JUSTICE AND THE POLITICS OF CAPABILITIES: SEN, NUSSBAUM AND NAVARRO

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Abstract Linking the idea of justice with human dignity through the 'politics of capabilities' is a recent theoretical project advanced by Amartya Sen and Martha Nussbaum and inspired by the shortcomings of Rawls's understanding of justice. Rawls's view on the redistribution of resources or primary goods has nothing to say about someone's capabilities to use these goods, so the idea of capabilities becomes central since it is focused on the way of life a person has a reason to value. The article discusses Sen and Nussbaum's development of the capabilities approach and their criticism of Rawls's fundamental premises about justice. Although the capabilities approach attempts to rectify injustices that Rawls failed to address properly, there are limitations of that approach as well. At the end, it is shown that capabilities are valued in relation to their contribution to the system of production – having more capabilities enhances someone's socio-economic position within the given structure – but this does not question the existing power relations and the very structure that perpetuate inequalities. Hence, the author agrees with the line of criticism that invokes the issue of power relations provided by Vicente Navarro, yet extending this criticism to Rawls's theory of justice for not fundamentally questioning the power relations inherent in the institutions reproducing social injustices.

Key words Justice, Capabilities, Sen, Nussbaum, Rawls, Navarro

It is intolerable that any man, woman, or child go through life segregated and deprived of their rights for any reason, much less because they were born into a body or mind that our global society may deem too different to accommodate. That their separation is due to a physical or mental disability, as opposed to one of more 'traditional' or visible classifications like race or religion or gender, makes the violation of their rights no less severe. True equality for the disabled means more than access to buildings and methods of transportation. It mandates a change in attitude in the larger social fabric – of which we are all a part – to ensure that they are no longer viewed as problems, but as holders of rights that deserve to be met with the same urgency we afford to our own. Equality puts an end to our tendency to perceive 'flaws' in the individual, and moves our attention to the deficiencies in social and economic mechanisms that do not accommodate differences.

Mary Robinson (in: Nussbaum 2006: 198-199).

Introduction

From Plato to our contemporaries the effort of political thinking was to provide a persuasive answer to how a just society should look like and how deep social injustices should be dealt with. In the second part of the 20th century, political and social theory was under the influence of Rawls's understanding of justice as fairness seen as an attempt towards eliminating those social and political inequalities „that are not to the benefit of all" (Rawls 1971: 54). This article is focused on different aspects of justice, away from the narrow idea of redistribution. We are going to discuss the shortcomings of Rawls's approach, though not from the known and well-established libertarian or communitarian critique of his theory of justice. Rather, the type of critique I am going to deal with is characterized by what Nancy Fraser would call a transition from the idea of 'redistribution' to that of 'recognition' (Fraser, 1995), yet, not in terms of the identity politics, but in redefining and extending the concept of redistribution to include, and thus to recognize those not being addressed in Rawls's theorizing of justice. In particular, my focus will be on the development of new socio-political vocabulary particularly wrapped up in the concepts of 'dignity'[1], 'decency'[2] and 'capability'[3] in contemporary discussions about justice that consider Rawls's approach limited in scope. Of course, these concepts can be discussed separately and from various theoretical angles, but my intention is to take the capabilities approach, or what can be called the politics of capabilities, theorized by Amartya Sen and Martha Nussbaum, as the approach that links the idea of justice with human well-being, namely as the project attempting to deepen Rawls's own approach as well as to criticize Rawls's shortcomings, not the project connected with more other aspects of the politics of recognition under the notion of the so-called identity politics as discussed, for example by Iris Marion Young and Charles Taylor, among all[4]. This approach reexamines the more general discussion of what qualifies for good life, a life that we have reason to value, a life worth of human dignity, seeing social and political justice inseparable from the value of life.[5] Whe-

[1] Martha Nussbaum particularly focuses on dignity and capablities attempting to root them in Aristotle's political philosophy, "Dignity is not defined prior to and independently of the capabilities, but in a way intertwined with them and their definition" (Nussbaum 2006: 162). I will discuss her views later in the text.

[2] For a detailed account on the concept of a 'decent' society, see: Margalit 1998.

[3] G.A. Cohen sees Amartya Sen's capability approach by attempting to illuminate what Sen actually thinks when introducing the concept of capabilities as something addressing the shortcomings of Rawls's understanding of primary goods. According to Cohen "Sen arrived at what he called 'capability' through reflection on the main candidates for assessment of well-being … which measured something falling between primary goods and utility … He called that something 'capability'" (Cohen 1990: 367-368). Cohen, however, shows some problems in this notion of capabilities. For more see: Cohen 1990: 357-382.

[4] For a detailed disscusion of this understanding of justice see I.M.Young's *Justice and the Politics of Difference* (1990), and Charles Taylor's essay *The Politics of Recognition* (1996).

[5] This approach is founded on Aristotle's understanding of life in the opening sentences of the *Nichomachean Ethics* as well as from his opening of the *Politics*. According to Aristotle life in *polis* is inseparable of good (*eu zēn*), it aims towards "the Chief Good", and as such it justifies the foundation of *polis* (see Aristotle 1998, 1973). Recently Giorgio Agamben took on this Aristotelian distinctions of life – the tension between *zōe* "which expressed the simple fact of living", and *bios* (which indicated the form or way of living proper to an individual or a group when theorizing

re Sen and Nussbaum stand together with Rawls is the centrality of fairness to justice in a sense that something like natural lottery or natural endowments are arbitrary and as such cannot be taken as a foundation of justice. In other words, the demands of justice as fairness cannot be satisfied in any social structure in which its members are at the mercy of fortune. Yet, in their understanding of the scope of justice, Sen and Nussbaum diverge from Rawls. Unlike Rawls's commitment to equality – equal basic liberties and opportunities for all embodied in the list of primary goods – being predominantly distribution-oriented and disallowing inequalities unless they are to everyone's advantage (Rawls 1971: 53), namely, unless primary goods „are acquired in ways which improve the situation of those who have less" (Rawls 1971: 81), Sen and Nussbaum see a fundamental flaw in Rawls's approach. For Sen what makes Rawls's theory problematic is its narrower relation to the diversity of human beings and their various needs in various circumstances that constitute someone's well-being (Sen 1980: 215-216). The capability approach is thus a response to this theoretical inadequacy related to various diversities attempting to demonstrate the shortcomings of Rawlsian equality. However, what misses from Sen and Nussbaum's criticism of Rawls is the way in which power relations and social structures perpetuate social inequalities. This is where Vicente Navarro criticizes the capabilities approach for not questioning the very system that produces and reproduces social injustices due to the power relations inherent in the institutions. In that sense, Navarro argues that even the capabilities approach fails to address social injustices properly.

Therefore, in this article, three views related to the dealings with social and political injustices, mostly focusing on the politics of capabilities will be taken into consideration. First, I am going to start with the perspective introduced by famous economist and Nobel prize winner Amartya Sen in his book *Development as Freedom* who claims that there could be no improvement of freedom without extending individual capabilities. These capabilities should allow the way of life a person has a reason to value. For Sen the idea of development is not understood in terms of economic growth only, but rather „development can be seen…as a process of expanding the real freedoms that people enjoy" (Sen 2000: 3). In other words, Sen asks what the real availability of functionings, or basic capabilities understood as „a person being able to do certain things" (Sen 1980: 218) is. Second, as an addition to the 'capabilities approach' we are going to discuss the argument provided by Martha Nussbaum in her *Frontiers of Justice*, a book she considers to be both critical and constructive for Rawls's conception of justice. Nussbaum is not going to displace the Rawlsian framework, but rather try to improve „a family of liberal conceptions" of justice in which the „capabilities approach is another member of this family" (Nussbaum 2006: 6). For Nussbaum the capabilities approach should push toward „the level above which not just mere human life, but good life, becomes possible" (Nussbaum 2006: 181). Finally, we will take into perspective Vicente Navarro's critique of the capabilities approach. Its focus is on the conclusions Sen made in *Development as Freedom* basically claiming that even the capability approach is inadequate in correcting social injustices due to its omission to take the role of power relations seriously enough.

the relationship between politics and life, a transformation of political exsistence into "bare life" (Agamben 1998: 1-12).

