# 10  Selecting a List

## The Capability Approach's Achilles Heel

Rutger Claassen

## 10.1 Introduction

The capability approach (CA) is an interdisciplinary approach used by sociologists, economists, philosophers and many others for a variety of purposes. It has proved fertile in thinking about large topics such as human development, quality of life and social justice, but also in relatively smaller contexts, from project management to education policy, from ecological sustainability to labour markets. Such a broad approach necessarily only has a small core of starting points on which all uses converge. If one wants to put the *approach* to work in a specific area, one needs to make further decisions so as to arrive at a sufficiently concrete capability *theory*. One of the primary decisions of capability theorists[1] is how to distinguish basic from non-basic capabilities.[2]

This issue, arguably, is the CA's Achilles heel, in two senses. The first sense is familiar: there is no consensus amongst those self-identifying as capability theorists how to do this, and the most prominent capability theorists, Amartya Sen and Martha Nussbaum, have clashed on this question.[3] Their controversy is often referred to as the 'list debate'. Nussbaum advocates drawing up a list of basic capabilities by theorists, while Sen wants to leave this to democratic publics. Without a convincing resolution to this controversy, the CA remains divided on the issue. Even if this pluralism is welcomed as a strength for the approach as a whole, the individual theorist needs to take a stance on this issue to be able to operationalize the approach. Secondly and much less discussed, the issue of basic capabilities is problematic in a sense that has recently been explored by Ian Carter.

---

[1] I use the term 'theorist' widely here: anyone constructing a capability theory. This may be an academic (from any field), a policy-maker, a professional in a specific field, etc.

[2] Nussbaum, in the past, has used the term *central* capabilities, reserving basic capabilities for a more specific usage (Nussbaum 2000: 84; 2011a: 23). In line with the widespread use of terms like basic needs, basic rights, etc., I will use the term *basic* capabilities instead of central capabilities. Sen also has used the term in roughly this sense; see, e.g. Sen 1993: 31, 41, although he may have in mind a more minimal core of capabilities absolutely necessary for survival, whereas others use the term more expansively to cover a wider set of socially important/valuable capabilities.

[3] Sen himself has recently denied that he can actually be called a capability theorist. I will remain agnostic about that question here. See Baujard and Gilardone 2017 and further references therein.

If anything, capability theorists agree that a list of basic capabilities is necessary for evaluations in concrete contexts. However, Carter argues that this exposes the CA to the risk of legitimizing paternalist interventions in people's lives, because any list (no matter who makes it) endorses a set of valuable functionings. This implies that if a person chooses not to act in the way made possible by such functionings (to dysfunction), the quality of his life is diminished and he can be forcibly corrected.

In this chapter, I will address both Achilles heels. First, I sketch what capability theorists do and do not agree to with respect to the issue of selecting a list of basic capabilities. This puts the Sen–Nussbaum debate in a slightly different perspective (Section 10.2). Then I will present Carter's challenge in its full force. I will argue that he is right that capabilitarians have not yet given good reasons to rebut his charge (Section 10.3). At this point we have both problems on the table. How to respond to them? Third, I show that the options for addressing the capability-selection problem are considerably wider than either adopting the Nussbaum solution or the Sen solution (Section 10.4). This opens the way for introducing my own preferred starting point to select basic capabilities. I will show how my version of capability theory can answer Carter's challenge in a way that is not open to Sen's and Nussbaum's versions (Section 10.5).

## 10.2    The List Debate: Common Ground and Points of Dispute

Adherents of the CA may make many diverging choices in the elaboration of their specific theories, but they can be characterized as agreeing on four essential points, and diverging on one main point (for alternative characterizations, see Deneulin and Shahani 2009; Robeyns 2016a).

First, they agree that the relevant features of a person in their theories need to be theorized as *capabilities to function*. Persons are characterized by the presence of a bundle of capabilities, where each capability contains the option of functioning in a specific way. There may be different ways to understand these concepts. For example, one point of divergence is whether one reserves the term 'capability' for the set of alternative functionings combinations that a person can achieve (Sen), or whether one uses the term to refer to distinct options in the set (Nussbaum) (Crocker 2008: 168–171). Furthermore, one may theorize about the internal aspects of a capability (skills, dispositions) and the external aspects (socially guaranteed options to use one's acquired skills) in slightly different ways (Dowding 2006). Also, one can debate whether capabilities are always attributes of individuals, or sometimes also of groups (Deneulin 2008; Sen 2009, 244–247). All these differences notwithstanding, the essential point is that a capability theorist focuses on capabilities to function, in contrast with other possible focal points. Two of these alternative views have been prominent in the literature, and the capability perspective was worked out in opposition to them: a focus on the resource bundle of a person and the focus on a person's utility levels. Capability theorists have long argued that a focus on resources ignores human diversity in converting resources

into functionings and fetishizes commodities. A focus on utility ignores a person's individual responsibility for her own choices and is misleading where preferences are adaptive.

Second, capability theorists generally consider the approach to be inherently *normative*: it is good to expand (some of) a person's capabilities (to some extent – for example, at least up to some threshold level). This normative position does not preclude purely descriptive work, but the latter serves to draw conclusions about what would be good to do in a certain context. The normative position may be backward-looking (evaluative) or forward-looking (prescriptive); it may be directed towards an audience of practitioners (such as policy-makers, professionals) or academics, and most importantly here, it may be done for different purposes. To mention the two most prominent cases: some use the CA's evaluative focus as characterizing human development in society (Sen 1999), others to characterize a person's entitlements in a just society (Nussbaum 2006). In more practical contexts, one may think of the necessary capabilities for labour market participation, higher education, technological development and so on. In all these contexts, capability expansions are judged prima facie good aims to pursue.

