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**RESEARCH MASTER'S DISSERTATION**

**DELIBERATING CAPABILITIES: CAPABILITARIAN DISCOURSE ETHICS**

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*Onbeschreven blad*

## Contents

Preface .....	v
Acknowledgements .....	x
1. The capability approach as an incomplete project .....	13
1.1 Capabilities .....	15
1.1.1 Functionings and capabilities .....	16
1.1.2 Physical and valuation neglect: problems of utilitarianism .....	18
1.1.3 Capability: advantage as freedom to pursue valuable life paths .....	19
1.1.4 The social context: a brief institutional perspective .....	20
1.2 An incomplete framework .....	22
1.2.1 First lacuna: which capabilities? .....	24
1.2.2 Second lacunae: Weights? .....	25
1.2.3 Third lacunae: Sen's concept of public reason.....	25
2. The entanglement of facts, values and norms.....	31
2.1 Normativity, social theory and evaluation.....	33
2.2. Facts and values, again.....	34
2.3. Discourse ethics .....	41
2.4. Norms and values.....	46
3. Deliberating capabilities.....	50
3.1. The proper relation between philosophy and democracy .....	52
3.2. A Political-liberal approach.....	64
3.3. A Habermasian approach .....	73
3.3.1. Habermas procedural concept of deliberative democracy .....	78
3.3.2. Civil society and deliberative democracy .....	79
3.3.3. Valuation, weights and public reasoning .....	81
4. Conclusion .....	85
List of references.....	89

## Figures

Figure 1: a representation of the capability space. Based on Robeyns (2005: 98) .....	17
Figure 2: multidirectional dependence .....	21
Figure 3: normativity, theory and evaluation .....	33
Figure 4 : a simplified overlapping consensus.....	70

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## Preface

*Understanding the demands of justice is not any more  
of a solitarist exercise than any other discipline of  
human understanding.*

Amartya Sen (2009: 392)

Although there have been studies of poverty for more than a hundred years, among economists the systematic analysis of poverty, and especially of the ways to measure it, became an important topic of research only in the late 1970s. This coincides with the publication of Amartya Sen's *Poverty: an ordinal approach to measurement* (1976).<sup>1</sup> In that article Sen stressed that poverty analysis requires two steps. The first step is to *identify* the poor, that is, to determine who are the poor and the non-poor by establishing a cut-off point. The second step is to *aggregate* or to sum up the information about who is poor into a meaningful measure of poverty. In other words we need to answer two questions: who is considered poor; and how poor are those who are considered poor (as Alkire and Santos have remarked, 2009: 132-3).

Of course, among his many contributions, Sen is more generally recognized for calling attention to the informational space of 'capabilities,' the beings and doings that people have a reason to value,<sup>2</sup> as the relevant space for making interpersonal and intersocietal comparisons of well-being. 'Capabilities' is an inherently multidimensional

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<sup>1</sup> Bibliometric research in economics journals shows an explosion of articles on poverty from the 1970's (JSTOR sample search; the number of articles with the words 'poverty' and 'measurement' is circa 600 which doubles the 300 articles published in the previous two decades). Sen's 1976 article accumulates 1799 citations alone, which include the seminal paper by Foster, Greer and Thorbecke (1984) on decomposable measures of poverty.

<sup>2</sup> Sen (1992: 5; 1998: 2009: 231)

space that puts emphasis on people's substantial freedoms. Thus capability theory treats each person as an end but remains agnostic with regards to other principles of justice.<sup>3</sup>

The interest on the capability approach and its multidimensional conception of poverty has given rise to a variety of measures of poverty at global, national and even municipal levels. While we may value this concern with poverty and inequality positively, it creates a set of conceptual questions that are quite pressing. One such question is how to define the dimensions of concern to identify 'the poor' and how to aggregate such dimensions. The problem is not that poverty researchers do not select dimensions or weights. On the contrary quite often they do. However, the connection between the selected dimensions (or weights) they use, and the values of the population they assess could be neglected even if they make their reasons for making a particular choice of dimensions explicit. Value explicitness is a necessary but insufficient condition because to advance a legitimacy claim there has to be something more that connects the selected dimensions with the beings and doings that people have reason to value. Otherwise we face a mismatch that has the undesirable consequence that the resulting evaluation can be easily put into question as arbitrarily. Of course the answer to this concern need not be one single answer and indeed I will discuss in this dissertation the different ends of the spectrum. However, because of the entanglement of facts and values that is increasingly accepted by philosophers and social scientists, I claim that the standard answer that gives expert judgement priority over folk-psychology will not be satisfactory at least for the cases where the so-called entanglement is virtually uncontested. Clearly, poverty or inequality measures are a case in point. Therefore the present dissertation holds that poverty scholars would

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<sup>3</sup> Ingrid Robeyns (2011b) has suggested rephrasing 'the capability approach to' with the more general 'capability theory of'. Rather than a mere stylistic amendment, Robeyns suggestion entails a definition of the approach as an incomplete normative framework that can be specified and further developed into a range of theories. *Ad honorem*, the current dissertation tries to advance a capability discourse ethics.

gain from a procedural/participatory answer to the two steps Sen delineates: *identification* and *aggregation*.

I attempt to address this concern by proposing a capability discourse ethics which is fundamentally based on three principles; (a) it claims that the freedom to achieve well-being is of primary moral importance; (b) it takes a procedural stance to answer the question about the appropriate selection of dimension when judging interpersonal advantage in terms of, *inter alia*, beings and doings people have reason to value as constituents of well-being, and; (c) grounds this procedural stance on a communicative concept of rationality.

The first chapter presents capability as an incomplete normative framework. On the question of evaluating the quality of life, Sen has outlined a framework and provided an answer for the relevant space for evaluation. By doing so he has also offered an answer to the question of the relevant space for evaluation. His argument originates from a conversation with American political philosophy but is also relevant for welfare economics and can be reduced to the thin claim that the correct space for well-being evaluation is that of capability (the alternative bundles of functionings a person has).

For example, in order to operationalize a capability theory of welfare economics, we need to answer two methodological issues in the construction of a poverty index that are unquestionably entangled with value judgments and therefore are susceptible to the critique based on discourse ethics that I will put forward in the coming chapters. These two methodological issues are the selection of capabilities and the setting of weights. As I mentioned above, the step of identification requires a conception of advantage. For example, we need to be able to say who is better and who is worse off. According to Sen's critique of both the resource and the utilitarian approaches to the quality of life, income-based criteria are insufficient, but enriching the description of the quality of life requires

context specific standards. In order to fulfill its promises the capability approach has to find answers to the steps that Sen pointed to; for *identification* we need to answer which capabilities/dimensions matter and set thresholds on each of these capabilities, for *aggregation* we need to set weights within and between dimensions.

The second chapter proposes a principled solution to the gaps I describe in the first chapter, based on Habermas conception of communicative rationality and the discourse ethics he derives from it. Discourse ethics is in dialogue with the capability approach as an ethical theory and depending on how the capability approach is specified, it may assess it as legitimate or not. I try to explain why discourse ethics holds this privileged position after discussing the collapse of the fact/value dichotomy in economics. This story on the sociology of the profession leads me for a plea ‘beyond value explicitness’ in social science. Discourse ethics is a way in which social scientists can be valuable and distinctive participants in our ethical discussions without pretending to be the authority of a final court of appeal. I consider this pledge for discourse ethics entirely in line with other pledges for democracy in social science as Kitcher’s notion of well-ordered science (Kitcher, 2003) and sustain that the adoption of discourse ethics for the specification of the capability approach is a promising response to the afore mentioned concerns.

After laying the building blocks of the project I pursue in this dissertation, the third chapter presents a capabilitarian discourse ethics that aims to appropriate Habermas’s main principle of discourse ethics, principle (D): “Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse.” (Habermas, 1992: 66) To do so, I first engage in a conversation about the relation(s) between philosophy and democracy that was brought up recently by Rutger Claassen (2011). I argue against Claassen’s characterization of the internal dispute between capabilitarian theorists and *pave* Claassen, I claim that the ‘democratic’ approach is the more



‘philosophical.’ This conversation takes me to a deeper discussion of the Aristotelian approach that Martha Nussbaum has defended and of which I remain critical, in Habermasian spirit, despite its Rawlsian amendments. Finally, and most importantly, I give an account of Habermas procedural concept of deliberative democracy and argue that his decentered model makes a tighter fit to Sen’s intuitions than the Rawlsian statist model. Nevertheless I do point to some limitations that the matching between the capability approach and discourse ethics may have. I also address briefly some of the criticisms Habermas’s conception has received from other theorists of deliberative democracy. To end the chapter I give some examples of how the valuation exercise conjoins with public reasoning.

At the end of the dissertation I reach the following three general conclusions:

- a) It is possible to enrich capability theory with a theory of deliberative democracy.
- b) Habermas’s discourse ethics is an apt candidate for the task but there may also be reasons why a lighter theory of deliberation is recommended.
- c) The coming global trend of multidimensional poverty measures may win legitimacy and efficacy if economists or statistical bureaus incorporate participatory and deliberative procedures in their methodologies.

## Acknowledgements

The writing process of this dissertation has gone through a long and winding road. This was not so much the result of constraints set by the subject matter of the dissertation itself as they were of the subject who writes these lines. When I first entered (Prof.) Dr. Jack Vromen's office (back then he was still to be formally declared Professor) the morning of the 8<sup>th</sup> of September of 2008 on one of these, all too similar, rainy days in Rotterdam, I had no idea what expected me, ...and the world, around the corner. Had I knew more about bounded rationality, hyperbolic discounting and counterfactual thought, I would have re-considered my decision, but I guess I was, luckily –I conjecture today–, a 'rational fool.'

At this moment I do not intend to tell a narrative of matters that are too personal and too common to be worth being read. However I want to thank the people who supported me through rain and shine because, conventions aside, I think it is the very least I could do and hence, a good start. So I hope that you find some comfort in reading these lines even if the dissertation itself does not satisfy your intellectual appetite.

First of all I would like to thank my supervisor Professor Dr. Ingrid Robeyns, her patience, persistence and enthusiasm should be considered ultimate causes for the present dissertation. Ingrid's work on the capability approach and theories of justice has been a source of inspiration and I have been lexicographically privileged to have the opportunity to develop my proposal for 'capabilitarian discourse ethics' under her wings. The work I present to the reader went over two years of supervision by Professor Robeyns, enough to make anyone lose its temper but Ingrid remained always open, helpful and encouraging. I hope that the ideas that I try to communicate on this dissertation justify even a small portion of her intense work for which I will remain in perpetual debt.

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## 1. The capability approach as an incomplete project

*Any evaluative judgement depends on the  
truth of some information*

Amartya Sen (1992, 73)

The capability approach is a broad framework for conceptualizing and evaluating individual welfare (Kuklys and Robeyns, 2005:9).<sup>4</sup> From a capability perspective, a person's well-being should be assessed in terms of the freedom she enjoys to realize doings and beings she has, upon reflection, reason to value (such as being able to be well nourished, to read the newspapers, to appear in public without shame, to move freely, to choose one's course of life, to work, to raise a family, to live without violence, etc). The origin of the capabilities approach can be found in a series of lectures given by Amartya Sen in the early 1980s (1979; 1982a; 1985). His first detailed treatment of the approach (1992) provides a critique of egalitarianism while his most popular book (1999a) takes a closer look at the determinants of development from the perspective of freedom (e.g., social and economic arrangements like facilities for education and health care as well as political and civil rights like the liberty to participate in public discussion and scrutiny). In the meantime he also engaged with philosophical circles to discuss conceptions of well-being or the quality of life (Sen and Nussbaum 1993). The basic purpose of the approach is summarized in the preface to the seminal monograph based on the Hennisman Lectures (Amsterdam, 1982) *Commodities and Capabilities*: "to present a set of interrelated theses concerning the foundations of welfare economics, and in particular about the assessment of personal well-being and advantage" (1982a, xi). The capability framework developed out of criticism of

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<sup>4</sup> I acknowledge that there is quite some divergence and disagreement within the literature on the capability approach on the question of what meta-theoretical status the capability approach has, i.e. a framework for quality of life assessment, a family of theories, an evaluative perspective, a theory of justice, etc. (see Robeyns, 2011a; 2011b).

standard welfare economics, particularly of what it assumes to be the relevant informational space for the evaluation of human well-being: utility.

The introduction of the capabilities idea was meant to be an answer to the question “Equality of what?” (Sen, 1979). A careful reading of this important contribution rephrases the question: “*If we want to be defending equality of something, then what would that be?*” (Robeyns, 2011a). This question does not have to be strictly interpreted as critical but it does call for attention to the relevant space for evaluation and the pros and cons that each space may have when we base our inequality-judgments on inequality on spaces. The primary concern is to conceptualize personal well-being, i.e. quality of life, and advantage, i.e. who is better and worse off, that can be used in a meaningful way as the currency of egalitarian policies. However this is not a necessary application of capabilityarianism. As we will see below the framework is open to divergent interpretations; in those cases capabilities can be interpreted as the basic concern for policymakers without implying egalitarian/prioritarian, republican or even libertarian policies. For that purpose we would require to further specify the approach and its relations to theories of the right.

The influence of the idea of capabilities soon went far beyond welfare economics and political philosophy. It became the inspiration for a wide interdisciplinary effort to understand better the ideas of quality of life and freedom and their relation to development, a subject that was, to some extent, neglected in economics despite its relevance, but that has by now attracted analytical welfare economists, social choice theorists, political philosophers, development ethicists and practitioners, among others, exploring more deeply the framework introduced by Sen (1979; 1982a); this has multiplied the number of interpretations. The discussion now brings together philosophers who use the approach to present their own (partial) theory of justice (e.g. Nussbaum, Anderson) while empirical economists aim to operationalize the approach, that is, to develop

quantitative techniques to measure functionings and capabilities (e.g. Alkire, Kuklys). In the meantime, both are criticized by development practitioners who seek the implementation of the approach through participative focus groups (e.g. Crocker, Clark). In fact, the whole framework is often presented as a broad framework of thought, rather than as a sharp analytical tool (Robeyns 2006). It can even be reduced to a thin claim about the relevant space of evaluation without being specific about the metric (whether functionings, capabilities or a mix of both as would be the case in refined functionings, see Fleurbaey, 2006) and much less about the rule of distribution.

Sen criticized Rawlsian egalitarianism for its focus on bundles of ‘primary goods’ and argued that there is an element of ‘fetishism’ in the Rawlsian framework in the sense that he “takes primary goods as the embodiment of advantage, rather than taking advantage to be a relationship between persons and goods.” (1979: 216) This relationship between heterogeneous persons and different goods defines the space where normative evaluations should focus. Sen calls this informational space ‘Capabilities.’ The concept is brought up in an open conversation amongst egalitarian philosophers but was promptly formalized and presented as a set of theses on the foundations of welfare economics. It is important to remark that Sen’s proposal for paying attention to the space of capabilities is one that aims to overcome the impossibility of interpersonal comparisons of utility by focusing on other evaluative space (Sen, 1998).

