Panel "Social Rights and Capabilities"

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Deliberative democracy and its informational basis: what lessons from the Capability Approach[1]

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The crucial point in Amartya Sen's approach lies in his emphasis on the informational basis of judgment (IBJ), which determines the content and methods of collective choice in a democracy. Indeed, Sen maintains the need for an objective assessment of the state of persons (against the dominant trend of purely ordinal rankings). To provide the grounds for agreement (and for disagreement, as we shall see), what we will call *the "table[2] of the situation"* must be just, in the twofold sense of objectively right and socially fair. This "table" will thus cover what Sen calls "the territory of justice":

"The informational basis of judgment identifies the information on which the judgment is directly dependent – and no less important – asserts that the truth or falsehood of any other type of information cannot *directly* influence the correctness of the judgment. The informational basis of judgment of justice thus determines the factual territory over which considerations of justice would *directly* apply". (Sen, 1990: 111)

Such requirements are extremely difficult to fulfil, both theoretically and empirically.

I. Real freedom and capability

In discussing the informational basis of judgment, Amartya Sen has joined a debate amply circumscribed by the pioneering works of Kenneth Arrow and John Rawls, which he sought to push to the breaking point, but without going beyond it. His results,

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[1] Modified version of my contribution : « Capacités, base informationnelle et démocratie délibérative. Le (contre)-exemple de l'action publique européenne » in : Jean De Munck and Bénédicte Zimmermann (eds.), 2008, *La liberté au prisme des capacités. Amartya Sen au-delà du libéralisme,* Paris, Editions de l'EHESS, Raisons pratiques 18, p. 297-326. Translated by Susan Taponier.

[2] Translated from « tableau » in French. We are playing here with the double meaning of this word in French: « picture » and « statistical table ».

although impressive, too often remain restricted by too simple interpretive frameworks. His critique of well-being as a relevant metric is accepted, but is mostly understood as an empirical effort to take more detailed situational data into account in assessing the state of individuals (essentially the definition of a list of functionings to be used as a yardstick for objectively comparing situations). His focus on individual freedom is obviously appreciated, but it is reduced to the standard problem of specifying the scope of opportunities more clearly. Though using it in a much more refined methodology, Sen remains trapped into the dominant positivist approach to social reality. In the rare instances when he resorts to statistical data, Sen takes it at face value (though it has been carefully selected). He has not really drawn out the implications of his intuition that "description is choice".[3] In a word, Sen neglects the socially constructed dimension of knowledge and its implications, an issue the implications of which, by contrast, will constitute the core of our paper.

1.1. The socially constructed dimension of knowledge

Before becoming information, economic and social reality is shaped by cognitive frameworks (the categories and social processes involved in knowledge). Such frameworks build and select, for the members of a community, information (and assessment) about what is and what is not important as a problem to be dealt with by the community (and the state). In other terms, informational bases of judgment are not merely sets of empirical data; they are first and foremost the product of national states and communities, which historically have been assigned the task (in a specific way by each country) of producing public knowledge of the common good so that concrete action can be taken to achieve it. Yet, as we shall see in Part II, these national cognitive categories are precisely what the technologies of governance promoted by the European Union are attacking. In attacking cognitive categories, they are also attacking national public policies – and therefore governments, what citizens expect from them, and key dimensions that are constitutive of their national identity. Sen's underestimation of the so-built character of information is therefore fraught with consequences for what the capabilities approach can contribute, particularly the renewal of social criticism. However

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[3] Sen, 1982: 432.

there are several points on which Sen's approach ultimately marks a potential break from the standard approach, even from the standard works about deliberative democracy.

We will stress two of these breaking points: capability as the power to be and to do (1.2); the table of the situation as an instance of cognitive representation (1.3).

1.2. Capability and the conceptions of real freedom

The first breaking point is obviously the concept of capability. There are two dominant interpretations of this concept from which Sen departs. The first one is individual competence, a notion arising from corporate management. One can find it, for example, in the French expression *capacité d'insertion professionnelle* (capability of professional insertion), which is a politically biased translation of the concept of "employability" used in EU documents. The second one is the individual's control over his or her choice, a notion arising from the liberal model. These two interpretations form a common backdrop for governance technologies. Sen (1985: 208) underlines that the individual's control over his or her choice was opposed to another interpretation of freedom (and therefore of capabilities), namely the power to be and to do, an interpretation that suggests a more radical theoretical and political innovation. How the individual choice is made is of little importance; what matters is that the person has the power to achieve the *beings* and *doings* that he or she values.

The example used by Sen (1985) pertains to two ways of living in an environment free from the threat of epidemics.[4] One way is to give individuals the freedom to choose to remain or to leave, based on their own calculation in terms of their personal preferences and utilities. The other is to conduct public policies that eradicate the risk of epidemics. In this case, the individuals have the power to live in a healthy environment. This approach gives them the real possibility of doing so, even though individually they have not explicitly made the choice from among a range of opportunities. By freeing them from an individual choice in the face of the danger of epidemics, which is unequal

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[4] Sen's example is malaria.

because it is subject to the constraint of resources, such a policy gives everyone access to real freedom.

Making this distinction between two conceptions of real freedom gradually leads us to favour a definition of capability as "the power to choose alternate ways of being and doing" (1.2.1) and to emphasise the need to include the (otherwise lacking) common good in the conceptual framework (1.2.2). By extending these conceptions, we can establish both the theoretical and practical connection between the capability approach and deliberative democracy.

