

SHOULD THE CAPABILITY APPROACH BE PATERNALISTIC?¹
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Is the capability approach paternalistic? Should it be? The former question has attracted much attention, but the latter may be more apt. Capability theorists measure how well individual lives are going, and how just societies are, in terms of people's access to valuable abilities to be and do. Nearly all capability theorists claim that public policy should, in some cases, encourage people to value or exercise valuable functionings they do not already exercise or value. Whether and how paternalistic the capability approach is depends on how often such policies are called for and whether they are justified as being in the interests of their targets.

.Since the capability approach (hereafter CA) is still under construction, determining the extent of its paternalism is not a unidirectional exercise in which we discover the implications of an existing theory. The CA is a practical approach to measuring well-being motivated by certain normative commitments about freedom and functioning. Since the CA aims to justify access to worthwhile functionings in a way consistent with respect for freedom, the political philosophy behind it need not be worked out independently of paternalism concerns. The paternalism implications of a given view about freedom, well-being, or the principles of justice can count as a strike for or against incorporating that view into the CA.

What will determine how paternalistic the CA is is largely how it explains why and when people deserve freedom to not to engage in valuable functionings.. In

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what follows, I lay out four potential views about the value of freedom to engage in disvalued functionings and discuss how consistent each is with two normative commitments that motivate the CA: commitments to treating human beings as agents and nonideal theoretical commitments to opposing oppression and deprivation. Though I do not take a particular view of why capability theorists should value freedom to engage in disvalued functionings, I suggest that capability theorists can value this freedom without taking opportunities not to function well to be first-order constituents of well-being. I call the freedom in question “content-neutral freedom,” because the CA readily grants noninterference to those who want to exercise valuable functionings; we want to know what the CA has to say about whether, when, and why those who reject valuable functionings deserve noninterference.² Along the way, I uncover a tension between thoroughgoing opposition to one form of paternalism (cost-soft paternalism) and the concerns about agency and nonideal theory motivating the CA.

What is the Capability Approach?

The CA, developed by Martha Nussbaum and Amartya Sen, is a framework for assessing individual well-being and evaluating social arrangements. It is primarily a view about the currency, or metric, to be used in such evaluations. The preferred metric for understanding how well human lives are going is valuable abilities to be and do, rather than, for example, subjective well-being or income. Imagine a scenario where two people, Amina and Saba, are equally happy and

² See Carter for a discussion of how most capability theorist notions of freedom are content-dependent.

possess equal finances. A road leads from the village Amina lives in to the school, but Saba lives in an isolated area with no access to education. Unsophisticated versions of subjective welfarism or resourcism say both are doing equally well, and perhaps that no injustice has been done to them. In contrast, the CA says (assuming education and mobility are abilities worthy of social promotion) that Saba is deprived. The CA also differs a “functioning” approach, though there is some controversy about how robust the difference is (see Arneson 2000, Claassen 2014),. Functionings approaches state that what matters is beings and doings, whether people actually engage in valuable functionings, rather than whether they *could*. On a functioning approach, Amina is deprived if she does not go to school, despite possessing the opportunity to go.

The CA is not a theory of distributive justice that gives rules about how capabilities should be distributed or institutions should be structured. Nussbaum’s (2001) variant of the CA incorporates a sufficientarian distributive principle. She argues that societies do not meet minimal criteria for justice if they do not enable a threshold level of certain capabilities to their members but is open to additional distributive principles.. Sen distances his variant of the CA from distributive justice altogether, seeing focus on ideal distributive principles as a pragmatic impediment (Sen 2009).

Though the CA is not a theory of distributive justice, it assumes certain normative commitments, loosely describable as liberal. Nussbaum and Sen are take protecting and enabling the exercise of freedom to be of very high political priority. Both refuse to specify the capabilities in a way that tolerates only a narrow range of

individual conceptions of the good life. Capabilities matter, for Nussbaum and Sen, partly because they help individuals live in ways they first-personally deem valuable. Both also argue that promoting capabilities rather than functionings is a way of respecting individual freedom.

Still, there is no consensus about how to articulate the foundational conceptual links between capabilities and liberalism. Sen usually speaks of the capabilities as (exhaustively) constitutive of freedom (Sen 1999, Sen 2009), where Nussbaum describes them as supports for it (Nussbaum 1999). We might say that, in addition to endorsing a certain metric of justice, capabilityarians hold that people who have opportunities to exercise valuable functionings, and to deliberate about whether and how to do so, are *ceteris paribus*, more free than those who do not. I discuss the specific capabilityarian articulation of these points in terms of agency in the next section. An important undertheorized question concerns whether the CA should be inserted into an existing liberal political theory (in the place, for example, the primary goods occupy in Rawls' theory) or become a normative political theory of its own. On the former response, freedom constrains how the capabilities should be pursued and can be worth protecting even if it makes individual lives go worse; on the latter, freedom just is the possession of options to be and do that contribute to individual lives going well.

