

Capabilitarianism without Paternalism?

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Abstract: Despite the exceptional growth of interest in the Capability Approach (CA) in specific fields of application, the approach has yet to clarify certain basic concepts, such as freedom, functioning, and, in particular, its key concept of capability. (1.) Taking two basic tenets of CA as my starting point, I would first of all like to (2.) contribute to the clarification of these central concepts. It thereby becomes apparent that “capability” is, on the one hand, an essentially hybrid concept with both an internal and external aspect. On the other hand, it addresses the freedom of choice between various lifestyles as a second-order competency. (3.) Against this background, this paper offers a suggestion to correct the terminology used by Martha C. Nussbaum in her concept of capability, and subsequently it will outline a basic model of the transformation of resources into forms of being and activities with reference to Ingrid Robeyns. In conclusion I will couple this rather static perspective with two critical points: (4.) First of all, a more dynamic view reveals hitherto barely considered aspects of freedom in everyday human lives. (5.) Secondly, the idea of capabilities opposes the attempt at a separation of capabilities from functions in order to avoid paternalism, as suggested by Nussbaum.

Key words: capabilities, functionings, substantial freedom, 2nd order competence, paternalism.

I. TWO CENTRAL IDEAS OF CA

Over the past 30 years, the Capability Approach (CA) has evolved into a reference framework for diverse and interdisciplinary areas of research. It has been applied in the fields of welfare economics, developmental policy, gender studies, and educational research. It has proved especially fertile in the area of poverty research and has been put to use in various countries and regions.¹ In terms of philosophical discourse, CA rivals other theories of justice, is acknowledged in specific spheres of ethics, such as economic and environmental ethics, and has also been raised the debate on animal ethics (Nussbaum 2004, 2006; Wissenburg 2011; Melin and Kronlid 2016). At the same time, its advocates, who I shall henceforth refer to as “capabilitarians”, adopting the term used by Ingrid Robeyns (2016) in the title of one of her essays, admit that despite the conceptual resources at its disposal, CA has yet to develop a comprehensive theory of justice. This has resulted in a longstanding debate as to whether it is even a uniform approach and, if so, what are its basic defining elements (cf. Crocker 2008, 55; Nussbaum 2011a, 18-19; Robeyns 2016 [2011]).

1] In addition to Amartya Sen’s early studies (Sen 1977, 1981) and his studies on India published together with Jean Drèze (Drèze und Sen 1997, 2002), here are just a few examples: Volkert (ed. 2005) and Arndt et al. (2006) on Germany, Krishnakumar and Ballon (2008) on Bolivia, Panzironi and Gelber (2012) on the Asia-Pacific region, and Vollmer (2013) for Mozambique. Additional case studies can be found in Deneulin, Nebel, and Sagovsky (2006), Ibrahim and Tiwari (2014), as well as Otto, Walker, and Ziegler (2018).

Nevertheless, we can discern two aspects that, when formulated in a sufficiently generalized manner, clearly apply for all normative (ethical) sophisticated variants of CA. The *first* aspect focuses on the supposedly simple matter of what people actually do with their lives and who they can be.² The primary aim of this question is to analyze the conditions under which people have the opportunity to realize their particular conception of a good and flourishing lifestyle or individual well-being. The second key aspect is to frame the normative requirements, the actual social, political, and economic conditions, in such a way that all individuals have an *equal opportunity* to realize their conception of well-being or a good lifestyle, at least to a certain threshold level.³ This is the crucial challenge faced by CA in establishing a theory of justice.

II. FUNCTIONINGS, CAPABILITIES AND FREEDOM

What individuals actually do and who they are capable of becoming is generally expressed in CA with the help of three central concepts: capability, functioning, and freedom. In his 1993 essay, *Capability and Well-Being*, Amartya Sen provides a preliminary answer to the question of what is meant by “functionings” and “capability,” as well as how they are related. His answer is meant to serve as the starting point for a step-by-step expansion of the approach with the goal of achieving a basic model:

Functionings represent parts of the state of a person – in particular the various things that he or she manages to do or be in leading a life. The *capability* of a person reflects the alternative combinations of functionings the person can achieve, and from which he or she can choose one collection. (1993, 31)

Here, the term “functioning” stands for everything that a person *actually* does and has accomplished in their life. It stands for *realized* activities (“doings”) and states of affairs (“beings”). This last category includes such heterogeneous conditions as having health insurance or not, being a citizen or being stateless, and being law abiding or a criminal. Sen designates those activities and states of affairs that *could be* realized by a person at a particular point in time as an individual’s “capability” (in the singular form). It is comprised of the individual pool of attainment *opportunities*, thus an individual power or potential to realize various combinations of activities and states of affairs (cf. Robeyns 2017, 91-92). As the “ability to achieve” (Sen 1987, 36), capabilities are likewise regarded as *positive freedoms*:

2] “What are people actually able to do and to be? What real opportunities are available to them?” (Nussbaum 2011a, x; see Robeyns 2005, 94).

3] There is certainly no consensus among capabiltarians that the approach should focus on a threshold level, thereby accepting a sufficiency rule as a principle of distribution. This position is advocated to one degree or another by Anderson (1999, 2010) and Nussbaum (2006). Others, such as Arneson (2006), instead tend to support an egalitarian solution, while Robeyns (2016) does not exclude a prioritarian distribution principle along the lines of Rawls’ Difference Principle.

