The capability approach and development policies

– the problem of adaptive preferences

Research Master Thesis

Hisashi Oki

Research Master Student at Erasmus Institute for Philosophy and Economics at Erasmus University Rotterdam

01/05/2012

Supervisor: Prof.dr.Ingrid Robeyns
Adviser: Dr. Julian Reiss

Outline   **Page**

Acknowledgements

Introduction

The capability approach evaluates the quality of human life in terms of capabilities which are real opportunities which a person has reason to value. The capability approach can regard a variety of aspects of human lives valuable as long as people have reason to value those. It does not limit the goodness of human life to a mere utility number or to the mere possession of means as in the primary goods which are central to John Rawls' account of distributive justice (Rawls, 1971). The capability approach was initiated by Amartya Sen (1980) and later developed in collaboration with Martha Nussbaum (1988) and attracts a wide range of specialists such as political philosophers, social scientists, and policy practitioners. For example, since 1990, United Nations Development Program (UNDP) annually publishes the *Human Development Report* based on insights from the capability approach.

I appreciate the capability approach because it evaluates a human life positively only if a person has reason to value the way of living. The capability approach requires that people actively make use of their own reasoning to realize their goals. Thus, the capability approach does not treat human beings as passive recipients of benefits of development policies and does not assume that they merely fulfill a predetermined goal; the capability approach regards human beings as active agents who can be the authors of own lives. As David Crocker (2008, p.157) quotes, the spirit of the capability approach can be seen in Isaiah Berlin's concept of positive liberty:

"I wish to be the instrument of my own, not other men's, acts of will. I wish to be a subject, not an object…I wish to be a somebody, not nobody; a doer – deciding, not being decided for, self-decided and not acted on by external nature or by other men as if I were a thing, or an animal, or a slave incapable of playing a human role, that is, of conceiving goals and policies of my own and realizing them" (Berlin, 2002, p.131).

We come up with objectives for ourselves even when the objectives appear to be "problematic" in terms of utility satisfaction, primary goods, or may indeed end our lives. The capability approach cherishes such objectives as long as we have reason to value them.

Adaptive preferences refer to preferences, values, goals, aspirations, and human behavior in general which people form as a result of their adaptation to what is perceived as normal in their world. I am interested in the analysis of adaptive preferences because they suggest the case in which people cannot make use of their reasoning in order to realize their real opportunities. In this thesis, I only focus on the form of adaptive preferences which is relevant to development[1]. Sen (1999, pp. 3-4, p.18) defines development not just as economic progress, as is often assumed in development studies but also as the promotion of freedom and capability. Thus, we cannot achieve development if we do not perceive our real opportunities because of the problem of adaptive preferences.

---

[1] For a brief explanation of different forms of adaptive preferences see David Clark (2011)

Both Sen and Nussbaum problematize adaptive preferences in the context of development. For example, Sen problematizes them as follows:

"…the usual underdogs in stratified societies, perennially oppressed minorities in intolerant communities, traditionally precarious sharecroppers living in a world of uncertainty, routinely overworked sweatshop employees in exploitative economic arrangements, hopelessly subdued housewives in severely sexist cultures. The deprived people tend to come to terms with their deprivation because of the sheer necessity of survival, and they may, as a result, lack the courage to demand any radical change, and may even adjust their desires and expectations to what they unambitiously see as feasible" (Sen, 1999, pp. 62-63).

Nussbaum also problematizes adaptive preferences by referring to the life story of Vasanti whom she encountered in India:

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

Both Sen and Nussbaum argue that adaptive preference is problematic because it suggests that people unambitiously accept existing unequal circumstances.

I will investigate how exactly Sen and Nussbaum problematize adaptive preferences in the context of development. Are their analyses different? Moreover, I question what kind of policy solutions Sen and Nussbaum provide to the problem of adaptive preferences. Are their policy solutions different? Can they be implemented without any problems? I will answer these questions in the thesis.

The thesis contributes in four ways. First, I clarify the difference between Sen's capability approach and Nussbaum's capabilities approach. I especially investigate what roles their theories are expected to play. Second, I clarify Sen and Nussbaum's analyses of adaptive preferences. They both analyze adaptive preferences in the context of development. However, they actually problematize adaptive preferences differently. I account for the difference by pointing at their different philosophical foundations. Third, I clarify the policy solution based on Nussbaum's capabilities approach to the problem of adaptive preferences. Prima facie her list of the central capabilities facilitates the identification of adaptive preferences. However, I suggest that her policy solution faces the criticism of paternalism and the criticism of the status of a constitution as the ultimate order. On the other hand, despite his acknowledgement of adaptive preferences Sen does not conceptualize policy solutions in detail. My fourth contribution will be to tackle this underexplored project and to conceptualize a policy solution[2] based on Sen's capability approach to the problem of adaptive preferences. I argue that the derived policy solution

---

[2] I use 'policies' in a broad way. I do not confine policies only to public policies, that is, what governments do (Spence and Deneulin, 2009, p.276). In this thesis, policies are conceived as being what organizations, including government, corporate, and non-profit organizations, do.

can eschew the criticisms which Nussbaum's policy solution faces. Although Sen's policy solution may involve the problem of the whim of majority inherent in democracy, I think that it is more promising than Nussbaum's policy solution.

In Chapter 1, I will provide a general introduction to the capability approach. I especially focus on the historical significance of the creation of the capability criterion by comparing it with utilitarianism and John Rawls' primary goods.

In Chapter 2 I clarify the difference between Sen's capability approach and Nussbaum's capabilities approach. What are their expectations for the role of theory? Are the important capabilities specified? Why do they have to be specified? Are there problems if theorists leave the actual content of capabilities abstract? In order to illuminate the philosophical foundation of Sen's capability approach I refer to Lawrence Hamilton's theory of true interest.

In Chapter 3, I argue that the two different versions of the capability approach result in two different analyses of adaptive preferences. On the one hand, Nussbaum suggests that adaptive preferences are problematic when people adjust their aspirations to unjust situations in terms of the central capabilities. On the other hand, Sen suggests that the problem involves the lack of the exercise of trans-positional reasoned scrutiny. This distinction is rarely pointed out in the literatures. I further argue that David Clark and Mozaffar Qizilbash's analysis of adaptive preferences share Nussbaum's philosophical preconception. I use the case study of the British government's education policy and argue for Sen's conception of adaptive preferences.

In Chapter 4, I analyze two different policy solutions to the problem of adaptive preferences. Nussbaum's policy solution aims to enable people to perceive the importance of having a missing capability, where the capabilities one should strive for are based on the list. I will argue that this policy solution is paternalistic. Furthermore, I will criticize Nussbaum's reliance on the role of a constitution as the ultimate order by referring to James White's proposal to use of a constitution for the initiation of a political dialogue. Sen does not conceptualize a policy solution to problematic adaptive preferences except for his call for public discussion. I tackle this underexplored project and suggest that Sen's policy solution will help citizens conduct trans-positional reasoned scrutiny and make them perceive alternative opportunities which would otherwise not be perceived. I tentatively call this *the enlightening policy*. I develop the concept of the enlightening policies and suggest that they can escape the criticisms which Nussbaum's policy solution faces. Although Sen's policy solution may not overcome the whim of the majority inherent democracy, I think that it is more promising than Nussbaum's policy solution.

1. The Capability Approach

1.1 The capability space as a normative criterion[3] for the evaluation of human life

The capability approach gives a normative priority to capabilities in the assessment of human life. Sen (1999, pp. 74-75) distinguishes two different end states: achievement and the freedom to achieve. While *capabilities* refer to the freedom to achieve, *functionings* refer to achievements. Functionings involve all sorts of beings and doings and vary from "elementary ones such as being adequately nourished and being free from avoidable disease, to very complex activities or personal states, such as being able to take part in the life of the community and having self-respect" (Sen, 1999, p.75). In contrast, capabilities reflect opportunities of an alternative combination of functionings which a person has reason to value. Thus, capabilities refer to a kind of freedom to achieve one alternative out of a set of different combinations of functionings.

Sen (1985, pp.203-204) adds the distinction between well-being and agency to the above distinction, creating four notions in total: well-being achievement, well-being freedom, agency achievement, and agency freedom. Well-being achievement refers to the achievement of goals which are beneficial to one's well-being. In contrast, agency achievement includes values other than the pursuit of one's own well-being. Likewise, well-being freedom refers to freedom to achieve goals which correspond to one's well-being while agency freedom refers to "what the person is free to do and achieve in pursuit of whatever goals or values he or she regards as important" (Sen, 1985, p.203). In other words, well-being freedom concentrates only on the kind of goals which are beneficial to one's own well-being while agency freedom eliminates such restrictions and opens up the possibility to pursue "whatever goals or values" a person has reason to value. Nussbaum (2011, pp. 197-201) dismisses this additional distinction as redundant "because what is valued is the freedom to do or not to do, [and] agency is woven throughout" (Nussbaum, 2011, p.201).

The capability approach differs from utilitarianism. As Sen (1999, pp. 62-63) explains, there is a variety of forms of utilitarianism from the classical focus on mental metrics such as pleasures and desires to the recent focus on utility as the numerical representation of a person's choice, but they share the same shortcoming. Utilitarianism evaluates the total amount of utilities which a person's choice generates in the assessment of human life. Other informational spaces such as freedom, human rights, liberty etc., are only instrumentally valued in the assessment. They are considered only in terms of whether or not they increase

---

[3] When I use the term 'capability criterion', I mean the choice of capability as the evaluative space of quality of life. It is usually introduced in comparison with other spaces such as utilities or primary goods. In contrast, with 'capability approach', I mean the methodology of how to use the capability criterion. That is, the capability criterion itself does not immediately tell us how to apply it in practice. Sen and Nussbaum agree with the importance of the capability criterion for the assessment of human life while their capability approaches are different. Furthermore, I often refer to Sen's approach as Sen's capability approach and Nussbaum's as Nussbaum's capabilities approach in order to reflect their difference.

the total amount of utilities. However, as Sen (1999, pp.65-66) points out, utilitarianism misses out on the importance of those informational space as valuable ends in themselves. Sen suggests that having liberty itself may constitute a good human life. It does not always have to be considered merely as a means to achieve utilities. Thus, Sen sees the problem of utilitarianism in its dismissal of the intrinsic importance of other ends. In contrast, the capability approach does not ignore those ends.

Yet, Sen not only criticizes utilitarianism, but also criticizes other ethical accounts. Sen (1999, p. 63, pp. 72-74) criticizes Rawls' absolute prioritization of primary goods. He argues that Rawls does not consider how these means will be converted into actual achievements. Primary goods are defined as general-purpose means that help anyone to promote his or her ends, and include "rights, liberties and opportunities, income and wealth, and the social bases of self-respect" (Rawls, 1971, pp. 60-65). Having primary goods is considered sufficient for the attainment of whatever objectives individuals aim to pursue. Sen suggests that the possession of primary goods does not necessarily guarantee that a person can achieve a given goal because many factors affect the conversion of means into the goal. There are various sorts of relationships between primary goods and the achievement of one's own ends: personal heterogeneities, environmental diversities, variations in social climate, differences in relational perspectives, and distribution within the family.[4] For example, there may be a case that "a person who is disabled may have a larger basket of primary goods and yet have less chance to lead a normal life (or to pursue her objectives) than an able-bodied person with a smaller basket of primary goods" (Sen, 1999, p.74). As an alternative, the capability approach concentrates on actual opportunities to achieve a kind of life which a person has reason to value given the particular social circumstance which the person finds herself in.

As has been discussed, the capability approach does not face the problems which utilitarianism and Rawls face. In other words, the capability approach successfully incorporates two different kinds of diversity which utilitarianism and John Rawls neglect. Sen (1992, p.85) points out the difference between "*inter-end* variations – different conceptions of the good that different people may have" and "inter-individual variation in the relationship between resources (such as primary goods) and the freedom to pursue ends". The inter-end variations pay attention to the diversity in one's conceptualization of moral values. The inter-individual variations focus on the diversity of social, environmental, and personal factors decisive for the actual attainment of one's values. By judging the goodness

---

[4] According to Sen (1999, pp. 70-71), personal heterogeneities refer to people's disparate physical characteristics connected with disability, illness, age or gender that make their needs diverse; Environmental diversities refer to variations in environmental conditions, such as climatic circumstances (temperature ranges, rainfall, flooding and so on) which can influence what a person gets out of a given means; Variations in social climate refer to social conditions such as public educational arrangements, and the prevalence or absence of crime and violence; Differences in relational perspectives refer to variations in the required patterns of behavior in a community which people belong to; Distribution within the family refers to variations in intra-family distribution of means.

of outcomes of choices only in terms of utilities, utilitarianism ignores the inter-end variations. By assigning a preeminent priority to primary goods yet at the same time endorsing the pursuit of various ends, Rawls ignores the inter-individual variation. In contrast, the capability approach incorporates both kinds of diversities.

The notion of inter-end variations questions the formation of values, interests, aspirations, and preferences rather than how to achieve the already formed values. What ends does a person have? How are they justified? Sen does not call existing opportunities capabilities unless they are formed through reasoned scrutiny; he requires that a person subjects "one's choices – of actions as well as of objectives, values and priorities – to reasoned scrutiny" (Sen, 2002a, p.4). Nussbaum also refers to the importance of practical reason in her list of ten central capabilities. She defines it as "[b]eing able to form a conception of the good and to engage in critical reflection about the planning of one's life" (Nussbaum, 2000, p.79). The capability approach requires that people form a conception of values by reasoning. As will be seen below Sen's rational reasoning and Nussbaum's practical reason are different. But they both require that people form their life values through reasoning. I will come back to this point later. In contrast, the notion of the inter-individual variations questions how to achieve given goals despite a variety in many social, personal, and environmental factors. In other words, the question of "what ends does a person have?" is already answered and the inquiry is headed toward the next question: "what power does she have to convert means into the fulfillment of those ends?."

1.2 The capability approach and development policies

Sen (1999, p.18) defines development as the promotion of capabilities. Thus, development policies aim to promote human capabilities. Sabina Alkire calls these kinds of policies prospective policies: "a working set of the policies, activities, and recommendations that are considered, at any given time, most likely to generate considerable capability expansion – together with the processes by which these policies/activities/recommendations are generated and the contexts in which they will be more likely to deliver these benefits" (Alkire, 2008, pp. 32-34). The prospective analysis is different from the evaluative analysis which "undertakes comparative assessments of states of affairs by comparing capabilities or freedoms (*inter alia*)" (Alkire, 2008, pp. 32-34). The prospective analysis questions how and why the expansion of human capabilities occurs and what factors contribute to the expansion rather than whether or not the expansion has occurred, which is what the evaluative analysis questions.

Corresponding to the difference between the inter-end variation and the inter-individual variation, I argue that there are two different stages which constitute the entire project of development. Both stages are necessary for the promotion of capabilities. For without appropriately specifying values to be promoted policy practitioners will not be able to set up development objectives. Even if policy practitioners know what values to be

endorsed they still have to investigate social, personal, and environmental conversion factors for the actual achievement of the endorsed values. Without securing real opportunities to attain what people have reason to value, it cannot be said that capabilities are promoted. In the first stage, policy practitioners try to answer "what ends does a person have?" and in the second stage, they try to answer "what power does she have to convert means into the fulfillment of those ends?."

In the first stage, policy practitioners may not always rely on people's existing preferences for the answer because what people perceive as valuable may be distorted – these are problematic adaptive preferences. As we will see in the third chapter, Sen and Nussbaum provide different policy solutions to problematic adaptive preferences because of their different analysis of adaptive preferences. Nussbaum makes use of her list of ten central capabilities for the solution while Sen does not concretely conceptualize policy solutions to the problem of adaptive preferences[5]. In the final chapter, I will conceptualize Sen's policy solutions. I tentatively call these *enlightening policies*.

In the second stage, policy practitioners investigate how social institutions should be arranged in order to help attain the values obtained from the first stage. Although policy practitioners already know which objectives should be achieved, there may still be some external factors which disturb the actual achievement. In such cases, policy practitioners rely on *supportive policies.* The Supportive policies aim to solve the remaining problem after the problem of adaptive preferences is solved. Therefore, in the thesis, I will not deal with supportive policies in detail because I am concerned with a policy solution to the problem of adaptive preferences.

---

[5] The constructive roles of political freedom that Sen emphasizes are relevant here. The constructive role of political freedom demands the appropriateness of conceptualizations of 'needs'; "Political and civil rights, especially those related to the guaranteeing of open discussion, debate, criticism, and dissent are central to the process of generating informed and reflected choices. Those processes are crucial to the formulation of values and priorities, and we cannot, in general, take preferences as given independently of public discussion, that is, irrespective of whether open debates and interchanges are permitted or not" (Sen, 1999, p.153).

2. The difference between Sen and Nussbaum

In this chapter, I discuss the difference between Sen's capability approach and Nussbaum's capabilities approach and examine how they justify the content of capabilities. First, I will explain the justification in Sen's capability approach by referring especially to Lawrence Hamilton's theory of true interest (Hamilton, 1999, 2003). Second, I will discuss Nussbaum's capabilities approach and examine how she justifies the content of capabilities. Third, I will assess their difference and argue for Sen's justification of the content of capabilities.

2.1 Sen's capability approach – Hamilton's theory of true interest

Given the preconception with theory commonly practiced in political philosophy as suggested by Hamilton (2003), I think that Sen has a quite radical view on the role of theory. The radical difference lies in Sen's explicit intention to leave theory *incomplete*. That is, he does not specify beforehand which capabilities have to be pursued and calls instead for democratic deliberation to specify them. Sen regards theory as a heuristic device, an instrument, or a filter which shapes the direction of democratic deliberation. For Sen, theory becomes complete in practice; the concrete content of capabilities can be known only in a particular social context. Lawrence Hamilton (1999, 2003) explains Sen's view on theory by advocating the notions of general and particular needs and the theory of true interest.

Hamilton (1999, 2003) develops a theory of needs and true interests. He examines how needs are perceived causally and historically. Hamilton distinguishes two different forms of needs: needs in their general form and needs in their particular form. General needs are composed of vital and agency needs and the necessary conditions for minimal human functioning. According to Hamilton (2003, p.12), vital needs are "the general ineluctable needs that are unproblematically associated with individual 'health'". The examples include "the need for adequate shelter, sufficient clothing, the required daily calorific intake, periodic rest, exercise, and social entertainment" (Hamilton, 2003, p.23). They do not constitute an exhaustive list of universal human needs but rather are ongoing minimal functionings which are subject to changes. Agency needs are the general ethical and political objectives of individuals and groups that relate to human functioning, and refer to people's ability to become actively involved with the daily evaluation of needs. General needs refer to vital and agency needs abstractly. In contrast, particular needs are more concrete and refer to objects which have immediate impact on our life. Particular needs reflect the various interpretations of general needs depending on different social contexts and past experiences. Particular needs are needs which a person perceives under the framework of general needs only here and now.

Hamilton observes that human beings do not always make adequate use of vital and agency needs because of an imbalance in what he calls the normative power. Hamilton

(2003, pp. 71-76) defines normative power as "the power to affect the extant norms and beliefs that directly or indirectly affect how individuals perceive and are able to attend to their vital and agency needs". But, the perceptions of general needs vary depending on different contexts, so how do we know whether or not the perceptions are correct? Hamilton (2003, pp. 88-91) suggests that if people form particular needs through their reflection under the guidance of general vital and agency needs, they are called *true interests*. "[A true interest] designates a particular 'post-reflective-evaluation' vital or agency need of mine in the here and now, or a satisfier thereof that can be justified causally as a means of meeting my vital needs and developing my agency needs. It is my 'true interest' X at a time t. At time $t + 1$ (despite my vital and agency needs not having changed) my 'true interest' might be Y" (Hamilton, 2003, p.88). As an example Hamilton refers to the case of objective illusion in India explained by Sen. Indian states like Bihar and Uttar Pradesh with very low life expectation have astonishingly low rates of self-assessed morbidity (Sen, 2002a, pp. 471-474). Yet, this result cannot be attributed to some random errors or individual subjectivism; given the prevailing medical circumstances people in these states objectively perceive that their health conditions are unproblematic. With extra information about medical science the people will be aware of ailments and attune their true interest to the observed life expectancy despite their vital needs to live a 'healthy' life not having changed. True interests are shaped rather than fixed as ahistorical end-states. True interests refer to adequate perceptions of vital and agency needs at a particular point and time.

Hamilton distinguishes between particular and general needs because he wants to pay serious attention to the historical mechanism involved in the formation of needs: "a bi-directional causal mechanism. Hamilton states:

"Ideas are a kind of activity that affects political and economic orders, change and policy, just as these orders, changes and policy affect ideas; that is, the causality is bi-directional: ideas and material reality interact causally on one another" (Hamilton, 2003, p.25).

According to Hamilton (2003, p.48), the kind of universalism advocated by Nussbaum ignores the bi-directional causal mechanism[6]. People perceive their needs as responses to a particular historical stage where they stand now. They do not perceive their particular needs exactly as they are depicted in theory. People perceive particular needs as reactions to a particular social situation, not as the direct products of a theory. Thus, he suggests that theory cannot depict needs in a particular form.

Although Sen does not mention the bi-directional mechanism directly, I think he would also endorse its importance. Sen (1999, p.154) regards social relations as an important determinant of values. He says: "The totality of human predicament would be a gross basis for identifying our 'needs'" (1999, p.154). Although Sen's work on social and psychological factors in the formation of values may be underdeveloped as Gasper (2002, 2007a, 2007b) and Giri (2000) suggest, he does not dismiss them. In his argument against

---

[6] I will explain Nussbaum's universalism in more detail later.

the charge of methodological individualism[7], Sen (2002b, pp. 80-81, 2009, pp. 244-246) claims that the capability approach does not suppose that individuals think, choose, and act independently from the society to which they belong. On the contrary, it acknowledges that individuals' thinking, choosing, and doing cannot be understood without considering the influence of social structures.

