

Sen's Capability Critique

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Rawls takes citizens to be *normal and fully cooperating participants* in social cooperation—where the first part of this conjunction means having “physical needs and psychological capacities within the normal range”.¹ By rejecting Rawls’s bracketing of disability, Sen’s capability approach is able to widen the range of inequalities it can acknowledge. A theory must first give us the tools to acknowledge inequalities before it can help us determine whether they are unfair. I will provide an interpretation of the disagreement between Rawls and Sen that departs somewhat from how they and others typically present it. My view is that the disagreement can best be understood by focusing on Rawls’s remarks about the value of liberties and Sen’s remarks about a public ranking of valuable functionings.

Rawls and the value of liberties

Consider this passage from *Theory*:

The inability to take advantage of one’s rights and opportunities as a result of poverty and ignorance, and a lack of means generally, is sometimes counted among the constraints definitive of liberty. I shall not, however, say this, but rather I shall think of these things as affecting the worth of liberty, the value to individuals of the rights that the first principle defines. ... [T]he worth of liberty to persons and groups depends upon their capacity to advance their ends within the framework the system defines. ... Taking the two principles together, the basic structure is to be arranged to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all. This defines the end of social justice.²

The point of justice as fairness is to secure people’s basic liberties and then give worth, or value, to those liberties. The first principle has two parts: equal basic liberties and fair value of political liberties. The second principle also has two parts: fair equality of opportunity and the difference principle. The first of these four parts—equal basic liberties—secures people’s basic liberties. The other three parts give value to those liberties. I will explain.

¹ John Rawls, *A Theory of Justice*, revised edition (Cambridge, MA: Harvard University Press, 1999), §16: 83-84.

² *Theory*, §32: 179; cf. John Rawls, *Justice as Fairness: A Restatement*, edited by Erin Kelly (Cambridge, MA: Harvard University Press, 2001), §45: 149.

Equal basic liberties provide people with, among other things, formal equality for political participation, which means an absence of discriminatory legal obstacles, such as voting restrictions based on gender or race or personal wealth. It is not enough, however, that all members of society have the same political liberties; Rawls is also concerned with people's ability to make use of them—in other words, the value political liberties have for them. The government is required to take action to increase the likelihood that people's level of success in politics will correlate only with their talent for and dedication to politics. For example, to prevent people from buying political influence, Rawls argues that political campaigns must be publicly funded and that the government must use taxes and inheritance laws to prevent excessive concentrations of wealth.³

To determine whether the government has done enough to achieve fair value of political liberties, society would need to measure people's success in politics and then examine whether inequalities in success correspond to such factors as gender, race, wealth, and so on. The government might therefore collect data on voting participation, candidates, elected representatives, appointed political officials, and other indicators of success in politics. Whenever there is excessive correlation between patterns of success and a factor other than talent for or dedication to politics, the government must consider whether to take further action towards achieving fair value of political liberties.

Next, consider fair equality of opportunity. Rawls enters into discussion of opportunity in order to specify the meaning of "open to all" in the phrase: "Social and economic inequalities are to be arranged so that they are ... attached to positions and offices open to all".⁴ He notes that "open to all" might be interpreted to mean "careers open to talents", according to which the opportunity to compete for jobs is only formally equal (as guaranteed by equal basic liberties). Since the competitive process related to careers begins at school, school-related opportunities are also relevant here. (Later on, we will consider an expanded reading of opportunity.) I will refer to liberties related to work and school as *occupational liberties*. Rawls is concerned not only with whether everyone has the same occupational liberties, but also with people's ability to make use of them. Fair equality of opportunity aims make sure that the value occupational liberties have for you is not affected by factors such as your gender, race, parents' wealth, and so on.⁵ The government is required to take action to increase the likelihood that people's level of occupational success will correlate only with their talent for and dedication to the career(s) they pursue.

³ *Restatement*, §§45 and 49.4.

⁴ *Theory*, §11: 53.

⁵ *Fair value of political liberties* could just as easily be called *fair equality of political opportunity*. Likewise, *fair equality of (occupational) opportunity* could just as easily be called *fair value of occupational liberties*. To guarantee the fair value of a certain type of liberties is to secure fair equality of the corresponding opportunity, and vice versa.

