

Evaluating Functionings and Capabilities*

Sen and Nussbaum both conceive good social and economic development as *inter alia* social change that promotes *valuable* capabilities and functionings, but the two development ethicists have importantly different conceptions of the evaluative exercise and the status of its results. In this chapter I ask and seek to answer several questions about Sen's and Nussbaum's respective views concerning the evaluation of human capabilities and functionings.

First, what is the result of Sen's and Nussbaum's evaluative exercises? Sen defends the "evaluative space" of capability and functioning; but, while he provides examples of capabilities and functionings that people have reason to value, he himself does not offer a "pre-determined, canonical list"¹ of (universally valid) capabilities or functionings. In contrast, Nussbaum offers just such a list. What is the content of Nussbaum's list? How and how well does she defend it? Why does Sen argue against such a list? Finally, *whom* do Sen and Nussbaum claim should evaluate functionings and capabilities and what methods they should employ? Here one finds a sharp and growing disagreement between Sen and Nussbaum. Nussbaum emphasizes philosophical theorizing in determining valuable capabilities while Sen stresses agency-manifesting processes of public discussion and democratic choice. How should we understand and

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assess this dispute? Finally, what view does each thinker hold with respect to the *range* of evaluations? For Sen, with his focus on an individual's personal advantage or "wellness," functionings/capabilities range in value from the trivial to the most valuable. For Nussbaum, human capabilities and functionings are to be "evaluated as valuable from an ethical view point" with the result that "some human abilities exert a moral claim" as components in "human flourishing" and some, like the "capacity for cruelty,"² do not. Which view is most reasonable?

Valuable Functionings and Capabilities: What are They?

It is not enough to carve out the space of functionings and capabilities; for these actual and possible functionings may differ in value or be valued in different ways. What international and national development should do is to expand capabilities, especially *valuable* or *valued* ones, and promote valuable or valued functionings. What are Sen's and Nussbaum's conceptions of good functionings and capabilities and the "evaluative exercises" that select and rank capabilities? What is the basis for and nature of a list, if there is to be one, and of the rankings? Sen clearly recognizes the importance of the task of developing his capabilities approach to include "different evaluation exercises"³: "It is valuation with which we are ultimately concerned in the functionings approach."⁴ However, in 1985 in *Commodities and Capabilities*, he recognized the difficulties in approaches to evaluation: it is hard to put the right questions let alone get the right

answers. In that same volume he confessed that he had “no magic solution to offer in dealing with these complex questions.”⁵

Sen gradually came to hold the view that it is groups themselves—rather than philosophers or other theorists—who should conduct the “evaluative exercises” that yield the selection and weighting of valuable capabilities and functionings. To some extent, Sen arrived at this view on evaluation in and through his dialogue with Nussbaum and her philosophical proposal of a universally valid list of fully human capabilities. Because of the pivotal role that Nussbaum’s “list” played in the evolution of Sen’s own ideas, as well as due to her view’s intrinsic interest, I now discuss the nature and status of Nussbaum’s list and Sen’s reasons for rejecting such a normative vision.

Nussbaum’s Philosophical List of Valuable Capabilities

Since the late eighties, Nussbaum has been evolving for development ethics a prescriptive list of what she now calls “central human functional capabilities.” Recent versions⁶ of her list differ from earlier versions. The items on recent lists are more general than earlier with the advantage that, for example, lacking a specific sensory capability would no longer make someone nonhuman or incapable of full flourishing. Moreover, her lists since 1995 or so make more room for human and legal rights.

Nussbaum intends her list to provide a universally valid conception of (partial) human flourishing and one that each government should embody in its constitution and implement in its laws and policies.⁷ Before assessing the status and merits of such a list

and why Sen refuses to propose a list—at least one understood as “predetermined” and “canonical”—it will be helpful to have Nussbaum’s current version before us.

Nussbaum’s Post-1995 List of “Central Human Functional Capabilities:”

1. **Life.** Being able to live to the end of a human life of normal length; not dying prematurely, or before one’s life is so reduced as to be not worth living.
2. **Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.
3. **Bodily Integrity.** Being able to move freely from place to place; having one’s bodily boundaries treated as sovereign, i.e. being able to be secure against assault, including sexual assault, sexual abuse, and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. **Senses, Imagination, and Thought.** Being able to use the senses, to imagine, think, and reason—and to do these things in a ‘truly human’ way, a way informed and cultivated by an adequate education. . . . Being able to use imagination and thought in connection with experiencing and producing self-expressive works and events of one’s own choice, . . . Being able to search for the ultimate meaning of life in one’s own way. Being able to have pleasurable experiences, and to avoid non-necessary pain.

5. **Emotions.** Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety, or by traumatic events of abuse or neglect.
6. **Practical Reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one's life.
7. **Affiliation.**
 - a. 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; to be able to imagine the situation of another and to have compassion for that situation; to have the capability for both justice and friendship.
 - b. Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails, at a minimum, provisions against discrimination on the basis of race, sex, sexual orientation, religion, caste, ethnicity, or national origin. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

8. **Other Species:** Being able to live with concern for and in relation to animals, plants, and the world of nature.
8. **Play.** Being able to laugh, to play, and to enjoy recreational activities.
9. **Control over One's Environment.**
 - a. **Political.** Being able to participate effectively in political choice that governs one's life; having the right of political participation, protections of free speech and association.
 - b. **Material.** Being able to hold property (both land and movable goods), not just formally but in terms of real opportunity; having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure.

In writings before 1999, Nussbaum tended to view each of these items as necessary and together sufficient for the good human life. She now relaxes her claim and calls her list “open-ended and subject to ongoing revision and rethinking”⁸ but still insists that the “ten” capabilities “all are part of a minimum account of social justice: a society that does not guarantee these to all its citizens, at some appropriate threshold level, falls short of being a fully just society, whatever its level of opulence.”⁹

Commentators have assessed Nussbaum's lists in various ways.¹⁰ One way is to ask whether any item on the list, for instance “play” or altruistic acts, should be removed because it is too culture- or individual-specific or even ethnocentric. In the last chapter, I analyzed how Sen's concept human “well-being” was concerned with personal advantage

and only brought in aid to others if such aid increased the individual's wellness. Another way to evaluate Nussbaum's list is to ask whether it leaves out some component of human flourishing, for instance, raising children, being religious, or engaging in meaningful work. These assessments are worth doing, but I shall not engage in this evaluation here. Instead, I evaluate Nussbaum's (i) strategy of trying to derive her list from a Kantian idea of human dignity and (ii) conception of the normative status of her list.

In her most recent writings Nussbaum embeds her list of central capabilities in a moral theory with one ultimate principle and two "orienting principles." Nussbaum's highest level principle is "a principle of each person as end"¹¹ in the sense that each and every human being has a dignity based on her threshold ability to choose their own conception of the good life. In a telling passage, in which she uses the terms "awe" "awe-inspiring" or "awe-inspiringly" in relation to the notion of human dignity (and its basis in practical reason and social cooperation). Nussbaum observes:

The core idea [in Marx] is that of the human being as a dignified free being who shapes his or her life in cooperation and reciprocity with others, rather than being passive shaped or pushed around by the world in the manner of a "flock" or "herd" animal.[*] A life that is really human is one that is shaped throughout by these human powers of practical reason and sociability.