Furthermore, Sen also emphasizes the importance of people's capacity to think against the often overwhelming influence of biased preconceptions –the other direction of the bi-directional mechanism. That is, he stresses the role of reasoned scrutiny. Let me elaborate on Sen's notion of reasoned scrutiny. The exercise of reasoned scrutiny does not exclusively mean processing relevant information to maximize one's utilities or making use of logic. In order to explain the notion of reasoned scrutiny, Sen refers to open impartiality as discussed by Adam Smith. Smith requires that the exercise of reasoning goes beyond local conventions of thought and focuses on what they look like from the perspective of the impartial spectator. As Smith summarizes the point:

"We can never survey our own sentiments and motives, we can never form any judgment concerning them; unless we remove ourselves, as it were, from our own natural station, and endeavor to view them as at a certain distance from us. But we can do this in no other way than by endeavouring to view them with the eyes of other people, or as other people are likely to view them (Smith, 1976, p.110 cited in Sen, 2002c, p.451)."

Sen also sees in reasoned scrutiny an ability to go beyond local biases that may keep us from the realization of alternative lives which we could possibly have reason to value[8].

Sen's reasoned scrutiny also corresponds to his notion of trans-positional objectivity. As Sen (2002a, p.476) suggests, there is objectivity in two senses: an objective formulation of values from the same position and an objective formulation of values through trans-positional scrutiny. The statement "the sun and moon are the same size" is objectively correct if other people who stand on the same position verify it without having access to additional knowledge. That is, the observation can be objective provided the same ignorance of optics in that society. Sen calls this phenomenon "objective illusion". On the other hand, when people form beliefs from a common standpoint and exercise trans-positionally

---

[7] According to Stewart and Deneulin (2002, p.66), Sen's approach is an example of methodological individualism because "all phenomena must be accounted for in terms of what individuals think, choose, and do".

[8] Smith's impartial spectator is different from Rawl's call for impartiality. According to Sen (2002c, pp. 447-448), Rawls's closed impartiality cannot address the limitations of partiality toward the shared prejudices or biases in the original position and excludes the voice of nonmembers whose lives may be affected by the decision in the original position. Smith's open impartiality aims at "removing the biasing influences of ones' objectives or interests or prejudices, not only in contrast with those of others in some group of which one is a member (There can, of course, be many such groups related, for example, to nationality, class, profession, and so on), but also of nonmembers of each group" (Sen, 2002c, p.446).

scrutiny the beliefs are trans-positional objective. Thus, exercising trans-positional scrutiny saves people from having objective illusion acquired through the common standpoint.

Trans-positional scrutiny does not guarantee that the acquired view is completely just. Nor does it demand that one has to exercise it all the time. As Sen (2002c, p.456) suggests, the acquired view through reasoning may not be completely right but that is not a problem. He states:

"The agreements arrived at need not demand that some proposal is uniquely just, but perhaps only that it is plausibly just, or at least not manifestly unjust. Indeed, the demands of reasoned practice can in one way or another, live with a good deal of incompleteness or unresolved conflicts. In particular, the acknowledgement of some incompleteness does not indicate that all is lost (Sen, 2002c, p.456)."

Furthermore, Sen does not ask us to exercise reasoned scrutiny for all the issues of the world but to have "a willingness to do just [that], when it seems relevant and appropriate" (Sen, 2004a, p.340). Thus, Sen requires that people maintain the willingness to exercise the reasoned scrutiny in relevant cases even though no conclusions are final.

Sen's notion of reasoned scrutiny does not presuppose that the human cognitive capacity of deliberation is the only possible way to provide trans-positional perspectives, as Ananta Kumar Giri (2000) holds when he criticizes Sen. Giri (2000, p.1013) basically argues that rational scrutiny is not the only tool of criticism of life in general and internal criticism of traditional preconceptions in particular. Giri states: "[s]ince the pursuit of human well-being is a matter of reflective quest and deliberation rather than one of repetition of tradition it is important to emphasize that the critical exercise involved is not only and solely rational; it is spiritual too" (Giri, 2000, p.1014). But, it is not accurate to treat Sen's rationality as if it only focuses on the conventional notion of rationality. Sen (2009, p.50) explains elsewhere why this is not the case: "the need for reasoned scrutiny of psychological attitudes does not disappear even after the power of emotions is recognized and the positive role of many instinctive reactions (such as a sense of revulsion about cruelty) is celebrated"[9]. Reasoned scrutiny refers to the ability to develop trans-positional views and does not exclude spiritual drives.

The notion of reasoned scrutiny is highly relevant to the notion of human agency but both are not exactly the same. Sen (1999, pp. 17-18) defines a human agent as "someone who acts and brings about change, and whose achievements can be judged in terms of her own values and objectives, whether or not we assess them in terms of some external criteria as well." Human agents do not merely conform to a given norm in their society but often strive for social changes. The basis for their action is their values acquired through reasoned

---

[9] Likewise Jon Elster (1983, pp. 22-24) argues that the endorsement of the human cognitive capacity to deliberate as the only possible source for the attainment of trans-positional knowledge may bring about the opposite result. The reasoned scrutiny in the narrow sense may be too strong since the constant reliance on the pure deliberation sometimes dismisses the case which unplanned intuitive desires can be considered autonomous and bring about trans-positional perspectives. That is the case of "sheer moral luck" (Williams, 1981) where people attain the state of trans-positional objectivity without cognitively striving for it.

scrutiny. As Crocker and Robeyns (2010, p. 80) suggest, there are four constituents of human agency: "(ⅰ) *self-determination*: the person decides for himself or herself rather than someone or something else making the decision to do X; (ⅱ) *reason orientation and deliberation*: the person bases his or her decision on reasons, such as the pursuit of goals; (ⅲ) *action*: the person performs or has a role in performing X; and (ⅳ) *impact on the world*: the person thereby brings about (or contributes to bringing about) change in the world". He further argues that "the more fully an agent's action fulfills each condition, the more fully is that act one of agency" (Crocker and Robeyns, 2010, p.80). Sen's notion of reasoned scrutiny includes the first and the second constituents but not the third and the fourth constituents. For Crocker, human agency not only forms an intention but also performs it in practice. In contrast, what I want to emphasize in this thesis is precisely the element of the formation of an intention, belief, and values, and not the later elements.

We have seen the notion of trans-positional scrutiny from many different angles. Let me come back to the implication of the notion: people can think against the often overwhelming influence of biased preconceptions. In his paper on identity, Sen (1998, p.15) states: "…being born in a particular country, or within a particular culture, need not eliminate the possibility of adapting a perspective or a loyalty that is very different from that of the bulk of the people in that country or in that culture". A person does not have to stick to a traditional norm in her society but can question what has been taught to her. Sen further states: "While circumstances may not encourage a person to do such questioning, the ability to doubt and to question is within each person's capacity" (Sen, 1998, p.24). People are not just social creatures whose values are just copies of social structures. Sen argues that by taking trans-positional views people will re-examine and reformulate the traditional norms. Therefore, not only people's perceptions of values are conditioned by social factors, but they also actively condition social relationships. I think that these arguments confirm that Sen also acknowledges the importance of what Hamilton calls the bi-directional mechanism.

Now, having seen the importance of the bi-directional mechanism, what role does Hamilton expect theory to play? Hamilton's theory tries to take some distance from the kind of universalism which is common in political philosophy. This kind of universalism assumes a 'view from nowhere' or a 'God's eye view' and attempts to provide full theoretical lists of particular human needs or theoretical blueprints for elaborate institutional design. The universalistic theory aims to provide the complete picture of a just society with its inhabitants and makes them realize whether some important components are lacking. The advocates of this theory conflate the distinction between general needs and particular needs, treating necessarily general characteristics of needs in theory as if they are the immediately perceptible objects of particular needs. In other words, the advocates try to "entrench a single moment in a dynamic process" (Hamilton, 2003, p.12). In contrast, Hamilton (2003, pp. 19-20) suggests using general needs in theory as a starting point for the evaluation of particular needs. That is, they do not directly present particular needs but play a role as a

filter to grasp particular needs. In practice, his theory is not "a universal theoretical blue print for action and institutional construction" but just a "means of guiding political action and choice" (Hamilton. 2003, p.20). The theory is helpful for us to organize our thoughts in a world where normative imbalance prevails but it leaves open the decisions of what we actually want to pursue.

According to Hamilton (2003, p.65), Sen's capability approach is the most sophisticated theory of true interests to date. This is mainly because Sen's 'theory' comes close to Hamilton's theory. As Hamilton (1999, pp. 532-535) suggests, Sen's capability approach acknowledges that present true interests are not atemporally given, they always include the possibility of objective illusion, and, therefore, the theory is incomplete. Yet, the capability approach is useful in shaping the direction of reflection in a complex world; it demands the continuous self-evaluation of values in the pursuit of capability in its general form. The actual content of capabilities is decided through reflective evaluation. The capability theory just does the job of guiding the adequate perception of particular capabilities. As Hamilton (1999, p.534) also suggests, "[t]he counterfactual questioning of whether people would change 'if they knew otherwise' is what is continually done. It is only in this manner that contingent opinion from our present 'delineated' point of view can move closer to an objective trans-positional knowledge of true interests." Sen's theory is not a list of ahistorical reified needs; it "[refrains] from completeness and foreclosure that could stifle the possibility of new forms of human flourishing, but [sees] theory as working like a filter, undermining illusory interests and supporting true interests" (Hamilton, 1999, p.535).

In line with Hamilton's theory of true interests, I define Sen's capability approach as follows. Sen's capability approach acts as a filter for further specification of particular capabilities by people. Sen's capability approach asks people to exercise trans-positional scrutiny and come up with particular capabilities within the framework of a general capability criterion. We cannot isolate and encapsulate those particular capabilities in theory. The particular manifestation of a general capability varies and depends on social and historical contexts. Sen intentionally retains openness for the unfolding of particular capabilities. As suggested above, a true interest I have at time t is different from another true interest I have at time $t + 1$ although both are perceived as the same vital and agency needs. The same argument goes for Sen's capability approach: a particular form of capabilities I come up with at t is different from another one I experience at time $t + 1$ although both are the interpretation of a general capability criterion. Below I occasionally call Sen's capability approach Sen's general capability approach or the general capability approach in order to emphasize the point above.

Although Sen does not elaborate the idea of seeing theory as a filter, he provides a similar view on theory. Just as Hamilton does, Sen distances himself from the kind of theory which Nussbaum endorses and regards the role of the capability approach as an initiation for public reasoning:

"Nussbaum has discussed the importance of identifying an overarching "list of capabilities," with given priorities, in a more Aristotelian way. My own reluctance to join the search for such a canonical list arises partly from my difficulty in seeing how the exact lists and weights would be chosen without appropriate specification of the context of their use (which could vary), but also from a disinclination to accept any substantive diminution of the domain of public reasoning. The framework of capabilities, as I see it, helps to clarify and illuminates the *subject* matter of public reasoning, which can involve epistemic issues (including claims of objective importance) as well as ethical and political ones. It does not – and cannot – displace the need for public reasoning" (Sen, 2004a, p.333).

Sen proposes the use of the capability approach as a guide for deliberative discourses without providing the concrete content of capabilities. In contrast, Nussbaum's list of central human capabilities fixes the content. For Sen, such a fixed content denies "the possibility of fruitful public participation on what should be included and why" (Sen, 2004b, p.77).

Sen is "a great believer in theory" (Sen, 2004b, p.78). I take this remark to mean that he acknowledges *some* authority in theory. Some authority is important to avoid the criticism of relativism. As Hamilton acknowledges, the authority to determine the direction of public discussion is important in order to avoid relativism that leaves all discretions to local practitioners who also may be entrenched in biased preconceptions. He states: "[t]he fact that [the general need as the critical frame of reference] is not a relativist account of need is also important because a number of determinants of need formation and provision are not restricted to specific contexts" (Hamilton, 2003, p.13). Policy practitioners cannot just rely on context specificity but also need some authoritative theory as Hamilton and Sen understand. Thus, Sen's theory does not accept any values as candidates of particular capabilities. It plays a role of a filter and that is something to protect against relativism. As I will argue below, Paulo Freire's otherwise excellent work has some defects precisely because he does not establish any theory to play any authoritative role.

The notion of theory as a filter also helps revise Sen's distinction between the comparative approach and the transcendental approach. According to Sen (2006b, p.216), the transcendental approach aims to identify perfectly just societal arrangements, just as Nussbaum's kind of universalism does. As an alternative, Sen argues for a comparative approach for reducing manifest injustices. He argues that the transcendental approach is neither necessary nor sufficient for a judgment about justice. It is insufficient because the identification of the just does not tell how to compare two non-best alternatives. Nor is it necessary since in any fields, relative assessment of two alternatives "tends in general to be a matter between them, without there being the necessity of beseeching the help of a third – 'irrelevant' alternative" (Sen, 2006b, pp. 221-222). As to the analysis of the insufficient condition, I think that Sen provides a fair argument, but as to the analysis of the necessary condition, he underemphasizes the role of theory. I just do not think the comparison between two alternatives is just "a matter between them". What should be dismissed is a kind of a theory that strictly tells the characteristics of the best. But, it is not to dismiss another kind of theory that aims to create a theory that shapes the direction of public discussion as to the judgment of two alternatives.

2.2 Nussbaum's capabilities approach

In this section, I argue that Nussbaum's capabilities approach is squarely in continuing tradition to establish a complete theory which provides a concrete content with a picture of a just society. Nussbaum's theory outlines at the theoretical level what the important capabilities are. Whether or not this kind of theory is legitimate it is at least what Nussbaum aims for. Nussbaum's capabilities approach is a small revision of the kind of theory which has traditionally been developed throughout political philosophy rather than a radical change from such a theory. I examine Nussbaum's defense of the status of her list of capabilities, the respect for diverse values, the call for practical reasoning, and what she means by 'specification' of the central capabilities.

Nussbaum (2000, 2002, 2006, 2011) admits that her capabilities approach is a universalistic account that is supposed to be applicable in any society for all times. She also describes it as a partial theory of social justice (Nussbaum, 2006, 2011). The list of ten central human capabilities[10] presents the actual components of a just society. She believes that the list can incorporate the diversity of human life which varies across time and place. Unlike relativistic accounts of human life the list does not suppose that human goals and values totally depend on a particular time and place and are all equally valuable. By using the explicit list, it is possible to defend it as universal and defend it against relativism.

The immediate question is: who decides which capabilities matter? Why are the ten capabilities in the list considered to be central and not others? For Nussbaum, capabilities refer to "opportunities of what people are actually able to do and to be – in a way informed by an intuitive idea of a life that is worthy of the dignity of the human being" (Nussbaum, 2000, p.5). Nussbaum (2000, p. 59, p.76, 2011, p.79) refers to the notion of overlapping consensus in political liberalism proposed by John Rawls (1999) in order to justify her central capabilities. That is, the ten capabilities are not a mere agreement among philosophers but rather represent the agreement which people all over the world universally agree on for political purposes, despite the variety of cultural, metaphysical, and religious understandings of the world. The central capabilities do not represent any particular metaphysical and religious views; rather it is a political conception. Despite the differences in comprehensive views on the good human life, Nussbaum believes that our intuitive ideas about human dignity can constitute a broad cross-cultural consensus for political purposes.

Nussbaum (2011, pp.71-74) defends the necessity to specify the content of capabilities in theory. For example, she states:

"[Unlike Sen's theory, Nussbaum's version] makes commitments as to *content*, using the list of ten Central Capabilities as a basis for the idea of fundamental political entitlements and constitutional law" (2011, p.70, my emphasis).

---

[10] See the Appendix to this thesis for the latest formulation of her list of central capabilities.

Furthermore, Nussbaum uses the analogy of a criminal trial to show that her capabilities approach presents the actual content of good outcomes. Unlike Rawls's insistence on correct and precise procedures without a specification of the right result, the capabilities approach

"…starts from *the outcome*: with an intuitive grasp of *a particular content*, as having a necessary connection to a life worthy of human dignity. It then seeks political procedures (a constitution, various allocations of powers, a certain type of economic system) that will achieve that result as nearly as possible, although it seems likely that such procedures will change over time and may also vary with the circumstances and history of different nations" (Nussbaum, 2006, p.82, my emphasis).

Nussbaum argues for the necessity of giving actual content to capabilities because otherwise political practitioners cannot know exactly which capabilities should be promoted.

"If it is true that a society is not minimally just unless it has given people the preconditions of a life worthy of human dignity, then it is incumbent on political actors to figure out what that life requires. If they are to deliver it, they need to know what it is" (Nussbaum, 2011, p.73).

Thus, her capabilities approach makes clear which capabilities are central and important, which are bad, trivial, and so on. After knowing which capabilities are to be achieved, policy practitioners can then judge which capabilities are lacking and which factors disturb the achievement of these capabilities.

Furthermore, Nussbaum suggests that her approach shares the same philosophical motivation as John Rawls: "[a]s with Rawls's principles, so here: the political principles give shape and content to the abstract idea of dignity" (Nussbaum, 2006, p.75). However, Nussbaum has problems with Rawls because he excludes people with disadvantages and impairments and non-human animals from the original position where political principles of justice are derived. Rawls' political principles are problematic because they do not reflect the interests of people with disabilities and non-human animals. Thus, as Nussbaum makes clear, her approach is rather an extension of the political principles which Rawls proposes in the case of 'normal people' to the case which he does not treat. Nussbaum's list is the revised version of the Rawlsian political principle of justice and includes the interests of disabled people and non-human animals.

Nussbaum's commitment to the specificity of the list in turn leads to her criticism of Sen. For example, she states:

"…because of Sen's reluctance to make commitments about substance (which capabilities a society ought most centrally to pursue), even that guidance remains but an outline" (Nussbaum, 2003, p.35).

Furthermore, she states:

"I shall argue, however, that the capabilities approach will supply definite and useful guidance, and prove an ally in the pursuit of sex equality, only if we formulate a definite list of the most central capabilities, even one

that is tentative and revisable, using capabilities so defined to elaborate a partial account of social justice, a set of basic entitlements without which no society can lay claim to justice" (Nussbaum, 2003, p.36).

The capabilities approach is a useful guidance because it clearly states "some freedoms are distinctly central for political purposes, and some are distinctly not" (Nussbaum, 2003, p.44). Without specifying the content of capabilities, it is not useful to say that "[a]ll citizens are entitled to freedom understood as capability" (Nussbaum, 2003, p.46), as Sen holds.

Why is it important to specify the content of the central capabilities apart from that it could be useful for policy practitioners? The answer reflects Nussbaum's criticism of utilitarianism. Nussbaum (2011, pp. 50-56) criticizes utilitarianism because it uses mental satisfaction of pleasures as the only criterion to judge human lives. As a result, utilitarianism may endorse some ethically unacceptable situations which violate the central human capabilities as long as the actors are satisfied and happy. In contrast, her list immediately makes it obvious that some situations are just or unjust. Thus, political practitioners can immediately detect an injustice even if the deprived people in question are mentally satisfied. Moreover, Nussbaum (2000, p.160) suggests that the list protects against the majority whim of democracy and the violation of minority right. Nussbaum thinks that existing preferences of citizens are susceptible to adaptation and not reliable for deriving the objective of development. The list is useful because it can protect citizens against the blind endorsement of malformed preferences.

As Nussbaum cautiously points out, her list does not specify functionings, but capabilities. That is, Nussbaum does not intend that policy practitioners force citizens to actually act out any of the items on the list, but rather that they secure opportunities for citizens so that they are able to do or be the items on the list. As Nussbaum (2000, p.41, p.71) argues, the list does not preclude any traditional forms of human lives which are in conflict with the central human capabilities so long as opportunities to choose those capabilities are in place. For example, the Amish traditionally may not accept political participations such as voting but Nussbaum has no problems with this, just so long as they have the opportunity to vote. It is perfectly possible that people are actually capable of fulfilling the components of the list, but they choose not to do so. This is different from forcing people to live in a traditional way of life without having any other options.

Nussbaum (2000, p.59, 2006, pp. 78-79) argues that the list plays a facilitative role for people's choices rather than a tyrannical role. She claims that the list makes room for people's own choices and so it is not tyrannical in this sense. She says: "[t]he language of capabilities, as both Sen and I employ it, is designed to leave room for choice" (Nussbaum, 2002, p.40). Furthermore, she suggests:

"…the items on the list ought to be specified in a somewhat abstract and general way, precisely in order to leave room for the activities of specifying and deliberating by citizens and their legislatures and courts. Within

certain parameters it is perfectly appropriate that different nations should do this somewhat differently, taking histories and special circumstances into account" (Nussbaum, 2006, pp. 78-79).

This expression may be confusing given that Nussbaum has issues with the abstractness of Sen's capability approach. What does she mean when she suggests that Sen's capability approach is too general but her capabilities approach has to retain some generality in order to leave room for further specification? What would then be the difference between 'too general' and 'adequately general'? As far as I know, she does not directly answer these questions. Probably, we can say that Sen's capability approach is more general and abstract than Nussbaum's capabilities approach. But, this is just a relative judgment, not an absolute judgment. Actually, some suggest that, for example, the capability of "having opportunities for sexual satisfaction and for choice in matters of reproduction" in Nussbaum's list can be considered "too general and vague" (Robeyns, 2005, p.206). It must be clear that we cannot determine whether Nussbaum's capabilities approach is too specific or ideally general or Sen's capability approach is too general or not by just looking at their phrasing. All we can do, I think, is to find out the motivations behind their allegedly general approaches. Because of the respect for pluralistic choices, they want to leave their approaches general enough to allow for further specification depending on various social contexts. I argue that what Nussbaum actually means by 'specification' is different from Sen's notion of specification.

