

# CARE AND THE CAPABILITIES APPROACH: A PATH TO GENDER EQUALITY?

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## ABSTRACT

Is it possible to value care work and still promote equality between women and men? There is a persistent fear that women's fragile gains in employment are at risk. However, Martha Nussbaum (2003) argues that her version of the capabilities approach is able to both support equality and handle the issue of care. Further, she holds that her list of ten central human capabilities gives theoretical shape to women's legitimate demands. In this paper I report on research examining Nussbaum's capabilities approach. I find that although the importance of care is emphasised in her more recent work, it is not adequately reflected in her list of capabilities. For some aspects of care it is difficult to justify setting capability rather than functioning as the political goal. I suggest a way of restructuring the capabilities list to address these concerns.

## RECENT CHANGES TO PARENTAL LEAVE PROVISIONS IN AUSTRALIA

Over the past five years there have been two major changes to parental leave arrangements in Australia: the extension of unpaid parental leave and, more recently, a publicly funded paid parental leave scheme.

A period of 12 months unpaid maternity leave has been available to a large number of Australian employees since 1979<sup>1</sup>. Now each parent has the right to request an additional period of up to 12 months unpaid parental leave, potentially taking a total of 2 years leave<sup>2</sup>. This new right is included in the National Employment Standards (NES), 10 minimum conditions specified in the *Fair Work Act 2009*. The NES also provides parents with the right to request part-time employment until their child starts school or, if the child has a disability, when s/he reaches the age of 18. The employer may only refuse these requests on 'reasonable grounds' although what constitutes reasonable grounds is not made explicit<sup>3</sup> (AIRC 2005; *Fair Work Act 2009* 2009, section 65, section 76).

On 17 June this year, legislation to introduce paid parental leave was passed by the Australian parliament. The stated aim of the scheme is to provide one parent with the financial security that allows them to spend at least the first few months caring full-time for their child. From 1 January 2011, birth mothers and the initial carers of recently adopted children will have the option of taking 18 weeks paid parental leave. The paid parental leave must be taken in one continuous 18 week period; however it may be transferred from the mother/carer to the other parent. The scheme includes a work requirement. To be eligible, the birth mother or initial carer must have been in paid employment for at least 10 of the 13 months prior to the expected date of birth or the date of adoption<sup>4</sup>. There is also an income test. Mothers and initial carers will not be eligible if their adjusted taxable income exceeds \$150,000 in the financial year prior to the birth or adoption. The level of payment is set at the Federal Minimum Wage, currently \$543.78 per week. Although funded from the public purse, the actual payments will be made through the employer. The national Paid Parental Leave Scheme may be supplemented by employer

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<sup>1</sup> In 1979, maternity leave and job protection were extended from the public sector to private sector employees covered by awards. Subsequently it has expanded to cover other private sector employees, fathers as well as adoptive parents.

<sup>2</sup> This right to request an additional 12 months leave came into force on 1 January 2010.

<sup>3</sup> If the employer refuses a request for additional unpaid leave or part-time work, they must notify the employee in writing stating the reasons for their decision (AIRC 2005; *Fair Work Act 2009*, section 65; section 76).

<sup>4</sup> To be eligible, mothers/carers would have undertaken at least 330 hours of paid work within the 10 month period. This is an average of one day of paid work per week. A person employed on a part-time or casual basis, with more than one employer, or who has recently changed jobs will be regarded as having worked continuously if they do not have more than an eight week gap between working days. A day is a working day if the person had at least one hour of paid work. Working in the family business (including a farm) also counts even if the business is not generating income (Family Assistance Office 2010).

paid parental or annual leave, with government funded and employer funded leave taken concurrently or sequentially (Family Assistance Office 2010).

There has been strong public support for both extended unpaid leave and the paid parental leave scheme. However some of commentators have been more circumspect. Feminist progressives such as industrial relations academics Marian Baird and Sara Charlesworth are concerned that while both measures may give parents more flexibility, they are likely to exacerbate gender inequality.