This idea of dignity has broad cross-cultural resonance and intuitive power We see a human being as having worth as an end, a kind of awe-inspiring something that makes it horrible to see this person beaten down by the currents of chance—and wonderful, at the same time, to witness the way in which chance has not completely eclipsed the humanity of the person.[*] As Aristotle puts it, “the noble shines through.” Such responses provide us with strong incentives for protecting that in persons that fills us with awe. We see the person as having activity, goals, and projects—as somehow awe-inspiringly above the mechanical workings of nature, and yet in need of support for the fulfillment of many central projects.[*]¹²

In the light of this ultimate principle, Nussbaum offers her list of central capabilities. The list, she says, formulates “an intuitive idea of a life that is worthy of the dignity of the human being”¹³ or, put another way, “an intuitive conception of truly human functioning and what is entailed by it.”¹⁴ Specifying or “rephrasing” the principle of each person as end, Nussbaum offers the “orienting” “principle of each person’s capability.”¹⁵ Nussbaum explains this principle as “the threshold levels of capabilities” that “can provide a basis for central constitutional principles that citizens have a right to demand from their governments.”¹⁶ Nussbaum’s prescription, which all states ought to embody in their constitutions, follows: “the capabilities in question should be pursued for each and every person, treating each as an end and none as a mere tool of the ends of

others.”¹⁷ Because a person’s action (or the state’s action) to realize her own valuable capabilities might harm the valuable capabilities of other persons, Nussbaum adds a second “orienting” principle: “the principle of moral constraint.”¹⁸ A capabilities version of Mill’s no-harm principle, this principle states that the state should intervene in order to protect a human being’s central capabilities when and only when they are threatened by the actions of others or of the state itself.¹⁹ On the basis of these principles Nussbaum argues, for example, against female genital mutilation, sati, and the caste system—even though the victims of these practices might consent to them.

Before continuing, let us assess this effort to justify her list not just by reference to widespread considered judgments but by appeal to a Kantian idea of human dignity. According to this idea, humans equally are ends in themselves and not merely means for others to use. Moreover, this intrinsic worth refers to something about all or at least most human beings: their ability, individual and jointly with others, to shape their own lives. My problem with her argument is not with this conception of human dignity or its grounding in human autonomy, for a very similar if not identical assumption is involved in Sen’s ideal of human agency. My problem is that Nussbaum’s reference to Kantian dignity does no work with respect to any of the specific items on her list. She does not show, for example, that because humans have inherent dignity they should be permitted, encouraged, or enabled to have bodily integrity, use their senses, play, or control their political environment. It is hard to see how the dignity of someone with advanced dementia hinges in any way on her capability to play or control her environment. One suspects that this Kantian commitment to equal dignity is less a basis for her list and

more a graft onto an Aristotelianism, whose logic seems to justify *unequal* moral and political worth of those with human parents.²⁰ However, even the Kantian doctrine of dignity, based as it is on the idea of equal moral autonomy, will exclude some human beings. Not only do some humans have more actual and potential autonomy than others, but as philosopher David Wasserman recognizes and Nussbaum seems to concede “individuals with the most severe cognitive impairments simply cannot fashion their own conception of the good life, no matter how intensive the support they receive from society.”²¹

Apart from this problem of justifying her list, what role does the list play in Nussbaum capabilities approach and what role does she intend it to play in society? As mentioned above, she intends that this list of “good human functioning” should precede, and be the basis for consideration of, the responsibilities, constitutional principles, and structures of “fully just” political arrangement. It would seem that Nussbaum should then say that she is offering what Rawls would call a nonpolitical or metaphysical conception of justice, one that is grounded in an ultimate moral conception (human autonomy) that is at odd with other moral outlooks, for instance, ones that stress obedience to authority.

In Rawls's liberal (and "political") theory, the right is prior to the good. Rawls proposes what he takes to be a fair framework—albeit informed by ideals of moral personality and social co-operation—in which people, within limits, are free to pursue their *own* conception of the ultimate good. How does Nussbaum stand with respect to Rawls's political liberalism?

As I discussed in Chapter 4, in her late 1980's and early 1990's essays, Nussbaum sharply distinguished her normative view from that of Rawls. Taking issue with Rawls, Nussbaum argued that the good—in the sense of a vision of the good or flourishing human life—is prior to the right and that the aim of government goes beyond fairly distributing Rawls's primary goods and Sen's positive freedoms as important as both these tasks are. The more determinate and guiding aim of just legislators should be that of promoting "the capability to live a rich and fully human life."²² Nussbaum, taking the space of capability and functioning as settled, initially proposed her list of the ten irreducible components of good human functioning. People in every place and time have inner powers—if not external opportunities—to live life (as an end or good in itself) in this way.

Nussbaum offered her initial list as a "thick, vague conception of the good." It was thick because it proposed not, as did Rawls's social primary goods, the *means* for any good life but the *content of the* good life. A good and just society would promote and protect a flourishing life for everyone. But did this view not mean that the government in a just society would be paternalistic, making decisions for individuals and communities about how they should live rather than make those decisions for themselves?

To meet this charge, Nussbaum stressed that the list was not only “thick” but also “vague” in the sense that the items were general and required that individuals and communities can and should specify them in their own way. Moreover, holding governments responsible to promote *capabilities* rather than functionings, Nussbaum contended that people were not forced by the government to flourish but could choose a nonflourishing way of life. A third anti-paternalist aspect of her earlier position was that one of the valuable capabilities was precisely the ability to reflect critically and autonomously decide one’s concept of the good.

Despite these liberal or nonpaternalist qualifications, Nussbaum still described her position as endorsing a universalist conception of a fully human life and the related government responsibilities to promote it. I was not the only one in the late eighties and early nineties to applaud—in a climate of postmodern and other relativisms—Nussbaum’s effort to defend, in political philosophy in general and development ethics in particular, a universal conception of the good or flourishing human life. At last, I believed, we could appeal to a universal standard to assess developing (and developed) societies and propose universally valid principles to construct a better future.²³

In her most recent version of the capabilities approach, however, Nussbaum has altered her course and adopted a liberal view akin to that of Rawls.²⁴ She still sees the task of any just government as that of promoting her list of capabilities and that these capabilities are intrinsically valuable components of—and not merely means to—any fully human life. Now, however, she likens these capabilities to Rawlsian primary goods in the

sense that the list identifies those capabilities and opportunities people should have *regardless* of their conception of the good:

Although this list of central capabilities is somewhat different in both structure and substance from Rawls's list of primary goods, it is offered in a similar political-liberal spirit: as a list that can be endorsed for political purposes, as the moral basis of central constitutional guarantees, by people who otherwise have very different views of what a complete good life for a human being would be.²⁵

The idea seems to be that the list can and should function as a moral-political charter for all peoples. It is not clear, however, whether she means that the idea of human dignity and the list derived from this idea are trans-political conceptions that can function politically because all accept them or, less robustly, that these norms are compatible with any ultimate moral outlook. However we interpret Nussbaum's present position, it is important to understand Sen's assessment of Nussbaum's project in its various versions.

Sen and the Evaluation of Capabilities and Functionings

In a 1995 essay, I took Sen's many examples and informal enumerations of capabilities or functionings that people had reason to value, and I displayed the great extent to which they "mapped on" to Nussbaum's systematic 1995 list²⁶ of 10 "central functional human

capabilities,” some with many subitems. Although sometimes it is difficult to decide whether Sen and Nussbaum proposed at that time different formulations of the same item or different items, I tallied 12 agreements, 13 items unique to Nussbaum, and only 1 item unique to Sen. Consulting the writings with the addition of Sen’s 1992 *Inequality Reexamined*, David Clark did the same sort of mapping and discovered one additional item unique to Nussbaum and 8 additional items unique to Sen.²⁷

I have come to believe that this mapping exercise is misleading, for it suggests that Sen and Nussbaum are up to the same thing. Although it is true that Sen and Nussbaum “discuss” the same or similar items as valuable capabilities, not only do they have—as we saw in chapter 5— somewhat different concepts of capability (and functioning) but they understand the status and justification of these capabilities in different ways. I say “discuss” because whereas Nussbaum *prescribes* her list as universally valid Sen merely *illustrates* the capabilities that people—both individually and collectively—have reason to value in and through various evaluative exercises, including that of public discussion and democratic deliberation.

