

AMARTYA SEN'S CAPABILITY APPROACH AND ITS RELATION WITH  
JOHN RAWLS' JUSTICE AS FAIRNESS.

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submitted by **SONGÜL ESMER** in partial fulfillment of the requirements for  
the degree of **Master of Arts in Philosophy, the Graduate School of Social  
Sciences of Middle East Technical University** by,

Prof. Dr. Yaşar KONDAKÇI  
Dean  
Graduate School of Social Sciences

---

Prof. Dr. Ş.Halil TURAN  
Head of Department  
Department of Philosophy

---

Prof. Dr. Ş.Halil TURAN  
Supervisor  
Department of Philosophy

---

**Examining Committee Members:**

Prof. Dr. Ertuğrul R. TURAN (Head of the Examining Committee)  
Ankara University  
Department of Philosophy

---

Prof. Dr. Ş.Halil TURAN (Supervisor)  
Middle East Technical University  
Department of Philosophy

---

Assoc. Prof. Dr. Aret KARADEMİR  
Middle East Technical Universtiy  
Department of Philosophy

---



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**Name, Last Name:** Songül ESMER

**Signature:**

## ABSTRACT

### AMARTYA SEN'S CAPABILITY APPROACH AND ITS RELATION WITH JOHN RAWLS' JUSTICE AS FAIRNESS.

ESMER, Songül

M.S., The Department of Philosophy

Supervisor: Prof. Dr. Ş.Halil TURAN

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This thesis aims to examine Amartya Sen's capability approach and its relation with John Rawls' "justice as fairness." In order to reveal Sen's capability approach, John Rawls' justice as fairness is explained as it has a significant influence on Sen's capability approach, and Sen's critiques of justice as fairness and transcendental approach to justice are discussed, as were the starting points of Sen's capability approach. While analyzing the capability approach, the concept of justice and theory of justice are analyzed through contemporary political philosophy's two most debated and crucial theories of justice.

**Keywords:** Capability Approach, justice as fairness, theory of justice, Amartya Sen, John Rawls.

## ÖZ

### AMARTYA SEN'İN YAPABİLİRLİK YAKLAŞIMI VE BU YAKLAŞIMIN JOHN RAWLS'UN HAKKANİYET OLARAK ADALET'İ İLE İLİŞKİSİ

ESMER, Songül

Yüksek Lisans, Felsefe Bölümü

Tez Yöneticisi: Prof. Dr. Ş.Halil TURAN

Mart 2021, 108 sayfa

Bu çalışma, Amartya Sen'in yapabilirlik yaklaşımını (capability approach) ve bu yaklaşımın John Rawls'un "hakkaniyet olarak adalet" ile ilişkisini incelemeyi amaçlamaktadır. Bu amaca yönelik olarak, Sen'in yapabilirlik yaklaşımı üzerinde önemli bir etkiye sahip olan John Rawls'un "hakkaniyet olarak adalet"i ve Sen'in hakkaniyet olarak adalet ve adalet aşkın yaklaşıma getirdiği eleştiriler Sen'in yetenek yaklaşımının başlangıç noktaları olarak tartışılmaktadır. Yapabilirlik yaklaşımı incelenirken, adalet kavramı ve adalet kuramı, çağdaş siyaset felsefesinin en çok tartışılan ve en önemli iki adalet kuramı aracılığıyla analiz edilmektedir.

**Anahtar Kelimeler:** Yapabilirlik Yaklaşımı, hakkaniyet olarak adalet, adalet kuramı, Amartya Sen, John Rawls.

*To my daughter Ekin Ada and son Musa Güney*

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## CHAPTER 1

### INTRODUCTION

Justice is a powerful word used to describe a wide variety of actions, regulations, and conditions. It is stated that there is no justice in cases of misery, discrimination based on race, gender, or religion, and taking or using private property without the consent of a person or torture or unjust arrest are considered unfair. Even when relatively minor mistakes are made, such as not paying a customer a refund for an erroneous purchase or giving less benefit to someone too shy to defend their rights, justice is considered not to be fulfilled. All types of injustices can be committed by anyone, from a president to a judge, from a judge to an official or a teacher. However, a theory of justice does not offer a concept of justice to encompass all possible types of the term or their most common uses. In political philosophy, the concept and scope of justice gain its context in particular theories of justice, for example, in certain types of justice such as productive justice, justice in war or criminal justice, or distributive justice theories.<sup>1</sup> In contemporary political philosophy, the theory of justice is often discussed over two prominent, inspiring, and rival theories of justice: John Rawls' justice as fairness and Amartya Sen's capability approach.<sup>2</sup>

Political thought, especially that of the Anglo-Saxon tradition, was mostly dominated by the utilitarian account of justice till Rawls, with his conception of "justice as fairness," attempted to provide an alternative understanding of

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<sup>1</sup> Chandran Kukathas, "On Sen on Comparative Justice," *Critical Review of International Social and Political Philosophy*, 16, no. 2 (Apr. 2013): 199.

<sup>2</sup> Ingrid Robeyns, "Justice as Fairness and The Capability Approach," in *Arguments for a Better World, Vol.1*, ed. K. Basu and R. Kanbur (New York: Oxford University Press, 2009), 397.

justice.<sup>3</sup> After being published, *A Theory of Justice* put an end to the dominance of utilitarianism over political philosophy focusing on maximizing welfare as an objective of social policy. Rawls first rejects utilitarianism's "aggregative character" that neglects distribution equality and refuses "the utilitarian assumption that welfare is the aspect of a person's condition which commands normative attention." Rawls changed the term "aggregation" with "equality," and he used the concept of "primary goods" instead of welfare.<sup>4</sup>

In justice as fairness, fairness is about the individuals in a given society, and it explores how to ensure fairness between them. The concept of justice is related to the "institutions" and explores how to determine just institutions with the help of principles of justice. Furthermore, according to this idea, justice leads to fairness, and in Rawls' justice system, these two notions are quite different, and the distinction between these two terms is fundamental. Since many languages even do not have separate words denoting justice and fairness, various scholars, including Sen, discuss whether the idea of "justice as fairness" can be a basis of a theory of justice. Sen gets the answer to this possible linguistic barrier directly from Rawls himself, and Rawls explains that the existence of different specific words does not matter. The important thing is whether people understand the distinction between these two words and seek words to explain this distinction in their language,<sup>5</sup> maybe with many other words.<sup>6</sup> Although there are no different words for justice and fairness in French, it is translated as "La justice comme

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<sup>3</sup> John Rawls, *A Theory of Justice Revised Edition*, (Cambridge, Mass.: Harvard University Press, 1999), xi.

<sup>4</sup> Gerald Allan Cohen, "Equality of What? on Welfare, Goods, and Capabilities," in *The Quality of Life*, ed. M. Nussbaum and A. Sen, (Oxford: Oxford University Press, 1993), 9.

<sup>5</sup> Since the word "adalet" is used for both "justice" and "fairness" it is difficult to understand the difference between "justice" and "fairness" linguistically in Turkish.

<sup>6</sup> Amartya Sen, *The Idea of Justice*, (Cambridge, Mass.: The Belknap Press of Harvard University Press, 2009), 72.

équité” to reveal the theory’s basic idea.<sup>7</sup> In Rawls’ view of justice as fairness, justice is taken as a political concept derived from the principles of distributive justice unanimously determined by the rational people in a society<sup>8</sup>, and justice is provided to the extent that society adheres to or “honors” these fundamental principles of justice.<sup>9</sup> Sen takes Rawls’ enlightening ideas about justice as a starting point for bringing them to a more comprehensive understanding of justice presented in the capability approach while accepting and taking advantage of his ideas.<sup>10</sup> The capability approach suggests that views of justice should focus on developing “capabilities” universally in terms of important human “functionings” rather than dealing with the fair distribution of resources such as primary goods or maximizing utility.<sup>11</sup> Sen not only criticizes Rawls’ justice as fairness and its principles of justice but also criticizes how the concept of justice is handled, arguing that the reason theories of justice cannot be used efficiently to examine global institutions or different nations’ arrangements may be due to a particular approach to justice. Sen holds that comparative approaches that focus on removing injustices should be used instead of transcendental approaches to justice seeking a perfect just society.<sup>12</sup>

This thesis is mainly an analysis of the concept of justice through the realization-focused capability approach presented in Amartya Sen’s *The Idea of Justice*. Following the Introduction, the second chapter begins with John Rawls’ A

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<sup>7</sup> Ibid., 73.

<sup>8</sup> Bernard Yack, “Justice: Political,” in *International Encyclopedia of the Social & Behavioral Sciences*, (Amsterdam ; New York : Elsevier, 2001), 8061.

<sup>9</sup> Kukathas, “On Sen On Comparative Justice,” 200.

<sup>10</sup> Sen, *The Idea of Justice*, 52.

<sup>11</sup> Eric Nelson, “From primary goods to capabilities: Distributive justice and the problem of neutrality,” *Political Theory*, 36, no:1 (Feb.2008): 93.

<sup>12</sup> Kukathas, “On Sen On Comparative Justice,” 197.

*Theory of Justice* because it has a great influence on Sen's *The Idea of Justice*, which is dedicated to the memory of John Rawls. In the second chapter, the main concepts of *A Theory of Justice* are introduced in their general terms. The second chapter's scope is limited to Rawls' early studies, especially to *A Theory of Justice*, because Sen bases his critiques mostly on Rawls' early works, especially this book. In the third chapter, before introducing the capability approach, Amartya Sen's criticisms of "justice as fairness" that gave birth to *The Idea of Justice* are presented. In the fourth chapter, the capability approach, with its main concepts and different ideas from justice as fairness, is explained in detail. In the fifth chapter, some reviews about the capability approach are discussed. This chapter also analyses and compares Rawls' and Sen's approaches to justice, concentrates on some ideas about Sen's theory's strengths and weaknesses, and explains the importance and interdisciplinary use of the capability approach in contemporary political philosophy. The final chapter gives a summary of evaluations and critiques of Amartya Sen's capability approach.

## CHAPTER 2

### JOHN RAWLS' THEORY OF JUSTICE

Rawls's theory is a powerful alternative to utilitarian theory, which he thinks is a weak doctrine that fails to provide a satisfactory explanation of citizens' fundamental rights and freedoms essential to democratic institutions.<sup>13</sup> His main purpose in writing *A Theory of Justice* was to create a systematic moral understanding against utilitarianism. For many years, utilitarianism has been accepted as the dominant systematic theory in Anglo-Saxon moral philosophy. Rawls aims to generalize the traditional social contract theory of Jean-Jacques Rousseau, John Locke, and Immanuel Kant and move it to a "higher order of abstraction," and he states that his systematic theory of justice that has emerged is "Kantian in nature."<sup>14</sup>

#### 2.1. Justice as Fairness

According to Rawls, justice is the "first virtue of all social institutions," and unjust institutions or laws are unacceptable no matter how effective they may be.<sup>15</sup> The rights secured by justice cannot be a matter of economic and political bargains or any other negotiations. To explain the role of justice, Rawls assumes that "a society is a more or less self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who

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<sup>13</sup> Rawls, *A Theory of Justice Revised Edition*, xi.

<sup>14</sup> *Ibid.*, xviii.

<sup>15</sup> John Rawls, *A Theory of Justice*, (Oxford: Oxford University Press, 1971), 3.

for the most part act in accordance with them.”<sup>16</sup> The members of society have mutual advantages because living together is more advantageous than living on their own. However, they have conflicting interests at the same time that how the generated benefits of social cooperation will be distributed among the community members, and at this point, some principles are needed to organize the society. These principles are social justice principles that balance community members’ mutual advantages, define fundamental rights and duties, and distribute benefits. In a well-organized ideal society, there is an accepted concept of justice shared by all individuals, and because of this common concept, people live together in peace even though they hold conflicting interests, and they respect others’ fundamental rights.<sup>17</sup> However, this is not common in existing societies because there is a lot of controversy over what is just and what is unjust. In an ideal social order, if individuals know that the concept of justice is for everyone without any discrimination among people, they will adopt this concept by keeping the accepted concept of justice above their subjective understanding of justice and act in accordance with the principles set by it. People will also rely on institutions governed by these principles of justice. Besides, there must be “stabilizing forces” in case of violations of the rules.<sup>18</sup> In the absence of an agreed concept of justice, individual conflicts and hostility among people will increase, and people will lose their sense of living safely in society. Therefore, it can be assumed that the concept of justice guarantees fundamental rights and duties, plays an active role in the distribution of shares, and has a responsibility for the coordination, efficiency, and stability of a society.<sup>19</sup>

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<sup>16</sup> Ibid., 4.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid., 6.

<sup>19</sup> Ibid.

Overall, the subject of justice is quite broad, including institutions, laws, decisions, even individuals and their inclinations, while Rawls limits it to institutions. Many things can be a matter of being fair and unfair. However, according to Rawls, this issue should be addressed in social justice, and the fundamental subject of justice is “the basic structure of society or more exactly the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation”<sup>20</sup> Rawls explains that he means all the main political constitution and social and economic arrangements by major institutions. Private property, family, legal protection of fundamental rights and freedoms, competitive markets are examples of institutions, and these institutions will identify all the individuals’ life expectancy and lifestyle. These institutions involve various social and economic problems that affect individuals’ initial situation and cause severe inequalities. The principles of justice must be applied primarily to these inequalities in the basic structure of society. Rawls thinks that it is crucial to conceive an ideal theory of justice to grasp the systematic problems of inequalities and injustices.<sup>21</sup>

On the other hand, Rawls defines himself as a contractarian, explaining his purpose to move the classical social contract understanding of Locke, Rousseau, and Kant to a higher level of abstraction and generalization. The “original agreement” aims to constitute the principles of justice for the fundamental structure of society. These principles are chosen by rational people on equal terms to live in a fair society, and all other agreements are made by them, and even forms of government are determined by them. Rawls calls this understanding of principles of justice “justice as fairness.”<sup>22</sup> In this understanding, all basic principles of rights and duties, and what is considered

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<sup>20</sup> Ibid., 7.

<sup>21</sup> Ibid., 9.

<sup>22</sup> Ibid., 11.

just and unjust, are chosen by members of society. In Rawls' account of justice as fairness, there is the supposition that people are in the original position described in traditional contract theories, and this is not a historical situation. This is a hypothetical situation in which nobody in the society knows her economic or social position or status, as well as her strengths, intelligence, natural abilities. Individuals even do not know what is good or bad or even their psychological inclinations. The aim is to choose all the principles of justice behind a "veil of ignorance."<sup>23</sup> Thus, the principles of justice will be chosen impartially because nobody knows which option is more advantageous or disadvantageous for their situation. According to Rawls, this selection of principles of justice ensures a fair bargain because the initially given circumstances are identical. After choosing these fundamental principles of justice, then the legislative and other institutions will be shaped. Citizens will consent to the principles of justice autonomously and voluntarily because these principles were initially selected by a mutual agreement. There is the assumption that citizens in the original position are rational and that no one will endorse a principle that increases overall advantages by permanently damaging individuals' fundamental interests and rights.<sup>24</sup> In justice as fairness, citizens are moral persons driven by two "highest-order interests": 1- to have "the capacity for a sense of right and justice (the capacity to honor fair terms of cooperation)" and 2- to have "the capacity to decide upon, to revise and rationally to pursue a conception of the good."<sup>25</sup> Citizens are presumed to have "certain cognitive abilities" to decide principles of justice in the original position.<sup>26</sup> In the initial position, the members agree on two main principles, first, the equal distribution of fundamental rights and duties, and second, inequalities can be accepted and

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<sup>23</sup> Ibid., 12.

<sup>24</sup> Ibid., 14.

<sup>25</sup> John Rawls, "Social Unity and Primary Goods," in *Utilitarianism and Beyond*, ed. A. Sen and B. Williams (Cambridge: Cambridge University Press, 1982), 165.

<sup>26</sup> Robeyns, "Justice as Fairness and The Capability Approach," 399.

considered fair only “if they result in compensating benefits for everyone, and in particular for the least advantaged members of society.”<sup>27</sup> In Rawls’ own words,

It may be expedient, but it is not just that some should have less in order that others may prosper. But there is no injustice in the greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved. The intuitive idea is that since everyone’s well-being depends upon a scheme of cooperation without which no one could have a satisfactory life, the division of advantages should be such as to draw forth the willing cooperation of everyone taking part in it, including those less well situated.<sup>28</sup>

Rawls admits that it is extremely difficult to choose these principles: first, the interpretation of the initial situation and the problem addressed in this position, and secondly, the determination of the principles to be chosen are the challenges to be faced.<sup>29</sup> The aim of justice as fairness is not to discover or enter into a new form of government but to choose moral principles.<sup>30</sup> In the original position, citizens concentrate only on choosing principles of justice and decisions on other issues, such as institutional structure. Policies are left to later stages “when the veil of ignorance is gradually lifted, and more and more information becomes available to the parties.”<sup>31</sup>

Justice as fairness is an example of social contract theories because it requires an agreement on the concepts of justice and the determination of fundamental rights and duties. However, “justice as fairness is not a complete contract theory. For it is clear that the contractarian idea can be extended to the choice of more or less an entire ethical system, that is, to a system including principles for all the

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<sup>27</sup> Rawls, *A Theory of Justice*, 14.

<sup>28</sup> *Ibid.*, 15.

<sup>29</sup> *Ibid.*, 15.

<sup>30</sup> *Ibid.*, 16.

<sup>31</sup> Robeyns, “Justice as Fairness and The Capability Approach,” 399.

virtues and not only for justice.”<sup>32</sup> On the other hand, justice as fairness converges to rational choice theory in choosing the most appropriate principles of justice adopted by all members of society.<sup>33</sup> In the initial situation, individuals are equal because no one has information about his or her own economic or social situation. Thus, they do not have the chance to decide on principles according to their interests. This situation, the “veil of ignorance,” ensures an impartial rational selection of principles of justice. According to Rawls, there are specific issues that every person naturally agrees on. Racism and discrimination of people according to their religion is without doubt unjust.<sup>34</sup> However, people do not have similar firm convictions about the distribution of wealth.<sup>35</sup> A concept of justice can be determined and justified by negotiation and agreement.<sup>36</sup>

Rawls presents his theory of justice as an alternative to the utilitarian theory; according to classical utilitarianism formulated in Henry Sidgwick, a society is just when its institutions are arranged well to enhance the net balance of the individuals’ satisfaction.<sup>37</sup> Besides, maximizing a person’s interests is the same as aiming to increase the total satisfaction of society members.<sup>38</sup> This is a natural way to achieve utility by adapting one person’s rational choice to the whole

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<sup>32</sup> Rawls, *A Theory of Justice*, 17.

<sup>33</sup> *Ibid.*, 18.

<sup>34</sup> *Ibid.*, 19.

<sup>35</sup> *Ibid.*, 20.

<sup>36</sup> *Ibid.*, 21.

<sup>37</sup> *Ibid.*, 22.

<sup>38</sup> *Ibid.*, 23.

society.<sup>39</sup> The principle of utility in the classical form defines the good as the satisfaction of rational desire, independent of right. At first sight, the utilitarian concept may seem plausible: “The appropriate terms of social cooperation are settled by whatever in the circumstances will achieve the greatest sum of satisfaction of the rational desires of.”<sup>40</sup> However, this view of justice does not deal directly with how total satisfaction is distributed among individuals. Distribution is important only because it is a means to maximize the satisfaction of rational desires. In this sense, utilitarians do not focus on the principle of respect for fundamental rights and freedoms, in other words, these rights are not their priorities in principle.<sup>41</sup> Besides, since the classical utilitarian view adapts a rational person’s choices to the whole society, it needs an impartial spectator who decides what the others’ desires are for the entire society. At this point, Rawls thinks that utilitarianism does not properly consider the distinction between people and take into account the diversity between people.<sup>42</sup>

In his article “Social Unity and Primary Goods,” Rawls underlines that justice as fairness concedes the presumption of the liberal view that “there are many conflicting and incommensurable conceptions of the good, each compatible with the full autonomy and rationality of human persons.”<sup>43</sup> Because of this plural understanding of the conception of good, liberalism finds it natural for every citizen in society to pursue his own good. For justice as fairness, it is not a single rational concept of “good” that unites all free and equal citizens of society who have diverse and even contradictory concepts of good, on which they agree, but

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<sup>39</sup> Ibid., 26.

<sup>40</sup> Ibid., 25.

<sup>41</sup> Ibid., 26.

<sup>42</sup> Ibid., 27.

<sup>43</sup> Rawls, “Social Unity and Primary Goods,” 160.

what unites these people is their agreement on what justice is.<sup>44</sup> On the other hand, for Rawls, the understanding of justice is independent of and precedes the concept of good; this limits the understanding of good through principles. Rawls calls these principles of justice. They are the sine qua non for “a well-ordered society” because every citizen accepts them, and also every citizen knows that these principles are accepted by other members of the society and that the main role of basic institutions is to fulfill these principles of justice. At this point, given that there are various, contradictory, and sometimes incommensurable concepts of the good, the question, how it is possible to agree on a public conception of justice that is shared and accepted by every citizen of society arises. Rawls thinks that a partial agreement is enough on some key points and points to the notion of “primary goods,” which include liberties, rights, income, and wealth to solve this problem, as they are the goods that every citizen desires to have.<sup>45</sup>

According to Rawls, the claims of liberty and right are different from the desire for social welfare, and in general, the former has an absolute priority over the second. In a just society, justice secures liberties and rights, which cannot be a matter of political bargaining. In justice as fairness, the priority of justice is the direct consequence of principles chosen in the original position. While the utilitarian view takes one person’s view and extends it to the whole society, justice as fairness argues that principles of social choice are the same as the principles of justice.<sup>46</sup> Contrary to the general belief that utilitarianism is individualistic, Rawls believes that it is not, even though utilitarians are

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<sup>44</sup> Ibid.

