubt on these findings for several reasons. Perhaps, he suggests, persons with a disability “adjust their expectations” and are not clear-eyed in assessing their situation (at least relative to his intuition about their lives), although he offers no support for that assertion.<sup>75</sup> And such studies, he argues, are skewed because any such survey “omits those who have intellectual disabilities severe enough to prevent them understanding the question they are being asked,” and such individuals “may be much less happy than the rest of us.”<sup>76</sup> Of course, it is Singer who has argued repeatedly that individuals with a severe intellectual disability lack self-awareness. Presumably, if so, the presence or absence of happiness is not a germane question—which would seem to undermine his effort to advance his argument by positing their unhappiness.

Singer’s attitude is also evident in statements such as the following with reference to children with Down syndrome:

we must have lowered expectations of . . . [the] child’s ability. We cannot expect a child with Down syndrome to play the guitar, to develop an appreciation of science fiction, to learn a foreign language, to chat with us about the latest Woody Allen movie, or to be a respectable athlete or basketball or tennis player.<sup>77</sup>

Although it would be wise not to expect such interests and activities of every child with Down syndrome (or, for that matter, every child of any kind), this type of framing leaves

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73 *Id.*

74 Singer, *supra* note 67, at 207–08.

75 For an example of a study endeavoring to assess the self-perception of one group of individuals with a disability, see Brian Skotko et al., *Self-Perceptions from People with Down Syndrome*, 155 AM. J. MED. GENETICS 2360 (2011). I discuss Singer’s unwillingness to credit how persons with a disability might understand his work at the text associated with notes 109–28, *infra*.

76 Singer, *supra* note 67, at 207–08.

77 SINGER, *RETHINKING LIFE AND DEATH*, *supra* note 56, at 213.

no room for the very real possibility of children with Down syndrome who do have the type of interests and engage successfully in the type of activities that Singer would have us think are beyond their ability. It also sends a disheartening message to parents and prospective parents and overlooks the role that expectations may play in well-being.<sup>78</sup> Consider, to take but one example, Chris Nikic, an individual with Down syndrome, born with such severe disabilities that “to keep him from choking, his family fed him baby food until he was six.”<sup>79</sup> After enduring many surgeries, with strong encouragement from his family, he took up sports as a vehicle to break out of social exclusion and to establish a regimen to improve his physical and mental health. In 2020, Nikic, by then 21, completed an Ironman Triathlon (a 26.2-mile run, a 112-mile bike ride, and a 2.4-mile open-sea swim), all accomplished in less than 17 hours.<sup>80</sup> And while Nikic is an unusual young man (I doubt many readers without or with a disability have completed an Ironman Triathlon), there are abundant examples of other young people with Down syndrome accomplishing what Singer believes they cannot.<sup>81</sup> This, of course, is not to say that would be the case for all children with Down syndrome or, for that matter, all children. Missing as well from Singer’s work is an appreciation of the possibility that disability, which he sees as a “hurdle,” may also be deeply enriching, as in the case of Celso Vieira, the

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78 On the importance of parental expectations for children with a disability, see, for example, Selina McCoy et al., *The Role of Parental Expectations in Understanding Social and Academic Well-Being Among Children with Disabilities in Ireland*, 31 EUR. J. SPECIAL NEEDS EDUC. 535 (2016). That study tracked 7,423 children from primary through secondary school.

79 Kurt Streeter, *Chris Nikic, You Are an Ironman. And Your Journey Is Remarkable*, N.Y. TIMES (Nov. 16, 2020), <https://www.nytimes.com/2020/11/16/sports/ironman-triathlon-down-syndrome.html>. For other examples pertinent to each of the areas Singer raises, see, for example, Cierra Johnson, *Man with Down Syndrome Is International Musician*, WKBW (July 29, 2016), <https://www.wkbw.com/news/inspiring-millions-one-piano-key-at-a-time> (discussing Sujeet Desai, who plays seven instruments); Luned Phillips, *Down Syndrome No Bar to Bilingualism, Study Suggests*, BBC (Dec. 21, 2018), <https://www.bbc.com/news/uk-wales-46632888>; Patrick Shanley, *“Damn It, That’s Huge”: Actors with Down Syndrome Are Finding More Work in Hollywood*, HOLLYWOOD REP. (Oct. 15, 2019), <https://www.hollywoodreporter.com/news/damn-it-s-huge-down-syndrome-actors-are-finding-more-work-hollywood-1248524>; Osman Sanyer, *Down Syndrome and Sport Participation*, 5–6 CURRENT SPORTS MED. REP. 315 (2006). Singer might respond, as he apparently did to the literary scholar Michael Bérubé, who wrote about his son Jamie (who “has a wide range of abilities,” including playing the violin, an engagement with literature, and interest in theories about vegetarianism), by suggesting that such examples are flukes. But his brief mono-dimensional assertion fails to capture the range and complexity of the experience of persons with Down syndrome and fails to take account of how understanding of Down syndrome, including the importance of early childhood support to later achievement, has transformed over the past half century—as evidenced by the fact that several individuals with Down syndrome are today accomplishing feats that two generations ago were thought impossible. Michael Bérubé, *Equality, Freedom, and/or Justice for All: A Response to Martha Nussbaum*, 40 METAPHILOSOPHY 352 (2009); see also MICHAEL BÉRUBÉ, *LIFE AS WE KNOW IT: A FATHER, A FAMILY, AND AN EXCEPTIONAL CHILD* (1996); MICHAEL BÉRUBÉ, *LIFE AS JAMIE KNOWS IT: AN EXCEPTIONAL CHILD GROWS UP* (2016) (written with “extensive input” from Jamie Bérubé).