Third, the CA endorses the *evaluative priority of capabilities* over functionings. Some theories defend focusing almost exclusively on expanding a person's capabilities, never on one's functions directly (Begon 2016). Others may be in favour of a mix, where capabilities-not-functionings are the default (for adults), but sometimes it is necessary or desirable to promote a person's functionings directly (Nussbaum 2000: 89–95).[4] However, at least some emphasis on 'capabilities-not-functionings' is necessary for a capability theory to remain a capability theory. An exclusive focus on functionings would make the concept of capability itself superfluous. The reason for capability theorists for this strong (if not exclusive) reason to focus on capability expansions is that this leaves persons with the choice of whether or not to function in the way their capabilities allow them to. The CA's evaluative priority of capabilities is based on its *normative commitment to freedom of choice*. Promoting or even coercing people to function in a specific way, without leaving them the choice, is paternalist, and this is what the approach wants to avoid most of the time (Claassen 2014). The CA thus is an inherently liberal approach (Robeyns 2016b).

Fourth, the evaluative focus implies a commitment to a *distinction between basic and non-basic capabilities*. The capability concept is very flexible and can be stretched to include trivial capabilities (that is, the capability to lift my finger) or morally repugnant capabilities (that is, the capability to torture my neighbour). No capability theorist will therefore consider endorsing the expansion of all possible capabilities. For the evaluation of actions and policies in the face of the inevitable scarcity of time and resources, this point becomes even more urgent. We always need to make a distinction between those capabilities that are important and good to

---

[4]  Still others may emphasize that, at least for descriptive purposes, we sometimes need to focus on the identification of functionings, since capabilities cannot be identified directly (Sen 1992: 52).

endorse (or even the object of a basic rights claim, as in Nussbaum's constitutional entitlements), and those which are non-important and/or not good. Analytically, from this commitment to a distinction into two sets follows the idea of a *list of basic capabilities*.[5] This commitment to a distinction between basic and non-basic capabilities (which is foundational for and prior to the commitment to a list of basic capabilities), has rarely been defended explicitly, because it has rarely been attacked. In the following, however, I will present Ian Carter's recent attack of it.

These four points of convergence lead up to the main point of divergence: the list-dispute. This point is not best captured by saying that Sen(ians) and Nussbaum(ians) disagree on whether to draw up a list or not. As just mentioned, all capabilitarians are committed to drawing up one or more list(s) of basic capabilities when they aim to evaluate persons' lives in a concrete practical context.[6] The disagreement is best captured by saying that Senians leave list-making up to democratic processes of deliberation, while Nussbaumians claim that theorists (like philosophers) should feel free to do so. This means: they accept a different *normative criterion/method* to decide which capabilities are to count as basic.[7] Elsewhere I have reconstructed this debate by distinguishing two points of contention. One is about the political legitimacy of theorists addressing real-world actors with self-made lists; the other is about the epistemological capacities (or lack thereof) of theorists in deciding which items to include on a list (Claassen 2011). Here, I will not rehearse these points. What is more important for present purposes is that there is a tacit agreement between Senians and Nussbaumians about the framing of this dispute, as being about the question of *who* should draw up the list (and *how* this should be done): the theorist or a democratic community.[8] This has led to a polarized opposition, where only these two possibilities seem viable. In the following, I want to challenge this framing by suggesting that the commitment to the basic/non-basic distinction leaves open a much wider range of options (Section 10.4). But first, let's dig deeper into the assumed necessity to draw up such a list of basic capabilities in the first place.

## 10.3   Carter's Challenge: Paternalism in the Capability Approach

It may be good to start with the common-sense observation that the CA is not the only approach which leads to a commitment to 'a list'. Thus, for example, theories of justice like John Rawls's also contain lists of basic liberties (Rawls

---

[5]  To draw this conclusion, one may argue that an additional premise is necessary: that the enumeration of important and good capabilities can be done in an exhaustive way (in a given context); otherwise, the list is open-ended.

[6]  For this reason, I also consider a side issue the question of whether or not there should be 'one canonical' list (Sen 2004). Both sides can agree that there can be different lists for different purposes.

[7]  Some would speak of 'normative principles' or 'ideals' – I will use the term 'criterion/method' instead. The binary term is intended to mark inclusion of both substantive principles and procedural tests to distinguish basic from non-basic capabilities.

[8]  Intermediate positions are also possible, see, e.g., Wolff and de-Shalit 2007.

1999), and theories of human rights contain lists of human rights (Griffin 2008). It seems hard not to agree with Philip Pettit that 'the basic liberties are invoked at some point in almost every political theory' (Pettit 2008). This may be unsurprising, for (as I conjectured above) the very commitment to a normative theory seems to entail distinguishing good/important from bad/unimportant items (irrespective of how these items are framed, as capabilities or something else). However, it may seem that this entailment is not as robust as it seems, in light of Ian Carter's recent argument that the exercise of drawing up a list of basic capabilities is problematically paternalist. For purposes of our discussion, we can define paternalism as follows: a theory (or a policy based on it) is paternalist when it interferes with the liberty of a person in order to prevent him from harming himself, either when he would harm himself voluntarily or when he would do so involuntarily (Claassen 2014: 61). The latter is often called soft paternalism (see Section 10.5), since it only interferes in cases where a person cannot make a voluntary or autonomous choice him/herself, while the former is called 'hard paternalism' – it licenses interference even when this capacity for choice is present in the person. As mentioned above, in the context of the CA, such paternalist 'interference' with a person's freedom is translated as 'promoting/coercing a person into a functioning', instead of merely realizing a capability and leaving the choice of whether or not to function to the person.

Carter's argument starts off from his analysis that the CA can be understood in three different ways. These three options differ in how strongly they interpret the evaluative priority of capabilities over functionings (third common point in Section 10.2). His argument, then, aims to show that each of them turns out to have paternalist implications. This argument, if valid, would cast doubts on every attempt to make a list, thus disqualifying both Nussbaumian and Senian capability theories. Let us consider his argument in detail.