1.2.1. Capability as the power to choose alternate ways of being and doing

Sen is very aware of the role of public policies in promoting capabilities[5]: "Freedom has many aspects. Being free to live the way one would like may be enormously helped by the choice of others and it would be a mistake to think of achievements only in terms of active choice by *oneself.* A person's ability to achieve various valuable functionings may be greatly enhanced by public action and policy, and these expansions of capability are not unimportant to freedom" (Sen, 1993: 44). He nevertheless spent little time debating the implications of real freedom as the power of being and doing differently. Examining them would help to dispel the ambiguities of the concept regarding the public action to be undertaken. It is tempting and even necessary (though it will take us away from the problems at hand) to allude to the concept of possibility presented by Ernst Bloch, for example.[6] Freedom as the power to be and to do implies that, in the situation she has, the person's access to functionings he or she values must really be possible. This presupposes that the external conditions (the environment) and the internal conditions (the person's aptitudes and resources) can be adequately combined to achieve valuable functionings. To borrow Ernst Bloch's terms, we must distinguish between two dimensions of possibility: alternate ways of doing (i.e. the person's ability or aptitude in a situation) and alternate ways of being (i.e. the potentiality contained in the things surrounding the person).

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[5] And of others, which questions, too, the role of public action to favour coordination that enhances capabilities and to orient individual action toward the taking into account of others.
[6] Bloch, 1976: 280-281.

Here are some examples. A disabled person – all things being equal in other respects – has fewer capabilities to travel freely in the city. Which solution would be most effective and fair: to give the person sufficient financial compensation to pay for the services of a chauffeur or to equip public transport (and the road network) with the facilities required for disabled persons to get on and off the bus by adapting the doors and sidewalks? The first proposal comes under an alternate way of doing: giving money increases the freedom to choose from among several options. The second proposal comes under an alternate way of being. It consists of a policy of public investment in things. In that option, the disabled person becomes truly identical to others. In many countries, a married woman with small children – all things being equal in other respects – has fewer capabilities to find a good job than a man or a single woman. This is not because she has fewer resources or skills (the internal conditions) but because the characteristics of her situation, the prevailing conception of public policies and the organisation of jobs and the labour market (the external conditions) work against her: no day care centres nearby; the children's school schedule (e.g. the school day ends at midday); no workstation organisation to ensure a certain amount of flexibility between work and private life; etc. Attempting to offset this inequality through additional financial resources or affirmative action is not useless, but it is more costly and less effective that implementing public polices that concretely give married women equal capabilities to find good jobs.

Nevertheless – and this is an important point – for Sen (and possibly for Bloch as well), human action has the last word. One is free to choose to use the especially adapted bus or not, to put one's children in day care or not. From the standpoint of justice, the essential factor is that the real possibility or potentiality of an alternate way of being and of doing exists. This possibility creates real *collective* freedom which is valid for everyone concerned, even if the only way we can grasp the conditions that must be fulfilled is by putting ourselves in the other person's shoes and projecting ourselves into in his or her situation as if we were experiencing it ourselves. Sen stresses the conversion factors that – given equal resources – lead to unequal results in terms of capabilities: individual factors (what we called earlier "internal conditions"); social factors (the social norms in force); environmental factors (in other words, the external conditions). We

must go further than that, however. For this brief discussion underscores the fact that, depending on whether we give priority to the first type of factors or to the others, public action will implement either individual free choice or free access to a real possibility. We could find more complex examples, in which external and internal conditions are combined (if only the combination of material obstacles and adaptive preferences in the face of discrimination in the case of women). In practice in every instance a problem of hierarchy or antecedence arises between these two conceptions of real freedom.

In leaving the last word to human action, Sen establishes a fruitful relationship between the responsible exercise of freedom and learning. The first is the prerequisite for the second, and vice versa. If a "virtuous circle" is created, the scope of achievements and actual freedoms will widen at the same pace. People will develop practical knowledge in this area, which will become both a condition and the purpose of capabilities in the sense of the power to achieve an alternate way of being and of doing. What is important for public authorities is that the informational basis of judgment underlying policy decisions has correctly taken into account the individual's situation from the standpoint of possible valuable outcomes. It should be noted in passing that possibility as an alternate way of being or doing will orient the development of the IBJ towards comparing the states of the person over time with regard to those outcomes in relation to the functionings the person values.

1.2.2. Capabilities, individual rights and the common good

The above distinction between the two conceptions of real freedom affects our conception of the implementation of individual rights (rights established by the constitution or by laws[7] such as the right to education, freedom of opinion, social security and housing). In the first option (individual control), emphasis will be placed on the right to appeal and impartial procedures to challenge decisions and correct injustices done to the individual. But what does an individual right to appeal mean with regard to housing (which each person in substandard housing would have to struggle to have recognised)? Freedom of opinion restricted to a right to appeal, although not worthless, would be meagre indeed. So and too in the area of social rights, only free access to real possibility

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[7] The formulation comes from Bonvin and Farvaque, 2007:11.

(the second option) gives the person a genuine capability – in this example, the authorities build housing.

Questioning the concept of capabilities goes further still. Once we bring in the state, our questioning will affect the theoretical and practical status we give to various conceptions of justice. Again, the problem with Sen's theoretical framework is that it does not include the common good, which is called for and even presupposed by the hypothesis of a *substantial* informational basis of judgment. Why? In order to reach agreement on the facts that make up the "territory of justice" (whether the territory concerns poverty, the reduction of inequalities or full employment, etc.), such collective objectives must have a value not only for the state but for all (or at least a significant number) of the members of the community. They have then to agree to make publicly known the relevant social facts to collectively deal with. So reluctant they could be, they will have to face the facts that the unemployed and the poor exist, that the fortunate will have to finance the cost of solidarity by paying taxes, that employers are not doing their duty, etc. They will have, thus, to accept a compromise between their conception of justice and that of the others. It will not be a procedural compromise but a compromise inscribed in cognitive categories, in public knowledge (common knowledge) and in things. History shows that such acceptance is possible and under certain circumstances will give rise to a general commitment to the common good, but it also shows that this commitment is becoming increasingly problematic.

