



Towards a normative framework for welfare reform based on the capability and human rights approaches

Synthesis Report Work Package 4.1

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Introduction

This paper aims at providing a normative framework based on human rights and the capability approach in order to assess contemporary welfare policies and suggest reforms that would promote human flourishing and human dignity. In the first section, we start by defining the anthropological conception at the basis of the capability approach, which is inherently plural and multidimensional. We thus explain the multidimensional nature of disadvantage at the core of the capability approach with reference to its anthropological understanding. From this perspective, we link each aspect of social disadvantage to an anthropological dimension – a valuable way of being human. Moreover, we show how public action can intervene and reduce disadvantage in each dimension. In the second section, we establish a link between the analytical framework developed in Section 1 and the human rights approach with the purpose of reinforcing its normative basis. In the third section we propose a normative framework for welfare reform based on the capability and human rights approach. Finally, in the conclusion we highlight some of the most important implications of adopting it, focusing especially on the differences between the normative framework proposed and austerity policies on the one hand, and the social investment approach on the other hand. A central concern, which informs the whole report, is to take into account the many critiques and challenges that have been addressed to the capability approach. In so doing, we depart - in certain aspects - from the orthodoxy of the capability approach as developed by Amartya Sen, taking on board elements drawn by Martha Nussbaum's version of the capability approach as well as insights from other scholars.

1. Human beings as receivers, doers and judges: the Anthropological Foundation of Disadvantage and Public Action in the capability approach

1.1 The capability approach, its anthropological conception and the nature of disadvantage

The capability approach is a 'broad normative framework for the evaluation and assessment of individual wellbeing and social arrangements, the design of policies, and proposals about social change in society' (Robeyns, 2005: 94), theorised initially by Amartya Sen as a framework for thinking about development (e.g. Sen, 1999). In this perspective, rather than as economic growth, development is defined as the process of expansion of human freedom. In particular, Sen was concerned with studying the normative element that informs policies promoting development. He thus introduced the concept of 'informational basis', which designates all pieces of information that are considered as relevant to identify disadvantage and design public action to overcome it. Thus, the 'informational basis' points to the elements that should be corrected and supported by public action; in contrast, it also suggests that the other elements, those outside the 'informational basis', are not as important and do not call for a specific public intervention. In short, it provides the basis for the evaluation of wellbeing, the assessment of justice and social progress and for the formulation of economic and social policies (e.g. Sen, 1992). From this perspective, if the goal is to promote equality, a crucial question remains to be addressed: 'Equality of what?' that is what needs to be equalised via public action? Is it resources, opportunities, well-being, etc.? Normative theories differentiate themselves precisely for the aspect that should be equalised. Indeed, equality in a certain space inevitably implies inequality in other spaces. For instance, equalising freedom from state intervention and protection of property rights (negative freedom) generates inequality of income.

From this perspective, Sen argues that 'capability', defined as the real freedom to lead the kind of life people have reason to value (Sen 1999: 18), is the most complete 'informational basis'. Thus, the capability approach challenges the two most established frameworks for assessing wellbeing and justice in welfare economics and - through its influence - in social policy: the commodity approach and utilitarianism (e.g. Sen, 1999). In contrast to the commodity approach based on material resources and income as the sole sources of relevant information, the capability approach focuses directly on the individuals' wellbeing. In this way it avoids the problem of 'commodity fetishism' whereby material resources - which are a means to an end - are treated as ends in themselves. Furthermore, it is responsive to those inequalities that emerge in the presence of equality of resources and originate from the varying capacities of individuals to transform resources into actual freedom to lead a valuable life. For instance, a disabled person and an able-bodied person may have control on the same amount of resources but they will still enjoy different levels of, say, the real freedom to move around the town (note that in the conversion process collective factors are as important as individual ones: e.g. a public transportation service accessible to disabled people may equalise the freedom to move around in the town). Thus, when assessing disadvantage, resources are not a sufficient informational basis, all factors intervening in the conversion of resources into capabilities need to be taken into account.

In contrast to utilitarianism that defines human wellbeing as utility or preference-satisfaction, the capability approach identifies it with real freedom. Indeed, utility is an inadequate informational basis in assessing justice for at least two reasons. First, the poorest groups in society will tend to adapt their preferences to their deprived situation. Thus, if the victims of injustice have learnt to accept their lot and be happy with it,

this injustice would be ignored in a utilitarian framework. Second, within welfare economics, the utilitarian perspective is generally concerned with maximising the aggregate utility (the sum of individual utilities), thus overlooking distributional issues within a given society. In pursuing such an objective of maximisation of general utility, public action based on utilitarianism can become illiberal, neglecting individual rights and freedoms (Sen, 1970). In the context of social policy, the tendency to focus on the maximisation of the employment rate, which is an aggregate indicator, implies that this collective goal may take priority over individuals' right to engage in activities beyond employment, such as care work or volunteer activities.

The fundamental problem of such normative theories lies in the narrowness of their informational basis, that is, in what is excluded from it and thereby ignored by public action. Hence material goods constitute of course a relevant information in assessing social justice, and utility is an important aspect of wellbeing; however, the narrow focus on these aspects alone and the exclusion of other crucial information is problematic. The capability approach instead is broader because it focuses directly on individuals' substantial freedom rather than on the means to achieve it (e.g. goods) or on one of its possible aims (e.g. utility). It takes into account resources and wellbeing, but also other important dimensions for human flourishing and human dignity.

In this discussion on the right informational basis to assess wellbeing and deprivation, it is possible to identify an anthropological dimension, which is however often kept only implicit. In particular, there is a link between the conception of the human being implicit in a specific normative framework and the informational basis that is used to assess deprivation within this framework. Thus, within hedonistic utilitarianism the anthropological conception involves the *homo oeconomicus*, the rational utility-maximiser, and deprivation is defined in terms of lack of utility (preferences that remain unsatisfied, whatever their content). In the commodity approach, human beings are implicitly assumed to be subjects looking for always more material goods, thereby referring to an anthropological conception which could be defined as 'possessive individualism' (drawing freely from Macpherson, 1962). In this case, deprivation is identified with the lack of material resources.

