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Citation: Walby, S. (2012). Sen and the measurement of justice and capabilities: A problem in theory and practice. *Theory, Culture and Society*, 29(1), pp. 99-118. doi: 10.1177/0263276411423033

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Link to published version: <https://doi.org/10.1177/0263276411423033>

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Sen and the Measurement of Justice and Capabilities

A Problem in Theory and Practice

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Abstract

Several developments in the measurement of justice have drawn on Amartya Sen's work on capabilities. This article addresses the relationship between Sen's theoretical work and its interpretation in the measurement of justice, in particular by the United Nations Development Project (UNDP) and by the British Equality and Human Rights Commission and Government Equalities Office in its Equality Measurement Framework. It starts with a review of the diverse interpretations of Sen's work, which range from considering it to be an innovative radical development to locating his work within the liberal tradition. Central to the article is the question of whether it is possible to develop a meaningful operationalization of Sen's philosophical distinctions, in particular that between capabilities and functionings, so as to inform measurement frameworks. It finds that on both conceptual and methodological grounds it is not possible to sustain this distinction in practice. This is illustrated by an analysis of the changing measurement of justice in frameworks developed by the UNDP and the UK government. Changes in the content of the measurement frameworks in radical or neoliberal directions are not constrained by Sen's theoretical analysis, despite claims that Sen's work informs these frameworks. The openness of Sen's work means that it can be used by forces generated by the neoliberal environment to support their redefinition of justice.

Key words

capabilities ■ equality ■ inequality ■ justice ■ Amartya Sen ■ theory

THE WORK of Amartya Sen has become much cited in both philosophical and practical analyses of justice (Human Development and Capability Association, 2011; Sen, 1977, 1981, 1984, 1992, 1999, 2004, 2009). Sen's work has become an important and influential part of the deliberative argumentation over the meaning of justice, both as a philosophical idea and the development of ways to accurately describe it (Nussbaum, 2000, 2003). Measuring justice is an important part of the development of policies and politics so as to ascertain what effects they are having. However, there are competing frameworks to inform this process of constructing measures of justice, including equality, equality of opportunity and human rights, which derive from social democratic as well as liberal traditions (Arneson, 1989; Jewson and Mason, 1986; Korpi and Palme, 1998; Rawls, 1978; Walby, 2009; Wilkinson and Pickett, 2009).

Sen's work is open to multiple readings and varied interpretations have developed (Fukuda-Parr, 2003; Robeyns, 2003). It is not uncommon for concepts to be stretched, but how far this can occur while retaining their meaning is an issue (Lombardo et al., 2009). Sen's early work underpinned the United Nations Development Programme (UNDP) challenge to international governmental assumptions that economic growth was the pre-eminent indicator of progress and its argument for replacing the goal of 'economic development' by 'human development' (UNDP, 1990). But recent interpretations of Sen (Alkire, 2005; Human Development and Capability Association, 2011) have focused on the elements of choice and opportunity within his concept of capabilities. This divergence in interpretation of Sen's work includes the contrasting prioritization of 'just outcomes' as compared with 'choice and opportunity'.

There are several attempts to translate Sen's rather philosophical texts into quantitative indicators to measure progress in the real world. This process of operationalization of concepts into forms of measurement has proceeded in quite varied directions across diverse projects and different times (Alkire et al., 2009; Fukuda-Parr, 2003; UNDP, 1990). Two major attempts to develop frameworks for measuring justice that have claimed Sen as their authority and inspiration are those of the UNDP and the British Equality and Human Rights Commission (EHRC) and Government Equalities Office (GEO) Equality Measurement Framework (EMF). The UNDP project has, since 1990, challenged the notion that progress equates to economic growth, producing an ever-changing suite of indicators of human rather than merely economic development (UNDP, 1990, 2009). This perspective has contributed to the development of the UN Millennium Development Goals (2000), which also include human development alongside economic development. The EHRC and GEO, since their foundation in 2007, have sought to develop a framework to measure equalities for a three-yearly review (EHRC, 2010). The EHRC, formed from the merger of earlier equality commissions, derives its existence not only from UK law but also from a world-leading European Union-wide (EU) set of Directives and Treaties on equalities (Europa, 2011).

Central to Sen's theory of justice is the concept of 'capabilities' and its distinction from the concept of 'functionings'. One of the challenges in interpreting the implications of Sen's writings for the real world is to find an empirical distinction that maps onto his philosophical distinction between 'capabilities' and 'functionings'. Can this challenge be met and a methodology be found to operationalize his philosophical concepts in a way that can be utilized in frameworks to measure justice? Or is Sen's work so open that it can be drawn upon to support widely varying measures of justice, rather than something that is distinctive and robust? Is Sen's work, despite its global icon status, merely an open signifier, which can be filled with an almost never-ending diversity of interpretations? If so, does this make Sen's work vulnerable to adoption in support of neoliberal forces?

