

Which Limitations Block Requirements?

Amy Berg
Oberlin College
10 N. Professor St.
Oberlin, OH 44074
aberg@oberlin.edu

Abstract: One of David Estlund’s key claims in *Utopophobia* is that theories of justice should not bend to human motivational limitations. Yet he does not extend this view to our cognitive limitations. This creates a dilemma. Theories of justice may ignore cognitive as well as motivational limitations—but this makes them so unrealistic as to be unrecognizable as theories of justice. Theories may bend to both cognitive and motivational limitations—but Estlund wants to reject this view. The other alternative is to find some non-*ad hoc* way to distinguish cognitive from motivational limitations. I argue that this strategy won’t work. Just as a person’s cognitive limitations may block her motives no matter how much she perseveres, so too motivational limitations may be genuine inabilities. Even ideal theories of justice must bend to even ordinary motivational limitations when they truly cause us to be unable to comply with requirements.

Keywords: David Estlund, justice, ideal theory, *Utopophobia*, motivational limitations

1. Introduction

As part of establishing the value of unrealistic (unbent, nonconcessive, ideal) theories of justice, David Estlund claims that human nature—more specifically, our motivational limitations—does not block requirements of justice. A theory of justice could be the true theory for human beings even if it contains requirements no human being can be motivated to meet (Estlund 2020, p. 29). Yet Estlund does not extend this conclusion to other aspects of human nature, such as people’s physical limitations (2020, p. 87). This creates a puzzle for Estlund’s view of the requirements of ideal justice. Why should motivational limitations fail to block requirements when

Which Limitations Block Requirements?

other limitations can? In this paper, I will consider Estlund's view in light of what we know about our cognitive limits. If the limits on what we can know, think, and understand do not affect requirements of justice, then we wind up with a theory of justice that's completely outside of our grasp. This is a theory even Estlund should not want to call a theory of justice. But if cognitive limitations block requirements, what is it about motivational limitations that makes them different? This gives us a new angle on an old controversy around Estlund's view of ideal justice: whether motivational limitations should, or should not, count as true inabilities. Once we take stock of the similarities between cognitive inabilities and motivational limitations, we must consider whether we can accept an intuitively plausible position (our cognitive limitations block what would be requirements of justice for cognitively unlimited beings) while also rejecting a parallel position (our motivational limitations block what would be requirements of justice for motivationally unlimited beings). I will show that we cannot do this: there is no *ad hoc* way to claim that at least some cognitive limitations block requirements without also accepting that some (not all) motivational limitations block requirements. Given the deeply unappealing implications of accepting justice that doesn't bend to our cognitive limitations, we should accept that some garden-variety, everyday motivational limitations really do block requirements of justice.

2. Estlund on Motivational Inabilities

Estlund argues against

The Human Nature Constraint: A normative political theory is defective and so false if it imposes standards or requirements that ignore human nature in requiring things that will not, owing to human nature and the motivational incapacities it entails, ever be satisfied (2020, p. 87).

To support his rejection of the Human Nature Constraint, Estlund gives us the case of

Messy Bill: Pleads that he is not required to refrain from dumping his trash in the yard because he is motivationally unable to bring himself to refrain. Assume that there is no special phobia, compulsion, or illness involved. He is simply deeply selfish and so cannot thoroughly will, or 'bring himself,' to comply. Refraining is something he could, in all other respects, easily do. Still, he will either not really try, or he will stop trying even if he might have succeeded (2020, p. 28).

Estlund argues that we shouldn't accept Messy Bill's excuse-making; his selfishness does not block this moral requirement, even though it means he will not put his trash in the trash can. Moreover, Estlund claims that 'typicality adds nothing':

Which Limitations Block Requirements?

The Line behind Bill: People line up to get your moral opinion on their behavior. Bill is told his selfishness does not exempt him from the requirement to be less selfish. Behind Bill comes Nina with the same query. Again, we dispatch her, on the same grounds as Bill. Behind Nina is Kim, but, since each poses the same case, our judgment is the same. The line might contain all humans, but that fact adds nothing to any individual's case (2020, p. 29).

Messy Bill shows us that an individual's motivational quirks and defects do not change which requirements of justice are incumbent on them. The Line behind Bill shows us that this is true even if every person has those quirks and defects permanently—even if they are part of 'human nature as such' (Estlund 2020, p. 29 and p. 102). Messy Bill is required not to dump his trash even if there's nothing he (or indeed any human) could do to become less selfish. Thanks to these cases, we can now reject the Human Nature Constraint: if a theory of justice requires a person, or all people, to do things they can't bring themselves to do, that is not, by itself, a defect in the theory.

In his initial statement of the Human Nature Constraint, Estlund focuses on requirements that cannot be satisfied 'owing to human nature *and the motivational incapacities it entails*' (2020, p. 28, emphasis mine). But we know that there's a lot more to human nature than our motives. Estlund explicitly recognizes this: 'There are other aspects of human nature that render certain things impossible for people to do (such as flying), of course, and I am not criticizing the correspondingly different version of a human nature constraint that would apply to those' (2020, p. 87).¹ Consider a parallel case to Messy Bill:

Cognitive Bill: Bill has difficulty storing certain kinds of events in his short-term memory. When he goes to take the trash out, he forgets where he's supposed to put it, eventually dumping it in his yard. Assume that there is no special phobia, compulsion, or illness involved. He is simply deeply forgetful and so cannot remember to comply. Refraining is something he could, in all other respects, easily do.

Cognitive Bill's impairment seems like a much better candidate for blocking what would normally be a requirement. And if a bunch of people line up behind Bill, and it turns out that short-term memory deficits of this kind are a permanent part of human nature, then it's even harder to make the case that justice should require us to remember things we simply can't remember.

While some requirements of justice don't apply to Cognitive Bill, things look different at the other end of the spectrum, when we consider beings with none of

¹ Relatedly, Estlund writes later that 'moral requirements...might only have application to agents with certain cognitive and emotional prerequisites' (2020, p. 104).

