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Title: Human rights and ethical reasoning: capabilities, conventions and spheres of public action

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Abstract

This interdisciplinary paper argues that human rights must be understood in terms of opportunities for social participation and that social and economic rights are integral to any discussion of the subject. We offer both a social constructionist and a normative framework for a sociology of human rights which reaches beyond liberal individualism, combining insights from the work of Amartya Sen and from French convention theory. Following Sen, we argue that human rights are founded on the promotion of human capabilities as ethical demands shaped by public reasoning. Using French convention theory, we show how the terms of such deliberation are shaped by different constructions of collectively held values and the compromises reached between them. We conclude by demonstrating how our approach offers a new perspective on spheres of public action and the role these should play in promoting social cohesion, individual capabilities and human rights.

Keywords: capability approach, convention theory, human rights, social justice, social and economic rights, public action, Sen, Amartya.

Introduction

Discourses, laws and theories of human rights have long been highly contested. Many of these debates centre around stark dichotomies between conceptions of human rights as: liberal or radical, individual or social, fundamental or social constructivist, normative or 'open', relativist or universalist, and basic or inclusive in scope (Hynes, et al. 2010; Sen 2004; Turner 2006; Waters 1996). Human rights have also been criticised by scholars for being soft, intellectually dubious, lacking in conceptual grounding, and difficult to enforce (Sen 2004: 315). Following calls to expand the scope of human rights beyond liberal individualism to address wider inequalities (Freeman 2002; Hynes, et al. 2010; Woodiwiss 2003), this paper poses both a social constructivist and a normative framework. It combines insights from Amartya Sen and French convention theory (especially Boltanski and Thévenot 2006) on ideas of justice, capabilities, ethical public reasoning and moral frameworks, arguing for public action to safeguard human rights.

Many legal debates on human rights derive from liberal concerns: the individual and her freedom of movement, her rights to social support, to free speech, and to freedom from discrimination on grounds of gender, sexual orientation, race, ethnicity, age, religion and disability. The liberal foundations for human rights legislation have historical roots in the US Declaration of Independence of 1776 and in the French declaration of 'rights of man' in 1789 which spoke of 'universal rights' of man, and which Marx criticised heavily for emphasising limited individual rights of man rather than the rights of citizens (Hynes, et al. 2010; Sen 2004). T.H. Marshall (1950) was influential in opening up debates about the importance of citizenship, distinguishing civic, political and social rights. However, broader social and economic rights, or 'second generation' rights, have only recently received attention within these debates, with critics pointing out the lack of feasibility of addressing these rights within existing legislation and institutions (cf. Felice 2003; Pogge 2008; Sen 2004). Well established liberal arguments on human rights have been employed to justify extensions in state welfare (to offer universal protection against common risks) and their removal (based on Hayekian arguments that state intervention undermines individual freedoms rather than furthering them).

Drawing on different academic disciplines, particularly sociology, social policy, economic theory and philosophy, this article offers both a socially constructed and normative framework for analysing human rights, placing the individual within the social, thereby encompassing a wide range of political, social and economic rights. We agree with Waters (1996) and Freeman (2010) that human rights are contextually

framed. According to Freeman (2002) human rights are means rather than ends, socially constructed rather than fundamental, relating to Waters' (1996: 593) argument that 'an adequate sociological theory of human rights must take a social-constructionist view, that human rights is an institution that is specific to cultural and historical context just like any other, and that its very universality is itself a human construction.' Freeman also suggests (2002: 4) that the sociological recognition of human rights as 'means' provides scope for their global enforceability in diverse social contexts and enables a wider sociology of human rights. Like many human rights scholars including Turner (2006), public sociologists (Burawoy 2005), human rights activists, and Sen (2004), we propose a normative foundation for human rights. Following Sen (2004), we argue for a normative foundation based on ethical demands identified by public reasoning rather than on universal claims based on a pre-specified list, or on ontological claims about the human condition. Nor do we confine ourselves to the remit of the law. As Sen claims, public demands inspire legislation rather than the other way round: '(t)he implementation of human rights can go well beyond legislation, and a theory of human rights cannot be sensibly confined within the juridical model in which it is frequently incarcerated.' (Sen 2004: 319)

Our argument rests on Sen's theories on capabilities, justice and human rights, also drawing on the work of French sociologists working within convention theory on justifications of public action (Boltanski and Thévenot 2006). Here human rights are ethical demands based on public reasoning about individual capabilities --people's effective freedom to choose the life they have reason to value (Sen 1993). Claims are realised within specific socio-political contexts and involve different frameworks of collectively recognised values. We conclude with a discussion on spheres of public action to place our argument within current political debates on employment policies, thereby offering an empirical location for what is fundamentally a theoretical paper.

