

The Contributions of Professor Amartya Sen in the Field of Human Rights

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Abstract

This paper analyses the work of the Nobel Prize winning economist Professor Amartya Sen from the perspective of human rights. It assesses the ways in which Sen's research agenda has deepened and expanded human rights discourse in the disciplines of ethics and economics, and examines how his work has promoted cross-fertilisation and integration on this subject across traditional disciplinary divides. The paper suggests that Sen's development of a 'scholarly bridge' between human rights and economics is an important and innovative contribution that has methodological as well as substantive importance and that provides a prototype and stimuli for future research. It also establishes that the idea of fundamental freedoms and human rights is itself an important gateway into understanding the nature, scope and significance of Sen's research. The paper concludes with a brief assessment of the challenges to be addressed in taking Sen's contributions in the field of human rights forward.

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Introduction and Overview

This paper analyses the contributions of the Nobel Laureate Professor Amartya Sen in the field of human rights. The motivation for the paper is three-fold. First, Sen's contributions in the disciplines of ethics and economics have deepened and expanded theoretical discourse on human rights in important and influential ways. In ethics, Sen's work has challenged the exclusion of poverty, hunger and starvation from the characterisation of fundamental freedoms and human rights, and has contributed to the development of a framework in which authoritatively recognised international standards in the field of poverty and human rights can be meaningfully conceptualised and coherently understood. In economics, Sen has established a far-reaching critique of standard frameworks that fail to take account of fundamental freedoms and human rights, and has pioneered the development of new paradigms and approaches that take account of these concerns. The paper provides an analytical overview of Sen's work in ethics and economics from the perspective of human rights and assesses the ways in which Sen's research agenda has deepened and expanded human rights discourse in each of these disciplines.

The second motivation for the paper is the more practical need for a 'scholarly bridge' between human rights and the discipline of economics (as highlighted by Mary Robinson, former UN High Commissioner for Human Rights). Whereas there is a wide perception of a conflict between human rights on the one hand and economics on the other – with fundamental freedoms and human dignity being seen as opposed to economic efficiency and the optimal allocation of resources, Robinson contends that human rights advocacy could often be strengthened by economic analysis. For example, arguments for shared international responsibility for the implementation of social and economic rights would often be supported by theoretical and empirical research in economics; whilst the development of 'common ground' through a programme of interdisciplinary research and consensus-building could provide a framework for the shaping of new and emerging 'big' ideas such as 'ethical globalisation' — the idea that processes of globalisation including economic processes should be subject to moral considerations including the ethical and legal principles entailed by the idea of human rights (Robinson, 2002). The current paper addresses the ways in which Sen's research agenda has promoted interdisciplinary cross-fertilisation and integration and suggests that his work provides an important prototype and stimuli for an interdisciplinary research programme of this type.

The third motivation is that the idea of fundamental freedoms and human rights itself provides a useful gateway into Sen's work. Sen's research in ethics and

economics over a period of more than thirty years covers a vast and complex terrain and can at times seem technical and fragmented. The idea of fundamental human freedoms and human rights provides an important unifying and overarching theme. Viewing Sen's research contributions through this lens provides a means of orientation through the complexities and technicalities and is key to the understanding of the nature and scope of Sen's work and its influence on international policies and debates.

Paper Organisation

The paper is divided into two main parts. Part 1 focuses on Sen's contributions in ethics. It analyses how Sen's work challenges the exclusion of poverty, hunger and starvation from the characterisation of fundamental freedoms and human rights, and provides a conceptual framework in which authoritatively recognised international standards in this field can be meaningfully elucidated and coherently understood. Part 2 focuses on Sen's contributions in economics. It sets out Sen's critique of standard frameworks in theoretical and empirical economics that fail to take account of fundamental freedoms and human rights and analyses his pioneering contributions towards an 'expanded' economics agenda that takes account of these concerns. Emphasis is placed throughout the ways in which Sen's contributions have promoted interdisciplinary cross-fertilisation and integration in ethics and economics on the subject of human rights; and the ways in which the idea of fundamental freedoms and human rights itself provides an important gateway into understanding the nature and scope and importance of Sen's work. The paper concludes by outlining some of the key challenges for the future development of this work.

BOX 1

THE CONTRIBUTIONS OF AMARTYA SEN IN THE FIELD OF HUMAN RIGHTS

INDIVIDUAL SUBSTANTIVE FREEDOMS AS THE PRIMARY FOCUS OF EVALUATIVE EXERCISES CONCERNING BASIC HUMAN INTERESTS IN ETHICS AND ECONOMICS

SEN'S CONTRIBUTIONS IN ETHICS

Critique of ethical frameworks with other informational focuses (e.g. utility, formal freedoms and rights/liberty 'primary goods')

Elucidation of a class of fundamental freedoms and human rights (and associated obligations) that focus on the valuable things that people can do and be

Support for the admissibility of poverty, hunger and starvation as 'freedom restricting' conditions

SEN'S CONTRIBUTIONS IN ECONOMICS

Critique of standard frameworks in theoretical and empirical economics that focus on income and utility

Development of a 'freedom-centred' economics that takes a direct account of valuable things that people can and do achieve

Support for the intrinsic and instrumental valuation of fundamental freedoms and human rights in economic analysis

1. Sen's Contributions in Ethics

Is poverty a denial of basic human rights? The Universal Declaration on Human Rights (1948) establishes international standards in the field of poverty and human rights – including the human right of everyone to a standard of living adequate for health and well-being (including food, clothing, housing and medical care and necessary social services) and to free and compulsory elementary education. This cluster of human rights has long-since been codified in international treaties in legally binding form¹ and the international recognition of poverty as a human rights issue has been strengthened in recent years.² Yet influential discourses in ethics and political theory in both libertarian traditions and liberal traditions have excluded poverty, hunger and starvation from the domain of fundamental freedoms and human rights or provide an inadequate basis for conceptualising authoritatively recognized international standards in this field (sections 1.1.-1.2). This includes frameworks that focus exclusively on negative freedom and negative rights and that fail to take account of poverty, hunger and starvation as ‘freedom-restricting’ conditions (e.g. Hayek, Nozick) and frameworks allow for a more sensitive handling of poverty issues but nevertheless fail to provide an adequate basis for emerging international standards in this field (e.g. Berlin, Rawls and O’Neill). In contrast, the ‘capability approach’ developed by Sen and others³ provides a framework in which freedom from poverty, hunger and starvation can be meaningfully conceptualised as fundamental human rights that all governments have obligations to respect, protect and promote (1.3). Salient features of this

¹ See Articles 25 and 26 of the Universal Declaration on Human Rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR) has been signed and ratified by more than 140 countries. This instrument affirms *inter alia* the right of the individual to an adequate standard of living including adequate food and shelter (Article 11), the right to the highest attainable standard of physical and mental health (Article 12), and the right of access to education and free primary education (Articles 13 and 14), and assigns legally binding international obligations on state parties – both individually and through international assistance and co-operation (Article 2).

² For example, in 1997, Mary Robinson, the then UN High Commissioner for Human Rights, stated that ‘Poverty itself is a violation of numerous basic human rights’ (Robinson 1997). In 2000, The Millenium Declaration adopted by world leaders as a statement of values, principles and objectives for the twenty-first century included the promotion and protection of all internationally recognized human rights (economic, social and cultural as well as civil and political) and set deadlines for collective actions in the field of poverty eradication (UNGA 2000).

³ This paper analyses the development of the ‘capability approach’ in Sen’s work. For Nussbaum’s contributions, see, for example Nussbaum (1993, 1995, 1997, 1999abc, 2000, 2003).

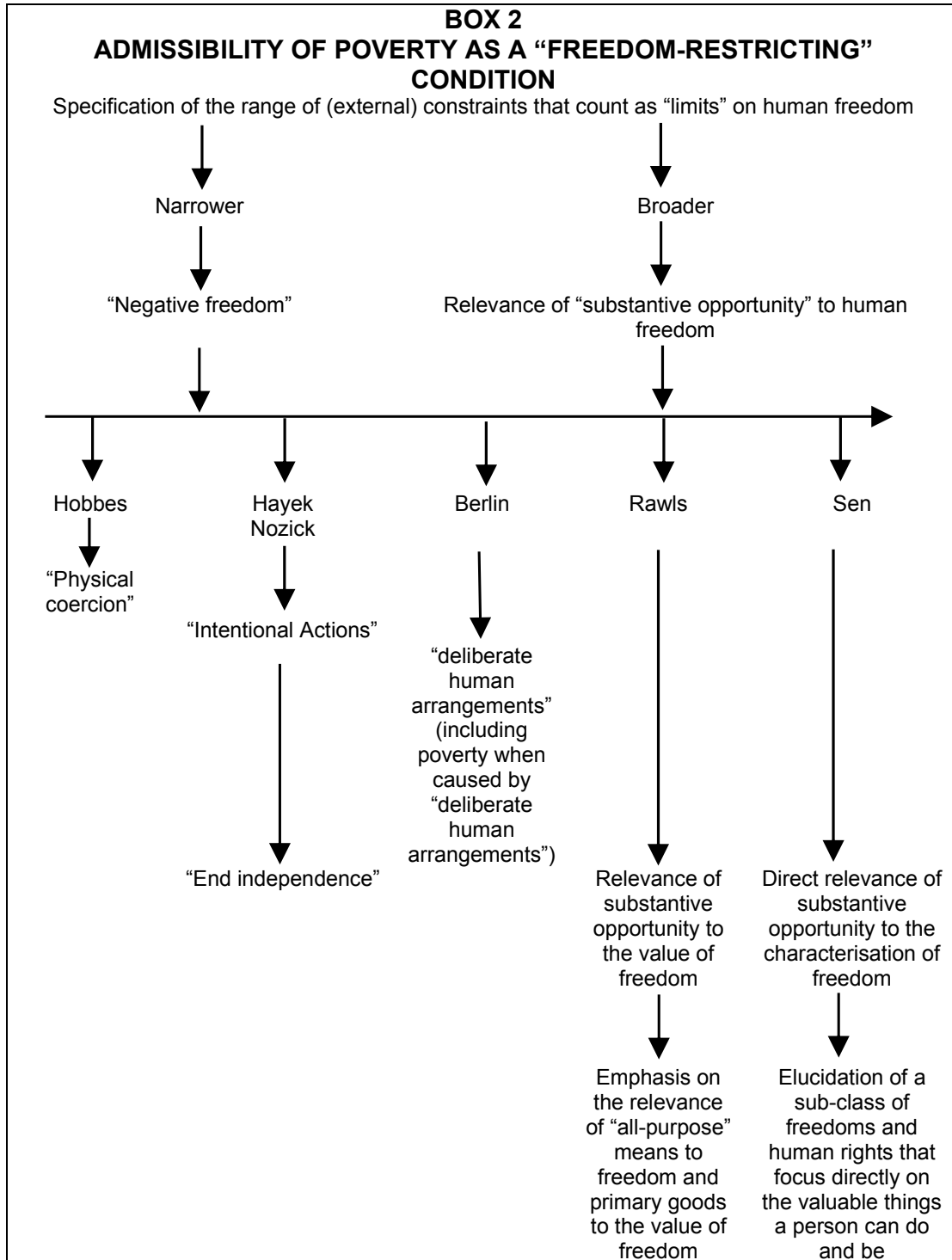
framework include support for a broad class of fundamental freedoms and human rights that focuses on the valuable things that people can do and be (1.3.1); support for a ‘non-absolutist’ model that accommodates hierarchies, balancing and trade-offs (1.3.2); strengthened support for positive obligations of assistance and aid (1.3.3); support for universalism against the relativist and culture-based critiques (1.3.4).

1.1 Negative theories of fundamental freedoms and human rights and the treatment of poverty, hunger and starvation

There is wide international acceptance of the principle that both negative and positive freedoms are the objects of human rights that ought to be protected and promoted by governments. In the past, the focus of international human rights concern was often on civil and political rights, rather than economic, social and cultural rights. This emphasis has shifted over the last decade. The economic and social rights enumerated in the Universal Declaration have now been codified in legally binding international human rights treaties – including the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Rights of the Child. At the domestic level, these human rights are increasingly being incorporated into Constitutional Law. In addition, the past tendency to interpret civil and political rights exclusively in terms of negative duties of omission, non-interference and restraint (rather than in terms of positive duties of action and commission) has now been widely rejected. The principle that all human rights (civil, political, economic, social and cultural) entail positive guarantees (of protection, promotion and assistance) as well as negative guarantees of (immunity, non-interference and restraint) has been developed in the jurisprudential literature (e.g. Eide (1998, 1999)) and is authoritatively established in human rights case law at the international, regional and domestic levels.⁴ Yet the search for objectivity in ethics has often resulted in the development of theories of fundamental freedoms and human rights that focus on personal liberty, and are exclusive of poverty, hunger and starvation. Influential theories in both the libertarian and liberal traditions have emphasised the development of ethical categories that are independent of ‘end-state’ principles – such as a particular conception of ‘human good’ or ‘human goods’ or ‘human flourishing’. This emphasis is associated with theories of negative freedoms and negative rights (that focus on the absence of intentional interference by other people, and that claim to be logically independent of the valuable things that people can do or be) and theories of negative obligation

⁴ Vizard (2000a, 46-52) provides an overview of the development of the concept of positive obligation at the international level (in the jurisprudence of the various UN Human Rights Treaty Bodies); at the regional level (in the Case Law of the European Court on Human Rights); and at the domestic level (e.g. in Indian and South African Case Law).

(that focus on negative obligations of immunity and restraint rather than positive obligations to defend and support the valuable things that people can do and be). These theories are in turn associated with proposition that the range of fundamental freedoms is limited, and that poverty is inadmissible as a ‘freedom-restricting’ condition (Box 2).