Capabilityarians do not agree about which capabilities are valuable, and, though Nussbaum proposes a universal list, Sen allows only context-specific lists (Robeyns 2003, Sen 2004, see Claassen 2011) Nussbaum and Sen agree that participatory and democratic methods should play a role in determining which

capabilities ought to be pursued and how. The list disagreement should not be confused with a lack of logical commitment to the view that some capabilities are more valuable than others, since assessing any state of affairs in capability terms requires selecting some valuable capabilities.³ To say that the society that eliminates malaria is better arranged than the one that makes malaria easily contractable requires taking a stance about value. Both Nussbaum and Sen extensively discuss abilities to be healthy, to move from place to place, to influence one's political community as an equal, and to exercise practical reason as examples of valuable capabilities. Nussbaum and Sen also both defend the approach on the grounds that social institutions should support more than negative freedom, because, as Nussbaum puts it, "choice is not pure spontaneity" (see also Anderson 1999, Nussbaum 1999, 45). Genuine choice requires having acceptable options, not merely not being interfered with. This suggests that the CA places a special value on functionings that are intuitively constitutive of basic well-being, rather than those constitutive of excellence..

Nonideal and Agency Motivations for the Capability Approach

The extent of paternalism capabilities can accept depends partly on why they have adopted the CA to begin with. The CA emerged in the 1980s and 1990s as an alternative to three other approaches to measuring well-being: the international development measure GDP, hedonist or desire satisfactionist utilitarianism, and

³ See Khader and Kosko (forthcoming) on the implicit perfectionist commitments of Sen's view.

the Rawlsian notion of primary goods. Two cross-cutting concerns, agency concerns and nonideal theoretical concerns, motivated criticism of these views.

Capability theorists, especially Sen, allege that other metrics of well-being treat people as moral patients, or containers for happiness and functioning, rather than active participants in evaluating and changing their own lives. Utilitarian approaches treat people as vehicles for the satisfaction of their own desires (Sen 1973, Sen 1977, Sen 1999), and approaches that focus on commodities risk assuming the commodities are intrinsically valuable. Though Nussbaum does not make these particular arguments, she treats living in ways one chooses and evaluates positively, rather than one in which one engages grudgingly or unthinkingly in valuable activities, as necessary for a life that goes well (Nussbaum 2001). For both, an acceptable theory of well-being will highly value people's abilities to set, revise, and achieve ends. Within this emphasis on agency, we can identify four distinct points.

First, the power to set and revise ends possesses intrinsic value. Second, respecting persons requires accepting that people may have ends besides their own welfare, especially self-sacrificing and tuistic ends. To treat only welfare-enhancing as important is to fail to appreciate the importance of first-personal evaluation in human life (Sen 1973, Sen 1982, Sen 1999, see also Cudd 2014). Third, people should not be treated as incapable of revising their ends and perspectives. This, too, would risk treating people as passive bearers of goals (Sen 1999, Sen 2002, Sen 2009, 87-124). Fourth, agency is instrumentally valuable for securing valuable capabilities besides agency. For example, people who can influence their political

environments are more likely to possess stable access to food, safety, etc. (Sen 1999). Much of Sen's critique of GDP as a development indicator consists of empirical demonstrations that approaches to poverty alleviation that undermine individual decision making power and devalue democratic processes, are likely to fail. Undergirding all four of these views is also the notion that the ability to set and revise ends can be practiced and strengthened through collective deliberative processes. Individual agency can be enhanced through interpersonal practices of value-clarification. The CA incorporates these commitments by a) treating abilities to be and do rather than actualized functionings as the currency of justice and b) envisioning a significant role for deliberative practices in securing the capabilities.

A second set of motivations behind the CA can be understood as nonideal theoretical. Nonideal theories, in my usage, focus on rectifying existing injustice rather than offering a picture of justice (see Mills 2005). Inadequacies in real-world poverty indicators motivated the CA initially. According to Sen, agnosticism about ideal justice is an advantage of the CA (Sen 2009), Nussbaum defends her argument for securing basic capabilities for all on grounds that it is a feasible proposal for ending severe deprivation in our historical moment. Though it is possible to imagine a capabilityarian ideal theory, most of its advantages over resourcist views (views that assess well-being in terms of access to goods) lie in its usefulness under nonideal conditions.