### **1.1 Capabilities**

Sen’s answer to the question “Equality of what?” introduces two basic notions. What matters to define *well-being* are the *functionings* of a person, i.e. her achievements: what she manages to do or to be (well-nourished, well-clothed, mobile, taking part in the life of the community). According to him, however, more important than well-being is the advantage of the person, i.e. her real opportunities. These are called capabilities. Although the ideas of

functionings and capabilities are closely related to the multidimensional approaches to the quality of life and to deprivation, the capability approach goes beyond a mere multidimensional framework as it puts the emphasis on choice from a set of real opportunities. In Figure 1 below I introduce the space of capabilities in relation to other spaces of evaluation like resources and utility.

### 1.1.1 Functionings and capabilities

Following the capability framework, the *well-being* of a person has to be evaluated on the basis of what he or she manages to do or to be. These ‘functionings’ have to be distinguished from the goods and services which are used to achieve them, because personal features matter a lot in the conversion from objective characteristics of commodities to actual functionings. For example, the nutritional value of food depends on the biological characteristics of the body; books do not contribute much to the personal development of persons who were never taught to read or that have to deal with neglected vision problems. Because a focus on the possession of commodities neglects human heterogeneity, it is not acceptable as a description of well-being. Sen (1982) gives a first and very useful formalization of these concepts which I will use to introduce the approach. The achieved functionings vector  $b_i$  of individual  $i$  can be written as:

$$b_i = f_i(c(x_i)) \quad (1)$$

where  $x_i$  is the vector of commodities possessed by person  $i$ ,  $c(\cdot)$  is the function converting the commodity vector into a vector of objective characteristics, and  $f_i(\cdot)$  is a personal utilization function of  $i$  reflecting one pattern of use that  $i$  can actually make. If  $v_i(\cdot)$  is the valuation function of person  $i$ , then the value of that vector of functionings  $b_i$  is given by:

$$v_i = v_i(f_i(c(x_i))) \quad (2)$$



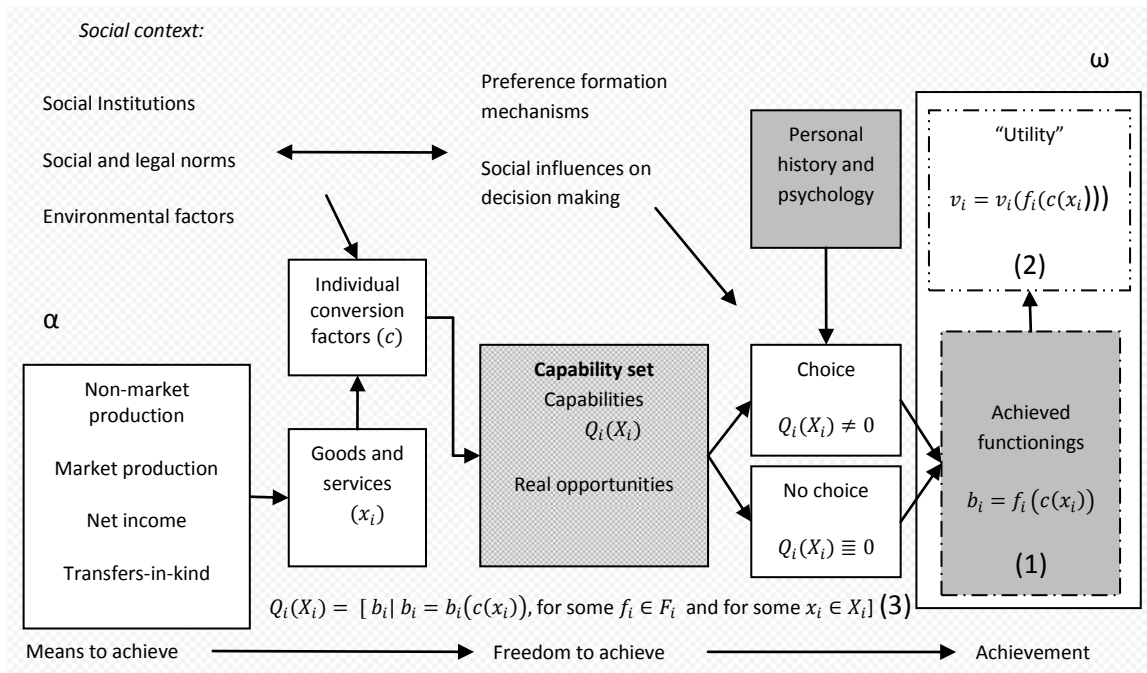


Figure 1: a representation of the capability space. Based on Robeyns (2005: 98)

Sen emphasizes that the valuation function  $v_i(\cdot)$  can represent a partial ordering. The interpretation of  $v_i(\cdot)$  is crucial. If we introduce the possibility of inter-personal differences, we introduce a subscript,  $v_i(\cdot)$  which makes it formally similar to a utility function  $u_i(x_i)$ , since it can also be seen as the representation of a (possibly partial) ordering of commodity bundles  $x_i$ . However, in Sen's view, it is necessary to distinguish the valuation of functionings vectors from the utility derived from it. He distinguishes different possible interpretations of utility. (Notice that these different interpretations would change the position of 'utility' in the figure above). Utility could be seen as part of the functionings space if interpreted as pleasure and pain, or it can be seen as a by-product if interpreted as fulfilled desires.

The first interpretation defines utility on the basis of 'preference satisfaction'. This is the most popular approach in modern welfare economics, but it is really a nonstarter.

The assumption that choices are motivated only by personal wellbeing is heroic and criticism abounds (e.g. Nozick 1974, 41; Brandt 1979, ch.13; Parfit 1984, ch.8). Moreover,

as is well known, the preference satisfaction approach cannot easily accommodate interpersonal comparisons of well-being. Yet such interpersonal comparisons are indispensable for judgments about inequality.

The second and the third interpretations are situated in the traditional utilitarian interpretation: one interprets utility as subjective happiness (pleasure and pain), the other as the extent to which desires are fulfilled. As representations of well-being, they both entail similar problems which I will discuss briefly below.

### **1.1.2 Physical and valuation neglect: problems of utilitarianism**

The first problem is what Sen calls ‘physical condition neglect’: utility is grounded only on the mental attitude of the person, and does not sufficiently take into account the real physical conditions of the person. This has two aspects. One is the issue of expensive tastes; the other is that persons may adapt to their objective circumstances or realistic expectations: “A person who is ill-fed, undernourished, unsheltered and ill can still be high up in the scale of happiness or desire-fulfillment if he or she has learned to have “realistic” desires and to take pleasure in small mercies” (Sen, 1982: 21). In the literature this neglect has also been called the ‘adaptive preferences’ problem.

The second problem is ‘valuation neglect’. Valuing a life is a reflective activity in a way that ‘being happy’ or ‘desiring’ need not be (Ibid, 29). An acceptable approach to well-being should explicitly take into account this valuational activity by the persons themselves. This is not to say that “happiness” or “desire-fulfillment” cannot be important components of well-being. But they are only part of the story. The most adequate way of taking them into account is to see them as elements of the vector  $b_i$ .

### 1.1.3 Capability: advantage as freedom to pursue valuable life paths

Sen claims that a description of individual living standards in terms of achievements is not sufficient because one has also to introduce the notion of freedom. He therefore proposes the concept of the *advantage* of a person, i.e. his or her *real opportunities*. The person can choose the use function  $f_i(\cdot)$  from her set of real possibilities  $F_i$ . Her choice of possible uses over commodities is restricted to his ‘entitlements’  $X_i$ , we can represent her real freedom by the set of feasible functioning bundles:

$$Q_i(X_i) = [b_i | b_i = b_i(c(b_i)), \text{ for some } f_i \in F_i \text{ and for some } x_i \in X_i] \quad (3)$$

$Q_i$  can then be called the ‘capabilities’ of person  $i$ , i.e. her real opportunities. Sen is explicit about the importance of the move from functionings to capabilities. The classic example is the comparison between two individuals who are both undernourished. For the first individual, the undernourishment is the result of his material deprivation. The second individual is wealthy, but decides to fast for religious reasons. While their achievements in terms of nutritional functioning are identical, it seems clear that their situations are not equivalent from the perspective of freedom. This is precisely the point that makes Sen’s approach different from utility-based approaches but also from other multidimensional approaches that do not have this concern with freedom.

Equalization of capabilities goes beyond equalization of opportunities in the narrow sense of the word, and also beyond removal of discrimination, although both are important elements of it. Capabilities are a reflection of the positive freedoms of individuals, and should not be restricted to the securing of negative freedoms. For example, persons should not only have the legal right to provide themselves with food; they should also have the economic possibilities to do so. This is why capabilities are often defined as ‘real freedoms’ or ‘substantive freedoms’: formal freedoms are not enough to secure people’s capabilities.

In contrast, the two most prominent theories nowadays, utilitarianism and the Rawlsian approach to justice, focus on utility information or (a person's endowment with) primary goods, respectively. Their problems can be summarized as follows. Focusing solely on a person's utility achievement risks overestimating her actual well-being due to adaptation phenomena, and fails to account for a person's freedom, whereas a focus on resources fails to account for the different abilities people have to convert means into actual doings and beings. These criticisms create reasonable doubt over both criteria presented above and make the capability approach a strong candidate for the evaluation of well-being and, as already pointed out, advantage.

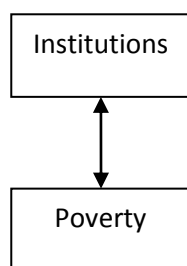
#### **1.1.4 The social context: a brief institutional perspective**

Lastly, I would like to spend a few words on how the social context enters the picture in the capability approach particularly with regards to the multidimensionality of poverty. The first thing to notice is that institutions and norms are constitutive of the multidimensionality of poverty. In the first place, institutions and norms determine access and achievements in various dimensions, in, for example, income, human development and social interactions.

Defining institutions is a matter of intense debate, at least between institutional economists (see e.g. Rutherford, 1994) as institutions refer to different domains: market, non market, state, economic, social, and political, among others. Institutions are often equated with rules and norms (but also with organizations), though these three concepts are distinct. Social norms are sometimes contrasted with official rules enforced by law. Therefore I will have to restrain this brief discussion to one of the most prominent accounts. It is possible to schematize the matter for our current purposes and distinguish between formal and informal institutions. The former constitute written and codified rules. Examples of formal institutions would be the constitution, the judicial laws, the organized

market and property rights. Informal rules, meanwhile, are rules governed by social and behavioral norms of a society, family and community. In many instances, informal institutions, over time, evolve into formal institutions. Institutions are highly path dependent and as North (1990) asserts, for institutional change to be a stable process, it should be an evolving and continuous process.

For North, institutions are “the rules of the game in a society”; they are “the humanly devised constraints that shape human interaction” (North, 1991: 97). He considers institutions “structure incentives in human exchange” (North, 1990: 3) and affect economic performance by their effects on the costs of exchange and production, together with technology. The main function of institutions is to “reduce uncertainty by establishing a stable (but not necessarily efficient) structure to human interaction” (North, 1990: 6) Institutions as evolutionary cognitive phenomena play a key role in these processes. As psychological states, institutions and norms endogenously both determine and result from individual mental models, and are therefore also causes and effects of social interactions and behaviors regarding the capability of escaping poverty, such as cooperation, altruism, and self-interest (see Binmore, 2005). Institutions are themselves multidimensional, including forms and contents which multiply the causal links between dimensions of institutions and dimensions of poverty. If we consider these multiple



**Figure 2:**  
**multidirectional**  
**dependence**

cognitive causal chains, there may be an *ex ante* indeterminacy of the effects of norms and institutions, which may be inclusive, cooperation enhancing or it may be exclusionary. Causality works both ways from institutions to poverty and from poverty to institutions, which induce endogenous processes and may generate poverty traps, or ‘institutional poverty traps’. Repeated social interactions may stabilize beliefs and norms, thus generating institutional poverty traps. Poverty

is shaped by norms, because norms are psychological states, mental representations, and cognitive routines, which may make learning processes costly for individuals. This generates path-dependency and persistent differentiation in mental models and behavioural rules (Denzau and North, 1994), or cognitive traps. Because institutions are themselves composite phenomena, they multiply the causal paths. Beliefs and preferences shape norms, which in turn shape economic outcomes. Beyond subsistence, poverty is shaped by individual mental representations and norms, which impact on the other dimensions –for example, perceptions of having no right to claim rights, of being confined to a lower status, of having no prospects of social mobility, and the like (as Sen has pointed to, see 1999; see also Nussbaum, 2000). Prospects contribute greatly to differences in individuals’ assessments of their own poverty: if individuals perceive their society as enjoying high social mobility, the fact that they are poor does not imply for them that they will be poor in the future. Finally, the literature on subjective economic welfare confirms the discrepancies between objective poverty and subjective perceptions of poverty. Even if there is a strong relationship between both indicators, there is by far not a one-to-one relationship

It must be noted that the representation of the capability space presented in fig.1 is static. Institutional considerations are better framed dynamically and therefore the emphasis would be mainly on the process by which resources and endowments are transformed to capabilities and functionings. However I do not present a dynamic model by any means and *de facto* escaped the temptation to simply fit this process into a cycle since, as I already mentioned, dependence is multidirectional.

## **1.2 An incomplete framework**

The focus on a person’s capability or freedom to realize valuable doings or beings, constitute the characteristic feature of the capability framework. In other respects, the capability framework is an incomplete framework which is open to different interpretations

which may be dependent on the problem that is supposed to address, however there are also some divergent interpretations where reconciliation seems further from reach. In any case, different versions of the approach may be in conflict and we cannot attribute these differences to pragmatic differences. No matter, though, whether it is employed in practical policy evaluation (Alkire, 2002), whether it forms the basis of a global assessment of human development as in the annual UNDP reports, or whether it is further developed into a theory of justice (Nussbaum, 2006), in all cases, at least two questions will have to be answered. As I already pointed out in the preface we need to define the dimensions or the list of capabilities and we need to determine weights within and between the selected capabilities or alternatively, affirm their incommensurability.

The incompleteness of the framework, and especially the question as to how the valuable functionings should be identified has triggered much debate over whether the capability approach can indeed hold up to what it promises. To appreciate the significance of this issue it is important to be aware of the importance that environmental, cultural and personal diversity is given within the approach. In the theoretical motivation of the approach the role of heterogeneity is twofold. First, human diversity with regard to the different abilities among people to convert commodities into functionings is one of the main motivations for the move from resources to the actual doings and beings a person can realize. Second, the move from achievement to freedom is motivated by a concern to take into account diversity on the level of values and different conceptions of the good life in modern societies characterized by a plurality of world-views. Sen has pointed out that the incompleteness of the framework affords the necessary flexibility to accommodate possible disagreement on the importance of different components of well-being. (Sen and Nussbaum, 1993: 48) Indeed many parts of the framework are left open, such as the specification of the relevant functionings that should enter a capability set, as well as the question of how capability sets can be ranked *vis-à-vis* each other. These gaps make it

possible to fill the blank spaces according to the purpose of the exercise and the concrete cultural context under consideration but also raise a lot of questions whether the approach is a workable idea or not. Whether these gaps add to the approach flexibility and thus to its workability or detract from it is something I will try to explore in this dissertation. Let's take a closer look to them.