Let us come back for a moment to the two conceptions of real freedom and to the public policies that flow from them. When it comes to individual freedom of choice among various life options, it is difficult to deny that people are free to espouse their individual conceptions of justice and of their own good as long as they do not infringe upon, let us say, the social order or accepted standards of behaviour,[8] etc. That does not rule out public policy, but it will consist mainly of rather Rawlsian market regulation (we are close to that in this case), amended by the guarantee that certain fundamental rights (basic

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[8] Or, in Rawls' perspective, as long as they comply with the principles of justice on which institutions are basisd.

capabilities) of the destitute will be respected, in keeping with the current standards in the society and historical period under consideration. The common good will be limited to procedures that encourage and frame the individual's search for his or her private own good. Only the most destitute will be in the information basis, which could lead to public action that is more paternalistic than democratic. Of course a policy of fundamental rights is not nothing; it may even be revolutionary in many countries. But do we really need to basis it on the conceptual framework used – or rather, on its innovations?

When public policy is based on access to real possibility and consequently the state invests substantial resources in things and in people, it can only promote functionings considered valuable by the community and for the community as a whole, rather than satisfy individual whims, however inoffensive or even sympathetically they may be viewed by others. The problem of determining the list of valuable functionings must then be understood as a deliberation leading to agreement on the *substance* of the common good. We are no longer in the realm of political consensus, regardless of whether it is founded on principles of justice or on optimal rules of deliberation. We are basically entering into the search for collective agreement on the relevant social facts for public action, an agreement in which everyone must take part and which raises crucial questions about democratic deliberation.

Such social facts are not restricted to general cognitive categories; they are situated, or better still, *have to be situated in a territory of justice that is relevant to the problem under consideration*. If the state is going to focus its action on giving members of the community access to real possibility, then the necessary counterpart (or rather, the other side of the process) will obviously be to involve them in determining that action. For they alone possess the key to (without being necessary aware of that) the concrete reality of situations. Without their participation, it is impossible to bring out the internal and external characteristics of the situation that enable real possibility to emerge. The expected counterpart of their participation – and the underlying motive – is the development of their capabilities. In our opinion, this is where the unity of the capabilities approach lies – between its substance (the capabilities) and its procedures

8

(democratic deliberation) – a unity so difficult to find in Sen's work. It means we must orient the specification of the concept of capability towards real possibility and focus deliberation on establishing the relevant facts. This leads us to the concept of deliberative social inquiry (as we shall see in Part III).

1.3. The "table of the situation" as an instance of cognitive representation

Upon closer scrutiny, although according to Sen's definition, the informational basis of judgment circumscribes the territory of justice on the basis of facts, it nevertheless carries strong normative weight. To be inside or outside the territory consequently means the persons in question will or will not receive aid from the community depending on how they are described (in which category or even which line, column and box in the table). This is especially serious as it is a question of what is socially fair and objectively right. An erroneous or voluntary biased observation in establishing the informational basis of judgment will have tangible consequences for the very persons for whom it is designed.

From this, we must conclude that there are two levels of political representation rather than just one: the representation of interests (this is the only one that is usually taken into account); and the cognitive representation of situations. Each of us is represented in the informational basis of judgment. We are somewhere in a box in some table at the intersection of categories of social classification; we are contributing to some magnitude or some rate. For example, the employment rate represents each of us as satisfied to have a job no matter what it is or as wanting one, regardless of its quality or our aspirations or demands. In a more general way, the arguments relating to the social facts presented in public debate treat us as inhabitants of possible worlds in which those arguments would be true.

That second level concerns the formatting of the information and the system of categories that represent a person's situation from the standpoint of the public action to be undertaken. The question implied by this (as well as by the preceding point) is: what are the circumstances under which citizens do or do not participate, and if they do, at what levels, in developing cognitive frameworks that are adequate to what they consider a fair handling of the problems. A corollary question: could they enter into the deliberative

process and what would be their chances of succeeding if they were not endowed with a certain sense of the common good or involved in a political process that led them to acquire and develop this sense?

II. Cognitive conventions and political conventions: the European example of the Open Method of Coordination

However, social criticism today must cope with a new element: the emergence of political strategies of rational action whose effectiveness lies in manipulating established informational bases of judgment. In the employment policies promoted by the European Union authorities (the example we are going to use), a "job" is no longer what it promised to be in the model of full employment, i.e. in terms of the level and guarantee of remuneration, security in the face of unforeseeable events and social and economic rights. It generally tends to bring greater insecurity in life and work and a loss of real freedom of choice. Logically, increased insecurity in life and work should prompt an enrichment of the informational basis in order to improve the *quality of* employment. And this quality should be understood as the scope of possibilities for living and working opened up by employment, which is precisely what the capability approach has been working to achieve. In practice, the policymaking of the European authorities is moving in the other direction. It consists in preserving national employment and unemployment categories in name only, while in practice interpreting them in such a way as to call them into question. In this interpretation, any work task, even one without any guarantees or any future, is called "employment". Far from enriching the informational basis, the European authorities downgrade it to the level of a scorecard (like those one can find among firms' management tools) and drastically reformulate it as a set of performance indicators, selected without any real democratic deliberation.