Importantly, utilitarianism and the commodity approach largely inform mainstream welfare economics and through their influence also the formulation of public policies. However, both these perspectives on disadvantage tend to be mono-dimensional – focusing on only one aspect of disadvantage (lack of utility or lack of material resources). In the capability approach, in contrast to the former two normative frameworks, the anthropological conception is multidimensional and recognises that the person is a 'beneficiary, whose interest and advantages have to be considered' but also 'a doer and a judge' (Sen, 1985: 208). As Crocker puts it: human beings are not passive entities waiting for satisfaction; rather, they are agents: not only 'experiencers' or 'preference satisfiers' but also 'judges', 'evaluators' and 'doers' (Crocker, 1992: 600). Thus, in contrast to the utilitarian conception, human beings pursue other goals beyond their own utility and they are capable of committing themselves to such goals even at the expenses of their own wellbeing (Sen, 1977).

In particular, in the perspective adopted here, human beings are seen as interdependent beings embedded in a broader social context rather than atomistic entities (see Lessmann,'s paper). In this context, we refer to Nussbaum's version of the capability approach. Indeed, referring to feminist theories, Nussbaum (e.g. 2003) has elaborated her capability approach on the base of an understanding of human beings as vulnerable and interdependent beings (see also Dubois and Droy's paper). The fact that human beings are relational and interdependent beings confers special importance to care work (all of them need to be supported and can provide help and support to others) and political participation (they are part of the same collectivity and willing to participate in the construction of society). As Wolff and De-Shalit (2007) argue, individuals in the capability approach should be conceived not only as receivers of goods but also as givers and members of a community. People care about the community and about their participation: human beings are seen as active members of a community who care about and for others, participate in social and political activities, and want to contribute to the collective shaping of the public, that is, in politics. In the same vein, Giovanola (2005) argues that the anthropology underlying the capability approach can be defined as 'human richness', whereby human beings are actors who can flourish in a plurality of ways and especially through the rela-

tionship with other human beings. Thus, in this anthropological understanding, human beings are not conceived as self-sufficient and isolated atoms, but as social beings, which are cared for and provide care for others, and as citizens, i.e. members of a larger political community whereby interdependency extends beyond the sphere of interpersonal relationships.

From this multidimensional anthropological understanding derives a multidimensional analysis of the nature of disadvantage. The focus on capability is multidimensional because capabilities emerge from the combination of material resources, life chances and opportunities for action and political participation. The anthropological ‘richness’ informing the capability approach can be expressed in three central anthropological dimensions: human beings as ‘receivers’, ‘doers’ and ‘judges’. Table 1.1 summarises the anthropological conceptions implicit in each normative framework discussed above for the assessment of wellbeing and the related understanding of social disadvantage.

Table 1.1 Anthropological conceptions implicit in each normative framework for the assessment of wellbeing and justice, and linked definition of disadvantage

Normative framework		Implicit Anthropological Conception	Informational Basis Nature of Disadvantage
Mainstream welfare economics	Utilitarianism	Homo oeconomicus (rational utility-maximiser)	Unsatisfied preferences
	Commodity approach	Possessive individualism	Lack of material resources
Capability approach		Human richness: receiver, doer, judge.	Lack of capability (i.e. lack of real freedom to lead the kind of life one has reasons to value)

Source: Authors' elaboration based on Sen (1977, 1985, 1992, 1999); Crocker (1992); Nussbaum (2001, 2003); Giovanola (2005); Wolff and De-Shalit (2007)

All these three dimensions should be understood in a broad and interconnected way. Thus, the receiver dimension includes not only the human need to receive material goods but also the need for relational support and the need to belong. Furthermore, the receiver dimension also points to vulnerability as a fundamental and inherent characteristic of human beings. This clearly departs from the metaphor of ‘human capital’, which tends to valorise only human strength and ability, thereby possibly neglecting and devaluing human weakness, fragility and disability (Laruffa 2016: 28). However, these characteristics are part as well of human nature in the same way as human capacities, and ignoring them would imply that public action is based on a distorted view of human beings. In contrast public action should consider human vulnerability. On the one hand, this implies putting emphasis on supporting individuals in their coping strategies (see Dubois and Droy’s paper). On the other hand, it means considering human relationships and interdependencies as (at least potentially) valuable rather than as obstacles to human freedom. Similarly the doer dimension surely includes the important issue of participation in the labour market but goes well beyond it, comprising also the equally important aspects of care work and political participation. Thus, the doer dimension refers to all possibilities for action open to an individual. Crucially, it also calls for the promotion of people’s capability for work, i.e. their real freedom to have a job they have reason to value, which should be considered as the yardstick for labour market policies. Such an encompassing conception of the ‘doer’ also requires that vulnerability is adequately tackled, i.e. that the ‘receiver’ is provided appropriate material and social support. In the field of social policies, this implies that appropriate decommodification policies are needed if the goal of including people in the labour market is to be achieved in a capability-friendly way.

Finally, the judge dimension refers to the fact that human beings are able to say what has value in their eyes and that this should be taken into account when designing policies aimed at enhancing their capabilities. Indeed, human beings hold different values and worldviews and should thus be recognised a ‘capability for voice’, i.e. the ability to express their opinions and to make them count in the course of public discussion (Bonvin & Farvaque, 2006; Bonvin, 2012). This goes against paternalistic views of public policies that dictate

what people should do and do not let them any space to express their wishes. Crucially, if the ‘judge’ dimension of human beings is recognised by public action, that will allow them being part of the definition of what it means to be a ‘doer’ (and not only endorsing the official view about this, which all too often boils down to finding a job as quickly as possible). The ‘judge’ dimension also involves the ability to participate in public debate, both for bringing one’s viewpoints (and enriching the informational basis on which decisions are made) and for having the opportunity to learn from one another and especially to overcome adaptive preferences, whereby disadvantaged individuals adapt their desires to their deprived situation (Anderson, 2003). With regard to the ‘judge’ dimension, a crucial role is played by the ‘capacity to aspire’ (Appadurai, 2004), which involves the capacity to imagine alternative possible futures and can thus be considered the opposite of adaptive preferences. Promoting the ‘judge’ dimension is one way to enhance the capacity to aspire of vulnerable people. This requires, however, that they are recognised as legitimate participants in decision-making processes (e.g. Young, 1990; Honneth, 1996; Fraser, 1997; 2003). In order to make a person’s own viewpoints count in a public discussion this person should be recognised as an actor capable to formulate value judgments - as a judge - and his or her views should be recognised as potentially valuable. This implies that public spaces should be organised in such a way to give weight and influence to the voice of vulnerable people (see also Bonvin & Laruffa’s paper).