What does Sen himself say about Nussbaum’s list, both its content and the procedure by which she generates it? In his 1993 essay “Capability and Well-being,” Sen discusses her 1988 account of Aristotle’s view that “that there is just one list of functionings (at least at a certain level of generality) that do in fact constitute human good living.”²⁸ Sen assesses this proposal in two very different ways. First, he claims that Aristotle’s view, which Nussbaum at least partially endorses, “would not be inconsistent with the capability approach presented here, but *not*, by any means, *required* by it.”²⁹ On

this assessment, Sen represents the capability approach as a general and “incomplete” approach that might consistently and fruitfully yield several different “evaluation exercises,” each of which—in its own way—would select and weigh functionings and capabilities, propose evaluative procedures, and take a position on such foundational questions as “the metaphysics of value.” Seen from this angle, Nussbaum’s version of the capabilities approach would be one (but only one) possible specification.³⁰ Moreover, it would be a mistake to identify Nussbaum’s specific theory with the generic capability approach, let alone reject other specifications.

In line with this account of Sen’s assessment of Nussbaum “list,” Sen himself puts forward the United Nations Development Programme’s Human Development Index (HDI) much shorter list of functionings or capabilities (purchasing power, longevity, and education). The purpose of this “list” is to provide simple, easily communicable, and quantitative criteria to assess how a nation is doing in comparison with its own past or the current achievements of other nations.³¹

Second, Sen makes other remarks in the same essay, however, that suggest a different and less irenic response to Nussbaum’s list. He says, for example, that he has “no great objection” to a “route” that offers “a unique list of functionings for a good human life.”³² This judgment suggests, however, that he does have *some* objection. The objections are twofold. In the 1993 essay he worried that Nussbaum’s list “may be tremendously over specified.”³³ It might be wished that Sen had identified the items on Nussbaum’s list that particularly seem guilty of overspecification. In 2005, he again

expresses concern about the fixity and finality—or dangers thereof—of some lists, Nussbaum's included:

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.³⁴

A third interpretation, which Nussbaum herself offered in 2000, of Sen's evaluation of her list was clearly incorrect (even in 2000), namely, that he takes no stand with respect to the project of a list or Nussbaum's particular list:

Most importantly, Sen has never made a list of the central capabilities. He gives lots of examples, and the *Human Development Reports* organize things in ways that correspond to at least some of the items on my list. But the idea of actually making the list and describing its use in generating political principles is not his, and he should not be taken as endorsing either the project or its specific contents.³⁵

Nussbaum is certainly right that Sen has never sought a fixed, universally correct, and all-purpose list. But if I am right in my analysis above, Nussbaum fails to capture Sen's stance on lists. Sen is willing to accept some lists, for example, the HDI, as one among many specific evaluative routes. No list, however, should be "fixed forever," too specific, or beyond the reach of rational scrutiny and public discussion.

Apart from his assessment of Nussbaum's particular list, does Sen suggest or argue for any other specific evaluation procedures, assumptions, and results? In "Capability and Well-Being, he leaves his approach "incomplete" and offers no specific evaluative exercise. Moreover, in this essay and again in *Inequality Reexamined*, he argues that in describing and defending the moral space or "objects of value" of agency, capability, and functioning, he already has engaged in an evaluation that has "substantial cutting power"³⁶ For, as we saw in Chapters 4 and 5, on the basis of the moral space of agency, capability, and functioning, Sen compellingly rejects as either instrumental or partial the proposed moral spaces of per capita GNP, Rawlsian primary goods, happiness, preference satisfaction, or basic needs. By ruling out some candidate objects of value and defending his proposed moral space, Sen contends that he has shown that "the perspective of capabilities provides a fuller recognition of the variety of ways in which lives can be enriched or impoverished."³⁷ If Sen justifies evaluation on these *general* "objects of value," why does he not go further and both select and weigh specific valuable capabilities, argue for their meta-ethical or metaphysical status, and defend a particular evaluative procedure? There are two related reasons.

First, assuming that “reasoned agreement” is “an important fundamental foundational quality central to political and social ethics” and that it may be easier to get agreement on “objects of value” than on general meta-ethical issues or a specific evaluative method, Sen thinks it better first to work for agreement “on the choice of an evaluative space.”³⁸ Hence, he calls his stopping short of offering a specific evaluative route not a permanent and principled end of a journey but a “pause.”³⁹ This term suggests that with sufficient agreement about his proposed evaluative space, it might be reasonable—at least for certain purposes—to advance a more specific evaluative method by which valuable achievements and freedoms might be selected and weighed.

A second reason for his refraining—at least through the early 1990’s—from entering the evaluative “lists,” is that Sen assumes that any evaluation exercise should be chosen and shaped in the light of the individual’s or group’s purposes and context and that these purposes and contexts may vary widely. Sen himself frequently gives the same or very similar examples of capabilities or functionings that, he claims, people have reason to value and that “can” be good candidates for assessing standards of living, poverty, and (gender) inequality in different countries or the same country at different times.⁴⁰ It is clear that Sen’s own purpose in his World Bank lectures, which were the basis for his 1999 *Development as Freedom*, is that of redefining development in relation to the expansion of several freedoms (as both ends and means) and in relation to the ideal of agency, the basis for deciding on and weighing valuable capabilities and functionings:

This book [*Development as Freedom*], however, is not intended primarily for people working at or for the [World] Bank, or other international organizations. Nor it is just for policy makers and planners of national governments. Rather, it is a general work on development and the practical reasons underlying it, aimed particularly at public discussion.

In line with the importance I attach to the role of public discussion as a vehicle of social change and economic progress (as the text will make clear), this work is presented mainly for open deliberation and critical scrutiny.⁴¹

Furthermore, Sen argues, it is not exclusively theorists who make proposals for public and professional discussion with respect to “substantive freedoms.” Members of a group or community of whatever scope (neighborhood, local, regional, national, continental, global) may face a concrete problem, such as how much of globalization to accept, but disagree about what should be done. Their adoption of democratic deliberation and decision making may enable them to “feed” their individual assessments “directly into social assessment”⁴² that, among other things, will select and weigh agency achievements as well as valuable capabilities and functionings.

Given his view of this plurality of evaluative problems related to different practical and normative purposes, it is not surprising that Sen refrains from celebrating *any* approach as the royal road to evaluation. However, neither of these reasons permanently block Sen or those influenced by his work from specific evaluation

procedures and revisable lists for particular evaluative contexts. With respect to the first reason (lack of agreement about values and evaluative procedures), a sea change in fact has occurred in international development theory and practice since the eighties and early nineties. In that period, Sen's capability approach was only one among many contending approaches to international poverty and inequality. Now, however, many development theorists, policy analysts, field workers, and community leaders routinely invoke Sen's name and, more importantly, his view that development should expand and protect valuable human capabilities. Given this growing consensus, many now ask "Which capabilities/functionings are most valuable?", "Who should decide?", and "How should the decisions be made?" Increasingly, Sen himself has answered not only by giving examples or making proposals of "substantive freedoms" that people have reason to value but by increasingly and explicitly identifying public discussion and democratic decision-making as among the evaluative procedures appropriate for certain purposes. Or so I shall argue later in this chapter and in Part IV.

In summary, I have examined the nature of Nussbaum's list and the two ways that Sen assesses it. The first way, the irenic response, is to view Nussbaum's list as one among several possible specifications of the general capability approach. The second and more critical path, is to raise serious questions about Nussbaum's list. In spite of her disclaimers to the contrary and her ongoing revisions, Nussbaum's offering of a fixed or preset list, Sen correctly worries, is incompatible with ongoing, context-sensitive, and revisable public discussion. Either way, Sen's general capability theory and his own proposal for appropriate evaluative exercises differ from Nussbaum's with respect to who

should select valuable capabilities and how they should do so. I now consider in more detail this methodological difference between Sen and Nussbaum.

Valuable Functionings and Capabilities: Who Decides and How?