Our analysis contests dominant liberal arguments that prioritise individual rationality and public choice as the proper basis for social co-ordination. Such market-based logics, arguably, are responsible for rising social exclusion and inequalities (Byrne 2005). Building on the notion that the individual and the social are mutually constitutive (Woodiwiss, cited in Hynes, et al. 2010: 822), we see the individual as not an autonomous but as a social being whose capacity for action depends on her ability to co-ordinate her actions with others. Openly acknowledged systems of socio-economic co-ordination are needed for individuals to realise their projects; here we elaborate on Turner's (2006) conception of solidaristic human rights derived from common human vulnerability. We recognise the sociological distinctions

drawn by Hynes, et al. (2010: 823) between individual rights and collective rights, the latter being tied to the state and citizenship. These are explored firstly through the ideas of Sen, who starts with the individual but addresses the social in his break with Rawlsian ideas of justice, and secondly through French convention theory which understands individual specificities as unique combinations of multiple social conventional demands. We argue that human rights and individual freedoms depend fundamentally on the inclusion of people within established networks of social interaction that operate in accordance with collectively recognised principles upholding commonly acknowledged social values. Such systems gain validity and acceptance in part through their historical evolution, in part through the terms within which public appeal is articulated when justifications for action are placed (individually or collectively) in the public sphere.

Sen and the idea of justice: capabilities, human rights and public reasoning

Sen's capability approach to a person's well-being is based on her actual ability to achieve valuable *functionings* : 'alternative combinations of things a person is able to do or be' (Sen 1993: 30). The capability approach has particular salience for the promotion of human rights because, as Salais (2004: 287) summarises: 'Given equal resources, when faced with the same contingencies, people do not have the same ability to overcome them. To neglect this reality is to run the risk of being neither fair nor efficient.' For Sen, real freedom translates as effective choice; a socially just society offers this freedom to the maximum degree for the largest number of its members. The capability approach shifts our focus from resources to their outcomes. The more capabilities a person has, the greater her effective freedom to make choices about her life and work.

Sen's 'Elements of a theory of human rights'(2004: 319) draws on his work on capabilities, justice and public reasoning to address criticisms of the 'coherence, cogency and legitimacy of human rights'. He summarises his theory in six key points: 1) human rights are primarily ethical demands not legal commands; 2) human rights are based on opportunity and process freedoms (capabilities) which satisfy 'threshold conditions' of special importance and social 'influenceability'; 3) human rights generate reasons for people to act to safeguard or promote specific freedoms; 4) the implementation of human rights reaches beyond legislation to include public recognition, agitation, discussion, appraisal and advocacy; 5) human rights can include significant social and economic freedoms and 6) the universality of human rights depends on whether such rights survive unobstructed discussion over time (Sen 2004: 319-320). Sen's work overcomes distinctions between 'universal' and situated or socially constructed

human rights: human rights (as ethical demands) have claims to universality if they survive unobstructed public scrutiny and discussion. This suggests that human rights are context-dependent; collective agreement determines what can and should be included.

