A Group of Girls and Group Rights

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Abstract

Group rights remain a hotly contested area with the capabilities approach. Using a thought experiment of eight girls, and focusing on the Sen capabilities approach, this paper illustrates the relative ease and difficulty of dealing with the girls' situations using the capabilities approach. It then draws attention to the examples of a girl in a tribe choosing voluntary isolationism and a girl in a previously uncontacted tribe to illustrate that the relative difficulty of the theoretical lens to explain and 'resolve' the scenarios.

Keywords: Capabilities Approach, Group Rights

Introduction

There is a 'major area of dispute among capability theorists [which] relates to issues of individualism, groups and social structures' observes Robeyns (2005, p107). This paper[1] seeks to add further considerations to this discussion through the means of a thought experiment of 'eight girls' posed by Gay Meeks.[2]

The paper firstly outlines the 'eight girls' problem. Through the thought experiment we see that that the more individualist scenarios are more easily addressed through the works of Sen (2010, 2001). Though when faced with hypothetical girls who interact with groups, and thus the capabilities of others, the answers become less straight forward. The paper then relates these issues to discussions in contemporary literature on group rights and indigenous communities. The article concludes that in particular in relation to Girls G and H – a girl from a community which has voluntarily isolated itself and a girl from a previously uncontacted community – the inherent data limitations of an uncontactable girl limit the effectiveness of a capabilities based analysis.

1. Introducing Gay Meeks' eight girls

'The basic {development] concern… is with our capability to lead the kind of lives we have reason to value' (Sen, 2001).

Thought experiments can help to isolate inherent logical and intuitive factors which are influencing our understanding of an issue (Baggini 2010). The thought experiment outlined below serves to elaborate on factors which help and hinder the capabilities approach in its dealing with individuals. Through it there are also interesting insights into factors impacting groups of individuals. The experiment functions by outlining different scenarios through which we can then see how well the capabilities approach can help them lead the kind of lives they have reason to value. The scenario is as follows:

'Assume all are highly intelligent.

Twins A and B live in a region of Africa where there is no provision for the higher education they both value. A is fully sighted but B is blind.

Girls C and D live in the UK. C applied for a university place and has an offer from Cambridge but has now volunteered to work as a missionary overseas instead. D lives on a deprived estate in Glasgow and sees no point in continuing into university education.

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[1] Adapted from a paper submitted in partial fulfilment of a unit in the MPhil in Development Studies programme 2012

[2] I am eternally grateful to Dr Gay Meeks, an Affiliated Lecturer and Senior Research Associate at the Centre of Development Studies in Cambridge, for posing this and many other brain-teasing questions on her postgraduate course.

E, who does wish for higher education, lives in a communist state where she is directed to take a degree course. F lives in Afghanistan with her husband in an area under Taliban control where girls are excluded from education.

Girls G and H both belong to indigenous tribal communities in the Amazonian rainforest. G is a member of the Tagaeri tribe which lives in 'voluntary isolation' in Yasuni National Park in Ecuador, while H is a member of the 'uncontacted' Mashco-Piro tribe recently observed in Manu National Park in Peru (first close photographs released in February 2012).'

2. Girls A to F: illustrating the strength of the capabilities lens for individuals

Let us now consider each in turn, and their treatment under the capabilities approach.

Girl A

A capabilities approach would argue that there is a need for an intervention because as Sen (2001:chap.8) would argue that it would bring benefits to her agency. Education, particularly literacy, enables people to increase their social opportunities and thus their freedom (Sen 2001:38–9). A similar position could be arrived at via different logic by a utilitarian – who could argue that Girl A would get a higher marginal utility from access to education – or a Rawlsian – who could argue that in order to get a career open to the talents, the difference principle would likely accord her additional resources. Such agreement between the different philosophical schools is not reflected in Girl A's twin's case.

Girl B

Intuitively Girl B requires an extra level of support in her life. As Sen (2001:70) argues heterogeneous people may require assistance to compensate for their disadvantages in life.

