Human Rights and Capabilities

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Abstract   The two concepts — human rights and capabilities — go well with each other, so long as we do not try to subsume either concept entirely within the territory of the other. There are many human rights that can be seen as rights to particular capabilities. However, human rights to important process freedoms cannot be adequately analysed within the capability framework. Furthermore, both human rights and capabilities have to depend on the process of public reasoning. The methodology of public scrutiny draws on Rawlsian understanding of 'objectivity' in ethics, but the impartiality that is needed cannot be confined within the borders of a nation. Public reasoning without territorial confinement is important for both.

Key words: Human rights, Capabilities, Public reasoning, Freedom

Introduction

The moral appeal of human rights has been used for varying purposes, from resisting torture and arbitrary incarceration to demanding the end of hunger and of medical neglect. There is hardly any country in the world — from China, South Africa and Egypt to Mexico, Britain and the United States — in which arguments involving human rights have not been raised in one context or another in contemporary political debates.

However, despite the tremendous appeal of the idea of human rights, it is also seen by many as being intellectually frail — lacking in foundation and perhaps even in coherence and cogency. The remarkable co-existence of stirring appeal and deep conceptual scepticism is not new. The American Declaration of Independence took it to be 'self-evident' that everyone is "endowed by their Creator with certain inalienable rights", and 13 years later, in 1789, the French declaration of 'the rights of man' asserted that "men are born and remain free and equal in rights". But it did not take Jeremy Bentham long to insist, in *Anarchical Fallacies*, written during 1791–1792, that "natural rights is simple nonsense: natural and imprescriptible rights [an American phrase], rhetorical nonsense, nonsense upon stilts" (Bentham, 1792/1843, p. 501). That division

remains very alive today, and there are many who see the idea of human rights as no more than ''bawling upon paper'' (to use another of Bentham's barbed descriptions).

The concepts of human rights and human capabilities have something of a common motivation, but they differ in many distinct ways. It is useful to ask whether considering the two concepts together — capabilities and human rights — can help the understanding of each. I will divide the exercise into four specific questions. First, can human rights be seen as entitlements to certain basic capabilities, and will this be a good way of thinking about human rights? Second, can the capability perspective provide a comprehensive coverage of the content of human rights? Third, since human rights need specificity, does the use of the capability perspective for elucidating human rights require a full articulation of the list of capabilities? And finally, how can we go about ascertaining the content of human rights and of basic capabilities when our values are supposed to be quite divergent, especially across borders of nationality and community? Can we have anything like a universalist approach to these ideas, in a world where cultures differ and practical preoccupations are also diverse?

Human rights as entitlements to capabilities

It is possible to argue that human rights are best seen as rights to certain specific freedoms, and that the correlate obligation to consider the associated duties must also be centred around what others can do to safeguard and expand these freedoms. Since capabilities can be seen, broadly, as freedoms of particular kinds, this would seem to establish a basic connection between the two categories of ideas.

We run, however, into an immediate difficulty here. I have argued elsewhere that 'opportunity' and 'process' are two aspects of freedom that require distinction, with the importance of each deserving specific acknowledgement.[1] While the opportunity aspect of freedoms would seem to belong to the same kind of territory as capabilities, it is not at all clear that the same can be said about the process aspect of freedom.

An example can bring out the *separate* (although not necessarily independent) relevance of both *substantive opportunities* and *freedom of processes*. Consider a woman, let us call her Natasha, who decides that she would like to go out in the evening. To take care of some considerations that are not central to the issues involved here (but which could make the discussion more complex), it is assumed that there are no particular safety risks involved in her going out, and that she has critically reflected on this decision and judged that going out would be the sensible — indeed the ideal — thing to do.

Now consider the threat of a violation of this freedom if some authoritarian guardians of society decide that she must not go out ('it is most unseemly'), and if they force her, in one way or another, to stay

indoors. To see that there are two distinct issues involved in this one violation, consider an alternative case in which the authoritarian bosses decide that she must — absolutely *must* — go out ('you are expelled for the evening — just obey'). There is clearly a violation of freedom even here though Natasha is being forced to do exactly what she would have chosen to do anyway, and this is readily seen when we compare the two alternatives 'choosing freely to go out' and 'being forced to go out'. The latter involves an immediate violation of the *process aspect* of Natasha's freedom, since an action is being forced on her (even though it is an action she would have freely chosen also).