Who should select which capabilities and functionings are (most) valuable and how should they do it? Nussbaum emphasizes the role of philosophers but leaves some room for the methods of global dialogue and Rawlsian reflective equilibrium. Sen, who employs reflective equilibrium to argue philosophically for the evaluative space of freedom and achievement (both agency and well-being varieties), argues at least since the mid-1990s that groups as well as individuals themselves should select and weigh various freedoms and achievements (including capabilities and functionings) and that groups should do so by expressing their agency through rational scrutiny, public deliberation, and democratic deliberation. The “evaluative exercises” and moral authority that, with some qualifications, Nussbaum gives to philosophers, Sen gives to democratic publics.

I examine now both Nussbaum’s and Sen’s evaluations of the roles of philosophers, constitutions and judges, democratic bodies, and individuals in evaluating capabilities and functionings. Often in response to the charge of paternalism—Nussbaum does assign a role, albeit limited, to philosophical dialogue, public discussion, democratic decision-making, and individual freedom or autonomy. However, these concessions to

democratic processes, while important, are insufficient; she and we should, like Sen, give a much more robust role to democracy conceived as an inclusive and deliberative process.

Philosophical Dialogue and Public Deliberation

Nussbaum rightly sees an important role for philosophical theorizing about questions of social justice and good development. Everyday ideas are often “jumbled and unexamined,”⁴³ and their preferences are frequently infected by traditional beliefs, self-deception, and people’s efforts to adapt to a grim reality.⁴⁴ Moreover, our everyday notions are often riddled with defective past theories, such as utilitarianism. Through critical scrutiny, conceptual clarification, argument with ourselves, and immersion in concrete problems, normative and systematic theory can overcome these deficiencies and provide a coherent and policy-relevant system of ethical principles and prescriptions.⁴⁵

Dialogue, argues Nussbaum, is also important. With respect to the contents and status of her list, Nussbaum consistently has advocated and practiced a conception of philosophical dialogue. She endorses a cross-cultural inquiry in which philosophers and others—through “participatory dialogue”⁴⁶—construct a consensus on what it means to be human and to live well. Participants in this inquiry consult their own experience, the stories and self-understandings of their respective groups, and the insights of other groups and dialogue partners. International interdependence, boundary crossings, and the

transnational scope of issues of various kinds make it imperative to forge a widespread or “overlapping consensus” on—at least partial—human flourishing and related constitutional principles. The consensus, ideally, will match most people’s considered judgments and common intuitions—regardless of their religious or metaphysical commitments—about the cross-cultural core of a “free standing”⁴⁷ conception of at least the basic dimensions of human flourishing. In areas in which an international consensus has not yet formed, for example, whether plants and nonhuman animals have intrinsic or only instrumental value, Nussbaum does not take a stand.⁴⁸

Nussbaum has practiced what she preaches. For example, she has responded to criticisms by fellow philosophers and now emphasizes that her list does not offer necessary and sufficient conditions for being human or for human flourishing but rather “central” capabilities.⁴⁹ Moreover, perhaps due to her new post (starting in 1995) at the University of Chicago Law School and to her discussions with Chicago law professor Cass Sunstein, among others, her later lists have included legal rights as institutional protections for the valuable capabilities. Finally, she argues that her discussions with Indians and especially women’s groups, have led her to make changes to the initial lists: “The primary changes are a greater emphasis on bodily integrity and control over one’s environment (including property rights and employment opportunities), and a new emphasis on dignity and non-humiliation.”⁵⁰ Not only has Nussbaum apparently learned from dialogue with philosophers and a wider public, especially poor Indian women, she also in turn believes that philosophy should value and contribute to “public deliberation”:

Philosophy asks for public deliberation instead of the usual contest of power. It asks us to choose the view that stands the test of argument, rather than the view that has the most prestigious backers; the view that gets all the details worked out coherently and clearly, rather than the view whose proponents shout the loudest. At its best, its fussiness is profoundly practical: only if things are worked out in all their detail will we know whether we really do have the alternative that can stand up to objection better than another, and sometimes the fatal objection to a view emerges only after considerable probing. It makes sense for public deliberation to take account of these apparently fussy debates, because this is how we think through what we have to do, see what we really want to stand for.⁵¹

I wholeheartedly agree with Nussbaum on the potential reciprocity between philosophical dialogue and public deliberation. In fact, I would go further and urge that she view her list not as something to be directly enshrined in constitutions but as a stimulus for public debate in the construction, interpretation, modification, and application of constitutional principles. I would note, however, that Nussbaum tends to collapse “public deliberation” into philosophical dialogue. Of course, important similarities (and fruitful interaction) obtain between, on the one hand, philosophical dialogue, and, on the other hand, public discussion and deliberation that leads to policy choice. Both aspire to uncoerced and overlapping consensus. Both involve the give and take as well as the rational scrutiny of arguments. But while philosophical dialogue aims

solely at the truth or at least on reasoned agreement on beliefs and values, in democratic deliberation fellow citizens deliberate over, decide on, and bind themselves to problem-solving policies that (most) all can accept.

Although Nussbaum herself has learned from citizen debates and concerns, she offers “fussy” philosophical argumentation and a coherent normative view or list as an improvement on everyday beliefs and arguments. In contrast, Sen makes it very clear that philosophical theorizing in general and “the framework of capabilities” in particular cannot displace public (citizen) reasoning and that Nussbaum’s “canonical list” threatens to do just that:

Nussbaum has discussed the importance of identifying an overarching “list of capabilities,” with given priorities, in a more Aristotelian way. 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 the disinclination to accept any substantive diminution of the domain of public reasoning. The framework of capabilities, as I see it, helps 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 does not—and cannot—displace the need for public reasoning.⁵²

Constitution Making

Nussbaum boldly proposes her list to the global community with the intent that the list and argumentation, especially the appeal to equal human dignity, will “provide the philosophical underpinning for an account of basic constitutional principles that should be respected and implemented by the governments of all nations, as a bare minimum of what respect for human dignity requires.”⁵³ Her intent is that political agents in particular countries will use her list to shape public policy in general and their country’s basic constitutional principles in particular.

With one exception, which I discuss presently, Nussbaum does not pause to consider the process of constitution making and the role that citizens and their representatives can and should play in this process. No mediation seems to exist between the philosopher’s articulation of the capabilities or human rights list and their embodiment in a nation’s constitution.

At one point, however, Nussbaum sensibly affirms that the nation should make or change its own constitution, thereby converting Nussbaum’s philosophical list into constitutional guarantees. Rather than seeking to impose her list on a nation, Nussbaum *recommends* that the nation itself deliberate—informed by her list—and decide on or amend their own constitution:

It would be inconsistent if a defender of the capabilities approach, with its strong role for democratic politics and political liberty, were to seek an implementation strategy that bypassed the deliberations of a democratically elected parliament. Thus at this point the approach is recommended as a good idea to politicians in India or any other nation who want to make it the basis of national or local policy. . . . In a case such as India's, if the Constitution is going to change, it will ultimately have to be because the people of India choose such a change. Capabilities theory would be a prescription for tyranny if it bypassed the nation.⁵⁴

In this passage Nussbaum gets it exactly right as far as she goes, although one would like to see her spell out her conception of the deliberative processes by which a constitutional convention should frame or a parliament should alter its constitution. How should philosophers propose and citizens and their representatives respond so that there is genuine give and take among equal participants rather than a short-circuiting of national self-determination. What stance should Nussbaum take if citizens reject her list in whole or part? Is she not going too far when she declares that a society that fails—regardless of its wealth—to guarantee her ten capabilities, at some level, to all its citizens cannot be fully just.⁵⁵ What is unclear and deserves attention⁵⁵ is the extent to which a country like the U.S. is morally justified in using nondeliberative methods, such as economic or military sanctions, to assure a nation's success in making or reforming a particular kind of constitution. What is morally permissible for capability philosophers to say and

democratic nations and international agencies (committed to central capabilities or basic rights) to do to get recalcitrant governments to entrench capability and rights guarantees, including the right of citizen participation, in their constitutions? Going beyond mere recommendation and even strong commendation, Nussbaum entertains—especially when there are “egregious violations of human dignity”—“the use of economic and other strategies to secure compliance”⁵⁶ I hope to take up these questions in future work on democratization. What mixtures of coercion, negotiation, and deliberation can and should be used and at what stage in a democratic transition such that the process is efficient and peaceful as well as respects the dignity of all citizens and their ownership of their own institutions?⁵⁷