Sen's Idea of Development and Capabilities

Dissatisfied primarily with Rawls's conceptualization of justice, its principles and the role primary goods play in his theory, Amartya Sen opened up the way towards 'the capability approach' first in his lecture *Equality of What?* delivered at Stanford University in 1979, followed by his book *Commodities and Capabilities* (1985a), and further theorized in his recent book *Development as Freedom* where Sen's discussion aims to rethink the traditional understanding of development in relation to freedom via his capability approach. In the nutshell, we can see Sen's position being critical towards existing conceptual frameworks for dealing with social and political injustices as problematically focused on the rational individual, its interest-oriented assessment of social and political life that have been perpetuated through the contractarian narrative of mutual advantage, while not promoting enough human well-being, or not enough as specified in the thin theory of the good through the list of primary goods as articulated by Rawls (Rawls 1971: 348).

In *Development as Freedom* Sen starts with the Janus-faced premise of the world. One face of the world is a face of opulence, a world where people on average can enjoy the quality of life unimaginable a century ago. The other face is much gloomier. It is a face with a significant dose of injustice, the face of a world where, to paraphrase on Hobbes, the life of man is poor, nasty, brutish and short. While one face of the world is running towards the more sophisticated ways of fulfilling human desires, the other face is sinking below the level of necessities, hardly being able to fulfill basic human needs. As Sen emphasized from the very beginning, overcoming this Janus-faced world is the major task of his idea of development. This is how Sen links development with freedom. Development should not be understood solely in economic terms, but more fundamentally, it is a concept which, according to Sen, should be put together with broadening personal freedoms and aiming at raising the quality of life and contributing toward human dignity. In Sen's own words: "Development consists of the removal of various types of unfreedoms that leave the people with little choice and little opportunity of exercising their reasoned agency. The removal of substantial unfreedoms…is *constitutive* of development…It concentrates particularly on the roles and interconnections between certain crucial instrumental freedoms, including *economic opportunities*, *political freedoms*, *social facilities*, *transparency guarantees*, and *protective security*" (Sen 2000: xii). Therefore, development should not be measured exclusively with the "the growth of gross national product, or with the rise of personal incomes, or with industrialization, or with technological advance, or with social modernization" (Sen 2000: 3) but rather in terms of expanding our substantial freedoms.

While for Sen no real freedom is possible without these easily measured determinants, yet freedom understood only through them would be dramatically impoverished. It would exclude all social and political outcomes and consequences of education and health care as well as the level of political and civil rights. Aiming at extending these freedoms and including them into the idea of development, Sen's argument implicates that a just social and political order can hardly be detached from a decent society, a concept that has to be attributed to Avishai Margalit describing a normative ideal of society as the "one whose institutions do not humiliate people" (Margalit, 1998: 1). Since for Sen development includes the enhancement

of substantial freedoms, it necessarily excludes all practices curtailing these freedoms in an unnecessary or unreasonable way. Therefore, Sen is drawing upon a framework of socio-political non-humiliating practices when stating that development "requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states" (Sen 2000: 3). For Margalit this would constitute a humiliating society since one that is decent is the "one that fights conditions which constitute a justification for its dependents to consider themselves humiliated. A society is decent if its institutions do not act in ways that give people under their authority sound reasons to consider themselves humiliated" (Margalit 1998: 10-11).[6] Thus, for Margalit and for Sen, a simple measurement of decency or development would not be enough. Society should be judged by the practices it embraces and follows and the best blueprint for these practices to flourish is in a liberal-democratic setting. If allowance of famine is humiliating then any government allowing it cannot be considered neither decent nor democratic: "no famine has ever taken place in the history of the world in a functioning democracy – be it economically rich…or relatively poor…" (Sen 2000: 16). Similarly, Nussbaum's view of a decent society and the idea of justice go hand in hand with the capabilities: "The job of a decent society is to give all citizens the (social conditions of the) capabilities, up to an appropriate threshold level" (Nussbaum 2006: 182).

Since Sen puts development in the context of freedom it is necessary to examine his understanding of freedom along with his capability approach. Freedom makes sense only if it can be exercised. This contrasts Rawls's view, since for Rawls freedom is primarily premised on the procedures and the institutional settings: "Whether men are free is determined by the rights and duties established by the major institutions of society" (Rawls 1971: 55). For Sen, freedom is *conditio sine qua non* of human capabilities defined as the availability of reasonable and valuable life someone is able to conduct (Sen 2000: 18). In other words, freedom is taken as a resource that is going to be evaluated in terms of the functioning or the capability it provides for someone's life. That means that social arrangements would be impoverished if they would be based on resources only. My freedom/income should be viewed as a resource that might or might not provide me with some capability. If my freedom, or if my income and wealth, do not give me the capability to get the expensive healthcare for treating my cancer, they are of little or no value, and in that sense they are not be able to contribute to my human dignity and make my life valuable and livable.

Basically this is the argument aimed at challenging Rawls's two principles of justice and his view of primary goods. In his early attack on Rawls's theory of primary goods developed in *Equality of What?* Sen concludes: "Primary goods suffers from fetishist handicap in being concerned with goods, and even though the list of goods is specified in a broad and inclusive way, encompassing rights, liberties, opportunities, income, wealth, and

[6] However, here, in addition, Margalit provides the Biblical example of the humiliation of Jesus. For Margalit this is an interesting example showing that even if Jesus did not consider himself being humiliated but perhaps under temptation, and even if for Christians this might be viewed "as a trial rather than a sound reason for feeling humiliated", this makes no difference for the rest of us to consider "those who put the crow of thorns on his head" humiliators (Margalit 1998: 12).

the social basis of self-respect, it still is concerned with good things rather than with what these good things *do* to human beings" (Sen 1980: 218). Rawls considers primary goods as "rights, liberties and opportunities, and income and wealth" as well as self-respect, understood in a way in which these are "things that every rational man is presumed to want" (Rawls 1971: 54). This is a bold claim since it assumes knowing what is rational for everyone, namely that equal distribution of these exact goods would be fundamental to someone's well-being. It rests on the premise, as Sen emphasizes, that we all have similar views on these goods/resources. However, some rational people might argue that the list of primary goods should include an equal share of certain resources such are healthcare or free time/leisure, for example, since these resources would determine their life prospects. Sen's capability approach suggests that some urging needs are not proposed by Rawls's scheme of primary goods and there is no fundamental reason to exclude them from consideration when thinking about equal distribution. But the very list of primary goods is not the only thing that Sen puts into question. According to Rawls, "basic liberties are separated out as having priority over other primary goods" (Sen 1980: 214). For Sen this should be considered as another shortcoming of Rawls's theory. It presupposes, as mentioned above, that all people have the same or very similar needs arguing that Rawls's equality overlooks "very widespread and real differences" (Sen 1980: 216), that primary goods cannot address adequately. Sen clarifies: "…in fact, people seem to have very different needs varying with health, longevity, climatic conditions, location, work conditions, temperament, and even body size (affecting food and clothing requirements)" (Sen 1980: 215-216), yet, Rawls's "veil of ignorance" takes everyone into the same situation of equality that makes unequal treatment of different needs unjustified. If various people in various conditions have various and different needs based, for instance, on various and different body conditions, Rawlsian distribution becomes problematic. For example, based on different constitution and body weight, as well as on other possible differences, an equal share of glasses of wine have a different effect not only on average men and women, but also on different people. The famous Rawlsian cake-cutting example according to which the "veil of ignorance" allows for everyone's equal share in an imagined distribution of cake perfectly shows how Sen's critique makes sense. Sen identifies that "Rawls takes primary goods as the embodiment of advantage, rather than taking advantage to be a relationship between persons and goods" (Sen 1980: 216). The problem is, as noticed earlier, that Rawlsian equality is focused on the redistribution of goods as such, not on what goods do to people, thus missing out what can be called the conversion principle, i.e. the outcomes of such equality as well as the shortcomings of not justifying different quantity and quality of resources based on human diversity, hence on an unequal capacity to convert different human conditions into what Sen calls functionings, or what Cohen translates as "desirable states" (Cohen 1990: 378). Sen writes: "If human beings were very like each other, this would not have mattered a great deal, but there is evidence that the conversion of goods to capabilities varies from person to person substantially, and the equality of the former may still be far from the equality of the latter" (Sen 1980: 219). In that respect, the politics of capabilities would address the problem of Rawlsian equality by proposing equality of "basic capabilities" – an ability "to do certain basic things" (Sen 1980: 218). Later in *Inequality Reexamined* (1992) Sen adds: "Equality of freedom to pursue our ends cannot be

