

## Capabilities as Fundamental Entitlements: Sen and Social Justice

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### I. The Capabilities Approach and Social Justice

Throughout his career, Amartya Sen has been preoccupied with questions of social justice. Inequalities between women and men have been especially important in his thinking, and the achievement of gender justice in society has been among the most central goals of his theoretical enterprise. Against the dominant emphasis on economic growth as an indicator of a nation's quality of life, Sen has insisted on the importance of capabilities, what people are actually able to do and to be.<sup>2</sup> Frequently his arguments in favor of this shift in thinking deal with issues of gender.<sup>3</sup> Growth is a bad indicator of life quality because it fails to tell us how deprived people are doing; women figure in the argument as people who are often unable to enjoy the fruits of a nation's general prosperity. If we ask what people are actually able to do and to be, we come much closer to understanding the barriers societies have erected against full justice for women. Similarly, Sen criticizes approaches that measure well-being in terms of utility by pointing to the fact that women frequently exhibit "adaptive preferences", preferences that have adjusted to their second-class status (Sen 1990, 1995). Thus the utilitarian framework, which asks people what they currently prefer and how satisfied they are, proves inadequate to confront the most pressing issues of gender justice. We can only have an adequate theory of gender justice, and of social justice more generally, if we are willing to make claims about fundamental entitlements that are to some extent independent of the preferences that people happen to have, preferences shaped, often, by unjust background conditions.

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<sup>2</sup> See Sen, Amartya (1980, 1982, 1985, 1992, 1999), representative examples of the many publications in which Sen has advanced this position.

This critique of dominant paradigms in terms of ideas of gender justice is a pervasive feature in Sen's work, and it is obvious that one central motivation for his elaboration of the "capabilities approach" is its superior potential for developing a theory of gender justice. But the reader who looks for a fully formulated account of social justice generally, and gender justice in particular, in Sen's work will not find one; she will need to extrapolate one from the suggestive materials Sen provides. Development as Freedom develops one pertinent line of thought, arguing that capabilities provide the best basis for thinking about the goals of development (Sen 1999). Both when nations are compared by international measures of welfare and when each nation strives internally to achieve a higher level of development for its people, capabilities provide us with an attractive way of understanding the normative content of the idea of development. Thinking of development's goal as increase in GNP per capita occluded distributional inequalities, particularly central when we are thinking about sex equality. It also failed to disaggregate and separately consider important aspects of development, such as health and education, that are demonstrably not very well correlated with GNP, even when we take distribution into account. Thinking of development's goal in terms of utility at least has the merit of looking at what processes do for people. But utility, Sen argues, is inadequate to capture the heterogeneity and non-commensurability of the diverse aspects of development. Because it fails to take account of the fact of adaptive preferences, it also biases the development process in favor of the status quo, when used as a normative benchmark. Finally, it suggests that the goal of development is a state or condition of persons (e.g. a state of satisfaction), and thus understates the importance of agency and freedom in the development process.

All these failings, he stresses, loom large when we confront the theory with inequalities based on sex: for women's lives reflect a striving after many different elements of well-being, including health, education, mobility, political participation, and others. Women's current preferences often show distortions that are the result of unjust background conditions. And agency and freedom are particularly important goals for women, who have so often been treated as passive dependents. This line of argument has close links with the feminist critique of

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<sup>3</sup> See for example Sen (1990, 1995, 1999).

Utilitarianism and dominant economic paradigms (e.g. Elizabeth Anderson 1993, Bina Agarwal 1997). It also connects fruitfully with writings by activist-scholars who stress the importance of women's agency and participation (e.g. Martha Chen 1983, Agarwal 1994).

Not surprisingly, I endorse these arguments. But I think that they do not take us very far in thinking about social justice. They give us a general sense of what societies ought to be striving to achieve, but 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. And they give us no sense of what a minimum level of capability for a just society might be. The use of capabilities in development is typically comparative merely, as in the Human Development Reports of the UNDP. Thus, nations are compared in areas such as health and educational attainment. But concerning what level of health service, or what level of educational provision, a just society would deliver as a fundamental entitlement of all its citizens, the view is suggestive, but basically silent.

Another famous line of argument pursued by Sen in works from "Equality of What?" to Inequality Reexamined seems more closely related to concerns of social justice. This argument begins from the idea of equality as a central political value (Sen 1992). Most states consider equality important, Sen argues, and yet they often do not ask perspicuously enough what the right space is within which to make the relevant comparisons. With arguments closely related to his arguments about the goals of development, Sen argues that the space of capabilities provides the most fruitful and ethically satisfactory way of looking at equality as a political goal. Equality of utility or welfare falls short for the reasons I have already summarized. Equality of resources falls short because it fails to take account of the fact that individuals have differing needs for resources if they are to come up to the same level of capability to function. They also have differing abilities to convert resources into actual functioning.

Some of these differences are straightforwardly physical: a child needs more protein than an adult to achieve a similar level of healthy functioning, and a pregnant woman more nutrients than a non-pregnant woman. But the differences that most interest Sen are social, and connected with entrenched discrimination of various types. Thus, in a nation where women are

traditionally discouraged from pursuing an education it will usually take more resources to produce female literacy than male literacy. Or, to cite Sen's famous example, a person in a wheelchair will require more resources connected with mobility than will the person with "normal" mobility, if the two are to attain a similar level of ability to get around (Sen 1980). (Although Sen tends to treat this example as one of straightforward physical difference, I believe that we should not so treat it: for the reasons that the wheelchair person is not able to get around are thoroughly social. We know that in a marathon the wheelchair contestants always finish more quickly than those who use their own limbs. What impedes their mobility in life generally is the lack of social provisions: ramps, wheelchair access lifts on busses, and so on. The social world is made for people with an average set of abilities and disabilities, and not for the person whose condition is non-average.<sup>4</sup>)

Sen's arguments about equality seem to have the following bearing on issues of social justice and public policy: to the extent that a society values the equality of persons and pursues that as among its social goals, equality of capabilities looks like the most relevant sort of equality to aim at. And it is clear that equality is a central goal for women who pursue social justice; once again, then, the arguments have particular force and relevance in the context of feminism. But Sen never says to what extent equality of capability ought to be a social goal,<sup>5</sup> or how it ought to

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<sup>4</sup> See Nussbaum (2001a). See also Nussbaum (forthcoming b), where I point out that all societies cater to the disabilities of the average person. Thus we do not have staircases with steps so high that only giants can climb them, or orchestras tuned to play at pitches inaudible to human ears and audible only to dogs.

A further problem not mentioned by Sen, but relevant to his critique of Rawls: even if the person in the wheelchair were equally well off with regard to economic well-being, there is a separate issue of dignity and self-respect. By measuring relative social positions by income and wealth alone, Rawls ignores the possibility that a group may be reasonably well-off economically, but suffer grave disabilities with regard to the social bases of self-respect. One might argue that gays and lesbians in our society are in precisely that position. Certainly the physically and mentally handicapped will be in that position, as their economic fortunes rise -- unless society makes a major and fundamental commitment to inclusion and respect.