The first interpretation would be to hold that functionings and capabilities are 'jointly necessary conditions for a life of quality' (Carter 2014: 86–88). Functionings are what is intrinsically valuable: they are the constituents of a good life. Capabilities, however, are also valuable, because they are a necessary condition in an analytical (not causal) sense to achieve a valuable functioning. Carter states that the value of capabilities, on this interpretation, is of a 'contributory' kind. The choice or endorsement of a functioning is a necessary component of – contribution to – the well-being that the functioning delivers (Olsaretti 2005). Therefore, capabilities and functionings are jointly necessary for a life of well-being. Now Carter claims that this interpretation risks legitimizing paternalist interventions in individuals' lives because the focus on valuable functionings (albeit those endorsed by the individual) implies that we may sometimes legitimately limit a person's freedom 'as the most efficient way of promoting voluntary valuable functionings in the long run' (Carter 2014: 88).

A second interpretation may seem to contain a lower risk of paternalism, because it puts more emphasis on the separate value of capabilities and functionings. On this interpretation, functionings and capabilities are 'disjunctively necessary conditions

for a life of quality'. Functionings are valuable as before, for their contribution to a good life. Capabilities are now valuable intrinsically – the capability theorist values the freedom of choice that individuals have when they get a bundle of capabilities. Here, too, however, the danger of paternalism cannot be avoided. For Carter claims that governments could still restrict a person's freedom of choice by pointing to the separate value of functionings. How large the possibilities for paternalist intervention are depends on this interpretation, on the '*relative weight* to be attached to freedom . . . on the one hand, and achievement . . . on the other, in determining the quality of lives' (Carter 2014: 89). Whatever the relative weight, on this interpretation functionings still count for something next to capabilities. Thus there will always be some scope for paternalist interventions.

Given the dialectic so far, it is unsurprising that Carter's third interpretation of the CA does away with the separate value of achieved functionings. What if a capability theorist says that, for political purposes, only capabilities have value for a good life? On this interpretation, the quality of life is only associated with 'the capability to achieve valuable functionings' (Carter 2014: 90). This, Carter claims, captures how Nussbaum and Sen see the approach. So even if the first two interpretations are analytical possibilities, given the conceptual apparatus of the CA, most capabilitarians will favour this third interpretation. But even on this interpretation, Carter believes, paternalism may be legitimated. It is worth quoting the key passage in full:

> It is true that the capability approach on this interpretation never concerns itself with the realization of valuable functionings. It is not true, however, that it wholly discards the political relevance of valuable functionings, for it retains a concern with *their* possibility rather than with *other* possibilities. What matters, on the third interpretation, is that people enjoy certain specific capabilities, not that they enjoy capability *as such*, and in order to identify such specific capabilities we shall still need to refer to a list of independently specified functionings. The value of freedom therefore remains dependent upon its *content* – on what it is the freedom to do or become – and that content depends, in turn, on the specification of a set of ends worth realizing. As a result, even the third interpretation of the capability approach leaves a residual space for paternalism.  (Carter 2014: 91)

This is an attack on the idea of singling out a list of basic capabilities to function as such. Carter sustains this attack through the example of a person, Arthur, who is disabled and needs a medical operation to be able to walk. The CA, Carter claims, will give this person access to that operation. However, if we would give Arthur the cash equivalent of the operation, we would give him additional freedom of choice. The third interpretation, Carter claims, implies refusing such a cash benefit on the grounds that the additional freedoms that cash gives may be of disvalue to the person (for example, Arthur may spend the money on a sports car which adds no value to his life). But then it seems that capabilitarians, in the name of consistency, would also have to allow persons to use other capabilities (say, to nourishment) in ways that are of disvalue to their lives (say, eat unhealthily). Carter suspects that capability theorists, 'as mainstream liberals', 'are happy to treat Arthur

paternalistically', but 'might be less happy with some of the other paternalist possibilities' (Carter 2014: 92). The capability theorist who wants to differentiate between these cases has to decide which of these choices *not* to function in a certain way (where the functioning is judged valuable, for it is on the list) she can defend nonetheless, and why. Capability theorists, Carter claims, have so far not solved this problem: 'although most capability theorists are probably inclined against the curtailment of such freedoms . . . the capability approach itself does not appear to supply us with the theoretical resources needed to justify such an inclination' (Carter 2014: 92).

The underlying problem, according to Carter, is that the capability theorist, while committed on the third interpretation to the intrinsic value of freedom (capabilities instead of functionings), continues to connect this freedom only to particular freedoms – that is, freedoms to perform particular functionings. A given capability to do $x$ analytically entails the capability not to do $x$, but if we do normative theory and propose a basic list, then $x$ (if on the list) is judged valuable, so not-$x$ is judged not valuable (or even of disvalue). To escape this implication, Carter thinks we need to attribute *content-independent value* to freedom. We should judge more freedom to be more valuable than less freedom, regardless of what it is a freedom to do. The CA should incorporate this move and embrace 'capability as such' instead of specific capabilities (Carter 2014: 94). Only then can we see why the freedom not to do a particular thing may be of value: because it still is an exercise of freedom of choice. This requires, of course, that we can identify in an evaluatively neutral way when one person has more freedom than another.[9]

Carter's challenge is a powerful one, because it lays bare the tension between valuing a function and valuing a capability to that function. If the function is truly valuable, then not functioning in that way seems not to be valuable, and there seems to be no reason why the capability (freedom to choose) to function in that way needs to be judged valuable at all (unless we reconnect them along the lines of the first interpretation – but this carries the associated risks of paternalism). How can a capabilitarian respond to this? The first step is for the capability theorist to say more about the basis – what I have called the normative criterion/method – on which capabilities are to be selected as basic. We have seen that this has been the point of divergence between capability theorists in the list debate.