generated by equality in the distribution of primary goods" (Sen 1992: 87). Rawls responded to Sen's criticism in *Justice as Fairness: A Restatement* admitting that his theory did not consider such extreme cases as those Sen has been discussing, yet that these cases should be taken seriously. He said: "The more extreme cases I have not considered, but this is not to deny their importance … we have a duty towards all human beings, however severely handicapped … I don't know how far justice as fairness can be successfully extended to cover the more extreme kinds of cases. If Sen can work out a plausible view for these, it would be an important question whether … it could be included in justice as fairness when suitably extended, or else adapted to it as an essential complementary part" (Rawls 2001: 176 n.59)[7].

Nevertheless, Sen's concept of "capability" and the understanding of "capacity" in Rawls's argument share some similarities. "Capability" for Sen means the real opportunity "to choose a life one has reason to value" (Sen 2000: 74) linked with the idea of freedom person enjoy when able to do things, a "well-being freedom" (Sen 1985b: 201)[8], and as such it comes close to the notion of 'substantial freedom' which Rawls aimed to express in the 'worth of liberty' as a person's "capacity to advance their ends within the framework the system defines" (Rawls 1971: 204). In *Inequality Reexamined,* however, Sen clarifies his and Rawls's approach by showing an inadequacy of Rawls's reliance on goods. Sen writes: "...a person who has a disability can have more primary goods (in the form of income, wealth, liberties, and so on) but less capability (due to the handicap). To take another example, this time from poverty studies, a person may have more income and more nutritional intake, but less freedom to live a well-nourished existence because of a higher basal metabolic rate, greater vulnerability to parasitic diseases, larger body size, or simply because of pregnancy ... many of those who are poor in terms of primary goods also have characteristics… that make it more difficult for them to convert primary goods into basic capabilities…" understood as an "access to a decent minimum level of functionings of an especially fundamental importance , such as mobility or shelter or health or community participation" (Sen 1992: 81-82).[9]

Discussing influential approaches to justice, Sen considers utilitarianism, libertarianism and Rawlsian theory of justice flawed since their competing principles rest on dubious informational exclusions. First, Sen is going to highlight, at least three major limitations of the utilitarian approach: distributional indifference (the sum of total happiness or desire fulfillments matters, not the way how they are distributed); neglect of rights, freedoms and other non-utility concerns (they could be valued only if they promote overall utilitarian calculus, not for their own sake); adaptation

[7] Harry Brighouse argues that Rawls's theory can be accommodated to the disabled since "intuitively the disabled are, other things being equal, the least advantaged, and Rawls's theory is designed … to benefit maximally the least advantaged whomever they may be" (Brighouse 2001: 555).

[8] G.A. Cohen points toward this importance of the notion of freedom in Sen's understanding of capabilities. However, he also notices certain ambiguities of Sen's linking of these two together. For a detailed account on Cohen's criticism see: Cohen 1990: 376.

[9] In *Political Liberalism* Rawls responded: "I agree with Sen that basic capabilities are of first importance and that the use of primary goods is always to be assessed in light of assumptions about those capabilities" (Rawls 1993: 183). For Rawls, Sen's approach might be forcing reconsideration predominantly on health care issues, without a possibility to be extended to a fully developed theory of justice (either comprehensive, or political).

and mental conditioning (the utilitarian approach can be easily swayed by mental conditioning and adaptive attitudes) (Sen 2000: 62). Therefore, the utility calculus is unfair when not paying attention towards the particular demands of those deprived, oppressed, or with special needs. Second, in terms of Nozick's libertarian approach, Sen argues that the uncompromising priority of libertarian rights including the 'entitlements', would probably lead toward "the violation of substantive freedom of individuals to achieve those things to which they have reason to attach great importance, including escaping avoidable mortality, being well-nourished and healthy, being able to read, write and count, and so on" (Sen 2000: 66).

Finally, as pointed out earlier, Rawlsian theory of justice suffers from its own limitations. The first particular requirement of this theory is that inequalities are permitted only if they are to everyone's advantage or able to "make everyone better off" (Rawls 1971: 54-55). Sen shows that needs vary and hence Rawls's view that inequalities "are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society" (Rawls 1971: 13) cannot justify those inequalities not being beneficial for those not benefiting directly from them, or for those not having "regular", but urging and special needs no matter what their social status is. Rawls's contractarian approach fails to address those demands for legitimate inequalities beyond the mutual advantage matrix since its conception of justice "only requires that everyone's position be improved" (Rawls 1971: 55).

Another problem is related to Rawls's imagined initial situation. For Rawls "a contract view holds that certain principles would be accepted in a well-defined initial situation (Rawls 1971: 14). In fact, this initial situation is far from being well-defined as the Original Position corresponds to what Nussbaum terms "normal" social cooperation (Nussbaum 2006: 118) where "normal" makes those with certain impairments out of the Rawlsian scheme. In these "normal" Rawlsian circumstances we imagine that everyone is "free and rational" (Rawls 1971: 10) in choosing the principle of justice as well as "that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances" (Rawls 1971: 11). But these outcomes and contingencies might be detrimental for someone's ability to make free and rational choices at all. Rawlsian "normal" Original Position is filled with abstract "normal" rational people making "normal" rational choices, and not taking into consideration those people with various impairments of life, those obviously not considered "normal" rational agents in the Rawlsian sense. Consequentially, it would be hard to imagine that many beyond the scope of "normal" social cooperation (those with impairments of life) would be persuaded to accept Rawlsian initial situation by using "philosophical reflection" (Rawls 1971: 19) as they would likely be unable to make such an effort. In other words, if I possessed all or some from the fixed list of Rawlsian primary goods, but was unable to make sense of them due to my impairments, then the whole equal distribution argument would have to be seriously reconsidered. This explains Sen's view that capabilities, unlike Rawls's primary goods, are not set once and for all and having no equal meaning for everyone. Our needs and thus our understanding of reasonable and valuable life are changing through time and space and so are the capabilities as well.[10] Further-

[10] In contrast to Sen, although accepting the idea that the capabilities are developing

more, Sen sees capabilities as something having intrinsic value for someone's own good and as such "it is not at all clear why people in that primordial state should be taken to be so indifferent to the joys and sufferings in occupying particular positions, or if they are not, why their concern about these joys and sufferings should be taken to be morally irrelevant" (Sen 1980: 217).

In that context, Sen views the role of freedom as two-fold: it fosters capabilities through public policy and encourages them as much as possible, while at the same time "the direction of public policy can be influenced by the effective use of participatory capabilities by the public" (Sen 2000: 18). Thus, the politics of capabilities is at the heart of political justice, since a just political system should protect and enhance these capabilities. Instead of Rawls's guiding idea according to which the principles of justice are those "that free and rational persons concerned to further their own interests would accept in an initial position of equality" (Rawls 1971: 10), Sen takes a different, more democratic approach. By not relying on abstract principles that abstract individuals would follow in the "hypothetical situation of equal liberty" that reflects "the original position of equality" (Rawls 1971: 11), making just choices is on the people with their various needs in changing circumstances. "If a traditional way of life has to be sacrificed to escape grinding poverty or minuscule longevity", Sen writes, "then it is the people directly involved who must have the opportunity to participate in deciding what should be chosen" (Sen 2000: 31), namely that it is only up to the people "to decide freely what traditions they wish or not wish to follow" (Sen 2000: 32).