'End-independence' and the negative view of fundamental freedoms and human rights

Hayek (1960, 1982abc) and Nozick (1974) suggest that impartiality in ethics requires an 'end-independent' approach that focuses on procedures and rules, rather than consequences, outcomes and results. This emphasis underlies Hayek's characterisation of individual freedom in exclusively negative terms — as the absence of coercion, with coercion defined in terms of intentional interference by other people in a protected individual domain. He maintains that this characterisation makes the evaluation of individual freedom independent of (1) the fulfilment of individual needs, opportunities, desires and the ability or effective power to fulfil particular goals; (2) the outcomes of impersonal circumstances and processes (including competitive market allocations and the outcomes of socio-economic processes of development and growth).⁵ Hayek's (1982b, 35-55, 103-4) defence of the negative view of fundamental or human rights also arises in this context. According to Hayek's theory, fundamental principles of justice take the form of 'end-independent' general and abstract rules that consistently apply to everyone on an equal basis without exception. Furthermore, he contends that whereas negative rights can be characterised in this abstract and general form (and fall within the scope of the 'fundamental principles of justice') positive rights cannot. In Hayek's view, positive rights 'to particular things' are only possible in the context of voluntary agreements and/or special relationships (such as tie-relationships) and require the assignment of responsibility to particular agents (in the form of counter-party obligations to ensure that the benefits of the right are provided). As universal claims they indeterminate — because there is no rational principle (or universal rule) that can prescribe the particular actions that particular obligation holders should undertake in specific situations. Hayek develops a critique of the economic and social human rights enumerated in the Universal Declaration of Human Rights in this context. He argues that these 'rights' represent positive

⁵ Hayek's characterization of individual freedom draws on a theory of responsibility that combines the standard proposition that people are only responsible for states of affairs that they intentionally cause, with a social and economic theory that characterizes a wide range of socio-economic phenomena as 'unintended outcomes' for which nobody is responsible. Hayek consciously builds here on empiricist approaches that identify a category of phenomena that arise as 'the result of human action but not the execution of human design'. For example, in developing Smith's theory of the 'invisible hand', Hayek emphasizes that competitive market allocations arise not as an 'intended outcome' of some foreseen purpose or plan, but as a result of the actions of millions of self-interested economic agents acting independently, in a 'self-generating' process of adaptation and cumulative growth. He argues that 'unintended outcomes' of this type (1) fall outside the ambit of human responsibility; (2) cannot be categorized as just or unjust; (3) fall outside the range of 'freedom-restricting' conditions. See, for example, Hayek (1960, 54- 70; 1982b 107-132).

claims to ‘particular things’ to which every human being is entitled but for which no distinct agent is responsible; and that claims of this type cannot be universalised within the framework of a free society (1960, 1-22, 71-84 133-147); 1982b, 101-106).⁶

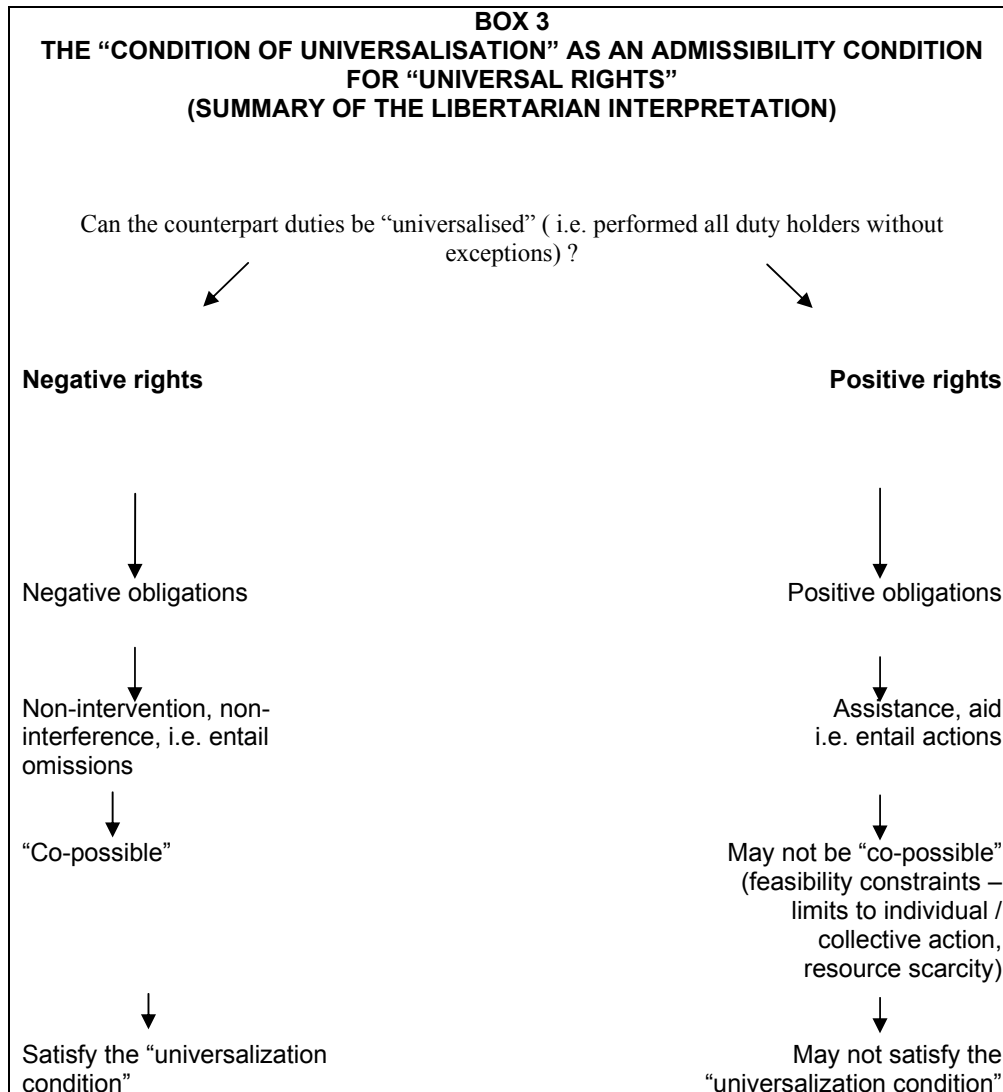
The logical structure of the libertarian rights

Nozick (1974, 28-30) also sets out an exclusively negative approach to fundamental freedoms and human rights. His development of the “outcome-independent” approach suggests that a neutral vantage-point in ethics can be achieved by adopting a deontological form of reasoning that is independent of the evaluation of consequences. This emphasis gives rise to an “absolutist” model of individual rights as constraints on action that cannot be violated under any circumstances⁷. Nozick’s position may be understood in terms of a logical condition (the “condition of universalization”) that relates to the admissibility of obligations as “universal obligations” (Box 3). The libertarian interpretation of this condition focuses on the question of whether it is logically possible for counterpart duties (in the form of actions) to be performed by all duty-holders without exception. Negative obligations of non-interference and non-intervention are viewed as being associated with duties that (1) involve negative actions of omission and restraint (2) are not subject to feasibility and resource constraints (3) are logically *co-possible* in the sense of being individually and simultaneously feasible. For example, it is feasible for a person to refrain from undertaking a certain action (such as interfering in another person’s “private sphere” or interfering with their property) in respect of all others. In contrast, positive obligations of assistance and aid are viewed as giving rise to duties that entail positive acts of commission that may not be logically co-possible. The

⁶ ‘[Such rights] could not be made universal within a system of rules of just conduct based on the conception of individual responsibility ... [T]he old civil rights and the new social and economic rights ... are in fact incompatible’ (Hayek, 1982b, 103-4).

⁷ Nozick’s (1974, 28-30, 164-166) characterisation of rights as “side-constraints” seems to provide a paradigmatic example of an “absolutist” model. This characterisation seems to suggest that rights and duties are non-contingent (in the sense of applying in all circumstances) and categorical (in the sense that their violation is always wrong). Certainly, Nozick supports the thesis of the mutual co-possibility of rights and duties, and rules out rights-maximisations over populations and balancing and trade-offs with other goals. For example, he maintains that the idea of balancing-off individual rights in an overall system of maximum rights-fulfilment for a population as a whole - or trading off individual rights in pursuit of *other* (non-rights related) end-state principles or goals - goes against the very essence of the idea individual rights; and that the objective of rights-maximisation can result in a “utilitarianism” of rights (1974, 28). However, Nozick’s concession to the possibility of violations in order to prevent “catastrophic moral horrors” challenges this “absolutist” interpretation, and the moral constraints in Nozick’s theory may after all provide a “weighty reason” for non-violation, rather than an absolute prohibition.

performance of positive duties of this type may incur costs and be limited by resource and feasibility constraints. For example, it may not be feasible for a person to perform a particular positive action (such as “feeding those in need”) in respect of all others. The “mutual incompatibility” of positive duties of this type is taken to rule out the possibility of “universal positive obligations” in the libertarian framework. Nozick contends that the entire set of individual rights that satisfy these conditions comprises a set of negative rights that is associated with exclusively negative duties of omission and restraint. Negative conceptions of the human rights to “freedom from severe poverty” and to “freedom from hunger and starvation” that focus on non-interference with the “means of life” (e.g. with the person or property) are admissible in this framework. However, fundamental freedoms and human rights that are limited by resources and/or other feasibility constraints (such as the human rights to an adequate standard of living, food and health) are viewed as generating “conflicting positive obligations” and are ruled out by the model.



Berlin on negative freedom and value pluralism

Influential theories in the liberal as well as the libertarian tradition have also suggested that impartiality in ethics requires the development of exclusively negative characterisations of fundamental freedoms and human rights. For example, Berlin (1969) maintains that value pluralism necessitates negative characterisations of freedoms and rights that are independent of the valuable things that a person can do and be. Like Hayek, he characterises freedom in terms of the absence of coercion by others, and suggests that only other people’s intentional actions can constrain or limit individual freedom; and that the characterisation of negative freedom is logically independent of the fulfilment of individual desires and of the power, ability or capacity of an individual to

achieve desired goals in practice.⁸ He is insistent that negative freedom should be characterised in a way that is independent of individual needs⁹ and that poverty can only be characterised as a limitation of freedom when it arises from ‘deliberate human arrangements’ (1969, 122-123). The debates about the interpretation of Berlin’s position here have far-reaching implications for the specification and justification of a class fundamental freedoms and human rights. Plant contends that the phrase ‘human beings have made arrangements’ should probably be interpreted as implying intentionality. However, Berlin’s stated position depends on the socio-economic analysis of the causes of poverty, and broader readings are possible. For example, under a broader interpretation, the outcomes of social and economic processes (including market outcomes) might be characterised as ‘freedom limiting’ conditions if their consequences, though unintended, are foreseeable or alterable (1991: 235). Gray’s analysis emphasises this broader reading. He maintains that the phrase ‘deliberate human arrangements’ recognizes that ‘the reasonable attribution of human responsibility’ depends on a range of factors other than intentionality, with negative freedom limited by outcomes that are unintended but remediable, alterable, foreseeable and/or predictable (1989, 61-65; 1995a, 27). Sen also suggests a broad reading of Berlin’s position. He suggests that Berlin takes a ‘demanding view of negative freedom’, going well beyond the ‘immunity’ component of process, and taking note ‘of the various parts that others play in making a person unable to do something’ (1993a: 524; 1981a). Indeed, many of Sen’s own pioneering contributions can be assessed in terms of the analytical space generated by this idea. Sen’s research in theoretical and empirical economics has made a major contribution to the evaluation of economic arrangements, processes and outcomes (including processes such as development, growth and globalization and competitive market outcomes) from the perspective of human freedoms and human rights rather than other

⁸ ‘You lack political liberty or freedom only if you are prevented from attaining a goal by human beings ... Coercion implies the deliberate interference of other human beings within the area in which I could otherwise act’ (1969, xl & 122). There are, however, significant differences between Hayek and Berlin’s position. For example, Berlin concedes that any assessment of individual freedom is deeply evaluative, and will be dependent on answers to questions regarding the relative values of alternative opportunities and actions (1969, xxxix-xl, xlviii). He also develops the case for collective obligations to undertake the actions that are necessary to secure the minimum conditions of negative freedom. ‘Legal liberties are compatible with extremes of exploitation, brutality, and injustice. The case for intervention, by the state or other effective agencies, to secure conditions for ... at least a minimum degree of negative liberty for individuals, is overwhelmingly strong’ (1969, xlvi).

⁹ ‘[Since you] lack political liberty or freedom only if you are prevented from attaining a goal by human beings ... [it follows that] ... mere incapacity to attain a goal is not lack of political freedom ... To provide for material needs ... is not to expand liberty’ (1969, lv; 122, 124-5).

informational perspectives (e.g. including utility or growth). His research has pushed forward understanding of the ways in which the denial and violation of human freedoms can sometimes be characterised as the foreseeable outcomes of economic processes and arrangements (e.g. through insufficient entitlement) and the ways in which economic outcomes, process and arrangements are alterable and remediable (e.g. through the introduction of human rights protections and public policy).¹⁰

1.2 Towards a broader characterisation of fundamental freedoms and human rights

The exclusively negative approach to fundamental freedoms and human rights has by now been widely challenged and this has resulted in the emergence of influential theories in the liberal tradition that give greater weight to poverty, hunger and starvation. The deconstruction of the logical distinctions between negative and positive freedom, and negative and positive rights, has precipitated important shifts – away from an exclusively negative approach, towards attention on autonomy, opportunity and a broader range of *obstacles* or *constraints*.¹¹ An important body of theories has emerged from within the liberal tradition that suggests that impartiality in ethics is compatible with the idea of general means to freedom that all people have reasons to value, whatever their conceptions of the human good or human goods, or their particular ends and goals¹² and many theories support the elucidation of far-

¹⁰ Pogge's (2003) 'broad' but negative theory of human rights also seems to build on the analytical space made by this idea. He contends that it is possible to go beyond the libertarianism without denying its central tenet (that human rights entail only negative obligations) by establishing that social institutions have a *causal* role in generating insecure access to the objects of human rights. Fundamental freedoms and human rights can then be viewed as giving rise to *negative* obligations of individuals and collective agents to refrain from supporting such institutions, with failure to respect negative obligations being viewed not merely in terms of the failure to assist and aid those who are in desperate need, but as being responsible for the generation and persistence of poverty. For further discussions of the distinctions between Pogge and Sen's approach, see Vizard (forthcoming, Chapters 2 and 3).