This article reconsiders the interpretations and implications of the work of Amartya Sen in theoretical and practical contexts. It reviews and clarifies the range of meaning of Sen's concepts in their philosophical and economic contexts. It reviews the development of justice frameworks in the UNDP and the British EHRC/GEO's EMF. It analyses the selection of the topics and the indicators used to measure progress by the UNDP and the various approaches to the EHRC's EMF. It compares these with alternative traditions and proposals to approach equality and justice, and considers whether the use of Sen's capabilities approach makes any difference to the measurement of justice, fairness, equality and progress.

Tensions in the Writings of Amartya Sen

There are many competing conceptions of justice, fairness and progress. Sen's work has been variously positioned in relation to these. Initially this raises the question as to whether there is a 'real' Sen underlying these or whether there are merely many differences in interpretations. There is an issue as to whether Sen has changed, whether his interpreters have changed, or whether these multiple themes have always been co-present in his work.

There is a tension in Sen's work as well as in its interpretations as to whether it is radical or merely traditional Western individualist liberalism (Gore, 1997). A radical view might focus on his early work on famine, which he analysed as the result of poverty and inequalities rather than shortage of food (Sen, 1981, 1984), and his focus on longevity rather than income in the Human Development Index (HDI); while traditional liberalism might be seen in his philosophical preferences for choice and freedom over other values, including democracy (Gasper and van Staveren, 2003). An alternative approach is to see his theoretical writing as traditionally liberal, but that his practical interpreters have used his work to support more radical projects. In this view it is the UNDP that interprets him as radical, despite, rather than because of his writings. At the same time his concepts may be seen as open to less progressive practice, for example supporting the concept of empowerment, that some see as supporting a neoliberal erosion of an emancipatory project (Sardenberg, 2008). There is a question as

to whether it is more appropriate to see both his work and his interpreters changing over time and in different contexts. For example, as the political environment has changed over time, the UNDP has developed greater interest in indicators on gender and on choice and agency (Fukuda-Parr, 2003).

Sen is an economist and a philosopher. He rejects approaches to justice based on the economists' focus on income and resources, as well as the utilitarian focus pioneered by Bentham on individual happiness or utility, in favour of his own focus on a person's freedom to have the capability to do and be the things they have reason to value (Sen, 2009: 231). Sen's capability approach is presented as underpinning the conceptual framework for the Human Development Reports of the UNDP, offering an alternative to a sole focus on economic growth (Fukuda-Parr, 2003). This framework was first established in 1990 with the HDI, which included longevity and education alongside income per person in a composite indicator, and has been steadily developed since.

Sen (2009) draws on and modifies traditional Western concepts of justice as fairness, freedom and choice. He retains some aspects of liberal thought, while in other respects he attempts to go beyond it. Sen stays close to the central tenets of Western individualism and (neo)liberalism by treating individual choice as if it were more fundamental than other values. It is especially the focus on the concept of 'choice' that opens his work to a neoliberal interpretation and deployment (discussed further below).

However, while Sen stays within some aspects of the Western, individual, liberal tradition, he rejects some of its variants, such as a focus on economic growth (Alkire and Black, 1997). Sen draws on and departs from Rawls (1978), especially by utilizing a comparative method to the analysis of injustice rather than utilizing more universalistic conceptions. His notion of freedom (Sen, 1999) is a substantive one, defined as what people can actually do and be. Sen thus uses the concept of positive freedom or positive liberty as opposed to negative liberty (Berlin, 1969), that is, freedom *to* rather than freedom *from*, originally based on the ideas of Kant. Where the former is more frequently associated with social democratic or socialist interpretations of freedom, social groups or members of social groups and the tradition of Marx and Hegel (e.g. Taylor, 1979), the latter is more often associated with a neoliberal interpretation of freedom, individual agents and the tradition of Spencer and Mill (Hayek, 1960; Nozick, 1974). In some of his early work, Sen (1984) even more clearly departs from liberal orthodoxy, such as in his work on famine. His analysis of famine was a trenchant critique of the policies that led to thousands of people dying of starvation, arguing that it was a shortage of money to buy food not a shortage of food itself that led to such needless hardship and death. Starvation, Sen (1981) argued, is the result of inequalities in the mechanisms of food distribution. Sen wishes to go beyond money as an end in itself, to valuing human life, and takes as his route to this the path of capabilities, opportunities and choice.

Capabilities and Functionings

Central to the innovations in Sen's philosophical writing is the distinction between 'capabilities' and 'functionings'. In Sen's distinction between capability and functioning, functioning is defined as the achievement or outcome, while capability is the capacity to achieve such functioning. A capability is an opportunity or a freedom; it is the ability to choose. A functioning is an outcome or achievement.