80 Streeter, *supra* note 79.

81 See sources cited *supra* note 79.

Brazilian savant whose autism may well have been an important factor in his mastering nine languages and bringing a laser-like focus to addressing poverty alleviation that Singer applauds without seeing the possible connection to his disability.<sup>82</sup>

By the same token, almost entirely absent in Singer's work is any appreciation of the possibility of the profound positive impact that individuals with a severe intellectual disability can have on their parents, other family members, and society more broadly.<sup>83</sup> As Dr. Timothy Shriver artfully captures in *Fully Alive: Discovering What Matters Most*, the life lessons imparted by individuals with intellectual disabilities, some quite severe, and of those who love and care for them, have been and can be a source of enormous inspiration.<sup>84</sup> They may have the capacity to humanize and enrich the lives of those who Singer calls normal by imparting singular lessons about character, the breadth of human possibility, devotion, sacrifice, and the acceptance of difference of many types—all of which could benefit society more broadly.<sup>85</sup> To use Singer's currency, the experience and the example of individuals with severe intellectual (and other) disabilities have the capacity to enhance utility, which calls into question conclusions he reaches based on his starting assumption that a severe intellectual disability can only diminish utility.<sup>86</sup>

A second major point of the tension between Singer's treatment of global poverty alleviation and of disability lies in his willingness to call into question conventional constructs about the former case and his unquestioning reliance on them in the latter. In considering poverty alleviation, Singer repeatedly implores readers to be unconstrained by convention and treat national borders as impediments that can and should be disregarded in the service

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82 To be sure, Singer notes in passing that having a disability might enable one to avoid conscription in a dangerous war. Singer, *supra* note 63, at 30. Interestingly, the ancient Chinese philosopher Zhuangzi (369–286 B.C.) made this point when describing how the severe disabilities of a person he called “Cripple Shu” enabled him to avoid military service and, thus, live longer than able-bodied young men conscripted into the army, which often led to their premature death in battle. See William P. Alford, Lecture in honor of Grand Justice Ma Han-pao, National Taiwan University College of Law: Rehabilitating History: A Revisionist Perspective on the Treatment of disability in Chinese History (Dec. 19, 2014) (on file with the author); John Altmann & Bryan W. Van Norden, *Was This Ancient Taoist the First Philosopher of Disability?* N.Y. TIMES (July 8, 2020), <https://www.nytimes.com/2020/07/08/opinion/disability-philosophy-zhuangzi.html>.

83 Licia Carlson notes what she sees as a tendency of Singer and other philosophers taking a similar position to downplay the observations of family as being heartfelt but misguided. See Carlson, *supra* note 3.

84 TIMOTHY P. SHRIVER, *FULLY ALIVE: DISCOVERING WHAT MATTERS MOST* (2014).

85 It can also spur groundbreaking work in philosophy, as evidenced in Eva Feder Kittay and Licia Carlson's work. See *COGNITIVE DISABILITY AND ITS CHALLENGE TO MORAL PHILOSOPHY* (Eva Feder Kittay & Licia Carlson eds., 2010).

86 Of course, there is an anecdotal quality in what I am recounting from Shriver's book (and my own experience)—just as there is in the examples upon which Singer so heavily relies in both his scholarship and his writing for a popular audience, including *The Life You Can Save* and *The Most Good You Can Do*. But Shriver, through his book and his decades of work with Special Olympics, has vastly more extensive and intensive experience with persons with intellectual disabilities and their families in forming his characterization of their lives. SHRIVER, *supra* note 84.



of doing the most good we can.<sup>87</sup> Yet, when it comes to disability, his thinking very much reflects the most conventional of constructs—the so-called medical model, which sees disability as a product of an individual’s medical condition, tends to define individuals in terms of their disability, and assumes that those with a disability ultimately bear principal responsibility for navigating their way through the world in which they find themselves.<sup>88</sup> He is sharply dismissive of the social model of disability, which advances the view that we should see disability as a product of the interaction between an individual’s medical condition and the way society is (or is not) constructed and calls on society to make changes needed to enhance the participation of individuals with a disability.<sup>89</sup> Singer is not alone: the medical model remains influential. But the social model, embodied in the Americans with Disabilities Act of 1990, has been gaining currency, as exemplified by its centrality to the United Nations Convention on the Rights of Persons with Disabilities, now ratified by more than 180 nations (albeit not the United States).<sup>90</sup>

Singer is direct in his disdain for the social model of disability, attacking individuals with disabilities and their allies who “claim that it is social conditions that disable them, not their physical or intellectual conditions. This assertion takes the simple truth that social conditions make the lives of the disabled much more difficult than they need be, and twists it into a sweeping falsehood.”<sup>91</sup> In so doing, he essentially avoids addressing the challenges raised by the social model of disability to conventional thinking. It is not surprising, therefore, that he misses the broadly encompassing ways in which not only the physical, but also the legal and cultural, construction of society shape what it means to be disabled, as Martha Minow demonstrates so well in *Making All the Difference*.<sup>92</sup> He fails to discern, for instance, how in speaking of some human beings as “normal” and others as “defective,” he is reinforcing a negative image that hardly makes for respect and acceptance.<sup>93</sup> The point is powerfully driven home by Harriet McBryde Johnson as she recounts Singer describing to her as “a

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87 We see much the same willingness to challenge conventional constructs in his work on the lives of animals, as he urges readers to look past the boundary of species. See SINGER, *supra* note 2.

