

Capabilities, Human Rights and Moral Pluralism

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Abstract:

Amartya Sen and Martha Nussbaum, the pioneers of the capability approach, have divergent views on human rights. While Sen advocates that human rights should be considered more as social goals towards which every society should progress, Nussbaum thinks that human rights should be seen as side-constraints that serve as benchmarks in international standard-setting and national public policy debates. Critically examining the difference between these two views and exploring the relation between the concept of capabilities and human rights, I argue that moral pluralism of the capability approach has a lot of potentiality to press forward the second and third generation of human rights, namely, socio-economic rights and group rights.

Keywords: *Capabilities, Consequentialism, Deontology, Economic Rights, Group Rights, Amartya Sen, Martha Nussbaum*

Introduction

The theory of human rights helps to effectively address many contemporary issues of social justice. From the moment of its adoption in 1948 until today, the Universal Declaration of Human Rights has provided inspiration and guidelines to governments, national courts, parliaments, non-governmental organizations, professionals and social activists for effectively combating atrocities and unjust social practices in different parts of the world. Its principles have empowered marginalized groups and minorities, such as the Black Americans in America, the Dalits and tribal groups in India, indigenous groups in Australia, Mexico and Latin America and ethnic groups in most African countries to gain space in the social and political mainstream. Its provisions and mechanisms have enabled women suffering from domestic violence, social exclusion and economic deprivation to unequivocally articulate their aspirations for equal dignity and respect at home and in society. The

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effectiveness of human rights is further consolidated by its international mechanisms and a popular appeal that cuts across nations, cultures and religions.

In contemporary political philosophy, the capability approach advocated by Amartya Sen and Martha Nussbaum offers a framework to think about what social justice is. By focusing on people's capabilities, it directly looks at the kinds of freedoms they enjoy, and more specifically, at the opportunities and choices available to them in leading valuable human lives. It points out the limitations of traditional approaches that focus on GNP per capita, maximization of welfare or distribution of basic resources. It raises more pertinent questions: how well is the wealth of a society distributed among its different sections (class, caste, gender, etc.)? What are the social and economic opportunities available to citizens in leading a life of their choice? What are the personal and social conditions that facilitate or hinder individual's ability to transform resources into different functionings? Answering these questions re-orient the way we think about poverty, inequality, development, living standards and so on.

This is the reason why moral philosopher Bernard Williams, for instance, seems to be in favour of the concept of capabilities rather than human rights: 'I am not very happy myself with taking right as the starting point. The notion of a basic human right seems to me obscure enough, and I would rather come at it from the perspective of basic human capabilities.'¹ Moreover, since 1993, the Human Development Reports of the UNDP (United Nations Development Programme) have been restructured to accommodate the theoretical underpinnings of the capabilities approach. The measurement of quality of life in the nations of the world and inter-country comparisons are made also based on people's capabilities.

In this essay, I critically examine the relation between these two influential concepts: capabilities and human rights. Does the capability approach complement a theory of human rights? Or, do the two approaches compete with one another? What are the comparative advantages, if any, when we focus on capabilities rather than on human rights and vice versa? In what way can the capability approach contribute to the progress of the human rights discourse in the contemporary world?

The first part examines Sen's understanding of human rights situating it in the context of his goal-view of rights or goal rights system. It also highlights the ethical method of 'broad consequentialism' that underpins Sen's goal rights system. The second part identifies the specific characteristics of Nussbaum's version of the capability theory. Her proposal to formulate a list of central human capabilities as guidelines for pursuing social justice makes her approach to rights and particularly to human rights different from Sen's goal rights system. The essay also interprets Nussbaum's approach to human rights as an 'integrative deontological system' that asserts the inviolable nature of all the capabilities in the list and yet accommodating within it the possibility of consequential reasoning in contexts where rights conflict with one another. The third part points out that moral pluralism that underpins the capability approach helps to advance the theory of human rights specifically in the sphere of socio-economic and group rights.

Throughout the essay I use the term ‘human rights’ to denote more to a democratic and public *discourse* of human rights than to specifically refer to the canonical statements of the Universal Declaration. While a legal approach to human rights has its advantages, and should be pursued to strengthen its effectiveness, it is equally important to recognise it as a meta-legal or moral resource available to anyone who wants to build better human communities. The word ‘discourse’ has a special significance because more could be achieved when human rights are seen as a modern democratic idiom that facilitates dialogue between nations, cultures and religions.

1. Sen’s Goal-view of Human Rights

Sen proposes ‘capability to functionings’ as the most appropriate criterion or measure to evaluate how well a society and individuals in that society are doing. This criterion has two distinct yet interrelated notions: *capability* and *functionings*.² Let us begin with functionings. Human lives could best be seen as consisting of different activities and states of being. We eat, work, study, travel, visit our friends, raise a family, pursue a career and engage ourselves in a variety of activities. But the fullness of our life cannot be captured if we limit ourselves to describing these activities alone. We also need to pay attention to different states of beings that these activities are intended for, namely, being well-nourished, living a healthy and long life, leading a happy and satisfied life and so on. In order to include both our activities and our states of being, Sen defines functionings as a mixture of ‘doings’ and ‘beings’ that a person manages to achieve. Functionings thus include a wide variety of doings and beings. These range from the most rudimentary functionings such as adequate nourishment and good health to more multifaceted ones such as achieving self-respect and participation in social and political life.

Though the idea of capability is closely related to functionings, they are not the same. If functionings represent what a person manages to achieve in life, capabilities stand for the various combinations of functionings the person can achieve or could have achieved. Capabilities, more precisely, refer to the set of *real opportunities* (as against formal opportunities) and *valuable choices* (as against imagined/trivial choices) available to a person in leading a life.³ The overall quality of life of the person is determined by these opportunities and choices and not merely achieved functionings. It is for this reason that Sen thinks capabilities to be the best candidates to represent the notion of positive freedom. Capabilities, he affirms, are ‘notions of freedom, in the positive sense: what real opportunities you have regarding the life you may lead.’⁴

We could, for instance, say that in the capability theory it is not enough to know that one is not a doctor, instead, an office assistant. It is also important to know, whether she could have become a doctor and chose not to, or whether she did not have enough money to pursue medical education, or whether she belongs to a community where medicine is a male dominated profession. Though all relevant information on *both* capabilities and achieved functionings will facilitate a better judgment on

people's overall quality of life, the aim of the capability approach as a theory of social justice is to create conditions where all citizens will enjoy equal capabilities. The reason for a decisive focus on capabilities rather than on achieved functionings is obvious enough. Concentration on functionings would mean that we push people into particular ways of doing and being. In contrast, focusing on capabilities creates spheres of choice where people could themselves choose the types of functionings they consider as valuable.

