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“Freedom from Development”

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## **FREEDOM FROM DEVELOPMENT**

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*This paper proposes that there are three essential elements or phases of development: i) systemic capacity; ii) individual capability, and; iii) social citizenship. Significantly, the role of government within each element of development is decidedly different. Systemic capacity refers to the development of the economic means, or wealth creation, needed to provide society with services and public goods. Capability building refers to providing individuals with the basic conditions required to live a long and fulfilling life, such as health and education. Social citizenship recognizes that values held by individuals and groups will often conflict, and there is rarely a singular social end that can determine life in a free society. Fostering citizenship reflects the importance of belonging, and the obligations, responsibilities, and restraint that individuals owe to others, society, and the environment. This third element is a notable departure from many traditional approaches to development, which tend to concentrate on development as largely a process of feeding individual needs.*

*The proposed approach is labeled ‘freedom from development,’ for it is premised on the recognition that while society often benefits from the pursuit of traditional development elements, including markets, centralization, and individual freedom, it does not do so exclusively nor without qualification. So while there are many instances in which development is a desirable social end, as when people derive greater capabilities from economic growth, there are also situations when the end of development must be displaced in favour of other social priorities. For example, there are times when markets yield freedom, and times when the freedom people crave will be found in rejecting the market altogether. Freedom from development suggests that values represented under the third element of citizenship will often have come at the expense of those of the first two elements, meaning that development in a traditional manner is superseded in a given context.*

*In order to determine when freedom from development is socially desirable, it is suggested that a form of cost benefit analysis be*

*conducted, comparing the economic and individual gains available under the first two elements with the potential social gains from belonging under the third element of citizenship.*

## 1. INTRODUCTION

The most well-known modern perspective on development arguably remains Amartya Sen’s *Development as Freedom* (DaF).<sup>1</sup> DaF is an expression of the capability approach to human development, which evaluates social progress and government efficacy in light of not only economic income or wealth, but also in terms of the important preconditions, such as health and education, required by individuals to enjoy a long and fulfilling life. The capability approach presents a more holistic approach to development, and this popular approach has been labelled the third movement in law and development.<sup>2</sup> While there is much that is commendable in the capability approach, there are also serious flaws. The capability approach has been criticized for any overly individualistic basis, which pays insufficient attention to social or environmental priorities.<sup>3</sup> Similarly, it may be said that in the attempt to capture everything benefiting the label of development under the umbrella of individual fulfillment, the capability approach, whether Sen’s or that utilized by the United Nations Development Programme (UNDP),<sup>4</sup> leads to a superficial

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<sup>1</sup> Amartya Sen, *DEVELOPMENT AS FREEDOM* (1999).

<sup>2</sup> See David M. Trubek & Alvaro Santos, Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice, in *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL* 7-9 (David M. Trubek & Alvaro Santos eds., 2006); See also BRIAN R. TAMANAHA, *ON THE RULE OF LAW: HISTORY, POLITICS, THEORY* (2004).

<sup>3</sup> See discussion *Infra* Part 1.

<sup>4</sup> The UNDP generally defines development as including fostering individual ‘abilities’: to live a long and healthy life, knowledge, and a decent standard of living. In addition, there are ‘conditions for human development,’ which include: participation in political and community life, environmental sustainability, human security and rights, and gender equality. UNDP, *What is Human Development?*, <http://hdr.undp.org/en/content/what-human-development>

vision that ignores the many conflicts and trade-offs that are necessarily involved in modern governance and policy-making.<sup>5</sup>

This paper suggests that if development is freedom, then society often needs a good dose of freedom from development; or freedom from the constant the emphasis on individual gain, however broadly defined. Accordingly, it is suggested that a three element conception of development should be constructed around the reality that neither societies nor individuals have homogenous ends, even if the ends are claimed to be as exultant as freedom. Not doubt most of the time many people crave prosperity and the increased potential that it provides, but people are more than merely consumers of wealth, government resources, and capabilities. Individuals also belong to communities, and arguably the environment, and something is owed as a result. Recalling the political philosophy tradition stretching back to ancient Athens, participation in public life can seen as a civic virtue, with value above and independent of the self-interest of the individual. The third element, therefore, contemplates when the individualistic and gain based approaches to development should give way, as people opt to forsake capability building gains in order to support other social or environmental commitments and obligations.

Part one of this paper provides a brief review of the capability approach, and Sen’s DaF in particular. Of the many criticisms that have been raised, a few major deficiencies with DaF are explored, including: i) that Sen gives a superficial and idealized account of the social and political constraints on individual freedom; ii) there is insufficient acknowledgement of the difficulties in managing the trade-offs between competing groups and values, and; iii) it is highly debatable whether, as Sen claims, freedom is actually more conducive to economic development.

Part two emphasizes the descriptive and normative (or efficacy and evaluative)<sup>6</sup> limitations within DaF, and proposes an alternative in the three element approach of Freedom from development. Significantly, each element entails a different style of role for government. The first element of economic capacity signals, *contra*

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<sup>5</sup> See discussion *Infra*

<sup>6</sup> Sen proposes that freedom is central to development for both evaluative (assessment) and effectiveness (achievement) reasons. DaF at 4.

