

In Search of Social Justice: the Capabilities

Approach v. Resourcist Theories

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Abstract

In this thesis I defend the distinctive character of the Capabilities Approach as a theory of social justice. In order to justify my claim I firstly analyze John Rawls's theory of justice as fairness and argue that it does not offer plausible solutions to some key concerns the Capabilities Approach highlights. Particularly, I argue that Rawls unjustifiably excludes disabled people from the original position; moreover, I argue that his theory as presented in *A Theory of Justice* does not have the methodology to extend the principles of justice so as to include the interests and needs of disabled citizens. Secondly, I analyze Thomas Pogge's defence of Rawlsian resourcism and argue that his counter-arguments rest on a deep misunderstanding of the Capabilities Approach and of its underlying motivations. Finally, I argue *contra* Ronald Dworkin that the Capabilities Approach is distinct from his resource egalitarianism. I argue that Dworkin's theory fails to capture fully the strength of socially created inequalities; this, in turn, represents a significant distinction between his theory on the one hand and the Capabilities Approach on the other. Moreover, by analyzing Martha Nussbaum's version of the approach I explicate a further difference between these two theories. I conclude that the Capabilities Approach is, in fact, a self-standing theory of social justice, although there are several major concerns that capabilities theorists need to address in order to show the superiority of their theory over resourcists views.

Acknowledgments

My interest in political philosophy, especially in theories of social justice, can be mirrored by the outstanding historical, political, and economic turmoil in Serbia's numerous episodes of quixotic fresh starts. Also, bitter and extremely lively personal experiences with the many faces of disability veered me to explore those philosophical theories that at least try to accommodate many puzzlements and discontents I found myself having with the reigning lines of thinking. The Capabilities Approach promised to provide some of the answers I was looking for.

Obviously, I am grateful to my supervisor, Zoltan Miklosi, first for agreeing to supervise me on this topic, and second for his guidance, helpful comments as well as suggestions. I am also thankful to Andres Moles whose splendid course inspired some of my arguments in this thesis. I owe special gratitude to Joe Bien, my Professor at the University of Missouri, whose kind words of encouragement and friendship have been indispensable.

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The real wealth of a nation is its people. And the purpose of development is to create an enabling environment for people to enjoy long, healthy, and creative lives. This simple but powerful truth is too often forgotten in the pursuit of material and financial wealth.

Mahbub ul Haq

By Way of Introduction: Probing Our Intuitions

New York City, USA, 1996. Jamie Bérubé like many children his age loves listening to music and making clever jokes. What is unusual about Jamie is the fact that he was born with Down syndrome. As his father, literary critic Michael Bérubé, describes his life, Jamie has been cared for since his birth by both his parents, his brother, his therapists and numerous doctors. A speech therapist is helping him to develop the muscles of his tongue, while another is trying to stretch his neck muscles so that his head could be “at the right place.” Equally important, a trained educator is stimulating his intellectual curiosity by preparing the curricula so as to suit Jamie’s needs and abilities. But what is of utmost significance is that the people in Jamie’s environment work on creating a world where he is not seen as a “stupid child” or the child with Down syndrome. After all, he is Jamie.¹

Oxford, UK, 1998. Judging by her literary style and rather flamboyant lifestyle, Irish-born British novelist and philosopher Iris Murdoch, was a forceful woman and thinker. Her splendid novels marked an important part of the twentieth century; all of them explore, with an implicit philosophical footing, various areas of human life that range from the biblical battle between good and evil, sexual relations and morality to the unexplored power of the unconsciousness. As she grew older, Iris suffered from Alzheimer’s disease, leaving her husband, John Bayley, to look after her. Living with such a disease that can strike everyone, Bayley describes in his memoirs, is often humiliating for both the patient and the caregiver.² Not being able to perform daily activities, and not being able to orient oneself go against what is intuitive in our notion of human dignity. Furthermore, having to

¹ For the description of Jamie and his condition cf.: Bérubé, M. (1996). *Life As We Know It: A Father, a Family, and an Exceptional Child*. New York: Pantheon.

² Cf.: Bayley, J. (1998). *Iris: A Memoir of Iris Murdoch*. London: Gerald Duckworth & Co. Ltd.

care for loved ones, who we remember in their prime, is frustrating and leaves us with a sense of hopelessness.

New York City, USA, 2010. Tyler Clementi was a new undergraduate student at Rutgers University. Little did he know that his new roommate would use a web-camera to secretly broadcast a video of him kissing another man. A few days later, Tyler committed suicide by jumping of the George Washington Bridge.³ This is not, unfortunately, an isolated story of gays committing suicide after being harassed and humiliated.

Belgrade, Serbia, 2010. During the first “successful” Pride parade in Serbia’s history, more than five thousand police officers protected less than a thousand gay, lesbian, bisexual and transgender citizens as well as LGBT activists. Around six thousand anti-gay rioters demolished Belgrade’s downtown area, while around one hundred people, mainly police officers and participants of the parade, were injured. The only success of the parade was that no one had been killed.

Disabled people and people of “abnormal” sexual orientations are our fellow citizens. They too can do quite well in terms of wealth and income alone, and yet do badly in other important areas of life. The different needs of disabled people are usually unrecognized or considered costly, while gays and lesbians, in many parts of the world, cannot appear in public without being stigmatized, nor do they have the equal right to free speech and expression; moreover, their equal humanity is not being recognized. (Given the opposition to gay marriage even in today’s liberal democracies, LGBT population can still be viewed as being in a similar position.)

Theories of social justice are meant to be responsive to the real world and to its utmost problems; they must exhibit the capacity for change in their formulations and even

³ Cf.: Parker, I. (2012). “The Story of a Suicide.” *The New Yorker*.
http://www.newyorker.com/reporting/2012/02/06/120206fa_fact_parker?currentPage=all (May 25, 2013).

in their methodologies in response to a new problem or to an old one that has been shamefully ignored. These are not mere issues in academic philosophy.

On the other hand, theories of social justice are meant to be abstract. They are supposed to have the theoretical power to go beyond the political controversies of their time, even if they have roots in such controversies. Political justification requires abstractness too, for we cannot justify a political theory unless it can be shown to be stable over time, by receiving support from citizens.

The failure to adequately account for the needs of fellow citizens with disabilities is, I believe, a serious flaw of any theory of justice. A plausible theory of justice should, I think, be able to recognize the equal human worth and claims of justice of people with impairments, and to acknowledge the work of caregivers. It also requires recognizing the varieties of disabilities as well as the dependency “normal” people experience. These problems should not be postponed to a later stage, as Rawls suggests, for they raise alarming issues regarding equality. Similarly, the failure to adequately remedy pervasive socially created injustices threatens the general plausibility of a theory of justice.

These cases of injustices give us, I think, at least a *prima facie* argument to consider the Capabilities Approach⁴ as a viable competitor to the more distinguished resourcist theories of justice given that such cases inspire the pioneers of the approach – Amartya Sen and Martha C. Nussbaum. But, in order to show its superiority over other competing theories of justice, the Capabilities Approach must firstly demonstrate its distinctive character, given that it has been powerfully challenged. In this thesis I particularly focus on two accounts – Rawlsian resourcism and Dworkin’s resource

⁴ The Capabilities Approach was pioneered by economist Amartya Sen, and further developed by philosopher Martha C. Nussbaum. In literature, the approach is referred to as either the capabilities approach (in plural) or as the capability approach (in singular). Commonly, the singular use is associated with Sen, while the plural usage is characteristic of Nussbaum’s writing. I prefer to use the plural version because I do not think there is one focal human capability.

egalitarianism – because I believe they are among the strongest and most developed theories of social distributive justice we have.

On the one hand, Thomas Pogge, as Rawls’s prominent defender, probes whether the differences between the Capabilities Approach and his “sophisticated Rawlsian resourcism” are all that ubiquitous. According to him, Rawls’s theory has the necessary resources to answer most, if not all, of the puzzles the capabilities theorist has set forth (Pogge 2002).

Similarly, Ronald Dworkin questions whether Sen’s approach provides a genuine alternative to his equality of resources. He argues that the Capabilities Approach is ambiguous; depending on how this ambiguity is solved, the approach either collapses into equality of welfare, or into equality of resources (Dworkin 2000).

The aim of this thesis is to argue that the Capabilities Approach, although nascent, is a self-standing theory of social justice. Amartya Sen has produced powerful objections to the reigning currencies of justice – resources and welfare, while Martha Nussbaum has furthered his ideas into a partial sufficientarian theory of social justice. Peculiarly, neither one of them has, to the best of my knowledge, provided a systematic answer to the aforementioned criticisms. I think that the Capabilities Approach, nevertheless, provides original answers to several central philosophical queries and it has been enormously influential in drawing philosophers’ attention to previously neglected issues of global development and justice, especially justice for women and disabled citizens. What I contribute with this thesis is to respond to various doubts targeted against this burgeoning theory. Obviously, this a desideratum for all philosophical theories, especially for the Capabilities Approach given that it still has to jettison many concerns in order to show its superiority over other, more developed, theories of justice (this is where the partiality part becomes focal). My purpose is not to vindicate the preeminence of the Capabilities

Approach; rather, it is more modest: I will argue that the objections against the Capabilities Approach developed by Pogge and Dworkin are unsatisfactory.

I will do so in three steps. In the first chapter, I examine the objections raised against Rawls's theory of justice as fairness and show that his distinguished theory faces some daunting concerns that cannot be worked out within his writings. In the second chapter, I analyze Pogge's counter-arguments against the Capabilities Approach and I argue that they essentially rest on a misunderstanding of the approach and of its key motivations. In the third chapter, I analyze Dworkin's more attractive use of the notion of resources and his ingenious proposal of the hypothetical insurance market; both aspects of Dworkin's theory promise to effectively account for the needs and interests of disabled people. I argue, however, that Dworkin's interesting remedy is unable to fully accommodate our intuitions about a just society; in particular I argue that Dworkin does not provide a plausible answer to socially created inequalities. Moreover, by providing an internal critique of Sen and by focusing on Nussbaum's view of the approach I stress another difference between these two accounts, which leads me to conclude that the Capabilities Approach is, in fact, a distinctive theory of justice.

I conclude by emphasizing several major challenges the Capabilities Approach must address in order to prove its superiority over other theories of justice. This task, however, must await further inquiry, for it falls beyond the scope of this thesis.

I. The Capabilities Approach as a Reaction to Justice as Fairness

1.1. Introduction

John Rawls's dual allegiance in *A Theory of Justice* – to the presumptions of the classical social contract tradition⁵ and to Kant's moral philosophy – is a source of thought-provocation and of profound tension. Rawls's aim is to produce acceptable political principles to everyone – to everyone within one condensed society that is – from a sparse set of assumptions as well as from a commitment to correct procedures that generate correct outcomes. Regardless of its strengths, Rawls's theory of justice as fairness faces numerous obstacles, some of which severely undermine his whole endeavor.

As Nussbaum persuasively argues, Rawls's theory faces four distinct, albeit not independent questions: (i) are Humean circumstances of justice indeed the only settings in which queries of justice occur?; (ii) are the reliance on a Kantian notion of personhood and the characterization of persons as “free, equal and independent” plausible?; (iii) does imagining individuals as upholding the contract of social cooperation only for mutual advantage eschew a richer and more plausible description of a just society and of people's motivations?; and (iv) are income and wealth that play a central role in indexing relative social positions an appropriate way to measure social justice? (Nussbaum 2006: 9–35). These four questions largely stem, I believe, from Rawls's presumptions and self-imposed theoretical limitations. I shall not address all four worries, however; instead, in this chapter

⁵ Rawls's dedication to the social contract tradition is evident from the very beginning of *A Theory of Justice*. He writes: “My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant” (Rawls 1971: 11).