Rights and Capabilities

Rights, without doubt, have a longer and more influential history than Sen's concept of capabilities. They have come to occupy an important place in contemporary moral and political discussions. When non-governmental organizations and people's movements want to make visible people's deprived conditions and secure for them some basic social, economic and political claims, they regularly use the language of rights. When international agencies such as the UNO wish to point out the failure of governments to respect and promote people's basic entitlements, it is the rhetoric of rights that they prefer to employ. Or, the governments themselves when reviewing their performances or proposing certain constitutional changes, it is, again, a set of fundamental rights that serves as a checklist.

Despite their wider influence, there is hardly one particular way of understanding what rights mean. Sen identifies at least two major approaches to rights in contemporary philosophical discussions.⁵ The first approach is known as the *instrumental view* of rights. Rights in this view are not valuable in themselves. They are considered to be instruments to bring about other right-independent goals mostly calculated in terms of sum total of personal utilities. This is typically a utilitarian approach to rights. Rights violations are not intrinsically bad, nor are their fulfilment considered as intrinsically good.

Unfortunately, many countries in the world seem to follow this crude utilitarian calculus when pursuing developmental projects such as building huge dams, establishing industries and sometimes even initiating large scale deforestation. The inherent importance of rights of millions of people affected and displaced by these projects and the ecological disasters that accompany them hardly merit the attention of governments and their planners. They are mostly concerned about the overall aggregative benefits that these projects might bring about. Claude Lefort points out how Marx, who obviously championed freedom of speech and association, right to vote, workers' right to good working condition and so on, seemed to have applied some sort of aggregative and instrumental thinking regarding the concept of human rights. He denounced it as 'the rights of egotistic man', 'separation of man from man' and 'recognition of slavery' because they stood in the way of achieving the social goal of a perfect communist society.⁶

The second approach is called the *constraint view* of rights. Rights, in this approach, are seen as side-constraints on what others can or cannot do. Rights here are valued intrinsically and therefore any rights violation is wrong *per se* even if such violations would result in better consequences or states of affairs. Robert Nozick in *Anarchy, State and Utopia* promotes such a view. His fundamental argument is that people have rights and that these rights should not be traded off for the sake of the greater good. For him 'rights do not determine the social ordering but instead set the constraints within which a social choice is to be made, by excluding certain alternatives, fixing others, and so on.'⁷ For example, he considers the individual's right to property as an inviolable right. No reason or circumstance can warrant the state or any other agency to take away individual's property for redistribution.

The important advantage of the constraint view is that it takes people's fundamental entitlements seriously and does not tolerate applying the utilitarian logic of maximizing welfare to any of them. If some brilliant planners come up with a suggestion of improving a society's overall economic prosperity but at the expense of arbitrarily violating, say, individual's right to choice of labour or right to own private property, the constraint view then may be said to act as a barrier to such efforts. However, the constraint view has a serious drawback as well. The advocates of this view tend to focus exclusively on rights that have come to be associated with negative freedom understood as the absence of interference or constraints by others. A whole range of rights that guarantee to people elements of positive freedom represented by people's capabilities to functionings is left out of the moral accounting. A person who happens to be poor and hungry because of low wages or unemployment may not be in want of any aspect of negative freedom. She may strictly speaking encounter no constraints by the state or by some individuals from seeking a higher wage or finding employment. But she does lack the opportunities to choose a life without poverty and hunger.⁸

Sen illustrates further how the idea of negative freedom is an inadequate approach to deal with issues of public policy by his empirical studies on famines in Bangladesh, West Bengal, China, Ethiopia and Ireland.⁹ Moral disasters like famines can go hand in hand with a social and political system in which no element of negative freedom is violated. During famines people die of starvation mostly not because of a substantial reduction of food availability but because of the failure of entitlement systems that enables them to establish command over food. As Sen observes, in 1974 Bangladesh went through a famine at a time when the food availability was considerably good. But several occupation groups lost their entitlement to food through loss of jobs and other economic changes such as inflation.¹⁰

In contrast to the instrumental and constraint view of rights, Sen advocates an alternative approach that brings together the concept of rights and capabilities. He calls it the goal-view of rights or goal rights systems. He defines it as 'a moral system in which fulfilment and nonrealization of rights are included among the goals, incorporated in the evaluation of states of affairs, and then applied to the choice of actions through consequential links.'¹¹ We could highlight two important

characteristics of Sen's goal rights system. First, the goal rights system values rights intrinsically as well as for their instrumental use. For instance, in a democratic nation the right to freedom of speech expressed in the form of free and independent press is valued not only for its own sake but also for a number of positive results it could effect when it is used as a voice of the poor and powerless and as a medium to critically evaluate public policies pursued by the government. Or, take the example of right to education. A person's right to education is valued not only for the economic and social benefits it will bring to the individual but also for the intellectual enhancement and personal growth that cannot be reduced to instrumental reasoning.

Second, the goal rights system encourages us to think of fulfilment of rights as general social goals to be promoted.¹² Instead of seeing rights in the usual terms of a relation between two persons – the right holder and the party to whom the claim is made – or, considering them as demanding only that we refrain from violating the rights of others, this approach sees the relation between persons and capabilities to which they have rights. This would mean that in evaluating how well a society and individuals in that society are doing, we take into account *both* fulfilment of rights as well as other non-right consideration that together go to form social goals. We cannot, for example, rank a particular society high on the ladder for social justice just because it has not violated people's right to property but has done very little in the area of distributive justice including the prevention of avoidable famines, deaths and malnutrition. In this case, both people's right to property and their opportunities to be free from hunger and disease together should form a society's goal.