Sen, that economic growth should be viewed as distinct from individual capabilities. In the first element, government is primarily a facilitator of economic growth, whether through regulatory and institutional design, or strategic policy-making. The second element of capability building acknowledges the importance of, and incorporates some core aspects from, the capability approach. Central to this capability element, then, is the view of the individual as a consumer of public goods and institutional inputs. For the second element, government is primarily a provider of these public goods and institutional inputs. The third element of citizenship contemplates public life and the intersection of individuals, groups, culture, and the environment. The third element involves values that may conflict inherently, and recognizes that trade-offs need to be made. At times the ascendant value or consideration for a given society may not be consistent with development as freedom, nor individual capabilities or gains. Under the third element the role of government is complex and varied - ranging from mediator of conflicting value or rights claims, to assisting marginalized groups to gain equal access to the participatory aspects of civic virtue. Moreover, under the third element, government is also a force to be resisted, for civic virtue and the pursuit of the common good requires active citizenship and the resistance to the accumulation of power, especially centralized power.

Part three introduces a hypothetical development case study involving the resistance by Indigenous peoples to a proposed economic development project. The case study is intended to reflect and concentrate certain global tensions involving development protests, while demonstrating the differences between DAF and Freedom from development.

Part four explores how Freedom from development is necessarily a heterogeneous approach, and that social and development priorities can fundamentally oscillate over time and a given context. The three elements approach is joined with a form of cost-benefit-analysis to indicate the manner in which priorities can oscillate over time so that the normally ascendant priorities of individual freedom and capability gains are sometimes displaced for compelling reasons.

## 2. DEVELOPMENT AS FREEDOM, AND ITS DISCONTENTS

The work of Amartya Sen has been instrumental in moving the study of development beyond the historical equation of development as economic growth and industrial progress to embrace a fuller and more humane conception. Sen recognizes of course that wealth can provide an important means of development, but it is not alone sufficient, and cannot constitute the end of development. As Sen writes: “an adequate conception of development must go much beyond the accumulation of wealth and the growth of gross national product and other income related variables.”<sup>7</sup> Sen’s central thesis in DAF is that individual freedom is both the primary end and the principal means of development.<sup>8</sup> The first component of freedom as an end is likely compelling to many, so long as freedom is defined broadly enough, while the second is much more questionable.<sup>9</sup>

First, as to freedom as the end of development, Sen’s defines freedom, drawing upon Aristotle, as the ability of individuals to live flourishing lives.<sup>10</sup> A flourishing life depends upon the ability, or capabilities, of people to “lead the kind of lives they value - and have reason to value.”<sup>11</sup> The essential question appears to be: ‘what do I need to flourish, by my own lights?’ The state is then evaluated in terms of delivering its part of the equation in the individual pursuit of a flourishing life. Importantly for Sen, individual freedom requires both the removal of obstacles to individual agency, or unfreedom, as well as the provision of social goods such as health, education, or basic income replacement and other features of a social safety net.<sup>12</sup> Some of the most memorable specifics from DAF involve observations on comparison capabilities across countries. For

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<sup>7</sup> DaF 14

<sup>8</sup> DaF 10

<sup>9</sup> Denis O’Hearn, Amartya Sen’s Development as Freedom: Ten Years Later, 8 Development Education Review 1-2 (2009).

<sup>10</sup> Frances Stewart and Severine Deneulin, Amartya Sen’s Contribution to Development Thinking, 37.2 Studies in Comparative International Development, 61, 62 (2002).

<sup>11</sup> DaF 18

<sup>12</sup> Peter Evans, Collective Capabilities, Culture, and Amartya Sen’s Development as Freedom, 37 Studies in Comparative International Development, 54, 55 (2002).

instance, Sen points out that African American males in the United States - while poorer than their white American counterparts - were far richer than people in the developing world, but had a lower chance of reaching mature ages in absolute terms.<sup>13</sup> Or, Sen’s observation that while many developing states had much higher incomes, the life expectancy was much higher in relatively poorer areas like the state of Kerala in India.<sup>14</sup>

While there is much commendable within DAF, and certainly within Sen’s work in general, many have pointed out its serious shortcomings. One major form of criticism is that Sen’s approach in DAF is overly individualistic in nature,<sup>15</sup> resulting in the exclusion or undue minimization of other important factors within development. For example, various authors have criticized Sen’s treatment of the environment for being overly anthropocentric and oblivious to the intrinsic value of nature.<sup>16</sup> In addition to the missing appreciation of the intrinsic value of the environment, some have further argued that any capabilities approach ought to incorporate individual responsibility toward nature.<sup>17</sup>

Unsurprisingly, the criticisms of DaF for being premised on a view of individuals as atomized and unembedded are most pronounced in social terms. For example, Sen’s capabilities approach has been characterized as sharing “the individualism of the

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<sup>13</sup> DaF 6,

<sup>14</sup> DaF 6,

<sup>15</sup> Peter Evans, *Collective Capabilities, Culture, and Amartya Sen’s Development as Freedom*, 37 *Studies in Comparative International Development*, 54, 56-59 (2002); Bhupinder Chimni, *The Sen Conception of Development and Contemporary International Law Discourse: Some Parallels*, 1 *LAW & DEV. REV.* 3, 11 (2008); Severine Deneulin & J. Allister McGregor, “The capability approach and the politics of a social conception of wellbeing 13:4 *European Journal of Social Theory* 501 (2010); Severine Deneulin, *Beyond individual freedom and agency: structures of living together in the capability approach to development*, in S Alkire, F Comim & M Qizilbash, eds, *The Capability Approach: Concepts, Measures and Application* (Cambridge: Cambridge University Press, 2008) 105.

