

Capability and Educational Equality: The Just Distribution of Resources to Students with Disabilities and Special Educational Needs

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The ideal of educational equality is fundamentally grounded in the egalitarian principle that social and institutional arrangements should be designed to give equal consideration to all. However, beyond this broad stipulation, the precise content of the ideal of educational equality is more difficult to determine. In this article, I aim to contribute to the debate on equality in education by dealing with the current, contentious issue of provision for students with disabilities and special educational needs. Thus, the paper addresses the question of what constitutes a just provision for these students, and it provides an answer in terms of the capability approach, as developed by Amartya Sen and Martha Nussbaum.

Controversy about educational questions should not surprise us, because education is inextricably involved in fundamental questions about human good and value (McLaughlin, 2003, p. 152).

INTRODUCTION

The ideal of educational equality is fundamentally grounded in the egalitarian principle that social and institutional arrangements should be designed to give equal consideration to all. Educational institutions should therefore enact the value of equal concern—whose significance has been highlighted by Richard Pring in his contribution to this collection—by ensuring that *all* students have a fair share of educational goods and fair access to the benefits these yield. However, beyond this broad stipulation, the precise content of the ideal of educational equality is more difficult to determine. Equality in education is mainly theorised along the ‘divide’ between equal input, however defined, and equal outcome (Brighouse, 2003, p. 472), and there seems to be a lack of consensus on its implications at policy level.

In this article, I aim to contribute to the debate on educational equality by dealing with the timely and contentious issue of provision for students with disabilities and special educational needs.¹ The question of a fair provision for these students is currently extremely controversial in almost all developed countries. The debate involves considerations of educational theory and practice, as well as arguments related to public policy, and it is mainly centred on whether education should be provided in inclusive or in special schools. However, there is a crucially foundational, but rather neglected philosophical core to the issue, which I aim to analyse in this paper by addressing the following questions: what constitutes a just educational provision for students with disabilities and special educational needs and, more specifically, what distribution of resources is fair to these students?

I provide an initial answer to these questions by outlining an understanding of educational equality in terms of a principled framework for a just distribution of resources. This framework employs a version of liberal egalitarianism and draws primarily on the capability approach, as developed by Amartya Sen and Martha Nussbaum, as well as other scholars. According to the capability approach, social and institutional arrangements should enact the value of equal concern by aiming at equalising people's 'capability to function', i.e. their real opportunities for well-being and hence for living good lives. It is through the concepts of capabilities (real opportunities for functionings, or real freedoms) and functionings (valued beings and doings, such as, for example, being educated, or having a rewarding job) that a conception of educational equality can be outlined and defended, in order to provide justified answers to my initial questions.

My argument is that the capability approach helps substantially in conceptualising educational equality by focusing on the fundamental functionings, promoted by education, that are essential prerequisites for an equal participation in society. On this view, educational equality consists in equal effective opportunities and access to these basic functionings. Students with disabilities and special educational needs are entitled to achieve educational functionings established for all. Therefore, they should have educational opportunities and resources to achieve effective levels of functionings. This is the principled justification for additional resources, and it sets the measure of the differential amount due to these students as a matter of justice. Finally, beyond the level of capabilities identified as a just educational entitlement, considerations of efficiency, drawing on John Rawls's principles of justice, should be applied to the necessary promotion of higher or more complex educational functionings.

While this framework aims at providing a justified answer to the specific demand of equality in education for students with disabilities and special educational needs, it does *not* constitute, however, a full theory of educational equality. Such a theory would require formulating the case for equality in relation to other values, like parental rights and liberties, as well as to broader principles of justice. However, some of the insights of the capability perspective on educational equality presented here may

nevertheless suggest important insights towards the formulation of a full theory of equality in education.

I EDUCATION, CAPABILITY AND EQUAL PARTICIPATION IN SOCIETY

Education, both in terms of formal schooling and informal learning, is central to the capability approach.² The approach emphasises specifically the contribution that the capability to be educated³ makes to the formation and expansion of other capabilities and, hence, the contribution it makes to people's opportunities for well-being and for their effective freedoms. Sen identifies education among basic capabilities, i.e. among 'a relatively small number of centrally important beings and doings that are crucial to well-being' (Sen, 1992, p. 44). In his account, equality has to be sought primarily in these basic capabilities, which constitute, therefore, areas of specific concern for egalitarians. Included among the basic capabilities, the capability to be educated is therefore of specific interest for egalitarians, too.