Hence, human beings are to be conceived as receivers, doers and judges. To each of these anthropological dimensions corresponds a specific kind of deprivation: the lack of material resources and of relational support involves the ‘receiver’ dimension, the lack of possibility for action or agency (or the lack of valuable opportunities, e.g. on the labour market) concerns the ‘doer’ dimension and the lack of opportunity to voice one’s viewpoints and to be recognised as a legitimate participant in the public debate - with the result of being able to overcome adaptive preferences and of enhancing one’s capacity to aspire - involves the ‘judge’ dimension. Crucially, the three anthropological dimensions constitute three dimensions of being human that are not substitutable one to the other, so that deprivation in one dimension cannot be compensated through the improvement of the other dimensions. Thus, it is impossible to compensate lack of possibilities for action only through monetary benefits whereas opportunities for action without material support and/or recognised capacity of expression may undermine rather than enhance capabilities. For example, unemployment benefits - while addressing the ‘receiver’ dimension - are insufficient to promote unemployed people’s flourishing because they neglect their ‘doer’ dimension. Yet, while low paid jobs may offer some possibilities for action, policies promoting the low-wage sector tend to overlook or downplay people’s ‘receiver’ dimension as the same time as they offer poor opportunities to the ‘doer’. Furthermore, a paternalistic policy leaving no space for the voice of beneficiaries - thus denying the ‘judge’ dimension - cannot be compensated by generous benefits paid to the ‘receiver’. In short, these anthropological dimensions should be considered as incommensurable, whereby trade-offs between dimensions are not allowed.

Taken together, they compose crucial dimensions of citizenship and call for considering citizens in their multidimensionality as receivers, doers and judges. Table 1.2 provides a synthetic representation of the anthropological conception underlying the capability approach.

Table 1.2 Anthropological dimensions and related kinds of deprivation

Anthropological Dimension		Kind of Deprivation	
Citizen	Receiver	Poverty; Material Deprivation; Lack of Relational Support/Care.	
	Actor	Doer	Lack of valuable opportunity on the labour market; Lack of opportunity for alternative forms of action/ agency
		Judge	Lack of recognised voice; Lack of 'capacity to aspire' (adaptive preferences)

1.2 Disadvantage, Public and Collective Action

In the European context, some social policy areas are better addressed than others. Concerning the 'receiver' dimension, for example, benefits are in place in many countries for countering poverty (i.e. minimum income), even if the level of benefits is often insufficient to lift people out of poverty. Three issues are key in this respect: first are there benefits or services that cover all forms of vulnerability? Or are some of them left out of the field of public action? Second are the existing benefits adequate in terms of level, duration and responsiveness? Or are they insufficient to properly tackle people's vulnerability? Third, if we admit that there are benefits and services and that they are appropriate, do people take them up? Or do they choose the option of non-take-up out of fear of reprisals or willingness to avoid the stigma often associated to being a recipient, i.e. dependent on the State support? All these three preconditions are needed - existence and appropriateness of benefits, take-up rate - if the 'receiver' dimension is to be addressed in a proper way. Another possibility, largely overlooked in contemporary policies, lies in an increased access to property and assets that could be of central importance for reducing poverty and inequality as Piketty and Atkinson claim (Piketty, 2014; Atkinson, 2015). Concerning the 'doer' dimension, active labour market policies are largely used in Europe - although not always successfully - to improve labour market accessibility, especially of marginalised groups. Yet, in such policies the 'doer' dimension is reduced to labour market participation, often in poor quality jobs. Thus, people's agency is enhanced only in this sense: at the core of social policies lie individuals' productive capacities rather than their substantial freedoms to lead the kind of life they have reasons to value (see De Munck & Lits' paper). Besides, active labour market policies tend to focus on the supply side, thereby leaving unaddressed issues of quantity and quality of jobs related to the demand side. By the same token, the 'doer' dimension in public policies is interpreted as a matter of supply-side economics, i.e. enhancing human capital and employability as the only way to convince potential employers to hire the beneficiaries of such policies. This is the very rationale of social investment strategies aiming to show that social policies are investments that generate economic returns. This restricted view of the 'doer' as a productive worker sharply contrasts with the richness of human agency in the capability approach.

For the purpose of this paper, it is important to stress that this focus of policies on employment marginalises not only care work but also political participation as a valuable way to be active and contribute to societal progress. Thus, despite the limitations in addressing the 'receiver' and 'doer' dimensions mentioned above, the aspect of disadvantage which is most neglected by social policy interventions certainly concerns the 'judge' dimension. Indeed, an important and generally neglected form of disadvantage is the lack of 'capacity to aspire' (Appadurai, 2004) among marginalised social groups¹. This can be observed both at an individual and collective level. At individual level, if public policies are designed along managerial lines, with quantitative targets to be reached (subject to financial or other sanctions if such is not the case), then vulnerable people's capacity to aspire may be taken into account only if it contributes to reach these targets. This is very much in line with the social investment logic: if aspirations are in compliance with official expectations, they are recognised; if not, they are discarded. This leaves very limited space for the 'judge'

¹ The following reflections on the capacity to aspire have been largely inspired by the excellent volume edited by Ota de Leonardis and Marco Deriu (2012).

dimension, as compliance seems to matter more than discussion or negotiation about what should be done for vulnerable people. In such cases public policies do not act as promoters of the capacity to aspire, quite the contrary. The same conclusion applies at collective level, whereby vulnerable people have difficulties in making their voice heard and seriously taken. The ‘capacity to aspire’ is a cultural capacity, which involves the possibility to participate in the formation of social imaginaries, to give a direction to social change and shape the future of society. Social groups fight for establishing their own vision of the future, presenting it as more realistic, plausible or as more desirable and preferable. Clearly, there are important power asymmetries among these social groups and the capacity to aspire is not equally distributed among them. Thus, at collective level, disadvantage along the ‘judge’ dimension designates the unequal possibility to participate in the collective debate on the kind of society that we want and to define and construct the future of society. In particular, in the context of the RE-InVEST project, such lack of political agency may be particularly detrimental when it comes to give a precise content to social investment policies. As De Munck and Lits argue in their contribution, there are important open questions for a social investment strategy, such as: what is an investment?; what is (and how is measured) a ‘return’?; what does participation in society mean?; what is meant by human flourishing?; which social risks should be collectively protected?; how is it possible to reconcile individual flourishing with environmental sustainability (and more generally freedom and justice)? If vulnerable people are deprived of their capability for voice and their capacity to aspire, then these questions will be answered by others and it is doubtful whether their views or interests will be duly taken into account.