Functionings are, in a sense, more directly related to living conditions, since they are different aspects of living conditions. Capabilities, in contrast, are notions of freedom, in the positive sense: what real opportunities you have regarding the life you may lead. (Sen 1987, 36; cf. 1999, 74-75)

Nussbaum similarly places freedom on the side of capabilities and, in this respect, concurs with Sen's position:

In contrasting capabilities with functionings, we should bear in mind that capability means opportunity to select. The notion of freedom to choose is thus built into the notion of capability. (Nussbaum 2011a, 25)

In essence, the step of actualizing a realization option takes the form of a "choice" of activities and states of affairs that a person "has reason to value" in light of their idea of a good life (Sen 1999, 14, 18, 73, 293, *passim*; 2009, 231). As far as I can see, all normatively discerning versions of CA designate this evaluative moment of individual selection to realize or not to realize being and activity possibilities as the paradigmatic location of *freedom*.⁴ However, one can only refer to a substantive freedom of a person to transform their existing capabilities into concrete forms of being and activities if certain *additional* and various requirements – each depending on the nature of the situation – are met. For example, a woman possessing a good physical constitution may nonetheless be extremely limited in her mobility if the laws of her country or local traditions prevent her from leaving the house without a male chaperon. Someone else might find themselves unable to obtain a desired job despite having the best qualifications, only because they are a member of a stigmatized minority. At this point, of significance are two references concerning terminology and one reference to the priority given to the evaluative moment as a moment of freedom:

(1) *Ambivalent use of the term "capability"*: It is impossible to find a consistent use of the term "capability" in the relevant CA literature. Instead, its use varies between two main meanings and their derivatives. The main meanings can be seen to concur with Aristotle's differentiation of two *modalities of possibility*: In the *Metaphysics* (1019b34), Aristotle differentiates between a possibility and a potency. In the first case, the possible state of affairs *has no reference to* a capacity and is therefore merely logically non-contradictory (a possibility), while the second case is a real possibility that *has reference to* a capacity (potency).⁵ In fact, capabilityarians regularly employ the term "capability" in accordance with either only one or a combination of the two following basic meanings⁶:

4] In addition to this concept of freedom that is tailored to individual life opportunities, Sen recognizes a second aspect of freedom that is related to (political) decision-making processes (cf. Sen 2002, 585).

5] What I refer to here as 'potency' corresponds to what Alan Gewirth characterizes as 'capacity,' which he distinguishes from 'capability': While capability is "primary active," capacity can "be passive as well as active; it is an ability not only to develop but also to be developed in certain ways" (1998, 63, n. 5).

6] In this respect, compare the analysis given by Crocker (2008, 171-77), who investigates the use of terminology by Sen and Nussbaum. Crocker comes to the conclusion that for Sen "a person's capability (for a particular functioning) is a possibility, option, freedom, or opportunity 'facing' the person. But this

- that of a “possibility” in the sense of a *logically* possible option, which *actually* ensues as a contingent “opportunity”;
- as an “ability” in the sense of a *potency* inherent in an individual, which, in turn, can be differentiated in terms of being active or passive, as well as poorly or strongly developed.

We refer to a “potency” in an active sense when we mean a capacity, a certain know-how, or even a skill. I will call this a *capability in the narrow sense* of the term (cf. Sedmak 2011, 32). Inasmuch as capabilitarians also include physical and psychological traits or characteristics of individuals as capabilities (see below), it appears that what is meant in this case are passive rather than active capacities. Regarding the transformation of such traits and characteristics into functionalities, one could again turn to Aristotle and speak of *dispositions* (attitudes). A capability in the narrow, active sense can then be regarded as the individual potency that can exert influence on external circumstances or internal states (feelings, thoughts, dispositions). The fundamental distinctions are summarized in Figure 1.

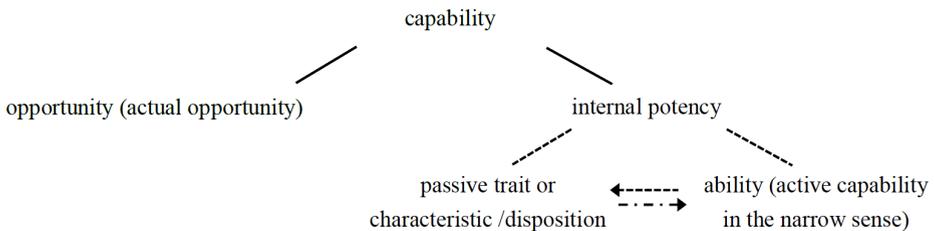


Figure 1. Internal differentiation within the concept of capability

It is quite obvious that one’s activities can exert an influence upon one’s feelings and dispositions. Conversely, there is no denying that feelings and dispositions can have an enabling, encouraging, or even an inhibitory effect upon our active abilities. As a case in point, James J. Heckman and Chase O. Corbin have demonstrated how various active capabilities reciprocally enhanced each other during ontogenetic skill formation within a dynamic model (2016, 344-48).