Which Limitations Block Requirements?

the cognitive limitations we're used to dealing with. These cognitively unlimited beings would be able to: remember everything in precisely correct detail; apply infinite rules and concepts with exact precision; uncover and assess all relevant evidence (moral, empirical, etc.); reason perfectly; display flawless judgment; sort out even the hardest of cases; perfectly apply the correct rules of logic, math, etc.; and so on. (Cognitively unlimited beings would not necessarily be omniscient, although I don't want to rule out the possibility that they could become so.) Justice as we know it is not built for beings like these—and I'll say more in the next section about why this is. If justice would be different for cognitively unlimited beings, then we do accept that some of our human limitations affect the requirements of justice.

In other words, consider what I'll call

The Generalized Human Nature Constraint: A normative political theory is defective and so false if it imposes standards or requirements that ignore human nature in requiring things that will not, owing to human nature, ever be satisfied.

The Generalized Human Nature Constraint, which lacks the clause about motivational incapacities, is much harder to reject than Estlund's original formulation. This may lead us to conclude something Estlund hints at above: some features of human nature block requirements.

3. Estlund's Dilemma

But it also creates a dilemma for Estlund. If we reject the Generalized Human Nature Constraint, then we wind up with an extraordinarily unbending view of justice, one on which we are all constantly required to do things that are far, far beyond what any human has ever been capable of doing. This view of justice might not even resemble our current best thinking about justice in the slightest. Alternatively, Estlund may have to embrace the Generalized Human Nature Constraint—and then motivational inabilities constrain even ideal justice. Either of these horns of the dilemma seems unappealing for Estlund. The third alternative is to find a (non-*ad hoc*) distinction between motivational inabilities and other kinds of limitations. Doing this would allow us to reject only the original Human Nature Constraint, not the broader Generalized Human Nature Constraint. As I will argue in section 4, we cannot do this: there is no non-*ad hoc* way to distinguish *all* motivational limitations from *all* cognitive limitations. This means that Estlund's original rejection of the Human Nature Constraint is too broad. While not all motivational limitations block requirements, even some normal, everyday motivational deficiencies are requirement-blocking.

In what follows, I consider each of these options—the two horns of the original dilemma in the rest of section 3 and the third alternative in section 4. I'll continue to focus on cognitive limitations as the parallel case to motivational deficiencies, since cognitive limitations are already lurking in the background of

Which Limitations Block Requirements?

many of these discussions. But we should keep in mind that other limitations could be in play too—if requirements of justice ignore our cognitive limitations, then they might not bend to limitations imposed by the laws of nature or metaphysics, and we could be on the hook for even-more-remote-from-us requirements of justice.

3.1 Neither Motivational nor Cognitive Limitations Block Requirements

The first way out of this dilemma is to reject even the Generalized Human Nature Constraint. On this view, neither the limitations of Messy Bill nor those of Cognitive Bill block any requirements (nor does any other limitation that's part of human nature).

One major advantage of this view is that it can tell a principled story about human nature. No failing of ours, whether motivational or otherwise, gets us off the hook. Throughout *Utopophobia*, Estlund wants us to recognize that our motivational failings don't constrain justice. But why, if that's true, should any other kind of failing? If constant smartphone use caused our short-term memories to wither away, that wouldn't by itself change the requirements of an unrealistic theory of justice, which is supposed to be unbent by human nature.

Another advantage of this view is that treating human nature as a holistic bundle probably hews closer to the empirical facts. It might seem simple in principle to say that a poor memory is a cognitive limitation and that selfishness is a motivational limitation, but in practice these are much more difficult to untangle. For example: because of our cognitive limitations, we need to be able to categorize objects and people—but this leads to our forming stereotypes, and stereotypes can make it harder for us to be motivated to treat others fairly (Gendler 2011, pp. 38f.). Similarly, Leslie (2017) claims our use of certain generics ('sharks eat bathers') can cause us to form (and act on) prejudices, and Johnson (2020) points out that, although the use of proxies is often necessary for us to engage in inductive reasoning, it can also lead to biased conclusions. In all of these cases, our cognitive limitations have motivational upshots—because we cannot perfectly process information, even when we want to, our motives to act morally suffer. It would be *ad hoc* for the motivational limitations we face not to block requirements when the cognitive limitations that helped cause them do. If we reject the Generalized Human Nature Constraint, we don't have to try to untangle different aspects of human nature that are actually bound up together.

On the other hand, rejecting the Generalized Human Nature Constraint has some deeply unappealing consequences. Justice that does not bend to human cognitive limitations could be way beyond our ken. One function of laws is to help us know what to do in situations where we are incapable of making totally precise judgments—but, GA Cohen (2008) charges, this makes any practically applicable theory of justice (specifically, Rawls's) less than fully just. One example Cohen cites (2008, pp. 313ff.) is UK council tax, which is divided into bands: in Bristol, for

Which Limitations Block Requirements?

example, a property owner whose property was valued at £88,000 in 2020 was charged council tax of £2061.03—but someone whose property was valued at £88,001 was charged tax of £2,519.04.² These bands are a response to our cognitive limits, since it would be too difficult to determine tax on a fully case-by-case basis—and yet it seems unjust that someone who owns a house worth one pound more has to pay an additional £458.01 for the privilege.³

Estlund gives a Rawlsian response—this tax would be just if it were the result of fully compliant legislators operating within a just basic structure—yet he recognizes that this response is likely to be unsatisfying: ‘Some will agree with Cohen that this does not accommodate the deep intuition that some tax rates are unjust even if there are other good reasons for adopting them...’ (2020, p. 179). If legislators could know everything about exactly how much each piece of property is worth, then it’s hard to claim that clumsy council tax brackets would be equally as just as assessing council tax on a fully case-by-case basis would be.