<sup>5</sup> Obviously the case for this depends very much both on what capability we are considering and on how we describe it. Thus, equality of capability seems to be important when we consider the right to vote, the freedom of religion, and so on; but if we consider the capability to play basketball, it seems ludicrous to suppose that society should be very much concerned about even a minimum threshold level of it, much less complete equality. With something like health, much hangs on whether we define the relevant capability as "access to the social bases of health" or "the ability to be healthy." The former seems like something that a just society should distribute on a basis of equality; the latter contains an element of chance that no just society could, or should, altogether eliminate. So the question whether equality of capability is a good social goal cannot be well answered without specifying a list of the relevant capabilities, another point in favor of the argument I advance in Section V.

be combined with other political values in the pursuit of social justice. Thus the connection of his equality arguments with a theory of justice remains as yet unclear.

In this paper I shall suggest that the capabilities approach is indeed a valuable way to approach the question of fundamental entitlements, one that is especially pertinent to issues of sex equality. (One way of using it, which I discuss elsewhere will be to use it as a basis for constitutional accounts of fundamental entitlements of all citizens.<sup>6</sup>) I shall argue that it is superior to other approaches to social justice in the Western tradition when we confront it with problems of sex equality. It is closely allied to, but in some ways superior to, the familiar human rights paradigm, in ways that emerge most vividly in the area of sex difference. And it is superior to approaches deriving from the Western notion of the social contract, because of the way in which it can handle issues of care, issues that are fundamental to achieving sex equality, as recent feminist work has demonstrated.<sup>7</sup>

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.

### **III. Capabilities and Rights**

The capabilities that Sen mentions in illustration of his approach, and those that I include in my more explicit list, include many of the entitlements that are also stressed in the human rights movement: political liberties, the freedom of association, the free choice of occupation, and a variety of economic and social rights. And capabilities, like human rights, supply a moral and humanly rich set of goals for development, in place of "the wealth and poverty of the economists," as Marx so nicely put it. Thus capabilities have a very close relationship to human rights, as

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<sup>6</sup> I make this case at greater length in Nussbaum (2000a); see also Nussbaum (forthcoming a).

<sup>7</sup> See especially Kittay, Eva (1999), Folbre, Nancy (1999, 2001); Williams, Joan (2000); Harrington, Mona (1999). Earlier influential work in this area includes: Fineman, Martha (1991, 1995); Ruddick, Sarah (1989); Tronto, Joan (1993); Held, Virginia (1993); West, Robin (1997); For an excellent collection of articles from diverse feminist perspectives, see Held, ed. (1995). See also Nussbaum (2000b). And, finally, see Human Development Report 1999.

understood in contemporary international discussions. In effect they cover the terrain covered by both the so-called "first-generation rights" (political and civil liberties) and the so-called second-generation rights (economic and social rights). And they play a similar role, providing both a basis for cross-cultural comparison and the philosophical underpinning for basic constitutional principles.

Both Sen and I connect the capabilities approach closely to the idea of human rights, and in Women and Human Development I have described the relationship between the two ideas at some length (Nussbaum 2001a: ch. 1; see also Nussbaum 1997). The human rights approach has frequently been criticized by feminists for being male-centered, and for not including as fundamental entitlements some abilities and opportunities that are fundamental to women in their struggle for sex equality. They have proposed adding to international rights documents such rights as the right to bodily integrity, the right to be free from violence in the home and from sexual harassment in the workplace. My list of capabilities explicitly incorporates that proposal, and Sen's would appear to do so implicitly.<sup>8</sup> But the theoretical reasons for supplementing the language of capabilities with the language of rights still require comment.

Capabilities, I would argue, are very closely linked to rights, but the language of capabilities gives important precision and supplementation to the language of rights. The idea of human rights is by no means a crystal clear idea. Rights have been understood in many different ways, and difficult theoretical questions are frequently obscured by the use of rights language, which can give the illusion of agreement where there is deep philosophical disagreement. People differ about what the basis of a rights claim is: rationality, sentience, and mere life have all had their defenders. They differ, too, about whether rights are prepolitical or artifacts of laws and institutions. (Kant held the latter view, although the dominant human rights tradition has held the former.) They differ about whether rights belong only to individual persons, or also to groups. They differ about whether rights are to be regarded as side-constraints on goal-promoting action, or rather as one part of the social goal that is being promoted. They differ, again, about the relationship between rights and duties: if A has a right to S, then does this mean that there is

always someone who has a duty to provide S, and how shall we decide who that someone is? They differ, finally, about what rights are to be understood as rights to. Are human rights primarily rights to be treated in certain ways? Rights to a certain level of achieved well-being? Rights to resources with which one may pursue one's life plan? Rights to certain opportunities and capacities with which one may make choices about one's life plan?

The capabilities approach has the advantage of taking clear positions on these disputed issues, while stating clearly what the motivating concerns are and what the goal is. The relationship between the two notions, however, needs further scrutiny, given the dominance of rights language in international feminism.

When we think about fundamental rights, I would argue that the best way of thinking about what it is to secure them to people is to think in terms of capabilities. The right to political participation, the right to religious free exercise, the right of free speech -- these and others are all best thought of as secured to people only when the relevant capabilities to function are present. In other words, to secure a right to citizens in these areas is to put them in a position of capability to function in that area. To the extent that rights are used in defining social justice, we should not grant that the society is just unless the capabilities have been effectively achieved. Of course people may have a prepolitical right to good treatment in this area that has not yet been recognized or implemented; or it may be recognized formally and yet not implemented. But by defining the securing of rights in terms of capabilities, we make it clear that a people in country C don't really have an effective right to political participation, for example, a right in the sense that matters for judging that the society is a just one, simply because this language exists on paper: they really have been given right only if there are effective measures to make people truly capable of political exercise. Women in many nations have a nominal right of political participation without having this right in the sense of capability: for example, they may be threatened with violence should they leave the home. In short, thinking in terms of capability gives us a benchmark as we think about what it is really to secure a right to someone. It makes clear that this involves affirmative material and institutional support, not simply a failure to impede.

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<sup>8</sup> See his reply to letters concerning Sen (2001).

We see here a major advantage of the capabilities approach over understandings of rights – very influential and widespread -- that derive from the tradition within liberalism that is now called "neoliberal," for which the key idea is that of "negative liberty." Often fundamental entitlements have been understood as prohibitions against interfering state action, and if the state keeps its hands off, those rights are taken to have been secured; the state has no further affirmative task. Indeed, if one reads the U. S. Constitution, one sees this conception directly: for negative phrasing concerning state action predominates, as in the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances." Similarly, the Fourteenth Amendment's all-important guarantees are also stated in terms of what the state may not do: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This phraseology, deriving from the Enlightenment tradition of negative liberty, leaves things notoriously indeterminate as to whether impediments supplied by the market, or private actors, are to be considered violations of fundamental rights of citizens (Nussbaum forthcoming a).

The Indian Constitution, by contrast, typically specifies rights affirmatively.<sup>9</sup> Thus for example: "All citizens shall have the right to freedom of speech and expression; to assemble peaceably and without arms; to form associations or unions; ...[etc.]" (Art. 19). These locutions have usually been understood to imply that impediments supplied by non-state actors may also be deemed violative of constitutional rights. Moreover, the Constitution is quite explicit that affirmative action programs to aid the lower castes and women are not only not incompatible with constitutional guarantees, but are actually in their spirit. Such an approach seems very important for gender justice: the state needs to take action if traditionally marginalized groups are to

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<sup>9</sup> Not invariably: Art. 14, closely modeled on the equal protection clause of the U. S. Fourteenth Amendment, reads: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

achieve full equality. Whether a nation has a written constitution or not, it should understand fundamental entitlements in this way.