Looking at rights in terms of rights to capabilities implies that people are entitled not only to a number of particular rights, say, right to x, y and z, but also to 'metarights' by way of effective public policies such as p (x), p (y) and p (z), and social institutions such as s (x), s (y) and s (z) that genuinely pursue the goal of realizing these rights.¹³ Take for example the right to employment. It is reasonable to insist that all citizens enjoy the capability to be employed. It is even legitimate to protest against and take into task governments that fail in this regard. But in a context and country where this goal is not immediately realizable Sen's goal rights system makes it possible to think that people still have the right to effective economic and social policies that will pave the way for the realization of this right in the near future.

Broad Consequentialism

Since the ultimate aim of the goal rights system is to maximize rights fulfillment and to minimize their violation and include them among general social goals, Sen advocates an ethical method of broad consequentialism.¹⁴ Consequentialism and deontology are the two most influential ethical methods used in evaluating individual actions and social choices. These are usually opposed to one another. A typical consequentialist judges the goodness of an action according to the consequences it produces overriding some times individual rights. A typical deontologist, on the other

hand, considers individual rights to be intrinsically important and delineates a field of actions by specifying some inviolable side-constraints with no special consideration to consequences.

Sen tries to reconcile these two views. Since he is interested in promoting a person's capabilities to valuable human functionings, he defends consequential reasoning to be the most suitable ethical method. Public policies, market mechanisms and social institutions are evaluated to be good and just insofar as they widen people's capability sets consisting of their opportunities and choices to lead valuable human lives. However, unlike a conventional (utilitarian) consequentialist, Sen 'broadens' this consequential reasoning to accommodate some important deontological concerns. He argues that rights considerations are part of an evaluation of the state of affairs. Furthermore, given the fact that human rights exert a considerable moral influence and can play a significant role in bringing economic, social and political security to people across the world, there is no reason why they should not be included as part of the social goals of every country and the international community.

2. Nussbaum's Side -constraint View of Human Rights

One of the important differences between Nussbaum's and Sen's version of the capability approach is the list of capabilities. Nussbaum agrees with Sen that capabilities are the most appropriate criterion or space to evaluate people's quality of life. She also agrees that the capability approach as a theory of social justice should focus on people's capabilities rather than on functionings so that people are not compelled to act in particular ways but are given ample opportunities to choose the types of functionings they consider as valuable.

Yet, Nussbaum traverses a more radical path: 'Sen has focused on the role of capabilities in demarcating the space within which quality of life assessments are made; I use the idea in a more exigent way, as a foundation for basic political principles that should underwrite constitutional guarantees.'¹⁵ It is not enough, she argues, that we only choose the space of capabilities to evaluate how well people's lives are going, but it is also important to democratically deliberate a definite but 'open' list of central capabilities that will serve as benchmarks for this evaluation.

Drawing inspiration from Aristotle-Marx's conception of 'truly human functioning' and focusing on the central notion of what it means to live a life with 'human dignity', Nussbaum proposes a set of entitlements that every society should strive to guarantee to its members. The list includes capabilities such as living a long life and avoiding premature death, having good health and adequate nourishment, freedom of movement, freedom from assault, freedom of choice regarding sexual matters, the ability and the opportunity to use one's senses, imagination, thinking and practical reason, and the ability to engage in various forms of familial, social and political relationships.¹⁶

We could point out at least two reasons why Nussbaum, unlike Sen, takes a decisive stand on what the central human capabilities are. The first one among them is to provide a more definite *normative* content to the capability approach. In contrast to the utilitarian or some versions of

resource-based theories of justice, it is important to insist in general, as Sen does, that people's capabilities should play a crucial role in evaluating the quality of their lives. But Nussbaum would like to go a step further. If the capability approach can operate with some cross-culturally agreeable central human capabilities, it has then a better scope of functioning as a substantive theory of justice. Not surprisingly, Sen himself often speaks of the need for paying attention to 'a relatively small number of centrally important'¹⁷ capabilities such as nutrition, health, mobility, political and civil liberties, free choice of labour, social respect and so on. He does this of course without committing himself to an *a priori* list of capabilities for a methodological reason that the endorsement of a set of capabilities will put a constraint on the pluralistic and democratic character of the capability approach.¹⁸

The second one is the realization that a flourishing human life could be spoiled or wasted by elements of '*tragic events*' most of which are human-made and some others that are not totally under the control of human agents. These could be as disparate as natural endowments, illness, war, political instability, communal violence and natural disasters. Whether we like it or not, people's ability to bear the impact of these events is not limitless. Even persons whom we consider to be of strong character (eg. Aristotle's *eudaimon* person, Biblical character Job, etc.) seem to lose equilibrium in the face of serious and continuous misfortunes.¹⁹ A theory of social justice that enumerates a list of a minimum of entitlements that people are obliged to provide one another is therefore better equipped to if not totally overcome the impact of these reversals but at least minimize it to the extent that it does not dramatically prevent individuals pursuing a valuable human life and enjoying equal standing in society.

Nominal rights and Combined Capabilities

Today, in many countries in the world including the ones that are usually considered to be progressive liberal democracies, we are faced with the situation where human rights continue to remain as nominal or only at formal levels. The law in action does not coincide with the law in the book. The constitutions and other legal instruments do guarantee many and some time very elaborate system of rights. But what we very often witness is that these are not effectively supported by state action. The state aggression, the poor functioning of state mechanisms and the lack of transparency and accountability of governments contribute to a situation where people's guaranteed rights fail to get translated into real opportunities.

This unfortunate situation, Nussbaum points out, could be in a way more effectively tackled when the language of rights is complemented with the idea of what she calls 'combined capabilities'.²⁰ By combined capabilities she means that the central human capabilities enumerated in her list are indeed a combination of three kinds of capabilities: basic capabilities, internal capabilities and external capabilities. *Basic capabilities* refer to the most rudimentary innate powers that every individual possesses but in an undeveloped form. A newborn child, for example, has the capability for speech

and language, love and gratitude, practical reason, etc. in this sense. Every being born of two human parents could be considered to possess basic capabilities. *Internal capabilities* refer to a developed sense of powers and capacities that every individual human being grows towards when sufficient conditions are provided. While some internal capabilities such as the ability to eat, to move around and to be capable of sexual functions may require just time and bodily maturation with a minimum of supporting conditions, others such as the ability to speak a language and creative use of one's thinking and imagination may require more intensive and elaborate supporting conditions. The third kind of capabilities is known as *external (combined) capabilities*. These refer to internal capabilities combined with appropriate external conditions for the exercise of different human functions. A progressive combination of these three leads towards developed central capabilities. These follow patterns or stages of development leading towards maturation and actualization.

