

CAPABILITIES AND THEORIES OF SOCIAL JUSTICE

Ingrid Robeyns

Paper for inclusion in Enrica Chiappero-Martinetti (Ed.) *Debating Global Society: Reach and Limit of the Capability Approach* (title tbc), Milan: Feltrinelli.

Copy-edited version 27 Feb 2007*

1. Introduction

This chapter aims to introduce how the capability approach relates to the literature on theories of equality and social justice.¹ I will not explain the capability approach at length, but rather assume that the reader has a basic understanding of the approach.²

The capability approach is a broad normative framework for the evaluation and assessment of individual well-being and social arrangements, the design of policies, and proposals about social change in society. It is used in a wide range of fields, including development studies, welfare economics, social policy and political philosophy. This chapter will highlight the role that the capability approach can play in one of these fields – that concerned with theories of justice. In large part the literature in this area falls within the domain of normative political philosophy, but there is some overlap with the work being done by welfare economists and other scholars.³ Within the scope of one chapter, I cannot provide a complete overview of the literature on the capability approach to social justice, but rather hope to introduce some key issues for an interdisciplinary audience. Put differently, the aim of this chapter is to give a primer to theories of justice, written for students of the capability approach, whatever their disciplinary backgrounds may be.

* For comments on earlier versions, I am grateful to Ramzi Mabsout, Marco Verschoor and especially Roland Pierik. Financial support from the Netherlands Organization for Scientific Research (NWO) is gratefully acknowledged.

¹ Egalitarian theories are part of the broader category of theories of justice, so in what follows I will refer to theories of justice to cover both.

² For introductions to the capability approach, see the chapters by Amartya Sen and Enrica Chiappero-Martinetti in this volume, or Alkire (2005) or Robeyns (2005a).

³ For accessible introductions to contemporary political philosophy, see Swift (2001) or Simon (2002).

We will start our exploration by sketching out the nature of the literature on theories of justice in Section 2. Section 3 will briefly discuss the main outlines of John Rawls's theory of justice. Section 4 will present capability critiques of Rawls, and Rawlsian critiques of the capability approach. Section 5 poses the question of what we need before a complete capability theory of justice can be developed, and the final section offers some concluding thoughts.

2. A brief description of the literature on theories of justice

Justice is an essentially contested concept: there is no generally accepted definition or description of justice, and thus no consensus on what the appropriate subject matter of theories of justice is or should be. Of course, this doesn't mean that nothing can be said at all. David Miller's description of social justice is a good starting point, as his definition would certainly command broad support among theorists of justice. Miller (1999: 1) contends that when arguing about justice, we are discussing

“how the good and bad things in life should be distributed among the members of a human society. When, more concretely, we attack some policy or some state of affairs as socially unjust, we are claiming that a person, or more usually a category of persons, enjoys fewer advantages than that person or group of persons ought to enjoy (or bears more of the burdens than they ought to bear), given how other members of the society in question are faring.”

Theories of justice do not cover the entire spectrum of moral issues. Social justice theorists generally agree that there are parts of morality that fall *outside* the scope of justice. Charity is such a case: you may not have the duty to help someone, yet decide nevertheless to help this person as an act of charity. For example, one may argue that it is not a matter of justice for people with median incomes to donate money for a children's playground, but at the same time hold the view that such an act is an act of charity.

Can we describe justice, and theories of justice, by their properties? Firstly, justice is a property that has been ascribed to both individuals and institutions: justice is a virtue of individuals in their interactions with others, and justice is a virtue (according to Rawls (1999: 3) even the *first* virtue) of social institutions (Barry and Matravers 2004). Thus we can say that a certain society is more or less just, or we can say that the behavior of some persons is just or unjust. Theorists of justice tend to discuss primarily the justice of social arrangements, that is, of social institutions broadly defined; justice as an individual virtue is often regarded as a matter of ethics

rather than of political philosophy (though not every political philosopher would agree with this way of demarcating justice from other areas of morality).

Second, the terms 'social justice' and 'distributive justice' are generally used interchangeably. Often the term 'justice' is used as shorthand to cover both, but this can be misleading since there are debates related to justice that fall outside the scope of social justice, such as retributive justice, which deals with crime and just punishment (Barry and Matravers 2004).

Thirdly, there are several different schools within social justice theories. Barry and Matravers (2004) distinguish between conventionalism, teleology, justice as mutual advantage, and egalitarian justice. *Conventionalism* is the view that issues of justice can be resolved by examining how local conventions, institutions, traditions, and systems of law determine the divisions of burdens and benefits. Barry and Matravers rightly point out that this approach, which in a modern version has been defended by Walzer (1983), can lead to the acceptance of grossly unjust practices by communities based on the fact that they are generally endorsed, even though they could be argued to be unjust based on values or ideas not currently present (or dominant) in that society. *Teleology* is the view that social arrangements should be justified by reference to some good that they are advancing. Examples are utilitarianism, natural law theory or Aquinas' Christian philosophy. For teleological theories, what justice is follows from an account of the good, and thus the account of justice depends on the account of the social good. A major criticism of teleological theories is that they necessarily rely on an external source, such as utility, the natural law, or God's authority. Teleological accounts of justice therefore necessarily depend on notions of the ultimate good (whether or not derived from religious sources). In pluralistic societies, it is therefore hard to see how justice can be derived from those notions of the good that cannot be accepted by all. Most contemporary political philosophers therefore argue that teleological theories cannot be defended, since people have competing ideas of the good and we cannot call upon a generally accepted external source that will tell us which idea of the good should be imposed on all.