The capabilities approach, we may now say, sides with the Indian Constitution, and against the neoliberal interpretation of the U. S. Constitution.<sup>10</sup> It makes it clear that securing a right to someone requires more than the absence of negative state action. Measures 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 measures that address these obstacles.

A further advantage of the capabilities approach is that, by focusing from the start on what people are actually able to do and to be, it is well placed to foreground and address inequalities that women suffer inside the family: inequalities in resources and opportunities, educational deprivations, the failure of work to be recognized as work, insults to bodily integrity. Traditional rights talk has neglected these issues, and this is no accident, I would argue: for rights language is strongly linked with the traditional distinction between a public sphere, which the state regulates, and a private sphere, which it must leave alone.

The language of capabilities has one further advantage over the language of rights: it is not strongly linked to one particular cultural and historical tradition, as the language of rights is believed to be. This belief is not very accurate, as Sen has effectively argued: although the term "rights" is associated with the European Enlightenment, its component ideas have deep roots in many traditions (Sen 1997, Nussbaum 2000a). Nonetheless, the language of capabilities enables us to bypass this troublesome debate. When we speak simply of what people are actually able to do and to be, we do not even give the appearance of privileging a Western idea. Ideas of activity and ability are everywhere, and there is no culture in which people do not ask themselves what they are able to do, what opportunities they have for functioning.

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<sup>10</sup> Of course this account of both is in many ways too simple; I refer primarily to the wording of the documents here, not to the complicated jurisprudential traditions stemming from them.

If we have the language of capabilities, do we also need the language of rights? The language of rights still plays, I believe, four important roles in public discourse, despite its unsatisfactory features. First, when used as in the sentence "A has a right to have the basic political liberties secured to her by her government", this sentence reminds us that people have justified and urgent claims to certain types of urgent treatment, no matter what the world around them has done about that. It imports the idea of an urgent claim based upon justice. This is important particularly for women, who may lack political rights. However, the capabilities approach can make this idea of a fundamental entitlement clear in other ways, particularly, as I shall be arguing, by operating with a list of capabilities which are held to be fundamental entitlements of all citizens based upon justice.

Rights language also has value because of the emphasis it places on people's choice and autonomy. The language of capabilities, as both Sen and I employ it, is designed to leave room for choice, and to communicate the idea that there is a big difference between pushing people into functioning in ways you consider valuable and leaving the choice up to them. Sen makes this point very effectively in Development as Freedom (Sen 1999). But we make this emphasis clear if we combine the capabilities analysis with the language of rights, as my list of capabilities does at several points, and as the Indian Constitution typically does.

On one issue concerning the relationship between capabilities and rights, I differ to some extent with Sen, and I can only briefly record that difference here (see Nussbaum 1997). Both earlier and in Development as Freedom, Sen takes issue with the idea that rights should be regarded as side-constraints on the pursuit of social well-being. He uses Bob Nozick's version of this claim as his target, and he makes the very plausible claim that Nozick is wrong to hold that property rights, construed in Nozickian fashion, are side-constraints on the pursuit of social well-being, always to be respected no matter what disasters befall. But there are two ways of making this objection. I think that Sen should that Nozick has the wrong account of what fundamental rights people have, including property rights. But if he makes this criticism, he need not object to Nozick's contention that rights are side-constraints (Sen 1999: 65-7). They may still be so: only Nozick has got hold of the wrong account of rights. Nozick's account of property rights is

implausible in all sorts of ways. But if we really have correctly identified the fundamental entitlements of all citizens, then it does seem right to say that those entitlements (in my account, the central capabilities) function as side-constraints on the pursuit of overall well-being: that is, we should not pursue greater well-being by taking away any citizen's freedom of religion or freedom of speech, etc. Now of course there may be emergencies in which some of the fundamental entitlements have to be suspended (although politicians from Mrs. Gandhi to George W. Bush<sup>11</sup> have done a great deal to discredit this idea). But in general, it seems just right that we cannot pursue the good by violating one of these basic requirements of justice.

A feature of the Indian Constitution illuminates that idea. As a reaction against the suspension of fundamental civil rights during the Emergency, the Indian Supreme Court has evolved a doctrine of the "essential features" of the Constitution: features that represent the most fundamental entitlements, such that they cannot be removed even by a constitutional amendment (of the sort that Mrs. Gandhi's large parliamentary majority so easily passed, removing crucial civil liberties).<sup>12</sup> To say that the fundamental entitlements of citizens are like side-constraints is to say something like that: they are essential features of the structure of a just society (or one that aspires to justice), such that they cannot be abrogated for the sake of greater prosperity or even security.

### III. Endorsing a List

One obvious difference between Sen's writings and my own is that for some time I have endorsed a specific list of the Central Human Capabilities as a focus both for comparative quality-of-life measurement and for the formulation of basic political principles of the sort that can play a role in fundamental constitutional guarantees.

. The basic idea of my version of the capabilities approach, in Women and Human Development, is that we begin with a conception of the dignity of the human being, and of a life that is worthy of that dignity—a life that has available in it "truly human functioning", in the sense

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<sup>11</sup> I am thinking of the suspension of civil liberties during the Emergency, in the former case, and of the new proposal for military tribunals to try foreign nationals suspected of terrorism, in the latter.

described by Marx in his 1844 Economic and Philosophical Manuscripts. With this basic idea as a starting point, I then attempt to justify a list of ten capabilities as central requirements of a life with dignity. These ten capabilities are supposed to be general goals that can be further specified by the society in question, as it works on the account of fundamental entitlements it wishes to endorse (Nussbaum 2000a, ch. 1). But in some form all are part of a minimum account of social justice: a society that does not guarantee these to all its citizens, at some appropriate threshold level, falls short of being a fully just society, whatever its level of opulence. (One way of implementing such a list would be through a written constitution with its account of fundamental rights (Nussbaum forthcoming a). But this is not a necessary feature of the idea.) Moreover, the capabilities are held to be important for each and every person: each person is treated as an end, and none as a mere adjunct or means to the ends of others. And although in practical terms priorities may have to be set temporarily, the capabilities are understood as both mutually supportive and all of central relevance to social justice. Thus a society that neglects one of them to promote the others has shortchanged its citizens, and there is a failure of justice in the shortchanging (Nussbaum 2001b). (Of course someone may feel that one or more of the capabilities on my list should not enjoy this central status, but then she will be differing with me about what ought to be on the list, not about the more general project of using a list to define a minimal conception of social justice.)

The list itself is open-ended and has undergone modification over time; no doubt it will undergo further modification in the light of criticism. But here is the current version.

### **The Central Human Capabilities**

**1. Life.** Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.

**2. Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.

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<sup>12</sup> See further discussion in Nussbaum (forthcoming c).

**3. Bodily Integrity.** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.

**4. Senses, Imagination, and Thought.** Being able to use the senses, to imagine, think, and reason -- and to do these things in a "truly human" way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid non-beneficial pain.

**5. Emotions.** Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)

**6. Practical Reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)

**7. Affiliation. A.** Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)

**B.** Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of non-discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.