<sup>45</sup> Ibid., 161.

<sup>46</sup> Rawls, *A Theory of Justice*, 28.

advocates of freedom and freedom of thought, because the principles of justice in utilitarianism are chosen by one impartial spectator for the whole society.<sup>47</sup>

On the other hand, in utilitarianism, the only aim is to maximize the sum of satisfactions to obtain and sustain social welfare because it depends on the individuals' satisfaction. At this point, every desire has a value in itself in deciding what is right. However, the source or quality of desire is not taken into account. This means that a person may violate some of the fundamental rights of others or limit the freedom of others, and this action can intensely satisfy him, and in this case, what the utilitarians will take into account is the intensity of desire. The only reason utilitarians do not allow such actions could be to stop their possible harm to society.<sup>48</sup>

In justice as fairness, individuals accept the principle of equal liberty regardless of their desires. The principles of justice do not consider the inclinations of people and how they will be met. Desires and aspirations are limited by the principles of justice that prioritize right over good, the interests that require violation of another person's fundamental right and liberties have no value and cannot be accepted no matter how many people are satisfied with it.<sup>49</sup> Rawls summarizes the main difference between justice as fairness and utilitarianism as follows:

In the one we think of a well-ordered society as a scheme of cooperation for reciprocal advantage regulated by principles which persons would choose in an initial situation that is fair, in the other as the efficient administration of social resources to maximize the satisfaction of the system of desire constructed by the impartial spectator from the many individual systems of desires accepted as

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<sup>47</sup> Ibid., 29.

<sup>48</sup> Ibid., 31.

<sup>49</sup> Ibid.

given. The comparison with classical utilitarianism in its more natural derivation brings out this contrast.<sup>50</sup>

Rawls also criticizes intuitionism and separates his theory of justice from intuitionism. In order to better understand Rawls' theory of justice, it is important to explain its' fundamental differences from intuitionism. Intuitionist theories have two main features. First, they give many kinds of first principles that contradict each other, and second, they do not explain the priority of these principles, but the right ones can only be chosen by intuition.<sup>51</sup> There are many types of intuitionism; for example, common sense intuitionism approaches justice with a set of principles applied to a particular problem of justice. Some groups focus on wages, others on taxation, and others on unjust behaviors. Individuals' ideas and current expectations, determined by their circumstances, have impacts on various principles of justice.<sup>52</sup> In order to eliminate subjective opinions, this issue can be addressed by reviewing the end of social policies, but even while doing so, many different social and economic factors and categorization of all these variables will affect our understanding of justice. This approach has a broader perspective than the perspective that draws inferences based solely on self-interest. Intuition also leads to finding a systematic explanation of understanding concepts. For example, the concept of justice has many contradictory principles. If the equal distribution of a higher national income in a society or full employment is taken as social purposes, then taxes and wage policy will be affected intuitively.<sup>53</sup> The concept of justice varies according to the chosen principles of justice. How these principles are prioritized is an important part of the understanding of justice and related ethical criteria. In justice as fairness, these principles are chosen in the original position, at least

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<sup>50</sup> Ibid., 33.

<sup>51</sup> Ibid., 34.

<sup>52</sup> Ibid., 35.

<sup>53</sup> Ibid., 36.

citizens agree on the balance of the principles of justice by giving them certain weights.<sup>54</sup>

Rawls proposes another way to choose the principles of justice: the principles of justice can be put in a “serial” or “lexical order”<sup>55</sup> such that no one can move to the second-order principle before fulfilling the first-order principle, and so on. In this order, the first principles have more importance compared to the following ones. In justice as fairness, Rawls suggests the principle of equal liberty prior to the principle regulating economic and social inequalities, and this also means that in a society based on these principles, the regulations about economic and social inequalities will be made in accordance with the principle of equal freedoms.<sup>56</sup> At this point, he also criticizes utilitarianism, arguing that if the principle of utility is chosen as the first-order principle, the remaining principles will be pointless.<sup>57</sup> This approach to the priority of principles seeks reasonable and common suggestions regarding the agreement in judgments and in justice as fairness, these principles are chosen in the original position.<sup>58</sup>

## **2.2. The Role of Institutions**

Rawls divides the theory of justice into two major parts; the first one is about “an interpretation of the initial situation and a formulation of the various principles available for choice there”<sup>59</sup> and the second part of it is about “an argument

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<sup>54</sup> Ibid., 42.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid., 43.

<sup>57</sup> Ibid., 44.

<sup>58</sup> Ibid., 45.

<sup>59</sup> Ibid., 54

establishing which of these principles would in fact be adopted.”<sup>60</sup> The main subject of the principles of justice is the principles of justice for institutions that differ from the principles applied to individuals. With these principles, the main institutions that determine the basic structure of the society are organized as a single whole structure.<sup>61</sup> Rawls defines institutions as “a public system of rules which defines offices and positions with their rights and duties, powers and immunities and the like.”<sup>62</sup> These rules classify “certain forms of actions as permissible, others as forbidden, and they provide for certain penalties and defenses...when violations occur.”<sup>63</sup> to sustain obedience. In this sense, even many games and rituals (general social practices) can be considered institutions. According to Rawls:

An institution may be thought of in two ways: first as an abstract object, that is, as a possible form of conduct expressed by a system of rules; and second, as the realization in the thought and conduct of certain persons at a certain time and place of the actions specified by these rules. There is an ambiguity, then, as to which is just or unjust, the institution as realized or the institution as an abstract object.<sup>64</sup>

Rawls indicates that what is just or unjust is the institution that has been realized and managed effectively and impartially. As abstract objects, whether the institutions are just or not is evaluated by realizing them. An institution “exists” when it regularly carries out the rules defining its actions and its functionings and where it is followed systematically by the public. In this sense, an institution

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<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid., 55.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

represents the basic structure of society.<sup>65</sup> The institution is a system of rules open to everyone, and everyone knows what is intended by these rules, what their limits are, what they allow and prohibit, and that these rules are for everyone else without any discrimination. Everyone participating in an institution is confident, at least theoretically, that the institutions guarantee each individual's interests and that the systematic rules laid down by the institutions are in the mutual interests of all.<sup>66</sup>

### **2.3. Two Principles of Justice**

Rawls defines the two principles of justice that are agreed in the original position as such:

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage and (b) attached to positions and offices open to all.<sup>67</sup>

The first principle is about defining and securing basic liberties, the second one is mostly about the regulations and arrangements of social and economic inequalities, and the first principle is prior to the second.<sup>68</sup> This means that defined and given fundamental liberties like; freedom of speech, freedom of the person, the right to have private property, and freedom from unjust arrest and seizure cannot be sacrificed for the sake of greater social and economic gains.

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<sup>65</sup> Ibid.

<sup>66</sup> Ibid., 56.

<sup>67</sup> Rawls, *A Theory of Justice Revised*, 53

<sup>68</sup> Ibid.

These liberties can only be restricted when some of the determined liberties “clash” with each other.<sup>69</sup>

The second principle deals with the distribution of wealth and income which must be according to everyone’s advantage, and this distribution needs not to be equal but must be consistent with the basic liberties and opportunity of equality. In Rawls’ terms, “All social values are to be distributed equally unless an unequal distribution of any, or all, of these values, is to everyone’s advantage.”<sup>70</sup> Rawls supposes a society where primary goods are distributed, and he explains that the main shared primary goods are rights, liberties, income, and wealth and calls these social goods that every rational person desires to have, no matter how different life plan she has. Other primary goods, such as intelligence, health, and imagination, are natural goods that cannot be controlled or shared among people.<sup>71</sup>

According to Rawls, primary goods play an essential role in the structure of institutions and the relations of the citizens concerned. The same primary goods index can be used to make comparisons on the social status of citizens. This comparison cannot be made in all areas, but the same primary goods index can be used to compare the problems of justice that arise, especially due to the basic structure.<sup>72</sup> In justice as fairness, if certain inequalities can make people’s conditions better than the previous situation, then it can be acceptable. Rawls points out that this conception of justice can be misunderstood as if it allows some restrictions on fundamental liberties for the sake of social and economic gains. However, he adds that applying these two principles in a serial order does

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<sup>69</sup> Ibid., 54.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Rawls, “Social Unity and Primary Goods,” 163.

not permit a bargain between fundamental liberties and economic gains because there is an absolute weight of liberty relative to social and economic gains.<sup>73</sup> The first principle demands certain rules that define and apply liberty equally to everyone, while the second principle, on the other hand, accepts in Rawls' terms "permissible inequalities" that are useful for all members of society.<sup>74</sup> While applying the second principle, Rawls takes the economic term "Pareto optimality" to measure whether an arrangement is efficient, and he prefers to use the term efficiency rather than optimality. According to the Pareto optimality, an arrangement is optimal in a situation where it is impossible to make a group of people better off without making a group of people worse off. For example, the distribution of goods is efficient when there is no other way to redistribute them without reducing a group of people's shares.<sup>75</sup>

Rawls' ideas have changed over the years, and he defended his principles of justice as part of what he later regarded as "a comprehensive liberal doctrine."<sup>76</sup> Later Rawls justified principles of justice through the concept of "political conception of justice" by their relations only to "political values," not part of "a comprehensive doctrine."<sup>77</sup> His turning towards political liberalism can be explained by his concern about the fact that in democratic societies where pluralism is inevitable, people have comprehensive doctrines that are quite different, sometimes contradictory and with this fact in mind, Rawls focused on how it is possible to reach an agreement on the principles of justice.<sup>78</sup> Political

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<sup>73</sup> Rawls, *A Theory of Justice Revised*, 55.

<sup>74</sup> *Ibid.*, 56.

<sup>75</sup> *Ibid.*, 58.

<sup>76</sup> Robeyns, "Justice as Fairness and Capability Approach," 400.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

justice is a term that refers to and explains different aspects of justice, and Rawls uses this term as a “source of distributive principles.”<sup>79</sup> According to Rawls, “in a constitutional democracy the public conception of justice should be, so far as possible, independent of controversial philosophical and religious doctrine.” and adds, “the public conception of justice is to be political, not metaphysical.”<sup>80</sup> The aim of justice as fairness is to set aside all philosophical arguments and reach an agreement on a political concept of justice in a constitutional regime.<sup>81</sup> The reason justice as fairness puts aside controversial political views is because it acknowledges that there will always be controversial ideas.<sup>82</sup> Moreover, from this point of view, rational, free and equal citizens (who can take part in a community, can make their own decisions and responsibilities) come together under the veil of ignorance and compromise based on justice by choosing the two principles of justice.<sup>83</sup> Rawls underlines that justice as fairness is a liberal doctrine as it also accepts the assumption of liberalism that in a “constitutional democratic state under modern conditions there are bound to exist conflicting and incommensurable conceptions of the good.”<sup>84</sup>

Furthermore, as part of the liberal doctrine, justice as fairness also refuses to commit to any “particular comprehensive ideal.”<sup>85</sup> One of the main aims of liberalism is to answer the question of how to reach a public agreement on the

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<sup>79</sup> Yack, “Justice: Political,” 8061.

<sup>80</sup> John Rawls, “Justice as fairness: Political, not metaphysical,” *Philosophy and Public Affairs*, 14, (1985): 223.

<sup>81</sup> *Ibid.*, 224.

<sup>82</sup> *Ibid.*, 225

<sup>83</sup> *Ibid.*, 244

<sup>84</sup> *Ibid.*, 245.

<sup>85</sup> *Ibid.*

rational good under the assumption that there are always controversial, incommensurable concepts, which are accepted as the fundamental characteristic of democratic culture. According to justice as fairness, this one thing that bounds all citizens together is the political concept of justice, and it is free from the concept of goodness that its principles limit and affect the concept of good.<sup>86</sup> According to Rawls, “It suffices to remark that in a society marked by deep divisions between opposing and incommensurable conceptions of the good, justice as fairness enables us at least to conceive how social unity can be both possible and stable.”<sup>87</sup> As Yack points out, Rawls’ understanding of the concept of political justice is remarkably apolitical, as it is independent of power strife and persuasive or cooperative efforts. As it is typically understood, the concept of politics is subject to principles of justice in Rawls’ understanding of political justice. However, there are many debates about the Rawlsian idea that without making assumptions on human nature and rationality whether it is possible to successfully reach an agreement on a concept of justice.<sup>88</sup>

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<sup>86</sup> Ibid., 249

<sup>87</sup> Ibid. 251.

<sup>88</sup> Yack, “Justice: Political,” 8063.

## CHAPTER 3

### AMARTYA SEN'S CRITIQUE OF A *THEORY OF JUSTICE*

Rawls' justice as fairness has a significant effect on Sen's theory of justice. Sen's critiques of A Theory of Justice later became a start point for Sen's own theory. According to Sen, Rawls builds his theory of justice on the question, "What is a just society?" This question is both the central and the starting point to his justice as fairness, and as Sen indicates, this question leads the theory to a transcendental approach to justice that deals with a perfectly just society. Regarding justice, Sen argues, a "comparative approach" that allows comparing existing social arrangements as "less just" and "more just" is more appropriate than a transcendental approach.<sup>89</sup>

#### **3.1. Amartya Sen's Criticism of the transcendental approach to justice.**

Sen holds that the transcendental approach to justice goes back to Thomas Hobbes, and Rawls continues this tradition while conceiving a just society in justice as fairness.<sup>90</sup> In justice as fairness, in the imaginary original position in which individuals choose the principles of justice under a veil of ignorance; without knowing their interests and achievements, they choose these principles for a completely just society, and these principles are also perfect. At this stage, they do not come together to find answers on how to remedy injustices that have occurred, how to adjust or make some changes to make existing institutions more just, but they are looking for fully just principles for institutions that work fully just. Sen remarks that to advance justice in society or remedy some injustices, a

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<sup>89</sup> Amartya Sen, "What Do We Want from a Theory of Justice?" *The Journal of Philosophy*, 103, No. 5, (2006): 216

<sup>90</sup> *Ibid.*

transcendental approach is neither necessary nor sufficient.<sup>91</sup> For example, hunger or rampant illiteracy are still serious injustices, and they can be resolved by the advancement of justice in a comparative approach, but the implementation of these advances may still make society far from a society that demands equal freedom and equal distribution. In other words, a society may remain on the “unjust” side according to the transcendental approach even after a significant regulation and the elimination of injustice. The transcendental approach is not concerned with the real-world injustices, or attempts to advance justice, or seeking remedies for injustice, but the leap into a completely just world.<sup>92</sup>

The defenders of the transcendental approach insist that to form a substantial theory, and one has to answer transcendental questions like “What is a just society?” Furthermore, it must also be clarified whether the transcendental approach produces enough relational results about the deviations from fairness in terms of comparative distances from excellence. Sen’s answer to this question is a definitive no:

The main difficulty lies in the fact that there are different features involved in identifying distance, related, among other distinctions, to (1) different fields of departure, (2) varying dimensionalities of transgressions within the same general field, and (3) diverse ways of weighing separate infractions. The identification of transcendence does not yield any means of addressing these problems to arrive at a relational ranking of departures from transcendence.<sup>93</sup>

The transcendental approach seeks for the “right” rather than best because best contains in it some degrees like “better” and “worse.”<sup>94</sup> So if a transcendental theory of justice defines an arrangement as a right social arrangement, it does not mean that it is the best social arrangement. There is the superiority of absolute

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<sup>91</sup> Ibid., 217.

<sup>92</sup> Ibid., 218.

<sup>93</sup> Ibid., 219.

<sup>94</sup> Ibid., 220.

right versus the relativity of the best and the worst. In this sense, Sen likens the transcendental approach to the “complete handbook of the great revolutionary”<sup>95</sup> that is far from focusing on existing injustices and answering the problems of reducing injustices or advancing justice. Even if the transcendental approach is considered as the identification of best rather than right, it does not still reveal how to make grading between two “non-best” alternatives. Admitting that the Mona Lisa is the best painting in the world does not explain how Gauguin and Van Gogh could be ranked.<sup>96</sup>

### **3.2. Is a Transcendental Approach to Justice Necessary When Making Comparisons Regarding Justice?**

Another point that Sen discusses is the necessity of a transcendental approach for justice comparisons. While comparing two different things, Sen thinks that a third-best thing does not have to be known and gives an example: when comparing Picasso and Dali, it is unnecessary to know the best painter in the world. And this view can be applied not only to aesthetics but also to other areas. For example, everyone knows that Everest is the tallest mountain in the world, but knowing this does not help us when comparing the heights of the other two mountains, so the general tendency to believe in the necessity of a superior alternative when comparing the two seems to be unfounded.<sup>97</sup>

On the other hand, there is not such a thing that the comparison of things will always “lead us to the very best,”<sup>98</sup> especially in the matter of justice. Even under a “veil of ignorance,” there may be conflicting ideas about, for example,

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<sup>95</sup> Ibid., 221.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid., 222.

<sup>98</sup> Ibid., 223.

“in weighing the claims of need over entitlement to the fruits of one’s labor.”<sup>99</sup> Often it is easy to agree that torture should be banned or widespread hunger should be eradicated, even if there are many conflicts in the interests of many people. However, it is not easy to find a suitable solution to the problem of distribution, and it remains an unresolved conflict between people. According to Sen’s example of deciding who gets the flute among three children, child A is the only child who is capable of playing the flute, child B has not got any toy of his own, and child C has worked hard to make the flute and all children know and accept this information about the flute, and yet all of them want the flute for himself. For the utilitarian, libertarian, and egalitarian, the answer may be obvious, but all these groups know that different answers will be given to these questions with the same great faith, and it will be hard to decide which argument will be superior to the others.<sup>100</sup> Sen also remarks that both individual evaluations and congruence of individual evaluations are mostly incomplete, and this incompleteness is an important feature of judgments of justice and makes it hard to agree on a perfectly just society and makes it hard to reach transcendental conclusions. Thus, for a useful theory of justice, transcendental questions are not necessary as a starting point.<sup>101</sup>

### **3.3. The Role of Institutions and “Fair Negotiation” in the Transcendental Approach to Justice**

According to the transcendental approach to justice, there is a great need for institutions and, the major role of them is to reach an ideal society that is completely just. Similar to Thomas Hobbes, Rawls also insists that the basic

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<sup>99</sup> Ibid., 224.

<sup>100</sup> Ibid., 225.

<sup>101</sup> Ibid., 226.

structure of a fully just society needs institutions that work properly.<sup>102</sup> In justice as fairness, the focus of public reasoning is to find the most appropriate institutions for a fully just society.<sup>103</sup> How to advance justice or reduce injustices is not taken into account in the transcendental approach to justice. On the other hand, the transcendental approach to justice limits itself at the local level, as it gives a vital role to the institutions that cannot be applied globally.<sup>104</sup> As Sen indicates, Rawls defines justice as fairness as a contractarian theory, and in the original position, there is a fair negotiation of principles of justice because public reasoning occurs under a veil of ignorance, the participants in the deliberation of justice are also the members of society, and this, limits justice as fairness at the local level.<sup>105</sup> Sen thinks that instead of fair negotiation of justice, Adam Smith's solution is more powerful: fair arbitration. Smith's arbitration sounds more impartial because there are imaginary impartial spectators who do not have to be a member of society, and that people's impartiality is not due to their ignorance about their interests but because, as distant and disinterested spectators, they are not directly affected by the societal decisions made by the community.<sup>106</sup> Smith aims to find resolutions for conflicting interests to advance justice or remedy injustices, while Rawls focuses on the demands of a fully just society.<sup>107</sup> Sen summarizes the superiority of the "Smithian line of reasoning" over the contractarian approach in four points:

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<sup>102</sup> Ibid.

<sup>103</sup> Ibid., 227.

<sup>104</sup> Ibid., 229.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid., 230.

<sup>107</sup> Ibid., 231.

1-dealing with comparative assessment and not merely identifying a transcendental solution,

2-taking note of social realizations and not only the demands of institutions and rules,

3-allowing incompleteness in social assessment, but still providing guidance in important problems of social justice, including the urgency of removing manifest cases of injustice; and

4-taking note of voices beyond the membership of the contractarian group, either to take note of their interests, or to avoid our being trapped in local parochialism.<sup>108</sup>

Sen holds that the theory of justice established within national borders has three dangers: “1-interests of other people may be affected (for example, by national policies on “global warming,” or for that matter what is called the “war against terror”); 2- the local parochialism shared by all (or nearly all) the persons within a given society may call for a distant challenge in the interest of objectivity; and 3- additional knowledge about what is feasible can be acquired from the experiences of other countries.”<sup>109</sup> Maybe the operations of institutions cannot directly affect the rest of the world, but in some cases, the consequences of the operations can affect all the world. Methods adopted by the US government to combat global terrorism, such as invading Iraq, obviously affect the rest of the countries.<sup>110</sup> Sen thinks that in Rawls’ imaginary original position where people are under a veil of ignorance may be impartial because of their not knowing personal interests, but they are not free from a closed society’s shared prejudices.<sup>111</sup> In particular, sensitive issues such as women’s inequality or torture or capital punishment should not be evaluated according to a specific society’s

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<sup>108</sup> Sen, *The Idea of Justice*, 70.

<sup>109</sup> Sen, “What Do We Want from a Theory of Justice?” 231.

<sup>110</sup> Sen, *The Idea of Justice*, 3.