To achieve fair equality of opportunity, the government must, for example, either prohibit private schools or make sure that public schools are of equivalent educational quality. To decide between these two actions, the government would need to measure people's success in school and work, and then examine whether inequalities in success correspond only to people's talent and dedication, and not to such factors as familial wealth, gender, race, and so on. The government might therefore collect data on high school graduation, postsecondary graduation, income, unemployment, leadership positions, and other indicators of success. Whenever there is excessive correlation between patterns of success and a factor other than talent and dedication, the government must consider whether to take further action towards achieving fair equality of opportunity.

Finally, consider the difference principle. Since political and occupational liberties are addressed by prior principles, the difference principle, in effect, concerns only inequalities in the value of other liberties, which I will refer to as *civil liberties*.⁶ Civil liberties are about leading your life outside of school, work, and politics, in pursuit of your conception of the good. Justice as fairness does not guarantee the fair value of civil liberties.⁷ Greater income and wealth give you greater ability to make use of your civil liberties by giving you a wider range of valuable options in your social and personal life. Instead of aiming to give fair value to civil liberties, the difference principle permits (and demands) inequality in the value civil liberties have for different people in order to maximise the value civil liberties have for the least advantaged.

To determine whether the government has done enough to satisfy the difference principle, society would need to measure changes over time in the value civil liberties have for the least advantaged. One way to do this would be to identify indicators of success in social and personal life. Justice as fairness is designed to avoid this. Instead, Rawls explicitly assumes, as an idealisation, that all citizens have physical and mental abilities "within the normal range" and then concludes, since money is an all-purpose means, that a given amount of money gives the same value to civil liberties for any two people. On that basis, justice as fairness takes your level of income and wealth to be adequate evidence of the value civil liberties have for you. For example, freedom of movement has greater value for a wealthier person, because their money gives them a better set of travel options. To evaluate implementation of the difference principle, the question then becomes whether the government has done all it can to increase the income and wealth of the least advantaged (without running afoul of the prior principles).

It is worth reflecting on why civil liberties are approached differently by Rawls. To measure success in social and personal life, we would need to appeal to ideas of the good that are beyond what could be included in a political, rather than comprehensive, conception of justice. (Rawls uses the term *political* in a technical sense here, rather than the ordinary sense it has when he writes about political

⁶ My usage may not match the ordinary usage of the term *civil liberties*.

⁷ *Restatement*, §46.

liberties.) The political conception of society views a society as a fair system of social cooperation, and views a person as a citizen who is able to be a fully cooperating participant therein by working with others and being fair to them. Societies and persons are obviously much more than this, but the political conception of society can be agreed upon without needing to reach agreement on the complete nature and value of humans and society. Ideas of the good can be “worked up” from the political conception of society and then included in a political conception of justice as political values—political in the technical sense. The value of occupational and political liberties can be judged using political values; but the value of civil liberties cannot. I will explain why.

Consider how we might think about success in school, work, and politics. One way would be to use a complete conception of the good to assess how *occupational goods* and *political goods* contribute to your well-being. Surely they do. This approach is not open to Rawls, because he does not seek to defend a comprehensive conception of justice, and so must appeal only to political values. Concerning occupational goods, being able to develop skills and use them in the labour market is something people need *as citizens* when society is understood as a fair system of social cooperation. The same is true for the ability to be fair and to do one’s part to create and sustain just institutions. This is how a significant part of the value of occupational and political goods can be explained without appeal to a complete view of well-being.

In contrast, the entire importance of *civil goods* comes from their contribution to your well-being. Civil goods are not meant to help you be able to be a fully cooperating participant. Rather, you participate in social cooperation in order to earn resources for enjoying civil goods in pursuit of your conception of the good. This is why the value of civil liberties cannot be judged using political values. And that is why justice as fairness is designed to avoid the need to identify indicators of success in social and personal life.

Some things that can be valued as a civil good can also be valued as a political or occupational good. For example, consider a café. It is a place where you can (i) be employed, (ii) have a business meeting, (iii) meet to politically organise, or (iv) enjoy leisure time. In the first two respects it is an occupational good, in the third a political, and in the fourth a civil. Justice as fairness can value a café *qua* occupational good or political good, but not *qua* civil good, because this would involve taking a stand about its importance for well-being. The theory is also unable to value things that are *mere* civil goods—whose value comes entirely from their contribution to your well-being.

Sen and a public ranking of valuable functionings

Sen offers the idea of capability as way to think about *the extent of freedom*. As we will see, this is essentially the same as Rawls’s idea of the value of liberties. To explain the idea of capability, we should start with *functionings*.