Constitutionally-constrained Democracy

Once capability guarantees are in place, Nussbaum also attributes a role—albeit an insufficiently robust role—to democratic decision-making in specifying and implementing capability norms. Since the late eighties, Nussbaum has insisted that it is up to each community to “specify” and implement her list in its own way, including deciding on the threshold for each central capability. Initially she called this permissible pluralism “local specification”:

The Aristotelian must aim at some concrete specification of the general list that suits, and develops out of, the local conditions. This will always

most reasonably be done in a participatory dialogue with those who are most deeply immersed in those conditions.”⁵⁸

In her more recent writings she describes this feature of her list as “multiple realizability.”⁵⁹ The list’s very general items “can be more concretely specified in accordance with local beliefs and circumstances,” and citizens and, presumably, judges can contribute to a determination of the threshold of each central capability. They do so by working “toward a consensus for political purposes . . . within each constitutional tradition, as it evolves through interpretation and deliberation.”⁶⁰

However, although she leaves a role for democratic processes to specify and design strategies for implementing her list, Nussbaum refuses to permit a governing body to prioritize, weigh or outweigh central capabilities. In the light of her normative principles and list, a nation’s constitution would include capability “guarantees” that a government is bound to enforce. Nussbaum does say that there should be a “strong role for democratic politics and political liberty” in certain areas left open by her list. But in fact she leaves open few such areas.

One decision that she does give to democratic processes to resolve is “the thorny issues of institutional competence raised by the clash between the legislative and judicial branches.” Admitting she is “agnostic” on this “clash,” Nussbaum states “each nation must resolve those particular issues on its own, in the light of its own traditions and constitution.”⁶¹ She should also add to this list of tough issues the similar question of

whether or not the theory of the “unitary executive,” a theory that permits the U.S. President to circumvent the statutes, is morally or constitutionally justified.

Another topic about which Nussbaum looks not to her own intuitions, normative theory, or proposed constitutional principles but to the “the democratic processes of a nation”⁶² is whether (or the extent to which) a government is justified in being paternalistic in relation to certain individual choices. For example, to what extent, if any, should a community prohibit actions in which a person freely chooses to risk or surrender a central capability? Should the person’s exercise of her central capability for choice trump her equally central capability for bodily integrity and healthy functioning, especially when the loss of the capability may be irreversible? For example, should the state prohibit freely selling oneself into slavery, consensual genital mutilation, the consensual surrender of reproductive capability, free participation in very violent or risky sports, and the unregulated purchase of dangerous medicines and drugs? Although Nussbaum makes it clear that she favors—“up to a point”—governmental “interference with choice” in such matters, she does recognize that “all these issues are controversial because they do raise legitimate concerns about paternalism”⁶³ and that other people may have different views as to where to draw the line with respect to legitimate government intervention.⁶⁴

In these kinds of cases Nussbaum admits that a democratic polity can and should decide democratically and deliberatively how to balance goods that conflict and about whose balancing people are not in agreement. Her mistake is in failing to see that there are many more areas in which a democratic community will have to decide how to weigh

conflicting goods and strike a fair balance between different conceptions of their appropriate weights.

Even with respect to these areas of democratic decision-making, Nussbaum assumes a fundamental incompatibility exists between constitutionalism and democracy: the more you have of one, the less you have of the other. Either democratic (majority) votes are completely unconstrained by moral or constitutional principles or constitutions—based on philosophically-established principles—stringently check and limit democratic will. I believe this assumption is mistaken. A constitution can and should protect not only certain capabilities (rights) but also secure and mandate venues for democratic and deliberative decision-making in the various branches of government and their relation to “the people.” As Cass Sunstein puts it:

Against those who see a continuing conflict between constitutional law and democracy, I urge that there need be no such conflict at all. Whether a constitution conflicts with democracy depends on what kind of constitution and what kind of democracy we seek. In a deliberative democracy, one of the principle purposes of the constitution is to protect not the rule of the majority but democracy’s internal morality, seen in deliberative terms. A system in which many people cannot vote or vote equally, or in which some people have far more political power than others, violates that internal morality.⁶⁵

Supreme Court Justice Stephen Breyer offers just such a view of the US Constitution. Although he argues that the Constitution certainly provides guarantees for “liberty of the moderns,” that is, various protections against government intrusions in the lives of citizens, the Constitution also embodies a commitment to “the liberty of the ancients.” This “active liberty” is, argues Breyer, “the freedom of the individual citizen to participate in the government and thereby to share with others the right to make or to control the nation’s public acts.”⁶⁶ For Breyer, “the Constitution is not a document designed to solve the problems of a community at any level—local, state, or national.” It is, rather a document that “trusts people to solve those problems themselves” and “creates a *framework* for a government that will help them do so.”⁶⁷ The perspective of “active liberty,” when put in proper balance with “modern liberty,” will enable judges to interpret a legal text in a way that “will yield a better law—law that helps a community of individuals democratically find practical solutions to important contemporary social problems.”⁶⁸ Unmistakably resonant in this jurisprudential view are both Dewey’s ideal of democracy and Sen’s ideal of citizen agency as ethically-justified dimensions of collective problem solving.

I share Nussbaum’s concern for constitutional protection for the most vital and basic capabilities, for I would not want to see a mere majority vote deprive some minority of its freedoms. Yet I am reluctant to ascribe to philosophers the job of prescribing a “canonical list of rights” and to Supreme Court justices the task of authoritative interpretation of a constitution that supposedly enshrines the philosophers’ norms. For each of these moves seems motivated, in the words of Jeremy Waldron, “to put that

canon beyond the scope of political debate and revision.”⁶⁹ It is indeed important to welcome philosophical critique and construction and to avoid the tyranny of the majority, but it is equally desirable not to succumb to the possible tyranny of the philosopher king or that of nine (or five!) judges. The best way to avoid the tyranny of the majority requires deliberative democracy in three ways. First, although they might advance philosophical argument or include citizen-philosophers, group members—acting directly or through their representatives—should deliberate about, decide on, and ratify their own constitution. Second, a constitution, if decided deliberatively and fairly, likely would provide guarantees that both protect everyone and that (most) everyone could accept and in any case would be subject to revision following public deliberation. Third, a point that Nussbaum misses, a democratic and just constitution would itself establish and encourage multiple venues for participatory and deliberative democracy.

Among other things, such democratic venues would provide citizens the opportunity and responsibility to scrutinize constitutions, constitutional rulings, and judicial review. In so doing citizens exercise their own agency in deciding collectively their values and their policies. Lists of capabilities or human rights that citizens have reason to value may still play an important role. But rather than functioning beyond the reach of deliberative and popular bodies, these lists should be viewed as generic topics or menus for discussion or specific proposals for democratic bodies and citizens to discuss.

Returning to the question of what sort of list is compatible with deliberation, I agree with Sen that the issue between Nussbaum and himself is not that of “to list or not to list.” The issue is what sort of list for what purpose? If the list is subject to additions

and corrections as well as a tool for stimulating, elevating, deepening, or broadening public discussion, well and good. If the list is determined prior to public deliberation and dogmatically shuts off debate, such a list is appropriate for the starting lineup for a soccer team but not for self-governing citizens trying to solve problems that have emerged in their particular social context:

My skepticism 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.⁷⁰

Why does Nussbaum put so much emphasis on a nation's constitution rather than, as does Sen, on democratic processes and citizen participation? There are, I believe, at least two reasons.

First, as we have seen, she fears that a democratic majority—when unconstrained by a rights-guaranteeing constitution—will ride rough shod over individual or minority rights. One of the virtues of an inclusive and deliberative democratic process is the likelihood that the minority concerns will be at least partially embodied in the group's decision. If not, as I shall argue further, in Part IV, the solution is more and not less democracy. Nussbaum has surprisingly little to say in her writings about democracy,⁷¹ and what she does say tends to identify democracy with decision making by simple majorities unconstrained by constitutions.⁷² More awareness of the recent innovations in democratic theory and experiments in democratic practice, might break the hold on her uncritical acceptance of minimalist democracy.