Since combined capabilities are concerned with both a person's innate powers as well as external opportunities, they have a more direct and precise way of addressing issues of social justice. They drive home the idea that the realization of a right for citizens requires much more than just the traditional liberal idea of negative freedom and absence of negative state action. It requires, among other things, creating opportunities and institutional support that would enable all citizens to live a life of human dignity. The right to education, freedom of conscience, political participation and freedom of speech are all best seen as human capacities that need further specification in the lines of certain internal capabilities combined with external conditions. The right to education, for example, will continue to remain a nominal right if all the citizens in a country do not have the material means or the external opportunities by way of good and efficient schools and effective educational system. Similarly, women's right to political participation will remain only a formal right if no substantial affirmative efforts are made to tackle the obstacles facing them in fully exercising this right.²¹

Besides this conceptual precision and enrichment that Nussbaum's list of capabilities brings to the discourse of human rights, we could quickly mention some other merits as well. First, it is not culturally biased, as rights language is believed to be.²² Often it is alleged that human rights come from western tradition and therefore it is not culturally amenable to other traditions. This stand off between different cultures could be more easily resolved and a favourable climate could be created in the framework of capabilities. Second, Nussbaum's list of capabilities, unlike the list of human rights, explicitly includes some important entitlements such as bodily integrity, freedom from domestic violence and freedom from sexual harassment at work that are pertinent for achieving sex equality. Third, the list of capabilities provides a better justification for pursuing affirmative action or positive discrimination for socially disadvantaged groups in society. In this regard, I have argued elsewhere²³ that the capability approach in general and more particularly Nussbaum's understanding of economic, social and political rights in terms of combined capabilities requires us to advocate some measures of affirmative action policies and programs. Depending on the country and the context, policies in favour

of the disadvantaged groups in education, employment and political participation might be necessary to counteract the systematic exclusions and deprivation experienced by them over the years.

Integrative Deontology

Recall here our earlier observation that Sen advocates an ethical method of ‘broad consequentialism.’ In contrast to this, we could say that Nussbaum advances an ethics of what could be called ‘integrative deontology’.²⁴ It is a deontological approach in as much as each item in the list of central capabilities is important on its own account. No capability can be sacrificed or overridden for the sake of guaranteeing some other capabilities. Nor should a quantitative cost-benefit analysis be applied to suppress some capabilities and promote others. The list of central capabilities, in a way, is ‘irreducibly plural’ in nature and content. This implies that the capabilities found in the list represent a ‘threshold’ below which a human person could not be considered as living in a truly human way. The political distribution of society should be arranged such that every citizen should be enabled to cross this threshold. It urges the governments to pursue public policies that will guarantee to all the citizens everyone of these capabilities. In a truly Kantian deontological spirit Nussbaum’s version of the capability approach is not satisfied if we have to make trade offs regarding any of the capabilities.²⁵

If the list of capabilities are inviolable side-constraints that should be guaranteed to people no matter whatever else the social goals one might promote, so too are human rights. Human rights, according to Nussbaum, should function as side-constraints in international standard-setting and public policy debates within each country. The items enlisted on the charter of human rights, like the list of capabilities, typically serve as benchmarks or checklist that guide governments and policy makers whatever be the social and political goals they want to achieve.

By suggesting that Nussbaum advocates a side-constraint view of human rights, we are not however saying that her approach could be put along with other traditional side-constraint views. Nussbaum’s side-constraint view, for example, must be distinguished from Nozick’s libertarian views. Nozick seems so fixated on rights as side-constraints and their procedural fulfilment that he allows no room for other considerations whatsoever. On the contrary, Nussbaum realises that though it is not desirable that any of the basic entitlements found in the list of capabilities be juxtaposed to one another for choice, we do face a number of life’s ‘tragic questions’²⁶ when we have to look at the consequences for discerning whether we have this or that right or, what set of rights deserves our immediate attention. It would be unfortunate if, for example, a government were forced to choose between the violation of citizens’ personal liberties and allowing a large-scale terrorist attack. But this does not warrant the violation of people’s liberties arbitrarily and continuously. All efforts and resources have to be mobilized to overcome this unfortunate situation. In this regard, Nussbaum rightly argues against Nozick’s position on the right to property: why should the right to property and ownership have absolute priority in a situation of famines and hunger? She points out that there should

be a prudential balancing between property rights and the requirements of redistribution. It is for this reason that Nussbaum on the one hand thinks that some limited form of property rights should be defended as a capability that cannot be easily traded off for other interests. At the same time she also strongly supports land reform policies that would pave the way for enhancing the capabilities of all citizens.²⁷

3. Moral Pluralism and Three Generations of Human Rights

I have so far argued that Sen and Nussbaum differ from one another on whether the capability approach should endorse a list of central human capabilities. I have also pointed out that they also have divergent views on whether consequential reasoning or deontological method would be the most suitable ethical method for promoting people's capabilities and social justice. Nevertheless, their approaches strongly support human rights and recommend that their defense be enlarged to think of human rights as rights to some fundamental capabilities. Human rights, like human capabilities, are vital moral claims that individuals have simply by virtue of being human persons independent of their nationality or affiliation to a class or any ethnic, cultural or religious group. These may or may not be legally endorsed by individual countries or societies. But insofar as they represent a person's capabilities to live a dignified human life they solicit the obligation of others to fulfil them irrespective of their citizenship or any other membership.

Moral Pluralism

It is important to keep in mind that Sen and Nussbaum do not support human rights for any foundational reason.²⁸ Human rights are misunderstood, they argue, if they are believed to contain some foundational values that people belonging to different cultures, religions and societies could endorse in the same way. Nor do they, as some human rights activists want, advocate that human rights be used as what Dworkin calls 'trumps' to settle disputes in public debates.²⁹ Appealing to such foundational claims and using human rights as 'final words' in discussion have in the past seriously hampered the progress of human rights discourse. Such a line of thinking fails to understand that values of freedom and security, private property and distributive justice, self-determination and national sovereignty found in the human rights charter do conflict with one another. If these values conflict so too are the rights that represent them as claims. Sen and Nussbaum therefore advocate that human rights, just like the capabilities approach, ought to be compatible with moral pluralism.