The opportunity aspect may also be affected, since a plausible accounting of opportunities can include having options and it can *inter alia* include valuing free choice. However, the violation of the opportunity aspect would be more substantial and manifest if she were not only forced to do something chosen by another, but in fact forced to do something she would not otherwise choose to do. The comparison between 'being forced to go out' (when she would have gone out anyway, if free) and, say, 'being forced to polish the shoes of others at home' (not her favourite way of spending time, I should explain) brings out this contrast, which is primarily one of the opportunity aspect, rather than the process aspect. In the incarceration of Natasha, we can see two different ways in which she is losing her freedom: first, she is being forced to do something, with no freedom of choice (a violation of her process freedom); and second, what Natasha is being obliged to do is not something she would choose to do, if she had any plausible alternative (a violation of her substantive opportunity to do what she would like to do).[2]

It is important to recognise that both processes and opportunities can figure powerfully in the content of human rights. A denial of 'due process' in being, say, sentenced without a proper trial can be an infringement of human rights (no matter what the outcome of the fair trial might be), and so can be the denial of opportunity of medical treatment, or the opportunity of living without the danger of being assaulted (going beyond the exact process through which these opportunities are made real).

The idea of 'capability' (i.e. the opportunity to achieve valuable combinations of human functionings — what a person is able to do or be) can be very helpful in understanding the opportunity aspect of freedom and human rights.[3] Indeed, even though the concept of opportunity is often invoked, it does require considerable elaboration, and capability can help in this elucidation. For example, seeing opportunity in terms of capability allows us to distinguish appropriately between (i) whether a person is actually able to do things she would value *doing*, and (ii) whether she possesses the *means or instruments or permissions* to pursue what she would like to do (her actual ability to do that pursuing may depend on many contingent circumstances). By shifting attention, in particular, towards the former, the capability-based approach resists an overconcentration on means (such as incomes and primary goods) that

can be found in some theories of justice (e.g. in the Rawlsian Difference Principle). The capability approach can help to identify the possibility that two persons can have very different substantial opportunities even when they have exactly the same set of means: for example, a disabled person can do far less than an able-bodied person can, with exactly the same income and other 'primary goods'. The disabled person cannot, thus, be judged to be equally advantaged — with the same opportunities — as the person without any physical handicap but with the same set of means or instruments (such as income and wealth and other primary goods and resources).

The capability perspective allows us to take into account the parametric variability in the relation between the means, on the one hand, and the actual opportunities, on the other.[4] Differences in the capability to function can arise even with the same set of personal means (such as primary goods) for a variety of reasons, such as: (1) *physical or mental heterogeneities among persons* (related, for example, to disability, or proneness to illness); (2) *variations in non-personal resources* (such as the nature of public health care, or societal cohesion and the helpfulness of the community); (3) *environmental diversities* (such as climatic conditions, or varying threats from epidemic diseases or from local crime); or (4) *different relative positions vis-à-vis others* (well illustrated by Adam Smith's discussion, in the *Wealth of Nations*, of the fact that the clothing and other resources one needs ''to appear in public without shame'' depends on what other people standardly wear, which in turn could be more expensive in rich societies than in poorer ones).

I should, however, note here that there has been some serious criticism of describing these substantive opportunities (such as the capability to live one kind of a life or another) as 'freedoms', and it has been argued that this makes the idea of freedom too inclusive. For example, in her illuminating and sympathetic critique of my *Development as Freedom*, Susan Okin has presented arguments to suggest that I tend ''to overextend the concept of freedom''.[5] She has argued: ''It is hard to conceive of some human functionings, or the fulfilment of some needs and wants, such as good health and nourishment, as freedoms without stretching the term until it seems to refer to everything that is of central value to human beings'' (Okin, 2003, p. 292).