There are lots of other laws which make imprecise, clumsy distinctions because we lack the ability to understand and adjudicate all the information we could get about every situation. Some people are undoubtedly not safe to drive even well below 0.08 BAC; others may be safe above 0.08; but with our imperfect understanding of individual metabolisms, we have to set a blood-alcohol limit somewhere. Legal systems may allow or require an offender’s diminished culpability to be taken into account in the sentencing process—for example, in the United States, juveniles are, as a class, legally barred from receiving the death penalty, while adults are not.⁴ This isn’t because no juveniles whatsoever are as culpable as adults but because the US Supreme Court has held that judges cannot assess the culpability of individual juveniles as well as they can assess adult culpability (*Roper v. Simmons* 2005, p. 573). If we were not as cognitively limited, and so could precisely assess individual culpability, then laws eliding the distinctions between individuals would be less just than laws allowing us to use the information at our disposal. Any rule which requires us to make coarse-grained distinctions among different groups of

² For more on Bristol council tax, you can find all the tax bands listed at ‘Council Tax Charges and Bands’ on the Bristol City Council’s website (<https://www.bristol.gov.uk/council-tax/council-tax-charges-and-bands>, accessed on March 29, 2022). It’s worth noting that other taxes, including marginal income tax rates, don’t operate in the same way.

³ Cohen compares our limited understanding to a ‘supercomputer [that] could calculate, cheaply, all property values with precision,’ claiming that this would be a more just arrangement (2008, p. 315)—so I read him as claiming that UK council tax bands exist at least in part because of our cognitive limits.

⁴ US Supreme Court cases *Roper v. Simmons* (2005), *Graham v. Florida* (2010), and *Miller v. Alabama* (2012) establish progressively stricter standards for juvenile punishment; the United States Sentencing Commission’s *Guidelines Manual* includes other ‘specific offender characteristics’ to be taken into account during the sentencing phase (2018, see especially Part H).

Which Limitations Block Requirements?

people as a result of our cognitive limitations—and these rules are fundamental to our administrative and criminal law—would not be required if we lacked those cognitive limitations (Berg 2021). And we shouldn't want those rules if we don't need them, because they make our system of justice less just—people have to pay more council tax than they should, are allowed to drive when they shouldn't be on the road, are punished less than they deserve to be, etc. Doing away with them would mean getting along just fine with many fewer laws than we currently require.

But the situation is more serious than that—if we accept the Generalized Human Nature Constraint, we seem to be able to do away with some of the foundational principles of liberalism. Rawls claims that we are subject to the burdens of judgment: evidence is conflicting and complex, we disagree about the weight of relevant considerations, our concepts are vague and subject to interpretation, our assessments are shaped by our individual experiences, there are normative considerations on multiple sides of an issue, and any system of institutions is a limited social space (2005, pp. 56f.). For Rawls, the burdens of judgment arise because of our cognitive limitations. They are the 'hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment...' (2005, p. 56); beings without sometimes-faulty powers of reason wouldn't face these hazards.⁵ The limits to our ability to process information mean that we can't plow through all the evidence to resolve all our conflicts. It's because we can't fully assess the evidence that we have disagreements about the weight of different considerations: if we could know all of the moral and empirical facts, that would seem to include the facts about the different weights of different moral considerations. If we had sufficient brainpower, we could deploy precise concepts, rather than the clumsy ones we have now that admit of vagueness and hard cases. And so on. Because of all this, Rawls thinks, we must affirm reasonable pluralism: 'Reasonable persons see that the burdens of judgment set limits on what can be reasonably justified to others, and so they endorse some form of liberty of conscience and freedom of thought' (2005, pp. 60f.). If we were not burdened in these ways, we could reach full agreement on the truth—and ideal justice could then do without one of the hallmarks of liberal political thought.

Even if we're fine with that, it's unclear that the theory we get if we reject the Generalized Human Nature Constraint justifies the existence of government. Gregory Kavka argues that even perfect people would need government—but the 'perfect people' he has in mind are morally, not cognitively, perfect. If we could 'know and use all facts, be perfect reasoners, have flawless (and mutually converging) judgment in applying general principles to specific situations, and perhaps—to solve coordination problems—even be capable of reading one another's minds,' he thinks we wouldn't need government (1995, p. 9). If Kavka is right about this, and if we reject the Human Nature Constraint in its entirety, then

⁵ See also Freeman (2007, p. 161).

Which Limitations Block Requirements?

ideal justice does not involve any government whatsoever. Once again, justice unbent by our limitations would be a world away from anything we now think of as justice.

So far, then, it seems that if we reject a generalized version of the Human Nature Constraint—if requirements of justice do not bend to our cognitive limitations—then true justice would be like nothing we currently recognize as justice. Truly ideal justice would involve no bright-line rules due to cognitive limitations, no reasonable pluralism—maybe even no government. We would be acting unjustly, in some sense, if we built laws on a foundation of reasonable pluralism (since most or all disagreement would be unreasonable) or possibly even set up a government in the first place (since this would unnecessarily constrain beings without cognitive limits). This is a deeply unappealing conception of ideal justice. We certainly couldn't use it to guide our practice, since it wouldn't tell us which laws to have or how to respect disagreement among reasonable but cognitively flawed people. It's not even clear that such a remote kind of ideal justice could tell us all that much about how we've fallen short and should be trying to improve, since we would be falling catastrophically short all the time, and the improvements ideal justice would recommend would frequently be out of reach for us.

Maybe this is too hasty. There is some reason to think that cognitively flawed beings would not fully do away with these familiar features of liberal justice.⁶ Perhaps some bright-line rules can be justified not because of our cognitive limitations but because cognitively unlimited beings would not want a dystopian surveillance state to gather all the information it would need to make decisions on a case-by-case basis. If vagueness is metaphysical, not epistemic, then there are some concepts that may be inescapably vague, no matter how cognitively unlimited we are. And Kavka's views about disagreement are complex. In the passage I quoted above, Kavka claims that our lack of mutually converging judgment is just another in a list of problems due to our cognitive limitations. That's not his view elsewhere in the paper: he also claims that people could hold differing beliefs without being guilty of 'any sort of error' (1995, p. 4). If the upshot of this 'incomplete objectivism' is that cognitively unlimited beings could still disagree, then our cognitive limitations cannot fully explain reasonable disagreement.