<sup>16</sup> See, e.g., Thierry Demals & Alexandra Hyard, *Is Amartya Sen’s sustainable freedom a broader vision of sustainability?* 102 *Ecological Economics* 33 (2014); Jerome Ballet, et al., *A note on sustainability economics and the capability approach*, 70:11 *Ecological Economics* 1831 (2011); Jerome Pelenc et al., *Sustainable Human Development and the Capability Approach: Integrating Environment, Responsibility, and Collective Agency*, 14:1 *Journal of Human Development and Capabilities* 77 (2013).

<sup>17</sup> Jerome Pelenc et al., *Sustainable Human Development and the Capability Approach: Integrating Environment, Responsibility, and Collective Agency*, 14:1 *Journal of Human Development and Capabilities* 77 (2013).

utilitarian approach, where individuals are assumed to be atoms who come together for instrumental reasons only, and not as an intrinsic aspect of their way of life.”<sup>18</sup> As Sen himself writes: “Societal arrangements, involving many institutions ... are investigated in terms of their contributions to enhancing and guaranteeing the substantive freedoms of individuals.”<sup>19</sup>

The capability approach here for Sen sees individuals act essentially as consumers, or enlightened choosers. Consumers who have a broad range of interests and choice options - for knowledge, and relationships of value, as well as politically, so that people can vote and choose who governs<sup>20</sup> - but consumers nonetheless. These individuals who pursue freedom and flourishing lives are largely considered as one-directional recipients of resources and experiences that are instrumental to individual aims and capabilities. These individuals are seemingly one-directional recipients because nothing is asked of them in return - no obligation is seemingly required to help others achieve flourishing lives, nor is there any seeming commitment to serve in public life as a citizen. While Sen is certainly appreciative that individual freedoms are “quintessentially a social product” and that there is “a two-way relationship,”<sup>21</sup> nonetheless this is superficially folded into a singular individual end, as Sen “makes individual freedoms and capabilities the one relevant space for evaluation of quality of life, with structures of living together assessed only instrumentally.”<sup>22</sup> Sen has repeatedly observed to be a liberal in the classical mold,<sup>23</sup> with a concentration on the individual with exogenous preferences,<sup>24</sup> and with a neutral

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<sup>18</sup> Frances Stewart and Severine Deneulin, *Amartya Sen’s Contribution to Development Thinking*, 37.2 *Studies in Comparative International Development*, 61, 66 (2002).

<sup>19</sup> DAF xii-iii.

<sup>20</sup> DaF 38.

<sup>21</sup> DaF 31.

<sup>22</sup> Frances Stewart and Severine Deneulin, *Amartya Sen’s Contribution to Development Thinking*, 37.2 *Studies in Comparative International Development*, 61, 68 (2002).

<sup>23</sup> Denis O’Hearn, *Amartya Sen’s Development as Freedom: Ten Years Later*, 8 *Development Education Review* 1, 3 (2009); Bhupinder Chimni, *The Sen Conception of Development and Contemporary International Law Discourse: Some Parallels*, 1 *LAW & DEV. REV.* 3, 11 (2008)

<sup>24</sup> Peter Evans, *Collective Capabilities, Culture, and Amartya Sen’s Development as Freedom*, 37 *Studies in Comparative International Development*, 54, 56 (2002)



treatment of social forces that might otherwise constrain those individual preferences.<sup>25</sup>

Sen’s approach in DAF is problematic not simply for what is under emphasized, as in the intrinsic value of the environment, social relationships and power, but what is downplayed or glossed over altogether. Particularly in the realm of political engagement, Sen is found to offer a superficial view. Political economy,<sup>26</sup> political and economic power,<sup>27</sup> global economic forces and international financial institutions (IFIs),<sup>28</sup> have all been observed to have been omitted or given superficial treatment as factors that influence development and individual freedom. Most concerning, for this investigation, is Sen’s avoidance of civic challenges, contestation, and the need to make difficult trade-offs between competing values.<sup>29</sup> This tendency is evident in the economic context as well, as where Sen somewhat blithely indicates that the relationship between efficiency and equity are simultaneously supportable, with

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<sup>25</sup> See Peter Evans, *Collective Capabilities, Culture, and Amartya Sen’s Development as Freedom*, 37 *Studies in Comparative International Development*, 54, 57 (2002); Bhupinder Chimni, *The Sen Conception of Development and Contemporary International Law Discourse: Some Parallels*, 1 *LAW & DEV. REV.* 3, 10 (2008);

<sup>26</sup> Bhupinder Chimni, *The Sen Conception of Development and Contemporary International Law Discourse: Some Parallels*, 1 *LAW & DEV. REV.* 3, 8 (2008); Frances Stewart and Severine Deneulin, *Amartya Sen’s Contribution to Development Thinking*, 37.2 *Studies in Comparative International Development*, 61, 63 (2002).