Individual advantage is judged in the capability approach by a person's capability to do things he or she has reasons to value. . . . The focus here is on the freedom that a person actually has to do this or be that – things that he or she may value doing or being. (Sen, 2009: 231–2)

A key issue in engagement with Sen is the priority he gives to capabilities over functionings in his approach to justice. Sen prefers to focus his analysis of justice on capabilities rather than on functionings.

In the nature of human lives, we have reason to be interested not only in the various things we succeed in doing, but also in the freedoms that we actually have to choose between different kinds of lives. The freedom to choose our lives can make a significant contribution to our well-being, but going beyond the perspective of well-being, the freedom itself may be seen as important. (Sen, 2009: 18)

In this way, Sen prioritizes opportunity, freedom and choice over equality of outcomes. In his account of justice, the ability of an individual to choose is prioritized above other values.

Various problems have been identified in relation to Sen's preference for capabilities rather than functionings as the basis of justice. Since choices and preferences are shaped by circumstances, which are likely to be affected by power and inequality, those in disadvantaged circumstances are likely to adapt their preferences to what is likely to be possible (Qizilbash, 1997). Further, as Sen (1977) himself has pointed out, an individual cannot know their future preferences or interests and hence any 'choice' made is already made on their past preferences. As a consequence the preferences of the poor are likely to be more limited in ambition than the preferences of the rich (Sen, 1984: 309). Sen himself notes the problem of 'adaptive preferences', but does not offer a satisfactory solution.

Sen discusses the practice of not-eating in order to argue that this activity can involve freedom of choice if it is a culturally valued 'fast', even though in other instances it can involve a lack of freedom as a consequence of famine. He uses this example to argue for the importance of the capability of choice, not merely the function of eating.

A person who voluntarily fasts, for political or religious reasons, may be just as deprived of food and nourishment as a famine-stricken victim.

Their manifest under-nutrition – their achieved functioning – may be much the same, and yet the capability of the well-off person who *chooses* to fast may be much larger than that of the person who starves involuntarily because of poverty and destitution. (Sen, 2009: 237)

Yet this is a poor example. It is far from clear that there is equivalence between the ‘under-nutrition’ of affluent people who fast for a few days and those who are hungry because of famine. The outcome or functioning at stake is good health, which the affluent person who fasts possesses but which the poor victim of famine does not.

Sen’s focus on choice means that the capabilities concept is part of a liberal approach to justice (Dean, 2009). This approach underestimates the significance of the social construction of choice. The notion of choice is a social invention and its experience is socially constructed. Most often, choice is merely the perception of choice. Indeed, choice is becoming a duty of individuals in complex fast-changing neoliberal social worlds (Bauman, 2005; Beck, 1992; Giddens, 1991). Hence, a focus on choice as the centre of human value becomes merely a circular route, reproducing existing social relations and hierarchies. People choose what they can; they choose what exists. ‘Choice’ and the associated suite of concepts such as ‘freedom’ are part of the reproduction of existing hierarchies, not part of a challenge to them. The promotion of the associated concept of agency in the social sciences is part of their incorporation into the neoliberal orthodoxy.

Challenges in the Definition of Capabilities in Practice

The many options available for the production of a list of ‘capabilities’ has led to much debate about the practical implications of Sen’s work. The issues include: identifying the most important capabilities; mapping the philosophical distinction between capabilities and functionings onto a distinction between empirical categories; evaluating potentially incommensurable categories. These issues are addressed through a detailed discussion of the development of the justice projects of the UNDP and British EHRC/GEO.

Sen himself does not produce a list of capabilities. Indeed, he thinks that the capability approach intrinsically cannot do so: ‘The capability perspective does point to the central relevance of the inequality of capabilities in the assessment of social disparities, but it does not, on its own, propose any specific formula for policy decisions’ (Sen, 2009: 232).

By contrast, Nussbaum (2000, 2003), integrating a more Aristotelian philosophical heritage, offers a closed list, albeit one that remains at a high level of abstraction. Her ten most important topics are: life and not dying prematurely; bodily health, including good health, reproductive health and shelter; bodily integrity, freedom to be mobile, secure from violent assault such as domestic violence, and opportunities for sexual satisfaction; able to use the senses, imagination and thought in a way informed

and cultivated by education, freedom of expression and religion; being able to have emotional attachments; being able to engage in practical reason and reflection; ability to affiliate with others, receive respect, whatever race or sex; live with other species successfully; ability to play; and the ability to participate politically, to hold property, decent employment.