The distinctive contribution of the approach consists precisely in identifying education as essential to well-being and among the primary concerns of equality. Two fundamental and interrelated considerations follow. The first concerns the essential role of education both in the sense of meeting a basic need to be educated, and for the promotion and expansion of other capabilities. In including education among the constituents of well-being, Sen emphasises how lack of education constitutes a fundamental disadvantage. This is specifically, albeit not solely, the case for children, as being deprived of education during childhood, both in terms of informal learning in social interactions and of formal schooling, determines a disadvantage that proves difficult, and in some cases truly impossible, to compensate for in later life. As Nussbaum argues, the exercise of certain functionings, like that of play and imagination, is particularly important during childhood in order to form the future mature capability (Nussbaum, 2000, p. 90). In this first facet, therefore, being educated responds to some essential basic needs of human beings, which, if unmet, cause substantial harm. But being educated is also foundational to other capabilities as well as future ones, thus expanding individuals' freedoms. This is perhaps best illustrated through an example. Consider, for instance, the case of learning mathematics. Formally learning mathematics not only expands the individual's various functionings related to reasoning and problem solving, but also widens the individual's sets of opportunities and capabilities with respect, on the one hand to more complex capabilities and, on the other, to better prospects for opportunities in life. The broadening of capabilities entailed by education extends to the advancement of complex capabilities, since while promoting reflection, understanding, information and awareness of one's capabilities, education promotes at the same time the possibility to formulate exactly the valued beings and doings that the individual has reason to value (see Saito, 2003). On the other hand, the expansion of capabilities entailed by education extends to choices of occupations and

levels of social and political participation. Learning mathematics may lead to choosing to become an economist or a teacher, for instance, as well as promoting one's civic participation in different forms. Thus, education has a distinct role in expanding capabilities and in determining people's real opportunities for well-being.

This leads to the second consideration. Education promotes the achievement of functionings that are constitutive of one's well-being, while also providing the resources for the enactment of important aspects of agency, thus enhancing individuals' effective freedom.⁴ Given the complex interrelation of individuals with the society they inhabit, forms of civic and indeed economic participation play an important role in determining one's well-being, while providing the basic structure for the exercise of effective freedom. This suggests important considerations about the kind of education that should be provided to individuals. Well-being can be seen as requiring forms of engagement in economic as well as civic participation in one's dominant social framework, but also forms of reflection on one's valued functionings. It follows that an education consistent with enabling people to achieve well-being and allowing the exercise of agency, entails the promotion of functionings and capabilities pertaining to abilities and knowledge that enable them to become participants in dominant social frameworks, while at the same time promoting reflection on valued goals. Consequently, among the countless capabilities that might be developed through education and schooling, the approach suggests the promotion and expansion of those necessary to participate as equals in society.⁵ This responds, on the one hand, to the duty of institutional arrangements to show equal consideration to all, while, on the other hand, providing the constitutive elements for making one's life go well, thus for the enactment of freedom. These considerations are foundational to a conception of capability equality in education.

However, the idea that education should equip individuals to become effective and equal participants in their social framework, and the precise meaning of an effective and equal participation in society, need further articulation. After all, it could be objected that education should instead promote all possible functionings and related capabilities, rather than certain specific ones.

Two fundamental reasons support the idea of an effective and equal participation in society as an appropriate goal of education and provide a reply to the possible objections raised. First, as Elizabeth Anderson has rightly argued in defending her view of democratic equality, the basic duty of citizens, acting through social and institutional arrangements, is to secure the conditions of everyone's freedom (Anderson, 1999, p. 329). This implies that among the countless capabilities that can be chosen, institutional schemes have a duty to promote those that are significant and crucial for well-being, thus foundational to freedom. In this sense, as Anderson notices, being an excellent card player is hardly significant towards that end, whereas being literate and able to participate in a system of production and in civic life certainly is (p. 317). Second, Sen insists on the importance of assessing social inequalities and public policy—and