88 For probing discussions of the medical model, see MARTHA L. MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW* (1990), and Michael Ashley Stein, *Disability Human Rights*, 95 CAL. L. REV. 75 (2007). For more on Singer’s views on society’s responsibilities, see the text accompanying notes 87–108, *supra* and *infra*.

89 See MINOW, *supra* note 88. (for expositions of the social model of disability).

90 For more on the Convention, see THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: A COMMENTARY (Ilias Bantekas, Michael Ashley Stein & Dimitris Anastasiou eds., 2018).

91 SINGER, *supra* note 4, at 47.

92 See MINOW, *supra* note 88.

93 SINGER, *supra* note 4, at 44–45. On what counts as “normal” and its implications, see Anita Silvers, *A Fatal Attraction to Normalizing: Treating Disability as “Species-typical” Functioning*, in *ENHANCING HUMAN TRAITS: ETHICAL AND SOCIAL IMPLICATIONS* (Eric Parens ed., 1998). The anthropologist Roy Richard Grinker explores the implications of what is labeled as “normal” from a comparative perspective, drawing on his own family’s four-generation involvement with psychiatry—including his grandfather’s work with Sigmund Freud. ROY RICHARD GRINKER, *NOBODY’S NORMAL: HOW CULTURE CREATED THE STIGMA OF MENTAL ILLNESS* (2020).

bit . . . weird” the idea of a family taking care of an individual who will never regain consciousness”—an idea that Johnson believes “could be profoundly beautiful.”<sup>94</sup>

Given his earlier invocation of Herbert Simon to argue that those with wealth in economically advanced societies should appreciate that “social capital” is responsible for “at least 90 percent” of their wealth, it seems remiss for Singer not to take account of the role that social capital has played and could play in the construction of society with respect to disability. Just as he urges that those with wealth not treat their fortuity as signifying their singular merit, so, too, it would seem that he should not treat the fortuity of having a severe cognitive disability as signifying a life less worth living. Singer’s unwillingness to reimagine society with respect to disability (in the way that he does with regard to global poverty alleviation or the lives of animals) reinforces the very attitudes toward individuals with a severe disability (or, for that matter, a less severe one, such as Down syndrome) that contribute to them and their families being stigmatized. Such stigmatization, in turn, stokes what he portrays as the unhappiness that “normal” parents typically have on giving birth to a child with a severe disability—which is an important underpinning of his argument regarding nonvoluntary euthanasia. In effect, the acceptance of conventional social attitudes toward disability and, with that, the labeling of certain individuals as abnormal or defective or certain behavior as weird, fosters the very unhappiness that Singer cites as justification for the argument that “the total amount of happiness will be greater if the disabled infant is killed.”<sup>95</sup>

To be sure, in *Practical Ethics*, Singer indicates that he opposes unjustifiable discrimination against “disabled people,” by which he means discrimination “in any situation in which the particular disability a person has is irrelevant to the employment or service offered.”<sup>96</sup> Singer’s expression of concern about such discrimination, however, is less reassuring than it might initially seem. Does he mean that discrimination is acceptable vis-à-vis any human he does not classify as a “person”? Probably not, but it would have been helpful had he been clearer, given the importance he vests in his distinction between persons and “merely conscious beings.” More crucially, much of what may or may not be justifiable discrimination will depend on what one sees as normal. To illustrate his point about when it is justifiable to discriminate, Singer writes “if we are seeking a proofreader, a blind person need not apply.”<sup>97</sup> That excludes the possibility of assistive technologies, readers, Braille, or other ways in which society might stretch to enable a talented individual with a sight impairment to do such work.<sup>98</sup>

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94 Johnson, *supra* note 61.

95 SINGER, *supra* note 4, at 162–63.

96 *Id.* at 45.

97 *Id.*

98 For a discussion of how assistive technologies have the potential to transform how we think of at least some disabilities, see Michael L. Wehmeyer et al., *Support Needs of Adults with Intellectual Disability Across Domains: The Role of Technology*, 27 J. SPECIAL EDUC. TECH. 81 (2012). Some observers have suggested that, with the rise of artificial intelligence, an argument might be made that all humans are or will be, in a way, “disabled” relative to at least some machines.

Singer might respond by noting that he has made the point that there should not be discrimination when “their [individuals with a disability] abilities are the same as those of people without disabilities.”<sup>99</sup> But here, as in his characterization of what parents might expect of a child with Down syndrome and, indeed, throughout his work, he sees disability in static terms, bounded by an individual’s impairment, and so fails to discern possibilities that might emerge with a richer appreciation of the interplay between the impairment and the way society is constructed.