The main concern is that these measures are unlikely to be used equally by men and women (Baird 2009; Charlesworth 2004; 2005). On average fathers only take short periods of leave following the birth of their child, and the leave they take is almost always paid. Mothers, on the other hand, take longer periods of leave, much of it unpaid. As a result women, on average, earn less over a lifetime and have lower levels of superannuation savings than men. Mothers who take extended periods of leave or work part-time are less likely to be promoted to more senior positions. There is a 'part-time penalty' with a long term negative impact on wage rates, evident even after a return to full-time employment (Chalmers & Hill 2007). Added to this is the gender wage gap. As a result women tend to retire with less wealth than men. With lower income, lower lifetime earnings and barriers in the workplace, many women in couple households become secondary earners, using any flexibility to meet family responsibilities and protect their partners' job. Single mothers are in a more difficult position with less discretion about how they divide their time between paid and unpaid work (Craig 2007; Goodin 2010) and often facing significant material hardship.

There is evidence to suggest that paid parental leave does more to promote individual well-being than unpaid leave, extended or otherwise (Baird 2009; Charlesworth 2004; 2005). However the Australian Government's scheme does not provide full wage replacement. The publicly funded parental leave will match or even exceed the income of low paid women; however for many women it will fall short. The gap is exacerbated by the lack of superannuation contributions for the period of Government funded paid leave<sup>5</sup>. Without wage replacement or superannuation, the scheme is unlikely to be attractive to fathers, thereby further reinforcing the role of the mother as the primary carer and secondary earner.

The Government's scheme does not provide wage replacement because it is politically difficult to justify using public funds to pay a high income mother \$2,500 per week and a low income mother just over \$540 for the same period. Australia has tended to target most forms of financial support to reduce the overall cost and to ensure that funds reach those with the greatest need. However, this line of thinking casts paid maternity leave as a form of

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<sup>5</sup> The Australian Greens introduced an amendment to rectify this however it was rejected by the Government.

welfare. If we consider paid parental to be similar in nature to paid annual or long service leave then the question of differing amounts is generally considered less troubling<sup>6</sup>. The attraction of a publically funding scheme is that it ensures the costs of paid parental leave are shared, thereby reducing the risk of discrimination against women of child-bearing age.

An additional issue is that the Government's paid parental leave scheme is not included in the National Employment Standards (Baird 2009). The governing legislation is the *Paid Parental Leave Bill 2010*, administered by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). Industrial relations legislation is the responsibility of the Department of Education, Employment and Workplace Relations (DEEWR). This means that the right to return to the same or equivalent position following a period of parental leave is specified in one piece of legislation, the paid parental scheme in another (*Fair Work Act 2009*, section 84).

The fear is that extended unpaid parental leave and the Government's paid parental leave scheme will reduce women's attachment to the workforce. Exacerbating this concern is the shift in government policy and public debate from a focus on gender equality to one on flexibility and family friendly measures. This has been evident over the past 15 years, particularly during the conservative Howard Government. Without attention to gender equality, attempts to acknowledge the importance of care work or measures to ease the pressures on individual women may well simply reinforce traditional gender roles (Charlesworth 2004; 2005; Baird 2009).

Increasing women's workforce participation is considered desirable to promote gender equality in the workplace and the home (Baird 2009; Whitehouse 2005; Kamerman 2000). It is also promoted as a way of meeting the costs associated with the aging Australian population. Gruen and Garbutt (2004) reported that the positive economic effect of increasing work participation rates is greater than improving productivity. It is clear that the increasing proportion of women, particularly mothers, in paid employment has brought about social change. However there has also been remarkable continuity in the gendered division of paid and unpaid work (Craig 2007).

There is a sense that the nature of work, the structures of rewards and the allocation of responsibilities are so firmly entrenched that the only way forward is for women to work in the manner of the traditional male breadwinner. I argue that this is a flawed way of conceptualising the problem of care. To break out of the vicious cycle of mutually reinforcing factors that sustain gender inequality (Doughney 2007; Leahy & Doughney 2006) we need to consider more than workforce participation.