In other words, a theory of justice for cognitively unlimited beings might not look so different from a theory of justice for us. In Estlund's terms, justice would be *robust*. A robust theory of justice can make unrealistic assumptions but still be applicable in realistic conditions 'if the requirements of justice in realistic morally deficient conditions are not different from the nonconcessive principles of justice' (2020, p. 193). If prime justice is robust, then while it might be true that cognitively

⁶ I'm grateful to a referee for raising this objection.

Which Limitations Block Requirements?

unlimited beings would behave differently from cognitively limited beings, that difference is irrelevant to theorizing about justice.

The concessive response to this objection is to grant these possibilities— to accept that bright-line rules, vagueness, and reasonable disagreement would persist among even cognitively unlimited beings. But even if we accept this, why should we think that the roles these features play in justice for cognitively unlimited beings would look like the roles they must play in justice for us? Take bright-line rules. It may be true that some bright-line rules would be necessary even in a society of cognitively unlimited beings, for example, to avoid overweening government surveillance. But others would not be. The bright-line rules about juvenile punishment are explicitly based on our cognitive limitations; we know this because the US Supreme Court does not think that similar bright-line rules are required for adults, about whom (the Court claims) we can better determine culpability (*Roper v. Simmons* 2005, p. 573). This kind of bright-line rule, which has nothing to do with what information we should or should not have access to but rather with how well we can understand the information we do have access to, would not survive in a society of cognitively unlimited beings. Some bright-line rules may have absolutely nothing to do with our cognitive limits and would exist in a society of cognitively unlimited beings—but these would be only those bright-line rules which are in no way necessitated by our limitations, and many bright-line rules fail this test.

Likewise with the other two. Is some vagueness metaphysical, not epistemic? Maybe—but some vagueness truly is epistemic ('I arrived at the party around 7 pm'; 'I scooped out about a cup of sugar'), and so cognitively unlimited beings would encounter less vagueness than we do. Is incomplete objectivism true? Possibly—but even if it is, so much of our disagreement about moral and political matters can be traced back to our epistemic failings (our lack of understanding of economics, science, psychology, etc.) that the space of reasonable disagreement for cognitively unlimited beings would be much smaller than it is for us.

The concessive response, then, holds that while the landscape for cognitively unlimited beings would have the same features, those features would be arranged very differently. While there might be bright-line rules and vague concepts, they would be warranted for different reasons than many of our bright-line rules and vague concepts are. Even the concessive response, then, does not deliver robust prime justice. Any rule or regulation that only exists because of our cognitive limitations, any tolerance we owe others entirely because of these limits, any disagreement that is only reasonable because of our deficiencies—all of these are unjust in a society of beings who lack these limits. And since 'the requirements of justice in realistic conditions' are different from 'the nonconcessive requirements of justice' (Estlund 2020, p. 193), justice is not robust.

But it's not clear that the concessive response is the right one. The nonconcessive response is this: we don't know! We don't know what cognitively unlimited beings would look for in a theory of justice, because they'd be just too

Which Limitations Block Requirements?

different from us. Maybe cognitively unlimited beings would be uncomfortable with government surveillance. But maybe they wouldn't. In a society where everyone complied with the requirements of justice, where the only need for government was to solve coordination problems, perhaps cognitively unlimited beings would allow each other (or the state) to gather all the information they would need to solve these coordination problems. Maybe some of our concepts are metaphysically vague, but why would cognitively unlimited beings deploy the same clumsy concepts we're limited to? Why bother with 'bald' when you can calculate exactly how many hairs someone has on his head and others can understand your use of that much more precise concept? From our blinkered standpoint, incomplete objectivism may look true, but maybe that's because we don't have the resources we would need to come to full agreement on issues of morality and justice. The nonconcessive response holds that maybe the concessive response is true, but maybe it's not—and since we don't know what cognitively unlimited beings would actually be like, we can't rely on a theory of justice that would be suitable for them (indeed, we may not even be able to conceive what justice would look like for them). The Generalized Human Nature Constraint has to be true.

This brings us to Estlund's second defense, his rejection of practicalism about justice—that is, his rejection of the claim that there is little or no reason to study justice apart from practical value (2020, pp. 35ff.). Even if we can't put our knowledge about justice for cognitively unlimited beings to use, it may still be valuable knowledge to have, the same way higher math or cosmology is valuable for its own sake.

But even people who, like Estlund, reject practicalism should see theorizing about justice for cognitively unlimited beings as importantly different from higher math and cosmology. Higher math is valuable, even if it's not immediately applicable, because it tells us something about what the world is like. Justice, as Estlund says, is a highly valuable social condition, even if it's unattainable, but what's valuable to know about is what the world could be like *for beings like us*. Justice for nonexistent beings who are crucially different from us, because they're cognitively unlimited (or because they can fly, or turn invisible, or travel through time) doesn't tell us anything about how the world works. This is not the same thing as saying that the only justice it's worthwhile to theorize about is justice that has immediate practical value; we'll see later on that prime justice should not concede to all of our motivational limitations, and it could still be worthwhile to know what justice would look like in full-compliance situations. All it means is that the justice it's valuable for us to consider is justice for beings like us. If cognitively unlimited justice is only justice for cognitively unlimited beings, who don't exist and probably never will, then it's not even impractically valuable.

Even if there's some minimal, impractical value to knowing about justice for hypothetical cognitively and motivationally unlimited beings (and I'm skeptical that there is), we should not reject the Generalized Human Nature Constraint. Justice

Which Limitations Block Requirements?

which relies on assumptions that are totally divorced from the reality of what it is to be human is justice that not only looks different from anything we think of as justice but in some cases is actually antithetical to justice for beings like us. Even if this counts as a theory of justice, it can't tell us about the requirements which apply to us.