At first glance, the possibilities offered by a combination of an actual *opportunity* (O), either arising or not from external circumstances, and a capability (C), understood in the narrow sense of an ‘internal’ potency, are rather straightforward: $C \wedge O$, $C \wedge \neg O$, $\neg C \wedge O$, and $\neg C \wedge \neg O$. On second glance, however, opportunities as well as capabilities – whether active or passive in nature – can be quantifiably assessed: Something can be more or less advantageous, something else can be more or less defined. Although *I* have easy access

freedom may be due to a variety of internal factors, including abilities and other personal traits, as well as external factors” (2008, 172).

to sturdy building materials, for instance, my capability in the narrow sense (know-how, skills) to ensure that I am “well-sheltered” (Sen 1992, 45) is not notably developed. Conversely, a skilled but impoverished bricklayer or carpenter in a Manila slum cannot properly employ his skills if he only has plastic sheeting and corrugated sheet metal at his disposal. This *bifurcation* of the concept of capabilities is likewise reflected in the concept of freedom.

(2) *Equating freedom and capability*: There is a tendency, if not an explicit attempt, in many capability texts to use the terms “substantial” or “real” freedom and capability as semantic equivalents. To mention but a few examples: Sen makes reference to “substantive freedoms – the capabilities – to choose a life one has” (1999, 74) and to “the capabilities that a person has, that is the substantive freedoms he or she enjoys to lead the kind of life he or she has reason to value” (1999, 87; emphasis added by the author). Nussbaum speaks of “capability, in the sense not of coerced functioning but of substantial freedom to choose and act” (2011a, 24). Clearly intended as an explanation, Robeyns adds “capabilities” in brackets when referring to the term “substantive freedoms”: “substantive freedoms (capabilities)” (2005, 93, 111). Keleher mirrors “[o]ne’s capability set, including un-chosen options” with “an individual’s freedom to engage the world and make significant decisions about what she will be and do in her life” (2014, 62). Asserting such an equivalence, however, is by no means unproblematic, neither intensionally nor extensionally.

This is an apt moment to take a look at the intensional aspect of this equivalence: When we think of capabilities as substantial freedoms, then it clearly follows that at a particular point in time “t” we possess the *greatest* freedom of choice of activities (doings) and states of affairs (beings) when ‘C’ and ‘O’ are fully combined as ‘ $C \wedge O$ ’ in t, such that an individual could uncompromisingly realize their conception of a good life at that particular point in time. Viewed in this light, the normative objective of CA must be to at least achieve the threshold level of $C \wedge O$ permanently and to the greatest possible extent for all cases of $C \wedge \neg O$, $\neg C \wedge O$, and $\neg C \wedge \neg O$. Yet, since C is an internal aspect and O is an external aspect that to a certain extent⁷ can be quantifiably gauged *independently of each other*, there must be a threshold value for C and one for O. As such, capability as a substantial freedom is basically a *hybrid* concept that always includes both an internal and an external aspect. Irrespective of whether the scope of justice is applied according to the distribution norms of egalitarianism, prioritarianism, or sufficiency theory (Kaufmann 2006; Davis and Wells 2016; Nielsen and Axelsen 2017), a uniform standard for the hybrid concept of substantial freedom cannot suffice.

(3) *Significance of the evaluative moment*: As a welfare and development economist, Sen leaves the evaluative moment and its reasons completely up to individuals themselves, and, in contrast to conventional welfare economics, treats this as part of the expanded data base of his theory. Sen would prefer to leave any discussion of relevant

7] The restriction “to a certain extent” is due to the possibility that capabilities in the narrower sense can be lost if, in the long term, there is insufficient external opportunity to exercise them.

value considerations and the assessment of their underlying reasons to the democratic decision-making process (Sen 1999, chap. 6; cf. Crocker 2008). By contrast, Nussbaum, in adopting certain Aristotelian arguments, initially understood her theory as a suggestion as to *what* elements constitute a good life – even though substantially divergent views on what the good life entails has since led her to adopt a political liberalism along the lines of Rawls (see below).

Despite this arguably greatest difference between the two, both Sen and Nussbaum have introduced their approaches as an alternative to the various versions of resourcism: inasmuch as John Rawls, Charles Beitz, and Thomas Pogge, on the one hand, and Ronald Dworkin, on the other, direct their focus on the fair distribution of more or less primary goods and services, they are thereby subject to the initial criticism of merely dwelling on the *means* to an end and not on the end itself:

An important problem arises from the fact that primary goods are not constitutive of freedom as such, but are best seen as means to freedom [...]. (Sen 1992, 80)

By referring to “freedom” as the actual, final end, Sen disavows any welfare theoretical and utilitarian determination of goals in the form of well-being, welfare, or utility (happiness, desire fulfilment, or preference satisfaction). As all the varieties of CA consider that primary goods, including negative freedoms (freedom *from* y, that is, from external despotism and repression), serve as a means to realize *positive freedoms* (cf. Crocker 2008, 121-22), the question immediately rises as to what kind of *freedom* (freedom to do what?) is actually meant here. Insofar as positive freedoms are understood as realization opportunities that can be embodied in capabilities, one is left to pose the analogue question in terms of capabilities: What kind of capabilities are ends in themselves and not merely further means to some higher-level goal?