¹¹ E.g. MacCallum (1973 [1967]) deconstructs the logical distinctions between negative and positive freedom and develops a single triadic formulation; Taylor (1985a, 192 & 195) argues that all rights-based claims entail an explicit or implicit affirmation of the *value* of certain human goods; and Gewirth maintains that both negative and positive rights can be captured in terms of a single formula: 'A has a right to X against B in virtue of Y' (1978). For an autonomy-based characterisation of individual freedom, see Raz (1986).

¹² Plant (1991, 248-251) distinguishes between 'maximalist' approaches (that characterize positive freedom in terms of the realization of particular ends and goals) and 'minimalist' approaches (based on the idea of general means to freedom that all people have reason to value). 'Minimalist' approaches avoid the need for elaborated

reaching positive obligations — including positive obligations in the field of poverty, hunger and starvation. Nevertheless, when viewed from the perspective of the justification and elucidation of authoritatively recognized international standards in the field of poverty and human rights, influential theories including Rawls (1973, 1993, 1999, 2001) and O’Neill (1986, 1993, 1996) have important limitations.

The Rawlsian framework and the idea of all-purpose general goods

Rawls (1973, 1993) highlights the centrality of a person’s real opportunity to pursue his or her objectives to ethical evaluation and characterises primary goods as end-independent means to freedom (such as rights, liberties, opportunities and self-respect) that rational people can be assumed to want and that constitute the core of an ‘overlapping consensus’ on the meaning of ‘citizen’s needs’ (and of ‘rational advantage’) under conditions of value pluralism. The principles of justice as fairness aim (1) to equalize the basic liberties enjoyed by all people; (2) to maximise the value of the equal basic liberties of the least advantaged by regulating inequalities in primary goods according to the ‘difference principle’.¹³ This framework provides a basis for a more sensitive handling of poverty, hunger and starvation but nevertheless has important limitations vis-à-vis the justification and elucidation of international standards in the field of poverty and human rights. For example, whilst making space for the concept of primary goods, these principles provide an inadequate basis for the development of a theory of economic and social rights. The liberties incorporated in the first principle of justice focus on a limited set of civil and political rights; the lexicographic ordering of the two principles appear to give absolute priority given to the basic liberties recognised in the first

conceptions of the human good (or goods) and only require general judgments about the needs, desires, capacities, opportunities and resources that are of fundamental importance.

¹³ **Primary goods** are specified as a) basic rights and liberties; b) freedom of movement and free choice of occupation against a background of diverse opportunities; c) powers and prerogatives of offices and positions of responsibility in the political and economics institutions of the basic structure; d) income and wealth e) the social bases of self-respect (Rawls, 1993, 181). **The equal basic liberties** in the first principle of justice are specified as: (a) freedom of thought and liberty of conscience; (b) the political liberties and freedom of association, as well as the freedoms specified by the liberty and integrity of the person; (c) the rights and liberties covered by the rule of law. **The principles of justice as fairness** are 1) each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all; b) social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society (Rawls, 1993, 291).

principle over all other needs when conflicts arise;¹⁴ and the distinction between the constituent elements of liberty and the value of liberty seems to preclude the admissibility of poverty, hunger and starvation as freedom restricting conditions.¹⁵ In addition, the principles of justice as fairness provide an inadequate basis for the development of a theory of human rights as universal benefits that all people everywhere should enjoy. The scope of the hypothetical choice situation is specified in terms of the domestic arrangements of a liberal democracy; whilst the characterisation of the principles of justice as fairness as universal principles with international scope is explicitly rejected.

The extended framework set out in Rawls (1999, 2001) addresses these limitations and moves forward in four important ways. Rawls's (1999) consideration of the normative principles of international relations provides for (1) direct consideration of universal human rights as the objects of rational choice behind the hypothetical 'veil of ignorance'; (2) an explicit acknowledgment that a list of 'basic' or 'fundamental' rights should include certain minimum economic benefits.¹⁶ Rawls (2001, 48, 176) suggests (3) a broader first principle of justice as fairness that can accommodate minimum subsistence rights¹⁷ and (4) the need to supplement a 'primary goods' index with information relating to individual outcomes (e.g. health inequalities). Nevertheless, the treatment of human rights and socio-economic minima in the modified and extended Rawlsian framework remains limited in important respects. Whereas in the domestic context the objects of choice are specified in terms of alternative principles of justice, the (1999) model limits the objects of choice to alternative interpretations of the 'Law of Peoples'. This specification

¹⁴ But see f.n. 27.

¹⁵ 'The inability to take advantage of one's rights and opportunities as a result of poverty and ignorance, and a lack of means generally, is sometimes counted among the constraints definitive of liberty. I shall not, however, say this, but rather I shall be thinking of these things as affecting the worth of liberty, the value to individuals of the rights that the first principle defines' (Rawls, 1973, 204).

¹⁶ Shue (1980) and Vincent (1986) 'interpret subsistence as including minimum economic security, and both hold subsistence rights as basic. I agree, since the sensible and rational exercise of all liberties, of whatever kind, as well as the intelligent use of property, always implies having general all-purpose economic means' (Rawls, 1999, 65, f.n. 1).

¹⁷ The first principle deals with 'constitutional essentials' and 'a social minimum providing for the basic needs of all citizens is also a constitutional essential' (2001, 48). Rawls also suggests that a social minimum a logical implication of the difference principle, which is now taken as violated 'when that minimum is not guaranteed' (2001, 162). However, the difference principle is not itself taken to be a 'constitutional essential' (2001, 48). For further elaboration, see (2001, 26-130).

fails to make analytical space for ‘universal primary goods’ or for a ‘global difference principle’ and results in a different specification of basic rights in the domestic and international context.¹⁸ In addition, the broadening of the first principle of justice in Rawls (2001) accommodates minimum subsistence rights but not a broader list of economic and social rights. Constitutional entrenchment of the ‘difference principle’ is treated as ‘non-essential’ and critical aspects of the regulation inequality (e.g. access to basic health for all) are to be dealt with ‘at the legislative’ rather than the ‘Constitutional’ stage (176, 2001; 1993, 49, 1999). Finally, notwithstanding the explicit acknowledgement that the right to life ‘entails’ the right to subsistence, Articles 22-28 (i.e. the entire cluster of social and economic rights) are excluded from Rawl’s list of human rights ‘proper’.¹⁹

O’Neill on the establishment of ‘universal positive obligations’ to assist those in need

O’Neill (1986, 1989, 1993, 1996) departs from the libertarian position by making analytical space for the concept of positive obligation, and suggesting that people have far-reaching positive obligations of assistance and aid – including far-reaching positive obligations to relieve poverty, hunger and starvation. In sharp contrast to the libertarian interpretation of the ‘condition of universalization’ discussed in section 1.1, O’Neill builds on the ways in which Kant applied the concept of the ‘universal law’ to the establishment of ‘universal principles of positive obligation’ as well as ‘universal principles of negative obligation’. Kant’s ethical framework creates analytical space for positive obligations to assist those in need by emphasising the importance of a class of obligations that relate not to the duty to perform or not to perform specific actions or types of action, but rather to duties to promote types of ‘end-of-action’ (general policies or goals). Even where a specific action or type of action cannot be consistently and uniformly performed in respect to all others (a requirement of the interpretation of the ‘condition of universalization’ set out in section (1.1), Kant suggested that positive obligations to promote ‘ends-of-action’ can be established as ‘universal imperfect obligation’ under Kant’s ‘universal law’.²⁰ However, in reviving the concepts of ‘universal perfect

¹⁸ This issue is discussed extensively in Hayden (2002).

¹⁹ The list of human rights ‘proper’ set out in Rawls (1999, 78-85) is limited to Articles 3-18 of the Universal Declaration (and logical implications of these human rights (e.g. the rights recognised in the Conventions on Genocide and Apartheid). This set is exclusive of Article 1 (the underlying premise of freedom and equality), Article 2 (non-discrimination), Articles 19-20 (freedom of opinion, expression, association, peaceful assembly and association) and Article 21 (political participation). Article 1 is excluded on the grounds that they are purely aspirational; other Articles are excluded on the grounds that they presuppose specific institutions.

²⁰ Kant refers to **(1)** the traditional distinction between **perfect duties** (where no

obligation’ and ‘universal imperfect obligation’, and exploring their relevance for contemporary ethics, O’Neill also follows Kant in limiting the reach of a theory of fundamental or human rights to the domain of ‘universal perfect obligation’. Whilst making analytical space for welfare rights as ‘universally distributed rights’, O’Neill disputes the idea that ‘imperfect obligations’ can be associated with strict duties and counterparty rights. She contends that whereas ‘perfect obligations’ (relating to the performance of specific actions) can be adequately reflected in a rights-based ethical framework, ‘imperfect obligations’ (relating to the promotion of general goals) will be ‘unallocated’ and ‘neglected’ – and that general obligations to relieve poverty, hunger and starvation ‘can at best have subordinate status in an ethical system in which the concept of rights is fundamental’ (1996, 127-8). This position is reflected in the typology of obligations set out in O’Neill (1996, 152), which seems to preclude the admissibility of positive conceptions of ‘freedom from severe poverty’, ‘freedom from hunger’ and ‘freedom from starvation’ as abstract, moral or pre-institutional rights, in terms of terms of which systems of positive law and institutional arrangements are to be justified and judged.

1.3 Sen’s contributions to the debate

There have been various attempts in the literature to modify the Rawlsian framework in order to develop a more adequate basis for conceptualising internationally recognised standards in the field of poverty and human rights. These include proposals for (i) broadening the first principle of justice to include social and economic rights; (ii) broadening the scope of the second principle of justice by (iii) constructing a ‘global’ original position in which (iv) a ‘global difference principle’ applies.²¹ Sen’s critique of the characterisation of

exceptions are permitted) and **imperfect duties** (giving latitude for choice) in terms of **(2)** the distinction between **narrow duties** (that have as their ground a specific action) and **broad duties** (that have as their ground a maxim (or ‘end of action’)). For example, in his treatment of the obligation of beneficence, Kant maintains that since it is non-feasible for a single person to assist all needy people in a consistent way, there can be no rational (contradiction-free) principle that can prescribe the extent to which an individual should act to assist those in need in any particular situation. Hence the injunction ‘assist those in need’ cannot be universalised in terms of a duty to perform a particular action. However, Kant maintains that this injunction *can* be consistently willed as a maxim in respect of all others, and that, in this form, it gives rise to a prescriptively binding obligation under the ‘universal law’. This possibility of obligations that relate to the promotion of general goals – rather than to the performance of specific actions – gives rise to the concept of an ‘imperfect obligation’. Kant provides for ‘permitted limitations’ of obligations of this type when goal-fulfilments are not mutually co-possible (ensuring ‘intrinsic compatibility’ and the satisfaction of the logical principle ‘ought implies can’) (Kant 1991 [1785] 31 & f.n.57.1; 1991 [1797] (1996 [1797]: 168).

²¹ The general possibility of conceiving basic human rights as terms of agreement that rational actors would choose in the original position is analysed in Hayden (2002,

goods in the Rawlsian framework has been a key influence both on the modifications and extensions to the original scheme set out by Rawls himself and on this broader debate. In Sen's view, focussing on 'primary goods' can result in indifference to, and neglect of, the actual things that people can and do achieve. The relationship between access to 'primary goods' and the things that people can do and be is contingent and conditional, and can vary between individuals, families and population goods. Therefore, there is a need to move beyond 'primary goods' as an informational focus for evaluative exercises concerning basic human interests, and to focus directly on the substantive freedoms that people can and do enjoy.²²

1.3.1 SUPPORT FOR A BROAD CLASS OF FUNDAMENTAL FREEDOMS AND HUMAN RIGHTS FOCUSSED ON THE VALUABLE THINGS THAT PEOPLE CAN *DO* AND *BE*
The 'capability approach' departs from other frameworks by providing direct support for a broad characterisation of fundamental freedoms and human rights that takes account of poverty, hunger and starvation. In moving beyond the Rawlsian position, Sen has argued that individual substantive freedoms in the

120-179). He argues that the theories set out in Rawls (1973, 1993, 1999) cannot support a genuinely universal human rights project and focuses on the necessity of types of modifications to the Rawlsian scheme. These are: (1) modifications of the first principle to incorporate a broader characterisation of basic rights reflecting not only the civil and political rights but also clearer articulation of economic and social rights; (2) broadening the scope of the problem addressed in the first formulation of the original position to accommodate universal human rights in the global context. Other proposals fall within the scope of this analysis. For example, Gewirth (1982, 1996) develops a theory of primary goods in terms of the *necessary conditions for moral agency* and places this idea at the center of a broad theory of fundamental freedoms and human rights; Beitz (1999 [1979], 125-169) contends that if social cooperation is the foundation of domestic distributive justice then international economic interdependence is the foundation for global distributive justice. Pogge (1989, 272) suggests that a 'globalized' first principle might require a set of basic rights and liberties 'analogous to the Universal Declaration of Human Rights'. See Hayden (2002, 198-206) for fuller references to the broader literature. For more general criticisms of contractarianism (individualistic/non-contextual focus, idealistic/unrealistic premises etc.) see, for example, Sandel (1984), O'Neill (1997) and Nussbaum (2003).