Sen points out that the capability approach, as a moral theory of justice is plural on at least three accounts.³⁰ First, it is plural in terms of *principles*. Judging people's quality of life in term of their capabilities requires the acceptance of the multiplicity of fundamental principles. It does not claim, even when they have to be weighed against one another, that these multiple principles are

combined into one general principle that would count as the ultimate standard. This is one of the reasons why Sen has deliberately resisted not developing a systematic account of capabilities.³¹ Second, the capability approach, unlike utilitarianism, requires a *plural informational base*. Utilitarianism includes only information concerning personal utilities understood in term of happiness, satisfaction, or desire-fulfilment. Information concerning freedom, rights, and distributive justice are excluded. These factors play a crucial role in the capability approach to evaluate how well a society and individuals in that society are doing. Third, the fact of *human diversity* is central to the capability approach. Human beings differ from one another in a number of ways. We differ from one another in our physical and psychological make-up. We begin life with differences in wealth, endowments and inheritance. We live in a friendly or difficult natural environment. We make our living and try to achieve our life purposes in societies and communities that offer more or less opportunities. These characteristics influence our ability to transform resources and goods into different capabilities to functionings.

Even though Nussbaum's insistence on a list of capabilities might at first appear to narrow down the pluralistic character of the capability approach, in fact, it is not so. The issue of moral pluralism remains a central concern for Nussbaum at least for three fundamental reasons.³² First, the list of capabilities is provisional and '*open-ended*'. Dialogue with other cultures forms an integral part of the procedure in formulating the list. New capabilities could be added or the existing ones could be reformulated to accommodate local particularities. Second, similar to Rawls's idea of political liberalism, the list is meant to be a '*freestanding moral idea*' for the political purpose of working towards an 'overlapping consensus' without basing itself on any particular metaphysical or religious comprehensive conception. Third, the list is thought of mainly as a basis for *justification* rather than for implementation and coercion. That is, while insisting that all countries in the world make efforts to provide its citizens a maximum realization of the capabilities found in the list, it allows a lot of space for each country for the manner in which this will be implemented.

What does this mean for the international human rights movement? The moral pluralism that underpins the capability approach makes us realize that the diffusion of human rights will be much more effective if it advocates a pluralistic approach that is sensitive to both deontological and consequential concerns. The reason for this is obvious. Even though human rights theorists and activists tend to exclusively employ a language of right, a closer look at the list of human rights reveals that it is, in fact, a mixture of both 'perfect' and 'imperfect' claims. Some are more direct and specific than others in pointing out who the right holders and what the claims are as well as the party to whom the claims are made. That no one shall be subjected to torture or cruel treatment by the state or any other agency is more clearly characterized than, for instance, the human right claim that everyone, as a member of society, has the right to social security. It is relatively easier to identify and bring to books the perpetrators who engage people in slavery or bonded labour than, say, those who violate people's economic, social and cultural rights. Human rights advocacy therefore should take

into account both rights considerations as well as non-rights social goals in terms of policies that would pursue the maximum fulfilment of rights. Such a methodology today becomes imperative, if the human rights discourse has to progress in the most challenging areas of what has come to be known as the second and third generation of human rights.

Three Generation of Human Rights

Today, the human rights experts, along with the idea of 'interdependence and indivisibility' of human rights, talk of the evolution of human rights into three generations.³³ The first generation rights are the basic political and civil liberties: freedom of opinion and expression, freedom from torture and arbitrary arrest, freedom of conscience and religion, the right to vote, and so on. The second generation rights refer to the socio-economic claims: the right to education, housing, health care, employment and an adequate standard of living. Even though these rights are more far-reaching claims often requiring a more welfarist state, they are essentially individualistic claims because they are meant to enhance individual's well-being. The third generation rights, by contrast, have to do with groups or communities rather than individual persons. They include national rights to self-determination, minority language rights and the right to public goods such as peace, environmental integrity and economic development.

We could reasonably affirm that there is a considerable conceptual as well as international political consensus on the need to endorse and even actively promote first generation rights.³⁴ Sen and Nussbaum too give a strong priority, if not an absolute priority, to these rights.³⁵ One of the reasons for their insistence on capabilities rather than on functionings is precisely to leave room for freedom and choice. Today, what is however very controversial and seem to seriously slow down the progress of human rights discourse are the second and third generation rights, namely, socio-economic rights and group rights.

Capabilities and socio-economic rights

In 1944, the US president Franklin D. Roosevelt in his State of the Union address declared: 'True individual freedom cannot exist without economic security and independence. Necessitous men are not free men'.³⁶ He is also the one who called the nations of the world to build a world that is 'free from want', along with other freedoms of speech and worship and freedom from fear. In a similar spirit, on 14 August 1947 the eve of Independence of India, Jawaharlal Nehru its first Prime Minister invited the country to see freedom as an opportunity to end 'poverty and ignorance and disease and inequality of opportunity'.³⁷ These aspirations receive a detailed articulation in *Article 25* of the Universal Declaration:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstance beyond his control.

Even though people's socio-economic needs and their fulfilment are expressed in the language of rights as 'right to food,' 'right to housing,' 'right to medical care' and so on, they continue to remain as nominal rights without any force. Today, this raises a lot of scepticism about the relevance of the international human rights movement as well as the sincerity of people who advocate it.

The first important reason for such scepticism is the reality and magnitude of deprivation in the world today. A large section of population in the world do not have accesses to basic needs to live a decent human life. Millions of people try to survive without adequate nutrition, access to clean water, decent shelter and health care services. The second reason seems to lie in the language of ambiguity and non-commitment failing to express a sense of urgency of people's needs in this area. The International Covenant on Economic, Social and Cultural Rights uses much weaker language than the International Covenant on Civil and Political Rights. This could be seen in the terminology of 'progressive realization' that frames these rights. This leads to the assumption that rights connected with people's economic welfare do not have the urgency and the priority that it deserves. The third one is the double-standards shown by most of the liberal states. While enthusiastically preaching on the moral ideals of human rights, they continue to pursue economic policies that perpetuate an atmosphere that is not conducive to the fulfilment of people's fundamental needs. The 'over activism' shown by the UN and other international agencies in naming and shaming countries for their civil and political rights record fail to display a corresponding activism in holding nations and institutions responsible for violations of people's economic rights.