<sup>111</sup> Sen, “What Do We Want from a Theory of Justice?” 233.

local value judgments but should be evaluated globally.<sup>112</sup> For example, while capital punishment is unacceptable for Europeans or Japanese, these implementations are typical in the USA. While in Sudan, it is considered unquestionably normal and fair for women who commit adultery to be stoned and sentenced to death, this is unacceptable in many other countries. In this sense, it is essential to consider global ideas that are valuable to avoid local short-sightedness.<sup>113</sup> On the other hand, Sen remarks that the comparative approach to justice is more feasible as it does not aim to find the best resolutions for a fully just society instead, it deals with the issues of global injustice and seeks remedies for removing injustices.<sup>114</sup>

### **3.4. Sen's Criticisms about "Justice as Fairness"**

Sen accepts that Rawls transformed contemporary political philosophy with *A Theory of Justice*, and it is he who has made the issue of justice what it is today.<sup>115</sup> To understand Rawls' theory of justice, it is crucial to figure out his foundational idea that justice must be understood as a requirement of fairness. Rawls's principles of justice depend on fairness,<sup>116</sup> and prior to them and as a foundational idea, fairness demands serious impartiality that is free from all personal interests, bias, or any other prejudgments. As mentioned in the previous chapter, this kind of impartiality is embodied in his idea of the "original position" that everyone is under a veil of ignorance that they do not know their interests or any other social, economic positions or priorities. Thus they are completely impartial in choosing principles of justice, and these principles

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<sup>112</sup> Sen, *The Idea of Justice*, 72.

<sup>113</sup> Sen, "What Do We Want from a Theory of Justice?" 234.

<sup>114</sup> *Ibid.*, 228.

<sup>115</sup> Sen, *The Idea of Justice*, 58.

<sup>116</sup> *Ibid.*, 53.

determine institutions of a just society.<sup>117</sup> In the Rawlsian system, unanimously and equally chosen principles constitute the basic structure of the just society and determine the political conception of justice, and this means all the other stages of Rawls' justice as fairness depends on this first action.<sup>118</sup> First, there are many different, conflicted, even biased ideas about justice that are hard to agree on even under a veil of ignorance without knowing one's interests or gains. Considering the flute example, quite different decisions can be made about the owner of the flute depending on different perspectives such as "effective use and utility, economic equity and distributional fairness, and the entitlement to the fruits of one's unaided efforts."<sup>119</sup> It is not necessary to know one's interests to make such different decisions, have different opinions about the concept of justice, and defend them impartially is not always about personal interests.<sup>120</sup>

In this sense, Sen notes that if there are no uniquely agreed principles of justice chosen under the "veil of ignorance," then it is difficult to use justice as fairness due to its "multi-staged unfolding"<sup>121</sup> structure.<sup>122</sup> In his *Justice as Fairness: A Restatement*, Rawls accepts that it is not easy to agree on conflicting ideas while some people defend different ideas about the concept of justice, and he concludes that in the original position, "the ideal of rigorous deductive reasoning cannot, however, be fully attained."<sup>123</sup> Although he still defends his old views

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<sup>117</sup> Ibid., 54.

<sup>118</sup> Ibid., 56.

<sup>119</sup> Ibid., 57.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid., 56.

<sup>122</sup> Ibid., 57.

<sup>123</sup> John Rawls, *Justice as Fairness: A Restatement*, (Cambridge, Mass.: Harvard University Press, 2001), 133.

about justice as fairness, he acknowledges that there is real difficulty in obtaining unanimously elected principles of justice.<sup>124</sup> Sen thinks that even Rawls should have abandoned his inspiring idea of theory of justice depending on this difficulty that it will face in the first step while choosing the principles of justice.<sup>125</sup>

On the other hand, Sen points out that in the two principles of justice, Rawls gives an essential role to personal freedoms that cannot be violated for the sake of anything else, such as wealth, income, or any other distribution equality,<sup>126</sup> but completely excludes distribution problems involving claims based on private property. In his first principle, personal liberties are taken as the foundation of the principles, while in the second principle, liberties are taken as one of the primary goods together with income, wealth.<sup>127</sup> This extreme weight given particularly to liberty was first questioned by Herbert Hart in his article “Rawls on Liberty and Its Priority.”<sup>128</sup> The priority of liberty on Rawls is explained as “[t]he principles of justice are to be ranked in lexical order, and therefore liberty can be restricted only for the sake of liberty.”<sup>129</sup> Hart thinks that it is difficult to apply the priority of liberty, to pick the basic liberties in a society given that every individual has different tastes or desires when there are conflicts over the different kinds of liberties<sup>130</sup> (sexual freedom or freedom of using drugs or

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<sup>124</sup> Ibid.

<sup>125</sup> Sen, *The Idea of Justice*, 58.

<sup>126</sup> Ibid., 59.

<sup>127</sup> Ibid., 60.

<sup>128</sup> Ibid., 65.

<sup>129</sup> Rawls, *A Theory of Justice*, 250.

<sup>130</sup> Herbert Hart, ‘Rawls on Liberty and Its Priority’, *University of Chicago Law Review*, 40 (1973): 545.

alcohol),<sup>131</sup> and he notes that “*Theory of Justice*” is inadequate about how the priority of liberty especially with its’ relation with other values works.<sup>132</sup> Sen also questions that in what grounds hunger, medical deprivation can be less important than liberty, or for the sake of these, how liberty cannot be violated? Liberty has importance and priority, yet as Sen indicates, “total unrestrained priority is almost certainly an overkill.”<sup>133</sup>

Further, Sen argues that in his second principle -the principle of difference- Rawls does not consider that people with different capabilities need different amounts of primary goods. For example, a pregnant woman’s needs are more than a woman without a child, or if two individuals, one healthy and one disabled, have the same amount of income, the disabled person cannot live at the same standard as a healthy person.<sup>134</sup>

### **3.5. Understanding Rawls’ “justice as fairness” through the distinction of “Niti” and “Nyaya”**

In Rawls’ justice as fairness, the focus is only on the justness of institutions, not on the justness of a society, which is also related to the individual’s actual behaviors. Sen explains this distinction with the help of two concepts in Sanskrit, “niti” and “nyaya” which are used in Indian jurisprudence. The term niti is used to mean “organizational propriety and behavioral correctness”<sup>135</sup> while nyaya

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<sup>131</sup> Ibid. 541.

<sup>132</sup> Ibid., 555.

<sup>133</sup> Sen, *The Idea of Justice*, 65.

<sup>134</sup> Ibid., 66.

<sup>135</sup> Ibid., 20.

represents “a comprehensive concept of realized justice.”<sup>136</sup> In this sense, while *niti* narrowly deals with the rules and institutions, *nyaya* assesses regulations and institutions together with real behavior patterns and their social consequences in the real world. Sen explains this distinction through an example: in the early Sanskrit texts it was being underlined that justice has to prevent “justice of fish” called “*matsyanyaya*” “where a big fish can freely devour a small fish.”<sup>137</sup> If the “big fish devour the little fish” in a society, it does not matter how well the institutions work in this society, and this society is unfair, according to *nyaya*.<sup>138</sup> On the contrary, according to *niti* the main aim is to “Let justice be done, though the world perish”<sup>139</sup> as quoted by Sen, the famous saying of Ferdinand I, Roman Emperor. The realistic focus of *nyaya* seeks remedies to remove severe injustices rather than attempting to reach a perfect just social arrangement. The aim of the abolition of slavery was not a step to reach an ideal perfect society in the 18<sup>th</sup>-19<sup>th</sup> centuries; it was a demand and action to end this kind of exploitation and The American Civil War that ended slavery also cannot be seen as an attempt to achieve transcendental justice, but it was an act of increasing justice by ending slavery.<sup>140</sup>

Turning back to Rawls, choosing the perfect institutions and principles in the original position cannot guarantee that people with different characteristics will apply them in real life, considering that actual human behaviors can be completely different from ideal reasonable behavior.<sup>141</sup> Sen states that even if it

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<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.*

<sup>139</sup> *Ibid.*, 21.

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*, 68.

is possible to agree on a concept of justice as fairness, this concept of justice has to be compatible with actual human behavior patterns and the nature of the society in which it emerges.<sup>142</sup>

In the Rawlsian system, the choice of the two principles of justice meant to ensure both the right choice of institutions as well as the emergence of appropriate actual behavior on the part of everyone, making individual and social psychology thoroughly dependent on a kind of political ethics. Rawls's approach, developed with admirable consistency and skill, does involve a formulaic and drastic simplification of a huge and multi-faceted task – that of combining the operation of the principles of justice with the actual behavior of people – which is central to practical reasoning about social justice.<sup>143</sup>

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<sup>142</sup> Ibid., 69.

<sup>143</sup> Ibid.

## CHAPTER 4

### AMARTYA SEN'S *THE IDEA OF JUSTICE* AND CAPABILITY APPROACH

Behind the demand for equality and the idea of justice lies the idea that some inequalities and related injustices can be eliminated. Amartya Sen's theory of justice differs from contemporary theories in some main points. First, the capability approach does not theoretically aim to achieve a perfect utopian fair society, instead, it aims to reduce injustices. Although there are some motivational similarities between seeking a way to sustain justice and establishing a perfectly fair society, it is "analytically" separated.<sup>144</sup> Second, there are many conflicting ideas about justice, and these ideas must be examined deeply without agreeing on them, remembering that every idea is right according to itself. There will be many ideas while scrutinizing conflicting claims, but this is the expected result of reasoning. Third, while the general inclination is blaming the institutions as the main actors in the presence of injustices, Sen turns his attention to human behaviors.<sup>145</sup> John Rawls is an eminent representative of this inclination. In his "Justice as Fairness," he explains the characteristics that institutions need to have to achieve justice, regardless of the importance of other agents, as if the only cause of injustice is the institutions that do not work well. There is always a supposition that the individuals' behaviors are entirely aligned with the institutions. Sen's pursuit of justice depends mostly on people's lives; unlike Rawls, institutions do not occupy the most important place in his theory of justice.<sup>146</sup>

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<sup>144</sup> Ibid., ix.

<sup>145</sup> Ibid., x.

<sup>146</sup> Ibid., xi.

In the Enlightenment period, there were two main approaches to the theory of justice. One group held the idea of a ‘social contract’ that paid all their attention to the role of institutions. This group focused on determining the conditions of a social arrangement and how to construct just institutions and make regulations. Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and Immanuel Kant are the prominent representatives of the contractarian approach.<sup>147</sup> This approach still has impacts on contemporary political philosophy. The ideas of John Rawls presented in the book *A Theory of Justice* also is an example of this approach.<sup>148</sup> However, some Enlightenment philosophers - such as John Stuart Mill, Karl Marx, and Jeremy Bentham - also focus on social realizations such as the behavior of individuals, their interactions between people, compare different types of life as well as institutions, and are interested in eliminating the apparent injustice they see in the world.<sup>149</sup> Sen indicates that his theory of justice is closer to the second alternative approach: the realization-focused comparison approach.<sup>150</sup>

#### **4.1. The Capability Approach**

In his Tanner Lecture at Stanford University in May 1979, which was later published as “Equality of What?” Sen introduced the capability approach while scrutinizing the Rawlsian concepts “primary goods” and “utility” in terms of equality.<sup>151</sup> Although Rawls underlines the importance of freedom rather than resources, he focuses entirely on primary goods in his “principles of justice”

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<sup>147</sup> Ibid., 6.

<sup>148</sup> Ibid., 7.

<sup>149</sup> Ibid.

<sup>150</sup> Ibid.,9.

<sup>151</sup> Ibid., 66.

when considering distribution issues.<sup>152</sup> In his “Equality of What?” Sen argues that primary goods constitute “...an element of “fetishism” in the Rawlsian framework. Rawls takes primary goods as the embodiment of advantage, rather than taking advantage to be a relationship between persons and goods.”<sup>153</sup>

This kind of fetishism cannot be observed in other views like welfarism or utilitarianism as income and wealth are valuable as they aim to enhance the utility of individuals. Thus, they are not important in themselves separately, but they are essential in their potential to contribute the total amount of utility.<sup>154</sup> Rawlsian approach concerns the primary goods as “rights, liberties, welfare, income,” and not the use of these goods or how individuals benefit from them. The utilitarian view deals with the use of these goods, but not their effects on human capabilities, instead it focuses on the “mental reaction” given to the use of these goods.<sup>155</sup> Sen asserts that both the utilitarian view and Rawlsian primary goods approaches cannot even fully identify the basic needs of a disabled person:

If it is argued that resources should be devoted to remove or substantially reduce the handicap of the cripple despite there being no marginal utility argument (because it is expensive), despite there being no total utility argument (because he is so contented), and despite there being no primary goods deprivation (because he has the goods that others have), the case must rest on something else.<sup>156</sup>

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<sup>152</sup> Ibid. 231.

<sup>153</sup> Amartya Sen, ‘Equality of What?’ in *Tanner Lectures in Human Values*, vol. I, ed. S. McMurrin, (1979): 216

<sup>154</sup> Ibid.

<sup>155</sup> Ibid., 218.

<sup>156</sup> Ibid.

The missing point is to assess needs in terms of “basic capabilities,” which Sen describes as a person’s “being able to do certain basic things.”<sup>157</sup> The capability approach on a broader perspective concerns what these goods do to the individuals and that the demand for equality includes the needs and interests implicitly. Sen calls this type of equality as “basic capability equality.”<sup>158</sup> Sen summarizes the capability approach as a “natural extension of Rawls’s concern with primary goods shifting attention from goods to what goods do to human beings.”<sup>159</sup> In his later writings, Sen uses the “capability approach ” to understand and explain other issues like poverty, liberty, and well-being. The concept of capability is employed by him to “represent the alternative combinations of things a person is able to do or be-the various ‘functionings’ he or she can achieve.”<sup>160</sup> “Functionings represent parts of the state of a person-in particular the various things that he or she manages to do or be in leading a life.”<sup>161</sup> The capability approach focuses on the ability of a person to accomplish the things that she values in her life.<sup>162</sup> Sen points out that the capability approach uses relevant information to evaluate the advantage of individuals but does not aim to show how that information should be used, as this approach does not attempt to “design” a different type of society but instead focuses on understanding whether people are advantageous in terms of opportunities.<sup>163</sup>

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<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid., 219.

<sup>160</sup> Amartya Sen, “Capability and Well-being,” in *The Quality of life* ed. M.Nussbaum and A. Sen, (Oxford: Oxford University Press, 1993), 31.

<sup>161</sup> Ibid.

<sup>162</sup> Ibid.

<sup>163</sup> Sen, *The Idea of Justice*, 232.

The capability approach does not attempt to make social policies or propose different formulas or recipes to remove social inequalities. However, it does give attention to the inequality of capabilities: "...the use of the capability approach for evaluation does not demand that we sign up to social policies aimed entirely at equating everyone's capabilities, no matter what the other consequences of such policies might be."<sup>164</sup>

Furthermore, while evaluating the "aggregate progress of a society," the capability approach gives significant importance to the extension of all human capabilities.<sup>165</sup> However, it does not suggest solutions to the contradictions between "aggregative" and "distributive" concerns.<sup>166</sup> However, it should be underlined that the information obtained through the capability approach can be used by institutions and organizations in policy making because the focus of the approach can be critical: this is the main contribution of the capability approach to our lives.<sup>167</sup>

#### **4.2. Capability Approach, Functionings, and Diversity of Values**

Sen points that the most crucial concept in the capability approach is "functionings," and he explains this term as "functionings represent parts of the state of a person-in particular the various things that he or she manages to do or be in leading a life."<sup>168</sup> And the capability of an individual can be defined as "the alternative combinations of functionings the person can achieve, and from which

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<sup>164</sup> Ibid., 232.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid. 233.

<sup>167</sup> Ibid.

<sup>168</sup> Sen, "Capability and Well-being," 31.

he or she can choose one collection.”<sup>169</sup> There are many different human functionings as there are a wide variety of different types of values depending on different lifestyles, preferences, and interests; it is because of this diversity, the capability approach deals with different aspects of lives. Valued human functionings can be related to basic functionings like adequate nutrition, accommodation, career goals such as having a well-paid job or being respected in a community, etc. The capability approach deals with the “ability to achieve various combinations of functionings that we can compare and judge against each other in terms of what we have reason to value.”<sup>170</sup>

While assessing some social issues, for example, poverty in developing countries, there will be a few valuable functionings to be taken into account in terms of capabilities. However, the number of critical functionings can be numerous and varied, quite different in some other areas, such as general problems of distribution or some other economic issues. It is an important step in the capability approach choosing from different functionings the convenient functionings for social analysis. There is a need to choose from a list of functionings -some of which may be important others can be redundant- that enables the assessment of the concerning social or economic analysis.<sup>171</sup> In this sense, it is important to identify the objects of value and, after this, understanding how they are valuable; Sen calls this stage “evaluative space.” For example, in the utilitarian approach, the evaluative space includes personal utilities such as pleasures, happiness, or desires.<sup>172</sup> In the capability approach, evaluative space consists of functionings and abilities to function. This is a broader approach than the utilitarian view, as it takes into account many other

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<sup>169</sup> Ibid.

<sup>170</sup> Sen, *The Idea of Justice*, 233.

<sup>171</sup> Sen, “Capability and Well-being,” 31.

<sup>172</sup> Ibid., 32.

values like freedom, such as the means of life and means of freedom that are excluded from the utilitarian evaluative space.<sup>173</sup>

### **4.3. The Capability approach and Rawlsian Primary Goods**

Many theories, especially in economics, focus on a particular kind of means of life, not life itself. Similarly, many analyses are based on income or wealth when assessing human success.<sup>174</sup> Rawlsian “all-purpose primary goods” constitute a good example of a “means-oriented evaluative approach”<sup>175</sup> as it plays a central role in distribution equity in Rawls’ principles of justice. Sen thinks this is a mistake because these goods are just a means to reach other valuable things such as freedom. The capability approach departs from these kinds of theories as it focuses on human life, and it shifts this focus from means to opportunities to achieve valued goals and the fundamental freedom to reach the ends of life one wants to live.<sup>176</sup>

The capability perspective is substantially different and broader from other approaches in evaluating human lives. For example, a person who has an ample fortune cannot be considered advantaged based solely on her income, such that the same person may have a severe illness or be disabled and have severe difficulties in converting her means of living, including her wealth, into a good life. The capability approach evaluates one’s life as a whole and focuses on what

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<sup>173</sup> Ibid., 33.

<sup>174</sup> Sen, *The Idea of Justice*, 231.

<sup>175</sup> Ibid., 233.

<sup>176</sup> Ibid.

one values and the ability to achieve one's goals rather than focusing on one's fortune.<sup>177</sup>

Rawls acknowledges the special needs of persons with disabilities and the need to make some special arrangements for them, but he refers to this concern in the legislative stage, not at the constitutional stage of society or not while choosing the principles of justice.<sup>178</sup> Rawls recognizes that there are some “conversion opportunity differences” between people. Some people cannot convert primary goods into functionings due to personal differences or the effects of some kinds of social and physical environments.<sup>179</sup> Sen holds that these widely observed matters are being evaluated in Rawls' justice as fairness after the basic structure of the society being established by the principles of justice; hence they are not being considered while choosing principles of justice. Second, the “special needs” that are offered are not aiming to prevent conversion opportunity differences among people, and rather they aim to ease the handicaps of the disabled.<sup>180</sup>

Another aim of the capability approach is to focus on injustices that severely affect human life and try to find solutions to these problems, not to conceive a totally just society with perfect institutions that operate perfectly fair. In this sense, it does not handle the problem of capabilities and conversion differences as a secondary matter.<sup>181</sup> Elizabeth Anderson argues with strong arguments that the capability approach is more effective than the resource approach because of the greater emphasis on “ends,” not “means,” which leads to a better

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<sup>177</sup> Ibid., 234

<sup>178</sup> Rawls, “Social Unity and Primary Goods,” 168.

<sup>179</sup> Sen, *The Idea of Justice*, 260.

<sup>180</sup> Ibid., 261.

<sup>181</sup> Ibid., 262.

understanding of the discrimination and deprivation of persons with disabilities and guides fair regulation of education and health care.<sup>182</sup>

#### **4.4. Capability Approach and Freedom**

Each theory of justice has a certain focus for considering a society or a practice as just or unjust. For example, utilitarianism focuses on the happiness or pleasure of the individual for evaluating the advantages of people and uses this criterion when comparing people with each other. Most economic approaches compare people according to their wealth, property, and income; the more income one has, the more advantageous he or she is. The first one is an example of a “utility-based approach,” the second is a “resource-based approach,” while the capability approach is a “freedom-based approach” that evaluates individual advantage differently from the traditional utilitarianism or resource-based approaches.<sup>183</sup> Sen puts this as follows:

individual advantage is judged in the capability approach by a person’s capability to do things he or she has reason to value. A person’s advantage in terms of opportunities is judged to be lower than that of another if she has less capability – less real opportunity – to achieve those things that she has reason to value.<sup>184</sup>

According to Sen, there are many things, such as personal differences, social factors that affect a person’s capability. Freedom is broader than a person’s capabilities, yet “human capabilities constitute an important part of individual freedom.”<sup>185</sup> There are many different approaches to freedom, and it is common to evaluate the freedom of a person as a ‘range of choice’ list from which a

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<sup>182</sup> Ibid., 263.

<sup>183</sup> Ibid., 231.

<sup>184</sup> Ibid.