The contrast in approach between Sen and Nussbaum may be understood as a difference over whether justice claims are articulated in an abstract deontological Kantian manner, or if they are more substantively defined in an Aristotelian manner (Alston, 1988; Howarth, 1995). Sen (2004: 77) insists that there should not be 'one predetermined canonical list of capabilities'. He considers that 'such a fixed list, emanating entirely from pure theory, is to deny the possibility of fruitful public participation on what should be included and why'. Hence he seeks to retain the concept of capabilities at a high level of abstraction, or at a deontological level. Nussbaum (2000, 2003), by contrast, is eager to develop a practical list of capabilities by drawing on philosophy as well as on multiple contributions from social groups in dialogue. Nussbaum's approach still needs to address the determination of the criteria by which some capabilities are selected rather than others.

Sen's refusal to produce a list does not mean that his name is not invoked to support particular lists. Indeed his personal authority is claimed in support of the UNDP indicators of human development (Fukuda-Parr, 2003; UNDP, 1990), as well for the EHRC indicators of equality (Alkire et al., 2009). It remains a question, however, as to whether it is appropriate to state that Sen's capabilities approach is the basis of any specific list, since Sen himself states that it cannot be.

Problems arise in the attempt to translate Sen's philosophical distinction between capabilities and functionings into a distinction between empirically verifiable categories. Identifying what people would choose if they were truly free to choose has proved an insurmountable difficulty. This difficulty is both conceptual and methodological simultaneously. Conceptually, it is intrinsically difficult to determine what people's preferences and choices are outside of what people have chosen. This is also a methodological problem, in that it is almost impossible to discover preferences separately from what people do. Indeed, Sen (1992: 52) acknowledges that there is a problem here. In a context in which it is hard to ascertain what women and men would choose if they were not constrained, the only reasonable basis for measuring capabilities offered in practice by the UNDP and EHRC is that of achieved functionings or outcomes. This problem is noted by Robeyns: 'We do not know what men and women would choose if they were liberated from their gender roles and thus genuinely free to choose' (2003: 86). 'Given that we have little direct information about people's capability levels, we could start by taking group inequality in achieved functionings as indicative of inequalities in capabilities' (2003: 85). If it is empirically impossible to distinguish between capabilities

and functionings, the value of the philosophical distinction for the measurement of justice is thereby diminished.

Sen suggests that it is not possible to compare and evaluate capabilities using a single standard and measure. However, he has a caveat in that while, on the one hand, he states that capabilities are incommensurable, on the other he says that it is possible to make reasoned evaluations between them. Sen writes that 'Capabilities are clearly non-commensurable since they are irreducibly diverse' (2009: 240) and that 'we cannot reduce all the things we have reason to value into one homogenous magnitude' (2009: 239). But simultaneously he holds that 'the choice and the weighting may sometimes be difficult, but there is no general impossibility here of making reasoned choices over combinations of diverse objects' (2009: 241). He suggests the way forward is through speaking 'prose'; by implication this is not a quantitative form of expression. Indeed Sen goes on to suggest that it is possible to avoid 'either/or' thinking and to replace it by 'both/and'. However, while this way of thinking may make sense in some kinds of philosophical writing, or poetry, it is not helpful if the task at hand is to decide on a specific list of capabilities and whether these capabilities are equally distributed or not. The use of a qualitative rather than quantitative methodology, recommended by Zimmermann (2006), does not solve this problem of the need to make a selection of capabilities and to find out their pattern of distribution.

This raises the question of whether those who invoke Sen's authority follow his rejection of 'one homogenous magnitude'. The UNDP's central index, the HDI, is a single number, composited from information about longevity, education and income (1990, 2009). Hence the UNDP does not follow Sen's position on this issue. The EHRC is also seeking quantitative indicators that simplify the data about a range of diverse capabilities so as to permit comparisons (Alkire et al., 2009).

Sen and the UNDP

The UNDP declares that Sen's work underpins its own. Fukuda-Parr, Director of the Human Development Report (HDR) Office, 1995–2006, states: 'Amartya Sen's ideas constitute the core principles of a development approach that has evolved in the Human Development Reports' (2003: 301). 'The Human Development Reports (HDRs), published annually for UNDP since 1990, have used Amartya Sen's capability approach as a conceptual framework in their analyses of contemporary development challenges' (2003: 301). Yet there is a caveat in that the framework is declared to be 'flexible'. 'Sen's ideas provide the core principles of a development approach whose flexible framework allows policy-makers to analyze diverse challenges that poor people and poor countries face, rather than imposing a rigid orthodoxy with a set of policy prescriptions' (2003: 302). This raises the question as to the point at which this 'flexibility' becomes so great that there is little significant connection between Sen's ideas and the practical

policy outcome. The argument here is that this flexibility is stretched too far.

The most important contribution of the UNDP has been the HDI, a composite formed from longevity, education (literacy and educational enrolment) and income. The HDI has played an important role as an alternative goal for global public policy to that of economic growth; one which includes human, not only economic aspects.