The reason for the inequality in the capacity to aspire, be it at individual or collective level, is at least threefold. First, the poor generally lack the capacity to aspire because they are mostly concerned with surviving. Thus, their temporal horizon is often limited towards the present whereas the capacity to aspire requires the possibility to imagine and plan the future. In particular, disadvantaged people may have difficulties in hoping for a better future. In such a respect, public action should provide the conditions to develop such a capacity to aspire, which requires an adequate level of material security to be able to develop one’s own projects. Second, and directly linked to this difficulty to imagine a better future, there is the issue of adaptive preferences. While advantaged people are used to imagine alternative futures and their preferences are oriented towards higher goods because they are used to have their more basic needs met, disadvantaged individuals usually adapt their preferences to their deprived situation. As Sen puts it:

‘It is not only that a poor person can offer less money for what he or she desires compared with a rich person, but also that even the strength of the mental force of desiring is influenced by the contingency of circumstances. The defeated and the down-trodden come to lack the courage to desire things that others more favourably treated by society desire with easy confidence. The absence of desire for things beyond one’s means may not reflect any deficiency of valuing, but only an absence of hope, and a fear of inevitable disappointment’ (Sen 1987: 10-11).

Third, social groups fighting for promoting their own vision of the future are unequally equipped with the knowledge they need to imagine and plan a realistic future for the society as a whole. Yet, the issue is not only that deprived people lack certain kinds of knowledge but also that the knowledge they actually have lacks legitimacy, thereby remaining marginalised and misrecognised in public debate.

What kind of public policies could address the specific disadvantage that relates to the ‘judge’ dimension? One important policy intervention surely consists in investing in education. While contemporary debates on social policy reform are increasingly dominated by an emphasis on the need to invest in education, this discourse is often framed in terms of the economic benefits that derive from such investment: the purpose of policies is then investing in people’s ‘human capital’ enhancing their employability (skills as workers) with the objective of increasing the employment rate and economic growth rather than to expand their capacity of judgment (skills as citizens). However, the point is not only to equip vulnerable people with certain knowledge they still lack in order to better participate but also to recognise the knowledge they already have, opening the public debate to other types of knowledge (Borghini, 2012: 73). From this perspective, the central policy concern should be that of allowing other kinds of knowledge to shape the content of individualised social policies as well as the debate on the future of society. In other words, even if ‘experts’ (e.g. policy-

makers, academic experts, local agents in charge of implementing welfare policies, etc.) are legitimised social actors thanks to their recognised knowledge, the issue is to open the debate to other voices and other kinds of knowledge. In particular, a central assumption in the RE-InVEST project is that not only ‘experts’ but also those who live in poverty and suffer from disadvantage hold relevant knowledge on poverty and disadvantage. In order to let marginalised forms of knowledge influence the debate on the proper content of social policies and, more widely on the future of society (i.e. on what is a desirable society), it seems necessary to create *informal* spaces of participation where people who lack ‘recognised knowledge’ can voice their concerns and be taken seriously (Bonvin, 2013; Bonvin et al., 2017). The central point here is that the capability for voice and the ‘capacity to aspire’ can be learned only by putting them into practice (Bifulco et al., 2012: 15).

In short, public policies should be designed in a way to take proper account of the ‘receiver’, ‘doer’ and ‘judge’ dimensions. The Table in Appendix 1 points to several issues and dimensions that are of central relevance in this respect. Taking these into account allows both analysing and assessing the impact of actual policies and suggesting avenues for reforms that would implement more capability-friendly policies.

However, this is not only a matter for public policies, it also involves other collectives such as NGOs, political parties, unions and the like. In her contribution to this report, Lessmann stresses the positive contribution that collectives can make in terms of enhancing individual wellbeing and agency. Especially for marginalised and vulnerable social groups, collective entities represent a fundamental resource for promoting their interests and achieving goals that are valuable to them (see also Bonvin, 2013). However, collective mobilisation may go beyond the interests of the group members. Indeed, Lessmann underlines that collectives may be classified according to the goals that they pursue, distinguishing those collectives that promote their members’ wellbeing from those that promote their agency, with the latter involving other-regarding goals and commitments rather than self-interest and wellbeing. From this perspective, collectives may have a twofold benefit for vulnerable people: in a first step they could develop a reinforced self-consciousness as right-bearers and ‘sense of entitlement’ (Hobson et al., 2011; see also Bonvin & Laruffa’s paper), thus being able to defend more efficiently their rights as receivers and doers. In a second step, they may also develop their own vision of the good society, beyond their egoistic interests, i.e. collectives may contribute to enhancing the ‘judge’ dimension. As Freire (1970) has argued, the very point of this process is that the ‘oppressed’ develop their own vision of the good society, in which possibly there would be no longer ‘oppressors’. Thus, collectives are important actors in the implementation of the three dimensions underlying the anthropology of the capability approach. All the same, as Lessmann also notes in her paper, the impact of collectives may be negative, e.g. when groups impose compliance and conformity with their rules on their members. She thus underlines the complex and ambivalent interrelation between the individuals and the groups they belong to. It must be however emphasised that, for vulnerable people, the overall balance is positive as is illustrated e.g. by the role of trade unions in the promotion of workers’ rights and in the setting up of the social security system.