**8. Other Species.** Being able to live with concern for and in relation to animals, plants, and the world of nature.

**9. Play.** Being able to laugh, to play, to enjoy recreational activities.

**10. Control over one's Environment.**

**A. Political.** Being able to participated effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association.

**B. Material.** Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

Because considerations of pluralism have been on my mind since the beginning, I have worked a sensitivity to cultural difference into my understanding of the list in several ways.

First, I consider the list as open-ended and subject to ongoing revision and rethinking, in the way that any society's account of its most fundamental entitlements is always subject to supplementation (or deletion).

I also insist, second, that 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 that I have outlined in section II. Within certain parameters it is perfectly appropriate that different nations should do this somewhat differently, taking their histories and special circumstances into account. Thus, for example, a free speech right that suits Germany well might be too restrictive in the different climate of the United States.

Third, I consider the list to be a free-standing "partial moral conception," to use John Rawls's phrase: that is, it is explicitly introduced for political purposes only, and without any grounding in metaphysical ideas of the sort that divide people along lines of culture and religion.<sup>13</sup> 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.

Fourth, if we insist that the appropriate political target is capability and not functioning, we protect pluralism here again.<sup>14</sup> Many people who are willing to support a given capability as a fundamental entitlement would feel violated were the associated functioning made basic. Thus, the right to vote can be endorsed by believing citizens who would feel deeply violated by mandatory voting, because it goes against their religious conception. (The American Amish are in this category: they believe that it is wrong to participate in political life, but they endorse the right of citizens to vote.) The free expression of religion can be endorsed by people who would totally object to any establishment of religion that would involve dragooning all citizens into some type of religious functioning.

Fifth, the major liberties that protect pluralism are central items on the list: the freedom of speech, the freedom of association, the freedom of conscience.<sup>15</sup> By placing them on the list we give them a central and non-negotiable place.

Sixth and finally, I insist on a rather strong separation between issues of justification and issues of implementation. I believe that we can justify this list as a good basis for political principles all round the world. But this does not mean that we thereby license intervention with the affairs of a state that does not recognize them. It is a basis for persuasion, but I hold that military and economic sanctions are justified only in certain very grave circumstances involving traditionally recognized crimes against humanity (Nussbaum forthcoming d). So it seems less objectionable to recommend something to everyone, once we point out that it is part of the view that state sovereignty, grounded in the consent of the people, is a very important part of the whole package.

<sup>13</sup> For the relation of this idea to objectivity, see Nussbaum (2001c).

<sup>14</sup> See my discussion of this issue in Nussbaum (2000a), ch. 1; and for a rejoinder to perfectionist critics, see Nussbaum (2000c),

<sup>15</sup> Although I am very skeptical of attempts to add group cultural rights to the list, because every group contains hierarchy; thus to give a group rights qua group is often to give the powerful members a license to continue subordinating the less powerful. Moreover, ethnic and cultural groups are likely in this way to be promoted above other groups around which many people define the meaning of their lives: the women's movement, for example, or groups formed around occupation or sexual orientation. For an elaboration of these points, see Nussbaum (forthcoming e).

Where does Sen stand on these questions? I find a puzzling tension in his writings at this point. On the one hand, he speaks as if certain specific capabilities are absolutely central and non-negotiable. One cannot read his discussions of health, education, political and civil liberties, and the free choice of occupation without feeling that he agrees totally with my view that these human capabilities should enjoy a strong priority and should be made central by states the world over, as fundamental entitlements of each and every citizen (although he says little about how a threshold level of each capability would be constructed). In the case of liberty, he actually endorses giving liberty a considerable priority, though without giving an exhaustive enumeration of the liberties that would fall under this principle. His role in the formulation of the measures that go into the Human Development Reports, moreover, clearly shows him endorsing a group of health- and education -related capabilities as the appropriate way to measure quality of life across nations.

On the other hand, Sen has conspicuously refused to endorse any account of the central capabilities. Thus the examples mentioned above remain in limbo: clearly they are examples of some things he thinks very important, but it is not clear to what extent he is prepared to recommend them as important goals for all the world's people, goals connected with the idea of social justice itself. And it is equally unclear whether there are other capabilities not mentioned so frequently that might be equally important, and, if so, what those capabilities might be. The reason for this appears to be his respect for democratic deliberation.<sup>16</sup> He feels that people should be allowed to settle these matters for themselves. Of course, as I have said above, I do too, in the sense of implementation. But Sen goes further, suggesting that democracy is inhibited by the endorsement of a set of central entitlements in international political debate, as when feminists insist on certain requirements of gender justice in international documents and in deliberative for a.

In Development as Freedom things become, I believe, even more problematic. For Sen speaks throughout the work of "the perspective of freedom" and uses language, again and again,

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<sup>16</sup> This is what Sen said in response to the present paper at the conference in Bielefeld at which it was first presented.

suggesting that freedom is a general all-purpose social good, and that capabilities are to be seen as instances of this more general good of human freedom. Such a view is not incompatible with ranking some freedoms ahead of others for political purposes, of course. But it does seem to go in a problematic direction.

First of all, it is unclear whether the idea of promoting freedom is even a coherent political project. Some freedoms limit others. The freedom of rich people to make large donations to political campaigns limits the equal worth of the right to vote. The freedom of businesses to pollute the environment limits the freedom of citizens to enjoy an unpolluted environment. The freedom of land owners to keep their land limits projects of land reform that might be argued to be central to many freedoms for the poor. And so on. Obviously these freedoms are not among those that Sen considers, but he says nothing to limit the account of freedom or to rule out conflicts of this type.

Furthermore, even if there were a coherent project that viewed all freedoms as desirable social goals, it is not at all clear that this is the sort of project someone with Sen's political and ethical views ought to endorse. The examples I have just given show us that any political project that is going to protect the equal worth of certain basic liberties for the poor, and to improve their living conditions, needs to say forthrightly that some freedoms are central for political purposes, and some are distinctly not. Some freedoms involve basic social entitlements, and others do not. Some lie at the heart of a view of political justice, and others do not. Among the ones that do not lie at the core, some are simply less important, but others may be positively bad.

For example, the freedom of rich people to make large campaign contributions, though defended by many Americans in the name of the general good of freedom, seems to me not among those freedoms that lie at the heart of a set of basic entitlements to which a just society should commit itself. In many circumstances, it is actually a bad thing, and constraint on it a very good thing. Similarly, the freedom of industry to pollute the environment, though cherished by many Americans in the name of the general good of freedom, seems to me not among those freedoms that should enjoy protection; beyond a certain point, the freedom to pollute is bad, and should be constrained by law. And while property rights are certainly a good thing up to a point

and in some ways, the freedom of large feudal zamindars in India to hold onto their estates – a freedom that some early Supreme Court decisions held to enjoy constitutional protection (wrongly, in my view, and in the view of subsequent decisions) -- is not part of the account of property rights as central human entitlements that a just society would want to endorse. To define property capabilities so broadly is actually a bad thing, because land reform can be essential to social justice (see generally Agarwal 1994).