Two of the most common arguments for the CA, the argument from adaptive preferences and the argument from differential conversion factors, gain much of their appeal from concern with real-world oppression and deprivation . The latter

argument states that individuals convert goods into functionings at different rates, so equality of resources can result in unequal amounts of functioning. Differential conversion rates are supposed to motivate a worry that equality of resources is not the kind of equality we care about. Similarly, the argument from adaptive preferences states that the CA is capable of identifying a moral problem utilitarianism cannot: the fact that people diminish their desires in response to oppression and deprivation. Capability theorists say that justice should care about well-being such people have lost, even if they themselves do not.⁴ For example, Sen argues that a very poor person may make herself happy by contenting herself with “small mercies”; capability theorists will say she is deprived if she lacks key capabilities, even if she feels happy and does not desire more than she has.

But why see responding to adaptive preferences and differential conversion factors as a good thing? One answer is that responding to oppression and deprivation is morally urgent. The argument from differential conversion factors is particularly persuasive if we worry that seemingly egalitarian resource distribution will perpetuate existing deprivation and inequality. The most popular example of differential conversion factors states that giving the same transportation budget to a person in a wheelchair and an ambulant person will result in different levels of mobility. The built environment prefers the latter, but equal resource distribution will not reveal the injustice done to the former. The conversion factor argument is sometimes discussed as concerning human diversity rather than oppression, but a

⁴ Khader (2011a and 2013) and Begon (2014) offer paths to claiming adaptive preferences are unreliable that do not involve understanding people with APs to be rationality deficient.

capability focus is especially likely to reveal ways existing background institutions are designed to make it easier for some members of society to meet their needs than others. The pull of the conversion factor argument on those who are not particularly concerned with oppression and deprivation is much weaker; it is merely a concern about making sure that differences caused by nature and luck are attended to, one that might be attended to relatively well by resourcism.⁵

We can make a similar case about the argument from adaptive preferences, and making it can help us reveal some particular features of capability theorists' notion of agency. Getting the "wrong" answer about the well-being of people who adjust their desires to bad conditions is not likely to count as a significant strike against an ideal theory, because many of the conditions that cause adaptive preferences will not exist in the world it imagines.⁶ Adaptive preferences are especially a problem for assessing well-being in a world where oppression and deprivation exist. The tendency to see adaptive preference as a political problem, rather than to see the political prescription to respond to them as condescending and autonomy-denying, is likely to track a refusal to think of respecting existing beliefs and desires as the best way to respect agency. If one thinks that desires are not static or that people's existing desires and behaviors do not transparently reflect what they care about or could come to care about, one may wish to divide respecting agency from respecting existing desires. This idea about agency

⁵ Rawls postpones concerns about differential conversion rates to the legislative and judicial stages rather than leaving them out altogether.

⁶ The capability literature does not focus on Elsterian adaptive preferences, wherein people unconsciously downgrade options that have ceased to be available (Nussbaum 2001, Khader 2011).

dovetails with the third agency motivation I described above; the idea that respecting people's existing desires may continue oppression and deprivation (and this is a bad thing) can be consistent with respect for agency, as long as respecting people as agents is distinguished from respecting people's existing desires.⁷ This notion that adaptive preferences interfere with the type of agency that capability theorists seek to protect can be understood as undergirded by a refusal to idealize human agents. According to Mills, nonideal theorists refuse to imagine away limitations on the capacities of actual human beings caused by oppression and deprivation (2005).

Absent concern about oppression and deprivation, the case for simply revising other metrics of justice rather than adopting the CA is much stronger. For example, one might simply say that it is important to give extra resources, on a case-by-case basis, to people with unfavorable conversion rates. Thomas Pogge (2010) argues that this approach is preferable to the CA because it sidesteps the (in Pogge's view objectionable) claim that people who need more resources to achieve functionings are doing less well than others. Without a background context of oppression and socially caused deprivation that allows such judgments to concern

⁷ Views that emphasize people's right to live in ways they deem valuable, including liberal ones, utilitarian ones, and the capability approach face challenges about how to handle adaptation cases of various kinds. Focusing on what people might want under idealized conditions, as some utilitarians and liberals do, or giving weight to what people *should* or could come to want, as perfectionists do, all threaten to disrespect persons by suggesting that their existing values and reasoning processes are defective. A challenge for views that want to respect autonomy or agency while questioning existing existing desires and values is to offer some reason to weight ideal or later desires and values over existing ones. Nussbaum discusses these challenges and the theories subject to them at length (see 2011, 111-161) and Sen offers one response at (2009, 274-276).

social institutions rather than individual deficits in native endowments, Pogge's disrespect concern is more persuasive. Reasons to prefer the CA over utilitarianism also diminish absent nonideal concerns. Under ideal conditions, individuals who happen to have values and desires that do not promote their well-being may appear as reasonable variations in conceptions of the good rather than potentially harmful adaptive preferences.