therefore in promoting equality—in the space of well-being freedom (see note 4), since pervasive inequity and disparities emerge primarily in the actual opportunities that people have to enjoy well-being (Sen, 1992, p. 72). However, he also maintains that ‘the person’s actual use of her well-being freedom’ will allow well-being agency to be pursued. Thus, well-being freedom provides the conditions for effective freedom. It follows that an education that provides individuals with the conditions for their equal participation in society provides also the conditions for the possibility to exercise agency and, therefore, with wide opportunities for freedom. While the precise content of such education is best determined as the result of processes of democratic deliberation, some functionings developed by education appear to have a truly basic, enabling role for democratic participation. Hence a fundamental basic education would plausibly include the cultivation and expansion of literacy and numeracy, as well as forms of scientific understanding, attitudes and dispositions to sociality and participation, and to learning functionings, as well as exercise and play. Furthermore, the inclusion of practical reason and deliberation within the functionings promoted by education seems congruent with a project aimed at equal participation in society.

However, the meaning of effective and equal participation in one’s social framework requires further specification. While an immediate understanding of this concept may conjure up images of success and adherence to a predefined, somehow ‘normal’ view of what effectively participating in one’s framework entails, that need not be the case. An understanding in line with the capability approach endorses instead the view of an individual who has effective opportunities to lead a meaningful life, free from the constraint of deep inequalities in well-being and able to choose, among a set of capabilities, those that she has reason to value. Here the effectiveness in participating in dominant social arrangements relates to the possible engagement in forms of economic, political and democratic activities, while exercising one’s agency in bringing about the outcomes and changes, both in one’s life and in society, that one has reason to value. This further relates to the element of an equal participation and, hence, as Anderson suggests, in relations of equality to other participants (Anderson, 1999, p. 316). By having effective opportunities to take part in social and political schemes, people are also enabled to ‘stand as equals’ in those schemes, since this contributes to the removal of relations of oppression and discrimination.

This view, however, entails the requirement of equal opportunities for functionings in education. I now turn my attention to this aspect.

II CAPABILITY EQUALITY IN EDUCATION: ELEMENTS OF A FUNDAMENTAL EDUCATIONAL ENTITLEMENT

There are three important interrelated reasons in support of equality in the fundamental educational functionings for participation in society. The first concerns the equal consideration due to citizens. Recall here that

according to Sen (1992), seeking equality in the space of capabilities constitutes the appropriate enactment of the equal consideration due to individuals. Education is crucial for people's well-being and plays a substantial role for the promotion of those achieved functionings necessary for individuals to participate effectively in society. Unequal provision in basic educational capabilities would lead to unequal freedom to develop effective functionings in society. While being an obvious inequality of consideration, this would at the same time undermine the legitimacy of social and institutional arrangements. Consequently, opportunities for educational functionings should be equally provided. Interrelated to this reason is the fundamental importance of education for people's freedoms. Within the space of capabilities, the variable we are trying to equalise is the effective freedom people have to choose the life they value. It therefore follows that the capability to be educated, as fundamentally constitutive of well-being, has to be part of the equalisation, too. There is, finally, another aspect of education that supports equality in the space of fundamental educational capabilities. Thinking of education, and especially the education of children, implies considering contingent and future-oriented dimensions. Education has a prospective value for the child in the future, while also entailing considerations of the present, contingent value it yields for the child as a child, now. It follows that unequal provision in educational capabilities would substantially put individuals at a disadvantage in a consistent and pervasive way, both contingently and for future prospects. These important reasons support seeking equality in the space of educational capabilities and point in the direction of its possible meaning. I now turn to this aspect.

The capability approach suggests a conception of educational equality in terms of equal opportunities to the achievement of fundamental functionings developed by education. This understanding relates substantially to the dimension of opportunity inscribed in the idea of capability. Capabilities represent the substantive freedoms that people have to choose among valuable functionings: they are capabilities to function. Inscribed in people's substantive freedom are the opportunities to enact this freedom in achieving functionings. Sen maintains: 'Freedom is concerned with processes of decision making as well as opportunities to achieve valued outcomes ... we have to examine ... the extent to which people have the opportunity to achieve outcomes' (Sen, 1999, p. 291).