The third and fourth schools in theories of justice therefore share a commitment to some form of liberalism, that is, a basic acknowledgement of the diversity of acceptable notions of the good life which a just society should accept. These schools had a major revival after the publication of John Rawls's *A Theory of Justice* in 1971,

which is generally regarded as the single most important work on social justice of the last century. Rawls turned to the social contract tradition, where justice is understood as the outcome of *mutual advantage*. The core idea is that rules of justice are more beneficial for everyone than if each individual were to pursue her own advantage on her own. Some of these theories (though not Rawls's) take the relative power or bargaining strength as a given, and therefore one may question whether justice will be done in situations of unequal bargaining power on this view (Nussbaum 2006). The other liberal school of justice is *egalitarian justice*, which is premised on the idea that people should be treated with equal respect and concern (Dworkin 1981a, 1981b). Rawls's theory of justice can be seen as an egalitarian theory of justice, but so are theories that come to very different substantive conclusions, such as Robert Nozick's (1974) entitlement theory. Other major contemporary theorists of justice who can be labeled 'liberal egalitarian' are Brian Barry (1995), Philippe Van Parijs (1995), and Ronald Dworkin (1981b), among many others – though there is also a substantial literature within mainstream political philosophy criticizing these theories (e.g. Anderson 1999). While all four schools of social justice still command support, it is primarily liberal egalitarian theories that are of direct relevance to the capability approach to justice. Even within this group there is strong diversity: the only true uniting feature is that all these theories endorse the principle that there should be considerable (but not necessarily absolute) scope for individuals to determine their own life plan and notion of the good.

Before discussing the work of Rawls in greater detail, it might be wise to stress that the mainstream literature on theories of justice is highly abstract, and often rather detached from questions about policy design or political feasibility. Theories of social justice are often constructed based on a number of rather technical tools from the field of analytical political philosophy. Sen (2006) has recently criticized such theories, and in particular Rawls's, for being *transcendental* theories, which seems to be very close (or identical) to what others have labeled 'ideal theories'. However, while there is currently a great deal of debate among theorists of social justice about the precise nature and shortcomings (if any) of ideal theories, there is also clearly no agreement on what precisely makes such a theory ideal. One problem with contemporary theories of justice (and it is not clear whether this is constitutively related to their ideal character or not) is that they are often based on 'strong assumptions', which may introduce significant biases or exclude certain groups of

people from the theory. For example, it has been argued that Rawls's theory is unable to account for our duties of justice towards the severely disabled (Sen 1980, Kittay 1999, Nussbaum 2006), or that Dworkin's egalitarian theory is unable to account for the unjust effects of socio-cultural structures due to exactly this sort of strong assumption (Pierik and Robeyns 2007). Some have argued that these theories (as they currently stand) fail to offer much guidance on how we can move to a more just society through feasible improvements, that is, they do not tell us what kind of actions or policies need to be implemented to move us in the direction of this utopian vision of a just society (Sen 2006, Pierik and Robeyns 2007). When we try to apply contemporary theories of justice to the current real and messy world, there are all sorts of complications that need to be taken on board, such as trade-offs between different values, power imbalances among different social groups, or interests of individuals and groups that may conflict with concerns of justice (e.g. the interest of governments in being re-elected). However, there is certainly no consensus on whether these problems are inherent to ideal theories; the distortive nature of the strongly simplifying assumptions may well be a *contingent* problem of ideal theory. This is a very topical debate in theories of justice, and at the moment it is unclear whether the eventual outcome will change the way we construct theories of justice ten or twenty years from now.

3. Rawls's theory of justice in a nutshell

In the previous section, I indicated the central importance of Rawls's theory in the contemporary debate on theories of social justice. In this section, I will briefly describe the essence of this theory, and its implications for the capability approach.⁴ Rawls's theory of justice, which he called 'Justice as Fairness', was gradually developed in a series of articles, and especially in his book *A Theory of Justice* (originally published in 1971, with a revised English edition in 1999) which is considered by many political philosophers to be the most important book in moral and political philosophy of the 20th century.

What are the issues that Rawls wants to address? Social institutions and societal practices, such as the constitution, legislation, the labor market or the institutions of

⁴ For lengthier introductions to Rawls's work on justice, see Brighouse (2004, chapter 3), Kymlicka (2002, chapter 3) and especially Richardson (2006a).

the welfare state, can be exploitative and unfair, and may provoke resentment among the people who must live under those practices and institutions. Rawls is trying to provide an answer to the question of how we can organise society in such a way that the principles of societal cooperation are fair and therefore accepted by everyone. It is in this sense that Rawls regards his work as being in the social contract tradition, since he wants to investigate the basic structure of a just society which is organized to each person's mutual advantage. Rawls uses the term 'the basic structure of society' to refer to the totality of social institutions and practices. He defines the basic structure of society as "the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arise from social cooperation over time" (Rawls 2001: 10). Rawls argues that the basic structure is the proper object of our concerns of justice, since by focusing on the basic structure we can accommodate issues of both equality and freedom. If we were able to find a way to make the basic structure of society fair, then people could live freely according to their own ideas of the good life within this just structure.

How can we find out how such a fair society would look? Rawls asks us to participate in a thought-experiment called 'the original position'. We are asked to step out of our current place in society and take place in the original position, which is situated behind the 'veil of ignorance'. This veil of ignorance takes away our knowledge of our actual place in society, and any information about our sex, the color of our skin, our profession, our natural abilities like intelligence or strength, and so forth. Behind the veil of ignorance we also don't know what our conception of the good life is. The reason for this is that Rawls does not want to develop a theory that is skewed in favor of one particular notion of the good life. We do, however, know all the general facts about the society, such as basic economic and political principles, and hold general knowledge about human psychology and about the relations between people and their social background.