To speak more generally, gender justice cannot be successfully pursued without limiting male freedom. For example, the "right" to have intercourse with one's wife whether she consents or not has been understood as a cherished male prerogative in most societies, and men have greatly resented the curtailment of liberty that followed from laws against marital rape – one reason why about half of the states in the U. S. still do not treat nonconsensual intercourse within marriage as genuine rape, and why many societies the world over still lack laws against it. The freedom to harass women in the workplace is a cherished prerogative of males the world over: the minute sexual harassment regulations are introduced, one always hears protests invoking the idea of liberty. Terms like "femi-nazis" are used to suggest that feminists are against freedom for supporting these policies. And of course in one sense feminists are indeed insisting on a restriction of liberty, on the grounds that certain liberties are inimical both to equalities and to women's liberties and opportunities.

In short, no society that pursues equality or even an ample social minimum can avoid curtailing freedom in very many ways, and what it ought to say is: those freedoms are not good, they are not part of a core group of entitlements required by the notion of social justice, and in many ways, indeed, they subvert those core entitlements. Of other freedoms, for example the freedom of motorcyclists to drive without helmets, they can say, these freedoms are not very important; they are neither very bad nor very good. They are not implicit in our conception of social justice, but they do not subvert it either.

In other words, all societies that pursue a reasonably just political conception have to evaluate human freedoms, saying that some are central and some trivial, some good and some actively bad. This evaluation also affects the way we will assess an abridgment of a freedom.

Certain freedoms are taken to be entitlements of citizens based upon justice. When any one of these is abridged, that is an especially grave failure of the political system. In such cases, people feel that the abridgment not just a cost to be borne; it is a cost of a distinctive kind, involving a violation of basic justice. When some freedom outside the core is abridged, that may be a small cost or a large cost to some actor or actors, but it is not a cost of exactly that same kind, one that in justice no citizen should be asked to bear. This qualitative difference is independent of the amount of cost, at least as figured in terms of standard subjective willingness-to-pay models. Thus, motorcyclists may mind greatly a law that tells them to put on a helmet, and they may feel that it wrecks their lives. In terms of standard willingness-to-pay models, they might be willing to pay quite a lot for the right to drive without a helmet. On the other hand, many citizens probably would not think that not being able to vote was a big cost. In terms of standard willingness-to-pay models, at least, they would not pay much for the right to vote, and some might have to be paid for voting. And yet I would want to say that the right to vote is a fundamental entitlement based upon justice, whereas the right to drive without a helmet is not (Nussbaum 2001b).

Sen's response to these questions, in discussion, has been to say that freedom per se is always good, although it can be badly used. Freedom, he said, is like male strength: male strength is per se a good thing, although it can be used to beat up women. I am not satisfied by this reply. For obviously enough, so much depends on how one specifies the freedoms in question. Some freedoms include injustice in their very definition. Thus, the freedom to rape one's wife without penalty, the freedom to hang out a sign saying "No Blacks here," the freedom of an employer to discriminate on grounds of race or sex or religion. Those are freedoms all right, and some people zealously defend them. But it seems absurd to say that they are good per se, and bad only in use. Any society that allows people these freedoms has allowed a fundamental injustice, involving the subordination of a vulnerable group. Of other freedoms, for example, the freedom of the motorcycle rider to ride without a helmet, we should not say, "good in itself, bad only in use," we should say "neutral and trivial in itself, probably bad in use." Once again, attention to the all-important issue of content is vital.

I would argue that Sen cannot avoid committing himself to a core list of fundamental capabilities, once he faces such questions. If capabilities are to be used in advancing a conception of social justice, they will obviously have to be specified, if only in the open-ended and humble way I have outlined. Either a society has a conception of basic justice or it does not. If it has one, we have to know what its content is, what opportunities and liberties it takes to be fundamental entitlements of all citizens. One cannot have a conception of social justice that says, simply, "All citizens are entitled to freedom understood as capability." Besides being wrong and misleading in the ways I have already argued, such a blanket endorsement of freedom/capability as goal would be hopelessly vague. It would be impossible to say whether the society in question was just or unjust.

Someone may now say, sure, there has to be a definite list in the case of each nation that is striving for justice, but why not leave the list-making to them? Of course, as I have already said, in the sense of implementation, and also in the sense of more precise specification, I do so. So, to be a real objection to my proposal, the question must be, why should we hold out to all nations a set of norms that we believe justified by a good philosophical argument, as when feminists work out norms of sex equality in documents such as CEDAW, rather than letting each one justify its own set of norms? The answer to this question, however, is given in all of Sen's work: some human matters are too important to be left to whim and caprice, or even to the dictates of a cultural tradition. To say that education for women, or adequate health care, is not justified just in case some nation believe that it is not justified seems like a capitulation to subjective preferences, of the sort that Sen has opposed throughout his career. As he has repeatedly stated: capabilities have intrinsic importance. But if we believe that, we also believe that it is right to say to nations that don't sufficiently recognize one of them: you know, you too should endorse equal education for girls, and understand it as a fundamental constitutional entitlement. You too should provide a certain level of health care to all citizens, and view this as among their fundamental constitutional entitlements. Just because the U. S. does not choose to recognize a fundamental right to health care, that doesn't make the U. S. right, morally justified.

In short: it makes sense to take the issue of social justice seriously, and to use a norm of justice to assess the various nations of the world and their practices. But if the issue of social justice is important, then the content of a conception of justice is important. Social justice has always been a profoundly normative concept, and its role is typically critical: we work out an account of what is just, and we then use it to find reality deficient in various ways. Sen's whole career has been devoted to developing norms of justice in exactly this way, and holding them up against reality to produce valuable criticisms. It seems to me that his commitment to normative thinking about justice requires the endorsement of some definite content. One cannot say, "I'm for justice, but any conception of justice anyone comes up with is all right with me." Moreover, Sen, of course, does not say that. He is a radical thinker, who has taken a definite stand on many matters, including matters of sex equality. He has never been afraid to be definite when misogyny is afoot, or to supply a quite definite account of why many societies are defective. So it is somewhat mysterious to me why he has recently moved in the direction of endorsing freedom as a general good. Certainly there is no such retreat in his practical policies regarding women. In recent writing such as "The Many Faces of Misogyny" he is extremely definite about what is just and unjust in laws and institutions, and one can infer a rich account of fundamental human entitlements from his critique (Sen 2001). But then it would appear that he cannot actually believe that the content of an account of fundamental entitlements should be left up for grabs.

Such leaving-up-for grabs is all the more dangerous when we are confronting women's issue. For obviously enough, many traditional conceptions of social justice and fundamental entitlements have made women second-class citizens, if citizens at all. Women's liberties, opportunities, property rights, and political rights have been construed as unequal to men, and this has been taken to be a just state of affairs. Nor have traditional accounts of justice attended at all to issues that are particularly urgent for women, such as issues of bodily integrity, sexual harassment, and, as my next section will describe, the issue of public support for care to children, the disabled, and the elderly.

Some supporters of a capabilities approach might be reluctant to endorse a list because of concerns about pluralism.<sup>17</sup> But here we may make two points that pertain specifically to the norm of respect for pluralism. First, the value of respect for pluralism itself requires a commitment to some cross-cultural principles as fundamental entitlements. Real respect for pluralism means strong and unwavering protection for religious freedom, for the freedom of association, for the freedom of speech. If we say that we are for pluralism, and yet refuse to commit ourselves to the non-negotiability of these items as fundamental building blocks of a just political order, we show that we are really half-hearted about pluralism.