A second reason for Nussbaum's skepticism about democratic processes is her view on "trade offs." On Nussbaum's account, a society's task, especially that of its government, is to promote and protect the central capabilities by ensuring that each citizen is able to get over a basic threshold with respect to each and every capability on Nussbaum's list. Although there is a plurality of central capabilities, a society cannot and should not decide among them or rank them. For, Nussbaum claims, these central capabilities are of equal moral urgency, and more of one can never make up for less than another:

The list is, emphatically, a list of *separate components*. We cannot satisfy the need for one of them by giving a larger amount of another one. All are of central importance and all are distinct in quality. The irreducible plurality of the list limits the trade-offs that it will be reasonable to make, and thus limits the applicability of quantitative cost-benefit analysis.⁷³

How should we assess this “no trade offs” reason for constraining democratic deliberation? I accept that there are a plurality of equally valuable capabilities and that more of one does not compensate for less or the loss of another. That said, it does not follow that there are not—in addition to decisions with respect to specification and implementation—important normative decisions that individuals and groups can and should make concerning the contextual ranking and sequencing of capabilities that they have reason to value. Sometimes there are insufficient resources or opportunities to promote (equally) all the valuable capabilities. Then what? Nussbaum’s consistent answer over the years is to transform the world so that each capability can be fully or sufficiently protected.⁷⁴ In response to the reasonable objection that sometimes this win-win solution is (at least in the short run) practically impossible, Nussbaum resigns herself to the “tragic character” of some choices. Such choices are tragic in the sense that such choices, especially when they push citizens below a capability threshold, cause real harm by “slighting” a distinctive good.⁷⁵

There is, however, another, less tragic, and democratic solution: a democratic body can deliberate and decide—when it cannot obtain all good things, at least not at

once—to give priority to some capabilities over others or prioritize some valuable capabilities in such a way that many (if not all) are satisfied to some extent but some more than others. As political theorist William A. Galston says, “The most difficult political choices are not between good and bad but between good and good.”⁷⁶ How, for example, should a community weigh—when they conflict—the good of security and the good of civil liberties, or the good of protecting endangered species versus the good of increasing economic opportunity? One virtue of deliberative democracy is that it offers a process by which clashing goods can be dealt with in such a way that a reasonable balance between goods and viewpoints can be forged. Good reasons exist, which I consider in Chapter 9, why a community’s selection and weighting of valuable capabilities and their thresholds should be made democratically, following a process of deliberation, rather than through appeal to a philosopher or other expert.

Individual Freedom and Plural Specification

Finally, Nussbaum attempts to soften her constitutionalism by affirming individual freedom and “plural specification.” The former means that one can decide whether to avail oneself of government provisioning of central capabilities. The latter means freedom “to specify each of the components [of the list] more concretely, and with much variety, in accordance with local traditions, or individual tastes”⁷⁷ Hence, not only does Nussbaum open some policy space for democratic decisions, she also celebrates the individual’s capability and right to decide (within limits) her own course of life. Based on

the liberal idea of “the citizen as a free and dignified human being, a maker of choices,”⁷⁸ she affirms, especially by elevating the capability of “practical reason,” the individual’s freedom to shape her own life:

Politics here has an urgent role to play, providing citizens with the tools that they need, both in order to choose at all and in order to have a realistic option of exercising the most valuable functions. The choice of whether and how to use the tools, however, is left up to the citizens in the conviction that this is an essential aspect of respect for their freedom. They are seen not as passive recipients of social patterning but as dignified free beings who shape their own life.⁷⁹

One of the ways open to these active citizens is that of the central capability of controlling their environment including “being able to participate effectively in political choices that govern one’s life; having the right of political participation, protections of free speech and association.”⁸⁰

There is much with which to agree in these passages, but it is notable that Nussbaum’s focus is on *individual* agency to shape one’s life through personal choice rather than on the *collective* choice of political values (for instance, valued capabilities and functionings) and policies. Although Nussbaum does include in her central capabilities the individual’s capability and right to participate politically, the emphasis is on the individual’s political rights rather on two themes increasingly prominent in Sen.

Sen emphasizes each citizen's "social commitment" to deliberate and decide policy together as well as the important role of political freedom in furthering public debate, rational scrutiny of options, and *social* choice of priorities: "One of the strongest arguments in favor of political freedom lies precisely in the opportunity it gives citizens to discuss and debate—and participate in the selection of—values in the choice of priorities."⁸¹

Nussbaum does ample justice to one side of the "two-way relation" between individual freedom and societal arrangements, namely, the way in which social arrangements and political actions can and should "expand individual freedoms." She misses, however, Sen's more capacious perspective in which individual freedoms "make the social arrangements more appropriate and effective."⁸² Sen is convinced that "the direction of public policy can be influenced by the effective use of participatory capabilities by the public."⁸³ Whether deliberating collectively as citizens of a polity or as members of an association, individuals acting collaboratively and through public discussion shape their preferences and arrive at remedies to practical problems.

We drive home the difference between Sen and Nussbaum on this point in relation to Nussbaum's one-sided interpretation of a recent idea of Sen's. In "Freedom and Needs," Sen says: "Political Rights are important not only for the fulfillment of needs, they are crucial also for the formulation of needs. And this idea relates, in the end, to the respect that we owe each other as fellow human beings"⁸⁴ Nussbaum interprets this passage as meaning exclusively that each citizen has the right to decide on her own needs and whether to avail herself of government provisioning. Sen, however, by the

“constructive role” of “basic political and liberal rights,” *also* means that “our conceptualization of economic [and other] needs depends crucially on open public debates and discussions, the guaranteeing of which requires insistence on basic political liberty and civil rights.”⁸⁵

Concluding Remarks

In one of Sen’s most recent books,⁸⁶ he and co-author Jean Drèze make even clearer the difference between Sen’s democratic approach to popular valuation and an approach, like Nussbaum’s, which gives more priority to philosophical reflection and valuation. Sen and Drèze distinguish between democratic ideals, institutions, and practices. It is certainly important to defend democratic *ideals*. These ideals are elements in the comprehensive idea of democracy as government of, by, and for the people—a conception of government that contrasts with government of, by, and for kings, philosophers, or other elites. These ideals include “freedom of expression, participation of the people in deciding on the factors governing their lives, public accountability of leaders, and an equitable distribution of power”⁸⁷ Going from “basic intents” to institutions, the two authors affirm “such institutional arrangements as constitutional rights, effective courts, responsive electoral systems, functioning parliaments and assemblies, open and free

media, and participatory institutions of local governance (such as panchayats and gram sabhas).”⁸⁸

Something more is needed, argue Drèze and Sen, than democratic ideals and institutions. A strong or deep democracy is composed of people who make democracy “work,”⁸⁹ who “practice”⁹⁰ democracy by engaging in public action and voicing concerns in various ways, such as voting, street protests, organizing political parties and civic movements, and monitoring governmental action. Without the “practice” of democracy, democratic institutions will function “at variance with the democratic ideals.”⁹¹ With democratic practice on the part of citizens, the “quality of democracy” improves. And a crucial aspect of democratic practice is that citizens evaluate freedoms and forge together common values:

The practice of democracy gives the citizens an opportunity to learn from each other, and can also profoundly influence the values and priorities of the society. Even the idea of “needs” (including the understanding “economic needs”), which is often taken to be fixed and well-defined, can respond to public discussion and exchange of information, views and analyses. In this sense, democracy has a *constructive importance*, in addition to the intrinsic value it has in the lives of the citizens and an instrumental role in political decisions. Value formation is as much a democratic activity as is the use of social values in the determination of public policy and social response.⁹²

In this chapter I have argued that Nussbaum's "route" to evaluating capabilities and functionings is to balance her bold normative list and her strong constitutionalism with *some* provisions, on the one hand, for philosophical dialogue, democratic constitution-making, and democratic processes within a constitutional polity, and, on the other hand, for freedom of individual choice. I have also argued that the door that she opens for democracy in each of the areas can and should be opened wider and that Sen helps us see how this might be done. In chapter 9, I argue that the theory and practice of deliberative democracy has much to offer Sen in his effort to renovate democratic theory, improve democratic institutions, and deepen democratic practice. I argue that respecting people's dignity and agency requires not only, as Nussbaum contends, that they are free as individuals to form their own conception of the good life; it also requires that people have the right and responsibility to form collective values and decide practical policies together.