Once we are in the original position behind the veil of ignorance, we will decide on the principles of justice that should govern our society. The aim of this thought-experiment is that we will not try to favor a set of social and political rules and social institutions that will favor the kind of person that we are in the actual society. In other words, the original position is set up in such a way that the moral conditions for a just society are met: we will not choose principles that are biased in favor of people with

the talents, skills and personal characteristics that we ourselves have, nor will we prefer social institutions that are in favor of people with the notion of the good life that we endorse. As the parties in the original position have no information about their place in society, circumstances or life plans, the agreement that they will reach in the original position regarding principles of justice will be fair to everyone. Rawls believes that the principles of justice determined in such a manner will be stable, since they will (hypothetically) be chosen under conditions of freedom and equality, and thus command enduring support by all.

Once in the original position, we are offered a menu of principles from which we must choose. Rawls argues that from such a list of possible principles of justice we will choose those principles that it is rational for us to choose, given the information that we do and do not have. Rawls argues that the following two principles will be chosen (Rawls 1999: 266):

1. Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
2. Social and economic inequalities are to be arranged so that they are both:
 - [2a] to be attached to offices and positions open to all under conditions of fair equality of opportunity; [2b] and to be to the greatest benefit of the least advantaged members of society (*the difference principle*).

The basic liberties are listed as follows: “freedom of thought and liberty of conscience; political liberties (for example, the right to vote and to participate in politics) and freedom of association, as well as the rights and liberties specified by the liberty and integrity (physical and psychological) of the person; and finally, the rights and liberties covered by the rule of law” (Rawls 1999: 44).

Rawls stresses repeatedly that the two principles have to be seen as working in tandem. The first principle, that of equal basic liberties, has priority over the second principle; in addition, (2a), the principle of fair equality of opportunity, has priority over the difference principle (2b). Applying the difference principle requires interpersonal comparisons of some notion of advantage. Rawls holds that a person’s advantage should be specified by social primary goods, which are all-purpose means that every person is presumed to want, as they are useful “for a sufficiently wide range of ends” (Rawls 1982/1999: 367). The parties in the original position do not know which notion of the good life they will endorse; they do not know whether they

will want to change their views on the good life over their lifetime; and they do not know their natural abilities. Therefore they will choose for general all-purpose means what will be suitable for an all-comprehensive doctrine of the good life, and what will also allow them to revise their conception of the good should they wish to do so (*Ibid*: 361). In response to some of the critiques on the original publication of *A Theory of Justice*, Rawls stressed that it is not real persons who are assumed to want those primary goods, but rather persons in their capacity as citizens, as conceptualized by the political conception of the person in his theory of justice (Rawls 1982/1999: 365-368; 1999: xvi, 58).

The social primary goods can be classified in five groups (Rawls 1999: 386):

- (a). basic rights and liberties;
- (b). freedom of movement and choice of occupation;
- (c). powers and prerogatives of offices and positions of authority and responsibility;
- (d). income and wealth;
- (e). the social bases of self-respect.

Due to the priority of the first principle over the second, and the principle of fair equality of opportunity (2a) over the difference principle (2b), the first three groups of primary goods are effectively equalized among all persons before the difference principle plays any role. This leaves us with only income and wealth, and the social bases of self-respect (categories d and e) to identify the worst-off person or group in society. Rawls considers the social bases of self-respect as probably the most important primary good, and argues that the best way to provide these bases is by treating every citizen as an equal, that is, by giving every citizen the same rights and liberties. Thus, based on Rawls's assumptions on human psychology, if both the first principle of justice and the principle of fair equality of opportunity are met, it follows that everyone is provided with the same social basis of self-respect. As a consequence, the difference principle will make interpersonal comparisons based on estimating the life-time expectations in terms of income and wealth.

Based on Rawls's first outline of justice as fairness in *A Theory of Justice*, many readers have interpreted the primary good of income and wealth as net personal income and personal wealth. However, Rawls later clarified that the primary good of income and wealth also includes our partial control of the property and income of groups and associations to which we belong, and the goods and services provided to

us by public goods or government spending (Rawls 1975/1999: 271-273; 1999: 172). As we will see below, this has some consequences for the debate between Rawlsians and capability theorists.

Two aspects of Rawls's theory of justice may require special attention. First, the Rawlsian principles of justice apply not to all interactions between citizens, but only to the basic structure of society. Because basic structures can differ over time and space, it is not possible to list all the institutions of the basic structure in general; however, Rawls (1999: 6) does mention some, including the political constitution, and economic and social arrangements such as the legal protection of basic liberties, competitive markets and the family. Thus, in contrast to much other theorizing in contemporary moral and political philosophy that focuses primarily or exclusively on the distribution of particular goods and thus would fall under what Rawls calls "allocative justice", Rawls's theory is a theory of institutional or political justice (Rawls 1999: 76-77, 2001: 50) – but his principles nevertheless have clear consequences for the distribution of burdens and benefits in society.

Second, because Rawls is deeply concerned about the possibility for people with very different comprehensive moral views on the good life to come to a reasonable agreement on the principles of political justice, he stresses that the conception of justice must be public and that the information necessary to make a claim of injustice must be verifiable by all, and preferably easy to collect. A theory of social justice needs a public standard of interpersonal comparisons, as otherwise the obtained principles of justice between citizens with diverse views on the good life will not prove stable (Rawls 1982/1999: 370-371; Pogge 2002: § 4.1).