Singer would likely seek to defend himself by noting that he has stated his belief in “affirmative action” for “people with disabilities” and that “it will generally be justifiable to spend more on behalf of disabled people than we spend on behalf of others.”<sup>100</sup> Leaving aside whether “people” extends beyond persons also to include “merely conscious” human beings, he does not provide a course of action here, whereas in his discussion of our responsibilities to alleviate global poverty, he calls on ninety-five percent of Americans to give at least five percent of their income. When it comes to disability, he tells us “just how much more [to spend] is, of course, a difficult question. Where resources are scarce, there must be some limit.”<sup>101</sup> And whereas Singer devotes volumes to what might be done to address global poverty or enhance respect for the lives of animals, his discussion of “affirmative action” regarding disability is but a few pages. In that very brief discussion, he does little more than to suggest “empathetically imagining ourselves in their situation.”<sup>102</sup> But his empathetic imagination comes with sharp constraints, as he tells the reader that even in the wealthiest of nations “[m]ore money for severely handicapped infants will mean less money for others in need”<sup>103</sup> and that

[u]nless governments—and the people who elect them—become markedly more generous in their attitudes to all those in need of special help, it does not seem wise to add to the burden on limited resources by increasing the number of severely disabled children who will, if they are to lead a worthwhile life, need a disproportionately large share of these resources.<sup>104</sup>

At the end of the day, Singer once again falls short when it comes to discrimination regarding disability. We can see a manifestation of this in his recent pronouncement about “the

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99 SINGER, *supra* note 4, at 45.

100 *Id.* at 46.

101 *Id.*

102 SINGER, *supra* note 4, at 46.

103 KUHSE & SINGER, *supra* note 52, at 166.

104 *Id.* at 171. Nor are these concerns about the cost of maintaining individuals with very serious disabilities isolated. They appear repeatedly in SHOULD THE BABY LIVE, RETHINKING LIFE AND DEATH, and other of Singer’s work. See KUHSE & SINGER, *supra* note 52; SINGER, RETHINKING LIFE AND DEATH, *supra* note 56.

ethics of prioritizing COVID-19 vaccination.”<sup>105</sup> Singer admirably stresses the importance of moving away from age alone to take account of “lower-than-average life expectancy” of “disadvantaged racial and ethnic minorities,” but he makes no mention of individuals with a disability, even though it has long been known that individuals with Down syndrome (and other intellectual and developmental disabilities) have a much higher rate of immunological vulnerability than the general population and much lower-than-average life expectancy.<sup>106</sup> A March 2021 study in the *New England Journal of Medicine Catalyst* (based on almost 65,000 patients across 547 health care organizations) reported that intellectual disability in general is “the strongest independent risk factor for presenting with a Covid-19 diagnosis” and “the strongest independent risk factor other than age for Covid-19 mortality.”<sup>107</sup> Despite that elevated risk, individuals with Down syndrome (or other intellectual or developmental disabilities) had a very difficult time in securing access to vaccine.<sup>108</sup>

The third major respect in which Singer’s treatment of poverty alleviation and of disability are in tension concerns his willingness to acknowledge the impact of his work. To understand this, we should commence with Singer’s response to claims that his justification of the euthanasia of severely disabled infants runs the risk of pushing society toward a dangerous slippery slope of “Nazi-style atrocities.” Singer offers two arguments. The first, that his motivations and goals are “totally different,” is, of course, correct. As he puts it, he is “a social democrat, utterly opposed to racist policies and a totalitarian state.”<sup>109</sup> The second is that *Practical Ethics* “was written as a textbook for university use” to get students to ponder “the implications of various ethical views” and that he “wasn’t suggesting as a matter of public policy that parents should be allowed to kill infants with haemophilia.” Indeed, he further states that, because his goal is to prevent infants unnecessarily suffering, his work is “obviously not a threat to any person with a disability who is capable of understanding anything about my position.”<sup>110</sup>

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105 Peter Singer, *The Ethics of Prioritizing COVID-19 Vaccination*, PROJECT SYNDICATE (Jan. 19, 2021), <https://www.project-syndicate.org/commentary/ethics-of-covid19-vaccine-priorities-by-peter-singer-2021-01>.

106 On the former point, see, for example, G. Ram & J. Chinen, *Infections and Immunodeficiency in Down Syndrome*, 164 *CLINICAL & EXPERIMENTAL IMMUNOLOGY* 9 (Apr. 2011), and on the latter, see, for example, Anna J. Esbensen, *Health Conditions Associated with Aging and End of Life of Adults with Down Syndrome*, 39 *INT’L REV. RSCH. MENTAL RETARDATION* 107 (2010).

107 Jonathan Gleason et al., *The Devastating Impact of Covid-19 on Individuals with Intellectual Disabilities in the United States*, *NEW ENG. J. MED. CATALYST* (Mar. 5, 2021), <https://catalyst.nejm.org/doi/full/10.1056/CAT.21.0051>.