Not only does the UNDP claim that its approach is in general informed by Sen, but also that Sen was central to the development of the list of key issues proposed by the UNDP. Fukuda-Parr, Director of the HDR Office at the time, states: 'With Anand, Sen also played a critical role in developing the measurement tools of human development, starting with the Human Development Index' (2003: 303). This role is claimed for Sen, despite Sen's own claim that 'we cannot reduce all the things we have reason to value into one homogenous magnitude' (2009: 239). The UNDP encouraged Sen, in conjunction with Haq and Anand, to define the list (Fukuda-Parr, 2003).

The criteria for selecting which capabilities are prioritized as important rest, on the one hand, on their being basic and universal: 'first, they must be universally valued by people across the world; and second, they must be basic, meaning their lack would foreclose many other capabilities' (Fukuda-Parr, 2003: 306). On the other hand capabilities are not basic and universal in that 'the human development approach has deliberately remained open-ended in the choice of capabilities, letting them vary over time and place' (Fukuda-Parr, 2003: 306). These criteria are contradictory: the selected capabilities cannot be both 'universally valued' and also vary in content over time and space.

This 'flexibility' can be seen in the changes over time in the indicators used by the UNDP. In 1990, the focus was on a single figure, the HDI. In 1995, the year of the UN Beijing conference on women, the UNDP introduced two gender indicators: the Gender-related Development Indicator (GDI), based on gender ratios of the components of the HDI; and the Gender Empowerment Measurement (GEM), based on gender proportions in women's political power (percentage of elected parliamentarians who were women, and later also percentage of government ministers who were women) and women's economic power (percentage of professional and managerial jobs held by women). In later years, further indicators and measurements have been added that include notions of good democratic governance and human rights. The UNDP declares that these changes in the indicators are a result of response to political change (Fukuda-Parr, 2003). The UNDP treats Sen's ideas as the core principles of a 'flexible framework', which has been applied to diverse and changing policy issues, the emphasis of which has evolved 'from the provision of public services to political empowerment' (Fukuda-Parr, 2003: 302).

The UNDP indicators, such as the HDI, the GDI and the GEM, are intended to be focused on outcomes of human development, of achievements

that in Sen's paradigm would normally considered functionings rather than capabilities. The practice over 20 years in the UNDP indicators is to treat the measurement of capabilities and functionings as if they were the same; that the measure of functioning is the best available measure of capability. For example, for the purposes of the HDI, longevity is regarded as a universal choice or capability, and is best measured in years of life, its achievement or outcome (Fukuda-Parr, 2003; UNDP, 2009).

How is this alignment between Sen's capabilities and the UNDP's outcome indicators of functioning achieved? The UNDP indicators of human development are declared to be the best measures of capabilities, opportunities and choices, on the same grounds as the capabilities were selected – that they are 'universally valued by people across the world' and are 'basic' (Fukuda-Parr, 2003: 306). In effect, capabilities are measured by functionings, as in the real world it is obvious that it is not possible to make a distinction between the two.

The conclusion to be drawn is that the UNDP's interpretation of Sen's framework is so flexible and changing, and the distinction between functionings and capabilities so slight, that the connection between Sen's ideas and the indicators used to measure human development becomes tenuous at best.

Sen and the British EMF

Sen's work has been declared a key underpinning of the new EMF in Britain, which is intended to inform a three-yearly review led by the EHRC (remit Great Britain: England, Wales and Scotland, but not Northern Ireland) and the GEO evaluating whether there has been progress towards equality and fairness.

There are two questions here. The first is whether Sen's capabilities theory is actually the basis of the EMF or whether other frameworks and forces are more important. In particular, there is not only the GEO/EHRC initiative post-2007 to reorient the equalities tradition using the capabilities framework of Sen, there are also diverse equality traditions linked to the varied equality strands, the class-led tradition of equality linked to trade unions and, last but far from least, the institutionalized legal and political forces of the EU. The second is whether invoking Sen and his concept of capabilities strengthens the justice agenda or whether his work is deployed by neoliberal forces to shift the agenda away from equality and towards choice.

The measurement of equality was previously a matter for the statistics produced by the Office for National Statistics (ONS) and the Treasury's Public Service Agreements (PSAs). While indicators and measurement were not key to the work of the previous equality commissions, which focused on other matters, nevertheless, a wide array of equality statistics and indicators have become increasingly available from ONS sources, including large-scale surveys (Walby et al., 2008; Walby and Armstrong, 2010).

Further, the equality agenda was to some extent entrenched in the Treasury's PSAs, which constituted a performance measurement mechanism for government departments (HM Treasury, 2007). There was an Equality PSA, for which the GEO was the lead department, and which contained five objectives, operationalized by indicators: narrow the gender pay gap; increase disabled people's choice and control; address inequalities in civic participation; tackle discrimination in employment; and improve understanding of and ability to address unfair treatment (HM Government, 2009). PSAs were abolished by the incoming Conservative-Liberal Democrat government in 2010.