## 10.4    Normative Criteria for List-Making: A Broader View

In this section, I want to broaden the list debate beyond the opposition between the Sen–Nussbaum solutions, showing that there are more options available. In doing so, my general aim is to provide a structure which might advance the 'list debate' in the context of the CA. At the same time, this will prove to be

---

[9]  Carter elsewhere has theorized this proposal in more detail (Carter 1999), and he and Sen clashed earlier on this issue (Carter 1996; Sen 1996).

a necessary step to answering Carter's challenge, in Section 10.5. Now, what are the options? Starting from the Sen–Nussbaum debate, we can distinguish between procedural and substantive criteria. The procedural method for Sen is: whatever is decided to be a basic capability by a process of public deliberation and decision-making is a basic capability. The substantial criterion for Nussbaum is: whatever contributes to a life of human flourishing (or human dignity[10]) is a basic capability. However, if we would accept these two as the only options, we lose sight of other options on both sides of the procedural/substantive divide.

On the procedural side, there is a whole range of possible procedures. One way of classifying these is along a continuum, depending on the extent to which the theorist puts constraints on the procedure. In an ideal typical *purely* procedural view, the outcome is left completely to the preferences of the participants and the interactions between the participants in the procedure. On an ideal typical *constrained* procedural view, the theorist imposes more or fewer constraints on the procedure, in terms of the inputs, process or outputs that are allowed or expected. This distinction is familiar from other political theories. For instance, Rawls's exclusion of certain reasons in public reasoning as unreasonable classifies as a theorist's intervention in an otherwise free procedure. Similarly, Habermas's discourse ethics require participants to adhere to certain discourse rules. Informed preference theories include more constraints on preference formation than utilitarian theories, which do not require preferences to be informed. When these constraints become very heavy, the theory borders on a substantive view (as graphically depicted in Figure 10.1).

In the capability literature, all of this comes back. Sen's view, arguably, is a constrained view, because he often makes reference to the idea of capabilities we 'have reason to value' (Sen 2009: 231). This restricts the inputs to a process of public reasoning, since one cannot bring forward capabilities which are unreasonable in this sense (how heavy this constraint is depends on how constraining this formula is over and above a simple 'capabilities we value' – this remains unclear in Sen's work). Also, David Crocker, who presented a specific account of deliberative democratic procedures to flesh out Sen's commitments to democracy (Crocker 2008: 297–329), offers a constrained procedural view, because it puts conditions on the democratic process itself. Finally, Ingrid Robeyns has defended a procedural approach to assess an individual's quality of life (Robeyns 2005). Here, as in many other capability theories, a specific outcome is expected: the capabilities should enhance quality of life. A purely procedural view seems hard to find in the capability literature, but obviously it remains a possibility (one could imagine a rule-utilitarian capability theory which selects basic capabilities for their regular contribution to maximize subjective preferences). It remains important to think of alternatives on a scale of being more to less pure or constrained.

---

[10]  Although I cannot argue this point here, I take it that the introduction in later work of human dignity (and of political liberalism) does not change the fact that Nussbaum's theory is best categorized as a well-being theory. See Claassen 2018.

On the substantive side, there seem to be at least three options. First and most famously, one could adopt some criterion of well-being. Here we find Nussbaum's approach, which selects capabilities for human flourishing. Alternative theories of well-being are also possible. For example, Mozaffar Qizilbash has argued that James Griffin's theory of well-being could form the ground of a CA (Qizilbash 1998), and Sabine Alkire has proposed to use John Finnis's work to the same end (Alkire 2002). Despite the important differences between these (and other) theories, they can all be grouped as chiefly concerned with giving a theoretically elaborated, substantive view of well-being. Often this well-being option seems to be 'the only game in town': the CA is regularly presented as an alternative view about well-being (or quality of life) compared to utilitarian views of well-being. Even if the CA is presented as a theory of justice, this well-being interpretation survives: the approach, then, is about the equal/fair distribution of capabilities for well-being. However, this association is contingent. Nothing prohibits one from stating that a given list of basic capabilities contributes not to well-being but to something else. Indeed, we will see that several existing proposals conceive of the CA in alternative ways. Thus it is high time to abandon this association as a necessary one. It all depends on the normative criterion/method one chooses for selection of basic capabilities.[11]

Second, there is a category of substantive criteria which I will refer to as criteria of 'freedom'. In contrast to theories of well-being, conceptions of freedom focus on the conditions for individuals to choose for themselves how to lead their lives (in this sense, these theories are 'thinner' or less substantive than the well-being theories). In this category, one could imagine, for instance, capabilities theories based on conceptions of negative, republican or positive freedom. I do not know of any author defending a negative freedom-view of capabilities, but such a theory is not impossible. The option of *republican freedom* has been hinted at by Philip Pettit. The requirements of a life of non-domination may be worked out in terms of a set of basic capabilities (Pettit 1997: 158; Pettit 2014: 86). Sen has refused this marrying of the CA with republicanism because he thinks both theories focus on different aspects of freedom (Sen 2001). While I cannot discuss this here, I think Pettit is right that there is nothing incoherent about combining republicanism with the CA (Pettit 2001). This position has also been recently defended by Qizilbash (2016).[12] On the side of *positive freedom*, Bo Rothstein has proposed that

---

[11] We also need to dissociate the capability approach from the idea often attributed to it of capabilities as 'goals not means' in life. This association is the consequence of Sen's anti-fetishism argument against Rawlsian primary goods (Sen 1990). Freedoms (capabilities), along this line, are constitutive parts of the good life, not means to it. A capability approach would be superior to a resourcist theory because it focuses directly on the good things in life. However, this position runs into the following problem. If any capability theory needs a normative criterion/method for selecting basic capabilities, then what seems of value, first and foremost, is that criterion/method itself. The basic capabilities, then, are instrumentally valuable to the achievement of that criterion/method; or at least, that possibility cannot be excluded a priori. It may be possible to reconstruct the relation between the criterion/method and the basic capabilities as one of part–whole rather than ends–means, but this will all depend on the criterion/method one proposes.