<sup>185</sup> Sen, “Capability and Well-being,” 33

person can choose independently from her own personal values or preferences. It cannot be decided whether the selection range is good or not without understanding the nature of the elements that make up this range.<sup>186</sup>

#### **4.4.1 Opportunity and Process Aspects of Freedom**

Sen draws a distinction between two aspects of opportunity that freedom gives us. Freedom gives us more opportunities to follow our objectives. The “opportunity aspect of freedom” deals only with our achievements in pursuing our goals, but the “process aspect of freedom” deals with the process of our choices and the conditions under which choices are made.<sup>187</sup> The capability approach focuses on an individual’s freedom to do, want, or choose something. This concerns “the opportunity aspect of freedom, seen in terms of comprehensive opportunities, and not just focusing on what happens at ‘culmination.’”<sup>188</sup> To highlight the distinction between the two aspects of freedom, Sen gives an example: a man named Kim decides to stay home without doing anything. In scenario A, he stays at home as he decides. In scenario B, a group of gangsters drags Kim to stay in a big hole. In the alternate C scenario, the gangs threatening to harm Kim if he does not stay home on Sunday and keep him at home. It is evident that in scenario B, both the opportunity aspect and the process aspect of Kim’s freedom are violated. However, in scenario C, the process aspect of Kim’s freedom is violated as he has no opportunity but to stay home unless he leaves the house, taking the risk of being punished badly by gangs. Choosing to stay at home in scenario A and C is not the same. In scenario

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<sup>186</sup> Ibid., 34

<sup>187</sup> Sen, *The Idea of Justice*, 228.

<sup>188</sup> Ibid., 232.

A, Kim may stay at home till evening, and he can change his mind at 19 o'clock and decide to have dinner in a restaurant.<sup>189</sup>

However, in scenario C, his two kinds of freedoms with limited opportunities cannot be considered the same in terms of the process aspect of freedom. The answer may differ in terms of the opportunity aspect of freedom because the final action is the same in both scenarios.<sup>190</sup> Sen remarks that to make a complete description of the realizations, final events should be evaluated together with the process that he calls 'comprehensive outcome,' which is different from the 'culmination outcome' that does not take into account the process.<sup>191</sup> For example, there is a big difference in terms of justice between people starving to death due to uncontrollable circumstances and a group of people starving to death due to another group's deliberate actions.<sup>192</sup> The opportunity aspect of freedom neglects Kim's limited freedom in scenario C. As the broader view of freedom, the process aspect of freedom takes note of the differences in scenarios A and C in terms of freedom. Sen also takes this idea as the central point of view when evaluating people's capabilities<sup>193</sup>:

We must examine in that context whether a person's capability to lead the kind of life she values should be assessed only by the culmination alternative that she would actually end up with, or by using a broader approach that takes note of the process of choice involved, in particular the other alternatives that she could also choose, within her actual ability to do so.<sup>194</sup>

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<sup>189</sup> Ibid., 229.

<sup>190</sup> Ibid.

<sup>191</sup> Ibid., 230.

<sup>192</sup> Ibid., 23.

<sup>193</sup> Ibid., 230

<sup>194</sup> Ibid.

Sen acknowledges that an achievement-based capability approach can be critical in some cases, such as gender equality discussions. The identification of achievement can be vital if specific people's abilities are denied, or the existence of these abilities is denied.<sup>195</sup>

Sen defines "capability derivatively on functioning"<sup>196</sup>: functioning chosen from the applicable combinations that a person can choose. The capability approach is more general and informational than an approach focusing only on achievements. In case of necessity, it allows assessment based on achievements alone while allowing considering opportunities and choices.<sup>197</sup> Considering the two people the same in terms of the 'achieved functioning' may hide many differences in the situation of those who achieve this result. For example, a person who fasts in accordance with his religious beliefs can be deprived of food, like another person who copes with famine and cannot find food, but there are enormous differences in terms of capability and freedom. According to Sen, the capability approach can reveal the distinction of "doing something and being free to do that thing" and compare the differences between freely choosing or doing something and being forced to do or choose certain things without another alternative.<sup>198</sup>

#### **4.4.2. Well-Being Freedom and Agency Freedom**

As discussed above, there is a distinction between achievement and freedom, similarly, there is a distinction between "well-being" and "agency." Trying to understand a person's well-being requires a different kind of an evaluative

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<sup>195</sup> Ibid., 236.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid., 237

exercise than attempting to evaluate a person's overall aims. While the former deals only with the well-being of a person, the latter has a different nature, as a person's overall goals can sometimes differ from pursuing only well-being.<sup>199</sup> On the other hand, assessing both in terms of achievement is also a different issue, as a person can have more freedom yet can achieve less and therefore cannot be considered more advantaged. In this sense, human advantage can be judged according to the distinction between attempting to increase a person's "well-being" and the aim of pursuing "agency" goals and can also be judged according to the distinction between "achievement" and "freedom to achieve."<sup>200</sup> These distinctions provide four different criteria for evaluating a person's advantages or disadvantages: "well-being achievement," "agency achievement," "well-being freedom," and "agency freedom." Each of these different criteria needs a different kind of assessment, correspondingly the content of the capability approach differs.<sup>201</sup>

Agency includes all life goals of a person and also the well-being aim of a person, but a person's agency objectives or preferences may be different from her well-being objectives, and thus they cannot be considered as congruent concepts.<sup>202</sup> A person's capability can be judged by the freedom to promote her well-being according to the well-being aspect of freedom or by her freedom to pursue her valued life goals according to the agency aspect of freedom. Some people may find pursuing some goals more valuable than enhancing their own well-being.<sup>203</sup> In some cases, the agency freedom of a person may even go

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<sup>199</sup> Sen, "Capability and Well-being," 36.

<sup>200</sup> Ibid., 37.

<sup>201</sup> Ibid., 49.

<sup>202</sup> Sen, *The Idea of Justice*, 287.

<sup>203</sup> Ibid., 288.

against her well-being freedom.<sup>204</sup> It is not hard to understand, for example, Mohandas Gandhi's or Nelson Mandela's motivations and priorities, which are beyond the narrow limits of their well-being.<sup>205</sup>

Sen thinks that the well-being aspect of a person and the agency aspect of a person also have distinct roles in terms of moral considerations as they have different points of view or preferences for deciding whether a person is advantaged or disadvantaged.<sup>206</sup> To illuminate this idea, Sen gives an example: on a spring morning, a person is sitting in a bank by the river enjoying her sandwich, and at the same time, she notices that someone is drowning in the river at a point that she cannot reach to save him. In a counterfactual situation, the man is drowning right in front of the woman who is eating her sandwich so that she can easily save the man. In this second situation, the woman's agency freedom has increased significantly, assuming that this woman really values saving a person's life, throws her sandwich, jumps to the cold river, and successfully saves the man's life. Considering the well-being of the woman, it can be argued that despite her pleasure of saving a person's life, her own well-being has diminished because she stopped eating her sandwich and risked her life by jumping into the cold river.<sup>207</sup> As Sen underlines, "an expansion of agency freedom can go with a reduction in actual well-being, through your own choice, even though you are not, by any means, indifferent to your own well-being."<sup>208</sup> It can be argued that a decline in the well-being freedom of a person also causes a decline in the agency freedom of a person since a person's freedom

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<sup>204</sup> Ibid., 289.

<sup>205</sup> Ibid., 290.

<sup>206</sup> Amartya Sen, "Well-being, Agency and Freedom: The Dewey Lectures 1984", *Journal of Philosophy*, 82 (1985): 206.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid., 207.

of agency also includes the pursuit of the freedom of well-being. However, in this case, this woman prefers to save the man's life instead of enjoying her sandwich, and because of this reason, while her agency freedom increases, her well-being freedom decreases. Since the opportunities preferred according to a person's agency freedom can differ from the opportunities preferred according to the well-being freedom of a person, both views may give different weight to opportunities related to different situations.<sup>209</sup>

#### **4.5. Sen's Discussions on Some Complications Regarding the Capability Approach**

There is a biased criticism of the capabilities approach, which says that it is difficult to use it due to its complex and "heterogeneous" characteristics when one is faced with a valuation problem. There is an old tradition in economics and political philosophy to stay away from "heterogeneous" means and choose a "homogeneous feature"<sup>210</sup> as a single good, such as income or utility for valuation. According to Sen, many serious problems of social reasoning involve different values that cannot be easily reduced into a single "commensurable" magnitude. While the utility is an example of such use in philosophy, gross national product's widespread use is an example of this trend in economics.<sup>211</sup> Capabilities are "non-commensurable"<sup>212</sup> as they are diverse. These diversities cannot be reduced into a single commensurable unit, but this does not mean that it is difficult to compare different sets of capabilities. In making daily decisions like what to do on holidays or for whom to vote, or what to consume, there is wide use of evaluating "non-commensurable" alternatives, and there is no

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<sup>209</sup> Ibid.

<sup>210</sup> Sen, *The Idea of Justice*, 239.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid., 240.

difficulty in deciding whether to go on vacation or undergo surgery. Often decisions are not made by checking a one-dimensional measurable scale in which different dimensions of a value reduce into one “good thing,” and it is not impossible to make reasonable choices from a range of various alternatives.<sup>213</sup> A reasonable assessment requires an assessment of the relative importance of the various alternatives, not “counting” them.<sup>214</sup> This should also be used in public reasoning. Public discussion of certain functionings and their combinations can lead to a better understanding of different social issues, and the results obtained can be highly productive in content.

Sen rejects the idea that the capability approach can be successful only if it gives a fixed list of capabilities based on determined weights on different functionings. Sen thinks that taking some kinds of weights as a base for evaluations may be influenced by community members’ common ideas, which may prevent flexible evaluation of social problems.<sup>215</sup> Hence, it is unnecessary to have a fixed list of skills to reach a consensus on some issues, such as that slavery restricts the freedom of the slave or that unfair detention is an unjust practice.<sup>216</sup>

Sen refutes the further criticism that capabilities are only attributable to individuals, not to groups. In this sense, the capability approach can be considered as an individualistic approach. Sen argues that it is quite possible to consider and apply capabilities to the groups. It is common to mention the success of the Australian cricket team, the military strength of the American army, and there is no reason to exclude group abilities from the debates about justices or injustices in society. There is a distinction between the school of

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<sup>213</sup> Ibid.

<sup>214</sup> Ibid., 241.

<sup>215</sup> Ibid., 242.

<sup>216</sup> Ibid., 243.

thought that takes the individualistic thoughts, choices, and functionings detached from society and the capability approach that accepts society's influences on the values, decisions, and actions of individuals. According to the capability approach, there is a reciprocal interaction between individuals and society. Individuals affect the society they live in by their decisions, choices, and actions, while society also profoundly affects their decisions, choices, and actions.<sup>217</sup> Sen also points out that thinking of a person only as a member of a particular group may lead to stigmatization and may prevent that person's freedom to define herself according to her own will. There is increasing use of categorizing people in terms of particular "dominant identities"<sup>218</sup> such as American, Muslim, Japanese, etc. Sen notes that the inclination of defining individuals based on a particular identity leads to a priori external obligation of duties, behaviors, role models and restricts the freedom of a person who has the liberty to choose to live according to his/her loyalties to other social groups he/she belongs. Sen explains this as follows:

Individual human beings with their various plural identities, multiple affiliations and diverse associations are quintessentially social creatures with different types of societal interactions. Proposals to see a person merely as a member of one social group tend to be based on an inadequate understanding of the breadth and complexity of any society in the world.<sup>219</sup>

Sen points out that there is a relevance of capabilities and freedom with the demands of sustainable development. There is an oversimplified understanding of the environment that defines it just as the "state of nature," including measures like the number of species, the extent of mountains, etc.<sup>220</sup> The value of nature stems from what it offers to people and its impact on human lives, and to

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<sup>217</sup> Ibid., 244.

<sup>218</sup> Ibid., 247.

<sup>219</sup> Ibid.

<sup>220</sup> Ibid., 248.

stop environmental destruction is not passive preservation or leaving nature as it is. There must be an intentional, active role of human constructivism. For example, improving and increasing the accessibility of education can enhance the environmental consciousness of people. The development has fundamental importance also about preserving nature. For example, purification of water cannot be counted as conserving pre-existing natural conditions or eliminating viruses that cause epidemic diseases; these are examples of human interventions.<sup>221</sup> While understanding the demands of sustainable development, it is useful to check the definitions of it: The Brundtland Report defines sustainable development as “meeting the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>222</sup> Robert Solow later expands this concept of sustainability: “as the requirement that the next generation must be left with whatever it takes to achieve a standard of living at least as good as our own and to look after their next generation similarly.”<sup>223</sup>

In many cases, people do not act only according to their self-concerned motivations, like opposing the extinction of a particular species because the presence or absence of an animal does not directly affect people’s daily living standards. What Sen underlines here is that human beings are not only “patients” who have needs and are satisfied by only fulfillment of these needs, but they are also “agents” who have the freedom to choose and value far beyond their interests. Thus the definition of sustainable development must be made, including this idea.<sup>224</sup>

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<sup>221</sup> Ibid., 249.

<sup>222</sup> Ibid., 250.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid., 252.

#### 4.6. Capabilities and Resources

Sen quotes Aristotle's *Nicomachean Ethics*, in *The Idea of Justice*: "...wealth is evidently not the [highest] good we are seeking; for it is merely useful and for the sake of something else."<sup>225</sup> Wealth is not an end in itself; it is a means of life, and it is not an indicator of a good life by itself. A person who has a severe disability cannot be regarded as more advantaged due to having a huge income compared to her poor but physically healthy neighbor. In this sense, to decide whether a person is more advantaged than another person, there is a need to make the comparison through their capabilities, and this requires a broader view than comparing their incomes or wealth. The capability approach based on substantive freedom gives a central role to the human being's "actual ability" to perform the things she values. It focuses on actual human lives, not on the means of life, such as income, wealth, or other possessions. This approach contributes to the broadness of evaluations in social studies<sup>226</sup>. The means-oriented approach to justice, as discussed above, is exemplified in Rawls' notion of "primary goods" and in his "Difference Principle." Primary goods are at the center of distributional equity in Rawls's theory. These goods are not valuable in themselves, but they are primary indicators of the distribution equity, as they are the means that every rational individual desires to have for achieving her life goals. At this point, Sen shares Aristotle's views that means of subsistence are not themselves ends of a good life. The capability approach makes this observation its foundation.<sup>227</sup>

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<sup>225</sup> Ibid., 253.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid., 254.

#### 4.7. The Capability Approach and Poverty

The identification of poverty depending on income is widespread, yet there are serious and substantive deficiencies of this view compared to the capability approach. Individuals may have the same amount of income, but their ability to convert this income into good living standards or into a kind of freedom that allows pursuing one's valuable personal goals depends on many other things that stem from characteristic differences of individuals and environmental or cultural factors.<sup>228</sup> Sen categorizes different kinds of contingencies that affect the convertibility of income into valuable things or lifestyles into four main groups:

1. "Personal heterogeneities"<sup>229</sup>: There is a huge range of human differences, including gender, age, having a severe illness or disability, proneness to illness, physical abilities, and these differences make diversity of needs; for example, a disabled person can need more income to live in the same standards of another healthy person.

2. "Diversities in the physical environment"<sup>230</sup>: Convertibility of income into the kinds of lives in which people can live depends on diversities in the physical environment, with both unchangeable or changeable structures, like climate, flora or floods, earthquakes, etc. An individual cannot manage to change even the changeable features of the environment because of the need for communal cooperation.

3. "Variations in social climate"<sup>231</sup>: The public education and health system or the crime rates in society can affect the conversion of income to functioning and quality of life.

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<sup>228</sup> Ibid.

<sup>229</sup> Ibid., 255

<sup>230</sup> Ibid.

<sup>231</sup> Ibid.

4. “Differences in relational perspectives”.<sup>232</sup> Common patterns of society can affect the amount of income that a person needs to live her desired life. With the same income, it is sometimes difficult to do even the same elementary things in two different societies; being recognized by the community can demand more amount of income in certain societies. Much more income can be needed to live a standard life in a country than another; income convertibility into a desired qualified life may differ among countries.<sup>233</sup> Depending on this deprivation relativity of income, Sen thinks that “deprivation in terms of incomes can yield absolute deprivation of capabilities.”<sup>234</sup> Having an income more than the world standards is not an indicator of a person’s conditions. A person living in a rich country would need more income to sustain her life.<sup>235</sup>

Certain difficulties such as old age or disabilities make it hard both to earn income and, at the same time, convert this income into functionings that a person desires to achieve; so capability poverty is much more intense than what poverty statistics based on solely income show. Moreover, the income approach to poverty hides the unjust distribution of resources and opportunities within the family due to gender discrimination which is commonly observed in Asia and North Africa. This can be evaluated by taking into consideration the fact that “capability deprivation reflected, for example, in greater mortality, morbidity, undernourishment or medical neglect, [of girls]” as Sen explains, but not by comparing income differences of families.<sup>236</sup>

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<sup>232</sup> Ibid.

<sup>233</sup> This can be observed even in the different regions of a country. For example, referring to Turkey, it is quite expensive to live in Istanbul and a person needs more income than any other cities since the substance of livings are more expensive than any other city.

<sup>234</sup> Sen, *The Idea of Justice*, 256.

<sup>235</sup> Ibid.

<sup>236</sup> Ibid., 257.

Sen also points out that although gender bias is not considered a burning concern of inequality and poverty in Europe or North America, there is still extensive implicit gender discrimination.<sup>237</sup> According to UNDP's Human Development Report 1995 (New York: United Nations, 1995), Italy ranked among the countries having the highest ratios in unrecognition of women labor. There is still gender bias in the wealthiest countries, especially regarding the opportunities in accessing higher education or in the prospects of being employed in the highest positions of firms.<sup>238</sup>

#### **4.8. The Capability Approach and Disability**

While there is a significant connection between disability and deprivation, it is among the most neglected matters of inequality all over the world. According to World Bank records, more than 600 million people live with a severe mental or physical disability, and 400 million of them live in developing countries. Disabled people are mostly the poorest people in the world in terms of income. In addition to this, they need more money than healthy people to adapt their lives to everyday life. They have to handle two kinds of handicaps: "earning handicap" that stems from the difficulties of working and earning, and "the conversion handicap," which is due to difficulties of converting the earned income to functionings and into a good living.<sup>239</sup>

Wiebke Kuklys, who researched poverty in the United Kingdom in her thesis, explains the importance of the "conversion handicap" caused by the disability with empirical results,

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<sup>237</sup>In Turkey, the percentage of women participation in formal and non-formal education is lower than the rate of participation of men. Education opportunities are unequal for women and men and the number of educated men is more than women, according to the data of Turkish Statistical Institute. See: <https://tuikweb.tuik.gov.tr/PreHaberBultenleri.do?id=33732> and [https://tuikweb.tuik.gov.tr/PreTablo.do?alt\\_id=1068](https://tuikweb.tuik.gov.tr/PreTablo.do?alt_id=1068)

<sup>238</sup> Sen, *The Idea of Justice*, 257.

<sup>239</sup> *Ibid.*, 258.

17.9 per cent of individuals lived in families with income below the poverty line. If attention is shifted to individuals in families with a disabled member, the percentage of such individuals living below the poverty line is 23.1. This gap of about 5 percentage point largely reflects the income handicap associated with disability and the care of the disabled. If the conversion handicap is now introduced, and note is taken of the need for more income to ameliorate the disadvantages of disability, the proportion of individuals in families with disabled members jumps up to 47.4 per cent, a gap of nearly 20 percentage points over the share of individuals below the poverty line (17.9 per cent) for the population as a whole. To look at the comparative picture in another way, of the 20 extra percentage points for poverty disadvantage for individuals living in families with a disabled member, about a quarter can be attributed to income handicap and three-quarters to conversion handicap (the central issue that distinguishes the capability perspective from the perspective of incomes and resources).<sup>240</sup>

Identifying the situation and the needs of the disabled is crucial not only because of the prevalence of disability worldwide but also because it is possible to significantly reduce the problems of disabled people by making some essential changes and regulations such as “societal help,” “imaginative intervention” or making “policies.”<sup>241</sup> Furthermore, Sen points out that most of the disabilities are not congenital, and therefore their occurrence can be prevented by taking some precautions. For instance, “maternal malnutrition” and childhood malnutrition can predispose children to diseases, and there is a type of blindness caused by infection and the lack of clean water. In addition to many injuries caused by traffic or workplace accidents, many people and children are severely injured, disabled, and killed by mine explosions in mined areas around the world every year. While many things can be achieved when seriously considered what can be done to both prevent and alleviate disability through “human intervention,”<sup>242</sup> it is very thought-provoking that many societies remain silent on this issue. Sen thinks that this silence stems from “conceptual conservatism,” especially, “the concentration on income distribution as the principal guide to distributional fairness prevents an understanding of the predicament of disability and its moral

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<sup>240</sup> Ibid., 258-259.

<sup>241</sup> Ibid., 259.

<sup>242</sup> Ibid.

and political implications for social analysis.”<sup>243</sup> Such a perspective hinders understanding and realization of the difficulties faced by 600 million disabled people whose problems cannot be reduced solely to income.<sup>244</sup>

#### **4.9. The Capability approach and Equality**

Equality was one of the fundamental revolutionary demands in Europe and America in the 18th century, and this demand did not lose its significance in the post-Enlightenment period. According to Sen, every normative social theory of justice demands equality of something. Theories of justice can be quite different and even contradict each other in terms of demanding or “focusing on equal liberty, equal income, equal treatment of everyone’s rights or utilities” however, the common point of all these theories is that they demand equality of “something.”<sup>245</sup> Even liberals or egalitarian political philosophers who do not put equality at the center of their theory demand a basic form of equality: “equality of libertarian rights”<sup>246</sup> or “equal legal and political treatment of people.”<sup>247</sup> Sen indicates that even in the utilitarian theories, a kind of demand for equality can be found: “equal treatment of human beings in attaching equal importance to the gains and losses of utilities by everyone, without exception.”<sup>248</sup> The essence of “equality of what” may be completely different, but the demand for equality is

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<sup>243</sup> Ibid., 260

<sup>244</sup> Ibid.