I will focus on the problem of primary goods, given that it is the most significant for my thesis. Before continuing, I shall stress some of the most important features of the Capabilities Approach in order to better understand the debate between Rawls on the one hand, and Sen and Nussbaum on the other.

1.2. Main Tenets of the Capabilities Approach

The Capabilities Approach is not a unitary view; it was pioneered by Sen primarily as a constructive critique of Rawls's theory and as a vigorous critique of welfare economics. It was then philosophically developed by Nussbaum who uses Sen's ideas, coupled with Aristotelian, Marxian and Rawlsian insights, to set forth a partial sufficientarian theory of social justice. While there are disparities between Sen's and Nussbaum's versions of the approach, I think they should be viewed as complementary. If a critique of one version is sufficiently persuasive, then I think we should inquire into the other view of the approach, for some concerns can plausibly be resolved without abandoning the capabilities paradigm. In this section I will only discuss some of the main characteristics of the Capabilities Approach; further elaborations of the approach will be examined at appropriate places in my critiques of both Pogge and Dworkin.

Contrary to Rawls, the Capabilities Approach begins with just outcomes and then seeks political procedures that will achieve these results. The just outcome capabilities theorists have in mind is equality of capabilities. So, we first need to understand the crucial distinction between capabilities and functionings that the approach utilizes. Functionings are the "beings and doings" of a person, whereas a person's capabilities are "the various combinations of functionings that a person can achieve. Capability is thus a set of vectors of functionings, reflecting the person's freedom to lead one type of life or another" (Sen,

1992). Sen's classical example involving nourishment helps to clarify this distinction. Consider two people who do not have an adequate intake of food to enable the functioning of being well-nourished. The first person is a victim of famine in Ethiopia, while the second individual is on a hunger strike due to some political protest for instance. Although both individuals lack the function of being well-nourished, the freedom they had to avoid being malnourished is of key importance for the Capabilities Approach. Even though both persons achieve the same level of functioning, the protester has the capability to achieve the functioning of being well-nourished, i.e. she chose to be malnourished; the person living in Ethiopia, however, lacks the capability to be well-nourished due to the, unfortunately frequent, times of famine in her country.

While capabilities theorists, furthermore, do not deny the importance of resources, such as wealth and income, to quality of life as well as to achieving a humanely dignified life, they think that resources should not be focal. As Sen stresses persistently, people differ in their abilities to convert resources either into valuable opportunities (capabilities) or into valuable "being and doings" (functionings) (Sen 1992). The hallmark of the Capabilities Approach, hence, is its sensitivity to variations in the abilities of individuals to convert resources into functionings which may be affected by internal variations, environmental features, and prevailing social norms.⁶

While Sen insists on the intrinsic value of capabilities, understood as substantive freedoms, Nussbaum grounds her version of the approach in the intuitive notion of human dignity. Her touchstone is closely related to Rawls's idea of the social bases of self-respect and non-humiliation. The idea of human dignity, moreover, is spelled out in terms of equality: it is equal human dignity that demands recognition and protection (Nussbaum 2006: 74–75, 291–295).

⁶ In his *Inequality Reexamined*, Sen identified these three factors that are inevitable for accessing (in)equality. Cf.: Sen, A. (1992). *Inequality Reexamined*. New York and Cambridge, MA: Russell Sage and Harvard University Press: 19–21.

Sen and Nussbaum, however, part ways on the question whether the approach should endorse a list of capabilities. Sen has persistently refused to do so, while Nussbaum proposed an “open-ended and humble” list of central human capabilities.⁷ Nussbaum’s treatment of this issue is tied to her dedication to formulate a partial theory of social justice, in which capabilities would serve as fundamental political entitlements of every citizen, and in which the central human capabilities she identifies can, over time, become the subject of overlapping consensus. I shall later discuss in more detail the implications of Nussbaum’s list to my central claim.

1.3. The Inflexibility of Primary Goods as the Currency of Justice

According to Rawls (1971), since cooperation among the contracting parties is triggered by the idea of mutual advantage, income and wealth play a central role in indexing relative social positions, i.e. they are focal in applying the difference principle. Although Rawls mentions the social basis of self-respect as one of the primary goods, he believes it is secured if the first principle of justice and the principle of fair equality of opportunity are satisfied. Nonetheless, it is quite odd that Rawls disregards self-respect when it comes to measuring who is the least well-off person in a society, given that self-respect is “the most important primary good” (Rawls 1971: 440). After all, as we can see from the narratives of many gays, lesbians and transgender people, they are denied their self-respect, ranking them thus quite low in this regard, although they might do quite well in terms of wealth and income alone.

That income and wealth are inadequate currencies of measuring advantage one enjoys, as Rawls is insisting, was discussed with great lucidity by Aristotle in his

⁷ Cf. Appendix for Nussbaum’s list.

Nicomachean Ethics. “Wealth is evidently not the good we are seeking;” Aristotle writes, “for it is merely useful and for the sake of something else” (*NE* 1.5. 1096a). Indeed, wealth is a poor indicator of a life one can lead or of a life one is capable of achieving; moreover, it is insufficient for effacing specific socially infused injustices.

Sen prominently objected to justice as fairness on the grounds that it cannot plausibly deal with severely disabled people. The difference principle, Sen argues, would not redistribute anything to disabled people based on their disability. His central objection is that Rawls’s theory fails to acknowledge personal differences between individuals in converting wealth and income into “what each person is able to do and to be” (Sen 1980, 1982, 1985, 1992, 1999). Primary goods are, thus, inflexible insofar as they do not treat *all persons* as equals. Sen argues, *contra* Rawls, that we should direct considerations of social justice to people’s capabilities.

Therefore, while an advocate of the Capabilities Approach will surely not deny that resources are necessary, she will reject that they are sufficient to convert capabilities into valuable functionings. In order to be well-nourished, for instance, a person needs both access to external goods (resources) and to internal “goods” such as a proper digestive system or a certain psychological make-up (freedom from fear of confronting an abusive husband, for example). Why are internal capabilities important? It is quite conceivable that a society does well in providing its people in such a manner that they are capable of being well-nourished, but then deny them this opportunity through repression or discrimination.⁸

⁸ This understanding does not commit the capabilities theorist to claim that having a capability requires turning it into an actual functioning. Indeed, as an adherent of Rawls’s political liberalism, Nussbaum argues that in most cases, it is capability that should be promoted and not functioning. Consequently, a person who has capability X can chose not to exercise it; this, in turn, shows reasonable respect for the person’s comprehensive doctrine of the good life (Nussbaum 2006: 171–173). Nonetheless, it should be noted that in certain areas of human life the question whether capabilities or functionings should be promoted becomes controversial. While it would be, I think, illiberal, and perhaps dictatorial, to dragoon all citizens into functioning in terms of political participation, religious functioning, sexual satisfaction and child-rearing for instance, in other areas the insistence on capabilities seems highly problematic. I agree with Nussbaum that in areas of self-respect and human dignity the actual functioning should be the appropriate aim. After all, one of the aims of a theory of social justice is to construct political principles that show equal respect to all

Indeed, Rawls recognized the force of this objection; after all, his theory is constructed for people whose capacities fall within the normal range, and who are “fully cooperating members of a society over a complete life” (Rawls 2001: 170; 2003: 20–21). In the following section, I examine how Rawls believed this issue can be resolved.

1.4. Deferring the Problem of Disabilities

Rawls’s insistence on the notion of primary goods, gauged in terms of wealth and income alone, disables Rawlsian theorists to fully appreciate the view that primary goods do not in fact tell us whether a society is just or not. Not only are disabled people excluded once again, but so are all people who fall within the “normal” range of abilities, albeit in a different understanding: as we grow old and face numerous illnesses, we stop being productive and become dependent; women who are expected to be full time wives, mothers, and caretakers do not contribute to society in familiar economic terms; and people with “abnormal” sexual orientations who are shunned by many societies are unable to achieve equal dignity. How is this problem to be answered?

Rawls thinks that inclusion of disabled people may be postponed to a later, legislative stage, after basic principles are chosen and after political institutions are designed. “I put aside for the time being”, Rawls writes, “these temporary disabilities and also permanent disabilities or mental disorders so severe as to prevent people from being cooperating members of society in the usual sense” (Rawls 2003: 20). So, Rawls’s strategy is to argue that once we determine what principles of justice are to be applied to “normal”

citizens; having a choice in the matter of self-respect and dignity would, hence, seem quite bizarre. Similarly, for children, functioning might be the goal in many areas of human life. Such mandatory functioning for children would be justified on the grounds of both the child’s cognitive immaturity and of the importance in enabling adult capabilities.

circumstances, then we can discuss how to extend those principles to cover unusual cases, such as disabilities. But, I think we have to distinguish between two distinctive questions. First, is deferring the question of disability an adequate response at all? Second, if it is, does Rawls then have the methodology to extend his theory so as to include physically and mentally disabled people?

With regards to the first question, I think the answer is negative for several reasons. First, when designing principles of justice the questions *by whom they are designed* and *for whom they are being designed* should match. Otherwise we would be facing the challenge of disrespecting an individual's equal human dignity as well as her practical reasoning. If this intuition is recognized, then by postponing the question of disabilities Rawls is deliberately discriminating against almost 700 million people worldwide.⁹ One might object that disabled people are still a minority, so not including them would not be a pressing theoretical concern. I think, however, that if their voices are not being heard, then this is a serious defect of a theory of justice since it raises alarming concerns about equality.¹⁰

Second, although Rawls does not belittle the problem of disability but rather acknowledges it as a pressing "practical" issue, his strategy of postponing this concern does not have innocent implications. Bracketing the claims of disabled people for a later stage is deeply problematic since it would not treat the problem as one of *basic* justice. I shall argue for this claim by making three relevant points.

For one thing, if the interests of disabled people can be plausibly taken into account derivatively, or at a later stage, as Rawls suggests, we naturally ask why this postponement is necessary at all. Even if postponing this issue is not in and of itself unequal and unjust

⁹ According to UN statistics, around 10 percent of the world population suffers from some kind of disability. This number, I think it is safe to assume, is even higher given that in some more traditional societies disability is still stigmatized and shameful. Cf.: UN Enable. *Factsheet on Persons with Disabilities*. <http://www.un.org/disabilities/default.asp?id=18> (April 30, 2013).

¹⁰ After all, disability and dependency come in many forms and at various times during one's life.

treatment (for it is conceivable that the contracting parties agree on such principles that would take into account the claims of disabled people), it is still problematic for it affects the fully equal treatment of all citizens.

Furthermore, if we start building a theory of justice on two highly intuitive ideas – on the notion of human dignity and on the idea that persons can have different lives that are worthy of respect – then we can think of disabled people as primary subjects of justice and evaluate their claims as basic ones and not as derivative.

Lastly, some people with impairments are fully capable of participating in political deliberation if their different needs are seen as primary and worthy of developing; keeping the assumption of rough equality of powers, thus, deliberately omits such groups from the process of discovering basic political principles. Of course, people with severe mental disabilities cannot be included directly in the process, no matter how generously we judge their abilities. The failure to include them, however, does not seem like a case of injustice, so long as their interests are taken into account via some other means (via guardians for instance).