From 2007, the EHRC and GEO introduced the work of Sen and his capabilities approach into the design of the new measurement framework (the EMF). The EHRC was established in 2007 out of the merger of the Commission for Racial Equality, the Equal Opportunities Commission, the Disability Rights Commission and legislation concerning three new grounds of age, religion/belief and sexual orientation as well as human rights, and engaged in a wide-ranging review as to the way forward, of which the EMF is one. The EHRC/GEO commissioned a number of projects funding a series of pieces of work to develop this approach (Alkire et al., 2009; Burchardt, 2006; Burchardt and Vizard, 2007; *Equalities Review*, 2007), but, nevertheless, also funded research that worked with other concepts of equality, such as the socio-economic class-led priorities of the National Equality Panel (Hills et al., 2010).

Each of the various equality groups or strands has important independent traditions, not only in their previous commissions but also in their civil society organizations and specific legislative victories. For example, the Commission for Racial Equality had a history of using the concept of 'good relations', not only equality; and the Disability Rights Commission a tradition of emphasizing special needs, not only equality through equal treatment. The newly institutionalized human rights project has a still different set of preferred concepts related to equality, again with a different legal encoding. Merging these diverse traditions has entailed increased diversity in the EMF, and proposals for additional cross-cutting concepts have been proliferating (for example, on 'good relations' see Johnson and Tatam, 2009).

In the UK, the most powerful and deeply institutionalized equality tradition has been that produced within trade unions and associated bodies. Most cases of discrimination (on grounds of sex, ethnicity, disability, age, sexual orientation, religion/faith) in employment negotiated with employers or taken through the courts are supported by trade unions, while the employment tribunals used to hear cases of discrimination were originally developed for industrial disputes between employers and workers. While this equality tradition has been increasingly marginalized from national deliberative and decision-making processes on equality over the last 20 years or so, its legacy of deeply entrenched institutions is still

important in practice. This class-led analysis is echoed in the EHRC/GEO-funded research of the National Equality Panel (Hills et al., 2010).

The most important part of the equality machinery in the UK continues to be the legal framework that has been developed in the EU. A series of equality Directives derives from the 1997 Treaty of Amsterdam; these are legally binding in Member States. It is EU law that there must be a commission or commissions to promote equality in each Member State. It is EU Directives that determine the framing of the equality in law as 'equal treatment' and which set minimum standards as to how far this principle should extend in employment and the sale of goods and services, and underpin the recent duty on public bodies to promote equality (European Commission, 2011). The EU has overridden UK preferences on the strength of equality legislation on several occasions, for example insisting in the mid 1980s that equal pay should not be restricted to the 'same' work, but be extended to work of equal value (Hoskyns, 1996; Walby, 1999). The Treaty of Amsterdam extended the grounds for equal treatment from a short list of gender, ethnicity and disability, to include in addition sexual orientation, religion and age. The development of UK equality law is largely, though not entirely, dependent on that developed at the EU level. The main exception is the UK legislation on racial and ethnic equality, which preceded the EU developments.

In the UK, as elsewhere, issues in the definition and operationalization of equality have been addressed not only in the philosophical literature, but also in the more practical contexts of equality practitioners. There is a substantial history of well over 30 years of civil societal, legal and governmental institutional involvement in the contested operationalization of the concept of equality in legal, governmental, institutional and statistical practice. The many dilemmas and tensions in the equality agenda have been subject to democratic process, contestation between rival stakeholders, interpretation and reinterpretation in law, public debate and compromise. There is a rich and diverse institutional legacy of equalities work in British civil society, including trade unions, universities and NGOs. The EHRC/GEO initiative to reorient the operationalization of the concept of equality in the UK around Sen's notion of capabilities is a late intervention in an already crowded field of competing equality concepts and projects.

In such a context, there is a question as to whether it makes any difference to practice when the EHRC and GEO announce that Sen's capabilities are to frame the way equality is measured. This is the issue as to whether different philosophical approaches to justice make a significant difference to the measurement of justice in practice. In this instance, the issue is whether the measurement framework is different when the concept of capabilities rather than other concepts is used to frame justice. Two of the most important points at issue are: the selection of the topics that go beyond income and economic growth; and the selection of the indicators used to measure them.

The EHRC/GEO selected the key topics for its EMF during a substantial process involving several stages and documents. The foundational document for the EHRC, the *Equalities Review* (2007), included a list of 10 dimensions.