Another important issue relates to the potential contribution of markets to the enhancement of capabilities. Social investment strategies display a high trust in the capacity of markets to solve social problems; indeed, the solution to unemployment or social exclusion does not lie in the regulation of markets, but in the promotion of educational policies aimed at equipping people for the market and making them able to fulfil the needs and expectations of potential employers on the labour market. These can be called ‘market-making’ policies, that are to be distinguished from ‘market-correcting’ policies. In contrast with this view, De Munck and Lits show that the contribution of markets in capability terms is limited: while they are very good at safeguarding and providing autonomy of decision and immunity from encroachment, they are not always efficient when it comes to creating new opportunities or providing public goods. Thus, markets need to be complemented via public action (social policies) and the intervention of other non-profit actors such as NGOs or unions. Mobilising a Polanyian perspective, De Munck and Lits call for the setting up of institutional arrangements that allow to conceive social investment as one tool to enhance capabilities and not only to increase productivity. In this line, the contribution of markets and of social investment should be

assessed against its capacity to take proper account of the 'receiver', 'doer' and 'judge' dimensions of human beings.

2. Human Rights: towards a global citizenship

2.1 On the anthropological foundations of human rights

As for the capability approach, also for the human rights framework it is possible to identify some anthropological assumptions. In particular, the notion of human rights assumes that all human beings share certain fundamental characteristics, independently of the cultural, social and historical conditions in which they live. Thus, human rights seem to be based on a human ontology and on a definition of human nature. Yet, the universal ambition inherent to the human rights project implies that this definition of the human nature should be open enough in order to truly include all human beings. From this perspective, the human rights framework is often grounded on two universal notions. The first involves the fact of human *vulnerability* (e.g. Turner, 1993). Indeed *all* human beings are vulnerable since they can all be harmed by their life circumstances or by others (see also Dubois & Droy's paper). From this perspective, human rights should provide protection against human vulnerability: not only the one that derives from the human condition but also that emerging from human relationships in general and power asymmetries in particular.

The second category used to justify human rights is that of *human dignity*, which is treated as an inherent characteristic of all human beings, whereby 'inherent' means that dignity is an essential, defining and permanent characteristic of human beings (Masferrer, 2016; Masferrer & García-Sánchez, 2016). The notion of dignity is linked to Kant's doctrine for which human beings should never be treated as means and always as ends in themselves.

As Andorno (2016) argues, both dignity and vulnerability are essential for the justification of human rights: 'human rights result from the confluence of two factors, one normative (the intrinsic worthiness of every individual) and one factual (the awareness of human fragility and susceptibility to harm)' (Ibid: 265). Interestingly, Andorno (2016) also stresses how precisely in situations of extreme vulnerability the notion of dignity becomes prominent. Indeed, when it is affirmed that 'every human being, even the most fragile, sick, and excluded one, is worthy of respect and entitled with inalienable rights' it means that 'such respect is not grounded on the circumstance that people are healthy, or strong, or morally autonomous, but on their mere existence as human beings' (Ibid: 265). From this perspective, 'human dignity becomes paradoxically more visible in vulnerability than in self-sufficiency, in weakness than in power' (Ibid.).

This suggests that the issue is not only to reduce vulnerability but also to recognise it. Indeed, in order to develop truly inclusive social policies, dependency must be taken into account from the very beginning since assuming individuals' independence inevitably marginalises those who are unable to abide by this standard of independence (Kittay, 1999). From this perspective the language of human rights is also linked with that of citizenship, where the 'rights' are the rights of the citizen. However, instead of being limited to the national state, the citizenship of human rights is cosmopolitan. Indeed, with economic globalisation, human interdependence has become truly global and embedded in a 'world system' so that human rights can provide a progressive paradigm universalistic in scope (Turner, 1993: 498). Hence, the human rights project is part of the process of rescaling the question of social justice from political communities involving solidarity among their members (while excluding others) to a global political community and a cosmopolitan citizenship, whereby social justice is extended beyond national borders (e.g. Sen, 2009).

Sen (2005) has argued that human rights complement the capability approach because they refer not only to the opportunity aspect of freedom (see De Munck & Lits' paper) but also the process

aspect of freedom, which considers the fairness or equity of the process (Vizard et al., 2011). While human rights should be seen as essentially ethical demands rather than legal obligations (Sen, 2004), they still can be mobilised to support claims in direction of a guarantee of a certain threshold of basic capabilities. The normative justification may involve a reference to human dignity, equally recognised to all human beings (Nussbaum, 2011).

2.2 Universality, indivisibility and inalienability

In this section we focus on three principles that are important for the formulation of a normative framework for welfare reform based on human rights: universality, indivisibility and inalienability. The first principle is that of universality. As argued above, the ‘citizen’ is the global citizen who is a rights-bearer because of his or her belonging to the human community (the principle of universality is especially relevant in the case of migrants who are often excluded from welfare state benefits also in the most generous welfare systems like Scandinavian ones). From this perspective, the goal would be to have a global social citizenship, that is, a global order based on human rights and on democratic citizenship rather than on only global markets. Indeed, in the contemporary context, the globalised economic system takes priority over national democratic politics. Instead of establishing the rules for the economic system, democratic politics seems to be embedded in economic globalisation and its rules. Yet, the human rights project challenges precisely this world order. In particular the protection and promotion of human rights cannot be made conditional upon the availability of economic resources. Rather, human rights should be regarded as a constitutional duty for public action - even in presence of scarce resources, such as during an economic downturn (Rodotà, 2014). In fact, constitutional norms (informed, among others, by human rights) establish what actions democratically elected governments *can* implement if they wish to but also those that they *cannot* implement as well as those that they *must* implement - with the protection and promotion of human rights belonging to the latter set of governmental actions (Ibid.). And indeed some austerity measures have been accused of undermining human rights (e.g. the right to education, to healthcare, to work, to housing, to justice, among other rights) and have been declared unconstitutional by some national constitutional courts, such as the Portuguese one (e.g. Council of Europe, 2013).

Sen also emphasises that capabilities and human rights can be promoted in a context of scarce resources (e.g. Sen, 1999): he takes the example of the UK where during the two World Wars - despite slow economic growth and lack of food per head - life expectancy actually increased the most and the cases of malnutrition almost disappeared. The reason for this is the increase of public action and the improvement of social policy supported by a change in public attitudes towards more solidarity and redistribution. In line with his comparative understanding of social justice (Sen, 2009), Sen calls for a step-by-step implementation of human rights that is compatible with the principle of universalism. For him, the apparent unfeasibility of certain human rights under present circumstances does by no means undermine their validity:

‘Why should complete feasibility be a condition of cogency of human rights when the objective is to work towards enhancing their actual realization, if necessary through expanding their feasibility? The understanding that some rights are not fully realized, and may not even be fully realizable under present circumstances, does not, in itself, entail anything like the conclusion that these are, therefore, not rights at all. Rather, that understanding suggests the need to work towards changing the prevailing circumstances to make the unrealized rights realizable, and ultimately, realized’ (Sen 2004: 348).