Sen's theory has been neglected within the sociology of human rights. He works within the disciplines of philosophy and economic development. His concept of 'capabilities' has been influential in shaping the United Nations Development Programme and associated policy discussion. The relationship between human rights and capabilities has been explored within the social policy literature, including the development of a capability-based measurement framework for monitoring equality and human rights (cf. Burchardt and Vizard 2011; also Dean, et al. 2005). However, Sen's own work on human rights, as opposed to the implications of capabilities for human rights, has received less attention. Sen's ideas are expressed in his recent book *The Idea of Justice* (2009), which addresses public reasoning as a central theme, establishing capabilities within a wider theory of justice. Thus, like sociology, Sen has a 'major role to play in encouraging human rights scholarship which is too closely aligned to human rights practice to contextualise and analyse human rights struggles in the full context of social inequalities' (Hynes, et al. 2010: 824). Sen's work has been criticised across a range of disciplines for being: too abstract to be relevant, too liberal, too focused on the individual, and inattentive to social structure (cf. Agarwal, et al. 2003; Nussbaum 2003; Robeyns 2003; Zimmermann 2006). More recently, Dean (2009: 261) has argued that capabilities obscure or neglect 'the constitutive nature of human interdependency; the problematic nature of the public realm; and the exploitative nature of capitalism'. It is beyond this paper's scope to review these criticisms in detail, but some are addressed by focusing on Sen's latest work on human rights, justice and public reasoning, and by viewing Sen's ideas through the lens of French convention theory.

In *The Idea of Justice* (2009), Sen expands on his ideas of capability as a means for evaluating social justice and human rights. He stresses the importance of ethical public reasoning (the plurality of reasons and the compromises to be reached between them) in shaping such an evaluation and emphasises salient differences between public reasoning based on rationality and negotiated compromise between specific sectoral interests as a basis for delineating collectively respected values. Here, Sen employs a very different concept of rationality to that offered by rational choice theory, which emphasises individual action devoted to realising the maximum number of personal objectives (Bessy 2007). We move beyond utilitarian explanations of human agency to focus on the development of a moral

environment within which agents can develop projects they have reason to value. Sen's ethical demand is for impartial, open debate that allows an unlimited plurality of reasons to be considered. Moral environments of social action, 'informational bases of judgement in justice' in Sen's terms, are necessarily multiple and varied, reflecting complex compromises negotiated by particular communities at specific points in time. Sen's approach acknowledges the multiplicity of situations facing each individual in the course of daily life as well as the varied social circumstances within which communities determine collective action frameworks that reflect values they have reason to respect.

For Sen, human rights are founded on individual capabilities that meet 'threshold conditions'. Such threshold conditions come closest to Nussbaum's (2003) view that basic capabilities are ethical fundamental entitlements or human rights, a proposal that Sen explicitly rejects. Threshold conditions are criteria for inclusion in public deliberation, not a pre-defined list. However, his focus remains on the individual; collective action is required to remove constraints on individual freedom. As examples, he offers the provision of public health, medical care, education, and the containment of criminal activity (2009: 226-7). Importance is given to factors that exacerbate poverty and constrain individual capability to act; poor health, innumeracy and illiteracy are obvious examples. The just society, by inference, must offer access to facilities and services that act as resources (conversion factors in Sen's terminology) to enable all to transform latent abilities into real functionings. Sen denies explicitly that the capability approach implies specific policy formulae to achieve equal capabilities for all (2009: 232) as the plurality of personal identities and social situations makes such a project impossible. Rather, social obligation rests on the promotion of human rights in terms of guaranteed personal freedoms: the resources (what, how much, for whom) being determined by public deliberation. Hence two conceptions of human rights emerge: the one being a socially situated freedom to act and the other an ethical demand for inclusive democratic deliberation over how all should be enabled to act – also referred to as 'capability for voice' (Bonvin and Farvaque 2006).

Sen thus links the realisation of human rights to processes of public reasoning, pursued on an ethical basis in which all are represented (2009). Such processes demand a free press, democratic political institutions and public debate as central to the pursuit of justice and to the identification of collective values. There are multiple informational bases on which the justice of given circumstances or policies may rest but only democratic deliberation should determine what these might be. While the means to identify human rights are prescribed, the ends (the rights themselves) are left to public reasoning.

Practical freedom cannot be realised outside the interpretive framework within which action is situated, which structures action and gives it sense in terms of power relations and the consequent capability for self expression (Zimmermann 2006). According to Zimmermann, a deeper insight into the concepts of personhood, agency and environment is required in order to operationalize the capability approach empirically: dimensions that remain abstract in Sen's theory.