In such a context, social criticism cannot be confined to relying on established facts. Its problem becomes to build what Bohman, 1999, calls a new understanding of economic and social reality. It must find a way to take part in establishing the facts that will give rise to action. It should not only militate in favour of an informational basis in terms of

10

capabilities, but even more it should find the political channels to make itself heard and actually influence the content and methods of such a basis. We will attempt later on to suggest that this involves the two sides of a single process, that is, of the constitution of a *public* (to use Dewey's concept). Such a process generates a *population* grouped together around a particular problem that shares a common knowledge about it, which they refine and put into action together.

Before we go any further, we would like to characterise the truly innovative elements contributed by the so-called Open Method of Coordination (OMC). In short, this method of governance turns statistical conventions into political instruments. As a consequence, evidence, especially statistical evidence, of the effectiveness of public policies (for instance in increasing employment and reducing unemployment) cannot be taken as the truth of the situation; they themselves should be subject to scrutiny.

2.1. Turning statistical conventions into political instruments

In earlier papers[9] I have shown how far, when using the OMC, the selection of a given set of indicators frames the normative background of the political decision-making process. It is neither malignity nor political cunning. It is the mere consequence of the fact that any indicator (or guideline) selects what is worth to be known or not and, so doing, basically builds the reality that is relevant both for the deliberative process preceding the decision and for the action to be undertaken. In other words, contrary to many radical critics who, for instance, denounce the European Employment Strategy (EES) for its neo-liberal ideology, the basic issue with the OMC in the EES is not strategic action, or ideology. The basic issue is about the cognitive conventions that are selected to drive the political process. One should pay attention to what is ordinarily taking for granted, hence invisible, that is the collection of statistical tables that, for each yearly report, national administrations are required to fulfil in the areas using the OMC. One must suspect that, to a large extent, these tables are the driving forces "behind" the formalism.

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[9] Salais, 2004, 2006a and b.

Contrary to the standard view, a table is not only a collection of figures (one in each box, for instance, as in a double-entry table), some being higher and others lower, from which one can draw conclusions like "the female rate of employment in 2005 is higher in the UK than in France". A table is, above all, a procedure for aggregating individual situations, for instance relating to employment and the person's position in the labour market. All situations compiled in the table which are considered as identical are placed in the one box, as if they were equivalent according to a given criterion or property (characteristic). Filling a table by combining individual data requires conventions of equivalence, which decide about what should be considered as similar (or, in other words, equivalent). By this logic, all women assigned by the compiler to the box of those "who have employment" will be considered equivalent in terms of the "having employment". But where does the description of what constitutes a "woman in work" start or, for that matter, end? Conventions of equivalence govern what we select, what we exclude and what we construct. Thus, the requested description becomes not far removed from a normative evaluation of the situation under review.

If we want to understand what a table means and does, we need to analyse the underlying methodology, i.e. the conventions of equivalence which have been used and the context in which a table is involved. Generally speaking, conventions of equivalence are ignored or misunderstood by the ordinary users. Usually, users take figures as, a prima facie, they seem to be, which means they interpret them with their own categories.[10] From the above statement on female rates, they will spontaneously conclude that "women work less in France than in the United Kingdom". But this conclusion is valid only if the legal, statistical and social definitions of what should be considered as a "job" are identical in the two countries. It is not the case, for the UK is using a "softer" definition of partial-time work, which leads to consider women with very few hours worked a week as having a job and to push them into such jobs. Part at least of these women would not be considered as such in France.

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[10] See the website of the European Union, URL: <http://www.epp.eurostat.ec.europa.eu

This France-UK example underlines the political potential that resides in directly choosing what people and policy-makers should consider as the relevant information to deal with collective problems. In the EES, choosing the global rate of employment as the key objective of maximise and asking the Member states to consider that any task of at least one hour a week is a "job" create incentives to deregulate national labour markets in order to increase the national performance.

2.2. Political efficacy of the method

The method derives its political efficacy from three aspects: creating a situation of cognitive ambiguity, producing justifications and disqualifying unknown factors.

The veil of ignorance surrounding the statistical conventions used to produce the figures creates a situation of cognitive ambiguity. This ambiguity acts like a smokescreen, allowing the conventions adopted as a benchmark for public policy to be changed without any awareness or protest on the part of the public. For example, if the employment rate goes up, ordinary citizens conclude that their chances of finding a job (corresponding to *their* criteria for a good job) are going to improve. But the European authorities may well – and in fact do – ascribe a totally different meaning to the notion of employment, one that resonates with the labour market deregulation policy they are pursuing, which obviously works against the expectations of the ordinary citizen. Since it is difficult for citizens, who have nothing but their individual, local experience to go on, to test general categories, this situation may last. In a situation of cognitive ambiguity, the task of the authorities consists in maintaining discursive consistency between the established meaning and the new meaning they assign to each category. Referring to Austin, 1962[11], one could say that, while employing the same discourse, the European Commission is acting to modify all the possible worlds in which the language convention ("to have a job") is valid. Believing they have remained in the same world, citizens set about looking for a job according to the established categories in their world, only to find themselves confronted by a world in which the same terms are interpreted differently and refer to other actions.

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[11] Reference used by Bohman, 1996: 204.

What is more, through its self-referential logic, this political method produces justifications of its efficacy that are not only theoretical but also concrete. The change in the rules of public policies (in this case, employment policies) does not aim to improve actual social situations but to directly boost scores on performance indicators. The ratings go up without any real improvement in social situations. In fact, those situations may even deteriorate under the impact of standard, short-term measures that cost little per beneficiary because they are designed to affect as many people as possible. The management of public agencies – from the national to the local level – is reorganised according to the logic of performance criteria. As a result, the data based on management and on assessment operating rules consequently show progress is being made. They may even be used to demonstrate of the veracity of the policy position. In other words, even if it was not their initial goal, reforms tend to establish a direct connection at every level between management and the production of evidence – in other words, self-fulfilling justifications.