The second principle - the indivisibility of human rights - means that the negation of one set of rights (political, civil, social or other) undermines the implementation of the others as well, or, positively formulated, that each set of human rights strengthens the other sets and is strengthened by them. Social rights play a crucial role in transforming formal political rights into real rights for effective participation (see Bonvin and Laruffa’s paper). At the same time, as the example comparing India

and China shows (the rich but totalitarian China suffering the worst famines in history while the poor but democratic India was preserved), an effective democracy - i.e. real civil and political rights - is essential for enforcing the respect and promotion of social rights. The importance of the indivisibility of human rights has become evident after the experience of totalitarian regimes of the XX century, which shows the danger of compensating the lack of political and civil rights with social rights.

Finally, the inalienability of human rights points to the fact that they must not be earned and that they cannot be taken away. Thus, and this is especially relevant for the RE-InVEST project, social rights - in the same way as political and civil rights - should be guaranteed without requiring individuals to deserve them with their behaviours. In other words, like the other two sets of rights, also social rights are intrinsically part of the democratic citizenship so that no conditionality should be attached to them, at least in respect to those social rights that guarantee a life in dignity and protect from vulnerable situations. Thus, 'responsibility is not a value that can justify large inequalities and especially poverty' (Fleurbaey, 2006: 306). The point here is that citizens - no matter how 'responsible' their behaviour may be, e.g. in terms of labour market involvement - need to be equally entitled to social and human rights respected, which requires that social policies are generous enough for providing the social preconditions of democratic citizenship (e.g. Anderson 1999). The logic of citizenship is *qualitatively* different from that of contract (Fraser & Gordon, 1992) because of this unconditional aspect. Activation policies, when they transform social citizenship from a status to a contract attaching responsibilities (in terms of labour market participation) to rights (Handler, 2003), actually go against this understanding of social rights as human rights.

The scope and relevance of these three principles certainly accounts for the attractiveness and capacity to mobilise of the human rights discourse. Working with vulnerable people in the project RE-InVEST we found plenty of confirmations of the empowering effects of this discourse.

The framework of human rights can complement the capability approach, stressing the universal, indivisible and inalienable nature of civil, political and social rights. In particular, in formulating a normative framework for welfare reform, the focus is on social rights. Thanks to the perspective elaborated here, social rights should be interpreted as universal entitlements (i.e. not linked to national citizenship, but accessible to migrants), as indivisible from other kinds of rights (e.g. they should be generous enough in order to become enabling factors for the conversion of formal civil and political rights into real ones - see Bonvin & Laruffa's paper) and as inalienable (e.g. unconditional in respect to labour market or other requirements). Furthermore, it is important to note that human rights are integrated in the capability framework, which conceives them both as means and ends of public action. Interpreting human rights as goals implies viewing them as targets to be reached. Understanding them as means entails that they help the conversion process of formal rights into real ones. Finally, the capability approach to human rights also overcomes the dichotomy between the deontological and consequentialist interpretations of rights (see De Munck & Lits' paper). On the one hand, the deontological approach is irresponsive to the consequences of implementing a certain set of rights: in the name of realising these rights, the worst consequences could be accepted. On the other hand, a purely consequentialist approach (that would value human rights e.g. because of their contribution to GDP growth) ignores the intrinsic importance of realising certain goals, such as human rights. From this perspective, the issue for us is to develop a normative framework for welfare reform in which capabilities and human rights are seen both as the ends and the means of public action, thereby adopting an approach that is simultaneously deontological and consequentialist.

3. Towards an encompassing theory of capacitating welfare: social justice as a political project

In an important critique to the capability approach, it is argued that its ‘ethical individualism’ is unable to promote other values beyond individual freedom such as social solidarity (see also Lessman’s paper). For instance, Dean (2009: 267) argues that considering the objectives of equality, freedom and solidarity, ‘the capability approach to equality is framed in terms of freedom, but not solidarity (...) the priority is individual liberty, not social solidarity; the freedom to choose, not the need to belong’. In the same vein, Deneulin and McGregor (2010) argue that the capability approach focuses on the goal of ‘living well’ rather than taking into account the goal of ‘living well together’. Yet, freedom is not the ultimate value of human life: freedom should be comprehended ‘in relation to its *telos* or its aim, which encompasses both the good of oneself and others, including future generations’ (Deneulin & McGregor, 2010: 509).

From this perspective, it seems that in the capability approach, social solidarity is reduced to its *instrumental value*. Thus, Sen is aware that social solidarity is important but this is treated as a collective conversion factor that positively contributes to the improvement of individuals’ wellbeing rather than a goal of intrinsic value to be pursued *per se*. Indeed, Sen insists on the important role played by solidarity in combating poverty and deprivation. For instance, he points out that a climate of solidarity allowed establishing the National Health Service in the UK in a period of slow economic growth (Sen, 1999).

The reason that justifies the commitment to ‘ethical individualism’ in the capability approach (Robeyns, 2005), that is, the focus on *individual* wellbeing as the ultimate unit of moral concern, is that a focus on a social group may hide inequalities *within* that group and may occult the possibility that groups may be based on oppressive relationships. It follows that collective institutions are valued only as instrumental for the enhancement of individual wellbeing. Thus, while their importance is recognised in the capability approach, they do not constitute a value in themselves. In particular, it seems that the central problem of oppressive forms of collective action is the lack of their democratic legitimacy and/or inclusiveness. We argue that what distinguishes emancipatory from oppressive collective action is that the first in contrast to the latter is ‘freely chosen’, that is, actively accepted, developed and sustained by the members of a given community.

This points to the importance of democracy and public debate within groups and collective action. In the same way, Habermas (1995) argues that the philosopher cannot define the content of justice, which should rather emerge from a *real* deliberation among citizens. This leads him to refuse any privileged position to any philosophers or experts in the public debate. Sen shares this idea, insisting that the content of social justice – in our case of social policies or social investment strategies – should not be decided beforehand by experts or policy-makers, but should be subject to a wide-ranging democratic deliberation. This calls for the incompleteness and openness of theories of social justice and social investment, so that they may be completed by the concerned people - among them vulnerable people - in a situated debate. In Sen’s view, this is a prerequisite both for the appropriateness of the designed social policies, and for the non-oppressive character of collective action and collective decision-making.