²² Sen's empirical research suggests that even such elementary freedoms as the capability to be well nourished may vary greatly, despite the consumption of same amounts of food, depending on the person's metabolic rate, body size, climatic conditions, parasitic disease, age, gender and special needs such as pregnancy (1993e, 532). Rawls accepts that capabilities are more fundamental for people than primary goods but questions the practical feasibility of information about capabilities as oppose to primary goods. He suggests that, by embedding primary goods rather than capabilities in principles of justice, 'we may come as close as we can in practice to a just distribution of Sen's effective freedoms' (1999, 13n; 1996, 182-185).

form of the capabilities and functionings²³ that people can and do achieve can be incorporated into ethical evaluation and included among the constituent elements of human freedom without losing objectivity. The central class of ‘capability freedoms’ focuses on the set of valuable things that a person is able to do and be. This class provides an elucidation of the ‘opportunity aspect’ of freedom. The ‘capability perspective’ does not provide an adequate or complete basis for a theory of fundamental freedoms and human rights, but rather provides an elucidation of the second part of Rawls second principle of justice (with ‘rational advantage’ characterised in terms of capability to function rather than primary goods).²⁴ The central idea of ‘capability-freedom’ is then associated in Sen’s conceptual framework with derivative classes of ‘capability-rights’ and obligations that have as their object the protection and promotion of valuable states of being and doing. In this way, the tripartite relationship between freedoms, rights and obligations that characterises many ethical and political theories (Diagrams abc) is mediated in Sen’s conceptual framework by the idea of capability (Diagram d). This approach supports the valuation of both negative and positive freedoms (Diagram e) and the elucidation of a class of fundamental freedoms and human rights that focuses on the valuable things that people can do and be (Diagram f). Unlike many other influential theories, the ‘capability approach’ provides direct support for the characterisation of poverty, hunger and starvation as ‘freedom-restricting’ conditions. For example, if a person (x) has reasons to value a life without hunger and would choose such a life, then the capability of this person to achieve adequate nutrition is directly relevant to her real opportunity to promote her objectives and expands her freedom. Conversely, deprivation in the capability to achieve adequate nutrition restricts x’s real opportunity to promote her objectives, and is admissible as a ‘freedom restricting’ condition. In this way: ‘Minimal demands of well-being (in the form of basic functionings, e.g. not to be hungry), and of well-being

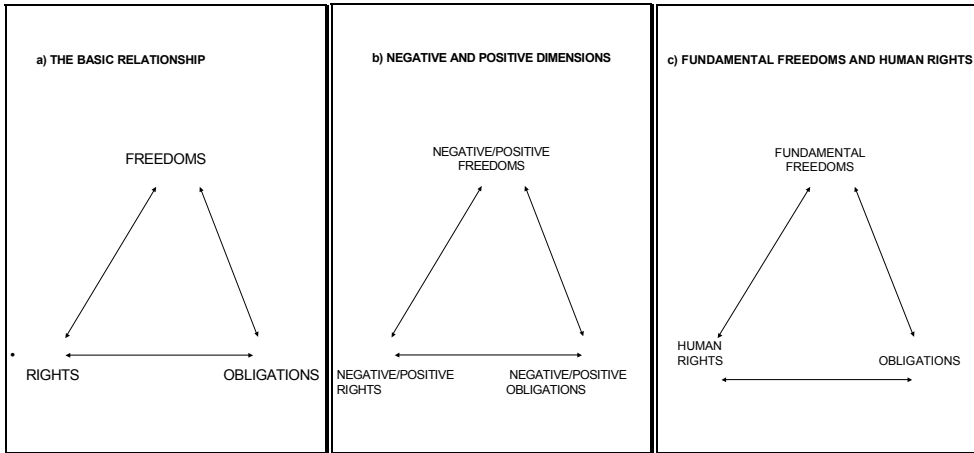
²³ The term ‘functioning’ refers to aspects of the states of being and doing that a person achieves, ranging from elementary personal states (such as achieving adequate nutrition) to complex personal states and activities (such as participation and appearing without shame). The term ‘capability’ refers to the alternative combinations of functionings that are within a person’s reach. See, for example, Sen (1993a, 31).

²⁴ Sen characterizes freedom as a complex and pluralist concept involving both opportunity and process (e.g. 2002, 9-13). In clarifying the role of the capability perspective in an over-all theory of fundamental freedoms and human rights, Sen has argued that the concept of the *capability to function* can be understood as an elucidation of the idea of the *substantive freedom* or *real opportunity* of a person to choose a life that he or she has reason to value. The ‘capability perspective’ provides an alternative specification of the second part of Rawl’s second principle of justice by making allowance for parametric variability between access to primary goods and the conversion of primary goods into valuable ends (in the form of combinations of valuable capabilities and functionings that people can and do achieve) (2004, 9-10).

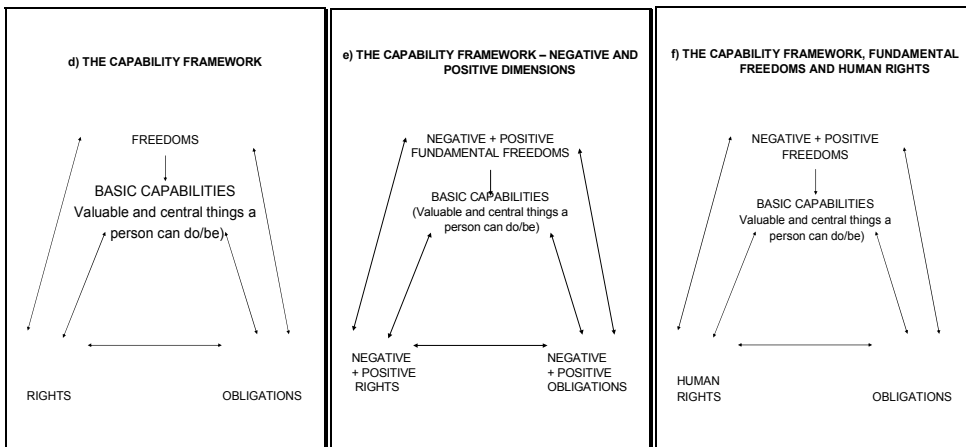
freedom (in the form of minimal capabilities, e.g. having the means of avoiding hunger)' can be conceptualised as rights that 'command attention and call for support' (Sen 1982a 4-7/15-19; 1985a, 217; 1985b, 21-24; 1992a, 66-8; 1993a; 1999a,13-35/54-86).

**BOX 4
CONCEPTUALISING HUMAN RIGHTS AND CORRELATIVE
OBLIGATIONS IN THE 'CAPABILITY FRAMEWORK'**

THE TRIPARTITE RELATIONSHIP BETWEEN FREEDOMS, RIGHTS AND OBLIGATIONS



THE 'CAPABILITY FRAMEWORK'



1.3.2 SUPPORT FOR A ‘NON-ABSOLUTIST’ MODEL THAT IS SENSITIVE TO CONSEQUENCES, OUTCOMES AND RESULTS

The ‘capability approach’ also departs from other influential theories by providing a ‘non-absolutist’ model of fundamental freedoms and human rights that is sensitive to consequences, outcomes and results. The discussion in section 1.1 explored the ways in which ‘absolutist’ models attribute little or no role to consequences in ethical evaluation and suggest that fundamental freedoms and human rights should always take strict priority over other goals when there are conflicts. For example, in the Nozickian model, the set of libertarian rights (including rights to life, liberty and property) takes strict priority over other goals, with individual rights being characterised as constraints on individual action that are **non-contingent** (in the sense of applying in all circumstances), **unqualified** (in the sense that their violation is always wrong), and **absolute**. Sen has set out a far-reaching critique of this approach in the context of poverty, hunger and famines. The libertarian specification of individual rights implies that endemic hunger and famines can arise with no violation of acknowledged rights, whilst ‘consequence-independent’ ethical reasoning results in ‘indifference’ to consequences such as malnutrition and starvation. For these reasons, Sen has proposed that the achievement of fundamental freedoms and human rights be evaluated in consequence-ethical systems that incorporate information about outcomes and results and of other forms of ‘complex multilateral interdependences’ involved in valuing fundamental freedoms and human rights in a society.²⁵ This broader informational base provides support for justified limitations on fundamental freedoms and human rights when there are sufficiently strong reasons (e.g. the

²⁵ Sen has argued that outcomes and results such as the states of being and doing that people achieve in practice have consequential relevance for the evaluation of fundamental freedoms and human rights — including relevance for the specification of the list of fundamental or basic rights. The ‘capability approach’ facilitates this approach by taking note of the correspondence between (1) the valuable states of being and doing that are protected and promoted in formal guarantees of fundamental freedoms and human rights; (2) the results that people **can** actually achieve (i.e. the capabilities that are within a person’s reach); and (3) the results that people **do** actually achieve (i.e. a person’s realized functionings). For example, in analysing the human right to education, the perspective of substantive freedom recognises that formal guarantees of the human right to education may be systematically unrealized in countries where customary practice, choice inhibition and/or adaptive expectations militate against school attendance by girls [Sen (2002, 632-651), Nussbaum (2000, 135-147)]. In pursuing this approach, Sen has argued that even when rights-based evaluations do *not* make explicit reference to outcomes and results they are often in reality based on consequence-sensitive analysis. For example, a general prohibition on smoking might refer only to a prohibition on actions. However, such a ban is in reality introduced as a means of avoiding a particular outcome (i.e. passive smoking) (1992b, 36).

limitation of property rights in order to prevent a famine). Furthermore, absolutist models can only provide support for a limited range of fundamental freedoms and human rights that are in logical terms ‘co-possible’ — with the feasibility of ‘complete realization’ being a condition of the admissibility of rights-based claims. In contrast, the ‘non-absolutist’ model recognises the possibility of mutual conflicts and incompatibilities between fundamental freedoms and human rights. This broadens the scope of human rights-based claims by supporting the admissibility of fundamental freedoms and human rights that are limited by resources and other cost and feasibility constraints, and by accommodating the possibility of hierarchies, balancing and trade-offs [1982a, 4-7 & 15-19 & 38-39; 1984, 310-315; 1985a, 212-221; 1985b; 1987b, 70-78; 1999a, 66; 2000ab].²⁶

1.3.3 STRENGTHENED SUPPORT FOR POSITIVE OBLIGATIONS OF ASSISTANCE AND AID

Does an act of commission (e.g. killing someone) have the same moral weight as an act of omission (e.g. failing to prevent a death)? Does a murder carry the same moral blame as the failure to intervene to rescue a drowning person, or failing to take actions that would prevent starvation? The conventional treatment of these questions (‘the doctrine of acts and omissions’) suggests that people are responsible for the harm caused by their positive acts, but not for the harm caused by their omissions. This approach results in the delineation of a relatively narrow sphere of strict human responsibility — with a broader sphere of benevolence, charity and supererogatory action. However, the moral distinction between acts and omissions is blurred if account is taken of the harm

²⁶ The absolutism of the outcome-independent approach is weakened in the Rawlsian framework in a number of important respects. First, the Rawlsian framework narrows the set of individual rights that take absolute priority over the fulfilment of basic needs to the set of basic liberties. Second, although the right to property is included, Rawls rejects broad interpretations, suggesting that the role of this liberty is ‘to allow a sufficient material basis for a sense of personal independence and self-respect’ (1993, 298). Third, Rawls does not characterise the basic liberties themselves in absolutist terms. He acknowledges that the basic liberties might conflict with one another and distinguishes between the ‘restriction’ of the basic liberties from ‘regulation’ when combined into a coherent scheme (1993, 294-5). Finally, despite emphasis on the priority of liberty and the lexicographic principle, Rawls (1999, 297) concedes that the priority of liberty is not required under all conditions, depending, for example, on the level of economic development. Nevertheless, Sen has challenged the proposition that the Rawlsian basic liberties should take absolute priority over the fulfilment of basic needs in all circumstances. He maintains that the force of other considerations (including the intensity of economic needs) can challenge the ‘absolute priority’ of personal liberties when there are conflicts (1999a, 63-4) whilst nevertheless defending the separation of basic liberties for special treatment and the importance of motivation and intentionality in the attribution of responsibility for states of affairs (2003).

caused by intentional omissions; by *foreseeable* as well as *intentional* acts; and by double-effects and other consequences (e.g. Glover (1990) and Reeder (1996)). Furthermore, the moral distinction between acts and omissions has been criticised in the literature for legitimising ‘moral indifference’ towards harm and suffering and a ‘casual approach’ to deprivation, malnutrition and the lack of access to medical care (Glover, 1990, 108). The analysis of these limitations has given rise to increased support for the concept of positive obligation in relation to preventive action and the provision of life-saving assistance and aid, at both the individual and societal levels. In contributing to this debate, Sen has argued that the ‘capability approach’ provides grounds for far-reaching positive obligations of assistance and aid, as well as negative obligations of omission and restraint. The valuation of ‘capability freedoms’ gives rise to associated claims on others to respect ‘capability freedoms’ (through non-interference) and to defend and support ‘capability freedoms’ (through positive acts of assistance and aid).

The Characterisation of Human Rights As ‘Goals’

In taking these ideas forward, Sen has argued that the greatest support for the elucidation of positive obligations of assistance and aid — including positive obligations to relieve poverty, hunger and starvation — may arise in moral structures that are ‘consequentialist but not welfarist’ (1982d, 358). If rights are purely instrumental (e.g. as in the utilitarian moral approach) then there is no case for including the realization of rights in the specification of the fundamental objectives of a system. If on the other hand rights are viewed as fundamental, but are characterised in terms of negative libertarian constraints (as in the Nozickian framework), then individuals can pursue their self-interest within the system of negative constraints, but are not under positive obligations to pursue the goal of the maximisation of rights-fulfilments or the minimisation of rights-violations. In contrast, Sen contends that if ‘consequence-sensitive’ reasoning is adopted without the additional limitations imposed by welfarism (i.e. if non-utility features including the intrinsic value of rights are treated as fundamental), then human rights can be included among the goals of a ‘consequence-sensitive’ ethical system, with the achievement and non-achievement of human rights being reflected in the positive and negative evaluation of states of affairs.²⁷ This linking of the objective of ‘goal-

²⁷ Consequential approaches to rights-based analysis have been criticised in various ways in the literature. Sen has attempted to deal with many of the criticisms and maintains that ‘consequence-sensitive’ frameworks can combine the advantages of consequential reasoning (including the accommodation of interdependences, trade-offs and instrumental accounting) with intrinsic valuation, agent sensitivity and position relativity in ethical assessment. He contrasts frameworks of this type with forms of ‘narrow consequentialist welfarism’ adopted in standard welfare economics and with deontological approaches adopted in ethics (1982a, 1983a, 1987b, 74-78,

realizations’ to moral obligations through ‘consequence-sensitive’ links can strengthen the role of ethical considerations in individual behaviour — including the positive obligations on third parties who are in a position to help [(1982a, 3-20 & 38-39), (1985a, 217), (1985b, 14-19), (1987b, 56-57 & 70-78)].