In my more than 25 years teaching, writing, and applying development ethics, I have been continually stimulated, enlightened, and provoked by the capability orientation, especially the versions that Sen and Nussbaum have contributed to development theory and practice. In the three chapters of Part II, I have sought to share the results of my evolving engagement with this approach to development ethics. I have analyzed both similarities and differences between these two thinkers with respect to their evaluations of alternative normative perspectives in development (chapter 4), their concepts of agency, functioning, and capability (chapter 5), and their ways of evaluating

capabilities and functionings in development (chapter 6). I have probed each position for weaknesses as well as strengths and have sought to work out an assessment that strengthens the capability orientation. In the two chapters of Part III, I apply development ethics and my favored version of the capability orientation to the problems of global consumption and hunger. In Part IV, I argue further for the fruitful convergence of the capability orientation and the theory and practice of deliberative democracy.

NOTES

1. Amartya Sen, "Human Rights and Capabilities," *Journal of Human Development*, 6, 2 (2005): 158.
2. Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000), 83.
3. Amartya Sen, in "The Standard of Living," in *The Standard of Living: The Tanner Lectures of Human Values*, ed. Amartya Sen, J. Muellbauer, Ravi Kanbur, K. Hart, and Bernard Williams (Cambridge: Cambridge University Press), 107; see also Amartya Sen, *Inequality Reexamined* (Cambridge: Harvard University Press), 44---46.
4. Amartya Sen, *Commodities and Capabilities* (Amsterdam: North-Holland, 1985), 32.
5. *Ibid.*, 48.
6. For two examples of Nussbaum's list prior to the mid-1990s, see Nussbaum, "Human Capabilities, Female Human Beings," in *Women, Culture and Development*, ed.

Martha C. Nussbaum and Jonathan Glover (Oxford: Oxford University Press, 1995), 83--85; and “The Good as Discipline, the Good as Freedom, in *Ethics of Consumption: The Good Life, Justice, and Global Stewardship*, eds. Crocker and Linden, 318---20. (Although the last paper appeared in 1998, Nussbaum presented it in a conference in 1994. Nussbaum sets forth, with little variation, her more recent list in Martha Nussbaum, “Capabilities and Human Rights,” *Fordham Law Review* 66 (1997), 273---300, and reprinted in Pablo De Greiff and Ciaran Cronin, eds. *Global Justice and Transnational Politics* (Cambridge, MA; and London: MIT Press, 2002); *Sex and Social Justice* (Oxford: Oxford University Press, 1999), 41---42; *Women and Human Development: The Capabilities Approach*, 78---80; “Capabilities as Fundamental Entitlements,” *Feminist Economics* 9, 2 and 3 (2003), 41-42; *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge: Harvard University Press, 2006), 43---45.

7. Up to the mid 1990s, Nussbaum advocated and practiced a two-step normative procedure and generated a separate list for each. The first step in constructing an account of good human functioning was to work out an “outline sketch” of being human, a “thick vague conception of the human being” or “the shape of the human form of life.” The second step, the thick vague conception of good human functioning, goes further and provisionally identifies, in a more determinate but still general way, the most important or “basic human functional capabilities,” “the totality of functionings that constitute the good human life.” The source of the first phrase is “Non-Relative Virtues: An Aristotelian Approach,” *Midwest Studies in Philosophy*, 13 (1988)38---39, and “Aristotelian Social Democracy,” in *Liberalism and the Good*, ed. Bruce Douglass,

Gerald Mara, and Henry Richardson (London: Routledge, 1990), 205---206, 217---24; Nussbaum formulates and discusses the second step in, for example, “Aristotelian Social Democracy,” 225-34. Although there are still residues of this two step sequence in Nussbaum’s recent writings, the first step is now de-emphasized and does little, if any, independent work (see “The Good as Discipline, the Good as Freedom,” 317-18, “Sex and Social Justice,” 39---40, *Women and Human Development*, 73.)

8. Nussbaum, “Capabilities as Fundamental Entitlements,” 42.

9. Nussbaum, “Capabilities as Fundamental Entitlements,” 40.

10. See, for example, *Women, Culture and Development*, ed. Martha C.

Nussbaum and Jonathan Glover; Jerome M. Segal, “Living at a High Economic Standard: A Functionings Analysis,” in *Ethics of Consumption: The Good Life, Justice, and Global Stewardship* eds. Crocker and Linden, 345---54; *Feminist Economics*, 9, 2 and 3 (2003); and (Carol C. Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2005), 57---58.

11. Nussbaum, *Women and Human Development*, 5, 56, 73---74.

12. *Ibid.*, 72---73. I have omitted three of Nussbaum’s footnotes from this long quotation.

13. *Ibid.*, 5.

14. *Ibid.*, 76.

15. Nussbaum, *Women and Human Development*, 5. See also 12---13, 74, 188---90, 246---47, 250---52, 274---75.

16. *Ibid.*, 12.

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17. Ibid., 5.
18. Ibid., 190. See also 221---22, 275.
19. Ibid., 275.
20. See Jesús Conill, *Horizontes de economía ética* (Madrid: Editorial Tecnos, 2004), especially 178---88.
21. David Wasserman, “Disability, Capability, and Thresholds for Distributive Justice,” in *Capabilities Equality: Basic Issues and Problems*, ed. Alexander Kaufman (New York and London: Routledge, 2006), 229. See also Martha Nussbaum, *Fronteirs of Justice: Disability, Nationality, Species Membership* (Cambridge: Harvard University Press, 2006).
22. Nussbaum, “Aristotelian Social Democracy,” 217.
23. See David A. Crocker, “Functioning and Capability: The Foundations of Sen’s and Nussbaum’s Development Ethic,” *Political Theory*, 20, 4 (1992): 595---99; “Functioning and Capability: The Foundations of Sen’s and Nussbaum’s Development Ethic, Part 2,” in *Women, Culture and Development*, ed. Nussbaum and Glover (Oxford: Oxford University Press, 1995), 69---80.
24. See Jesus Conill, “Bases éticas del enfoque de las capacidades de Amartya Sen,” *Sistema*, 171 (2002): 47---64.
25. Nussbaum, *Women and Human Development*, 74.
26. Crocker, “Functioning and Capability, Part 2,” 174---76. See Nussbaum’s 1995 list in “Human Capabilities, Female Human Beings,” 83---85.

27. Clark, *Visions of Development: A Study of Human Values* (Cheltenham, UK, Northampton, MA: Edward Elgar, 2002), 71---73.

28. Nussbaum, "Nature, Function, and Capability: Aristotle on Political Distribution," *Oxford Studies in Ancient Philosophy*, 6 suppl. vol. (Oxford: Clarendon Press, 1988), 152. Quoted by Sen in "Capability and Well-being," in *The Quality of Life*, ed. Martha C. Nussbaum and Amartya Sen (Oxford: Oxford University Press, 1993), 46.