Applied to education, this view translates into considering the extent to which people have opportunities to achieve fundamental educational outcomes. The insight of the capability approach is that people should have the same extent of opportunities to achieve fundamental functionings, like being able to read and to write, or to concentrate and accomplish task, or to reflect critically on one's own actions. Opportunities are here considered in a broad sense. They include: educational resources, both in terms of physical resources and human resources; settings, like school buildings and facilities; and external conditions, like policies and regulations that are necessary to promote educational achievement.

Hence, the kind of freedom we are equalising encompasses the opportunity to achieve a valued functioning and the conditions for that functioning to be achieved (Unterhalter and Brighouse, 2007, p. 83).

The aspect of opportunity within the idea of capability emphasises furthermore that what we are equalising is not actual achieved functionings, but the effective access to the achievement of these functionings. For instance, people should have equal effective opportunities to achieve reading, writing and reasoning functionings. This allows considering the individuals' freedom to choose to achieve certain functionings by deploying means at their disposal and, furthermore, it leaves open the possibility of choosing whether to achieve certain educational functionings or not. An example may illustrate this distinction. Consider, for instance, Len and Josh, who have achieved different mathematical outcomes. Len has high numerical reasoning, whereas Josh has achieved basic counting functionings. Suppose they have similar personal characteristics and both have attended a very well equipped school, with highly motivated and qualified teachers, and wide possibilities to learn in a stimulating environment. Suppose furthermore that Josh has achieved lower outcomes since he has decided to spend his time in leisure activities rather than in learning. Here the capability approach does not consider the different achieved functionings as a matter of equality, since difference in achievement in this case relates to the individual's choice. Suppose instead that Len and Josh have different achieved functionings due to the fact that Len's school could provide for additional courses aimed at improving levels of achievements. The differential outcomes in this instance relate to a substantial inequality of capabilities. The capability approach highlights this difference and insists on equality as equal effective opportunities for functionings. What matters in terms of equality of capabilities is the equal opportunity that people have to secure educational functionings, rather than equality in achieved functionings. This position allows the possibility of choosing whether or not to achieve certain functionings, providing the relevant opportunities are available.

There is, however, a tension in this position that relates primarily to the possibility of choice when considering the education of children. There are levels of choice that, given their status, are unavailable to children. Children's status requires adults to protect their interests and meet their needs, and, hence, children's agency freedom or the exercise of autonomous choices are fundamentally limited. Thus, when operationalising the capability approach in relation to the education of children, the emphasis is on providing a kind of education that, while considering the actual well-being of children during their childhood, can, at the same time, equip them with the fundamental capabilities that they will exercise in future. On the one hand, this endorses the importance of equal access to fundamental educational functionings and, therefore, to a kind of education that will provide children with the means to function effectively in society. On the other hand, however, it raises the problem of justifying choices actually made for children and not by children. For instance, children cannot choose not to be educated and cannot choose among educational functionings and capabilities. In this case, the parent and

guardian, as well as the state for certain capabilities, exercise the actual choice for the child. A possible way of solving this tension is to consider parents' choices and the enforcement of certain regulations by the state, for instance compulsory schooling requirements, as actually made in the child's best interest and, hence, for the child's present and future well-being. These can therefore be seen as proxy-choices. Thus, when referring to the education of young children, as Sen suggests (Saito, 2003, p. 27), it is perhaps more appropriate to consider actual functionings, rather than the related capability. Nevertheless, from the point of view of the design of social and institutional arrangements, what can be reasonably provided and distributed by democratic governance are ultimately opportunities and resources. This solution, albeit partial, allows considering equality in terms of equal opportunities to educational functionings, with the caveats illustrated above, as valid and justified in the case of children's education.