3.2 Both Motivational and Cognitive Limitations Block Requirements

Since we have seen that rejecting the Generalized Human Nature Constraint is unappealing at best, and results in something that isn't even justice at worst, maybe we should accept this constraint. In other words, both motivational and cognitive limitations block the requirements of justice. As Estlund notes, Elizabeth Anderson holds a version of this view: 'Just institutions must be designed to block, work around, or cancel out our motivational and cognitive deficiencies...' (2010, p. 4). David Wiens does too: 'good-faith motivational incapacities (indeed, improbabilities)—*if there are any such things*—are sufficient to block moral requirements' (2016a, p. 348, emphasis his). One advantage of views like Anderson's and Wiens's is that they, like the view in the previous section, have a unified theory of the relationship between human nature and theories of justice. Just as theories of justice have to pay attention to facts about human beings' cognitive limitations in order for them to even be theories of justice, so they have to pay attention to facts about our motivational limitations. Otherwise they might be, if not as remote as theories that deny the Generalized Human Nature Constraint, still too remote to be theories of justice for beings like us.

Another advantage is that theories that accept the Generalized Human Nature Constraint give apparently plausible results in some cases. Wiens offers the case of

Claudia: Realizes after a week that writing a book is harder than she anticipated; but instead of giving up, she presses on the following week, producing a few more pages. Claudia has some good weeks, but she also has weeks where she suffers significant setbacks. After a year, Claudia's despair and lack of self-confidence get the best of her and she abandons her book. A couple of years later, Claudia has a new idea for a book, which she sets out to write. Again, after many weeks of encountering obstacles, despair and low confidence set in again and she abandons her book. This pattern repeats itself several more times, until Claudia finally gives up her dream of writing a book (2016a, pp. 340f.).

Wiens concludes that, although she's made a good-faith effort, Claudia cannot write a book (2016a, p. 340f.). This is a plausible analysis of this case—which may not mean it's the right one (as we'll see soon, Estlund disagrees). But if rejecting the Generalized Human Nature Constraint both is theoretically unified and gives

Which Limitations Block Requirements?

intuitively plausible results in some cases, Estlund's original Human Nature Constraint now begins to look problematically *ad hoc*. Why should only motivational limitations, and not other features of human nature, not block requirements? Can we make a non-*ad hoc* distinction, so that Estlund can retain his original, less generalized version of the Human Nature Constraint, without being forced onto either horn of this dilemma?⁷

4. Which Limitations Are True Inabilities?

There are a number of different ways we might try to separate motivational from cognitive limitations, to show that the former don't block requirements but that the latter do. One would be to claim that *all* cognitive limitations are permanently baked into our character, but *all* motivational limitations are malleable, and to further claim that only permanent limitations block requirements. But neither claim about limitations is true—for all we know, Messy Bill's selfishness is not changeable, but Estlund believes he is required to comply anyway; meanwhile, we can push past some of our cognitive limitations, through tactics such as memory training.⁸ Another would be to claim that we are not responsible for any of our cognitive limitations, but we are responsible for all the failures of our motives, and only things we're not responsible for block requirements. This too is an overly broad claim—we do have control over some of our cognitive capabilities (that memory training again), and we are not responsible for all our motives (a small child raised by bigots is not responsible for the bigoted beliefs he holds).⁹ Finally, perhaps cognitively unlimited justice is of no practical value, while motivationally unlimited justice is practically valuable—but, as long as we reject practicalism about justice, this alone is not grounds for dismissing the value of theorizing about cognitively unlimited justice. These initial attempts to draw a sharp line between motivational and cognitive limitations seem unlikely to succeed.

So we should try drawing the line in a different way. The best way to draw a non-*ad hoc* distinction between motivational and cognitive limitations, what will really let us reject the Human Nature Constraint in its original, motive-specific form, is if cognitive limitations represent genuine inabilities, but motivational limitations don't. Estlund has developed the view that motivational limitations are not genuine inabilities both prior to *Utopophobia* (2011; 2016) and in the book itself. But this view is thornier than it might initially seem. When we compare Estlund's views about

⁷ One other possibility: only motivational limitations, and not cognitive ones, block requirements. But since I don't know of anyone who holds this position, and I don't see why anyone would, I think we can safely ignore it.

⁸ Both Gilabert (2017, p. 95, note 6) and Wiens (2016b, p. 5) are critical of Estlund's claim that Bill is truly incapable of doing what he ought to, instead claiming that we should see Bill as an 'anti-social jerk' (Wiens) who can will to do the right thing but merely finds it difficult (Gilabert).

⁹ See Wolf (1988).

Which Limitations Block Requirements?

motivational limitations to what we now know about cognitive ones, we'll see that even some 'garden-variety' motivational limitations are genuine inabilities (and thus requirement-blocking). In some cases, some features of a person's psychology (including her motives) can make it impossible for her to succeed even when she tries. Even so, we can concede to Estlund that ideal justice should ignore many human motivational limitations.

4.1 The Estlund/Wiens Debate

Estlund accepts (at least for the sake of argument) that *ought implies can*: in order for a person to be required to do something, she must be able to do it. But nobody thinks that ought implies *will* or *is likely to* or *can easily do*. When someone's motives limit them (we might say, as Estlund does, that they 'can't bring' or 'can't will' themselves to do something), is this a true requirement-blocking inability? We've already seen Estlund say no in the case of Messy Bill. Estlund's formal analysis of 'can't will' cases is:

- S can't will (can't bring herself) to φ* if and only if, even if S believed that trying and persevering would, if carried through, be likely to succeed,
- i. Were S to *decide* to φ , then she would not tend [i.e., be sufficiently likely] initially to *try* to φ , or
 - ii. Were S to initially *try* to φ , then she would not tend [i.e. be sufficiently likely] to *persevere* (to fully try) (2020, pp. 98f.).