### **1.2.1 First gap: which capabilities?**

First, given the large number of doings and beings one can imagine that focusing on the capability of "counting the number of hairs in one's beard," would reduce a normative focus on capabilities to the absurd; one has to identify those functionings which are relevant for the evaluation of a person's well-being.

Two main answers can be found in the literature: Nussbaum (2000, 2006) has proposed a general list of valuable functionings inspired by an Aristotelian notion of human flourishing. She emphasizes that her list is universally applicable but has to be specified and extended in each particular setting. As an alternative, Sen (1992) and many who work with the capability approach as an incomplete framework of evaluation, hold that the valuable functionings should be identified in a discursive and participatory process among the people whose well-being is assessed.

Sen has discussed the relevance of many specific capabilities like the freedom to be well nourished or the ability to move about or the power to participate in the social life of the community. But he is against the fixation of a universal capability list which is absolutely complete and totally fixed because such a list would be unable to respond to public reasoning.



### **1.2.2 Second gap: Weights?**

We could answer the question over which capabilities matter if we can answer the relative value of functionings-capabilities because this determines their relevance for evaluation. This leads to the question of how to identify the value of functionings-capabilities? Here, once again Sen warns us of the “temptation not only to have one fixed lists, but also to have the elements of the list ordered in a lexicographical way.” (2005: 78). This means that if we are to rank even basic capabilities we should always do so in a context dependent way. This does not mean that Sen does not believe in a role for theory but rather that the question of evaluation has to be grounded on the particular social reality that the society in question faces.

### **1.2.3 Third gap: Sen’s concept of public reason**

Sen is widely recognized as a prominent social choice theorist. Indeed he received the Nobel prize “for his contributions to welfare economics.” However in his lecture for the occasion he was keen to point out that “it is social choice ... that provides a general approach to the evaluation of, and choice over, alternative social possibilities.” (1998: 179) Given that Sen’s expertise on the subject is beyond doubt, one would expect that he indeed has a lot to say about the exercise of public reasoning which, at least from an outsider’s perspective, may seem very relevant for social choice. Nonetheless one will quickly run into a surprise since this is not necessarily the case because social choice theory deals only very indirectly with public reasoning. Indeed social choice theory is a very analytical and mathematical approach to the problem of social choice characterized by an aggregative model which assumes away the exercise of public reasoning in a wider sense.

We can say that according to the aggregative model individuals of a society have each different sets of preferences about what they would like governmental institutions to do. The key point where the aggregative model characteristic of social choice theory may

stop too early is that these preferences need not be contrasted or openly discussed among citizens. Accordingly, a popular ‘raise your hands’ or more formalized method of voting is used as a mechanism for aggregating individual preferences; the outcome is legitimate and just, provided it reflects the preferences of the majority (or whatever other voting rule is agreed upon to resume the social exercise). Yet the aggregative model can be problematic because it makes individual preference-satisfaction the core concern of politics and voting the only political activity.

Even though Sen is an expert in social choice theory he rejects the idea that social and political institutions are to be exclusively evaluated depending on their contributions to individual preference-satisfaction. By contrast, he advocates the idea that “open discussion, debate, criticism, and dissent are central to the processes of generating informed and reflected choices” and that we cannot “take preferences as given independently of public discussion” (Sen 1999b: 153). Perhaps one way of simplifying these two models would be on the one hand to attend to the ballot without any prior discussion simply to declare one’s preferences and on the other hand attending the ballots after listening to the different positions and discussing one’s reasons for preferring *a* over *b* and perhaps after hearing and offering arguments changing preferences from *a* to *b* (notice that we still need to aggregate the preferences whatever they may be). This is clear from the following quote where Sen ponders on the type of public reasoning that is required for an effective democracy:

What exactly is democracy? We must not identify democracy with majority rule.

Democracy has complex demands, which certainly include voting and respect for election results, but it also requires the protection of liberties and freedoms, respect for legal entitlements, and the guaranteeing of free discussion and uncensored distribution of news and fair comment. Even elections can be deeply defective if they occur without the different sides getting adequate opportunity to present their

respective cases, of without the electorate enjoying the freedom to obtain news and to consider the views of the competing protagonists. Democracy is a demanding system , and not just a mechanical condition (like majority rule) taken in isolation (Sen, 1999c: 9-10)

Therefore it is correct to say that Sen expects a more demanding role for public reasoning in democracy than the aggregative model we find in social choice theory. For him it is not so much about aggregating preferences but about informing and transforming preferences through open dialogue and scrutiny. As Sen expresses it: “The practice of democracy gives citizens an opportunity to learn from one another, and helps society to form its values and priorities” (ibid: 10)

As we have already mentioned (see 1.2.1 above) in order to resolve the selection of the relevant capabilities for policy purposes, Sen alludes to democracy: every society through public discussion and democratic deliberation should decide on the list of capabilities and the thresholds that each of these capabilities. However, Sen seems to leave a number of conceptual and philosophical issues unexplored and unscrutinized. Specifically his approach would possibly gain traction if it takes further steps that advance it from a general defense of democracy to an specification of what form of democracy is more suitable to promote a free and equal society.

In his more recent book *The Idea of Justice* (2009) Sen has indeed taken more time to lay out his thoughts about democracy and public deliberation. Sen has for a long time been recognized for his work on the instrumental role of democracy in preventing famines or other instrumental virtues of democracy. Nevertheless for Sen, democracy has intrinsic value and the capability to participate in public discussion can be taken as central to his approach for both reasons. However, Sen’s conception has remained altogether somewhat vague and general. He discusses issues like the universal value of democracy and tries to

deviate the public conversation from the false diatribe between western and non-western values but he stops short of specifying a conception of public reasoning that may serve capabilities theories specifically. He does claim for example that “we can take the relevant standard of objectivity of ethical principles to be linked to their defensibility in an open and free framework of public reasoning.” (Sen, 2009: 196) But this is something many political philosophers would agree with and the problem is that within this agreement there are different positions. Sen is well aware of this but instead of taking sides with one or the other he stays at the level of convergence even if he has departures with those he claims to be relying on. To illustrate I will consider Sen’s comments on the differences between Rawls’s and Habermas’s conceptions of public reasoning.

Sen notes that “Rawls’s own wording seems to concentrate on open dialogue, not with all, but only with ‘reasonable people’ [this contrasts with] the more fully procedural view of Habermas” (Ibid, footnote). However even when Sen recognizes that the differences between Habermas’s and Rawls’s view of public reasoning “may be quite significant” He doesn’t pursue the issue of differentiation because it’s not central for the purpose of the book (Ibid, footnote):

Despite the differences between the distinct types of arguments presented by Smith, Habermas and Rawls, there is an essential similarity in their respective approaches to objectivity to the extent that objectivity is linked, directly or indirectly, by each of them to the ability to survive challenges from informed scrutiny coming from diverse quarters. (45)

However, Sen asserts that “the principles that survive such scrutiny need not be a unique set.” (45) This is, in fact, a large departure from Rawls. Indeed Sen states that approaches to justice that propose “to follow up the choice of principles of justice by the rigidity of a unique institutional structure (this is part of transcendental institutionalism discussed in the

Introduction), and which proceeds to tell us, step by step, an as if history of the unfolding of justice, cannot easily accommodate the co-survival of competing principles that do not speak in one voice.” (46) This criticism that Sen makes of Rawls’s concept of public reason and particularly in the consequences that the identification of ‘reasonable persons’ may have, has a Habermasian flavor. Indeed Sen does “not make a big distinction between those whom Rawls categorizes as ‘reasonable persons’ and other human beings, despite Rawls’s frequent reference to –and evident use of – the category of ‘reasonable persons’.” (43) But even if this criticism can be found in Habermas, Sen goes beyond Habermas because he argues “for the possibility that there may remain contrary positions that simultaneously survive and which cannot be subjected to some radical surgery that reduces them all into one tidy box of complete and well-fitted demands” (46). It is not that Habermas does not have a place for dissent on his theory but clearly his emphasis is on consensus and reaching understanding which he believes is the *telos* of language. So there may be interesting divergences between these authors and that makes it more of a pity that Sen does not engage fully in this discussion. Sen acknowledges that there are “many differences in the distinct ways in which the role of public reasoning in politics and discursive ethics can be viewed.” (326) But he refrains from exploring these differences because the thesis he ‘tries to explore’, namely, that there is an intimate connection between justice and democracy, “is not threatened by the existence of these differences” (Ibid).

Jürgen Habermas has focused on the latter, largely procedural, route, rather than relying on some procedure-independent identification of what would convince people who are ‘reasonable’ persons and who would find some political conviction to be ‘reasonable’ as well. I see the force of Habermas’s point and the correctness of the categorical distinction he makes, even though I am not fully persuaded that

Rawls's and Habermas's approaches are, in fact, radically different in terms of the respective strategies of reasoning. (43)

Perhaps Sen is right in sustaining this general point but I think it goes at the cost of stating the obvious. I consider that Sen's approach would gain much ground from a more nuanced account of public reasoning and I believe that Habermas's procedural-deliberative conception would make a tighter fit to Sen's own concerns than Rawls's statist model, because of its decentered character. Perhaps this hypothesis proves to be wrong after it is properly analysed and investigated, but in any case it remains very unfortunate that Sen does not fully engage with the literature in deliberative democracy even when Sen concedes that "Habermas has made a truly definitive contribution in clarifying the broad reach of public reasoning and in particular the dual presence in political discourse of both 'moral questions of justice' and 'instrumental questions of power and coercion'." (2009:325) Nonetheless, as I have stated I will give the reasons why I believe discourse ethics is particularly well suited to provide the philosophical foundations of a democratic theory that delineates the normative criteria that procedural answers need to fulfill. Habermasian discourse ethics can and should be seen as spelling out in more detail what rational inquiry worthy of its name requires.

## 2. The entanglement of facts, values and norms.

In a capitalist democracy there are essentially two methods by which social choices can be made: voting typically used to make “political” decisions, and the market mechanism, typically used to make “economic” decisions.

Kenneth Arrow (1951, 1)

This chapter introduces a principled solution for the three lacunas I pointed to above: the selection of dimensions for a multidimensional measure (1.2.1), the weights aggregation demands (1.2.2), and the underspecified concept of public reason that Sen postulates (1.2.3). As I have stated already, I propose Habermasian discourse ethics and his conception of deliberative democracy, as a path worth exploring for the mentioned gaps in the capability approach. The main purpose of this chapter is to introduce discourse ethics to provide the foundation for the discussion about its usefulness for capability theories in the following chapter. But before I do that I must show why discourse ethics enters the picture. To do so, I discuss the relation between facts, values and norms which, so I argue, is persistent across social sciences but also in economics and hence it must be faced rather than avoided. The most basic consequence of this relation is that social sciences have to deal not only with ‘value premises’ but even that its descriptive and normative roles are entangled with values. Social scientists should accept and explicitly state value judgments rather than conceal them as implied assumptions. What is more, values should not be chosen arbitrarily, they must be chosen in purpose-oriented manner. For example, the rationality assumption may be justified for explanatory purposes even if we are aware that people do not behave rationally all the time. But what if the purpose is not explanatory but normative? On this question Reiss has commented:

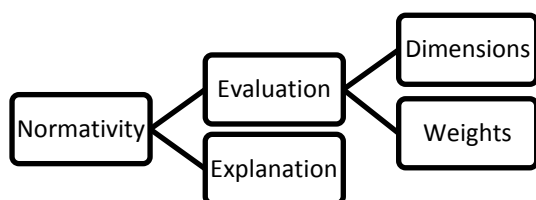
The position I take here is democratic: if value judgements are at stake, what should matters are the values of the people concerned. But I admit that a thorough normative discussion about the question ‘whose values?’ is missing here (Reiss, 2008: 25)

According to Reiss the chosen values must be founded on people’s actual valuations. How do we get to these valuations is an entirely different matter which I approach in this dissertation from one perspective only, namely, discourse ethics. The basic reason is that I believe it is necessary to recast the distinction between positive and normative economics in such a way that discussion of values is not precluded from policy oriented disciplines. The hinge is the possible influence the communicative conception of rationality that Habermas has defended may have for normative economics understood theoretically. My intention is to look at Habermasian conceptions at work. My interest in Habermas here is as theoretician of communicative rationality and discourse ethics but not on his theses about modernity or his metaphor on the ‘colonization of the *lifeworld*.’ I constrain my discussion to the interaction between communicative rationality, i.e. action towards common understanding, and instrumental rationality, i.e. strategic action, as complementary. I must anticipate, also, that I explain and defend his principle of discourse ethics which, I consider, is a basic principle of justice that sheds light on the ‘whose values?’ question I quoted above with the answer ‘all affected.’ In this sense with this thesis I explore one path that may be worth considering for the ‘evidence-based economics research project.’



## 2.1 Normativity, social theory and evaluation

Before I give my account of discourse ethics and why do I think it matters for the capability approach I will have to engage in an exercise of relevance. The first thing that I would like to pay attention to is the division of labor between positive and normative economics. According to standard economic textbooks the division between positive and normative economics is one that corresponds to that between facts and values. Positive economics deals with facts and makes claims about how the world is or works. It states laws, infers causal links and postulates mechanisms while normative economics deals with values and makes claims about how the world should be or at the very best, makes use of mathematical and analytical tools to reach conclusions about values while remaining somewhat neutral even if its subject matter is everything but neutral. In any case this received-view about facts and values has come under the lens of criticism. In figure 3 we can see that normativity is now recognized as influencing both ‘positive’ and ‘normative’ economics. It is now widely accepted, if it was ever questioned, that normativity plays a role in explanatory theory too since notions of rationality are essentially a way to constrain the beliefs and desires of agents in order for actions to be explainable by social science: Rationality is a value premise. Of course, the centrality of rational choice theory or expected utility theory for economics is well established, and proof of that is its resilience



**Figure 3: normativity, theory and evaluation**

to criticisms. Here we can speak of a normative concept that is not moral (see Hands, 2006; 2009; 2011) and although this notion has received criticisms, it is sufficient

to take Hands point to give normativity a special place with regards to, say ‘facticity’ in economic theory, we can almost say that all economics is, in this sense, normative. However, the types of normativity involved in explanatory theory and in evaluative theory seem quite distinct. Positive economics seeks to

understand and explain economic regularities and mechanisms, whereas normative economics deals with the assessment of policies or states of affairs. This could be illustrated with ‘positive, normative and, I would add, evaluative statements’. Roughly speaking causal statements (x causes y); normative statements (x must satisfy property y); and value statements (x is preferred to y). To illustrate we could add a third voice to Mankiw’s (2003: 28-9) text-book example:

Fortune: Minimum wage laws cause unemployment

Norma: The government should raise the minimum wage

Valery: The more leisure I enjoy, the happier I am.

What is of interest for me in this trichotomy is that it points out to at least two different types of value-ladenness. As figure 3 (above) shows the idea is to remark that normativity plays at multiple levels and in different senses.

