

# **On the implicit conceptions of freedom and justice involved in the capability approach**

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## **Introduction**

The Capability Approach (CA) gives a central role to the freedom of choice, because it is from the overall set of possible choices in life that a person has the freedom to exercise (i.e. the set of capabilities of the individual) that welfare can be evaluated.

For this reason it seems to us interesting and relevant to submit the idea of freedom in the CA to a series of questions (questions of justice are also naturally associated). Does the freedom of choice really constitute the principal foundation of the CA? If such is the case, the demand for a certain consistency between the different elements of the CA becomes legitimate, i.e. one should be able to find in the chain of reasoning that makes up the CA, certain principles that are in harmony with the idea of positive freedom as defined and used by Sen.

At the end of such an examination, another question follows naturally : can the capability approach be based on a different conception of freedom, such as that of social freedom, which is based on the concept of negative freedom?

The second question enables us to extend the reply to the first question : does the freedom of choice constitute the unique and non-replaceable foundation for an analysis of well-being in terms of capacity or is there in certain cases, the possibility or the space for a concept of freedom that is adapted or more efficient for the evaluation of well-being in these particular cases?

Hence we shall first try to demonstrate the consistency of the idea of freedom in the CA, and then analyse in the specific case of adaptive preferences, which is a special case, that a different concept of freedom could be more appropriate. This will bring us naturally to questions of social interaction, identity, and justice in the CA, where we will briefly present the state of the current debate between two schools of political philosophy on this question, in the context of the CA.

## **I. The Freedom of Choice as the foundation of the Capability Approach.**

Sen illustrates the distinction between agency freedom and well being freedom through two oft-cited examples. We discuss these two examples below. Their similitude lies in the consideration of "natural" constraints, in the sense that only the constraints that are non inherent to the individual<sup>1</sup> are taken into account as limiting her freedom of choice. Asserting this has meaning if one recalls the definition of Berlin (1969) on the one hand and the conception of liberty as power on the other.

### a) Two examples

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<sup>1</sup> By "non-inherent" to the individual we mean the idea that the constraints borne by the individual are not of his choosing or his own making, nor are they issuing from the actions of another individual; hence the appellation "natural constraints".

We start with the example given by Sen in “Liberty and Social Choice ”,(p. 18-20, 1983) and in "Well-being, agency and freedom; the Dewey Lectures 1984",(1985) of a person, (Edmond), victim of a car accident, who remains conscious after the accident. Two types of treatment are possible for Edmond : A et B. Treatment A assures him of a better chance of recovering (or is less painful) but the treatment has been developed by testing on animals, which is the main difference with treatment B. Edmond, who is conscious, declares that he understands the alternative and prefers treatment B to A. A is preferable in terms of "well-being"<sup>2</sup> but B satisfies to a greater extent his "agency goals". Thus the direct freedom of Edmond is better assured by the treatment B (one finds the distinction between "well-being" and "agency", the latter concept being more adapted to the evaluation of moral judgements).

Suppose now that Edmond is in a coma, but that his companion knows exactly the strength of his moral convictions. The same alternatives are then present. Edmond's companion is totally convinced that he would have chosen treatment B, even though she knows that treatment A would have been better for his well-being. Here also, Edmond's freedom is better served by treatment B, even though Edmond himself does not exercise a direct power of choice on this issue. Edmond's indirect freedom is better served in this case.

It is important to note that in this example, it cannot be said that the principal question in this choice is the well-being of the patient, because as the case stands, his well being would have been better served by treatment A. "The argument in favour of treatment B is precisely that Edmond would have chosen it himself, and it is clearly considered relative to liberty rather than to well-being. This is what Isaiah Berlin calls ‘the degree of liberty of a man, or a people, to choose to live as they want, and it needs counterfactual exercises of this type. It would be

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<sup>2</sup> "Well-being freedom" and "agency freedom" are defined by Sen in the following manner : “A person’s agency freedom” refers to what the person is free to do and achieve in pursuit of whatever goals or values he or she regards as important. A person’s agency aspect cannot be understood without taking note of his or her aims, objectives, allegiances, obligations, and—in a broad sense—the person’s conception of the good. Whereas well-being freedom is freedom to achieve something in particular, viz., well-being, the idea of agency freedom is more general, since it is not tied to any one type of aim. Agency freedom is freedom to achieve whatever the person, as a responsible agent, decides he or she should achieve. That open conditionality makes the nature of agency freedom quite different from a well-being freedom, which concentrates on a particular type of objective and judges opportunities correspondingly.” (Sen, 1985, p.203-4). Thus, well being freedom puts forward the idea of the freedom to realise a life of quality while agency freedom considers the freedom and the realisation of general or plural objectives that are important for an individual. These two ideas constitute the two standards for the evaluation of "the good life", and are also part of the pluralist approach that Sen seeks to promote by the CA. While "well-being freedom" is included in the concept of "agency freedom", the first can diminish while the second is increasing, such that "well-being freedom" cannot really be subsumed by "agency freedom". To sum up, according to this type of evaluation, one or the other of these standards will be chosen in specific contexts - "well-being freedom" for evaluating well being in the context of public policies, and "agency freedom" pour des moral judgements.

difficult to be satisfied by a conception of liberty that depends exclusively on the person who exercises the decision making power (Sen, 1992, *Inequality Reexamined*, p.176).

Also, Sen (1992) takes as an example the preference of an individual for not being mugged in the street. He cannot exercise such a control directly by himself, but that does not matter; what is important is that he is not actually mugged on the road, even if the control over this action is exercised indirectly by him, through the intermediary of public authorities.