Drawing on these considerations, I can now outline a first, provisional understanding of what constitutes a fundamental educational entitlement. This consists in equal opportunities and access to levels of educational functionings necessary to function and to participate effectively in society. Basic functionings promoted by education form the necessary enabling conditions that, once achieved, allow individuals to function effectively in their dominant framework. In so far as we can, ultimately, we should provide individuals with equal secure access to these educational functionings, which constitute the transformational resources necessary to function and participate effectively in society. While conceptualising equality in terms of the equal opportunities for functionings, this view highlights the importance of the prospective educational achievements in terms of levels of functionings for an effective participation in society. It implies therefore a threshold level of achieved functionings that educational institutions should promote and foster, set at the level necessary for effective participation in dominant social frameworks.

This position presents evident similarities with the threshold level of capabilities proposed by Martha Nussbaum in her version of the approach. According to Nussbaum, her list of Central Functional Human Capabilities 'gives us the basis for determining a decent social minimum in a variety of areas' (Nussbaum, 2000, p. 75), which constitutes at the same time the underpinnings of basic political principles informing constitutional guarantees. In her view, therefore, governments should provide a threshold level of capabilities, and this provision should be a constitutional requirement. The threshold of educational capabilities I suggest is more specific and circumscribed in scope, since it aims primarily at selecting levels that are essential for functioning in society, and, hence, it aims at outlining educational capabilities that are of central egalitarian concern and, as such, that should be equally distributed. Furthermore, the educational entitlement proposed, as we shall see, aims also at addressing issues of educational entitlement for children with disabilities and special educational needs. Nevertheless, despite the more restricted scope of my proposal, its underlying idea draws on Nussbaum's conception.

An educational entitlement thus conceived, however, although already demanding a goal for social and institutional arrangements, may raise problems. Two in particular are significant. The first relates to the provision of a subset of basic capabilities rather than the full range of possible educational ones. Should individuals be equally entitled to achieve higher levels of educational functionings? Or a broader range? This issue relates directly to the problem of indexing capabilities inherent to the approach, while also implying considerations about education. As we have seen in relation to education, the capability approach faces the problem of deciding which capabilities, among the countless possible ones, society should aim to equalise. At the same time, the presumptive dimension proper to education compounds this problem, since deciding in advance what capabilities and what level of achieved functionings will ultimately allow a person to flourish is a very difficult task. However, the fundamental educational entitlement outlined can withstand this objection for two important reasons. First, securing fundamental functionings, which are essential to participate effectively in society, means giving people those transformational resources that will allow them to choose the kind of life they have reason to value. It therefore means assuring their well-being and expanding their freedoms. Since this is the fundamental variable upon which people's relative positions in social arrangements should be evaluated, this meets the requirements of the approach and the demands of equality. Second, since the basic educational functionings are at the same time fundamental in expanding other and future capabilities, providing people with this subset means securing those enabling conditions upon which to base higher educational as well as other functionings and capabilities. After all, higher educational functionings cannot be achieved without the prior achievement of fundamental enabling conditions, such as literacy and numeracy. However, setting this basic educational entitlement leaves open the important issue of the promotion of higher levels of functionings beyond the basic entitlement outlined, which I will analyse in the final section of the paper.

The second problem concerns how to conceptualise this educational entitlement in relation to disability and special educational needs, and, hence, while evaluating functionings and capabilities restrictions. More specifically, it concerns how we can think of equality of sets of educational capabilities when certain disabilities may limit functionings and capabilities, sometimes in consistent ways. The next section addresses this issue in more detail.

III ELEMENTS OF A FUNDAMENTAL EDUCATIONAL ENTITLEMENT FOR STUDENTS WITH DISABILITIES AND SPECIAL EDUCATIONAL NEEDS

A capability perspective on educational equality defines it in terms of equal effective opportunities to levels of functionings that are necessary to participate in society. This constitutes a fundamental educational

entitlement and establishes a threshold level of basic capabilities that should be guaranteed to individuals. Students with disabilities and special educational needs are entitled to the achievement of educational functionings established as a matter of justice for all individuals. However, disability and special educational needs imply functionings and capabilities limitations that may result in difficulties in the achievements of those levels of educational functionings. It follows, therefore, that students with disabilities and special needs should receive educational opportunities and resources necessary to achieve effective levels of functionings in their dominant social framework. This implies the provision of additional opportunities and resources, where necessary, as a matter of justice. Equalising opportunities and securing fundamental educational functionings in the case of children with disabilities and special educational needs means exactly providing those additional opportunities and resources necessary for the achievement of an effective participation in society.