Although income may affect freedom and vice versa, Sen argues that the effects of both income and capabilities should be observed separately. For example, low income, as Sen highlights, "can be a major reason of illiteracy and ill health as well as hunger and undernourishment" (Sen 2000: 19) limiting the exercise of some basic freedoms, as well as an obstacle to improving someone's quality of life. The inability to have a better education and healthcare could lower the chances of acquiring a better job, and as such would not only affect someone's life expectancy, but also likely those of future generations. This is why Sen highlights that our substantial freedoms are affected not only by income but also by our capabilities. In fact, poverty is not merely caused by low income but rather by capability deprivations as well (if not even in greater extent). In that respect there is no substantive difference in income deprivations or capability deprivations. Both deprivations would almost for sure affect someone's quality of life. Hence, although poverty could be understood in material terms as being income-based, poverty could also be expressed in an immaterial way as a deprivation of basic freedoms. Capability deprivations reflected in "premature mortality, significant undernourishment (especially of children), persistent morbidity, widespread illiteracy and other failures" (Sen, 2000: 20) are immaterial expressions of poverty.

The second particular requirement of Rawls's theory is the absolute "priority of liberty" which is supposed to safeguard the idea that "each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override" (Rawls 1971: 3). Rawls sees this priority rule as one of the essential aspects of his theory that particu-

rather than being already developed, Martha Nussbaum is going to make a list of the capabilities not allowing them to be in a sort of flux. I will return later to Nussbaum's argument. See: Nussbaum 2006: 76-77.

larly differentiates it from the utilitarian views on justice. This 'lexical' priority of liberty to other considerations is meant to capture the illegitimacy of sacrificing any individual's basic personal freedoms for collective gains. However, although this rationale of Rawls's main priority principle often aligns with more basic inviolability of the difference between persons in general, they are not the same. The latter corresponds to the general 'priority of the right to the good' principle as the core of Rawlsian liberal understanding of justice.[11] But what kind of absolute priority may endanger, Sen asks, the status of other needs such as for example the need for economic sufficiency/insufficiency influencing the matter of life and death? How come that this issue may be overridden by personal liberties? In other words, what Rawls considers as the sacrosanct ordering of principles according to which any infringements of the liberty principle cannot be justified, or better to say that any trade-offs from the liberty principle to the "difference principle" is out of the question, Sen criticizes "to be *irrelevant* to urgency" (Sen 1980: 217). Why to choose the priority of "political liberty (the right to vote and to hold public office) and freedom of speech and assembly" (Rawls 1971: 53) in circumstances in which someone needs care, medicine, food, or shelter? In these particular circumstances those needs might be fundamental to someone's dignity much more than any of the abovementioned liberties that someone might even decide not to take into an account as necessary for her own self-understanding. However, the difficulty Sen needs to deal with is the same as Rawls's. For making sense of the capability approach it would be necessary for a government to use public funds in order to rectify current or historically inherited injustices. This would require some sort of Rawlsian overlapping consensus that would also be hardly attainable since Sen's capability approach would likely produce similar disagreements in a pluralist society as Rawls's justice as fairness, and thus it might be seen as just another competing idea of justice.[12]

By paraphrasing Euclid's statement that there is no 'royal road' to geometry, Sen suggests that his capability approach does not provide "any royal road to evaluation of economic and social policies either" (Sen 2000: 85) but "the evaluative focus of this 'capability approach' can be either on the *realized* functionings (what a person is actually able to do) or

[11] It is worth mentioning Sandel's argument against Rawls's 'priority principle'. Sandel explains: "The primacy of justice can be understood in two different but related ways. The first is a straightforward moral sense. It says that justice is primary in that the demands of justice outweigh other moral and political interests, however pressing these others may be. On this view, justice is not merely one value among others, to be weighed and considered as the occasion arises, but the highest of all social virtues, the one that must be met before others can make their claims. On the full deontological view, the primacy of justice describes not only a moral priority but also a privileged form of justification; the right is prior to the good not only in that its claims take precedence, but also in that its principles are independently derived. This means that, unlike other practical injunctions, principles of justice are justified in a way that does not depend on any particular vision of the good. To the contrary: given its independent status, the right constrains the good and sets its bounds" (Sandel 1998: 3).

[12] Our pluralist societies make disagreements so deep that, according to Dworkin, we cannot agree about anything at all: "We disagree, fiercely, about almost everything. We disagree about terror and security, social justice, religion and politics, who is fit to be a judge, and what democracy is. These are not civil disagreements: each side has no respect for the other. We are no longer partners in self-government; our politics are rather a form of war" (Dworkin 2006: 1).

on the *capability set* of alternatives she has (her real opportunities). The two give different types of information – the former about the things a person does and the later about the things a person is substantively free to do" (Sen 2000: 75). Taking Sen's analysis of poverty as a fundamental example of capability deprivation it becomes clear why capabilities matter: "What the capability perspective does in poverty analysis is to enhance the understanding of the nature and causes of poverty and deprivation by shifting primary attention away from *means*…to *ends* that people have reason to pursue, and correspondingly, to the *freedoms* to be able to satisfy these ends" (Sen, 2000: 90). Moreover, Sen's contributed to the discussion over justice by moving the focus from Rawlsian equality to various other ways of addressing the problem of redistribution and inequality, as it was also the case with the idea that we should not be merely seeking mutual advantage behind the Rawlsian veil of ignorance, but that we should take into an account our asymmetry of power that oblige those having "effective power" to have more obligations and responsibility towards the others (Sen 2009: 206-207).

But how radical is Sen's criticism in general? According to my view, not enough. The problem with Sen's capability approach is its adjustment to the same matrix that Rawls adheres to – the "free market arrangements" (Rawls 1971: 63) that might be responsible for a large scale of inequalities that influence capabilities. In describing his shift from income or wealth to the one related to quality of life and substantive freedoms, Sen claims that he is not making a radical turn from the established traditions of economics. Precisely, he makes a strong linkage with Adam Smith's understanding of human freedoms and life conditions. There are a few passages in *Development as Freedom*, especially near the end of the book where Smith is highlighted as an important figure for understanding the roots of the capability approach. Sen writes: "The capability perspective involves, to some extent, a return to an integrated approach to economic and social development championed particularly by Adam Smith (both in the *Wealth of Nations* and *The Theory of Moral Sentiments*)…Smith emphasizes the role of education as well as division of labor, learning by doing and skill formation. But the development of human capability in leading the worthwhile life…is quite central to Smith's analysis of 'the wealth of nations.'" (Sen 2000: 294). Yet, the implications of Smith's take on human capabilities can be viewed as being essential for reproducing the capitalist mode of production, not for enhancing human capabilities *per se*. In describing similarity between the 'human capital' approach and his 'capability approach' Sen makes a point suggesting that both approaches can be understood in terms of serving the existing economic order rather then questioning it for producing and reproducing deep structural inequalities. Similarly, when Sen endorses Smith, he endorses Smith's view of human freedom as a prerequisite for human development, a potential similar to the one expressed under the notion of capabilities. Unfortunately for Sen, and along with Smith's view of capitalist system of production, it is implied that such potential is valued within that system regardless of its possible adjustments to other human ends, as Sen advocates for. In other words, in discussing redistributive justice, ultimately capabilities are valued in relation to their contribution to the system of production and having more capabilities enhances someone's socio-economic position within the given structure. This seems to be an important limitation of Sen's approach. He writes: "If education makes a person more efficient in com-

