An Agency-Based Capability Theory of Justice

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Abstract: The capability approach is one of the main contenders in the field of theorizing social justice. Each citizen is entitled to a set of basic capabilities. But which are these? Martha Nussbaum formulated a set of ten central capabilities. Amartya Sen argued they should be selected in a process of public reasoning. Critics object that the Nussbaum-approach is too perfectionist and the Sen-approach is too proceduralist. This paper presents a third alternative: a substantive but non-perfectionist capability theory of justice. It presents a two-level concept of individual agency as connected to social practices. It then argues basic capabilities are those necessary to for the agency necessary to navigate freely and autonomously between different social practices.

1. Introduction

The capability approach is generally considered to be one of the main contenders in the field of different theories of social justice. Its proponents have argued that it is superior, for various reasons, to resourcist and utilitarian rivals. However, it has also faced criticisms. Using a capability approach to justice means that *each citizen is equally entitled to a set of basic capabilities*. Call this the basic formula. But which are these basic capabilities? The basic formula has been worked out in two radically different directions, exemplified by Martha Nussbaum and Amartya Sen, both directions leading to fairly well-rehearsed criticisms. Here I will present a third direction, which aims to offer a new way of making use of the capability metric and escape these criticisms. This will be of interest to theorizing justice more generally since it will show how the capability approach can be more fruitfully employed against competing theories of justice.[1]

Nussbaum has formulated her famous set of ten basic (or as she calls them, 'central') capabilities for a good, flourishing life (Nussbaum 2000; Nussbaum 2006; Nussbaum 2011a). This proposal was originally presented as a neo-Aristotelian theory of the good (Nussbaum 1990). It attracted criticisms from liberal philosophers who worried about the perfectionist character of her theory (Qizilbash 1998; Arneson 2000; Deneulin 2002; Barclay 2003; Okin 2003; Nelson 2008). The core of their concern is that Nussbaum's theory prescribes, for all the major spheres in life, what it is to flourish in these spheres, and then make this full theory of the good a matter of constitutional entitlements to be protected by the state. This will be problematic for those citizens who do not want to participate in some of these spheres of life, but do have to accept and contribute to a state that acts to protect and nurture the capabilities central to these spheres of life. It is also bound to be problematic for citizens who hold a conception of the good which

includes functioning in a sphere of life that Nussbaum does *not* include on her list. Any account of human flourishing is bound to remain controversial to both of these groups. Elsewhere I have analyzed this criticism, Nussbaum's responses and her turn to political liberalism (Nussbaum 2011b) to escape perfectionism in more detail.[2]

Amartya Sen, reluctant to present a canonical capability list, argues that basic capabilities should be selected in a process of public reasoning (Sen 1999a; Sen 1999b; Sen 2009). Thus he endorses not a substantive but a proceduralist proposal: to leave the task of capability selection up to the democratic process. This has attracted criticisms as well: for aren't democratic deliberators essentially as prone to adaptive preferences and other vices of subjectivist theories as the utilitarianism Sen set out to replace when introducing the capability metric? (Dowding 2006; Sugden 2006; Sumner 2006; Qizilbash 2011). A second problem is that this strategy dissolves theorizing about justice into democratic theory. Elsewhere I have argued that this is problematic, even from the point of view of respect for democracy itself (Claassen 2011). The point is summed up very nicely by Philippe van Parijs, when he writes: 'Political philosophers, and the institutional engineers that they might inspire, are fortunately not in a position to despotically impose their personal conception of justice and the corresponding institutions. A democratic majority must decide. But this must not stop political philosophers from telling that majority what it should decide and why, including as regards institutions that will modify its own functioning and lead it to take decisions different from what it otherwise would.' (Van Parijs 2011: 3–4)

Whether one shares these criticisms of Nussbaum and/or Sen, depends on one's own theoretical commitments. Most defenders of the capability approach choose one of these sides and try to defend it against objections. However, what is not in dispute in the debate is that the capability approach's central problem of how to define basic capabilities seems either to require a substantive objectivist list theory of well-being (the Nussbaum-approach) or a proceduralist reliance on democratic reasoning (the Sen-approach). This is confirmed by the fact that most other adherents of the capability metric roughly fall into the same two camps (for two exceptions to this, see my remark in the conclusion of this paper).[3] However, this paper is written from the perspective of an author who is worried about both alternatives, about the perfectionism of the Nussbaum-approach and the emptiness of the Sen-approach. Roughly, my theoretical inclination is to agree with the objections against proceduralist theories that a full capability theory of justice needs a substantive normative criterion. However, I also agree that Nussbaum's capability theory is too perfectionist.

In this paper I do not want to rehearse the critical exchanges in the existing literature, but present a constructive alternative: a capability theory of justice which aspires to be substantive but not perfectionist. The general idea is to use a conception of *individual agency* (instead of well-being or human flourishing) as the underlying normative ideal to select basic capabilities. Basic capabilities are those capabilities that are necessary to have (a specific form of) individual agency. This proposal should be interesting not only for the critics of Nussbaum and Sen who

reject the capability approach entirely because they identify it with these two elaborations of it, but also for those who are committed to one of the two existing camps. This paper offers a particular account of agency and of course other conceptions of agency (or freedom/autonomy) could be put forward to fill the theoretical space I identified between Nussbaum and Sen. While I will argue that my conception of agency fits well with existing work on agency in general and with the capability approach in particular, one could therefore be unconvinced by its particulars. For those readers my paper should nonetheless be important as an example of these third alternatives that have not yet been sufficiently considered in the capability approach thus far.

Agency will first be defined as an autonomous and free move in a social practice. Section 2 presents the individualistic aspects of agency, with actions being 'autonomous' and 'free' moves. Section 3 presents the social aspect of agency as being a form of participation in a social practice, i.e. a cooperative structure characterized by a common set of institutions. This is what I call 'participational agency'. Given the multiplicity of practices, however, we need to acknowledge a second, higher-level form of agency: the ability, not to participate in practices, but to navigate between them: navigational agency (Section 4). Throughout all these sections I show how the various aspects of agency can and indeed must be understood in terms of a set of capabilities. Finally, in Section 5, I argue that once we accept this view of agency, justice can be understood as requiring for each citizen a set of basic capabilities for the higher-level form of agency: navigational agency.

2. Agency: Freedom and Autonomy

This section discusses the 'individualist' aspects of my conception of agency, i.e. those aspects that can be described without explicit reference to the social context. It defines agency as made up of two individualist components: autonomy and freedom. It then connects both components to the concept of capabilities, and compares the resulting conception of agency to Nussbaum's and Sen's use of the same term (the expression 'free and autonomous agency' which I will regularly use may falsely give the impression that the components 'autonomy' and 'freedom' qualify a third feature, called 'agency'. This is wrong: agency simply exists through its two components. This is more accurately captured by the formula 'agency = freedom + autonomy').

Many authors have defined individual agency in purely individualist terms. For example, Rawls refers to our capacity to construct a rational life plan. His thin theory of the good is centered around this aspect of our deliberative rationality (Rawls 1999, 358). Joseph Raz offers a conception of personal autonomy consisting of three conditions: appropriate inner abilities, independence and an adequate range of options (Raz 1986, 372). James Griffin, in his theory of human rights, uses a conception of agency consisting of three aspects: freedom, autonomy and minimum provision (Griffin 2008, 149). Alan Gewirth, in his moral theory, offers a conception of agency which consists of two aspects: voluntariness and purposiveness

(Gewirth 1978, 31–42). Despite enormous differences, these and other authors see agency as a feature of individuals. I think these definitions of agency are incomplete, since they do not explicitly incorporate the social aspects of agency which I will add in the next section.[4] However, in this section I first concentrate on the individualist aspects and here I have much in common with each of these authors. I offer a characterization which is not meant to be particularly controversial, but which systematizes the concepts of agency of authors like those just mentioned.

The most general definition of an agent is that of a person trying to realize an end as the object of his action. Action is intentional or purposive behavior. The end can be intrinsic to the action (simply to perform the action for its own sake), or instrumental to it (to realize a goal not included in the action description itself). The end can be simple and short-term or complex and long-term. The concept of an agent's end does not require devising a life plan in which many goals are integrated into a unified whole, or a coherent conception of the good life. Our ends may or may not be hierarchically ranked or commensurated. The only thing that is implied is that the agent *values* his ends: they represent whatever he considers good to achieve. This implies that his goals are not simply cravings, impulses or desires, but purposes that he has adopted or endorsed as worthy of pursuit. Agency requires a reflexive stance (i.e. at least the presence of some level/forms of reflection to be specified in more detail).