Functionings are *doings* or *beings*. A *doing* is any action; a *being* is any physical or mental state. These are descriptive terms. A trivial action, like bending

your finger, is just as much a doing as a monumental action, like giving birth. A harmful state, like starving or being homicidal, is just as much a being as a beneficial state, like being well-nourished or having self-respect.

To have a complete description of the kind of life a person leads, you would need to have a complete record of the functionings they achieve—that is, all their physical and mental states and everything they do. Sen uses the term *achieve* broadly to include functionings that happen with or without assistance from other people. For example, an infant who is fed well by their parent is said to *achieve* the functioning of being well-nourished.⁸

To turn a record of a person's achieved functionings into an assessment of their well-being, you would need to judge how valuable each functioning is. Sen uses the term *valuation function* for one set of such judgments. If you are evaluating one person's well-being, the valuation function would be their own judgments about the value of their functionings. To do interpersonal comparisons of well-being, there must be an agreed-upon valuation function. Sen argues that it is impossible to do "inter-valuation-functional" comparisons of well-being involving two or more valuation functions at once.⁹

It is humanly impossible to have a valuation function that lists and ranks all valuable functionings. An incomplete valuation function can have significant practical implications. That being said, we will see later on that there is reason to include more, rather than fewer, valuable functionings.

We are now in a position to examine Sen's idea of *capability*. He describes it as *the freedom to achieve well-being or the freedom to lead the kind of life you have reason to value*.¹⁰ Suppose you knew not only the combination of functionings a person actually achieves, but also all the other possible combinations of functionings they could have achieved instead. This is called a *capability set*. A person's capability is about the alternative combinations of functionings they have the freedom to achieve. How do we assess how good the set of alternatives is? Sen rejects the *count method*, according to which a larger set is always better, because there is an obvious and compelling sense in which a person is given more freedom by a smaller number of options they judge to be valuable than by a larger number of options they judge to be detrimental or worthless.¹¹ The evaluation of capability sets requires judging the value of the options themselves.¹² In order to use the idea of capability to inform government action, we would need a public list of valuable functionings and a public ranking of those functionings.

⁸ Amartya Sen, "Capability and Well-Being," in *The Quality of Life*, edited by Martha Nussbaum and Amartya Sen, 30-53 (Oxford: Oxford University Press, 1993) 43.

⁹ Amartya Sen, *Commodities and Capabilities* (Amsterdam: North-Holland, 1985), 58.

¹⁰ Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999).

¹¹ Amartya Sen, *Rational and Freedom* (Cambridge, MA: Harvard University Press, 2002), 13.

¹² Amartya Sen, "Capability and Well-Being," in *The Quality of Life*, edited by Martha Nussbaum and Amartya Sen, 30-53 (Oxford: Oxford University Press, 1993), 35.

How would all of this work? It is difficult to gather information about a person's capability set directly, because it is hard to know what functionings they *could have but chose not to* achieve. Instead, a society can examine information about achieved functionings in order to reach conclusions about capability. For example, if a particular functioning is achieved by a significant number of people, and if no social group is disproportionately represented among the people who do not achieve it, this indicates that all people have the capability related to this functioning. If, instead, a social group is overrepresented among people who do not achieve this functioning, this suggests that there may be a group-linked obstacle blocking this capability. The government must then consider whether to take action to address this obstacle.

It is important to note that a society's ability to put the idea of capability into practice is made possible—and, at the same time, is limited—by the content of the public ranking of valuable functionings. This is because a larger capability set is judged to be better (i.e., to give more freedom) than a smaller capability set only if the functionings that are found in the larger one and are missing in the smaller one are recognised as valuable. Recall Sen's rejection of the count method. If those extra functionings are not on the public list, then the larger set is judged to be merely numerically larger, but not better. If a group-linked inequality manifests only in terms of functionings that are not on the public list, then capability theory would be unable to acknowledge that inequality. This can be a reason in favour of a longer, rather than shorter, public list.

Rawls and a public ranking of valuable functionings

Is justice as fairness opposed to a public ranking of valuable functionings? Rawls does not address this explicitly. I will argue that justice as fairness could support a public ranking of valuable functionings related to political and occupational goods, but not civil goods.

In our discussion of fair value of political liberties we saw that society would need to gather information about indicators of success and then look for patterns that suggest that the value of political liberties is affected by wealth, gender, race, and so on. Those indicators simply are valuable functionings in politics. The patterns in question are about inequality in achieved political functionings, which may indicate inequality in the freedom to achieve valuable political functionings. Talking about how much value political liberties have for different people is the same as talking about people's capabilities related to political participation.