<sup>245</sup> Ibid., 291.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid., 292.

<sup>248</sup> Ibid.

not accidental because it reinforces the “general acceptability” of social justice theory because it denies discrimination and demands some form of equality.<sup>249</sup>

While most of the prominent theories of justice tend to accept people as equals on a basic level, their answers to the question of “equality of what?” are quite different. Although there are many notable differences among egalitarians, they all share some fundamental common views to some extent. In his essay “Equality as a Moral Ideal,” Harry Frankfurt argues against those who insist on economic egalitarianism and see such a demand as a moral ideal.<sup>250</sup> Frankfurt discusses a specific type of economic egalitarianism that supposes that everyone wants more money in every condition regardless of their character and condition. Frankfurt thinks that having the same amount of assets does in itself not contain moral values. Instead, the idea of “each should have enough” has considerable moral values.<sup>251</sup> Being obsessed with economic egalitarianism distracts people from understanding or discovering their own interests and needs, and he adds that this kind of view may even cause self-alienation:

To the extent that people are preoccupied with equality for its own sake, their readiness to be satisfied with any particular level of income or wealth is guided not by their own interests and needs but just by the magnitude of the economic benefits that are at the disposal of others. In this way egalitarianism distracts people from measuring the requirements to which their individual natures and their personal circumstances give rise. It encourages them instead to insist upon a level of economic support that is determined by a calculation in which the particular features of their own lives are irrelevant.<sup>252</sup>

Moreover, Frankfurt argues that a person may well be satisfied with what she has and does not want to have more. It is a disputable assumption that every rational

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<sup>249</sup> Ibid., 293.

<sup>250</sup> Ibid., 294.

<sup>251</sup> Harry Frankfurt, ‘Equality as a Moral Ideal’, in *Against Equality: Readings on Economic and Social Policy*, ed. William Letwin (London: Macmillan, 1983), 134.

<sup>252</sup> Frankfurt, ‘Equality as a Moral Ideal,’ 135-136

person desires to have more wealth.<sup>253</sup> According to Sen, such discussions focus on the question of “Why equality?” rather than “Equality of what?” that solely focuses on distribution issues. Many theories approach the concept of equality in a similar way and discuss it in similar areas such as income, public services, welfare, and emphasize the egalitarianism of income, services, welfare while considering the conflicting demands of equality.<sup>254</sup>

On the other hand, Sen questions whether it is right to demand equality of capability, in other words, whether the capability approach resolves all contradictory aspects of equality, and his answer to this question is a clear “no.” In Sen’s own words, capability is “only one aspect of freedom, related to substantive opportunities, and it cannot pay adequate attention to fairness and equity involved in procedures that have relevance to the idea of justice.”<sup>255</sup> He adds that the capability approach focuses on the “opportunity aspect of freedom,” and it cannot meet the “process aspect of freedom” efficiently. In some cases, capabilities cannot wholly reveal fairness or equity of the process involved, and in such cases, it is not appropriate to insist on or even demand equality of capabilities. For example, it is known that when similar care is given to all age groups, women tend to live longer than men, and when equality is desired in terms of capability to live longer in this space, giving more medical care to men than women to compensate for the masculine inability to live longer than women could be considered. Nevertheless, giving men more medical care in this way is a violation of the requirement of basic equity in terms of being treated similarly in life and death matters.<sup>256</sup>

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<sup>253</sup> Ibid., 158.

<sup>254</sup> Sen, *The Idea of Justice*, 295.

<sup>255</sup> Ibid.

<sup>256</sup> Ibid., 296.

Based on this example, considering freedom in terms of process and demanding equality in the expected lifetime can invalidate the opportunity aspect of freedom. The capability approach gives significant importance to the individual's substantive opportunities, especially in terms of the distribution of opportunities, but this does not mean that there is no need to consider the process aspect of freedom. A theory of justice should give weight to "both the fairness of the processes involved and to the equity and efficiency of the substantive opportunities that people can enjoy."<sup>257</sup> The capability approach is critical in that it can be used by any theory of justice in making political or moral evaluations as well as effectively evaluating the advantages and disadvantages of a person. Sen explains that

even in terms of the Rawlsian characterization of distinct problems of justice, capability is a rival only to the use of primary goods in judging relative advantages in the Difference Principle, and that leaves out other issues, including the place of personal liberties and the need for fair procedures.<sup>258</sup>

The issue of "fair process and a fair deal" cannot be evaluated adequately by the capability approach, as this matter "goes beyond" evaluating the advantages or the disadvantages of people.<sup>259</sup> The problem stems from the nature of the concept of equality that it cannot be reduced to a single thing, income, or wealth, or achieved life goals, capabilities, or utility.<sup>260</sup>

Sen indicates that although considering freedom in assessing the advantages or disadvantages of people or equality is necessary and useful, in some cases, it may not be necessary to demand only equal freedom for all. For instance, in the

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<sup>257</sup> Ibid.

<sup>258</sup> Ibid., 297, (footnote.)

<sup>259</sup> Ibid.

<sup>260</sup> Ibid.

example described above, where three children discuss who will get the flute, it is important to consider that one of the children made this flute for himself.<sup>261</sup>

Based on this example, Sen thinks:

The line of reasoning that gives an important status to efforts and the rewards that should be associated with labor which also yields such normative ideas as exploitation, can suggest grounds for pausing before going single-mindedly for equality of capability. The literature on the exploitation of sweated labor and the unjust rewards received by those who do the ‘real work’ has a strong connection with this perspective.<sup>262</sup>

On the other hand, as discussed above, capability approach can be defined in more than one way and can be interpreted differently according to the difference between “well-being freedom” and “agency freedom.” In this sense, capability approach may be inadequate when making judgments about some inequalities or cannot be used to assess some types of inequality due to the difficulties in ranking different capabilities according to their relative importance. Reducing capability inequalities may be important, but it cannot be the only concern of a theory of justice with more comprehensive demands. Sen thinks that equality is not the only value that a theory of justice deals with, and that equality is not the only issue where the capability approach is useful. The capability approach deals with both aggregative and distributive features while evaluating advantages and disadvantages. For example, according to the capability approach, an institution or a policy can be good because it enhances the capabilities of all people, regardless of whether it increases capability equality or distributive benefits.<sup>263</sup>

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<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

<sup>263</sup> Ibid., 298.

## CHAPTER 5

### UNDERSTANDING SEN'S CAPABILITY APPROACH THROUGH ITS COMPARISON WITH RAWLS' JUSTICE AS FAIRNESS

In order to work toward justice in global politics, one does not necessarily need to convince others of the specific content of justice; rather, one only must establish a common ground, a shared recognition of injustice.<sup>264</sup>

Rawls' justice as fairness and Sen's capability approach are two major, inspiring and competing theories of justice in contemporary political philosophy. There are still many discussions about the similarities, differences, strengths, and weaknesses of these two theories. In this chapter, some of these ideas will be discussed in order to reveal the strengths and weaknesses of Sen's understanding of justice in the context of Sen's capability approach compared to the Rawls theory of justice.

#### 5.1. Comparing Capability Approach and Justice and Fairness

In her article "Justice as Fairness and Capability Approach," Ingrid Robeyns tries to put forth different arguments about these two theories. Sen's most eminent critique of justice as fairness concerns the primary goods approach neglecting human diversity.<sup>265</sup> Sen gives the example of a handicapped person who, compared to a healthy person, is at a disadvantage in converting primary goods into what she wants to achieve in her life or the person she wants to be in her life, but who would not get any additional resources according to Rawls'

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<sup>264</sup> Antony Lyon, "Relational Representation: An Agency-Based Approach to Global Justice," *Critical Review of International Social and Political Philosophy* 16, no:2, (Apr., 2013): 237

<sup>265</sup> Robeyns, "Justice as Fairness and The Capability Approach," 400.

difference principle.<sup>266</sup> While Rawls acknowledges the need for special care for people with disabilities, he argues that the scope of the principles of justice are for normal people and normal situations, and he describes the situation of people with disabilities as an extreme case that needs to be addressed after developing a sound and persuasive theory of justice.<sup>267</sup> However, the scope of Sen's claims is wider than a few cases, and he thinks that concern for primary goods cannot explain the differences in the ability of humans to transform primary goods into what they can be or do in their lives. Therefore, Sen insists on focusing on human capabilities to function rather than primary goods that should be considered as essential means to achieve one's goals but cannot be taken as an end. Although primary goods are important means of achieving one's own goals, many other things affect a person's ability to follow her life plan by affecting her ability to convert primary goods into what she values to do or be in her life.<sup>268</sup> In his later works, Rawls changes his view postponing the issue of persons with disabilities to the legislative stage, instead proposes to expand the scope of his theory to include those with disabilities.<sup>269</sup>

At this point, Robeyns questions whether it is possible to expand the scope of justice as fairness to include people with disabilities; this has been questioned by many other philosophers,<sup>270</sup> and accordingly, there are many different views regarding this issue. Robeyns argues that it is difficult to stay within the Rawlsian framework even if it is possible to broaden the scope of justice as fairness, including people with disabilities. According to Harry Brighthouse and Martha Nussbaum, justice for the disabled cannot be a matter of justice in this

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<sup>266</sup> Ibid., 401.

<sup>267</sup> Rawls, *Justice as Fairness: A Restatement*, 170.

<sup>268</sup> Robeyns, "Justice as Fairness and The Capability Approach," 401.

<sup>269</sup> Rawls, *Justice as Fairness: A Restatement*, 176.

<sup>270</sup> Robeyns, "Justice as Fairness and The Capability Approach," 401.

context. It can be discussed “as a matter of charity or compassion.”<sup>271</sup> Eva Kittay and Nussbaum argue that delaying the disabled issue is unacceptable because being cared for and being dependent on another person are crucial in people’s lives and profoundly affect their quality of life. Kittay and Nussbaum insist that care and dependency cannot be considered as extreme cases as they have a central role in human life, affecting many people’s lives. At some point in someone’s life, every person can face such a problem. Besides, they point that “the distribution of the burdens and benefits of being cared for, and the distribution of the burdens and benefits of caring, are as many concerns of political justice as the distribution of income, wealth, liberties and opportunities.”<sup>272</sup>

According to Robeyns, “partial accounts of justice run the risk of giving us distorted principles of justice if there are significant spill-over effects between those domains of justice that are included in the theory and those that are excluded.”<sup>273</sup> Furthermore, this exclusion is not just about the special situation of people with disabilities, and many other human varieties are ignored and excluded from the scope of justice as fairness. For instance, Rawls indicates that justice as fairness does not deal with “local justice,”<sup>274</sup> such as justice in families, as it is a “theory of political justice.” However, this understanding leaves many problems unsolved, especially those related to gender injustice. Studies show that separating justice from family deepens gender injustices. There must be a unified understanding of justice applicable to many other areas, including families and local associations. In justice as fairness, when determining principles of justice, such kind of local problems are excluded from the scope as

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<sup>271</sup> Ibid., 402.

<sup>272</sup> Ibid.

<sup>273</sup> Ibid.

<sup>274</sup> Ibid.

these issues are regarded as local justice tasks rather than tasks of political justice.<sup>275</sup>

Sen's capability approach as an alternative framework to Rawls' understanding of primary goods allows comparison of interpersonal well-being. In this sense, the capability approach is not a theory of political justice. Instead, it focuses on a person's opportunities, and this person can turn those opportunities into what she values doing or being. Moreover, the scope of beings and doings can be anything that a person desires, healthy nourishment, being healthy, engaging in social relations, and many other things. These are called functionings. Sen points out Rawls' inadequate assessment of human diversity in converting primary goods into functionings.<sup>276</sup> Sen marks three factors that affect the conversion of primary goods and other valued capabilities into personal functionings: "1. Personal conversion factors:" the factors that stem from the characteristic of a person such as physical strength, intelligence, sex, health, "2. Social conversion factors:" social norms, gender roles in society, religion, etc. and "3. Environmental conversion factors:" such as climate, disasters that occur in a region.<sup>277</sup>

While the subject of justice as fairness is the basic structure of society, the subject of the capability approach includes primary goods, among other things, explains social norms, interpersonal relations, common attitudes; thus, this approach does not limit itself to the basic structure of the society.<sup>278</sup> In Rawls' justice as fairness, families belong to the basic structure of society, and their needs are determined according to the two principles of justice. The behaviors of

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<sup>275</sup> Ibid.

<sup>276</sup> Ibid., 403.

<sup>277</sup> Ibid., 404.

<sup>278</sup> Ibid., 403.

the family members are out of the scope of justice as fairness, and the principles of justice do not regulate them. In the Rawlsian system, there is a supposition that in a well-ordered society, the members of the families automatically comply with the principles of justice. Family members are considered members of an association, not family members.<sup>279</sup> However, in real life, people may not behave as they act as members of social institutions, their behaviors within a family can cause many injustices in families. The capability approach acknowledges that family members' behaviors can affect an individual's quality of life. In the capability approach, such injustices are considered as parts of the theory of justice, not as separate issues that need to be addressed in a moral theory.<sup>280</sup>

According to the capability approach, if people who have similar capabilities do not have a problem with their cognitive abilities (if they do not have a mental disability or if they are not small children who cannot decide on their own), or in other words, if they have similar opportunities and can decide on their own to take their responsibility, then justice should concern their capabilities rather than their achieved functionings.<sup>281</sup> Sen underlines that people should have effective possibilities in their life to choose and achieve a qualified life that they value. They can choose whatever they want from their capabilities to realize their decisions, and this understanding of the capability approach makes it liberal like Rawls' theory. However, as Robeyns points out, unlike many other liberal theories, the capability approach takes into account material and intangible conditions that affect opportunities, as well as other factors that can influence people's decisions.<sup>282</sup>

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<sup>279</sup> Ibid., 404.

<sup>280</sup> Ibid.

<sup>281</sup> Ibid.

<sup>282</sup> Ibid., 405.

## **5.2. Some considerations on the distinction between “A comprehensive moral doctrine” and “a political conception of justice.”**

According to Robeyns, Rawlsians may argue that the capability approach is a comprehensive moral doctrine rather than a political conception of justice that sets aside conflicting philosophical and religious doctrines.<sup>283</sup> Rawls thinks that a concept is comprehensive when it comprises conceptions about what is valuable in human life or about personal virtues and character, and in this sense scope of comprehensive moral doctrines are different from the scope of political conceptions of justice. Philosophical and religious doctrines tend to be general and comprehensive and contain ideals to be achieved.<sup>284</sup> According to Rawls, “a doctrine is fully comprehensive when it covers all recognized values and virtues within one rather precisely articulated scheme of thought.”<sup>285</sup> On the other hand, a partially comprehensive doctrine includes some nonpolitical values and virtues in a “loosely” worded way. In this sense, even a partially comprehensive doctrine includes nonpolitical values and virtues. Political liberalism offers a political conception of justice that comprises only political matters, not the entire life.<sup>286</sup> Rawls argues that Sen’s critique of justice as fairness demands an acceptance of comprehensive moral doctrine while justice as fairness is a political conception of justice that steps aside any comprehensive moral theory.<sup>287</sup>

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<sup>283</sup> Ibid.

<sup>284</sup> John Rawls, “The Priority of Right and Ideas of the Good,” *Philosophy and Public Affairs*, 17, no.4 (1988): 252.

<sup>285</sup> Ibid., 253.

<sup>286</sup> Ibid.

<sup>287</sup> Ibid., 259.

Sen responds to Rawls' criticism in his article "Means versus Freedom" saying that his critique of "justice as fairness" was misinterpreted: "Capability reflects a person's freedom to choose between alternative lives (functioning combinations), and its value need not be derived from one particular 'comprehensive doctrine' demanding one specific way of living."<sup>288</sup> Furthermore, Sen points out that the capability approach does not focus on achievements but rather on the capabilities of a person based on their actual freedom of choice between different functionings sets and different lifestyles. What is essential and evaluated in the capability approach is the freedom to choose the different lifestyles that individuals value, not the number of resources or primary goods they have.<sup>289</sup>

According to Sen, Rawls focuses on primary goods when making interpersonal comparisons and tries to answer the question of "Equality of what?" and in this sense, he focuses on means themselves rather than what people can achieve with these. There is a clear distinction between the capability approach and primary goods understanding in terms of the freedom enjoyed. A person can have more primary goods, but she can have less capability when converting them into what she values to do or to be because of her mental or physical handicap.<sup>290</sup> Moreover, "in the wealthier countries ... many of those who are poor in terms of income and other primary goods also have characteristics-age, disability, disease-proneness, and so on-that make it more difficult for them to convert primary goods into basic capabilities."<sup>291</sup> Differences in converting primary goods into capabilities are also critical in the studies of gender inequality. While a woman may have precisely the same amount of primary goods as a man, she can be severely disadvantaged due to the influence of factors such as neonatal

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<sup>288</sup> Amartya Sen, "Justice: Means versus Freedom," *Philosophy and Public Affairs*, 19, no.2, (1990): 118.

<sup>289</sup> *Ibid.*, 114.

<sup>290</sup> *Ibid.*, 115.

<sup>291</sup> *Ibid.*, 116.

care, the traditional roles of men and women in families, and pregnancy-related biological factors. Thus, the amount of primary goods or other resources, especially in gender studies, hides many inequalities and cannot be a useful parameter for comparing a person's advantages and disadvantages. As people are different and differ in many ways, even if they have the same amount of primary goods, they have different capabilities to build freedom to choose how they want to live regarding their characteristics, social, traditional, and many other features.<sup>292</sup>

According to Robeyns, although Rawls assumes that justice as fairness does not depend on any comprehensive moral theory, he endorses "certain comprehensive ideas" by conceptualizing people as equal and free citizens guided by higher interests.<sup>293</sup> In this context, Robeyns doubts whether it is possible to establish a theory of justice without relying on any comprehensive ideas. The same objection would come to the capability approach based on comprehensive ideas for deciding and choosing from a list of valuable capabilities.<sup>294</sup> However, Sen rejects the idea of making a fixed list of capabilities, as he thinks that a predetermined list of capabilities will be inefficient for all times, regardless of citizens' opinions and values. In some comparisons, some lists of capabilities may be used for the purpose of comparison, but there is no need to reject other capability lists or "freeze" the list.<sup>295</sup> These lists should be changed over time for practical needs. Sometimes also making a lexicographic order may be tempting, yet it is a hard thing to do, for example, the ability of well-nourishment cannot be fixed above or below the ability to be sheltered such that an improvement of the former is always considered more important than an improvement in the second.

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<sup>292</sup> Ibid., 116.

<sup>293</sup> Robeyns, "Justice as Fairness and The Capability Approach," 406.

<sup>294</sup> Ibid.

<sup>295</sup> Amartya Sen, "Capabilities, Lists, and Public Reason: Continuing the Conversation," *Feminist Economics*, 10, (2004): 78.

If people are dying of hunger in their houses, good nutrition should be prioritized; otherwise, priority should be given to housing if there is enough food and many people suffer from the lack of housing.<sup>296</sup> Robeyns discusses “whether it is possible to select capabilities without imposing a comprehensive notion of the good life.”<sup>297</sup> According to Robeyns, all liberal theories, including political liberalism, support the use of comprehensive moral views of the good life, albeit to a certain extent. Similarly, “capability theorists could ... specify some principles that legitimate notions of the good life would need to meet.”<sup>298</sup>

To compare justice as fairness and capability approach, Robeyns summarizes justice as fairness in three points: “... justice as fairness is (1) a hypothetical justification of principles of justice, (2) limited to domestic justice and brackets questions of local and global justice, thereby ignoring significant spill-over effects, and (3) an exercise in ideal theory.”<sup>299</sup> While justice as fairness deals with an ideally just society, the capability approach seeks remedies for existing real-world injustices.<sup>300</sup> Ideal theories enrich and deepen our understanding of justice and can be used as guides in many situations, but they do not show how to achieve this ideal state of justice. Robeyns points out that the assumptions of ideal theories about human nature or social conditions cannot be used in current injustices.<sup>301</sup> Rawls likewise assumes that there will be no discrimination against gender or race in an ideally just society because such inequalities are avoided by

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<sup>296</sup> Ibid.

<sup>297</sup> Robeyns, “Justice as Fairness and The Capability Approach,” 407.

<sup>298</sup> Ibid.

<sup>299</sup> Ibid. 410.

<sup>300</sup> Ibid.

<sup>301</sup> Ingrid Robeyns, “Selecting Capabilities for Quality of Life Measurement,” *Social Theory and Practice*, 34, no:3 (July, 2008): 361.

fair equality of opportunity.<sup>302</sup> Accordingly, gender and racial injustices are not discussed in Rawls' theory of justice. Robeyns thinks that there is no such ideal example of a society where gender or racial injustices can be avoided in this way in real life. Besides, the causes of gender and racial discrimination cannot be reduced to the violation of fundamental freedoms alone.<sup>303</sup>

The debate between Rawls and Sen can be summed up as the defense of the ideal theory and the defense of focusing on the present unjust world, leaving aside the search for an ideal theory. Although both Sen and Rawls focus on the same concepts, freedom, equality, and justice, the way they deal with these issues and the questions they seek answers are different,<sup>304</sup> as Robeyns explains:

Rawls wants to investigate the very possibility of unanimous agreement on the principles of justice for a democratic society which is characterized by radical pluralism in visions of the good life. This leads him to engage in an exercise of hypothetical ideal theory and leads him to place several questions of justice and morality outside the scope of his work. Sen, in contrast, is much more concerned with developing non-ideal theory on justice, with greater direct relevance for pressing issues of injustice.<sup>305</sup>

On the other hand, the capability approach needs further justification, such as selecting or restricting certain capabilities to develop a theory of justice. Justice as fairness needs to deal with the problems of non-ideal societies and needs to clarify the primary goods index includes. Robeyns thinks that justice as fairness and the capability approach can be considered “complementary theories,”<sup>306</sup> not rival theories. The capability approach, too, can address the basic structure of society and distribution problems in terms of primary goods, and Rawls and

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<sup>302</sup> Rawls, *Justice as Fairness a Restatement*, 65.