Purposiveness can be separated into two different stages which are together constitutive of agency. The first stage is when an agent *deliberates*, i.e. forms (or revises) his goals and chooses adequate means to realize these goals. The second stage is when an agent tries to *realize* his goals in practice. Of course, in the actual experiences of agents these stages are often not neatly separated but intermingled. We re-adjust our goals while acting as much as we re-adjust our actions while deliberating. Nonetheless, it is analytically useful to keep these two stages separate. I will refer to the first stage as the exercise of an agent's 'autonomy' (a capacity also referred to with such terms as self-legislation, self-determination or self-authorship) and the second stage as the exercise of an agent's 'freedom'. An autonomous agent is able to set himself goals, a free agent is able to act upon them. Full agency requires both freedom and autonomy.

Both freedom and autonomy also have two aspects: they require the presence of *capacities* or 'internal capabilities' on the one hand and *options* or 'external capabilities' on the other hand. This leads to a fourfold scheme (see Table 1). With

Table 1   Individual agency and its components

	Autonomy (rational deliberation)	*Freedom (free action)*
Capacities: internal capabilities	1a) capacities to set ends and means	2a) capacities to realize ends
Options: external capabilities	1b) awareness of options (non-manipulation by others)	2b) options (non-interference by others)

respect to the autonomy part of agency, I need the capacity to set myself goals, i.e. certain mental abilities to deliberate.[5] With respect to the freedom part of agency, I need the capacity to succeed in reaching my goals. There are then two sets of capacities necessary for agency, relating to the two stages of agency: deliberation about and realization of my goals. Similarly, there are two sets of conditions with respect to our options. With respect to the autonomy part, others should not interfere with my internal process of setting goals, i.e. that they do not manipulate my deliberations about my options. This safeguard ensures that I am aware of the options that I actually have: others may block my awareness of – i.e. mental access to – these options (Pettit 2003). With respect to the freedom part, it is about the actual access to these options: others should not coerce me into another way of acting than the one I had decided upon myself, i.e. not interfere with my actions.

Summing up, we arrive at the following definition: an agent is an individual who is 1) able to deliberate autonomously, i.e. 1a) has the capacities necessary to set himself goals and decide upon means to reach these goals, 1b) can exercise these capacities without manipulation by others, and 2) able to act freely, i.e. 2a) has the capacities necessary to act upon his choices about goals and means, and 2b) can exercise these capacities without interference by others (see Table 1).

Now what is the relation between this conception of agency and the concept of capabilities? (in the following I relate my framework to Nussbaum's capability theory; I have included a separate appendix at the end of this paper to discuss Amartya Sen's concept of agency).

First, agency itself *is* a capability. A capability is an opportunity or ability to a functioning. A functioning, as Sen has defined it, is any state of 'being' or 'doing', from being healthy to riding a bike. The concept of a functioning is extremely flexible. Being healthy or riding a bike are quite concrete functionings, although they could be specified even more concretely, as being mentally or physically healthy or riding a mountain bike or a city bike. Similarly they could be specified more abstractly, such as when we subsume riding a bike under 'riding a vehicle' or 'moving from place to place'. Because of this flexible structure, it is no stretch of the imagination to see agency itself as consisting of two highly abstract functionings: autonomous deliberation and free action. And if both deliberation and action are functionings, then agency consists of the two 'meta-capabilities' to these functionings. Agency's two central components are not forms of welfare or resources, but capabilities. Agency may require resources, and the exercise of agency may deliver welfare, but agency itself is a capability.

It is rather surprising that the fact that agency is itself a capability has not been noted more often.[6] Nonetheless it is latent in Nussbaum's theory, since Nussbaum presents practical reason as itself a capability. In my terms, however, practical reason covers only the autonomy-part of agency, not the freedom-part. It is about reasoning about one's ends, not about realizing them in practice. For the latter part, we have to look at all the other central capabilities on Nussbaum's list, which specify privileged action-contexts. Also, Rawls has assimilated Sen's early critique of his theory by noting that he also starts from the normative standpoint of capabilities, namely

'the capabilities of citizens as free and equal persons in virtue of their two moral powers' (Rawls 2001a, 169). The primary goods, then, are selected with a view to realizing these two moral powers/capabilities. Finally, in the legal context Simon Deakin has made a strong case for the similarities between the notion of capabilities and the notion of 'capacity', which refers to the standing before the law one needs to enter into contracts with others (Deakin 2006). The linkages made by these authors are indications of the fruitfulness of a theoretical connection between agency and capabilities that I aim to develop more fully in this paper.

Second, the different components of agency can be spelled out in terms of a list of capabilities. For the conception of agency presented above can be linked to Nussbaum's well-known distinction between three types of capabilities. First, we have 'basic capabilities', the 'innate equipment of individuals' that often 'cannot be directly converted into functioning' (Nussbaum 2000, 84). I prefer to refer to these as 'innate capabilities' (since I will use the term 'basic capabilities' for what she calls 'central capabilities'). When innate capabilities are sufficiently developed, they become 'internal capabilities', i.e. 'developed states of the person herself that are, so far as the person herself is concerned, sufficient conditions for the exercise of the requisite functions' (Nussbaum 2000, 84). Finally, when internal capabilities are combined with 'suitable external conditions for the exercise of the function' (Nussbaum 2000, 85), they become 'combined capabilities'. Only the latter are full capabilities, providing us with effective freedom, with the real opportunities to do or be something. It is therefore combined capabilities that are the subject of justice for Nussbaum and Sen.[7]

Internal capabilities correspond to what I have called the 'capacities' necessary for both goal-setting (agency-autonomy) and goal-pursuit (agency-freedom). The options one has access to when non-manipulated and non-interfered with correspond to Nussbaum's suitable external conditions, which I will refer to as 'external capabilities'. Taken together, the two agency-capabilities are what Nussbaum calls 'combined capabilities'. In adopting this terminology of 'internal' and 'external' capabilities, one note of caution is in order. The proper development of internal capabilities from our innate capabilities *also* requires suitable external conditions. Both types of capabilities, then, are dependent on suitable social conditions. The words internal and external merely refer to the location of the respective aspect of agency itself (capacities as attributes of the person, options and their manipulation/interference as attributes of the social world external to the person). Moreover, these external conditions for nurturing internal capabilities are not merely negative. For example, it is obvious that from childhood onwards the nurturance of many inner abilities requires a good deal of help from others. In my framework, however, the more positive conditions are acknowledged by saying that all four aspects of agency require suitable social practices – including social and legal norms – to safeguard both aspects of agency (see next sections). The negative conditions with respect to the agent's options (non-manipulation and non-interference) are part of the definition of agency itself, while the positive conditions are external to the definition of agency. For example, it is part of the description of an agent to say that he is able to display his love for his

homosexual partner in public without interference by homophobic others, while this requires the presence of social and legal norms which inhibit these others from interfering.

Note that the fact that the components of agency can be specified in terms of a capability set does not mean that they *must* be specified in this way. Agency is a highly general term, which needs specification. Some may argue that the practical conditions for realizing agency turn out to be best formulated in some other metric than capabilities. This of course is the Rawslian position. As we have seen, he allows the redescription of his two moral powers as capabilities, but continues to think of their conditions in terms of a list of primary goods. Whether one thinks that the conditions for agency can best be spelled out in terms of capabilities or resources depends on arguments in the debate between resourcists and capabilitarians (Dworkin 2000; Pogge 2002; Pierik and Robeyns 2007; Sen 2009; E. Anderson 2010; Brighouse and Robeyns 2010; Kelleher 2015). In this debate the main capabilitarian claim has been that a resourcist metric takes insufficient account of interpersonal variations in agents' abilities to convert resources into functionings. I will not rehearse this debate here, but rely on those who have made the capabilitarian case elsewhere.

In conclusion, the concept of agency should not be set apart from the concepts of capability-functionings. Agency can be fully captured in the language of capabilities. It is itself a (complex) capability, and can be specified in terms of a set of capabilities that form the components for agency.