108 See, e.g., William Brangham, *Relative Invisibility Makes for Uphill Battle to Get COVID Vaccines for Americans with IDD*, *PBS NEWSHOUR* (Mar. 31, 2021), <https://www.pbs.org/newshour/show/relative-invisibility-makes-for-uphill-battle-to-get-covid-vaccines-for-americans-with-idd>.

109 SINGER, *WRITINGS ON AN ETHICAL LIFE*, *supra* note 56, at 324.

110 *Id.* at 324–25.

Singer's assertion about what persons with a disability engaging with his work may or may not understand is problematic for reasons both internal to that work and owing to its influence. With respect to the former, one of the four reasons Singer offers in *Practical Ethics* for the “wrongness” of killing a person, as opposed to “a merely conscious being,” is that knowing that other “people like myself” may be killed, “my present existence will be fraught with anxiety and will presumably be less enjoyable.”<sup>111</sup> And yet, later in that book, he argues that taking the life of an infant with haemophilia or Down syndrome may be justifiable because of “the probability that when the death of a disabled infant will lead to the birth of another infant with better prospects of a happy life [by which he means one without such a disability], the total amount of happiness will be greater if the disabled infant is killed.”<sup>112</sup>

Singer fails to provide a convincing explanation of why the taking of the lives of infants with haemophilia or Down syndrome should not be seen as having an effect on the lives of persons with those conditions or even be threatening to other persons with a disability. Perhaps he might say that ending the life of an infant with haemophilia or Down syndrome ought to be no more alarming to children or adults with those conditions than ending the life of a “normal” infant is likely to be to a “normal” adult, but that argument fails to take account of the possibility that a stigmatized minority and the rest of the population may have very different understandings of what might, superficially, seem a common event (the taking of the life of one of their members). Nor, for that matter, does it adequately address the possibility that taking the life of a senior with Alzheimer's may engender anxiety on the part of some “normal” adults and lessen their enjoyment of life, especially as they age. It is not at all clear that his caveat—that he would limit involuntary euthanasia of adults to situations “in which the person to be killed does not realize what agony she will suffer in the future”—would be reassuring to adults approaching old age. There is no reason to assume that the general public would be aware of this caveat. And, presumably, if older adults were concerned enough about the prospect of such suffering that they wished not to experience it, they could agree to voluntary euthanasia (through a living will). Singer would have us start with the obverse—namely, that everyone should potentially be subject to nonvoluntary euthanasia, unless they object to it in writing. This seems problematic both as regards autonomy (as his argument assumes that the starting and default point is a surrender of control over one's life) and as concerns the difficult question of who gets to make end-of-life decisions, given the potential conflict of interest between the elderly infirm and those who might benefit from their death, financially or by being spared responsibilities of care.

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111 SINGER, *supra* note 4, at 77–78.

112 *Id.* at 163.

Singer's position also fails to heed the fact that he is a figure of very considerable influence. There is no doubt that Singer has influenced how leading thinkers see and seek to explain the world. Consider, for instance, the work of such eminent philosophers as Jeffrey McMahan of Oxford, who argues that killing someone with a severe intellectual disability is less problematic than killing one of "us" (meaning someone without such a disability); Martha Nussbaum of the University of Chicago; and Singer's former student Julian Savulescu, also of Oxford.<sup>113</sup> But his impact extends well beyond the academy. He was described more than a quarter century ago in the *New England Journal of Medicine* as already "probably [having] had a larger readership than any professional philosopher since Bertrand Russell, and more success in effecting change in acceptable behavior."<sup>114</sup> And Singer's page on Project Syndicate indicates he was named "the world's third 'most influential contemporary thinker'" by a Swiss think tank.<sup>115</sup>

This prominence matters because, as Harriet McBryde Johnson (who Singer described as "always fair") wrote shortly before passing away, "Singer is infected by common social prejudices about disability. He would validate those prejudices with the life-and-death power of the law. At a minimum, validating those prejudices undercuts the disability rights movement's struggle for a significant social investment in people commonly considered to lack potential usefulness."<sup>116</sup> To which one might add there is the potential impact on the attitudes of prospective and actual parents (birth or adoptive) of an infant with a severe intellectual disability, haemophilia, or Down syndrome. As earlier noted, such attitudes are crucial to Singer's argument regarding the permissibility of nonvoluntary euthanasia, but he seems to assume that parents have clear, fully formed views one way or the other and seems not to take account of the role work such as his may have in shaping their opinions or that of society more generally (nor, for that matter, does he delineate carefully between expectant parents, birth parents, and adoptive parents).<sup>117</sup>

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113 See JEFFREY MCMAHAN, *THE ETHICS OF KILLING: PROBLEMS AT THE MARGINS OF LIFE* (2002); Julian Savulescu, *The Welfarist Account of Disability in DISABILITY AND DISADVANTAGE* (Brownlee & Cureton eds., 2009). See also MARTHA NUSSBAUM, *FRONTIERS OF JUSTICE* (2007), views she has tempered as noted in Martha Nussbaum, *The Capabilities of People with Cognitive Disabilities*, 40 *METAPHILOSOPHY* 331 (2009).

114 Jeffrey Spike, *Rethinking Life and Death: The Collapse of our Traditional Ethics*, 333 *NEW ENG. J. MED.* 1509 (Nov. 1995) (reviewing SINGER, *RETHINKING LIFE AND DEATH*, *supra* note 56).