1.3.4 SUPPORT FOR THE VALIDITY OF A THEORY OF HUMAN RIGHTS IN THE CONTEXT OF ‘IMPERFECT OBLIGATIONS’

The characterisation of rights as goals also breaks down the emphasis in some theories on a *binary* correspondence between rights-fulfilments (and violations) and the performance (and non-performance) of specific duties or actions, and emphasises instead the *tripartite* relationship between agents, goals (or outcomes) to which that agent has rights, and the associated obligations and duties (1982a, 38; 1982d, 347; 1985c).²⁸ This challenges theories that make analytical space for the concept of positive obligation — but that maintain that, in the field of poverty, hunger and starvation, positive obligations are not associated with counter-party human rights. In responding to O’Neill, Sen has argued that the introduction of ‘consequence-sensitive’ reasoning provides a framework in which the value of human rights achievements and the disvalue of non-realizations can be reflected in the evaluation of states of affairs. This evaluation is not contingent on the precise specification duties or on legal codification, and in Sen’s view, the ‘consequence-sensitive’ approach provides a basis for the conceptualisation of human rights that correspond to ‘imperfect’ as well as ‘perfect’ obligations (Sen 1981b; 1982a, 2-20 & 38-39; 1984, 310-315; 1985a, 212-221; 1985b, 14-19; 1987b, 56-57&70-78; 2000ab).²⁹

1993d). However, a classic objection — the question of whether the duties that flow from positive obligations are necessarily ‘indeterminate’ or are only ‘weakly determined’ in consequential frameworks — is not fully resolved. As Sen acknowledges, the issue of who in particular is responsible for fulfilling a right, and how far they are obliged to go in fulfilling the right — is left open (2000a, 494-5).

²⁸ The general class of rights that focus on outcomes rather than on permissions and obligations to act (or not to act) is discussed in Sen (2002, 645) and referred to as the class of ‘contingent rights to ‘states of affairs’.

²⁹ Nussbaum characterizes basic capabilities as needs for functioning and proposes that the gap between the *potential capability* for a good human life, and the *full realization* of such a life, gives rise to claims of assistance by others and provides a rationale for theories of political obligation and human rights. See, for example, (1993, 1997).

1.3.5 SUPPORT FOR POLICIES AND PROGRAMMES AIMED AT THE ACHIEVEMENT OF FUNDAMENTAL FREEDOMS AND HUMAN RIGHTS

Whereas the Nozickian model makes the feasibility of ‘complete realization’ a condition of the admissibility of rights-based claims, Sen has argued that feasibility cannot be a condition of coherence, and that fundamental freedoms and human rights based claims can be meaningful in the context of cost and feasibility-constraints. Sen has reasoned that where there are resource constraints, the positive obligations associated with ‘capability-freedoms’ and ‘capability-rights’ may not relate directly to valuable states of being and doing (x) — that may be currently unachievable — but to policies and programmes p(x) that promote the achievement of (x) as an immediate or cumulative outcome. The violation of obligations of this type involves the absence and inadequacy of policies and programmes p(x) — rather than the non-fulfilment of (x) per se (Sen, 1982d; 2000a). This approach is reflective of a critical element in the establishment and development of international legal obligation in the field of poverty and human rights. For example, Articles 26-29 of the Bill of Rights attached to the South African Constitution (1996) entrenches a cluster of socio-economic rights essential for an adequate standard of living — including the human rights to housing, access to health care, sufficient food and water, social security and education. The justiciability and legally enforceability of these human rights has been put beyond question by jurisprudence of the South African Constitutional Court, which has upheld claims for the violation of socio-economic rights in a series of landmark judgements.³⁰ These Cases establish that resource constraints do not relieve the Government of the positive obligation to fulfil the socio-economic rights established in Articles 26-29 of the Constitution by taking positive measures to eliminate or reduce the large areas of severe deprivation that afflict South Africa.³¹ However, the Court has also sought to delimit the nature and scope of the duties that flow from this positive obligation. It has reasoned that the Governments responsibilities under these

³⁰ See Articles 26-29 of the Bill of Rights attached to the Constitution of the Republic of South Africa [Act 108 of 1996] www.concourt.gov.za. Cases considered include *Grootboom v Government of the Republic of South Africa* (housing) and *Treatment Action Campaign (TAC) v The Minister of Health* (medical care), Constitutional Court of South Africa, Judgments dated 4 October 2000 and 5 July 2002 www.concourt.gov.za.

³¹ ‘[H]undreds of thousands of people [are] living in deplorable conditions throughout the country. The Constitution obliges the State to act positively to ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependents ... [Although it] is an extremely difficult task for the State to meet these obligations in the conditions that prevail in our country... [T]hese are rights, and the Constitution obliges the State to give effect to them. This is an obligation that Courts can and in appropriate circumstances, must enforce’ [*Gootboom* paras. 93-4].

Articles can be discharged through the adoption of policies and programmes that aim at the achievement of human rights over time rather than their immediate and/or complete fulfilment.³²

1.3.6 SUPPORT FOR UNIVERSALISM AGAINST THE RELATIVIST AND CULTURE-BASED CRITIQUES

Finally, Sen's work in ethics has pushed the human rights agenda forward by defending the idea of universalism against the relativist and culture-based critiques. In rejecting approaches that locate the historical antecedents of contemporary ideas about fundamental freedoms and human rights exclusively in Western traditions of natural law and natural rights, Sen has both subjected the idea of a monolithic Asian culture that is opposed to fundamental freedoms and human rights to critical scrutiny, and has defended the relevance of diverse cultures, religions and philosophies to the development of these ideas. In particular, he has argued that:

- All societies and cultures comprise diverse elements. Elements within Western societies, cultures and philosophies that are consistent with and supportive of contemporary ideas about universal human rights have co-existed with other elements that are neither supportive nor consistent with the idea of human rights (e.g. slavery, sexism, racism and fascism). Similarly, elements in non-Western societies have co-existed with elements that are neither consistent with nor supportive of this idea.
- The historical antecedents of the ideas of fundamental freedoms and human rights are not exclusive to particular societies, religions or cultures. The ideas from which contemporary concepts of human rights emerged — ideas of universalism, tolerance and respect for human dignity and worth, traditions of freedom, traditions of concern for the poor, needy and exploited, and traditions of interpersonal obligation and

³² The Court has reasoned that there are two counter-balancing elements to Articles 26-29: a first element recognising the general right, and a second element establishing and delimiting the scope of the positive obligation imposed on the state. In weighing up these elements, the Court has reasoned that the State is not obliged (a) to go beyond available resources or (b) to realize the rights immediately. Rather, the State must (c) act reasonably to ensure the progressive realization of these rights over time. This can involve (d) the adoption of a comprehensive policy or programme that is (d.1) is capable of facilitating the realisation of the right in question and (d.2) makes appropriate provision for short, medium and term needs. Programmes or policies that exclude a significant segment of society, or that do not take adequate account of immediate crisis needs, cannot be said to be reasonable. In the Cases referred to above, the policies and programmes adopted by the government failed to comply with these principles and the Government was held to be in violation of the positive obligations established in the Constitution [Grootboom pars. 41-44, 65-69, 95; TAC 67-95].

government responsibility — have broad historical antecedents that are not regionally constrained.

- The work of non-Western thinkers (including tolerance, pluralism and minority protection (Ashoka) good government and famine prevention (Kautilya) and Akbar) should be re-appraised in the light of these principles.³³

The attempt to move *beyond* the universalism-relativism dichotomy by establishing cross-cultural foundations for the idea of human rights is reflective of the broader emphasis in Sen's work on the underlying question of how to preserve a role for the development of universal ethical categories (capabilities, freedoms, human rights etc.) whilst recognising the importance of diversity and difference in human affairs. For example, the underlying concern with the reconciliation of universalism on the one hand, and diversity and difference on the other is central to Sen's theoretical work on the nature of objectivity (in the argument that universal values can be compatible with variances associated with positional characteristics). Whereas standard approaches characterise 'neutrality' in terms of some form of invariance with respect to individual observers and their positions (Nagel's 'view from nowhere'), Sen has suggested that positional characteristics may be relevant for observations, knowledge, beliefs, practical reasons and choices and that this parametric dependence can be built into the evaluation of states of affairs without compromising objectivity. Hence in Sen's view, 'neutrality' is compatible with 'position-relativity' when the observational position is variable — requiring only that evaluators in identical positions would adopt identical evaluations.³⁴ The possibility of developing universal ethical categories in the context of diversity and difference is also reflected in Sen's emphasis on 'second-order justifications',³⁵ in challenges to completeness as a condition of ethical evaluation (with practical proposals for applying the ideas of capabilities and rights emphasising the limits that value pluralism may impose on the development of evaluative systems);³⁶ and in practical proposals for the

³³ See for example Sen (1997c, 35-40) and (1999a, 227-240). Also see Vizard (2000b).

³⁴ These positional characteristics can include a range of parametric variables including location and situation as well as relationship ties and a person's special concern for his or her own actions See, for example, Sen (1982a, 19-38; 1983a; 1993d) and Anderson (2003).

³⁵ A second-order justification can begin with an assertion of valuable elements, and then seek consistency of other proposed ideas with these elements (1985c, 21-23).

³⁶ For example, in advocating the use of capability-space (as oppose to utility-space or income-space) for evaluative exercises concerning basic human interests, Sen has argued that the capability approach is consistent and combinable with several different substantive theories of value and that there is no theoretical necessity for the

assessment of poverty (in the argument that an invariance in capability and functioning may correspond to a variance in commodity space).³⁷

2. Sen's Contributions in Economics

This second part of the paper turns to the ground-breaking ways in which Sen's research agenda has focussed international attention on the critical importance of fundamental freedoms and human rights for economic analysis. In the past, the idea of fundamental freedoms and human rights has often been neglected in theoretical and empirical economics. Dominant approaches have evaluated the adequacy of economic processes and arrangements in terms of income expansion, whilst standard frameworks in welfare economics have evaluated interpersonal advantage and the efficiency and fairness of competitive market outcomes in terms of utility — with no explicit recognition of instrumental and intrinsic value of fundamental freedoms and human rights (see Box 5). In contrast, Sen has set out a far-reaching critique of standard frameworks that fail to take account of fundamental freedoms and human rights (section 2.1), opening up important new lines of enquiry, and pioneering the development of radical new paradigms and approaches that take account of these concerns (sections 2.2-2.6). His contributions include far-reaching proposals for the incorporation of new variables and concerns into theoretical and empirical economics including individual entitlements (section 2.2), capabilities and functionings (2.3), gender discrimination (2.4), civil and political rights (2.5), 'freedom of choice' and 'opportunity freedom' (2.6) and 'liberty rights' and 'basic rights' (2.7). These proposals have contributed to important paradigm shifts — away from an exclusive concern with income, growth and utility, towards a range of human rights-focussed variables and concerns — and provide a framework for the instrumental and intrinsic valuation of fundamental

question of relative value of different capabilities to be resolved prior to agreement on evaluative space (e.g. 1992a 46-49 & 133-134; 1993a, 34-33 & 48-49; 1997, 203-209).

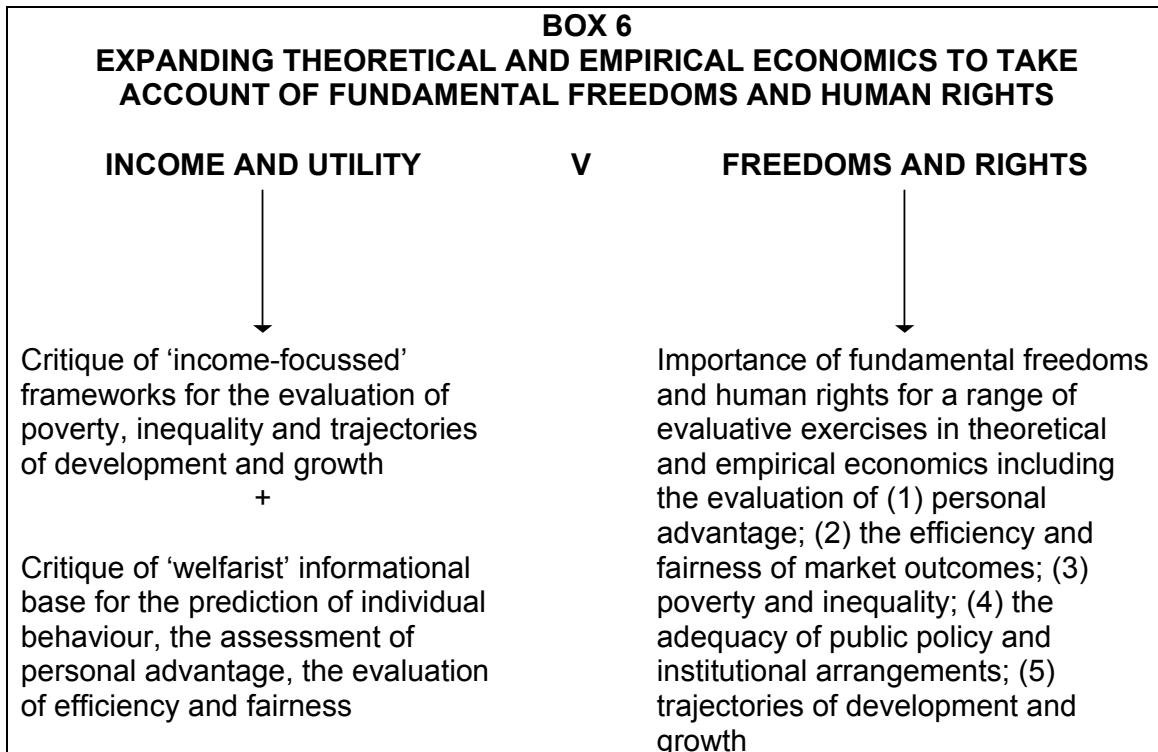
³⁷ In defending the proposition that 'irreducible absolutist core' in the idea of poverty against the view that relativism 'dissolves' the concept of absolute need, Sen has argued that a *relativist* characterisation of poverty in commodity-space may correspond to *absolutist* characterisation in the space of capabilities and functionings — because there may be more variation in the commodity requirements of capabilities than in capabilities themselves. The 'commodity-basis' of the 'capability to be adequately nourished' may vary greatly across communities — giving the poverty line in commodity-space a relative character. Similarly, the commodity requirements of the 'capability to appear in public without shame' will vary in different societies with different social and cultural norms, income levels, modes of production etc. (1984, 325-345; 1987a, 17).