4. Rawlsian justice versus the capability approach

We now turn to a comparison between Rawls's theory and the capability approach to justice. We will do this by presenting critiques by capability theorists of Rawls's account of justice, and Rawls's critique of the capability approach.

The first critique was formulated by Sen in his 1979 Tanner Lecture, and concerned the Rawlsian conceptualization of a person's advantage and the identification of the worst off in terms of primary goods, and the consequences that this has for some "non-normal" individuals. Sen's critique started with his claim that justice as fairness deals in an unsatisfactory way with severely disabled people (Sen 1980: 195-220). The difference principle, which determines how well-off someone is

in terms of income and wealth *only*, would not justify any redistribution to a disabled person on grounds of her disability. Rawls's strategy is to postpone the question of our obligations towards the disabled, and exclude them from the development of the theory and the principles of justice. The underlying reason is that Rawls prefers to focus on the classical problems in the history of political thought. He argues that justice as fairness addresses what he regards as the fundamental question of political philosophy, namely "what principles of justice are most appropriate to specify the fair terms of cooperation when society is viewed as a system of cooperation between citizens regarded as free and equal persons, and as normal and fully cooperating members of society over a complete life" (Rawls 2001: 176, note 59). Rawls certainly does not want to deny our moral duties towards those who fall outside the scope of his theory, but he believes that we should first work out a robust and convincing theory of justice for the "normal" cases and only then try to extend it to the "more extreme cases" (*Ibid.*). The neglect of the needs of the disabled is thus not so much situated in the conceptualization of the social primary goods, but rather determined by the limited scope of justice as fairness as a social contract theory between "normal and fully cooperating members of society over a complete life".

However, Sen's critique of primary goods goes beyond the case of the severely disabled. As Sen puts it, the problem does not end with the hard cases of the severely disabled. He believes that the more general problem with the use of primary goods is that it cannot adequately deal with pervasive inter-individual differences between people, since people have "very different needs varying with health, longevity, climatic conditions, location, work conditions, temperament, and even body size" (Sen 1980: 215-216). Sen's critique of primary goods boils down to the fact that primary goods cannot adequately account for inter-individual differences in people's abilities to convert these primary goods into what people are able to be and to do in their lives. In contrast, Sen argues, we should focus directly on people's beings and doings, that is, on their capabilities to function. Primary goods are the means to pursue one's life plan. But the real opportunities or possibilities that a person has to pursue her own life plan are determined not only by the primary goods that she has at her disposal, but also by a range of factors that determine to what extent she can turn these primary goods into valuable states of being and doing. Hence, Sen claims that we should focus on the extent of freedom that a person actually has, that is, on her capabilities.

Rawls did acknowledge that his theory does not account for justice towards the severely disabled. However, the question is not so much whether Rawls did include the disabled, but rather whether it is possible to include the physical and mentally disabled in his theory by extending the social contract as drawn up in the original position. If this is not possible, and the only way to deal with such individuals is in an *ad hoc* fashion, then the question becomes whether this should be considered unacceptable. I do not have the space here to investigate these issues at full length, but would simply point out that a number of philosophers have addressed them, and drawn rather different conclusions (Kittay 1999, Brighouse 2001, Nussbaum 2006, Richardson 2006b).

A second major critique by capability theorists is the question regarding which societies can be and are included in Rawls's account of justice. In *Inequality Reexamined*, Sen formulates a second critique of Rawls which has received far less attention than his critique regarding primary goods and inter-personal diversity. While Rawls responded to Sen's critique regarding the limitations of making interpersonal comparisons based on primary goods, he never responded to Sen's objection related to the scope of justice as fairness. In his later work, Rawls (1993: 101) wrote that justice as fairness "understands itself as the defense of the possibility of a just constitutional regime". Indeed, in developing justice as fairness Rawls repeatedly stresses that the principles of justice should be independent of any controversial philosophical or religious doctrines, which is one main reason why the parties in the original position do not know their conceptions of the good life, including any religions or ideologies to which they might subscribe. Tolerance for other comprehensive views of the good life thus takes a primary place in justice as fairness (Rawls 2001: 186-190). In addition, Rawls also explicitly stresses that the scope of justice as fairness is limited to constitutional democracies (*ibid.*: xi).

Sen (1992: 77) takes issue with the fact that Rawls works within the boundaries of political liberalism, as this "limits the scope of the concept of justice drastically and abruptly, and it would often make it hard to identify political rights and wrongs that a theory of justice *should* address." He gives the example of the injustices created by Emperor Haile Selassie's political views during the Ethiopian famines in 1973, and argues that while great injustices took place, neither the Emperor nor his opponents would accept any principle of tolerance of different views of the good except for their own. Sen (1992: 79) concludes that "many blatant injustices in the world take place in

social circumstances in which the invoking of ‘political liberalism’ and the ‘principle of toleration’ may be neither easy nor particularly helpful.” Moreover, Sen (2006: 226-228) has also stressed that the ideal theoretical (or transcendental) approach that Rawls uses has extremely demanding institutional requirements, which cannot be met in many countries in the foreseeable future. But, Sen argues, surely theories of justice should be able to give us some guidance on how improvements of justice can be made in such circumstances.