modity production, then this is clearly an enhancement of human capital. This can add to the value of production in the economy and also to the income of the person who has been educated…If a person can become more productive in making commodities through better education, better health and so on, it is not unnatural to expect that she can, through these matters, also directly achieve more – and have the freedom to achieve more – in leading her life" (Sen, 2000: 293-294). Yet, exercising someone's endowments for the sake of their better placement in existing capitalist hierarchies might appear unjust for those vulnerable individuals and groups Sen is willing to defend so fiercely. Here it should be also noticed that Sen places himself to the tradition of Karl Marx as well who, similarly to Smith, pointed toward "the gulf between the rich and the poor" (Sen 2000: 107), and "who saw competitive capitalism as a major force for progressive change in the world" (Sen 2000: 121, 113), especially in relation to the discussion of the slave and free labour. Aside of these attempts to make both Smith and Marx his theoretical allies, where Marx particularly becomes interesting for Sen is in his view of human freedom as an ability to fulfill someone's potentiality, or when circumstances deprive someone from power to do some basic things.[13] Sen is Marxian only in that sense, yet his market-oriented view is making him unable to grasp the particular injustice inherent to the capitalist system of production. Now I will be turning my focus to Martha Nussbaum's capabilities approach to examine the relationship of her views towards Rawls's theory of justice in comparison to Sen's.

Nussbaum and the Politics of Capabilities

The very title of the book *Frontiers of Justice* suggests that Martha Nussbaum is willing to discuss the framework of existing theoretical formulations of social and political justice. While Nussbaum emphasizes that theories of justice should be abstract, they also need to "be responsive to the world and its most urgent problems" since it was often the case in the Western tradition that they "have been culpably inattentive to women's demands for equality" (Nussbaum 2006: 1). Having awareness that most theories of justice have left certain questions out of their scope, Nussbaum's main interest is to discuss "three unsolved problems of social justice whose neglect in existing theories seems particularly problematic" – firstly, "the problem of doing justice to people with physical and mental impairments"; secondly, "extending justice to all world citizens"; and thirdly, "the issues of justice involved in our treatment of nonhuman animals" (Nussbaum 2006: 1-2) emphasizing that "Rawls's distinguished theory has serious shortcomings in these three areas" (Nussbaum 2006: 4). Hence, Nussbaum's project is to contribute towards Rawls's theory of justice claiming that her "capabilities approach is another member of this family" that shares a general ideal of political liberalism that Rawls is only a

[13] Sen's foundations for his discussion of development and freedom, as well as his understanding of capabilities can be particularly linked to Marx's views on 'circumstances' expressed in The German Ideology, among all. Marx argued that our development depends "on whether we live in circumstances that allow all-round activity and thereby the full development of all our potentialities … If the circumstances in which the individual lives allow for him only the [one]-sided development of one quality at the expense of all the rest, [if] they give him the material an time to develop only that one quality, then this individual achieves only a one-sided, crippled development", so the task is to replace "the domination of circumstances and of chance over individuals by the domination of individuals over chance and circumstances" (Marx 1998: 272, 280, 464).

part of (Nussbaum 2006: 6). For the purposes of this article's dealings with the politics of capabilities, and along with the previous Sen's discussion, I will concentrate on Nussbaum's first unresolved problem that aims to address justice for people with some fundamental health (physical and mental) impairments, as well as on its practical application to health politics.

Nussbaum starts by discussing Rawls's contractarianism as fundamental for his theory of justice. "The idea of basic political principles", she writes, "as the result of a social contract is one of the major contributions of liberal political philosophy in the Western tradition" (Nussbaum 2006: 10). Thus, prior to developing her own approach, Nussbaum states: "My arguments begin from the assumption that theories of justice in the social contract tradition are among the strongest theories of justice we currently have" (Nussbaum 2006: 69). It is understood that the social contract narrative presupposes these fundamental features: the state of nature where people are free and equal; that these people are reasonable enough to make social and political arrangements that would allow for qualitatively better life conditions ("commodious living" in Hobbes's vocabulary); that they have roughly similar needs and interests; and that they are willing enough to keep from the state of nature out of prudence so they could require peace, security, property protection and mutual advantage. In a similar fashion Rawls derives his principle of justice from the social contract metaphor: "In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract" (Rawls 1971: 12). What makes Rawls's approach different from the historical social contract tradition is the fact that natural rights play no role in his theory, as well as that "Rawls's choice situation includes moral assumptions that Hobbes, Locke, and even Kant…eschew" (Nussbaum 2006: 12).

One of the most disputable parts of the social contract narrative is the assumption that the contract parties are understood as having roughly equal moral and power positions. This claim presupposes a non-existing, hypothetical situation of equality that serves as a method for legitimizing the social contract itself, namely the foundation of the state. Yet, Nussbaum emphasizes this feature of the contractual approach as its limitation. She describes this situation as following: "The assumption of equality (of powers and capacities) is supposed to show us something important and true about human beings, which should lead to the criticism of existing hierarchies. But it also does crucial work inside each social contract theory, explaining how political principles come out the way they do. The rough equality among the parties is crucial to understand how they contract with one another, why they would make a contract in the first place, and what they hope to gain from the social contract. It is thus important to see how such an equality assumption requires us to put some important issues of justice on hold. In particular, justice for people with severe mental impairments and justice for nonhuman animals cannot plausibly be handled with a contract situation so structured" (Nussbaum 2006: 31-32). According to Nussbaum, this is exactly where Rawls's theory falls short.

For Nussbaum, the other problem of the contractarian approach is its mutual advantages postulation. It is assumed that the contractual parties determine the value of contracting only through their own gain or advantage obtained as an outcome of the contract situation. Social cooperation is thus seen as a prudence or necessity for enhancing someone's own selfish interests. Social

contracting, Nussbaum highlights, rest on the premise that "no attachment to justice for its own sake is required, and also no intrinsic, noninstrumental regard for the good of others" (Nussbaum 2006: 34). This line of arguing recalls what seems to be the first non-instrumental view of justice articulated as such in the Western philosophical tradition – the one made by Plato in the *Republic* through the character Glaucon who, dissatisfied with Socrates's defense of justice against Thrasymachus, pushed for defending justice for its own sake – "I want to hear it praised on its own" (Plato 358d).

Another issue with the social contracting approach is the one related to the 'marginal' groups. Feminist political theorist Carol Pateman has been emphasizing the role of 'masculinity' in the genuine idea of social contracting (Pateman 1988, 1989) and Nussbaum follows that path when trying to show how the benefits of contracting agents were on the side of men, not of women, children and elderly people. While Pateman's focus on women as a marginal group in the social contract tradition is valuable theoretical insight, Nussbaum additionally shows that no social contract approach "includes people with severe and atypical physical and mental impairments" since "they were never considered part of the public realm" (Nussbaum 2006: 14-15). This type of criticism is a foundation of the capabilities approach Nussbaum is willing to pursue and it strikes to the heart of the social contract tradition that inspires Rawls's theory of justice. However, Nussbaum's goal is not to refute Rawls's major assumptions but rather to emphasize the limitations of his theory by trying to extend it. In *Political Liberalism* Rawls acknowledges the problems his theory is facing. As mentioned before, Nussbaum has outlined four problems Rawls deliberately left unsolved and opened since he saw some obstacles to incorporate these 'anomalies' into his conception of justice. These are: "what is owed to people with disabilities (both temporary and permanent, both mental and physical); justice across national boundaries, what is owed to animals and the rest of nature…and the problem of saving for future generations" (Nussbaum 2006: 23). But Rawls, in his reply to Sen, considered these issues to be out of the scope of his conception of justice, namely that no concessions of his justice as fairness would be possible towards the capabilities approach: "While we would like eventually to answer all these questions, I very much doubt whether that is possible within the scope of justice as fairness as a political conception" (Rawls 1993: 21).