A different line of argument would be to accept Rawls's claim about postponement, and investigate whether he has the methodology to offer a plausible solution to this worry. Eva Kittay tries to extend and adjust justice as fairness so as to include the claims of justice of dependent persons.¹¹ Her focal proposal is to include the need for care to the Rawlsian list of primary goods, which would situate care as one of the basic needs of citizens (Kittay 1999: 102–103).

Although quite a reasonable proposal, it is questionable whether it is possible to simply add care to Rawls's list. First, the list of primary goods is a list concocted by persons who possess the two moral powers, with the aim of reflecting the needs of those

¹¹ Kittay is thus not focused on disability *per se*, but on people who depend on others for caretaking as well as on people who perform caregiving.

citizens; this already leaves out the different needs of disabled persons. This limitation stems from Rawls's Kantian view of personhood; modifying the political conception of a person, thus, would go against one of the key presumptions of Rawls's theory. Second, it is doubtful whether care can be plausibly included as a primary good, since Rawls derives the list from his commitment to the idea of cooperation for mutual advantage and to the idea of rough equality.¹² Rawls's contracting parties in the original position, moreover, are rational and prudential seekers of their respective conceptions of the good, who are not motivated by altruistic sentiments to benefit each other.¹³ Kittay could, of course, demand an amendment of these assumptions as well. Yet, these would not be minor revisions; those assumptions are, after all, at the heart of Rawls's theory.

Nussbaum argues, contrary to Kittay, that including disabled people in the original position would bring havoc to Rawls's doctrine of primary goods, for he would lose a straightforward and simple way of determining who is the worst-off in society (Nussbaum 2006: 113). Indeed, Rawls ascribes much importance to the simplicity of the difference principle and its ability to linearly rank persons in a given society. Introducing additional measures would jeopardize the argument for the difference principle.

Nussbaum also insists that an inalienable part of Rawls's theory is the idea of cooperation for mutual advantage. If we include people with disabilities, Nussbaum argues, we might accommodate the deaf, blind, and wheelchair users for example, if we redesign public and work space in such a manner that could effectively create conditions in which these groups can be economically productive in the familiar sense. This reorganization,

¹² Rawls elaborates his idea of social cooperation for mutual advantage in the following way: "social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts" (Rawls 1971: 4).

¹³ One might object to this interpretation of Rawls by stressing the work done by the veil of ignorance. Namely, one might point out that Rawls's contracting parties are, after all, placed behind of veil of ignorance while deciding on the principle of justice; this, in turn, guarantees a significant degree of impartiality. However, if this is the case, then Rawls would need a richer political psychology and a more complex account of why people live together and of why they cooperate. For, in my view, people sometimes engage in social cooperation because they expect to get something out of cooperation. At other times, people cooperate because of a shared love for justice, or because of benevolent reasons and/or compassion.

nevertheless, would still not cover all cases of physical impediments; some people live with such severe physical disabilities that they interfere with major life functionings (Nussbaum 2006: 117–118). Moreover, I think that if we read Rawls as a social contract theorist, then the restructuring would not be economically prudent – its costs outweigh the potential contribution since people with unusual impairments are a minority.¹⁴ On the other hand, Rawls employs a broad understanding of social cooperation, giving questions of justice priority over questions of efficiency. This reveals a deep tension in Rawls’s thinking. Nevertheless, if we give precedence to the social contract tradition aspect of Rawls’s theory, then we must limit the understanding of cooperation. So, the upshot is that the architectonic features of Rawls’s hybrid theory – the circumstances of justice, rough equality of powers, independence, and cooperation for mutual advantage – persistently shape who is included in the contract and what each party is trying to accomplish by cooperating.¹⁵ Atypically disabled people, therefore, cannot be fully covered by Rawls’s theory.

1.5. Conclusion

I conclude that there are powerful reasons to view Rawls’s theory of justice as unsatisfactory. He offers no theoretical justification for either omitting disabilities from the original position, nor for bracketing them for a later stage and keeping them beyond the boundaries of our theories of social justice. Moreover, Rawls only tackles the problem of disabilities, acutely ignoring other types of injustices, particularly those that are

¹⁴ Rearrangements that would stop discrimination based on sex, race or religion, however, are economically sound because they do not require such expenses and they would include in the scheme a large group of productive workers who might otherwise be neglected.

¹⁵ In *Political Liberalism*, Rawls writes that the issue of disability as well as the questions of what is owed to non-human animals and to the rest of nature are “problems on which justice as fairness may fail” (Rawls 2003: 21).

consequences of social milieus. The Capabilities Approach, contrary to this, is sensitive to various “abnormalities” and has the methodology to account for our intuitions about disabled people and other disadvantaged groups. Rawlsians, however, have not fallen short of an answer. In the following chapter I shall examine Pogge’s counter-arguments against the Capabilities Approach that challenge its uniqueness.

II. Flawed Foundations: A Critique of Pogge

2.1. Introduction

Thomas Pogge criticizes the Capabilities Approach on the grounds that “neither Sen nor Nussbaum has so far shown that the capability approach can produce a public criterion of social justice that would be a viable competitor to the more prominent resourcist views” (Pogge 2002a: 167, 2010: 17).¹⁶ In order to reach his conclusion, Pogge confines the debate between the Capabilities Approach and the “sophisticated Rawlsian resourcism”¹⁷ (to borrow his own phrasing) and asks a narrower, but focal question: “should alternative feasible institutional schemes be assessed in terms of their participants’ access to valuable resources or in terms of their participants’ capabilities, that is, access to valuable functionings?” (Pogge 2002a: 177–178). He produces several arguments that purport to show that the Capabilities Approach is not a self-standing theory of social justice, although it might be a useful supplement to his refined Rawlsian resourcist theory.

Pogge’s chief argument against the Capabilities Approach is that both Sen and Nussbaum overestimate the difference between their own approach and Rawlsian resourcism; this disparity boils down to the question whether natural human diversity should be compensated. In order to refute this claim I will first reconstruct Pogge’s arguments that lie in the background and argue that they are unsatisfactory. I will then proceed to probe Pogge’s mordant view of the issue of human heterogeneity and show that it too is deeply flawed. I will do so by analysing his argument as twofold.

¹⁶ Pogge’s 2010 article that appeared in H. Brighouse & I. Robeyns (eds.), *Measuring Justice: Primary Goods and Capabilities*. New York: Cambridge University Press, represents a shortened version of his original text “Can the Capability Approach be Justified” published in 2002. Since the original article is more detailed I will mainly refer to this version in my discussion of Pogge’s critique.

¹⁷ When I refer to “Rawlsian resourcism” I refer to Pogge’s amendments of Rawls’s theory.

First, I will address the question whether Pogge's polished version of Rawls's theory can accommodate human heterogeneity as effectively as the Capabilities Approach. One inadequacy must be noted at this point. Namely, when considering how resourcism can plausibly contribute to the concern about vast human differences, Pogge maintains that Sen and Nussbaum are guilty of the so-called "straw-man" fallacy; put differently, they are not objecting to Rawlsian resourcism at its strongest form. In developing my argument, however, I shall address this predicament too. Furthermore, I will challenge Pogge's argument that the main source of disagreement between these two rival theories lies in the question of compensation for natural disadvantages. In particular, I will argue that the very notion of compensation is incompatible with Nussbaum's version of the Capabilities Approach as well as that there are powerful reasons not to include this concept within a theory of social justice.

2.2. Not Just Resource Distribution

One might get the impression that by portraying capabilities as mere means to fulfilling ends, Pogge believes that the Capabilities Approach, much like his resourcist view, is a plea for a modification of an institutional order that would distribute resources. Nevertheless, he does not confine himself to thinking about the Capabilities Approach in such a simplified manner.

Quite the contrary, Pogge recognizes one of the quintessential objections Sen and Nussbaum raise against resourcist theories – they are silent when considering the fact that individuals need different levels of resources if they are to reach the same levels of functionings. Undeniably, people have diverse abilities to convert resources into actual functionings. Some of these differences are forthrightly physical: a growing child needs

more protein than an adult to achieve the same level of health, and a pregnant woman needs more nutrients than a non-pregnant woman. Pregnant and lactating women, Sen justly argued, need more resources than other people (Sen 1992: 113). Undoubtedly, they need more nutrients than non-pregnant women in order to attain the same level of health and in order to support their growing fetuses. Pogge might argue that appealing to capabilities is unnecessary since the resourcist will view the pregnant woman not as a single human being; rather, she could conceptualize her as an adult plus her child. Therefore, pregnant women would receive their fair share of resources after all (presumably both in terms of food and health care). Such a reply, nonetheless, would be unsatisfactory for several reasons. First, pregnant and lactating women's needs cannot be rightfully reduced as the needs of an adult plus a child. The effects of pregnancy go beyond the mere need for extra nutrients and specialized health care. Pregnant women commonly suffer from fatigue and nausea; they might be, furthermore, unable to continue with work either inside or outside of the home, losing thus some of their income. After birth, similarly, women may suffer from severe depression, making it difficult, thus, to recover their emotional and professional lives. So, in order to fully account for such cases, we should be looking at pregnant women as a special case and not as the amalgam of an adult plus a needy child. Showering pregnant women with additional resources, hence, will not suffice to ensure their fair treatment since after all, they have distinctive (although utterly human) needs.

Cognitive differences in converting resources into functionings are, perhaps, most obvious: they involve unequal levels of intelligence and/or talents even between "normal" people; this becomes even more apparent once we consider persons who do not fall within the "normal" range of mental abilities, but who have certain mental impairments. (These

can range from mental illnesses such as severe depression, bipolar disorder and schizophrenia, to cognitive impediments such as autism and Asperger's syndrome.)

Other disparities are social: in environments where women have been traditionally neglected from the educational sphere, it will take more resources to produce female literacy than male literacy. Or to paraphrase Sen's now famous example: a person in a wheelchair will require more resources to attain the same level of mobility than someone who does not have any kind of physical impairment (Sen 1980).¹⁸

Finally, Sen reminds us of environmental factors: depending on climate, geological structure and other natural settings, the capability to be mobile will certainly differ among people who live in dissimilar environments (Sen 1992).

Although he accepts the claim about personal differences in converting resources into functionings, Pogge nevertheless entrusts the Capabilities Approach with a spurious distributional scheme. In his view, the capabilities theorist, like the resourcist, is only concerned with modifying the institutional scheme of resource distribution so as to make it more attentive to personal traits. The solution that "institutions should provide person P with more resources because of personal characteristic C", however, is not the only response available to the Capabilities Approach as it is for resourcism.