Hence social environments shape individual identities, personal preferences and values (the bases on which individuals decide what action they value and the projects they aim to fulfil). Thus, through a different path, informational bases of judgement in justice (the outcomes of public reasoning) influence personal self assessment and choice. Those things a person has reason to value are likely to reflect activities that her peers also value. Indeed, the construction of social cohesion and sound social ordering implies the creation of an implicit or explicit accord about capabilities that all agree should be encouraged. There are self evident links between personal attainment and activities of value to wider communities – most obviously in the context of employment. The 'value' to the individual does not only derive from an isolated personal satisfaction: self worth is linked to the acclaim of others. Here we face the problematic link between personal and collective capability: the individual attributes and activities that the collective may wish to encourage, and, by inference, those it may wish to contain. Respecting collective judgement helps the person to integrate into the wider community and to earn a living. In this context, capabilities as a *genre* emerge as socially constructed. However, as personal situations are contextually specific, any individual capability *set* remains unique.

If social participation is central to the realisation of capabilities and human rights, the sphere of public action through which this could be promoted extends beyond areas identified by Sen, who confines his attention to helping those suffering from hunger, disease or illiteracy. Deprivations that might prevent the realisation of human potential have expanded exponentially and might include having no access to the internet or to public transport to travel in search of employment. This shifts our focus beyond resources required to foster individual welfare into wider spheres of public action: universally accessible services can offer the means to by-pass financial resources as the only (or best) conversion factor (Sen 2009: 267) Sen agrees that social and economic rights, including welfare rights, should be included within broad human rights; people should campaign for reform. However, he argues against critics who suggest that such rights cannot be realised without institutionalisation, and refutes claims that it is not feasible to ensure social and economic rights for all:'(t)he current unrealizability of any accepted human

right, which can be promoted through institutional or political change, does not, by itself, convert that claim into a *non*-right.' (Sen 2004: 320)

Our reading of Sen thus distinguishes his ethical, normative advocacy of public reasoning as the foundation for determining informational bases of judgement in justice from the multiple possibilities he offers for the promotion of capabilities in specific socio-political situations. Hence we agree with Sen, and against Nussbaum (2003), that it is not possible to list essential capabilities as a basis of rights for all. Sen's idea of human rights broadens its scope to involve social and economic rights, and signals the significance of public action in furthering these rights. Addressing public reasoning, he moves the focus beyond the individual, but offers few guidelines about how capabilities may be realised. According to Robeyns (2003: 64) 'One important aspect of Sen's capability approach is its underspecified character. The capability approach is a framework of thought, a normative tool, but it is *not* a fully specified theory that gives us complete answers to all our normative questions.' Sen's approach allows scope for moving beyond the foundations he has laid (Agarwal, et al. 2003: 5). In this spirit, we link Sen's approach to human rights, public reasoning and capabilities to the work of French convention theorists. Here, our focus shifts from individual capability as such towards the identification of judgements in justice as products of public reasoning.

Co-ordinating frameworks for public action: justification and French convention theory

Many liberal theories approach the question of human rights by addressing constraints on individual freedom. Convention theorists eschew this pathway, preferring to understand individual freedoms, plans and aspirations as socially constructed. Initially developed by a French group of economic theorists and sociologists to address problems posed by rational choice (Orléan 1994), convention theory focuses on issues of co-ordination. Instead of the rational individual seeking to maximise personal gain, we are offered an analysis of the mechanisms and public values that co-ordinate economic action to make personal projects feasible. The person able to utilise established frameworks of co-ordination is best placed to realise her projects and to gain real freedom in consequence. Convention theory has received little attention from sociologists outside France (apart from social theorists). However, it offers important sociological insights for the construction of human rights. Our principal focus is on the work of French sociologists Boltanski and Thévenot (2006) who use references to public values articulated by those seeking to explain their actions (to gain acceptance or forestall criticism) as an analytical tool to

reveal what Sen would term the 'informational bases of judgement in justice' applicable in specific contexts.