While Nussbaum argues for the importance of people's own choices, she elsewhere explains that her approach leaves room for specification "in the sense of *implementation*" (Nussbaum, 2002, p.47). But, I argue that this notion of specification is narrower than Sen's notion of specification. Thus, I think that Nussbaum conflates the difference between the two different notions. According to Nussbaum, Germany and the United States 'specify' the parameter of the right to free speech right:

"Thus, for example, Germany's interpretation of the free speech right, according to which there can be a good deal of legal regulation of antisemitic speech and political organizing, is rather different from the U.S. interpretation, which protects such speech unless there is an imminent threat of public disorder" (Nussbaum, 2006, p.79).

The Germans and the Americans differ in their way to implement a given end – the right to free speech, but not in the end itself. Thus, the specification in this sense significantly differs from Sen's and Hamilton's sense. Sen and Hamilton for example discuss the case where citizens justify two totally different or even conflicting capabilities as ends in various contexts. The Germans and the Americans agree on the importance of the right to free speech as an end but differ in the way of how to arrange social institutions in order to achieve it. Thus, Nussbaum's list of central capabilities actually does not make room for people's own choices in the sense of justifying the content of the capabilities but just in the sense of implementing them. In contrast, Sen's capability approach intends to facilitate various ways of justifying chosen capabilities. Sen does so by accepting a new interpretation of the original capability. This is precisely the reason why the original capability in Sen's

approach is vague. In Sen's capability approach, citizens have to engage in the act of specification in two senses. In contrast, in Nussbaum's capabilities approach, citizens only conduct the specification of "political procedures (a constitution, various allocations of powers, a certain type of economic system) that will achieve that result as nearly as possible" (Nussbaum, 2006, p.82).

Let me elaborate further on Nussbaum's notion of specification. As explained above, the list of central capabilities presents a kind of overlapping consensus along the lines of Rawls's political liberalism and is endorsed only for political purposes despite different comprehensive views on human life. Nussbaum (2006, p.79, my emphasis) adds the following to the above understanding:

"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*".

Thus, at first sight, it sounds that the list of central capabilities stands at a higher general level than the comprehensive doctrines of individual citizens and even has an influence on the delineation of these comprehensive doctrines. It thus seems that we can regard the list as an instrument for further specification of comprehensive doctrines as Sen's capability approach. However, this is not the case. As Nussbaum (2006, pp. 138-185) suggests, even in the cases of people who are fasting or the Amish who choose not to participate in political life because of religious reasons, they all recognize the importance of having the central capabilities as political values but choose not to have those functionings (being well-nourished and being politically active, respectively). Here, I think that Nussbaum does not use the list as a satellite conception which draws on the actual comprehensive views of citizens; citizens conceive the political conception and the comprehensive doctrine separately. The political conception stands at the same abstract level as the comprehensive views. That is, Nussbaum assumes that people accept the components of the list in addition to the comprehensive views and do not make use of the list for the generation of the comprehensive views.

Nussbaum compares the central capabilities with human rights and the entitlements in the U.S Constitution in order to show the explicitness of the former. Nussbaum (2006, pp.284 - pp.288) suggests that although the capabilities approach is a species of the human rights approach, it differs in its precision and affirmativeness of the capabilities language. She problematizes the ambiguity that the language of human rights brings up. Likewise, she also sees the ambiguity of the U.S. Constitution as problematic, because it is reminiscent of the Enlightenment tradition of negative liberty. She says: "[The U.S. Constitution] leaves things *notoriously indeterminate* as to whether impediments supplied by the market or by private actors are to be considered violations of fundamental rights of citizens" (Nussbaum, 2006, p.286, my emphasis). In contrast, according to Nussbaum, the Indian Constitution

specifies rights precisely and affirmatively. It depicts human rights in a way so that readers can straightforwardly perceive the impediments. For example, "impediments supplied by nonstate actors may also be *deemed* violations of constitutional rights" (Nussbaum, 2006, p.288, my emphasis). She goes on to claim: "[m]easures such as the recent constitutional amendments in India that guarantee women one-third representation in the local *panchayats*, or village councils, are strongly suggested by the capabilities approach, *which directs government to think from the start about what obstacles there are to full and effective empowerment for all citizens, and to devise measure that address these obstacles*" (Nussbaum, 2006, my emphasis). Thus, for Nussbaum the capabilities approach like the Indian Constitution depicts the right outcome of 'what must be achieved' directly so that readers can clearly see the gap between the goal and the current situation and identify what obstacles lie in-between. Here, Nussbaum assumes that the readers can interpret the meaning of the central capabilities literally because of the explicitness of the content. By "further specification depending on local contexts" Nussbaum does not mean that citizens can deliberate which capabilities they want to achieve, rather she just means that they can examine how to achieve a given capability.

Furthermore, Nussbaum (2000, pp. 198-202) proposes the use of the central capabilities as a supplement to the defective indeterminacy of the U.S. Constitution. She refers to the United States Religious Freedom Restoration Act of 1993 (RFRA). The act prohibits "any agency, department, or official of the United States, or of any state, from 'substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability,' unless the government can demonstrate that this burden '(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest'" (Nussbaum, 2000, pp. 198-199). That is, the law may impose a substantial burden on an individual's free exercise of religion only if a compelling state interest is given. Nussbaum is frustrated with the ambiguous statement of 'a compelling state interest'. What exactly does it mean? Unless it is specified, there will be a danger of relying on the arbitrariness of judges in deciding case by case what the compelling state interest is. Thus, she proposes that the central capabilities can "give content to the otherwise vague and amorphous notion of 'compelling state interest'" (Nussbaum, 2000, p.202). Thus, Nussbaum tries to reduce ambiguous and vague expressions in the Constitution to concrete, precise and affirmative ones as much as possible. In the last chapter, I argue for the completely opposite role of the Constitution: the alleged 'indeterminate' nature of the U.S. Constitution is not a problem but actually an important advantage.

Nussbaum's notion of 'specification' corresponds to her notion of 'practical reason'. Nussbaum defines practical reason as "[b]eing 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.)" (Nussbaum, 2000, p.79). Furthermore, Nussbaum (2000, p.82, p.87) suggests that practical reason plays a facilitative role in the further specification and respect

for people's own choices. I suggest that Nussbaum's practical reason is different from Sen's reasoned scrutiny. I suspect that Nussbaum expects citizens, when they use practical reason, to end up with the same capabilities as the ones already predetermined by philosophers rather than to find out completely new ones. The notion of practical reasoning enables citizens to locate the already revealed central capabilities wherever and whenever that exercise takes place. We exercise practical reason in order to identify the central capabilities which are there to be discovered. In contrast, Sen expects citizens to exercise reasoned scrutiny in order to find out new particular capabilities in the pursuit of capability in its general form. Those new particular capabilities are not developed in any theory before the act of reasoning. David Crocker (2008, p.160) endorses the above point. He argues that the use of practical reason in Nussbaum's work is confined to specification and implementation of the ideal of human lives which philosophers offer as the moral basis for constitutional principles. Thus, Nussbaum's practical reason does not produce anything beyond the realm of the already created conceptions of good human lives. It does not refer to any ability to transcend the existing dispositions.

I think that the difference between Nussbaum's practical reason and Sen's reasoned scrutiny corresponds to Sen's other distinction: the difference between detecting identity and determining identity (Sen, 1998, pp. 15-22). Although Sen's target is not Nussbaum here, I think her notion of practical reason is closer to detecting identity than to determining identity, which is the notion that Sen argues for. Detecting identity is an exercise through which one finds out assumed identities in a certain traditional community. The detection refers to one's discovery of what is already there as the 'correct' object. For example, a woman may discover that she is a Muslim and nothing else. This exercise typically leads to an unquestionable acceptance of biased social norms. On the other hand, determining identity demands that one's identity be examined and scrutinized rather than discovered and accepted. The determination refers to the substantial choice between alternative identities as "Mohandas Gandhi deliberatively decides to give priority to his identification with Indians seeking independence from British rule over his identity as a trained barrister pursuing English legal justice" (Sen, 1998, p.16). Nussbaum's capabilities approach seems to claim that the central capabilities are given as 'the right outcomes' to be discovered by practical reason for political purposes.

Furthermore, Crocker (2008, pp. 161-162) suggests that Nussbaum's dismissal of Sen's distinction between agency and well-being shows the shortcoming in her notion of practical reason. As suggested above, Nussbaum openly admits that the distinction between agency and well-being is missing on her account and it can be compensated by just relying on the distinction between capability and functioning. Crocker argues that this dismissal is problematic in two senses. First, the distinction between capability and functioning is not sufficient to emphasize the importance of people's own choices as active agents and not as passive recipients. Without the separate notion of agency, Nussbaum cannot "do full justice to people's actual freedom to shape their own lives, including their own decisions with

respect to which freedoms to make most important in their lives" (Crocker, 2008, p.161). Second, because of her prescriptive priority to her list of central human capabilities, "Nussbaum restricts the scope of practical agency to that of specifying the norms the philosopher sets forth and the constitution entrenches" (Crocker, 2008, p.162). The role of practical reason and Nussbaum's understanding of 'agency' reveal her expectation that citizens discover the ideal good human life that Nussbaum as a philosopher offers. In contrast, Sen's notion of agency and reasoned scrutiny expect that citizens make choices whose scopes are not completely determined, though restricted, by the components of the capability approach.

I have introduced and discussed the two versions of capability approach, Sen's capability approach and Nussbaum's capabilities approach. In the next section I will assess the difference between them and argue for Sen's approach.

2.3 Assessments of Sen's capability approach and Nussbaum's capabilities approach

(A) Specifying capabilities or retaining their generality? – on the role of theory

Let me start from Nussbaum's criticism that Sen's capability approach is too general and abstract and her claim that the content of capabilities must be specified. I think that this criticism is misleading since the role of Sen's theory is different from Nussbaum's. They simply are different philosophical enterprises. Sen intends to use his capability theory as an instrument for democratic deliberation. While Sen retains some authority in his theory in order to avoid relativism, his theory does not determine which capabilities are to be pursued. This is because what people find reasonable as a valuable capability may vary from context to context. He intentionally does not define the specific content of capabilities as a requirement of a theory of justice because of his concern with the bi-directional mechanism. Yet, this does not immediately lead to complete arbitrariness in value judgments in each different context, as relativism would. Sen is a believer in theory and does retain some authority for it. This authority works by shaping the direction of political dialogues where the decisions for the choice of particular capabilities are made. Because of the theory's ambiguity, policy practitioners cannot immediately point at capabilities in a concrete form just from examining the theory. They instead use the theory as a starting point for further deliberation. The authority in Sen's capability theory initiates a democratic dialogue in such a way as to direct the attention of participants to the pursuit for capability in its general form and then holds back; within this framework of conversation the participants in the dialogue do the job of justifying the content.

Sen's capability approach is highly general and abstract because of his attention for the diversity of interpretations. Thus, Sen expects a positive relation between 'generality'

and diverse ways of specifying. Sen's intention may come close to what Frank Ankersmit expresses as the nature of political philosophy in aesthetic representations: "[e]verything can be said or expressed in it, without the representation vocabulary compelling one to accept a particular content" (Ankersmit, 1996, p.24). Sabina Alkire also acknowledges Sen's inclination to deal with a wide variety of circumstances: "[s]o the capability approach, fully developed, could appreciate all changes in a person's quality of life: from knowledge to relationships to employment opportunities and inner peace, to self-confidence and the various valued activities made possible by the literary classes. None of these changes are ruled out as irrelevant as all times and places" (Alkire, 2005, p.119). Furthermore, Alkire explains how the incompleteness of Sen's theory is not a problem, contrary to what his critics think:

"Some critics seem to be nostalgic for an approach that would cleanse the capability approach from all of the value choices and provide an intellectual breakthrough – like finding a cure for AIDS. If that is the case then researchers are competing teams who are trying to find the magic missing insight. But many of the residual value judgments in the capability approach will need to be made on the ground over and over again…That was what Sen means by fundamental or assertive incompleteness" (Alkire,2002, p.127).

Sen tries to get off the traditional pathway of political philosophy where the competition for finding the magic missing insight is held. Ingrid Robeyns also suggests that the crucial difference between Sen and Nussbaum lies in "the *intrinsic* underspecification of Sen's capability approach" in contrast to "*one* catch-all definite list" (Robeyns, 2005, p.197).

On the other hand, Nussbaum intends to use her capabilities approach as a concrete picture of a just society. At the theoretical level, though allegedly tentative and revisable, she develops the substantive content of the capabilities to be pursued. The content of the capabilities is specified to the same epistemological degree as the objects which people directly perceive in their experiences. Hamilton calls the specified values at this level particular need. Nussbaum expects that people realize and acquire the same capabilities as they are written in her theory. She demands much more authority for theory than Sen does even to the extent that the theory completely and directly speaks about valuable outcomes on behalf of people. There is no need for democratic discussion to specify which outcomes are to be pursed because they are already specified.

At this point, I think there are two valid criticisms of Nussbaum's capabilities approach. The first one questions the alleged universalism of her central capabilities. Nussbaum does not argue but just declares that all people in the world will eventually perceive the importance of endorsing the central capabilities despite their various metaphysical and religious views on human life. Frances Stewart questions the legitimacy of Nussbaum's universalistic claim.

"Nussbaum's current list (which she regards being subject to amendment) represents the philosophy of an early 21st century Western liberal. Quite a number of the elements would not have been part of an agreed list

in Europe in the nineteenth century, would not be accepted by large numbers in modern Western societies, and are not the prevailing values of many, probably the majority, in many developing countries (notably freedom of reproductive choice; respect for other species). Thus, the list cannot claim to have arrived at some universal values. We are told there is an overlapping consensus on them, but not given the evidence on which the claim is based" (Steward, 2002, pp. 1191-1192).

Likewise, Nivedita Menon states that rather than giving systematic explanations,

"Nussbaum's capabilities simply *asserts* certain norms to be 'good' – this, as I have demonstrated, is an *a priori* assertion, in a sort of 'surely we would all agree on *this*' mode" (Menon, 2002, p.165)".

Thus, the basis of Nussbaum's claim that the central capabilities are universally legitimate and that all people agree with them for political purposes is a mere assertion and simply lacks a valid argument.

The second criticism is, I think, even stronger; it questions Nussbaum's entire philosophical enterprise. The second criticism challenges her conviction that a theory must be complete in the sense that it gives concrete content to the picture of a just society. As Hamilton argues, given the force of the bi-directional mechanism in the perception of one's capability, it is impossible to isolate any capabilities in a particular form and justify them theoretically. This criticism means that it does not matter what methodology one takes to justify the content of capabilities; the criticism rather doubts the entire philosophical enterprise. Theorists cannot simply suppose that other people will experience the same object as the theorists perceive. The criticism regards any attempt to legitimize capabilities as particular forms in theory as unjustifiable and asks the traditional philosophers to entirely change their view on the role of theory. I think that the criticism suggests the epistemological limit of one person to know what is important for people in different situations. It questions the very attempt to describe distinct capabilities in such a way that a theory's users can directly detect them. Nussbaum criticizes Sen's capability criterion as too general to be adequately perceived by its readers. But, neither can the meaning of Nussbaum's ten central capabilities be equally perceived by others. There is always the act of interpretation of the written capabilities in theory and that requires the process of interpretation through democratic discussion. This process may not escape distorted preference formations but there is no good reason to believe that Nussbaum's list can protect against distorted preferences.

Furthermore, Nussbaum's claim that her list is amenable as the situation changes cannot avoid the criticisms above. Even if her list is actually revised for whatever reason, it will be presented as something that all human beings directly agree on at that particular moment of presentation. Thus, again, the fault of the list is not in the temporal limit of the coverage (which will be covered by the amendment) but in its assumption that the content is equally comprehensible to all readers. I think that it is implausible to hold the claim that the

list will enable policy practitioners to avoid the act of the arbitrary interpretation, save time, and avoid the majority whim of democracy.

I suggest that the content of the list, at most, can function as a provider of topics of political dialogue and as a filter to shape the direction of the dialogue if not to predetermine the result of the dialogue. As a possible way out for Nussbaum, I think she can argue that the list of the central capabilities plays a role in the initiation of democratic deliberation, just like Sen's capability approach aims at. This is actually what Crocker thinks Nussbaum should argue about: Nussbaum's list should be viewed as a stimulus to initiate public debate and not as something to be directly enshrined in a constitution. This is what Sen's capability criterion is supposed to do: it should help clarify and illuminate the subject matter of public reasoning. The focal point then will be which guidelines are useful for the initiation of public deliberation? Which languages pay most attention to the historical influence on the value formulation and help initiate trans-positional reasoning? This point calls for further research. It may be possible to challenge Sen's capability approach from this angle.

(B) The difference between Nussbaum's practical reason and Sen's reasoned scrutiny

Although it is difficult to understand the difference between Nussbaum's practical reasoning and Sen's reasoned scrutiny just from their definitions, they are quite different. Both Nussbaum and Sen acknowledge the importance of deliberation and reflection to examine one's notion of a good human life. However, this mutual acknowledgment does not entail that their argument is similar. They give different answers to the question "what is the goal of reasoning?" For Nussbaum, reasoning is necessary to detect what is already waiting to be discovered, the already revealed right outcomes in theory, or in this case the central capabilities as the overlapping consensus for political purposes. No matter where and when a person exercises practical reason, say, in 17th century in Japan or in the 21 century in The Netherlands, it always brings the right, and the same, answers to the reasoner. In contrast, for Sen, reasoned scrutiny is used for the interpretation of a general capability which varies depending on social and historical contexts. Sen's notion of reasoned scrutiny critically examines local preconceptions and perceives what a person has reason to value here and now. Thus, the notion allows for the possibility to find a capability which nobody has ever thought about. The notion of reasoned scrutiny leaves room for the perception of completely new particular capabilities which go far beyond the content of the original theory.

Likewise, there is a big difference between Sen's and Nussbaum's notion of specification of capabilities although they both emphasize people's own choices. Since Sen's capability approach is intentionally incomplete and ambiguous, there will be a lot of ways to specify their actual content in practice. For Sen, this specification corresponds to the respect for people's own decision-making about their objectives through trans-positional scrutiny.

On the other hand, the specification in Nussbaum's sense is narrower. Since the content of capabilities in her approach is already distinctly specified, there is no room for further specification, in contrast to Sen's approach. But, Nussbaum insists that her approach does leave room for further specification. She calls such specification "specification in implementation". That is, people can specify, by consulting their own history and other contextual factors, how to attain the *given* central capabilities. Thus, the specification in Nussbaum's sense is obviously different from Sen's. Nussbaum's notion of choice only refers to the choice of how to specify social arrangements to attain a given end, and not the choice of justifying the end itself. Thus, we should not conflate the two different uses of reasoning even when Sen and Nussbaum equally show respects for people's own choices. In the next chapter I explain how these differences between Sen's capability approach and Nussbaum's capabilities approach are reflected in their analysis of adaptive preferences. I argue that despite the clear differences Clark and Qizilbash's accounts of adaptation problems presuppose the same philosophical enterprise as Nussbaum does.

In sum, the chapter argues for Sen's capability theory and against Nussbaum's capabilities theory. Sen's capability theory is incomplete and general in an important sense. Because of its generality it can be used as a filter for further dialogue where people justify actual content of capabilities through their own reasoning. In contrast, Nussbaum assumes that the role of theory is to give the concrete content of a just society for the purpose of user friendliness and for protecting against majority whim. But, it is implausible to assume that all people understand the theory similarly to the theorists, because of the bi-directional mechanism.

3. Adaptive preferences

Adaptive preferences refer to preferences, values, goals, aspirations, and human behavior in general which people form as a result of their adaptation to what is perceived as normal in their world. In this chapter, I argue that while both Sen and Nussbaum deal with adaptive preferences in the context of development they problematize adaptive preferences differently. This difference is worth considering since it affects the characteristics of proposed policy solutions. Furthermore, I argue that capability scholars such as David Clark (2009) and Mozaffar Qizilbash (2006, 2009) share Nussbaum's analytical method. This is because these scholars share Nussbaum's philosophical inclination to establish an objective notion of a good human life though they do it differently. The scholars all argue that the lack of such an objective notion is a shortcoming of Sen's capability approach. However, as discussed above, Sen sidesteps this philosophical enterprise intentionally. The step enables Sen to have a different focal point in the analysis of adaptive preferences.

The chapter will unfold as follows. First, I will argue that Nussbaum, Clark, and Qizilbash share the same philosophical preconception and show how that leads to their analysis of adaptive preferences. Second, I will examine the way Sen problematizes adaptive preferences proceeding from his philosophy. Third, I use a case study of an attempt by the British government to increase working class access to Higher Education (HE). This case study will help me clarify the difference between Nussbaum and Sen.

3.1 Nussbaum, Clark, and Qizilbash's philosophical preconception and its influence on their analyses of adaptive preferences

Nussbaum's capabilities approach gives concrete content to capabilities at the theoretical level. This philosophical framework affects the course of her argument on adaptive preferences. She problematizes adaptive preferences as follows. An adaptive preference is problematic if it is an internalized preference which is in conflict with the central capabilities. The problem of adaptive preferences, according to Nussbaum, is that the central capabilities are not perceived attainable. As Nussbaum (2000, pp. 112-113, p.126) suggests, many women seem to figure out that abuse is painful and bad but still accepts it as "a part of women's lot of life". In the worst case, some women do not even consider it to be bad or wrong and just accept it as the way things are. Although an adaptive preference itself may be unavoidable if people adapt their preferences to unjust situations as conceptualized by the list, it is problematic. In other words, it is not problematic that people adjust their preferences to just situations. Now, as discussed above, Nussbaum does not argue that the central capabilities must be adopted by all people as different comprehensive views on human life. For example, it is not a problem if the Amish choose a life which does not focus on political freedom despite the fact that they perceive the importance of having that capability for political purposes and are capable of achieving it. The problem of adaptive

preferences arises when they think that disregarding political freedom is normal without ever taking into account the central capabilities. Adaptive preferences are problematic when people exclude the specified central capabilities from their perception of what is seen as possible.