3. Participational Agency

In this section I will present a conceptualization of the social aspect of agency. This part of the theory does not negate the individualist components of agency, but shows how these have to be embedded in a social context.

The relation between the 'social' and the 'individualist' may lead to endless confusions. First, I restrict myself throughout to agency as the *attribute of individuals*. I will simply stay agnostic about the existence of collective agents. My theory at this point neither presupposes nor denies their existence. Second, I will take it for granted that individual agency has certain *social conditions*. For example, if individual agency requires rational capacities that need to be nurtured from birth, then it requires some social arrangement, like families nurturing babies and teachers educating pupils. In this sense individual agency to a large extent is a social achievement. This kind of 'social thesis' is not where we should look for controversy. It is hardly in dispute, between, say, liberals and communitarians (Taylor 1985, 191; Kymlicka 1989, 75). Indeed, the aim of many liberal theories is precisely to show that individual agency requires certain – liberal – social and political institutions, from the rule of law to the separation of powers, from constitutional rights to a market economy. Note, however, that the fact that agency has social preconditions is compatible with a purely *individualist* notion of action itself (as exemplified by the authors mentioned at the start of Section 2).

The definition of agency offered here goes one step beyond this and defines agency itself as *inherently* socially embedded. Action, on my account, will be defined as a *free and autonomous move in or between social practices*. The social aspect is that action is a move in a social practice, while the individualist aspect is that this move has two qualities which make that move an individual's own action: its freedom and autonomy. Hence one cannot really understand actions for what they are without their social context. The description of actions refers to this context for their comprehensibility.[8] As the definition above ('in or between') makes clear, the social aspect refers to two forms of agency: agency within social practices (what I will call 'participational agency') and agency as moves between practices (what I will call 'navigational agency'). These will be the subject of this and the next section, respectively.

While providing an inherently social definition of action is highly unusual in much moral and political theory, this is more or less customary in much social theory (Winch 1990; Pettit 1993; Searle 1995; S. Miller 2001). Such an inherently social definition of agency is also certainly in the spirit of Nussbaum's capability theory. For Nussbaum has always stressed that two of her ten capabilities have an architectonic role: practical reason and affiliation. These 'both organize and suffuse all the others, making their pursuit truly human' (Nussbaum 2000, 82). Affiliation refers to 'being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction' (Nussbaum 2000, 79). Nussbaum's stress on this capability is meant to provide an antidote to the Kantian tradition in recent theorizing about justice, which according to her focuses solely on a human being's rationality. This is why she puts the capability of affiliation on the same level as practical reason. Man as rational animal and man as social animal are brought together. My theory has the same reconciliatory ambition, but pursues it through a different route. First, I think it is better to integrate both aspects in *one* conception of agency, thus making clear the connection between rationality and sociality. This connection is lacking in Nussbaum's theory, where the two capabilities remain separate and unconnected items on her list. Second, I do not interpret sociality as necessarily including altruistic motivations ('show concern for other human beings'). I follow those who believe that a justification for political theory should not rely on such motivations, since that presumes what needs to be proven. Even if we would be entirely egoistic, we are still acting within a social context. More should not be presupposed.[9]

As a point of entry we can start from the idea, introduced in the previous section, that agents have options that others should not interfere with. If we would not go beyond that, our theory of agency would presuppose that in the absence of interferences we simply 'have options'. However, most if not all[10] options agents have are socially constructed, and would not exist without society. The setting and realizing of ends does not occur in a vacuum, but in social contexts. For these contexts I will use the generic term 'social practices'. A social practice is a structure of actions held together by a set of common institutions, in which several agents cooperate to reach their ends. Structure means that actions obey more-or-less recognizable and stable patterns, which can be interpreted by the participants to orient

themselves in the practice. Structure is brought about by *institutions*, i.e. the formal and informal rules (norms) that qualify actions within the practice as legitimate or illegitimate, desirable or undesirable, allowed or prohibited, etc. Such institutions define *roles* of participants, in terms of the *rights and duties* they have to follow to be able to participate in the practice. All of this serves the purpose of allowing the participants to pursue certain *ends*. These concepts – institutions, roles, rights and duties, and ends – are the crucial components of a practice. Practices are often understood through the analogy of a game: they are cooperative structures in which participants pursue their ends, subject to the constraints presented by the rules of the game.

This definition of a practice is meant to accommodate a great variety of practices. Some will be highly stable and exist without much change for centuries. Others will be fluid and adopt changing norms rather quickly. Some will be mostly structured by formal rules (such as legal codes), others rather by informal expectations and unwritten social norms (think of the routines of family life). Some practices will be rather self-standing, while others will have porous boundaries and overlap or be nested in other practices (e.g. think of how daily work in a company is structured by its statute and corporate culture, but also by the norms of the market in which it operates). To start with agency as a move in a practice, is not to take a stance on what practices should look like in all these respects. It is merely to give an account of agency's embeddedness in social contexts.

Social practices are essentially normative in two senses.[11] First, they are normative because action is directed to the realization of ends; this is the teleological aspect of practices. Here we need to distinguish individual and collective ends. Every individual always has an individual end in acting: this is the move he wants to make. Some practices allow a great variety of individual ends to be pursued: the descriptions of the individual actions, when spelled out, will have little in common. At other times, however, all these individual ends are instantiations, without much variation, of a collectively standardized end for all its participants. The first type of relation we often find in competitive settings (such as adversarial politics or the market), where each individual's end includes the frustration of the ends of others. The collective end here is radically different from the ends individuals strive for; such as to deliver the public benefits from a competitive political process. The second type of relation can be found in cooperative practices, where there is a truly shared end (as when a group builds a house together). But even here, there is a need for agency: i.e. for individualized contributions to the practice, in which a person has her own ends when cooperating toward the collective end. Indeed, freedom and autonomy in a practice are about the individual's decisions how to fulfill his role, how to discharge his duties and make use of his rights, which moves (not) to make, in short, how to play the game (all of this says nothing about who *determines* the ends – more about that later).

Second, practices are normative because the goal-pursuit of agents is structured by institutions, which define roles in terms of rights and duties; this is their deontic aspect. This deontic aspect is related to the teleological aspect. Through the adoption of a certain set of norms, a practice gains a specific character, as being a

practice of a certain kind. Other norms would have led to another kind of practice, and this will have an impact on the ability of participants to reach their goals. If legal norms prohibit euthanasia, then patients with a wish to end their lives will have difficulty to reach this goal in the medical practice. If legal norms allow euthanasia, then their goals will be more easily facilitated, even though other norms in the same practice (say, a shared medical ethos amongst doctors not to actually perform euthanasia save in highly exceptional circumstances) may still make it difficult, compared to another practice in which these other norms would also be reformed. Norms will often be selected with an eye on the individual ends that ought (not) to be pursued within the practice.

A social practice, then, both enables and constrains individual action. Setting one's own purposes, in a practice, means deciding *how* to fulfill one's duties and make use of one's rights. It is crucial to see that this involves our freedom and autonomy. No deterministic picture of practices is credible. Individuals still (have to) make decisions when they interpret their roles. These role-descriptions always leave a certain leeway (Gewirth 1978, 27–28). On the other hand, we should also not be blind to the fact that practices constrain action. First, the capacities to set and execute goals depend on the practice. To be an agent in a football game requires different capacities from being an agent when standing before a legal court, or selling art works, or speaking in parliament. In each of these contexts, different capacities are required. For example, to sell a work of art requires commercial skills in persuasion, affinity with the products traded in that specific market, an ability to attune one's performance to a specific kind of clientele, etc. All of these things are highly specific to the practice. Second, the context of a practice limits our options as well. The reason for this lies in the constraints imposed by institutions. The practice of car traffic needs a rule for driving on the right-side or left-side of the road, to enable participants to engage successfully in movements from one location to another. Norms impose certain patterns of action rather than others, since they are necessary to reconcile the actions of all participants.

The necessarily restricted character of our agency in practices points to a theoretical difficulty in identifying instances of manipulation and interference. It is inevitable that participants constantly influence each other. At which point are we prepared to say that these influences get a manipulative or interfering character, i.e. amount to a form of coercion? This cannot be discussed in general. If practices make possible our actions (by creating options to act in first place), and simultaneously restrict it (by creating a limited set of options), then coercion can only be benchmarked against the alternative practices which could also exist, and offer more options than the current practice. In other words, judgments of coercion depend on the overall benefits of having this practice instead of another one (here judgments of proportionality come in as well: could we have this practice but with less restraining rules?). These are essentially normative judgments. Similarly, what counts as objectionable manipulation will also depend on the practice. The same technique of advertising that is objectionable on TV on Sunday morning in between children's programs will be unobjectionable late at night where it is addressed to adults.