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<sup>6</sup> This, however, should not blunt concern over the big disparities in income levels nor blind us to the difficulty of living on the minimum wage.

## FRAMING THE PROBLEM

We all start life as babies totally dependent on the care of others for our survival. Many of us who reach old age will once again need care and during the intervening years we may experience different levels of dependency. Care is essential to our survival as individuals and societies, as well as to our dignity and our happiness. However, care alone is insufficient. We also need adequate food, shelter, and access to other resources and opportunities that make life worth living. For most people the main way of obtaining the resources needed to sustain a dignified life is through paid employment. The economic independence women achieve through paid work gives some important freedoms, particularly the option of leaving violent, abusive or unfulfilling relationships. Another way of obtaining necessary resources is through transfer payments between members of a family or community, although these are often tainted with the recipients regarded as unproductive beneficiaries.

Under current arrangements it is difficult to care for others and have access to the opportunities and resources needed in order to survive and flourish. This leads to two important questions. How do we distribute resources and opportunities in a fair way? In what ways should each of us contribute to ensure that others have the opportunity to live a meaningful life? In order to answer these questions we must first specify what it is we need to live in a fully human way. Our answers must take into account human neediness and a long history of entrenched discrimination.

## NUSSBAUM'S CAPABILITIES APPROACH

The appeal of the capabilities approach is that it provides a pluralistic account of what we need to live well. At a minimum it provides a quality of life measure focused on what people can be and can do (Nussbaum 2001). It examines the extent to which an individual has the real opportunity to achieve the things that she or he has reason to value (Sen 2009). While both Sen and Nussbaum use capabilities to provide a measure of a person's quality of life, Nussbaum takes her approach further, grounding it in Aristotelian thinking about human need and flourishing. She develops the capabilities approach as a political theory designed to specify a basic level of entitlement. Documenting the disadvantage experienced by some individuals by virtue of one or more aspects of their identity is vital. However, we also need to argue why the differences in experiences are unjust. Sen's insights on capabilities are important, but the underdetermined nature of his capabilities framework limits its ability to help us approach this and other urgent social issues.

Nussbaum identifies ten central human capabilities that should be available to everyone. They are: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species;

play; and control over one's environment. She argues that they are sufficiently abstract to be universally relevant and provide scope for further specification at the level of the state or community<sup>7</sup>.

## CAPABILITIES AND CARE

Nussbaum argues that her capabilities approach is able to support equality between the sexes, as well as handle the issue of care. She considers the capabilities approach to be superior to social contract theories that ignore care and dependency; stronger than human rights based approaches that do not insist on the material and institutional conditions essential for flourishing (Nussbaum 2003); and to provide better protection than ethics of care approaches that do not always insist women should have access to a full set of opportunities (Nussbaum, 2002). She considers that the capabilities list can give 'theoretical shape to women's definite and justified demands' (Nussbaum 2003, p. 55).

There is much to recommend Nussbaum's approach, particularly given that it starts with the ideas of humans as both capable and needy and the focus on the individual as an end not the means to another's end. However, a detailed examination of Nussbaum's ten central human capabilities reveals a number of problems. First, the importance of care is not made explicit. Second, the list focuses on our rights and pays insufficient attention to our obligations. A third concern is that for at least some elements it is difficult to sustain the argument that the focus should be on capability rather than functioning. Fourth, Nussbaum's ten capabilities describe different kinds of things, things that are not of the same order. Finally, some of the capabilities group elements that do not sit well together. I will discuss these first four concerns before proposing a revised list that also addresses the fifth issue.

## THE ABSENCE OF CARE

While her list of ten capabilities does not explicitly address care, Nussbaum discusses the issue extensively, particularly in her books *Frontiers of Justice* and *Women and Human Development* and in a chapter 'Long-term care and social justice'.