<sup>27</sup> Vicente Navarro, *Development and Quality of Life: A Critique of Amartya Sen’s Development as Freedom* 30:4 *International Journal of Health Services* 661 (2000); Peter Evans, *Collective Capabilities, Culture, and Amartya Sen’s Development as Freedom*, 37 *Studies in Comparative International Development*, 54, 56-59 (2002); Bhupinder Chimni, *The Sen Conception of Development and Contemporary International Law Discourse: Some Parallels*, 1 *LAW & DEV. REV.* 3, 8 (2008); Frances Stewart and Severine Deneulin, *Amartya Sen’s Contribution to Development Thinking*, 37.2 *Studies in Comparative International Development*, 61, 6 (2002).

<sup>28</sup> Denis O’Hearn, *Amartya Sen’s Development as Freedom: Ten Years Later*, 8 *Development Education Review* 1, 3 (2009); Bhupinder Chimni, *The Sen Conception of Development and Contemporary International*; Bhupinder Chimni, *The Sen Conception of Development and Contemporary International Law Discourse: Some Parallels*, 1 *LAW & DEV. REV.* 3, 8 (2008)

<sup>29</sup> See, e.g., John Toye, *Dilemmas of Development* (1987); (describing dilemmas of development in choosing between either concurrent goals, or different goals over time.); Stuart Corbridge, 2.3 *Progress in Development Studies*, 183, 194 (2002)(noting the potential trade-off between some democratic freedoms and the pace of economic development.); Frances Stewart and Severine Deneulin, *Amartya Sen’s Contribution to Development Thinking*, 37.2 *Studies in Comparative International Development*, 61, 64 (2002)(noting that “actual existing democracy does not present a neat solution to the difficult problem of defining priorities.”)

the liberalization of markets alongside of investment in health and educational institutions, but Sen “tides over the tensions between the two sets of goals.”<sup>30</sup> Similarly, on the political level, despite all of the power imbalances and myriad dynamics in the global system, DaF possesses a “naive optimism that as soon as the weight of good argument is brought to bear on power in the global arena it will yield to it.”<sup>31</sup>

Sen’s vision of everything serving as a means toward individual capability and freedom is only sustained by not acknowledging the extent to which democracy and freedom necessitate debate and conflict, and that not all claims can equally succeed all of the time, or at the same time. As noted by Stewart and Deneulin, Sen’s admirable sounding support of “democratic and self-determined decisions”<sup>32</sup> comes at a cost, namely: “that without a democratic understanding about priorities there is very little content to Sen’s approach. ... The problem is that Sen’s concept of democracy seems an idealistic one where political power, political economy, and struggle are absent.”<sup>33</sup> Or as Denis O’Hearn observes: “Essentially, then, Sen proposes that development is driven by capitalism laced with good values: transparency, where folks can be trusted to do what they say they will do, decent behavioural ethics, etc. Yet he provides no theory of where such ethics originate...”<sup>34</sup>

Finally, Sen’s claim that individual freedom is the principal *means* of development is a highly debatable point. Sen’s argument is that in terms of effectiveness, freedom is the best way to achieve development.<sup>35</sup> The framing of freedom as both the principal means and the primary end of development no doubt provides for a nice symmetry, but it is highly questionable whether increased freedom

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<sup>30</sup> Bhupinder Chimni, The Sen Conception of Development and Contemporary International Law Discourse: Some Parallels, 1 LAW & DEV. REV. 3, 8 (2008).

<sup>31</sup> Bhupinder Chimni, The Sen Conception of Development and Contemporary International Law Discourse: Some Parallels, 1 LAW & DEV. REV. 3,11 (2008).

<sup>32</sup> Frances Stewart and Severine Deneulin, Amartya Sen’s Contribution to Development Thinking, 37.2 Studies in Comparative International Development, 61, 63 (2002).

<sup>33</sup> Stewart and Deneulin *supra* at 63-64.

<sup>34</sup> Denis O’Hearn, Amartya Sen’s Development as Freedom: Ten Years Later, 8 Development Education Review 1, 3 (2009)

<sup>35</sup> Sen proposes that freedom is central to development for both evaluative (assessment) and effectiveness (achievement) reasons. DaF at 4.

actually improves development outcomes. That the historical record, in which nearly every rich and prosperous liberal democracy has achieved industrialization and prosperity before the presence of a robust democracy with a wide franchise, further undermines the causal connect between freedom and economic development.<sup>36</sup> In DaF, Sen’s strongly rejects the equation of the success of the East Asian model with its connection to authoritarian rule, and in particular the so called Lee thesis (named after Lee Kuan Yew, the influential prime minister of Singapore) which purports that rights and freedoms actually hamper economic growth and development.<sup>37</sup> As Sen contends: “There is nothing whatsoever to indicate whatsoever that any of these policies [‘openness to competition, the use of international markets, a high level of literacy and school education, successful land reforms and public provision of incentives for investing, exporting and industrialization’] is inconsistent with greater democracy and actually had to be sustained by the elements of authoritarianism that happened to be present in South Korea or Singapore or China.” It has been suggested that this Sen’s particular argument of Sen’s should be treated with caution, for good reason.<sup>38</sup>

It may well be that undemocratic or authoritarian governments, whatever other deficiencies or lack of virtues they may manifest, may often be more effective at orchestrating beneficial reforms that are unpopular or difficult in the short-term.<sup>39</sup> Additionally, it could well be that in certain circumstances that countries need to achieve basic economic capacities before other and additional public goods or individual benefits by way of capabilities can be contemplated, much less provided. For it does appear that Sen’s phrasing results in something of an argumentative dodge - democracy may not be inconsistent with what was achieved in the East Asian success stories, but democracy did not happen to be present, and nor was full representative democracy present in most contexts, if any at all,

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<sup>36</sup> Stuart Corbridge, 2.3 Progress in Development Studies, 183, 193 (2002)(noting the uncomfortable that “close to none as yet” countries “have industrialized successfully while functioning as a representative or participatory democracy.”).