Thus, for instance, a child with dyslexia is entitled to additional opportunities and resources that will allow her to achieve reading and writing functionings appropriate to participate effectively in her social framework. The aim here is not simply the fairness of the share of resources, but, more appropriately, it is ensuring appropriate levels of functionings.

While answering the central question related to educational equality for students with disabilities and special educational needs—i.e. what allocation of resources is just for them—this perspective presents some positive insights, both normatively and for more practice-oriented issues. First, the educational entitlement is set within a normative framework where competing demands of equality for children with disabilities and non-disabled children are evaluated comparatively. In providing the normative basis upon which to reconsider the contentious issue of resource allocation, the capability approach presents a justified answer to long debated issues. More specifically, in identifying an educational entitlement, it allows considering the additional requirements of resources for children with disabilities and special educational needs as requirements of justice.

Second, determining an educational entitlement that indicates a threshold level of capabilities, necessary to the individual to function effectively in society, helps in avoiding a possible problem related to the resource provision for disabled people, i.e. the problem of infinite demand.⁶ This problem arises, for instance, in relation to severe impairments, like multiple cognitive impairments, when compensatory models imply an infinite allocation of resources in order to get the individual to an even starting point, as compared to other individuals, so that she has a real chance for equality over a lifetime. In setting a threshold level within the basic educational capabilities and in specifying this as the level for effective functioning in society, we avoid the problem of infinite demand in two ways. First, we set an actual limit on how much resources should be distributed, and that limit corresponds to the opportunities and

resources necessary to the individual's effective participation. Second, the demands of disability and special educational needs are considered within a framework of equality that evaluates it in relation to the demands of other individuals. Thus, an infinite allocation of resources to a disabled child that would deplete the others of resources necessary to achieve levels of functionings to participate effectively in society is not possible, since it is contrary to the same principle upon which the distribution takes place in the first instance.

Third, the educational entitlement proposed provides a possible, although provisional, answer to the problem of indexing capabilities, or, more specifically, to the question of what capabilities to foster and promote in relation to the limitations of disability and special educational needs. Recall here that the capability approach faces the question of which capabilities to promote equally among individuals and, hence, which capabilities are of egalitarian concern. The proposed entitlement suggests a possible answer by outlining basic educational capabilities essential to function effectively in society and that should, therefore, be provided as a matter of justice. However, this answer needs further specification when related to some of the complexities of disability and special educational needs. Consider, for instance, severe and multiple cognitive disabilities. There are situations where teachers and parents of severely cognitive disabled children decide to privilege the promotion of certain capabilities and the achievement of certain functionings, for instance that of establishing positive social relationship, over capabilities and achieved functionings like numeracy ones, for instance. In such cases, therefore, teachers and parents, under external resource constraints and considering the child's individual characteristics, apply mild perfectionist considerations in deciding which capabilities would help the child to flourish in life. On the one hand, the educational entitlement outlined applies exactly this kind of mild perfectionist considerations: it selects a list of capabilities that, once fostered, will allow individuals to function effectively in society, therefore giving them the bases to flourish. The capability approach is here very useful, not only because it allows us to focus on essential freedoms, but also because it provides considerations relating to means-ends, where the ends are the expansions of the individual's freedom to choose the life she has reason to value. Mild perfectionist considerations, ultimately, are necessary to the project and lead to useful answers.

However, on the other hand, the same considerations constitute also the limit of the approach. More specifically, the selection of basic capabilities as constitutive of the educational entitlement may present problems. Reconsider here the example of the severely cognitive disabled child. Suppose the child's well-being rests almost entirely on two activities: on her enjoyment of music, and, hence, on functionings like listening and singing, and on her swimming and exercising in water. Obviously, the child's well-being is paramount; and hence the promotion of these functionings can be seen as a matter of justice. However, the educational entitlement proposed does not consistently account for these instances,

thus presenting a substantial limit (this objection is also addressed further on).