115 Singer, *supra* note 105 (referencing the Gottlieb Duttweiler Institute).

116 Harriet McBryde Johnson, *Afterword*, in PETER SINGER UNDER FIRE, *supra* note 3, at 204.

117 Singer, by the way, assumes that families wishing to adopt will be unwilling to adopt a gravely disabled child, save in the rare case. "This is a realistic assumption even in a society in which there is a long waiting list of couples wishing to adopt normal babies." SINGER, *supra* note 4, at 161. That is not necessarily clear. To take but one example, the fact is that for many years a sizable number of children adopted, especially from outside the West, have had special needs, some quite major, and there has not been a shortage of families seeking to make such adoptions. See, e.g., David Crary, *Adopting China's Special Needs Kids*, ASSOC. PRESS (Mar. 28, 2010), [https://archive.boston.com/news/nation/articles/2010/04/03/adopted\\_chinese\\_orphans\\_often\\_have\\_special\\_needs/](https://archive.boston.com/news/nation/articles/2010/04/03/adopted_chinese_orphans_often_have_special_needs/).

To raise such questions about Singer's impact is not to argue that he should refrain from constructing challenging thought experiments because they might cause offense, although it might have been helpful had he at least briefly acknowledged the tug between the demands of pure logic and the power of personal bonds, as his own experience bears out.<sup>118</sup> Nor is it to overstate his part in perpetuating the enormous stigma that attaches to disability with very tangible and at times tragic consequences.<sup>119</sup> Rather, it is to highlight that, even as he cultivates his role as an influential public intellectual, he refuses to acknowledge the impact his work regarding disability has on the general public, on parents, and on the sense of self-worth of persons with disabilities—which presumably would be of consequence for qualities he values, including autonomy and the capacity to engage with others.

It is important to note that Singer is not shy about wanting to have a broad impact. He begins *The Most Good You Can Do: How Effective Altruism Is Changing Ideas About Living Ethically* by recounting with pride how his Practical Ethics class at Princeton led one of his best students to abandon philosophy for a Wall Street arbitrage firm so that he could be an “effective altruist” by having more income to donate to charity.<sup>120</sup> Nor is this an isolated example. Over decades, through books written for a mass audience, op-eds, TED talks, founding an important NGO, and much more, Singer has worked hard to be a public intellectual having an impact on policy. *The Life You Can Save*, *The Most Good You Can Do*, and *Ethics in the Real World: 82 Brief Essays on Things That Matter*<sup>121</sup> offer many examples of people putting his ideas, chiefly, but by no means exclusively, regarding global poverty alleviation, into action. As he states in the preface to *The Life You Can Save* (the subtitle of which is *Acting Now to End World Poverty*), “I believe that if you read this book to the end, and look honestly and carefully at our situation, assessing both the facts and the ethical actions, you will agree that we must act.”<sup>122</sup>

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118 Singer discusses this tug with respect to his late mother in Michael Specter, *The Dangerous Philosopher*, NEW YORKER, Sept. 6, 1999, <https://www.newyorker.com/magazine/1999/09/06/the-dangerous-philosopher>.

119 Johnson, *supra* note 61. It is a fact that persons with a disability commit suicide at a far higher rate than the general population. For discussions of the impact of societal attitudes on the perceived self-worth of persons with disabilities, see, for example, Ben Mattlin, *People with Disabilities Often Fear They're a Burden. That's Why Legal Assisted Suicide Scares Me*, VOX (Sept. 21, 2017), <https://www.vox.com/first-person/2017/9/21/16307868/assisted-suicide-disabilities-legal>; Nicky Clark, *Enough Is Enough: Disabled Persons Are Driven to Suicide by the Government's Welfare Reform*, THE INDEPENDENT (Oct. 4, 2012), <https://www.independent.co.uk/voices/comment/enough-enough-disabled-people-are-driven-suicide-because-government-s-welfare-reform-8197640.html>. I am aware that some might contend that noting this may seem inconsistent with Johnson's earlier point about the way in which she and others with a disability may understand their lives. I read her as saying that the sense persons with a disability may have of their self-worth can be and is eroded by societal practices and norms that devalue their worth.

120 SINGER, *supra* note 5 at 3–4.

121 *Id.*; SINGER, *supra* note 15; SINGER, *ETHICS IN THE REAL WORLD*, *supra* note 62.

122 SINGER, *supra* note 15, at xv.

Some might contend that Singer could endeavor to defend himself in two principal ways—first, by suggesting that his work on global poverty alleviation is written for a general audience whereas that on euthanasia was intended as academic thought experiments, and second, by his clear disavowal of ill motive, as in his statement, “It’s certainly nothing against people with disabilities that motivates my position [regarding the permissibility of killing infants with a severe cognitive disability].”<sup>123</sup> As concerns the first, Singer declares at the outset of *Practical Ethics*, from which many of the examples about disability discussed earlier in this article are drawn (purposefully), that “[t]his book is . . . about the application of ethics . . . to practical issues,” and soon thereafter he reiterates that “an ethical judgment that is no good in practice must suffer from a theoretical defect as well, for the whole point of ethical judgments is to guide practice.”<sup>124</sup> Were there any doubt about his intention regarding the reach of *Practical Ethics*, he lets the reader know that it “is widely read,” has been “translated into fifteen languages,” and is required for the aforementioned Princeton course that he sees as changing lives. And he has set out his views regarding life and death with respect to disability in several ways meant to reach far beyond a university audience, including “rewriting the commandments . . . of the old ethic that we have seen to be false” and otherwise dispensing advice to public officials, judges, and health care professionals engaged in making life and death decisions.<sup>125</sup>