Perfectionism and Paternalism

To know what it would mean for the CA to be paternalistic, we need to distinguish perfectionism from paternalism. Perfectionism concerns the endorsement of a conception of the good life; paternalism concerns the *means* public institutions use to promote what is taken to be in people's interests. Though perfectionists often specify that the good is the development of human nature or that societies should maximize excellence, the CA need not be perfectionist in these senses. Though they disagree about which capabilities are valuable, capability theorists cannot avoid the perfectionist view that some functionings are objectively good. Nor can they be neutral among views about what contributes to human well-being (see Deneulin 2002, Khader 2011, Claassen 2014, Khader and Kosko forthcoming).⁸

To know whether one individual is doing better than another, or to know whether society is doing as well as it could, capability theorists need to pick some set of functionings and see whether opportunities to engage in them are available.

⁸ It is worth noting that the claim that different lists will be useful in different contexts, as Sen does, does not eliminate the problem of having to prefer some functionings over others.

It may seem that promoting capabilities rather than functionings eliminates the possibility of perfectionism. Yet consider the capability of bodily health. Note that even this framing is not evaluatively neutral; “health” designates a desirable functioning and social institutions that promote the associated capability will make health readily available, rather than assure that all bodily states (healthy and unhealthy) are equally available. Public neutrality about many capabilities may also be practically impossible. The capability of health requires access to medical care, nutrition, support networks, knowledge about how to care for oneself and others, etc. Making it harder to live unhealthily may just be an opportunity cost of making the health capability widely available. Conceiving health as a capability does advise against forcing people to eat well or accept particular medical procedures. But it is one thing to permit opting out of a valuable functioning and another never to value any functionings over others.

Non-neutrality about what makes a life go well may seem at odds with the (not only) liberal value of living according to one’s own lights. Yet protecting a multiplicity of ways of life may be consistent with selecting and formulating capabilities such that they can be justified and enacted in a variety of ways. Nussbaum adopts this strategy, arguing capabilities should be multiply realizable and justifiable (Nussbaum 2001, 75-77). She also limits perfectionism by arguing that the CA need only promote capabilities up to a threshold level,⁹ such that the

⁹ Nussbaum also attempts to limit perfectionism in more recent work by arguing that the capabilities are the potential topic of a political overlapping consensus (2001, 2011). This move successfully limits the reliance of capability theory on a comprehensive view of well-being, it does not do away with the need for claims

need for a stance about the relative value of getting vaccines or not getting vaccines does not require one about relative value of being a dancer or a mechanic. `

A society can be perfectionist without being paternalist (see Raz 1988, Khader 2011, Claassen 2014). Paternalism involves individuals' freedom being abridged for their own sakes, and consists in the choice of certain *means* to effect valued outcomes,--rather than the mere valuing of those outcomes. To answer the question of what level of paternalism capability theorists should accept, we need a definition of paternalism. Let us say that paternalism occurs just in case a person experiences a nonvoluntary reduction in liberty in order to promote her interests.¹⁰ Since some definitions of liberty eliminate the possibility of paternalism altogether by suggesting that a person cannot *really* will against their own good, let us also stipulate that a person can, in principle, will things that are in their interests and things that do not. Additionally, rather than drawing a hard line between what reduces liberty and what does not, we can understand the level of paternalism of a given policy as increasing as costs attached to an agent's desired course of action increase.

This definition counts noncoercive acts as paternalistic. This means that capability theorists' common reply to paternalism allegations—that, by focusing on capabilities, they avoid *forcing* people to function—responds only to a narrow range

about the value of certain functionings over others. To put the point differently, she shows that the capabilities need not be supported by a perfectionist (in the sense of complete and specific) doctrine but does not show that the capability approach does not require perfectionist (in the sense of concerning the good) claims at all.

¹⁰ This definition of paternalism places paternalism to cultures outside the scope of analysis. For a discussion of concerns about paternalism to cultures see Gutwald (2011).

of paternalism concerns. Incentives, taxes, fines and social sanctions can all constitute paternalistic interference in the lives of those who do not already want to engage in valued functionings (see Deneulin 2002). For example, guaranteeing the capability of health may involve fining people who do not secure health insurance, taxing unhealthy products, making such products more difficult to access in the physical design of stores, or providing financial incentives for receiving certain treatments. Though none of these confronts the agent who does not desire health with imprisonment or the threat of physical force, and none (provided the agent is not financially desperate) makes it impossible to live an unhealthy life, each decreases the freedom of agents who wish to live unhealthily. A smoker's freedom to smoke—and to use their money in other ways-- is lessened by taxes on cigarettes, even if it is not totally vitiated. Using this scalar understanding, we can understand paternalism as hard to the extent that it imposes high costs on behavior inconsistent with well-being and soft to the extent that it imposes low costs. Cass Sunstein understands paternalism on this type of continuum (Sunstein 2014). Sunstein's way of drawing the distinction between hard and soft paternalism does not map onto the traditional distinction. Soft paternalism is usually understood to consist only in acts that check for the voluntariness of actions or interfere with nonvoluntary conduct. In contrast, the cost-soft understanding counts low-cost interventions that aim at changing people's behavior and desires as soft.