The third capability critique of Rawls’s work is by Martha Nussbaum (2006), who devoted her Tanner Lectures to just this topic. Nussbaum’s main argument is that the social contract tradition is a bad starting point for thinking about justice, especially if we want to extend justice to people beyond our own national borders, to animals, and to the disabled. Her critique of Rawls and defense of her capability theory require a full-length analysis and assessment that I cannot provide here, but which will surely generate a literature of its own in the years to come. However, it should be noted that the social contract aspect of Rawls’s work, and his reliance on social primary goods as the metric for interpersonal comparisons for the purpose of justice, are logically independent: it is in principle possible to construct a social contract theory of justice which makes use of the Rawlsian devices of the veil of ignorance and the original position where principles of justice chosen in the original position would be formulated in terms of functionings or (basic) capabilities.

Let us now turn to two important Rawlsian critiques of the capability approach. Rawls argues that the capability approach entails a comprehensive notion of the good, in contrast to the political liberalism of justice as fairness (Rawls 1988/1999: 456; Sen 1992: 82-83). He suggests that the capability approach relies on a particular conception of the valuable ends in life, and therefore does not respect the diverse comprehensive views of the good life that citizens of a plural society might endorse. Political liberalism, in contrast, claims to be fair between different comprehensive conceptions of the good, and only endorses principles of justice that citizens with diverse and conflicting comprehensive notions of the good can endorse as the result of an overlapping consensus.

Sen (1990, 1992: 82-83) argues that Rawls’s claim that the capability approach would endorse one unique view of the good is mistaken. The capability approach holds that the relevant focus is on the combination of capabilities that a person can access, in other words, a focus on people’s capability sets. And this capability set

“stands for the actual freedom of choice a person has over alternative lives that he or she can lead” (Sen 1992: 114). An interpersonal comparison focusing on a set of achieved functionings would endorse a comprehensive notion of the good, but this is precisely what Sen and Nussbaum have stressed repeatedly: as a matter of principle, the focus is not on achieved functionings, but on capabilities to achieve those functionings.

This argument strikes me as correct. But is it sufficient? One possible counter-reply to Sen’s defense is that the capability approach ultimately relies on a specification of the list of valuable capabilities, and as such imposes a specific view on the good life. One might argue that by listing the capabilities that are going to count for purposes of social justice, we are imposing a comprehensive notion of the good life. If a particular functioning is important to my notion of the good life, and it is not included in the list of capabilities, then the conceptualization of justice will be biased against my notion of the good life.

It is well known that Sen has refused to endorse one particular list of capabilities, and as such stays clear from facing this problem (Sen 2004). Nussbaum, in contrast, has proposed and defended a list of capabilities that a capability-based theory of social justice should promote (Nussbaum 2000, 2003, 2006). Thus, to my mind the objection that the selection of capabilities could indirectly entail the endorsement of a comprehensive notion of the good life is primarily relevant for Nussbaum’s version of the capability approach, and less so for Sen’s. Nussbaum’s capabilities approach aims to specify capabilities as the fundamental constitutional entitlements that every person in every country should be guaranteed, and that are non-negotiable. Nussbaum (2003) has also argued that if Sen wants his capability approach to have any bite for purposes of social justice, he should endorse a list of capabilities, whether that list be partial or complete. Nussbaum believes that her list can become the object of an overlapping consensus of people as citizens who have otherwise diverse views of the good life, but this claim has been questioned (e.g. Barclay 2003). Nevertheless, this leaves unanswered the question of whether one can select the relevant capabilities in a manner that can be justified *both* in terms of the process by which the selection takes place, *and* in terms of respecting all acceptable notions of the good life that people may endorse. This is an area in which much more philosophical work needs to be done.

The second major Rawlsian critique of the capability approach is the charge that it does not meet the publicity criterion. It has been argued, both by Rawls (1993: 182) and more recently by Pogge (2002), that a theory or principle of social justice should be a workable and public criterion, that is, inequalities and injustices should be able to be assessed by the public and should not need to rely on impossible amounts of information. As Rawls (1993: 182) puts it, “What is crucial is always to recognize the limits of the political and the practicable... we must respect the constraints of simplicity and availability of information to which any practicable political conception (as opposed to a comprehensive moral doctrine) is subject.”

Brighouse (2004: 82) has summed up the advantages of social primary goods constituting a publicly measurable metric:

“First, citizens can see more readily whether justice is being done if we have a public way of measuring it. Second, the theory can guide policymaking more clearly, because policymakers can see what the relevant deficits are. Finally, [...] citizens can hold policymakers accountable for their successes and failures, by looking at the publicly measurable outcomes of the policies.”

The capability approach has some difficult questions to answer. Are capabilities indeed too difficult to measure or assess in such a public fashion? Would this require too much and complex sorts of information? Would this make the capability approach unworkable as a theory of social justice? So far, these questions have not yet been answered. Sen has repeatedly stated that capabilities can form the informational basis for a theory of justice, but he has never developed such a theory himself. We are therefore left with the open questions as to how to select the capabilities without imposing a single notion of the good life, and whether the publicity requirement poses an insurmountable obstacle.

What conclusion can we draw from the debate between Rawls and capability theorists? It has often been argued by capability theorists that the capability approach is a superior framework to Rawlsian justice. I think it is fair to say that the literature does not allow us to draw such conclusions as yet. There are still many differences between the Rawlsian framework and the different versions of the capability approach that have not been sufficiently analyzed, and not all critiques by Rawlsians have been

satisfactorily answered.⁵ For the moment, it remains an open question where forthcoming work will lead the debate.⁶

5. What do we need for a capability theory of justice?

The previous two sections showed that Rawls's theory of justice and the capability approach to justice differ in several ways. One important difference is that the capability approach is not yet a complete theory of justice. Nussbaum's work comes closest to offering us a capability theory of justice, but even her account remains incomplete in important ways. Moreover, it would be a mistake to think that there can be only one capability theory of justice; on the contrary, the open nature of the capability framework allows for the development of a "family" of capability theories of justice. In this section we will discuss what is needed if we want to create such a theory.