I do not doubt Singer’s sincerity when he speaks of his motivation, but that is a separate question from his impact. As Eva Feder Kittay has powerfully argued, philosophers—and especially ethicists—have a responsibility to be attentive to the impact of their work, especially with respect to its consequences for subjects of their inquiry, and perhaps particularly when those subjects have been the focus of much discrimination.<sup>126</sup> Singer has indicated that he considers it unfortunate that what he characterizes as “a misunderstanding of my views” has “caused distress to some people with disabilities,”<sup>127</sup> even as he has noted that one “positive outcome” of protests about his views that sought to prevent him from speaking was that they “drew attention to my views,” especially concerning global poverty alleviation and animal liberation.<sup>128</sup>

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123 SINGER, WRITINGS ON AN ETHICAL LIFE, *supra* note 56, at 325.

124 SINGER, *supra* note 4, at 2.

125 See, e.g., the essays in SINGER, RETHINKING LIFE AND DEATH, *supra* note 56; SINGER, *supra* note 62; the excerpts of his academic work in SINGER, WRITINGS ON AN ETHICAL LIFE, *supra* note 56 (which the author notes was intended to reach beyond academic circles to prompt debate); see also Singer’s interviews with Bob Abernethy and Nell Boyce, also reprinted in SINGER, WRITINGS ON AN ETHICAL LIFE, *supra* note 56.

126 See Kittay, *supra* note 3.

127 SINGER, WRITINGS ON AN ETHICAL LIFE, *supra* note 56, at 325.

128 *Peter Singer, An Intellectual Biography*, in PETER SINGER UNDER FIRE, *supra* note 3, at 64–65. Although Singer’s assertion that the lives of “some nonhuman animals . . . by any standard, are more valuable” than those of severely cognitively disabled humans draws attention to his case for animals, is it necessary, as Michael Bérubé has written, to view the situation of individuals with such a disability and that of animals in what are, in effect, zero-sum terms? See BÉRUBÉ, LIFE AS WE KNOW IT, *supra* note 79. Would it not be possible to make the point about valuing the



My pointing out tensions between Singer's argument regarding our responsibility to address global poverty alleviation and his treatment of disability is not meant to disparage the former goal. Singer is right to remind readers of how much less governments in the affluent world have done for development than is generally assumed. I share his commitment to doing more. I maintain, though, that addressing challenges of poverty that we face at home would make efforts at addressing challenges abroad more palatable both here and there, and potentially more effective.<sup>129</sup> More importantly, I believe that a greater recognition of how intimately interwoven poverty and disability are would benefit each. An authoritative joint study by the World Health Organization and the World Bank concluded in 2011 that, conservatively speaking, at least fifteen percent of the human race—equaling more than one billion people—have a disability, and that the situation of persons with a disability is especially acute in developing nations.<sup>130</sup> In the words of then-WHO Director-General Dr. Margaret Chan and then-World Bank President Robert Zoellick,

Across the world, people with disabilities have poorer health outcomes, lower education achievements, less economic participation and higher rates of poverty than

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lives of animals without repeatedly contributing, however inadvertently, to what Harriet McBryde Johnson and many others see as deeply unfortunate societal attitudes about individuals with a disability?

- 129 Singer takes insufficient account of how giving close to home (and seeing results) might help inculcate a more general and generous spirit of giving and also of the argument, often made, that developed countries are being hypocritical in pressing for involvement in the affairs of developing nations when they have so many unresolved dilemmas at home. It is also worth noting Singer's implicit faith in the technocratic—that is, that we can readily quantify to a precise degree the good that particular charities can do. Although such a worldview is hardly surprising from a utilitarian vantage point, and while few, if any, among us would deny the importance of accountability, experience suggests that attempts to measure the effectiveness of development in a highly technical manner confront many a challenge, both conceptual (including what we mean by the very idea of development itself) and practical. See William P. Alford, *Exporting the "Pursuit of Happiness,"* 113 HARV. L. REV. 1677 (2000).
- 130 WORLD HEALTH ORG., WORLD REPORT ON DISABILITY 10 (2011). This may well undercount the number of persons with a disability, as the *World Report* is a decade old, and disability is often defined more narrowly in poorer nations, given the greater challenges of conducting censuses and funding social services. See UN DEP'T OF ECON. & SOC. AFFS., DISABILITY AND DEVELOPMENT REPORT: REALIZING THE SUSTAINABLE DEVELOPMENT GOALS BY, FOR AND WITH PERSONS WITH DISABILITIES (2018); Nora Groce et al., *Poverty and Disability—A Critical Review of the Literature in Low and Middle-Income Countries* (Leonard Cheshire Disability & Inclusive Dev. Centre, Working Paper Series No. 16, Sept. 2011); Sophie Mitra et al., *Disability and Poverty in Developing Countries: A Snapshot from the World Health Survey* (World Bank, Social Protection Discussion Paper No. SP 1109, 2011); Lena Banks et al., *Poverty and Disability in Low and Middle-Income Countries: A Systematic Review*, PLOS ONE (Dec. 21, 2017). Charlotte McClain-Nhlapo, who was Global Disability Advisor for the World Bank Group and previously oversaw developmental assistance regarding disability at the United States Agency for International Development, suggests that as many as eighty percent of the world's persons with a disability live in developing nations. Ede Ijjasz & Charlotte McClain-Nhlapo, *How Can the World Bank Better Support Persons with a Disability?*, VOICES (Nov. 12, 2015), <https://blogs.worldbank.org/voices/moving-goals-action-disability-inclusive-development>.