The critique of 'standard' frameworks

Sen's critique of income-focussed frameworks has emphasised the finding that competitive market economies and trajectories of development and growth can generate many different outcomes and that non-income variables (including institutional conditions and respect for fundamental freedoms and human rights) are among the variables that can affect these results. For example, effective development and growth may critically depend on a wide range of non-income variables such as the presence or absence of pro-poor public policies related to basic education, health care and employment generation and the institutional context in which markets function, including respect for fundamental freedoms and human rights (on which, see section 2.5). Income-focussed approaches concentrate on a particular means (or instrument), resulting in the neglect of the intrinsic value of ultimate objectives and goals (including the intrinsic value of fundamental freedoms and human rights), as well the neglect of the instrumental value of other (non-income) instruments. An exclusive focus on income can therefore result in systematic bias and policy failure because of (1) the focus on a single instrument when many may be relevant; (2) the focus on the 'wrong' policy target (Drèze and Sen (1989) and Sen (199a; 2001b)). In welfare economics, individual well-being is often characterised in terms of the concept of utility (understood in terms of individual 'pleasures and pains', happiness and/or desire-fulfilment) and operationalised in terms of revealed preferences and actual choices. Sen has developed a far-reaching critique of 'welfarist' frameworks for concentrating on an overly narrow view of human rationality and well-being. His work has 'unpacked' the 'welfarist' foundations of a wide-range of conceptual and technical apparatus and has analysed the limitations of this informational base from the perspective of fundamental freedoms and human rights — for the prediction of individual behaviour, the characterisation of interpersonal advantage and the evaluation of the efficiency and fairness of competitive market outcomes. Key limitations include:

- Neglect of the relevance of fundamental freedoms and human rights to the characterisation of human motivation and rationality and the prediction of individual behaviour. Standard frameworks assume (1) that individual utility can be interpreted in terms of the real representation of individual preferences (via the utility function); (2) that individual preferences are motivated by 'self-interested utility maximisation'; (3) that individual preferences can be deduced from individual choices (the theory of revealed preference); (4) that 'maximal choices' can be equated with 'optimal choices'. Sen has argued that these assumptions result in an overly narrow view of human motivation and rationality and can result in wrong predictions. The objective of individual behaviour is not necessarily 'self-interested utility maximisation' and other motivations and objectives may be important determinants of preferences and choices.

These include identity, loyalties, commitments, agency and the pursuit of goals and values such as fundamental freedoms and human rights.



- Neglect of the relevance of fundamental freedoms and human rights to the characterisation of personal and interpersonal advantage. Sen has argued that 'welfarism' is an overly narrow informational base for characterising personal interests because it focuses on the *well-being* aspect of a person (relating to his or her own personal physical and mental interests), whilst neglecting the *agency* aspect (relating to the goals that a person values, desires and has reasons to pursue); on a single dimension of human wellbeing (utility), whilst neglecting other dimensions (including entitlements, capabilities and functionings, opportunity, freedom and human rights); and on outcomes, whilst neglecting process-sensitivity and the intrinsic value of individual freedom of choice and participation. Furthermore, interpersonal comparisons based on individual 'mental states' such as happiness and desire-fulfilment may be systematically biased because of the phenomenon of 'adaptive expectations'. This phenomenon may be particularly common in the context of inequality, poverty and oppressive cultural traditions — with the expectations and desires of vulnerable groups including the poor, and women in traditional and sexist societies being particularly affected — whilst the limitations of utility-based frameworks in the context of 'adaptive expectations' are exacerbated by

the use of choice information as a proxy for utility (via the theory of revealed preference).³⁸

- Neglect of the relevance of fundamental freedoms and human rights to the evaluation of the efficiency and fairness of competitive market outcomes. Standard approaches in welfare economics adopt utility-based interpretations of Pareto Optimality as a necessary condition for economic efficiency and distributional fairness. Sen has critiqued this concept on the grounds that it is ‘supremely unconcerned with distributional issues’. A state can be Pareto Optimal ‘with some people in extreme misery and others rolling in luxury, so long as the miserable cannot be made better off without cutting into the luxury of the rich’ (1987b, 31-32), (1997[1978], 7). Furthermore, the concept of Pareto Optimality is insensitive to the possibility of entitlement failure and starvation, and can conflict with respect for individual liberty-rights. These limitations feed into judgements about the efficiency and fairness of competitive market outcomes through the Fundamental Theorems of Welfare Economics.³⁹

The need to expand theoretical and empirical economics to take account of fundamental freedoms and human rights

Against this background, Sen’s research agenda has moved both theoretical and empirical economics forward by highlighting the importance of fundamental freedoms and human rights for the analysis of economic processes and

³⁸ See, for example, Sen (1985a, 15), (1987b, 45-46) and (309, 1984) and Nussbaum (2001).

³⁹ The concept of Pareto Optimality suggests that a situation is optimal if no non-conflicting improvements can be made (i.e. if no one’s situation can be improved without worsening the situation of someone else). Utility-based interpretations suggest that a situation is optimal if no one’s utility can be improved without worsening the utility of someone else. The First Theorem of Welfare Economics establishes that under certain assumptions (e.g. no externalities) all competitive market equilibria are Pareto Optimal. That is, no one’s situation (utility) can be improved without worsening the situation (utility) of someone else, starting from any competitive market equilibrium. The Second Theorem establishes that given certain additional conditions (e.g. no convexities) every Pareto Optimal outcome is a competitive equilibrium with respect to some set of prices and some initial distribution of resources. Therefore, every Pareto Optimal outcome can be decentralized using the competitive market mechanism (with an appropriate initial allocation and price vector). Although more radical interpretations are possible, these Theorems are often interpreted as implying that, under certain assumptions and conditions, competitive market outcomes are not improvable in ways that would increase the utility of at least one person without reducing the utility of somebody else. For further discussion, see Sen (1993e) and, for example, Mas-Colell *et. al.* (1995, 556-7).

arrangements including the evaluation of (1) personal advantage (2) the efficiency and fairness of market outcomes (3) poverty and inequality (4) the adequacy of public policy and institutional arrangements (5) the nature of development and growth. His work has emphasised the development of new frameworks and approaches in theoretical and empirical economics that take account of both the *instrumental* role of fundamental freedoms and human rights in influencing competitive market outcomes and trajectories of development and growth; and of ‘post-welfarist’ frameworks in welfare economics that take more account of the *intrinsic* value of fundamental freedoms and human rights in assessing the impact of economic arrangements and processes on individuals, groups and populations. ‘Post-welfarist’ frameworks of this type include frameworks that adopt a pluralistic informational base, taking account of both well-being and agency; frameworks that take account of the non-utility features of human motivation and personal well-being; frameworks that are sensitive to processes as well as to outcomes, reflecting the intrinsic value of freedom of choice and participation; frameworks that go beyond the view of individual preferences as ‘self-interested utility maximisation’ by adopting a broader view of agency and the things that people *would* choose to do (given the choice); and frameworks that give a central and constitutive role to the value of freedoms and rights in economic analysis and evaluation.

‘The assessment of ‘value’ has to take us well beyond utilities ... [T]he evaluation of consequences [should take] explicit note of the violation and fulfilment of [freedoms and] rights ... by incorporating the value of right fulfilment and the disvalue of rights violation into the assessment of resulting states of affairs’ (Sen 1996, 26; 1987b, 73).⁴⁰

⁴⁰ The criticisms of utilitarianism highlighted in the literature include (1) focus on utility information; (2) failure to give adequate weight to agent-relative values; (3) failure to give adequate weight to intrinsically good and bad actions; (4) failure to give intrinsic weight to the violation and fulfilment of individual rights (including internationally recognized human rights). These and other limitations are discussed in Sen and Williams (1982). In responding to (3), Sen has argued that the proposition that rights are instruments to ultimate objectives be split into the propositions that (1) rights do not have intrinsic importance (only a derivative role, ideally in promoting utility), and (2) any acknowledgement of rights — legally or morally — has consequential implications which must be examined. He maintains that even when (1) is rejected, the relevance of (2) is not disestablished. See, for example, Sen (1996b, 156).

Proposals for moving forward

Sections 2.1-2.6 analyse the key ways in which Sen's proposals have moved theoretical and empirical economics forward by incorporating new variables and concerns that reflect the intrinsic and instrumental value of fundamental freedoms and human rights. These contributions include far-reaching proposals for the incorporation of individual entitlements, capabilities and functionings, civil and political rights, 'freedom of choice', 'liberty rights' and 'basic rights' into economic analysis and evaluation. These proposals have contributed to important paradigm shifts — away from an exclusive concern with income, growth and utility, towards a range of human rights-focussed variables and concerns. They have opened-up important new lines of enquiry and provide a framework for the instrumental and intrinsic valuation of fundamental freedoms and human rights in economic assessment and in empirical economic research.

BOX 7

SUMMARY OF SEN'S PROPOSALS FOR THE INCLUSION OF HUMAN RIGHTS BASED CONCERNS AND VARIABLES INTO THEORETICAL AND EMPIRICAL ECONOMICS

- **Individual Entitlements (section 2.2).** Analytical framework for assessing the sensitivity of the 'rights-structure' prevailing in a particular society to poverty, hunger and starvation; empirical evidence of the importance of variables other than aggregate food supply as determinants of individual access to food.
- **Capabilities and Functionings (section 2.3).** Conceptualisation of substantive freedoms as the primary objectives of social and economic arrangements; empirical evidence of the dissonance between the expansion of individual income and the expansion of capability achievement, evaluation of trajectories of development and growth in terms of capability expansion (e.g. 'development and freedom' and 'human development'); development of approaches to poverty and inequality that focus on capability deprivation (e.g. poverty as 'capability deprivation' and analysis of inequalities in capability-achievement by different population groups (e.g. by gender, ethnicity, nationality etc.).
- **Gender Discrimination (section 2.4).** Empirical investigation of gender discrimination in capability space and analysis of gender power asymmetries and the intra-household situation as cases of 'co-operative conflict'.
- **Civil and Political Rights (section 2.5).** Analysis of the instrumental role of individual liberties in promoting effective development and growth (e.g. role of civil and political rights in preventing socio-economic disasters, promoting transparency and providing incentives for the solution of acute economic needs.
- **'Freedom of Choice' and 'Opportunity Freedom' (section 2.6).** Proposals for capturing and formalising the idea of the right to choose and nature and scope of individual choices and constraints in economics.
- **'Liberty-Rights' and 'Basic Rights' (section 2.7).** Development of 'social-choice' theoretic models of liberty rights and 'basic' rights.

2.2 Individual entitlements

The 'entitlement approach' provides a framework for assessing the impact of the 'rights-structure' that prevails in a particular society on poverty, hunger and starvation. Whereas the concept of rights focuses on the relationship between two agents (two individuals, an individual and the state etc.), the concept of entitlement focuses on a person's 'command over things', given the complete specification of the rights and obligations that an agent has vis-à-vis others, and the rights and obligations that others have vis-à-vis him. A person's 'entitlement set' identifies the different bundles of things to which he or she has access, given the specification of (1) the rights-structure; (2) initial endowments, transfers and opportunities for transforming endowments into entitlements via exchange. In economies characterised by production for own consumption (e.g. peasant economies), the exchange mapping depends on the exchange relationship with nature (i.e. agricultural productivity), whereas in economies where a significant proportion of the population acquires food by exchanging labour power for a wage, markets are a crucial determinant of a person's 'entitlement set'. Hunger and starvation are captured and formalised in this model in terms of the failure to access an 'entitlement set' that includes a commodity bundle satisfying minimum food requirements. If a set of commodity bundles F_i satisfies the minimum food requirements of person i , then i will starve if he or she is not entitled to any member of F_i (given (1) the rights-structure; (2) endowments, transfers and exchange entitlement mappings). The 'starvation set' S_i identifies allocations of endowments that are associated with inadequate exchange entitlements, and facilitates the distinction between systems of rights that give rise to legal entitlements to adequate food, and systems of rights that do not (e.g. Sen 1981, 1982d 347-351).

Empirical applications of the 'entitlement approach'

Sen's empirical applications of the 'entitlement approach' have moved the economics and human rights agenda forward by providing new insights into the nature and causation of deprivation and by focussing international attention on the range of variables other than aggregate food supply that can help to explain hunger and starvation. Sen has hypothesised that '[m]ost cases of starvation and famines across the world arise not from people being deprived of things to which they are entitled, but from people not being entitled, in the prevailing legal system of institutional rights, to adequate means for survival' (1982d, 349). His empirical research supports this argument by suggesting that in large famines in the recent past, in which millions of people have died, starvation has occurred as a consequence of entitlement shifts resulting from the exercise of rights that were perfectly legitimate in legal terms. Furthermore, important variables other than aggregate food supply can undermine a person's entitlement to food. Starvation deaths often arise when there is no overall decline in food availability, with entitlement failure arising, for example, when

particular population groups were unable to trade their labour power or skills (Sen 1981; also see Drèze and Sen (1989)). These research findings have helped to focus international attention on the importance of food security policies that take into account the determinants of the differential ability of individuals, groups and classes to command food in practice. Thus the UN Special Rapporteur on the Human Right to Food has recommended that the first step in a national food security strategy is to map the situation for different population groups, taking into account a range of variables including occupation, gender, ethnicity, race and rural/urban location. This approach reflects the complex causes of starvation and hunger and importance of the precise identification of the food-insecure — who they are, where they are located and the particular causes underlying their vulnerability (Eide, 1998-9).