Nussbaum (2002) identifies care as a problem of justice. The care of family members is usually the responsibility of women. They either provide the care themselves or coordinate alternative arrangements and, in addition, do most of the household work. The people employed as carers are also more likely to be women and the jobs are generally poorly paid. The gendered division of paid and unpaid work is reflected in the income levels, overall wealth and social standing of women compared to men. Drawing on data from the United Nations Development Programme (1997), Nussbaum (2000b, p. 2) points out that 'there is no country that treats its women as well as its

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<sup>7</sup> Although Sen does discuss important capabilities he insists that a list of capabilities must be developed through a democratic process by the community that will use them.

men, according to a complex measure that includes life expectancy, wealth, and education.’ In general women do not receive the supports they need to live fully human lives (Nussbaum 2000b, 2000a).

A society cannot consider itself just if its members are unable to receive the care they need. Nor is it just if people are punished financially and socially for providing the care we all need at some point in our lives. However, the dominant economic approach tends to view care as a matter of efficiency, which obscures considerations of justice and equity. Nussbaum (2002) argues that the simple language of efficiency needs to be replaced with the more complex language of human development. According to Nussbaum there are three aspects of the problem of providing care: the allocation of care giving responsibilities within the household; the level of support provided to carers by the public sector; and third, the structure of jobs and careers.

Nussbaum’s ten central human capabilities include elements that are an important part of care provision. The most relevant are the formation of attachments, development of social relations, feelings of compassion and empathy, and support for the institutions that sustain the healthy development of each individual. However, her list does not include a care capability.

The absence of a care capability is one the problems identified by Lewis and Guillari (2005). They consider this omission to be a consequence of developing a universally applicable list. Although Sen has not written about care, his approach of leaving the construction of the capability list open, Lewis and Guillari argue, may be more useful. However, it is not clear why Nussbaum’s list cannot be modified to strengthen the emphasis on care. Nor is it obvious that democratic processes will necessarily achieve the desired result, given that the evidence to date is not particularly encouraging.

A stronger emphasis on care could be achieved by strengthening the reference to it in Nussbaum’s ten capabilities or by the addition of a separate care capability. Because care is so central to our lives and because current care arrangements are a significant cause of inequality, I favour the addition of a care capability.

In their study of disadvantage in Britain and Israel, Jonathon Wolff and Avner de-Shalit add three new capabilities to Nussbaum’s list, one of which concerns care:

Doing good to others: Being able to care for others as part of expressing your humanity. Being able to show gratitude (Wolff & de-Shalit 2007, pp. 46-8, 191) <sup>8</sup>.

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<sup>8</sup> The two other additions were ‘living in a law-abiding fashion’ and ‘understanding the law’. For the interviews they also included a dummy capability expressing a radical libertarian view. This was used to make sure that interviewees were not simply nodding their way through the list. Through the interviews an additional category emerged as important. This was the ability to communicate, including the ability to speak the local language.

Wolff and de-Shalit find Nussbaum's capability list strongly influenced by the language of justice and, in line with the liberal tradition, focused on the person as a recipient of entitlements rather than as a contributor to the welfare of other people. Despite this, they find her philosophy sympathetic to the ethic of care and acknowledge that the ideas they wish to draw out are already implicit in her list, particularly in the capabilities of the emotions and affiliation. In making this claim, they refer to Nussbaum (1996)'s view that being ethical starts with the ability to empathise with others and the importance of literature in developing empathy<sup>9</sup>.

The point Wolff and de-Shalit make is that as humans we need to be able to express ourselves and our connections with others. One example is the importance of being able to show gratitude.<sup>10</sup> This includes the ability to return a favour, pay one's respects and to delight in another person's joy. One of the people interviewed for Wolff and de-Shalit's book on disadvantage said that '(d)oin'g good to others allows one self-esteem. Being human means not only to receive; one wants to give' (Wolff & de-Shalit 2007, pp. 46-7).<sup>11</sup> People who lack the financial or physical means or the time to show gratitude or do good to others are, according to Wolff and de-Shalit, disadvantaged.

Although it expresses our human need to reciprocate, Wolff and de-Shalit's care capability fails to address the fair allocation of care and other types of work. Wolff and de-Shalit's work provides a powerful description of our need to care for others; however it does not adequately convey a sense of our obligation to provide that care.