Much the same is true of occupational liberties. When we identify indicators of success in school or work what we are doing is making a list of valuable occupational functionings. Fair equality of opportunity is about capabilities related to school and work.

In contrast, Rawls's view is opposed to a public ranking of valuable civil functionings. Justice as fairness is designed to avoid the need to identify indicators of success in social and personal life. Civil functionings are valuable because of their importance for a person's well-being, and so cannot be identified and ranked by

appealing only to political values. Civil functionings that can be valued *qua* occupational or political functionings could be included on a Rawlsian list, although they might be ranked lower than they would have been if their full value were acknowledged. Functioning that are about *mere* civil goods could not be included on a Rawlsian list. Justice as fairness assumes that a person's income and wealth is adequate evidence of their freedom to achieve valuable civil functionings.

An expanded reading of fair equality of opportunity?

Let us consider whether fair equality of opportunity should be given an expanded reading, according to which it includes some civil goods.¹³ This would allow justice as fairness to value some things *qua* civil goods, which means some valuable civil functionings could be included on a Rawlsian public list. I will consider whether there is support for this in Tommie Shelby's work on race and Norman Daniels's work on health and disability.

Shelby writes that in order to fully achieve fair equality of opportunity in the U.S. in a way that addresses racial injustice, especially as experienced by African Americans, institutional reforms would have to include, among other things, "aggressive measures to address discrimination in ... housing and lending."¹⁴ Shelby is surely right, but I do not think he is advocating for *fair* equality of opportunity in housing and lending, because this would require the government to take steps to make sure that people's success in housing is determined only by their talent for and dedication to housing, and is unaffected by, among other things, their income and wealth. Perhaps the best houses would go to the best architects regardless of money. This is not Shelby's position. Instead, what is needed is formal equality in housing and lending—which ought to be guaranteed by equal basic liberties—in combination with fair equality of occupational opportunity. Such formal equality, Tommie notes, would place demands not only on the content of rules that regulate institutions related to housing and lending, but also to those institutions *as realised*.

[W]hen the distorting effects of racial prejudice and bias pervade the operation of an institution, the institution as realized is itself unjust, notwithstanding the justice of its rules and procedures when viewed abstractly.¹⁵

Fair equality of occupational opportunity ensures that people's income and wealth are not influenced by their racial identity; and formal equality in housing and lending ensures that people's ability to secure loans and acquire housing depends only on their finances and is unaffected by their racial identity.

¹³ I thank Sarah Roberts-Cady and Jon Mandle for raising these points.

¹⁴ Tommie Shelby, "Race and Social Justice: Rawlsian Considerations," *Fordham Law Review* 72/5 (2004): 1697-1714 at 1711.

¹⁵ Shelby, "Race and Social Justice," 1706.

Daniels aims to improve Rawls's ability to address illness and disability.¹⁶ Rawls cites Daniels favourably.¹⁷ Daniels broadens fair equality of opportunity, so that it requires society to meet people's health needs when doing so will help them have a fair share of the *normal opportunity range*, which is "the array of life plans reasonable persons are likely to develop for themselves."¹⁸ He argues that guaranteeing people fair opportunity shares is a vital part of what they need in order to be "normal, fully functioning members of society."¹⁹ If, for example, social meetings in cafés or in private homes play an important social role in a particular society, then we might say that these civil goods should be included in the normal opportunity range; and this could provide support for requiring the accessibility of these and other socially significant spaces for the sake of making sure everyone has the ability to participate as a free and equal citizen.²⁰

One question this raises is how a civil good would be identified as being one that has an important social role. On the one hand, we could say that a civil good has an important social role if it makes an important well-being contribution to social or personal life. If we do this, then we are identifying indicators of success in social and personal life. This is what the use of primary goods is supposed to allow justice as fairness to avoid. If we take this route, the normal opportunity range becomes equivalent to the idea of capability, which, indeed, Daniels acknowledges.²¹ On the other hand, the civil good might be valued *qua* political or occupational good, and not *qua* civil good. We might say, for example, that having access to socially significant spaces is an occupational and political good, because social networks grow out of social events, and such networks have importance in politics, work, and school. This takes us back to my reading of fair equality of opportunity as involving only occupational goods.