Perhaps the more worrying aspect of procedures like OMC is that, by creating an environment of procedures of information and of evaluation adequate to predefined political goals (ultimately, a system self-producing proofs), it leads to growing difficulties to articulate legitimate alternative claims. As figures and procedures are seen by most of the people as guaranteeing truth by their mere existence, they allow endorsing political credibility. Even if the public debate begins to be fed with such fabricated data (without any professional or democratic control of their process of production), it nevertheless means for people that the "facts" are already there. As already existing evidence, these "facts" format the public debate. So it becomes harder to set claims which have not been the object, not only of cognitive elaboration but, more deeply, of common knowledge. For to be heard, claims need to be backed by "facts"; these facts must also be understood, which means that they can constitute the basis for shared understanding within the political community.

At the end, this means that the practical experience and knowledge of people, coming from their life, their work or from their participation to political life are potentially disqualified. They risk losing any access to what one can call a social process of generalisation. It would become difficult to transform practical knowledge into general claims. If true, the path for democratic expression would be cut, even if, formally, democracy remains. The social foundations for active political participation and of citizenship would be undermined, the value of them disappearing for part of the population. It is the reason why one should speak of a-democracy as the ultimate step of the diffusion of such political methods.

III. The situated state: the point where the capabilities approach converges with deliberative democracy

The European Open Method of Coordination and more broadly New Public Management are the latest and perhaps the last avatars of states that could be described as holistic in terms of the way they were planned and introduced during the 20th century. In such states, the common good is defined in reference to an all-encompassing doctrine viewed as pre-existing and external to the society (such as "the market", "socialism", etc.). Having the potential to be described a priori, such doctrines enjoy the status of unquestionable truth. Hence, strictly speaking, the common good is not imposed; due to its status, it is considered the object of a consensus that does not need to be recognised by each citizen individually in order to exist.

Such holistic constructions of the common good are not opposed to the individual freedom of autonomy; they merely deny that this freedom is capable of adjusting harmoniously to the common good. This denial is used to create a rift between individual freedom and the quest for the common good, into which the rational methods of governance insinuate themselves. By a priori constructing and selecting the reality on which the debate must focus, the New Public Management defines at the outset which issues are relevant and thereby structures collective choice as well as the direction to be taken in seeking solutions. The democratic process is not eliminated, but it is contained and guided from outside towards predetermined results. Moreover, the process is self-

referential: it produces its own justifications in the form of empirically evident statistical results. It tends to bar the way to a plurality of demands and solutions. And it gradually restrains the real freedom of at least some members of the community in terms of living, working or democratic participation.

3.1. The situated state

To counter this deviation of democratic mechanisms, our working hypothesis is that social criticism demonstrates in practice that it is possible to engage in a different kind of public action, action that implies a type of state that, unlike holistic states, refuses any prior aggregation and founds the concrete achievement of the common good on the active intervention of its citizens. With Michael Storper, we have called this type of state a "situated state".[12] In the last part of this paper, we would like to show how the advances contained in Sen's work converge with the findings of research on deliberative democracy and help to clarify how a situated state can foster the constitution of publics and bring about a change in deliberative practices.

In our definition, a situated state goes beyond abstract general categories to assign the common good a content indexed to the situation. It is impossible to describe the common good a priori beyond formulating a fundamental objective such as ensuring full employment, reducing inequality, satisfying the right to education, etc. It remains collectively knowable, provided it refers to specific situations of collective action; it becomes known in the course of that action itself and is achieved by a public that joins together for that purpose. Knowing and achieving the common good thus become the two sides of a single social process rooted in a situation. A situated state does not deliberately try to manipulate general categories but rather to promote processes of collective knowledge of problems (with intermediate levels that vary in their results and can be dynamically revised, involving and thereby creating publics). In the new political context now taking shape, the problem of democracy is that, before a problem can be solved, it must first be constituted as a problem of common interest; to do that, an objective judgment (what we call common knowledge) must be formed about it. The

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[12] Salais and Storper, 1993: 328-348.

relevant facts must be constructed (or reconstructed) in a type of democratic process that avoids the manipulation characteristic of rational political governance and allows the community to form well-founded judgements with regards to the reality and the quest for the common good.

The situated state will therefore orient its action away from achieving political consensus on procedures towards seeking a compromise on the content of the common good. This implies a number of questions that are seldom raised in the literature such as the relevant scope and content of the situation in relation to the common good. How is the situation to be described? What do we need to know and how can we find out? How can each person develop the capabilities to act for the common good? How can the state be present in the situation alongside the actors to help them rather than substitute itself for them in concretely achieving the common good? What are the contours of a deliberative process that democratically constitutes the public along with implementing social inquiry creating common knowledge within that public. We will limit ourselves to this last point in the next section.

3.2. Deliberative democracy and practical knowledge

To try and make some headway on this question, let us first look at how research can be used in the area of deliberative democracy. On the whole, the seminal works do not offer much in the way of encouragement. In the wake of Rawls and Habermas, research work has become normative and is usually limited to studying the conditions with which political procedures must comply in order to achieve a political consensus[13]. This has little to do with the search for objectivity in collective judgment. Nevertheless, recent work has focused on observing real situations and reincorporating the virtues of disagreement. This brings us closer to the issue. James Bohman[14] emphasises that, for free and equal exchange of arguments (reasons) to take place, a deliberative procedure must satisfy the requirement of equal capabilities to deliberate or what he called an "equal capability for public functioning". More generally, for social criticism to succeed

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[13] The work of Joshua Cohen, which is remarkable in other respects, is a good example of this. See his contributions in Bohman and Rehg, 1999.
[14] Bohman, 1999.