Ingrid Robeyns (2003) develops a capabilities list for matters concerning gender inequality in post-industrialised Western societies. This list includes four capabilities that focus specifically on care and the opportunities available to women, two addressing care and employment and two concerning time allocation. These are:

7. Domestic work and non-market care: being able to raise children and to take care of others.
8. Paid work and other projects: being able to work in the labor market or to undertake projects, including artistic ones.
11. Leisure activities: being able to engage in leisure activities.

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Without at least some degree of verbal independence it is virtually impossible to achieve whatever goals they might set themselves (Wolff & de-Shalit 2007, p. 45, 58, 60, 191).

<sup>9</sup> Wolff and de-Shalit note that they do not consider ethics of care to be an alternative to justice but agree with Onora O'Neill (1993) that both are important parts of life. Drawing on O'Neill's work, they identify justice with institutions, and care with character (Wolff & de-Shalit 2007).

<sup>10</sup> The importance of being able to show gratitude is an Aristotelian idea (Aristotle 1976; Wolff & de-Shalit 2007).

<sup>11</sup> Similarly, a poor person from Ghana remarks that being poor is when you know good but you cannot do good because you do not have the means (Narayan et al. 2000 in Wolff & de-Shalit 2007).

## 12. Time-autonomy: being able to exercise autonomy in allocating one's time (Robeyns 2003, p. 72).

One of the advantages of Robeyns's list is its clear statement that individuals should have genuine opportunities to provide care and to take on paid employment or engage in other meaningful projects. However, until many more men take on the responsibility of providing care, the opportunities available to most women will remain constrained. This problem may be revealed by the capabilities for leisure and time-autonomy. Time use surveys show that while women and men in developed countries have about the same amount of leisure time, there are significant differences in its nature and quality. Women are more likely to combine leisure with childcare or other unpaid work (Bittman & Wajcman 2000; Craig 2007). The situation of poor women in developing countries is more difficult, with the majority having no leisure time (Benería 2008). Opportunities for leisure and time-autonomy are measures of well-being, providing information about the extent to which paid and unpaid work is shared. They can indicate the extent to which central capabilities concerning care, play and engagement in meaningful activities are available. However, their inclusion in a list of capabilities does not ensure a fair allocation of work and resources.

The main gap in Robeyns' list is our obligation to provide care for others. While many men continue to choose not to function in this area women will continue to do the work and face constraints in what else they are able to do. An element of our obligation to others is suggested in Robeyns' fourth capability: '*Social relations*: being able to be part of social networks and to give and receive social support' (Robeyns 2003, p. 72). Although important in other ways, this capability is unable to provide the protection or support for unpaid or underpaid care and domestic work. Inequality in the distribution of caring responsibilities is a major factor in the economic and social disadvantage faced by women, a disadvantage compounded by race, ethnicity and class. However, it is difficult to specify an obligation and still insist that the political goal should be capability rather than functioning. This leads to my second and third areas of concern.

### RIGHTS AND OBLIGATIONS, CAPABILITIES AND FUNCTIONING

Introducing obligations into a capabilities approach may limit the freedoms that the various capabilities approaches seek to defend. Both Nussbaum and Sen argue that we should aim to provide every person with the real opportunity to realise their full human capabilities but not to insist that everyone *must* realise all human capabilities. Sen (2009) favours the broader focus on capabilities rather than a narrower focus on actual achievements or functioning because of the importance he places on freedom. He argues that the capability approach draws attention to the ability of people to choose different lives and not simply on the result of that choice. For Nussbaum (2000b), aiming for capability is a matter of respect for people and the choices they make. Even in situations where we feel sure of what constitutes a flourishing life, we do not respect people if we order them to function in specific ways. Instead we should present our arguments in support of our conception of the good and then leave the choice up to the individual. She argues that many people would be willing to support a

particular capability as a fundamental entitlement but would feel violated if the associated functioning were to be made mandatory (Nussbaum 2006). For adult citizens, the appropriate goal is capability not functioning. This is because of the importance the approach attaches to practical reason as a good in itself and as a good that 'suffuses all other functions, making them human rather than animal' (Nussbaum 2000b, p. 87).