<sup>303</sup> Robeyns, “Justice as Fairness and The Capability Approach,” 410.

<sup>304</sup> *Ibid.*, 398.

<sup>305</sup> *Ibid.*, 411.

<sup>306</sup> *Ibid.* 412.

Sen's theories can converge on this matter. However, the primary goods and the basic structure of society would be evaluated in the capability approach not for the sake of their own values but because of their impact on human capabilities.<sup>307</sup>

### **5.3. Martha Nussbaum's Comparison of Capability Approach with Justice as Fairness in terms of Aristotelian Theory.**

Martha Nussbaum compares the capability approach with justice as fairness in terms of Aristotelian theory. Nussbaum points out that in *A Theory of Justice*, Rawls accepts that there has to be a general understanding of a certain type of a theory of good in order to choose distribution principles. However, this understanding of good must be a "thin" theory of good. And according to this idea, Rawls suggests that primary goods are in the common interest of everyone, and regardless of the personal well-being concept of citizens, everyone will want to own more of these goods.<sup>308</sup> According to Nussbaum, Aristotle would not agree with Rawls because wealth and income are goods in themselves on Rawls' list of "primary goods." He would reject the idea that it is always better to have more of them, and on the contrary, he would argue that owning too much wealth impairs functioning. According to Aristotle, having too much wealth disrupts good functioning because wealth is an "external good"<sup>309</sup> and is useful only if it is useful as an item serving human function. The effects of instrumental goods, namely the effects of enhancing or preventing human activity, can be understood in their relation to human functionings. The value of items can be evaluated and understood in the context of a "thicker theory of good living," and wealth in this

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<sup>307</sup> Ibid.

<sup>308</sup> Martha Nussbaum, "Nature, Function and Capability: Aristotle on Political Distribution," in *Oxford Studies in Ancient Philosophy Supplementary Volume*, ed. J. Annas, R.H. Grimm, (New York: Oxford University Press, 1988): 150.

<sup>309</sup> Ibid., 151

sense has no independent value in itself.<sup>310</sup> Nussbaum thinks that Rawls' justice as fairness is a thin theory, and his list of primary goods gives an independent value to the items that can be useful in their relationship with human functioning. Rawls prefers to choose only primary goods to make room for people to choose their own good lifestyles because these goods have the ability to support many different lifestyles, but it is hard to avoid the issue of what good life is, especially when deciding on the distribution issues. Nussbaum underlines that

There is no way around taking some stand about what functions are constitutive of human good living -- if we are to produce an account of distribution that offers a coherent account of the ways in which the city can actually promote people's good. Now of course it is easier for Aristotle to say this than for Rawls, since Aristotle believes that there is just one list of functionings (at least at a certain level of generality) that do in fact constitute human good living; whereas Rawls is determined to leave the choice of these constituents to the individual.

<sup>311</sup>

Nussbaum notes, however, that both Rawls and Aristotle would reject the understanding of the good life that limits one's good life choices, and Aristotle would not oppose Rawls' idea of assigning an important role to the choice of individuals but would reject the view that primary goods have an independent value.

Amartya Sen could be a contemporary supporter of Aristotle, arguing that material goods are not important independently of human functions and can only be evaluated in relation to human functions. Sen criticizes Rawls for overvaluing primary goods in most of his articles. Both Sen and Aristotle would agree on some points about utilitarianism. "Aristotle would agree with the utilitarian that distributable goods are valuable because of what they do for people, and not as things of worth in their own right."<sup>312</sup> However, Aristotle would reject the

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<sup>310</sup> Ibid., 152.

<sup>311</sup> Ibid.

<sup>312</sup> Ibid., 153.

utilitarian idea that the criterion a “lawgiver”<sup>313</sup> needs can be found in the satisfaction of individuals’ desires and their subjective preferences. In his many writings, Aristotle notes that there are many poorly educated people, and in most cases, they cannot make good decisions or want good things for their own well-being. Not all people are good candidates in understanding the necessary functions of a good human life. For example, most people’s excessive desire and love for money should not influence the decisions of a lawgiver when considering monetary issues. Sen’s criticisms of utilitarian ideas converge with this understanding of Aristotle.<sup>314</sup>

Sen also underlines that poor education or the constant deprivation of things affect people’s desires, in that in most cases, people are unaware that they are deprived of something, or they do not realize their own needs that have become unattainable for traditional or personal reasons. In many cultures around the world, women believe that they do not need to be educated or that they cannot function independently of their traditional roles imposed on them, and they lack even the desire for such ideals that they think they cannot achieve. In some cultures, women cannot even fully perceive their basic needs, such as nutrition, and die from diseases caused by malnutrition.<sup>315</sup> Nussbaum notes that a utilitarian understanding can be dangerous in this sense and can hide many injustices and explains:

Thus if we use an approach based upon utility, we must conclude that such people are indeed doing well and that the lawgiver has no further responsibility to them. A further merit of the Aristotelian approach - which asks, instead - which good human functions they are in fact able to perform — is that it enables

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<sup>313</sup> Lawgiver is the one who cares of a class of human being, organization and other things related to the city and should consider how individuals can live their lives well (eudaimonia). Nussbaum, “Nature, Function and Capability: Aristotle on Political Distribution,” 147.

<sup>314</sup> Ibid., 155.

<sup>315</sup> Amartya Sen, *Commodities and Capabilities*, (New Delhi: Oxford India Paperbacks, 1999), pp. 53- 69.

us to criticize such situations, and to say that more ought to be given to such people.<sup>316</sup>

Sen's refusal to evaluate individuals based on a particular measure (utility or resource) and focus on people's capability to function (what one is able to do or be) illuminates many fundamental inequalities. As Sen puts it, delicate issues, such as women's disadvantaged position in families, should be evaluated through an "exercise of open impartiality." Hence, I hold that empirical studies about gender differences in terms of well-being discussed in *Commodities and Capabilities* are valuable in evaluating the position of women in families. The capability approach provides a useful perspective to examine inequalities within families, and I think that similar studies can be made in our country by taking Sen as a guide.

#### **5.4. Kukathas' Evaluation of the Capability Approach as a Comparative Theory of justice.**

In his essay "On Sen On Justice," Chandran Kukathas compares Sen's comparative approach to justice with Rawls' transcendental approach and argues that Sen fails to develop a comparative theory of justice. Sen's *The Idea of Justice* was published "when the idea of justice [dominated] theoretical reflection about social arrangements."<sup>317</sup> Rawls and his successors recognized the concept of justice as the "first virtue of all social institutions, and those that were not just ought to be reformed, even if they possessed other merits"<sup>318</sup> However, as the discussion of the need for a global approach to justice began, Rawls expressed his doubts that justice as fairness cannot be extended to the global theory of justice. Thomas Nagel then held that the idea that justice cannot be extended to a global understanding of justice. Regarding these arguments, Sen

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<sup>316</sup> Nussbaum, "Nature, Function and Capability: Aristotle on Political Distribution," 175.

<sup>317</sup> Kukathas, "On Sen On Justice," 196.

<sup>318</sup> Ibid.

acknowledged that these theories could not be applied to institutions globally and to the social and political arrangements of different nations, and pointed out that the focus of these theories is to design a perfect just society and that this viewpoint is inherently problematic, and that this transcendental approach to justice should be abandoned.<sup>319</sup>

While Kukathas accepts Sen's criticism of transcendental approach to justice, he is skeptical of the approach Sen proposes. Furthermore, Kukathas claims that Sen could not develop a theory of justice. A systematic theory of comparative justice does not seek an answer to the question of "What is just society?" it tries to remedy injustices, and Kukathas' question is how can a comparative theory of justice reduce injustices. Kukathas points out that for Sen, this issue can be solved in an open, impartial public reasoning.<sup>320</sup>

Kukathas explains that "normative theories of justice purport to be action guiding by supplying principles by which we might judge whether a particular action is just or whether a set of outcomes is just or whether an institutional structure is just."<sup>321</sup> An egalitarian may comment that an outcome is just or unjust in terms of its enhancing or reducing equality relative to other alternatives, or a libertarian may consider an action fair if it does not violate any rights of others. Likewise, distributive theories of justice set the principles of distribution. Although Sen seriously scrutinizes equality and inequality through his capability approach, he does not lay down any principles of justice to evaluate actions or consequences or institutions as just or unjust.<sup>322</sup> Kukathas indicates that,

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<sup>319</sup> Ibid.,197.

<sup>320</sup> Ibid., 198.

<sup>321</sup> Ibid. 200.

<sup>322</sup> Ibid., 201.

He has suggested that actions and outcomes, and perhaps even institutional arrangements, can be examined – questioned, challenged, criticized – to see whether they are just, and argued that one way of assessing them is to consider them in relation to other alternative courses of actions or possible outcomes, or structural arrangements. But there is no master principle or combination of principles that he invokes or appeals to in order to make judgments of justice.<sup>323</sup>

However, Sen underlines that he has a systematic theory of justice and emphasizes that his theory is not a transcendental theory. Kukathas thinks that Sen's problem does not stem from his approach to justice because there can be a comparative theory of justice.<sup>324</sup> For example, despite its shortcomings, utilitarianism is a theory of justice that can compare societies and rank them in terms of utility and explain that a society with the highest aggregate or average utility is the most just. Sen argues that since there are many contradictory ideas and principles and many variations of interpretation connected to different lifestyles, the purpose of theories should not be to evaluate or rank or compare societies with a single formula, such as benefit, freedom. "Comparative assessments must take place within contexts within which they can intelligibly be made."<sup>325</sup> At this point, Kukathas argues that when comparing a society with or without slavery, it is easy to conclude that the absence of slavery can be regarded as a development of justice, or a world without hunger is more just than a world with starving people. The problem arises when comparing a society without slavery and a society without hunger and deciding which one is better. This issue is a simple matter for utilitarians to apply "utility" to decide which alternative is better.<sup>326</sup> However, Sen's theory, "which is the product of a careful assessment of the range of internally coherent comparisons, and which also

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<sup>323</sup> Ibid.

<sup>324</sup> Ibid.

<sup>325</sup> Ibid., 202.

<sup>326</sup> Ibid.

satisfies the other desiderata upon which he insists,<sup>327</sup> cannot reveal an answer to this question. Kukathas concludes in his article that

If values are plural in the way Sen suggests, justice is not a master idea that subsumes all else but one value among many. Justice should certainly be pursued, and in many cases, vigorously. But it is not the first virtue of social institutions. Nor is it the notion that should frame all our reflections on ethical and political life.<sup>328</sup>

Sen replies to Kukathas that a subject matter of evaluations of justice may well be comparative judgments, that the focus of the theory may not necessarily be ideal justice. Sen indicates that when he scrutinized justice, he widely used the comparative approaches presented by Adam Smith, Karl Marx, John Stuart Mill, and many others and was often accused of being too theoretical. Sen argues that a theory can be constructed from comparative judgments, or, in his own words, “from the systematic use of practical reasoning on how to increase justice and reduce injustice,” and states that he and Kukathas disagree on what the “conceptual- and relatively abstract- issue of what can be legitimately called a ‘theory is’”<sup>329</sup>

I think that Kukathas’s criticism of Sen’s need to establish principles of justice is strong, and Sen’s response given in the article “Ideas of justice: a reply” stating that he and Kukathas do not agree on the conceptual meaning of the theory, is unsatisfactory. Kukathas points out that a clear idea can be maintained as to what is just or unjust, according to utilitarianism, egalitarianism, or liberalism. Moreover, these normative theories of justice also aim “to be action-guiding” through their principles of justice. Sen argues that a theory of justice should be determined by comparative judgments. He thinks that it is crucial to focus on

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<sup>327</sup> Ibid., 203.

<sup>328</sup> Ibid.

<sup>329</sup> Amartya Sen, “Ideas of justice: a reply,” *Critical Review of International Social and Political Philosophy*, 16, no:2 (2013): 310.

injustices through public reasonings to remove injustices or enhance justice. Sen consciously and persistently avoids presenting certain principles of justice based on an abstract ideal of justice that is valid for all societies and all times, which will enable to decide at first glance what should be regarded as just or unjust. This goes against Sen's main arguments of the need to use the comparative approach to justice, which treats justice as an interactive relational concept with competing reasonings to be understood through the experiences of individuals.

### **5.5. An Evaluation of the Capability approach in terms of Particularist and Universalist accounts of Justice.**

Antony Lyon highlights the relevance of Sen's comparative approach to justice to current global politics and its importance in current global political thought. Lyon points out that while "by focusing on the specific and correct content of justice, political thought has often treated justice as essentially universal or particular, rather than as plural and interactive" Sen's comparative approach treats justice in its natural versatility.<sup>330</sup> Global politics is a cross-border political activity that cannot be limited by sovereignty within certain boundaries, and because of this activity, many concepts, including justice, must be considered beyond the traditional context of sovereignty.<sup>331</sup> Lyon notes that "theories of justice have explicitly or implicitly relied upon sovereignty, and consequently, the debate over the meaning and content of justice has turned on the location and necessity of authority within a conception of justice."<sup>332</sup> Universalists evaluate justice in terms of the supposition that there is a "transcendent authoritative justice,"<sup>333</sup> on the other hand, particularists reject authoritative justice, and they

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<sup>330</sup> Lyon, "Relational Representation: An Agency-Based Approach to Global Justice," 233.

<sup>331</sup> *Ibid.*, 234.

<sup>332</sup> *Ibid.*, 235

<sup>333</sup> *Ibid.*

think that justice is immeasurable. According to Lyon, the concept of global justice, which should be understood through practical global relations beyond the limits of sovereignty, can be met by Sen's comparative approach that takes into account the plural, relational nature of justice. Particularists regard justice as incommensurable due to its plural nature, and this understanding of justice leads to "holding each particular understanding of justice as sovereign in itself, singular and local."<sup>334</sup> This understanding regards justice as a social construction that gives a central role to human experiences, but contemplating justice through a completely relative moral understanding prevents "making meaningful distinctions between particular understandings of justice."<sup>335</sup>

Furthermore, particularists think that any external intervention would have a transformative effect, that even criticism is destructive because, according to this approach, any external interaction has an impact on these specific and meaningful beliefs and practices. For example, particularists regard human rights as a western-based tool of cultural imperialism under the claim of universality. According to them, human rights should be questioned in terms of how much these rights address intercultural diversity. This discussion is very important as it draws attention to the fact that human rights should not be used as an instrument of cultural imperialism. The critique of human rights does not deny them but suggests defending them within the framework of changing interests of different people and different communities depending on their cultural diversity.<sup>336</sup>

In contrast to the particularists, universalists affirm the worldwide use of universal concepts of justice, such as human rights, because they adhere to the idea of transcendental justice that is not influenced by human experience. According to Lyon, this approach can best be observed in Rawls' concept of the

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<sup>334</sup> Ibid.

<sup>335</sup> Ibid.

<sup>336</sup> Ibid., 236.

“veil of ignorance ... a device” that separates people from their own experiences to achieve principles of justice, and Lyon thinks that this kind of universalist approach that considers justice as “intellectually derived” is a mistake because of two reasons:

First, whereas particularists see only violence in transformations of local articulations of justice, universalists fail to account for the presence of power within existing human relationships, ignoring the risks of violence and domination altogether. Second, and according to Sen, this is fatal to the universalist approach to justice: in treating justice as primarily an idea, universalists prioritize getting justice perfect and right, incorrectly assuming that just practices follow from true ideas.<sup>337</sup>

I think that this emphasis of Lyon is important: justice is related to people’s experiences, and choosing principles of justice by separating individuals from their own experiences can give unsatisfactory results. Even in the search for a perfect, just society, it is necessary to understand the nature of injustice that we face in different ways. Rawls holds that basic human rights and liberties have an absolute priority, and he aims to develop the basic structure of a just society according to the principles of justice that prioritize these rights. As I have noted in the second chapter of this thesis, Rawls assumes that discrimination according to race and religion is undoubtedly unjust. I believe that it is important to see that people are not subjects who are in constant interaction with institutions in their lives. The relation between institutions and individuals is only a part of a human’s life; people are facing many different kinds of injustices in their daily experiences. It remains unclear how it is possible to reach an ideal just society by focusing solely on ideal just institutions without revealing and understanding the injustices people face in their daily lives.

I believe that it is essential to focus on these concrete experiences rather than abstract ideals while studying justice. Today, institutions are already, more or less, shaped with the principle of treating everyone as equals. However, either implicitly or explicitly, various injustices continue to exist. I think that even for

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<sup>337</sup> Ibid.

aiming the ideal just society, it is necessary to understand these different forms of injustice. Agreeing on what is unjust and focusing on the perfect fairness does not mean that the problems that arise due to this injustice can be solved with the same ease. In this sense, the comparative approach to justice appears to be crucial.

Lyon notes that Sen's comparative approach to justice is between these two approaches, placing great emphasis on actual behavioral experiences while avoiding the pursuit of perfect justice. The comparative approach's "claims are replaced not with moral relativism, but with a relational view of the practical manifestations of justice in the lives of the participants. Therefore, the experience of justice frequently begins with the recognition of its absence."<sup>338</sup> This practice leads to unity over what is deemed unjust without referring to principles of justice or a consensus on different ideas of justice that determine what is considered fair. In this sense, this approach gives space for global politics to enhance justice as it does not focus on agreeing on the concept of ideal justice but insists on the importance of uniting around what is considered unjust and what can be done to eliminate them. With its applications and focal points, this feature of the approach is suitable for working on justice on a global scale.<sup>339</sup>

In taking a comparative approach to justice, one is able to link the concern for justice to global politics. In order to work toward justice in global politics, one does not necessarily need to convince others of the specific content of justice; rather, one only must establish a common ground, a shared recognition of injustice. In the process of working to ameliorate the suffering of specific injustices, a practical sense of global justice emerges. It is not a traditional, philosophical idea of global justice; rather its content is fluid, composed of the values and practices that have and are becoming globally available as the tools and language used to work against injustice.<sup>340</sup>

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<sup>338</sup> Ibid., 237.

<sup>339</sup> Ibid.

<sup>340</sup> Ibid.

## 5.6. The Issue of Whether the Capability Approach Should Make a Fixed List of Capabilities

In 2008, a year before Sen's *The Idea of Justice* was published, Eric Nelson, in his article "From Primary Goods to Capabilities Distributive Justice and the Problem of Neutrality," discusses Sen's attitude of refusing to provide a capability list. Nelson summarizes Sen's justification for this idea in three points: First, a fixed list of capabilities cannot adequately respond to "public reasoning" and the formation of social values. Second, a fixed list of capabilities would require a lexicographic sequence of capabilities evaluated in terms of their importance or relevance; this can make it challenging to use the capability approach in more specific situations effectively.<sup>341</sup> Finally, a fixed list cannot meet the changing goals we may have over time. In other words, "a fixed list would be insensitive to the different purposes we might have at different times for generating various capability lists."<sup>342</sup> According to Nelson, these reasons put forth by Sen are convincing, and it may be difficult to make a fixed list of capabilities, but that does not mean there is no need to make a list of capabilities:

But if Sen is serious about his Rawlsian framework, and capabilities are indeed going to determine the social minimum that the basic structure of society must ensure to all citizens, we must know which are to be included. Otherwise, how could we ever know whether a given distribution was just or unjust? It seems to be a minimal requirement of any theory of justice that it should be able to answer that question.<sup>343</sup>

It may be argued that Sen avoided the "one size fits all" approach of the philosophers because he wanted to give cultures the right to compose their lists

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<sup>341</sup> Nelson, "From Primary Goods to Capabilities Distributive Justice and the Problem of Neutrality," 103.

<sup>342</sup> *Ibid.*, 104.

<sup>343</sup> *Ibid.*, 106-107.

according to their specific circumstances and values.<sup>344</sup> However, it is untenable not to make a list of capabilities, as it adheres to a non-transcendental understanding of justice. To illustrate it with Sen's example, it is not necessary to know the highest mountain in the world to compare the heights of Kanchenjunga and Mont Blanc, but still, it is necessary to know what the heights of these two mountains are.<sup>345</sup>

Rutger Claassen considers this issue asking the following question: "Should philosophers make lists of basic capabilities or should they leave this to the democratic process?"<sup>346</sup> Claassen notes that Sen does not leave the fundamental decision whether justice is a matter of capabilities, resources, or utility to democratic public reasoning, but he persistently avoids making a fixed list of capabilities and leaves that choice to public reasoning.<sup>347</sup>

To explain the relation between philosophy and democracy, Claassen discusses this issue on a meta-level (as the relation between theory and practice), looking at the role of philosophers in terms of the relation between philosophy and democracy. According to the first view, as "philosopher-hermits," philosophers do not engage in society, do not direct any legislation, have nothing to do with practice, the only motivation of these philosophers is to seek the truth.<sup>348</sup> Whereas according to the second view, philosophers are "philosopher-kings," that is, ultimate decision-makers; their theories and facts are indisputable, and the principles of their theories must be applied in this sense without any change,

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<sup>344</sup> Ibid., 107

<sup>345</sup> Ibid., 119.