in a particular area, it must build a "new understanding" of the economic and social phenomena that develop within it. In Bohman's view, this new understanding entails building new collective causes, endowing them with legitimacy and mobilising communities of influence within civil society able to share that cause and to commit to it. Samantha Besson and Chantal Mouffe[15] encourage us to abandon the dream of rational consensus pursued by Rawls and Habermas because it is unattainable – and we would add – too easily manipulated. Trying to achieve consensus by avoiding the substantial issues or through negotiated accommodation may in fact overpower the need to bring the reasons (or the scope of what can be considered reasonable) to the attention of the public. By clarifying the basis of disagreement for the participants, deliberation can, on the contrary, have the beneficial effect of enriching their conceptions and making the process more informative, consistent and thoughtful. For Besson, disagreement must be seen as a creative resource for deliberation. Disagreement does not rule out the possibility of partial agreements, for example on which variables are relevant to the problem or how some of their aspects should be dealt with; the possibility of partial agreements will become even more visible.

What this works lack, however, is thinking about why, in addition to the general knowledge supplied by the sciences and the experts, citizen participation in collective decision-making is irreplaceable. It is possible and even necessary to say their participation is justified by basic principles (the virtue of the democratic model itself), but that is no longer enough. The fundamental reason for social criticism lies in the real value of the knowledge arising from social practice that citizens possess.

Research on democratic experimentalism[16] has grasped the importance of involving citizens in developing and processing information to implement local policies based on general macro objectives. It provides convincing examples of cooperative action in large American cities such as Chicago where the police force works jointly with concerned citizens to define local police policy. Teams are set up at the local level to identify and

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[15] Besson, 2003; Mouffe, 2000.
[16] Sabel, 1994; Sabel, 1996 ; Dorf and Sabel, 1997.

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solve problems. Residents are invited to take part in the process of delineation as well as formulate strategies and assess the results. The Centre (in this case, Chicago's Community Policing Evaluation Consortium) is in charge of collecting, sharing articulating and later disseminating the experience (in other words, the practical knowledge) revealed by these local efforts at problem solving (Sabel and Dorf, 1997: 76-80).

In so doing, democratic experimentalism calls into question the strict separation and established hierarchy between scientific knowledge (intended to develop general categories) and practical knowledge (reduced to the local level and consequently assumed to be prone to erroneous judgments) that we find, for example, in Habermas' two-track approach to deliberative democracy.[17] For Habermas, practical knowledge is the driving force in the informal debates of civil society and helps generate new topics, but it is up to the formal institutional sphere (to which the social sciences belong) to develop adequate knowledge for political decision-making. Our analysis suggests, on the contrary, that the political technologies of governance flourish, precisely by keeping these two paths separate. While civil societies (at the national and EU levels) remain the locus for highlighting the issues and mediating them, they are also prey to serious manipulation. It is not enough to have the strategic and political support of civil and social society. One must also put into question the process by which knowledge is provided to the civil and social society. In a way or another, the civil and social society should become true producers of that knowledge, and not only consumers. The how to produce will be addressed in the next paragraph.

The strength of democratic experimentalism lies in its conviction that a community is capable of defining the issues and the criteria for their assessment through the forms of local democracy as well as the procedures to follow in implementing and adjusting the solutions. But its weak point – which ends up outweighing its strength because it fails to prevent the manipulation of participatory democracy – is to try and justify state action by combining participatory democracy with market efficiency. Such an approach is

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[17] Habermas, 1996a; for a Bohman critique, 1996, p. 172 et seq..

comprehensible in an Anglo-Saxon context, but it confuses increased performance with progress towards achieving the common good.[18] As Sabel and Dorf, 1997:26-28, indicate, it reduces institutions to procedures of *learning by monitoring*, i.e. a conception very similar to the rational governance used by the European Union. The collective view of the problem to be solved is limited to sharing information (without realising that the constitution of cognitive frameworks is at issue). The citizen is immediately too optimistically considered an "expert on community life" (*op. cit.*: 76), which overlooks the very difficult problem of transforming practical knowledge into general knowledge. The federal level is conceived as providing individuals and their local authorities the information they have gathered along with benchmarking and performance assessment techniques. It remains in control of the "technical" aspects of the process. As a result, such research remains under the spell of the OMC and fails to grasp its strategies for instrumentalising collective initiative and autonomy.[19] The qualitative change implied by the leap from company management to state action is never really analysed.

3.3. Situated deliberation according to Sen: constructing the objectivity of judgment

One must say that Sen's approach goes further than the previous works in breaking away from the standard characterisation of deliberation. According to the logic of his model for public action, in order to assess the possibilities of each person, it is necessary to identify and construct the variables that describe his or her state (the "focal features", to use Sen's concept). It means that common knowledge has to be constructed by combining the use of general categories (or rules) with the relevant singular aspects of the situation.

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[18] Joerges, 2006 (p. 272 et seq.) notes that democratic experimentalism "proposes to use qualities inherent in the economic sphere to establish the criteria for what good governance should achieve" and thus embraces in a deceptively mild form the legacy of the strong state recommended by ordo-liberalism. This model of governance in which bureaucrats and experts exchange best practices runs the risk of "promoting executive authority and diminishing the virtues of democratic accountability of leaders, the rule of law and its judicial control"

[19] Trubek and Mosher 2003 is a caricature in this respect. The authors consider as an evident fact (i.e. immediately derived from data on employment and unemployment) that the governments set themselves the task in 1997 of improving the employment situation, without even examining the strategic, and therefore political, reasons that drove them to put this issue at the top of their agenda.