Consider one real-life and one fictional story, both of which show the myriad of hurdles women (especially girls) have to surmount. The Capabilities Approach, unlike Rawlsian resourcism, can deal with the barriers many women endure in order to achieve some valuable functionings; this is particularly evident in sexist societies in which, regardless of formal access to legal rights, women are viewed – by others as well as by themselves – as unworthy of equal human dignity. The Capabilities Approach has the

¹⁸ Although Sen uses this example as an illustration for physical inequality, I think we need not treat it as such. Physically disabled people cannot attain the same level of mobility with the same resources as a person with "normal" physical capabilities not only because they differ in their physical abilities, but also because of social reasons – a person in a wheelchair, for example, cannot go to a park on the other side of town using public transportation since there are neither ramps nor buses that can accommodate disabled passengers.

methodology to go beyond the institutional reasons for such a societal milieu and to offer a plausible exegesis that includes cultural practices which belittle one's sense of self-worth, low bargaining power in the private sphere which makes a woman more vulnerable to domestic violence, and educational policies that frustrate young girls from attending schools. Nussbaum shares her story about Vasanti, an Indian woman who felt trapped in an abusive marriage, with no money of her own, no property, and no children to help her with housework.¹⁹ Nussbaum writes:

Like many women, she seems to have thought that abuse was painful and bad, but still a part of women's lot in life, just some thing women have to put up with as part of being women dependent on men, and entailed by having left her own family to move into her husband's home. The idea that it was a violation of rights, of law, of justice, and that she herself has rights that are being violated by her husband's conduct – these ideas she did not have at the time, and many women all over the world don't have them now (Nussbaum 2000: 112–113).

So, Vasanti's bodily integrity and health were constantly in danger, her dignity was violated, and her exit options were shrinking.

In such societies, unfortunately, even women with access to resources and who, unlike Vasanti, can be considered relatively wealthy may lack the capability to be well-nourished or to retain their bodily integrity. As Khaled Hosseini bitterly describes the tumultuous lives of Mariam and Laila in his *A Thousand Splendid Suns*, women who live a fairly affluent family are susceptible to rigid sexist cultural mores that endanger their bodily integrity and bodily health – they too are vulnerable to physical and sexual abuse, forced pregnancy and even to denial of food. Moreover, human preferences are highly malleable; persons living in such environments are likely to adapt to expectations and possibilities available. People like Vasanti or like Mariam and Laila (though fictional characters) often will learn not to want those things that conventions and their political

¹⁹ Arguably, a childless woman is more prone to be a victim of domestic violence.

realities have placed outside their reach. Sen and Nussbaum have persuasively argued for the existence of this phenomenon with regards to women's preferences; a phenomenon Jon Elster called *adaptive preferences*. The Capabilities Approach, therefore, rightly stresses that women in situations similar to the ones aforementioned, require more than a larger share of institutional resources; after all, how likely is that the resources will end up with them if they grew up with the belief that they should give their own resources to their husbands?

Properly understood, the Capabilities Approach focuses on expanding an individual's capabilities set; this often requires individuals to be agents and not mere passive recipients of resources. While inescapably married to resources and institutions (in order to become educated and employed), agency goes beyond the scope of resources and rights to remove cultural impediments. The idea of rights is itself problematic since it is understood in many different ways. For instance, people disagree on the basis of rights claims: is it rationality, sentience, or simply being human? They also disagree about whether rights are pre-political entitlements or artefacts of institutions and laws. The Capabilities Approach, contrary to this, give clear guidance on what capabilities represent: the basis for capabilities claims is a person's existence as a human being; furthermore, the approach advances the idea that capabilities are pre-political entitlements of each and every individual.

Even when we combine resources and rights, moreover, a woman can have access to divorce or to a system that prohibits spousal abuse, but this combination of resources and rights does not benefit a woman who sees herself as unworthy. Similarly, women in many nations today have the formal right of political participation; if they are threatened with violence when they desire to exercise this right, however, then they cannot be seen as proper agents. So, what is needed in order to surmount these perplexities, in Nussbaum's

terminology, is one of her central capabilities: *practical reason*. This normative notion accentuates the critical activity of reason in forming and pursuing a conception of the good.²⁰ It also entail that it is troublesome if a person does not see herself in a specific way, as a bearer of rights and as a citizen who is entitled to equal human dignity. A woman who has the capability of practical reasoning, thus, is a woman who challenges cultural norms, either those about food distribution or about violations of bodily integrity (no matter how accepted or valued these norms are). Such empowerment is one of the tenets of the Capabilities Approach; this aspect, however, Pogge fails to consider when he erroneously characterizes the approach as pleading for resource distribution. Such neglect is quite odd, given that he explicitly refers to “the very great contributions Sen and Nussbaum have made towards spreading awareness of the economic injustices inflicted specifically upon women and girls” (Pogge 2002a: 183). Yet, he does not see the nexus between the work done on gender injustices on the one hand and the underlying concerns of the Capabilities Approach on the other.

What is even more startling, Pogge accuses the Capabilities Approach of weakening feminist worries by suggesting that women’s “suffering... is due to their being insufficiently compensated for their inferior natural endowments” (Pogge 2002a: 183). He then goes on to suggest that if institutions are created as just so that both men and women receive equal treatment, then factors beyond the institutional frameworks that trigger these injustices in the first place will disperse on their own (*Ibid.*). This claim is not surprising given that Pogge understands human rights as “negative liberties” (Pogge 2002b). Such an understanding of fundamental entitlements, in turn, implies that a person’s rights are secured if and only if no harm is inflicted upon her; in other words, rights are secured if the

²⁰ Cf.: Nussbaum’s list in the Appendix for an elaboration of the capability of practical reason.

state refrains from inflicting harm and the government does not have any further affirmative tasks.

Clearly, however, official recognition of women's equal human worth on its own does not alter deeply rooted cultural attitudes. The Capabilities Approach, thus, understands securing of rights as an affirmative task of governments. It stresses that securing a right requires more than mere absence of negative state action; in that respect, the approach is closely linked to the interpretation of rights as found in the Indian Constitution (Nussbaum 2006: 284–291). The Indian Constitution, to relate back to Vasanti, typically specifies rights affirmatively: for example, “all citizens shall have the right to freedom of speech and expression; to assemble peaceably and without arms; to form associations or unions; to move freely throughout the territory of India; to practice any profession; ...” (The Constitution of India, Art. 19) and “all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion” (*Ibid.*, Art. 25).²¹ Such locutions might be understood, and I think rightly, to imply that troubles inflicted by non-state actors may also be deemed as violations of constitutional rights. Additionally, the Indian Constitution is quite explicit that affirmative action programs to assist the lower castes and women are not simply compatible with constitutional assurances – they are, essentially, in their spirit. This approach, I believe, is critical for gender justice: the state needs to take action if traditionally marginalized groups are to achieve full equality. Whether or not a nation has a written constitution, it should understand human rights and entitlements in this way.

²¹ Like almost all world Constitutions, the Indian also prohibits “discrimination on grounds of religion, race, caste, sex or place of birth” (*Ibid.*, Art. 15).

2.3. *The Key Divergence: Compensation for Natural Heterogeneities, Equal Human Dignity*

Now we arrive at the discussion of natural diversity which Pogge deems to be “the real contrast” between the two theories. Bearing in mind that Pogge believes that there is a good deal of convergence between his refined resourcism and the Capabilities Approach, he claims that they agree on who should benefit from resource distribution, albeit they disagree on why they should receive the benefits. In light of this, Pogge is finally able to argue for his chief claim, namely that “[c]apability theorists assert, while resourcists deny, that a public criterion of social justice should take account of the individual rates at which persons with diverse physical and mental constitutions can convert resources into valuable functionings” (Pogge 2002a: 168). Although I showed that Pogge’s previous arguments are unsatisfactory, in this section I will accept them *arguendo*, and argue that even if we accept his “minor” arguments against the Capabilities Approach, his “major” objection is unwarranted in light of Nussbaum’s version of the approach.

In thinking about natural human diversity, Pogge inadequately caricatures the miscellany of human needs and abilities that are deemed relevant from the point of view of the Capabilities Approach and that either Sen or Nussbaum would endorse. In other words, he considers a vast set of both physical and mental differences that can be observed between humans. This view veers him to bizarrely claim that the Capabilities Approach requires “vertical ranking” of every physical and mental feature. (Pogge’s traits range from suffering and severe disabilities to hair color and having freckles.) Vertical ranking of all human characteristics, in turn, leads Pogge to assert that according to Sen and Nussbaum natural endowments of some persons “should be characterized as deficient and inferior, and those persons as naturally disfavored and worse endowed – not just in this or that

respect, but overall – not just in the eyes of this or that observer, but in the eyes of the shared public criterion of social justice” (Pogge 2002a: 206).

Pogge is mistaken, however, about three relevant points, or so I will argue. First, the Capabilities Approach does not require any kind of ranking of every personal trait; second, the approach does not require vertical ranking of all individuals in light of their diversity; and third, the capabilities theorist is not concerned with dictating what capabilities a community should value. While I argue for these points, I will at the same time answer the question of compensation.

2.3.1. Ranking of Every Trait, Dictating Capabilities

One of the central tenets of Nussbaum’s version of the Capabilities Approach, which I deem to be more philosophically developed than Sen’s, is a zealous commitment to Rawls’s idea of political liberalism; this shows reverence to each individual citizen’s human dignity as well as to her use of “practical reason” in conceiving and pursuing a conception of the good life. A major innovation, moreover, is Nussbaum’s list of ten central human capabilities which serves as the basis for fundamental political principles (that might be embodied in a nation’s constitution) and which constitute a threshold over which it is every nation’s duty to bring every citizen. Obviously, conceiving such a list is a treacherous task, which involves careful justification. Hence, in justifying her list of human capabilities, introduced for political purposes only, Nussbaum is relying heavily on Rawls’s notion of reflective equilibrium as a method for political justification.

How does Nussbaum argue for her list? Similarly to Rawls, I think her arguments are essentially Socratic in nature: she appeals to the interlocutor to consider what is implicit in the notion of human dignity and of life in accordance with it. Intuitively, if a

person is forced into leading a life that is disrespectful of her equal dignity not to be treated as a mere means, then we have reasons to object. The notion of life in accordance with human dignity, albeit vague, is one of the most fertile ideas in human history and jurisdiction; it is not surprising, therefore, that Nussbaum is taking this idea as her starting-point in justifying the list of central human capabilities in her *Frontiers of Justice*.

Firstly, although vagueness is generally considered a vice in philosophical analyses, in the case of the Capabilities Approach, I think, it proves to be one of its strengths. For Nussbaum's list of central human capabilities, although definite, is as she claims in several places, "open-ended" and subject to constant revision and improvement (either in terms of additions or deletions).

Secondly, enumerating capabilities in a rather abstract manner leaves sufficient room for citizens of different nations with diverse histories to decide on the exact form each capability should take. (I think this point is important since, for example, the capability Nussbaum calls political control over one's environment which involves the right of free speech (capability 10A) will be interpreted differently in France and Germany due to their distinctive histories and attitudes. Anti-Semitic speech in Germany is, and I believe it should be, heavily monitored; this is not the case with France. Both interpretations seem right to me.)

Thirdly, in my view, Nussbaum's list is "freestanding" as Rawls would put it. After all, it is introduced specifically for political and legislative purposes and it appears to encompass those parts of the human experience that everyone would endorse, even people with poles apart conceptions of the purpose of life.

Fourthly, by insisting that the relevant matrix are capabilities and not functionings, pluralism is protected once again. Every person has an adequate exit option – she can opt out from practicing a capability if she thinks it is inappropriate for her lifestyle. But, that

does not imply that no one should have the opportunity for that same capability. People who object to any religious establishments can endorse freedom of religion, because they recognize that some of their fellow citizens believe this is the right life path.²²

The process of justifying capabilities, hence, asks every citizen to use her practical reason and to ponder arguments in her search for a reflective equilibrium. Since this search is occurring in the realm of politics, it necessarily involves dialogue with fellow citizens. Also, many of the capabilities Nussbaum enumerates are pre-requisites for the voices of the disadvantaged and stigmatized to be heard.