There is, certainly, considerable scope for argument on how extensively the term freedom should be used. But the particular example considered in Okin's counter-argument reflects a misinterpretation. There is no suggestion whatever that a functioning (e.g. being in good health or being well nourished) should be seen as freedom of any kind, such as capability. Rather, capability concentrates on the *opportunity* to be able to have combinations of functionings (including, in this case, the opportunity to be well-nourished), and the person is free to make use of this opportunity or not. A capability reflects the alternative combinations of functionings from which the person can choose one combination. It is,

therefore, not being suggested at all that being well-nourished is to be seen as a freedom. The term freedom, in the form of capability, is used here to refer to the extent to which the person is free to choose particular levels of functionings (such as being well-nourished), and that is not the same thing as what the person actually decides to choose. During India's struggle for independence from the Raj, Mahatma Gandhi famously did not use that opportunity to be well fed when he chose to fast, as a protest against the policies of the Raj. In terms of the actual functioning of being well-nourished, the fasting Gandhi did not differ from a starving famine victim, but the freedoms and opportunities they respectively had were quite different.

Indeed, the *freedom to have* any particular thing can be substantially distinguished from actually *having* that thing. What a person is free to have — not just what he actually has — is relevant, I have argued, to a theory of justice.[6] A theory of rights also has reason to be involved with substantive freedoms.

Many of the terrible deprivations in the world have arisen from a lack of freedom to escape destitution. Even though indolence and inactivity had been classic themes in the old literature on poverty, people have starved and suffered because of a lack of alternative possibilities. It is the connection of poverty with unfreedom that led Marx to argue passionately for the need to replace ''the domination of circumstances and chance over individuals by the domination of individuals over chance and circumstances''.[7]

The importance of freedom can be brought out also by considering other types of issues that are also central to human rights. Consider the freedom of immigrants to retain their ancestral cultural customs and lifestyles. This complex subject cannot be adequately assessed without distinguishing between *doing* something and being *free* to do that thing. A strong argument can be constructed in favour of an immigrant's having the freedom to retain her ancestral lifestyle, but this must not be seen as an argument in favour of her pursuing that ancestral lifestyle whether she herself chooses that pursuit or not. The central issue, in this argument, is the person's freedom to choose how she should live — including the *opportunity* to pursue ancestral customs — and it cannot be turned into an argument for that person specifically pursuing those customs in particular, irrespective of the alternatives she has.[8] The importance of capability — reflecting opportunities — is central to this distinction.

The process aspect of freedom and information pluralism

In the discussion so far I have been concentrating on what the capability perspective can do for a theory of justice or of human rights, but I would now like to turn to what it *cannot* do. While the idea of capability has considerable merit in the assessment of the opportunity aspect of freedom, it cannot possibly deal adequately with the process aspect of

freedom, since capabilities are characteristics of individual advantages, and they fall short of telling us enough about the fairness or equity of the processes involved, or about the freedom of citizens to invoke and utilise procedures that are equitable.

The contrast of perspectives can be brought out with many different types of illustrations; let me choose a rather harsh example. It is, by now, fairly well established that, given symmetric care, women tend to live longer than men. If one were concerned only with capabilities (and nothing else), and in particular with equality of the capability to live long, it would have been possible to construct an argument for giving men more medical attention than women to counteract the natural masculine handicap. But giving women less medical attention than men for the same health problems would clearly violate an important requirement of process equity, and it seems reasonable to argue, in cases of this kind, that demands of equity in process freedom could sensibly override a single-minded concentration on the opportunity aspect of freedom (and on the requirements of capability equality in particular). While it is important to emphasise the relevance of the capability perspective in judging people's substantive opportunities (particularly in comparison with alternative approaches that focus on incomes, or primary goods, or resources), that point does not, in any way, go against seeing the relevance also of the process aspect of freedom in a theory of human rights — or, for that matter, in a theory of justice.