A first important question that any theorist of justice needs to ask is 'justice of what?' or 'equality of what?' A minimalist interpretation of the capability approach states that it *only* specifies an evaluative space, that is, it only answers the question 'in which dimensions should we evaluate justice, inequality, poverty, etc.' In the literature on social justice there are several terms used to indicate what precisely we are assessing or measuring: the metric of advantage, the currency of justice, or the informational basis for the interpersonal comparisons for the purpose of justice. The most influential metric of justice is resources, and it is often thought by capability theorists that capabilities provide a better metric of interpersonal comparison than resources. However, 'resources' is a term that is used to cover many different categories of things. Elsewhere I have distinguished between five different types of resources that have been criticized by capability theorists (Robeyns 2005b). Type 1 is GNP per capita. Despite its widely discussed shortcomings, it has been one of the few statistics available for each country and therefore widely used in research on global poverty and inequality. In theories of justice, however, it is largely absent. Type 2 is individual disposable income. Welfare and development economists who work on the microeconomic aspects of development focus on individual disposable income, or

⁵ For example, most critiques by Pogge (2002) remain unanswered.

⁶ For a collection of essays that explores the differences between Rawlsian justice and the capability approach with a focus on the comparison of primary goods and capabilities, see Brighouse and Robeyns (eds., forthcoming).

directly on consumption when they are considering people who live partly in a subsistence economy. Again, this measure is not often defended as the best metric of justice by theorists of justice. Nevertheless, equivalized household income, which serves as a proxy for individual income, is often used by welfare economists who want to perform empirical research on unjust inequalities. Type 3 are individual entitlements to material goods. This notion extends individual disposable income by including an estimate for nonmarket production and the provision of public goods. This more extended account of resources is used in more fine-grained micro studies in welfare economics, but still not very often in theories of justice. Type 4 are Dworkinian resources. Dworkin's philosophical theory of equality (1981b) distinguishes between two types of resources: impersonal and personal. Dworkin's impersonal resources are equivalent to individual entitlement to material goods. Personal resources in Dworkin's account are personal bodily and mental resources such as intelligence, physical and mental abilities and disabilities, and so forth. Type 5 are Rawlsian social primary goods, which were discussed in Section 3. They include income, wealth, liberties, opportunities, and the social bases of self-respect, and thus are a combination of individual disposable income (type 2) and some civil and political human rights, opportunities, and the social bases of self-respect. Note that Rawls does not include the Dworkinian personal resources. Based on this simple classification, we can conclude that there is a significant difference as to how different scholars understand the term 'resources', with an especially striking difference between economists and political philosophers. An important consequence is that capability critiques against resourcism that rely on one of these types cannot automatically be extended to another type, since they are so different. Within theories of justice, the main arguments are with Rawlsian resourcists, and with defenders of Dworkinian resourcism.⁷ Other possible metrics are needs, basic needs, or the many different types of subjective welfare notions. A full capability theory of justice would need to show why it serves better as a metric of justice than all of these other metrics. Many capability theorists tend to believe that the superiority of functionings and capabilities has been proven, but rebuttals such as Pogge's (2002) show that much more argumentation is needed.

⁷ For the difference between capabilities and social primary goods as the metric of justice, see the previous section and references cited there; for the difference between capabilities and Dworkinian resources, see Williams (2002) and Pierik and Robeyns (2007).

Another major choice that has to be made when developing a capability theory of justice is whether we want it to be an outcome or an opportunity theory, that is, whether we think that we should assess injustices in terms of achieved functionings, in terms of capabilities, or by using a combination of the two. At the level of theory and principles, most theorists of justice endorse the view that justice is done if all have equal genuine opportunities. Translated to the capability language, this would imply that at the level of theory and principles, capabilities are the relevant metric of justice, not functionings. However, not everyone subscribes to this view. Anne Phillips (2004) has been a prominent voice arguing for equality of outcome, rather than opportunities. In the capability literature, Marc Fleurbaey (2006) has argued against the approach of taking only capabilities into account and defended a focus on ‘refined functionings’ (i.e. a combination of functionings and capabilities). In addition to these theoretical arguments, there may also be non-theoretical reasons for focusing on functionings (or in combination with capabilities), for example related to data availability or measurement limitations, or because the specific area warrants a focus on functionings, as may be the case for children (Robeyns 2006: 353-355).

A third issue which needs to be resolved if one wants to develop a capability theory of justice, is how to decide and justify which capabilities matter. There are at least two ways to do so: either through procedural approaches such as criteria from which the relevant capabilities are derived, or by defending a specific list of capabilities. This selection of relevant capabilities for the purpose of justice can be done both at the level of ideal theory (Vallentyne 2005), at the level of abstract principles (Anderson 1999, Nussbaum 2000, 2003, 2006) or at an applied theoretical level that is useful for practical assessments of injustice (Wolff and de-Shalit 2007).