Opinions differ sharply with respect to the answer to this question. The *first*, liberal, and materially parsimonious answer provided by Sen is that the purpose of freedom is to allow every individual to decide *for themselves* what they want to do and to become. Robeyns formulates this point as follows:

What is ultimately important is that people have the freedoms or valuable opportunities (capabilities) to lead the kind of lives they want to lead, to do what they want to do and be the person they want to be. (2005, 95)

Simply put, those who are *in the position* “to lead the kind of lives they want to lead” have the substantial freedom (capability) to transform those capabilities into functionings that, from their point of view, they have “reason to value.” In this sense, Sen also designates in *The Idea of Justice* (2009) freedom as an end: “primary goods are merely means to other things, in particular freedom [...]” (2009, 234). How should this be understood? For illustrative purposes, let us imagine someone who would like to lead a simple life consisting of optionally eating, sleeping, reading a book, riding a bike, or spending time with friends. Let us further assume that at a particular point in time, this person has

the capability of freely choosing between these five options, as well as combining and organizing them at her own discretion with the aim of realizing their idea of the good life. This person would therefore possess the relevant internal potencies (abilities = capabilities in the narrow sense) and the external opportunities “to lead the kind of life she wants to.” From this perspective, freedom of choice here is clearly related to the performance of a *decision-making competency* (cf. Leßmann 2011), namely a second-order capacity that pertains to the available specific first-order capacities (to eat, sleep, read a book, etc.):

Capability reflects a person’s freedom to choose between alternative lives (functioning combinations), and its valuation need not presuppose unanimity regarding one specific set of objectives (or, as Rawls calls it, ‘a particular comprehensive doctrine’). (Sen 1992, 83)

According to this interpretation, the determination of (final) ends lies in the hands of every individual – or in the hands of a democratically constituted society. The *liberal* version of CA thereby finds itself in a state of latent tension with respect to alternative, yet potentially more controversial options. These alternatives maintain that the actual end must *somehow entail a specified concept of the good life or a successful lifestyle*, as Nussbaum originally did with her “thick vague conception of the good” (1990, 217 ff.). There are a variety of starting points to arrive at such specifications. One could turn to sources in the history of civilization in order to attain an idea of humanity⁸, which could subsequently be broadened to include a concept of a good or flourishing life. This would then permit us to inquire as to which capabilities are embodied in this lifestyle (Nussbaum 1987, 1990, 1992, 1995). One could equally begin with an analysis of human abilities, identify criteria for particularly excellent capabilities (i.e. key capabilities, Sedmak 2011), and then make explicit the very nature of humanity embedded within these capabilities. Ultimately, both of these approaches lead to a quarrel about a consensual view of a successful lifestyle, which Sen would *preferably eschew* in order to create room for second-order capabilities. Since any lifestyle pre-determined to be good or flourishing certainly cannot be based on *arbitrary* capabilities chosen at the discretion of individuals or of democratically elected legislators. According to Nussbaum, it should be the task of philosophy to distinguish a qualified and therefore invariably *limited* spectrum of worthy capabilities, and in this way ensure

the philosophical underpinning for an account of basic constitutional principles that should be respected and implemented by the governments of all nations, as a bare minimum of what respect for human dignity requires. (2000a, 5, cf. 51, 116)

[8] “What are the features of our common humanity, features that lead us to recognize certain others, however distant their location and their forms of life, as humans and, on the other hand, to decide that certain other beings who resemble us superficially could not possibly be human?” (Nussbaum 1990, 219).

It should be noted that the tremendous aspiration to specify capabilities as the object of generally respected and implemented constitutional principles concerning the exercise of political power would inevitably *restrict* the second-order freedoms of individuals:

The basic choice that Nussbaum leaves to individuals and communities is how to specify and implement the ideal of human flourishing that *she* – the philosopher – offers as the morals basis for constitutional principles. (Crocker 2008, 162)

Then again, a normatively ambitious CA, which demands the collective promotion of capabilities for all mankind, either through the state or international organizations, could not seriously uphold a *strict neutrality* with respect to the diversity of human capabilities. At the very least, CA should provide selection and evaluation *criteria* in order to allow for debate. Three brief comments should suffice at this point: If we make provisions for general conditions of shortage, the *first* question would concern the relevance of any capability with respect to the opportunity of a good or even only a decent lifestyle (Nussbaum 2000a, 13, 76; 2000b, 222-23; 2006, 44, 53; 2011a, 15, 29-42). For example, an extensive system of primary schools should be implemented before setting up schools for ventriloquists. *Secondly*, there are all kinds of functionings (such as shelter, medical care, and mobility) that can be realized through various capabilities and therefore could be evaluated in terms of *efficiency and sustainability*. Lastly, we would have to consider the *moral* quality of capabilities: “Many capacities inherent in our nature are bad (e.g. the capacity for cruelty)” (Nussbaum 2011b, 25; cf. 2000a, 83; 2011a, 61; Robeyns 2016, 406). A closer inspection of the dark side of human nature (Claassen und Düwell 2013, 496-97) reveals that under the surface of derogatory designations such as “cruelty”, there exists a broad range of capabilities with highly ambivalent potential: the expert cut into human flesh can equally serve to heal (surgery) or to torture (cruel infliction of harm). Many competencies that distinguish a good diplomat engaged in a difficult mission are those also shared by notorious swindlers. And the expert with a solid training in computer sciences can secure data from hostile attacks or alternatively engage in such attacks. The list of dual-use capacities is optionally expandable and can be easily expressed in the terminology of freedom. CA should therefore provide criteria that would aid in distinguishing between morally good, morally neutral, and evil realizations of capabilities.