The main issue at stake is uncertainty and how it may be overcome. Uncertainty is understood in Knight's sense (1921) as a situation where the outcomes of any action are unknowable in advance of the action taken. Uncertainty must be distinguished from 'risk', where possible outcomes can be identified and, with calculation, the actor can minimise their likelihood or insure against their occurrence. Uncertainty undermines confidence and trust, hampering the efficacy of transactions and discouraging action, provoking the breakdown of socio-economic systems. If I place an order on the internet, paying by credit card, am I certain that the goods will arrive, that I will not be overcharged? If I fear either might happen, I will not act; uncertainty is too strong. Well-established systems of exchange are underpinned by conventions that encourage compliance with commonly accepted practices. Some conventions, such as the definition of fraud, are identified in law, to punish malfeasance and offer redress. Others develop over time and are fortified by collective trust which, once damaged, can threaten social fabrics. In 2008, the financial crash prompted savers to rush to withdraw their money from banks, nearly provoking the collapse of western capitalism. We know, rationally, that no bank ever holds in its vaults sufficient cash to pay all depositors at once. Normally this does not matter. However, when collective confidence and trust are undermined, crisis occurs, conventions of normal banking behaviour vanish and the situation becomes unmanageable without outside intervention.

Confidence and trust are thus essential to the smooth running of modern societies, challenging the picture of human action dominated by utilitarian, rational individuals seeking personal satisfaction through competitive markets. Modern societies rely heavily on multiple conventional understandings. Some (not riding bicycles on pavements) are legally enforced while others (when to wear a dinner jacket, how to greet work colleagues, family or friends) are not. Such informal arrangements evolve historically and foster co-ordination, confidence and trust: co-ordination being essential to successful achievement as, necessarily, we need to anticipate the reactions of others to our initiatives for our objectives to be attained. Compliance with informal conventional behaviours is used to distinguish insiders from outsiders: from moral codes to religious observance, from civil etiquette to approved good manners, in the use of language and forms of address, we identify those actions that are familiar from those that are not. Trust is shaped accordingly. In this way, conventions create social inclusion and

exclusion, networks of trust and co-ordinated social action that underpin social fabrics. It is through the creation of such networks of inclusion and exclusion that issues of human rights come into the question.

There is considerable variation in what is considered to be the right and proper way of doing things. To justify our actions publicly, to offer explanation or resolve dispute, different conventions (collectively accepted systems of co-ordination) stand revealed (Boltanski and Thévenot 2006). At points of breakdown or conflict, these conventions become pivotal points of reference as the 'rights' and 'wrongs' of particular actions are tested in open debate. In arenas of deliberation or public reasoning, the agent justifies her actions to win public approval. (1) Public justifications locate action within established conventions concerning proper behaviour based on collective values to forestall (or negate) criticism. Reference to different value frameworks that serve, formally or informally, to co-ordinate collective action gives rise to moral judgements that reflect specific evaluations (or hierarchies) of worth. These evaluations are the building blocks of understanding, acceptance and trust, offering the foundations of the public good.

This focus on public reasoning links Sen to the French sociologists. In both cases, public deliberation and reasoned debate identify the principles of justice applicable to specific situations. Reasoned and open deliberation allows all participants to understand and internalise constraints on the situation while also giving them a voice in reaching collective decisions. The locus of the rational argument is centrally important: different objects and actions find their significance within varied conventional worlds.

Different evaluations of worth (frameworks of endowed value) pertain to different objects and the actions that involve them. Boltanski and Thévenot offer plural hierarchies of social value within which judgements are made about 'better' or 'worse', 'good' or 'bad' actions. Within plural frameworks of social ordering, market-based systems, reliant on competition and on signals of quality and price, offer one form of co-ordination. Standardized measurement provides the basis for technical knowledge that co-ordinates professional understanding in fields such as engineering or medicine. This 'industrial' world validates scientific analysis: the foundations for planning and the co-ordination of future development. Other hierarchies of worth demarcate collectively held values that shape socio-political worlds. They legitimate public authority and distinguish civic virtues from anti-social behaviours that merit collective condemnation. This civic world includes varying bases of moral-political evaluation, to identify legitimate decision-making that determines different spheres of state power. Democratic processes of public deliberation are regarded as a morally superior and more legitimate basis for determining public policy

than other forms of government. In addition, religious observance, innovatory genius, celebrity fashion and the desire for love, intimacy and acceptance – all help foster compliance and conformity with a wide range of different social practices in varied locations: the local community, the family, the student collective, the trade union, the operatic society.