## **2.2. Facts and values, again**

In 1935 when Robbins published the revised version of his *Essay on the Nature and Significance of Economic Science*, it seems that it escaped him that the main subject of economics he was defining –the problem of scarcity- was indeed a question with a normative yet non-moral nature. The strict dichotomy between facts and values that Robbins suggested in his essay did not allow him to see that there might be latent normative issues in the concept of optimization under constraints, with the result of neglecting the place that the normative question might have in science in general and in economics in particular. This is one of the arguments that Wade Hands makes in a series of recent articles (2006, 2009, 2011) where he sets forth to explain the concept of normative rationality in economics. His main point is that the concept of rationality involved in

economics is a normative one, namely a question of how an agent *ought* to behave rationally in the face of scarcity.

Nevertheless, what Hands fails to notice is that, while Robbins held the strict dichotomy between the positive and the normative, at the same time he recognized that the question of scarcity might lead to normative yet non-ethical considerations that should otherwise be avoided:

“As we have just seen, economic analysis is *wertfrei* in the Weber sense. The values of which it takes account are valuations of individuals. The question whether in any further sense they are *valuable* valuations is not one which enters into its scope. If the word rationality is to be construed as in any way implying this meaning, then it may be said that the concept for which it stands does not enter into economic analysis.” (Robbins, 1932: 91)

The very fact that Robbins was willing to admit that the ordered valuations of individuals might be of a normative importance, is indicative of his willingness to recognize a problem that he nevertheless thought as peripheral to economic analysis. Yet, within Robbins’s framework of analysis, since rationality refers to human action, it cannot describe but an optimal way of acting when certain ends are given. Assuming that there is an order of individual valuations and an action based on their ordering means that the optimal course of action based on this order is also the optimal for the individual -given that his preferences are known. It prescribes what the agent ought to do given the ordering of his preferences or his scale of valuations. Hence, even if the question of the content of the valuations themselves belongs to the normative-ethical sphere, how can one ignore the fact that an economic behaviour described as optimal has a deontological nature? If this is so, it would seem that Robbins *pave* Robbins has defined economics as a practical science, that is, one that deals with means and ends rather than causes and effects.

But let me get back to the fact/value dichotomy that Robbins famously, but not exclusively, defended. What is meant by it is expressed regularly in policy discussions when one hears someone challenge a statement, not by saying that the statement in question is false, or that the arguments offered in support are not valid or convincing but by asking the question, ‘Is that a fact or a value judgment?’. The implication is that if it is a value judgment then we may discard it as *subjective* and given that: *Any* value judgment is as good as the other. This position can be termed *moral relativism* and it was defended by Robbins *by its joints* when he made use of the fact and value dichotomy as a ditch to limit claims of redistribution made by Cambridge welfare economists as Marshall and Pigou to the realm of ethics:<sup>5</sup>

If we disagree about ends it is a case of thy blood or mine – or live and let live according to the importance of the difference, or the relative strength of our opponents. But if we disagree about means, then scientific analysis can often help us resolve our differences. If we disagree about the morality of the taking of interest (and we understand what we are talking about), then there is no room for argument. (1932: 53)

The conclusion drawn by Robbins is impressive; by holding what Putnam (2002) refers to as the fact/value dichotomy (in this passage means v. ends) he precludes moral deliberation from a policy oriented endeavor. But not only this, one would be tempted to think that he believes that economists are not influenced by their ethical and political values when they do economics.

The philosophical roots of the fact/value dichotomy that still haunts neoclassical economics go back at least to David Hume. For Hume, a “matter of fact” was something

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<sup>5</sup> However, Backhouse (2010) has argued that more than the Cambridge economists, Robbins target was Oxford idealism.

that one could see, hear, touch, taste or smell. Arguably, this was a reasonable view for a philosopher to adopt in the eighteenth century. In the early twentieth century, however, the new science confronted philosophers with “facts” that could not be perceived nor expressed except in mathematics. This raised concern over another dichotomy – that between fact and theory – while indirectly undermining the fact/values dichotomy as well. However a direct attack came from the classical American pragmatists, who argued that facts, theories and values are all necessarily entangled. Nonetheless, this criticism took many decades to be considered seriously in the conversation.

It is customary to attribute the adoption of a fact/value dichotomy in economics to the influence of Lord Robbins. Samuelson, the most important welfare economist of the last century, lends support to this view: “It is *fashionable for the modern economist* to insist that ethical judgements have no place in scientific analysis. Professor Robbins in particular has insisted upon this point” (1947, 219). However Robbins position was more complicated. The principle Robbins wished to attack was the interpersonal comparisons of utilities. If these comparisons were allowed, then economists could be asked whether it would be a good idea to redistribute some superfluous income to those who face destitution. Robbins attacked interpersonal comparisons in his book *An Essay on the Nature and Significance of Economics Science* (1932) with an argument that rested on the inscrutability of other minds. As if the question of who was starving and who was not, was not testable as a factual issue! After all, Robbins definition of Economics came from the fact of scarcity. Moreover, the general principle upon which the equilibrium of supply and demand rest and that allows for economics to become a science is deduced from the simple fact that “a price exists at all” (Robbins, 1931: 75). This very fact when deductively analyzed into its basic conditions uncovers the principles upon which economic science is founded:

If there were no demand beyond the available supply, and no alternative use for the factors of production involved, there would be no price. The good would not be scarce in relation to the demand for it. It would not be an economic good at all. It would be a free good. In the last analysis, therefore, our proposition rests upon deductions which are implicit in our initial definition of the subject-matter of Economic Science as a whole. Economics is concerned with the disposal of scarce goods with alternative uses. That goods are scarce and have alternative uses is a fact. Economic analysis consists in elucidating the manifold implications thereof.

(Ibid)

Robbins analysis is obviously deductive in nature. Yet a word in his text might indicate that his argument is not immune and that it can –as it did in the field of philosophy of science and in the economic practice- undermine his modern aspirations. This word is none other than ‘fact’ -alluding us to the distinction between facts and values. In the language of common sense, fact means something objective, undeniable and given in contrast to a value – which is turn is subjective constructed and sometimes imposed or inherited. Yet if common sense dictates the meaning, the history of the word dictates the opposite. ‘Fact’ is derived from the Latin word *factum*, a noun originating from the verb *facere*. Surprisingly enough –and contrary to common sense- a fact is something that has been made, that has been fabricated and constructed. Furthermore it is a deed, or an act –something that someone has done. This meaning has survived in such words as ‘artifact, factory, fashion, feasible’ and ‘fetish’ –among others (Klein 1971, 570). Therefore, the use of the word ‘fact’ with the meaning of an objective, given phenomenon is metaphorical in its essence: It is as if someone fabricated something and handed it over to us. If the ‘fact of scarcity’ is a construction postulated by rational economic man it is certainly not *wertfrei*.

The vocabulary of ordinary language and of the social sciences is replete with value-laden terms. For example, to describe a tribal system as “primitive,” a political system as a “regime,” an economic system as “capitalist,” or behavior as “rational” seems to combine description and evaluation. Even when social scientists give definitions of such terms free from their ordinary connotations, the terms retain their approving or disapproving connotations. Thus modern economic theory’s definition of “rationality” as utility maximizing can be claimed to be neutral on the moral desirability of utility maximizing. But since rational is an ordinary term of approval, this claim carries little weight.

If values do permeate social science then we should abandon the received positivistic view in economics. The case for the collapse of the fact/values dichotomy in economics has been made, *inter alia*, by Hilary Putnam (2002) who has shown how the dichotomy (in a virulent form in which ethical questions were considered to be questions of “thy blood or mine”) penetrated neoclassical economics after 1932 resulting in an impoverishment of welfare economics’s ability to evaluate what is supposed to evaluate. Putnam discusses very positively Sen’s attempt to enrich the evaluative capacity of welfare and development economics by means of the capabilities approach.

The capabilities approach requires the use of a vocabulary that consists almost entirely of entangled concepts, that is, concepts that cannot simply be factored into a descriptive part and an evaluative part, such as valuable functioning, capabilities a person has reason to value, well-nourish, self-respect, able to take part in the community. The standpoint that Sen shows has to be taken is one that says “that valuation and the ascertain of facts are interdependent activities.” (2002, 63) Moreover, and closely related to the discussion on Robbins that I made above, I must assert that Sen’s approach to inequality or, alternatively, to judgments of overall well-being is a direct response to Robbins arguments for the impossibility of interpersonal comparisons of utility. If redistributive

claims cannot find scientific ground in the space of utilities, looking at the space of capabilities and perhaps even more to functionings does allow for interpersonal comparisons. For example Sen has analyzed data in income and mortality and reached the following conclusion:

[I]t is not only the case that American blacks suffer from relative deprivation in terms of income per head vis-à-vis American whites, they are also absolutely more deprived than the low-income Indians in Kerala (for both men and women), and the Chinese (in the case of men), in the case of living to ripe ages (...) Bangladeshi men have a better chance of living to ages beyond forty years than African American men from the Harlem district of the prosperous city of New York. (1998: 22-23)

Of course, I must remark, Sen is not arguing for a redistribution of income from Bangladeshi men to African Americans from Harlem, NY. In fact he reports that African Americans “are very many times richer than the people of comparison groups in the third world.” (24)

But if social science is entangled with evaluative terms and judgments then we need a justification for the values that are at play. I will argue that discourse ethics provides that framework. But before I introduce discourse ethics I will give some general differences between critical theory and positive social science. This is relevant since discourse ethics claims to be an elementary part of critical theory.

One last thing before is that I would like to suggest that perhaps, borrowing more philosophical jargon, we should talk of theoretical economics, which thinks of economic phenomena in terms of causes and effects; and practical economics, which conceives economic phenomena in terms of means and ends. Although they are obviously related, in



this thesis I am interested exclusively with practical economics. From this perspective, I care not only about discussions about ends, as it would typically be thought of but also about means because value premises must be applied not only to ends but also to means since people evaluate means, too. This is especially true in relation to the side effects from the achievement of a certain end by certain means.

### 2.3. Discourse ethics

There are different levels at which we can speak of discourse ethics. A broad sense of discourse ethics would include not only the Frankfurt school approach to discourse ethics but also different theories of discourse Perelman's *Rhetorics* or Toulmin's *Uses of Arguments*. In the Netherlands van Grootendorst and Van Eemeren have developed a pragma-dialectical approach to argumentation; Deirdre McCloskey and Arjo Klamer are widely acknowledged for giving discourse or, say, rhetoric a fundamental role in economic explanation. However, when we speak of Habermasian discourse ethics we are in a completely different field that has little to do with any of the above. Habermas's definitions of discourse ethics and communicative rationality and their procedural requirements (1979, 1983, 1985, 1990) are based on a procedural as opposed to substantive rationality: "Discourse ethics (...) establishes a procedure based on presuppositions and designed to guarantee the impartiality of the process of judging." (1990: 122) What, then, is the basic principle of discourse ethics? Concretely, discourse ethics proposes that any valid moral norm has to fulfill the following condition, namely, the *principle of discourse* (D):

Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse. (Habermas 1992, 66)

According to Habermas a discursive foundation of morality is required in modern societies with a plurality of worldviews that enter in conflict and force to debunk traditional

morality grounded on religion or other comprehensive doctrines. Habermas understands this fact of modernity as the precondition that leads philosophy to a post-metaphysical foundation of morality. Habermas finds this foundation in the pragmatics of every day speech.

To develop his theory, Habermas introduces the linguistic-pragmatic concept of 'communicative rationality' which is guided by communicative action, distinct from and, accordingly, precedent to strategic action and its analogous 'instrumental rationality'. The basic assumption of Habermas is that the *telos* of language is understanding. (Habermas, 1987: 387) It is therefore a more elementary type of action than instrumental action in the sense that communication is necessary to coordinate action. In this sense it is prior to instrumental rationality that if necessary in our daily life, has been the object of the criticisms of many moral philosophers. Instrumental rationality is essentially teleological, that is oriented towards ends (thus with a means-ends structure) or as Kant would have it, it has the structure of a hypothetical imperative (in contrast to a categorical imperative); it is essentially strategical and hence works under a subject-object framework; its *telos* is domination. Communicative rationality, in contrast, is action oriented to understanding and it works under an inter-subjective rather than the subject-object framework and therefore it, ideally, does not establish dominance relations further than the coercion of the stronger argument.

Habermas distinguishes between distinct levels of rules like the basic logical and semantic rules or the norms governing procedure, such as the principle of sincerity and most importantly norms that 'guarantee' no coercion, repression and inequality in an argumentative process, he calls these the 'pragmatic presuppositions of discourse':

1. Every Subject with the competence to speak and act is allowed to take part in the discourse
2.
  - a. Everyone is allowed to question any assertion whatsoever
  - b. Everyone is allowed to introduce any assertion whatsoever into the discourse
  - c. Everyone is allowed to express his attitudes, desires, and needs.
3. No speaker may be prevented, by internal, or external coercion, from exercising his rights as laid down in 1 and 2 above. (Habermas, 1992a: 89)

According to Habermas, something like the rules of language is entailed in the pragmatic presuppositions of rational discourse. They are necessary in the sense that someone who participates in discourse –the give and take of reasons– has to be guided by these, precisely, because to be in discourse is to be able to justify one’s claims, not to exclude other participants arbitrarily, and so on. However they are also ideal in the sense that if we follow them they would lead towards a rationally motivated consensus. Ideally this means a linguistic practice where the voices of all concerned are listened to, no argument is arbitrarily excluded, and where only the force of the better argument prevails. Rorty characterized this as follows:

By ‘commensurable’ I mean able to be brought under a set of rules which will tell us how rational agreement can be reached on what would settle the issue on every point where statements seem to conflict. These rules tell us how to construct an ideal situation, in which all residual disagreements will be seen to be ‘noncognitive’ or merely verbal, or else merely temporary – capable of being resolved by doing something further. What matters is that there should be agreement about what would have to be done if a resolution were to be achieved. In the meantime the

interlocutors can agree to differ- being satisfied of each other's rationality the while.

(Rorty, 1979: 316)

Habermas situates the moral point of view within the communication framework of a community of selves. He replaces Kant's categorical imperative and its 'monological' reflection where practical reason dictates universal moral obligations in a private manner with a demand for inclusion of the viewpoints of all who would be affected by the adoption of a certain normative claim. We could also add that he 'lifts' Rawls's veil of ignorance and pleads for factual participation in discourse –where all are fully aware of the other's perspectives and interpretations.

Based on what has been termed the pragmatic turn in philosophy of language Habermas sustains that validity is linked to reasoned agreement concerning defensible claims. The key to communicative rationality is the appeal to reasons –what he calls the unforced force of the better argument– to gain intersubjective recognition for such claims. Therefore, Habermas's idea of a 'discourse ethics' can be viewed as a reconstruction of Kant's idea of practical reason in terms of communicative reason. We may say that Habermas is trying to recast in procedural terms Kant's categorical imperative: rather than ascribing to others as valid those maxims I can will to be universal laws, we must submit them to others for purposes of discursively testing their claim to validity. The emphasis shifts from what each can will individually without contradiction to what all can agree to in rational discourse. In Habermas's theory of action as communicative rationality, validity construed as rational acceptability is not something that can be dictated by practical reason in a solitary exercise but is rather tied to communication processes in which claims are tested by argument. This amounts to a consensus notion of truth.