'Fully trying' means 'trying without giving up unless one's failure so far supports the reasonable belief that further trying would be futile' (Estlund 2020, p. 91). This is what explains why Messy Bill is violating the requirement not to dump his trash. Because his selfishness makes him lazy, he has not fully tried to put his trash in the trash can; if he tried and persevered, he would be likely to succeed. 'Can't will' cases are not cases of genuine inability, and so any requirements we can't bring ourselves to comply with do not violate 'ought implies can.'

For Estlund's analysis of motivational limitations to work, it must be true that all (or at least all 'garden-variety'; more on this later) cases must work in the same way. Whenever we can't bring ourselves to do something, it must either be that we fail to try or that we fail to persevere. But some 'can't will' cases look a lot like cases in which someone has fully tried to do something. Recall Wiens's Claudia case, in which Claudia starts writing a book, works really hard at it, experiences setbacks, tries again, but ultimately gives up after a year or so. Wiens concludes that Claudia is truly unable to write the book, and she's unable because her motives make it impossible for her:

Claudia's repeated failure to complete a book stems from her repeated failure to press through periods of deep despair, her fear of rejection, and

Which Limitations Block Requirements?

so forth. Put simply, Claudia's inability derives from a lack of important motivational resources (2016a, p. 341).

If Wiens is right, then this is a case in which Claudia's lack of will means that she has a genuine, requirement-blocking inability. Unlike Messy Bill, Claudia truly cannot do what she's supposed to be doing. Also unlike Messy Bill, Claudia seems to be fully trying—she's persevered for years, she's worked hard, and she's made several different attempts, until she forms the reasonable belief that further trying would be futile.

At the same time, Estlund's reluctance to accept Wiens's analysis of Claudia makes sense. When someone is truly unable to do something, it's often because they're blocked by some external force (Claudia wants to go outside, but I've locked her in). Other times, it's because of some inescapable physical limitation (Claudia wants to bench 500 pounds, but she's just not strong enough). In Wiens's Claudia case, though, what (apparently) makes Claudia unable to write the book is fully internal to her—it's a feature of her own psychology. Claudia's fear and anxiety are what (seem to) make it impossible for her to get words down on paper. But then Messy Bill could make the same case—a feature of his own psychology, his incurable selfishness, gets him off the hook, he could claim. That doesn't seem intuitively plausible. And there's a long tradition in ideal theory which holds that our motivational limitations are irrelevant to the truth about justice. As Estlund says in a number of places, defects in us seem to be properly seen as just that—defects in *us*, not defects in justice (2020, pp. 28f.). So Estlund's analysis of Claudia has both theoretical consistency and intuitive plausibility on its side.

4.2 Cognitive Claudia

Wiens and Estlund have gone back and forth on this issue without settling it (Estlund 2016; Wiens 2016b).¹⁰ This is where cognitive (in)ability comes in. Earlier, we contrasted Messy Bill with Cognitive Bill. To understand how we should view Claudia, and, more importantly, to understand when our limitations block requirements of justice, we can likewise compare Wiens's original Claudia with

Cognitive Claudia. Instead of writing a book, Claudia decides to memorize one—*Mrs. Dalloway*, which clocks in at a healthy but not overwhelming 194 pages. Claudia possesses a fine but not extraordinary memory. She starts out being able to keep only a few sentences in her head at once, and she realizes that memorizing a book is harder than she anticipated; but instead of giving up, she presses on the following week. Claudia has some good weeks, when she's able to memorize three or four pages, but she also has weeks when she suffers significant setbacks—every time she memorizes a good chunk of

¹⁰ These iterations rely on Estlund's original specification of ability in (2011, p. 212), which is slightly different from (2020, pp. 98f.).

Which Limitations Block Requirements?

text, she realizes she's forgotten the previous few pages. After a year, her fine-but-not-extraordinary memory gets the best of her and she abandons her project. A couple of years later, she decides to try to memorize an even shorter book, and she sets out to do it. Again, after many weeks of encountering obstacles, her memory causes her to abandon her memorization project. This pattern repeats itself several more times, until Claudia finally gives up her dream of memorizing a book.

Claudia can't memorize an entire book. And we know that she can't—is genuinely unable to—because her efforts fit Estlund's analysis. Remember, for Estlund, to fully try is to try 'without giving up unless one's failure so far supports the reasonable belief that further trying would be futile.' Claudia's been trying for years! She has repeatedly begun attempts to memorize books, and she has worked hard on each attempt. In trying to memorize different books, she has approached the problem from multiple angles. It's more appropriate to describe Claudia's behavior as 'perseverance' than it would be if memorization had come naturally to her; we don't normally say that someone is 'persevering' at something they find easy and fun.

I recognize that it might seem inaccurate to say that Claudia has tried 'without giving up'—she does take breaks between memorization attempts before getting back to it. But almost anyone who perseveres at a difficult, long-term project (painting, learning calculus, finding a romantic partner) takes a break after a given attempt fails—sensible people don't leap directly from one failed long-term relationship into another. We shouldn't think of Claudia's early breaks as true instances of 'giving up.' (If you don't like that as an analysis of the case, just change the details slightly so that Claudia is already planning her second memorization attempt as she quits her first.) She only truly 'gives up' when she abandons the project of memorizing a book altogether at the end of the case—that's when we can conclude she's fully failed at what she set out to do. We know that Claudia's belief that further trying would be futile is a reasonable one—memorizing an entire novel is beyond the scope of her very normal memory. And this reasonable belief is connected to her past futile attempts, since she has formed the belief over the course of repeatedly trying and failing.