Fourthly, a capability theory of justice needs to specify where to draw the line between individual and collective responsibility, or how and by whom this decision should be made. There is a remarkable absence of any discussion about issues of responsibility in the capability literature, in sharp contrast to political philosophy and welfare economics, where this is one of the most important areas of debate, certainly since the publication of Dworkin’s (1981a, b) work on justice and equality. Nevertheless, whether one wants to discuss it explicitly or not, *any* concrete capability policy proposal can be analyzed in terms of the division between personal and collective responsibility; but this terminology is largely absent from the capability literature. This might be explained in part by the fact that much of the work on

capabilities deals with global poverty, where issues of responsibility seem to be less relevant since it would seem rather harsh to suggest that the world's most destitute people are individually responsible for the situation they are in. Philosophical puzzles, such as the issues of expensive tastes (for costly wines, caviar, fast cars, and so forth), are simply beyond the radar screen of the child laborer or poor peasant. However, while this may perhaps justify the absence of any discussion about personal responsibility among capability scholars concerned with poverty, it does not absolve theorists of justice who deal with justice in affluent societies (or affluent sections of poor societies) for discussing the just division between personal and collective responsibility (Pierik and Robeyns 2007).

This brings us to a related issue. A theory of justice generally specifies rights, but also duties. However, capability theorists have remained largely silent on the question of who should bear responsibility for expanding the selected capabilities. Nussbaum passionately advocates that all people over the world should be entitled, as a matter of justice, to threshold levels of all the capabilities on her list; but apart from mentioning that it is the duty of governments to guarantee these entitlements, she remains silent on the question of who precisely should bear the burden and responsibility for realizing these capabilities.

Finally, a theory of justice needs to explain on what basis it justifies its principles or claims of justice. For example, in Rawls's theory of justice the two principles of justice are justified by the thought-experiment of the original position, and the social-contractarian nature of his theory. Dworkin's egalitarian justice theory starts from the meta-principle of equal respect and concern, which he then develops in the principles that the distribution of burdens and benefits should be sensitive to the ambitions that people have, but should not reflect people's unequal natural endowments. If capability scholars want to develop a full theory of justice, they will also need to explain on what bases they justify their principles or claims.

There are undoubtedly more hurdles that need to be overcome before we can develop a fully fleshed-out capability theory of justice. In any case, I hope that the six lacunae discussed in this section make it clear that there is a huge step from a minimalist interpretation of the capability approach as the specification of an evaluative space, to a complete capability theory of justice.

6. Some final thoughts

Rather than trying to summarize the main arguments of this chapter, I want to conclude by listing two concerns that have been raised in the debates about social justice. The first is that theories of justice are too abstract and do not help us with social justice struggles on the ground. One may well argue that we roughly know what is going wrong, and need political action rather than more and more detailed theorizing. Moreover, some think that the subtleties of the theories of justice are easily abused in reality in order to justify gross inequalities, as may have been the case with the philosophical discussion about individual responsibility. A recent book by Barry (2005) exemplifies such a concern with the direct application of theories of justice to political change and the reform of the welfare state, rather than with further philosophical refinements of theories of justice. Related charges have been made specifically against the capability approach. For example, Hill (2003) has argued that not enough attention has been paid to issues of social power in the capability literature, and Feldmann and Gellert (2006) have highlighted the importance of struggles and negotiations by dominated and disadvantaged groups if social justice is ever to be realized. Such questions of power politics, effective social criticism, successful collective action, the importance of historical and cultural sensitivities, or the negotiation of competing interests, are indeed largely absent from the philosophical literature on theories of justice. These theories develop *standards* of a just society, but often do not tell us what institutions or policies are necessary to reach such just societies, let alone what social and political processes can help its advocates to ensure that these policies and social changes are implemented.

Secondly, capability scholars have been criticized for having their priorities wrong: to focus so heavily on the metric of justice, and human diversity in the conversion of resources into capabilities, it is argued, draws attention away from huge inequalities in terms of resources (income, wealth), and therefore helps to preserve the (unjust) status quo. Pogge (2002) has been the one of the most vocal capability critics who has argued that the capability approach, in particular Sen's work, overemphasizes the role of national and local governments in discussions of global poverty, thereby neglecting the huge injustices created by the global economic system and institutional structures, such as global trade rules. Pogge may have a point in his charge that capability theorists have paid insufficient attention to these issues, which have been discussed at length in the philosophical literature on global justice; but one

might also argue that this is tangential to the issues with which the capability approach to social justice is most concerned, namely how to make interpersonal comparisons of advantage for the purpose of social justice. One might, quite plausibly, hold the view that since most capability theorists are concerned with human well-being, they should invest their energies in addressing the most urgent cases of injustice by investigating the underlying causal processes and mechanisms, and concentrating on the development of solutions; but again, this is not valid as a critique of the capability approach as a theory, nor does it recognize the role that the capability approach *can* play in substantive debates about global justice and inequality. One should simply not take the capability approach for being more than what it is: an evaluative approach that draws our attention to people's beings and doings, and their real freedom to be the person they want to be and do the things they want to do.

References

- Alkire, S. (2005) 'Why the capability approach?' *Journal of Human Development*, 6(1), pp. 115-133.
- Anderson, E. (1999) 'What is the point of equality?' *Ethics*, 109, pp. 287-337.
- Barclay, L. (2003) "What kind of liberal is Martha Nussbaum", *SATS – Nordic Journal of Philosophy*, 4(2), 2003, pp. 5-24
- Barry, B. (1995) *Justice as Impartiality*, Oxford: Clarendon Press.
- Barry, B. (2005) *Why social justice matters*, Cambridge: Polity Press.
- Barry, B. and M. Matravers (2004) 'Justice', in E. Craig (ed.) *Routledge Encyclopedia of Philosophy*, Retrieved January 2, 2007 from <http://www.rep.routledge.com/article/S032>.
- Brighouse, H. (2001) 'Can Justice as Fairness accommodate the disabled?', *Social Theory and Practice*, 27(4), pp. 537-560.
- Brighouse, H. (2004) *Justice*. Cambridge: Polity press.
- Brighouse, H. and I. Robeyns (Eds., forthcoming) *Measuring Justice: Primary goods and capabilities*, Cambridge: Cambridge University Press.
- Dworkin, R. (1981a) 'What is Equality? Part 1: Equality of Welfare', *Philosophy & Public Affairs*, 10(3), pp. 185-246.