Furthermore, Nussbaum explains that sometimes an adaptive preference can be a good thing by referring to her own life and the example given by Elster. Nussbaum (2000, pp. 137-138) suggests that she used to dream about becoming the best opera singer in the world. But, she adjusted her aspirations to what she could actually achieve. Elster's example is based on La Fontaine's fable; the fox stops wanting the grapes because he cannot reach them. As a reply to it, Nussbaum suggests that the fox may not have reached the grapes but it may have shifted its "preferences in keeping with that failure, judging that such lives are not for [him]" (Nussbaum, 2000, p.138). Thus, she argues that an adaptive preference is "often a good thing, and we probably shouldn't encourage people to persist in unrealistic aspirations" (Nussbaum, 2000, p.138). Thus, there is clearly the difference between problematic adaptive preferences and not-problematic adaptive preferences. We can judge the difference by looking at the content of actual preferences and using the list of the central capabilities.

Nussbaum's analysis of adaptive preferences is also reflected in her criticism of utilitarianism. Nussbaum (2000, pp. 153-155) argues that because utilitarianism endorses the situations which are in conflict with the specified central capabilities as long as people are happy, it is problematic. She criticizes utilitarianism for its failure to include the intrinsic importance of the central capabilities *per se*. Although Sen also criticizes utilitarianism in its analysis of adaptive preferences, he does it differently. I will come back to this point later.

Nussbaum's analysis corresponds to her argument that Sen's capability approach cannot overcome the problem of adaptive preferences. Because his approach is too general, it cannot distinctly define which adaptive preferences are unjust. Thus, like utilitarianism, it may justify a situation where people adapt to unjust situations because Sen relies on people's self-assessed capabilities in public discussion which sometimes are as malleable and distorted as preference satisfaction. Steward summarizes Nussbaum's motivation behind the above claim well.

"[Nussbaum] comes to the conclusion that even if efforts are made to get at people's 'true preferences', it is never possible to be sure that these have been successful. Hence she sticks to a list of central capabilities, which identify capabilities with intrinsic worth without appealing systematically to people's desires or behaviour" (Stewart, 2002, p.1192).

What people come up with as important capabilities, even if they are generated through deliberate discussion, is not reliable and always susceptible to problematic adaptive preferences. Therefore, Nussbaum believes her list is a better solution, because it can be used to judge which adaptive preferences are problematic without consulting people's actual preferences.

David Clark (2002, 2009) doubts the legitimacy of the central capabilities proposed by Nussbaum. For example, he suggests that Nussbaum's theory of the good "does not draw directly on human values and experience (as the discussion of her methodology sometimes implies), but is in fact based on the myths, legends, and stories of ancient history" (Clark, 2002, p.844). He is suspicious of Nussbaum's claim that her list is "the result of years of cross-cultural discussion" (Nussbaum, 2000, p.76). Instead, he demands that a theory of the good must be legitimized by "scientific (empirical) investigation"[11]. He argues that we need to listen to the actual voice of poor people and that scientific investigation is best suited to capture it. The problem of all the "countless lists [that] have appeared in the literature [on human development studies]" (Clark, 2002, p.833) is the lack of the scientific endorsement. The content of the central capabilities on Nussbaum's list will be different from a new content of theory of the good generated by the scientific investigation.

Clark claims, contrary to Nussbaum, that according to his scientific investigation, it is not the case that most of poor people have problematic adaptive preferences. Clark (2009, p.23, p.27, pp. 33-34) suggests that there are two kinds of adaptive pereferences: downward adaptation and upward adaptation. Downward adaptations involve "adjusting aspirations downwards to reflect disadvantaged circumstances and hardship" (Clark, 2009, p.23). On the other hand, upward adaptations involve "adjusting aspirations upwards to reflect new opportunities and what others (most notably the person's peers or references groups) have managed to achieve" (Clark, 2009, p.23). For example, women may work hard to attain the same level of well-being as men. He then goes on to argue that while downward adaptations are problematic upward adaptations are not because the latter are adaptations to a more healthy state of human beings. Clark argues for the following stance.

"…in an increasingly global and multicultural world it is no longer realistic to suppose that the poor and deprived lack sufficient knowledge about alternative lifestyles to make informed judgments. In the early twenty-first century it is virtually impossible to find an example of an 'untouched' culture or society. Even relatively isolated parts of Africa, Asia and Latin America have been touched by radio and television, if not by persistent migration" (Clark, 2009, p.25).

Thus, his point is that poor people do not adjust their aspirations to disadvantageous circumstances (downward adaptation), but they rather adjust their aspirations to the other way (upward adaptation). For Clark, the seemingly problematic adaptive preferences in terms of development and justice rarely exist.

In so far as the case of downward adaptations exists, though quite rare among poor people, there is a call for amplifying their voices. Here, scientific investigation will be a guidance to "correct any shortfall in aspirations in a given dimension (by raising the poverty

---

[11] The scientific evidence refers to "plenty of evidence – particularly from more sophisticated econometric studies based on panel data" (Clark, 2009, p.30) conducted by Stutzer (2004) and Burchardt (2005). Clark further suggests that the evidence from Clark and Qizilbash (2008) counter-argues the kind of adaptive preferences proposed by Nussbaum and suggests that "values and aspirations have not been crushed by the harsh realities of life in South Africa" (Clark, 2009, p.37).

line above what is perceived as necessary to 'get by')" (Clark, 2009,p.33). This solution does not demand "someone else's list of intrinsically valuable capabilities" (Clark, 2009, p.33).

In addition, Clark (2009, pp. 26-27) worries that Sen's capability approach cannot overcome the problem of adaptive preferences (downward adaptation); it has the same fate as utilitarianism. As he suggests, "there is no prima facie reason to suppose that human values (on the surface at least, i.e., when reported) are any less malleable than preferences, wants or satisfaction" (Clark, 2009, p.26). This is interesting because Sen precisely criticizes utilitarianism for its susceptibility to the problem of (downward) adaptive preferences. Because utilitarianism is only concerned with people's subjective state of well-being, it is possible that it justifies unequal situations as long as people are happy. However, Clark argues that Sen's capability approach is susceptible to the same problem. This is because reasoned values are just as subjective and malleable. Even if values are formed through public reasoning, there is no guarantee that they are not just another form of adaptive preferences which continues to privilege the values of the advantaged and excludes those of vulnerable groups. Because of the vagueness of capabilities, Sen's approach cannot be a reliable guidance. To overcome this problem, Clark (2002, p.833) calls for a further work to operationalize Sen's capability. Such a call involves sorting out "a list of relevant ends" (Clark, 2002, p.83). Nussbaum and others develop such a list but for Clark that list is illegitimate because of the lack of scientific foundations.

Note here that Clark does not disagree with the philosophical enterprise that Nussbaum is engaged in. He states: "[b]efore human development can be assessed a list of relevant ends is required" (Clark, 2002, p.833). Thus, in a way he equally also calls for a theory that gives concrete content to the picture of a just society. He criticizes Sen precisely because of the lack of such a theory. Clark differs from Nussbaum in his method to justify a list. Clark criticizes Nussbaum's use of anecdotal evidences, not her philosophical inclination to establish a list. Thus, Clark's new list does mean to provide concrete and particular needs at the theoretical level. He assumes that such a complete theory can give more helpful guidance than Sen's. Clark takes for granted that Sen also has to aim for the same philosophical enterprise without any reference to Sen's intention to leave theory incomplete and abstract for good reasons. Although there is a difference between Nussbaum and Clark in their justificatory methods, I think that they are working in the same philosophical realm that is somewhat orthogonal to Sen's project. Below, I will argue that Mozaffar Qizilbash also engages in the same philosophical work as Nussbaum and Clark.

Qizilbash suggests that James Griffin's prudential value list (Griffin, 1996) can effectively deal with the problem of adaptive preferences. Qizilbash defines adaptive preferences as a case where "people's desires and attitudes are malleable and can 'adapt' in various ways to the straitened circumstances in which they live" (Qizilbash, 2006, p.83). Qizilbash (2006, p.84) goes on to argue that the focus on the mere satisfaction of actual desires may not account for well-being since they are "too often unrelated to what is good

for people or in their interests". Problematic adaptive preferences cause the gap between people's actual desires and their interests. Qizilbash tries to argue that Griffin's prudential value list can be a solution to the problem of adaptive preferences because it allows us to check the distance between actual desires and true interests.

According to Qizilbash, in his early works Griffin (1996) requires "a number of formulations of the information requirement which must be met if a desire counts as 'informed'" (Qizilbash, 2006, p.85). As Qizilbash notes, this requirement involves 'the technical sense' of 'informed desires' which avoid all faults which Griffin finds with actual desires. However, in his later works, Griffin (1996) acknowledges that such a requirement is too demanding and goes beyond the limited human capacity to collect information and to process this information. It is this concern that leads him to establish a prudential value list which enumerates the informed desires that "make a distinctively human life go better" (Qizilbash, 2006, p.86). The list includes the following components:

"the components of a characteristically human existence (freedom from great anxiety and pain, basic capabilities, autonomy, liberty and minimum material provision); understanding; accomplishment – the sort of achievement that gives a life point and weight; deep personal relations; and enjoyment" (Griffin, 1996, pp. 29-30 quoted in Qizilbash, 2006, p.96).

Griffin's list of prudential values can effectively deal with the problem of adaptive preferences. Based on the prudential value list, "…the fact that someone has fulfilled his or her desires – after adaptation – while having realized few, if any, prudential values would not mean that that person's life is judged as going particularly well…" (Qizilbash, 2006, p.98). However, this does not mean that deprived people cannot exercise prudential deliberation which enables one to come up with the components of the prudential value list. So, a deprived person could already understand the importance of prudential values through deliberation but "may have decided to *avoid great anxiety* by only going for those forms of *enjoyment* or *accomplishment* that are within her reach" (Qizilbash, 2006, p.99). That observation is supported by "studies which engage with, and attempt to listen to, the poor or disadvantaged (including poor women)[12]" (Qizilbash, 2006, p.100). The studies "typically show that the poor or disadvantaged can be very articulate about their living conditions. Indeed, some studies suggest that they endorse many of the items listed by philosophers" (Qizilbash, 2006, p.100). The studies show that those deprived or disadvantaged people typically can articulate and endorse the same items on the list of prudential values. Thus, both intellectuals and poor people agree on the legitimacy of the prudential value list. The problem of adaptive preferences arises when some deprived people do not perceive that they are feasible[13]. The prudential value list is useful because it "can help to elucidate the nature of the adaptation problem – *by invoking the constituents of well-being which are*

---

[12] Qizilbash cites some scholars who also engage in the studies. They include such scholars as Susan Moller Okin (2003).

[13] In this thesis, I do not focus on the difference between the ability to endorse the list and the ability to see its feasibility. The focus will rather be on the relationship between the role of theory which Qizilbash supports and the defined adaptation problems.

missing in, or available in, the lives of people living in straitened conditions – in a way that a purely formal requirement on desires does not" (Qizilbash, 2006, p.101, my emphasis). In sum, for Qizilbash and Griffin, the problem of adaptive preferences refers to a case where people adjust their aspirations to a situation which is in conflict with the prudential values.

Griffin's list of prudential values directly leads to the criticism of the over-generality in Sen's capability approach. This criticism is something which Nussbaum, Clark, and Qizilbash share. Qizilbash (2006, p.103) endorses Nussbaum (1988)'s and Wayne Sumner (1996)'s following claims respectively:

"Sen's failure to give a substantive account of capabilities means that some people's list might reflect evaluative judgments which are distorted by adaptation in the same way that desires can be…inasmuch as Sen's approach is 'subjective' – because people can affirm their own lists of valuable capabilities – he runs into the adaptation problem" (Qizilbash, 2006, p.103).

Thus, like Nussbaum and Clark, Qizilbash suggests that Sen's capability approach does not solve the problem of adaptive preferences because of the possibility that reasoned values can be distorted by unequal situations similar to Sen's own criticism of preference satisfaction and utilitarianism. Qizilbash uses the above criticism in order to defend the use of the prudential value list as an objective list which is legitimate irrespective of social and contextual influences. The distorted formation of values then is not a problem because the independently established list can articulate and confirm which prudential values are important and feasible. Policy practitioners just read the list, acknowledge what is missing in a certain society, and ask people there to perceive the feasibility of values as they are written in the list. Indeed, as Qizilbash (2009, p.12) acknowledges, Nussbaum's list comes close to Griffin's list of prudential values.

Nussbaum, Clark, and Qizilbash seem to share the same philosophical preconception that a theory of justice should provide a concrete picture of a just society. This shared preconception in turn directs them to similarly problematize adaptive preference. For Nussbaum, it is problematic when adaptive preferences put a person in a position where a person does not critically examine and unconsciously accepts internalized desires which are in conflict with the central capabilities. For Clark, the problematic form of adaptive preference (downward adaptation) only very rarely exists, but if such a case exists, policy practitioners must rely on an objective list supported by scientific research. For Qizilbash and Griffin, the problem of adaptive preference refers to a case where some deprived people do not perceive the feasibility of prudential values. I argue that they all aim to analyze adaptive preferences in terms of an objective theory which immediately and directly tells its readers what exactly constitutes a good human life. The three differs from each other in the method to legitimize the actual content of the good but shares the same philosophical stance. In the next section, I will argue that Sen simply does not share this same philosophical preconception and this affects his unique analysis of adaptive preferences.

3.2 Sen's analysis of adaptive preferences

As discussed above, Sen does not specify which particular capabilities are important because of the importance of the openness for further specification depending on a particular social context. Sen's capability approach maintains a general capability criterion and regards it as guidance for the practice of trans-positional reasoned scrutiny. Sen's notion of reasoned scrutiny asks a person to perceive an alternative perception of the reality within the framework of a general capability criterion[14]. The counterfactual reasoning of whether a person would change 'if she knew otherwise' is continually conducted in this the framework. This distinguished characteristic of Sen's capability approach offers a distinct analysis of adaptive preferences; it does not problematize adaptive preferences as Nussbaum does since it does not specify the central capabilities at the theoretical level. I argue that for Sen an adaptive preference is problematic if it puts a person in a position where she will not exercise trans-positional reasoned scrutiny of her values within the framework of a general capability criterion. Unlike the cases of Nussbaum, Clark, and Qizilbash, Sen does not have any pre-determined answer to the problem of adaptive preferences, and suggests that the answers will vary depending on a particular situation. For Sen, an adaptive preference refers to an end state which is reached without the exercise of trans-positional reasoned scrutiny within the framework of a general capability criterion. In other words, it is not a problem even if a person adjusts her aspirations to what is perceived as feasible, for example, without perceiving the importance of the central capabilities as long as that adjustment is an end state of reasoned scrutiny.

In fact, as far as I know, there is only one scholar who notices the difference between Sen's analysis of adaptive preferences and Nussbaum's analysis in a similar way as I do in this thesis. Michael Watts (2009, p.430) notes that Sen and Nussbaum address adaptive preferences differently because of their different interpretations of the capability approach[15]. On the one hand, according to Watts, for Sen adaptive preferences are "uniformly negative products of adversity not simply because of the extreme deprivation framing his illustrations of adaptation *but also because they signal the individual's inability to participate fully in the deliberative processes that determine what her society values and what she therefore has reason to value*" (Watts, 2009, p.430, my emphasis). On the other hand, for Nussbaum, adaptive preferences are problematic if they "cause the individual to *deny the value of these central human capabilities* in her own life" (Watts, 2009, p.431, my emphasis). I emphasize this difference between Sen and Nussbaum since the difference matters to their respective policy solutions to problematic adaptive preferences.

---

[14] Remember Sen's capability approach as a 'filter' as discussed in the section 2.1 above.
[15] Unfortunately for the purpose of this thesis, Watts does not develop this genuine difference between Sen and Nussbaum on the interpretation of adaptive preferences further in the rest of his paper. Instead, he suggests that Sen and Nussbaum often conflate the intrinsic value of education with its instrumental value when they argue on adaptive preferences.

To support my claim that Sen's notion of adaptive preferences refers to an end state which a person reaches without the exercise of trans-positional reasoned scrutiny, let me examine his criticism of utilitarianism. Sen says:

"A thoroughly deprived person, leading a very reduced life, might not appear to be badly off in terms of the mental metric of desire and its fulfilment, if the hardship is accepted with non-grumbling resignation. In situations of longstanding deprivation, the victims do not go on grieving and lamenting all the time, and very often make great efforts to take pleasure in small mercies and to cut down personal desires to modest—'realistic'—proportions. Indeed, in situations of adversity which the victims cannot individually change, *prudential reasoning* would suggest that the victims should concentrate their desires on those limited things that they can possibly achieve, rather than fruitlessly pining for what is unattainable. The extent of a person's deprivation, then, may not at all show up in the metric of desire fulfilment, even though he or she may be quite unable to be adequately nourished, decently clothed, minimally educated, and properly sheltered" (Sen, 1992, p.55).

Thus, utilitarianism may justify an unequal situation as long as people are satisfied in terms of pleasure and pain no matter how problematic that situation appears in other respects. Yet, unlike Nussbaum, Sen does not criticize utilitarianism just because it dismisses predetermined aspects of human lives but also because it treats human beings as passive recipients of pleasure and inert creatures who are determined to seek to satisfy their utilities. I would like to emphasize this aspect of Sen's criticism of utilitarianism. In his reply to Sugden (2006a), Sen (2006a) emphasizes how utilitarianism ignores the call for the exercise of reasoned scrutiny rather than on how it misses out particular ethical components of human lives. Sen criticizes utilitarianism especially because "scrutiny does not get its due when pleasures or desires are simply taken as the basis of moral or political calculation" (Sen, 2006a, p.92). This means that Sen criticizes utilitarianism because it prevents one from exercising reasoned scrutiny.

Let me return to the criticism of Sen's capability approach, that is, Sen's non-specification of capabilities that makes it impossible to deal with the problem of adaptive preferences. Nussbaum, Clark, and Qizilbast argue that because Sen does not set up any list of specified capabilities and keep relying on malleable concepts of values he cannot escape the same criticism given to utilitarianism on the issue of adaptive preferences. There is simply no guarantee that reasoned values are not ill-formed or malleable. Sen states: "[i]t is not that utility is mental whereas valuation is not (they both involve the mind, I say with some relief!)" (2006a, p.93). Yet, Sen does not have to argue that values formed under critical scrutiny are not ill-formed or non-adaptive nor does he present reasoned scrutiny as the final solution to adaptive preferences. As Sen (1998, p.23) suggests, one cannot reason from nowhere and thus reasoning always involves cultural influences. But, he continues to argue that the necessity of reasoning in any encumbered position will not cease to exist in order for a person to make choices. Reasoning as well as preference satisfaction may be equally malleable but that is no problem for Sen. As suggested above, Sen does not ask us to exercise reasoned scrutiny to all the issues of the world but to have "a willingness to do just [that], when it seems relevant and appropriate" (Sen, 2004a, p.340). I think the danger

rather lies in the assumption that once we have an objective theory of the good human life, the malleability of reasoned scrutiny can be minimized. It is not the case that each reader interprets central capabilities or prudential values similarly as they are depicted in theory. And, interpretation necessarily involves a value judgment through reasoning.

Unlike Sen, Nussbaum, Clark, and Qizilbash need to explain how they want to legitimize their list. Nussbaum has to provide an argument to explain how the central capabilities on her list can be the objects of an overlapping consensus in all societies. Clark has to argue for the legitimacy of scientific investigation. What does he mean by 'science'? Why can sophisticated econometric studies based on panel data be considered science? How does he argue that scientific investigation best expresses the poor's actual voices? Similarly, Qizilbash has to argue that Griffin's prudential value list is supported by the studies which directly engage with deprived people. Furthermore, whatever theory of the objective good ultimately agreed upon, all three have to argue that readers in a foreign place can correctly understand the content of the items on the list. Can we really assure that, for example, all human beings or even the trained experts can point at the meaning of Play in Nussbaum's list as it is depicted? I doubt it because there will be no fixed meaning of Play which all of us agree. I think that it is necessary to translate the meaning of the original texts in theory in the present context, and the translation calls for the kind of deliberative discussion that Sen argues for. Therefore, Nussbaum, Clark, and Qizilbash all face the same criticism of 'malleability' of deliberation which they use to criticize Sen. Nussbaum, Clark, and Qizilbash do not pay enough attention to the importance of deliberation with others just by assuming that the items in their lists are equally understood by citizens. Deliberative discussion will be an inevitable exercise even for their lists.

As discussed above, there are obvious differences between Sen's capability approach and Nussbaum's capabilities approach. Thus, critics of the capability approach have to be careful about their targets. According to Crocker (2008, p.18), Sen's notion of reasoned scrutiny reflects his recent turn on participatory and democratic discourses. He states in the introduction to his recent book:

"In the early 1990s I stressed what the two had in common and interpreted Sen as implicitly proposing something close to Nussbaum's explicit pluralistic conception of the good or flourishing human life. Now, in spite of ongoing shared commitments and concepts, Sen and Nussbaum, I argue in a completely new Chapter 6, have *increasingly* different normative outlooks…Chapters 4-6 also differ from my earlier work in that I have changed my comparative assessments of Sen's and Nussbaum's version of the capability orientation. Whereas earlier I was attracted to Nussbaum's ideal of the good or flourishing human life and her list of its components, now I argue, especially in Chapter 6, that this approach has limitations…Whereas earlier I merely noted that Nussbaum lacked Sen's notion of agency, I now see that this lacuna is a serious weakness in her approach and one reason for her failing to give sufficient weight to citizen participation and democratic decision-making" (Crocker, 2008, pp. 18-19).