Given the fact that practices offer a restricted context of action, it is natural to wonder about the possibilities for individuals to transcend the specific practices in which they find themselves enmeshed. This will lead us to consider navigational agency (see Section 2). Before closing, however, let's discuss the link between participational agency and the concept of a set of capabilities.

On the level of a specific practice participational agency can rather straightforwardly be specified in terms of a set of internal and external capabilities. A practice of teaching is composed of participants with certain internal capabilities, say capabilities to speak and listen, give and understand instructions, etc. It also requires certain external capabilities, say options to access relevant educational resources, the absence of certain inhibiting conditions, etc. Descriptively, it may or may not be difficult to identify the relevant capabilities, depending on the complexity of the practice, the transparency of its institutions, the extent to which the practice is volatile or stable, etc. Normatively, there may be disputes about what these capabilities should be. The only relevant point here is the conceptual one, that in so far as it is possible to identify the demands of successful participation, these can be captured in terms of capabilities, along the lines sketched earlier. The specific set of necessary internal and external capabilities then is *constitutive* of what it is to be an agent-participant in the practice. If being a lawyer requires being able intellectually to handle legal cases plus being able to communicate successfully with clients plus having an entrepreneurial disposition, then these three capabilities together make up the capability of being a lawyer. Agency in a specific practice is simply defined through the capabilities necessary for participation in that practice. If the practice changes then the characterization of agency and the required capabilities change accordingly.

Since agency itself is composed of the four aspects analyzed earlier, in studying specific practices we need to trace the linkages between the relevant capabilities and these four aspects. As an example, let's take the freedom of expression, or in capability-terms, the capability to express oneself in public. Let's suppose we can identify the set of practices in which this capability is institutionalized (say, television programs, protest marches on the street, internet forums, etc.). Links can be drawn between each of these practices and all four parts of the definition of agency. Freedom of expression most obviously contributes directly to a speaker's freedom of action (2b). He can say what he wishes to say. It also, however, contributes to a listener's freedom from manipulation (1b): when listeners have access to a plurality of options they will be less likely to be indoctrinated by a single group able to monopolize public discussion. Moreover, since private deliberation is always influenced by input from others, long-term exposure to such a free public sphere will automatically improve listeners' capacities to deliberate about public issues (1a). Finally, and through a training-effect, such a practice will contribute to speakers' capacities to express themselves well (2a). This is of course anything but a full analysis of freedom of expression. The point is to illustrate the methodology of identifying agency in a practice: we should look at all participants in a practice (here: speakers and listeners) and all their capabilities.

4. Navigational Agency

To bring in navigational agency, we need to enrich the social ontology developed thus far with one additional premise: the existence of a multiplicity of social practices. As we will see, this brings in the possibility of a new type of agency.

Human life consists of participation in several practices, and a society consists of the co-existence of several practices. I take this premise to be uncontroversial. Partly the identification of a practice is an arbitrary matter, which depends as much on the interests of the observer as on the characteristics of social reality. Where one observer sees a boundary between two separate practices, another one sees a practice overlapping with or nested in another (does the enforcement of the criminal code form one practice? Or should we distinguish as many practices as there are crimes defined in the code?). Whatever of the exact boundaries, it strains credibility to define society as made up of only one practice. We all participate in different social contexts, with markedly different rules and expectations. This is not just a consequence of the differentiation of spheres in modern society – although there it takes extreme forms – but of living in society in general (one need only think of the conflicts between different normative orders described in ancient Greek tragedies).

As a consequence of the multiplicity of practices, all participational agents will be confronted with two normative problems in addition to the fulfillment of their role within the practices in which they happen to participate. The first problem is: in which practice(s) to participate? This problem is forced upon us by the multiplicity of practices and the practical impossibility of participating in all of them. Different careers, marriage partners, memberships of religious and other communities etc. are possible; which one(s) to participate in? Second, participational agents need to deal with *conflicts* between the practices in which they participate. The most familiar kind of conflict lies in the necessary scarcity of our time, which forces us to distribute our time between participation in different practices. Beyond that, conflicting norms are also a source of conflicts. For example, holding a certain job may make the observance of a religious custom impossible, so that one will have to choose between one or the other or find another way to solve the conflict.

If and to the extent that participational agents are able to solve these two problems themselves freely and autonomously, they are navigational agents. First, navigational agents are able to choose which practices to participate in, i.e. to make decisions about *entry and exit* in social practices (represented for an imaginary 'agent B' by the double arrows in Figure 1). Second, navigational agents are able to resolve practical conflicts between the practices in which they participate on their own terms. Having these abilities is not self-evident: navigational agency is a mere *possibility*. Not every participational agent necessarily also is a navigational agent. One can be a participant in a multiplicity of social practices *without* having the option of choosing to exit these and enter other ones. Social or political conventions may prohibit these moves and coerce people into participation into certain practices. Similarly, conflicts between practice-based commitments may be resolved by other persons or institutions instead of by our own choices. Navigational
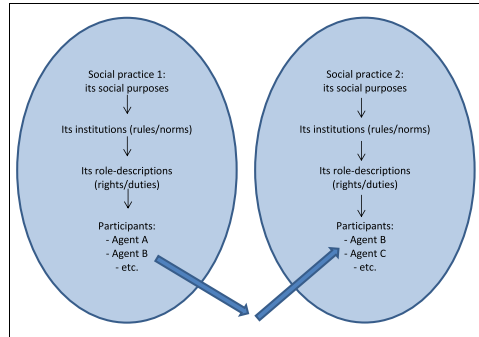
Figure 1   Agent B exiting one practice and entering another practice

agency is a contingent possibility, whereas participational agency is a necessity of human life.[12] Navigational agency requires a specific kind of society, which protects its members' opportunities to navigate the social world as they see fit. The central contention later in this paper will be that honoring the aspiration to navigational agency defines the struggle for social justice (see Section 3).

Navigational agency ensures that one's participation itself in social practices is a free and autonomous choice. However, an objection to the analysis so far may be that it is implicitly biased toward the status quo and may have conservative implications. For each practice constrains the ends that a participant can choose and at any point in time society offers a limited menu of practices and associated possible ends. This menu reduces agency in any society to a choice between pre-set ends. This is particularly painful where a participational agent is not prepared to endorse any of these ends. Here the different levels at which one can identify a practice become relevant. Imagine a labor market consisting of ten companies which all manage to exploit their workers in some ways. If one identifies the relevant practice of participation as that of the single company (given its unique institutional framework of formal and informal rules, compared to its competitors, this identification may be useful for some purposes), one could say workers have a choice to freely exit and try to enter other companies if they disagree with its exploitative features. However, if one identifies the relevant practice as the labor market as a whole, one can say there is no exit option (assuming for the sake of argument there are no other sources of income available) from exploitation.

Navigational agency, as the ability to make free and autonomous choices with respect to one's participation in social life, hence requires more than the ability to exit. The latter sometimes simply is not available, if a set of practices in which one must participate are all similarly structured, as in the labor market example. Therefore we need to add two forms of navigational agency in addition to exit/entry and conflict resolution, two further abilities which belong to navigational agency. I will call these the *reform* of existing practices and the *creation* of new practices. Opportunities for reform and creation, where they are available, potentially greatly enhance our agency. Reforming practices means being able to

co-govern these practices. Of course one cannot claim, when dissatisfied with a practice, to have the right to govern the practice on one's own (becoming the new dictator). Reforming (or creating) practices requires the participation of others, so that here one's agency is necessarily limited to the extent that one cannot convince others of the value of supporting the changes one has in mind. Nonetheless it is of great importance in contexts where exit is unavailable. The creation of a completely new practice can be seen as a limit-case of reforming existing practices (when the reforms are drastic enough, what emerges is basically something new), but is seems important to mention separately to stress the creative, spontaneous potential of navigational agency. Practices are not static but evolve, and to the extent that participational agents are also navigational agents, they are not passive subjects but agents of change, innovation and transformation.