The Capability Approach and Content-Neutral Freedom

Concerns about the effectiveness and means of paternalistic intervention are not the only limitations on paternalism available to capability theorists. They may

view freedoms not to engage in valuable functionings as worth protecting for independent moral reasons. Let us call the opportunity to have one's choices about one's own life be decisive regardless of whether they are choices to function well "content-neutral freedom." For capability theorists, difficulty respecting content-neutral freedom arises primarily in cases where an agent wants not to engage in a valuable functioning, or to engage in a disvalued functioning. This is because agents who want to engage in valuable functionings will not find themselves interfered with in a capability society. Content-neutral freedom is also nonidentical with autonomy understood as the ability to exercise the capacity for choice in one's life (see Raz 1988). An individual who lacks opportunities to engage in disvalued functionings may retain opportunities to make decisions just by being able to choose how to combine and enact valued functionings.

Capability theorists want to assign some value to content-neutral freedom; it is difficult to make sense of the focus on capability over functioning without it. Yet in order for this focus to be nonarbitrary, and in order to have a principled way of understanding when focus on functioning is appropriate, we need an understanding of *why* people deserve to not to face high costs for not engaging in valuable functionings. An important question here concerns whether opportunities not to engage in valuable functionings are first-order constituents of well-being-- that is, about whether an individual life can be said to go worse without a given opportunity to engage in a disvalued functioning.

Before discussing four views capability theorists can take to valuing content-neutral freedom, we should put aside some common strategies that promise to

eradicate paternalism from the CA almost entirely. According to one, functionings gain their value from being chosen. However, this is an unsatisfactory explanation of the value of content-neutral freedom for three reasons. First, only a small subset of valued functionings, such as sexuality, must be unforced to be valuable. The value lost by force may also sometimes be outweighed by the value of the functioning itself (see Arneson 2000); being incentivized to eat right may be worse than eating healthy food completely freely, but the presence of strong incentives to eat healthily do not vitiate the value of health. If only some functionings lose their value when engaged in absent opportunities to reject them, and if the value lost may be outweighed by the value of functioning, then, without some other reason for valuing content-neutral freedom, the CA will, in many cases, endorse paternalistic freedom reduction to promote functioning,

A second strategy for avoiding paternalism is simply to claim that the only valuable functionings are ones an agent herself values. This strategy is often appealed to by capability theorists, facilitated by Sen's description of capabilities as freedoms, and definition of freedom as the pursuit of what one values. But, because of the need to identify objectively valuable capabilities I described in the perfectionism section, policy aligned with this strategy would be more likely to be resourcist, or even utilitarian, than capabilityarian. Additionally, Sen's more common locution is that capabilities are what people value and "have *reason* to value." It seems impossible for this locution to avoid reintroducing the idea that some functionings are valuable irrespective of whether people actually value them (Khader and Kosko forthcoming)

Capability as Such

There are four more promising routes to assigning value to content-neutral freedom. I will discuss the scope of permissible paternalism each generates, as well as the extent to which each view responds to the agency-respecting and nonideal theoretical motivations of the CA. One, valuing “capability as such,” is developed, though not endorsed, by Ian Carter in imagining an anti-paternalist CA. On the capability as such view, the currency of justice is all abilities to be and do, rather than a putatively objectively valuable subset. Carter also stipulates that the view includes a sort of pluralism-maximizing principle stating that as many functionings as as possible should be available (Carter 2014, 99). The view removes promoting individual well-being from the menu of legitimate state motives, and thus eliminates paternalism by eliminating much of the paternalist motive. If the defender of capability as such draws on autonomy as justification of maximizing available capabilities, paternalism to protect people’s psychological capacities for choice may sometimes be called for.

The capability as such view precludes much paternalism but may justify heavy restrictions on individual freedom for non-paternalist reasons. The most practical way to ensure that a wide variety of ends are available may be to promote certain “all-purpose functionings”—like nutrition, education, and relationship.¹¹ Additionally, if people’s desires happened to converge, the capability as such view would seem to support reducing people’s freedom to reduce clustering and maximize pluralism. The extent of agency protected by the capability as such view

¹¹ The notion of all-purpose means draws from Rawls’ notion of primary goods.

thus depends largely on empirical factors. It is also unclear that the standards for interpersonal comparison offered by the capability as such view will track intuitions about what counts as deprivation, since only the quantity of capabilities matters, irrespective of whether these are capabilities to be nourished, go hungry, or paint masterpieces.. The capability as such view may be a CA only in name, given that it is not particularly responsive to the nonideal and agency concerns of the CA—and given that it does not offer an intuitively plausible evaluative space for interpersonal comparisons.