A Utilitarian would be predominantly concerned about the mental state of satisfaction of B not whether this limits her potential in life. A Rawlsian cannot cover this either as the 'resource fetishism' means we should only focus on the resources going to someone and not what people are able to do with these resources (Sen 1980:276). Sen specifically argues that resources are relational; we must judge them by what freedoms they bring to people to enable them to live the lives they want to lead.

Sen (1980; 1996) argues the capabilities approach is the only approach which can guarantee that resources would be allocated to B. Utilitarians would care more about who gains the most happiness from the resources and Rawlsians would be more concerned about the allocation of Primary Goods not the starting point of the people with Primary Goods. As shown in *Development as Freedom* and the *Idea of Justice*, some significant advances in ethical thought have been made upon older schools of justice thinking such as Rawlsianism and Utlitarianism.

Girl C

A parallel can be drawn between Girl C and Sen (2001:76) which introduces the example of two people, one fasting, the other who is famished. The first is capable of purchasing food but chooses not to, the second cannot. In outcome terms alone both are malnourished however the first person

has exercised their agency, their free choice. Sen argues that only the capabilities approach is able to recognise this distinction.[3] Here also, Girl C has the freedom to choose between alternatives. Freedom for Sen is something that has intrinsic value as it enables people to do what they have 'reason to value' (Sen 2001:18).

We should however pause to consider the nature of the decision. Sugden (2008:chap.13)'s strict interpretation of the phrase 'reason to value' stimulates important questions over the nature of what constitutes a correct decision. If we were to look at C's decision-making-process (DMP) using Kahneman (2011)'s $Systems_1$ and $Systems_2$ framework for choices[4] we can define DMP_1 and DMP_2. If C chose using DMP_1, i.e. she saw a particularly heart-wrenching story designed to play on her emotions by an NGO with a good PR department, its difficult to say that she has exercised agency or that this is desirable. On the other hand, if C used DMP_2 and looked to carefully consider the relative merits of her options then this is a better candidate for a reasoned choice. As an observer working with a limited data detailing only decision outcomes and not the reasons for taking them, we cannot assess whether this is a desirable exercise of freedom or a lack of judgement. This is at the core of Sen (2010) chapter 1's discussion[5] surrounding the nature of carefully reflected decisions. That the capabilities approach is able to identify this as a point of concern is illustrative of the strength of this approach in dealing with this scenario.

Girl D

This scenario is directly addressed by Sen (2001:62) when he extends Rawls' 'happy slave' argument to oppressed minorities, tamed housewives and exploited, overworked employees. Sen argues that happiness will be influenced by adaptations to our surroundings.

The core of the issues facing Girl D is that a supportive environment is needed to support flourishing. In this sense the issues are similar to the above discussion regarding Girl C and the nature of her decision. It appears however that in this case the emphasis in the Capabilities Approach would be more heavily upon the environmental factors influencing her. If we don't we risk focusing upon happiness and 'the mental metric of pleasure or desire is just too malleable to be a firm guide to deprivation and disadvantage' (Sen 2001:63).

It should be noted that as Burchardt (2009) highlights, the capabilities approach itself may be prey to such criticisms as the actions in the capability set are themselves subject to adaptation to our surroundings. Although this concern should be noted it does not impinge upon the fact that this does not limit our ability to apply it to this scenario to arrive at a solution to D's scenario.

Girl E

Girl E is responded to by Sen (2010:229-30) who introduces Kim, a person who wants to stay at home. He then questions whether his freedom is impacted if a group of thugs tell him to stay within in the house or face severe punishment. Analysis of the 'process aspect of freedom'[6] illustrates that

[3] A Utilitarian reply to this argument would be that the marginal utility from food for the famished person would be greater than for the fasting person.
[4] A $Systems_1$ choice is made on impulse, involving instinct and emotion. A $Systems_2$ choice is based on slower calculated reasoning.
[5] And Adam Smith's impartial observer criterion highlighted by Sen.
[6] Whether the choosing is valuable in and of itself (freedom's intrinsic value).

he is unable to choose an alternative. Consideration of the 'opportunity aspect of freedom'[7] may imply that there is no concern as Kim would select that option anyway. However, Sen argues that this does not give respect to the opportunity to choose freely and select an alternative.