Habermas reformulates the Kantian version of the *principle of universalization* (U) in terms of intersubjectivity. To begin with, the principle of universalization explains what our everyday intuition would outline for us as a strategy for solving moral conflicts: the principle of impartiality. The principle of universalization (U) is formally stated as follows:

A norm is valid only if "all affected can accept the consequences and the side effects its general observance can be anticipated to have for the satisfaction for everyone's interests (and these consequences are preferred to those of known alternative possibilities.) (Habermas, 1992: 65)

In this way, the principle of universalization formally determines those conditions which must be met if the claim of legitimacy is justified. We must notice that (U) and (D) are intrinsically related and indeed (D) can be derived from (U). The salient characteristic of (D) in contrast to (U) is that it states explicitly the discursive character of the moral point of view.

With Kant, Habermas distinguishes the types of practical reasoning and corresponding types of 'ought' proper to questions concerning what is pragmatically appropriate, ethically prudent, or morally right. When questions of value arise, deliberation on who one is and wants to be yields insight concerning the good life. If issues of justice are involved, that is, if there is a clash between different values, fair and impartial consideration of conflicting interests is required to judge what is right or just. And like Kant and Rawls—who give priority to the right over the good—Habermas regards questions of the right, rather than specifically ethical questions, to be the proper domain of moral theory. This does not deny that ethical discourse is rational but Habermas understands that the question, 'how should I (or one, or we) live?' needs to be solved in the context of the irreducible pluralism of modern life. What is crucial for Habermas is that in

our modern world, to suppose that the questions of the good life can be answered in general and by philosophers is no longer plausible. Questions of self-understanding and self-realization, rooted as they are in particular life histories and cultures, do not admit of general answers; prudential deliberations on the good life within the horizons of particular life-worlds and traditions do not yield universal prescriptions. If taking the fact of pluralism seriously means renouncing the idea that philosophy can single out a privileged way of life or provide an answer to the question about the good life that is valid for everyone, *it does not*, in Habermas's view, rule out a theory of a narrower sort, namely, a theory of justice. This amounts to a demarcation between norms and values, between questions of justice and questions of the good. Accordingly, the aim of Habermasian discourse ethics is to reconstruct the moral point of view from which questions of right can be fairly and impartially judged. This is the role that (U) and (D) are supposed to fulfill.

Perhaps one of the most controverted core assumptions that Habermas makes regarding the performative dimension of speech is that every speech act implicitly raises three different claims to validity that correspond to different types of practical reasoning, with respect to the truth of the proposition, the rightness of the utterance, and the truthfulness of the speaker. Habermas assures that the interpreter of an utterance is always in principle free to take up a 'yes' or 'no' stance to the validity claims raised by it, and thus to accept or reject it. Every utterance carries with it the 'guarantee' that the speaker could, if asked, redeem the validity claims it raises by providing sufficient justification of its truth or rightness and in the case that it cannot provide such justification, the speaker would be ready to drop his or her claim.

#### **2.4. Norms and values**

As I have remarked above, Habermas draws a clear-cut distinction between the concept of validity at work in scientific and descriptive discourse and the validity of moral statements

as ideal warranted assertability. Whereas truth claims in the case of empirical statements pragmatically presuppose a world of objects existing apart from our descriptions, moral validity claims lack such a realist commitment and in themselves hinge on the recognition by all the participants in the discourse. Moral rightness is conceptualized as a validity claim in a sense analogous to the truth, albeit without the same presuppositional commitments, and defined by the deontology of the just and the right, in terms of the norms and actions being equally in the interest of all possibly affected (Habermas 1999, pp. 271-318). Moral objectivity is thereby explained in a cognitivist and constructivist way.

Value judgments do not respond to the same validity conditions. But they are apt to be embodied in norms. When values are discussed from an impartial point of view and are rationally accepted by all the participants in a moral discourse, then the content of the judgment can be recognized as obligating under universality conditions. In that sense, they get entangled with moral norms. At the same time, Habermas accepts a weak notion of cognitive content for evaluative statements and insists that the meaning and significance of values can be rationally debatable in ethical discourses concerning the self-understanding and life-projects of persons and groups. Values are not objective just in the sense of being accepted within a community as a set of cultural conventions or customs. They deserve acceptance when subject to rational scrutiny and supported by good reasons. They are objective insofar as they are recognized intersubjectively by means of compelling reasons. Values have to be authorized in a practical context of rational discussion and inquiry. So Habermas is reluctant to consider them in naturalist terms. Hence, the discursive approach to morality is open to dissent about values and most importantly implies ethical fallibilism, that is, we may be wrong about our ethical beliefs and thus we should be open to new arguments that could disprove some previously held ethical belief.

Hilary Putnam (2002) argued that the distinction between norms and values is not as clear as Habermas states because norms presuppose 'thick ethical concepts' or values.

Norms like ‘don’t be cruel to your mother,’ presupposes the value of cruelty, and without it there is no language in which this norm could be recognized. This means that norms, as facts, are also unavoidably entangled with cultural values. In that case, agents will need to find different mechanisms of conflict resolution and seek out other routes to social cooperation and social order than moral ones. This would have the consequence of shifting the program of discourse ethics away from morality and ethics and towards politics and law. This raises the question: ‘What constitutes a just procedure for mediating disputes over contested values?’ is thus that such a procedure would require and foster open and fair debate among participants in the dialogue about contested customs. In part, this means ensuring that procedures for discussion and decision-making are designed to give participants roughly equal positions in deliberation, what Habermas calls ‘institutionalization of discourse’. A just procedure for negotiating disputes about cultural values would thus need to try, so far as it is possible, to bridge structural power differences among different group members and between these members and other, participants that may be affected by the deliberation in process. This in turn requires assessing who is excluded, why is that the case, and how this might be diminished for the purposes of inclusion in democratic dialogue.

However, Habermas does concede that disagreements about values as well as norms will always be with us. The idea that it should be the task of philosophy to deliver an authoritative resolution for moral disagreements is –for him– absurd. As Moody-Adams has put it:

An effective challenge to ... skepticism about the relevance of moral theory to moral life must begin by relinquishing the vain insistence upon the authoritative status of philosophical moral inquiry ... There is a middle way between the skeptical anti-theorist view on which moral philosophy should be replaced by some



other discipline – such as cultural anthropology, or experimental psychology, or literature, or some combination thereof- and the unsupportable view that moral philosophy is the final court of appeal on questions of moral justification. That middle way involves thinking of moral philosophy as a valuable and distinctive participant in the ongoing process of moral inquiry. (2002, 176)

One way of understanding discourse ethics is to think of it as a middle way between conceiving philosophers as beings with privileged access to truth and the opposite idea of philosophers as having nothing to offer. A middle way in which philosophers can be a valuable and distinctive participants in ethical discussions without pretending to the authority of a final court of appeal. One common criticism of discourse ethics depends on the double mistake of supposing that Habermas believes that an ideal speech situation will actually be reached at some particular time in the future and supposing that that such a situation is precisely the final court of appeal. Rather than undertake the task of producing a final ethical system, a final set of rules of conduct what Habermas offers instead is a rule for how to conduct our inevitable disagreements. This rule is what Habermas considers the moral point of view, and to its clarification philosophers must limit. I will come back to this on the next chapter where I discuss and contrast the Aristotelian approach to specifying capabilities with a Habermasian approach, particularly, when I discuss the proper relation between philosophy and democracy.

### 3. Deliberating capabilities

*Audi alteram partem*<sup>6</sup>

The second chapter introduced and proposed a principled solution for the first two lacunas in the capability approach I described in chapter 1, i.e. selection of dimensions (1.2.1) and weights (1.2.2) based on Habermas's conception of communicative rationality and the discourse ethics he derives from it. Discourse ethics is in dialogue with capabilitarianism as an ethical theory and depending on how capabilitarian theories are specified, it may assess them as legitimate or not. I provided an epistemic argument based on the collapse of the fact/value dichotomy as the main reason why the capability approach can flourish more fully in the fertile framework of critical theory. The story on the sociology of the profession that I pointed to above (2.2), has led me to make a plea that goes beyond value explicitness. Indeed I claim that value explicitness is a necessary but insufficient condition for the full and fruitful exercise of public reasoning.

Of course, there are many theories that claim to be critical and the extent to which they are is a matter of much discussion. Habermas's discourse ethics has been the object of many critiques but nevertheless it has remained central to critical theory because if nothing else, it has provided a coherent framework that starts from the tangible tensions of complex societies with a plurality of world-views and keeps a distance from both, the naturalization of morality as well as the appeal to tradition, while at the same time providing a "post-metaphysical" foundation for practical reason.<sup>7</sup> It is a minimal moral theory that reduces the role of moral philosophy to the clarification of a discourse-based moral point of view and leaves other questions to be answered by factual discourses. It is in

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<sup>6</sup> One of the fundamental principles of Constitutional Law in many countries. It entails that no person should be condemned unheard. A principle closely connected to the notion of due process which holds that an individual, whose life, liberty, or property is in legal jeopardy, has the right to confront the evidence against him or her in a fair hearing.

<sup>7</sup> See Habermas 1988b and 2000.

this sense “largely procedural” (Sen, 2009: 43). I have defended the claim that discourse ethics is a way in which social scientists can be valuable and distinctive participants in our ethical discussions without pretending to be the authority of a final court of appeal (2.3). This is especially pertinent for cases where the entanglement of facts and values is virtually uncontested even by the most hard-nosed economists.

After laying the building blocks of the project I pursue in this dissertation, this chapter presents a capability discourse ethics (3.3) that aims to appropriate Habermas’s main principle of discourse ethics:

(D): Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse.

(Habermas, 1992: 66)

As I have discussed (2.4) this project goes through a narrow pass since Habermas’s discourse ethics is a theory of the right while Sen’s approach is fundamentally a theory of value and thus while the first deals with norms (in Habermas’s sense universally valid statements of obligation) the latter deals with values (which may vary as the different life-worlds vary). Nevertheless I have argued that while it is true that facts, values and norms are entangled, this does not preclude the possibility of rational discussion of them. To put it in Kantian terms, this difficulty does not amount to a reduction of epistemology to aesthetics.

In this chapter, I engage in a discussion about the relation of philosophy and democracy in the context of the selection of capabilities that was brought up recently by Rutger Claassen (2011). I argue against Claassen’s characterization of the internal dispute between capability theorists and *pace* Claassen, I claim that the ‘democratic’ approach is the more ‘philosophical’ (3.1). This conversation takes me to a deeper discussion of the

Aristotelian approach that Martha Nussbaum has defended and of which I remain critical, in Habermasian spirit, despite its Rawlsian amendments (3.2). Finally, and most importantly, I give an account of Habermas's procedural concept of deliberative democracy (3.3) and argue that his decentered model (3.3.1) makes a tighter fit to Sen's intuitions than the Rawlsian statist model because of his emphasis on the role of civil society (3.3.2). Finally I give some examples of how the valuation exercise conjoins with public reasoning (3.3.3).

### **3.1. The proper relation between philosophy and democracy**

As we have seen above (1.2.1), one of the key issues that divide proponents of CA is whether or not a fully fledged capability theory should include a substantive list of central capabilities. There is a full spectrum of answers to this question, with Martha Nussbaum and Amartya Sen each occupying a position at the opposite ends of the spectrum.

On one side lies the work of Martha Nussbaum (2000; 2006; 2011) who has defended a list of central capabilities. Inspired by Aristotle (and J.S. Mill and K. Marx), she starts from an idea of the 'fully human life' and defines a list of abstract essential capabilities on the basis of what 'human dignity' requires.<sup>8</sup> Her list contains 10 general human capabilities (2011: 33-34):

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.

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<sup>8</sup> It is true that Nussbaum's strategy, which I will consider below, is more nuanced than I introduce it here. But my impression is that chapters in or out, the plot remains unchanged.

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 attachment 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 in meaningful relationships of mutual recognition with other workers.

Nussbaum claims that the translation of these 'essential' and abstract capabilities into more specific ones will depend on the specific social, cultural, and economic context. However, on the path from the general to the specific things may change more than we can foresee, consensus may seem within reach when one remains at the level of abstract formulations, but soon crumbles down when one turns to more specific applications. Nussbaum does claim that her list fulfils a critical role which an open-ended capability approach would not be able to assume, for instance, her account provides a theoretical argument for the condemnation of adaptive preferences. But this also may be problematic for her claim that the list is amenable to an overlapping consensus. Surely, not all societies would accept all of Nussbaum's listed items and this is something we can infer from the fact that Rawls limited widely his representational device and the pertinence of his principles of justice to what he

called ‘well-ordered societies.’<sup>9</sup> In any case, because Nussbaum doesn’t have the theoretical construction Rawls does, we are forced to test her claim that her list of capabilities would be supported by an overlapping consensus empirically. Nevertheless, despite this criticism, her list of capabilities may prove useful insofar as it provokes debate and discussion. That is to say, in as much as it contributes to public reasoning. This much, Nussbaum would be ready to accept.<sup>10</sup>

Amartya Sen is the exponent of the alternative position on the other end of the spectrum, in which the definition of the list of capabilities is deliberately left open, and has to be settled in a democratic process through public reasoning (see e.g. Sen 2004). This dynamic process creates room for participation of the people concerned—on its own already an important capability (crucial from the perspective of capability discourse ethics). Nevertheless, this strategy remains question-begging insofar as Sen has not given a detailed account of his idea of public reasoning relying broadly on Rawls and Smith while at the same time being critical of some key elements of Rawls’s conception. Most noticeably Sen claims to hold to a Rawlsian conception of public reasoning but at the same time wants to tone down Rawls’s notion of ‘reasonable persons,’ which is fundamental for Rawls’s account of public reasoning. On the other hand Sen takes that the relevant standard of objectivity for ethical principles is “to be linked to their defensibility in an open and free framework of public reasoning.” (2009: 196 and footnotes) *Prima facie* this criterion seems to be closer to Habermas’s conception than to Rawls’s but even though Sen is well

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<sup>9</sup> I understand that the salient characteristic of a *well-ordered society* is that the principles that order the basic structure are publicly known to do so, and the justifications for these principles are knowable by and acceptable to all reasonable citizens. The idea behind publicity is that since the principles for the basic structure will be coercively enforced, they should stand up to public scrutiny. We can say that a well-ordered society is one that holds a public conception of justice.

<sup>10</sup> Even if she has modified her position to do so. Capability scholars distinguish between the early Nussbaum and the later Nussbaum. The breaking point within one and the other would be before and after the publication of *Women and Human Development* (2000) where she started to present her (partial) theory of justice as a branch of political liberalism and thus compatible with an overlapping consensus.

aware of their differences he wants to make a more general point that conflates both Habermas's and Rawls's conception. This may have the advantage of broadening the scope of authoritative support for Sen's conception of public reason but this comes at the cost of stating the obvious and leaving a range of pressing questions unanswered.

Claassen (2011) has called the first position 'philosophical' and the latter 'democratic'. My first remark, one which I consider Claassen should recognize, is that these tags are simplistic because to some extent both positions are philosophical and democratic. A better but still flawed representation of these positions would be, I suggest, substantive and procedural.<sup>11</sup> However I will stick, provisionally, to Claassen's description for simplicity in the exposition of his argument. Nonetheless, I do believe that this description is not only inaccurate but unfortunate because it does not carve the matter by its joints.