Indeed, there is no a priori reason why the "territory of justice" that proves to be relevant for person A should have exactly the same scope or characteristics as that of person B. The variables of action (the focal features) for a given problem differ in the situations of A and B; or A is better than B at a particular functioning but is less capable with regard to another. The list of relevant functionings – i.e. those that may require public action – can vary between the situations of A and B. For example, inadequate revenue must be corrected in the case of A, whereas for B (a woman with young children who wants to work), characteristics such as lack of day care are more important than revenue. The level at which the situation must be defined, as well as its scope – in other words, the level at which the relevant cognitive categories have to be constructed and the nature of those categories– will depend on the problem. Moreover, the configuration of the situation under review usually calls for joint implementation of a variety of resources ranging from the most general (monetary allocations, entitlements) to the most concrete and case-specific (for instance the particular content and length of training). How these resources should be combined can only be decided in the situation, based on its specific features. As a result, a territory of justice, although centred on the person, is not inherently individual. Its social scope and scale will vary depending on the problem and cannot be determined a priori from the outside. Instead, the scope and scale of such deliberative and cognitive territories must emerge dynamically from society itself, with a diversity of possible contents and configurations depending of the issue at stake.

Sen approaches deliberation at the most general level, namely, society considered as a whole and makes an original contribution to it. It is not up to theoreticians to define the list of valuable functionings through exterior knowledge, but rather society itself through democratic deliberation. From an ethical standpoint, he is convinced that any community must choose and specify by itself the functionings it considers valuable, for this is the only way to be relatively sure that their specifications will be adapted to the type and degree of its economic and social development.[20] Indeed, Sen reveals here a genuine aspiration for a situated state. In line with the developments in Part I, we can conclude that what is at stake here is not prior deliberation over which norm is the right one (a

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[20] Sen, 2004

conception based on a hypothetical ontological *plurality* of norms), but deliberation suited to an adequate grasp of the social reality (a conception based on the observation of a *variety* of situations from the viewpoint of the scope of capabilities). Empirical diversity should be understood as the outcome of compromises between the operating methods and resources of normative and political models. It must be the starting point for action, not the normative models. The fact remains that Sen did not pose the problem of deliberation at the concrete level of the life-world (*le monde vécu* in French). However he began to raise the essential and most difficult problem of reaching collective agreement on which facts adequately account for diversity. The question is this: how is it possible through a process of political deliberation to arrive at an *objective judgment* regarding the concrete reality of things and persons? Objective because it is recognised by everyone as just, in the twofold sense of right and fair, and as a result leads to good actions. If such objectivity is attained, conflicts over normative foundations are reduced to discursive, self-interested justifications that cannot withstand – without bad faith – the test of evidence arising from the process of establishing the facts. For, in this case, objectivity is not produced a priori by the technologies used for governance; it has become common knowledge as the outcome of a democratic process that has been developed as far as it can possibly go. In a democracy, it is perfectly legitimate to refuse to consider the political implications of the knowledge about the social, even the common knowledge, but denying its truth-value carries with it the danger of being excluded from the deliberative process and destroying the credibility of one's own claims.

3.4. Construction of common knowledge and deliberative procedures in the Capability Approach

In the socio-political context emerging today, partly under the influence of the construction of the European Union, in which general categories are instrumentalised, social criticism is faced with the need to test the evidence presented by political authorities for the ethical and democratic quality of their actions. This need is appearing at various levels with regard to various collective problems.

James Bohman[21], to come back to him, has taken a particular interest in how to go about guaranteeing that deliberative procedures give what one might call – in a situated state approach – equal consideration to the participants. He has therefore transposed the concept of capability to this problem. Indeed, there are significant inequalities among participants in terms of their political power, the scale and quality of the resources they are able (or ready) to provide, their practical knowledge about the problem to be solved and their ability to formulate their ideas adequately. Deliberative procedure must be designed in such a way as to ensure that each person can be heard and understood by the others. Any idea or resource, no matter how insignificant it may appear at first glance, could turn out to be decisive in finding a just, effective solution. Bohman argues in favour of state neutrality towards the interested parties and even for its intervention to neutralise any inequalities in their capability to deliberate. However, in our view he neglects certain consequences of the previous discussion, especially the priority that should be given to establishing common knowledge in order to constitute a public. If the constitution of the public is still guided by the search for political consensus on the solutions, even after inequalities in deliberative capabilities have been neutralised, it will still be over-determined by strategic actions and will not result in a genuine commitment to the common good.

Collectively constituting knowledge that can be raised against what the authorities say and do implies bringing out into the public sphere and debate what, in a certain sense without realising it, the potential public of a situation *already* knows from its practice and experience. But this potential public has yet to recognise its truth-value and discover its implications with regard to how the situation is configured and what can be done within it. To use a revised version of Sen's language, the situation presents possibilities for alternate ways of being and doing that offer the promise of capabilities for people. The political challenge is to bring these possibilities to light, to make them achievable and ultimately accessible.

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[21] In Bohman, 1996, 1999, *op. cit.*

As the research work on deliberative democracy has emphasised, ideas and their mutual comprehension arise and progress through discussion. But as Sen indirectly points out, the discussion must be concerned with relevant facts, which allows it as far as possible to avoid strategic manipulation and strive for objectivity. It is aimed not at determining what should be done, but rather, in order to do something, what do we need to know and how can we find out it. In other terms, it concerns the informational basis of judgment related to the situation.