Nevertheless, Nussbaum claims that: "The capabilities approach is a political doctrine about basic entitlements, not a comprehensive moral doctrine. It does not even claim to be a complete political doctrine, since it simply specifies some necessary conditions for a decently just society, in the form of a set of fundamental entitlements of all citizens. Failure to secure these to citizens is a particularly grave violation of basic justice, since these entitlements are held to be implicit in the very notions of human dignity and a life that is worthy of human dignity … The capabilities approach is a form of political liberalism: it relies on the idea that an overlapping consensus of the reasonable comprehensive doctrines can emerge over time to support and sustain the political conception" (Nussbaum 2006: 155, 388).

Nussbaum is a Rawlsian who sees the capabilities approach as an extension of Rawlsian political liberalism, but also critical of Rawls's contractarianism. Rather, she sees herself to belong to the Aristotelian/Marxian tradition that has theoretical sensibility for human digni-

ty (Nussbaum 2006: 278), while, at the same time, embracing "the Aristotelian/Marxian conception of the human being who finds fulfillment in relation with others" (Nussbaum 2006: 85), insisting "that the good of a human being is both social and political" (Nussbaum 2006: 86), and rejecting "the contractarian conception of the person as 'equal' in power and ability" (Nussbaum 2006: 88). All in all, Nussbaum's capability approach presupposes that other types of human relations are preferable to those based on the modern idea of the social contract. Namely, thinking about justice through the mutual advantage matrix is something that Nussbaum considers flawed purpose of social cooperation: "Justice is about justice, and justice is one thing that human beings love and pursue. It is always nice if one can show that justice is compatible with mutual advantage, but the argument for principles of justice should not rest on this hope" (Nussbaum 2006: 89). As mentioned above, in *Frontiers of Justice* Nussbaum attempts to ground her anti-contractarian sentiments in her endorsement of what she considers to be the Aristotelian understanding of a human being as a political animal – "a moral and political being" with human dignity (Nussbaum 2006: 87), but by doing that she claims that the capability approach is also "a type of political liberalism" as "it eschews reliance on any deep metaphysics of human nature" (Nussbaum 2006: 86). Such 'thin' Aristotelian foundations of the capabilities approach along with the non-metaphysical conception of political liberalism in *Frontiers of Justice* are not without interpretative problems, both in comparison with her earlier works on Aristotle, as well as in her application of Aristotle, or rather in implication of Aristotle's view of a person in the context of severely disabled. Although it would be out of the scope of this article to discuss in detail Nussbaum's reliance on Aristotle in developing her capabilities approach, her essay "Nature, Function, and Capability: Aristotle on Political Distribution" (1988) is considered as the first outline of her view in which capabilities enables individuals for attaining a good life, and where political arrangements should correspond to this ideal given the circumstances (Nussbaum 1988: 146-148). Aside from the fact that the concept of dignity cannot be explicitly grounded in Aristotle, and that Aristotle's understanding of *tuche* (or luck) is necessary for *eudaimonia* (practicing good might be impossible in certain conditions determined by nature or nurture), Nussbaum's reliance on Aristotle in articulating the capabilities approach suffers from additional problems. Namely, Nussbaum's adherence to Aristotle's conception of the human being as having practical reason and sociability is hardly applicable to her capabilities approach since, as she also admits, some people will not be able to exercise these two fundamental Aristotelian preconditions of the human being: "Some types of mental deprivation are so acute that it seems sensible to say that the life there is simply not a human life at all, but a different form of life. Only sentiment leads us to call the person in a persistent vegetative condition, or an anencephalic child, human" (Nussbaum 2006: 187).

What is the basic difference between Sen and Nussbaum in articulating the capabilities approach? While Sen focuses on the comparative measurement of quality of life and on issues of social justice, Nussbaum emphasizes that she, by contrast, "have used the approach to provide the philosophical underpinning for an account of core human entitlements that should be respected and implemented by the governments of all nations, as a bare minimum of what respect of human dignity requires… The

capabilities are then presented as the source of political principles for a liberal pluralistic society" (Nussbaum 2006: 70). The capabilities approach in both Sen's view and in Nussbaum's variations requires an effective, transparent, and systematic involvement of the state and civil society in order to provide for the necessary socio-political changes. In that respect it should be considered as the politics of capabilities, not merely as an approach to deal with social justice and inequalities. They both propose their own political framework that the state should adopt in securing minimal requirements for attaining a life of valuable choices, or a life worth of human dignity. As both Sen and Nussbaum correctly pointed out, by sticking only to the Rawlsian understanding of justice, the contractarian approach, as well as to those priorities among the principles of justice, and his view of the primary goods, we are neglecting different needs and severe depravations that certain social groups might be exposed to, deliberately or not. Thus, without taking these into an account we would be unable to respond adequately to this kind of socio-political injustices. Hence, Nussbaum provides us with what she calls "The Central Human Capabilities", namely with the list of ten fundamental human capabilities i.e. possibilities to achieve various things (Nussbaum 2006: 76-78). Nussbaum points toward the value of *life* first, implying there is a hierarchical order among them.

The capability of *life* is defined as being able to live a life of normal human length, namely not be exposed to the conditions unbearable for living as well as not dying prematurely. The second capability is *bodily health*, a capability to be provided with good health, adequately nourished and sheltered. The third, *bodily integrity* assumes protection against the violence (sexual and domestic included). Fourth, Nussbaum talks about *senses, imagination and thought* as a way of perceiving the world around us, namely the capabilities that ensure that we are not deprived of basic educational trainings or plethora of human experiences such as music, literature, religion, etc., as well as being able to express these things freely. Fifth are *emotions*, or what, according to Nussbaum, can be understood as having a life being attached to things and people, expressing love, gratitude, grievance and so forth, and not living an impoverished, solitary life. Sixth, Nussbaum emphasizes *practical reason* – "being able to form a conception of the good and to engage in critical reflection about the planning of one's life" (Nussbaum 2006: 77). Seventh would be *affiliation* or an ability to live with other human beings (alluding to Aristotle's view that solitary life is suited only for a beast or a god). Protecting this capability means protecting those types of institutions that nourish such forms of human affiliations. Accordingly, Nussbaum includes here the social basis of self-respect and nonhumiliation. Eight, the capability approach should be extended to *other species* so that our lives would be lived with concern toward our natural world. Ninth is the capability to *play*, in other words, having a spare time for recreational activities by one's own choice. And finally, tenth is the *control over one's environment* in the political and material sense, i.e. having the democratic legacy of participating in political life and engaging in political decision-making processes, as well as having the right to own property, and the same rights as others protecting them from any kind of unlawful intrusions. For Nussbaum "they are all, each and every one, fundamental entitlements of citizens, all necessary for a decent and dignified human life" (Nussbaum 2006: 166).

Nussbaum emphasizes that her capabilities approach is not suitable only for one particular tradition. Rather, she views it as a universal project. The politics of capabilities should be applied to all regardless of their culture or tradition, since, according to her view, disabilities of any kind do not recognize any particular human feature. Thus, it can be claimed, for example, that the issue of health is of universal concern since the lack of health manifests evenly to all. By making the capabilities list the way she did, Nussbaum implies that the basic needs of all human beings are not culturally or historically embedded: "…with regard to each of these, we can argue, by imagining a life without the capability in question, that such a life is not worthy of human dignity" (Nussbaum 2006: 78). Unlike Rawls's list of primary goods, Nussbaum's list of capabilities is not given once and for all – it is "open-ended and subject to ongoing revision and rethinking, in the way that any society's account of its most fundamental entitlements is always subject to supplementation (or deletion)" (Nussbaum 2006: 78). Nussbaum's open-ended list of capabilities reflects open-ended pluralist global societies.