- Dworkin, R. (1981b) 'What is Equality? Part 2: Equality of Resources', *Philosophy & Public Affairs*, 10(4), pp. 283-345.
- Feldman, S. and P. Gellert (2006) 'The seductive quality of central human capabilities: sociological insights into Nussbaum and Sen's disagreement', *Economy and Society*, 35(3), pp. 423-452.
- Fleurbaey, M. (2006) 'Capabilities, Functionings and Refined Functionings', *Journal of Human Development*, 7(3), pp. 299-309.
- Hill, M. (2003) 'Development as empowerment', *Feminist Economics*, 9(2/3), pp. 117-135.
- Kittay, E. (1999) *Love's Labor. Essays on Women, Equality, and Dependency*, New York: Routledge.
- Kymlicka, W. (2002) *Contemporary Political Philosophy*, second edition, Oxford University Press.
- Miller, D. (1999), *Principles of Social Justice*, Cambridge, Mass.: Harvard University Press.
- Nozick, R. (1974) *Anarchy, State and Utopia*, New York: Basic Books.
- Nussbaum, M. (2000) *Women and Human Development*, Cambridge: Cambridge University Press.
- Nussbaum, M. (2003) Capabilities as fundamental entitlements: Sen and Social justice, *Feminist Economics*, 9 (2/3), pp. 33-59.
- Nussbaum, M. (2006) *Frontiers of Justice: Disability, Nationality and Species Membership*. Harvard University Press.
- Phillips, A. (2004), 'Defending Equality of Outcome', *Journal of Political Philosophy*, 12(1), pp.1-19.
- Pierik, R. and I. Robeyns (2007) 'Resources versus capabilities. Social endowments in egalitarian theory', *Political Studies*, 55(1), pp. 132-152.
- Pogge, T. 2002. Can the capability approach be justified? *Philosophical Topics*, 30, pp. 167-228.
- Rawls J. (1975/1999) 'Fairness to goodness', *Philosophical Review*, 84, pp. 536-555, Reprinted in John Rawls (1999), *Collected Papers*, Harvard University Press, pp. 267-285.

- Rawls J. (1982/1999) 'Social unity and primary goods', in: Amartya Sen and Bernard Williams (eds., 1982) *Utilitarianism and Beyond*, Cambridge University Press. Reprinted in John Rawls (1999), *Collected Papers*, Harvard University Press, pp. 359-387.
- Rawls J. (1988/1999) 'The priority of the Right and the Idea of the Good', *Philosophy and Public Affairs*, 17, 1988. John Rawls (1999), *Collected Papers*, Harvard University Press, pp. 449-472.
- Rawls, J. (1993) *Political Liberalism*. New York: Columbia University Press.
- Rawls, J. (1999) *A Theory of Justice*. Revised edition. Harvard University Press.
- Rawls, J. (2001) *Justice as Fairness: A restatement* Harvard University Press.
- Richardson, H. (2006a) 'John Rawls', *Internet Encyclopedia of Philosophy*, online at www.iep.utm.edu/r/rawls.htm, accessed 18 January 2007.
- Richardson, H. (2006b), 'Rawlsian Social-Contract Theory and the Severely Disabled: A Response to Nussbaum', *Journal of Ethics*, 10, pp. 419-426.
- Robeyns, I. (2005a) 'The capability approach: a theoretical survey', *Journal of Human Development*, 6(1), pp. 93-114.
- Robeyns, I. (2005b) 'Assessing global poverty and inequality', *Metaphilosophy*, 36(1/2), pp. 30-49.
- Robeyns, I. (2006) 'The capability approach in practice', *Journal of Political Philosophy*, 14(3), pp. 351-376.
- Sen, A. (1980). Equality of what? In S. McMurrin (ed.) *The Tanner Lectures on Human Values*. Salt Lake City: University of Utah Press.
- Sen, A. (1990). Justice: means versus freedoms. *Philosophy and Public Affairs*, 19, 111-121.
- Sen, A. (1992). *Inequality Re-examined*, Clarendon Press, Oxford.
- Sen, A. (1999). *Development as Freedom*. Knopf : New York.
- Sen, A. (2004). Capabilities, lists, and public reason: Continuing the conversation. *Feminist Economics*, 10, pp. 77-80.
- Sen, A. (2006) 'What do we want from a theory of justice?', *Journal of Philosophy*, CIII(5), pp. 215-238.
- Simon, R. (2002), *The Blackwell Guide to Social and Political Philosophy*, Oxford: Blackwell Publishing.

- Swift, A. (2001) *Political Philosophy. A Beginner's guide for students and politicians*. Cambridge: Polity.
- Vallentyne, P. (2005). Debate: Capabilities versus opportunities for well-being. *The Journal of Political Philosophy*, 13, pp. 359-371.
- Van Parijs, Ph. (1995) *Real Freedom for All. What (if anything) can Justify Capitalism*, Oxford: Oxford University Press.
- Walzer, M. (1983) *Spheres of Justice*, New York: Basic Books.
- Williams, A. (2002) 'Dworkin on Capability', *Ethics*, 113, pp. 23-39.
- Wolff, J. and A. de-Shalit. (2007). *Disadvantage*. Oxford: Oxford University Press.