In conclusion, where these four abilities of exit/entrance, conflict resolution, reform and creation are available, a participational agent is able to freely and autonomously participate in social life and also becomes a navigational agent.[13] Navigational agency is agency at a practice-transcending level, since it is about navigating the social world as a whole: deciding which practices to join and leave, how to resolve conflicts between them, how to create or reform practices. In navigational agency we take up a reflexive stance to social life as we encounter it and as we have participated in it thus far; trying to either change or add to existing social structures or change our own location in the social field. The qualifier 'practice-transcending' should not be misunderstood. Navigational agency is not a-social, since it still concerns choices within or between practices: the agent at all times acts 'on the ground' of social life. It is only about transcending one's *current* participation in *existing* practices, either by moving to other practices or by changing or adding to the menu of existing social practices. In this way, a concept of agency starting from a firmly socially embedded analysis of what it is to act, leads us to acknowledge the possibility of a form of agency that transcends these practices.

This does require that individual agents are able to take their reflection to a higher level, and reach a reflective distance with respect to their current roles. It requires that they may formulate new or different ends in life from the one's assigned to them by the practices they currently participate in. One may be wonder whether individuals are able to do this kind of end-setting, if they are always immersed in social life. Aren't we back to the 'disembedded self'? This ability however, is not more mysterious than the reflective distance needed to fulfil a role – which as we saw also requires one to reflect upon how to use the discretionary space left by the role description, and interpret it in a free and autonomous way. If humans have the reflective abilities to be participational agents, they also have the potential to be navigational agents. Being neither animals nor automata, human beings should be understood as having these abilities (at least, both fall or stand together. But I will leave out of consideration the possibility that they fall together that some determinists in the free will debate may want to push).

Let's now turn to the link between navigational agency and capabilities. Navigational agency requires the general ability to choose between practices, as well as the absence of manipulation and interference with respect to these choices.

The fact that these requirements are not relative to a specific practice but are general does not mean that they can somehow (mysteriously) be realized somewhere *outside* social practices. Even these general requirements of agency must be realized within social practices. Navigational agency-capabilities are a subset of participational agency-capabilities. They are those practice-bound capabilities that are necessary to realize navigational agency. To illustrate, let's use the example of freedom of expression again. Not all four links between communication practices and participational agency mentioned in Section 3 are necessarily also links to navigational agency. It is probably reasonable to say that the direct effects on our agency-freedom (2a and 2b) are mainly important for those who have it as their private ends to be speakers (say, politicians, journalists, activists). They may greatly enjoy doing so and think it important to do so – it makes up their private conceptions of the good life. In this example the value for navigational agency lies mainly or exclusively in the effects on agency-autonomy (1a and 1b) of the listeners: every citizen's capacity to navigate between social practices. Thus some of the value of the freedom of expression is purely practice-bound while another part of it also transcends the practice (concerns navigational agency). Any of these specific claims about freedom of expression might be contested. My point is merely methodological: we can make a full list of all the practice-bound capabilities and then investigate the way they contribute to (or threaten to undo) our navigational agency.

In elaborating this method, it is useful to distinguish between two types of social practices. First, some social practices are positively necessary to develop the required capabilities for navigational agency. Call these *mandatory practices*. Navigational agency will for example require practices of education and health care, to the extent that these are necessary to build up the required mental and physical capacities (internal capabilities) which enable citizens to navigate their societies. It will also require practices which safeguard certain general prohibitions on coercion and manipulation (external capabilities), such as policing and courts to maintain criminal law. This means that certain practices have a special function: they serve to create and sustain our general capabilities for navigational agency. The existence of these practices cannot be left to the spontaneous agency of individuals volunteering to create them, but is a social and political concern if there is to be navigational agency at all.

Second, all other practices, which are not necessary in a positive sense to realize navigational agency, can be conceived of as practices in which agents exercise their agency already developed. Call these *optional practices*. For these practices there is a negative requirement not to violate the navigational agency of their participants. Imagine that someone argues that the practice of marriage (unlike health care or education) is itself not a necessary requirement to become a navigational agent. Rather it is one optional lifestyle choice amongst others. Whatever of the substantive merits of such an argument, if we grant it, there still is a further point to ask about inequalities within this optional practice. For if the inequality between men and women in marriage arrangements leads to women feeling inferior and unable to act freely and autonomously, this would amount to a violation of their navigational agency. This would be the case where women do not feel free to exit

their marriages (so that the practice is a coercive one), or where women would feel unable to act freely and autonomously in other domains of life. The preservation of navigational agency therefore requires monitoring *all* practices to see if insufficient levels of participational agency do not undermine their participants' more general capacity for navigational agency.

Through this method one could use the concept of navigational agency to generate a list of basic capabilities. I will here not present such a list, because following this method requires discussing for every existing social practice to what extent it is implied in protecting or violating navigational agency. This is clearly beyond the scope of a single paper. Whatever list we come up with, it is important to realize that on the method described here it is impossible to make up a trans-historical list of basic capabilities. The relation between navigational agency and capabilities is not constitutive but *instrumental*. For depending on the specific socio-historical character of existing social practices, the task of navigation will require *different* specific capabilities. For example, the skills to navigate between existing practices required in modern societies are different than those in premodern societies. The ability to read and write will be necessary for agency in literate societies, whereas this is not the case in societies relying predominantly on oral transmission of information. Similarly, whether one has a realistic possibility of exit from an existing practice (say, a vested religion) depends on the strategies for blocking exit in current practices. As these blocking strategies become more aggressive, more extensive capabilities to exit will be necessary as well. Navigational agency thus serves as a *regulative principle* to select capabilities, which is itself universally valid (this would need further justification), but does not generate a universal list.

The recognition of the socio-historical specificity of basic capabilities does *not* imply taking a Senian stance on the controversial 'list-issue'. My discussion here about the status of the list (transhistorical versus historically relative) is not to be conflated with the issue of its legitimate authors. On the latter issue, I cannot see what is wrong with granting philosophers (as anyone else) the opportunity to propose capability lists, nor why that would be disrespectful of democracy (Claassen 2011). That however is a different matter. The point here is that whoever proposes a list, should acknowledge its socio-historical specificity even if the criterion of navigational agency itself can be justified as transhistorically valid (as I think can be argued, see the conclusion).

5. Justice, Agency and Capabilities

The paper so far has given a rough picture of participational and navigational agency and how these concepts can be specified in terms of a set of capabilities. We can now address the normative question: which capabilities do citizens owe each other in a just society? Justice is normally (and correctly) understood as being about *equality* in some dimension. My theory offers two dimensions as a candidate[14]: those capabilities necessary for agency in all social practices (i.e. participational agency), or those capabilities necessary for navigating social

practices (i.e. navigational agency). Is justice about equality of participational or navigational agency?

Let's imagine that justice would require equal rights to participate in all social practices. Inequalities in agency are everywhere in social life. They may have many origins and reasons. In family life, the inequalities between parents and children find their rationale in the natural inequality of capacities of both these roles. The inequality between husband and wife, in some cultures, finds its origin in beliefs about the aptness of each of these roles for the fulfillment of certain tasks in the household. In business, employee contracts specify rights and duties and most companies differentiate between employees in this respect. It might be dysfunctional for a company to give the same right to make decisions about the long-term strategy of the company to the 25-year old graduate who just started, and to the 50-year old senior manager in the strategy department. In such contexts, there may be good reasons for having inequalities of participational agency: it may deliver benefits to all participants (albeit not necessarily equal benefits). The mutuality of these benefits may require and thus legitimize inequality of agency. However, the rationality of having these practices does not preclude their immorality. It may be rational to cooperate within an inegalitarian structure in which one is dominated, because that is still more advantageous than defecting from the practice. The question thus arises when these unequal relations become unjust.

It is here that my theory introduces navigational agency. The powers of a navigational agent, her real opportunities to enter and exit practices, reform existing ones or create new ones, is what ensures that if she participates, she does so (sufficiently) freely and autonomously. This in turn presupposes for each participant that she has basic rights to capabilities for navigational agency. These rights guarantee citizens the capacities and options to enter and exit social practices. Therefore at the higher level of navigational agency equality between agents *is* a demand of justice, even if within social practices it is not. For if some citizens would have more or stronger agency-rights than others, they would find themselves in (grossly) asymmetrical bargaining positions within practices. This would render them vulnerable to coercion and oppression from other participants. Instances of such coercion are often experienced as unjust. These experiences of injustice are an indicator of what the agency-account tries to make explicit in its theory. Coercion points to a lack in the voluntariness of one's participation, and that can best be teased out in terms of the absence of sufficient capabilities for navigational agency.