By and large, we can see that on Nussbaum's account, the capabilities theorist is not demanding ranking of every personal trait – this is, after all, unworkable. What the approach does require, however, is a careful contemplation of those traits that are implicit in the intuitive notion of human dignity. The capabilities theorist is, hence, not asking us to judge whether a person is tall or short, or whether she has freckles or not. These traits, albeit perhaps significant personally, are not relevant for living a life in accord with equal human dignity nor for being considered as an equal citizen. This point, coupled with the adherence to political liberalism, makes it quite obvious that the Capabilities Approach is not in the business of dictating which capabilities people should value. Rather, it is suggesting that we should protect those capabilities most, if not all, people would agree upon over time. (Rawls's influence is once again clear, for this is his idea of an overlapping consensus.) Moreover, given the deliberate openness of Nussbaum's list, what people consider relevant capabilities might change over time; this, however, does not imply that they are not cherished now.

²² Cf.: Nussbaum, M. C. (2006). *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: The Belknap Press of Harvard University Press: 78–81.

2.3.2. Vertical Ranking and Inferiority; Dignity and Compensation

Pogge's objection about vertical ranking of individuals with their natural inequalities is closely linked to the issue of compensation. Hence, in order to argue against his claim that the Capabilities Approach is stigmatizing individuals by employing only vertical ranking I will first analyze the notion of compensation and argue that a capabilities theorist need not be committed to this view.

The basic intuition behind the Capabilities Approach as developed by Nussbaum is the idea that "human capabilities exert a moral claim that they should be developed. Human beings are creatures such that, provided with the right educational and material support, they can become fully capable of the major human functions" (Nussbaum 2000: 88). One of the consequences of seeing human flourishing as morally significant is that it veers us in the direction of thinking about resources as mere means to an end, i.e. as means to achieving full human flourishing. This basic Aristotelian idea tells us that wealth, income and other possessions are simply not good in themselves. Although Aristotle himself devotes much critical attention to the chrematistic tendency, he argued that such resources (in strict terms) are, indeed, worthless unless they are put into the service of the doings and beings of human lives.²³ So, from the point of Aristotelian insights and Nussbaum's version of the approach, compensation becomes part of the problem, rather than part of the solution; for compensation would recognize human "abnormalities" as disadvantages, and not as still unexplored uniquenesses.

The persistent trend of modern societies is to impugn the competence of people with physical impairments for instance, as well as their potential contribution to society. This is in part because full support of their distinctive needs and abilities is costly;

²³ Cf.: Aristotle (1998). *Nicomachean Ethics*. (D. Ross, J. L. Ackrill, & J. O. Urmson, trans.) Oxford: Oxford University Press.

costliness, by no means, makes this acceptable. Not so long ago deaf and blind people could not participate in public political life nor in higher education; similarly a person in a wheelchair could not partake in sports or perform a wide range of jobs. These impediments were quickly dismissed as natural and inevitable; they were, however, social.²⁴ Failure to fulfill the human potential of mentally disabled people is even more acute. Children with Down syndrome, for example, have traditionally been considered “stupid”; this prevented us from realizing what they could achieve. For example, some effects of Down syndrome are improvable bodily limitations: weakness of the muscles of the neck and tongue prevents environment exploration and speech development. So, the point that the Capabilities Approach tries to elucidate is that all citizens in virtue of their shared humanity have equal claims on treatment with human dignity.²⁵ Nussbaum’s conception of the approach with its Aristotelian insights, hence, begins with a strong political notion of a human being; species membership and the characteristic activities of a species, then, specify it further.

Pogge’s claim that a commitment to the Capabilities Approach necessarily involves stigmatizing natural diversities, therefore, is an utter misrepresentation of the whole project. Vertical ranking, as he names it, is not an inalienable part of the approach; in fact, a capabilities theorist welcomes a “horizontal” view of human heterogeneities that can be deemed as beneficial to all. Even those persons with severe cognitive impairments, I

²⁴ Although I believe there is improvement in dealing with issues related to physical disabilities, many nations still have a long way to go before the distinctive (not inferior) needs of disabled persons could be fully addressed. Reconfiguring public places and public transportation so that they accommodate the needs of the physically disabled, for example, are challenges many societies still face.

²⁵ A theory of justice should, I believe, also inquire into the other side of the problem: the burdens and hardships of those persons who care for the disabled. Caregivers have a rightful claim, I think, to the recognition that what they are doing *is work*; assistance, both human and financial; opportunities for rewarding employment – after all, providing for a dependent family member is a full-time job; thus, it has large effects on the rest of the person’s life, including work outside the caregiving sphere – and leisure time since providing for a disabled person is often difficult emotionally. This is especially true when a parent is looking after a severely ill child with the knowledge that her child will either probably be shunned by society and/or dependent for the rest of her life, or when a child is providing for a sick parent (we must keep in mind that disabilities can come with old age) which is humiliating and bitter for both the child and the parent. This issue is closely linked to the concerns of gender justice, since mostly women do care-related work.

believe, have important things to teach us, people with “normally” functioning abilities. They include, among other things: the possibility of better understanding humanity and its diversity; development of a moralized compassion for fellow citizens²⁶; new insights about aging with dignity and about ourselves as we age; interacting with persons with disabilities can also help to develop imagination so that we can experience the inner life of someone else. Of course, I think that instigating relations among people with same or similar illnesses can teach us about different kinds of affectionate relationships, for such relationships, I think, contain genuine reciprocity and affection, although not of the familiar type.

Moreover, insisting on a single list of human capabilities shows reverence for individual dignity: encounters with people who suffer from physical and especially cognitive disabilities are often conducted with a heavy thought of the stigmatized characteristic, forcing one to view the other as not fully human. By insisting that people with physical and mental disabilities have rightful claims to a single set of basic capabilities, the capabilities theorist is once again asserting their equal human dignity and not stigmatizing them nor envisaging them as inferior. This, however, does not imply that the Capabilities Approach endorses a single way of human flourishing (as is the case with Aristotle’s normative theory). Instead, the claim is that capabilities are important prerequisites for reasonable conceptions of human flourishing. Citizens whose mental capacities fall below a certain threshold despite a society’s best effort to bring them up to a minimum level of capability, however, present a difficult puzzle. The capabilities theorist has two possible answers nonetheless: either those citizens have a different form of life (as I think is the case with people in permanent vegetative states) or those citizens will never, unfortunately, attain full human flourishing, although they firmly remain within the species

²⁶ By the term “moralized compassion” I mean compassion for fellow humans not for reasons of love or other kinds of affection, but for reasons of a particular moral outlook and moral reasoning.

of *homo sapiens sapiens*. So, people with severe mental impairments will not attain all the capabilities that make life a distinctively human one and this is unfortunate, but this is not to say that they are flourishing in a different form of life for this would rob them of their shared humanity.

2.4. Conclusion

I conclude that unlike Rawlsian resourcism, the Capabilities Approach has the methodology to effectively confront the numerous ways in which informal social norms and expectations inspire our stereotypes and stigmas. School curricula and student socialization can be amended in such a manner to spark toleration, compassion, imagination and cooperation beyond our differences; this will, I believe, help to efface stereotypes and unwarranted generalizations about disabled people, gays and lesbians, women and other disadvantaged groups.²⁷ This shows, I think, a substantial disparity between the two theories. Moreover, I conclude that Pogge's critique of the Capabilities Approach rests on flawed foundations, *viz.* his interpretation of the approach, I argued, is misguided.

A more appealing use of the notion of resources, nevertheless, is made by Ronald Dworkin. His resource egalitarianism is constructed with a specific reference to the issue of injustice towards disabled people, providing thus a slightly richer account of human life and heterogeneity. While Rawlsians use resources in the sense of an index of primary goods, ignoring thus the objections raised by Sen and Nussbaum, Dworkin makes room explicitly for variations in conversions of resources. I shall proceed to analyze Dworkin's

²⁷ Nussbaum has already taken her first steps towards accentuating the need for an educational reform that would focus on the humanities in order to bring about such changes. Cf.: Nussbaum, M. C. (2010). *Not For Profit: Why Democracy Needs the Humanities*. Princeton: Princeton University Press.

resources egalitarianism, and argue that the Capabilities Approach differs from his theory too.

III. The Cost of Disability, Socially Generated Inequalities and Promoting Capabilities: A Critique of Dworkin

3.1. Introduction

The insight guiding Dworkin's theory is that we must distinguish between two types of resources: impersonal (social) and personal (internal). Impersonal resources, according to Dworkin, are "those resources that can be reassigned from person to another – his wealth and the other property he commands, and the opportunities provided to him, under the reigning legal system, to use that property." Personal resources, on the contrary, are an individual's "physical and mental health and ability... that is his innate capacity to produce goods or services that others will pay to have" (Dworkin 2000: 322–323). Obviously, Dworkin's notion of resources is thicker than Rawls's; it includes personal characteristics such as vigor, health, intelligence, and imagination. This is a major improvement over Rawls's quite simplistic assumptions, for it allows us to capture the heterogeneity of human experiences as well as what people would value as a part of a just society.

Dworkin is aware, of course, that personal resources cannot be distributed in the same manner as impersonal ones. Therefore, he constructs an indirect way of compensating for these shortfalls: physical disability, for instance, can be accounted for by providing people with wheelchairs and by redesigning public spaces so as to better suit the needs of physically disabled persons. By ingeniously introducing the hypothetical insurance market, Dworkin purports to show what and how much should be compensated for. In his thought-experiment it is presupposed that people, having been stranded on a deserted island and having been placed under a Rawlsian veil of ignorance, enter the

hypothetical market which sells insurance for certain disabilities. Dworkin's "veil of ignorance", however, is significantly thinner than Rawls's: persons know what their conception of a good life is.²⁸ Assuming that each person has an equal share of resources and that each individual is equally vulnerable to disabilities and less-than-average talents, Dworkin maintains that in the insurance market people would be free to buy protection against those disabilities they are likely to suffer. Depending on the type and level of insurance people would be considered rational to buy, we can use the tax system to make payments. Healthcare benefits, unemployment schemes and other types of welfare policies would, in turn, constitute the various ways of compensating for natural disadvantages (Dworkin 1981, 2000).

Dworkin also makes two strong assumptions, both of which are central to his theory. The principle of authenticity ensures that the parties have authentic preferences, while the principle of independence ensures that they do not participate in actions that are influenced by prejudices (Dworkin 2000: 158–162). Consequently, in Dworkin's egalitarian theory socially generated inequalities are set aside. A society that satisfies both the principle of authenticity and the principle of independence, hence, is a society without discrimination, prejudice, racism, gender bias, homophobia or ethnic divisions. Nevertheless, once the principles of justice are established, and the theory is applied to actual societies, the bracketed issues need to be considered.

Equipped with such methodology, Dworkin is able to make his pivotal distinction between brute luck and option luck. In short, inequality is justified, according to Dworkin, if it results from a person's voluntary choice, conceiving individuals thus as responsible for their actions. On the other hand, there are circumstances that produce inequalities but which are at the same time beyond personal control – good or bad outcomes that occur

²⁸ Cf.: Dworkin, R. (2000). *Sovereign Virtue: The Theory and Practice of Equality*. Cambridge MA: Harvard University Press: 112–119.

independently of one's choices. Dworkin names the former concept option luck and the latter brute luck (Dworkin 1981: 292–304, 2000: 73–74). In my view, Dworkin provides us with a hybrid theory of capitalist market economy and the welfare state. A Dworkinian just society can be interpreted as being a huge insurance company that covers citizens from various forms of brute luck (transforming hence brute luck into option luck once insurance is introduced); welfare payments then compensate citizens for those tragedies that are traceable to bad brute luck, much like actual insurance policies.