Conversion factors

Sen argues that justice as fairness is insensitive to the fact that there is significant *inter-individual variation* with respect to people's ability to convert resources into the freedom to achieve well-being. We can rephrase Sen's objection as being precisely about Rawls's approach to measuring the value of civil liberties. The key claim in the objection to Rawls is, then, that a given level of income and wealth does not give the same value to civil liberties for different people. Such inter-individual variation exists among the members of the least advantaged (as well as at every other level of income and wealth). It therefore affects society's ability to accurately measure the value civil liberties have for the least advantaged. This, in

¹⁶ Norman Daniels, *Just Health: Meeting Health Needs Fairly* (New York: Cambridge University Press, 2008).

¹⁷ *Restatement*, §51.6: 175, note 58.

¹⁸ Daniels, *Just Health*, 43.

¹⁹ Norman Daniels, *Justice and Justification: Reflective Equilibrium in Theory and Practice* (New York: Cambridge University Press, 1996), 216.

²⁰ I thank Sarah Roberts-Cady and Jon Mandle for this point.

²¹ Daniels, *Just Health*, 66-71.

turn, affects society's ability to determine whether its government has done enough to satisfy the difference principle. This variation can be explained using the idea of *conversion factors*.

Ingrid Robeyns distinguishes between three types of conversion factors: *personal*, *environmental*, and *social*.²² To illustrate, imagine you are a wheelchair user in a society that makes no effort to be inclusive of people with disabilities. You must pay out of pocket for your wheelchair and related expenses, which reduces your ability to convert your income into the freedom to achieve valuable civil functionings. This is a personal conversion factor. Your ability to make use of civil liberties is further reduced by the inaccessible design of many public spaces. This is an environmental conversion factor. The prevalence of ableist attitudes further shrinks the range of valuable civil functionings you have the freedom to achieve. This is a social conversion factor. Your *conversion ability* (i.e., your ability to convert resources into the freedom to achieve well-being) is affected by the interaction between all three types of conversion factors. If you are nondisabled, your income gives more value to your civil liberties, or, in other words, opens up a larger range of valuable civil functionings. Not all conversion factors are related to disability, but the importance of giving justice to disabled members of society is enough by itself to fuel the capability critique; and so I will focus on disability-related conversion factors.

Disability

The disadvantage that is attached to disability can be lessened by addressing any or all of the three types of conversion factors. For example, consider the capability to participate in a recreational basketball league with a \$60 registration fee at a community centre that lacks accessible design. If you are a wheelchair user, then you would not be able to convert \$60 into this functioning. Some actions society could take to change this are:

- (i) Offering publicly funded medical treatments to restore the use of your legs (if such treatments exist),
- (ii) Offering publicly funded assistive devices or technologies that allow you to stand, walk, run, and jump (if such devices or technologies exist),
- (iii) Making the community centre physically accessible,
- (iv) Introducing a recreational wheelchair basketball league,
- (v) Purchasing a set of basketball wheelchairs for public use, and
- (vi) Doing outreach to change attitudes so that the wheelchair basketball league is enjoyed by good numbers of nondisabled players as well as wheelchair users.

The last of these addresses social factors, (iii)-(v) address environmental factors, and the first two address personal factors.

²² Ingrid Robeyns, "The Capability Approach: A Theoretical Survey," *Journal of Human Development* 6/1 (2005): 93–117 at 99.

What if playing in a recreational basketball league is not a functioning that is included in the public ranking of valuable functionings? Recall Sen's rejection of the count method. The mere fact that one capability set is numerically larger than another tells us nothing about whether it is better. We must know whether the extra functioning in the larger set is valuable. If the public ranking does not recognise playing in a recreational basketball league as a valuable functioning, then adding that functioning to a capability set would make it merely larger, not *better*. Only a theory that can first acknowledge an inequality can help us argue that society should take action to reduce that inequality. Capability theory's ability to do this is made possible—and, conversely, is limited—by the content of the public ranking of valuable functionings. If disability shrinks a person's capability set, capability theory is able to count this as disadvantageous only insofar as the lost functionings are recognised as valuable by the public ranking.

This brings into focus the practical significance of the disagreement between Rawls and Sen. That disagreement is best thought of as being about how to value civil functionings. Rawls seeks to avoid generating a public ranking of valuable civil functionings; Sen shows the importance of doing so. And so, if disability shrinks a person's capability set in a way that blocks valuable civil functionings, Rawls's view cannot help us argue that society should take any of the actions (i)-(vi) in cases where what is at stake are mere civil goods—i.e., those that are important only for social and personal life.