In this perspective, democratic decision-making procedures become both ‘an element and condition of social justice’ (Young 1990: 23). This also emphasises the crucial importance of the issue of political agency of vulnerable people (see Bonvin & Laruffa’s paper). Such a view is clearly in line with the three anthropological dimensions underlying the capability approach: human beings are not only passive receivers (of benefits and services designed by others), they are also doers and judges taking an active part in the design and implementation of such benefits and services. Thus, social investment policies should be assessed against their impact on the threefold anthropological foundation of the capability approach. Equally, this view is congruent with the conception of human rights, insisting both on their universality, indivisibility and inalienability on the one hand, and on the possibility of various implementations in a diversity of cultural and social contexts. It goes against one-size-fits-all conceptions of human rights and thereby invalidates culturalist objections that emphasise the Western character of human rights and their incompatibility for other cultural and social contexts. In the same way, a human rights and capability-based conception of social policies and social investment should be both open and incomplete enough to be implemented in a variety of national contexts, and strictly focused on the enhancement of human rights and capabilities. This is the very condition for social investment to be both solidarity-enhancing and respectful of democratic concerns.

Political theories, which inspire actual public and social policies, vary significantly in the way they tackle this issue. In other words, what is the best way to overcome the dichotomy between individual agency and collective action on the one hand, and between universalism and localism on the other hand (see also Lessmann’s paper). Neoliberal theories with their focus on negative freedom insist on the inevitability of such dichotomy and focus on the necessity to emphasise individual agency at the expense of collective action and social solidarity. In this case every state intervention is interpreted to inevitably imply a constraint on individual freedom. By contrast, the capability approach claims that the law can actually support individual freedom if it protects individuals from the domination (arbitrary power) of other individuals (e.g. labour market regulation protects workers from employers’ possible abuse of power over them), provides social rights and entitlements or competencies and qualifications. Thus, collective action or State action not only can be compatible with individual freedom, but it is a necessary prerequisite of individual flourishing: no enhancement of human rights or capabilities can be envisaged without collective action and State intervention. All the same, as emphasised above and in Lessmann’s paper, it is recognised that the action of collectives and of the State may be oppressing too.

The central task, then, is to distinguish between empowering and constraining collective and institutional interventions (see Bonvin & Laruffa’s paper). While at the output level (opportunity freedom) emancipating interventions facilitate the conversion of formal rights into real rights (whereas constraining ones hinder the conversion process), at the level of process freedom public debate and democratic processes are the distinguishing feature of empowering collective action. Thus, the issues of conversion and democracy are to be considered as the key criteria to distinguish capability-friendly and human rights approaches to social policies and social investment from other approaches. In other words, when social policies or social investment allow the conversion of formal rights into real ones and when they are based on effective participation of all stakeholders, they are in line with the requirements of the human rights and capability framework outlined in this paper. Table 3.1 shows how this conception of freedom and social investment obviously contrasts with neoliberal approaches.

Table 3.1 Different understandings of freedom in neo-liberalism and the capability approach and their implications for welfare reform

	Neo-liberalism	Capability Approach
Conceptualisation of freedom	Negative freedom (freedom as non-interference)	Capability-freedom (negative freedom and positive freedom or freedom to achieve)
Implications for welfare reform	Reducing state intervention (this automatically enhances individual freedom)	Increasing legitimate state intervention (process freedom) aimed at increasing individuals' opportunity-freedom

In this way it seems that the capability approach can take into account all three dimensions of social justice considered by Fraser (2003), who defines social justice focusing on distribution, recognition and participation. As Robeyns (2003) has argued, the capability approach can combine the distributive, the recognition as well as the participatory aspects of social justice. These three dimensions of social justice are also linked to the three anthropological dimensions, whereby their combination allows taking proper account of the receiver, the doer and the judge dimensions. Once applied to the issue of welfare reform, this normative framework based on a tri-dimensional conception of social justice implies that capacitating welfare states not only focus on the opportunity aspect of freedom, thereby guaranteeing a just distribution, but that they also promote process freedom, whereby individuals not only are respected and recognised but can also participate in the co-construction of the welfare state itself (see Table 3.2).

Table 3.2 The Capacitating Welfare State

Aspects of Freedom	Opportunity Freedom	Process Freedom
Kind of legitimacy	Outcome-legitimacy	Input legitimacy
Aspects of social justice	Just distribution of capabilities (takes into account the conversion issue)	Respect/recognition and participation (takes into account the democracy issue)

Thus, capacitating welfare states aim at a just distribution. Yet, generally the 'informational basis' for such just distribution is focused on material resources (i.e. income or benefits). In contrast, in our approach, the relevant informational basis is capability, which entails taking due account of the issue of conversion. Furthermore, a just distribution cannot compensate for disrespect and misrecognition or lack of participation. For instance, if welfare claimants feel humiliated to receive benefits because of the stigma attached to being 'on welfare', then this is not in line with our conception of the capacitating welfare state. The same is true for all welfare practices that may involve disrespect, such as high degrees of conditionality on benefits that tend to neglect the dignity of the citizen. Concerning the participatory aspect, this is certainly the most neglected both in the political and the academic discourse on welfare reform. Yet, a capacitating welfare state implies the *democratisation of the welfare state* (Fitzpatrick, 2002). Thus, while the mistake of the traditional welfare state was to leave citizens little control over welfare institutions (conceiving them only as receivers), neo-liberal approaches interpret empowerment 'in terms of market individualism and consumerism, ignoring democracy altogether' (Ibid.: 162). By contrast with these two views, a capacitating welfare state requires establishing a 'deliberative welfare' which would also call for the elimination of those inequalities that impede the equal participation to the deliberative process. All these dimensions provide a normative yardstick for assessing present social investment strategies (see D 4.2) and suggest avenues for improvement.