Given the existence of the hypothetical insurance market as well as of the distinction between personal and impersonal resources, Dworkin is able to provide a resourcist answer to some of the key objections raised against Rawls by Sen and Nussbaum. Both Jamie Bérubé and Iris Murdoch (i.e. both people with inborn and with acquired disabilities, either mental or physical), under Dworkin's scheme, would be covered by the insurance and hence, they would not suffer any disadvantages in his imagined just society.²⁹ Consequently, Dworkin is faced with a dilemma with regards to the status of the Capabilities Approach.

²⁹ Elizabeth Anderson famously argued that Dworkin's insurance scheme is discriminatory. According to her interpretation, the hypothetical insurance market victimizes people with extremely rare but severe disabilities because "the chances of anyone suffering from it [rare handicaps] were so minute that it was *ex ante* rational for people not to purchase insurance against it" (Anderson 1999: 303). Whether it would have been rational for people to buy such insurance or not, however, is arguable. One might hold the contrary view: it was, in fact, irrational not to buy insurance. Given that Dworkin builds his theory with an inspiration of how market economy and insurance schemes actually work, I think that Anderson's claim remains unsupported. For if we were offered insurance against some possible but extraordinarily uncommon disability, and there is high likelihood that the insurance cost is miniscule precisely because of how insurance companies operate, then it would be, I think, irrational not to buy that insurance. Many thanks to Zoltan Miklosi for a helpful discussion of this point.

3.2. *Dworkin's Dilemma*

In *Sovereign Virtue*, Dworkin asserts that the Capabilities Approach does not provide a valid alternative to the two egalitarian theories he distinguishes: equality of resources and equality of welfare (Dworkin 2000: 285–287). Namely, he scrutinizes the Capabilities Approach based on a paragraph from Sen's *Inequality Reexamined*:

A person's achievement... can be seen as the vector of his or her 'functionings', consisting of beings and doings. The relevant functionings can vary from such elementary things as being adequately nourished, being in good health, avoiding escapable morbidity and premature mortality, etc., to more complex achievements such as being happy, having self-respect, taking part in the life of the community, and so on. The claim is that functionings are constitutive of a person's being, and an evaluation of well-being has to take the form of an assessment of these constituent elements. Closely related to the notion of functionings is that of the capability to function. It represents the various combinations of functionings (beings and doings) that the person can achieve. Capability... represents a person's freedom to choose from possible livings (Sen 1992: 39–40; cited in Dworkin 2000: 301).

Dworkin offers two readings of this paragraph. On the one hand, equality of capabilities is in fact equality of welfare, since Sen mentions several capabilities that are psychological states of being, which are recognized in a 'welfarist' framework (Dworkin 2000: 302). Yet, as Dworkin has shown earlier, equality of welfare is unsatisfactory because it results in counter-intuitive judgments; in particular, equality of welfare does not hold people responsible for their expensive tastes and ambitions. Such an approach, thus, would have to compensate people for inequalities stemming from differences in preferences (Dworkin 2000: 11–64).

Moreover, Sen himself has vigorously argued against equality of welfare, understood as preference satisfaction, by stressing that people, women in particular, frequently exhibit adaptive preferences, i.e. preferences that are formed as a result of cultural oppression (Sen 1990, 1995; cf. also Nussbaum 2000). Therefore, by defining the

aim of social justice in terms of satisfaction of preferences, welfare theories reinforce the *status quo*, which might be highly unjust. Aesop's fable *The Fox and the Grapes* is quite illuminating of this point.

Another major deficiency, I think, is that by merely looking at the levels of people's preference satisfaction, a nation can do quite good, even if a few underdogs at the bottom of the social ladder are vastly suffering. If we focus on welfare egalitarianism, on the other hand, a further problem emerges; namely, it tends to aggregate various components of people's lives in one metric. By employing "satisfaction" as the appropriate measure of justice, welfarism is suggesting singleness and commensurability; real life, contrary to this, exhibits diversity which cannot be compared appropriately. The idea of valuating our lives in accordance with one utilitarian inspired metric seems harrowing. Finally, welfare cannot be the appropriate political goal until it is specified in a concrete manner. After all, people disagree greatly about what welfare genuinely is; for some it is dangerous excitement, for others it is hedonistic enjoyment. Molière's misanthrope and Dom Juan certainly have very diverse ideas about what welfare is.

I agree with Dworkin that such a "natural" reading of the Capabilities Approach would not do justice to Sen at all; I do not agree with him, however, when he concludes that the approach should be read as a form of equality of resources, allotted in a slightly different vocabulary. But first, what is this intimate relationship between equality of resources and the Capabilities Approach?

At first glance, the similarity between Sen's capabilities and Dworkin's impersonal and personal resources is staggering. Indeed, like the capabilities theorist Dworkin recognizes that people are vulnerable and prone to many physical and cognitive disabilities. As we have seen, his redistribution scheme based on a hypothetical insurance market enables him to include within a theory of justice those persons who suffer from some

impairments. Both Sen's physically disabled person and Dworkin's Tiny Tim would, on Dworkin's view, be eligible for compensation, provided that they have insured against those disabilities; it would be, after all, imprudent of them not to buy such insurance. When considering disabilities, therefore, there seems to be little (if any) difference between Sen and Dworkin. I shall argue in the next section, however, that their respective theories do part ways when it comes to recognizing and alleviating socially generated inequalities.

Before I proceed to a closer consideration of this issue, let me make two caveats. First, Dworkin's impression that equality of resources and Sen's capability theory converge comes as no surprise given that Sen's idea of which capabilities are important is deliberately vague – he does not provide a full account of particular capabilities that should be deemed valuable from the point of view of distributive justice. This problem, I shall argue in section 3.4, can be resolved too via an internal critique of Sen, albeit it would require a significant departure from his original thinking.

Second, before proceeding to evaluate the problem of socially generated inequalities, I think a minor point is necessary. If it holds that equality of resources and Sen's Capability Approach are no different, why is it then more interesting to think of the Capabilities Approach as subordinate to equality of resources? Dworkin offers no normative reasons for this view.

3.3. *Defending Sen: The Case of Ann and Bob, Socially Created*

Inequalities

One might offer an argumentative strategy that would vindicate the difference between the Capabilities Approach and equality of resources by firmly remaining within Sen's framework. It is this strategy that I shall now explore.

Andrew Williams responded to Dworkin's critique by claiming that it is possible to identify inequalities in capabilities that derive neither from inequality of Dworkinian resources nor from preference satisfaction (Williams 2002: 23–39). He asks us to imagine two twins, Ann and Bob, with equal personal and impersonal endowments. Both hope to combine prosperous careers with family life with a member of the opposite sex. In Williams's society, however, career preferences are distributed asymmetrically between men and women: men generally prefer to devote their time to work, while women prefer to combine family life with a prosperous career, dividing thus child-rearing duties with their husbands. According to Williams, the Capabilities Approach would rightly consider Ann to be worse off than Bob since she has fewer prospects to find a suitable partner. Equality of resources, on the contrary, would consider Ann and Bob as equals given that they both possess an equal amount of both personal and impersonal resources. Thus, Williams concludes that equality of resources on the one hand and the Capabilities Approach on the other lead to different judgments about Ann and Bob. Additionally, the Capabilities Approach, in Williams's view, does not collapse into a welfarist theory of equality since its judgment is not based on unequal welfare levels (Williams, 2002: 30–34).

This example is problematic on two grounds, or so Dworkin argues. First, equality of resources requires compensation for injustices caused by unjust patterns of discrimination. Since the difference between the life prospects of Ann and Bob results

from the effects of past discrimination and subordination of women, Dworkin asserts, equality of resources will likely demand some remedial measures (Dworkin 2002: 136–137).

Such a response, however, I think misunderstands Williams’s example. He is not arguing that Ann is a victim of the subjugation of women. Ann’s disadvantage does not result from unfair treatment or from a denial of women’s rights. Her “handicap” is, rather, a consequence of the free preferences of members of her society to pursue their life-plans. Ann has, therefore, less freedom than Bob to combine a thriving career and a family. Bearing in mind that Dworkin argues that inequalities which spring from the effects of preferences of other members of the market are not a matter for political concern (Dworkin 2000: 287), resource equality fails to provide a remedy for Ann’s deficiency; this is not the case, however, with the Capabilities Approach.

Dworkin’s second, more promising, strategy is to deny that the inequality of capabilities between Ann and Bob is morally relevant. Why should we assume, Dworkin asks, that a capability set that includes child-rearing and domestic activities but not an active career is less valuable than a capability set that is comprised of these two capabilities? Put differently, Dworkin asserts that the capability sets of our two twins are intertwined and non-dominated. How could we judge whether one person is better off than another? Dworkin argues that it is either objectively more valuable to be able to have a prosperous career than to be able to raise children or that Bob has a greater “second-order capacity” that would enable him to achieve what makes each of them happy or fulfilled. The first option is unwarranted since it could be justified only on sexist, patriarchal grounds, whilst the second option relies on a welfare metric (Dworkin 2002: 137). Clearly, Williams does not wish to take the second route, so we are left with the first horn of the dilemma. Dworkin claims, nonetheless, that Williams does not offer an account of why

Ann's capabilities set is objectively less valuable than Bob's. Moreover, according to him, it is impossible to even offer such an explanation.

Yet, the relevant question, I think, is not whether Bob's capability set is more valuable than Ann's; rather, it is whether they are being treated as equals. Indeed, in my view, even Dworkin's improved and richer notion of resources fails to address significant socially created injustices, or so I shall argue. (Although his resource egalitarianism does an equally good job as the Capabilities Approach in dealing with the negligence suffered by disabled people due to differences in natural endowments.)

One of the tenets of Dworkin's equality of resources, as we have seen, is the dichotomy between choice and luck. Unequal distribution that results from choices people make are morally permissible; whilst unequal distribution resulting from differences in natural endowments (physical and mental powers, genetic predisposition, health, strength, and talent) are morally arbitrary and ought not to affect the distribution of resources in society (Dworkin 2000: 81, 287, 322), unless, of course, a person is insured against these misfortunes. There are two problems, however, with this line of thinking.

Firstly, by placing high emphasis on personal responsibility, Dworkin is overlooking the fact that a person's ability to make an informed choice (and to assume substantive responsibility for it) is influenced by various personal, social, and environmental circumstances, i.e. as we have already seen, people are prone to adaptive preferences. Now, Dworkin could rightly point out that, in this case, his *principle of authenticity* is not satisfied. This principle requires that people's preferences accurately reflect their objective interests, and it is with authentic preferences that Dworkin's auctioneers enter the market (Dworkin 2000: 158–161).³⁰ A careful analysis of adaptive preferences, however, reveals that persons require significant freedom, education, as well

³⁰ It can also be argued that this is a matter of the degree of idealization one is willing to employ.

as physical and mental skills in order to make authentic choices. In order to secure the principle of authenticity, therefore, Dworkin would have to assume a background (primordial) distribution which is prior to the market apparatus.