In this context, I should comment briefly also on a misinterpretation of the general relevance of the capability perspective in a theory of justice. A theory of justice — or more generally an adequate theory of normative social choice — has to be alive both to the fairness of the processes involved and to the equity and efficiency of the substantive opportunities that people can enjoy.[9] In dealing with the latter, capability can indeed provide a very helpful perspective, in comparison with, say, the Rawlsian concentration on 'primary goods'. But capability can hardly serve as the sole informational basis for the *other* considerations, related to processes, that must also be accommodated in normative social choice theory.

Consider the different components of Rawls's (1971) theory of justice. Rawls's 'first principle' of justice involves the priority of liberty, and the first part of the 'second principle' involves process fairness, through demanding that 'positions and offices be open to all'. The force and cogency of these Rawlsian concerns (underlying his first principle and the first part of the second principle) can neither be ignored nor be adequately addressed through relying only on the informational base of capabilities. We may not agree with Rawls's own way of dealing with these issues, but these issues have to be addressed, and they cannot be sensibly addressed within the substantive boundaries of capability accounting.

On the other hand, the capability perspective comes into its own in dealing with the *remainder* of the second principle; namely, 'the Difference Principle' — a principle that is particularly concerned with

the distribution of advantages that different people enjoy (a consideration that Rawls tried to capture, I believe inadequately, within the confines of the accounting of 'primary goods'). The territory that Rawls reserved for primary goods, as used in his Difference Principle, would indeed, I argue, be better served by the capability perspective. That does not, however, obliterate in any way the relevance of the rest of the territory of justice (related to the first principle and the first part of the second principle), in which process considerations, including liberty and procedural equity, figure.

A similar plurality of informational base has to be invoked in dealing with the multiplicity of considerations that underlie a theory of human rights. Capabilities and the opportunity aspect of freedom, important as they are, have to be supplemented by considerations of fair processes and the lack of violation of people's right to invoke and utilise them.

Listing capabilities

I turn now to the controversial question of the listing of capabilities. In its application, the capability approach allows considerable variations in application. Martha Nussbaum has discussed powerfully the advantages of identifying an overarching 'list of capabilities', with given priorities. My own reluctance to join the search for such a canonical list arises partly from my difficulty in seeing how the exact lists and weights would be chosen without appropriate specification of the context of their use (which could vary), but also from a disinclination to accept any substantive diminution of the domain of public reasoning. The framework of capabilities helps, in my judgement, to clarify and illuminate the subject matter of public reasoning, which can involve epistemic issues (including claims of objective importance) as well as ethical and political ones. It cannot, I would argue, sensibly aim at displacing the need for continued public reasoning.

Indeed, I would submit that one of the uses of the capability perspective is to bring out the need for transparent valuational scrutiny of individual advantages and adversities, since the different *functionings* have to be assessed and weighted in relation to each other, and the opportunities of having different *combinations* of functionings also have to be evaluated.[10] The richness of the capability perspective broadly interpreted, thus, includes its insistence on the need for open valuational scrutiny for making social judgements, and in this sense it fits in well with the importance of public reasoning. This openness of transparent valuation contrasts with burying the evaluative exercise in some mechanical — and valuationally opaque — convention (e.g. by taking market-evaluated income to be the invariable standard of individual advantage, thereby giving implicit normative priority to institutionally determined market prices).

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The problem is not with listing important capabilities, but with insisting on one pre-determined canonical list of capabilities, chosen by theorists without any general social discussion or public reasoning. To have such a fixed list, emanating entirely from pure theory, is to deny the possibility of fruitful public participation on what should be included and why.