A fully centralised decision-making system may result in efficiencies but we should still recognise that there is a lack of freedom (Sen 2001:27). E, the unfortunate girl, cannot select any alternative so her capability set is restrained. This example illustrates the ability of the Capabilities Approach as an intellectual tool through which to observe an intuitively problematic situation.

Girl F

Sen (2001:31–3) argues that there is a 'basic value that the people must be allowed to decide freely what traditions they wish or not wish to follow.' This freedom-grounded argument trumps the legitimacy of purported 'authorities' to impose traditions upon people. Sen goes further to argue that basic educational skills are essential for effective participation in the decision-making-process so any restriction of education also contravenes the right to participate. Sen believes he has therefore provided strong grounds for intervention in this scenario.[8]

But what if F wants to live this way? The prospect of becoming an unhappy Socrates (highly educated but unhappy) may be off-putting regardless of whether she is allowed to study or not. She may prefer to be a content human being and Sugden (2008) would support her that it's her choice. With Girl E we faced the problem of someone happy to take an action she was obliged to take, now we could face someone reluctant to be educated and unable to do so if we wanted a capabilities intervention. Based on the discussion above this violates the process and opportunity aspects of her freedom. If however education is forced upon her this too would violate the decision to choose a lifestyle she has values (with or without reason). Sen could argue that her choice does not fully count until she is fully educated but by this point her ability to live an uneducated life would have been prevented.

We are more willing to accept the decision of Girl D to not attend university as it is seen as a decision made under freer choice and it could be argued that the logic was arrived at through rational decision making. But as for the case of Girl D – the happy slave helps to illustrate the limitations of a purely happiness based approach. Here too, the nature of the Rawlsian happy slave would likely dominate the concerns highlighted above.

What we have seen in the discussion of Girls A - F is that there are adequate accounts for each of the girls which come from the capabilities approach. But it should be noted that only Girl F has an explicit group rights dimension and this in turn raises issues as to permissible cultures as shown in Appendix 1. The A - F girls, who are all relatively isolated individuals (in that their decisions have a marginal impact upon their neighbours), have a clear parallel with Sen's earlier writings and they can be adequately dealt with in the capabilities framework.

[7] Whether we are free to pursue the lives we want (freedom's instrumental value).
[8] There appear to be some forms of circularity in the reasoning - see Appendix 1.

3. Girls G and H: Girls in more complex group rights situations

Unlike Girls A to F above, there is no direct reference to these scenarios in *Development as Freedom* or *The Idea of Justice.* Girl F is problematic from a group rights perspective, but the need for her to attain the 'capability to lead the kind of lives we have reason to value' dominates in this scenario. Yet most of the arguments that Sen forwards in relation to traditions are focused upon Islam or China.[9] Sen appears to assume well-established cultures which have a rich intellectual heritage to draw upon (Sen 2010:337), that benefit from global perspectives and discussion (Sen 2004:50) and which are a part of an interconnected world (Sen 2010:152). Ultimately 'there are few non-neighbours in the world today' (Sen 2010:173). From within this context Sen concludes, as highlighted in F, that culture should be chosen by the individual not imposed. This is a significant contrast with the G and H Girls who are in isolated communities which do not interact with other groups.