I agree with Sen and Nussbaum, secondly, when they argue that some morally relevant inequalities are generated by social practices, attitudes as well as institutions that disparagingly affect the life-prospects of certain people. Historically, public policies as well as prejudices have been instrumental in causing these inequalities. Consider the segregation policies in the US that have been in power as recently as the 1950s and 1960s³¹, sodomy laws aimed at criminalizing homosexual relations³² (remember also the stories of LGBT population from the introduction), twentieth century policies that prevented women from voting in political elections, prejudices against Jews, Roma people, the caste of untouchables in India, and many others. Centuries of injustices have created social structures and patterns that make race, ethnicity, gender and sexuality still a dominating force that profoundly influences one's life-prospects.

Demands of equality and justice, nevertheless, should penetrate deeper and efface those social stigmas and prejudices that mock equal human dignity. Undoubtedly, social endowments³³ do not *ipso facto* affect a person's life in the same manner as natural endowments do. For natural endowments produce inequalities via biological or physiological processes; social endowments affect the positions of individuals *vis-à-vis* human social structures and patterns of behavior. These social structures, furthermore,

³¹ Racial segregation in the US has marked much of the first half of the twentieth century. Segregation was ruled as violating the Fourteenth Amendment of the US Constitution in the landmark case *Brown vs. Board of Education* (Cf.: *Brown v. Board of Education of Topeka*, 1954) which ended *de iure* segregation policies. *De facto* segregation, however, remains an issue even in the 21st century in some areas of the US.

³² Sodomy laws in the US even allowed police officers to invade the privacy of citizens if they had been suspected of homosexual relations. For instance, Michael Hardwick, a resident of Atlanta, was arrested in his bedroom while having oral sex with his male lover; under Georgia law, this was within the legal limits of law enforces. Cf.: *Bowers v. Hardwick* 478 U.S. 186 (The United States Supreme Court 1986).

³³ Social endowments are those attributes of persons that in and of themselves do not affect the person's life prospects; in interaction with social structures, however, they influence one's ability to generate impersonal resources. For instance, skin color and physique are personal attributes, which become race once they interact with social processes.

generally operate along group lines: if it is widespread to think of gays as disgusting or revolting³⁴, for instance, then this image transcends to all gays, robbing them thus of their individual personalities and of their equal standing as human beings.³⁵ (Some would deny, unquestionably, many gays, lesbians, bisexuals and transgender people their full humanity and shamefully reduce their status to that of non-human animals. This view nowadays, I hope, strikes as ludicrous.) Nussbaum names this phenomenon as “projective disgust” (Nussbaum 2010a: 15, also Nussbaum 2004). Lord Devlin went as far as to famously argue that the presence of social disgust was a strong enough reason to favor the prohibition of an act, even if it did not cause harm to others; he then applied this conclusion explicitly to the criminalization of consensual homosexual acts (Devlin 1965: 17).

How does Dworkin’s theory square with socially created inequalities? Dworkin categorically distinguishes between inequalities caused by natural endowments and inequalities created by social factors; the latter being “the consequence of long-standing and unjust pattern of discrimination and stereotyping” (Dworkin 2002: 137). There is a straightforward remedy, however: he innocently suggests that civil rights laws have the power to weaken discriminatory behavior and stereotyping; socially induced inequalities, therefore, will disperse over time (Dworkin 2000: 345–346). Given that Dworkin understands socially created inequalities as something temporary that can be, *in thesi*,

³⁴ For instance, Paul Cameron, founder and head of the Family Research Institute, describes gay men and their sexual conduct as follows: “The typical sexual practices of homosexuals are a medical horror story – imagine exchanging saliva, feces, semen and/or blood with dozens of different men each year. Imagine drinking urine, ingesting feces and experiencing rectal trauma on a regular basis. Often these encounters occur while the participants are drunk, high, and/or in an orgy setting. Further, many of them occur in extremely unsanitary places (bathrooms, dirty peep shows), or, because homosexuals travel so frequently, in other parts of the world. Every year, a quarter or more of homosexuals visit another country. Fresh American germs get taken to Europe, Africa and Asia. And fresh pathogens from these continents come here. Foreign homosexuals regularly visit the U.S. and participate in this biological swapmeet.” Oddly but unsurprisingly, Cameron neglects lesbians from his descriptions. Cf.: Cameron, P. (2009). “Medical Consequences of What Homosexuals Do. Pamphlet.” <http://www.familyresearchinst.org/2009/02/medical-consequences-of-what-homosexuals-do/> (April 25, 2013).

³⁵ For a meticulous examination of legal issues that surround same-sex relations grounded in a far-reaching investigation of how the emotion of disgust determines both civil legislation and public opinion cf.: Nussbaum, M. C. (2010a). *From Disgust to Humanity: Sexual Orientation and Constitutional Law*. New York: Oxford University Press as well as Nussbaum, M. C. (2004). *Hiding from Humanity: Disgust, Shame, and the Law*. Princeton University Press: Princeton.

defeated, he does not deem it important to assign social endowments a focal place within the framework of equality of resources. Yet, even if we agree with Dworkin that inequalities that spring from social circumstances are temporary and defeasible, they are still persistent in real life and need to be addressed appropriately.³⁶

In his reply to Williams, Dworkin acknowledges the normative relevance of social endowments and holds that he has already proposed measures to deal with those issues (Dworkin 2002: 137). Unfortunately, I think Dworkin overstates the work in Chapter 3 of *Sovereign Virtue* with regards to inequalities in social endowments; he does not argue for particular actions that would alleviate such inequalities, nor does he tell us how we might derive those measures from the theoretical framework of equality of resources. I think that a theory of social justice that cannot translate its conclusions onto non-ideal settings is missing out on some important concerns. This, of course, does not mean that it is impossible to construct arguments within the Dworkinian framework which would offer a solution; I only stress that Dworkin has not done so. Both Sen and Nussbaum, on the contrary, have written extensively about how social endowments such as gender, class, caste, race, and sexual orientation create alarming inequalities (Sen 1992, 1995; Nussbaum 1999, 2000, 2010a). The Capabilities Approach, thus, is sensitive to social processes that influence an individual's life prospects in terms of her capabilities. Nevertheless, in order to even be thought of as a theory of social justice, the Capabilities Approach would have to show that it can distinguish between morally relevant and morally insignificant capabilities. Dworkin gives us clear guidance regarding this question, while Sen persistently fails to do so. This brings us to an internal critique of Sen.

³⁶ Samuel Scheffler, among others, criticizes luck-egalitarians for acutely ignoring one of the most urgent egalitarian concerns of today's world according to his view, namely "how best to accommodate differences of race, gender, religion, culture and ethnicity" (Scheffler 2003: 38).

3.4. *Criticizing Sen: The Need for a Specified List; Promoting Capabilities*

Quite a different argumentative strategy that would show where and why equality of resources and the Capabilities Approach depart, as I hinted previously, is to argue against Sen within the capabilities outlook on social justice. In particular, one can argue that Sen should endorse an explicit, though open-ended, list of capabilities, one like Nussbaum is proposing for instance. This strategy, I think, would accomplish three things: (i) it would show that the Capabilities Approach is distinct from other competing theories, (ii) it would further substantiate the claim that the approach can successfully meet the challenges posed by social inequalities discussed in the previous section, and (iii) by focusing on Nussbaum's version of the approach, we can make another distinction between a Dworkinian just society and a Capabilities just society.

Indeed, it is quite puzzling that Sen is unwilling to support some list of core capabilities.³⁷ On the one hand, his arguments seem to be parasitic on the idea that some specific capabilities are central and non-negotiable. One cannot read his discussions about health, education and political and civil liberties without gaining the intuition that such human capabilities occupy a central place in Sen's thought and should be protected by all nations as fundamental entitlements of each and every citizen.³⁸

On the other hand, Sen has explicitly refused to endorse anything like Nussbaum's list of central human capabilities (Sen 2005). Thus, the examples he mentions remain in

³⁷ It is interesting to note that Ingrid Robeyns thinks that Sen should not endorse any list of capabilities given that he is not deeply interested in providing a philosophical underpinning of a theory of justice; instead, he is focused on providing a critique of traditional economic thinking and on suggesting an alternative framework. Cf.: Robeyns, I. (2003). "Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities." *Feminist Economic*, 9 (2-3), 61–92. If this is the case, then it is becomes even more puzzling as to why Sen engages in a burning debate with Rawls as well as with Dworkin and their respective ideal theories of justice.

³⁸ It should be noted that Sen says little about a threshold level which Nussbaum is clearly devoted to.

limbo; Sen clearly believes that the abovementioned capabilities are important, but it remains unclear to what extent he is ready to recommend them as the appropriate political goal and as the cornerstone of a theory of social justice. Obviously enough, if we wish to judge whether a society is just or not, we need a specified notion of what social justice is. Remaining in the nebulous territory of “substantive freedoms” cannot perform this critical task. Moreover, some human affairs are too principal to be left to the caprice of politicians or to the dictates of cultural traditions.³⁹ Maintaining that, for instance, adequate healthcare, or choosing one’s partner voluntarily should not be important in nation N because they believe such matters are insignificant would be, I think, a capitulation to subjective preferences and to cultural relativism. Just because the US does not recognize healthcare as a fundamental human entitlement, but rather sees it as a commodity, to take a blatant example, does not make that policy morally justified.⁴⁰ And this is precisely what Sen has been objecting to throughout his career.

Furthermore, Sen’s argument about choosing relevant capabilities is dangerously circular. If public reasoning and discussion are pivotal for selecting capabilities and for weighing them against each other in every social context, then Sen is already presupposing the capability of social and political participation, i.e. practical reasoning.

By defining capabilities as “real opportunities” that are effectively available to an agent (Sen 1985: 3–4), finally, Sen is echoing Isaiah Berlin in suggesting that capabilities are in fact non-moralized positive freedoms. However, some freedoms clearly limit others. The freedom to donate large sums of money to political parties and their campaigns (all too

³⁹ Sen thinks that the process of determining relevant capabilities should be left to democratic processes and to public reasoning. In this way, as I understand it, every nation will ultimately have different central capabilities, although some will certainly overlap. Nonetheless, Sen is suggesting that what capabilities will be judged as valuable depends on the personal values of the majority in a given nation. Cf.: Sen, A. (2005). “Human Rights and Capabilities.” *Journal of Human Development*, 6 (2), 151–166.

⁴⁰ It seems to me that, historically, radical moral statements and the arguments behind those statements have been vital in public discussion and deliberation. Such claims can be justified before they are accepted. This was, I believe, the case with Mahatma Gandhi’s arguments for non-violent resistance, Martin Luther King’s fight for equal civil rights, arguments for LGBT rights advanced by Jeremy Bentham and Harvey Milk for example, as well as with early feminists such as Bentham again, and Mary Wollstonecraft.

often in many counties) influences the freedom of equal vote. The freedom to own an allotted part of land limits the freedom of others to use that particular land. In general, any particular freedom encompasses the concept of constraint. Similarly, if Sen is wholeheartedly devoted to gender justice (and we see this from many of his writings), then he must concede that achieving gender justice requires curtailing male freedom to a certain extent. For instance, male freedom to make explicit references to a woman's body parts or sexual appeal may go beyond appropriate behavior and become sexual harassment; making sexual abuse an anachronism, thus, requires restricting the freedom of others to perform such actions that constitute it in the first place. In other words, no society that pursues even a social minimum of equality can avoid limiting freedoms in many ways; it must take a definite stand and claim that some freedoms are not good (they might be even quite bad in fact), and that they should not have a place in a theory of social justice. Other freedoms, contrary to this, are simply irrelevant in the sense that they are neither good nor bad, and it is because of their triviality that they find no refuge in a theory of social justice.