III. NUSSBAUM’S CONCEPT OF CAPABILITIES AND A SIMPLE BASIC MODEL OF CA

In terms of capabilities, Nussbaum’s variant of CA essentially differentiates “basic capabilities,” “higher-level capabilities,” with which she clarifies the internal differentiation between “internal” and “combined capabilities,” and “central capabilities.”⁹ As, in my opinion, the ongoing discussion concerning Nussbaum’s list of central capabilities does not contribute anything essentially new towards the clarification of a basic model of

⁹ Nussbaum employs this terminology (at the latest) with her essay “Capabilities and Human Rights” (Nussbaum 1997, 289-90).

capabilities, I prefer instead to concentrate here on explanations and offer corrective suggestions on terminology concerning (1) basic and (2) higher-level capabilities in order to, along with Ingrid Robeyns, establish the connection between the central concepts of CA (3).

(1) Keeping with the spirit of early poverty research (Charles Booth, Benjamin S. Rowntree; cf. Gillie 1996), Sen still understood “basic capabilities” as those that correspond to more or less essential functionings needed for survival in situations of extreme deprivation, such as “the ability to be well-nourished and well-sheltered, the capability of escaping avoidable morbidity and premature mortality, and so forth” (Sen 1992, 45; cf. 1999, 36). His language maintains the characteristic style of approaches focusing on those basic needs and goods that primarily affect discernible physical living conditions.

In Nussbaum’s writings, the terminology shifts to a more pronounced *ontogenetic* perspective, which is directed towards the individual development of humans in a psychophysical unity. As representative of “basic capabilities,” she lists “the capability for speech and language, the capability to love and gratitude, the capability for practical reason, the capability to work” (Nussbaum 2000a, 84). Assuming that these can already be at the disposition even of an infant, Nussbaum understands the term “capabilities” here in the sense of very generally delineated innate equipment or innate powers (Nussbaum 2011a, 23). It should then be possible to differentiate and scale such powers, such as whether they require many years of practice or, to a certain degree, are ready to function from the very start, such as the capabilities of seeing and hearing (Nussbaum 2000a, 84). Without a doubt, the capability for practical reason and the capability to work are among those particularly requiring intensive practice. If we still wish to include these in the category of basic capabilities, the term “capability” seems to refer to a *predisposition* to a capability, thereby understood as a kind of potential to a potential. It is likely to be the case that basic capabilities as well as predispositions to capabilities do not simply develop autonomously but require an appropriate environment. Evidence for this can be seen in the widespread phenomenon of *stunting*, particularly among infants and young children in developing countries. Malnutrition and undernutrition can lead to developmental disorders even in the fetus, which can have an impact on the later training of motor and cognitive capabilities (cf. Handa and Peterman 2006; Grantham-McGregor et al. 2007; Groppo 2015).

(2) In terms of higher-level “trained or developed traits and abilities”, such as the capability “of participating in politics” or “to think critically or speak publicly” (Nussbaum 2011a, 22), Nussbaum recommends distinguishing between internal and combined capabilities: “I use the term combined capabilities for the combination of trained capacities with suitable circumstances for their exercise” (2008, 357; cf. 2000a, 84-85; 2011a, 22). Accordingly, the internal capacities include being able to think critically, be politically active, to speak in public, and to organize, which are all essential for the external guarantees of the freedom of speech, assembly, and association. Furthermore,

Nussbaum includes individual characteristics, such as “personality traits, intellectual and emotional capacities, states of bodily fitness and health, internalized learning, skills of perception and movement” (2011a, 21) to her list of internal capabilities. These are dynamic phenomena, and in order to flourish as *combined* capabilities, their training and maintenance require accommodating social, economic, and political framework conditions. Yet, even those capabilities classified by Nussbaum as “basic” require suitable *external* conditions in order to flourish (recall stunting), and, as substantial capabilities, would therefore also be “combined.” As such, I would prefer not to use Nussbaum’s classification of internal capabilities as combined, but instead distinguish them from “basic” capabilities with the designation of capabilities developed to a *higher level*. The second step leaves terminological *generalists* free to interpret the general possibility of participating in social life as a “capability” (Brighouse and Unterhalter 2010, 69), whereas terminological *specialists* can, for example, speak of someone possessing the professional competence to serve as a judge if that individual has passed the second legal state examination (bar exam). Of course, the borders between a generalized and a specialized perspective on capabilities are fluid, and the complex interaction between internal potential and external circumstances at all levels of development and specialization explain to no small measure the difficulties in measuring and comparing capabilities (Comim 2008; Nussbaum 2011a, 61). Nevertheless, for the sake of clarity, the generalists should be allowed to speak of capability sets for their purposes, while the specialists can refer to the specifying singular.