I am sure that Sen would agree with this. I am sure, too, that he would say the same about other items on my list, such as health and education: if a nation says that they are for human capabilities, but refuses to give these special protection for all citizens, citing reasons of cultural or religious pluralism, Sen will surely say that they are not making a good argument, or giving genuine protection to pluralism. Instead, they are, very often, denying people (often, women in particular) the chance to figure out what culture and form of life they actually want. So they are actually curtailing the most meaningful kind of pluralism, which requires having a life of one's own and some choices regarding it. And that goal surely requires a certain level of basic health and education.

But then we are both, in effect, making a list of such entitlements, and the only question then must be what shall go on the list, and how long it will be.

The second argument is one that derives from the Rawlsian idea of political liberalism, and I am not certain that Sen would endorse it. The argument says that classical liberalism erred by endorsing freedom or autonomy as a general good in human life. Both earlier liberals such as Mill and modern comprehensive liberals such as Joseph Raz hold that autonomy and freedom of choice are essential ingredients in valuable human lives, and that society is entitled to promote freedom across the board. Rawls, and I with him, hold that this general endorsement of freedom shows deficient respect for citizens whose comprehensive conceptions of the good human life do not make freedom and autonomy central human values. People who belong to an authoritarian

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<sup>17</sup> Sen stated at the Bielefeld conference that this is not his concern.

religion cannot agree with Raz or Mill that autonomy is a generally good thing. Mill responds, in chapter 3 of On Liberty, by denigrating such people (he understands Calvinists to be such people) (Mill 1859). Presumably the Millian state would denigrate them too, and would design education and other institutions to disfavor them, although their civil liberties would not be restricted. Rawls and I agree that this strategy shows deficient respect for a reasonable pluralism of different comprehensive conceptions of the good life. We should respect people who prefer a life within an authoritarian religion (or personal relationship), so long as certain basic opportunities and exit options are firmly guaranteed.

I hold that this respect for pluralism is fostered both by making capability and not functioning the appropriate political goal and also by endorsing a relatively small list of core capabilities for political purposes. Thus we say two things to religious citizens. We say, first, that endorsing the capabilities list does not require them to endorse the associated functioning as a good in their own lives, a point I have stressed earlier in this section. And we say, second, that the very fact that it is a short list shows that we are leaving them lots of room to value other things in mapping out their plan of life. We do not ask them to endorse freedom as a general good – as we might seem to do if we talk a lot about freedom but fail to make a list. Instead, we just ask them to endorse this short list of freedoms (as capabilities), for political purposes and as applicable to all citizens. They may then get on with the lives they prefer.

The expectation is that a Roman Catholic citizen, say, can endorse this short list of fundamental liberties for political purposes, without feeling that her view of Church authority and its decisive role in her life is thereby being denigrated. Even an Amish citizen, who believes that all participation in public life is simply wrong, can still feel that it's all right to endorse the capabilities list for political purposes, because no general endorsement of autonomy as an end tells her that her life is less worthwhile than other lives. And, as I argued in WHD, even a woman who believes that the seclusion of women is right may endorse this small menu of liberties and opportunities for all women, though she herself will use few of them – and she will feel that the conception is one that respects her, because it does not announce that only autonomous lives are worthwhile (Nussbaum 2000a, chs. 1 and 3).

I am not certain whether Sen is in this sense a comprehensive liberal like Raz, or a political liberal like Rawls and me. But to the extent that he finds Rawls's arguments on this score persuasive, he has yet a further reason to endorse a definite and relatively circumscribed list of capabilities as political goals, rather than to praise freedom as a general social good.

The question of how to frame such a list, and what to put on it, is surely a difficult one, in many ways. But I have argued that there is no way to take the capabilities approach forward, making it really productive for political thought about basic social justice, without facing this question and giving it the best answer one can.

#### **IV. Capabilities and the Social Contract Tradition**<sup>18</sup>

One further issue, fundamental to concerns about gender justice, will help us to see both why the capabilities approach is superior to other approaches to social justice within the liberal tradition, and why a definite list of entitlements is required if the approach is to deliver an adequate conception of justice. This is the all-important issue of care for people who are physically and/or mentally dependent on others: children, the disabled, the elderly. This is a central issue for gender justice, because most of the caregiving for such dependents is done by women, often without any public recognition that it is work. The time spent on this caregiving disables women from many other functions of life, even when a society has in other respects opened those functions to them. For this reason a large body of feminist writing has developed pursuing this issue; and the 1999 Human Development Report devoted special attention to it as an issue of gender justice. To appreciate why this problem has not been adequately addressed, and why the capabilities approach does better, we must now contrast it with approaches familiar within the social-contract tradition.

Insofar as the capabilities approach has been used to articulate a theory of social justice, or part of such a theory, it has been in dialogue from the start with the ideas of John Rawls and the Western liberal social contract tradition (John Rawls 1971, 1996). In "Equality of What?" Sen already argued for the capabilities approach by contrasting it with Rawls's approach, which

defines justice in terms of the distribution of "primary goods," prominently including wealth and income (Sen 1980).<sup>19</sup> My account of capabilities in Women and Human Development takes the argument further, comparing capabilities to Rawlsian primary goods at several points and endorsing the idea of an overlapping consensus (Nussbaum 2000a, ch. 1). Sen and I both argue that Rawls's theory would be better able to give an account of the relevant social equalities and inequalities if the list of primary goods were formulated as a list of capabilities rather than as a list of things.<sup>20</sup>

But there is another problem that ought to trouble us, as we ponder the social contract tradition as a source of basic principles of justice, particularly with women's lives in view. All well-known theories in the social contract tradition imagine society as a contract for mutual advantage. They therefore imagine the contracting parties as rough equals, none able to dominate the others, and none asymmetrically dependent upon the others. Whatever differences there are among the different founders of that tradition, all accept the basic Lockean conception of a contract among parties who, in the state of nature, are "free, equal, and independent."<sup>21</sup> Thus for Kant persons are characterized by both freedom and equality, and the social contract is defined as an agreement among persons so characterized. Contemporary contractarians explicitly adopt this hypothesis. For David Gauthier, people of unusual need are "not party to the moral relationships grounded by a contractarian theory."<sup>22</sup> Similarly, the citizens in Rawls's Well Ordered Society are "fully cooperating members of society over a complete life" (Rawls 1980: 546, 1996: 183).

Life, of course, is not like that. Real people begin their lives as helpless infants, and remain in a state of extreme, asymmetrical dependency, both physical and mental, for anywhere from ten to twenty years. At the other end of life, those who are lucky enough to live on into old age are likely to encounter another period of extreme dependency, either physical or mental or

<sup>18</sup> The argument of this section is a somewhat shorter version of the argument of Nussbaum (2000b).

<sup>19</sup> Although Rawls's list also includes some capability-like items, such as opportunities and liberties, only wealth and income are used to define who is "least well off" in the society, a key notion for the application of Rawls's Difference Principle.

<sup>20</sup> The list is actually heterogeneous, including liberties, opportunities, and powers alongside income and wealth; recently Rawls has added still other capability-like items to the list, such as access to health care and the availability of leisure time.