These reflections are only meant to give a first motivation why navigational, but not participational agency should be considered the right *equalisandum*. They merely provide a preliminary justification for navigational over participational agency as the criterion for social justice, by showing that there is no reason to condemn all instances of practice-based inequality as long as individuals have control over their subjection to these instances (either by exit options or by rights to reform). A full justification requires showing how it is rationally inescapable for each person to claim a right to navigational agency. This will be done elsewhere. These reflections also do not answer the more detailed question: when, at what point,

does the lack in navigational capabilities between two participants become so strong that one can no longer speak of voluntary, uncoerced relations in their practice? In other words, we still need an account of the *distributive rules* to apply. Equality of agency does *not* imply that every capability must be distributed in strictly equal portions. It is a separate discussion whether a sufficiency or priority rule may also be legitimate. At this point, we need not conclude that the distributive rule should be strict equality, or even that we can apply the same rule for each capability in the set of navigational capabilities

Let me now comment on why I think this conception of justice compares favorably to Nussbaum's capability theory of justice. The demarcation of basic capabilities from non-basic ones is not made on the basis of their importance for a flourishing human life or any other ideal of well-being, as it is for Nussbaum and others in the capability approach. As discussed in the introduction, many have (convincingly, in my view) argued that this leads to a strongly perfectionist conception of justice. My alternative capability theory avoids this strong form of perfectionism since navigational agency-capabilities fulfill a different and more restricted *function* than capabilities for human flourishing or well-being: navigation versus participation in social life. The concept of agency introduced here leads to a capability theory that is focused from the start on the liberal aim of guaranteeing for each agent a measure of practice-transcending freedom and autonomy. The individualistic aspects of agency lead us to single out only those capabilities that contribute to such freedom and autonomy.

Now since we need some freedom and autonomy in all social practices, as part of what it is to fulfill social roles, the individualist aspect on its own would still have led us to a conception of justice prescribing capabilities for agency as participation in *all* social practices (analogous to Nussbaum's theory which prescribes capabilities for flourishing in all spheres of life).[15] By embedding this account in a dual-level theory of agency, we can see why that conclusion needs to be resisted. For a just society should restrict itself to those conditions that empower citizens to navigate between social practices. By focusing on citizens' emancipation from social practices, it guarantees that participation is a matter of free choice. Justice then is a matter of using public power to save citizens from private practices of oppression and coercion, so that they can function as autonomous choosers of their own lives. While much more needs to be said, this is hopefully enough to show us how this account can escape the problem associated with Nussbaum's version of the capability approach to justice, of becoming an overly perfectionist theory.

6. Conclusion

In this paper I have presented a proposal for a substantive, but non-Aristotelian version of the capability approach for theorizing justice, focusing on the protection and development of free and autonomous navigational agency as regulative ideal for selecting basic capabilities. Let me mention at least four important tasks ahead to fully develop this theory.

First, the proposal will need a more elaborate account of the *justification* of navigational agency, discussing how it relates to methods of justification appealed to by Nussbaum (internalist essentialism, reflective equilibrium, political liberalism) and other possible justificatory strategies. Second, while not necessarily needing to present a full list of basic capabilities (see Section 4), the theory will need to be clearer about its theory of *judgment*: how to select basic capabilities and use agency as a commensurans when different basic capabilities conflict. Third, the theory will need to say more about its *distributive principle*(s): how much of each basic capability should citizens be entitled to? How is this related to individual responsibility? Fourth, a *comparison* to other substantive but non-Aristotelian elaborations of the capability approach would be important. I currently see two authors who have argued that their view could be merged with the capability approach: Philip Pettit's republicanism (Pettit 2001; Pettit 2010) and Elizabeth Anderson's theory of democratic equality (E. Anderson 1999; E. Anderson 2010).

Here I have offered a first presentation of the main components of the agency-based view. I have argued how the individual and social aspects of agency can be related to the metric of capabilities, and how its dual-level view of agency points to a subset of capabilities as basic: those which protect navigational agency. Finally I have argued this conception escapes the perfectionism of Nussbaum's theory and the subjectivism inherent in Sen's proceduralism. Even if these arguments fail to convince, it would at least help, or so I hope, to explore more extensively the space for substantive but non-perfectionist capability theories of justice that is currently squeezed by the predominance of the Nussbaumian and Senian stances on how to use the capability metric for theorizing justice.

7. Appendix: Amartya Sen's Concept of Agency

The argument about the connection between agency and capabilities in this paper may raise the question how I see the relation between my proposal and Amartya Sen's concept of agency.

Sen has used the concept of agency in different ways (Crocker 2008; Crocker and Robeyns 2010), but never in the way I introduce it in this paper. A first usage of agency is common to Sen and other capability theorists: to refer to the individual's capacity to make choices from a capability set, which lead that person to achieve certain functionings. This usage represents the core idea of the capability approach: to guarantee a set of freedoms from which the individual can choose herself. This use of agency, however, does not remove the interpretation of the concept of functionings as bringing the possessor of a functioning 'well-being', but it brings us a theory which combines well-being and agency: the agent chooses himself between functionings which give him well-being.

A second usage is more distinctive of Sen – he uses agency to denote a space of evaluation that is *not* captured by the conceptual pair of capabilities-functionings. Sen often made a distinction between four terms, all parts of what he calls a person's 'advantage': well-being-freedom and well-being achievement, and agency

freedom and agency achievement. Well-being refers to the well-being one derives from achieving and being able to achieve one's personal goals. Agency (in both its freedom and achievement aspects) is meant to reflect a wider range of goals, not necessarily relating to one's personal well-being, but also, say, to the well-being of others or not to anyone's well-being at all (Sen 1985; 1992, 59–62; Sen 2009, 286–290). Sen furthermore associates his own capability notion exclusively with the well-being pair of notions: functionings for him are well-being achievements, and capabilities are well-being freedoms. Capabilities for him are a metric of well-being, introduced in contrast to utilitarian interpretations of well-being. The need for going beyond well-being is introduced by the wish to acknowledge that we sometimes have goals that do not form part of our well-being at all.[16]

   This conceptual apparatus has been very influential. Following Sen, many have thought of capabilities as necessarily being indicators of 'well-being', not of 'agency'. However, Sen's fourfold framework is confusing, because we need to exercise our agency in converting any freedom into an achievement (the first usage of agency), whether the content of this freedom relates to one's own well-being or not. The positioning of agency as opposed to well-being wrongly suggests that the exercise of agency is absent from the well-being freedom/well-being achievement part of Sen's structure. The framework is also unhelpful where it identifies only 'non-wellbeing goals' with the term agency. One way of recasting Sen's scheme in less confusing language would be to say that he recognizes agency for the sake of one's own well-being goals and agency for the sake of 'non-well-being-goals', and both of these goals can in turn be achieved when our agency is successful. But even then there is a more fundamental objection.

   Nussbaum has argued that Sen himself has already introduced a very broad notion of well-being by using capabilities instead of utility to characterize well-being. Given that redefinition, the idea of a 'non-well-being goal' does not make much sense. Capabilities can have as their object *any* goals we set ourselves (whether or not related to our own well-being). So the wellbeing-freedom/wellbeing-achievement pair of notions is superfluous and should be abandoned (Nussbaum 2011a, 197–201). Similarly, capabilities in my use of the term encompass both Sen's broader agency pair of notions and his pair of well-being notions: they may serve to enhance our own well-being or that of others.[17] I have stressed a wide concept of an agent's goals, in which we only assume that the chooser values (the realization of) his goals as good; for otherwise he would not have a reason to choose these goals in the first place. Thus there is a necessary orientation to well-being in every action. But it is an entirely different question whose well-being the agent aims at: his own or that of someone else (or impersonal well-being, whatever that may be).