What lessons can one draw from these two examples? Both represent situations in which individuals face constraints in the free exercise of their choices, constraints which are not inherent but which are due to external phenomena. The typology of Jon Elster (1985, p.126) enables further precision of this idea because it distinguishes, among the different constraints on individual freedom, the internal obstacles - i.e. the psychological constraints - and the external constraints, be they natural (i.e. come from nature, such as a physical handicap) or human (that is, accidental or deliberate). These two examples as well as others presented by Sen (such as "being free of malaria"... ) seem to suggest that only natural constraints are taken into account by him (at least in his examples) This restriction concerning obstacles to freedom might seem surprising. However, a more precise analysis of the concept of freedom, which is implicitly or explicitly present in the CA, will enable us to show that this first impression is false, and also to highlight the overall consistency which is represented in this approach by the exclusion of external and human constraints, to use Elster's formulation.

#### b) The freedom of choice and positive freedom

The restriction on the obstacles to freedom referred to above acquires meaning when one places the freedom of choice in its original context of positive freedom. Recall that in Berlin (1969, p. 122) negative freedom is defined as the absence of obstacles or constraints. On the contrary, positive freedom emphasizes the possibility of action, to the extent that this action is under the control of the individual (self-mastery) and enables the satisfaction of her fundamental ends (Berlin, 1969, p. 131). This distinction enables us to understand why the freedom of choice as discussed by Sen corresponds to the concept of positive freedom.

We also find the elements that were present in the two previous examples. Thus, in the example of Edmond, who is the victim of a car accident, he can, in spite of his incapacity due to a natural constraint (coma), exercise his choice through his friend. In this case, he is considered to be free if his fundamental values (refusing treatment with animal tests) are respected.

However, it is essential to state precisely the relationship between the freedom of choice and positive freedom in Sen's approach. Sen (1988, p.274-6) stresses the errors in the evaluation of well-being when it is based on the negative freedom framework *exclusively*. Two problems arise.

First of all, regarding liberty uniquely as a state of non-interference from others, without stipulating the overall value and importance of negative freedom (and its absence) leads to an impasse in case there is a violation of the framework of rules within different institutional contexts. "This internal tension can be avoided if the value of the fulfilment of negative freedoms and disvalue of their violations are incorporated in a consequence-sensitive system of ethical evaluation, so that the importance of preserving negative freedoms is well reflected in the evaluation of actions and the decision regarding what is to be done." (Sen, 1988, p.274) Thus Sen (1982, 1988) warns against a conception of negative freedom that would be reduced to taking into account only the constraints on the behaviour of individuals without enquiring about the institutional structures that guarantee this type of freedom. The example of the individual who wants to be free in the sense of not being mugged on the street (on top of not being constrained from going out) illustrates Sen's critique.

Secondly, negative liberty does not appear to be the relevant concept in many situations. Sen picks up the Frank Knight's (1947) critique of utilitarianism which fails to ask the question as to whether individuals really have the means of putting into play their freedom of action. For Knight: "the practical question is one of power rather than of formal freedom" (in Sen, 1988, p.273). An illustration is given by Sen (p.272) : "For example, if a person happens to be poor and hungry because of low real wages or unemployment, *without* his having been prevented (by the state or by some strong-armed individual or institution) from seeking a higher wage or finding employment, then the person's negative freedom may not have been, in any way, violated, even though his positive freedom from hunger is clearly compromised by circumstances." This example enables a precision on the conditions of a real freedom -: a legal and institutional framework that guarantees everyone the means

of deploying a freely determined action, i.e., which is consciously undertaken for a personal objective. Thus according to Sen it is necessary to privilege a vision of "overall freedom", that is, take into consideration a "a person being able to do this or be that (such as being well nourished, avoiding escapable morbidity and mortality, being able to move about freely, and so on)" (p.275)). This enumeration of the parameters to be taken into account in the concept of overall freedom obviously recalls the list of functionings. The CA thus acquires meaning: that of an approach that aims to promote positive freedom in terms of *choice, as a finality and not just as a means.*

This detour via the definition of positive freedom as developed by Berlin highlights how the CA is deeply rooted in the framework of positive and overall freedom. Also, this enables a more refined analysis of the implications of this analytical foundation. To be precise, if understanding individual welfare in terms of functionings<sup>3</sup> follows logically from the definition of positive and overall freedom, it also makes to the concept of capability a necessary element for considering freedom as an end and not just as a means for acquiring well-being. Also, the goals of the individual, whose importance is stressed in the definition of Berlin, are captured by the idea of "agency freedom" in the CA.

Sen's approach thus appears perfectly adapted to a rigorous understanding of liberty in the positive sense.

It still remains to be seen how such a definition of freedom at the individual level leads to the transition to the collective level, i.e., the interpretation of positive freedom in some *collective* sense. Philipp Pettit (2001) provides an illuminating analysis of this question, by laying the building blocks of an articulation between the individual and the collective in the capability approach. His method lies in considering the preferences that constitute choice, and our contention is that this enables a circumvention of the problems raised if the CA conceived uniquely in terms of choice. By situating the analysis *prior* to the question of choice, that is, at the level of preferences, Pettit repositions the conception of freedom as an indirect power, which is present in Sen (1985 and 1992 in particular), in the larger framework of social choice.

#### c) Freedom of choice and freedom as power

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<sup>3</sup> Functionings, along with basic elements such as being well nourished or in good health, can include more complex elements such as one's own sense of dignity or self respect or taking part in the life of the community. That is, it includes social interaction (see below).