(3) In order to clarify the interaction between internal potencies and external conditions in the constitution of capabilities as substantial freedoms, I would recommend making use of what Sen referred to as “conversion factors” (1992, 79-87), namely those factors that co-determine if and how a capability or a set of capabilities can be transformed “into freedom of choice over alternative combinations of functionings [...]” (1992, 81) at a particular point in time with the help of actually available resources. Robeyns broke down these conversion factors according to personal, societal, and environmental factors with regard to the capability set of an individual and situated these capabilities in a social context (cf. 2005, 98-9; 2016). She has thereby arrived at a non-dynamic basic model of the transformation of resources into achieved functions by means of individual capability sets. Figure 2 adopts her representation, although it simplifies two aspects of the model.¹⁰

10] The first point is that on the input side of her representation, Robeyns also breaks down the sources through which people can obtain or finance goods and services: non-market production, market production, net income, as well as transfer in kind. The second point is that element that I have labeled as “personal preferences” is differentiated by Robeyns according to “preference formation mechanism” and “social influences on decision making” on the one hand, and “personal history and psychology” on the other (see 2005, 98). As these sources and differentiations are irrelevant for my considerations here, I have discarded them.

Personal conversion factors include individual characteristics, such as intelligence, talent and skills, physical condition (state of health), gender, and basic biochemical parameters,

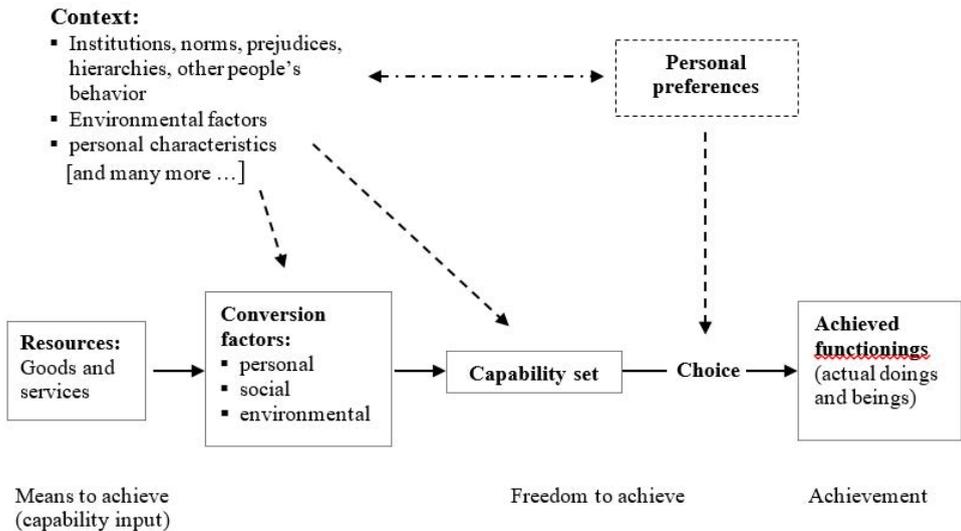


Figure 2. Stylised non-dynamic representation of a person’s capability set and her social and personal context. Modified version adapted from Robeyns (2005, 98).

such as metabolism rate. When it comes to *social conversion factors*, a whole range of heterogeneous social characteristics and conditions come into play, ranging from laws, conventions, hierarchies, and cultural practices and traditions (including discriminatory attitudes based on gender or ethnicity) to public goods, such as infrastructure, educational system, and so forth. Also included here are those external guarantees of freedom of speech and assembly invoked by Nussbaum, which complement the internal capabilities of critical thinking and being politically active, enabling them to become combined capabilities and therefore de facto operative capabilities (freedoms). Environmental conversion factors include not only long-term climatic conditions and geographical locations, but also catastrophes occurring in the relative short-term, such as earthquakes, severe weather, hurricanes and floods, and drought.

IV. UNDERESTIMATED MOMENTS OF FREEDOM

Having regard this basic model of CA I would offer one brief explanatory comment and two lengthier immanent-critical remarks. The keywords here are (1) interdependence, (2) variability and (3) freedom.

(1) *Interdependence*: Numerous causal and epistemic relations, as well as correlates of responsibility, can clearly exist between the various types of conversion factors.

For example, *environmental catastrophes* may be causally attributable to collectively interconnected activities, including social factors. And the severity of the consequences of such environmental events for persons affected depends to no small measure on the extent and quality of the prognostic, preventative, and response resources deployed. In terms of *personal* factors, there is sufficient evidence to show that individual access to education as well as a balanced diet are dependent on social parameters, such as ethnicity, class, and gender. And with respect to recurrent political disputes on international trade agreements, the antagonists are nonetheless united in their acceptance of the premise that *institutional* factors exert a considerable influence on the work and living conditions of the affected populations – in either a positive or negative sense.

(2) *Variability*: Secondly, it is significant that, typically, the possibilities of realizing capabilities or even sets of capabilities are dependent on personal conversion factors. Under other circumstances, in a varied instantiation of the schema, these capabilities or sets could be similarly subsumed under personal conversion factors or even under achieved functionings. A vivid example deals with what Nussbaum classifies as an essential capability: “Being able to participate effectively in political choices that govern one’s life” (Nussbaum 1997, 288; 2003, 42; 2006, 77; 2011a, 34, etc.). It encompasses, as a combined capability, the fundamental and actual guarantee of political rights, including a sub-type of social conversion factors, which can, for example, be implemented in local environmental political activities (functionings), i.e. activists seeking to prevent the destruction of ecologically valuable marshlands as a result of road construction. Should the protest to maintain the biotope prove successful, the activists would thereby also prevent a local restriction upon their exercise of a further capability, similarly classified by Nussbaum as being essential, namely, “being able to live with concern for and in relation to animals, plants, and the world of nature” (1997, 288; 2003, 42; 2006, 77; 2011a, 34, etc.). Inasmuch as combined capabilities concern substantial freedoms, the activists could have devoted their “substantial” political freedom to uphold ecological *preservation* to another substantial freedom – the freedom to be able to develop a relationship to other living beings and to nature as a whole. The freedom/capability to engage in political activities is retained as long as the relevant parameters (legal frameworks, passive and active dispositions, conversion factors) do not change for the worse. In addition, the protagonists have gained the freedom to experience nature, which, presumably, would have been lost had they not intervened. According to this interpretation, we are dealing with an increase in freedom *relative* to a conceivable situation where there is a *lack of political freedom*. Looking back, the original political capability (in the full sense of a substantial freedom) could thus also be interpreted as a conversion factor for the capability to develop a relationship with nature. At the same time, this example of a variable instantiation illustrates a synergy effect, which, according to Heckman and Corbin (2016), can produce an interaction of various capabilities. This synergy effect can be formulated both in terms of capability as well as *in terms of freedom*.