I have, of course, discussed various lists of capabilities that would seem to demand attention in theories of justice and more generally in social assessment, such as the freedom to be well nourished, to live disease-free lives, to be able to move around, to be educated, to participate in public life, and so on. Indeed, right from my first writings on using the capability perspective (for example, the 1979 Tanner Lecture 'Equality of what?'; Sen, 1980), I have tried to discuss the relevance of specific capabilities that are important in a particular exercise. The 1979 Tanner lecture went into the relevance of ''the ability to move about'' (I discussed why disabilities can be a central concern in a way that an income-centred approach may not be able to grasp), along with other basic capabilities, such as ''the ability to meet one's nutritional requirements, the where-withal to be closed and sheltered, the power to participate in the social life of the community''. The contrast between lists of capabilities and commodities was a central concern in *Commodities and Capabilities* (Sen, 1985a). The relevance of many capabilities that are often neglected were discussed in my second set of Tanner Lectures, given at Cambridge University under the title *The Standard of Living* (Hawthorn, 1987).

My scepticism is about fixing a cemented list of capabilities that is seen as being absolutely complete (nothing could be added to it) and totally fixed (it could not respond to public reasoning and to the formation of social values). I am a great believer in theory, and certainly accept that a good theory of evaluation and assessment has to bring out the relevance of what we are free to do and free to be (the capabilities in general), as opposed to the material goods we have and the commodities we can command. But I must also argue that pure theory cannot 'freeze' a list of capabilities for all societies for all time to come, irrespective of what the citizens come to understand and value. That would be not only a denial of the reach of democracy, but also a misunderstanding of what pure theory can do, completely divorced from the particular social reality that any particular society faces.

Along with the exercise of listing the relevant capabilities, there is also the problem of determining the relative weights and importance of the different capabilities included in the relevant list. Even with a given list, the question of valuation cannot be avoided. There is sometimes a temptation not only to have one fixed list, but also to have the elements of the list ordered in a lexicographic way. But this can hardly work. For example, the ability to be well-nourished cannot in general be put invariably *above* or *below* the ability to be well-sheltered (with the implication that the tiniest improvement of the higher ranked capability will always count as more

important than a large change in the lower ranked one). The judgement must take into account the extent to which the different abilities are being realised or violated. Also, the weighting must be contingent on circumstances. We may have to give priority to the ability to be well-nourished when people are dying of hunger in their homes, whereas the freedom to be sheltered may rightly receive more weight when people are in general well-fed, but lack shelter and protection from the elements.

Some of the basic capabilities (with which my 1979 Tanner Lecture was particularly concerned) will no doubt figure in every list of relevant capabilities in every society. But the exact list to be used will have to take note of the purpose of the exercise. There is often good sense in narrowing the coverage of capabilities for a specific purpose. Jean Drèze and I have tried to invoke such lists of elementary capabilities in dealing with 'hunger and public action', and in a different context, in dealing with India's economic and social achievements and failures (Drèze and Sen, 1989, 2002). I see Martha Nussbaum's powerful use of a given list of capabilities for some minimal rights against deprivation as being extremely useful, in the same practical way. For another practical purpose, we may need quite a different list.

For example, when my friend Mahbub ul Haq asked me, in 1989, to work with him on indicators of human development, and in particular to help develop a general index for global assessment and critique, it was clear to me that we were involved in a particular exercise of specific relevance. So the 'Human Development Index' was based on a very minimal listing of capabilities, with a particular focus on getting at a minimally basic quality of life, calculable from available statistics, in a way that the Gross National Product or Gross Domestic Product failed to capture (United Nations Development Programme, 1990). Lists of capabilities have to be used for various purposes, and so long as we understand what we are doing (and, in particular, that we are getting a list for a particular reason, related to assessment, evaluation, or critique), we do not put ourselves against other lists that may be relevant or useful for other purposes.

All this has to be contrasted with insisting on one 'final list of capabilities that matter'. To decide that some capability will not figure in the list of relevant capabilities at all amounts to putting a zero weight on that capability for every exercise, no matter what the exercise is concerned with, and no matter what the social conditions are. This could be very dogmatic, for many distinct reasons.

First, we use capabilities for different purposes. What we focus on cannot be independent of what we are doing and why (e.g. whether we are evaluating poverty, specifying certain basic human rights, getting a rough and ready measure of human development, and so on).