Claassen (2011) discusses the problem of the selection and justification of a list of capabilities from a wider perspective where the question of list making "is merely an instantiation of a classic question, namely about the proper relation between philosophy and democracy." (492) Regarding this question, the capability dispute is presented as a 'case study'. Claassen's article argues in favor of the philosophical position and intends to assert the philosopher's possibility and even duty of making capability lists. Furthermore it argues that the democratic position is less respectful of democracy than the philosophical position. This last claim I want to argue against since I think that Claassen overshoots his target. While I agree with him with respect to the possibility of making capability lists, I do not see that taking a procedural response to this important question leads to a predicament where

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<sup>11</sup> This suggestion is compatible with the way Nussbaum places her approach when she treats the problem of adaptive preferences in *Women and Human Development* (2000: 135-165). It is compatible because she builds in substantive elements (i.e. her list of central capabilities) into a procedural approach. This strategy has the virtue of being able to account for the problem of adaptive preferences, a common concern for both Sen and Nussbaum that nevertheless has been theoretically neglected by Sen. In other works she claims that her version of the capability approach is outcome-oriented in contrast to procedural approaches like the ones of Rawls and Habermas. (1996:155-7)



we are puzzled whether the carriage goes before or after the horses. But let me take Claassen's detailed arguments step by step.

Claassen finds two types of objections from the democratic theorists against the philosophical position, i.e. the position that affirms the possibility of making capability lists at least for the purpose of a capability theory of justice (which is the domain Claassen restricts to). The first objection is the *political objection*: "its (the political objection's) main point is that Nussbaum's method bypasses those people that its theory is to be applied to in practice." (493) The second objection is the *epistemological objection*: it "holds that philosophers cannot possibly know which capabilities are most important to people." (493)

The first thing we must notice is that these two objections may actually be phrased as one where the political objection takes the forefront and receives further support from the epistemological objection. Claassen is well aware of this and notices that for this case it would be possible to assert that "if the public has better access to knowledge about people's capabilities, this is an additional reason to think that the public is the legitimate choice to make capability lists." (496) However, Claassen sustains it would be possible to hold a weaker political objection so that even if the public makes uninformed choices "it is still the most legitimate list maker." (496) Questions start to arise as we read these sentences. What is the source of legitimacy? Is it only derived vaguely from "the public" or does it come from a procedural commitment? Claassen does not worry too much about this as he proceeds with his dissection of the arguments. A pertinent question would be if there is anyone within the capability approach that sustains this naïve version of the political objection. To my knowledge there is not and Claassen certainly does not provide any example. But let's continue for the sake of the argument.

Concerning the first objection Claassen recalls Nussbaum's response where she claims that "those people needing justice are not served when these questions are left

open” (496). This response is clearly pointing to the problem of adaptive preferences and if we were to analyze this issue thoroughly we would come to the conclusion that indeed the problem is not about being democratic or being philosophical but about whether we should have a substantive or a procedural response to the specification of the approach and more precisely about what mix of procedure and substantive elements our normative standards should contain. In any case this answer is not successfully responding to the weak political position I referred to above because it does not contest the (naïve) claim about legitimacy in the first place, which is what the political objection is about. So it would seem that indeed at least for this version Nussbaum bypasses (proudly) those people that its theory is to be applied to in practice.

Regarding the epistemological objection the phrasing Claassen uses to describe this objection sounds awkward, once we consider the example he gives which rather talks about ‘epistemological limits’ rather than ‘epistemological impossibilities’:

Most scholars ... do not believe that it is possible for one person to truly understand the lives of all people around the world ... One person will almost always have a partial perspective and thus partial epistemological access, given the impact of one’s situatedness ... [t]he epistemological limits of a well-defined list of capabilities become obvious. Instead, we need a process of genuine listing and deliberation until a list, which will necessarily be collective, can be constructed (Robeyns, 2005: 198; as quoted by Claassen, 2011: 494)

Of course these limits, which I consider authentic ones, are those that stand in the way for philosophers or anyone interested to know which capabilities are most important to people. Nonetheless, there is, clearly, a leap from acknowledging these limits to taking them as an unsurmountable wall. Indeed, Claassen quotes Robeyns’s proposal for bridging the gap but he decides to pay no further attention. Maybe acknowledging this would be

anticlimactic for his argument but I do not see what Claassen sees in here. Indeed, Nussbaum herself, when presenting her list, also gives a proviso:

[I]t is important to stress that the approach builds in an important place for the norm of respect of pluralism... (2006: 78)<sup>12</sup>

It is plausible to interpret this proviso as a response to the epistemological objection. Furthermore, Claassen acknowledges that Nussbaum's response "does not in itself refute the existence of epistemological limits." (2011: 495) And his defense of the philosophical position tones down the criticism to the extent that "the substance of the constructive proposals does not yet match the vehemence of the criticism directed at the philosophical position." (495) I think we should accept Claassen's point since indeed, even when there are proposals on the table these have been mostly pragmatic and domain specific (e.g. Robeyns, 2003). While Claassen is occupied with the question of theories of social justice and his remark would, in a qualified way, still hold. Given that Claassen is interested in defending the possibility of making capability lists and not with the specific defense of Nussbaum's list *per se*, the question whether Nussbaum's claim that her list of capabilities is compatible with an overlapping consensus falls out of the scope for he could easily reply that there may be a capability theory of justice, at least in Platonic form, that does provide a theory of justification for the list of capabilities as well as a theory of acceptance for the same list. So let us look at Claassen's central objections against the democratic position.

Claassen presents us a typology of the different relations between theory and practice from the point of view of the philosopher. He wants to make us conclude, upon reflection, that Nussbaum's position is not that of the philosopher-king, as her critics say, but that of the philosopher-citizen. Claassen maintains that the democratic position

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<sup>12</sup> Whether the six ways this proviso is managed are satisfactory is another question.

conflates the level of philosophical theory and a ‘meta-level’ at which a particular understanding of the relation between philosophy and democracy, namely, that which sees philosophers as philosopher-kings. But let us take a closer look to the typology he puts forward. The taxonomy of *Homo-sapiens philosophicus*:<sup>13</sup>

*Philosopher-hermit*: his or her theories have no practical relevance whatsoever.

*Philosopher-king*: claims to practical legitimacy are completely derived from claims to philosophical truth at the level of theory.

*Philosopher-citizen*: offers his theory as input into a democratic process run by others.

*Philosopher-investigator*: a sub-species of the philosopher-citizen who crosses the boundaries of theory and practice to gather data and lets the results of his or her practical investigations influence their theories and think the latter enriched by their empirical efforts.

Claassen has a point although it is only a small one. As cleverly as he constructs his argument he is trying to convince us that Nussbaum is indeed a philosopher-citizen not a philosopher-king. But we may still question if he has indeed proved that (a) Nussbaum’s list is legitimate<sup>14</sup>; (b) Is indeed compatible with an overlapping consensus? My answer is a strict no. If anything, Claassen has only provided a defense for the possibility of making lists. Neither, Sen, nor Robeyns oppose to that. Sen explicitly says it:

*The problem is not with listing important capabilities, but with insisting on one predetermined canonical list of capabilities, chosen by theorists without any general*

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<sup>13</sup> Based on Claassen (2011).

<sup>14</sup> One challenge any list that claims to be universal has to face. Indeed Nussbaum postulates her list as a proposal for dialogue where any of the listed capabilities may be challenged. For example one may challenge the inclusion of the ‘other species’ capability on the basis of ‘human dignity’ or even keep the same items but accept them for different reasons and possibly differential weights among them. We may speak of three stages: elicitation, justification and acceptance. Strictly speaking it is the third stage where legitimation obtains.

social discussion or public reasoning. To have such a fixed list, emanating entirely from pure theory, is to deny the possibility of fruitful public participation on what should be included and why. (2004: 77, *emphasis added*)

If we read Nussbaum's proposal charitably, there is no disagreement between Sen and her to the extent that her list is 'open ended' and thus not 'fixed' and supposedly compatible with an overlapping consensus, which would point to a Rawlsian understanding of public reason and thus in tune with Sen's own notion of public reason, she even refers to her list as a 'module' in Rawlsian jargon. The fact that making capability lists is not really the mother of all battles within the capability theories can be further supported by one example out of many. I refer here to Robeyns's list for the conceptualization of gender inequality in post-industrialized Western societies, at the ideal level:<sup>15</sup>

1. *Life and physical health*: being able to be physically healthy and enjoy a life of normal length.
2. *Mental well-being*: being able to be mentally healthy.
3. *Bodily integrity and safety*: being able to be protected from violence of any sort.
4. *Social relations*: being able to be part of social networks and to give and receive social support.
5. *Political empowerment*: being able to participate in and have a fair share of influence on political decision-making.
6. *Education and knowledge*: being able to be educated and to use and produce knowledge.
7. *Domestic work and nonmarket care*: being able to raise children and to take care of others.

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<sup>15</sup> Robeyns, 2003: 71-72

8. *Paid work and other projects*: being able to work in the labor market or to undertake projects, including artistic ones.
9. *Shelter and environment*: being able to be sheltered and to live in a safe and pleasant environment.
10. *Mobility*: being able to be mobile.
11. *Leisure activities*: being able to engage in leisure activities.
12. *Time-autonomy*: being able to exercise autonomy in allocating one's time.
13. *Respect*: being able to be respected and treated with dignity.
14. *Religion*: being able to choose to live or not to live according to a religion.

As we can see, Robeyns, who is a defender of procedural list-making, has made a rather detailed list herself, and hence has no problems at all with making list per se. Thus the possibility of making lists is not what is at stake contrary to what Claassen thinks. Perhaps the only question is if the process of selection of capabilities is legitimate or not, valid or not, and more broadly if we consider that capabilities are those beings and doings that people have a reason to value. While the democratic position keeps the accent on people, Nussbaum is more interested in the 'reason to value' and that explains her substantive concerns which I indeed applaud, but still reserve the right to question if the route taken has been the right one. By saying this I want to suggest that there is, at least, another possibility to get to where we want to go.

Finally, before closing this section, I want to point out that this classic philosophical question that Claassen makes was also raised by Habermas in 1963 when he first published his *Theory and Practice* albeit Habermas's followed a historical, not an strictly analytical perspective. This difference in approach matters because as Habermas states:

The old doctrine of politics referred exclusively to *praxis*, in the narrow sense of the Greeks ... In the final instance, politics was always directed toward the formation

and cultivation of character; it proceeded pedagogically and not technically. For Hobbes, on the other hand, the maxim promulgated by Bacon, of *scientia propter potentiam*, is self-evident: mankind owes its greatest advances to technology, and above all to the political technique, for the correct establishment of the state. (42)

Habermas is putting attention to the change in the methodological approach: from practical knowledge to the pragmatic art of techniques of power and of social organization. This may seem far out but what I want to convey by the contrast of historic with analytic perspectives is that some options have been already ruled out, namely, that of philosopher-kings which were only meant to exist in utopia (literally no-place). However, if there were any who claimed privileged access to metaphysical knowledge and thus thought of themselves as ‘philosopher-kings’ that derive a special kind of authority from their status they would still have to convince us of their gifts because we may as well doubt if they *really* have privileged access to metaphysical knowledge unless they justify their claims with reasons we can understand and accept. So perhaps there could be ‘philosopher-constitutional-kings’ they would not be absolute monarchs but rather constitutional monarchs. The point is that philosopher-citizens are the only kind we have (of course we may still question if they are hermits or grumpy or even felicitous beings). This is simply our starting point, we still need to answer the real and hard questions about what would or how are we going to justify the list if there should be any. I admit that there should be lists because they are a good starting point for conversation but also because, until further consensus are achieved, lists are action guiding.<sup>16</sup>

I have already suggested that we should recognized the different positions discussed as procedural and substantivist but sticking to the terminology that Claassen has given, I

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<sup>16</sup> Nussbaum has compared her list with the Universal Declaration of Human Rights and other international documents over which there is wide global consensus. She claims that her list “provides the underpinnings of basic political principles that can be embodied in constitutional guarantees.” (2000: 74)

want to provide a counter-slogan for his claim, namely: ‘the democratic approach is the more philosophical’. However, my argument is not one about terminology I think Claassen pushes too far a dichotomy that is not there in the first place:

Thus we are faced with a fundamental dispute about the role of the philosopher versus the role of the democratic public. Should philosophers make lists of basic capabilities or should they leave this to the democratic process? (509)

But rather than conforming to this dichotomy I have suggested that *we should ask other questions* namely, not if philosophers can or not elicit lists but rather how will they justify the list of capabilities on the one hand and how is the justification of the list connected to the acceptance of the list. Following Habermas I think that the relevant question is about what is the proper role of moral philosophy in our contemporary world where the clash of comprehensive views is the bread and butter of politics. We can no longer conceive our societies as homogenous entities because of the growing, ethnic, linguistic, and religious pluralism that characterizes them. Under these circumstances it is implausible to think that philosophy can provide an account of the good life that is acceptable to each. Rather the role of philosophy has to be reduced to illuminating a discursive moral point of view that allows us to ask what is equally good for all.

Once we have established that all philosophers are indeed philosopher-citizens let’s look at two justification strategies that are open to us: the political-liberal approach (3.2) and the Habermasian discourse-ethical approach (3.3).

### **3.2. A Political-liberal approach**

For each item on her list Nussbaum has to make a case for its inclusion. To do so she needs a normative criterion that guides the selection. Nussbaum has defended a criterion based on “human dignity.” The question in this section is whether this criterion succeeds in



doing what it is supposed to do, i.e. generate a list of political entitlements and obligations?