<sup>37</sup> DaF 148

<sup>38</sup> Stuart Corbridge, 2.3 Progress in Development Studies, 183, 194 (2002).

<sup>39</sup> Stuart Corbridge, 2.3 Progress in Development Studies, 183, 194 (2002)(observing that authoritarian regimes sometimes have a comparative policy-making advantage, using the example of successful land reforms that otherwise in democratic states might likely have been blocked by agrarian elites).

where rapid industrialization has occurred. It is as if Sen has concluded that the sum of 1 + 3 equaling 4 does not preclude the value of 2 + 2 in also achieving 4; which is certainly true, but somewhat besides the point if the argument is that the number 2 is the most effective means of achieving 4.

### 3. THREE ELEMENTS OF DEVELOPMENT: CAPACITY, CAPABILITY, CITIZENSHIP

#### 3.1 Economic Capacity

Sen’s argument on the development efficacy of freedom is suspect precisely because there does appear to be a pyramid structure to development, with economic means or capacity at the base. Wealth alone does not ensure that it is used effectively or equitably, to be sure, but surely there are more policy options available, including capability friendly investment, with increased economic capacity. Sen acknowledges that wealth is an important means to development, but he is loath to grant it sequential or practical priority. Economic capacity can be thought of as a priority that precedes, but subsequently moves along with and supports a view to capability building and individual consumption of public goods. This separation of capacity from capability may be useful not only because capacity can occur as a priority to be fulfilled first, but also because it recognizes that the provision of capability investments are contingent upon economic capacity. Among the oversights in Sen’s idealized political realm is the underappreciation of fiscal constraints that may affect the provision of government services. The provision of capability building government services must be considered in light of other policy commitments and the general economic wherewithal of a state to provide funding.<sup>40</sup>

As with development in general, the capability element cannot be an assumed constant in isolation, fed by an idealized government unencumbered by fiscal realities. Rather, the delivery of state based individual capabilities, like public health and education, depend upon a state’s treasury and tax revenue. It is useful, therefore, to

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<sup>40</sup> Yong-Shik Lee, *General Theory of Law and Development*, 50 *Cornell International Law Journal* 415, 429 (Noting the considerable economic resources required to supply non-economic values such as the rule of law, and that to “achieve development goals effectively, one may have to set priorities among the constituent elements of development.”)

consider capacity as separate from capability, because: i) there is strong evidence that it precedes the luxury of capability building; ii) capability depends upon economic capacity and cannot exist independently of it, whereas capacity can arguably exist independent of capability provision; iii) capacity is a type of governance, oversight, and policy-making that is distinct in nature, and; iv) this distinct governance nature may be influenced by the third element of citizenship in a manner not canvassed under a holistic capability approach.

A central reason for the separation of capacity and capability is the different style of government involvement called for. Economic capacity building can be seen as largely a matter of regulatory and institutional design, as well as strategic policy making. The development question that underlies capacity building can thought of as - what set of rules, institutions and policies are most conducive to growing a state’s economy in a world of scarcity and competition? This first level of capacity is the level of prescription, of trying to determine which regulatory and institutional features are most constructive to economic growth. It is the level of traditional prescriptions on the western model of property rights, contract enforcement, and the rule of law. It is also the level of witnessing different success stories and models, as with the phenomenal economic rise of the so-called Newly Industrialized Countries (NICs) in the post WWII era.<sup>41</sup> On a more micro level, as Richard Posner has noted, development gains may accrue from simply choosing simpler rules within an otherwise inefficient or corrupt system rather than reforming the institutions themselves.<sup>42</sup> Regardless of the scale, sound governance and institutions are widely understood to be crucial to development.<sup>43</sup> The difficulty of course is that establishing what institutions will work in which context and why

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<sup>41</sup> See Yong-Shik Lee, General Theory of Law and Development, 50 Cornell International Law Journal 415, 429-30; See also SONGOK HAN THORNTON & WILLIAM H. THORNTON, DEVELOPMENT WITHOUT FREEDOM: THE POLITICS OF ASIAN GLOBALIZATION (2008).

<sup>42</sup> Richard A. Posner, Creating a Legal Framework for Economic Development, 13 World Bank Research Observer, 1, 3-4 (1998).

<sup>43</sup> See, e.g., Dani Rodrik et al., Institutions Rule: The Primacy of Institutions Over Geography and Integration in Economic Development, 9 J. Econ. Growth 131 (2004); Daniel Kaufmann et al., Governance Matters IV: Aggregate and Individual Governance Indicators, 1996-2004, No.3630 World Bank Policy Research Working Paper 1 (2005).

remains resolutely elusive.<sup>44</sup> The point in terms of the present inquiry is simply to note that the economic capacity stage, of how states can best facilitate economic growth, is qualitatively distinct from the second and third elements.