[12] The republican capability approach has also been advocated in Alexander 2008.

autonomy should be the underlying normative criterion: 'the state treat all citizens with "equal concern and respect", and it should furnish them with "basic capabilities" so as to enable them to make autonomous choices' (Rothstein 1998: 157, see also 52–54). I have proposed a socially grounded view of free and autonomous agency as the underlying normative criterion for capability theory (Claassen 2017; 2018).[13] While Nussbaum has always objected to associations of the capability theory with an ideal of autonomy (Nussbaum 2003; 2011b), there seems to be nothing incoherent about this option either. It all depends on the normative arguments; the debate cannot be resolved on definitional grounds.

Third, a final option is not to focus on anything a person might have reason to value, nor on (some form of) well-being or freedom, but on democracy: basic capabilities are those which enhance a citizen's abilities for democratic participation. Indeed, the CA has been advanced by deliberative democrats such as James Bohman, who claims that deliberative democracy needs 'equal capacities for active citizenship' (Bohman 1997: 326). Elizabeth Anderson has used the CA in her work on democratic equality. She argues that justice needs to focus on capabilities necessary for democratic citizenship (Anderson 1999). Kevin Olson has made a similar proposal for capabilities for democratic participation (Olson 2006: 94–96, 138–143). Depending on the content one puts into the preconditions for a democratic process, the substantive criterion of democracy can be worked out in thinner or thicker ways. It seems thinner than both freedom- and well-being-centred views, thus bordering on procedural views (see Figure 10.1).
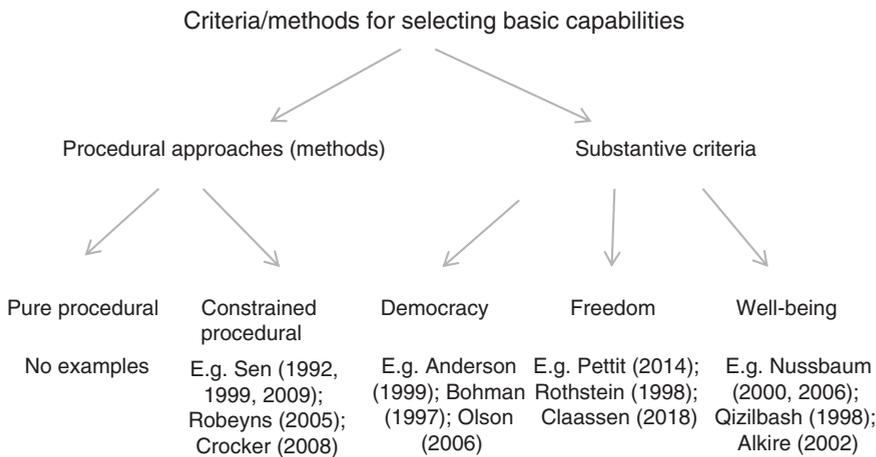


**Figure 10.1** *Criteria/methods for selecting basic capabilities*

---

[13] See also Claassen and Düwell 2013 for an argument that Alan Gewirth's theory of personal agency can be used to underpin a list of basic capabilities. See also Schuppert 2014 for a Hegelian-inspired view connecting agency and capabilities. Kevin Olson has argued that in addition to capabilities for political agency, one can also identify and defend capabilities for cultural agency and economic agency (Olson 2006: 78–86, 142–143).

This overview seems to me to give the most important options for capability selection, although perhaps the scheme could be further refined. The range of options is impressive; indeed, almost the full spectrum of political theories can be brought to bear on the CA. The approach can be(come) a battleground for neo-Aristotelians, utilitarians, Kantian liberals, democratic theorists and others, who all share only a commitment to working out their favoured normative criterion/method in terms of a set of basic capabilities (claiming 'this set will make you happy, democratically empowered, personally autonomous, non-dominated, and so on'). This point cannot be stressed enough: once a capability theorist has adopted a normative criterion/ method $x$, she is at least as much an $x$-theorist as a capability theorist: the choice of criterion/method $x$ is at least as important a feature of the resulting theory as the further elaboration of that criterion/method in terms of a set of basic capabilities.

## 10.5    Freedom-Based Capability Theory: Handling the Paternalism Problem Appropriately

Now we have to bring this analytical scheme to bear on Carter's challenge: that is, if the commitment to freedom of choice (capabilities-not-functionings) is coupled with a list of basic capabilities, the theory runs the risk of legitimizing paternalism. Given limited space, I will only discuss two of the options from the menu in Section 10.4. I will compare the answers which can be given to Carter's challenge from the perspective of a well-being-based capability theory and a freedom-based capability theory. I aim to show that (1) it really matters for answering Carter's challenge which criterion/method one chooses; and (2) a freedom-based capability theory has better resources for providing an answer to Carter's challenge than a well-being-based capability theory.

The most promising answer a well-being-based capability theory could provide is that Carter has misunderstood the sense in which each of the basic functionings is taken to be valuable. Take the example of professional choices. In many societies, there are different professional lives one could live. These are very different in the skills, enjoyments and opportunities they offer, but each of them contains something of value, both for the professional and for those who enjoy the fruits of his labour. Imagine a person who has a capability set consisting of two options: becoming a doctor or becoming an academic. If she chooses to become a doctor, then we cannot conclude – as Carter wants to have it – that this person has chosen to 'dysfunction' with respect to the capability to become an academic. Time is scarce and the person has simply selected one of the other options from the list as her preferred one. What we have here is value pluralism. As Raz argued: 'Belief in value pluralism is the belief that there are several maximal ways of life' (Raz 1986: 396; as Raz argued, this necessitates an autonomous choice between these ways of life). Similarly, Nussbaum's ten central capabilities can be defended by stating that each of them offers something of value, but persons themselves must choose which of these functionings to realize (and alas, not to realize) in their lives.