   This latter question moved Sen to introduce agency freedom and agency-achievement. He was worried about the narrowness of the egoistic assumption that people would only be motivated by their own well-being. (Crocker and Robeyns 2010, 76). This however is important only when we are concerned with a descriptive or explanatory theory of agency, which wants to give a correct account of the fullness of human motivation in setting goals. But if we are concerned with normative exercises (such as theorizing justice) all of this is irrelevant. In

making claims like 'citizen *a* should have a right to a set of capabilities (x, y, z)', the capabilities (x, y, z) refer to characteristics of the relevant individual *a*. Whether the goals he sets himself once he has obtained that set are egoistic or not, is besides the point. For evaluative purposes, we are only interested in whether we are justified in claiming that he should be entitled to this set with these elements. The evaluative exercise aspires to an impartial, third-person standpoint. In such exercises the content of the justified set for citizen *b* is determined separately, by a parallel exercise, not by thinking about whether *a* could use his capability set to altruistically further *b*'s well-being.

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NOTES

[1]   This paper focuses on the capability approach's contribution to the field of theorizing about justice. The approach has also been applied in other areas (such as quality of life measurement, human development policies, project evaluations etc.). It is multidisciplinary, with contributions from philosophers, social scientists, economists etc. For overviews of work in the capability approach, see Robeyns (2005b), Robeyns (2006), and Deneulin (2009).

[2]   This criticism is part of a book I am working on, *Navigational Agency. A Capability Theory of Justice* (working title). From the end of the 1990s, Nussbaum amended her proposal and presented more or less the same list as the result of an overlapping consensus in political liberal terms. This attracted different criticisms. (Barclay 2003; Biondo 2008; Stark 2009; Katzer 2010; Formosa and Mackenzie 2014). Apart from general criticisms about the adequacy of Rawlsian political liberalism for theorizing social justice, the main problem in the capability context is that it does not seem to make Nussbaum's substantive capability list any less perfectionist. This perfectionism problem should not be confused with the paternalism problem: for the difference between both, see Claassen (2014).

[3]   For examples of objective list theories, see Alkire (2002) and Qizilbash (1998). For proceduralist approaches, see Robeyns (2005a) and Crocker (2008).

[4]   Note that this does not make their conceptions of agency individualist in the moral sense (as akin to 'egoistic' or betraying an 'individualistic life style'). Nor do I think these conceptions need to deny that agency thus conceived has social preconditions. However, they do not bring the social context into the definition itself. In section 5, I will argue this lack has distinctive disadvantages.

[5]   This definition remains agnostic on the exact nature of the 'capacities' mentioned in the a-clauses (see Table 1). Since we require that agents endorse their goals as their own, some minimal level of rational control is implied. We should not assume extensive levels of rationality, however, nor should we assume that we need only cognitive requirements for agency. Emotional and social capacities are all in a complicated way involved in our agency. In the literature on personal autonomy, several competing theories about the exact requirements of autonomy are proposed (J. Anderson and Christman 2005).

[6]   An exception is Hübenthal (2006, 302), who discusses the close relation between Nussbaum's capability theory and Gewirth's theory of agency. See also Claassen and Düwell (2013).

[7]   See also Dowding, who analyzes these stages as 'latent ability', 'ability proper' and 'ableness'. (Dowding 2006, 325).

[8]   Sometimes, a stronger claim is made, that agency is itself a *social status*: to be an agent is to be recognized as such by others (Honneth 1995; 2011; J. Anderson 2008). There are several ways of understanding this recognition claim, some of which come close to the earlier thesis that agency has social preconditions. For example, social recognition can be presented itself as one of the preconditions of agency, next to material and legal requirements (J. Anderson and Honneth 2005). This I would accept. However, at other times the recognition claim goes beyond this, to say that one can only *be* an agent if and to the extent that one is recognized by others. This is often cashed out in terms of roles: 'being an agent' is a role like 'being a mother' or 'being a doctor'; it depends on the right kind of social relationships. The social recognition (either in formal laws or more informally) of one's position as a role-holder constitutes one's agency in that role. I do not rely on this stronger claim. Recognition is best seen, I think, as a response to, not as constitutive of our agency. For recognition is a response to a *capacity* for agency that is itself not dependent for its existence on recognition relations (Laitinen 2007, 248; Baldwin 2009, 325). As a result, agency is not just another role which only comes into being through social acts of acknowledgment. It is the possibility of being a role-holder in the first place. Arguably, reaching this conclusion will require some work if one has first embedded agency in social practices. To defend this position, we need to separate the ontological from the justificatory relation between agency and recognition. While we may acknowledge that agency and recognition are ontologically co-existent, agency is justificationally prior to recognition. This will have to be done elsewhere.

[9]   Some authors have explored the social nature of capability theory, proposing collective capabilities (Gore 1997), 'structures of living together' (Deneulin 2008), or a capabilitarian 'relational ontology' (Smith and Seward 2009). For a sensitive discussion of the differences between ethical, ontological and explanatory individualism, see Robeyns (2008, 90–94).

[10]   One question that may arise at this stage is whether *all* actions are a matter of moves in (between) practices. Some will wonder whether some actions at least take place outside of any practice. This may include both purely individualized interactions with nature outside of any social context (Robinson Crusoe on his island or I alone in my room brushing my teeth) and social interactions which do not seem to be embedded in any practical/institutional context (two strangers meeting on the street). My theory can allow for the existence of such actions. Purely individualized actions (to the extent that they exist in society – many self-regarding actions can be re-described as part of larger action types which are a move in a practice) generate no moral consequences and are thus irrelevant for a theory of justice. Social, but non-practice-bound interactions may still have effects on the agent's capabilities for participational and navigational agency, by violating its preconditions (one stranger assaulting the other). As a result the latter will also be institutionally

prestructured (e.g. by criminal and tort law and social norms), hence part of a 'quasi-practice' (which isn't positively geared towards the realization of ends but does contain institutions).

¹¹   Using the term 'normative' does not imply *approval* of the theorist of whatever happens in a practice (MacIntyre 1985; D. Miller 1999, 111–130). Rather, it should here be seen as a descriptive term, which allows us to understand the relation between actions and the social structures within which they take place (Rawls 2001b; Young 2011).

¹²   We could say participational agency is a *descriptive* notion since we are always participating in some practices, while navigational agency is a *normative* notion: this form of agency need not be present, we can strive for it as an ideal/value to be realized for all agents in society.

¹³   Given that I have defined navigational agency through these four abilities, one might wonder whether the 'navigational' label is the best description, since the metaphor of navigation refers primarily to the first task (exit/entry: movement between practices). 'Practice-transcending agency' might be more-encompassing, since all four kinds of agency transcend existing practices (in different ways). This is a somewhat burdensome term. I have decided to stick with navigational agency as a *pars pro toto* given the metaphorical force of the term.

¹⁴   Theoretically, one could imagine two other options: justice as the equal ability to participate in *some* (i.e. any) practice or as the ability to participate equally in *some specific* practice(s). The former seems a redundant ideal; being participational agents, we always already participate in some practices. The latter begs the question: why is equality within these specific practices a requirement? This will have to refer to some external standard (such as the necessity to become a navigational agent).

¹⁵   An example from a different context may help: Liao has argued that Griffin's (single-level) theory of agency does not have the resources to block the implication that a human right to an 'agentic capacity to sail a yacht' may have to be granted to all citizens (Liao 2015, 89). This seems to me a problem for Griffin indeed, but my approach solves it by confining basic rights to navigational agency.

¹⁶   Carter maintains that in later work it becomes less clear whether Sen restricts capabilities to the well-being pair of notions, because here he talks about capabilities 'we have reason to value'. See Carter (2014, 80). Whatever of that, my argument is directed against any position making the restriction Sen made in earlier work.

¹⁷   I would also object to the word 'achievement' in Sen's account: we do not only function in a certain way when we achieve a goal, but already when we pursue it (whether or not we are successful). Unsuccessful action is also action.

REFERENCES

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

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

—— (2010), 'Justifying the Capability Approach to Justice', in H. Brighouse and I. Robeyns (eds) *Measuring Justice. Primary Goods and Capabilities*. Cambridge: Cambridge University Press: 81–100.

Anderson, J. (2008), 'Disputing Autonomy. Second-Order Desires and the Dynamics of Ascribing Autonomy', *SATS - Nordic Journal of Philosophy*, 9: 7–26.

Anderson, J. and Christman, J. (2005), 'Introduction', in J. Christman and J. Anderson (eds) *Autonomy and the Challenges to Liberalism. New Essays*. Cambridge: Cambridge University Press: 1–23.