Second, social conditions and the priorities that they suggest may vary. For example, given the nature of poverty in India as well as the nature of available technology, it was not unreasonable in 1947 (when India

became independent) to concentrate on elementary education, basic health, and so on, and to not worry too much about whether everyone can effectively communicate across the country and beyond. However, with the development of the internet and its wide-ranging applications, and the advance made in information technology (not least in India), access to the web and the freedom of general communication has become a very important capability that is of interest and relevance to all Indians.

Third, even with given social conditions, public discussion and reasoning can lead to a better understanding of the role, reach and the significance of particular capabilities. For example, one of the many contributions of feminist economics has precisely been to bring out the importance of certain freedoms that were not recognised very clearly — or at all — earlier on; for example, freedom from the imposition of fixed and time-honoured family roles, or immunity from implicit derogation through the rhetoric of social communication.

To insist on a 'fixed forever' list of capabilities would deny the possibility of progress in social understanding, and also go against the productive role of public discussion, social agitation, and open debates. I have nothing against the listing of capabilities (and take part in that activity often enough), but I have to stand up against any proposal of a grand mausoleum to one fixed and final list of capabilities.

Public reasoning, cultural diversity and universality

I turn now to the final question. If the listing of capabilities must be subject to the test of public reasoning, how can we proceed in a world of differing values and disparate cultures? How can we judge the acceptability of claims to human rights and to relevant capabilities, and assess the challenges they may face? How would such a disputation — or a defence — proceed? I would argue that, like the assessment of other ethical claims, there must be some test of open and informed scrutiny, and it is to such a scrutiny that we have to look in order to proceed to a disavowal or an affirmation. The status that these ethical claims have must be ultimately dependent on their survivability in unobstructed discussion. In this sense, the viability of human rights is linked with what John Rawls has called 'public reasoning' and its role in 'ethical objectivity'.[11]

Indeed, the role of public reasoning in the formulation and vindication of human rights is extremely important to understand. Any general plausibility that these ethical claims — or their denials — have is, on this theory, dependent on their ability to survive and flourish when they encounter unobstructed discussion and scrutiny (along with adequately wide informational availability). The force of a claim for a human right would be seriously undermined if it were possible to show that they are unlikely to survive open public scrutiny. But contrary to a commonly offered reason for scepticism and rejection, the case for human rights cannot be discarded simply by pointing to the possibility that in

politically and socially repressive regimes, which do not allow open public discussion, many of these human rights are not taken seriously at all.

Open critical scrutiny is essential for dismissal as well as for defence. The fact that monitoring of violations of human rights and the procedure of 'naming and shaming' can be so effective (at least, in putting the violators on the defensive) is some indication of the wide reach of public reasoning when information becomes available and ethical arguments are allowed rather than suppressed.

It is, however, important not to keep the domain of public reasoning confined to a given society only, especially in the case of human rights, in view of the inescapably universalist nature of these rights. This is in contrast with Rawls's inclination, particularly in his later works, to limit such public confrontation within the boundaries of each particular nation (or each 'people', as Rawls calls this regional collectivity), for determining what would be just, at least in domestic affairs.[12] We can demand, on the contrary, that the discussion has to include, even for domestic justice (if only to avoid parochial prejudices and to examine a broader range of counter-arguments), views also from 'a certain distance'. The necessity of this was powerfully identified by Adam Smith:

> We can never survey our own sentiments and motives, we can never form any judgment concerning them; unless we remove ourselves, as it were, from our own natural station, and endeavour to view them as at a certain distance from us. But we can do this in no other way than by endeavouring to view them with the eyes of other people, or as other people are likely to view them.[13]

Questions are often raised about whether distant people can, in fact, provide useful scrutiny of local issues, given what are taken to be 'uncrossable' barriers of culture. One of Edmund Burke's criticisms of the French declaration of the 'rights of man' and its universalist spirit was concerned with disputing the acceptability of that notion in other cultures. Burke argued that "the liberties and the restrictions vary with times and circumstances, and admit of infinite modifications, that cannot be settled upon any abstract rule".[14] The belief that the universality that is meant to underlie the notion of human rights is profoundly mistaken has, for this reason, found expression in many other writings as well.