This is not to say that the outcome is ethically irrelevant. The capabilities approach leaves space for individuals to choose a life in accordance with their conception of the good but this does not mean that all outcomes are valued equally. We may well judge some outcomes as highly undesirable and advocate for other choices to be made. Nussbaum's approach is strongly normative, with the ten central human capabilities identified because functioning in these areas is deemed essential for a fully human life (Nussbaum 2000b, 2006).

The most common critique of the capabilities approach from an egalitarian perspective concerns the question of setting capability as the goal. This dispute continues a much longer discussion on whether egalitarians should aim for equality of opportunity or equality of outcome. Critics include G. A. Cohen (1993) who questions whether individuals have real choice and therefore argues that the focus must be on outcomes. While Robeyns (2003) upholds the goal of capability, she is also concerned about the extent to which we are restricted and shaped by coercive social practices. Richard Arneson (2000, 1989), Paul Streeten (1981) and Frances Stewart (1985) also express their reservations about the goal of capability. Although Wolff and de-Shalit (2007) do not favour setting functioning as the sole measure of well-being, they question whether the distinction between capabilities and functioning is very clear.

On the question of the most appropriate political goal, it is important to note that Nussbaum makes a number of qualifications. First, she states that we may need to require some types of functioning in children in order to produce adults who have all the capabilities. Second, even with adults there are some cases where we might promote functioning rather than capability, most particularly in the case of self respect and dignity, but also in the areas of health and safety. Finally, sometimes the absence of function indicates that the capability is not really available. This is particularly when there has been a history of persistent and entrenched discrimination (Nussbaum 2000b). This last point is also made by Anne Phillips (2004), Robeyns (2003) and Sen (2009).

These qualifications are all relevant to the problem of care but there is another issue. A person cannot claim an entitlement if to do so results in harm to others. If we fail to specify our obligation to provide care, the freedoms of some groups of individuals will continue to be compromised. The real opportunities available to women are constrained by the choices made by men. A father's decision not to be involved in the day-to-day care of his young baby limits the options available to the mother. Highly paid professional parents can pay for good quality care for their children, yet the carers upon which they depend usually have far fewer options (Pocock 2009; Tronto 1993,

2002; Bubeck 1995). The obligations that need to be built into the capabilities list concern not just individuals, an important component is also social (Fudge 2010).

#### THE ONTOLOGY OF CAPABILITIES

My fourth concern is that the capabilities listed by Nussbaum are different types of entities. At first glance this might not seem remarkable. Her ten capabilities are designed to provide a pluralistic account of human flourishing. However, it does matter because the list is weakened by inconsistencies in both its structure and in the nature of individual capabilities. This is particularly evident in the difficulty of insisting that the goal should always be capability rather than functioning. In some cases the capability in question is so important, as in the case of life or the basis of self respect, it is difficult to imagine a situation where a well person would choose not to function. There are other capabilities that do not exist unless they are realised, for example our capacity to form and sustain relationships. For these reasons we need a more carefully structured list to express the minimum requirements for human flourishing.

Questions about the nature of capabilities or other entities (including objects and concepts such as well-being and equality) are ontological. With the exception of the work of Nuno Martins (2006, 2007a) little attention has been paid to the ontological underpinnings of the capabilities approach. While Martins' main focus is on Sen's capabilities approach, he includes some discussion of Nussbaum's work. Martins argues that Sen's capabilities approach is primarily, although not explicitly, an ontological exercise and that his work can be usefully complemented by Lawson's structured ontology.

In his most recent book Sen (2009) describes capabilities as powers. Martins (2006) is more specific. Using the conceptual framework of critical realism, he argues that capabilities are like causal powers. They are potentials that may or may not be exercised and may or may not be actualised. As causal powers, capabilities are emergent from underlying physical, biological, psychological or social structures. These structures may facilitate or constrain a particular achievement of functioning. However, the capabilities cannot be reduced to the structures. The set of functionings achieved by a person is the actualisation of the power or potential. We need to understand the structures and associated mechanisms in order to broaden both human capabilities and potential functionings. This is most likely to be achieved through structural transformation. Without attention to structure and an understanding of the complex interacting forces shaping social systems, it is not possible to assess whether specific policies or actions will exacerbate rather than alleviate a problem.