### 3.2 Individual Capabilities

This level is straightforwardly an endorsement of the capability approach in its basic outline, with the individual as a consumer of government services. On this level, government may supply basic building block resources in terms of health and education, ensure a basic standard of living, and provide other attributes of a social safety net. The first difference of note from Sen’s capability approach is that here capabilities are considered contingent, as social programs are dependent upon fiscal capacity and tax revenues that are not fixed variables. The capabilities supported can of course be privileged within government expenditures, but they must be considered within this real world constraint of fiscal capacity, and not as a philosophical or moral aspiration in isolation. The second difference of note is that political freedoms are not treated as a capability, but rather under the third element of citizenship.

### 3.3 Citizenship

Political freedoms are rightly described by Sen as an essential end of development.<sup>45</sup> Political participation may both a crucial means to a well lived life. The reason to differ from Sen and treat political life separate from other capabilities is that it depends upon government to some extent, but it is not singularly provided by government in the same way that schools, hospitals, or unemployment insurance are. Governments should ensure that individuals have the opportunity to participate politically, at least as an ideal found in

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<sup>44</sup> See Michael J. Trebilcock and Mariana Mota Prado, LAW AND DEVELOPMENT, 35 (2014) (“Correlation does not necessarily imply causation: showing that all or most rich countries have good institutions does not prove that they are rich because they have good institutions.”); Thomas Carothers, The Rule of Law Revival, in PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE 3, 7 (Thomas Carothers ed., 2006) (describing the post-cold war enthusiasm with rule of law promotion, and its uneven, ambiguous track record).

<sup>45</sup> Again, the role of political freedoms as a means to development is much more debatable. See supra part

liberal democracies, but governments cannot ensure that the participation actually occurs, much less that it is fulfilling to a particular individual. Political participation cannot be provided by government, but it can be ensured as a potential by government.

A stronger instance of the limited government role under citizenship occurs with group affiliation and culture. Governments can support the constitutional space required for group affiliations and cultural differences to flourish, but government cannot provide individuals with these group and cultural goods. The transformation out of the capability mode should be notable at this stage, for while the individual can be a consumer of culture, a culture must also be lived by others. An individual is less of an atomized accumulator when it comes to culture, as opposed to a capability wholly supported by government expenditure as in the case of social safety net payments or educational services or training, for example. The main distinction between capability and citizenship thus far is the recognition that with participation in politics or culture, the individual may well consume some benefit from others, but it is a benefit that is dependent on the contribution of other private individuals who give life to the value or means of capability, and it cannot be solely provided or guaranteed by government.

The distinction between capability and citizenship elements becomes most pronounced when citizenship is considered to be fundamentally as a part of belonging. Many people derive value from contributing to their society, socially, culturally, and politically, as well as to the environment. More importantly, however, is the recognition that people’s contributions do not merely have value because it is experienced by the individual contributor, but rather because these contributions have an intrinsic or independent value apart from the individual. In DAF, Sen draws upon Aristotle for the notion of individual flourishing, but we may also look back to the ancient Greeks for another lesson, and one that is arguably more central to western political philosophy, on the importance of civic virtue. As Richard Dagger notes in relation to the modern ascendancy of political appeals to language of rights: “thinking in this way blinds us to the extent of our reliance upon others. As we regard ourselves more and more as self-constituted individuals, we fail to realize how we depend upon communities that not only give meaning to our lives but also largely constitute our identities. So preoccupied are we with our rights that we lose sight of our

responsibilities and the need to act virtuously, with the good of the community in mind.”<sup>46</sup>

DAF is full of elegant arguments for the individual need for freedom and flourishing, and what everyone should equally expect from government, and so on, but there is little to no mention of individual commitments, obligations, and contributions to the society from which they are to extract so much of their capability gains. Elsewhere Sen gives an eloquent account of the depth of individual concerns that extend beyond individual well-being alone, including environmental preservation - “we can have many reasons for our conservationist efforts... some of which turn precisely on our sense of values and of fiduciary responsibility.”<sup>47</sup> Again, it is not that Sen misses or is oblivious to important non-economic values, but that he does not specify how “the possible range of procedures by which valuational issues are to be resolved,”<sup>48</sup> or that “it is not at all clear how these processes of public reasoning and democracy are going to take place.”<sup>49</sup> The third element of citizenship is premised on the need to not only pursue our own individual self-interests and capabilities and sense of fulfillment, but that people also need to fulfill commitments and shared responsibility for the greater good, often in restraint of our individual freedom. The object of freedom from development, however, is not simply to revise or reframe the values included in development, especially since the over broadness of DaF and the UNDP definition is the very cause of its indeterminacy. Freedom from development is also intended to suggest a rough guide for resolving competing claims and assigning value priorities in context.

#### 4. HYPOTHETICAL CASES

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<sup>46</sup> Richard Dagger, CIVIC VIRTUES 3-4 (1997).