A belief in uncrossable barriers between the values of different cultures has surfaced and resurfaced repeatedly over the centuries, and they are forcefully articulated today. The claim of magnificent uniqueness — and often of superiority — has sometimes come from critics of 'Western values', varying from champions of regional ethics (well illustrated by the fuss in the 1990s about the peerless excellence of 'Asian values'), or religious or cultural separatists (with or without being accompanied by fundamentalism of one kind or another). Sometimes, however, the claim of uniqueness has come from Western particularists. A good example is

Samuel Huntington's (1996) insistence that the ''West was West long before it was modern'', and his claim that ''a sense of individualism and a tradition of individual rights and liberties'' are ''unique among civilized societies''. Similarly, no less a historian of ideas than Gertrude Himmelfarb has argued that ideas of 'justice', 'right', 'reason' and 'love of humanity' are ''predominantly, perhaps even uniquely, Western values'' (1996, pp. 74–75).

I have discussed these diagnoses elsewhere (for example Sen, 1999). Contrary to cultural stereotypes, the histories of different countries in the world have shown considerable variations over time as well as between different groups within the same country. When, in the twelfth century, the Jewish philosopher Maimonedes had to flee an intolerant Europe and its Inquisitions to try to safeguard his human right to stick to his own religious beliefs and practice, he sought shelter in Emperor Saladin's Egypt (via Fez and Palestine), and found an honoured position in the court of this Muslim emperor. Several hundred years later, when, in Agra, the Moghal emperor of India, Akbar, was arguing — and legislating — on the government's duty to uphold the right to religious freedom of all citizens, the European Inquisitions were still going on, and Giordano Bruno was burnt at the stake in Rome, in 1600.

In his autobiography, *Long Walk to Freedom*, Nelson Mandela (1994, p. 21) describes how he learned about democracy and individual rights, as a young boy, by seeing the proceedings of the local meetings held in the regent's house in Mqhekezweni:

> Everyone who wanted to speak did so. It was democracy in its purest form. There may have been a hierarchy of importance among the speakers, but everyone was heard, chief and subject, warrior and medicine man, shopkeeper and farmer, landowner and laborer.

Not only are the differences on the subject of freedoms and rights that actually exist between different societies often much exaggerated, but also there is, typically, little note taken of substantial variations *within* each local culture — over time and even at a point of time (in particular, right now). What are taken to be 'foreign' criticisms often correspond to internal criticisms from non-mainstream groups.[15] If, say, Iranian dissidents are imprisoned by an authoritarian regime precisely because of their heterodoxy, any suggestion that they should be seen as 'ambassadors of Western values' rather than as 'Iranian dissidents' would only add serious insult to manifest injury. Being culturally non-partisan requires respecting the participation of people from any corner of the earth, which is not the same thing as accepting the prevailing priorities, especially among dominant groups in particular societies, when information is extremely restricted and discussions and disagreements are not permitted.

Scrutiny from a 'distance' may have something to offer in the assessment of practices as different from each other as the stoning of

adulterous women in the Taliban's Afghanistan and the abounding use of capital punishment (sometimes with mass jubilation) in parts of the United States. This is the kind of issue that made Smith insist that ''the eyes of the rest of mankind'' must be invoked to understand whether ''a punishment appears equitable''.[16] Ultimately, the discipline of critical moral scrutiny requires, among other things, ''endeavouring to view [our sentiments and beliefs] with the eyes of other people, or as other people are likely to view them'' (*The Theory of Moral Sentiments*, III, 1, 2; in Smith, 1976, p. 110).

Intellectual interactions across the borders can be as important in rich societies as they are in poorer ones. The point to note here is not so much whether we are *allowed* to chat across borders and to make cross-boundary scrutiny, but that the discipline of critical assessment of moral sentiments — no matter how locally established they are — *requires* that we view our practices *inter alia* from a certain distance.

Both the understanding of human rights and of the adequacy of a list of basic capabilities, I would argue, are intimately linked with the reach of public discussion — between persons and across borders. The viability and universality of human rights and of an acceptable specification of capabilities are dependent on their ability to survive open critical scrutiny in public reasoning.