Martins (2007b) welcomes Nussbaum's grounding of capabilities in an Aristotelian understanding of flourishing, her realism, rejection of utilitarian and resourcist approaches to well-being, as well as her defense of universal values. However, he rejects her list of central human capabilities. The reasons for this are not always clear. His comment that defining the list is not an easy task is hardly compelling. A stronger concern is her failure to explicitly

link capabilities to underlying structures. While some capabilities, particularly life, bodily health and bodily integrity are uncontroversial because they relate to our shared biological structure, others draw on social and economic structures that are particular rather than universal. For example, Nussbaum identifies the importance of private property, which Martins considers to assume a specific rather than universal economic structure. Our common human nature is historically and socially mediated. We can move from evidence of human diversity to the identification of universal statements by understanding that empirical diversity and structures lie in different ontological levels (Martins 2007b; Lawson 2003).

Making explicit a structured ontology for Nussbaum's capabilities list will do more than clarify differences between the particular and the universal. It will also show how the capabilities are linked to each other. For a person to have access to the capability of practical reason, which entails the ability to plan one's life, they need to have realised other capabilities such as respect, health and material resources. Revealing these connections makes it clear why it is not possible to trade away one capability for more of another.

## SUGGESTIONS FOR A RESTRUCTURED LIST

My proposed list restructures and expands Nussbaum's list of ten central human capabilities. I start with the idea that to live in a fully human way we need to have the capacity to form and enact a plan of how we wish to live our lives in accordance with the things we value, with the proviso that we do not harm others. Closely linked to this is the capability of respect. Without these two capabilities flourishing is not possible. The capabilities of practical reason and respect emerge from but are not reducible to the rest of the capabilities listed. The remaining capabilities are organised according to the group of structures to which they relate.

In addition to this, I have separated the two parts of Nussbaum's capability of affiliation into the capabilities of respect and of sociability/connectedness. Similarly, I have created two capabilities out of the two parts of Nussbaum's capability of control over one's environment. These are the capabilities of political participation and of a material basis for a dignified life. Further, I have added four new capabilities: care, living with others, equality and sustainability. This increases the total number of items on the list to sixteen.

More minor changes involve moving elements from one capability to another. 'Pleasurable experiences and avoidance of non-beneficial pain' has been moved from the capability of senses, imagination and thought to that of bodily integrity. 'Freedom from unwarranted search and seizure' has been moved from the capability of control over one's environment part B to the capability of political participation. I have extended the capability of practical reason to include the ability to enact as well as formulate a life plan. The idea that we have our obligations to others has been added to the capability of sociability/connectedness. Reference to environmental sustainability is

now contained to the capability concerning other species. I have also made minor changes to the names of some items.

The process of developing capabilities lists is the subject of considerable debate. Robeyns (2003) defends a procedural approach to the selection of capabilities for a given context. This process involves four steps: brainstorming; testing the draft list against the academic, political and grassroots literature; considering other capabilities lists; and debating the list with others (e.g. through the publication of academic papers). She notes that the second step is likely to be the most time-consuming and should include attention to the views and circumstances of people who live very different lives. Robeyns argues that her procedural approach provides a way of realising Sen's democratic process. There is significant overlap between the content of Robeyns' and Nussbaum's lists, and indeed with various other capability lists. However, Robeyns contends that even if the items on a list developed following her procedural approach end up being much the same as those on Nussbaum's list, they are different because of the scope of application and the process of development. Despite this claim, it is difficult to find significant differences in the way the two lists are developed. Nussbaum (2000b, 1998) defends a philosophical approach aimed at developing a normative philosophical theory but this entails much the same the type of testing and debate described by Robeyns. My approach has been iterative rather than staged, involving brainstorming, consideration of the literature and other lists, and discussion with others, a process that is by no means complete.