Consider personal conversion factors. Imagine that you, by birth, illness, or injury, are able to walk but not run. A medical treatment exists that could allow you to run. It is unlikely that Rawls's view could recognise running as a valuable functioning, because you need not run in order to fully participate in school, work, or politics. And so, the treatment would not be publicly funded; although treatments that provide a level of mobility that is important for school, work, or politics would be. For similar reasons, there would be public funding for standard prosthetics and assistive devices, but not for prosthetics or assistive devices that are specially designed for allow people to participate in recreational activities (unless, of course, this is valued *qua* occupational or political good). In short, a Rawlsian government could be called on to take action to address personal conversion factors only if they affect people's occupational or political life.

Concerning environmental conversion factors, consider the question of how many spaces should be accessible. One might well want to argue that all spaces that could be made accessible, should be. A Rawlsian public ranking could not support this. In order to recognise the inaccessibility of a given space as disadvantageous to people who cannot access it, the functionings that are blocked by the inaccessibility must be recognised as valuable. If a space is important only for civil goods, then having access to it is a civil functioning that would not be on a Rawlsian list.

What all this shows is that Rawls's desire to avoid the need to identify valuable civil functionings (i.e., indicators of success in social and personal life) makes his theory unable to address disability-related inequalities in the value that

civil liberties have for people. The severity of this limitation in the theory depends on (a) how often civil goods can be valued *qua* occupational or political goods and (b) to what extent this results in an underappreciation of the importance of civil goods so valued.

Public value perfectionism

Rawls's desire to avoid identifying valuable civil functionings is motivated by his anti-perfectionism—that is, his desire to avoid appealing to ideas of good that are not political values. The worry can be thought of as follows. A public ranking of valuable civil functionings is likely to excessively reflect ideas of the good from the dominant group in society. If such a ranking were put to use in the implementation of the difference principle, the outcome would favour the dominant group's conception of the good. This goes directly against Rawls's requirement that a reasonable person or group shall not use political power to advance their own conception of the good. The worry is avoided when the value of civil liberties is measured in terms of income and wealth.

As we have seen, avoiding this worry in this way renders the theory unable to adequately address conversion factors related to civil functionings. Is this cost too great? My view is that at least when the conversion factors are related to disability, it is.

A compromise position is possible. I call it *public value perfectionism*. I propose to leave the two parts of Rawls's second principle as is—including the use of income and wealth to measure the value of civil liberties for the sake of implementing the difference principle—and to add third part. This third part, which I will call *the inclusion principle*, would require society to take action to reduce disability-related inequalities in conversion ability related to civil functionings. To implement the third part—and only this part—there would be a public ranking of valuable civil functionings.²³ Such a ranking could not be generated using political values. Instead, a society would use what I call *public values*. I will explain the difference.

Political values have two key features. First, citizens are asked to affirm political values *for political purposes* without also being asked to affirm them for other purposes, such as forming and pursuing a complete conception of the good. Second, political values are “worked up” from the political conception of society. Public values lack the second feature, but have a restricted version of the first—namely, citizens are asked to affirm them *for one political purpose* without also being asked to affirm them for other purposes (including other political purposes). The purpose in question is to reduce the disadvantage attached to disability.

For public values to have this feature, the right question must be asked when generating the public list of valuable civil functionings. The question is not: “Is it important for me to achieve this functioning?” This focuses too narrowly on

²³ Public rankings of political and occupational functionings would already be needed because of fair value of political liberties and fair equality of opportunity.

what you think contributes to your good. The question is not: “Is it important for people to have the freedom to achieve this functioning?” This focus is too broad, because it suggests that society might seek, as a general aim, to promote the civil functionings on the public list. The risk of advancing the dominant group’s conception of the good would be too great. The question should be: “Is it important that disability not block people from having the freedom to achieve this functioning?” This question makes it clear that the public ranking is used only to guide government action to address disability-related conversion factors. You could support government action to reduce disability-related barriers to a recreational activity, while at the same time being opposed, on anti-perfectionist grounds, to the idea that the activity should be generally encouraged using government power. For example, you could support accessibility requirements for ski hills and public funding for sit-skis, and so support a public ranking that includes alpine skiing as a valuable civil functioning; and at the same time, you could oppose the idea that the government should provide a general subsidy to reduce the cost of skiing for all skiers.

The use of public values to implement the inclusion principle would be a constrained form of perfectionism. The alternative is a theory that is unable to see—and therefore unable to address—disability-related inequalities in the value of civil liberties. This is the key question raised by Sen’s capability critique: Should such inequalities be ignored in order to avoid (even a constrained form of) state perfectionism?