The point of departure of Philip Pettit's (2001) analysis is Sen's (1970) liberalism condition and its larger interpretation in terms of indirect power to which Sen is himself favourable. Briefly stated " The minimal liberal condition is that there are at least two persons in the society –not necessarily all- who are decisive in relation to issues in their 'recognised personal sphere' (Sen, 1983, p.7) " (P. Pettit, 2001, p.2)

Two interpretations of the "decisive" nature of the decision making process are possible in the liberalism condition.

The first interpretation says that a person is decisive over options A or B if she can choose directly over the two options. Direct control or direct freedom is required and the exercise of choice determines what happens.

The second interpretation imposes a slightly weaker condition : "they can choose whether A or B or what they would have chosen, did they have a choice determines whether A or B. [...] it requires only indirect control or indirect freedom; if the exercise of choice does not determine what happens, how the person would have chosen does." (p.3) It is therefore a broader interpretation in the sense that an effective exercise of choice is not required, *if the choice realised coincides with what the individual would have done if she had the possibility of making the choice herself*. The concept of freedom becomes an issue here, because in the example of Edouard (victim of the car accident), he is considered to be free because his choice of treatment B, which he prefers, is exercised indirectly through his companion.

For Pettit, Sen favours this second interpretation in social choice theory: "Sen points out that his impossibility theorem hold under of the two readings of freedom but acknowledges that social choice theory represents freedom as requiring only indirect power." (P.3) This assertion seems particularly justified because Sen, in his *Dewey Lectures* (1985) argues forcefully for an understanding of freedom as indirect power. He thus goes back to the classical distinction in political philosophy between liberty conceived in terms of "power" or "control"). Here is the definition he gives. :

“A person’s freedom may well be assessed in terms of the power to achieve chosen results : whether the person is free to achieve one outcome or another; whether his or her choices will be respected and the corresponding things will happen. This element of freedom, which I shall call *effective power* or *power* (for short) is not concerned with the mechanism and procedures of control. It does not matter for effective power precisely *how* the choices are ‘executed’. Indeed the choices may not even be directly

addressed. Effective power can take note of *counterfactual choice* : things might be done because of knowledge of what the person would choose if he actually had control over the outcome.

In contrast, a person's freedom may also be assessed in terms of whether the person is himself exercising *control* over the process of choice. Is he actively doing the choosing in the procedure of decision and execution? This element of freedom may be called *procedural control*, or *control* (for short). It does not matter for freedom as control whether the person succeeds at all in achieving what he would choose.” (Sen, 1985, p.208-9).

For Sen (1985, p.210) conceiving of liberty in terms of indirect power is justified by the fact that society cannot be organised efficiently in such a way that each person exercises herself all the time the levers of control relevant to her personal sphere. For example, the individual who does not want to be mugged in the street cannot necessarily herself deal with the aggressors or the possibility of aggression - what matters is the result, i.e., her security, and this result can be attained through the action of the public authorities. The same is true for most spheres of political control or decision making that affect the lives of individuals.

This terminological precision necessitates the following remarks :

First of all, one finds here a consequentialist argument : only the results of the choice are important, the procedure leading to the choice is not important (liberty as power), and whoever be the person operating the choice (liberty as indirect power).

Also, one can see that the definition of liberty as power is coherent with a definition of positive freedom as developed above.

Finally, it seems to us that it's precisely the use of this definition of liberty as an indirect power that justifies the use of counterfactual reasoning. If liberty or freedom had been defined as an exercise of control by the individual during the choice procedure, the question of causal dependence between an action and the resulting event would hardly be relevant, for the causality relationship would be obvious. Also, the origin of an action is easily retraceable in the context of liberty as control. On the contrary, as soon as the choice is exercised by someone else in our place, it becomes important to verify that the choice that has been exercised by the person who is substituting is that which we would have made if we were in the situation of choosing ourselves (counterfactual reasoning). Thus we can deduce that the definition of liberty as indirect power on which Sen has based his approach requires this type

of reasoning. This remark enables us to come to a more complete understanding of Sen's use of counterfactuals (which is often implicit), and on the other hand, to highlight the importance of this reasoning in the overall architecture of freedom in the CA.

This preceding remark does not contradict the argument of Pettit on the role of counterfactuals :

“When Sen speaks of things turning out as the agent would have chosen in a counterfactual case, I assume that how the agent would have chosen in the counterfactual case, is a function of how he or she is now configured in the actual world : that is, that it expresses an actual disposition to choose after a certain pattern in that imagined case (a pattern that may differ from how the agent is actually disposed to choose in the actual case). This assumption is entirely plausible. Measures that make an agent’s counterfactual choices decisive will give a degree of power to that agent, as he or she actually is, only if those counterfactual choices express something about the agent’s actual nature.”

This argument also forcefully synthesizes different elements that come into play in Sen's liberalism condition : : “This means that whereas it is the exercise of choice that has to be determinative of results under the narrower conception of freedom, it is the agent’s disposition to choose –for short, his or her preference- that must be determinative under the broader; this disposition determines whether A or B, either on a direct or on an indirect basis. *Under the narrowing reading, then, freedom consists in the enjoyment of decisive choice; under the broader it consists in the enjoyment of decisive preference.*” (italics added).