Thus, capabilitarians can give a reason why offering choice to individuals remains important, despite the fact that there is already a pre-selection of valuable options: because some of these might be *more* valuable to the specific individual than others. The prospective doctor realizes the highest value for her (if she chooses wisely, which we assume she does) by choosing a medical career, even if her life would also have been of (some, but lower) value had she chosen an academic career. Only when one chooses an option does its potential value 'come to life' for the chooser. The act of choice is a necessary – though not sufficient![14] – component of its well-being. At first sight, this may strike readers as a return to Carter's first interpretation of the CA. However, the capability theorist might consider herself on firmer ground now. Carter argued in response to the first interpretation that in the quest for optimal well-being, government might do better than individuals themselves. But the well-being-based response assumes that there is no standpoint from which governments can make such judgements. The abstract 'value' of an option cannot be a reason for government intervention, because only the concrete 'value-for-me' of an option I chose represents real value. The differences in value between two options cannot be diagnosed from a supra-individual standpoint (at least, not when both options are on the list of capabilities which are judged to have potential value for persons in the first place).

This solution by adherents of a well-being version of the CA, however, raises a new problem: it does not seem to allow diagnosing any deficits in personal decision-making as warranting paternalist interference. In giving pride of place to individual choice, the solution presupposes that such a choice can always be taken as an indicator of the individual's 'true self'. This seems implausible (to me, and to many egalitarian liberals, if not to Carter). It is one thing to say that we cannot judge which option will maximize a person's well-being. It is another thing to say that we cannot make any external third-personal judgement about the quality of a choice qua choice. Normally, this concern is expressed in terms of autonomy: even if we do not know what would maximize a person's well-being if he would be able to make an autonomous choice, we sometimes feel legitimated in saying that this choice was not autonomously made. This is a procedural ground for government intervention, because something was wrong with the conditions in which the choice was made (Feinberg's 'soft paternalism': Feinberg 1986). It seems that the capability theory needs to be able to make room for such judgements as legitimate grounds for government intervention. And Nussbaum does indeed allow for various contexts in which paternalism is justified (Nussbaum 2000: 89 ff.). But this means that a concern for autonomy along the lines just sketched is introduced into her version of the well-being-based capability theory.

---

[14] The theory remains wedded to a predetermined list of valuable functionings; the element of individual choice concerns only the choice between options on that list. Each option has potential well-being for every human being (given the connection of each option to a view of human nature and its flourishing); this potential is actualized when the individual endorses the option. See also Olsaretti 2005.

Freedom-based versions of the CA can accommodate this concern more directly (in the following I use my own preferred version within this category, a CA based on a criterion of autonomous agency, for illustrative purposes). It might respond to Carter by emphasizing that the functionings on a list of basic capabilities are only valuable in a certain respect: for their contribution to the development and maintenance of a person's capacity for autonomous agency. On such a line, the value of a basic capability derives from the value of the underlying normative criterion of autonomous agency. If autonomous agency is valuable, then each capability which is a necessary condition for agency is valuable too. Carter would object that this opens the door for paternalism: should the government, then, force people to function in such ways that their autonomous agency is developed? The answer is: to the extent that an individual lacks a threshold level of such agency, yes it should.[15] This is why paternalism is legitimate towards children (or persons with severe mental disabilities). However, to the extent that individuals have already developed autonomous agency up to the threshold level, their *exercise* of such agency should be respected.[16] This is what makes interventions in the health care sector, for example, so complicated. Mentally competent adults may refuse a treatment which would enhance their future health (hence, since health is a condition for agency, their agency as well). But they do so by exercising the agency they have at the moment. Hence the normative criterion of autonomous agency points in two conflicting directions: developing future agency and respecting current agency. This is no theoretical embarrassment for the normative criterion of autonomous agency – it is the most accurate diagnosis of these morally difficult situations that we can give (in practice, these conflicting demands will have to be weighed).

Now one might think that if a well-being version of the CA could also – albeit indirectly – incorporate a concern for the autonomous competencies of individuals, in addition to its primary focus on a set of well-being-enhancing functionings, then it is on a par with a freedom-based version of the CA. Both can justify legitimate instances of paternalism. However, this would still leave untouched its well-being-based list of basic capabilities. Carter's objection to his third interpretation of the CA is based on a judgement that paternalism creeps in via the *perfectionism* inherent in the list-making exercises in the CA (paternalism and perfectionism need to be sharply distinguished; see Claassen 2014: 59–61). This has been taken to be the basis for a long-standing objection against Nussbaum (Arneson 2000; Deneulin 2002; Nelson 2008).[17] A list of basic capabilities to valuable functionings based on a conception of human flourishing is disrespectful to citizens whose

---

[15] Here, I assume that the theory of autonomous agency focuses on the attainment of such threshold levels (hence, has a sufficientarian structure). Agency as a bundle of capacities is a 'scalar property', but the relevant threshold marks the point where society treats persons as responsible agents; agency, in the latter sense, is a 'range property' (Rawls 1999: 441 ff.; Carter 2011).

[16] All of this is meant under the condition that the exercise of one's capabilities does not harm others. Here I focus on harm to self, but a full capability theory needs to harmonize each citizen's space for capabilities exercise with that of others.

[17] A different way of dealing with this problem is suggested by Begon 2017.

conceptions of the good do not figure on the list. This expressive violation is compounded by the coercion exerted by government in raising the revenues from all citizens in realizing only this selection of capabilities. In short, the capabilities-not-functionings move does render a political regime liberal (non-paternalist) on the receiving end (you do not have to 'swallow' a functioning if you do not want to), but it is still objectionable both on the contributory end (coerciveness of taxation) and in its expressive message of disrespect. This seems to be behind Carter's rejection of the third interpretation (see the quote in Section 10.3 above).