<sup>346</sup> Rutger Claassen, "Making Capability Lists: Philosophy versus Democracy," *Political Studies*, 59, (2011): 491.

<sup>347</sup> Ibid., 498.

<sup>348</sup> Ibid., 500.

hence their theories have a direct impact on practice.<sup>349</sup> In the third type of relationship, philosophers are seen as “philosopher-citizens” who offer their theories as “inputs” to democracy and hope to influence practice with their theories. The “philosophical position” mostly holds this view.<sup>350</sup> According to Classen, this philosophical position enriches public debate, thus the philosopher-citizen should be present in society as a “philosopher-investigator.”<sup>351</sup> Philosopher-investigators admit the limitations of thinking on their own, often collecting data from “the real world,” observing and gaining feedback from the public debates about the practical effects of their theories.<sup>352</sup> Classen points out that

the philosopher investigates the divergence between his views and those of the public, but his final considered judgment need not be one in which he has established congruence with other citizens. To the contrary, he may criticize citizen’s ideas (for example, because he judges that they are incoherent, insufficiently clear, or based on faulty empirical data) and come to a different, but equally reasonable, position.... In this respect, while engaging with their ideas, intellectually he stays at a critical distance.<sup>353</sup>

A philosopher investigator who engages in public debates to reinforce her arguments by writing for newspapers or attending public expert meetings may appear to be involved in these practices. Nevertheless, she may want to affect the practice with her ideas while strengthening her arguments by collecting data from the practice or by learning the ideas of others. In this sense, Classen notes that it is sometimes difficult to pinpoint the role of philosophers, and he adds that

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<sup>349</sup> Ibid., 501.

<sup>350</sup> Ibid.

<sup>351</sup> Ibid., 504

<sup>352</sup> Ibid.

<sup>353</sup> Ibid., 506.

This confusion between different roles may be part of the reason why the democratic position has gained appeal. The safest way to avoid such confusion would be to retreat from public view. In this article I have hoped to show that such a strategy of retreat, while safe, would impoverish both philosophy and democracy.<sup>354</sup>

On the other hand, some philosophers argue that Sen does not need to prepare a fixed list of capabilities, as the capability approach is a general framework and not a classical normative philosophical theory. Robeyns argues that Sen should provide “systematic methodological reasoning on how such a selection could be made.”<sup>355</sup> The capability approach applications are suitable for a wide variety of interdisciplinary use either theoretically or empirically in different fields as well as in a local and global context.<sup>356</sup> In this sense, Sen thinks that each list of capabilities should be considered according to its own context. Robeyns stresses that

Most scholars, especially ethnographers, do not believe that it is possible for one person to truly understand the lives of all people around the world. ... If we accept that it is very hard, and indeed often impossible, to truly understand people who live in a very different situation, then the epistemological limits of a well-defined list of capabilities become obvious. ... Moreover, people are extra sensitive to intellectuals from other cultures, certainly to those from the geopolitical center who speak on their behalf, as this is often emotionally experienced as an attack on their identity.<sup>357</sup>

Robeyns exemplifies this point by referring to how Nussbaum’s proposed list of capabilities has received many criticisms from Indian academics for failing to understand the actual problems of poor Indian women. It is essential to allow

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<sup>354</sup> Ibid.

<sup>355</sup> Ingrid Robeyns, “Selecting Capabilities For Quality Of Life Measurement,” *Social Indicators Research*, 74, (2005): 191.

<sup>356</sup> Ibid.

<sup>357</sup> Ibid., 198.

cultures, groups, or individuals to negotiate and make choices on their own.<sup>358</sup>

Robeyns consequently suggests making a list of criteria for choosing the capabilities rather than making a fixed list of capabilities to overcome epistemological biases.<sup>359</sup>

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<sup>358</sup> Ibid., 201.

<sup>359</sup> Ibid., 205.

## CHAPTER 6

### CONCLUSION

The main purpose of this thesis is to interpret Amartya Sen's capability approach by comparing it with John Rawls's "justice as fairness." This thesis focuses on the concepts of justice, freedom, equality, the requirements of theories of justice, transcendental and comparative approaches to justice in Sen's *The Idea of Justice* with a view to their relations with Rawls' justice as fairness. As Robeyns put it, both Sen and Rawls focus on the same concepts, namely justice, freedom and equality, but their approach to these concepts, the questions they seek answers to, and therefore the solutions they offer, are different.

In the 20th century, John Rawls became a touchstone in political philosophy, influencing many other political philosophers with his concept of justice as fairness. In his *A Theory of Justice*, Rawls attempts to end the dominance of classical utilitarianism in political thought by developing a systematic alternative concept of justice. Rawls presents his contractarian theory of justice that focuses on "justice as fairness," which secures and prioritizes fundamental liberties and rights. These fundamental rights and liberties have absolute importance and priority that they are secured by the two principles of justice chosen by citizens of a society under the "veil of ignorance." In justice as fairness, equal distribution of certain primary goods - the things every rational person desires to have- has significant importance. Justice as fairness is a political concept that leaves behind all the philosophical arguments, and it does not commit itself to any comprehensive moral doctrine, and thus unites individuals with its principles of justice.

Rawls' justice as fairness dominated political thought for many years, and Amartya Sen's *The Idea of Justice* was published during this period. Justice has

been defined as the first virtue of all institutions, and it has been accepted that institutions should be organized according to it. As political issues began to be discussed through international societies and global organizations, the concept of global justice became important. Sen argued that applying justice to global institutions can be severely problematic which is because of the transcendental approach to justice, which seeks an answer to “What is a just society?” and later developed his realization-based comparative approach to justice: the capability approach. Sen discusses that the aim of achieving an ideally just society is neither necessary nor sufficient when making comparisons and decisions on issues of justice because, in this way, one does not deal with existing real-world injustices. Sen thinks that many advancements in justice throughout history have been achieved by agreeing on injustice without aiming to reach a perfect, just society:

when people agitated for the abolition of slavery in the eighteenth and nineteenth centuries, they were not labouring under the illusion that the abolition of slavery would make the world perfectly just. It was their claim, rather, that a society with slavery was totally unjust. ... It was the diagnosis of an intolerable injustice in slavery that made abolition an overwhelming priority, and this did not require the search for a consensus on what a perfectly just society would look like.<sup>360</sup>

According to Sen, as an example of a transcendental approach, justice as fairness limits itself to the local level in the original position in choosing the principles of justice under the veil of ignorance. Sen notes that in the Rawlsian original position, individuals still share the general prejudices of their society. Instead of “fair negotiation” of justice, Sen suggests a more powerful tool to satisfy impartiality: Adam Smith’s “fair arbitration” and “impartial spectator.” Sen continues the tradition of Adam Smith, John Stuart Mill, Karl Marx, and Jeremy Bentham, who focus on “realization-based comparisons” to eliminate existing real-world injustices. Until Sen’s comparative approach, the focus of political thought on justice was to reach the concept of perfect justice. However, Sen

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<sup>360</sup> Sen, *The Idea of Justice*, 21.

challenged this widespread perspective by introducing his comparative approach to justice, which treats justice as a relationship between agency and experiences.

While the capability approach focuses on human life, it treats goods as only means to reach what a person values to be or to do. Rawlsian primary goods approach does not consider human diversity and lacks to address an individual's basic needs and the conversion differences of primary goods according to a person's aims of life. Comparing people's advantages or disadvantages in terms of primary goods can hide many injustices. The capability approach considers the different needs and abilities of a person that can differ according to the biological, (age, health) environmental, and cultural factors of individuals' while converting primary goods into a qualified life.

In justice as fairness, the special needs and care of people with disabilities are ignored, and the problem of justice within families is also excluded from theory. Rawls supposes that in a perfectly just society, individuals will fully comply with the principles of justice. By focusing solely on justice in institutions and limiting its scope to society's basic structure, justice as fairness neglects the justice of society, which is related to individuals' actual behaviors, which can be quite different from ideally reasonable behaviors. The subject of the capability approach is broader as it evaluates, besides primary goods, the well-being of individuals in terms of their opportunities to do or be according to their preferences.

Another issue that has been debated is, despite Rawls' assumption of presenting a political conception of justice, whether it is possible to devise a theory of justice without adhering to a comprehensive doctrine. Because Rawls makes assumptions about human nature, assuming that people are rational and equal citizens with higher-order interests. On the other hand, Sen has received much criticism that the capability approach cannot be considered a systematic theory of justice because he does not make a specific list of capabilities to determine what is fair or unfair. Despite these criticisms, Sen refuses to make a fixed capability list, or provide any principles of justice, as people's needs change over time, and

inequalities that need to be primarily eliminated can change from time to time and from place to place. Sen leaves the decision to select capabilities or make capability lists to public reasoning.

As a successor of the contractarian tradition, Rawls thinks that the concept of justice will unite people with different moral and political views. For instance, Rawls supposes that everyone agrees on the idea that discrimination “religious intolerance and racial discrimination are unjust.”<sup>361</sup> The problem is that although many fundamental rights and freedoms are guaranteed by laws and governments, many people face different forms of injustices in their daily lives. Even though agreeing and focusing on the concept of perfect justice deepens our understanding of justice in focusing on the ideal, Sen thinks that it cannot offer a solution -reducing injustices or enhancing justice- by overlooking the daily injustices. Therefore, today there are incidents where justice cannot be achieved even in cases, although there is no doubt that they are unfair.

Dealing with justice at the institutional level makes these injustices difficult to recognize. Simply put, there is still racial discrimination, so that “Black lives matter”<sup>362</sup> can still be a hot topic in this century. People are faced with many different injustices in different ways, at different times, and in different countries, according to their gender, religion, nationality, or race. The assumption of a completely just society and a society in which each individual acts fairly for her own good seems to serve as a veil that conceals the many injustices that have occurred. In this sense, focusing obstinately on injustices and trying to understand the peculiar internal dynamics of injustices varying according to nations, times would be more effective in changing the present situation in terms of either removing injustice or advancing justice. Black lives

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<sup>361</sup> Rawls, *A Theory of Justice*, 19.

<sup>362</sup> “Black Lives Matters (BLM) is a decentralized political and social movement advocating for non-violent civil disobedience in protest against incidents of police brutality and all racially motivated violence against black people” see: [https://en.wikipedia.org/wiki/Black\\_Lives\\_Matter](https://en.wikipedia.org/wiki/Black_Lives_Matter), <https://blacklivesmatter.com/about/>

Matter Foundation<sup>363</sup> is a good example of this type of approach since it is a global organization working with “local powers.”

Regarding the debates over whether Sen should provide a capability list, Sen points out that it seems rather difficult to give a fixed pre-made capability list to meet the varying cultural needs of different nations at different times. However, Sen’s critics think that leaving these decisions entirely to public reasoning is a deficiency in Sen's theory of justice. It is held that a criteria list of capabilities could make Sen's theory of justice more systematic.

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<sup>363</sup> In 2020, after George Floyd was murdered by a police officer, the biggest demonstration in American History, the Black Lives Matter protests took place with the participation of approximately 15 million to 26 million people. See: [https://en.wikipedia.org/wiki/Black\\_Lives\\_Matter](https://en.wikipedia.org/wiki/Black_Lives_Matter)

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## APPENDICES

### A.TURKISH SUMMARY / TÜRKÇE ÖZET

Adalet kelimesi eylemleri, uygulamaları ve koşulları tanımlamak için kullanılan oldukça geniş ve yaygın bir kullanıma sahip bir kelimedir. Siyaset felsefesinde ise bu kavram anlamını belirli bir adalet kuramı içerisinde kazanır, adaletin kapsamı, sınırları da bu adalet kuramları üzerinden belirlenir. Çağdaş siyaset felsefesinde, adalet kuramı ilham verici ve çoğu zaman rakip olarak ele alınan iki adalet kuramı üzerinden tartışılmaktadır: John Rawls'un hakkaniyet olarak adaleti (justice as fairness) ve Amartya Sen'in yapabilirlik yaklaşımı (capability approach.)

Bu tezde adalet ve beraberinde eşitlik, özgürlük ve adalet kuramlarının gereksinimleri, adalete aşkın (transcendental) ve karşılaştırmalı (*comparative*) yaklaşımlar; Sen'in yapabilirlik yaklaşımı ve bu yaklaşımın Rawls'un hakkaniyet olarak adaleti ile karşılaştırması üzerinden tartışılmaktadır. 20. yüzyılda John Rawls'un hakkaniyet olarak adalet kavramı diğer birçok siyaset felsefecisini de etkileyen bir mihenk taşı olmuştur. Rawls'un etkilediği filozofların arasında Amartya Sen de yer almaktadır, öyle ki Sen; *Adalet Düşüncesi (The Idea of Justice)* kitabını Rawls'un anısına ithaf etmiştir. Sen'in adalet kuramını anlayabilmek için Rawls'un hakkaniyet olarak adaletini kavramak gerektiğinden, bu çalışmada öncelikle Rawls'un adalet kuramı, genel kavramları ile ele alınmıştır. Sen'in Rawls eleştirisi çoğunlukla Rawls'un ilk çalışmalarına, özellikle de *Bir Adalet Teorisi (A Theory of Justice)* kitabına yönelik olduğundan, bu tezde de temel olarak Rawls'un bu eseri ele alınmıştır. Tezin üçüncü bölümünde Sen'in kendi adalet kuramının başlangıç noktası olması dolayısıyla, Sen'in Rawls'un adalet kuramına getirdiği eleştirilere yer verilmiştir. Çalışmanın dördüncü bölümünde, Sen'in adalet kuramı ve yapabilirlik yaklaşımı detaylı bir şekilde alınmıştır. Son bölümde ise Sen'in yapabilirlik yaklaşımına

getirilen eleştiriler, yapabilirlik yaklaşımı ile hakkaniyet olarak adaletin kıyaslanması temel alınarak değerlendirilmiştir.

Rawls'un hakkaniyet olarak adalet adını verdiği kuramını ortaya koyduğu *Bir Adalet Teorisi* adlı eseri günümüzde de siyaset felsefesinin en önemli eserleri arasındaki yerini ve önemini korumaktadır. Rawls'un amacı siyasi düşüncede faydacı görüşün egemenliğine son vererek onun yerine alternatif sistematik bir adalet kavramı sunmaktır. Rawls kuramının John Locke, Jean-Jacques Rousseau ve Immanuel Kant tarafından temsil edildiği şekliyle geleneksel toplumsal sözleşme kuramının daha genel ve daha yüksek bir soyutlaması olduğunu belirtir. Rawls temel olarak bir toplumdaki bireylerin net memnuniyet dengesini en üst düzeye çıkarmayı amaçlarken, dağıtım sorunlarını görmezden gelen klasik yararçı adalet anlayışını reddeder. Rawls insanları tek bir "yığın" olarak gören faydacı görüş yerine insanları eşitler olarak görmek gerektiğini işaret eder. Rawls'un adalet kuramında kişilerin temel hak ve özgürlüklerini hem önceliklendiren hem de koruyan hakkaniyet kavramı merkezi bir öneme sahiptir. Hakkaniyet olarak adalette hakkaniyet kavramı insanlarla ilişkilidir, insanlara eşit davranılması gerektiğine vurgu yapmaktadır. Adalet ise bilmezlik peçesi (*veil of ignorance*) altında rasyonel kişiler tarafından seçilen dağıtıcı adalet ilkeleri aracılığı ile kurumsal düzeyde sağlanır ve kurumlardaki adaletin sağlanması bireyler arasında hakkaniyeti sağlar.

Adalet ilkeleri hem temel hakları ve görevleri belirler hem de toplumsal yararları dağıtır. Rawls'a göre herkesin yararına olmayan şeyler adaletsizdir. Bilmezlik peçesi, toplumdaki hiç kimsenin ekonomik veya sosyal konumunu veya statüsünü, güçlü yönlerini, zekasını, doğal yeteneklerini bilmediği varsayımsal bir durumdur. Bilmezlik peçesi, Rawls'un adalet kuramında hem tarafsızlığı sağlar hem de hakkaniyetli bir şekilde adalet ilkelerinin seçilmesine olanak tanır. Hakkaniyet olarak adalet kuramında seçilen birinci ilke temel hak ve hürriyetleri hem belirler hem de korur. Birinci ilkenin ikinci ilkeye önceliği vardır. İkinci ilke (*difference principle*) ise dağıtım eşitliği, etkililik ve toplumun en dezavantajlı kesiminin durumunun iyileştirilmesi ile ilgilenir.

Dağıtım eşitliğinde Rawls'un birincil değerlerin (*primary goods*) dağıtımını büyük bir öneme sahiptir. Rawls birincil değerlerin tanımını yaşam tarzı ne kadar farklı olursa olsun, her rasyonel bireyin sahip olmak isteyeceği değerler olarak tanımlar. Rawls'a göre bu değerler, haklar ve özgürlükler, yetkiler ve fırsatlar, gelir ve servetten oluşan toplumsal birincil değerler (*social goods*) ve zekâ, sağlık ve hayal gücü gibi değerleri barındıran doğal değerler (*natural goods*) olmak üzere iki gruptan oluşur. Rawls'a göre, birincil değerler kurumların yapısında ve bireylerin birbirleriyle olan ilişkilerinde önemli rol oynarlar. Ayrıca bireylerin sosyal statüsüne ilişkin karşılaştırmalar yapmak için aynı birincil değer endeksi kullanılabilir. Rawls hakkaniyet olarak adaletin tüm felsefi argümanlardan uzak ve hiçbir ahlaki doktrine bağlı olmayan politik bir kavram olduğunu belirtir. Çoğulcu bir demokraside insanları bir araya getiren şeyin seçmiş oldukları adalet ilkeleri dolayısıyla adalet kavramı olduğunu savunur.

Sen adalet kuramlarını iki ana gruba ayırarak inceler. Sen, Thomas Hobbes ile başlayan ve daha sonra John Locke, Jean-Jacques Rousseau ve Immanuel Kant tarafından takip edilen sözleşmecî geleneğin (*contractarianism*) ideal bir adalet arayışına odaklanan aşkın kurumsalcılık (*transcendental institutionalism*) yaklaşımı olarak tanımlar. Rawls'un da adalet kuramını "Adil toplum nedir?" sorusuna cevap arayan, mükemmel bir adalete ulaşmaya çalışan aşkın (*transcendental*) bir adalet anlayışı üzerine kurduğunu belirtir. Sen; adil toplum nedir sorusuna odaklanmak yerine mevcut adaletsizliklere odaklanan karşılaştırmalı (*comparative*) bir yaklaşımın, aşkın bir yaklaşımdan daha uygun olduğunu savunur. Sen ayrıca kendi kuramını, kurumlara odaklanan "sözleşmecilik" geleneğinden farklı olarak, kurumlardan ziyade bireylerin birbirleri ile olan etkileşimlerini dikkate alan, insan yaşantısında görülen adaletsizlikleri gidermeye odaklanan gerçekleştirmeye dayalı karşılaştırma (*realization-focused comparison*) yaklaşımın, John Stuart Mill, Karl Marx, and Jeremy Bentham, Marquis de Condorcet, Mary Wollstonecraft gibi filozofların geleneğini sürdürdüğünü ifade eder.

Sen, bir toplumda adaleti geliřtirmek veya bazı adaletsizlikleri gidermek için ařkın bir yaklaşımın ne gerekli ne de yeterli olduđunu düşünür. Ona göre iki şeyi karşılaştırırken, bir üçüncüyü yani en iyinin ne olduđunu bilinmesine gerek yoktur. Sen, bilmezlik peçesi altında dahi insanların üzerinde anlayamayacağı birtakım konular olabileceđine dikkat çeker. Örneđin kişinin emeđinden yararlanma hakkının kime verilmesi gerektiđi konusu tartışması insanların kişisel çıkarlarının ötesinde bir tartışmadır. Sen bu konuyu üç çocuk tarafından paylaşılamayan flüt örneđi üzerinden somutlaştırır. Bu örneđe göre, kişilerden biri flütü kendisi için, kendi aylarca süren emekleri sonucunda kendi elleri ile yapmıştır ancak flütü çalmayı bilmemektedir. Flütü çalmayı bilen tek kişi, bu becerisi dolayısıyla flütün kendisine verilmesini talep etmektedir. Diđer üçüncü çocuk ise hiçbir oyuncacı olmadığı, en fakir çocuk olarak flütün kendisinin olması gerektiđini savunur. Bu durumda faydacı görüşe göre, flütün onu çalmayı bilmesi dolayısıyla en çok tatmine ulaşacak olan kişiye verilmesi gerekmektedir. Ekonomik eşitlikçi (*economic egalitarian*) görüş ise kendisine ait hiçbir oyuncacı olmayan çocuđa verilmesini daha adil bulacaktır, böylelikle bu kişiler arasındaki ekonomik eşitliğe katkıda bulunmuş olacaktır. Oysa bir taraftan da flütü yapan kişi bu flütü kendisi için yapmıştır. Bu kişi ise liberal (*libertarian*) kişiler tarafından savunulacak ve flütün tartışmasız bir şekilde onu yapan kişiye verilmesi gerektiđinin en adil olduđu kararı verilecektir. Hatta flütün onu yapan çocuđa verilmesi konusunda liberal sağcılarla, sol görüşlü Marksistler mutabık olacaklardır. Buradaki üç farklı görüşe mensup kişiler kendi bakış açılarının şüpheye yer bırakmayacak bir biçimde haklı olduđunu iddia edeceklerdir. Dolayısıyla da flütün kime verileceđi sorunu bu şekilde çözülemeyecektir. Sen'e göre adaletin, aynı tarafsızlık iddiasına sahip ancak birbirinden farklı ve birbirine rakip olabilecek pek çok tanımı bulunmaktadır. Sen, Rawls'un kuramının diđer aşamalarının, bilmezlik peçesi altında oybirliğiyle belirlenen adalet ilkelerine bađlı olarak şekillendiđine, yani kuramın diđer aşamalarının bu ilk aşamanın iyi işlemesine bađlı olduđuna dikkat çekerek, daha ilk aşamada sorun çıkmasının Rawls'un kuramının işlemesine engel olacağını belirtir.