Opportunities to Engage in Disvalued Functionings as Components of Well-Being

A second way of theorizing the value of content-neutral freedom understands opportunities to engage in disvalued functionings to directly contribute to a life that goes well. This view should be distinguished from the view that disvalued functionings, such as malnutrition or illiteracy, themselves contribute to well-being. A view that disvalued functionings were intrinsically valuable would both be highly counter-intuitive and, if the disvalued functionings were as well-being-enhancing as their opposites, divest prescriptive power from the CA. Rather, this second view states that, *ceteris paribus*, a person who has access to a given functioning and the ability not to engage in it has a better life than a person who has only the former.

The extent of paternalism permitted by this view varies from functioning to functioning. It is plausible that the ability not to vote combined with the ability to vote enhances a person's life more than compulsory voting. It is less plausible that that a person who has the opportunity be sick or healthy is better off than a person

who lacks the opportunity for illness. We may need a relatively comprehensive view that ranks various capabilities, choice not to engage in them, and their contributions to a life that goes well to know for sure, but intuition suggests that the view is implausible about basic functionings. The view that opportunities to engage in individual disvalued functionings help a life go better will likely recommend strong paternalism about basic functionings.

The view also seems inconsistent with the subset of agency concerns that have to do with allowing people to care about ends besides their own well-being—though it may be objected that people cannot care about anything at all without basic functionings. On the other hand, basic functioning paternalism may be consistent with some nonideal concerns. Nonengagement in basic functionings is especially likely to be a result of socially caused deprivation. Nussbaum argues for a presumption against the notion that people’s nonengagement in functionings like nutrition and sanitation is usually voluntary (Nussbaum 2001-44, 92-94), and I argue elsewhere that, even if nonengagement is voluntary, this is not a reason to assume that people’s rejection of such functionings is durable in the face of information and good options (Khader 2011). A nonideal view of agency suggests that imposing some costs on nonengagement in basic functionings may even benefit agents by encouraging value reflection.

Content-Neutral Freedom as Condition of an Autonomous Life

The third and fourth ways of valuing content-neutral freedom in a capability theory do not take individual opportunities to engage in disvalued functionings to directly contribute to a life that goes well. Instead, content-neutral freedom is

generally worth protecting because of the *enabling* role it plays in the existence of other goods, goods that are either constitutive of, or background conditions for, well-being. To motivate these other views, without yet describing either, we can think of cases where reducing an individual's content-neutral freedom to promote functioning seems objectionable. Consider a person who lacks the freedom to starve. The idea immediately conjures intuitively noxious images of a person being forced to eat.

There are ways to hold onto the intuitive noxiousness without claiming there is value in the opportunity not to starve. For example, we might say that individuals deserve the prerogative not to eat, because individuals deserve to be able to live lives that are bad for them. This idea, unlike the view that opportunities not to engage in valuable functionings add to well-being, allows that a person's life is not directly improved by having the opportunity to starve. Lest the idea that opportunities to starve are not important for well-being seem paradoxical or condescending, we can remember that many valuable life-plans do not manifest well-being, even by their own authors' lights. Self-sacrifice (such as fasting) would not be self-sacrifice if it did not involve giving up something self-beneficial. We may want to design social institutions in a way that allows the choice of morally valuable ends that are not well-being enhancing. Another path is to see the intuition that forced eating is noxious as triggered by something other than the intrinsic benefits to the agent of the opportunity foregone. So, for instance, the idea of force-feeding might conjure the image of a political prisoner, and protecting the opportunity to starve might be a way of protecting people from this type of control. Rather than

saying that opportunities not to function well directly add to individuals' well-being, capability theorists might see content-neutral freedom as helpful in protecting against certain common threats to well-being.

My point so far is only to suggest that there are ways to think people deserve content-neutral freedom, and to value it alongside valuable functionings, without claiming that opportunities to engage in disvalued functionings themselves contribute to lives going well. Now that we have seen this, I describe a third view about the value of content-neutral freedom. According to it, freedoms not to engage in valued functionings are means to achieving autonomy as non-alienation. Serena Olsaretti, who defends such a view (2005), argues that endorsement is a necessary but insufficient condition of a life that goes well. Rather than claiming that any particular opportunity to engage in a disvalued functioning contributes to well-being, Olsaretti claims that feelings of nonalienation improve lives that already exercise valuable functionings. Olsaretti sees certain functionings as necessary constituents of well-being, and an agent's endorsement of a life that exhibits such functionings as adding more well-being still. Endorsement, for Olsaretti, is an attitude toward one's life in general rather than specific functionings (this differentiates Olsaretti's view from the athletic, choice-focused view G.A. Cohen attributes to capability theorists)¹², and freedoms not to function well are valuable only insofar as they contribute to the good of endorsement. If people experience

¹² See Cohen 1996 for an argument that the capability approach assumes an athletic picture of human life in which all functionings must be actively chosen.

themselves as routinely prevented from doing what they want to do, Olsaretti claims, they will lose their sense that they are the authors of their own lives.