An autonomy-based version of the CA, I would argue, minimizes this problem as much as possible. Granted, it is perfectionist to say that the state should operate on the basis of developing its citizens' capacities for autonomous agency (since this itself is a moral ideal). But this is the most minimally perfectionist position that is possible (Colburn 2010; Patten 2012). It refers to individuals to make choices about the good life, and only guarantees real opportunities for making these choices. This may be taken as an internal argument in favour of an agency-based capability theory. Embedded in the CA's only normative commitment, to promote capabilities and not functionings (see Section 10.2) lies a commitment to an ideal of autonomous agency. A state which would aspire to justify its policies on a completely non-perfectionist basis would have to stop *doing* anything – hence cease to exist. For as soon as it performs any action, it commits itself to a belief about the goodness of the end that the action aims at (this is true for collective as much as for individual actions). Perfect neutrality, therefore, is a chimera.[18]

This difference between well-being-based versions and freedom-based versions of the CA comes out clearly in the treatment of cases like Arthur's (see Section 10.3). A well-being-based approach would be able to resist the conclusion that Arthur should be given cash benefits to use the money for a sports car instead of a medical operation (a new hip), but it would do so on the ground that the latter option is a component of substantive well-being (it is on the list of valuable functionings), while the former is not. This is a direct application of its perfectionist commitment to a well-being-based list of capabilities. As we have seen, this provokes Carter's response that the same paternalist stance should then be taken towards other disvaluable capabilities (to become a couch potato or eat unhealthily), a consequence that capability theorists may want to avoid. But indeed, I would agree with Carter that it is unclear how a well-being-based CA would be able to avoid such a conclusion.

An autonomy-based capability theory would handle this problem differently. It would base its decision about the justifiability of cash transfers (Arthur) on considerations of autonomy. This opens up the space for arguments about justified soft paternalism towards Arthur because of a lack of autonomy. One promising argument in this direction is that in-kind transfers

---

[18] Carter claims that his account avoids perfectionism altogether (2014: 97). The question is whether this is possible. This would require a critical discussion of his own, claimed-to-be value-neutral approach in his monograph (1999). For a criticism of Carter's claims to neutrality, see Sugden 2003.

are a legitimate way for people to self-bind themselves through collective institutions to overcome hard-wired psychological problems in their decision-making capacities, which make them unable to achieve their preferred choices over a lifetime (Heath and Panitch 2010). It also opens up arguments about the political community being justified in only offering the hip operation, since the hip operation is necessary to maintain an autonomous life (as health in general is a crucial precondition for autonomous agency), while the sports car is not. Allowing choice and then seeing how people spend the money on sports cars might undermine popular support for a focused liberal policy of spending its scarce resources on enhancing people's autonomy-enhancing capabilities (Satz 2010: 76–79). All of this is different in the case of the couch potato, presuming that such a person's lifestyle – while not admirable – can be chosen autonomously and does not jeopardize the couch potato's future autonomy. From an autonomy-based CA theory, this lifestyle can be allowed.

In sum, an autonomy-based version of the CA does retain a commitment to a list of basic capabilities, but minimizes the perfectionism inherent in such list-making, compared to a well-being-based approach. This allows it to justify certain instances of paternalist interference, while condemning others, on the basis of the criterion of autonomy itself. While the discussion in this section was too short to provide a full treatment of the problem of paternalism and a full comparison of the way different CA approaches may respond to this problem, it hopefully sufficed to show how capability theorists can take the sting out of Carter's challenge, and retain their commitment to specify a list of basic capabilities.

## 10.6   Conclusion

This chapter has pursued two aims. On the one hand, its aim was to introduce the reader to the CA's stance on the familiar problem of selecting basic capabilities, by offering a general diagnosis of what is common to 'the' capability approach (that is, all versions of it) and where different capability theories may diverge (Section 10.2); and by offering a broader-than-usual overview of the different answers to the selection problem, going beyond the standard Nussbaum–Sen dichotomy of philosophical theory versus democratic practice (Section 10.4). On the other hand, the article has engaged with the challenge posed by Carter: that selecting basic capabilities may be problematic in the first place (Section 10.3). Here, I offered two possible responses to Carter, depending on the specific answer one gives to the selecting-problem (Section 10.5). I argued that a freedom-based capability theory is better-equipped to answer Carter than a well-being-based theory. Even if the reader does not share this ultimate conclusion, I still hope to have offered a useful overview of how to think about the capability selection problem, and a case for at least taking Carter's challenge very seriously.

## References

Alexander, J. 2008. *Capabilities and Social Justice: The Political Philosophy of Amartya Sen and Martha Nussbaum*. Aldershot: Ashgate.

Alkire, S. 2002. *Valuing Freedoms: Sen's Capability Approach and Poverty Reduction*. Oxford University Press.

Anderson, E. 1999. 'What Is the Point of Equality?' *Ethics* 109/2: 287–337.

Arneson, R. 2000. 'Perfectionism and Politics'. *Ethics* 111/1: 37–63.

Baujard, A. and Gilardone, M. 2017. 'Sen Is Not a Capability Theorist'. *Journal of Economic Methodology* 24/1: 1–19.

Begon, J. 2016. 'Athletic Policy, Passive Well-Being: Defending Freedom in the Capability Approach'. *Economics & Philosophy* 32/1: 51–73.

   2017. 'Capabilities for All? From Capabilities to Function to Capabilities to Control'. *Social Theory and Practice* 43/1: 154–179.

Bohman, J. 1997. 'Deliberative Democracy and Effective Social Freedom: Capabilities, Resources, and Opportunities', in J. Bohman and W. Rehg (eds.). *Deliberative Democracy: Essays on Reason and Politics*. Cambridge, MA: MIT Press: 321–348.

Carter, I. 1996. 'The Concept of Freedom in the Work of Amartya Sen: An Alternative Analysis Consistent with Freedom's Independent Value'. *Notizie di Politeia* 12/43–44: 7–22.

   1999. *A Measure of Freedom*. Oxford University Press.

   2011. 'Respect and the Basis of Equality'. *Ethics* 121/3: 538–571.

   2014. 'Is the Capability Approach Paternalist?' *Economics & Philosophy* 30/1: 75–98.

Claassen, R. 2011. 'Making Capability Lists: Philosophy versus Democracy'. *Political Studies* 59/3: 491–508.