Crocker (1992) did not see much difference between Sen and Nussbaum except for the mere lack of the notion of agency in her approach, and thought that Sen's capability approach

would inevitably lead to something like the specification of Nussbaum's central capabilities. But, in his more recent work, Crocker (2008) sees a significant difference between those two more clearly.

Likewise, as Qizilbash points out, Nussbaum thinks Sen's discussions in *On Ethics and Economics* (Sen, 1987) are "helpful precisely because they focus on cases involving the adaptation of desires or attitudes in the face of significant shortfalls in capabilities or opportunities" (Qizilbash, 2006, p105). The discussions are the following:

"A person who has had a life of misfortune, with very limited opportunities, and rather little hope, may be more easily reconciled to deprivations than others reared in more fortunate and affluent circumstances. The metric of happiness may, therefore, distort the extent of deprivation, in a specific and biased way. The hopeless beggar, the precarious landless labourer, the dominated housewife, the hardened unemployed or the overexhausted coolie may all take pleasures in small mercies, and manage to suppress intense suffering for the necessity of continued survival, *but it would be ethically deeply mistake to attach a correspondingly small value to the loss of their well-being because of this survival strategy*". (Sen, 1987, pp. 45-46, cited by Qizilbash, 2006, p.91, my emphasis)

Thus, it may appear that Sen also decides on a certain set of values in theory, and tries to problematize adaptive preferences in terms of the absence of those values, or "the loss of their well-being". Therefore, he invites a criticism like the following: "ethical theorists can claim to know better than some particular individual what is good for her" (Sugden, 2006, p.34). However, this criticism by Sugden cannot be applied to Sen's capability approach defended throughout this thesis since the approach does not provide any concrete content of "what is good for her". In his reply to Sugden, Sen (2006) shows some frustration at Sugden's interpretation. But, I think that Sugden's interpretation may be partly due to Sen's being ambiguous about his theoretical stance and his analysis of adaptive preferences.

Sen's analysis of adaptive preferences is different from Nussbaum, Cark, and Qizilbash's analysis. For Sen, the problem of adaptive preferences occurs when a person does not start examining entrenched desires through trans-positional reasoned scrutiny within the framework of a general capability criterion. In contrast, Nussbaum, Clark, and Qizilbash problematize adaptive preferences in relation to their specified components of a just society informed by their objective theories. I argue in the next chapter that because their analyses of adaptive preferences differ they imply two different kinds of policy solutions. In the next section, I introduce a case study of the British government's education policies and suggest that the study argues against Nussbaum's analysis of adaptive preferences.

3.3 The British government's education policies and adaptive preferences

In this section, I examine a case study of the British government's attempt to increase the access to Higher Education (HE) for the working classes. David Bridges, Michael Watts, and

Caroline Hart analyze the education policies of the British government. I argue that the case argues against Nussbaum's analysis of adaptive preferences but supports Sen's analysis.

Bridges, Watts and Hart focus on a white paper from the British government *The Future of Higher Education,* which "calls attention to the injustices embedded in the current access to higher education, particularly the under-representation of students from families with no tradition of higher education and from the lower socio-economic groups" (Watts and Bridges, 2006, p.143)[16]. According to them, the British government merely assumes that attending to higher education is an expression of "the principle of justice" (Bridges, 2005, p.3). The British government points at a particular intrinsic value in higher education and assumes that the achievement must be secured. The government also assumes that students from the lower socio-economic groups do not attend to higher education because they have "low aspirations" (Watts and Bridges, 2006, p.143). Bridges, Watts and Hart question these assumptions of the British government. Is higher education always valuable? Do students from the working class who do not value higher education have adaptive preferences? They argue that the education policies "betrayed rather than fulfilled the promise of justice" (Bridges, 2005) because they did not consider other values which the students find worth pursuing. Their studies find that some of the working class students "choose not to enter higher education" (Watts and Bridges, 2006, p.150).

Let me first quote Watts and Bridges' analysis of the life history of Renata, one of the students.

"Renat is from Nortfolk's Traveller (or Gypsy) community and so belongs to one of the more marginalized social groups in Britain…This marginalization contributes to a very strong sense of communal identity; and one aspect of this group identity, clearly articulated by Renata in her accounts, is the rejection of formal schooling and post-compulsory education…Embedded in social and family contexts that do not place great emphasis on formal education, her life has been following a trajectory that moved away from academic forms of education and towards employment…Employment, however, was perceived as a valued alternative to school: It is paid and this enabled other functionings (such as social activities and a sense of independence).…When we met her, Renata was working with younger Traveller children in a newly started day care centre; and, at the time of her involvement with our research, she was studying for an NVQ (National Vocational Qualification) in childcare as part of her training…[The work experience] signaled three significant changes: it offered the intrinsic reward of performing meaningful and satisfying work; it offered the potential for career progression which would be enhanced by higher education; and it introduced her to colleagues who were university graduates and who valued higher education…[By finding a satisfying job], Renata came to acknowledge the potential value to her of post-compulsory education" (Watts and Bridges, 2006, pp. 150-152).

[16] Nelly Stromquist also criticizes education policies that merely aim to increase the accesses to education. She instead calls for "transformative education" which aims to promote the awareness of students as to their present situation and raise the critical capacity to identify the problem. She argues that transformative education "produces knowledge that raises awareness of social inequalities and enables individuals to organize for progressive social transformation" (Stromquist, 2006, p.149). Without the critical assessment of conventional values prevalent in the curriculum merely increasing accesses to education may reproduce and endorse the oppressive status-quo.

Watts and Bridges emphasize that Renata comes to recognize the potential value of higher education for a specific reason arising from her life history, not through any instruction from the British government's education policies. This analysis provides two suggestions. First, Renata recognizes the value of higher education – the value in the sense that higher education contributes to her career, but this value may not coincide with what the government promotes as the value of higher education, such as academic achievement. Second, Renata comes to recognize the value of higher education because it is in her own interests through its relevance for her career. That is, she perceives the value of higher education because it is valuable to her at that moment. Thus, if she would have chosen to take a totally different life style, she may not have eventually perceived the value of higher education in any sense, but rather could have found more worthy to pursue. These two suggestions imply the lack of legitimacy of the specified value of higher education given by the British government and the uselessness to make a person perceive the value when the moment is not right. I think that these two suggestions tend to support Sen's analysis of adaptive preferences rather than Nussbaum's.

Let me speculate what Nussbaum would say with regard to these education policies[17]. Nussbaum would not force students to follow higher education. Yet, she would suggest that the value of higher education should be specified and argue that students must perceive the intrinsic value of higher education, and if not, they have problematic adaptive preferences. Bridges (2005) suggests the use of the specified value of higher education in practice.

"If we can convincingly argue that certain kinds of knowledge (let's call it academic knowledge for convenience) contributes in significantly greater measure than other kinds of knowledge to people's capacity to determine and realize lives of their own (free) choosing and to lead their lives robustly in what might be regarded as an unfriendly social environment, then surely we would be justified in (ⅰ) attaching particular value to this kind of knowledge and (ⅱ) attempting to shift the preferences of people who, even as young adults, seem unpersuaded of this value *in their own interests*". (Bridges, 2005, p.8)

I think that Nussbaum will agree with the specification of the values of higher education and that policy practitioners should try to shift the preferences of students who are not persuaded of this value. She will argue that in this way policy practitioners can protect students against their distorted preferences.

Yet, as suggested above, I think Nussbaum's account fails in two ways. First, the account lacks the legitimacy of the specified value of higher education, whatever the content may be. Why do policy practitioners propose that academic knowledge is the value of higher education, and not its relevance to a career? Bridges (2005, pp. 10-11) also doubts the account. As he refers to John White:

---

[17] It is controversial if Nussbaum regards higher education capability as one of the central capabilities. Watts (2009) suggests that although Nussbaum acknowledges the contribution of college educations to human flourishing, it is not obvious whether she establishes it as "the threshold for educational adequacy". Comim (2007) seeks to regard higher education as a basic capability. For the purpose of the argument in this thesis, I suppose that higher education is part of the central capabilities.

One may hold that there is a particular way of life which everyone should follow, thus translating a personal ideal into a moral imperative. This seems wholly arbitrary. Gulfs have existed since the beginning of civilization between one preferred way of life and another: no-one has succeeded in producing a "knock down" argument that eliminates all rivals" (White, 1973, pp. 44-45).

Similarly, Bridges doubts that the government can secure a rational choice by giving a clear account of educational value. He suggests: "[t]he reality is that we never know enough; we always make choices on the basis of restricted understanding of the alternatives" (2005, p.11). There is no guarantee that the government knows all the values of higher education. Second, the account fails to consider students' particular historical route when they come to perceive the value of higher education. There is no guarantee that the government can promote higher education in the right time for students to perceive its importance.

In contrast, Sen's capability approach does not face Watts and Bridges' criticisms. First, Sen's capability approach does not regard adaptive preferences as a failure of perceiving the depicted value of higher education. There are no *prima facie* values of higher education that must be perceived by all students. Thus, Sen's capability approach does not face the legitimacy problem. Furthermore, it does not fail to take into account people's unique life histories. As suggested above, Sen's capability approach aims to initiate a public discussion where citizens specify the content of capabilities. In the case of school teaching, Sen's capability approach requires that teachers communicate with students, identify unseen barriers in their circumstances, and help them "discover and develop their capabilities" (Hart, 2008, p.12). Both students and teachers "negotiate such circumstances to their best advantage". This is because after all "[n]o one can lay down in detail how a person will best flourish in the future" (White, 2007, p.22). Hart (2009) summarizes the point:

"…we can ask people what capabilities they perceive themselves to have at a given moment but this remains within a broader dynamic socio-cultural, political, historical and environmental context over which they have limited control…In fact the capability approach encourages us to look at people on an individual basis and not to assume that the opportunities and constraints will remain constant for members of artificially created groups" (Hart, 2009, p.399).

Thus, Sen's capability approach can escape the legitimacy problem and use individual life histories and discussion to identify important capabilities.

I will discuss another report on the lifestyle aspirations of young people who had opted out of continuing education in order to summarize the above argument.

"'Mike', a young bricklayer who enjoys his work, can earn a decent wage and wants to get good at it and to learn more specialized techniques, but does not see any advantage in entering higher education (and even much in the vocational programs offered by FE college" (Bridges, 2005, p.6).

In order to deal with Mike's adaptive preference, should we raise his aspiration to the direction of the specified value in higher education? Both Nussbaum and Sen would disagree with any kind of policy that forces him to achieve higher education. Nussbaum would argue that at least he has to perceive the universal value of higher education. So, the answer is yes.

Sen would disagree with the legitimacy of such specified values and point to the lack of relevance of this value for Mike. So, the answer will be no. Instead, Sen would argue that if Mike has exercised reasoned scrutiny at the moment of choice within the framework of a general capability criterion, and chooses to become a bricklayer out of the other alternatives available at that moment, he does not fall prey to problematic adaptive preferences. On the contrary, if he refuses to exercise reasoning and becomes a bricklayer because of the tradition for example, he has a problematic adaptive preference. Although Bridges, Watts and Hart and Sen do not yet provide policy solutions to adaptation problems as they understand them, I try to move a step forward to its explication in the next chapter.

In sum, in this chapter I have argued that Sen and Nussbaum's different expectations for the function of theory lead them to analyze adaptive preferences differently. Sen problematizes adaptive preferences when a person is in a state where she cannot initiate further conduct of reasoned scrutiny in the framework of a general capability criterion. Nussbaum argues that adaptive preferences are problematic when they are in conflict with the central human capabilities. Furthermore, I argue that Clark and Qizilbash also have the same expectation as Nussbaum for the role of theory despite the differences in the ways they legitimize their respective theories. I introduced a case study of the British government's education policy in order to clarify Sen's and Nussbaum's analyses of analyzing adaptive preferences. In the next chapter, I will conceptualize development policies for adaptive preferences based on Sen's theory.

4. The capability approach and policy solutions – on the role of a constitution and the enlightening policies

This chapter consists of two parts. First, I explain what Nussbaum's policy solution based on her analysis of adaptive preferences looks like. I argue that it faces the criticisms of being paternalistic. Furthermore, I suggest that some philosophers of law such as James White will criticize her assumption of the role of a constitution. Second, despite his acknowledgement of adaptive preferences, Sen does not develop his policy solutions in detail. I will tackle this yet underexplored project. I will then argue that Sen's policy solution can avoid the criticisms that Nussbaum's policy solution faces.

4.1 Nussbaum's capabilities approach and the task of policy practitioners

For Nussbaum, the task of policy practitioners is straight forward: once policy practitioners understand the capabilities specified in her theory, they will know whether a certain society lacks some of the central capabilities or not and they should aim to promote any missing capabilities. Although policy practitioners should not force citizens to function in any particular way, they should ask them to understand the importance of having the central capabilities for political purposes. If citizens do not agree with the moral conception derived from Nussbaum's list, they have problematic adaptive preferences. Nussbaum's capabilities approach is useful because it specifically validates morally acceptable outcomes. According to Nussbaum, in the case of problematic adaptive preferences, policy practitioners should promote the understanding of the capabilities exactly as they are depicted in theory.

I think that there are three challenges for applying the capabilities approach. When can we say that we create real opportunities? First, policy practitioners have to guarantee that citizens have the intellectual and physical capacities to attain the desired result. Second, policy practitioners have to make sure that social circumstances allow people to attain the central capabilities. Third, and most relevant to my thesis, policy practitioners have to confirm that citizens understand the importance of having the central capabilities for political purposes. The third challenge is highlighted by a case where people do not yet recognize the importance of the central capabilities for political purposes – the case of problematic adaptive preferences. In such a case, policy practitioners must alter existing preferences and make them perceive the moral importance of those capabilities.

Let me provide an example to clarify the three challenges above. Suppose that a certain religion does not allow its members to vote for local political bodies – one of the central capabilities. If the religion's members conform to this situation without perceiving alternative lives and they have not chosen to be in that situation, the situation will be judged unjust. Yet, political practitioners cannot force the members to vote. Their task is to make

sure that the members have an opportunity for voting even if they may not actually take it. The three challenges identified above work out as follows in this case. First, policy practitioners have to make sure that the people have the capacity to function in those capabilities (such as the ability to read and understand a voting billet and being able to write down a politician's name). Second, they have to make sure that there are good institutional arrangements that can support the capacity of the central capabilities (such as well-paved roads to the voting place). Third, they have to make sure that the members perceive the importance of having those capabilities for political purposes in addition to their religious beliefs (this would entail giving more information and education). It is the third challenge that involves the problem of adaptive preferences.

Let me explain Nussbaum's distinction between basic capabilities, internal capabilities, and combined capabilities in order to address these three challenges. Nussbaum (2000, pp. 83-84) defines *basic* capabilities as "the innate equipment of individuals that is the necessary basis for developing the more advanced capabilities, and a ground of moral concern". Human beings have the potential to fully function in the higher-level capabilities that figure on the list if society properly nurtures these. Basic capabilities refer to the innate faculties which are not yet nurtured by policies and education[18]. In contrast, Nussbaum defines *internal* capabilities as "developed states of the person herself that are, so far as the person herself is concerned, sufficient conditions or the exercise of the requisite functions" (Nussbaum, 2000, p.84). She continues: "[u]nlike basic capabilities, these states are mature conditions of readiness" (Nussbaum, 2000, p.84). Nussbaum claims that society nurtures basic capabilities so that they can be transformed into internal capabilities. Nussbaum states:

"One job of a society that wants to promote the most important human capabilities is to support the development of internal capabilities – through education, resources to enhance physical and emotional health, support for family care and love, a system of education, and much more" (Nussbaum, 2011, p.21).

In the example above, a person has internal capabilities when she can actually formulate an opinion about politics and be able to speak in public, and perceive the political value of having those capabilities.

Although Nussbaum does not make this clear, I think that there are two distinct elements in her notion of basic capabilities. First, basic capabilities refer to the physical, mental or intellectual capacities required for the central capabilities. For example, basic capabilities of political freedom refer to the innate abilities to formulate critical and consistent opinions about government and to speak in public without shame. Second, basic capabilities also refer to the moral capacities, namely the capacity to understand the values of the central capabilities for political purposes. That is, in this second sense, basic capabilities refer to the capacity to perceive what is just and unjust and the appropriate intuitive sense of human dignity and tragedy. The second must be distinguished from the

---

[18] Nussbaum (2010) explains the role of education in raising critical and emotional capacities of students.

first. For example, it is possible that although a person does not have the capacity to formulate critical opinions about the government and a strong gut to speak in public, she may nonetheless know the importance of doing so, or vice versa. Thus, there are two distinct tasks of policy practitioners: nurturing the physical and intellectual capacities and nurturing the moral capacity. The first task addresses to the first challenge above while the second task addresses the third challenge.

Nussbaum suggests that the acquisition of internal capabilities does not mean that people actually have the real opportunities associated with them. In order to say that a person has a capability she must have it as a *combined* capability. Nussbaum defines combined capabilities as "internal capabilities combined with suitable external conditions for the exercise of the function" (Nussbaum, 2000, pp. 84-85). Even if a society does well in nurturing internal capabilities, it may "cut off the avenues through which people actually have the opportunity to function in accordance with those capabilities" (Nussbaum, 2011, p.21). Thus, not only do policy practitioners have to stimulate the innate capacities but also they must properly arrange social institutions so that people can actually perform the functionigns associated with these capabilities. Even if people have the capacity to formulate opinions in public and recognize the political value of that action if the societal arrangements do not allow them to exercise these capacities, they do not have the real opportunities required. Nussbaum suggests that promoting the central capabilities means that policy practitioners secure them as the combined capabilities. This task of policy practitioners addresses to the second challenge above.

Now, this thesis particularly focuses on policies that deal with the problem of adaptive preferences. How can policies intervene when citizens adjust their preferences to unequal circumstances? Therefore, these policies deal with the third challenge discussed above. I actually believe that the third challenge prior to the first and the second. This is because it would be wrong to stimulate a person's intellectual or physical capacity when policy practitioners do not know whether she recognizes its moral value. Nor is it useful if policy practitioners arrange social institutions without knowing if the people in question can actually function in the desired way.

How can policy practitioners raise basic capabilities and deal with problematic adaptive preferences? For example, take the basic capability of performing practical reason. Nussbaum (2010) argues for the importance of raising the critical capacities of students by education in a Socratic fashion. Socratic values refer to students' abilities to be "active, critical, curious, capable of resisting authority and peer pressure" (Nussbaum, 2010, p.72). I suggest that this Socratic value includes both the intellectual, mental, and physical capacities, and the moral capacities discussed above. Nussbaum discusses Rabindranath Tagore's experimental Socratic education in India and suggests that it goes well with the ideal role of education but remains extremely general. It does not effectively instruct "today's average teacher very much about how to structure learning so that it elicits and develops the child's

ability to understand the logical structure of an argument, to detect bad reasoning, to challenge ambiguity…"(Nussbaum, 2010, p.72). Therefore, Nussbaum aims to establish a prescriptive theory which can instruct today's average teachers exactly what innate capacities to promote even if Tagore is not present. Thus, policy practitioners use Nussbaum's theory with its specific content of morally right outcomes and they try to shift existing preferences in their direction. Policy practitioners go to a local community, see whether the local people adjust their preferences to a reality that lacks some of the central capabilities, and they try to make the people perceive the moral importance of these central capabilities.

4.2 Nussbaum's policy solutions to adaptation problems and two criticisms

Nussbaum's policy solution to the problem of adaptive preferences invites two criticisms from different angles: the criticism of paternalism given by some political philosophers and scholars of development studies and the criticism of the constitution as the ultimate order by some philosophers of law such as James White.

(A) The criticism of paternalism

Nussbaum's policy solution to adaptive preferences faces the criticism of being too paternalistic, authoritative, and prescriptive. As will be seen below, I mean paternalism as a policy style which imposes a development objective on citizens without encouraging them to participate in the justificatory process of making the objective[19]. Nussbaum holds that as long as policy practitioners understand what constitutes a just society based on her list, they can detect the problem of adaptive preferences and teach people in order to perceive the missing elements as a part of an attainable reality for them. This reasoning supposes that policy practitioners always know more about the good human life than citizens. This stance is criticized by Alison Jaggar among others. Furthermore, it is in conflict with a movement in post-war development studies which aims to encourage people's participation in developing a contour of development objectives. This movement includes Ananta Kumar Giri and Philip Qarles Van Ufford and Paulo Freire.

Jaggar (2006, pp. 307-309) criticizes Nussbaum's exclusive and unwarranted reliance on philosophers' reflections about the good human life. Nussbaum calls her approach as a "non-platonist substantive-good approach" which forthrightly informs an intuitive concept of a truly human life. Nussbaum prefers this approach to proceduralism because the latter may not be able to omit mistaken or corrupt desires of those who participate in the discourse. Jaggar (2006, p.318) observes that the non-platonist substantive-good approach "runs the risk of exclusiveness because it fails to mandate that everyone should participate

---

[19] Thus, I do not mean that all kinds of policy are paternalism as criticized here.

in developing the list of capabilities; instead, an unidentified 'we' draw on the ideas of other vaguely identified 'people'". Nussbaum would not accept it when other people reject the list of the good human life developed by "us", the philosophers though "we" may use some of their expressed preferences for the support and the further development of the list. This stance is also reflected in Nussbaum's policy solution to adaptive preferences:

"If the desires of members of an oppressed group are incompatible with the capabilities, the non-platonist substantive good approach recommends dismissing them as 'adaptive preferences' without taking seriously the possibility that 'our' own preferences might be corrupt or mistaken" (Jaggar, 2006, p.319).