Collective conventions of proper behaviour are not externally imposed (not, at least, without difficulty) but rather reflect multiple compromises that have evolved over time. As Thévenot argues (2001a), these hierarchies are neither permanent nor stable (hence the recent emergence of an environmental or 'green' order of worth). All are grounded in historical precedent; all are constantly modified in the course of action. All offer different foundations for rational action: while all co-exist, none can be used to denigrate or disqualify any other as all operate within their own terms of reference. In this way, plural co-ordinating reference points based on different hierarchies of worth offer frameworks within which individual projects are identified and personal choices are made, thereby demonstrating the multiple identities and values endowed to objects and persons in accordance with different 'worlds' of worth. In the words of Thévenot:

> '… objects might qualify as efficient tools, or commodities appropriate for marketing, or regulatory devices enforcing civic equality in terms of health or safety in particular, or patrimonial assets that relate to the past and anchor trust. Other qualifications relating to different orders of worth are signs supporting fame or creative innovations which testify to inspiration. Persons qualify jointly as: professionals or experts; dealers and customers; equal citizens; trustworthy and authoritative people; celebrities, creators. The format of relevant information is always conventional.' (2001b: 68)

Individual choices are made within complex situations. The pre-existence of collective understanding about right and proper behaviour means that, to act, each person requires the common knowledge embedded in conventions shaping different environments (Dupuy, 1989). Conventions create moral codes to identify 'good' and 'bad' behaviours, transactions, attitudes, assessments, measurements and so on. As they are collective, they are also public and as they are public, the state may guarantee their observance. Equally, firms and other agencies represent formalized institutional compromises between different conventional practices that shape both individual objectives and the nature of the environment within which these are realised (Thévenot, 2001a; Storper and Salais 1997). Each firm or agency has its own membership and its own rules, delineating boundaries of inclusion and exclusion while shaping legitimate and illegitimate frameworks of approved action.

Capabilities, conventions and the sociology of human rights

Convention theory and the capability approach together offer a pathway to a sociological analysis of human rights, identified in contexts of open possibilities for social participation. Environments are necessarily varied, the product of Sen's key normative demand that all should have an equal voice in public deliberation, to define the principles of judgement in justice pertinent to specific situations. Boltanski and Thévenot offer a sociological toolkit to delineate different justifications employed in such deliberations, thereby revealing specific value structures implicit in this process – an approach broadened by Sen who stresses the plurality of arguments to be accommodated in reaching reasoned judgement. There are evident links between these two analytical frameworks. Both insist on public reasoning as a basis for reaching judgement: on the necessity for constant compromise and on the implausibility of reifying particular rights or values as pertinent to all societies at all times (although Sen acknowledges that universal human rights might be created if global public deliberation could sustain a collective conclusion). All authors acknowledge a debt to established philosophical traditions. Sen interprets public reasoning within an alternative Enlightenment tradition to that of the social contract and its comparative, realization-focused approach. He contrasts his views with those of Rawls and Habermas, both of whom he identifies with transcendentalism, arguing that advocacy of public reasoning is not limited to the west and pointing to traditions of analytical deliberation in Indian philosophy (Sen 2009). Similarly, Boltanski and Thévenot (2006) show how different economies of worth reflect the work of different political theorists: market (Adam Smith), industrial (Saint-Simon), domestic (Bossuet), civic (Rousseau), inspiration (Augustine), and fame (Hobbes).

At the same time, there are tensions. Sen's analysis is more normative: his plurality of public reasons stretches well beyond the limitations of Boltanski and Thévenot's worlds of worth. Indeed, these limitations have led to Thévenot's subsequent identification of a 'green' world (noted above) and to the creation of another 'world' in Boltanski and Chiapello's work (2005). Secondly, each approach has a different focus. Sen's primary gaze is on the individual, her freedoms and her potential capabilities. In contrast, for Boltanski and Thévenot, the object is sociological analysis, locating individual decisions and actions within collective structures of judgement – in some respects reminiscent of Foucault's (1972) archaeologies of knowledge. Thanks to its emphasis on social co-ordination as the tap root for effective social and economic action, when combined with Sen's normative propositions, convention theory opens a pathway for sociologists to participate in practical debates on human rights.