Nussbaum uses a basic argumentative strategy:

The basic idea is that with regard to each of these [the capabilities in question], we can argue, by imagining a life without the capability in question, that such a life is not a life worthy of human dignity. (2006: 78)

This justification strategy is very similar to the ‘early’ Nussbaum and indeed when she presents her list in *Frontiers of Justice* she refers to her earlier work where she made this argument in detail for affiliation and practical reason. (2006: 78, n.52; 1995) Following this procedure she reaches to her proposal of the ten central capabilities: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment (2000: 78-80; 2006, 76-78; 2011: 33-34, see also above 52-54):

The Capabilities Approach, in my version, focuses on the protection of areas of freedom so central that their removal makes a life not worthy of human dignity. (Nussbaum, 2011: 31)

Moreover, Nussbaum considers her list compatible with a Rawlsian overlapping consensus:

I consider the list to be a freestanding “partial moral conception,” to use John Rawls’s phrase: that is, it is explicitly introduced for political purposes only, and without any grounding in metaphysical ideas of the sort that divide people along lines of culture and religion. As Rawls says, we can view this list as a “module” that can be endorsed by people who otherwise have very different conceptions of the ultimate meaning and purpose of life; they will connect it to their religious or secular comprehensive doctrines in many ways. (2006: 79)

So how is it possible that her account of human nature is compatible with political liberalism? It seems to me that either you have your own view on human nature's political conditions and defend that in your political theory or you do not, but you cannot have it both ways. Nussbaum would respond that:

The list is a proposal: it may be contested by arguing that one or more of the items is not so central and thus should be left to the ordinary political process rather than being given special protection. Let's suppose someone asks why play and leisure time should be given that sort of protection. I would begin by pointing out that for many women all over the world, "the double day" – working at a job and then coming home to do all the domestic labor, including child care and elder care, is a crushing burden, impeding access to many of the other capabilities on the list: employment opportunities, political participation, physical and emotional health, friendships of many kinds. What play and the free expansion of the imaginative capacities contribute to a human life is not merely instrumental but partly constitutive of a worthwhile human life. That's the sort of case that needs to be made to put something on the list. (2001: 36)

If this is the case Nussbaum does to defend her list, either I am missing something or else I simply misunderstand her. But in this example she gives there is no reference to human dignity at all. Instead she falls back into the slippery notion of "a worthwhile human life." Human dignity is an old concept which is closely linked to respect for others but also to self-respect. In the history of philosophy Immanuel Kant defended that persons because of their moral dimension that is, because they can tell the difference between right and wrong, should be treated not as means but rather as ends in themselves. That is what the notion of 'human dignity' entailed for Kant. The notion of a 'worthwhile human life' however is a thicker concept that for one thing makes use of the noun 'worth' which obviously implies

valuation however 'ends in themselves' are beyond all valuation since they are not relative to another. So we can say that Nussbaum's notion of 'human dignity' departs from the Kantian notion. I cannot go into a more profound discussion about this fundamental notion but I will say that equating 'human dignity' with 'a worthwhile human life' does introduce some problems that were already foreseen in the history of philosophy. For example, Adam Smith claimed that:

Custom has rendered leather shoes a necessary of life in England. The poorest creditable person of either sex would be ashamed to appear in publick without them. In Scotland, custom has rendered them a necessary of life to the lowest order of men; but not to the same order of women, who may, without any discredit, walk about bare-footed. In France, they are necessaries neither to men nor to women; the lowest rank of both sexes appearing there publickly, without any discredit, sometimes in wooden shoes, and sometimes bare-footed. (Smith, WN: V.ii.k3)

From the citation above I want to call attention on two aspects. First, while Smith is discussing the notion of self-respect, he is cutting on its social dimension something that Kant avoids and therefore we must not confuse Kant's and Smith's different conceptions of self-respect because for Kant the notion of self-respect is intrinsically tied to human dignity and it is therefore non-negotiable, dictated by practical reason alone. While for Smith, who takes a cultural perspective, what will count as 'the ability to appear in public without shame' is something that varies from one context to the other. The second aspect I would like to point out is that a conception of 'human dignity' that is closely connected to the notion of 'a worthwhile human life' will as the above quotation tries to show, vary depending on the social context.

On this line of thought, the reliance on the notion of 'a worthwhile human life,' has generated ample criticism to Nussbaum's list. For example in *Poverty, Well-being, and Gender*:

*What Counts, Who's Heard?* Susan Moller Okin (2003) states among other things that Nussbaum's conception of a dignified life seems 'Western and elitist':

highly intellectualized conception of a fully human life and some of the capacities central to living seem to derive far more from an Aristotelian ideal than from any deep or broad familiarity with the lives of women in the less developed world. As for the more sophisticated, even fanciful, items on her list, they seem to draw more from the life of a highly educated, artistically inclined, self-consciously and voluntarily religious Western woman than from the lives of the women to whom she spoke in India (296)

The first thing that drives my attention to this criticism on Nussbaum's list with which I personally endorse is that Okin seems to be already making a legitimacy claim.<sup>17</sup> But Nussbaum has arguments to defend herself against such accusations:

The capabilities approach is articulated in terms of a Rawlsian idea of *political liberalism*: that is, the account of entitlements is envisaged as a partial account of the good, for political purposes, which citizens may attach to different comprehensive conceptions of the good. It is articulated, or at least we hope so, in terms of freestanding ethical ideas only, without reliance on metaphysical and epistemological doctrines (such as those of the soul, or revelation, or the denial of either of these) that would divide citizens along lines of religion or comprehensive ethical doctrine. It is therefore hoped that this conception can be the object of an *overlapping consensus* among citizens who otherwise have different comprehensive views. (Nussbaum, 2006: 163)

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<sup>17</sup> Similarly, Ingrid Robeyns voices a concern for legitimacy, albeit for efficacy reasons, of Nussbaum's list: "the process by which the list has been created itself needs to be legitimate. If the people to whom the list will apply reasonably feel that it is imposed on them, then the list will lack the necessary legitimacy that is needed for the list to have any political effect" (2005, 199).

Nussbaum contends, following Rawls, that her account her list of the ten central human capabilities can achieve an overlapping consensus among different religious, philosophical, and moral views. Her account of basic capabilities could be compatible with different moral conceptions because it does not rely (according to her) upon any metaphysical or epistemological conceptions of the self or of persons. Instead the list of capabilities is based in what she considers as informed intuitions we share about what is needed for living a dignified and minimally good human life. Is this strategy enough to yield an overlapping consensus or does this depends rather on empirical conditions that may or not be the case?

In an overlapping consensus citizens support the same basic laws for different reasons. One obvious question is whether Nussbaum's account is compatible with a Rawlsian overlapping consensus because unlike Rawls's theory, in Nussbaum's there is not a philosophical framework or a complex moral theory in place to justify the capabilities she lists as central to truly human functioning. Her idea of human dignity is intuitive:

The basic *intuitive idea* of my version of the capabilities approach is that we begin with a conception of the dignity of the human being, and of a life that is worthy of that dignity—a life that has available in it “truly human functioning,” in the sense described by Marx in his 1844 *Economic and Philosophical Manuscripts*. (2006: 74, *my emphasis*)

However we must notice that the centrality Marx assigns to meaningful work is not reflected in Nussbaum's central capabilities. i.e. Marx derives his notion of human dignity from productivity. Something that Nussbaum considers “not the main end of social life.” (160)

The two concepts with which Rawls has explained political unity and legitimacy are ‘overlapping consensus’ and ‘free public reason.’ They belong to the ‘second stage’ of his theory: contrary to the interpretation that overlapping consensus is a model for the

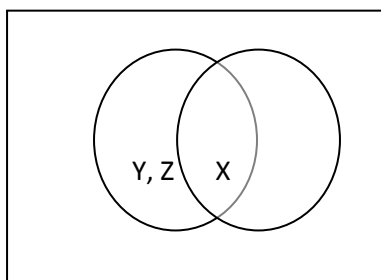
justification of justice principles, Rawls distinguishes between the justification stage of the theory as ‘free-standing’ political-moral conception and the stage of explaining social stability. The overlapping consensus serves to explain how a society can be pluralistic but nonetheless stable, not as much as an ethically integrated society but more than a strategic ‘modus vivendi.’

The solution he proposed in his paper ‘Justice: Political not Metaphysical’ (1985) is based on the ‘method of avoidance’ (231): a political conception of justice must be compatible with a multitude of ethical values and forms of life and must therefore itself avoid ethical validity claims – it must be acceptable and reasonable for ethical conceptions without contesting their truth. In other words:

The question is: what is the least that must be asserted; and if it must be asserted, what is its least controversial form? (Rawls, 1987: 8)

Key to understanding the concept of overlapping consensus is that it is essentially a political consensus between –what Rawls refers to as– comprehensive doctrines. It is ethical only at a later stage once different groups find reasons that support the consensus from the perspective of their particular doctrines.

Coming back to Nussbaum, her list, “can be endorsed by people who otherwise have very different conceptions of the ultimate meaning a purpose of life; they will connect it to their religious or secular comprehensive doctrines in many ways.” (2006: 79) On the other hand notice that when she claims that her list would be apt for an overlapping



**Figure 4 : a simplified overlapping consensus.**

consensus, even a global one. She bases this belief on the “fact” that all religions in the world have a liberal branch and therefore they would accept her list. But notice that not even capability theorists with similar backgrounds to Nussbaum consent, strictly speaking, to her list. For

example Robeyns's list above does not specify the capability of bodily integrity in the same way that Nussbaum does. For Nussbaum it includes "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." Whereas for Robeyns, it only includes "being able to be protected from violence of any sort." It is certainly naïve to draw an overlapping consensus only about this item because perhaps other items in Robeyns list would indeed take care of the elements that would not overlap with Nussbaum's list but I do it to illustrate another point. Let's suppose that fig 4 (above) represents the overlapping consensus between Nussbaum and Robeyns for the capability of bodily integrity. Clearly there is an overlap for X (being able to be protected from violence of any sort) but both Y (being able to move freely) and Z (having opportunities for sexual satisfaction and for choice in matters of reproduction) are left out. I acknowledged that this is overly simplistic and that indeed Robeyns has different capabilities that do overlap with both Y and Z. 'mobility' for Y and possibly 'respect' for Z (but this is not straightforward). The point I want to convey is that if this naïve idea of an overlapping consensus would be enough to claim an idea of public reasoning and here I also acknowledge that fig. 4 above does not represent a Rawlsian overlapping consensus or only does it very roughly. The idea behind an overlapping consensus implies that different comprehensive views may come to an agreement on what are the principles of justice that should govern a liberal society. We may understand this in two ways. The first way to understand it is closer to social choice theory in the sense that it only assumes that preferences are given and that for social choice we only need to aggregate these preferences and come about with the common denominator to put it bluntly. This would yield an agenda for government without any real public deliberation. This way of understanding the idea of an overlapping consensus is minimalistic and though it may be quite pragmatic it is also very deficient because there is no reasoning behind to support the common agenda or

to rephrase it; there would be support for the agenda but for different and quite possibly contradicting reasons, which we may presume may lead to instability while pursuing this agenda. A more demanding sort of overlapping consensus would not be satisfied with the minimal common denominator but would also demand that the reasons that support the agenda are shared. However, and here Rawls comes in, these reasons need not and indeed should not be strictly connected or even derived from a comprehensive view. But rather participants of plural, multi-comprehensive societies would come to an agreement based on political reasons which the other camps may recognize without requiring the assumption of ethical premises regarding what the good life is following particular comprehensive views. In this sense an overlapping consensus is less like a Venn diagram and more like a module that can be fitted to so many other comprehensive views. This is, in essence, the Rawlsian notion. Thus our first conclusion is that one thing is the stage of justification where members of different ethical systems justify the norms within and for themselves and through a bird eye's view we may find the commonalities between them and the truly public practice of giving and taking reasons that the other may accept without endorsing our way of life.

Furthermore, this more demanding type of consensus may still be somewhat in the middle of the spectrum if we consider that there is a divide between the reasons one gives to the other part to justify a framework where our 'true' beliefs are to be embedded and the reasons we hold within our comprehensive view. If we consider this we may find that there could be a more demanding consensus that goes beyond political reasons and questions the limits of the political. Here is where a Habermasian consensus in its strongest form would be placed. This would mean that we need to differentiate between questions of justification and questions of acceptance. Nussbaum seems to touch the subject:

Sixth and finally, I insist on a rather strong separation between issues of justification and issues of implementation. I believe that we can justify this list as a



good basis for political principles all around the world. But this does not mean that we thereby license intervention with the affairs of a state that does not recognize them. It is a basis for persuasion, but I hold that military and economic sanctions are justified only in certain very grave circumstances, involving traditionally recognized crimes against humanity. So it seems less objectionable to recommend something to everyone, once we point out that it is part of the view that state sovereignty, grounded in the consent of the people, is a very important part of the whole package. (Nussbaum, 2006: 80)

The way I interpret it, Nussbaum's list is not compatible with an overlapping consensus precisely because of its substantive character. Nussbaum list demands acceptance in so many areas 'ethical' areas that it seems hard to imagine that someone who comes from a conservative quarter would be ready to accept or mean the same thing that Nussbaum means by, for example, 'having opportunities for sexual satisfaction and for choice in matters of reproduction.' Perhaps there could be agreement at the abstract level but it would soon crumble down if we were to cash the voucher. In fact, her enthusiasm about the compatibility of her list with a global overlapping consensus depends on the existence of a 'liberal branch' in every comprehensive doctrine out there. Let us now look at how these questions could be addressed from a different perspective.

### **3.3. A Deliberative-procedural approach**

*'Impartiality' in the sense of justice converges with 'impartiality' in the sense of the discursive ascertainment of cognitive claims to validity.*

Jürgen Habermas (2003, 105)

In the previous section I asked whether Nussbaum's criterion of 'human dignity' succeeded in generating a list of political entitlements and obligations. In this section I will ask the

respective question for capability discourse ethics. As we saw in section 2.3, the essential point of discourse ethics by Habermas is formulated in the principle of universalization and what it entails - namely, the principle of discourse. So we need to ask if the principle of discourse is able to generate a list of political entitlements and obligations. That is, we ask whether this principle can be fruitful for capability theories.

The principle of discourse is a principle for argumentation, because it summarizes the normative implications bound up with the situation of 'entering into an argument.' These implications can be summarized as follows:

- (a) *equal participation* of all who are affected; the *postulate of unlimitedness*, i.e., the fundamental openness concerning time and persons;
- (b) the *postulate of freedom from constraint*, i.e., the freedom of discourse from accidental and structural forms of power; and
- (c) the *postulate of seriousness*, i.e., the absence of deception and even illusion in expressing intentions and in performing speech acts.

According to Habermas we have to presume these principles counterfactually, even when we know that people usually do not act this way. The reluctance to accept these principles results in a performative self-contradiction and is therefore mistaken. For example if I tell a lie, I am involved in a performative self-contradiction since when I enter into communication, I must initially assume that everyone else is telling the truth and is being sincere. If I do not, either I would be involved in some sort of strategic interaction, treating other persons as mere means to my ends. But even if I lie I may be challenged on my claims and asked to justify my stance and to the extent that these questions are raised, even if I try to act strategically and persuade rather than argue I will be pulled back to the

domain of communicative action contestively where I am forced to justify or drop my claims.

We could say that Habermas holds a thick view of democracy, since he begins from the idea that free and reasoned deliberation is the basis of democratic legitimacy. However, he conceptualizes deliberation as bound by strong normative constraints of egalitarian reciprocity, publicity, and reasonableness. Moreover, he argues that the outcomes that issue from deliberation should be subjected to a further test of legitimacy: outcomes are said to be legitimate if they are the product of deliberative communication constrained by norms of rationality and publicity, and if the agreements that participants reach also reflect these norms. For Habermas, deliberation should also aim to yield consensus on pivotal norms, which communicative agents must be able to endorse for the same, shared reasons.

For Habermas, the principle of universalization and these accompanying postulates should be applicable to the critical examination of practical, everyday norms. Habermas wants to disqualify discourse in those cases in which ‘expert discussions’ assume a ‘placeholder’ function for those who cannot represent themselves, precisely because the principle of discourse requires that all who are affected be able to participate:

Required is a “real” argumentation in which those who are affected cooperatively participate. Only an intersubjective process of understanding can produce an agreement that is reflexive: only then can all participants know that each has been convinced by all. (Habermas, 1992: 77)

This is a challenging demand that could only be achieved in rare cases. But Habermas has worked through this problem and emphasized the institutionalizations of discourse. By this he means nothing other than to build up procedures that facilitate communicative action. Habermas situates those institutionalized discourses that come closest to achieving the idea

of justice, as formulated in the principles of universalization and discourse, as a connection between a real resolution and the counterfactual idealization of discourses.