This non-alienation view takes content-neutral freedom to be valuable as a means to endorsement, and so the extent of paternalism it permits will depend heavily on situation-specific empirical facts. Persistent cost-hard paternalism across a variety of domains of life seems likely to have cumulative, endorsement-undermining effects, especially since people chafe most strongly at policies that are costly to them. On the other hand, domain-specific hard paternalism is likely to be permissible in some cases, especially when there is reason to expect that individuals will come to endorse its effects (and its means) later. Cost-soft paternalism seems especially permissible on the non-alienation view., since agents' feelings of violation are both likely to track costs and constitute costs themselves., and the autonomy view locates the wrongness of paternalism in its evocation of subjective feelings of being infringed upon.,

The autonomy view leaves much latitude for paternalism of both kinds concerning basic functionings—especially if it exists alongside latitude to opt out of less basic ones. Since endorsement only adds value to a life that includes valuable functionings, it is difficult to make the case that protecting opportunities to opt out of basic functionings, like health, is more important than promoting the functionings themselves (Olsaretti 2005, 105). Additionally, subjective endorsement is unlikely to arise in people who lack basic functionings, both because ill-health, malnutrition, etc. are likely to produce life dissatisfaction and because the psychological capacities

and states that enable endorsement require some actual functioning (Olsaretti 2005, 96-97).

The nonalienation view seems highly consistent with the capabilityarian emphasis on respecting and promoting agency. However, discouraging paternalism people will notice and chafe at is potentially at odds with attending to the concerns about responding to oppression and deprivation I mentioned earlier.. Because of adaptive preferences, ideology, and other status quo biases it may seem that those most likely to bristle at paternalism are those who are likely to benefit. A woman in a patriarchal society who believes she deserves less than men, for example, may feel arrogated by attempts to provide her equal functioning. Having the acceptability of paternalism track people's subjective feelings also seems to give weight to opposition to paternalism people happen to initially feel very strongly, and this may be a morally arbitrary reason.

However, the non-alienation view itself suggests an answer to these worries: when a functioning is morally urgent, the means of paternalism should be tailored so as not to encourage alienation. The view may thus attempt to reconcile nonideal theoretical and agentic concerns by recommending increases in people's engagement in valued functionings by means that will enable *them* to come to value those functionings. The pull here is toward agency-engaging cost-soft paternalism. The nonalienation view may also discourage paternalism in cases of voluntary self-sacrifice. The perception of social institutions as overreaching is likely to increase if valuable self-sacrifice is not permitted, and this is a threat to everyone's endorsement. Additionally, strong feelings of nonendorsement can count as reasons

not to subject self-sacrificing people to paternalism—at least in cases where they do not sacrifice basic functionings.

Content-Neutral Freedom as Institutionally Valuable

A fourth view takes content-neutral freedom to be important for just institutions. Though promoting well-being is a goal of just institutions, not all values they promote must themselves be constituents of well-being. Justice involves coordination and social institutions are patterns of relationship. There are therefore reasons to value opportunities that make the right types of institutions possible, irrespective of whether any individual life goes better with or without them. Such opportunities may even count as intrinsically valuable, despite contributing only instrumentally to a life that goes well.. Opportunities to form the right types of relationships can be understood to be worth protecting because they express intrinsic values relevant to institutions or because they provide individuals with intrinsically valuable forms of standing—without being constitutive of individual well-being, and without contributing to individual well-being in every case. If content-neutral freedom protects the right types of social relationships, and these relationships have intrinsic value for political standing but instrumental value for well-being, capability theorists may endorse the institutional view for one or both of two reasons: because the capabilities constitutive of well-being are threatened by lacks of content-neutral freedom in a wide enough range of cases to justify a general stance protecting it, or because of independent commitments to some egalitarian theory of justice.