Nussbaum easily disregards proceduralism because it is supposedly unreliable despite the development of various methods "for making actual discourse more reliable" (Jaggar, 2006, p.310) and she does not consider the possibility that philosophers' reflections are distorted. Thus, Jaggar concludes: despite Nussbaum's claim that her approach is compatible with political liberalism, Nussbaum's approach "does not manifest liberalism's characteristic respect for the voices and desires of others" (Jaggar, 2006, p.319) and is even "likely […] to be neocolonial" (Jaggar, 2006, p.320).

Furthermore, Nussbaum's policy solution is in conflict with a development program that aims to encourage people's participation in making a contour of development objectives. In their brief historical survey, Giri and Ufford (2004, p.20. p.22) suggest that the ethical agenda in the practice of development in the last fifty years after the second World War has been the care for others. It has been "an agenda of hegemonic application of a priori formulations in which the objects of development do not have much say in defining and shaping the contours of their development" (Giri and Ufford, 2004, p.20). The agenda is hegemonic in the sense that policy practitioners determine development objectives without consulting citizens and assume that citizens are merely the passive receivers. Policy practitioners predetermine the conception of the good life somewhere outside the actual lives of people and prescriptively impose it on others. Policy practitioners stick to the clear distinction between creators of development and beneficiaries of such development, subjects and objects, teachers and students, and so on. The creators of development are supposed to have knowledge about the good human life and the beneficiaries merely have to accept this knowledge.

Giri and Ufford propose an alternative development program which sees development as self-development and self-transformation both for subjects and objects of development. It is an ethical agenda based on self-development, that is, care not only for the other but also for the self. The self-development agenda requires that both the creators and the beneficiaries engage in self-development and together delineate the contours of their development. The notion of self-development reflects a Gandhian conception of care for others: adequate self-development automatically generates care for others. This self-development differs from the mere selfish pursuit of one's benefits in that the former eventually leads to care for others while the latter does not. Care through the self-

development also differs from care for others without self-debelopment. We come to care for others through self-development as "an interior journey, an exploration of [our] being, and not just the working out of a pre-established strategy" (Pillai, 1985, p.77 cited by Giri and Ufford, 2004, pp. 26-27). Therefore, on this alternative understanding of development, policy practitioners will no longer regard care for others as their pre-established duty; rather as they develop themselves they begin to care for others. In this way, both subjects and objects of development find out strategies to develop in the process of their interactions. This new development program requires "the language of giving and receiving in which both the self and the other, other and the self are giver and receiver at the same time" (Giri and Ufford, 2004, p.29). Subjects, teachers, and agents are at the same time objects, students, and recipients and vice versa.

Freire (1971, pp. 47-54) criticizes the treatment of oppressed people as totally ignorant. He suggests that past development programs failed to achieve their desired outcomes precisely because of this treatment. Instead, he claims that educators and leaders must trust the ability of the oppressed to identify and solve problems by themselves. Political leaders have to communicate with the oppressed and identify the values to pursue together in the process of communication. The political leaders' own conviction of values "cannot be packaged and sold; it is reached, rather, by means of a totality of reflection and action" (Freire, 1971, p.54). The transformation of society is made not *for* the oppressed but *with* the oppressed.

Freire (1971, p.58) explains the treatment of oppressed people in past development programs by using the banking concept of education in contrast to a problem-posing education. The banking concept of education turns students into 'containers' to be filled by teachers' narrations; it is an act of depositing where students are the depositories and the teacher is the depositors. This concept reflects the assumption that "knowledge is a gift bestowed by those who consider themselves knowledgeable upon those whom they consider to know nothing" (Freire, 1971, p.58). As a result, students passively adapt to the fragmented view of reality deposited in them. In contrast, in a problem-posing education teachers try to establish a relationship with students in the form of a dialogue. Through the dialogue, students' conventional way to look at the world is questioned. As Freire elaborates:

"[A teacher] does not regard cognizable objects as his private property, but as the object of reflection by himself and the students. In this way, the problem-posing educator constantly reforms his reflections in the reflection of the students. The students – no longer docile listeners – are now critical co-investigators in dialogue with the teacher" (Freire, 1971, p.68).

Thus, in a problem-posing education, students do not merely accept the "knowledge" about human lives provided by teachers but become a critical co-investigator.

As a way forward, Freire (1971, p.168) proposes that policy practitioners make use of a problem-posing education. They should aim to enable oppressed people to critically reflect

upon their world and their perception of this world through dialogue. Together they find out the problems that have to be resolved; the leaders never impose on the people what they think the problems are. In dialogue, policy practitioners play a role in directing people's attention to some familiar subject which people can easily understand because of its historical and contextual relevance. Policy practitioners aim to bring people to the same level, where they can all share the subject to be discussed. Policy practitioners have to investigate "people's thinking – thinking which occurs only in and among men together seeking out reality" (Freire, 1971, p.100). Freire concludes this is because "I cannot think *for others* or *without others*, nor can others think *for me*" (Freire, 1971, p.100).

I suggest that Nussbaum cannot escape the criticisms given by Jaggar, Giri and Ufford, and Freire. Her theory is susceptible to the criticism of paternalism. As Jaggar argues, Nussbaum's approach assumes that "we", the philosophers, can select and justify the list of central capabilities without considering that philosophers' reflections might be distorted. As Giri and Ufford argue, I think Nussbaum's policy solution is an agenda of hegemonic application of *a priori* formulations in which objects of development do not have much say in defining and shaping a contour of development. Moreover, I think that Nussbaum's political solution comes close to the banking concept of education which turns students into 'containers' to be filled by teachers' narrations, as suggested by Freire. Nussbaum's policy solution suggests that policy practitioners identify problems purely based on theory and impose a pre-determined moral outcome on citizens who otherwise do not perceive its importance as part of the attainable ends. Nussbaum's policy solution does not aim to find out problems together with people through dialogue. This stance suggests that policy practitioners have a duty to work for the people rather than learn something from them for shaping a development objective. On Nussbaum's picture, there will be no "interior journey" of exploring themselves and no learning from the people but just the working out of a pre-established strategy. Likewise, policy practitioners will not strive to create a political dialogue with citizens in order to facilitate a co-investigation of development objective. Thus, I think that Nussbaum's policy solution is outdated in the sense that it does not take into account the insight from the emerging development programs.

(B) The criticism of the constitution as the ultimate order

Nussbaum's use of a constitution invites the criticism by James White, an American philosopher of law. Based on his account I suggest that Nussbaum's assumption regarding the role of a constitution and the task of judges is problematic.

Nussbaum seems to ascribe the role of securing the specified content of capabilities and corresponding rules to the authority of a constitution.

"Some capabilities (the ability to vote) are important, and some (the ability to drive a motorcycle without a helmet) are relatively trivial; a just constitution will protect important ones and not the trivial ones...No

constitution protects capabilities qua capabilities. There must be a prior evaluation, deciding which are good, and among the good, which are most central, most clearly involved in defining the minimum conditions for a life with human dignity" (Nussbaum, 2006, p.166).

Here, I argue that Nussbaum ascribes the power of securing moral goods to the realm of jurisdiction. In other words, judges, using their interpretation of the articles of a constitution decide on what exactly is allowed and what is forbidden in a just society.

What is the importance of emphasizing the role of jurisdiction? As Nussbaum often suggest, a strong judiciary power can protect against majority whim of democracy or "the vicissitudes of politics" (Nussbaum, 2007, p.56). Nussbaum (2007, p.56) suggests:

"History shows us that legislative majorities are susceptible to panic and polarization; they can easily be led to demonize unpopular minorities and to seek restrictions of their rights. If rights of the most fundamental type can be removed as the result of a hasty popular judgment, minorities will enjoy less security and a nation's citizens will, hence, enjoy less equality".

As an example of such vicissitudes of politics, Nussbaum (2007, p.56) refers to the Emergency of 1975-1977 in India when Indira Gandhi "succeeded in convincing her parliamentary majority to suspend a large group of 'Fundamental Rights' in order that she could clamp down on her political enemies". The constitutional guarantee of the capability entitlements can protect citizens against such political vicissitudes because the constitution ensures that entitlements are stable regardless of majority whim. Judges have "a strong role" (Nussbaum, 2007, p.62) in interpreting fundamental constitutional entitlements. Note that Nussbaum promotes "the individualized nature of the judicial process" (Nussbaum, 2007, p.61) which is favorably distinguished from the interpretive work of the masses.

Now, how do judges interpret constitutional entitlements? Nussbaum (2007, p.25) recommends 'perception' as opposed to 'lofty formalism'. 'Perception' is an experienced contextual understanding and requires judges to consider contextual and historical features of human life when they interpret texts. Lofty formalism "is the view that the good judgment requires standing at a considerable distance from the facts of the case and the history of struggle that they frequently reveal" (Nussbaum, 2007, p.26). Nussbaum's criticism of lofty formalism does not lie in the reliance on a judicial rule *per se* but in the disregard of historical factors by making use of the abstractness of the rule. If a judicial rule is a good one in the sense that it presents relevant historical features, Nussbaum states that there is nothing wrong with using it directly. She further suggests that such a rule is "usually not be highly general or abstract" (Nussbaum, 2007, p.27). The problem of lofty formalism is to treat general and abstract texts in a constitution as if they are directly applicable. Although Nussbaum does not refer to it, I think that we may think of typical bureaucratic work as a kind of lofty formalism; we may have experienced some bureaucracy which processes requests without investigating their particularities.

Nussbaum (2007) offers two necessary elements in order to conduct 'perception': the explicitness of texts in a constitution and the use of literary imagination to understand

people's real life. In order to explain these two elements, I will first use the case of the U.S Constitution as Nussbaum also focuses on it in her paper. Nussbaum's stance as to the U.S Constitution is as follows:

Some of the central human capabilities "receive explicit protection in the constitutional text; others have been recognized as fundamental rights through the jurisprudence of the Fourteenth Amendment. Still others have never been securely recognized as *constitutional* rights, and have been pursed primarily through legislative action…The Court, then, has a significant role to play in protecting human capabilities through its interpretive role" (Nussbaum, 2007, p.95).

Nussbaum (2007, p.7) suggests that welfare rights such as social and economic rights have not been protected explicitly through the Constitution and often caused controversies. As suggested above, according to Nussbaum, "[The U.S. Constitution] leaves things *notoriously indeterminate* as to whether impediments supplied by the market or by private actors are to be considered violations of fundamental rights of citizens" (Nussbaum, 2006, p.286, my emphasis). The interpretation of judges will be more important in those cases.

Now, let me come back to the two elements which facilitate 'perception'. First, as one of her sections of her paper ("A. Good News on Environment and Education") shows, Nussbaum attributes some successful interpretation of the texts to their explicitness. For example, she suggests that the 2006 Term of the Constitution carefully recognizes the entitlements of people with disabilities and attributes its success to the fact that "the statue, carefully read, is not ambiguous" (Nussbaum, 2007, p.76). She goes on to claim that because the statue is clearly written, "the Court did not need to engage in detailed historical and contextual imagining…; they only needed to read the statue" (Nussbaum, 2007, p.77). This statement reflects her previous acknowledgement that some judicial rule is good because it can present complex and historical features directly.

Second, Nussbaum (2007, pp. 31-33, p.58) requires judges to have diverse life experiences and be competent of contextual and historical interpretations of a constitution. The entitlements do not merely exist as words on paper and must be interpreted by judges. Nussbaum continues:

"The good judge, as the [capabilities approach] imagines that role, will read a case the way an attentive reader reads such a novel, asking what the people are actually able to do and to be, what the history of their efforts is, and whether the freedoms and rights at issue are real for them, or distant and unavailable abstractions" (Nussbaum, 2007, p.32).

Through literary imagination judges can comprehend "an accurate picture of people's substantive freedoms" (Nussbaum, 2007, p.32) even if the texts do not explicitly express these freedoms. As mentioned above, welfare rights are not explicitly protected by the U.S. Constitution. Nussbaum's point on the role of imagination becomes more important especially in such unclear and controversial cases. For example, Nussbaum (2007, pp. 78-82) refers to *Ledbetter v. Goodyear Tire & Rubber Co*. which deals with Lilly Ledbetter's claim of sex discrimination in pay at Goodyear. While Justice Alito dismisses Ledbetter's claim arguing

that a suit must be filed within the 180-day period just as with similar cases in the past, Justice Ginsburg pays attention to the fact that pay discrimination occurred incrementally and points at the difference from the past cases which "involve a one-time discrete act [that is] immediately identifiable" (Nussbaum, 2007, p.80). Nussbaum is in favor of Justice Ginsburg's interpretation because of its perception of the real situation of Ledbetter that is not equivalent to any of the past cases. In contrast, Nussbaum criticizes the interpretation of Justice Alito because of the reliance on obtuse analogical reasoning and formality. Off course, the texts do not explicitly specify the incremental pattern but Nussbaum's point is that the judge's imagination can overcome such ambiguities.

Nussbaum's capabilities approach is helpful for both cases above. First, it can give an account of "the incompleteness of the U.S. Constitution" (Nussbaum, 2007, p.78). The specified content of the list can compensate for the incompleteness of rights such as welfare rights in the Constitution. Second, the capabilities approach provides a benchmark of adequate reasoning about the Constitution by asking them what people are actually able to do and be. Even when the Constitution nominally protects entitlements, its actual interpretation may be controversial and indeterminate. The capabilities approach is helpful because it can help judges exercise "the realistic sort of imagining" (Nussbaum, 2007, p.73).

Both the explicitness of some parts of the Constitution and the realistic sort of imagining contribute to the individualized nature of the judicial process. In other words, they help individual judges to make a stable interpretation of capabilities protected by the Constitution and protected against distorted preferences Judges can make important decisions about the content of capabilities entirely with the aid of the texts and the literary imagination aided by the capabilities approach. In contrast, citizens are not supposed to engage in making important decisions. As suggested above, although they can participate in the decision making of how to *implement* a given capability, they do not have a say about the *justification* of that capability. They merely hear judicial opinions as ready-made answers. I will criticize Nussbaum's assumption in the task of judges and the role of the Constitution by using James White and Edward Levi. White suggests that the Constitution plays a role in initiation of political dialogue where judges *and* citizens corroborate.

Let me first explain the understanding of the Constitution as "plain meaning" which is criticized by White. I focus on Chief Justice Taft's opinion for the majority in *Olmstead v. United States* which is resisted by Justice Brandeis. The case deals with the interpretation of the fourth amendment to the U.S. Constitution:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and no Warrant shall be issued but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched and the persons or things to be seized" (White, 1990, pp. 141-142).

The facts of *Olmstead* are as follows:

"[F]ederal officials, with some state policy assistance, systematically tapped the telephone wires of persons they suspected to be involved in a large-scale bootlegging operation. They did so without probable cause or a warrant, normally required for valid searches, and in direct violation of state laws that made wiretapping a crime. Upon the basis of evidence obtained as a result of this activity, the defendant was convicted of a federal offense and appealed. The only question is whether the wiretapping violated the defendant's fourth amendment rights, for if it did, the government concedes that the 'exclusionary rule' applies to prohibit the admission of that evidence" (White, 1990, p.142).

The case then concentrated on the question of whether what the officers counted as "search" and "seizure" matched with search and seizure as it is stated in the Constitution. Justice Taft concludes there was no search or seizure by giving the following interpretation:

"The Amendment itself shows that the search is to be of material things – the person, the house, his papers or his effects. The description of the warrant necessary to make the proceeding lawful, is that it must specify the place to be searched and the persons or things to be seized…The Amendment does not forbid what was done here. There was no searching. There was no seizure. The evidence was secured by the sense of hearing and that only. There was no entry of the houses of offices of the defendants" (White, 1990, p.143).

White (1990, pp. 143-145) argues that Taft's opinion in the case "characterizes both the facts and the law with a kind of blunt and unquestioning finality, as if everything were obviously and unarguably as he sees them; in doing this he prepares us for the conclusory and unreasoned characterizations upon which the case ultimately turns" (White, 1990, p.145). For example, despite its controversial nature Taft suggests that the officers' hearing of words of the defendants do not count as seizure as protected by the Constitution because there is no literal expression in the amendment that covers the case. White suggests that behind his opinion there is a motivation to regard the Constitution as "a document written in plain English making plain commands" (White, 1990, p.146), or "a set of word to tell us what to do" (White, 1990, p.148). White expresses the role of the judge based on this understanding of the Constitution as follows:

"My job is to decide this case in light of the Constitution. Here are the facts. They are as plain as can be. Here is the text. It is as plain as can be. It speaks of searches and seizures and here there is neither" (White, 1990, p.147).

This view regards the Constitution as "simply an authoritative document, the ultimate boss giving ultimate orders" (White, 1990, p.145). Judges play a role in telling us what is literally written in the Constitution. This role supposes pure authorities both in judges and in the Constitution since ultimate orders are written in clear English in the Constitution and judges simply have to read them and let us know what they are. For Taft, the task of the court is "not to reason, not to argue, not to explain, but to declare the meaning of an authoritative text" (White, 1990, p.147).

White doubts that judges can grasp the plain meanings of the Constitution as it is written. This is because the original texts are products of "one cultural and social context" which its framers belong to and have necessarily an "incomplete reach" in contexts that are new or unknown to the framers (White, 1990, p.155). Therefore, it is impossible to read the

texts of the Constitution literally. Endorsing the literal reading of the Constitution is even dangerous because it "creates a false pretense of submission to external authority" (White, 1990, p.147) and deprives citizens of opportunities to participate in its interpretation.

In contrast, Justice Brandeis presents the following opinion in the case above by quoting *Weems v. United States*:

"Legislation, both statutory and constitutional, is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had therefore taken. Time works changes, brings into existence new conditions and purposes. Therefore a principle to be vital must be capable of wider application than the mischief which gave it birth. This is particularly true of constitutions" (White, 1990, p.150).

According to White, Brandeis thinks that the role of the Constitution is to "enable us to bring into our minds at once both our own experience and that of our predecessors, and to think about that experience as a whole in a disciplined way" (White, 1990, p.151). Our thought is always influenced by immediate experience and based on a limited intelligence and limited grasp of the facts. The principles in the Constitution can organize our limited thoughts in a systematic way or they can give us a certain standpoint to start dealing with problems; thanks to the assistance of the Constitution we are not lost "at sea". A certain language can be brought out of the original text and given a new range of meanings in unforseen contexts. Thus, it plays a role in generating a kind of community where we can share problems and hold values that would otherwise be impossible. The task of judges then is to conceive the Constitution as a way to provide "a way of constituting ourselves in relation to our self-transforming world [by] its language [and] the general principles that it expresses" (White, 1990, p.151). Although the text remains the same, its translation in a new context will give it a transformed meaning. Thus, the meanings of the text are not at all obvious at the level of the text; they *become* obvious in practice by both judges and citizens through their mutual communication.

Thus, the role of the Constitution is not to give plain commands but to help us in framing our thinking in a principled way in uncertain contexts. The task of judges is to provide a meaning of the original text of the Constitution as they think fits well with the present context and therefore create a political community where participants can actually talk about current problems. The written language of the Constitution will always be incomplete and the specification of the language is left to a decision in a political community initiated by judges. Judges play the important role of creating a new relationship between citizens and the old text of the Constitution so that they can take a new perspective which otherwise would not be possible. White suggests that judges establish a political community where "democracy begins" (White, 1990, p.224).

Because of the necessity of frequent reactions to unique contexts, the Constitution cannot pretend to be "a unity" because it is "unstable at its center" (White, 1984, p.241). It thus takes a general form (White, 1984, p.244). Furthermore, Levi (1949) suggests it is an

advantage that the Constitution is vague and general. He even argues that its framers intentionally left the texts ambiguous.

"To the necessary ambiguity of word and intention must be added the knowledge that some of the framers were aware that 'there ought to be a capacity to provide for future contingencies'. Perhaps they expected the words to change their meanings as exigencies arose. Perhaps they realized that ambiguity is best" (Levi, 1949, pp. 64-65).

It is interesting to see the contrast: Nussbaum criticizes the ambiguity of the U.S Constitution because lofty formalism takes advantage of them without taking account contextual and historical factors. White and Levi's claims are precisely the opposite: the Constitution is ambiguous because it has to be able to be accommodated to contextual and historical factors.

By bringing the original text into the present context with their context-sensitive interpretations, judges seek to provide citizens with a way to look at the world which otherwise would not be realized. Note, however, that this is not to say that citizens have to obey the results which judicial opinions support, as the authoritative understanding of the Constitution brings about. Instead, citizens follow the process leading to the results; how judges explain their decisions, justify them, and so on. Thus, it is possible that citizens feel that there is "something to admire in an opinion with the result of which [they] disagree" (White, 1990, p.93). White (1990, p.222) argues that the virtues of judicial opinions do not lie in the results they support, but in how well they establish a political community by making relevant connections between given social contexts and the Constitution. The creation of the political community is "of greater ultimate value than reaching the result that one happens to approve in the case at hand" (White, 1990, p.222). The art of a judge is "to expose to the reader the grounds upon which her judgment actually rests, with as full and fair a statement of her doubts and uncertainties as she can manage. Such an opinion would establish a relation of fundamental equality with the reader, who might follow the whole argument, consider himself enlightened by it, but come to the opposite conclusion" (White, 1990, p.224). Thus, a good judge is one who initiates a political conversation with citizens by providing a novel interpretation, which citizens can then use for further deliberation. In contrast, a good judge for Nussbaum is one who provides the 'correct' outcome. Citizens then do not have a say in its justification. White does not dismiss the mass decision making process and rather considers ways to mitigate the risks involved there. In contrast, Nussbaum gives up the possibility of a mass decision making process and leaves all the decisions to judges.