These ten dimensions form the basis of what we describe as the Equality Scorecard. We have developed the list that underlies the Scorecard by drawing on international human rights frameworks, and through extensive consultations both with the general public and with some of those individuals at high risk of experiencing disadvantage. (*Equalities Review*, 2007: 17)

These are: Longevity; Physical security; Health; Education; Standard of living; Productive and valued activities; Individual, family and social life; Participation, influence and voice; Identity, expression and self-respect; and Legal security. The 10 dimensions are considered to concern ‘freedoms’ and ‘opportunities’ (2007: 18) and to be based on Sen’s capabilities (2007: 125). While considering a range of approaches to the concept of equality, the *Review* concludes that: ‘a definition of equality should be based on the capabilities approach developed by Professor Amartya Sen and others over the past 30 years’ (2007: 125). However, in practice the *Review* included a diverse range of equality perspectives within its several chapters including, but not only, Sen’s capabilities. The detailed development of the list of 10 capabilities drew on a set of background papers written from the perspectives of Sen’s capabilities and international human rights (Burchardt, 2006; Burchardt and Vizard, 2007).

Following the selection of the 10 dimensions, the EHRC/GEO moved on to select the indicators to measure the dimensions. Walby et al. (2008) conducted a review of equality statistics and indicators, identifying and evaluating over 200+ indicators that were either proposed or in use by a wide range of stakeholders active in the equality field and related academic and policy research reports and publications. The equality actors included: the legacy commissions, government departments and their specialized equalities units, HM Treasury and its PSAs, local authority and devolved administrations, major public services such as the police, major civil society organizations across the range of equality strands, trade unions, transnational bodies such as the EU and the UN. After consulting with producers and users of these statistics, Walby et al. (2008) proposed a selection of priority indicators based on ONS criteria.

Alkire et al. (2009) drew up the final lists of indicators for the EMF, stating that ‘relatively little research has been devoted to developing criteria for selecting social indicators to monitor poverty, inequality or well-being’ and thus that ‘a certain amount of innovation is required’ (2009: 25). They drew on three sources: ‘the theoretical underpinning of the capability approach developed by Amartya Sen; the international human rights framework; and extensive consultation with the general public, individuals and groups at risk of discrimination and disadvantage’ (Alkire et al., 2009: 1).

They identify 48 indicators and 88 measures to cover the 10 dimensions identified in the *Equalities Review* (Alkire et al., 2009: xx–xxviii).

What is the influence of Sen on the list of topics and selected indicators? As discussed earlier, Sen does not endorse any specific list of capabilities (2009: 232); neither is it suggested that he specifically endorses the EHRC/GEO list. Thus it is hard to see what influence Sen had on the selection of the 10 dimensions of this list.

Although Sen's philosophical approach depends on a distinction between capabilities and functionings, with capabilities identified as what is important, neither the *Equalities Review* nor Alkire et al. offer indicators and measurements that use the concept of capabilities, instead recommending that outcomes or functionings are to be used as the measure of capabilities since they are unable to offer a meaningful distinction in practice. The *Equalities Review* concedes that it is not possible in practice to measure capabilities separately from outcomes; hence outcomes must be treated as if they were the same as capabilities. 'Measurement of inequality in outcomes actually attained by individuals or groups in each of the 10 dimensions – in many cases this will be a good indicator of whether people have the real freedom in question' (*Equalities Review*, 2007: 130). Alkire et al. offer distinctions between outcomes (functionings), processes and autonomy (close to Sen's concept of capability):

Inequality of outcome – that is inequality in the central and valuable things that individuals actually achieve; inequality of process – reflecting inequalities in treatment through discrimination or disadvantage by other individuals and groups, or by institutions and systems, including lack of dignity and respect. ... And inequality of autonomy – that is, inequality in the degree of empowerment people have to make decisions affecting their lives, how much choice and control they really have given their circumstances. (2009: 2)

They concede that measures of autonomy (close to capability) are not available and thus cannot be used. They recommend further research on this. Thus it is hard to see what influence Sen had on the indicators to measure the capabilities.

What are the implications of the human rights approach for the definition of topics and indicators? The list of 10 domains and their sub-fields has only the most tenuous relationship with the 31 articles of the 1948 Universal Declaration of Human Rights (UN, 1948). For example, there is no claim that the treatment of torture as a violation of human rights is a relevant addition to the British EMF. It might be argued that the introduction of the human rights agenda helps to prioritize the inclusion of otherwise neglected topics such as care of the disabled. However, disabled groups in the UK have not usually made their arguments via the discourse of human rights. The selection of the 10 dimensions of the EMF appears to have little connection with international human rights.