<sup>47</sup> Sen, A. K. (2004b) Why we should preserve the spotted owl, The London Review of Books, available at: [www.lrb.co.uk/v26/n03/sen\\_01.html](http://www.lrb.co.uk/v26/n03/sen_01.html). Page 3

<sup>48</sup> Alkire, S. (2002) Valuing Freedoms: Sen’s Capability Approach and Poverty Reduction (Oxford: Oxford

University Press) p 13

<sup>49</sup> Robeyns, I. (2005) The Capability Approach: a theoretical survey, *Journal of Human Development*, 6(1), pp. 93–114. P 106



#### 4.1 An Individual Case Study

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#### 4.2 A Comparative Case Study

There has been a pronounced rise in the skepticism on the benefits of markets and centralization in recent years, with Brexit as perhaps the most glaring example. This section poses a hypothetical case study that is emblematic of a rejection of markets and the defensive priorities of environmental and cultural preservation. A hypothetical example of indigenous peoples’ resistance to a resource development project is used here to demonstrate the interrelated issues of economics, environment, and group belonging. Indigenous peoples’ protests against resource projects have been prominent of late, as with the grassroots Standing Rock movement in North Dakota, multiple protests in Western Canada,<sup>50</sup> and various protest movements in South America.<sup>51</sup> It should be stressed that using an Indigenous hypothetical is not to suggest that Indigenous peoples are uniformly or uniquely stewards of the environment, and indeed Indigenous groups often wish to lead in the development of resources to increase the prosperity of their communities. The hypothetical is considered as a potential lesson for the study of development, not as a substantive examination of Indigenous advocacy or Indigenous rights.

The following hypothetical draws some inspiration from the basic facts of *Tsilhqot’in Nation v. British Columbia*, a landmark Supreme Court of Canada case on Aboriginal Title handed down in 2014.<sup>52</sup> Suppose that an Indigenous community are the exclusive residents of a large and remote territory within Canada. The territory contains vast tracts of old growth forest that a semi-nomadic Indigenous community has inhabited exclusively since time immemorial. The inherited cultural beliefs and practices of the Indigenous community depend upon the use and enjoyment of the forest in this traditional fashion. The Indigenous territory is

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<sup>52</sup> *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44.

bordered on all sides by clear cut logging previously approved by the regional government. The regional government next approves logging in the Indigenous peoples’ territory and sells the logging rights to a private firm, all of which the Indigenous group reject.

Although the determination of such a case will have various features, such as the judicial determination of an Indigenous right or title, the nature of the dispute for development purposes has three components of interest. First, there is the political feature of autonomy, including self-determination and the ability to arrange local community affairs independently. Second, there is the environment sustainability goal in protecting the forest ecosystem. Third, the forests are integral to the preservation of the distinct culture and way of life of the Indigenous community. There is arguably much that is worthy of recognition in the joined values of autonomy, sustainability, and culture, that is also appealing to non-Indigenous people who have no personal stake in the specific case or cause. And while not everyone may be able to claim cultural belonging that is contingent on an environmental resource, if the three concerns are telescoped into two broad concerns involving autonomy and sustainability, the concerns become much more universal.

As to the potential lesson for development, the question becomes of whether it is consistent with development (and in particular, development as freedom) to either approve or reject logging of the forest? Suppose that the Indigenous community succeeds in establishing legal control or a qualified jurisdiction over the territory - this would render any proceeds from selling logging rights as moving directly to the community. Additionally, this thought experiment should be conducted bearing in mind the unfortunate reality that most Indigenous communities have much lower standards of living, and access to public goods and services, than the surrounding non-Indigenous society.<sup>53</sup> Therefore, a decision by the Indigenous community to forgo logging for the sake of the preserving the forests would entail that a traditional way of life is sustained, but the economic productivity of this way of life might be close to a subsistence level.

A strong reading of the capability approach and Sen’s thesis in DAF would be that the Indigenous communities decision would clearly be contrary to development. As a result of the no logging

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decision, the individual community members and their immediate families would have less economic resources to commit to their own education, training, health, and standard of living. As consumers of capability enhancing services and public goods, the individuals in the community would have less without logging. For Sen, everything should serve individual freedom and capability building, including communities and the environment. Sustainable development, according to Sen, has to conform to his concept of individual freedom: “If the importance of human lives lies not merely in our living standard and need-fulfillment, but also in the freedom we enjoy, then the idea of sustainable development has to be correspondingly reformulated.”<sup>54</sup> Sen has asserted that “the value of the environment cannot be just a matter of what there is, but also consists of the opportunities it offers to people. The impact of the environment on human lives must be among the be among the principal considerations in assessing the value of the environment.”<sup>55</sup> Indeed, it is exactly the environment as means to individual purposes that has garnered criticism from those who question Sen’s anthropocentric view of the environment.<sup>56</sup>

There are of course obvious counterpoints to the simplistic economic conclusion that the no logging decision would be contrary to development within a longer temporal view - namely the value of community and the environment that supports it. And certainly a more nuanced reading of DAF could support this no logging decision as consistent with development. For one, cultural participation is endorsed strongly by Sen as a component of individual flourishing.<sup>57</sup>

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<sup>54</sup> Sen, A.K., 2002. *Rationality and freedom*. The Belknap Press of Harvard University Press, Cambridge (Mass.) [Cited in Thierry Demals & Alexandra Hyard, "Is Amartya Sen's sustainable freedom a broader vision of sustainability?" (2014) 102 *Ecological Economics* 33, 35.]

<sup>55</sup> Sen, A.K., 2009. *The idea of justice*. Allen Lane, London. [Cited in Thierry Demals & Alexandra Hyard, "Is Amartya Sen's sustainable freedom a broader vision of sustainability?" (2014) 102 *Ecological Economics* 33, 35.]