We could construct parallel cases based on the other cognitive limitations we've already talked about. Claudia, who doesn't have a background in social science, reads a book full of 'conflicting and complex' empirical and scientific evidence (Rawls 2005, p. 56), and she tries to figure out how that evidence bears on questions of moral and political importance to her—but, although she tries repeatedly, she just isn't familiar enough with the material to understand it. She perseveres until her failure supports the reasonable belief that further trying would be futile—she can't fully understand the evidence in this book. Claudia reads a book full of concepts that are 'vague and subject to hard cases' (Rawls 2005, p. 56), and,

Which Limitations Block Requirements?

although she tries to come up with clear guidelines that are not open to differing judgments and interpretation, she eventually has to give up. In the original Claudia case, Estlund might say that Claudia's fear and procrastination cause her to be unable to persevere.¹¹ That is, she has not fully tried. But Cognitive Claudia is a case where fear and anxiety don't enter the picture. She perseveres until her failure supports the reasonable belief that further trying would be futile.

Unlike benching 500 pounds (where Claudia's physical limitations block what she wants to do) or being locked in a room (a case of external interference), the things that prevent all the Cognitive Claudias from performing some psychological feat are internal to the Claudias' own psychology. But they are still genuinely ability-blocking, since, as we have seen, these psychological features are what give rise to the Claudias' reasonable belief that further trying will be futile.

4.3 From Cognition to Motivation

In the cognitive case, it's comparatively easy to see that there is a true inability. For each of us, there's some limit beyond which our cognition will not take us, cannot take us, no matter how hard we try to make it otherwise. This brings us back to the motivational case. Does the lesson from Cognitive Claudia carry over to the original Claudia, who's blocked by her own motivations rather than by her cognitive inabilities? If it does not, then this must be because motivational limitations are distinct from cognitive limitations in some crucial way.

Here are three reasons for thinking that we can't come up with a sharp dividing line between these two kinds of limitations. First, Cognitive Claudia and the original Claudia case operate in the same way. In both cases, the Claudias fully try, making repeated attempts, persevering, and trying to overcome the limitations of their psychology. This pushes the burden back to someone who wants to show that motivational cases are distinct—what about original Claudia could convince us that motivational and cognitive limitations are importantly distinct? At one point, Estlund cites Frankfurt's denial that motivational inabilities are genuine inabilities, because they prevent an agent from performing some action 'only by virtue of the fact that he does not really want to perform it' (2020, p. 345, note 16); if true, this would make motivational limitations a distinctive feature. But Frankfurt's analysis doesn't apply to Cognitive Claudia or original Claudia. In Cognitive Claudia, it's not that a strong desire turned out to be weaker than originally thought; it's that what might be a fervently held desire was blocked by a non-desire element of Claudia's psychology (her fine-but-not-extraordinary memory). Likewise, original Claudia holds a fervent desire to write a book. Her fear and anxiety do not signal that she

¹¹ For example: '...can't will is not always a case where trying would not succeed, but often a case where one does not fully try, even though doing so would succeed' (Estlund 2020, p. 94).

Which Limitations Block Requirements?

doesn't really want to do this; her persistence and planning show that, actually, she very much does.

Second, it's going to be difficult to find a clear distinction between motivational limitations and other features of our psychology because, as we have already seen, cognition and motivation are intertwined. We saw already that limited cognitive resources lead to stereotypes lead to biases in our treatment of others. If a cognitive limitation is a genuine inability (and not all of them are!), then any motivational limitation that is entirely a result of that cognitive limitation would be a genuine inability too. Once again, the connections between cognitive inability and motivational limitation show us that some motivational defects really are inabilities.

Finally, Estlund himself allows that motivational limitations can be requirement-blocking in rare circumstances. For our purposes, the relevant motives are the clinical ones, those 'that are commonly understood as chronic or temporary psychological disorders of the kind that call for medical care' (2020, p. 99)—addictions, phobias, compulsions, and so on.¹² Estlund grants for the sake of argument, although he never officially concedes, that clinical motives are requirement-blocking (2020, p. 99).¹³ But if Bill were in the grip of serious psychosis, such that he sincerely believed he would be murdered if he put the trash anywhere but his lawn, it would be cruel to claim that the requirements of justice still fully applied to him—so Estlund should fully make this concession. (The same would go for severe phobias, dementia, and so on.)

Once we allow that some features of a person's psychology give rise to motivational inabilities which are requirement-blocking, we have given up on the strategy of seeing all motivations as categorically different from other inabilities—we can't hold that motivational inabilities *never* cause our trying to be futile. We are no longer drawing a line between all cognitive and all motivational limitations—instead, we must accept that at least some motivational deficiencies are genuine inabilities. Of course, as I noted, Estlund never officially concedes that clinical motives are genuine inabilities; he just grants it for the sake of the argument. But failing to concede this would come at a heavy price, because it would require us to accept that psychosis, severe phobias, dementia, and so on are not requirement-blocking. So the right question is not *whether* motivational limitations are genuine inabilities but rather *which* of our motivational limitations truly are inabilities. The case of clinical motives shows us that even Estlund allows that some motives are inabilities, the case of Cognitive Claudia shows us that some everyday features of

¹² Estlund clarifies that it isn't the medical care as such that makes these motives clinical, but rather the presence of a disorder (2020, p. 99). The other two types—'severe insistent' and 'morally weighty' motives—aren't relevant for us, because although Estlund thinks they block requirements, he doesn't think they are literally disabling (2020, pp. 105ff.).

¹³ Additionally, he ventures that implicit bias may be requirement-blocking, since it may be outside our agential control (2020, pp. 113f.)—but we have seen that requirements can be blocked even when an agent is aware of her motives.

Which Limitations Block Requirements?

our psychology block requirements, and the parallels between original and Cognitive Claudia show us that even everyday motives can constitute true inabilities—in sum, everyday motives can block the requirements of justice.

This all means that Estlund needs to give up one element of his view. The analogy with the cognitive case shows that our motives can make us truly unable to do certain things, which means they can sometimes block requirements of justice (unless we throw out ‘ought implies can’). Notice that what we’ve said so far has nothing to do with how typical these motives are—as long as an individual person fully tries, she is unable to do something if her motives still prevent her from doing that thing, even if those motivational quirks are extremely rare. This is a significant revision to Estlund’s view, which was supposed to be impervious to motivational defects, whether individual or species-wide.