The view of content-neutral freedom as institutionally valuable holds that noninterference in self-regarding engagement in disvalued functionings is crucial for a society that rejects unjust patterns of relationship. Philip Pettit defends a focus on capability rather than functioning on the grounds that it protects individuals from domination (2001). According to him, real-world cases where all but valued functionings are removed from an individual's option set are inevitably ones where some power could turn against her at will. Being required to engage in valued functionings also means being vulnerable to being forced *not* to function well. Sen himself makes different but compatible institutional arguments. He argues that freedom *from* governments is required to sustain background contexts in which valued capabilities are available. According to Sen, poverty alleviation practices without (moderated) markets and democracy are likely to be ineffective because resources and political processes can be hijacked by elites. As Sen argues in his empirical work, famines only occur in non-democratic countries, because democracy ensures the sensitization of elites to the concerns of nonelites (Sen 1999). It is not clear, however, whether the freedoms he has in mind—freedoms of association, speech, press, etc. qualify as content-neutral freedoms. Surely, these freedoms need to be expressible in content-neutral ways to exercise their protective function. Freedom of speech cannot protect against tyranny if it is protected content-dependently.

However, and raising this concern illuminates the scope of paternalism recommended by the institutional view, nondomination concerns may encourage paternalism relative to functionings that protect against domination and

oppression. Some are necessary for democratic participation (see Anderson 1999), but given that domination can occur interpersonally, paternalism toward other functionings may be warranted. For instance, if income-generating activities can protect women from domestic abuse, domination worries may recommend promoting them paternalistically.

The institutional view responds to agency concerns about treating people as means to their own well-being by preserving individual prerogatives to pursue non-well-being oriented ends. Since the aim of the institutional view is to combat domination, it foregrounds the nonideal theoretical goal of ending oppression. Further, to the extent domination is a force that keeps people's worldviews partial and underdeveloped, as Sen clearly believes it is, (see 2009, 157-164, 242), the paternalistic interventions the institutional view recommends will recognize that unjust conditions pose limitations on human agency.

Conclusion

I have described four views about the value of content-neutral freedom capability theorists can adopt, the range of paternalistic intervention each justifies, and the extent to which each is compatible with concerns motivating the CA. Though I have taken no stance about which view capability theorists should adopt, and the last three views may be combined, my analysis here permits three observations about attempts to limit capability paternalism.

First, capability theorists who wish to limit paternalistic intervention aimed at promoting basic functionings will probably need to theorize beyond a list of first-order constituents of well-being. Making judgments about when to engage in

paternalism on a theory that treats opportunities not to engage in valuable functionings as themselves valuable may require a comprehensive view of well-being in which weights are assigned to various valued and disvalued functionings.. Such weightings are difficult, and potentially politically objectionable, to develop. Weightings would likely that the well-being added by being paternalized into exercising a functioning will outweigh the well-being added by the opportunity to engage in its disvalued opposite. Knowing why people should be able to pursue ends besides well-being also requires more than a list of first-order constituents of well-being.. It may be necessary, in explaining why capability theorists should value content-neutral freedom, to refer as Olsaretti does, to value attitudes about one's life as a whole or to concerns about just institutional design.

Still, and second, limiting paternalism in the CA does not require generalized opposition to public intervention, or the view that functionings are worthless unless they are freely chosen. Concerns about oppression and domination, and concerns about the role of non-alienation push against the presumption that paternalistic action is generally a bad thing. Instead, these nonideal concerns suggest reasons to choose the means of paternalism carefully. Forms of paternalism that threaten alienation do so precisely by imposing costs agents see as unacceptable..Forms that threaten domination do so relying on means that are insensitive to the paternalized agent's wishes.

The fact that opposition to interference as such need not ground limitations on paternalism is good news for capability theorists because of my next (third) observation: the nonideal theoretical motivations of the capability require some

paternalism tolerance. Of course reductions in freedom required to reduce oppression and deprivation may be justified on other-regarding rather than paternalistic grounds; providing collective goods, such as a malaria-free environment (see Olsaretti 2005) or encouraging a more fair distribution of social advantages may be justified in terms of what citizens owe to one another.¹³ Still, worries about replicating existing inequalities through facially egalitarian policies are at odds with a strong presumption against paternalistic intervention. Under real-world conditions, protecting people's freedom to do what they are already doing may just be a way of preserving existing oppression and deprivation. Accepting some paternalism to reduce oppression is consistent with the nonideal notion of agency capability theorists often appeal to. Where it seems to libertarians and some liberals that respecting people's ability to form and revise conceptions of the good means nonintervention, capability theorists often suggest that nonintervention can also be autonomy-disrespecting. Treating people as vehicles for their existing preferences may itself be construed as a way of denying their agency. The idea that people may not truly embrace their existing plans and desires is associated with forms of positive freedom theory that define away paternalism by suggesting only the only "real" desires are desires for well-being. But rather than suggesting that all rejection of valued functionings is nonvoluntary, the nonideal notion of agency suggests only that people can come to revise their preferences and values when social institutions engage them as deliberators. The nonideal

¹³Nussbaum also argues that most functioning-promotion policies can be justified in terms of the shared burdens choices not to function well impose (2001, 94).

theoretical motivations of the CA seem to recommend cost-soft paternalism and even begin to provide a framework for justifying it.

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