Human rights and public action

As argued above, human action depends on social integration for its efficacy. This generates a more profound meaning for the term 'social exclusion' which is frequently interpreted as a synonym for poverty. It is possible to be excluded, and deprived of the freedom to act, without being poor. The European Convention on Human Rights forbids discrimination on the grounds of race, ethnicity, gender, age, sexual orientation, disability and so forth, to prevent exclusion from effective action consequent on personal attributes that first, do not of themselves prevent individual participation and second, cannot be changed by the person concerned. The Convention understands human rights as social *inclusion*, offering a freedom to act in a framework of collective acceptance. Hence, education is not merely a means to insert capital value into a human frame but more importantly to acquaint the student with the myriad conventions of collective action as well as the public reasoning and values that underpin them. This enables her to know and to be able to deliberate with others about the right and proper way of doing things. Through this process of personal empowerment located in an ability to deliberate and participate in collective action, human rights as 'capabilities' (Sen 1993; 2004; 2009) can be realised and independence achieved.

Public action emerges as a necessary link between reasoned deliberation and the realisation of its conclusions. As Sen argues, such action is required to achieve human rights, reaching beyond law to involve voluntary action, pressure group agitation or collective protest. For convention theorists, who stress the importance of co-ordination, the state represents the co-ordinator of last resort, the collectively recognised authority that resolves dispute or clarifies required behaviour (Salais, 1999). In neither case is public action confined to the state. That said, we will focus remarks on public action as state policy and the insights sociological analysis can bring, using the specific example of labour market policy.

For over a decade, labour market activation programmes, sanctioned under the Lisbon Agenda and assessed by the Open Method of Co-ordination (OMC), have laid at the heart of the European Union's response to rising social dependency, epitomised in the UK by the Blair governments' New Deal. Using a capability approach, academics have analysed activation policies (e.g. Rogowski, Salais and Whiteside, 2011; Bonvin, 2008), although the theoretical foundations of the combined approach outlined here have been less explicit. Convention theory can unpack the terms within which labour market activation is justified and assessed. The principles of New Public Management (NPM) embedded in the OMC reflect

the values of a market world focused on immediate economic goals: on value for money, performance targets, competitive mechanisms of service delivery and public expenditure savings. The sole object is to return the unemployed to work (any work) as swiftly as possible. This damages co-ordination and fosters the cherry picking of clients with no regard for public deliberation, local circumstance or personal autonomy. The worker, as market commodity, retains responsibility for her conformity to market requirements and market standards. 'Capability for voice' and, thereby, deliberation on positive synergies between life and work, disappear.

Jean-Michel Bonvin's work (2008) demonstrates that short-term performance indicators (placement rates) are economically and socially counterproductive. Placement agencies perform to official targets rather than facilitating the reintegration of jobless people by negotiating viable training and a planned development of working capability to benefit local economies. Alternative pathways could promote participation by allowing localities to define their own objectives, modifying evaluation criteria to accommodate local circumstances and to allow clients a voice in determining their treatment. Local agencies and the jobless should be allowed to deliberate, to find the means for candidates to develop a capability to choose, without which personal responsibility is meaningless. Similarly, Bénédicte Zimmermann's sociological study of company policy (2011) explores how employers address the professional development of working people. Empirical investigation of 13 French firms analysed company policies in terms of work quality, training, employee consultation and work/life balance. Here, 'employability' -the duty of the individual to acquire and adapt skills as employers require – is contrasted to 'capability': the employee's ability to plan her working life, to exercise choice about whether and how to act in given situations, again fostering personal responsibility. A positive loop can be achieved between security and flexibility for both partners in the work relationship: motivation and efficiency on one side, freedom and potential accomplishment on the other. A focus on agency within employment situations and socio-professional contexts sees skill formation as a joint venture and not as solely a matter for workers or the state. By understanding capability development as a collective obligation, sociological critique re-evaluates employment situations in terms of social rights and outcomes that are superior to those dedicated to individual employability alone.