29. Sen, "Capability and Well-Being," 47.

30. A good analogy would be Robert Nozick's distinction between "the general outlines of a theory of justice in holdings" and a specific theory of justice in holdings: "the general outlines of the theory of justice in holdings are that the holdings of a person are just if he is entitled to them by the principles of justice in acquisition and transfer, or by the principle of rectification of injustice (as specified by the first two principles). If each person's holdings are just, then the total set (distribution) of holdings are just. To turn these general outlines into a specific theory we would have to specify the details of the three principles of justice I shall not attempt that task here" (Robert Nozick, *Anarchy, State, and Utopia* [New York: Basic Books, 1974], 153). Another analogy would be John Rawls's distinction between a *concept* of justice, those kinds of normative principles whose role is to provide the distribution of the benefits and burdens of fair social cooperation, and a particular *conception* of justice, that is, any proposal of *specific* principles to govern just distributions (John Rawls, *A Theory of Justice*, rev. ed (Cambridge: Harvard University Press, 1971, 1999), 5 . Both Nozick and Rawls could

say that *any* specific theory consistent with the general approach is permitted but not required by that approach.

31. Sen, "Human Rights and Capabilities," 158. See also Sudhir Anand and Amartya Sen, "Human Development Index: Methodology and Measurement," in *Readings in Human Development*, ed. Sakiko Fukuda-Parr and A. K. Shiva Kumar (New Delhi: Oxford University Press, 2003), 114---127.

32. Sen, "Capability and Well-Being," 47.

33. Ibid.

34. Sen, "Human Rights and Capabilities," 160.

35. Nussbaum, *Women and Human Development*, 13.

36. Sen, "Capability and Well-Being," 49; *Inequality Reexamined*, 42---44.

37. Sen, *Inequality Reexamined*, 44.

38. "Capability and Well-Being," 49.

39. Ibid., 48.

40. Sen, *Development as Freedom* (New York: Knopf, 1999), 20.

41. Sen, *Development as Freedom*, xiii---xiv.

42. Sen, "Capability and Well-Being," 49; *Development as Freedom*, 66

43. *Women and Human Development*, 35.

44. See Nussbaum, *Women and Human Development*, chap. 2.

45. See Ibid., 298---303 for a nice statement of this conception of the role of philosophy.

46. Nussbaum, "Human Capabilities, Female Human Beings," 94. I omit a footnote that refers to Martha Chen's development project in Bangladesh and its use of Paolo Freire's method of "participatory dialogue" (*A Quiet Revolution: Women in Transition in Rural Bangladesh* (Cambridge, MA: Schenkman, 1983).

47. Nussbaum, *Women and Human Development*, 83.

48. Nussbaum, *Women and Human Development*, 157.

49. See David A. Crocker, "Functioning and Capability, Part 2," 172---73; Susan Wolf, "Comments on Nussbaum's 'Human Capabilities, Female Human Beings,'" in Nussbaum and Glover, eds., *Women, Culture and Development*, 105---15; Jerome M. Segal, "Living at a High Standard of Living: A Functionings Analysis," in *Ethics of Consumption: The Good Life, Justice, and Global Stewardship*, eds. Crocker and Linden), 342---65.

50. Nussbaum, *Women and Human Development*, 78, n. 82. Some of Nussbaum's critics argue that her academic interchanges are restricted to like-minded colleagues and that in her discussions with poor women she does not worry sufficiently that poor women may be intimidated by her academic stature and tell her (Nussbaum) what she wants to hear.

51. *Ibid.*, 300.

52. Sen, "Elements of a Theory of Human Rights," *Philosophy & Public Affairs*, 32, 4 (2004), 333, n. 31. Sen makes the same point in almost the same words in "Human Rights and Capabilities," 157.

53. Nussbaum, *Women and Human Development*, 5; cf. 51, 116.

54. Ibid., 104.

55. Nussbaum, “Capabilities as Fundamental Entitlements,” 42.

56. Ibid.

57. See Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Washington, D.C.: Carnegie Endowment for International Peace, 1999); *Critical Mission: Essays on Democracy Promotion* (Washington, D.C.: Carnegie Endowment for International Peace, 2004).

58. Nussbaum, “Human Capabilities, Female Human Beings,” 94.

59. Nussbaum, *Women and Human Development*, 77.

60. Ibid.

61. Nussbaum, *Women and Human Development*, 202. Two pages later Nussbaum says: “I remain agnostic about the proper role of legislature and the judiciary in this evolution [of boundary-fixing between these two branches]; the resolution of such institutional questions depends on contextual features about the nature of democratic traditions in each country” (Ibid., 204). Notice that the work to be done here seems to be done by (legal?) interpreters of a nation’s constitution and “democratic traditions” and not by public deliberation.

62. Ibid., 95.

63. Ibid.

64. Sen, I argued in chapter 5 and will reiterate in chapter 10, would describe these choices as ones between agency freedom, on the one hand, and well-being capabilities or functionings, on the other.

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65. Cass R. Sunstein, *Designing Democracy: What Constitutions Do* (Oxford: Oxford University Press, 2001), 10.
66. Stephen Breyer, *Active Liberty: Interpreting our Democratic Constitution* (New York: Knopf, 2005), 3.
67. *Ibid.*, 134.
68. *Ibid.*, 6. See also E. J. Dionne, "Talking Sense on Court Choice," *Washington Post*, November 23, 2004, A 29.
69. Jeremy Waldron, "A Right-Based Critique of Constitutional Rights," *Oxford Journal of Legal Studies*, 13, 1 (1993), 19. See also, Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999), Part III.
70. Sen, "Human Rights and Capabilities," 156.
71. No entry for "democracy" exists in the subject index of either *Women and Human Development* or *Sex and Social Justice*, but Nussbaum entitles one section in the former "Justification and Implementation: Democratic Politics" (101---105).
72. In *Women and Human Development*, Nussbaum worries that without constitutional guarantees a majoritarian democracy may harm the capabilities and opportunities that future generations would have either to enjoy nature or nonhuman species (94) or to choose their own religion or speech (160). In a recent article, however, Nussbaum departs from democratic minimalism and appreciates that "a good democracy" fosters "responsiveness and interactivity" among citizens who think critically, deliberate together, and imaginatively consider alternative social possibilities. See "Education and

Democratic Citizenship: Capabilities and Quality Education,” *Journal of Human Development: Alternative Economics in Action*, 7, 3 (2006): 391.

73. Ibid., 81.

74. See Nussbaum, “Aristotelian Social Democracy,” 212. See David A. Crocker, “Functioning and Capability, Part 2,” 178---80.

75. For a compelling argument that Nussbaum fails to justify her exclusive trichotomy of either “no trade-offs” or “change the world” or “accept tragedy,” see Wasserman, “Disability, Capability, and Thresholds for Distributive Justice,” 228---32.

76. William A. Galston, *Liberal Pluralism: Implications of Value Pluralism for Political Theory and Practice* (Cambridge: Cambridge University Press, 2002), 34.

77. Nussbaum, “Human Capabilities, Female Human Beings,” 94.

78. Nussbaum, “Capabilities and Human Rights,” 134.

79. Nussbaum, “Capabilities and Human Rights,” 135 (footnote omitted citing Sen, “Freedom and Needs,” 38.

80. Nussbaum, *Woman and Human Development*, 80.

81. Sen, *Development as Freedom*, 30.

82. Ibid., 31.

83. Ibid., 18. Happily, Nussbaum is beginning to reach for a more balanced view on the relation between individual critical thinking and social deliberation when in a 2006 article she applauds Socrates’s mission of promoting “the examined life”: “But he [Socrates] defended his activity on the grounds that democracy needs citizens who can think for themselves rather than simply deferring to authority, who can reason together

about their choices rather than just trading claims and counter-claims” (“Education and Democratic Citizenship,” 388).

84. Sen, *New Republic*, 10, 17 (1994): 38.

85. Sen, *Development as Freedom*, 148.

86. Jean Drèze and Amartya Sen, *India: Development and Participation*, 2nd Ed. (Oxford: Oxford University Press, 2002).

87. *Ibid.*, 347.

88. *Ibid.*

89. Sen, *Democracy as Freedom*, 154---55.

90. Drèze and Sen, *India*, 347---79.

91. *Ibid.*, 351.

92. *Ibid.*, 25.