The Human Right to Freedom from Hunger and Competitive Market Outcomes

The ‘entitlement approach’ has also generated debates about whether famines can occur under conditions of perfect competition with rational behaviour. This debate is important for assessing what markets can and cannot achieve under the idealized conditions of perfect competition from the perspective of fundamental freedoms and human rights. Sen’s analysis suggests that there is a possibility of a situation in which competitive markets clear, but in which not everyone gets an adequate food entitlement to guarantee survival. Where individuals and groups have no direct food entitlements there may be non-survival, with insecure food entitlements arising not as a result of market failure (as this is standardly understood), but when markets work. This analysis challenges approaches that rule out the possibility of starvation death due to an inability to buy sufficient food through production or exchange, and/or that maintain that if all economic agents are rational, there will be an appropriate behavioural response to famines that can be anticipated (e.g. insuring against food insecurity by storing grain or expanding food production⁴¹). Some authors have concluded

⁴¹ The assumption of universal survival is embodied in the principle of *trade-independent security* which implies that ‘each consumer can, if necessary, survive on the basis of the resources he holds and the direct use of his own labour, without engaging in exchange and still have something to spare of some type of labour which is sure to meet with a positive price in any equilibrium’ (Koopman, as cited in Sen, 1981, 172). Desai suggests that this assumption comes about both for reasons of mathematical simplicity (since introducing minimum subsistence for consumers as a necessary condition for equilibrium would introduce discontinuities make mathematical proof difficult) and because of standard assumptions about scarcity in mainstream economics. The proposition that famines — a form of systematic and pervasive scarcity — can occur (and have historically occurred) without there necessarily being a shortage of food, and in the face of available food stocks, is analogous to the claim that involuntary unemployment can occur in the face of excess capacity and unsold commodity surpluses. Just as involuntary unemployment does not arise in the pure model of competitive markets, and is standardly explained in terms

that Sen's empirical findings must be explainable in terms of insufficient initial endowments, market failure caused by the violation of the initial conditions and/or broader political conditions (e.g. restrictions on access to food and/or freedom of movement or food transportation resulting from government policy, violence, war etc.). Others have emphasised that freedom from starvation cannot be guaranteed under the idealized conditions of competition and have developed models that support the prediction of entitlement failures in economies in which competitive markets 'work'. For example, Desai (1995 [1990] 136-147) takes up the question of how entitlement failures in food can arise if there is no decline in food availability and/or no rise in the price of food, whilst Coles and Hammond contend that entitlement failures 'do nothing to create any Pareto inefficiencies' and 'cannot be market failures in any normal sense'.

'[T]he tragedy of starvation can arise in economies characterized by perfect competition. Then starvation is not a result of market failure ... [Like] involuntary unemployment ... it is not the result either of unnecessary institutional rigidities in the labour market. Instead, it is an entirely natural phenomenon of a neoclassical economy with surplus labour. Only after excess labour has been removed through starvation can general equilibrium arise' (1995, 60).⁴²

2.3 Capabilities and functionings

Sen's contributions to the development of a cross-disciplinary bridge between economics and human rights have been driven forward by the argument that economic processes and arrangements should be evaluated from the perspective

of departures from the assumptions of the pure model, so the pure model of competitive markets must rule out involuntary hunger and starvation (Desai, 1995 [1987], 120-133).

⁴² Desai (1995 [1990] 136-147) develops a two individual two good model covering the markets for rice and fish, with an asymmetric preference structure and specialisation, and demonstrates that famine conditions can occur without invoking market failure. Coles and Hammond (1995) demonstrate that standard results relating to the existence and efficiency of general market equilibria are valid even when the assumption of universal survival is relaxed. Competitive equilibria with non-survivors exist and are Pareto Optimal because the survival of the non-survivors would require sacrifices from survivors. Core equivalence also holds, with non-survivors lacking the resources they need to block a Walrasian equilibrium, and to ensure their own survival. Various modifications of the standard framework are required to establish the proofs (e.g. assumptions to deal with the distribution of 'needs' on the margin of survival and non-convexities in consumptions set as an individual passes between survival and death).

of individual substantive freedoms (rather than other informational focuses such as income and utility). This argument is reflected in a series of influential proposals for evaluating individual advantage, the efficiency and fairness of competitive market equilibria, the adequacy of public policy and institutional arrangements, poverty and inequality, and the nature of development and growth, in terms of the capabilities and functionings that people can and do achieve. Proposals for capturing and formalising individual substantive freedoms in the form of the valuable ‘beings’ and ‘doings’ in ‘capability space’ build on the ‘entitlement approach’ but recognise that the mapping between a person’s entitlements (i.e. their command over commodities) on the one hand, and a person’s capability to achieve valuable functionings on the other, depends on personal features (such as bodyweight, health status and aspects of a persons situation reflected in ‘environmental conditions’). ‘Capability space’ takes account of this parametric dependence on personal features by introducing a ‘characteristics function’ (that governs the conversion of commodity consumption into valuable characteristics) and a ‘personal utilisation function’ (that governs the conversion of characteristics into valuable things that a person can do and be). The different combinations of beings and doing that i can achieve (such as being nourished, clothed, mobile or taking part in the life of the community) are captured and formalised as ‘functioning vectors’ (i.e. as ‘points’) in ‘capability space’. Given i ’s command over commodities (or entitlements) and his or her personal features (such as bodyweight, health status and aspects of their personal situation reflected in ‘environmental conditions’), the ‘capability set’ $Q_i(X_i)$ is defined derivatively as the set of feasible ‘functioning vectors’ for person i , and represents the freedom that a person has in terms of the choice of functionings (i.e. the various combinations of doings and beings that he or she can feasibly achieve):

$$Q_i(X_i) = [b_i | b_i = f_i(c(x_i)), \text{ for some } f_i(\cdot) \in F_i \text{ and for some } x_i \in X_i.]$$

where x_i is a vector of commodities possessed by i
 X_i is the set of feasible commodity vectors for i
 $c(\cdot)$ is a function converting a commodity vector into a vector of characteristics
 $f_i(\cdot)$ is a personal ‘utilisation function’ for i (representing the conversion of a commodities vector x_i into a functionings vector by i)
 F_i is the set of feasible ‘utilisation functionings’ f_i , for i
and $b_i = f_i(c(x_i))$ is a vector of achieved functionings for person i (given a commodity vector x_i and the choice of a utilization function f_i).

Since i is *able* or *has the capability* to choose a functioning vector from the set of feasible functioning vectors, the capability set might be interpreted as a *possibility* or *opportunity* set for i . Alternatively, the capability set might be conceptualised as representing i ’s *options* or the extent or range of his or her

freedom of choice (1997 [1973], 199-203). Sen does not necessarily equate the valuation of the ‘capability set’ with the personal valuation of the best element of the ‘capability set’ by person *i*. The personal valuation of the ‘capability set’ by person *i* might also depend on *i*’s valuation of the intrinsic value of choice or on his or her evaluation of the adequacy, range or diversity of the elements that are available to *i* (see section 2.5). In addition, ‘capability set’ evaluation may also take into account social or ethical valuation of the substantive freedoms that *i* enjoys.

Empirical Applications of the ‘Capability Approach’

Sen’s empirical applications of the ‘capability approach’ have opened up new lines of enquiry and resulted in an important body of statistical evidence on human rights- focussed concerns. Sen’s empirical findings highlight the possibility of divergences between the expansion of economic growth and income on the one hand, and the expansion of valuable human capabilities on the other. They establish that economic growth and income can be poor predictors of the capability to live to a mature age (without succumbing to premature mortality) in different countries (e.g. India, China, Sri Lanka, Costa Rica, Jamaica) and for different population groups (e.g. black men versus other groups in the US; the population in the Indian state of Kerala versus populations in other states). As well as addressing the successes and limitations of market processes in securing the expansion of human capabilities and functionings, Sen’s empirical research provides important insights into the critical role of public policy in securing the human rights to freedom from hunger and starvation (e.g. Drèze and Sen (1989)). The idea that capabilities and functionings may be the most appropriate focal variables for a range of evaluative exercises concerning human interests has resulted in important new approaches to the analysis of poverty and inequality [e.g. Drèze and Sen (1989); Sen (1993a, 31-41; 1999a, 22-3,74-110)] and has had a major impact on international efforts to characterise and measure poverty and well-being and to evaluate the nature and adequacy of development. The UNDP’s Human Poverty Index captures deprivations in living standards (where ‘living standard’ is characterised in terms of access to safe water, health services and birth-weight), whilst the *Human Development Index* captures the importance of three crucially important and highly valuable human capabilities — the capability to achieve knowledge, longevity and a decent standard of living. These indices rival income-focussed measures and provide critical statistical information about the achievements and non-achievements of populations and groups.

2.4 Gender discrimination

Sen’s proposal that human equalities and inequalities be characterised and evaluated in capability space has moved the economic analysis of gender discrimination forward in innovative and important ways. The critique of utility

as an informational base for the characterisation and evaluation of individual advantage is partly motivated by concern with the impact of the conditioning of women's preferences on individual choices and actions and the development of the 'capability approach' was in turn motivated by the need for a more adequate analytical space for the characterisation and evaluation of gender disparities in situations of power asymmetries, discrimination and entrenched disadvantage. Sen's empirical research findings also establish statistical relationships between gender discrimination and capability inequality. For example, Sen's analysis of the phenomenon of excess mortality and artificially lower survival rates of women in many parts of the world (the phenomenon of 'Missing Women') suggest that although excess mortality in women of a childbearing age could be partly explained by maternal mortality, no such explanation was possible for female disadvantage in survival in infancy and childhood. Evidence of lower female-male ratios in countries in Asia and North Africa is indicative of the influence of social factors resulting in gender inequality including gender discrimination and the comparative neglect of female health and nutrition (1999a, 104-7; Drèze and Sen (2002), 229-245). Other contributions in the field of gender discrimination include the analysis of underlying power asymmetries on the intra-household allocation bargaining situation (including the analysis of unequal gains in situations of 'co-operative conflict' and the use of 'bargaining thresholds' to improve allocative outcomes (e.g. Sen, 1990).⁴³

2.5 *Civil and political rights*

Sen's work has also moved the economics and human rights agenda forward by challenging the idea that there is an inevitable conflict between civil and political rights on the one hand, and effective development and growth on the other. The idea of a core of so-called 'Asian values' that are in some way opposed to civil and political rights — together with high growth rates in parts of East Asia during the 1980s and 1990s, and China's recent record of development and poverty reduction — are sometimes invoked as evidence of the positive impact of authoritarianism on economic growth. However, Sen (1999a, 180-188; 1999b; 2000b) has emphasised that evidence from E. Asia must be balanced against contrary evidence from other regions. Even when Singapore and South Korea were growing faster than any other country in Asia, the fastest growing economy in Africa was Botswana — 'a major defender of democracy'. In Sen's view, the statistics go in contrary directions and do not yield a clear and unambiguous relationship.

⁴³ The use of the capability framework for the analysis of gender is discussed and further developed by Nussbaum [especially in (Nussbaum 1995, 2000)]. The analysis of Sen's 'Missing Women' is further discussed in Corell (2001). The question of whether or not the capability approach adequately addresses issues of power imbalances is discussed in Agarwal, Humphries and Robeyns (2003).

‘[S]ome relatively authoritarian states (such as South Korea ... Singapore and, recently China) have had faster rates of economic growth than some less authoritarian ones (such as India, Costa Rica and Jamaica). But the overall picture is much more complex than these isolated observations might initially suggest, and systematic statistical studies give no real support to the claim that there is a general conflict between political rights and economic performance’ (1999b, 91).

The instrumental role of civil and political rights in promoting effective development and growth

Indeed, Sen’s empirical research findings suggest that human rights guarantees can often play an instrumental role in the promotion of effective development and growth and in the promotion of capability expansion and the fulfilment of basic needs. His work in this field has made an important contribution to the growing body of literature on economics and institutional conditions by establishing that democratic forms of government and civil and political rights protections can be of critical significance in the determination of incentives on governments and on public policy responses to social and economic shocks. For example, Sen has argued the patterns of risk and investments that predispose countries to financial and economic crisis can be partly explained by lack of transparency, disclosure and accountability in business, strong family links between the government and the private sector, and lack of public participation in and scrutiny of financial and business arrangements; and that governmental responses to economic and financial crises, and the chances of effective restructuring and reform, are critically affected by the absence or presence of democracy and human rights protections. In addition, Sen’s empirical research establish the ways in which democratic forms of government and civil and political rights protections can provide critical incentives to governments in the context of famine prevention — by empowering individuals to complain, ensuring that information is disseminated, exerting pressure on government and helping to precipitate a more effective public policy response. In particular, Sen’s empirical findings establish that no major famine has occurred in a democratic and independent country with a relatively free press, and that this statement applies not only to the affluent countries of Europe and America, but also to the poor but broadly democratic countries such as India. For example, the incidence of famines in India until independence in 1947 (for example, the Bengal famine in 1943 killed between 2 and 3 million people) contrasts with the post- independence experience following establishment of a multiparty democratic system and provides inter-temporal evidence of the positive impact of democracy in reducing the risk of famine. Furthermore, the Indian experience contrasts sharply with the experience of famine in China, where, when the

‘Great Leap Forward’ proved to be a mistake, disastrous policies were not corrected for three full years (1958 to 1961) — while 23 to 30 million people died (1999a, 180-188; 1999b, 90-93)⁴⁴.