Sen, Rawls'un kuramında öngörülen bilmezlik peçesi altında yapılan adil müzakere (*fair negotiation*) yerine Adam Smith'in önerdiği adil tahkimin (*fair arbitration*) daha tarafsız olacağını savunur. Aşkın adalet yaklaşımı yerel kurumlara hayati bir rol vererek, kendini yerel düzeyde sınırlar. Kişiler bilmezlik peçesi altında iken, yani kendi kişisel çıkarlarına dair bilgi sahip değilken dahi içinde buldukları toplumun yerel önyargılarını hâlâ paylaşmaya devam ederler. Bunun dışında Sen tarafsızlığın bu biçimine kapalı tarafsızlık (*closed impartiality*) adını verir. Belirli bir toplumun üyesi olma mecburiyeti bulunmayan, dolayısıyla bir toplumun paylaştığı yerel önyargılardan, ya da o toplumun kalıplaşmış fikirlerden uzak tarafsız gözlemciler (*impartial spectators*) ile yapılan değerlendirmelerin adaletin tarafsızlık ilkesini daha iyi sağlayacağını savunur. Tarafsız gözlemciler ile yapılan bu değerlendirme prosedürüne ise açık tarafsızlık (*open impartiality*) adını verir.

Rawls'un hakkaniyet olarak adalet düşüncesinde hakkaniyet önemli bir yere sahiptir ve hakkaniyet ilkelerinin tarafsız bir şekilde seçilmesi esastır. Rawls'un sisteminde, oybirliğiyle seçilen ilkeler, adil toplumun temel yapısını oluşturur ve siyasi adalet anlayışını belirler. Rawls'un kuramının diğer tüm aşamalarının bu ilk eyleme bağlı olduğu anlamına gelir. Sen'e göre bilmezlik peçesi altında iken dahi üzerinde uzlaşamayacak konular olduğu düşünüldüğünde Rawlsçu sistemin işlemesi oldukça zayıftır. Sen ayrıca Rawls'un kuramında özgürlüğe aşırı bir önem verilmesinin de sorunlu olduğunu ifade eder. Açlık, tıbbi yoksunluk gibi durumlar söz konusu olduğunda, bu durumların hangi gerekçeyle özgürlükten daha az önemli olabileceğini ya da bunlar uğruna özgürlüğün nasıl ihlal edilemeyeceğini sorgular.

Sen Sanskritçe *niti* ve *nyaya* kavramları üzerinden de hakkaniyet olarak adaleti eleştirir. *Niti* terimi örgütsel veya kurumsal adaleti temsil ederken; *nyaya* kapsamlı ve gerçekleştirilmiş bir adalet kavramını temsil eder. *Niti*, kurallar ve kurumlarla dar bir şekilde ilgilenirken, *nyaya* kurumları ve kuralları gerçek davranış kalıpları ve bunların gerçek dünyadaki toplumsal sonuçlarıyla birlikte değerlendirir. Bir toplumda “büyük balık küçük balığı yer” kuralı işliyorsa bu

toplumda kurumların ne kadar iyi çalıştığına bakılmaksızın *nyaya*'ya göre adaletsizdir. *Niti*'ye göre ise asıl amaç "Dünya yok olsa da adalet yerine gelmelidir." *Nyaya*'da amaç gerçekçi bir şekilde belirlenen adaletsizliklerle savaşmak ve adaleti güçlendirmektir. Rawls'un hakkaniyet olarak adaletinde, bireyin fiili davranışlarıyla da ilişkili olan toplumsal adalet değil, kurumların adaletine tam bir odaklanma vardır. Oysa bireylerin gerçek yaşantılarındaki davranışları "ideal rasyonel davranış" biçimlerinden oldukça farklıdır. Öte yandan *nyayanın* odağında yaşamın akışı içerisinde ortaya çıkan adaletsizliklerle savaşmak ve adaleti güçlendirmek vardır. Sen, tarihteki adalet ile ilgili pek çok gelişmenin ideal kusursuz bir adil toplum arayışından yola çıkarak değil, daha çok o an söz konusu olan adaletsizlikleri giderme amacıyla sağlandığını belirtir. Örneğin köleliğin kaldırılması, köleliği sona erdirerek adaleti artırma amacıyla yapılan mücadele sonucu elde edilen bir başarıdır.

Yapabilirlik yaklaşımı (*capability approach*) ise kuramsal olarak mükemmel işleyen kurumlara sahip adil bir topluma ulaşmayı amaçlamaz, amacı adaletsizlikleri azaltmaktır ve bu ikisi analitik olarak birbirinden oldukça farklıdır. Hakkaniyet olarak adaletin odağında kurumlar vardır, adaletsizliğin ana nedeni, kurumların iyi çalışmamasıdır. Bireylerin mükemmel işleyen kurumlara uygun olarak hareket edeceği varsayılır. Sen'nin adalet kuramı insan yaşamına odaklıdır. Yapabilirlik yaklaşımının çıkış noktası, Sen'in Rawls'ın birincil değerler yaklaşımına getirdiği eleştiridir. Rawls, birincil değerleri, araç olarak görmekten ziyade kendi başlarına amaç haline getirir. Rawls'un sisteminde dağıtım ile ilgili konularda tüm odak bu birincil değerler üzerindedir. Birincil değerler, bireylerin bu değerleri kullanımı veya bu değerlerden nasıl yararlandıkları bağlamında ele alınmazlar ve kendi başlarına amaç haline getirilirler. Sen'e göre bu yaklaşım insanların en temel ihtiyaçlarına yönelik olarak yapılacak kıyaslamalar için dahi eksiktir. Çünkü tüm birincil değerler, görece zenginlik, gelir vb kendi başlarına birer amaç değildir; bunlar yaşam için araçlardır ve tek başlarına iyi bir yaşamın göstergesi değildirler. Kişiler aynı gelire sahip olabilirler ama bu geliri yaşamda değer verdikleri şeylere

dönüştürürken, çevresel, kültürel, sosyal, fiziksel ve karakteristik farklılıklardan dolayı oldukça farklı konumda olabilirler.

Sen'e göre bir kişinin başka bir kişiden daha avantajlı olup olmadığına karar vermek için, yapabilirlikleri üzerinden karşılaştırma yapmak gereklidir. Sen insanların temel yapabilirliklerini bir insanın yapmak istediği şeyleri yapabilmesi veya olmak istediği şeyi olabilmesi şeklinde tanımlar. Yapabilirlik yaklaşımı odağını araçlardan değer verilen amaçlara ulaşmayı sağlayacak fırsatlara ve bir insanın yaşamak istediği şekilde yaşamasına fırsat veren temel özgürlüklere çevirir. Sen, yapabilirliği araç odaklı birincil değerler yaklaşımından farklı olarak, birincil değerleri insanlara olan etkileri dolayısıyla dikkate alan bir yaklaşım olarak tanıtır. Sonraki çalışmalarında Sen yoksulluk, özgürlük, refah gibi konular incelenirken yapabilirlik yaklaşımının kullanılabileceğini ortaya koyar ve yapabilirlik terimini bir kişinin yapabileceği, başarabileceği veya olmak istediği çeşitli 'işlevlerin' (*functionings*) alternatif bileşimleri şeklinde tanımlar. Bu yaklaşımda işlevler ise bir kişiyi yaşamında yapmayı ya da olmayı başardığı çeşitli şeyleri temsil eder.

Yapabilirlik yaklaşımı, bir kişinin yaşamında değer verdiği şeyleri başarma yeteneğine odaklanır bu bunun için de pek çok farklı bilgiyi, refah, mutluluk gibi kişisel faydaların yanı sıra kaynakların eşit dağılımı, göreceli veya mutlak zenginliği ele alarak, bunları bütünsel bir şekilde değerlendirir. Değer verilen işlevler, yeterli beslenme, barınma gibi temel işlevler olabileceği gibi, iyi maaşlı bir işe sahip olma veya bir toplulukta saygı görme gibi bazı kariyer hedefleriyle de ilgili olabilir. Yapabilirlik yaklaşımı bu işlevlerden birini gerçekleştirme becerisiyle veya kişi tarafından değer verilen çeşitli işlevlerin bir bileşimini elde etmesi ile ilgilidir. Sen, tek bir tür yaşam aracına odaklanan kuramlardan ayrılarak, bakışını değer verilen amaçlara ulaşmayı sağlayacak fırsatlara ve bir insanın yaşamak istediği şekilde yaşamasına fırsat veren temel özgürlüklere çevirir ve hayatın bütünsel olarak kendisiyle ilgilenir. Bu yaklaşımın insanların fırsatlarına odaklanırken farklı bir toplum türü tasarlama amacı bulunmaz, buna bağlı olarak elde edilen bilgilerin nasıl kullanılması gerektiğini göstermez.

Yapabilirlik yaklaşımı insan yaşantısını değerlendirirken diğer yaklaşımlardan temelde ayrılır ve çok daha geniş bir değerlendirme perspektifi sunar. Örneğin, aynı gelire sahip biri sağlıklı diğeri engelli iki insanı ele alırken, sadece gelire bağlı yapılan değerlendirmelerin bu iki kişinin avantaj ve dezavantajlarını tam anlamıyla ortaya koyamayacağını belirtir. Öncelikle sağlık sorunları olan bir kişi, hem yaşam araçlarına daha çok ihtiyaç duyar, hem de yaşam araçlarını kendi değer verdiği yaşam araçlarına dönüştürmekte dezavantajlı durumdadır. Sen, araç odaklı, örneğin sadece gelire odaklı yaklaşımların buna benzer farklılıkları görünmez kıldığına dikkat çeker. Örneğin, Rawls bazı kişilerin bazı özel ihtiyaçları olabileceğini kabul eder ama bu kişilerin durumunu kendi kuramının kapsamının dışında tutar. Rawls'a göre bu kişilerin durumu toplumun temel yapısının belirlendiği adalet ilkelerini seçerken değil de daha sonraki bir aşamada ele alınması gereken bir husustur. Sen ise engelli kişilerin durumunun sonradan ele alınmasının, bu kişilerin durumlarına kalıcı çözümler getirmek veya önlenemez olanları önlemekten ziyade, sadece hafifletici etkilerinin olacağını belirtir.

Sen'in yapabilirlik yaklaşımı insan özgürlüğüne odaklıdır. Sen özgürlüğün iki temel yönünü saptar: Fırsat yönü (*opportunity aspect*) ve süreç yönü (*process aspect*). Özgürlüğün fırsat yönü, yalnızca insan hedeflerine ulaşırken elde edilen sonuçlarla ilgiliyken, süreç yönü daha kapsamlı olarak insan seçimlerinin yapılma süreciyle ve bunların yapıldığı koşullarla da ilgilidir. Yapabilirlik yaklaşımı bireyin bir şeyi yapma, isteme veya seçme özgürlüğüne odaklanması dolayısıyla yalnızca doruk noktasında (*culmination*) ne olduğuna odaklanan fırsat yaklaşımından farklı olarak, daha geniş bir bakış açısından özgürlüğün fırsat yönü ile ilgilidir. Örneğin dini inançları doğrultusunda oruç tutan bir kimse, kıtlık dolayısıyla yiyecek bulamayan başka bir kişi gibi beslenmeden yoksun bir durumda olabilir. Ancak bu iki kişi yapabilirlikleri ve özgürlükleri açısından oldukça farklı konumdadırlar. Sen'e göre, yapabilirlik yaklaşımı "bir şeyi yapmak ve o şeyi yapmaktan özgür olmak" ayrımını açıklayabilir ve bir şeyi özgürce seçmek veya yapmak ile başka bir seçeneği olmaksızın belirli şeyleri yapmaya veya seçmeye zorlanmak arasındaki farkları ortaya koyabilir.

Sen'e göre insan yapabilirliklerinin çok çeşitli olmaları ve ölçülebilir tek bir birime dönüştürülemedikleri için ölçülemedikleri, farklı yapabilirlik bileşimlerinin karşılaştırılmayacaklarını göstermez. Makul bir değerlendirme, çeşitli alternatiflerin göreceli öneminin, sayılmadan değerlendirilmesini gerektirir. Bir başka deyişle herhangi bir değerlendirme yaparken, değerlendirilen şeylerin "sayılmasına" gerek yoktur. Günlük yaşamda kararlar, bir değer farklı boyutlarının tek bir iyi şeye indirgenmekle ve bu tek boyutlu, ölçülebilir değere göre alınmazlar; bu kararlar çeşitli alternatiflerden makul seçimler yapmak şeklinde alınır. Günlük yaşamda bu biçimde yapılan pek çok değerlendirme kamusal akıl yürütmede de kullanılabilir.

Sen adaleti soyut değil, somut olarak, bireylerin yaşam deneyimleriyle olan bağlantısı içerisinde ve ilişkisel olarak ele alır. Adalet kişilerin kendi kültürleri, gelenekleri ve deneyimleri içerisinde bizzat yaşamın kendi pratiği içerisinde anlamını kazanmaktadır. Sen'in karşılaştırmalı bakış açısı, yoksulluk, engellilerin durumu, aile içi adaletsizlikler gibi alanlar için geniş bir bakış açısı sunar. Bu alanlarda ortaya açan adaletsizliklerin tespit edilmesine, ifade edilerek tartışılmasına ve dolayısıyla da bunlara yönelik tedbirlerin alınabilmesine olanak tanır. Hakkaniyet olarak adaletin konusu toplumun temel yapısı iken, yapabilirlik yaklaşımının konusu daha kapsamlıdır, diğer şeylerin yanı sıra birincil değerleri de içerir.

Yapabilirlik yaklaşımı belirli bir toplumdaki toplumsal normları, kişilerarası ilişkileri, ortak tavırları açıklamaya yardımcı olur, dolayısıyla bu yaklaşım kendini toplumun temel yapısıyla sınırlamaz. Hakkaniyet olarak adalet ideal olarak adil bir toplumla ilgilenirken, yapabilirlik yaklaşımı yaşamın akışındaki adaletsizliklere odaklanarak bunlara çareler arar. Rawls adaletin kapsamını kurumsal düzeyde sınırlı tutarken, Sen adaleti çok daha geniş ve ilişkisel bağlamda araştırır. Rawls bireylerin belirlenen kurumsal yapıya ve adalet ilkelerinde tam bir uygunluk içinde hareket edeceğini varsayar. Bu da gündelik yaşamda karşılaşılan pek çok adaletsizliği görünmez kılar.

Rawls'a göre yapabilirlik yaklaşımı, çelişkili felsefi ve dini doktrinleri bir kenara bırakan siyasi bir adalet anlayışından ziyade kapsamlı bir ahlaki doktrindir. Sen ise yapabilirlik yaklaşımının özgürlüğe odaklı olduğunu, kişilerin istedikleri yapabilirlikleri seçebileceklerini ve belirli bir yaşam tarzı önerisi bulunmadığını açıklayarak Rawls'un görüşüne katılmaz. Yapabilirlik yaklaşımında birincil değerler, insan yapabilirlikleri üzerindeki etkileri nedeniyle dikkate alınır. Bireyler aynı sayıda birincil değerlere sahip olsalar dahi yararlanılan özgürlük açısından çok daha farklı koşullarda olabilirler. Yararlanılan özgürlük açısından, yapabilirlik yaklaşımı ile birincil değerler anlayışı arasında önemli bir ayrım vardır. Bir kişi daha fazla birincil değere sahip olabilir, ancak zihinsel veya fiziksel engeli nedeniyle bu değerleri yapmaya veya olmaya değer verdiği şeye dönüştürürken daha az yeteneğe sahip olabilir. Birincil değerleri yapabilirliklere dönüştürme farklılıkları cinsiyet eşitsizliği çalışmalarında da önemli bir araç olarak kullanılabilir. Örneğin, bir kadın, bir erkekle aynı miktarda birincil değere sahip olsa da, bebek bakımı, o toplum yapısında erkek ve kadınların geleneksel rolleri, hamilelikle ilgili biyolojik faktörler gibi faktörlerin etkisiyle önemli ölçüde dezavantajlı durumda olabilir. Bu anlamda, özellikle cinsiyet araştırmalarında birincil değerlerin veya diğer kaynakların sayısı temel alınarak yapılan değerlendirmeler birçok eşitsizliği gizlediğinden belli bir kişinin avantajlarını ve dezavantajlarını karşılaştırmak için iyi bir ölçüt olamaz. Bireyler aynı sayıda birincil değerlere sahip olsalar bile, sosyal, kültürel, fiziksel, karakteristik, biyolojik vb. birçok nedenden kaynaklanan farklılıklarından ötürü hayatlarında özgürlük inşa etme konusunda farklı yapabilirliklere sahiptirler.

Öte yandan Sen yapabilirlik yaklaşımında eylemleri veya kurumları adil veya adaletsiz olarak değerlendirmek için herhangi bir adalet ilkesi ortaya koymadığı için eleştirilir. Sen'in sabit bir yapabilirlik listesi hazırlamasının ya da bir takım ölçütler belirlemesinin gerekli olduğu konusunda görüşler bulunmaktadır. Sen bazı karşılaştırmalarda, karşılaştırmaların amacına göre kimi yapabilirlik listelerinin kullanılabileceğini düşünse de herhangi bir yapabilirlik listesinin reddetmenin veya herhangi bir listeyi sabitlemenin doğru olmadığını savunur. Çünkü Sen'e göre bu listeler pratik ihtiyaçlar için zamanla değiştirilmelidir. Sen

ayrıca farklı ulusların farklı zamanlarda deęişen kültürel ihtiyaçlarını karşılamak mümkün olmayacağı için önceden hazırlanmış belirli bir yapabilirlik listesi oluşturma fikrini de reddeder. Sen'e göre bir kuram, karşılaştırmalı yargılardan veya pratik akıl yürütmenin sistematik kullanımından oluşabilir.

Aşkın bir adalet anlayışını temsil eden hakkaniyet olarak adalet, birincil değerler yaklaşımında insan çeşitliliğini dikkate almaz. Bireyin deęişen ihtiyaçlarına ve yapabilirliklerine göre sahip olduğu birincil değerlerini yaşam amaçlarına dönüştürme farklılıklarını ele almaz. Yapabilirlik yaklaşımı ise yaşam araçlarından ziyade insanların amaçlarına ve insan yaşamına odaklanır. Adaletle ilişkisel olarak bakar. Temel odağı adaletsizlikler ve onları ortadan kaldırmak olduğu için, süregelen adaletsizlikleri tanımakta daha etkindir. Hakkaniyet olarak adalet, kuramını toplumun temel yapısı ve kurumlarla sınırlarken özel ihtiyaçlara sahip kişileri ve aile içi adaletsizlikleri kuramından dışlar. Bunun temelinde insanların bilmezlik peçesi altında seçtikleri adalet ilkeleri ile kusursuz bir şekilde işleyen kurumlara tam uyumlu bir şekilde hareket edecekleri varsayımı vardır. Bu da gündelik hayatta yaşanan pek çok adaletsizliği görünmez kılar. Rawls'a göre farklı çıkarlara sahip insanları bir arada tutan şey adaletin ne olduğu konusundaki mutabakatlarıdır. Örneğin, Rawls'a göre dine ve ırka dayalı ayrımcılık tartışmasız bir şekilde adaletsizdir.

Ancak günümüzde, birçok temel hak ve özgürlük yasalar ve hükümetler tarafından güvence altına alınsa da pek çok insan günlük yaşamlarında farklı adaletsizliklerle karşılaşmaktadır. Günümüzde hâlâ insanlar cinsiyetlerine, dinlerine, milliyetlerine veya ırklarına göre farklı zamanlarda ve farklı ülkelerde birçok farklı adaletsizlikle karşı karşıya kalabilmektedirler. Öyle ki günümüzde hâlâ "Black Lives Matter" dünya gündeminde yer alabilmektedir. Bu anlamda adaletsizliklere inatla odaklanmanın ve ülkelere göre deęişen adaletsizliklerin kendine özgü iç dinamiklerini anlamaya çalışmanın, gerek adaletsizliğin ortadan kaldırılması gerekse adaletin geliştirilmesi açısından mevcut durumu deęiştirmede daha etkili olacağı düşünülmektedir.

Sen'in sabit bir yapabilirlik listesi sunması gerekip gerekmediğine ilişkin tartışmalarla ilgili olarak Sen'in yapabilirliklerle ilgili bir ölçüt listesi hazırlamasının Sen'in adalet kuramını daha sistematik hale getirebileceği düşünülmektedir.

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### YAZARIN / AUTHOR

**Soyadı / Surname** : Esmer  
**Adı / Name** : Songül  
**Bölümü / Department** : Felsefe / Philosophy

**TEZİN ADI / TITLE OF THE THESIS** (İngilizce / English): AMARTYA SEN'S CAPABILITY APPROACH AND ITS RELATION WITH JOHN RAWLS' JUSTICE AS FAIRNESS.

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