4. Conclusion

The aim of this paper is to propose a normative framework for welfare reform in Europe based on the human rights and capabilities approach. We have argued that the nature of social disadvantage may be best understood making explicit the anthropology of reference. Indeed, each normative theory involves a specific idea of being human, which however is often kept implicit thereby impeding a discussion on the underlying assumptions. Once made explicit such assumptions, the capability approach has the advantage -in respect to other normative frameworks, such as utilitarianism and the commodity approach - to be based on a multidimensional understanding of disadvantage and of human beings, who are seen as ‘receivers’, ‘doers’ and ‘judges’. Highlighting this complex anthropological foundation is essential for overcoming some fundamental critiques that have been addressed to the capability approach. As Gasper and Van Staveren (2003) argue, ‘in a market-oriented, money-dominated world’ the capability approach ‘faces some risk of subordination to what comes out of such market- and money-dominated processes, unless it is combined with a richer language for analysis and evaluation. *If partnered by richer pictures of personhood*, the capability approach might help in identifying and confronting consumerism. In their absence, its emphasis on increasing the range of choice can be distorted into a ‘defense of consumerism’ (Ibid: 149, emphasis added).

Moreover, referring to the framework of human rights we have identified two further anthropological elements: human vulnerability and human dignity intrinsic to every human being. Combining the capability and human rights anthropological frameworks provides a complex view of human beings that creates the basis for the normative assessment of welfare policies and social investment strategies.

This allows grounding the normative framework for welfare reform on a broader basis than the social investment approach. Indeed, the latter is based on the anthropology of human capital and suffers from at least three shortcomings (Laruffa, 2016: 28-30). First, this anthropology may be strongly exclusionary in respect to vulnerable people, such as disabled people many of whom ‘will never be good workers in the capitalist sense’ (Taylor, 2004: 35) – no matter how big the investment in their human capital. In contrast to the discourse on human capital, the ethics of care and vulnerability stresses the importance of human fragility as a fundamental human characteristic. Hence, rather than only aiming at reinforcing individuals against vulnerability by investing in their human capital, policies should also encourage the formation of solidarity and caring attitudes in the population. Second, the anthropology of human capital suffers from instrumentalism. As emphasised by Sen (1999), people are treated as means for achieving economic growth rather than as ends in themselves. In contrast, in our approach we have stressed that human beings should be seen as the final ends of public action: they have the dignity of the citizens and thus deserve respect and recognition. Third, the human capital anthropology values human beings as active doers in a restricted sense, that is, as economic actors and workers. This marginalises other notions of valuable agency and of being a ‘doer’. Individuals are ‘doers’ in other ways and other spaces than the labour market, which tends to be overlooked by social investment strategies.

From this perspective, while the traditional welfare state focused mainly on the vulnerable/receiver dimension, the social investment approach aims at empowering individuals as human capital and as workers for the economy, thereby it only marginally acknowledges human vulnerability (receiver) and neglects other important forms of agency, especially their political agency as ‘judges’.

In contrast, a capacitating welfare state based on the capability approach and the human rights framework should refer to a richer anthropology which includes the dimensions of the receiver, the doer and the judge in their vulnerability and dignity. Table 4.1 summarises these elements, which will further elaborated in Deliverable 4.2 of the RE-InVEST project.

Table 4.1 Welfare models and their anthropological informational base

Welfare model	Traditional Welfare State	Social Investment State	Capacitating Welfare State
Anthropological reference	Vulnerable receiver	Human capital (doer as worker)	Democratic Citizen (receiver, doer and judge)

appendix 1

In the following table we summarise the central ideas of the paper in a more concrete way. In particular, we propose some questions which could help analysing and assessing the quality of each conversion factor in the different countries. The questions are grouped according to the anthropological dimensions that have guided the discussion on disadvantage and public action in this paper (see Table 1.2 above).

Table a1.1 Conversion factors and related questions grouped according to the anthropological dimensions

Conversion Factors	Anthropological Dimensions	Possible Evaluative Criteria
Social conversion factors	Vulnerable receiver	What is the generosity of social policies? What is the degree of accessibility (coverage and affordability) of social services? What about the level of benefits, their duration and the degree of conditionality attached to them? What is the degree of economic equality in society in terms of income as well as of assets?
	Citizen (doer, judge)	Is activation oriented only towards paid work? What is the freedom to care (e.g. work/life balance policies)? And the freedom to refuse a job (without losing benefits)? Are there enough jobs (e.g. level of unemployment rate)? What is the quality of these jobs, do they contribute to human flourishing or simply to economic growth (e.g. level of precarious working conditions; 'capability-unfriendly-job indicator')? Do activation policies encourage preference adaptation (i.e. a bad job is better than no job)? Do activation policies implicitly devalue other kinds of work (e.g. care work)? What is the room given to participation in the formulation of social policies? What is the degree of workplace democracy?
Political conversion factors	Vulnerable receiver	Are people provided with enough time to participate?
	Citizen (doer, judge)	Are there spaces and opportunities for participating? Is the agenda sufficiently open and incomplete so that participation can really make a difference? Is participation reduced to information gathering and/or consultation or does it substantially influence the outcome of the process? Are collective action and collective actors supported? Is there sufficient investment in education?
Cultural conversion factors	Vulnerable receiver	Are other types of knowledge beyond formal and scientific ones recognised and valued? Is there sufficient investment in education in order to develop individual autonomy (capacity to form a conception of the good) and the critical thinking necessary to challenge what is considered self-evident?
	Citizen (doer, judge)	Are there arenas of deliberation in which vulnerable people have the opportunity to deliberate in a less formal way than in an official context while still having an impact? Are the 'sense of entitlement' and the 'capacity to aspire' supported? Is the sense that it is worth participating reinforced? Are social problems interpreted as individual questions to be privately addressed or is there a collective and political elaboration of them? Is there aspiration to change or apathy prevails? Hope for a better future or desperation and fear?

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RE-InVEST - Rebuilding an Inclusive, Value-based Europe of Solidarity and Trust through Social Investments

In 2013, as a response to rising inequalities, poverty and distrust in the EU, the Commission launched a major endeavour to rebalance economic and social policies with the Social Investment Package (SIP). RE-InVEST aims to strengthen the philosophical, institutional and empirical underpinnings of the SIP, based on social investment in human rights and capabilities. Our consortium is embedded in the 'Alliances to Fight Poverty'. We will actively involve European citizens severely affected by the crisis in the co-construction of a more powerful and effective social investment agenda with policy recommendations.

<http://www.re-invest.eu/>

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