Now, Sen might respond by maintaining that generally more freedom is good *per se*, but that it can be used in a bad way, as the above examples can be seen. I think, however, that such a reply is unsatisfactory, for many freedoms already contain in themselves severe injustices. The freedom to discriminate on the basis of race, nationality, sex, and religion or the freedom to beat up a person because she is of different sexual orientation are certainly not good *per se*. Any society that would allow for the existence of such freedoms, even if it would condemn their "bad use", would be doing injustice to vulnerable and often marginalized groups of fellow citizens.

So, it seems that Sen cannot avoid advancing a list of fundamental capabilities. If capabilities should be used in a plausible conception of social justice, then they obviously need to be specified, even in a highly abstract manner. Moreover, by placing the notion of

capabilities in limbo, Sen's view can easily be turned against him; instead of effacing capability inequalities due to discrimination in terms of gender, sex, or race, Sen's notorious refusal to specify what capabilities should be seen as politically important can heighten such unacceptable inequalities.

Once we consider Nussbaum's more philosophically developed and coherent portrayal of the Capabilities Approach, a further differentiation between the Capabilities Approach and Dworkin's resource egalitarianism reveals itself. By building her theory of social justice on a distinctively ethical notion – respect for equal human dignity articulated in the species norm coupled with the Aristotelian idea of human flourishing – Nussbaum is able to call for establishing quite demanding “positive responsibilities”, i.e. she holds that the purpose of social cooperation and nation building is to establish such political principles that guarantee that all persons have an ample minimum of all ten central human capabilities, or can effectively claim them if they are lacking some capabilities. After all, the capabilities Nussbaum singles out, according to her, are precisely those capabilities that make life a truly human one; therefore, they should not only be protected and embodied in constitutional guarantees, but they should also be promoted and developed in every individual citizen.⁴¹ This is especially true, Nussbaum holds, with two architectonic capabilities: practical reason and affiliation. Viewing human beings from a distinctively Aristotelian perspective (as a social animals capable of having “an active life of the element that has a rational principle”⁴²), Nussbaum thinks that practical reason and affiliation occupy a special place “since they both organize and suffice all the others, making their pursuit truly human” (Nussbaum 2000: 82).

⁴¹ Nussbaum writes for example: “The basic intuition from which the capability approach begins, in the political arena, is that certain human abilities exert a moral claim that they should be developed” (Nussbaum 2000: 83). Also: “The basic claim of my account of social justice is this: respect for human dignity requires citizens be placed above an ample (specified) threshold of capability, in all ten of those areas” (Nussbaum 2011: 36).

⁴² Cf.: Aristotle (1998). *Nicomachean Ethics*. (D. Ross, J. L. Ackrill, & J. O. Urmson, trans.) Oxford: Oxford University Press: 1.7. 1098a3–1098a4.

Indeed, the Capabilities Approach, as developed by Nussbaum with the main presumptions of human dignity and human flourishing, stresses moral and humanly rich goals for social justice. Moreover, it understands the securing of basic entitlements, i.e. central capabilities, as an affirmative task.

Who is exactly assigned this, as I term it, positive responsibility to develop capabilities, remains a matter of debate however. Institutions come in many forms and protect various interests. In her story about Vasanti, Nussbaum praises the work done by the Self Employed Women's Association (SEWA), a non-governmental organization in India that works with poor women. Its major goal is to enable women to control and to plan their lives by providing poor women with microcredits in order to gain financial independence; education in business, management, even politics; health care; labor union; and even friendship, companionship and building self-confidence.⁴³

In other places, Nussbaum emphasizes that the central human capabilities should be enshrined in a nation's constitution, whether written or not (e.g. Nussbaum 2000: 101–105, 2006: 175, 284–291), suggesting thus that it is, in fact, the responsibility of governments (at least derivatively) to provide all citizens with a basic social minimum in the area of the ten central human capabilities.⁴⁴ When discussing the extension of the Capabilities Approach to the global arena, Nussbaum explicitly mentions that “it is ultimately people who should be seen as having moral duties to promote human capabilities” (Nussbaum 2006: 307). Nonetheless, she continues to offer four reasons in favor of assigning institutions with this daunting responsibility, which cannot be reconstructed here.⁴⁵ Contrary to this, in Dworkin's theory we find no mention of any positive responsibilities

⁴³ For Nussbaum's description of SEWA, cf.: Nussbaum, M. C. (2000). *Women and Human Development: The Capabilities Approach*. Cambridge: Cambridge University Press: 15–24.

⁴⁴ This assertion seems to place a good deal of trust to the benevolent character of governments.

⁴⁵ Cf.: Nussbaum, M. C. (2006). *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: The Belknap Press of Harvard University Press: 306–324.

towards fellow citizens, nor does his account require us or governments to be concerned with advancing a truly human and flourishing life for every individual.

3.5. Conclusion

The first difference between the Capabilities Approach on the one hand and Dworkin's resource egalitarianism on the other, as I showed, lies in their abilities to appropriately address socially created inequalities. Dworkin's theory excludes inequalities in social endowments, making them, consequently, morally irrelevant. The Capabilities Approach, contrary to this, maintains that such inequalities should be incorporated by a theory of justice; focusing on capabilities rather than on resources (as complex and rich as they are envisioned in Dworkin's framework) allows us to make this focal step.

Furthermore, by drawing the implications of Sen's version of the Capabilities Approach, I argued that he cannot plausibly maintain that a circumscribed "canonical list" of capabilities should not be endorsed and that what capabilities are to be judged as politically important should be left to "public reasoning." This led me to consider Nussbaum's account of the approach; this focus, moreover, introduced a second distinction between the Capabilities Approach and resource egalitarianism.

Although Nussbaum's methodology allows her to call for "positive responsibilities" of promoting capabilities as political goals, it remains unclear who exactly has these duties. The question of responsibility need not be answered here, for my aim is only to bring forward another distinction between the two theories. The many facets of the Capabilities Approach reveal that capabilities, indeed, can serve as a basis for quite a strenuous theory of a social minimum, differentiating itself once again from other rival theories.

Concluding Remarks: The Next Chapters of Human Development

The Capabilities Approach, I conclude, offers a powerful apparatus in crafting a different account of social justice. It supplies us with a different method for dealing with pressing issues of both justice and equality that contemporary political philosophy confronts.

In the first chapter I outlined some chief characteristics of the approach and I contrasted it with Rawls's justice as fairness. I also argued that Rawls himself fails to adequately answer the relevant concerns capabilities theorists insist on. Moreover, I argued that Rawls does not have the methodology to account for the claims of justice of either disabled people or of other disadvantaged groups that might enjoy their fair share of primary goods, measured in terms of wealth and income alone.

Pogge's attempt to show the ability of his "sophisticated Rawlsian resourcist theory" to answer these worries, I argued in the second chapter, is unsatisfactory. His counter-arguments either rest on a misunderstanding of the Capabilities Approach or they actually provide further arguments for the claim that by remaining firmly on Rawlsian grounds, one cannot fully accommodate the gross inequalities in people's abilities to use resources for a dignified human life. Pogge's more nuanced view of Rawlsian resourcism, I argued, cannot do justice to the claims of neither Jamie nor of Iris nor to the claims of many women.

Finally, I argued in the third chapter that although Dworkin offers us a richer and a more adequate view of human heterogeneity and vulnerability, his presumptions limit the scope of his theory, *viz.* I showed that Dworkin's theory fails to take into account enormous inequalities generated by social climates and mores; this is, I think, a significant difference between the two theories. In other words, his promising theory does not fully

capture the injustices done to Tyler Clementi and to Michael Hardwick, nor does it actively confront the social circumstances of Belgrade Pride parade. I also showed that the Capabilities Approach cannot be subsumed under Dworkin's resource egalitarianism since in Nussbaum's version we find suggestions of establishing "positive duties" to promote as well as to protect central human capabilities that make life worthy of our equal human dignity.

While my sympathies for the Capabilities Approach are evident throughout this thesis, I do not conclude that the approach presents a more adequate theory of social justice overall. There are several major gaps that the approach needs to address in order to show its alleged superiority over other distinguished theories of social justice; they, however, must remain superficial at this point.

First, as I emphasized beforehand, even Nussbaum's version is only a partial theory of justice – it does not specify what political principles of justice operate above the ample threshold Nussbaum is suggesting. Both Rawls and Dworkin are more ambitious – they provide a complete account of social justice. However, I think that since so many people over the world are struggling for lives that are worthy of their human dignity, it makes little significance whether a theory of social justice prescribes anything more than an ample social minimum. Specifying a threshold may be sufficient for immediate purposes; after all, a more ambitious standard of social justice would have to reach this goal before it could be considered.

A second and closely related problem is determining the appropriate threshold level. What social and economic support as well as what political and civil rights are required to treat people as fully equal remains to be considered.

Third, vast pressure is put on Nussbaum's theory given that her version of the approach can be interpreted as being perfectionist; this is clearly at odds with her explicit

dedication to Rawlsian political liberalism.⁴⁶ Associated with this worry is the general problem of paternalism that looms over the Capabilities Approach. Undeniably, there is a certain degree of paternalism within the framework of the Capabilities Approach; to what extent it is justified (and perhaps even desirable) remains to be further explored. The issue of paternalism is an important one that capabilities theorists need to address, since it encompasses all citizens, including adults whose mental powers are within the “normal range.” (I think there is generally less reluctance to accept even quite high degrees of paternalism when thinking about children and mentally disabled people.)

Notwithstanding, if my arguments against Rawlsian resourcism, even in its strongest form as presented in Pogge’s thinking, as well as my arguments against Dworkin’s resources egalitarianism are sound, then I think capabilities theorists can argue further for the claim of superiority over these two eminent theories of social justice. By arguing that the Capabilities Approach is a self-standing theory of social justice, nonetheless, I contributed to the “equality of what” debate in a modest sense – I showed that the Capabilities Approach withstands the most significant criticisms lodged against its distinctive character. What remains to be done, however, is to show that it offers an overall more satisfactory way of thinking about justice and equality than both Rawlsian and Dworkinian resourcism.

⁴⁶ An interesting analysis of this issue is discussed in: Barclay, L. (2003). “What Kind of Liberal is Martha Nussbaum?” *Sats-Nordic Journal of Philosophy*, 4 (2), 5–24.

Appendix: Nussbaum's List of Ten Central Human Capabilities

1. *Life*. Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.
2. *Bodily Health*. Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.
3. *Bodily Integrity*. Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. *Senses, Imagination, and Thought*. Being able to use the senses, to imagine, think, and reason – and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid nonbeneficial pain.
5. *Emotions*. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)
6. *Practical Reason*. Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)
7. *Affiliation*.
 - A. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)
 - B. Having the social bases of self-respect and nonhumiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of nondiscrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.
8. *Other Species*. Being able to live with concern for and in relation to animals, plants, and the world of nature.
9. *Play*. Being able to laugh, to play, to enjoy recreational activities.
10. *Control over One's Environment*.
 - A. Political. Being able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association.
 - B. Material. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical

reason and entering into meaningful relationships of mutual recognition with other workers.

This list is reproduced as found in Nussbaum, M. C. (2006). *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: The Belknap Press of Harvard University Press: 76–78.

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