people without disabilities. This is partly because people with disabilities experience barriers in accessing services that many of us have long taken for granted, including health, education, employment, and transport as well as information. These difficulties are exacerbated in less advantaged communities. To achieve the long-lasting, vastly better development prospects that lie at the heart of the 2015 Millennium Development Goals and beyond, we must empower people living with disabilities and remove the barriers which prevent them participating in their communities; getting a quality education, finding decent work, and having their voices heard.<sup>131</sup>

Individuals with a disability in developing countries are, in the words of Alice Albright, Chief Executive of the Partnership for Global Education, “the poorest of the poor”<sup>132</sup>—to which I would add that individuals with profound intellectual disabilities are the most vulnerable of the vulnerable. There is not enough research on this topic, with the result that it is difficult to describe causal mechanisms with absolute assurance, but the most credible work concludes that disability is both a cause and consequence of poverty in developing nations and that individuals with disabilities are among the most marginalized worldwide.<sup>133</sup> One might have thought, therefore, that someone as interested as Singer is in poverty alleviation would appreciate how addressing disability will concomitantly advance what he describes as the responsibility we all bear to address poverty. To the extent, however, that Singer’s message reaches developing nations or those in developed nations who wish to alleviate global poverty, there is a danger that, along with his laudable call for supporting development, he may also, without so intending, be affirming harmful assumptions about individuals with disabilities in general and severe cognitive disabilities in particular. Given that “an estimated 90% of children with disabilities in the developing world do not go to school,”<sup>134</sup> presumably we want to be very careful to avoid suggesting, however inadvertently, that in a context of extremely limited resources, such funds are best not spent on those who might be perceived as a burden on society.

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131 WORLD HEALTH ORG., *supra* note 130, at xi. The Sustainable Development Goals (SDGs), adopted by the United Nations in 2015, include disability much more directly than the Millennium Development Goals, as the SDGs address education, employment, access, inequality, and acknowledgement in public records, among other issues. See UN DEP’T OF ECON. & SOC. AFFS., *supra* note 130.

132 Alice Albright, *Disabled People in Developing Countries Are the Poorest of the Poor*, GLOB. P’SHP EDUC. (Apr. 15, 2014), <https://www.globalpartnership.org/blog/disabled-people-developing-countries-are-poorest-poor>.

133 See sources cited *supra* note 130. For a cogent argument demonstrating that poverty involves not only economic deprivation but social isolation, see Kim Samuel et al., *Social Isolation and Its Relationship to Multidimensional Poverty* (Oxford Poverty & Hum. Dev. Initiative, Working Paper No. 80, Nov. 2014).

134 *Children with Disabilities Face the Longest Road to Education*, GLOB. P’SHP EDUC. (Dec. 3, 2016), <https://www.globalpartnership.org/blog/children-disabilities-face-longest-road-education>.

Surely, in the pool of approximately one billion people with a disability, there are many individuals with talents that might benefit any nation and, in particular, countries that are impoverished, if education and/or other opportunities were available to them (e.g., someone with a serious degenerative disease might be a brilliant researcher or an inspiring teacher).<sup>135</sup> But to give Singer the benefit of the doubt as to his intended focus (if not its effect), there is also much to be learned from individuals who have even the most severe intellectual disabilities, and from their families. Their lived experience has the potential to provide extraordinary lessons to those who have not a priori dismissed the possibility of learning from them—about resilience, devotion, selflessness, and humaneness—qualities that presumably will serve any nation, developing or otherwise, and that would, to use Singer’s currency, promote utility for us all.<sup>136</sup>

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135 See, e.g., Stuart Clark, *A Brief History of Stephen Hawking: A Legacy of Paradox*, *NEW SCIENTIST* (Mar. 14, 2018), <https://www.newscientist.com/article/2053929-a-brief-history-of-stephen-hawking-a-legacy-of-paradox/>; Ashoka, *Harnessing the Power and Resilience of Disabled Women Leaders*, *FORBES* (July 15, 2013), <https://www.forbes.com/sites/ashoka/2013/07/15/harnessing-the-power-and-resilience-of-disabled-women-leaders/>.

136 See SHRIVER, *supra* note 84, at 171–75, for two extraordinary examples, among many: a young boy named Daniel and a baby named Pearl whose courage was inspiring not only to their immediate families but to others as well.