(3) *Freedom*: As we have seen, CA situates the freedom of a person in their individual choice between alternative combinations of doings and beings against the background of existing capability sets. These capabilities embody, as it were, that what a person is in a position to achieve (freedom to achieve) at a particular point in time and under the given contextual conditions. The contextual conditions, in turn, can be analyzed on the one hand in terms of accessible resources as the means to pursue a particular way of life, and on the other hand in terms of institutional frameworks, the value systems and norms of the local community, natural environmental conditions, personal traits and characteristics, and so on. In particular, the extent, orientation, and scope of these possibilities for doing and being appear to be the determining factors in establishing what a person may achieve at the moment of decision. They *condition* the latitude of freedom intrinsic to the capabilities yet appear to be peculiarly detached from any access by the individual. What thereby emerges is a depiction of persons whose ways of life tends to be reduced at any time to a given inventory of realization opportunities in conflict with internal and external experiences. Capabilitarians' professionally widespread preoccupation with and concentration on the poor and poorest of this world may have assisted in the promotion of such a depiction. Nonetheless, this could advance the de-differentiation of the two moments of meaning in the guiding term "capability" as external opportunity and internal potency.

Without any further explanation, Robeyns designates her schema of a "person's capability set" as a non-dynamic depiction. A more dynamic view of the connection between functionings, capabilities, and freedoms emerges when we take into account the previously discussed *interdependence* of conversion factors and the *variability* in the attribution of capabilities under capability sets, functionings, and conversion factors. Speaking from a first-person perspective, through the decision to realize lower-level capabilities into actual functionings, I frequently develop, under ontogenetic auspices, the potential to other or higher-level capabilities and functionings. The moment of freedom that arises in the first choice is simultaneously passed on to the next level, which allows for the development of further and higher-level capabilities and functionings. Finally, this is reflected in personal conversion factors or even institutional norms (laws)¹¹, which, in the form of framework conditions, will then allow me (or not) to employ a *then* given set of capabilities in the functionings I prefer.

While this potential for freedom is systematically underestimated in Robeyns non-dynamic model, it nonetheless appears to me that the *freedom to decide* on capabilities to be realized, seen as the paradigmatic location of freedom, is prone to misunderstanding and overestimation. One view, let us say one that is semantically naïve and empirically uninformed, could imply that between a given capability set, on the one side, and optional functionings (doings and beings), on the other, there existed a clearly defined

11] Correspondingly, Sen (1999, 36-40) differentiates between a "constitutive role," which, for instance, political freedoms have on development, and an instrumental function of freedom that "concerns the way different kinds of rights, opportunities, and entitlements contribute to the expansion of human freedom in general" (1999, 37).

and genuine leeway space, which would provide individual freedom to choose a solid and straightforward position to protect from paternalistic encroachments. CA would reserve this leeway space for every individual so that they could realize their preferred functionings in accordance with their own conception of the good life. Such a conception is certainly evoked by the previously mentioned semantic *equivalence* of capabilities with freedoms. In conclusion, we will examine one of Nussbaum's ideas to demonstrate that this simplified picture simply does not hold true.

V. HOW AN OBJECTION TO PATERNALISM CANNOT BE AVOIDED

Initially, Nussbaum recommended that political incentive measures should exclusively concentrate on capabilities (1997, 287). She later conceded that such a restriction was simply mistaken when considering certain groups of people. Basically, Nussbaum wants to adopt a politically liberal standpoint along the lines of Rawls, namely one that allows for a plurality of conceptions of a good life, as she recognized that the promotion of functions in the case of 'normal' adults "were precluding many choices that citizens may make in accordance with their own conception of the good, and perhaps violating their rights" (2000a, 87; cf. 2006, 171-72). This affirmation of political liberalism that perceives itself as being *anti-paternalistic* admits certain exceptions:

(α) In the case "of people with severe mental impairments," who do not, for example, have the capacity to decide upon a designated medical treatment and therefore cannot be 'informed' in order to provide a possible 'consent,' they should rather be supported in their actual functionings (state of health) instead of capabilities (Nussbaum 2006, 172-73).