If this knowledge is constituted in line with the strategic logic of the actors involved, the basis will be empty, for reasons that are easy to understand. The actors grasp reality through frameworks that are oriented towards the ends they are pursuing and backed up by the norms they value. The only information they format is what they consider relevant to those ends and values and they leave the rest aside. The meaning they attribute to this "portion" of reality is linked to what they grasp and they deduce from it the course of action that is in their best interests. Since the framework of understanding and the norms vary from one actor to the next, the portions of reality they see and to which they assign a strategic meaning may ultimately prove to be quite different and without any overlapping[22]. If the actors were sincere – but they will not –they would discover at the outcome of the process what they put into it at the outset and be forced to acknowledge that they do not share the same analytic frameworks or interests or norms.

If it is made up of citizens' opinions (their so-called "expertise") such a basis will be inconsistent. A different way of proceeding consists in turning the combined construction of a public and of common knowledge into a process of mediating competing interests. This means using knowledge building as a vehicle to introduce an ethic of objectivity into the deliberation. The purpose of deliberation is not to achieve consensus but to allow the participants to pursue their disagreement, provided it is expressed within the framework of the common knowledge created. If the process can be successfully completed, the disagreement will focus – to use Sen's terms, 1993 – on the weight and dominance ranking of the various pieces of information contained in the

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[22] Contrary to Rawls' expectations

basis. In the terms used by Mouffe, 2000, the process will transform the figure of the enemy into that of an adversary. Finally, insofar the process assigns a general value to practical, local and individual knowledge it should include specialists of inquiries on the social (researchers, lawyers and statisticians). They would act as third parties, using their methodologies to develop questions, categories and nomenclatures, survey methods and a format for presenting the results. Their role would be to constitute the table of the situation in the sense of cognitive representation, as we saw earlier, and present it as both a mirror and a subject of debate likely to raise the awareness of the public as a public. They would focus on bringing out the general knowledge contained in the practical knowledge of the persons (as well as sharing it and making it public); they would not act as experts (delivering their pre-constructed knowledge to the ignorant), but as *go-betweens* from the singular to the general. The word "go-between" seems more appropriate here than "translator", because it is not simply a question of transcribing local knowledge into already existing general categories. At the same time, such "go-betweens" would not divest themselves of their already constituted knowledge before encountering the situation, but rather use that knowledge in such a way as to create a bridge with the individuals' life-worlds. The constraint of equality capability to deliberate put forward by Bohman takes on its full value of ensuring that each person has an equal chance to move from the particular knowledge that she possesses to general knowledge.

More broadly, from this point of view, militants tend to be identified with investigators and knowledge builders, in an unusual kind of investigation one might call a *deliberative inquiry*. The format of such an inquiry is modelled on sociological or ethnological inquiries, but it attempts to provide the latent significance (which transforms its meaning) of the general implications of practical knowledge with the status of scientific objectivity. In this case, scientific methodology is more than merely heuristic; it becomes ethically necessary to transpose it to the field of deliberative democracy. For its purpose is to enable a constituted public to enter into public deliberation facing the political authorities, armed with an achievable alternative way of being and doing and supported by objectively grounded, legitimate knowledge that cannot be disregarded.

Without pushing the analogy too far, Stavo-Debauge and Trom, 2004, offer an enlightening analysis of the social movement that saved the old section of Lyon from destruction and preserved its cultural heritage for the future. Their study shows how the militants succeeded in joining the perceptual experience of district residents to scientific knowledge of its historic past (as it was categorised and listed under the forms of buildings and remarkable architectural or decorative elements). The informational basis changes when the references to the common good are shifting from public hygiene and housing standards toward historical patrimony and heritage. In the key moment (the cognitive moment) of their deliberative inquiry (to use our notion), the militants became "go-betweens" when they illuminated – in the strict sense – what was hidden beneath the filth of the old buildings during an evening visit of the site that was open to the public. More generally, a great deal of study is being devoted today to that cognitive moment that enables practical experience in a situation to combine with the general precepts of economic development. There is a whole spectrum of approaches[23] ranging from manipulating local knowledge through indicator-based management (as in the European OMC) to ethnological surveys focused on giving a voice to the people concerned.

The "democratic" advantages of deliberative inquiries are revealed in the results we would expect. Common knowledge constructed through deliberation is not a mere sum of sentiments, opinions or subjective, empirical assessments, nor is it a diktat out of the blue. It organises and weighs; it creates the facts and thus provides an incentive, in certain configurations, to reformulate the issues and choose other ways to solve the problems. It gives the weight of truth for criticizing the "facts" rationally fabricated by authorities in search of justification. It gradually adds something to the deliberation that was not there in the beginning.

For some, if not for everyone, accepting facts established deliberatively may prove to be demanding. While confirming many initial judgments, the inquiry might show that some of these assessments are groundless. On the other hand, it could reveal significant new

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[23] Cf., for example, Engel and Salomon, 2002; Engel, Carlsson and van Zee, 2003.

facts that must be taken into account. It may force some, under pain of being excluded from the deliberative process (or of realising their voice is no longer being heard), to redefine their analysis of the situation as well as their demands. But it will do so in an authentic way, not merely in the mode of rhetorical, strategic justification. For, the outcome of such inquiry is to formulate an agreement on the facts to be taken into account in describing reality in all its diversity. Consequently, it will not eliminate contradictions or antagonisms. But it reformulates them as sets of arguments that may be disapproved by some participants but are nevertheless understood by everyone because they stem from the same accepted knowledge basis. When social criticism focuses on introducing new categories and cognitive variables and makes the objectivity of knowledge the basis for action, it can introduce new data to the description of the facts (the second form of political representation) that will support those whose voices were not represented until then in the political process (the first form of representation). Even if their demands do not succeed at the outset (because they are given insufficient weight in the subsequent decision-making process) at least they will be heard and no one will be able to deny their existence or their legitimacy. The social process and collective action keep alive the possibilities to have the last word.

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