<sup>21</sup> Locke, *Second Treatise on Government*, chapter 8.

both, which may itself continue in some form for as much as twenty years. During the middle years of life, many of us encounter periods of extreme dependency, some of which involve our mental powers and some our bodily powers only, but all of which may put us in need of daily, even hourly, care by others. Finally, and centrally, there are many citizens who never have the physical and/or mental powers requisite for independence. These lifelong states of asymmetrical dependency are in many respects isomorphic to the states of infants and the elderly.

In short, any real society is a caregiving and care-receiving society, and must therefore discover ways of coping with these facts of human neediness and dependency that are compatible with the self-respect of the recipients and do not exploit the caregivers. This, as I have said, is a central issue for gender justice.

In this area a Kantian starting point, favored by Rawls and other modern contractarians, is likely to give bad guidance. For Kant, human dignity and our moral capacity, dignity's source, are radically separate from the natural world. Morality certainly has the task of providing for human neediness, but the idea that we are at bottom split beings, both rational persons and animal dwellers in the world of nature, never ceases to influence Kant's way of thinking about how these deliberations will go.

What is wrong with the split? Quite a lot. First, it ignores the fact that our dignity just is the dignity of a certain sort of animal. It is the animal sort of dignity, and that very sort of dignity could not be possessed by a being who was not mortal and vulnerable, just as the beauty of a cherry tree in bloom could not be possessed by a diamond. Second, the split wrongly denies that animality can itself have a dignity; thus it leads us to slight aspects of our own lives that have worth, and to distort our relation to the other animals.<sup>23</sup> Third, it makes us think of the core of ourselves as self-sufficient, not in need of the gifts of fortune; in so thinking we greatly distort the nature of our own morality and rationality, which are thoroughly material and animal themselves; we learn to ignore the fact that disease, old age, and accident can impede the moral and rational

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<sup>22</sup> Gauthier, David (1986): 18, speaking of all "persons who decrease th[e] average level" of well-being in a society.

functions, just as much as the other animal functions. Fourth, it makes us think of ourselves as a-temporal. We forget that the usual human lifecycle brings with it periods of extreme dependency, in which our functioning is very similar to that enjoyed by the mentally or physically handicapped throughout their lives. Feminist thought has recognized these facts about human life more prominently, at any rate, than most other political and moral thought.

Political thought in the Kantian social-contract tradition (to stick with the part of the tradition I find deepest and most appealing) suffers from the conception of the person with which it begins. Rawls's contracting parties are fully aware of their need for material goods. Here Rawls diverges from Kant, building need into the foundations of the theory.<sup>24</sup> But he does so only to a degree: for the parties are imagined throughout as competent contracting adults, roughly similar in need, and capable of a level of social cooperation that makes them able to make a contract with others. Such a hypothesis seems required by the very idea of a contract for mutual advantage.

In so conceiving of persons, Rawls explicitly omits from the situation of basic political choice the more extreme forms of need and dependency human beings may experience. His very concept of social cooperation is based on the idea of reciprocity between rough equals, and has no explicit place for relations of extreme dependency. Thus, for example, Rawls refuses to grant that we have any duties of justice to animals, on the grounds that they are not capable of reciprocity (TJ 17, 504-5); they are owed "compassion and humanity," but "[t]hey are outside the scope of the theory of justice, and it does not seem possible to extend the contract doctrine so as to include them in a natural way" (TJ 512). This makes a large difference to his theory of political distribution. For his account of the primary goods, introduced, as it is, as an account of the needs of citizens who are characterized by the two moral powers and by the capacity to be "fully

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<sup>23</sup> For one particularly valuable treatment of this theme, see Rachels (1990). Two wonderful pictures of the animal sort of dignity: Smuts, Barbara (1999) and Pitcher, George (1995). I discuss the implications of recognizing the dignity of non-human animals in Nussbaum (2000d). See also MacIntyre, Alasdair (1999).

<sup>24</sup> I do not mean to deny that Kant gives need an important role in his theory: for just one good treatment of this aspect of Kant's thought, see Allen Wood (1999). What I mean is that whereas for Kant personality and animality are conceptually independent, and personality is not itself understood in terms of need, for Rawls these two elements are more thoroughly integrated, and the person is understood from the first as in need of material and other goods.

cooperating," has no place for the need of many real people for the kind of care we give to people who are not independent.<sup>25</sup>

Now of course Rawls is perfectly aware that his theory focuses on some cases and leaves others to one side. He insists that, although the need for care for people who are not independent is "a pressing practical question," it may reasonably be postponed to the legislative stage, after basic political institutions are designed:

So let's add that all citizens are fully cooperating members of society over the course of a complete life. This means that everyone has sufficient intellectual powers to play a normal part in society, and no one suffers from unusual needs that are especially difficult to fulfill, for example, unusual and costly medical requirements. Of course, care for those with such requirements is a pressing practical question. But at this initial stage, the fundamental problem of social justice arises between those who are full and active and morally conscientious participants in society, and directly or indirectly associated together throughout a complete life. Therefore, it is sensible to lay aside certain difficult complications. If we can work out a theory that covers the fundamental case, we can try to extend it to other cases later. (Rawls 1980: 546)

This reply seems inadequate. Care for children, the elderly, and the mentally and physically handicapped is a major part of the work that needs to be done in any society, and in most societies it is a source of great injustice. Any theory of justice needs to think about the problem from the beginning, in the design of the most basic level of institutions, and particularly in its theory of the primary goods.<sup>26</sup>

What, then, can be done to give the problem of care and dependency sufficient prominence in a theory of justice? The first thing we might try, one that has been suggested by Eva Kittay in her fine book, is to add the need for care during periods of extreme and asymmetrical

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<sup>25</sup> As Eva Kittay has argued in an excellent discussion in Kittay (1999), there are five places in Rawls's theory where he fails to confront facts of asymmetrical neediness that might naturally have been confronted. (1) His account of the "circumstances of justice" assumes a rough equality between persons, such that none could dominate all the others; thus we are not invited to consider relations of justice that might obtain between an adult and her infants, or her senile demented parents. (2) Rawls's idealization of citizens as "fully cooperating" etc. puts to one side the large facts about extreme neediness I have just mentioned. (3) His conception of social cooperation, again, is based on the idea of reciprocity between equals, and has no explicit place for relations of extreme dependency. (4) His account of the primary goods, introduced, as it is, as an account of the needs of citizens who are characterized by the two moral powers and by the capacity to be "fully cooperating," has no place for the need of many real people for the kind of care we give to people who are not independent. And (5) his account of citizens' freedom as involving the concept of being a self-authenticating source of valid claims (e.g. Rawls (1996): 32) fails to make a place for any freedom that might be enjoyed by someone who is not independent in that sense.

<sup>26</sup> See Kittay (1999): 77: "Dependency must be faced from the beginning of any project in egalitarian theory that hopes to include all persons within its scope." For a remarkable narrative of a particular life that shows exactly how many social structures play a part in the life of a mentally handicapped child from the very beginning, see Bérubé (1996).

dependency to the Rawlsian list of primary goods, thinking of care as among the basic needs of citizens.<sup>27</sup>

This suggestion, if we adopt it, would lead us to make another modification: for care is hardly a commodity, like income and wealth, to be measured by the sheer amount of it citizens have. As Sen has long suggested (see Section I above), we would do well to understand the entire list of primary goods as a list not of things but of central capabilities. This change would not only enable us to deal better with people's needs for various types of love and care as elements of the list, but would also answer the point that Sen has repeatedly made all along about the unreliability of income and wealth as indices of well-being. The well-being of citizens will now be measured not by the sheer amount of income and wealth they have, but by the degree to which they have the various capabilities on the list. One may be well off in terms of income and wealth, and yet unable to function well in the workplace, because of burdens of caregiving at home (see Williams 2000).