Conclusions

To conclude, the two concepts — human rights and capabilities — go well with each other, so long as we do not try to subsume either entirely within the other. There are many human rights for which the capability perspective has much to offer. However, human rights to important process freedoms cannot be adequately analysed within the capability approach.

Furthermore, both human rights and capabilities have to depend on the process of public reasoning, which neither can lose without serious impoverishment of its respective intellectual content. The methodology of public scrutiny draws on Rawlsian understanding of 'objectivity' in ethics, but the impartiality that is needed cannot be confined within the borders of a nation. We have to go much beyond Rawls for that reason, just as we also have to go beyond the enlightenment provided by his use of 'primary goods', and invoke, in that context, the more articulate framework of capabilities. The need for extension does not, of course, reduce our debt to John Rawls. Neither human rights nor capabilities would have been easy to understand without his pioneering departures.

Acknowledgements

Notes

1 See Sen (2002a), particularly the Arrow Lectures ('Freedom and Social Choice') included there (essays 20–22).

2 An investigation of more complex features of the opportunity aspect and the process aspect of freedoms can be found in the Arrow Lectures ('Freedom and Social Choice') in Sen (2002a, essays 20–22).

3 On the concept of capability, see Sen (1980, 1985a, 1985b), Nussbaum and Sen (1993), and Nussbaum (2000). See also the related theories of substantial opportunities developed by Arneson (1989), Cohen (1989), and Roemer (1996), among other contributions.

4 The relevance of such parametric variability for a theory of justice is discussed in Sen (1990).

5 See Okin (2003, p. 293). On related issues see also Joshua Cohen (1994, especially pp. 278–280), and G. A. Cohen (1995, especially pp. 120–125).

6 See Sen (1980, 1985a, 1985b). In contrast, G. A. Cohen has presented arguments in favour of focusing on achieved functionings — related to his concept of 'midfare' — rather than on capability (see Cohen, 1989, 1993).

7 See Marx (1845–1846/1977, p. 190).

8 There is a substantial difference between: (1) valuing multiculturalism because of the way — and to the extent that — it enhances the freedoms of the people involved to choose to live as they would like (and have reason to like); and (2) valuing cultural diversity *per se*, which focuses on the descriptive characteristics of a social pattern, rather than on the freedoms of the people involved. The contrast receives investigation in the *Human Development Report 2004* (United Nations Development Programme, 2004).

9 On the plurality of concerns that include processes as well as opportunities, which is inescapably involved in normative social choice (including theories of justice), see Sen (1970, 1985b). Since I have often encountered the diagnosis that I propound a ''capability-based theory of justice'', I should make it clear that this could be true only in the very limited sense of naming something according to one *principal* part of it (comparable with, say, using England for Britain). It is only one part of the informational base of a theory of justice that the capability perspective can expect to fill.

10 I cannot emphasise adequately how important I believe it is to understand that the need for an explicit valuational exercise is an advantage, rather than a limitation, of the capability approach, because valuational decisions have to be explicitly discussed, rather than being derived from some mechanical formula that is used, without scrutiny and assessment. For arguments *against* my position on this issue, see Beitz (1986) and Williams (1987). My own position is more fully discussed in Sen (1999, 2004).

11 See Rawls (1971, 1993, especially pp. 110–113).

12 See particularly John Rawls (1999). See also Rawls's formulation of the original position in *Political Liberalism* (Rawls, 1993, p. 12): ''I assume that the basic structure is that of a closed society: that is, we are to regard it as self-contained and as having no relations with other societies. … That a society is closed is a considerable abstraction, justified only because it enables us to focus on certain main questions free from distracting details.''

13 See Smith (1759/1790, III, 1, 2). Smith (1976, p. 110). I have tried to discuss and extend the Smithian perspective on moral reasoning in Sen (2002b).
14 Quoted in Lukes (1997, p. 238).
15 On this see Nussbaum and Sen (1988).
16 Smith (1978/1982, p. 104).

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