The approach applied here to employment policies can be adapted to evaluate other social interventions (e.g. health policy and pension policy) and the general provision of public services. This places recent agendas of privatisation under market competitive logics under a new light. Market

arguments view the provision of public services as an unjust burden that undermines wealth creation by forcing the better off to subsidise the poor. Market competition under privatisation generates efficiencies by driving down costs while offering consumer choice. Such claims have become increasingly familiar. The results have included widening income disparities, fractured and uneven service provision at variable cost, commonly to the detriment of poorer districts.

When viewed from the theoretical perspective proposed here, market provision of public services fails on a number of counts to accommodate human rights. First and foremost, by transforming the voting / deliberating citizen into a consumer of service products, the possibility of reasoned public debate (the core of social justice for both convention theorists and the capability approach) is destroyed. The consumer may choose between different providers or products, but cannot deliberate on the provision of resources to those whose capability development requires them. Second, market competition fractures service co-ordination. For what use is the opportunity for apprenticeship training 40 miles away if there is no public transport or one cannot afford the fares or no child care is available? Without co-ordination, confidence and trust are destroyed and participation undermined. Third, the short-term search for profit to sustain shareholder value generates incentives to attract the wealthy customer and to neglect the rest, thereby negating any recognition of those social inter-dependencies that sustain personal freedom. Finally, if the state intervenes to control the market's worst excesses, transaction costs rise thanks to an enlarged regulatory burden – thereby undermining competitive pricing that was the supposed advantage of market-based co-ordination in the first place.

Concluding discussion

Reading Sen's ideas on social justice through the lens of convention theory opens a path towards a positive sociology of human rights. In adapting arguments developed by Sen and French convention theorists on social justice, ethical reasoning, human development and moral frameworks of argumentation, we offer a sociological perspective that bridges the divide between normative and socially constructed approaches and has wide implications for public sociology and social policy. The human rights debate becomes more inclusive and context-dependent. Our socially constructed approach to human rights contributes to sociological arguments that stress the importance of social contexts and understand individuals as social beings. By locating individual rights in social contexts, we challenge both liberal claims that human rights are based solely on individual freedoms and neoliberal

arguments that prioritise the market, individual rationality and public choice. The normative aspect of our approach is grounded in ethical public reasoning, deliberation and debate, not the problematic foundations offered by universal or fundamental human rights theories. This contributes to critical sociology. As Calhoun argues (1993: 91), good critical sociology should address questions of agency and moral responsibility, to 'develop a critical account of existing social conditions with positive implications for social action.' Ethical demands for public reasoning necessarily link to wider calls within the discipline for a public sociology. Burawoy identifies Sen as a 'dissident economist' working in a critical social science tradition of public sociology that constitutes '… reflexive knowledge not only because it interrogates the normative foundations of professional knowledge but also because it does so through open discussion' (Burawoy 2005: 511).

For Sen, reasoned public deliberation determines informational bases of judgement in the promotion of social justice: for convention theorists, public action underwrites integration within the body politic, to enable all to realise their projects. To secure collective well-being, broader social interventions are therefore required than those offered today by a welfare state. Instead of rescuing market casualties in a market world, the state underwrites individual freedoms and socio-economic co-ordination. In the twenty-first century, the promotion of capability requires access to an increasingly complex web of resources to facilitate participation in modern life: such as reasonably priced housing, transport and internet access. While such resources do not have to be publically owned, they should be accessible to all on the same terms. This is not to argue that such resources should form a predefined list. The combined insights of Sen and French convention theory offer powerful evaluations of human rights within different social, political and economic contexts. Their application in different ways to different arenas of public action (as briefly discussed in relation to labour market policies) is evident. However, this approach does broaden the scope of human rights to include social and economic rights, rights for capabilities, for social inclusion, and both positive and negative rights, by arguing for public action to safeguard human rights. Finally, we would note how the perspectives developed here offer the means for sociologists to confront the principles of neo-liberal economics, for too long the theory of choice among policy-makers. But that necessarily is the subject for another paper.

Notes

1 Justifications are not necessarily motives. The agent may have other reasons for acting but justifies it in terms that win public acceptance.

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