(β) Supporting functionings also remains a priority when this facilitates the development of certain adult capabilities in children. This presupposes the promotion of certain functionings in childhood, which in themselves serve as prerequisites for later capabilities: "exercising a function in childhood is frequently necessary to produce a mature adult capability" (Nussbaum 2000a, 90). Such a desired paternalism is reflected in compulsory education (Nussbaum 2006, 172, 377, 395; 2011a, 26, 148, 156).

(γ) Finally, Nussbaum is willing to allow for exceptions to the ban on paternalism when functionings are of key importance for the development or maintenance of other capabilities. Above all, she includes health, security, and environmental protection among the relevant spheres of life (2000a, 91; 2006, 172, 294).

At this juncture, I am not prepared to enter into the wide-ranging debate concerning various forms of paternalism (cf. Leßmann 2005; Nelson 2008; Claassen 2014). Instead, in two steps, I would prefer to show why Nussbaum's theory can hardly *avoid* the objection of paternalism, whether justified or not, because her primary focus is on capabilities and only in supposedly exceptional circumstances on functionings.

(1) The difficulties begin with the identification of capabilities and functions and their categorization along the lines of “basic” and “internal” capabilities. The characteristic of being “basic” can be understood along with Sen and early poverty research in the sense of being *urgent* for survival or the avoidance of “absolute deprivation” (Sen 1981, 17): “Basic capabilities” would then be those capabilities that ensure survival or, as the case may be, physical health within one’s environment (see above: 3. (1)). From the viewpoint of a developmental theory approach, however, basic could also be understood as a *Prius* [previous]. Accordingly, a capability would then be labeled basic in relationship to higher-level and/or more specific capabilities that build upon it (see above: III. (2)). Taken from this point of view, Nussbaum’s “capability to work” could now be seen ontogenetically as higher-level, even when perceived in a rather broad sense. At the same time, it could also be classified as “basic” in the sense of being “urgent,” to the extent that we assign normal adults as being in a “mature condition of readiness.” By contrast, in the case of small children, people with certain mental disabilities, or very old persons, we do not presuppose a mature capability to work nor – *a fortiori* – its urgency.

From a philosophical point of view, we could certainly leave the difficulties of the intensional and extensional delineation of a capability concept to relevant specialist disciplines, such as evolutionary psychology and learning theory. One thing, however, seems perfectly clear to me: The partitioning of capabilities according to types and levels is not something that is plainly apparent from the nature of the subject matter. Rather, it is dependent on theoretical positions and is thereby subject to particular interests. In particular, it provides absolutely no response to the *follow-up question*, which is of vital interest to any resource allocating entity, as to whether a person has developed a particular capability to a certain threshold level, without the person having even activated this capability: *The kind and degree of development of capabilities cannot at all be recognized, irrespective of relevant functionings.*

(2) I thereby come to the actual crucial issue: the differentiation between capabilities and functionings. The simple picture that clearly delineates capabilities from functionings is just not applicable for all those capabilities or even bundles of capabilities the acquisition of which could fit under the motto of “learning by doing.” Here, one could easily invoke examples of very heterogeneous capabilities of various difficulty and aggregation levels: *being able to* read, write, perform arithmetical calculations, make music, dance, swim, ride a bicycle, maintain social relationships, experience sexual satisfaction, as well as program computers, solve legal cases, or draft political programs. All of these capabilities require for their development that we actually exercise the relevant functionings (activities) to a particular degree – even if initially we are inept or amateurish – because it is only in this way that we can acquire the “tacit components” (Polanyi 1962) of the corresponding knowledge. As previously noted, Nussbaum does concede that “exercising a function in childhood is frequently necessary to produce a mature adult capability” (2000a, 90). Yet, in this case, it could appear as if the close interconnections of capabilities and functionings involved in learning were merely a specific feature of childhood. This would be misleading,

however, as empirical evidence makes amply clear: Widespread functional illiteracy among *adults* is not only explained by the circumstance of never having learned to read and write. Quite frequently, already acquired skills in reading and writing can be lost as a result of a protracted lack of practice (Buddeberg 2012, 206 f.; Sturm and Ziegler 2014). As such, it appears to me that a much closer interconnection between capabilities and functionings exists, namely one that spans the whole life cycle of an individual into old age. This also explains the basic thesis of CA as to why those capabilities falling under the heading of “learning by doing” as an *internal potency or disposition* will still always depend on suitable *external conditions*. Then, without actual opportunities for practice in the form of functionings, these capabilities can neither be developed nor be maintained at a previously achieved level. The idea of understanding capabilities as substantial freedoms requires exactly this interplay between external opportunities and internal potency (or rather capabilities *in the narrow sense*) and is thereby opposed to Nussbaum’s separation of capabilities from functionings in the name of avoiding paternalism.

In conclusion, if it is true that capability, understood as substantial freedom, is a hybrid concept that invariably includes an inner as well as outer aspect, then those versions of CA that base their normative ambitions more on *external opportunities* for the realization of internal potencies, tend to conform to views of Rawls. Therefore, along with “rights, liberties, and opportunities, and income and wealth” (Rawls 1999, 79), they also take into consideration a broad spectrum of basic goods. By contrast, those capabilitarians who place greater focus on supporting the internal aspect of capabilities by advancing a kind of “educational approach of justice” (Andresen, Otto and Ziegler 2010, 188), will thereby always take into account and promote functionings. As such, they, in particular, will be obliged to observe the sort of neutrality necessary to avoid the objection (legitimate or not) of paternalism.

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