Anderson, J. and Honneth, A. (2005), 'Autonomy, Vulnerability, Recognition, and Justice', in J. Anderson and J. Christman (eds) *Autonomy and the Challenges to Liberalism. New Essays*. Cambridge: Cambridge University Press: 127–49.

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

Baldwin, T. (2009), 'Recognition: Personal and Political', *Politics, Philosophy, and Economics*, 8: 311–28.

Barclay, L. (2003), 'What Kind of Liberal Is Martha Nussbaum?', *SATS - Nordic Journal of Philosophy*, 4: 5–24.

Biondo, F. (2008), 'Is Martha Nussbaum Really Political Liberal?', *Archiv Fur Rechts- Und Sozialphilosophie*, 94: 311–24.

Brighouse, H. and Robeyns, I. (eds) (2010), *Measuring Justice: Primary Goods and Capabilities*. Cambridge: Cambridge University Press.

Carter, I. (2014), 'Is the Capability Approach Paternalist?', *Economics & Philosophy*, 30: 75–98.

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

—— (2014), 'Capability Paternalism', *Economics & Philosophy*, 30: 57–73.

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

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

Crocker, D. and Robeyns, I. (2010), 'Capability and Agency', in C. Morris (ed.) *Amartya Sen*. Cambridge: Cambridge University Press: 60–90.

Deakin, S. (2006), ''Capacitas': Contract Law and the Institutional Preconditions of a Market Economy', *European Review of Contract Law*, 2: 317–41.

Deneulin, S. (2002), 'Perfectionism, Paternalism and Liberalism in Sen and Nussbaum's Capability Approach', *Review of Political Economy*, 14: 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: Cambridge University Press: 105–24.

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

Dowding, K. (2006), 'Can Capabilities Reconcile Freedom and Equality?', *The Journal of Political Philosophy*, 14: 323–36.

Dworkin, R. (2000), *Sovereign Virtue. The Theory and Practice of Equality*. Cambridge, Massachusetts: Harvard University Press.

Formosa, P. and Mackenzie, C. (2014), 'Nussbaum, Kant, and the Capabilities Approach to Dignity', *Ethical Theory and Moral Practice*, 17: 875–92.

Gewirth, A. (1978), *Reason and Morality*. Chicago: The University of Chicago Press.

Gore, C. (1997), 'Irreducibly Social Goods and the Informational Basis of Amartya Sen's Capability Approach', *Journal of International Development*, 9: 235–50.

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

Honneth, A. (1995), *The Struggle for Recognition. The Moral Grammar of Social Conflicts*. Cambridge, Massachusetts: The MIT Press.

Honneth, A. (2011), Das Recht Der Freiheit. Grundriss Einer Demokratischen Sittlichkeit.

Hübenthal, C. (2006), *Grundlegung Der Christlichen Sozialethik*. Munster: Aschendorff Verlag.

Katzer, M. (2010), 'The Basis of Universal Liberal Principles in Nussbaum's Political Philosophy', *Public Reason*, 2: 60–75.

Kelleher, J. P. (2015), 'Capabilities versus Resources', *Journal of Moral Philosophy*, 12: 151–71.

Kymlicka, W. (1989), *Liberalism, Community and Culture*. Oxford: Clarendon Press.

Laitinen, A. (2007), 'Sorting Out Aspects of Personhood. Capacities, Normativity and Recognition', *Journal of Consciousness Studies*, 14: 248–70.

Liao, S. M. (2015), 'Human Rights as Fundamental Conditions for a Good Life', in C. Rowan, S. Matthew Liao and M. Renzo (eds) *Philosopical Foundations of Human Rights*. Oxford/New York: Oxford University Press: 79–100.

MacIntyre, A. (1985), *After Virtue*, Vol. 2nd. London: Duckworth.

Miller, D. (1999), *Principles of Social Justice*. Cambridge Massachusetts: Harvard University Press.

Miller, S. (2001), *Social Action. A Teleological Account*. Cambridge: Cambridge University Press.

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

Nussbaum, M. (1990), 'Aristotelian Social Democracy', in R. Bruce Douglas, G. M. Mara and H. S. Richardson (eds) *Liberalism and the Good*. New York: Routledge: 203–52.

—— (2000), *Women and Human Development. The Capabilities Approach*. Cambridge: Cambridge University Press.

—— (2006), *Frontiers of Justice*. Cambridge, Massachusetts: The Belknap Press.

—— (2011a), Creating Capabilities. The Human Development Approach. Cambridge, Massachusetts: The Belknap Press.

—— (2011b), 'Perfectionist Liberalism and Political Liberalism', *Philosophy & Public Affairs*, 39: 3–45.

Okin, S. M. (2003), 'Poverty, Well-Being and Gender: What Counts, Who's Heard?', *Philosophy and Public Affairs*, 31: 280–316.

Pettit, P. (1993), *The Common Mind*. New York/Oxford: Oxford University Press.

—— (2001), 'Capability and Freedom: A Defence of Sen', *Economics and Philosophy*, 17: 1–20.

—— (2003), 'Agency-Freedom and Option-Freedom', *Journal of Theoretical Politics*, 15: 387–403.

—— (2010), 'Freedom in the Spirit of Sen', in C. Morris (ed.) Amartya Sen. Cambridge: Cambridge University Press: 91–114.

Pierik, R. and Robeyns, I. (2007), 'Resources versus Capabilities: Social Endowments in Egalitarian Theory', *Political Studies*, 55: 133–52.

Pogge, T. (2002), 'Can the Capability Approach Be Justified?', *Philosophical Topics*, 30: 167–228.

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

—— (2011), 'Sugden's Critique of the Capability Approach', *Utilitas*, 23: 25–51.

Rawls, J. (1999), *A Theory of Justice*. Revised. Oxford: Oxford University Press.

—— (2001a), Justice as Fairness. A Restatement. Cambridge, Massachusetts: The Belknap Press.

—— (2001b), 'Two Concepts of Rules', in J. Rawls and S. Freeman (eds) Collected Papers. Cambridge, Massachusetts: Harvard University Press: 20–46.

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

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

—— (2005b), 'The Capability Approach: A Theoretical Survey', *Journal of Human Development*, 6: 93–117.

—— (2006), 'The Capability Approach in Practice', *Journal of Political Philosophy*, 14: 351–76.

—— (2008), 'Sen's Capability Approach and Feminist Concerns', in F. Comim, M. Qizilbash and S. Alkire (eds) The Capability Approach. Concepts, Measures and Applications. Cambridge: Cambridge University Press: 105–24.

Searle, J. (1995), *The Construction of Social Reality*. New York: The Free Press.

Sen, A. (1985), 'Well-Being, Agency and Freedom: The Dewey Lectures 1984', *The Journal of Philosophy*, 82: 169–221.

—— (1992), Inequality Reexamined. Cambridge, Massachusetts: Harvard University Press.

—— (1999a), 'Democracy as a Value', *Journal of Democracy*, 10: 3–17.

—— (1999b), Development as Freedom. Oxford: Oxford University Press.

—— (2009), The Idea of Justice. Cambridge, Massachusetts: The Belknap Press.

Smith, M. and Seward, C. (2009), 'The Relational Ontology of Amartya Sen's Capability Approach: Incorporating Social and Individual Causes', *Journal of Human Development and Capabilities*, 10: 213–35.

Stark, C. (2009), 'Respecting Human Dignity: Contract versus Capabilities', *Metaphilosophy*, 40: 366–81.

Sugden, R. (2006), 'What We Desire, What We Have Reason to Desire, Whatever We Might Desire: Mill and Sen on the Value of Opportunity', *Utilitas*, 18: 33–51.

Sumner, L. W. (2006), 'Utility and Capability', *Utilitas*, 18: 1–19.

Taylor, C. (1985), 'Atomism', in *Philosophy and the Human Sciences*. Cambridge: Cambridge University Press: 187–210.

Van Parijs, P. (2011), *Just Democracy. The Rawls-Machiavelli Programme*. Colchester, UK: ECPR Press.

Winch, P. (1990), *The Idea of a Social Science and Its Relation to Philosophy*, Vol. 2nd. London: Routledge.

Young, I. M. (2011), *Responsibility for Justice*. Oxford: Oxford University Press.