What is the impact of the public consultations? Alkire et al. state that one of the three key inputs into ‘the development of the EMF’ is ‘extensive consultation with the general public, individuals and groups at risk of discrimination and disadvantage’ (2009: 1). They helpfully provide a list of the 186 attendees at the 12 consultation events and the organizations from which they came, thus providing clarity as to the nature of the exercise. It is odd to find that only a minority (28%) of those attending consultation events were members of civil society strand (and human rights) organizations, that 45 percent were from government and governmental bodies, 10 percent from public bodies (such as the police), and 16 percent from civil society non-strand bodies (e.g. universities). There were no trade unions at the meetings. People from gender equality organizations were present at just one-third of the consultation events. The absence of trade unions and the limited engagement of gender equality groups is surprising. The consultation events were intra-governmental to a greater extent than they were consultations with the ‘general public, individuals and groups at risk of discrimination and disadvantage.’

By contrast, what are the implications of the work of other equality forces for the topics and indicators selected? In practice, the old legacy commissions and governmental policy units addressed most if not all of these 10 dimensions, though the focus had initially been, following the legislation, on issues of employment and the sale of goods and services, and only recently extended through mainstreaming the public duty to promote equality to all policy arenas. The integration of violence (physical and legal security) into the remit of the EHRC and equality architecture is a consequence of civil society pressure (e.g. EVAW, 2011) rather than a philosophically led argument through capabilities or human rights. Violence against women was included as a human right in 1993 as a consequence of feminist pressure; that is, human rights adapted in response to feminist pressure, rather than leading this change. The restructuring of the equality architecture in Britain has provided an opportunity to reconsider what are the core policy areas that are relevant to equalities and justice. The answer, perhaps unsurprisingly, is almost all of them. The equality concept has usually been more narrowly confined to the economic, largely employment, but also goods and services, but has increasingly been made more agile so as to extend across the whole range of major policy domains. This is a consequence of EU strategies of mainstreaming, including the duty placed on public bodies to promote equality (European Commission, 2011; Walby, 2005), civil society pressure (e.g. EVAW, 2011) and the broadening of trade union activities on equality (TUC, 2011). Sen’s approach is not necessary to the extension of the agenda of the equality architecture, though it is not inconsistent with this shift.

Thus, during the development of the EHRC/GEO EMF, Sen’s work was used to justify the centrality of the concept of ‘capability’ to the measurement framework. During the consultation process, some of the bodies traditionally central to the equalities agenda, such as the trade unions,

were marginalized. However, in practice, the measurement of equality in the EMF predominantly uses indicators related to outcomes or functionings, rather than capabilities or choice.

Conclusion

Sen's work has become an open signifier; a signifier that can be mobilized behind very different kinds of projects. Despite the emphasis on choice, Sen's work was used in the 1990s to support projects that attempted to insert justice and equality into the goals of global public policy. His work was used to champion the critique of the neoliberal goal of economic growth and to offer alternative goals, including longevity, education and gender equality. However, in the current, more neoliberal period, Sen's work is used in attempts to rework justice projects so as to prioritize choice over equality. Sen's work is open to a great diversity of readings.

A key philosophical distinction in Sen's work is that between capabilities and functionings. However, despite their best efforts, neither the UNDP nor the EHRC has been able to devise a way to measure capabilities separately from functionings in the real world. Capabilities cannot be measured separately from functionings, or opportunities from outcomes. In practice outcomes (functionings) are used to signify and measure capabilities. So, Sen's philosophical distinction has little direct practical relevance in the measurement of justice, fairness, equality and progress.

Topics and indicators of equality are a result of politics, expertise and institutional legacy. Ironically, such flexibility is exactly what Sen wants, even though others, such as Nussbaum, prefer the list to be derived more philosophically. The UNDP list changes over time, for example, introducing gender in 1995, with further changes to indicators being made in 2011 (UNDP 2011). The criteria for the selection of the topics and indicators to be used in the EMF, which were claimed by the EMF to be influenced by Sen, human rights and a consultation process (that ignores trade unions), are in fact informed by a distinctive UK heritage that encompasses a variety of equality traditions variously embedded in civil society organizations, trade unions and EU-led law.

Sen has become an iconic figure. His work stands for justice rather than solely for economic growth. 'Sen' (meaning Sen's work) has become an 'open signifier' in that his work can be and has been interpreted as supporting an extremely wide range of theoretical, policy and political positions. These diverse positions may be seen as in tension, as contradictory, or as incoherent. With a focus on choice, his work can be interpreted so that it fits the agenda of neoliberal forces. With a focus on justice, his work can be interpreted so that it fits more radical interpretations. Who can catch him and tie him to their cause? The UNDP brilliantly secured Sen, not only to support their challenge to the notion of economic growth as the sole goal of public policy, but also their detailed specification of a very wide range of justice issues that Sen's own writings had left entirely open.

Sen is currently being used to support the justice project of the EHRC and GEO in the UK; but do not expect to find any of the indicators they say his approach underpins in any of his many written works.

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