Pettit proposes certain arrangements that guarantee to the individual the coincidence of her preferences (with revisions possible in case of failure) with the fact that the choice is exercised by someone else. The freedom of the agent requires, according to Pettit, two conditions on the preferences. First of all, the preferences must be decisive, independent of the content of the preferences: I am independent relative to options A and B, only if, according to my preference, I can obtain A or B. It is not enough, from the point of view of liberty, that I obtain A if my preference is for A, but I cannot obtain B if my preference was for B.. Secondly, preferences have to be decisive independently of context. Imagine that one has the possibility of decisively choosing between A and B, independently of the content, but that exercising this decisive preference depends on the wishes or favour of one's entourage in the large sense. "You are not powerful enough in relation to them to be sure of your preference’s being decisive regardless of their wishes. You have a decisive preference only so far as you enjoy the grade and favour of those others.” (p.6) “The enjoyment of favour-dependently

decisive preference is quite consistent with the person's living in a position of total subjugation to another, being available just so far as the other happens to be a kindly or gullible or evadable master." (p.7)

These two specifications on the decisive character of preferences is therefore perfectly coherent with the freedom of choice in Sen's framework. This legitimizes our first reaction with respect to the first two examples : the constraints on liberty taken into account are not the result of the action of others but are natural constraints. We shall however see in the second part that in excluding from taking into consideration the dependence of an action on the "favour" of others (say a despotic prince), Sen reduces considerably the possibilities of considering the interaction between agents in the CA. Also, independence with respect to the content is coherent with the definition of positive and global freedom : individuals should have access to different options, no matter whether they choose it or not, and should thus have the right to do otherwise.

Pettit thus enables us to come to a better understanding of the relationship between preferences and choice on the one hand and between the individual and the collective decision making process on the other, which comes into play in the CA. Sen opts for a definition of liberty in terms of indirect power as a sufficient condition in the context of collective choice, and the same definition therefore applies at the individual level. This also enables *not* extending the liberty conditions to the decisive character of choice, and to examine only the decisive character of only the preferences. It seems to us that preferences are easier to examine than choices, and also highlights certain limits in the practical application of the CA.

These preceding remarks thus provide us a reply to our first question : that positive and global freedom conceived as indirect power is the foundation of the CA and we have tried to put into consistency the analytical ideas on which the approach is based.

However, once one has recognized the existence of a criteria of freedom on which the approach is based, one has to examine eventual exceptions, i.e., situations in which the concept of freedom of choice such as it has been exposed runs into difficulty or fails. Recall that Sen himself claims an operational validity of the approach in terms of improving well being. In fact, the case of adaptive preferences, which the CA has to take into account, puts the pertinence and efficiency of the conception of freedom into difficulty. Such adaptive preferences might form a particular case that requires a different conception of liberty, and might need taking into account the interaction between agents and the constraints of liberty that result from these interactions.

## **II. Taking into account adaptive preferences : a failure of the freedom of choice?**

### **1. Adaptive preferences**

The concept of endogenous preferences seeks to understand the formation of the preferences of agents by determining the factors that are at the origin of the specification of preferences - such as culture and social institutions. Adaptive preferences on the other hand have the objective of taking into account the revision of preferences, which results from the harmonisation by the agent of his preferences with the preferences over the options over which she can effectively choose. This type of preferences are of relevance in the case where the agents, in situations of deprivation or lack of choice, adjust or adapt their preferences or wishes to what is possible. Thus an individual who is denied the conditions of a decent life can, by adapting her preferences, consider herself to be fully satisfied. Since welfarism evaluates welfare from utilities, extended to the idea of happiness or the satisfaction of desires, it fails, according to Sen (1985, 1987) to take into account such situations of acceptance of one's condition.

Jon Elster (1983, Ch. 3), who is partially at the origin of the idea of adaptive preferences, gives the illustration through the example of the sour grapes and the fox in the fable of La Fontaine. The fox renounces, in the example, the elements contained in his choice set, but not in his attainable possibility set. What is desirable can thus become a function of what one can obtain.

This is very close to the proposition of Sen : "Considerations of 'feasibility' and of 'practical possibility' enter into what we dare to desire and what we are pained not to get. Our mental reactions to what we actually get and what we can sensibly expect to get may frequently involve compromises with a harsh reality." (Sen, 1985b, p.15)

Two questions can hence be posed - what meaning should one give to the notion of the "possible" or being "able" on the one hand, and on the other, how to take into account this possibility?

As Martha Nussbaum (2001, p.78) points out, most people adapt their aspirations to what it is effectively possible for them to obtain, which in itself is probably not a bad thing. Thus, according to Nussbaum, it is better that a person renounces the childhood dream of being a great opera singer if the possibility of realising this dream is very unrealistic. One thus

finds a precision on the meaning to be given to the term “possible” which is present in the definition of negative liberty in Berlin.:

“If I am prevented by others from doing what I could otherwise do, I am to that degree unfree; and if this area is contracted by other men beyond a certain minimum, I can be described as being coerced, or, it may be, enslaved. *Coercion is not, however, a term that covers every form of inability. If I say that I am unable to jump more than ten feet in the air, or cannot read because I am blind, or cannot understand the darker pages of Hegel, it would be eccentric to say that I am to that degree enslaved or coerced. Coercion implies the deliberate interference of other human beings within the area in which I could otherwise act.* You lack political liberty or freedom only if you are prevented from attaining a goal by human beings. Mere incapacity to attain a goal is not lack of political freedom.” (I. Berlin, 1969, p.122. italics added)

However, Elster does not propose that we analyse adaptive preferences specifically through the angle of negative liberty, and recalls that Berlin does not straitjacket himself into considering liberty “being free to do what one wants to do”, (J. Elster, 1983, p.127), without questioning the genesis of such desires. Recalling that Berlin is opposed to such a notion of liberty<sup>4</sup>, Elster however reproaches Berlin of a certain ambiguity concerning the content that should be given to the idea of “conditioning” of the individual who depreciates his non-realizable desires. For Elster (1983), the discriminating criteria should be that of autonomy : “I do in fact suggest that the degree of freedom depends on the number and importance of the things that one (i) is free to do and (ii) autonomously wants to do.” (p.128). This criteria renders more operational the definition of liberty. “We can exclude operationally at least one important variety of non-autonomous wants, viz. adaptive preferences, by requiring *freedom to do otherwise*. If I want to do x, and free not to do x, then my want cannot be shaped by necessity. [...] Other things being equal, one’s freedom is a function of the number and importance of the things that one (i) is free to do, (ii) is free not to do and (iii) wants to do.” (Elster, 1983, p. 128-9, italics added). Elster calls this freedom to do or the freedom not to do a “freedom with respect to that action”.