<sup>56</sup> See e.g. Thierry Demals & Alexandra Hyard, "Is Amartya Sen's sustainable freedom a broader vision of sustainability?" (2014) 102 *Ecological Economics* 33, 36; see also Wouter Peeters, Jo Dirix, & Sigrid Sterckx, *The Capabilities approach and environmental sustainability: The case for functioning constraints* 24:3 *Environmental Values* 367 (2015); Jerome Pelenc et al., *Sustainable Human Development and the Capability Approach: Integrating Environment, Responsibility, and Collective Agency*, 14:1 *Journal of Human Development and Capabilities* 77 (2013); Jerome Ballet, et al., *A note on sustainability economics and the capability approach*, 70:11 *Ecological Economics* 1831 (2011).

<sup>57</sup> DaF 31

“Sen is strongly aware of the importance of culture for valuations, of the dynamics of cultural systems, and of the (resulting) cultural diversity and intercultural differences.”<sup>58</sup> Indeed it is possible that a community’s rejection of traditional development is quite consistent with Sen’s insistence that different groups should be free to live the kind of lives they have reason to value.<sup>59</sup> Finally, there is also important qualifications in DaF on the pursuit of economic efficiency for the provision of public goods, including the environment. In a similar vein, in his subsequent work on sustainable development, Sen maintains an anthropocentric view of the environment but indicates the use and enjoyment of the environment by future generations can be accounted for: “it is entirely possible - indeed quite natural - to be interested in the lives of others, including those not yet born, and to be committed to make sure that our successors are not left in ruins generated by us.”<sup>60</sup>

Again it is difficult to take exception with Sen for his particular emphasis on individual freedom, for it is so thoroughly humane in Sen’s expression. As Sen writes: “If a traditional way of life has to be sacrificed to escape grinding poverty or miniscule longevity (as many traditional societies have had for thousands of years), then it is the people directly involved who must have the opportunity to participate in deciding what should be chosen.” But if development is to cover all that individuals choose, separately or together, then what is the use of the concept development other than the relatively banal observation that it is good that people are free to make good decisions? If the very fact of group decision-making renders the decision to be good, then freedom from development provides little guidance on what decisions are to made. Constructing a concept of development with myriad caveats and addendums can successfully incorporate nearly everything of importance if one chooses to do so, but the endeavour will provide an unsatisfactory guide to development. For example, in the broad categories listed in UNDP definition of development, the usual bedrock concerns with individual welfare in terms of standard of living and long life are listed alongside of community and political participation as well as

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<sup>58</sup> Fabian Scholtes, *Whose Sustainability? Environmental Domination and Sen's Capability Approach* 38:3 *Oxford Development Studies*, 289, 301 (2010).

<sup>59</sup> Stuart Corbridge, *2.3 Progress in Development Studies*, 183, 202 (2002).

<sup>60</sup> Sen, A.K., *Sustainable development and our responsibilities*. *Not. Polit.* 26 (98), 129, 131, (2010).

environmental sustainability,<sup>61</sup> yet the latter may often conflict with, and have a constraining effect on the former categories of individual ability.

So, it would appear that actions or decision-making that is inconsistent with Sen’s premise in DAF on individual capability building blocks are nonetheless reconcilable with development as freedom. Development as freedom occurs through individuals building their capabilities to realize their ends in life; but then development as freedom may not necessarily center on capabilities in the strict sense but can be about other values, in an undefined but vaguely permitted manner. This presents a distinct indeterminacy or lack of direction to the capability approach and to DaF in general.<sup>62</sup> Freedom from development would differ simply by indicating that for much of the time and for most people, material growth and the furtherance of individual capabilities is the means by which they realize their ends in life - and accordingly, are *deriving* freedom from development. Freedom from development differs from DAF, however, in the suggestion that most people at least some of the time will realize their ends in life by rejecting the building blocks of individual capability - and they will rather be free of development. The interesting part then becomes indicating when freedom from development is more likely to be persuasive, and when citizenship is more likely to trump capacity and capability.

## 5. DEVELOPMENT COST BENEFIT ANALYSIS

For the Indigenous community imagined above, there may well be no price at which they would willingly part with the forests of their territory, which would confirm the cultural significance of the decision in overcoming the other two development elements of economic capacity and capability. But surely there are different contexts when the calculus amongst the three elements changes? Rather than simply have a uniform end to development, as in

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<sup>61</sup> UNDP, What is Human Development?, <http://hdr.undp.org/en/content/what-human-development>

<sup>62</sup> See Frances Stewart and Severine Deneulin, Amartya Sen’s Contribution to Development Thinking, 37.2 Studies in Comparative International Development, 61, 63 (2002) (“Planners who are told that their job is to enhance people’s capabilities to do or be valuable things may well be at a loss. They might well ask: whose capabilities should be given priority? Which priorities are valuable? Are there priorities within the categories of valuable capabilities?”).

individual freedom, a truly heterogeneous view of development would recognize that both the ends and the contextual determinants of development are fluid and variable. This section proposes that there is a form of cost benefit analysis, and that it can help explain why the decision on the part of the hypothetical Indigenous is a rational manifestation of freedom from of development - or a rational displacement of development as capacity and capability building. ...