2.6 ‘Freedom of choice’ and ‘opportunity freedom’

Sen’s formal proposals for incorporating the ideas of ‘freedom of choice’ and ‘opportunity freedom’ into mathematical and welfare economics also reflect an underlying concern with the idea of fundamental freedoms and human rights. His contributions in this area have focussed attention on the importance of process for economic assessment and evaluation — especially the opportunities that people have to choose and participate — and provide a basis of a re-characterisation of the First Welfare Theorem in terms of ‘opportunity-freedom’ rather than utility.

‘Freedom of choice’

Sen has criticised standard frameworks in economics for their lack of emphasis on agency and participation and has developed a series of technical proposals for incorporating the *possibility of choosing* and the *range and adequacy of opportunities available* into preference relations (‘chooser dependence’ and ‘menu dependence’) and for the formal representation of *constraints on choice* (e.g. by distinguishing between (1) ‘optimizing’ choice functions requiring a best choice and (2) ‘maximizing’ choice functions requiring the choice of an alternative that is not judged to be worse than any other (e.g. Sen 1997a). Proposals for enhancing the formal representation of the nature and scope of individual options in economic analysis have also included the development of

⁴⁴ There is a growing body of literature analysing the instrumental role of civil and political rights in promoting effective development and growth. World Bank (1998) discusses the importance of a range of variables including personal freedoms and liberties (e.g. from slavery, forced and bonded labor), property rights, freedom of economic transactions, women’s equality (e.g. freedom from labour market exclusion and non-discrimination in relation to property rights); ‘good governance’ and institutional conditions (e.g. access to justice); and civil society and stake holder participation in the design and implementation of development projects and policies. Stiglitz (1999) analyses the adverse economic effects of the failure to respect the right to freedom of information. He finds that whereas informational asymmetries create barriers to entry that advantage ‘insiders’ over ‘outsiders’ and can result in corruption and distortions in private and public decision-making, greater access to information can reduce the magnitude and consequences of these agency problems, resulting in more efficient resource allocation. The critical importance of non-income variables including institutional context is also analysed in Besley and Burgess (2002), who develop a model of the determinants of government responsiveness to the needs of vulnerable citizens. Their empirical findings suggest that, in the Indian context, electoral turnout, political competition and mass media can affect government activism vis-à-vis calamity relief and food distribution.

formal axioms for capturing and formalising the idea of individual ‘opportunity-freedom’ (e.g. 1991, 1993e). These axioms relate the assessment of freedom to the evaluation of the nature and scope of the options available, and the preferences and values of the individuals concerned. This approach challenges (1) cardinality-based formulations that characterise individual freedom purely in terms of the number of options available (e.g. Pattanaik and Xu (1990)); (2) ‘flexibility-based’ formulations that suggest that uncertainty about future tastes is a reason for valuing current time freedom of choice in economics (e.g. Arrow (1995)). Sen rejects (1) on the grounds that it fails to give weight to the value of the options available to the individual concerned; and (2) on the grounds it represents a purely ‘instrumental approach’ that fails to reflect the intrinsic value of freedom of choice. In cases where there is no uncertainty, a set of options would still be evaluated in terms of the value of the maximal (most preferred/chosen) element or elements in the choice set — with the other elements of the menu not being taken into account.

The characterisation of the First Welfare Freedom in ‘Opportunity-Freedom’ Space

The formal axioms discussed above also provide the basis of a re-characterisation of the First Theorem of Welfare Economics in terms of ‘opportunity-freedom’ rather than utility. Standard frameworks equate economic efficiency with the efficiency of utilities and assume that (1) preferences are determined by choices; (2) choices are motivated by self-interested welfare maximization. Sen has argued that the basic analytical results of the ‘Arrow-Debreu’ Theorem are independent of assumption (2) and that the proposition that competitive market outcomes are efficient under certain conditions (such as the absence of externalities) will hold if some interpretation of individual advantage other than utility is adopted (with the utility-based interpretation of Pareto Optimality losing its status as necessary condition for social optimality). For example, his results establish that the basic efficiency results reflected in the ‘Direct Theorem’ can be carried over from the ‘space’ of utilities to the ‘space’ of individual substantive opportunity-freedoms (both in terms of freedom to choose commodity baskets and in terms of capabilities to function) (Sen 1991, 1993e, 1999a).

2.7 ‘Liberty-rights’ and ‘basic rights’

Sen has finally moved human rights based discourse in economics forward by developing a series of influential proposals for incorporating the ideas of ‘liberty-rights’ and ‘basic-rights’ into the theory of social choice. His contributions in this area provide a framework for the social-choice theoretical representation of individual rights; formalise the tension between the Pareto criterion and the notion of a ‘protected private sphere’; and provide a

framework for the future development of the formal representation of basic (fundamental or human) rights in economics and social choice.

Liberty-rights

The proposals set out in Sen (1970ab, 1983b, 1992b, 1995, 1996ab, 2002, 581-659) modify and extend Arrow's (1963 [1951]) framework for social choice by introducing an explicit condition that captured the idea that social choice procedure should respect individual liberty-rights. Whereas the framework for social choice developed by Arrow required that the social choice procedure should respect the condition of non-dictatorship, Sen (1970b) strengthened this condition by introducing the stronger requirement that the social choice procedure should respect individual 'liberty-rights' by introducing conditions that make individuals 'decisive' over social outcomes. If an individual prefers x to y — and if the choice between x and y is reasonably characterised as falling within his or her personal domain — then the fulfilment of individual liberty-rights requires that this individual preference determines the social preference relation in this respect. Social states that fail to respect individual liberty-rights are then evaluated as 'worse' than social states in which individual liberty-rights are respected and fulfilled. Sen's 'Impossibility of a Paretian Liberal' result captures and formalise a potential conflict between the principle of Pareto Optimality (asserting the priority of unanimous preference rankings) and individual liberty (conceptualised as freedom of choice within a private domain). The result establishes that if at least two individuals are guaranteed that their preference will be decisive for social preference in relation to at least one pair-wise choice that is reasonably characterised as falling within the personal domain, then contradictory cycles may result (e.g. x socially preferred to y , y to z and z to x) for some set of preferences. Therefore, if a social choice procedure satisfies the Pareto principle, it may sometimes fail to satisfy even a minimal expression of liberal values (1982e [1976] 314-5).

'Basic Rights'

Critics of Sen's social choice-theoretic formulation of individual rights have argued that the idea of individual rights cannot be captured in terms of individual 'decisiveness' over social outcomes, and have highlighted the relevance of game-theoretic frameworks for capturing and formalising the idea of individual rights. For example, Gaertner et al (1992) capture and formalise the idea of individual rights in terms of admissible behavioural strategies — with individual rights and duties conceptualised in terms of the permission of each agent to choose admissible strategies, and the obligation not to choose a non-admissible strategy. Sen has in turn highlighted in the limitations of formulations that focus exclusively on formal permissions and obligations to act or not to act in terms of the critique of 'consequence-independence' set out in Part I. Whereas game-theoretic models of liberties and rights often reflect the

Hayekian-Nozickian position on outcome-independence, Sen has argued that the likely consequences of different game-form specifications should be analysed in terms of the things that people value in the domain of fundamental freedoms and human rights. This concern can be achieved within a game-theoretic framework by working backwards — from consequences to antecedents — and taking account of the social states ‘induced’ by the specification of sets of admissible strategies in a game-form. In this way, the game-theoretic approach can be conceptualised in terms of the specification of sets of derived rights or rules for bringing about the affirmation and realization of sets of basic rights (Sen, 1995, 14; also see 1992b, 152; 1996a, 31; 2002, 581-659).⁴⁵

Conclusion

This Paper has analysed the contributions of Nobel Laureate Professor Amartya Sen in the field of human rights. It has been argued that Sen’s work has expanded and deepened human rights discourse by opening up new lines of enquiry in both ethics and economics and by promoting cross-fertilisation and integration on the subject of human rights across traditional disciplinary divides. In ethics, Sen has challenged the exclusion of poverty, hunger and starvation

⁴⁵ More recent contributions in the broader literature are reflective of this argument and emphasise the distinction between sets of basic (or higher order) rights (that are modelled in a preference- and consequence-sensitive way), and sets of ‘derived rights’ (that focus on the specification of admissible behavioural strategies). For example, Hammond suggests that the choice of a rights-configuration can be conceptualised in terms of the choice of a game form ‘that induces these rights’ (1996, 83). Peleg’s (1998) model can accommodate rights can be captured and formalized in terms of sets of available individual strategies in a game form and ‘higher level’ rights that cannot be readily interpreted in terms of restrictions on behavioural strategies. Pattanaik and Suzumura (1994, 1996) embed game-theoretic formulations of individual rights in a broader model of the social choice of a rights structure that relates the conferment of individual rights to individual preferences (through a social welfare function) and to outcomes (through ‘consequence-sensitive’ informational loops). Suzumura (1999-2000) further develops the consequence-sensitive approach whilst Fleurbaey and Van Hees (2000) relate the distinction between basic rights (defined in terms of guarantees of states of affairs) and derived rights (defined in terms of admissible strategies in a game form) to the distinction between human rights that everyone should have, and the actual positive rights that are codified in particular legal systems. They also develop the ideas of rights-incompatibility and rights-realizations and (with Fleurbaey and Gaertner 1996) take the game-theoretic approach forward by developing the distinctions between different broad categories of rights (active/passive rights, negative/positive). Van Hees (1995, 1996), introduces the distinctions between different rights types (claim, power, liberty, immunity) into the game-theoretic framework.

from the characterisation of fundamental freedoms and human rights, and has contributed to the development of a framework in which authoritatively recognised international standards in the field of poverty and human rights can be meaningfully conceptualised and coherently understood. In economics, Sen has set out a far-reaching critique of standard frameworks that fail to take account of fundamental freedoms and human rights, and has pioneered the development of new paradigms and approaches that focus on human rights-centred concerns. This development of a ‘scholarly bridge’ between human rights and economics has been shown to be an innovative and important contribution that has methodological as well as substantive importance, and that provides a prototype and stimuli for future research. Key challenges in taking this work forward include:

- **Clarification and further conceptual development in relation to foundational issues.** Sen has been criticised for failing to resolve important foundational issues relating to the capabilities, human rights and obligations. Further clarification is required in relation to (1) the question of the primary concept in Sen’s conceptual framework;⁴⁶ (2) the need for principles and/or procedures for resolving the question of relative value;⁴⁷ (3) the debate around ‘capability set’ evaluation.⁴⁸

⁴⁶ Are freedoms, capabilities, human rights or obligations the primary or foundational concept in Sen’s conceptual framework? The interpretation set out in section 1.3 suggests the primacy of freedoms and ‘capability-freedoms’. However, the possibility of a more fundamental role for the idea of human rights is sometimes suggested (e.g. 1984: 310). Furthermore, the concept of obligation could also be viewed as fundamental (on which, see Vizard 2004c).

⁴⁷ The question of relative value is discussed in Williams (1987, 100-102), Glover (1995, 124-125), O’Neill (1995, 144), Crocker (1995: 191), Alkire (2002), Robeyns (2003). Sen has challenged *completeness* as a condition of ethical and socio-economic evaluation, and defended the view of ‘capability space’ as ‘substantially incomplete’, whilst nevertheless acknowledging that the ‘capability approach’ may require supplementation with a background theory of ethical or social value (e.g. 1987a: 100-108; 1992a: 32-49; 1993: 47). Nussbaum contends that Sen’s treatment of the ‘capability approach’ is too vague and fails to differentiate valuable freedoms from the trivial and the bad and has defended the necessity of applying and extending the capability approach on the basis of a definite list (e.g. 1993, 1995, 1999abc, 2001, 2003, 2004). For further discussion of the issues and a proposal that treats the ‘capability space’ as substantially incomplete and that adopts authoritative international standards in the field of poverty and human rights as a basis for selecting a list of relevant capabilities that will be relevant in the context of human rights advocacy, see Vizard (2000, 2004ab, forthcoming (Conclusion)).

⁴⁸ Sen has emphasised the central importance of the capabilities that people have reasons to value (taking into account, for example, meta-preferences and counterfactual choices). The clarificatory remarks in Sen (1991) affirm that the evaluation of the capabilities a person enjoys entails (1) reflective valuation by the individuals

- **Further development of principles and/or procedures for dealing with limitations, trade-offs and priorities.** Sen has addressed many of the traditional objections to the evaluation of fundamental freedoms and human rights in consequential ethical systems. Nevertheless, important issues remain unresolved. In particular, the ‘consequence-sensitive’ approach will require principles and/or procedures to provide the basis for limitations and trade-offs and for establishing priorities in the context of resource and feasibility constraints. In addition, further principles and procedures are required to address the ‘implausibility challenge’ and to delimit the general positive obligations of assistance and aid ‘of those in a position to help’. Sen’s recent emphasis on the concept of ‘reasonableness’ may be important here.⁴⁹
- **Further development of the research programme on economics and human rights.** Sen’s work provides a ‘scholarly bridge’ between economics and human rights of the type highlighted by Mary Robinson, former UN High Commissioner for Human Rights. His proposals for incorporating new variables and concerns into theoretical and empirical economic analysis provide a framework for the instrumental and intrinsic valuation of human rights in economic analysis and the basis for a research programme addressing the need for (1) further development of a technical apparatus that incorporates human rights-based criteria into economic analysis; (2) further analysis of the impact of economic arrangements and processes on fundamental freedoms and human rights; (3) further analysis of the instrumental role of fundamental freedoms and human rights in promoting development and growth.

concerned; (2) critical scrutiny of the ‘reasons’ underlying preference. Sen (2004: 15-16) also suggests the need for a framework of objective reasons and of public reasoning in the identification of a class of fundamental freedoms human rights. Further clarification of the nature and content of this framework is required.

⁴⁹ See Sen (2004: 10-12) for the distinction between ‘reasonable action’ and ‘compulsory action’ and Vizard (2004c) for further discussion of the implications of Sen’s treatment of this issue for a theory of ‘universal imperfect obligation’.

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