It remains to be determined how such revisions of preferences, which are symptomatic of adaptive preferences, can be concretely identified. Elster proposes for this a condition of *autonomy of preferences* which he characterises in the following way : “If  $S_1$  and  $S_2$  are two

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<sup>4</sup> “ ‘If degrees of freedom were a function of the satisfaction of desires, I could increase freedom as effectively by eliminating desires as by satisfying them; I could render men (including myself) free by conditioning them into losing the original desire which I have decided not to satisfy.’, Berlin (1969), p.xxxviii.” in Elster (1983), p.127.

feasible sets, with induced preferences structures  $R_1$  and  $R_2$ , then for non  $x$  or  $y$  (in the global set) should it be the case that  $xP_1y$  and  $yP_2x$ ". (p.131). Thus a complete reversal of preferences (other than going from preference to indifference and vice versa) is excluded. Thus, stipulating an autonomy condition boils down to postulating a minimal rationality on the part of the agent. This condition authorises changes in preferences between elements of different sets (inter-set rankings) and indifference between elements of the same set, but does not allow under any circumstances a reversal of the internal ranking of the initial choice set. Elster provides examples to characterise these situations. An example that Elster give of the violation of the above condition is the following : an individual has three possibilities. Being a free man, being a prisoner in a camp or being a prison guard. Suppose his initial preferences in a free state are being a free man rather than a concentration camp prisoner, and being a prisoner rather than a guard. It is possible that once inside the camp, he might come to prefer being a guard over being a free man, with the condition of prisoner ranked at the bottom. The restriction of the feasible set brings about a reversal of preferences (see Elster, p. 131).

It is perfectly possible that a changed situation for an agent can result in a depreciation of his initial preferences, i.e., the preferences in the final state corresponds to a degradation of the situation of the agent (for example, reconciling oneself to a life of misery and privation after having seen better days). Qualifying such preferences as "irrational" does not seem to us in opposition to the definition of rationality in Sen's "Internal consistency of choice" (1993). In fact, Sen proposes an interpretation of the act of choosing by agents in order to evaluate their rationality (for example, not taking the last fruit in a basket when one is in company is not irrational, because it is an application of a rule of "savoir-vivre"). An external reference is thus used in order to interpret choice. Sen accepts as rational cases of preference reversal that are judged irrational by Elster. However, such contradictions are only apparent, as each of these arguments reaffirm the necessity of taking into account the context in which choices are made.

The above arguments enable us to go beyond the critique addressed by Nussbaum (2001, p. 79) to Elster that his conception of freedom, such as the "freedom to do otherwise" lacks a substantive accompanying theory of justice. According to Nussbaum, Elster's autonomy criteria omits taking into consideration if the suppressed desires (adaptive preferences) are related or not to the fundamental rights of individuals. It is fundamental for Nussbaum (2000, 2001) to qualify as the absence freedom all situations where a person "forgets" to consider herself as a citizen who has legitimate rights to be exercised. Nussbaum claims that no procedure can take into account the right to a better situation: stipulating a list

of fundamental rights thus becomes necessary. Thus a list of basic capabilities also takes on meaning, from the point that it is conceived as constituting a “substantive theory of central capabilities” and has its scheme in an universal approach to justice that Nussbaum defends. One thus comes back to the necessity of deploying a counterfactual reasoning, in order to know if, with respect to the fundamental rights of the individual, the person has the possibility of “doing otherwise”. A well known example of such a procedure will demonstrate its limits.

## 2. Determining the absence of freedom - : example and limit.

(Sen, 1985) uses a counterfactual (in a well-known example) to judge the well-being freedom of an individual.

Consider two individuals, *A* et *B*, dying of starvation, *A* because he is poor and *B* because his religious beliefs have made him decide that he will deny himself food and bear the suffering that results.

*A* et *B* are in a situation of identical suffering in terms of welfare. However, “there would nevertheless remain an important difference between the two cases, viz. *B could have* in a straightforward sense, chosen an alternative life style which *A* could not have chosen.” (Sen, 1985, p.201<sup>5</sup>). There is an implicit counterfactual reasoning in this example. The causes of the starvation of *A* and *B* are respectively economic and religious. If *B* had not been religious, *B* would not die (because she had the material means to look after her needs).<sup>6</sup> If *A* was not poor, *A* would not die of starvation (because she *would have had* the material means to look after her needs).

Thus, if the religion of *B* had not existed, *B* would not be hungry because she would have had the economic possibility of nourishing herself. *A* does not have such an alternative, hence *A*’s well-being freedom is judged to be inferior to that of *B*.

However, one can probably say that talking or thinking about the non-existence of *B*’s religion can be considered to be a bit far-fetched in the real world. Would it not be possible to claim that the absence of a “religious convention” makes it legitimate to think of the presence of a social convention such as the existence of some form of public solidarity

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<sup>5</sup> Sen adds “This is a difference that is relevant to assessing the well-being aspect of the two persons respectively, though it is not necessarily a difference between the actual well-being levels achieved by the two. In judging a person’s advantage (and the kind of “deal” that he or she has got), the importance of well-being freedom must be recognized.”

<sup>6</sup> Remark : It’s because Sen judges both the consideration of happiness and the satisfaction of desires to be inadapted as standards of evaluation, that one cannot consider that the malnutrition of *B* is compensated by her state of eventual ecstasy or happiness.