But how should all of this work? For Nussbaum the key lies in comparing the capabilities approach with the international human rights approach. Accordingly, capabilities should be approached as responsibly as human rights are. State institutions as well as those with international capacities, such are the UN, need to partake in the implementation of the politics of capabilities. She said: "One way of thinking about the capabilities list is to think of it as embodied in a list of constitutional guarantees…" (Nussbaum, 2006: 155). Since she suggests that these institutions ought to protect capabilities (as well as human rights), based on how national and international institutions were in fact protecting human rights in many recent cases (Rwanda, Bosnia, Somalia, Darfur, Syria, Saudi Arabia, Venezuela, etc.), the weakest spot in her approach becomes exactly the universal application of the politics of capabilities as it might appear as wishful thinking. But even without pursuing universal validity, Nussbaum fails to address the question of whose idea of justice is on the table. In pluralist global societies this is far from being self-evident. At one point she recognizes that of all the various capabilities available, not all of them are good or desirable. She states: "Some capabilities are actually bad, and should be inhibited by law (the ability to discriminate on the grounds of race or sex or disability, the ability to pollute the environment). No constitution protects capabilities *qua* capabilities. There must be a prior evaluation, deciding which are good, and, among the good, which are the most central, most clearly involved in defining the minimum conditions for a life with human dignity" (Nussbaum 2006: 166). By suggesting "a prior evaluation" of that sort, Nussbaum further complicates the way in which this approach can be defended from the value pluralist perspective. She would actually need to reconcile her liberal pluralism with non-liberal perspectives due to the fact that value pluralism presupposes a wide range of notions of good; thus, picking out those 'goods' or capabilities that would be indisputably central for human flourishing is something that makes her argument weak. By claiming that the capability approach requires universal adherence as well as the framework of liberal-pluralist society, Nussbaum falls in her own trap: either all societies should embrace liberal pluralism to fulfill the requirements of her approach, or she needs to abandon any universality of that sort. The closest way out would be introducing something like the 'harm principle' accord-

ing to which preventing harm to others would justify some hierarchy among the capabilities as well as the universality of harm reduction. Of course, this would be far from the simple principle that John Stuart Mill had suggested since the notion of harm is very vague and quite different in different cultures.

For Nussbaum the capabilities approach is much deeper than the one Sen deploys in his criticism of Rawls's primary goods. As elaborated earlier on, Sen considers the list of primary goods as dominantly resource-oriented and his critique is based on the view that resources mean less if we do not take into account the capabilities needed to use them properly. Instead of equal distribution, the emphasis for Sen is on the different resources that different people need, and in many situations, more resources that would be necessary for those with various mental or physical disabilities in order to provide them with the same capabilities, for example more income and wealth to make up for initial inequalities of opportunities. However, Nussbaum takes this redistribution paradigm narrowly. Her focus on distributing resources from institutional levels to individuals might solve some social and political inequalities, but not how just and decent the treatment of these individuals is in general. Namely, such individualist-oriented redistribution leaves the ways in which institutions treat individuals intact, and even more than that, the ways in which the public space is organized. If, for example, those in need receive a monthly welfare support such as income or food, while being marginalized or ghettoized in social and political life, then justice is satisfied only at the level of redistribution, not recognition. Nussbaum advocates a shift in understanding the arrangements of justice that goes beyond both Rawls and Sen. The goal of justice is to provide recognition – not only to redistribute the resources, but to recognizing someone's social status via both symbolic and real arrangements. Nussbaum writes: "No matter how much money we give the person in the wheelchair, he will still not have adequate access to public space unless public space itself is redesigned … That redesign of public space is essential to the dignity and self-respect of people with impairments … The relevant question to ask is not how much money do individuals with impairments have, but what are they actually able to do and to be?" (Nussbaum 2006: 167-168). Yet, in terms of those with serious disabilities whose capabilities-deprivation is likely to be the gravest, even the widest possible capabilities approach might not suffice. For some people, living lives without the possibility of conscious awareness and communication would mean an inability to exercise the majority of meaningful human capabilities.

What Nussbaum aims to show is that the politics of capabilities is necessary to redesign the ways in which our institutions deal with all these issues no matter how acute they are, that our institutions and public space should be arranged and rearranged beyond mere redistribution, but rather in terms of being able to create a social and political environment for a life worth living, a good human life with dignity. Furthermore, Nussbaum adds to the capability approach the discussion of power relations that has been missing from Sen's explicit attention. Equality of powers and capacities in the contractarian approach assumed by Rawls is something that Nussbaum questions. It is rather Rawls's idealized fiction rather than the premises we should take as a starting point when handling the question of justice since this assumption of initial equality might be detrimental for justice itself. However, Nussbaum does not go far enough to

criticize how power relations within the existing socio-economic system reflect someone's capabilities.

Navarro: Power Relations and the Limits of the Capability Approach

Vicente Navarro is among those political scientists with profound determination for questioning existing social and political injustices especially in connection with health policies. While Sen and Nussbaum advocate a rearrangement of existing social order by widening the scope of discussion on justice and inequalities, Navarro's profoundness lies in a belief that this very order produces irreparable inequalities and injustices and thus that no intervention into existing social tissue would produce significant results. Hence, the order itself should be put into question. Sen and Nussbaum do not fundamentally question the economic and philosophical foundations of the existing socio-political order, but rather draw their solutions within and from these foundations. Quite the contrary, Navarro understands that these foundations are responsible for the injustices and inequalities that theories of social justice have attempted to deal with.

According to Navarro, the state is limited, or even 'blackmailed' by international corporations and institutions such is the IMF, in conducting certain policies of social justice due to the existing capitalist logic of organizing social and economic processes, especially in the context of globalization and global market capitalism. This limitation "has become a major force behind the setting of public policies, including health policies. The power of governments to shape national policy", Navarro continues, "is being considerably limited and diminished by an increasingly competitive international economy" (Navarro 2002a: 109).

Basically, what is neglected in Sen and Nussbaum's approach is the notion of power. They never discuss power relations and those forces like market economy that shape our understanding of justice, that Rawls does not even put behind 'the veil of ignorance', and that the politics of capabilities only wants to rectify to the possible degree. In Sen and Nussbaum's scheme the institutions are perceived malleable and thus able to fight inherited injustices. The only thing that has to be done is to push towards better institutional adjustments that would result in an improved and not necessarily the same and equal redistribution of socio-political resources as well as in a dignifying human existence, especially in the case of those with mental and physical impairments. But Sen and Nussbaum do not have a plan B if those institutions do not abide by their proposals.

Navarro does not share Sen and Nussbaum's optimism regarding the role of the institutions in rectifying grave structural injustices. He emphasizes that political institutions will always be linked to their particular political and economic interest and therefore far from 'value free' politics. The examples of such institutions in international arena are the IMF, World Bank, WHO, UNICEF, etc. These institutions, Navarro claims, characterize "the complete absence in their analysis of globalization of the role of power and politics. This observation does not imply that these agencies are apolitical – far from it. It means simply that they never appear to be political. In their analysis and their recommendations, power is not mentioned. Their discourse and their recommendations appear to be 'value free', guided primarily by scientific and technical considerations, with conclusions and recommendations that tend to coincide with the conventional wisdom of the domi-

nant establishment centers of power in today's world" (Navarro 2002a: 113). For Navarro the problem of inequalities cannot be tackled seriously if it is to be treated within the existent power relations. Neglecting this important dimension of our socio-political world leaves the source of existing social injustices intact, and allowing these injustices to be continually produced and reproduced.[14]