   2014. 'Capability Paternalism'. *Economics & Philosophy* 30/1: 57–73.

   2017. 'An Agency-Based Capability Theory of Justice'. *European Journal of Philosophy* 25/4: 1279–1304.

   2018. *Capabilities in a Just Society: A Theory of Navigational Agency*. Cambridge University Press.

Claassen, R. and Düwell, M. 2013. 'The Foundations of Capability Theory: Comparing Nussbaum and Gewirth'. *Ethical Theory and Moral Practice* 16/3: 493–510.

Colburn, B. 2010. 'Anti-Perfectionisms and Autonomy'. *Analysis* 70/2: 247–256.

Crocker, D. 2008. *Ethics of Global Development: Agency, Capability, and Deliberative Democracy*. Cambridge University Press.

Deneulin, S. 2002. 'Perfectionism, Paternalism and Liberalism in Sen and Nussbaum's Capability Approach'. *Review of Political Economy* 14/4: 497–518.

   2008. 'Beyond Individual Freedom and Agency: Structures of Living Together in the Capability Approach', in F. Comim, M. Qizilbash and S. Alkire (eds.). *The Capability Approach: Concepts, Measures and Applications*. Cambridge University Press: 105–124.

Deneulin, S. and Shahani, L. (eds.). 2009. *An Introduction to the Human Development and Capability Approach*. London: Earthscan.

Dowding, K. 2006. 'Can Capabilities Reconcile Freedom and Equality?' *Journal of Political Philosophy* 14/3: 323–336.

Feinberg, J. 1986. *Harm to Self*. Oxford University Press.

Griffin, J. 2008. *On Human Rights*. Oxford University Press.

Heath, J. and Panitch, V. 2010. 'Why Cash Violates Neutrality'. *Basic Income Studies* 5/1: 1–26.

Nelson, E. 2008. 'From Primary Goods to Capabilities: Distributive Justice and the Problem of Neutrality'. *Political Theory* 36/1: 93–122.

Nussbaum, M. 2000. *Women and Human Development: The Capabilities Approach*. Cambridge University Press.

2003. 'Political Liberalism and Respect: A Response to Linda Barclay'. *SATS: Nordic Journal of Philosophy* 4/2: 25–44.

2006. *Frontiers of Justice*. Cambridge, MA: Harvard University Press.

2011a. *Creating Capabilities: The Human Development Approach*. Cambridge, MA: Harvard University Press.

2011b. 'Perfectionist Liberalism and Political Liberalism'. *Philosophy & Public Affairs* 39/1: 3–45.

Olsaretti, S. 2005. 'Endorsement and Freedom in Amartya Sen's Capability Approach'. *Economics and Philosophy* 21/1: 89–108.

Olson, K. 2006. *Reflexive Democracy: Political Equality and the Welfare State*. Cambridge, MA: MIT Press.

Patten, A. 2012. 'Liberal Neutrality: A Reinterpretation and Defense'. *Journal of Political Philosophy* 20/3: 249–272.

Pettit, P. 1997. *Republicanism: A Theory of Freedom and Government*. Oxford University Press.

2001. 'Capability and Freedom: A Defence of Sen'. *Economics and Philosophy* 17/1: 1–20.

2008. 'The Basic Liberties', in M. Kramer (ed.). *The Legacy of HLA Hart*. Oxford University Press: 201–224.

2014. *Just Freedom*. New York and London: W. W. Norton.

Qizilbash, M. 1998. 'The Concept of Well-Being'. *Economics & Philosophy* 14/1: 51–73.

2016. 'Some Reflections on Capability and Republican Freedom'. *Journal of Human Development and Capabilities* 17/1: 22–34.

Rawls, J. 1999. *A Theory of Justice*, rev. ed. Oxford University Press.

Raz, J. 1986. *The Morality of Freedom*. Oxford: Clarendon Press.

Robeyns, I. 2005. 'Selecting Capabilities for Quality of Life Measurement'. *Social Indicators Research* 74/1: 191–215.

2016a. 'Capabilitarianism'. *Journal of Human Development and Capabilities* 17/3: 397–414.

2016b. 'The Capability Approach', in E. N. Zalta (ed.). *The Stanford Encyclopedia of Philosophy* (winter 2016 ed.). Stanford University. Available at: http://plato.stanford.edu/entries/capability-approach/ (accessed 24 February 2020).

Rothstein, B. 1998. *Just Institutions Matter: The Moral and Political Logic of the Universal Welfare State*. Cambridge University Press.

Satz, D. 2010. *Why Some Things Should Not Be for Sale: The Moral Limits of Markets*. New York: Oxford University Press.

Schuppert, F. 2014. *Freedom, Recognition and Non-Domination: A Republican Theory of (Global) Justice*. Dordrecht, Heidelberg, New York and London: Springer.

Sen, A. 1990. 'Justice: Means Versus Freedoms'. *Philosophy and Public Affairs* 19/2: 111–121.

1992. *Inequality Reexamined*. Cambridge, MA: Harvard University Press.

1993. 'Capability and Well-Being', in M. C. Nussbaum and A. Sen (eds.). *The Quality of Life*. Oxford: Clarendon Press: 30–53.

1996. 'Freedom, Capabilities and Public Action: A Response'. *Notizie di Politeia* 12/43–44: 107–125.

1999. *Development as Freedom*. Oxford University Press.

2001. 'Reply'. *Economics and Philosophy* 17/1: 51–66.

2004. 'Capabilities, Lists, and Public Reason: Continuing the Conversation'. *Feminist Economics* 10/3: 77–80.

2009. *The Idea of Justice*. Cambridge, MA: Harvard University Press.

Sugden, R. 2003. 'Opportunity as a Space of Individuality: Its Value and the Impossibility of Measuring It'. *Ethics* 113/4: 783–809.

Wolff, J. and de-Shalit, A. 2007. *Disadvantage*. Oxford University Press.