(public or private aid, soup kitchens)? One can thus establish the following reasoning : if an institution of public assistance had existed, A would not be hungry in spite of his poverty because this public institution could have taken care of his basic needs.

We admit that this type of argument is somewhat specious or artificial. However, it does enable us to stress that Sen's conclusion on the well-being freedom of A being inferior to that of B is actually not that evident. In one case, A does not have the material means to survive, but in the other, B does not have the psychological means or the social conventions necessary to survive either! And is it automatically easier to survive with respect to a social convention or norm as compared to a state of nature? We claim that the answer is negative, and one can also see from the above discussion that the definition of freedom chosen by Sen, who considers only "natural" constraints, induces restrictions that prevent further considerations on the social nature of freedom.

### 3. The usefulness of the concept of social freedom for dealing with adaptive preferences.

Thus, determining whether it is possible (or whether it could have been possible) for B to do or not to do x – i.e. to follow or not to follow the teachings of her religion sends us back to the question already raised on the idea of " what it is possible to do".

Elster's approach, which proposes an analysis of freedom in given circumstances ("freedom with respect to that action"), suggests a refinement for detecting the presence of adaptive preferences. Elster proposes a conception of "the liberty to do otherwise' that is appropriate for the circumstances under consideration : "If I want to do x, and am free to do x, and free not to do x, then my want cannot be shaped by necessity", p.128.

This formulation is close to that of Oppenheim (1995, p.404-7) : With respect to (wrt) "P (a holder of power), R (a respondent) is unfree to do X if and only if P makes it either impossible or punishable for R to do X. Wrt P, R is free to do X or to do Not-X if and only if P makes R neither unfree to do X nor unfree to do Not-X".(p.404)

It remains to be determined as to what constitutes an impossibility or a punishment by P with respect to the action of R. Impossibility brings us to the idea of a constraint imposed by one individual on the action of another. This impossibility enables Oppenheim to make a distinction between the freedom of choice and "social freedom". If the action of R (For example, entering the property of P) was made impossible, not by the action of P but by "natural" causes (a physical handicap, or a river that forms a natural barrier) then it will not be

possible for R to undertake the action X through the lack of a freedom of choice. On the other hand, if R was not restricted by natural constraints from doing X, but by the action or the eventual punishment of P, then R would be considered as having freedom of choice but lacking in social freedom.

Thus, the freedom of choice refers to the absence of natural constraints while social freedom takes into account the interference of others on one's own action. One thus finds the principal elements of the freedom of choice in Sen as we have presented it in the first part, and we claim that it supports our first conclusion on the consistency of the ideas constituting liberty in the CA – that is, freedom of choice, positive freedom (in terms of power) and without taking into account the interaction between agents.

The idea of punishment (or retaliation) constitutes another element in the definition of Oppenheim and is taken into account by considering the eligibility of an action. Ineligibility, taken from Miller, is defined in the following way :

"an agent is unable to perform an action when it is literally impossible for him to perform it, or the performance would be so costly that it is effectively excluded from the scope of his consideration' (Miller, 1983:68). It seems, therefore, plausible to extend the concept of unfreedom to include relationships making it practically impossible or ineligible for someone to act in a certain way. [...] Accordingly, P makes R unfree to do X if P makes doing X too risky or costly or difficult, not for R specifically, but for any reasonable person, finding himself in R's situation." (P.407, Oppenheim)

Thus an action which is formally possible might not be so in practice, because the cost that has to be borne by the individual who carries out the action is not only excessive but is too high for any "reasonable" person.

One thus finds the necessity of taking into account the rationality of the agent : it would be irrational for an individual to bear too high a cost for doing X. In the example of the two individuals, the poor and the religious, taking into account the interaction of agents can be illuminating at similar levels of welfare. For the religious person, what is her real possibility for doing otherwise, i.e., renouncing her religion so as not to die of hunger?<sup>7</sup> This ineligibility consideration is implicitly considered by Sen in his counterfactual reasoning. Hence, the question arises on the social cost for the religious person for renouncing her religion and getting excluded from her community.

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<sup>7</sup> It could probably be said that no religion asks anybody to die of hunger, but let us put this aside for the sake of argument.

It therefore seems to us legitimate to ask the following question : shouldn't the eligibility of an action, that is, its real possibility, be taken into account when one does a counterfactual reasoning in order to detect adaptive preferences? If it is too costly for a religious person to leave her religious community (in terms of excessive cost for a rational or reasonable person) she can resign herself to adopting the conventions of the religion and consider herself to be satisfied by adapting her preferences her condition. Thus, using social freedom -which is negative - as an analytical tool enables detecting adaptive preferences that the freedom of choice (positive) angle neglects (or is not fully equipped to deal with) : the religious person has the freedom of choice, i.e., the positive freedom of not having to bear natural or inherent constraints that the individual faces (dying of starvation). But she can lack the social freedom to do otherwise. Belonging to any community (religious, ethnic, social...) is one of the constituents of individual identity that many individuals might not want to renounce at all because it constitutes an element of their humanity.

### **III. Social Interaction, identity and community.**

We have raised in the previous section the question of social interaction (which the freedom of choice approach has difficulties in taking into account) but which the CA needs to take into account. Social interaction becomes important in the context of concepts such as identity and community. Also, the idea of belonging to a group or to a community, which might be important for the exercise of positive freedom, also bring out the limits to the concepts of liberty that we have discussed above. In this part, we want to raise a few issues that are to do with the exercise of individual freedom in specific institutional and cultural contexts, and the attempt by communitarian political philosophers and social scientists to argue that the CA should take into account the notion of community in its assessment of freedom and justice. To review this debate, we recall some principal elements of communitarian political philosophy based on Kymlicka (2001).