Note that White does not mean that judges can create a political community with complete arbitrariness and citizens can arbitrarily say anything they want. The original texts in the Constitution play a restrictive role here. White States:

"It always requires an act of creation, a making of something new; yet the original text cannot be forgotten, for fidelity is always due to it." (White, 1990, p.246).

White does not mean that participants in a political dialogue can just discuss their random thoughts; the direction of the dialogue must be shaped by the original text in the Constitution. Judges may create a new interpretation of the original text in order to deal with new situations, but it must still be grounded in the original article. In this sense, the Constitution retains authority. White suggests: "the theory that all the meaning is made by the 'community of interpreters' [is] as wrong as its opposite that the meaning of a text simply lies there in the text, for future generations to pick up" (White, 1990, p.245). Note that "authority" here is used completely differently from the authority in Nussbaum's take on the Constitution. For White the authority refers to the judiciary power to shape the direction of political conversation. For Nussbaum the authority refers to the judiciary power to determine the outcomes that are to be pursued for.

White often argues that the Constitution and judges are necessary because of a positional specificity that is embedded in one language and culture and the limits that brings with it. Thus, we may stick to a traditional norm and never doubt what values we can reasonably find important besides things we already know. White argues that the Constitution and judicial opinions play an effective role in such situations, for they "throw[s] into question our sense of ourselves, our languages, of others" and "release[s] us from the prison of our own ways of thinking and being" (White, 1990, p.257). By giving a foundation of political dialogue upon which citizens rely for further deliberation, they can break through the status quo, perceive their previous conception of the reality, and notice a new understanding of what is perceived as normal. With the aid of the Constitution and judges we can "move from immersion in our world and its language to a place critical of them, on the margin, and then return" (White, 1990, p.260). In contrast, as suggested above, Nussbaum's way to deal with these limits differs from White's. Her basic stance is to avoid any methods which require the reliance on the facility of citizens and not to mitigate the limits of human minds.

In sum, I argue that Nussbaum regards judicial opinions as the ultimate order and this assumption is problematic. Nussbaum's take on the Constitution partially endorses the Constitution as having a plain meaning. Nussbaum does not suggest that, if they are abstract and general, the texts should be read as they are written; unless if they somehow successfully present the substantial freedom of people realistically. For Nussbaum judges must avoid applying lofty formalism. Instead, they should compensate for the weakness of such abstractness by their literary imagination. Thus, surely, Nussbaum requires something more than the literal reading of the Constitution in the latter case. However, note that the reason why Nussbaum does so is that abstract texts do not represent people's actual situation. If someday additional texts are added to the previous vague texts and they do represent people's actual situation, they can be read as they are. I suggest that this dismissal of the literal interpretation of the Constitution is inherently different from that of Brandeis and White. For Brandeis and White dismiss it in order to keep judges from being the ultimate arbiters who hand out ultimate orders and rather encourage citizens to join the work of

interpretation. Nussbaum dismisses the literal interpretation when it does not fit with current contexts while Brandeis and White dismiss it unconditionally. Nussbaum does not give up the possibility to comprehend people's living situations only through a literal reading while Brandeis and White do. As suggested above, she prefers the Indian Constitution because its texts are more explicitly written than the U.S Constitution. Yet, the question is when can we judge that some texts are explicit enough to express the real circumstance of citizens? What is Nussbaum's criterion when she says "the Court did not need to engage in detailed historical and contextual imagining…; they only needed to read the statue" (Nussbaum, 2007, p.77)? Nussbaum calls for the use of her capabilities approach. Yet, the same question applies here: is the content of the list specific enough? Are texts not always abstract in some sense? Then, do they not require the interpretation of judges which goes beyond the literal meaning of the texts?

Note that Nussbaum calls for the literary imagination for the judicial interpretation of the Constitution. I think that the notion of literary imagination itself is insightful. Yet, I am suspicious of the full reliance on "the individualized nature of the judicial process" (Nussbaum, 2007, p.61). Why can we all, including citizens, not engage the literary imagination? Isn't it also problematic to only use the judges' literary imagination? Nussbaum does not leave any room for citizens to participate in the interpretation of meanings of the original texts, contrary to what White proposes. Nussbaum worries about the risk of majority whim so much that she calls for the task of judges as the ultimate arbiters deciding on which capabilities should be pursued. By doing so, she thinks that judicial opinions can be a direct solution to the problem of adaptive preferences, ignorance of the future, and limited knowledge. Yet again, I doubt that judges' opinions are not in some ways distorted. I argue that Nussbaum's take on the Constitution is not a consensus among lawyers and indeed criticized by White, Brandeis, and Levi.

We have seen that Nussbaum's policy solution to the problem of adaptive preferences faces two criticisms – the criticism of the authoritative imposition of policies and the criticism of the status of the constitution. Below, I argue that Sen's policy solution to the problem of adaptive preferences can escape those two challenges. However, Sen does not concretely develop such policies. So, I will take the task of conceptualizing them and see if they overcome the two challenges Nussbaum's policy solution faces.

4.3 Conceptualizing the enlightening policies

(A) The enlightening policies as an underexplored project

What kind of policies are necessary to deal with the problem of adaptive preferences as Sen understands it? As argued above, Sen understands by the problem of adaptive preferences the situation where the exercise of reasoned scrutiny under the framework of a general capability criterion does not get off the ground. Thus, Sen's policy solution should aim to

help citizens exercise reasoned scrutiny under the framework of a general capability criterion. However, Sen does not provide a detailed account of such a policy. Although Sen argues for a democratic process and deliberate discussion in the selection of capabilities, he does not show how they work in detail. David Crocker shares the same analysis:

"But what does Sen mean by public scrutiny and public reason? How does he conceive of the process of public valuational and policy discussion? What, more precisely, are his views on democratic decision-making as a kind of "responsible social choice?" Who should engage in this process, in what venues, and how should they do – in ways consistent with Sen's basic value commitments?...although Sen opens the door to an explicit engagement between the capability approach and deliberative democracy, he has only begun to venture through it (Crocker, 2006, pp. 313-314).

Sharath Srinivasan (2007) expresses the same concern: despite his careful concern for such cases as structural inequalities and adaptive preferences, Sen does not develop an account of "how society guarantees to fairly support individuals to best reason, deliberate and advance their specific demands in social and political processes" (Srinivasan, 2007, pp. 465-466).[20] I start with the same questions that Crocker and Srinivasan pose. That is, what do development policies which aim to help conduct trans-positional reasoned scrutiny look like? Public discussion plays an important part in enabling its participants to conduct trans-positional scrutiny and hence to solve adaptation problems. How does that mechanism work? In this chapter, I try to answer this question in detail. I tentatively call Sen's policy solution to adaptive preferences the enlightening policies. I conceptualize the enlightening policies by considering the relevancy of a constitutional guarantee, their rhetorical characteristics, and their relation with theory of deliberative democracy.

(B) On Sen's capability approach and the use of a constitution

The enlightening policies focus on the question of what social organizations can do to help conduct the practice of reasoned scrutiny so that a person can get over biased preconceptions, take trans-positional stances, and deliberate over what she has reason to value. They directly address the problematic state of people with adaptive preferences, where they cannot start with reasoned scrutiny. Policy practitioners aim to stimulate people's faculty of reasoned scrutiny by providing a structure within which deliberation can develop. Their task is not to impose a ready-made development objective on people but rather to shape the direction of political conversation. Policy practitioners are not supposed to decide on which development objectives should be pursued before there is public

---

[20] Srinivasan thus demands that Sen specifies "the substantive content of that component of justice that relates to participation in social and political processes" (Srinivasan, 2007, p.467), and includes it in his theory of justice. This demand is unavoidable for him even though he is reluctant to specify the content of political freedom. Srinivasan thus proposes the protection of a 'political capability' and does not aim to secure other specific capabilities at the level of theory as Nussbaum does. While I am sympathetic to this argument, I will take a different line of argument.

discussion. The general stance of policy practitioners should be to work *with* citizens not *for* them.

Now, as discussed above, Sen does not want to say that policy practitioners can provide just any topics with participants in their public discussion with citizens; they must derive such topics as an interpretation of a general capability criterion. The question is whether such a criterion can be protected by a constitution and whether policy practitioners can make use of a constitution for the purpose of deriving topics in public discussion. As far as I know Sen has not dealt with the use of a constitution in his work. If we go with Nussbaum's understanding of the role of a constitution, the answer will be negative. This is because for Nussbaum the interpretation of a constitution by judges must be ultimate and there is no room for public discussion. But, what if we go with White's understanding of the role of a Constitution? I think that it is worth examining the possibility of policy practitioners deriving topics for public discussion from interpreting a general capability criterion as it is enshrined in a constitution. Indeed, I think that White's take on a constitution may be relevant here. For White, a constitution is intentionally abstract and used as a reference to start a political dialogue in a systematic way even in uncertain or new contexts. A judge is qualified if she can successfully establish a political dialogue with citizens and not because of the content of her opinion *per se*. Furthermore, White's point that a judicial interpretation makes us "move from immersion in our world" corresponds to Sen's solution to adaptive preferences. Sen problematizes adaptive preferences as a case where we do not initiate trans-positional reasoned scrutiny in the pursuit of capability in its general form. I argue that White makes a similar point: citizens are asked to critically question our own ways of thinking within the framework of a constitution.

Yet, I think that there are three possible problems with the application of White's take on a constitution for operationalizing the enlightening policies. First, the use of White's take on a constitution may fail to take into account the separation of the legal, administrative, and judicial powers. If judges are not "ultimate bosses" giving final orders but just initiating a political dialogue, it is questionable whether they can avoid majority whim inherent in democracy and protect the rights of minorities. White's version may take away too much power from jurisdiction and thereby lose the balance between the three powers. Perhaps, because of its inherent role a constitution may have to be the ultimate safeguard against the imbalance between the three powers. In that case, the role of a constitution will differ from the spirit of Sen's capability approach, since the latter calls for a democratic decision making process.

Second, there are sometimes cases which demand immediate actions and cannot wait for the process of public deliberation. The judicial power may respond to such cases quickly.

Third, if a general capability criterion is enshrined in a constitution, then policy practitioners have to comprehend the expert language of laws. This will cause policy

practitioners to have an extra burden and may exclude potential users who hesitate to learn this expert language. This situation is problematic because I do not want to argue that policy practitioners who implement the enlightening policies must be experts on law. Thus, there may be good reasons why the judicial power, because of its original nature, must be ultimate. After all, the enlightening policies must play the role of initiation of trans-positional scrutiny within the framework of a general capability criterion. We do not have to argue that only a constitution and judges can play such a role. Indeed, the first and the second problems apply to White, Levi, and Brandeis. Perhaps they have an answer to the problem but in this thesis I take the case to be controversial. Thus, it may not be wise to be in a hurry to operationalize the enlightening policies through a constitutional guarantee.

(C) The enlightening policies as the creation of a rhetorical community and its relationship with the theory of deliberative democracy

I develop the account of the enlightening policies by clarifying their relationship with the theory of deliberative democracy. White (1987) elsewhere claims that his take on the constitution that establishes "a set of speakers, roles, topics, and occasions for speech" is rhetorical. The rhetorical analysis makes it possible to address "the central questions of collective existence in an organized and consistent, but not rule-bound way" (White, 1987, p.313). Brought into a complicated and contingent situation which would otherwise be impossible to comprehend, the rhetorical interpretation may direct our attention to a new reference point with which we feel that "now we understand the situation". "Rhetorical analysis invites us to talk about our conception of ourselves as individuals and as communities, and to define our values in living rather than in conceptual ways" (White, 1987, p.313).

White's use of rhetoric comes close to Ernesto Grassi's general understanding of rhetoric[21]. Grassi distinguishes three kinds of speech.

"(1) The *external*, '*rhetorical speech*', in the common meaning of this expression, which only refers to images because they affect the passions. Since these images do not stem from insight, however, they remain an object of opinion. This is the case of the purely emotive, false speech: 'rhetoric' in the usual negative sense. (2) The *speech which arises exclusively from a rational proceeding*. It is true that this is of a demonstrative character, but it cannot have a rhetorical effect because purely rational arguments do not attain to the passions, i.e., 'theoretical' speech in the usual sense. (3) The *true rhetorical speech*. This springs from the *archai*, nondeductible, moving, and indicative, due to its original images. The original speech is that of the wise man, of the *sophos*, who is not only *epistetai*, but who with insight, leads, guides, and attracts" (Grassi, 1980, p.32).

Grassi supports the third kind of speech. The rational speech of the second kind cannot proceed without *archai* that are indicative about the direction of the rational speech. The role of rhetoric cannot be limited to the first kind of speech, because rational proceeding is

---

[21] White (1987, p.318) himself states that Grassi's general view of rhetoric is close to his own.

the only ingredient of this kind of speech. The *external*, '*rhetorical speech*' assumes that rhetoric is a mere technique to persuade others, or to alleviate the dryness of rational speech. In contrast, the true rhetorical speech does not allow for such separation between rationality and rhetoric. Rhetoric "is rather the speech which is the basis of the rational thought…This original speech, because of its "archaic" character, sketches the framework for every rational consideration…"(Grassi, 1980, p.20). With the nature of true rhetorical speech, "the audience is literally 'sucked into' the framework designed by the author" (Grassi, 1980, p.26). Only after the rhetorical framework is given can rational speech be initiated.

Likewise, Iris Marion Young (2000) points out the complementary role of rhetoric to deliberative democracy proposed mainly by Jurgen Habermas[22]. According to Young (2000, p.6), some theories of deliberative democracy rely on a narrow understanding of what being reasonable means. For them, rational speech is "the speech to which deliberative democracy should be confined, consists of universalistic, dispassionate, culturally and stylistically neutral arguments that focus the mind on their evidence and logical connections, rather than move the heart or engage the imagination" (Young, 2000, p.63)[23]. Deliberative democracy claims to offer an appropriate procedure of democratic processes that enable citizens to exercise rational reasoning in the sense defined above. Young's point is that any communication does not proceed only with that procedure and is suffused with rhetoric[24]. Rhetoric here refers to various ways that something can be said. We do not pay attention purely to the assertive content as there to be found; we get stimulated for deliberation once we recognize a certain meaning of the assertive content that is subject to a particular situation. What matters here is not "*what* a discourse says…[but] *how* it says it" (Young, 2000, p.64).

Young summarizes the role of rhetoric in comparison with rational speech. First, "*[r]hetorical moves often help to get an issue on the ground for deliberation*" (Young, 2000, p.66). Rhetorical activities such as demonstration and protest, the use of emotionally charged voices and symbols are sometimes useful to get the attention of parts of the public that otherwise might not take the discussed issues seriously. After the initiation process has passed, the process of deliberative democracy will be initiated. For example, once participants share the same reference point, the rules of fair procedures for further argument will become effective. Thus, rhetoric can be considered to be a foundation of rational speech. Second, "*[r]hetoric fashions claims and arguments in ways appropriate to a*

---

[22] Young proposes two other aspects of communication as something that furthers deliberative democracy: greeting or public address as the acknowledgement of "the presence and point of view of diverse social segments in the political public" and "Narratives" that "can supply steps in arguments, but they can also serve to explain meanings and experiences when groups do not share premises sufficiently to proceed with an argument" (Young, 2000, p.7)

[23] Notice that Sen's reasoned scrutiny as defined above is far from the kind of rational speech defined here. This is mainly because Sen does not exclusively specify a certain route that directs us to trans-positional views.

[24] Young (2000, p.64) also suggests that there are some theorists who do not dismiss the role of rhetoric as something that furthers deliberative democracy. They include Benjamin Barber (1984) and Susan Bickford (1998).

particular public in a particular situation" (Young, 2000, p.67)[25]. Rhetoric brings context specificity into the process of deliberative democracy. The theory of deliberative democracy often suggests that democratic discussions must not exclude potentially affected parties. But, at the same time, it is also important to focus on the particularity of local issues since otherwise local citizens will not be interested in the topic of the discussion.

I argue that the enlightening policies must make use of rhetoric and play a complementary role with deliberative democracy. Policy practitioners, if they are good rhetoricians, provide an interpretation of a general capability criterion that fits well with present contexts and what citizens feel like talking about. The task of policy practitioners is rhetorical since it aims to direct our attention to a shared reference point in a contingent world which otherwise will be difficult to grasp. Grassi and Young further suggest that rhetoric is actually a foundation of rational speech. Without the role of rhetoric which makes participants share a certain view, a rational process of deliberative democracy cannot get started. Theories of deliberative democracy can deal with the procedures of fair deliberation on *given* proposals but do not answer the questions such as "where do the proposals come from?". The enlightening policies aim to fill this gap and will be the source of stating proposals.

(D) Conceptualizing the enlightening policies and some case studies

With the consideration above, I propose that the enlightening policies ask social organizations[26] such as governments, corporations, and non-profit organizations to play the following roles. First, social organizations must aim to create a political community where participants can exercise their trans-positional reasoning. They do so by presenting to the participants potential community issues, which otherwise would not be realized, in a rhetorical way so that the participants can recognize their importance for their everyday life and would want to talk about them. This presentation does not take the form of prescription; it rather just functions as an initial catalyst. Second, social organizations identify local issues through interpreting a general capability criterion. I suggested above that the enshrinement of such a criterion in the White's take on a constitution may face three problems: the protection of minority rights, the case of emergency, and the burdensome legal terminologies. At this point, I do not think that his take on a constitution is not useful for operationalizing the enlightening policies. Yet, the second point is that topics

---

[25] Gary Remer (1999) endorses these two points suggested above by Young. Remer argues that in the case of politics where a speaker needs to address to a mass audience, the rational form of speech in deliberative democracy is not effective because it is available only for selected members who are accustomed to speaking the same code. In contrast, deliberate oratory, a form of rhetoric proposed by Cicero, is preferable in a mass communication because of its care for context specificity, everyday language, and emotions of the audience.
[26] I do not define what the qualifications of social organizations to implement the enlightening policies. Any organizations or individuals who agree with the spirit of the enlightening policies are qualified.

in public discussion should not be randomly chosen and must be facilitated through theory as a filter. I think that it is interesting to consider further what kind of texts, or even pictures and diagrams, can play the role of restricting the direction of public discussion in a principled way without imposing a fixed outcome. The enlightening policies cover the process *until* citizens are actually in a rhetorical community; they cover the moment until they get stimulated by the interpreters, recognize issues as issues, and successfully take trans-positional views. The theory of deliberative democracy plays a complementary role with the enlightening policies by securing the procedures *after* a rhetorical community is created. Thus, in a way, while the enlightening policies break the established order deliberative democracy regains the order for deliberative purposes.

I want to defend the enlightening policies against two possible criticisms. First, it may be questionable whether the enlightening policies can deal with the case of emergency such as the Emergency of 1975-1977 in India. One may say that the enlightening policies cannot adequately deal with such a case because it requires a prompt reaction against the obvious misconduct of the majority. As suggested above, although I do not disregard the risk of the majority whim, I think that experts' judgments of the seriousness of a situation may not always be correct. Moreover, I think that in principle we should try to rely on a democratic process and make citizens judge about the outcome of existing discourses as much as we can. As suggested above, the enlightening policies fulfill the initial process in such a democratic process. The point is not to dismiss such a democratic process as unreliable but rather to mitigate its risks. The enlightening policies together with deliberative democracy establish that discourse. Second, and related to the first point, one may think that in the case of emergency, we have to make decisions immediately and do not have time to wait for the initiation of public discussion. I think that the enlightening policies do not necessarily presuppose that public discussion must be done in a certain physical space. Thus, we do not have to wait for the arrival of representatives from selected interest groups spread all over the world at some assigned hall. After being stimulated by the enlightening policies, citizens can organize public discussion anywhere – schools, corporations, and even family houses. Such movements will lead to a substantial and prompt social action, especially when the case is really serious. The enlightening policies do not target any specific groups or individuals as potential participants.

I have two examples of organizational activities which the enlightening policies will engage in: the women's consciousness raising program and the popular theatre projects. The women's consciousness raising program has been organized since the 1960s (Sarachild, 1978). It began in a room of an apartment in New York where only women would gather and talk to each other about their experiences of discrimination against women. What is unique about their program is their focus on consciousness raising, that is, making women aware of what they perceive as normal practices in their daily lives might actually be problematic. For example, some women believed that it is expected that they play dumb, always be agreeable, and wear shoes and clothes which attract men. The program aims to rescue

women from their adaptation to what is perceived as normal and deliberate to realize alternative values.

The popular theatre projects aim to present potential problems of a community through theatre, drama, or story-telling. They are usually meant to operationalize Freire's conscientization programs (Ross Kidd and Martin Byram, 1978 and Augusto Boal, 1979). In a popular theatre, participants can "see themselves and their situation in a fresh way and want to talk about [raised] problems with others" (Kidd and Byram, 1979). According to Kidd and Byram (1979, pp. 3-4), this is made possible by the following four characteristics of popular theatre. First, a theater play is an entertainment that appeals to the interests and emotions of participants. Second, it is performed in local languages so that it can involve those who are illiterate and who do not understand English. Third, its presentation of local problems is dramatic so that participants can codify the reality which otherwise would not be realized. Fourth, it facilitates collective expression and horizontal communication rather than top-down one-way communication. Policy practitioners use popular theatre only as an initial catalyst for further deliberation by participants. In this section, I only focus on the popular theatre projects. Although I refer to the two examples as potential activities which the enlightening policies require, neither of them meets the requirement exactly. This is because neither of the two activities rely on theory as a filter when they derive topics to be discussed in public discussion, thus failing to meet the second requirement I suggested above.