Apart from this generalized critique of leading scholars and global institutions for not taking into account the power relations when discussing social and political inequalities, Navarro is particularly focused on the capability approach, namely he noticed some irreparable problems within Sen's theoretical structure. Let me briefly show how Navarro questions the main thesis of Sen's *Development as Freedom*. Since, according to Sen, freedom is the goal of development, which means "the capability to develop one's own potential, unrestrained by circumstances outside one's own control", freedom is understood as 'developing one's own capabilities' (Navarro 2002b: 463). However, freedom for Sen is not merely the purpose of development but the way of attaining development as well. According to Sen, as Navarro points out, there are five instrumental freedoms: *political freedom*, *economic facilities*, *social opportunities*, *transparent guarantees* and *protective security*. The major flaw of Sen's work, Navarro claims, is that he omits to establish the relationship among these five freedoms. Again, for Navarro it means that Sen has left the broader understanding of existing power relations and social structures outside of his scope. Thus, Navarro argues: "Sen moves within the classical economic tradition, based on Adam Smith, in which the individual is the subject and object of analysis; collective agents and subjects such as social classes do not appear, nor does any analysis of what articulates these collective agents such as exploitation and domination" (Navarro 2002b: 464-465). This is why Sen does not challenge the very idea of what constitutes inequality or power relations, and that is the market itself (something Rawls leaves intact as well). Navarro writes: 'For Sen, the market is the major motor for change and improvement to the active intervention and regulation of the state, which must correct the imperfections of the market and invest in people to enrich human capital and increase the power and ability to succeed in the market. But issues of power and how that power is reproduced are rarely, if ever, touched on' (Navarro 2002b: 465). What is omitted in Sen's analysis, according to Navarro, is the power based on the (privileged) ownership of resources. For Navarro the fact that the analysis of justice and inequalities in Sen's approach lacks an analysis of the existing set of property relations is an important shortcoming of the capability approach. Indeed, Sen's critique of Rawls implies that the contracting parties in the Original Position were not of the same power due to the inequalities of their capabilities, but Sen did not articulate this implication properly and thus failed to show this important weakness of Rawls's theory.

Finally, by following Sen's view of the role of democracy in the part pertaining to the idea of development as freedom,

[14] In a similar way, this has already been noticed by Iris Marion Young who argued that "a focus on the distribution of material goods and resources inappropriately restricts the scope of justice, because it fails to bring social structures and institutional context under evaluation…The general criticism I am making of the predominant focus on the distribution of wealth, income, and positions is that such a focus ignores and tends to obscure the institutional context within which those distributions take place, and which is often at least partly the cause of patterns of distribution of jobs and wealth" (Young 1990: 20, 21-22).

Navarro concludes: "Democracy is indeed necessary to guarantee development, but the specific types of property relations in those democracies are a major handicap to democratic and human development" and this is why Sen by not going far enough in his analysis "leaves untouched the core of conventional wisdom, without penetrating the question of how power is produced and reproduced in the world today" (Navarro 2002b: 473). Although Navarro is focused on criticizing Sen's capability approach, the same would apply for Nussbaum's theorizing of capabilities. The fundamental limitation of both Sen and Nussbaum's capabilities approach lies in their endeavor to solely improve Rawls's theory of justice and his shortcomings in dealing with inequalities, without attempting to shake off those preconditions for inequalities that have been produced and reproduced within the existing power relations, especially within the market.

Concluding remarks

What is omitted in all of these accounts of justice – in "justice as fairness" as well as in "justice as capabilities" – is the way in which demands for justice are placed within the limits of the existing socio-economic structures in which institutions and corporations might not be interested in a reconfiguration of the structural injustices (influenced by global market having the power to influence the redistribution of fundamental resources), and thus in adequately addressing the politics of capabilities by, at least, providing a set of basic capabilities. This is something that has not been questioned properly within the given paradigm. Rawls implies that those indicated as "least advantaged" or "worst-off" are the products of economic inequalities. Accordingly, their situation can be improved with a better redistribution of social and economic goods. But Rawls never seriously questioned the capitalist system responsible for creating and cementing these inequalities in the first place. Actually, Rawls's theory does not make structural injustice disappear. Improving everyone's position does not mean inequality will fade away, but most likely that those "best-off" will stay proportionately unequal from the "worst-off". This is because Rawls's principles of justice are based on the assumption that we are fundamentally self-interested, namely that we could not agree to the principles allowing certain advantages for others and not for ourselves. This is encapsulated in the egotistic understanding of human nature that Rawls propagates: 'Since each desires to protect his interests, his capacity to advance his conception of the good, no one has a reason to acquiesce in an enduring loss for himself in order to bring about a greater net balance of satisfaction. In the absence of strong and lasting benevolent impulses, a rational man would not accept a basic structure … irrespective of its permanent effects on his own basic rights and interests' (Rawls 1971: 13). Hence, the very concept of mutual advantage is just a reflection of the egotistic rationality that clashes with the proper defense of human dignity and the idea of good life that the capability approach wanted to advance. Even in an idealized fiction that Rawls's theory of justice aims to create in which 'the Original Position' or 'the Veil of Ignorance' play the main roles, he cannot imagine a basic structure in which promoting self-interest is not something social relations are founded on. Rawls's invisible hand of justice is not fundamentally different from Adam Smith's invisible hand of production that was an instrument for legitimizing capitalists' own enrichment through the narrative of mutual benefits for all. For example, the role of, what Iris M. Young calls the *decisionmaking structure* in de-

termining economic relations is based on structural power relations, responsible for reproducing injustice, that have much more in common with exploitation and marginalization than with any meaningful protection of human dignity: "Economic domination derives at least as much from the corporate and legal structures and procedures that give some persons the power to make decisions about investment, production, marketing, employment, interest rates, and wages that affect millions of other people. […] (T)he decisionmaking structure operates to reproduce distributive inequality and the unjust constrains on people's lives" (Young 1990: 23).

Rawls's theory of justice as well as both capabilities approaches have been limited in the scope of their critique of the structural origins of inequality and the power relations behind them by not attempting to tackle the permanent reproduction of structural inequalities based on existing socio-economic power relations deeply enough. Horkheimer and Adorno's understanding of the culture industry captures this problem in a similar way – the problem of what they defined as the culture industry is not in abolishing the suffering of those "worst-off", but in making their situation more bearable, so they can more easily endure their powerlessness and their close-to-the-bottom position in the market capitalist structure. It is well captured in their cartoon allegory, as a paradigm of the culture industry, applicable here as well: 'Donald Duck in the cartoons and the unfortunate victim in real life receive their beatings so that the spectators can accustom themselves to theirs' (Horkheimer and Adorno 2002: 110). Justice and power have much more in common than many of those theories and approaches discussed are willing, or even able, to question. Plato warned about it in the *Republic* when trying to refute Thrasymachus's view on justice as an outcome of the power politics, of the "stronger" able to make the rules of the game, a view that associated justice with tyranny, and not with human dignity.

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Pravda i politike sposobnosti: Sen, Nussbaum i Navarro

Sažetak Povezivanje ideje pravednosti s ljudskim dostojanstvom kroz "politike sposobnosti" recentan je teorijski projekt koji uvode Amartya Sen i Martha Nussbaum, inspirirani nedostacima Rawlsova razumijevanja pravednosti. Naglašava se da Rawlsovo stajalište o preraspodjeli resursa ili primarnih dobara ne uzima u obzir sposobnosti pojedinaca da koriste ta dobra pa upravo stoga pojam sposobnosti postaje ključnom idejom koja predstavlja način života koji netko ima razloga cijeniti. Autor razmatra razvoj pristupa sposobnostima i kritiku Rawlsovih temeljnih pretpostavki o pravednosti u radovima Sena i Nussbaum. Iako pristup sposobnostima pokušava ispraviti nepravde vezane za ljudsko dostojanstvo koje Rawls nije uspio riješiti, postoje ozbiljna ograničenja tog pristupa. Naposljetku je pokazano da se sposobnosti vrednuju prema njihovu doprinosu sustavu proizvodnje – ako netko ima više sposobnosti, to povećava njegov društveno-ekonomski položaj unutar zadane strukture – ali ne propituju se postojeći odnosi moći i struktura koja održava nejednakosti. Stoga je autor suglasan s kritikom pristupa sposobnostima Vincenta Navarra, ali i proširenju kritike na Rawlsovu teoriju pravednosti, zato što ne dovodi u pitanje temeljne odnose moći koji su inherentni institucijama i njihovoj reprodukciji društvenih nepravdi.

Ključne riječi pravda, sposobnosti, Sen, Nussbaum, Rawls, Navarro