Communitarian political philosophers (Michael Sandel, Michael Walzer, Alasdair MacIntyre, Daniel Bell, Charles Taylor) defends a certain conception of the good, which is determined by the community through its rules and social conventions. They claim that community is as important as liberty and equality, and this is insufficiently recognized in liberal theories such as those presented above. Communities exist in common social practices, cultural traditions and shared social understandings. They need to be respected and protected. Communitarians

charge liberals with being abstract and ahistorical in their individualism, ignoring institutional and social contexts and of being insensitive to group identity.

Communitarians claim that i) community can be the *source* of principles of justice, which should be based on a shared understanding of society rather than on universal and ahistorical principles; and ii) community should play a greater role in the content of principles of justice, ie justice should give more weight to the common good and less to individual rights.

To give an example of a communitarian stand on justice :

"There is no such thing as a perspective external to the community, no way to step outside our history and culture. The only way to understand requirements of justice is to see how each particular community understands the value of social goods. A society is just if it acts in accordance with the shared understanding of its members, as embodied in its characteristic practices and institutions. Hence identifying principles of justice is more a matter of cultural interpretation than of philosophical argument". (Walzer, in Kymlicka 2001).

This has obviously been criticized by philosophers like Brian Barry as a means of justifying barbarous practices like mutilation, etc. But the main point is that the difference between liberals and communitarians hinges on the "common good"- or a "way of life" defined by the community versus "plural conceptions of the good". More fundamentally, the debate goes down to discussing the "intrinsic" value of freedom. To liberals, freedom is valuable for its own sake. Communitarians reject this as an empty argument, seeing freedom only as an instrumental value. In the context of this debate, there are three points that we would like to raise in particular.

#### i) Social Interaction and limits on the concept of freedom

Economists have recently been paying increasing attention to the effects of social heterogeneity on economic outcomes, in particular via the effect of the formation of social groups. Akerlof (1997), Akerlof and Kranton (2000) have modelled the formation of groups and the construction of group identity through social interaction. In the Akerlof framework, individuals are subject to external effects in their interactions with others in the sense that their actions, behaviour and choices enter each other's utility functions and have an aggregative effect in the formation of groups through the search for stable structures of reciprocity and solidarity. Within a group, there are advantages to conformist behaviour and social costs associated with deviation. The choice of and the construction of identity can have an important effect on the economic outcomes that groups and individuals are faced with, in

the sense that the choice of identity affects educational choices, job prospects and mobility as well as decisions such as marriage and friendship, all of which affect well being. The rules of collective behaviour of the group and the modes of social interaction also act as a source of "external" constraints on individuals. Groups, i.e. communities and the identities that they form affect their well being, and leaving the group affects individual well being and imposes a cost on the individual. Empirical studies and monographs from a variety of social sciences (see references in Akerlof (1997), Loury (1999) show that forming an identity through belonging to a group or community affect people's capabilities in a very real way.

The communitarians (see Gore, Gasper 1997) argues that the capability approach should include the social functioning of individuals as an important element of their capability. In fact, Gore points out that Sen's model of personhood, ie. what constitutes a person, "seeks to incorporate a balance between the individual and the social nature of living. Gore also claims that Sen wants to delink the ethical foundation of the CA from positive freedom - to claim that different theories of value are consistent with the capability approach (with applications to liberty and freedom, justice and social ethics). Such a wide interpretation of the philosophical foundations of the capability approach would obviously leave it open to a variety of interpretations and approaches.

The CA recognizes the implications of individuality for evaluation, and also takes into account social elements in the evaluative process. Notably, social functionings are taken into consideration, and these functionings are affected by 'the social conventions in force in the society where the person lives'. Identity gives value to social functionings (such as "appearing in public without shame"). Also, the CA recognizes that other- regarding concerns affect individual well-being. It is also argued that accepted standards widely shared in society, ie, criteria other than individual preferences, can be used in the valuation of functionings (ex, appearing in society without shame, the social bases of self respect). This enables the CA to assess not only the state of individual, but also societal well being. It seems quite clear to us from from this list that it's the roots of the CA approach in the positive freedom framework, along with the strong externality argument that is at the root of the 'communitarian' interpretation of capabilities. (Recall that positive liberty is sometimes attributed to collectivities, or to individuals considered primarily as members of given collectivities (Carter)). The communitarian interpretation "embeds" social interactions and their utility to individuals and groups as a principal element of the capability approach. But to the extent that social interactions or social conventions act as constraints on individuals, a "strong" inclusion

of social interactions, would be freedom reducing rather than freedom enhancing and appears to be contrary to the spirit of the capability approach. This is, according to us, an inconvenience in the interpretation of social functioning in the CA with respect to Sen's own use of the concept of freedom.

Moreover, the communitarian argument has been extended to claim that some goods are "Irreducibly Social goods " (Gore 1997). This argument is obviously rooted in a certain holistic vision of society - that there are certain objects of value for individuals which are properties of societies rather than individuals and need to be included in assessments of both justice and individual well-being. These are language codes, culture (practices, institutions, common understandings) (Arguments of Taylor, see Kymlicka). Gore extends these arguments to claim that moral norms, interpretative schemes and modes of discourse, modes of government (both state -centric and informal ) which define power relations are irreducibly social goods (see Kymlicka also) and human beings are embedded in societal and institutional contexts through these social goods.