If we accepted these two changes, we would surely add a third, relevant to our thoughts about infancy and old age. We would add other capability-like items to the list of basic goods: for example the social basis of health, adequate working conditions, and the social basis of imagination and emotional well-being, items that figure on my list (Nussbaum 2000a, ch. 1).

Suppose, then, we do make these three changes in the list of primary goods: we add care in times of extreme dependency to the list of primary goods; we reconfigure the list as a list of capabilities; and we add other pertinent items to the list as well. Have we done enough to salvage the contract doctrine as a way of generating basic political principles? I believe that there is still room for doubt. Consider the role of primary goods in Rawls's theory. The account of primary goods is introduced in connection with the Kantian political conception of the person, as an account of what citizens characterized by the two moral powers need.<sup>28</sup> Thus, we have attributed basic importance to care only from the point of view of our own current independence.

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<sup>27</sup> Kittay (1999): 102-3.

<sup>28</sup> In Rawls (1971), primary goods were characterized as all-purpose means to the pursuit of one's own conception of the good, whatever it is; in Rawls (1980) and (1996) the interpretation shifts, and Rawls

It is good to be cared for only because care subserves moral personality, understood in a Kantian way as conceptually quite distinct from need and animality. This seems like another more subtle way of making our animality subserve our humanity, where humanity is understood to exclude animality. The idea is that because we are dignified beings capable of political reciprocity, therefore we had better provide for times when we are not that, so we can get back to being that as quickly as possible. I think that this is a dubious enough way to think about illnesses in the prime of life; but it surely leads us in the direction of a contemptuous attitude toward infancy and childhood, and, a particular danger in our society, toward elderly disability. Finally, it leads us strongly in the direction of not fully valuing those with lifelong mental disabilities: somehow or other, care for them is supposed to be valuable only for the sake of what it does for the "fully cooperating." They are, it would seem, being used as means for someone else's ends, and their full humanity is still being denied.

So I believe that we need to delve deeper, redesigning the political conception of the person, bringing the rational and the animal into a more intimate relation with one another, and acknowledging that there are many types of dignity in the world, including the dignity of mentally disabled children and adults, the dignity of the senile demented elderly, and the dignity of babies at the breast. We want the picture of the parties who design political institutions to build these facts in from the start. The kind of reciprocity in which we humanly engage has its periods of symmetry, but also, of necessity, its periods of more or less extreme asymmetry – and this is part of our lives that we bring into our situation as parties who design just institutions. And this may well mean that the theory cannot be a contractarian theory at all.

So I believe we need to adopt a political conception of the person that is more Aristotelian than Kantian,<sup>29</sup> one that sees the person from the start as both capable and needy – "in need of a rich plurality of life-activities," to use Marx's phrase, whose availability will be the measure of

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acknowledges that they are means with regard to the Kantian political conception of the person: see Rawls (1996):187-90.

<sup>29</sup> As the late Peter Cicchino eloquently put this point, Aristotle's conception is not deductive or a priori: it respects widely held views about human reality, but takes experience as its source and guide. Second, it takes seriously the materiality of human beings -- their need for food, shelter, friendship, care, what might be called their basic dependency. Third, it is epistemologically modest -- it does not claim to

well-being. Such a conception of the person, which builds growth and decline into the trajectory of human life, will put us on the road to thinking well about what society should design. We don't have to contract for what we need by producing; we have a claim to support in the dignity of our human need itself. Since this is not just an Aristotelian idea, but one that corresponds to human experience, there is good reason to think that it can command a political consensus in a pluralistic society. If we begin with this conception of the person and with a suitable list of the central capabilities as primary goods, we can begin designing institutions by asking what it would take to get citizens up to an acceptable level on all these capabilities. Although Sen refrains from specifying a political conception of the person, I believe that this suggestion is squarely in line with his ideas.

In Women and Human Development I propose that the idea of central human capabilities be used as the analogue of Rawlsian primary goods, and that the guiding political conception of the person should be an Aristotelian/Marxian conception of the human being as in need of a rich plurality of life-activities, to be shaped by both practical reason and affiliation (Nussbaum 2000a, ch. 1). I argue that these interlocking conception can form the core of a political conception that is a form of political liberalism, close to Rawls's in many ways. The core of the political conception is endorsed for political purposes only, giving citizens a great deal of space to pursue their own comprehensive conceptions of value, whether secular or religious. Yet more room for a reasonable pluralism in conceptions of the good is secured by insisting that the appropriate political goal is capability only: citizens should be given the option, in each area, of functioning in accordance with a given capability or not so functioning. To secure a capability to a citizen it is not enough to create a sphere of non-interference: the public conception must design the material and institutional environment so that it provides the requisite affirmative support for all the relevant capabilities.<sup>30</sup> Thus care for physical and mental dependency needs will enter into the

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have the exactitude of mathematics, but rather is content to look for 'such precision as accords with the subject-matter'" (Cicchino 1999).

<sup>30</sup> In that way my view is close to the type of liberalism defended (against Lockean contractarianism) by T. H. Green, though my form is not perfectionistic, but is, rather, a form of political liberalism. I have found very illuminating the discussion of the liberal tradition in Deigh (2001).

conception at many points, as part of what is required to secure to citizens one of the capabilities on the list.

Although Sen has not commented explicitly on issues of mental disability and senility, I believe that the view I have just mapped out is squarely in line with his emphasis on freedom as goal. We see, then, here again, that the capabilities approach solves some problems central to a theory of social justice that other liberal theories seem unable to solve well; the capability-based solution seems to be an attractive way of thinking about fundamental entitlements.

But now we must observe that the capabilities approach does these good things only in virtue of having a definite content. The capabilities approach provides us with a new way of understanding the form of "primary goods", and that is one part of the work that it does in providing a more adequate theory of care. But getting the form right was not all that had to be done: we also had to add the need for care in times of acute dependency to the existing list of primary goods. And then, I argued, we would also need to add other capabilities as well to the list, in areas such as health care, work conditions, and emotional well-being. My own list of capabilities provides for these things already, in areas such as emotions, affiliation, and health. A shift from the space of resources to the space of capabilities would not go far in correcting the deficiencies of the Rawlsian framework unless we had a list with a definite content, one that prominently includes care. Moreover, I also argued that we need to associate the list with a specific political conception of the person, one that conceives of dignity and animality as related rather than opposed. This is another piece of definite content, one that suffuses the capabilities list as I conceive it.

The capabilities approach is a powerful tool in crafting an adequate account of social justice. But the bare idea of capabilities as a space within which comparisons are made and inequalities assessed is insufficient. To get a vision of social justice that will have the requisite critical force and definiteness to direct social policy, we need to have an account, for political purposes of what the central human capabilities are, even if we know that this account will always be contested and remade.

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