The need to *institutionalize discourses*, trivial though it may be, does not contradict the partly counterfactual content of the presuppositions of discourse. On the contrary, attempts at institutionalization are subject in turn to normative conceptions and their goal, which spring spontaneously from our intuitive grasp of what argumentation is. (92)

Only when certain domains of discourse are institutionalized to such an extent that under specifiable conditions a general expectation exists, that discursive conversation will be initiated, can they become a relevant mechanism of learning for a given society. For capability ethics this means that deliberation about capability lists needs to take place as a matter of fact and for that the spaces for deliberation must be put in place.

To specify a list of capabilities from a Habermasian perspective we need to make use of the moral point of view as discourse ethics understands it. One of the virtues of a Habermasian approach is that instead of building up from a conception of 'human dignity' it starts from the plurality of world-views or comprehensive doctrines that characterize modern societies. What is important here is that the idea of moral argumentation that Habermas has in mind requires a real process of argumentation in which the individuals concerned cooperate, e.g. an intersubjective process of reaching understanding that yields an agreement that is reflexive in nature and therefore gives the participants the knowledge that they have collectively become convinced of something. One thing to note is that a discursively ethical consensus is not merely an overlapping consensus as would be for instance in the Rawlsian case. The type of consensus Habermas defends is stronger in the sense that participants reach an agreement not only by supporting the conclusions but by sharing the reasons that support the conclusions but not on the 'module architecture' that

Rawls postulates but rather on a 'one piece' construction. That is what the requirement of the force of the better argument together with an unbounded understanding of 'the political' amounts to.

However it is often the case that even under ideal conditions neither an overlapping nor a Habermasian consensus is feasible. This is the case, namely, whenever it turns out that all the proposed solutions touch on the diverse interests in respectively different ways without any generalizable interest or priority. In these cases, Habermas concedes, there remains the alternative of bargaining, that is, negotiation between parties who are willing to cooperate. Of course, to bargain is to engage in communication for the purpose of forcing or inducing the opponent to accept one's claim. To achieve this end, bargainers rely on threats and promises that will have to be executed. Bargaining power does not derive from the 'power of the better argument,' but from material resources, power and the like. Statements asserted in a process of bargaining are made with a claim to being credible, in the sense that bargainers must try to make their opponents believe that the threats and promises would actually be carried out. Nevertheless this does not mean that bargaining destroys the discourse principle because for Habermas, *fair bargaining* aims at compromises the participants find acceptable under three conditions. Such compromises provide for an arrangement that:

- (a) is more advantageous to all than no arrangement whatever,
- (b) excludes free riders who withdraw from cooperation, and
- (c) excludes exploited parties who contribute more to the cooperative effort than they gain from it. (Habermas, 1998: 166)

This may serve as a good example that Habermasian discourse ethics is not merely an idealized conception of democracy but also a conception that may in different degrees be realized in practice. Bargaining processes are tailored for situations in which social power relations cannot be neutralized in the way rational discourses presuppose. The

compromises achieved by such bargaining contain a negotiated agreement that balances conflicting interests. Whereas a rationally motivated consensus rests on reasons that convince all the parties in the same way, a compromise can be accepted by the different parties each for its own different reasons.

### **3.3.1. Habermas procedural concept of deliberative democracy**

In *Three Normative Models of Democracy*, Habermas sketches a proceduralist view of democracy and deliberative politics which differs in relevant aspects from both the liberal and the republican paradigm. He elaborates on the three normative models of democracy by comparing their corresponding images of state and society. Habermas distinguishes among the liberal, republican and proceduralist-deliberative views of democratic politics. According to the liberal model, the democratic process has the function of transmitting to the political apparatus the interests of an autonomous civil society; the task of politics is the coordination of divergent interests among private persons. According to the republican model, politics is viewed as the articulation of a ‘common good,’ of a substantive vision of the ethical life of the community. The good of politics is not the administration of the interests of civil society as much as it is the creation of solidarity among citizens.

Habermas objects that both the liberal and the republican models “presuppose a view of society as centered in the state –be it as guardian of a market-society or the state as the self-conscious institutionalization of an ethical community.” (2) The discourse theory of democracy proceeds from the image of a decentered society. The political system is considered neither the peak, nor the center, nor even the formative model of society in general. Habermas seeks to recast concepts like legitimation and popular sovereignty in terms of this proceduralist model:

Discourse theory works instead with the higher-level intersubjectivity of communication processes that flow through both the parliamentary bodies and the

informal networks of the public sphere. Within and outside the parliamentary complex, these subjectless forms of communication constitute arenas in which a more or less rational opinion and will-formation can take place (2)

Habermas insists “on the original meaning of democracy in terms of the institutionalization of a public use of reason jointly exercised by autonomous citizens.” (3) The challenge is not only how to reconceptualize the ideal of such a public sphere under conditions of societies ‘too complex for democracy,’ but it is to give it a philosophically more adequate formulation which does not run together questions of justice with those of the good life, the way in which civic republicans do. Habermas maintains, on the basis of arguments he has developed much more explicitly elsewhere,<sup>18</sup> that the republican tradition ‘overburdens’ the democratic process by assimilating “politics to a hermeneutical process of self-explication of a shared form of life or collective identity.” () He distinguishes such ethical discourses on collective forms of life from political discourses proper that would involve both moral questions of justice and instrumental questions of power and coercion.

### **3.3.2. Civil society and the institutionalization of discourse**

I have roughly sketched Habermas’s model of deliberative model of democracy that puts the emphasis in independent public forums, distinct from both the economic system and the state administration, having their locus rather in voluntary associations, social movements, and other networks and processes of communication in civil society, including the mass media. However, at this point I would like to connect this with the subject of the institutionalization of discourse because I believe that these play an important role for in as much they would provide the space where citizens can exercise social choice. Deliberation in this context means preference transformation rather than mere aggregation. If we want

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<sup>18</sup> See the essays collected under the title *Moral Consciousness and Communicative Action*; see also, “On the Pragmatic, the Ethical, and the Moral Employments of Practical Reason” in Habermas *Justification and application: Remarks on Discourse Ethics*.

to talk about a demanding concept of public reasoning we need to move from the methodological assumption of individuals with an ordered set of coherent preferences. This assumption does not have much relevance in the political world. Individuals may have views and wishes but no ordered set of preferences, since the latter would imply that they would be enlightened not only about the preferences but about the consequences and relative merits of each of their preferred choices in advance. It is actually the deliberative process itself that is likely to produce such an outcome by leading the individual to further critical reflection on his already held views and opinions; it is incoherent to assume that individuals can start a process of public deliberation with a level of conceptual clarity about their choices and preferences that can actually result only from a successful process of deliberation. Likewise, the formation of coherent preferences cannot precede deliberation; it can only succeed it. Opinions conflict with one another. In the course of deliberation and the exchange of views with others, individuals become more aware of such conflicts and feel compelled to undertake a coherent ordering. Therefore, Habermas discourse theory of deliberative democracy:

Focuses exclusively on the procedural aspects of the public use of reason and derives the system of rights from the idea of legally institutionalizing it (i.e., the public use of reason). It can leave more questions open because it entrusts more to the *process* of rational opinion and will formation. (Habermas 1995, 131)

But we must notice that it is not only the citizenship faculties of moral judgment that make this process possible, but rather institutions in which citizens have to respond to one another and thereby assume responsibility. So the institutionalization of discourse does not only democratize processes of 'general will formation,' it also affects the formation and transformation of preferences through argument. This is clearly a departure from Rawls and one which I would like to think can serve better capabilities theories.



### 3.3.3. Valuation, weights and public reasoning

Far from doing a counterfactual exercise a capability discourse ethics starts from ‘the fact of pluralism’ and therefore part of the answer to the question whether what constitutes a just procedure for mediating disputes over contested values is that such a procedure would require and foster open and fair debate among participants in the dialogue about different values. In part, this means ensuring that procedures for discussion and decision-making are designed to give participants roughly equal positions in deliberation. This indeed may amount to raise the stick too high and it is likely so at least for some poor countries that lack the institutional force to achieve this desirable goal. Nevertheless this should not detract from the rightness of Habermas’s claims. Of course, we can question if taking urgent action against, for example, famines serves the sole purpose of paving the way for the institutionalization of discourse.

How should we judge if Habermas’s conception of public reasoning is a useful amendment to the capability approach? Consider what Nancy Fraser has said in a contribution on Habermas and the public sphere:

For example, until quite recently, feminists were in the minority in thinking that domestic violence against women was a matter of common concern and thus a legitimate topic of public discourse. The great majority of people considered this issue to be a private matter between what was assumed to be a fairly small number of heterosexual couples (and perhaps the social and legal professionals who were supposed to deal with them). Then feminists formed a subaltern counterpublic from which we disseminated a view of domestic violence as a widespread systemic feature of male-dominated societies. Eventually, after sustained discursive contestation, we succeeded in making it a common concern. (Fraser 1990, 71)

What will count as a matter of common concern, and thus the beings and doings that people have reason to value, will be decided precisely through discursive contestation. So no topics (or discussion of whether capabilities should be considered as politically relevant) should be ruled off limits in advance of such contestation. In this way, our fallible and thus imperfect but indefinitely perfectible ability to recognize the demands made upon us by various values is precisely what provides discourse ethics with content. But in order for this content to claim legitimacy it has to pass the legitimacy test which might involve the need to institutionalize discourse. Furthermore, I should add that this apparently simple example of what Habermas's concept of deliberative democracy entails puts the finger in those contested boundaries that under a Rawlsian conception of public reasoning remain neatly demarcated. And by that I mean the distinction between the public and the private spheres that Rawls draws. But this is only one of many things we may point out. In general I have pointed to Habermas's decentered conception of deliberative democracy which is also in contrast with Rawls's statist model. I would also add that this conception is more compatible with Sen's own view who says that public discussion and deliberation "can lead to a better understanding of the role, reach and significance of particular functionings and their combinations" (2009: 242), and provides a very similar example to the one quoted above:

To illustrate, public discussion of gender-based inequalities in India has helped to bring out, in recent years, the importance of certain freedoms that did not receive adequate acknowledgement earlier. (2009: 242)

Hence, public discussion has proved very helpful, most likely even necessary, to put certain issues on the political agenda, and as an item to be included on a list of politically relevant capabilities. This illustrates the power of a discourse-ethics based capability approach,

which is lacking in capabilities theories that are ignoring the importance of public discourse and debate for deciding what is important.

I would like to add another possibility. In the preface to this dissertation I pointed out that in order to analyze poverty we need to identify and aggregate the poor. For identification we need to define the relevant dimensions that we are going to take into account for the purpose of our evaluation. Suppose we have agreement about the dimensions of concern because congress passed a law that regulated how to measure multidimensional poverty. This is the case, for example, in Mexico. Once we have defined the dimensions of concern in a democratic way (and I take it that Habermas considers legislation to be just that) we still need to answer questions about thresholds and questions about aggregation or substitution among dimensions. For the case at stake I just want to call attention to one of the six dimensions that Mexican law defines as constitutive of minimum welfare: access to water. According to the legislative body this is one 'basic capability' and therefore the statistical office in charge is required to report how many people there are who are deprived of this basic service. However, no threshold was defined.

The statistical office thus faces a decision. Either they set the thresholds through expert judgment or they consult the population to elicit what they consider the bare minimum for 'access to water.' As it happened in the Mexican case, both roads were explored. On the one hand the designated expert determined a threshold that stated a low floor 'There is a pipe connected to the lot.' (Notice that this threshold alone does not answer the question whether the individual who is above or below it has 'access to water' or he does not as it does not specify if the pipe is connected network). On the other hand the statistical office was curious enough to take a survey about the thresholds with the public. For this indicator 80% of the surveyed population considered a threshold which we

may dub as a high roof came out: 'There must be a tab with running hours for at least 2-3 hours per day.' The discrepancy between these thresholds is noticeable and while there may be good reasons why the expert judgment was taken by the statistical office, the fact that 80% of the population has a different valuation of what the minimum should ring a bell.

Discourse ethics has a word to say about it particularly because the evaluation has the character of a norm. It is mandated by law and it is a national, official measure of inequality of the Mexican state. Therefore there are grounds on which to construct a legitimacy claim since this evaluation is vindicatory for the continuation or termination of development programs. Does that mean that the statistical office should take the value judgment expressed in the survey? Not at all, for one thing, the methodology for the survey may have its flaws and even if selection problems have been controlled for, the population may not be the right judge for the nuanced technicalities that a multidimensional measure of poverty entails. However, a procedure of public deliberation seems to be in place. Experts may have good reasons that need to be aired out while the public has concerns that deserve to be listened. Given that indices of well-being have the potential to fix political agendas the gains in legitimacy that a process of public deliberation may bring would serve not only normative but also practical ends. If the population that is being assessed is consulted on the standard that will be used by the government to assess its performance they surely will have a word to say about it. This may dispense possible conflicts of interest between the evaluating agency and the evaluated programs. Moreover there could be potential gains in efficacy and in the impact of the measure if the public is involved from the outset.

#### 4. Conclusions

In the previous three chapters I have tried to show that the capability approach is a promising and novel alternative for the evaluation of human well-being. However, before we can put the approach to practice, blanks need to be filled in. I have explored one of these possible solutions, namely, I have tried to show that discourse ethics can be used generally as a rich specification of the required conception of public reason that is to a great extent missing in the approach and especially in Sen's own version of it. I discussed Claassen's (2011) paper because I wanted to show that (a) it is possible to enrich capabilitarian theory with a theory of deliberative democracy. By contrasting Nussbaum's political-liberal approach and Habermas deliberative-procedural approach I have tried to show that (b) Habermas's discourse ethics is an apt candidate for the task as it does make clear how public reasoning has proved fundamental for the task of advancing certain topics in the political agenda. However, there may also be reasons why a lighter theory of deliberation is recommended. Namely, Habermas's ideal notion of consensus may seem too ideal to be realized and perhaps we should be content with a Rawlsian overlapping consensus if that is the best we can do. In fact, we may even be satisfied with less. I argued that Nussbaum's detailed list of universal capabilities is not compatible with an overlapping consensus but it may nevertheless fulfill an urgent role for the practice of development as it does offer substantive elements sustained by considered judgments that open up 'intervention points' for public policy. This does not detract from the principle of discourse I explained above. In fact we can interpret Nussbaum's efforts to make her list 'open-ended' and to present it as a 'proposal' as exactly paying tribute to the idea captured in the principle of discourse, that is, that moral validity is dependent on the discursive acceptance of norms by all those who are affected by them.

Furthermore, I would add, based on the discussion of the entanglement of facts, values and norms that I put forward in the second chapter, that (c) the coming global trend of multidimensional poverty measures may win legitimacy and efficacy if economists or statistical bureaus incorporate participatory and deliberative procedures in their methodologies. This I tried to illustrate by discussing briefly how one instance of the evaluative process may conjoin with public deliberation. I argued that walking down this path may bring more clarity and legitimacy to the ends of public policy.

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