According to Gore, if intentional and reflexive activity is accepted as integral to well-being then institutional contexts affect well being in several ways. First, common understandings make activities meaningful (shared beliefs, folklore, culture, etc) and define the set of significant possibilities in life. Second, dominant values - for example, that of a dominant or mainstream community - can undermine the sense of self-respect of some other group. (Recall that the Rawlsian primary good, the social basis of self-respect can be obtained only through social interaction and recognition by others, including via group identity). Finally common modes of action affect the nature and quality of social relationships and one's sense of self.

Gore goes on to argue that the evaluative implications of Sen's approach depends on whether the properties (characteristics) of societies and their institutional contexts are intrinsically or instrumentally valuable for individual well being. If institutional contexts are instrumentally valuable, they have an impact on well being, but do not have to enter the evaluation process. But if they are intrinsically valuable, individual lives cannot be judged in isolation from institutional contexts. (again, appearing in public without shame). It can be argued for example that the 'social basis of self-respect' is the means to the 'functioning' having self respect. But if - the evaluation of states (good or bad) goes beyond the individual consumption or mental states or commodity possessions to evaluating the *'nature of people's lives and their activities'*, institutional contexts become intrinsically valuable.

Liberal philosophers, such as Rawls (1996), have gone a long way to try to accommodate the communitarian critique that historically disadvantaged groups and communities need to be recognized through some mechanism of accommodation within the liberal society. This accommodation has been called the "overlapping consensus" by Rawls. In fact, liberals have gone as far as accepting illiberalism or authoritarian values within a group so long as they are freely adhered to. An example is the religious toleration of non-liberal groups within liberal-democratic societies on the basis of the idea that each religious group should be free to organize communities as it sees fit, even along non-liberal lines. This raises the question of individual autonomy and the limits of the liberal consensus.

ii) The question of individual autonomy and the limit of the "overlapping consensus"

We have seen in our second part above the importance of the condition of autonomy of preferences in Elster in the definition of freedom. The question of individual autonomy is also, according to us, the limit of the liberal-communitarian compromise on questions of community, identity and individual rights and justice.

For Rawls (Kymlicka, p 234) there are two principal elements in the overlapping consensus - the moral power of individuals to "form, revise and pursue" their conception of the good - and their sense of justice that must remain intact even when individuals are part of a community. This idea of autonomy- with the priority of individual freedom (p 336 in Kymlicka)- implies that autonomy is not only the right to revise one's beliefs through the use of reason, but that the public recognition of this autonomy by all groups and communities that form part of a "society" is necessary for a liberal democratic society to function. (In Political Liberalism, Rawls defends an explicitly 'political' concept of justice and places it in the context of liberal-democratic societies). Some communitarians - the less liberal among them, according to Kymlicka - contest the idea of autonomy. They oppose individual autonomy to the idea of embeddedness that we have mentioned above - that social relations are embedded, hence giving priority to individual autonomy negates the recognition of the community. We claim that this question of the recognition of individual autonomy would define the limits of the liberal 'compromise' or overlapping consensus.

iii) Some Remarks on the universal nature of the Rawls-Sen approach to freedom, justice and related questions

In many of his papers on *normative* questions, Sen has at times dealt with the issues raised here without making any *explicit* reference to institutions. When he does so explicitly, as in *Inequality Reexamined* (Sen 1992, Chapter 5, Justice and Capability, pp. 75-79), we think that the implications of what he says go very far indeed towards an 'universalist' position. Sen discusses at length the political conception of justice in Rawls, which 'starts from within a certain political tradition' (a liberal-democratic one). He points out that the Rawlsian "hope that this political conception of justice may at least be supported by what we may call an 'overlapping consensus'" would prevent raising questions on justice and injustice under a wide variety of circumstances where such political consensus is not present (his discussion on the Ethiopian famine and the position of Haile Selassie). Sen states "to leave these matters out of the scope of a 'political conception of justice' would be to reduce its domain severely". This clearly suggests that the Rawlsian justice framework as interpreted by Sen is an universalist and global conception of justice; this conception would be difficult to reconcile with cultural, communitarian or other approaches to universal truth and justice. Brian Barry and Nussbaum advance similar arguments, Barry in his defence of equality within an universalist framework, and Nussbaum on the question of rights and a substantive and universal theory of justice (as we have mentioned above in the context of adaptive preferences). Even though local and institutional contexts need to be taken into account on each question that we have discussed above, we would claim that the need for an universalist approach and framework to deal with these issues remain as strong as ever.

## **Conclusion**

This paper had the objective of retracing the different constitutive elements on the question of freedom in the CA in order to understand and analyse its articulation and its consistency. A positive and global conception and freedom as indirect power seems to constitute the foundation of this approach. It remained to be determined if this conception was the only one possible. The answer constructed here is negative - adaptive preferences are a particular case in which the concept of freedom in Sen needs to be amended. This implies the introduction of aspects of negative freedom in order to take into account internal constraints (autonomy) or external and human constraints (actions or reactions of others) to individual freedom that can place the individual in the situation of being unable to "do otherwise" and thus brings about a failure of counterfactual reasoning. This local modification of the concept of freedom however, does not seem to us to go against the CA. In fact, the CA, which is an

approach and not a theory as Sen himself claims, has the advantage of accommodating diverse interpretations. In the third part, we also raise the difficulties brought about by these diverse interpretations when it becomes essential to take social interactions, social functionings and the idea of community into account, as has been demanded of the CA. This also raises the limits and inconveniences of the concept of liberty in Sen, and the difficulty of taking into account substantial social interactions as demanded by the communitarians. The political debate also raises questions on 'universalist' versus non-universalist (cultural, communitarian) approaches in political philosophy or social science. We feel that the status of 'approach' rather than 'theory' leaves the space open for further debate and extensions of the concept of freedom, locally, so as to be able to make concrete applications of the CA.

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