I focus on one case study: Laedza Batanani, a popular theatre based participatory programming implemented in Botswana in 1970s as a part of the community education campaign. The notion of Laedza Batanani is "to provide an occasion where the community is drawn together, is 'woken up' to their situation, and discusses what might be done about it" (Kidd and Byram, 1979, p. 8). The program is initiated by the University's Institute of Adult Education and involves extension workers in the area either as local organizers or members of actor-amateurs (Kidd and Byram, 1979, pp. 8-11). The campaign team tours the five major villages in the area annually, and in each village, they put on a one and half hour performance, that includes drama, puppetry, dancing, singing, and drumbeat poetry. Community leaders and extension workers identify potential community issues at a pre-campaign workshop and present them through the theatre performance. The problems discussed in the first four years of Laedza Batanani include "concerns about cattle theft, inflation and unemployment, the effect on community and family of migrant labour and the drift to the towns, conflict between modern and traditional practices, the school-leaver problems, and family and health problems" (Kidd and Byram, 1979, p.9). According to the selection criteria, issues should be: "a) small tasks which people can easily achieve (e.g., clean-up campaigns rather than a large infrastructural project); b) problems which require a local response rather than government action; c) problems whose solutions can easily be supported by regular extension work" (Kidd and Byram, 1979, p.10). The issues identified will not be presented as propaganda or as clear packaged answers. They must first be

perceived by local people as problems. The performance only plays a role in creating an awareness of the problem by an audience. As the report continues, the campaign was successful in terms of people's participations, the relevancy of issues, and its initiation for further actions.

The popular theatre campaign is similar to the activities that the enlightening policies expect, but not completely the same. It fulfills the first requirement that I suggested above. The organizers in Botswana pay attention to the entertaining feature of theatre in order to appeal to interests and emotions of members of an audience and use expressions that are already familiar to them. Thus, they manage to present local issues in a context sensitive way so that the audience feel that they want to discuss them. A dramatic presentation of issues may facilitate the perception of the problems as their own. The organizers just play a role in stimulating local citizens and are not in imposing a certain moral outcome on them. However, obviously, the case study does not rely on the function of theory as a filter in any sense. Thus, it does not meet the second requirement of the enlightening policies that I suggested above. The organizers identify potential problems in the pre-campaign meetings but the orientation of the problems is not systematized by any theory at all. There are indeed some criteria for the selection of issues in the case study but they are rather practical and not restrictive in any ethical dimension. The identified problems such as cattle theft, inflation and unemployment, and family and health problems must be important. Yet, the enlightening policies require that the problems must be derived from the interpretation of a general capability language. Otherwise, the selection of topics remains arbitrary. Indeed, this arbitrariness is also the problem for Freire on whom the popular theatre project relies for its philosophical grounding. Freire does not provide any ethical theory which can be used as a filter for the critical reflection and political dialogue as Sen's general capability criterion does. Without such a normative evaluative criterion there is a danger of relativism. Therefore, policy practitioners could end up accepting any values given by citizens, or vice versa. Although I agree with Freire and his call for a political dialogue with citizens, I think that the role of theory as filter is missing in his account.

(E) The enlightening policies as a promising project

Can the enlightening policies avoid the two criticisms that Nussbaum's political solution faces? I think the answer is yes. First, the enlightening policies do not face the criticism of paternalism since their stance is not to impose a pre-determined moral outcome but to shape the direction of political conversation with citizens. The enlightening policies only aim to initiate a political conversation with citizens by giving a reasonable ground for an alternative understanding of their reality. The enlightening policies do not expect them to agree with actual outcomes of the grounding. In this way policy practitioners together with other participants can work on shaping their development goals. The enlightening policies

are on the same track that Giri and Ufford and Freire's propose as the way forward in development studies.

Second, the enlightening policies can escape the criticism of the constitution as the ultimate order. Unlike Nussbaum's policy solution, the enlightening policies do not make use of the constitution as the ultimate boss. Instead, the enlightening policies initiate a political dialogue based on the capability theory as a filter. The constitution as the ultimate order cannot play this filtering role. Although White's take on a constitution may be useful, the enlightening policies do not have to use it. The question of whether the constitution is the ultimate order or an initiation for political dialogue is controversial among lawyers and cannot be answered in this thesis. If I nevertheless take White's version for operationalizing Sen's capability approach, I may invite criticisms from the other side and of not fulfilling the inherent role of the Constitution. In contrast, Nussbaum does view the constitution as the ultimate order and therefore face criticisms from White's side. Thus, I propose that the enlightening policies do not make use of a constitution and leave open the possibility to find other devices to enshrine the general capability language.

In sum, in this chapter I conceptualize the enlightening policies as follows. First, the enlightening policies require that social organizations present to local citizens the issues of the community, which otherwise would not be realized, in a rhetorical way so that the citizens can perceive their meanings in their own contexts and everyday language and would want to discuss them. Second, the enlightening policies require that social organizations identify local issues as topics in a political dialogue as an interpretation of the general capability approach as a filter. Unlike Nussbaum's policy solutions to adaptive preferences, I argue that the enlightening policies can overcome the criticisms of paternalism and of the authoritative role of the constitution. I think Sen's capability approach is promising for further research in this sense.

Conclusions

There are four main contributions in this thesis. First, I clarify the difference between Sen's capability approach and Nussbaum's capabilities approach, especially focusing on the difference between in their expectations for the role of theory. While Nussbaum's capabilities approach aims to specify the concrete content of capabilities, Sen's capability approach intentionally leaves the actual content of capabilities incomplete, and instead calls for public discussion to specify the content through the exercise of trans-positional scrutiny. Second, I clarify Sen and Nussbaum's analyses of adaptation phenomena. They both analyze adaptive preferences in the context of development and justice. Yet, their actual analyses differ because of the foundational difference. On the one hand, Nussbaum problematizes adaptive preferences as internalized preferences which are in conflict with the central capabilities. On the other hand, for Sen an adaptive preference is problematic if it puts a person in a position where she does not exercise the trans-positional reasoned scrutiny within the framework of a general capability criterion. Third, I argue that Nussbaum's political solution to problematic adaptive preferences faces the criticisms of being paternalistic and of the status of the constitution. Policy practitioners impose pre-determined moral outcomes on citizens. Moreover, Nussbaum's assumption of the role of a constitution as the ultimate order is criticized by White. According to him, a constitution should rather be used as an initiation for political community. Yet, Sen's approach to adaptive preferences also poses problems. Despite his acknowledgement of adaptive preferences Sen does not conceptualize detailed policies which can deal with adaptive preferences. My fourth contribution is to tackle this underexplored project and to conceptualize a policy solution based on Sen's capability approach to adaptive preferences. I conceptualize what I call the enlightening policies as follows. First, the enlightening policies require that social organizations present to local citizens the issues of a community, which otherwise would not be realized, in a rhetorical way so that the citizens can perceive their meanings in their everyday language and would want to discuss them. Second, the enlightening policies require that social organizations identify local issues as topics in a political dialogue under the guidance of the general capability approach, where the theory acts as a filter. Unlike Nussbaum's policy solution to the problem of adaptive preferences, I argue that the enlightening policies can overcome the criticisms of paternalism and of the authoritative role of the constitution. In this sense, I think Sen's capability approach is promising for further research and for a new type of development policies.

References

Alkire, Sabina. 2002, *Valuing Freedoms: Sen's Capability Approach and Poverty Reduction*, Oxford University Press, Oxford

Alkire, Sabin. 2005. Why the Capability Approach?, *Journal of Human Development*, Vol. 6 (1), pp. 115-133.

Alkire, Sabina. 2008*,* Using the capability approach: prospective and evaluative analyses in *The capability approach, Concepts, Measures and Applications* edited by s. Deneulin with L. Shahani, and S. Alkire, Cambridge University Press, New York

Ankersmit, Franklin. 1996, *Aesthetic Politics, Political Philosophy Beyond Fact and Value*, Stanford University Press, Stanford

Berlin, Isaiah. 2002, Four Essays on Liberty, Oxford University Press, Oxford

Barber, Benjamin. 1984, *Strong Democracy*, University of California press, Berkley

Bickford, Susan. 1998. Beyond Reason: Political Perception and the Political Economy of Emotion Talk, *the paper presented at the American Political Science Association*, Boston September 1998.

Boal, Augusto. 1979, *Theatre of the oppressed*, Pluto Press, London

Bridges, David. 2005. Widening participation in higher education: 'the philosopher and the bricklayer' revisited, the paper presented at *the Annual Conference of the Philosophy of Education Society of Great Britain* Oxford 1-3 April 2005, pp. 1-14.

Burchardt, Tania. 2005. Are one man's rags another man's riches? Identifying adaptive expectations using panel data, *Social Indicators Research*, Vol. 74, pp. 57-102.

Clark, A. David. 2002. Development ethics: a research agenda, *International Journal of Social Economics*, Vol. 29 (11), pp. 830-848.

Clark, A. David and Qizilbash, Mozaffar. 2008. Core poverty, vagueness and adaptation: a new methodology and some results for South Africa, *Journal of Development Studies*, Vol. 44 (4), pp. 519-544.

Clark, A. David. 2009. Adaptation, Poverty and Well-Being: Some Issues and Observation with Special Reference to the Capability Approach and Development Studies, *Journal of Human Development and Capabilities*, Vol. 10 (1), pp. 21-42.

Clark, A. David. 2011. Adaptation and development: issues, evidence, and policy relevance, *BWPI Working Paper 159*, published by Brooks World Poverty Institute.

Comin, Flavio. 2007, *Concepts of development: The role of education in Higher education and national development* edited by D. Bridges, P. Juceviciene, R. Jucevicius, T. McLaughlin, & J. Stankeviciute, Routledge, London

Crocker, David. 1992. Functioning and Capability: The Foundations of Sen's and Nussbaum's Development Ethic, Political Theory, Vol. 20 (4).

Crocker, David. 2006, *Sen and Deliberative Democracy* in Capabilities Equality: Basic Issues and Problems, edited by Alexander Kaufman, Routledge, New York

Crocker, David. 2008, *Ethics of Global Development, Agency, Capability, and Deliberative Democracy*, Cambridge University Press, Cambridge

Crocker, David and Robeyns, Ingrid. 2010, *Capability and Agency* in Amartya Sen edited by Chiistopher W. Morris, Cambridge University Press

Elster, Jon. 1983, *Sour Grapes*, Studies in The Subversion of Rationality, Cambridge University Press, Cambridge

Freire, Paulo. 1968, *Pedagogy of The Oppressed*, translated by Myra Bergman Ramos, Herder And Herder, New York

Gasper, Des. 2002. Is Sen's Capability Approach an Adequate Basis for Considering Human Development?, *Review of Political Economy*, Vol. 14(4), pp. 436-461.

Gasper, Des. 2007a. What is the capability approach? Its core, rationale, partners and dangers, *The Journal of Socio-Economics*, Vol.36, pp. 335-359.

Gasper, Des. 2007b. Adding links, adding persons, and adding structures: Using Sen's frameworks, *Feminist Economics*, Vol. 13(1), pp. 67-85.

Giri, Ananta Kumar, 2000. Policy Arena, Rethinking Human Well-being: A dialogue With Amartya Sen, *Journal of International Development*, Vol. 12, pp. 1003-1018.

Giri, Ananta Kumar and Ufford, Philip Qarles Van. 2004. A Moral Critique of Development: Ethics, Aesthetics and Responsibility, *Development Research Series, Working Paper No. 128 published by DIR & Institute for History, International and Social Studies, Aaloborg University*, pp. 1-39.

Grassi, Ernesto, 1980. *Rhetoric as Philosophy, The Humanist Tradition*, translated by John Michael Krois and Azizeh Azodi, Southern Illinois University Press, Carbodale and Edwardsville

Griffin, James. 1996, *Value Judgment: Improving Our Ethical Beliefs*, Clarendon Press, Oxford

Hamilton, Lawrence. 1999. A Theory of True Interests in the Workd of Amrtya Sen, *Government and Opposition* Vol. 34(4), pp. 516-546.

Hamilton, Lawrence. 2003, *The Political Philosophy of Needs*, Cambridge University Press, Cambridge

Hart, Carolien. 2008. What Can Young People Tell Us About Promoting Equality and Inclusion Through Widening participation in Higher Education in England?, the paper presented at *Human Development and Capability Association International Conference, New Delhi 9-13 September 2008*, pp. 1-13.

Hart, Caroline. 2009. Quo Vadis? The Capability Space and New Directions for the Philosophy of Educational Research, *Stud Philos Educ*, Vol. 28, pp. 391-402.

Jaggar, Alison. 2006. Reasoning About Well-Being: Nussbaum's Methods of Justifying the Capabilities, *The Journal of Political Philosophy*: Vol. 14 (3), pp. 301-322.

Kidd, Ross and Byram, Martin. 1979, Popular Theatre: A Technique for Participatory Research. Participatory Research Project. *Working paper No.5, International Council for Adult Education*.

Levi, H. Edward. 1949, *An Introduction to Legal Reasoning*, The University of Chicago Press, Chicago and London

Menon, Nivedita. 2002. Universalism without foundations?, *Economy and Society*, Vol. 31 (1), pp. 152-169.

Nussbaum, Martha. 1988. Nature, Functioning and Capability: Aristotle and Political Distribution, Oxford Studies in Ancient Philosophy, Vol. 6, pp.145-148.

Nussbaum, Martha. 2000, *Women And Human Development, The Capabilities Approach*, Cambridge University Press, New York

Nussbaum, Martha. 2003. Capabilities As Fundamental Entitlements: Sen And Social Justice, *Feminist Economics*, Vol. 9 (2-3), pp. 33-59.

Nussbaum, Martha. 2006, *Frontiers of Justice*, The Belknap Press of Harvard University Press, Cambridge and London

Nussbaum, Martha. 2007. The Supreme Court 2006, Foreword: Constitutions and Capabilities: "Perception" Against Lofty Formalism, *Harvard Law Review*, Vol.121 (4), pp. 5-97.

Nussbaum, Martha. 2010, *Not for profit, Why democracy needs the humanities*, Princeton University press, Princeton

Nussbaum, Martha. 2011, *Creating Capabilities, The Human Development Approach*, the Belknap Press of Harvard University Press, Cambridge, Massachusetts, and London, England

Okin, Susan. 2003. Poverty, Well-Being and Gender: Who Counts? Who's heard?, *Philosophy and Public Affairs*, Vol. 31 (3), pp. 33-59.

Pillai, P.V. 1984, *Hind Swaraj in the Light of Heidegger's critique of Modernity* in Hind Swaraj: A Fresh Look, edited by Nageswar Prasad, New Delih, Gandhi Peace Foundation

Qizilbash, Mozaffar. 2006, *Well-Being, Adaptation and Human Limitations* in Preferences and Well-beings edited by Serena Olsaretti, Cambridge University Press, Cambridge

Qizilbash, Mozaffar. 2009. Well-Being, Preference Formation and the Danger of Paternalism, *Papers on Economics & Evolution*, No. 0918, pp. 1-30.

Rawls, John. 1971, *A Theory of Justice*, Harvard University Press, Cambridge

Rawls, John. 1999, *The Law of Peoples with "The Idea of Public Reason Revisited",* Harvard University Press, Cambridge

Remer, Gary. 1999. Political Oratory and Conversation: Cicero versus Deliberative Democracy, *Political Theory*, Vol. 27 (1), pp. 39-64.

Robeyns, Ingrid. 2005. Selecting Capabilities For Quality of Life Measurement, *Social Indicators Research*, Vol. 74, pp. 191-215.

Sarachild, Kathie. 1978, *Consciousness-Raising: A Radical Weapon in Feminist Revolution*, Random House, New York

Sen Amartya. 1980, *Equality of What?* in Tanner Lectures on Human Values edited by S.McMurin, University of Utah Press, Salt Lake City

Sen, Amartya. 1985. Well-Being, Agency and Freedom, The Dewey Lectures 1984, *The Journal of Philosophy*, Vol. 82 (4), pp. 169-221.

Sen, Amartya. 1987, *On Ethics and Economics*, Blackwell, Oxford

Sen, Amartya. 1992, *Inequality Reexamined*, Russell Sage Foundation, New York, Clarendon Press, Oxford

Sen, Amartya. 1993, *Capability and well-being*, in *The Quality of Life* edited by M. Nussbaum and A. Sen, Clarendon Press, Oxford

Sen, Amartya. 1998, *Reason before identity*, Oxford University Press, Oxford

Sen Amartya. 1999, *Development As Freedom*, Oxford University Press, Oxford

Sen, Amartya. 2002a, *Rationality and Freedom*, The Belknap press of Harvard university press, Cambridge

Sen, Amartya. 2002b. Response to Commentaries, *Studies in Comparative International Development*, Vol. 37 (2), pp. 78-86.

Sen, Amartya. 2002c. Open and Closed Impartiality, *Journal of Philosophy*, Vol. 99 (9), pp. 445-469.

Sen, Amartya. 2004a. *Elements of a Theory of Human Rights*, Philosophy & Public Affiars, vol. 32 (4), pp. 315-356.

Sen, Amartya. 2004b. Dialogue, Capabilities, Lists, And Public Reason: Continuing The Conversation, *Feminist Economics*, Vol. 10 (3), pp. 77-80.

Sen, Amartya. 2005. Mary, Mary, Quite Contrary!, *Feminist Economics*, Vol. 11(1), pp. 1-9.

Sen, Amartya. 2006a. Reason, Freedom and Well-being, *Utilitas*, Vol. 18 (1), pp. 80-96.

Sen, Amartya. 2006b. What Do We Want From A Theory Of Justice?, *The Journal of Philosophy*, Vol. C3 (5), pp. 215-238.

Sen, Amartya. 2009, *The Idea of Justice*, Penguin Books, London

Smith, Adam. 1976 [1790], *The Theory of Moral Sentiments*, Clarendon Press, Oxford

Srinivasan, Sharath. 2007. No Democracy Without Justice: Political Freedom in Amartya Sen's Capability Approach, *Journal of Human Development*, Vol. 8 (3), pp. 457-480.

Stewart, Frances. 2002. Book Reviews: Women and human Development: The Capabilities Approach by Martha Nussbaum*, Journal of development*, Vol. 13, pp. 1189-1202.

Steward, frances and Severine Deneulin. 2002. Amartya Sen's Contribution to Development Thinking, *Studies in comparative International Development*, Vol. 37 (2), pp. 61-70.

Stromquist, Nelly, P. 2006. Gender, education and the possibility of transformative knowledge, *Compare: A journal of Comparative and International Education*, vol. 36 (2), pp. 145-161.

Stuzer, Alois. 2004. The role of income aspirations in individual happiness, *Journal of Economic Behavior and Organization*, Vol. 54, pp. 84-109.

Spence, Randy and Deneulin, Secerine. 2009, *Human Development Policy Analysis in An Introduction to The Human Development and Capability Approach* edited by S. Deneulin and L. Shahani, EarthScan, London

Sugden, Robert. 2006. What We Desire, What We Have Reason to Desire, Whatever We might Desire: Mill and Sen on the Value of Opportunity, *Utilitas*, Vol. 18 (1), pp. 33-51.

Sumner, Wayne. 1996, *Welfare, Happiness and Ethics*, Clarendon Press, Oxford

Watts, Michael and Bridges, David. 2006, *Enhancing Student's Capabilities? UK Higher Education and the Widening Participation Agenda* in Transforming Unjust Structures: The Capability Approach edited by S. Deneulin et al., pp. 143-160, Springer, the Netherlands

Watts, Michael. 2009. Sen and the Art of Motorcycle Maintenance: Adaptive Preferences and Higher Education, *Stud Philos Educ*, Vol. 28, pp. 425-436.

White, James. 1987, *Rhetoric and Law: The Arts of Cultural and Communal Life* in The Rhetoric of the Human Sciences edited by J.S. Nelson, A. Megill, and D.N. McCloskey, University of Wisconsin Press, Madison

White, James. 1984, *When Words lose their meanings, Constitutions and reconstructions of Language, Character, and Community*, The university of Chicago press, Chicago and London

White, James. 1990, *Justice as Translation, An Essay in Cultural and Legal Criticism*, The university of Chicago Press, Chicago and London

White, John. 1973, *Towards a compulsory curriculum*, Routledge and Kegan Paul, London

White, John. 2007. Wellbeing and Education: Issues of culture and Authority, *Journal of Philosophy of Education*, Vol. 41 (1), pp. 17-28.

Williams, Bernard. 1981, *Moral Luck*, Philosophical Papers 1973 – 1980, Cambridge University Press, London

Young, Iris Marion. 2000, *Inclusion and Democracy*, Oxford University Press, Oxford

Appendix: The latest version of Nussbaum's ten central capabilities (Nussbaum, 2011, pp. 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.

3. Bodily Integrity. Being able to move freely from place to place; having one's bodily boundaries treated as sovereign, i.e. being able to be secure against assault, including sexual assault, child sexual abuse, 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 self-expressive 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 search for the ultimate meaning of life in one's own way. Being able to have pleasurable experiences, and to avoid non-necessary pain.

5. Emotions. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by overwhelming fear and anxiety, or by traumatic events of abuse or neglect. (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.)

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 and to have compassion for that situation; to have the capability for both justice and friendship. (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 non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails, at a minimum, protections against discrimination on the basis of race, sex, sexual orientation, religion, caste, ethnicity, or national origin. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

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), not just formally but in terms of real opportunity; 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.