5. Conclusion

If a putative requirement of justice is something we could never do, because we just don’t have the brainpower, is it a true requirement of justice? We’ve seen that the answer is no: justice for cognitively unlimited beings isn’t justice for beings like us (indeed, it may not deserve the label ‘justice’ in the first place). But this forces Estlund to confront a dilemma: either he must accept this unappetizingly unrealistic view of justice, or he must accept that justice is constrained in some sense by human nature. If we are not to accept the Generalized Human Nature Constraint, then there must be some way to separate motivational from cognitive limitations—but we were not able to find a non-*ad hoc* way to make this distinction. Since cognitive limitations and clinical motives can block requirements, then so do at least some ‘garden-variety’ motivational limitations. Estlund has to accept the Generalized Human Nature Constraint.

That said, this doesn’t have to represent a significant shift in how ideal unrealistic justice is. That garden-variety motives sometimes block requirements does not mean they always do. If someone really has not fully tried—if their motives cause them not to try or not to persevere—then we should fully agree with Estlund that no requirement is blocked. It may be that these are the vast majority of cases, that normal motives hardly ever block requirements. That is, some ‘can’t will’/‘can’t bring’ cases fit the pattern Estlund describes (2020, pp. 98f.), but others really are cases where someone can’t bring herself to do something even though she has fully persevered. Estlund’s analysis of many cases might still get it right—but ideal justice does, in the end, have to be responsive to some of the garden-variety defects of human nature.¹⁴

¹⁴ For a somewhat different way of going about things, see Berg (2018). There, I argued that ideal justice does not bend to motivational limitations, but non-ideal justice does. The key difference between my view there and Estlund’s view is that non-ideal justice is what gives

Which Limitations Block Requirements?

This might even include Messy Bill, the case we started with. Messy Bill is described as ‘deeply selfish’ and as not really having tried to change that. Everyone can agree that he’s required to overcome his non-requirement-blocking motives, or at least to persevere in trying to. But things would be different if he had fully tried but still failed to become less selfish. Against what Estlund argues throughout *Utopophobia*, there could be a Messy Bill who truly is blocked by his own motives—this might be an unlikely case, but rejecting the Generalized Human Nature Constraint means we have to bite the bullet here. We have to accept that some Messy Bills, like some Cognitive Bills, really are not required to comply with what might have seemed like the requirements of justice.

Acknowledgments: Craig Agule and Matt Braich gave me helpful comments on earlier versions of this paper. I also benefited from exceptionally thorough and helpful feedback from referees and an editor at *Moral Philosophy and Politics*.

Works cited

- Anderson, E. (2010). *The Imperative of Integration* (Princeton & Oxford: Princeton University Press).
- Berg, Amy. (2021). ‘Bright Lines in Juvenile Justice’, *Journal of Political Philosophy* 29 (3): 330-352.
- . (2018). ‘Ideal Theory and “Ought Implies Can”’, *Pacific Philosophical Quarterly* 99 (4): 869-890.
- Cohen, G.A. (2008). *Rescuing Justice and Equality* (Harvard: Harvard University Press).
- ‘Council Tax Charges and Bands.’ (2021). Bristol City Council. URL = <https://www.bristol.gov.uk/council-tax/council-tax-charges-and-bands>. (accessed on March 29, 2022).
- Estlund, D. (2020). *Utopophobia: On the Limits (If Any) of Political Philosophy* (Princeton & Oxford: Princeton University Press).
- . (2016). ‘Reply to Wiens’, *European Journal of Political Theory* 15 (3): 353-362.
- . (2011). ‘Human Nature and the Limits (If Any) of Political Philosophy’, *Philosophy and Public Affairs* 39 (3): 207-237.
- Freeman, S. (2007). *Rawls* (New York: Routledge).

us our most immediate obligations of justice—so if Messy Bill is truly blocked by his own motivations, there’s a sense (the sense that’s relevant for action guidance) in which he is not obligated to clean up his trash. It’s a slightly different way of carving up the ideal/non-ideal terrain, but it gets us the same result.

Which Limitations Block Requirements?

- Gendler, T.S. (2011). 'On the Epistemic Costs of Implicit Bias', *Philosophical Studies* 156 (1): 33-63.
- Gilbert, P. (2017). 'Justice and Feasibility: A Dynamic Approach', in M. Weber and K. Vallier (eds.). *Political Utopias: Contemporary Debates* (Oxford: Oxford University Press): 95-126.
- Grabam v. Florida*. (2010). 560 U.S. 48.
- Johnson, G. (2020). 'Algorithmic Bias: On the Implicit Biases of Social Technology', *Synthese* 198 (10): 9941-9961.
- Kavka, G.S. (1995). 'Why Even Morally Perfect People Would Need Government', *Social Philosophy and Policy* 12 (1): 1-18.
- Leslie, S. (2017). 'The Original Sin of Cognition: Fear, Prejudice, and Generalization', *Journal of Philosophy* 114 (8): 393-421.
- Miller v. Alabama*. (2012). 567 U.S. 460.
- Rawls, J. (2005). *Political Liberalism*, expanded ed. (New York: Columbia University Press).
- Roper v. Simmons*. (2005). 543 U.S. 551.
- United States Sentencing Commission. (2018). *Guidelines Manual*, §3E1.1.
- Wiens, D. (2016a). 'Motivational Limitations on the Demands of Justice', *European Journal of Political Theory* 15 (3): 333-352.
- . (2016b). 'Rejoinder to Estlund.' Unpublished manuscript, version 1.2. URL = <https://philpapers.org/archive/WIERTE-3.pdf> (accessed on March 29, 2022).
- Wolf, S. (1988). 'Sanity and the Metaphysics of Responsibility', in F. Schoeman (ed.). *Responsibility, Character, and the Emotions* (Cambridge: Cambridge University Press): 46-62.