Analysis of his view of 'groups' provides similar results. Sen highlights that groups are not capable of thinking, we should value a group in terms of the aggregation of the individual valuations of its constituent members (Sen 2010:246). 'In valuing a person's ability to take part in the life of the society, there is an implicit valuation of the life of the society itself' (ibid.). Sen's idea of a group is also one which interacts with other aspects of self-identification such as language, religion, race, gender etc. which form 'multiple identities' that may cut across borders (Sen 2010:129). From the literature above it is apparent that G and H may not fall into the framework so neatly and therefore the following discussion will have to rely upon a greater level of interpretation of the Capabilities Approach than has previously been used in the paper.

G and H Thematic Discussion: Groups interacting with other groups

In 'The Art of Not Being Governed' Scott argues that groups which live in voluntary isolationism have chosen to live lives separate from the state (Nathan, 2010). In particular in the case of G's tribe it could be argued:

(i) that these groups are exercising their agency by choosing to live lives separate from wider society.

There is however a tension in Sen's argument here if we accept (i). As Sugden (2008) highlights democratic process is used to determine what a population views to be valuable in life. What if the tribe is occupying land that has national importance? The Jawara Tribe in the Andaman Islands chose voluntary isolationism but tourists keep visiting the site to see them. The state can choose to enforce isolation for the community but this would require closing access to the only road in and out of the island (Aljazeera, 2012). In this scenario a democratic vote by the entire island would see the rights of the tribe overruled in a Tyranny of the Majority situation (but at the same time it would likely enhance the capabilities of the majority on the island). These concerns could also be extended to other people living outside the law within a state such as shanty towns residents where a state wants to remove slums for 'national benefit' or other minority groups such as gypsies.

[9] Sen (2001:chap.10) highlight the compatibility between Confucianism and human rights arguing that 'Asian values' are often over-emphasised. He also stresses the liberal reforms under Akbar the Mughal Emperor and argues that democracy is not a uniquely Western value.

This is a particularly acute pragmatic concern for indigenous groups who enter resource allocation discussions from a place of extreme power inequality. A good illustration of this is the inhuman treatment of aboriginal groups in Australia (Evans, 2007), which has hampered the capabilities of generations of aboriginal groups. The level of redistribution required to help rectify this may indeed impact upon the capability set of another group of people and would likely face opposition in an unequal situation.

Whether in a debate over resources at a national level a minority groups claims will be strong enough to secure an allocation of fixed resources (e.g. land) is doubtable. There is little guidance on which group of individuals should be prioritised over other – the majority or the minority? Any democratic process deliberating the preferred capability set risks overruling the capabilities such as those suggested in premise (i) above.

Challenges for the Sen Capabilities approach relating to G and H's interaction with their groups

Firstly, it may be that Girls G or H live in matriarchic societies. In which case, the women's agency concerns highlighted by Sen as a justification for education have already been achieved. In this scenario high quality agency has been achieved and education may not be required.

Secondly, up to this point it has been assumed that G agrees with the decision of the tribe and has not been forced into isolation. She may herself be subject to Tyranny of the Majority. However, from the outside, we cannot determine if the individual agrees with the group. But Sen (2010:71) argues what happens outside any country's borders does matter and human rights are requirement for global justice (even if this argument implies some cosmopolitanism).

If we accept (i) above, then removing oneself from contact is to be taken as an exercise of choice. In order to respect their decision there can no contact, otherwise this violates the intrinsic value of freedom of the tribe. In this scenario, with no communication, we do not know what is going on within the tribe's borders. If the tribe were to grossly violate any human rights, i.e. forcing G into isolation, we would not know. However, with no certain knowledge of this which right is to be enforced, that of respecting their decision or that of protecting potential human rights abusees? The Capabilities Approach doesn't offer an answer. Were we to know with certainty of this violation the debate becomes similar to case F.

Thirdly, there is a further problem with H; we cannot find out whether this community wants to be isolated unless we ask, at which point we have just established contact and undermined the question. We need to decide with some outside metric whether intervention is suitable, given the irrevocable change to the tribe's life, if we are to intervene there needs to be strong justification.