How does the capability approach help overcoming the obstacles in the area of socio-economic rights? Do the insights offered by the capabilities approach help in any way to press forward the idea of human rights? If rights are seen in terms of rights to capabilities, does this perspective offer more prospects of fulfilling people's welfare rights?

The capability approach, first and foremost, emphasizes the idea that people's socio-economic entitlements and capabilities are as important as any other interests. A moral theory that pays attention only to first generation rights of political and civil rights are inadequate. Disease, famines, malnutrition and infant mortality are as much matters of concern as any denials of political or civil liberty. When such moral disasters are avoidable, the refusal to address them is an explicit insult to human dignity and a failure to take seriously the unconditional worth of each person.

In this connection, the human rights discourse loses its moral appeal when it concentrates only on sharpening its legal instruments but fails to devise mechanisms for just international trade, redistribution of wealth, and radical reformation of ownership of property that would effectively work towards realization of socio-economic rights. Only very recently that this has received the attention of

the international human rights movement. The Commission of Human Rights now tries to elaborately report on areas such as food, housing, foreign debt, effects of structural adjustment and so on. But much more remains to be done.

Second, though the legal and institutional efforts can go a long way in carrying forward people's socio-economic needs, the influence of human rights need not be limited to this. 'The importance of human rights,' reminds Sen, 'need not lie only in their putative proposals for legislation and institutionalization. Human rights can have their own domain of influence and importance without being parasitic on – or even being wisely reinforced by – subsequent legislation.'³⁸ Insofar as most of the socio-economic needs are fulfilled better by effective public policies than by insisting them to be rights, the obligation to fulfil them becomes the responsibility of anyone who can help. In this regard, human rights could be used as meta-legal or moral resources by governments, non-governmental organizations, international agencies, the press and the media to push forward a maximum realization of these rights.³⁹

Third, thinking of socio-economic rights in terms of people's capabilities helps to understand that these are indeed deeply interrelated to other rights.⁴⁰ A country can indeed economically prosper and has a better chance of avoiding major disasters like famine, disease and so on when there is a functioning democracy that guarantees basic civil and political rights. Civil and political rights offer people the opportunity to draw attention to important issues and demand appropriate public action. Similarly, civil and political rights have more opportunities for flourishing in an atmosphere of economic security and development. Today, many official United Nations resolutions begin to reflect this idea by insisting on the 'interdependent and indivisible' character of all human rights – economic, social, cultural, civil and political rights.

Capabilities and Group rights

It is often pointed out that human rights are predominantly rights of the individuals and therefore fail to address some of the fundamental third-generation rights known as 'collective rights,' 'group rights' or 'cultural, linguistic and religious minority rights'. Will Kymlicka expresses clearly the problem existing in this area:

While minority [group or collective] rights are indeed essential, the solution is not necessarily to add a detailed list of minority rights to human rights declaration in international law. Instead, we must accept that traditional human rights are insufficient to ensure ethnocultural justice, and then recognize the need to supplement them *within each country* with the specific minority rights that are appropriate for that country.⁴¹

Kymlicka, on the one hand, argues that the original list of human rights contained in the Universal Declaration is too narrow and needs to be expanded to accommodate certain collective or group rights.

This becomes essential and a matter of justice given the fact that today many countries in the world have cultural, linguistic or religious minority groups whose urgent needs and aspirations cannot be fulfilled unless these groups are granted certain rights collectively. We cannot, for example, expect that individuals enjoy language or cultural rights unless the community as a whole is granted the assurance of preserving this right. On the other hand, Kymlicka also expresses a serious difficulty in gaining international consensus on the enforcement mechanisms for these group rights because the groups are so very different and diverse as indigenous people, immigrants, refugees, guest workers, colonizing settlers, Roma, religious groups and so on. All of them differ in their size and social setting and have different needs and aspirations. Moreover, there is always the danger that these groups could seriously deprive or constrain the freedom and rights of individuals belonging to them.

The conceptual dilemma whether group rights are also human rights on the one hand, and the possible conflict between group rights and individual rights on the other, could be resolved by looking at how the capability approach sees the relation between individual capabilities and community. Since the aim of the capability approach is to promote people's capability to function it focuses on the individual person as the most basic unit of analysis and comparison. Political arrangement of distribution is evaluated to be just and effective only insofar as all individuals in that arrangement enjoy more or less an equal amount of real opportunities and valuable choices in leading meaningful human lives.

Focusing on larger units of analysis such as the family, class, caste, gender, cultural or religious community, nation and so on are useful and even necessary under certain contexts and circumstances in order to evaluate the structural or institutional support for individuals. However, such focus often runs the danger of hiding many forms of deprivation and unequal distribution to the individuals belonging to these collectives. The capability approach thus focuses primarily on individual's capabilities, but stresses also the importance of the institutional framework for enhancing individual freedom.

This is the reason why Nussbaum emphasizes that the *principle of each person's capability* and the idea of the *individual as the basic political subject* play a central role in the capability theory.⁴² These principles motivate us to ask: Does each person enjoys access to the capabilities enlisted in the threshold or at least, stands the chance of crossing this threshold? What are the real opportunities and valuable choices available to each and every individual? Sen also substantiates this need to focus on the individual's capability set. He argues that an aggregate understanding of the family can do harm to individuals well-being and freedom and that the problems of hunger and malnutrition should not only be seen as an entitlement failure of the family but also as a problem of distribution of entitlements *within* the family.⁴³

Yet, along with its focus on promoting individual's capabilities, it is typical for the capability approach to be simultaneously concerned about capabilities that are strictly speaking not individual capabilities. These include public goods such as transport, parks, museums, healthy environment, etc.

as well as what Charles Taylor calls the ‘irreducibly social goods’ such as language, culture, social ethos etc.⁴⁴ We could together call them ‘non-individualized social goods’. These goods are enjoyed collectively, rather than by individuals, on their own account. A healthy environment, for example, is a non-individualized social good. If a healthy environment that is free from malaria and other endemic diseases is secured for one person living in a particular region, others living in the community enjoy its benefit as well. This is true in the case of a language, which seems to be the essential feature of a community. Unless the community as a whole is granted the assurance of preserving this social good, it is difficult to promote the capabilities of individual persons to speak their language and to lead valuable human lives.