#### PROPOSED LIST OF CENTRAL HUMAN CAPABILITIES

Flourishing depends on the capabilities of practical reason and respect.

1. **Practical reason.** Being able to form a conception of the good, to engage in critical reflection about the planning of one's life, and to live the life one values as long as it does not harm other. This entails protection for the liberty of conscience and religious observance.
2. **Respect.** Being able to live as a dignified being whose worth is equal to that of others. Having the social bases of self-respect and non-humiliation. This entails, at a minimum, protection against discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin, and care responsibilities.

The capabilities of practical reason and respect emerge from but are not reducible to the following 14 capabilities, organised according to the groups of structures to which they relate.

**Agency (emergent from, although not reducible to, a shared biological structure and social structures that although not universally shared, have many features in common)**

3. **Senses, imagination and thought.** Being able to use the senses, to imagine, think, and reason – and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing self-expressive works and events of one’s own choice, religious, literary, musical and so forth. Being able to use one’s mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to search for the ultimate meaning of life in one’s own way.
4. **Play.** Being able to laugh, play, to enjoy recreational activities and to have the same opportunities as others for play and recreational activities.
5. **Political participation.** Being able to participate effectively in political choices that govern one’s life; having the right of political participation, protection of free speech and associations; and having the freedom from unwarranted search and seizure.

**Interconnectedness, including responsibilities to others (emergent from, although not reducible to, a shared biological structure and to social and economic structures that, although not universally shared, have many features in common)**

6. **Mental and emotional well-being.** Being able to have attachments to things and people outside ourselves; to love and care for those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude and justified anger. Not having one’s emotional development blighted by overwhelming fear and anxiety, or by traumatic events of abuse or neglect. Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.
7. **Sociability/connectedness.** Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another and to have compassion for that situation; to have the capability for both justice and friendship. It is not enough to merely feel concern and compassion, it is also necessary to act on our obligations to other humans so that they have the opportunity to flourish. Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation and also protecting the freedom of assembly.

8. **Care.** Being able to receive the care needed during periods of dependency, particularly infancy, old age, periods of illness or disability, and being able to take responsibility for the care of others. This includes our obligations to provide or arrange the care of close family members as well as a shared social responsibility for the care of members of the same community and of distant strangers. Social responsibility includes paying taxes to fund decent support services and transfer payments as well as supporting labour laws that guarantee a living wage and proper working conditions, and supporting fair trade and environmental sustainability.
9. **Living with others.** Being able to live with others in relationships that are neither exploitative nor oppressive. For many this group will centre on shared domestic arrangements (including, but not limited to, different sorts of families) but may also include relationships across households such as separated parents, extended families and women's collectives.
10. **Living with other species.** Being able to live with concern for and in relation to animals, plants, and the world of nature. This entails living in an environmentally sustainable way.

**Physical well-being (emergent from, although not reducible to, a shared biological structure)**

11. **Life.** Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.
12. **Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished, to have adequate shelter.
13. **Bodily Integrity.** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction. Being able to have pleasurable experiences, and to avoid non-beneficial pain.

**Fundamental conditions for flourishing (emergent from, although not reducible to, ecological structures that may have some regional variation and to economic and social structures that, although not universally shared, have many features in common)**

14. **Material basis for a dignified life.** Being able to access the resources and opportunities needed to sustain a dignified life. This includes access to basic material needs such as food and shelter as well as the opportunity to earn income through meaningful work. In most cases the real opportunity to use land and movable goods is secured through ownership. Meaningful work involves being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers. It includes care and domestic work.

15. **Equality.** Being able to have access to the basic resources and opportunities needed for a dignified life on an equal basis with others. This entails no significant differences in the basic material circumstances of each individual.
  
16. **Sustainability.** Being able to sustain functioning by having access to adequate material resources, the possession of internal capacities to develop a life plan and freedom from coercion which makes enactment of that plan a possibility.

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## LEGISLATION

*Fair Work Act 2009* (Cwlth)

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