Finally, we know H is of high intelligence; without access to higher education her capability set will be lower than it otherwise may be were she given the opportunity to reflect on what she wants. This may imply some level of burden for the global community to extract her from the tribe. This may however invalidate her right to a family life and also assumes that she would be capable of integrating easily with an outside community. Given protracted isolationism this is doubtful, for example feral children who lack socialisation cannot easily have it installed at a later age (Rosenberg 1983:151).

4. The eight girls' contribution to group rights debates

The challenges highlighted within the previous section may not be insurmountable. This section of the paper responds to the issues raised above before concluding that issue of data remains unanswered.

Until now the paper has focused analysis upon Sen's articulation of the Capabilities approach. A core feature of the differences between Sen and Nussbaum is their decision to come up with a list of capabilities or to leave it for open public discussion (Nussbaum, 2003). As highlighted above this may pose a problem for Sen in how one local group (of which Girls G and H are a part) interacts with larger national groups.

The same cannot so easily be said about the Nussbaum approach. It can be argued that adoption of the Seventh Capability 'Affiliation' (Nussbaum, 2003) gives scope for the groups in which the Girls operate to be able to protect the environment in which they are living. There still remains a controversy over whether an explicit listing should be given for the capabilities approach (Robeyns, 2005, p. 106). Such a solution is not however fully satisfying as it accepts as a premise as it tacitly acknowledges issues with the Sen based interpretation of the capabilities approach.

An alternative solution to this dilemma could be the adoption of the Stewart (2005) approach; by acknowledging the group as a unit distinct from, but including, the constituent members of the group. This helps to accord a set of 'group capabilities' to the tribes noted above. If we were to acknowledge the tribes themselves and their capabilities, this would then help us to acknowledge the right to self-determination of Girl G's isolationist tribe and the right to remain uncontacted for the Tagaeri tribe. Given historic examples of 'western liberators' non-interventionism may be an attractive solution to this dilemma. But as discussed above – it is possible that an acutely patriarchal oppressive regime may have overruled the interests of the girls. This places the group capabilities in conflict with the Girls' capabilities and we also once again arrive at the issues raised in Appendix 1.

Though, Binder and Binder (2016) would highlight the advantages for indigenous autonomy from using a capabilities approach. It keeps at the forefront of analysis the impact on given individuals in the group. That we are able to talk about the impact upon Girls G and H within the group illustrates the strength of a framework designed to explicate how we create an environment for people to live lives they have reason to value. Furthermore, the framework does accord rights to a group when seen as a group of individuals. The authors highlight that the very identification of the tension between the group and individual is a result of the capabilities (Binder and Binder, 2016, p. 10).

We should ultimately acknowledge that the capabilities lens is not asserting ontological individualism. Instead, it is making ethical individualist claims which Robeyns (2005, p. 108) notes 'recognizes the connections between people, their social relations, and their social embedment'. Robeyns goes on to highlight a swathe of authors who do include an analysis of groups and pay sufficient attention to groups.

Robeyns case is well made and illustrates ways in which groups can be seen through a capabilities lens. But it still doesn't help to overcome the question as to whether to intervene in the case of Girl G or H as we remain ignorant as to the situation of the girls in their respective communities. In the absence of any data it is not clear whether we have reached a threshold for interaction with these

groups which would overcome the 'harm of intervention'[10]. Though the data limitation is a driving assumption in the Girl G and H scenarios above, the interaction with the group rights assumption further complicates the matter. Any decision has a bearing on the capabilities of the other individuals in the group but we are unable base the decision upon any kind of democratic deliberations without substantially altering the lives they currently lead by interacting with them.

Conclusion

This paper has discussed how we can adequately apply the capabilities lens to the group of eight girls posed above. It is evident that when we consider the capability set of a given girl in isolation the capabilities approach provides a simple and clearer cut answer to how we can enable an environment to help the Girls live lives they have reason to value.