Both for Sen and Nussbaum, the rationale for paying attention to individual capabilities are twofold: first, it is based on the moral conviction that each person is valuable and worthy of respect as an end that cannot be overridden by some aggregative concerns and procedures; second, we do this by way of strategy in combating entrenched evil social practices that do not give importance to the well-being and freedom of individuals. At the same time, the reason for paying attention to non-individualized social goods is based on the realization that individuals acquire and develop their capabilities in the context of different institutional arrangements.

The correlation between individual’s capabilities and non-individualized social goods that is central to the capability approach makes it possible for us think that certain groups in society need to be granted rights for the sake of well-being and freedom of individuals in the group. But at the same time what should be kept in mind is that the rights of any group are always asserted against some larger unit rather than against its own individual members. Group rights to practice religion, for example, should not rule out the rights of individuals to leave a religious group when they choose to do so. Group rights to language should not be a pretext to prevent an individual from learning another language other than the language of the group. We cannot rule out the possibility of imbalance of power sharing and suppression of human agency within religious and language minorities, women’s movements, ethnic and cultural communities. As Claude Lefort rightly reminds, the human rights movement is always intended to overturn any attempt to vest unlimited sovereignty on governments and to challenge unequal and oppressive power relations in the family, religions, and cultural groups.⁴⁵

Concluding Remarks

This essay has been largely an ethical enterprise on the concept of capabilities and human rights. I have pointed out that Sen advocates a consequentialist approach that includes human rights considerations as part of social goals to be promoted. Nussbaum, in contrast, recommends a side-constraint view of human rights that is consequence sensitive in situations where some rights need more immediate attention than others. I have argued that despite these divergent points of departure what underpins the capability approach is moral pluralism that values human rights for their intrinsic

worth, their role in securing to people social, economic and political security and for their formative influence in evoking a sense of solidarity with victims of repressive governments and oppressive social practices no matter what nations, cultures and religions they belong to. Such a pluralistic and pragmatic perspective has a better scope of advancing the international human rights movement in the contemporary world.

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¹ Bernard Williams, 'The Standard of Living: Interests and Capabilities', in Geoffrey Hawthorn (ed), *The Standard of Living*, (Cambridge: Cambridge University Press 1987), p.100.

² Sen introduces the capability approach to social justice as an alternative to the prevailing utilitarian and Rawls's theory in the Tanner Lecture 'Equality of What?' in S. McMurrin (ed), *Tanner Lectures on Human Values: Volume I*, (Cambridge: Cambridge University Press 1980). But from then on in a number of subsequent writings he has been elaborating and clarifying what the notion of capability means and how the capability approach could fruitfully be used for analysing equality, poverty, quality of life and development. The following could be considered as seminal writings that directly deal with some fundamental concepts involved in the capability approach: Amartya Sen, 'Rights and Capabilities' in *Resources, Values and Development* (Cambridge: Harvard University Press 1984), pp.307-24; 'Well-being, Agency and Freedom', *Journal of Philosophy*, XXXII/4 (1985), pp.169-221; 'The Standard of Living: Lecture I, Concepts and Critiques', 'The Standard of Living: Lecture II, Lives and Capabilities' in Geoffrey Hawthorn (ed), *The Standard of Living*, (Cambridge: Cambridge University Press 1987); *Inequality Reexamined*, (Oxford: Oxford University Press 1992); 'Well-being and Capability', in Martha Nussbaum and Amartya Sen (eds), *The Quality of Life*, (Oxford: Oxford University Press 1993); *Development as Freedom* (Oxford: Oxford University Press 1999).

³ I use the term 'real opportunities' in order to underline the fact that the capability approach is not satisfied if people have only formal opportunities guaranteed by laws but face a lot of obstacles in real life situations that prevent them making use of these opportunities. Strictly speaking no law in India, for example, forbid children having access to basic education. But many other social, economic and organizational factors prevent them making use of these opportunities. Similarly, the term 'valuable choices' is used to emphasize the fact that the capability approach judges a person's extent of freedom based on what is immediately relevant and important in leading a meaningful life.

⁴ Sen, 'Standard of Living' (note 2) p.36.

⁵ Amartya Sen, 'Rights and Agency', *Philosophy and Public Affairs*, 11/1 (1982) pp.3-39; 'Consequential Evaluation and Practical Reason', *The Journal of Philosophy*, XCVII/9 (2000), pp.477-502; 'Culture and Human Rights' in Sen, *Development as Freedom* (note 2) pp.227-48.

⁶ Claude Lefort, *The Political Forms of Modern Democracy* (Cambridge: Polity Press 1986), pp.239-72; *Democracy and Political Theory* (Cambridge: Polity Press 1988), pp.21-44.

⁷ Robert Nozick, *Anarchy, State and Utopia*, Oxford: Blackwell 1974), p.166.

⁸ Amartya Sen, 'Freedom of Choice: Concepts and Content', *European Economic Review*, 32 (1988), pp.269-294.

⁹ Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Oxford University Press 1981); 'Ingredients of Famine Analysis: Availability and Entitlements' in *Resources, Values and Development* (Cambridge: Harvard University Press 1984), pp.452-84; 'Property and Hunger' *Economics and Philosophy*, 4 (1988), pp.57-68.

¹⁰ Sen, *Poverty and Famines* (note 9) pp.131-53.