When faced with Girls who interact with the capabilities of other individuals or groups of individuals it is less clear cut because there is greater scope for analysis of the range of implications for the Girls. This was shown in Section 3 where it is unclear the degree to which we should adopt premise (i), or whether we should violate the 'uncontacted' nature of the Tagaeri tribe given the assumption of high intelligence of the girls involved.

Though it is apparent that there are some responses from within the literature to the issues analysed in section 3, a question remains unanswered with regards to data. In order for the framework to operate – particularly if we are performing an external review of the group – it requires information on the capabilities of the individuals within the group. However, gathering such data as an external person (as in the case of Girls G and H) risks violating important capabilities outlined above. Further thought is required in this area to help resolve this issue.

[10] In the case of G overriding a decision for self-determination and for H an irrevocable first contact.

Appendix 1: Sen's position on tradition and choice

P1) External forces mandating an individual chooses life X not Y is not a free choice

P2) The Capabilities Approach argues individuals need to freely choose what life to lead

P3) Individuals can choose Tradition_1 if they want to

P4) To make an (informed) choice requires Education_1

C1) Can only choose Tradition_1 if they have Education_1

However,

P5) There exists a tradition, Tradition_2, such that all education is denied to some individuals

C2) Tradition_2 is incompatible with (P2)

By acknowledging (P5), Tradition_1 in (P3) ceases to be any tradition but a subset of acceptable traditions compatible with (C1). But then a question arises as to <u>how</u> to recognise a Tradition_1 from any other Tradition_2 that is not compatible with the capabilities approach. The only way of distinguishing between the Traditions is through the capabilities approach or more plainly: the only traditions which are acceptable to the capabilities are those which are already defined to be acceptable through the capabilities approach (P2) should therefore change to:

P2a) The Capabilities Approach argues individuals need to freely choose a life consistent with the Capabilities Approach

Isolating the precise difficulties with this argument requires further analysis particularly in relation to 'freely choose' as this is also defined by the capabilities approach but there are some indications that a fallacy may be present. Clearly however any consideration of i) adaptation to surroundings and ii) an inability to distinguish DMP_1 and DMP_2 as an observer also impacts on the strength of this argument.

Such considerations are further complicated by the recognition that for a culture to flourish requires participation and failure to participate by a critical number of people stops the culture from operating.

Bibliography

Aljazeera, 2012. The lost tribe.

Baggini, J., 2010. The Pig That Wants to be Eaten: And Ninety-Nine Other Thought Experiments. Granta Books, London.

Binder, C., Binder, C., 2016. A capability perspective on indigenous autonomy. Oxford Development Studies 44, 297–314.

Burchardt, T., 2009. Agency Goals, Adaptation and Capability Sets. Journal of Human Development and Capabilities 10, 3–19.

Evans, R., 2007. A history of queensland. Cambridge University Press, Cambridge.

Kahneman, D., 2011. Thinking, Fast and Slow. Allen Lane.

Nathan, A.J., 2010. The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia. Foreign Affairs.

Nussbaum, M., 2003. Capabilities as Fundamental Entitlements: Sen and Social Justice. Feminist Economics 9, 33–59.

Robeyns, I., 2005. The Capability Approach: a theoretical survey. Journal of Human Development 6, 93–117.

Rosenberg, M. (Ed.), 1983. Introduction to Sociology. Methuen.

Sen, A., 2010. The Idea of Justice. Penguin.

Sen, A., 2004. How does culture matter? in “Culture and Public Action: A Cross-Disciplinary Dialogue on Development Policy.” Stanford University Press.

Sen, A., 2001. Development as Freedom, New Ed. ed. Oxford Paperbacks.

Sen, A., 1996. Equality of What in “Ethics and Economics.” Edward Elgar.

Sen, A., 1980. Equality of What in “The Tanner Lectures on Human Values.” Cambridge University Press.

Stewart, F., 2005. Groups and Capabilities. Journal of Human Development 6, 185–204.

Sugden, R., 2008. Capability, Happiness, and Opportunity, in “Capabilities and Happiness.” OUP Oxford.