¹¹ Sen, 'Rights and Agency' (note 5) p.15

- ¹² Amartya Sen, 'Rights as Goals', in Stephen Guest and Alan Milne (eds), *Equality and Discrimination: Essays in Freedom and Justice* (Stuttgart: Franz Steiner Verlag Wiesbaden GMBH 1985), pp.11-25.
- ¹³ Amartya Sen, 'The Right Not to be Hungry', in *Contemporary Philosophy: A New Survey: Vol.2* (The Hague: Martinus Nijhoff Publishers 1982), pp.345-9.
- ¹⁴ Sen, 'Consequential Evaluation' (note 5), pp.477-80.
- ¹⁵ Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000), pp.70-1.
- ¹⁶ The latest version of Nussbaum's list of ten central human capabilities could be found in Ibid. pp.78-80.
- ¹⁷ Sen, *Inequality Reexamined* (note 2) p.44.
- ¹⁸ This was the main line of Sen's reply for not endorsing a list of central human capabilities during the course of a dialogue between Sen and Nussbaum at the Plenary Session of the Conference 'Promoting Women's Capabilities: Examining Nussbaum's Approach', St Edmund's College, University of Cambridge, 9-10 September 2002.
- ¹⁹ Martha Nussbaum, *The Fragility of Goodness* [Updated Edition] (Cambridge: Cambridge University press, 2001), pp.318-42; 'The Cost of Tragedy: Some Moral Limits of Cost-Benefit Analysis' in M. D. Adler and E. A. Posner (eds), *Cost-Benefit Analysis: Legal, Economic and Philosophical Perspectives* (Chicago: The University of Chicago Press, 2001), pp.169-200.
- ²⁰ Nussbaum, *Women and Human Development* (note 15) pp.84-86.
- ²¹ Martha Nussbaum, 'Capabilities and Human Rights', *Fordham Law Review*, (November 1997), pp.273-300.
- ²² Both Sen and Nussbaum have argued that ideas of 'rights' and 'freedom' cannot be solely attributed to western tradition alone. These could be found in other non-western traditions and cultures as well. Sen, 'Culture and Human Rights' in *Development as Freedom* (note 2) pp.227-48; Nussbaum, *Women and Human Development* (note 15) pp.96-100.
- ²³ John M. Alexander, 'Inequality, Poverty and Affirmative Action: Contemporary Trends in India', Mimeograph, Paper presented at the WIDER conference *Inequality, Poverty and Human Well-being*, 30-31 May 2003, United Nations University, Helsinki, Finland.
- ²⁴ The term 'integrative deontology' may not be a very attractive word. I use this term in order to indicate that Nussbaum's ethical method must be distinguished from other rigid deontological systems (e.g. Nozick) that do not offer an ethical framework to confront 'tragic' situations where some fundamental rights conflict with other equally fundamental rights.
- ²⁵ Nussbaum, *Women and Human Development* (note 15) pp.81-82.
- ²⁶ For the moral nature of the 'tragic questions' in political planning and implementation see, Nussbaum, 'The Cost of Tragedy' (note 19) pp.169-200.
- ²⁷ Nussbaum, 'Capabilities and Human Rights' (note 21) pp.297-99; 'Capabilities as Fundamental Entitlements: Sen on Social Justice', *Feminist Economics* (Forthcoming 2003).
- ²⁸ Sen, *Development as Freedom* (note 2) pp.227-48, Nussbaum, 'Capabilities and Human Rights' (note 21).
- ²⁹ For further arguments against Dworkin's idea of rights as 'trumps' see Michael Ignatieff, 'Human Rights as Politics, Human Rights as Idolatry' in Grethe B. Peterson (ed), *The Tanner Lectures on Human Values* (Salt Lake City: The University of Utah press 2001), pp.298-301; Sen, 'Rights as Goals' (note 12) pp.19-21.
- ³⁰ Sen, 'Well-being, Agency and Freedom' (note 2) pp.175-81.
- ³¹ I discuss more elaborately the problem of selection of important capabilities and the problem of incomplete and partial ordering of capabilities in Sen's capability approach in my 'Capability Egalitarianism and Moral Selfhood', *Ethical Perspectives* 10 (2003) 2.
- ³² Nussbaum, *Women and Human Development* (note 15) pp.83-105.
- ³³ Philip Alston, 'A Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?', *Netherlands International Law Review* 29 (1987), pp.307-65; Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press 1989), pp.28-46.
- ³⁴ We cannot, however, overlook the fact that human rights especially in the area of civil and political rights receive a lot of resistance from non-democratic and authoritarian regimes. Some countries like Singapore, China and others point out that the language of human rights is something specific only to western culture. It is not particularly relevant to non-western cultures that give importance to typically 'Asian values'. Others resent the fact that the West in international politics uses human rights as another tool of domination. A survey of these arguments and possible responses to them could be found in Charles Taylor, 'Conditions of Unforced Consensus on Human Rights', in Joanne R. Bauer and Daniel A. Bell (eds), *The East Asian Challenge for Human Rights*, (Cambridge: Cambridge University Press 1999), pp.124-44; Ignatieff, 'Human Rights as Politics, Human Rights as Idolatry', pp.287-349.
- ³⁵ Sen, *Development as Freedom* (note 2) pp.63-65; 'Freedom and Needs', *The New Republic*, January 10/17, (1994), pp.31-38; Nussbaum, *Women and Human Development* (note 15) pp.96-7.

- ³⁶ Quoted in Berma Klein Goldewijk and Bas de Gaay Fortman, *Where Needs meet Rights* (Geneva: WCC Publications 1999), p.1.
- ³⁷ Jawaharlal Nehru's speech at the Constituent Assembly, New Delhi, 14 August 1947; Reprinted in Sarvepalli Gopal (ed), *Jawaharlal Nehru: An Anthology* (New Delhi: Oxford University Press 1983), pp.76-7.
- ³⁸ Sen, 'Consequential Evaluation and Practical Reason' (note 5) p.499.
- ³⁹ Amartya Sen, 'Work and Rights,' *International Labour Review*, 139/2 (2000), pp.119-28.
- ⁴⁰ Amartya Sen, 'Human Rights and Economic Achievements', in Joanne R. Bauer and Daniel A. Bell (eds), *The East Asian Challenge for Human Rights*, (Cambridge: Cambridge University Press 1999).
- ⁴¹ Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship* (Oxford: Oxford University Press 2001), pp.83-84.
- ⁴² Nussbaum, *Women and Human Development* (note 15) pp.12, 246-47.
- ⁴³ Amartya Sen, 'Family and Food: Sex Bias in Poverty', 'Economics and the Family' in *Resources, Values and Development* (Cambridge: Harvard University Press, 1984) pp.346-68, 369-88.
- ⁴⁴ Charles Taylor, 'Irreducibly Social Goods' in G. Brennan and C. Walsh (eds), *Rationality, Individuality and Public Policy* (Canberra: Australian National University 1990), pp.45-63.
- ⁴⁵ Lefort, *The Political Forms of Modern Democracy* (note 6) pp.239-72.