Finally, a further positive insight of this perspective concerns its important practice-oriented implications. The educational entitlement determines the additional opportunities and resources for students with disabilities and special educational needs as a matter of justice, and it furthermore specifies a threshold level for enactment of the distribution. I believe that this constitutes an important insight for the design of educational policies, in that it suggests a normative framework upon which to draw more precise funding formulae for inclusive and special education. The latter, moreover, is drawn on a framework that considers the competing demands of students with disability and non-disabled students, and, hence, on a comprehensive perspective of the demands of equality in education.

Despite these positive insights, there are, however, two main and consistent limits to this perspective. The first concerns the possible element of 'reductionism' implied in an educational entitlement and in the related selection of capabilities. Reconsider here the case of severe cognitive disabilities: in this case supporting the achievement of musical and swimming functionings enhances the well-being of the child. Why should we propose an educational entitlement based on basic capabilities necessary to an effective participation in society, when some impairments restrict functionings in such substantial ways that the actual well-being of the individual is better promoted through securing other functionings? Should we not instead reconsider the full set of educational capabilities and promote it? Moreover, even in its broader understanding entailing alternative ways of functionings, are we not suggesting an idealised and somehow 'normalised' view of what 'effective functioning and participating in society' may mean? This first limit is interrelated with the second one, which concerns the possible discriminatory and oppressive use of any threshold level, however carefully designed, in separating those individuals that achieve the set levels from those who do not. Disabled people's movements have long denounced these discriminatory and stigmatising perspectives, and oppose the idea of threshold levels, however well intentioned they may be.⁷ Why not propose the promotion of capabilities and functioning achievements and abandon any idea of threshold levels?

I shall admit at once that I do not have a full defence of the proposed framework against these questions and that I share many of the perplexities they raise. However, some considerations may clarify the reasons in support of an educational entitlement. First, there are considerations of justice that endorse the proposed entitlement. Questions of justice arise in situations of scarcity of resources, and the just design of social and institutional arrangements implies an evaluation of the distribution of benefits and burdens among individuals. Society, through the design of social and institutional arrangements cannot equally promote the countless possible capabilities that people may have reason to value. A selection criterion is needed when considering issues of equality. In the

specific case of education, the criterion chosen relates to the possibility to function effectively in society, and the basic capabilities indicated respond to this requirement. The aim and the criterion meet egalitarian ideals and seem justified for selecting both the capabilities and the level at which they should be distributed: we are providing people with the transformational resources that will allow them to choose the life they have reasons to value. Moreover, in promoting people's functioning and participation in society, they are provided with the effective freedom for exercising agency and citizenship, which is one of the aims of disabled people's movements and activists. Second, the entitlement is based on an idea of educational equality as equal opportunities and presents the threshold level as an indication of the proposed achieved functionings in order to set levels of distributions that, for instance, do not incur the problem of infinite demand. In this sense, the threshold level is not meant to discriminate between people or to evaluate their competence in a range of functionings (as certain understandings of the medical model of disability would suggest, for instance). Rather, it establishes a presumptive aim for the distribution to be at the same time equal and effective. While these considerations do not fully respond to the objections raised, I believe they provide useful specifications to attenuate their force.

The view presented so far, however, leaves open the fundamental aspect of providing and promoting higher levels of educational functionings, which appears important in itself, for the intrinsic value of education and, instrumentally, in light of the complex structures of contemporary societies. This last aspect of the framework is addressed in the final section of this article.

IV TOWARDS A PRINCIPLED FRAMEWORK FOR A JUST DISTRIBUTION OF EDUCATIONAL RESOURCES TO STUDENTS WITH DISABILITIES AND SPECIAL EDUCATIONAL NEEDS

Although an effective participation and the possibility of taking part as equals in society do not require individuals to achieve high levels of educational functionings, their promotion is important both intrinsically and instrumentally. For instance, the possibility of interpreting complex literary theories or understanding the scientific underpinnings of the Human Genome Project are not necessary to participate effectively in society. However, their pursuit may enhance the well-being of some, for instance those who love literary works or scientific endeavours, while also proving instrumentally valuable in giving access to better or preferred job opportunities. At the same time, these endeavours may yield positive results for people other than those undertaking them. For instance, some implications of the Human Genome Project may prove helpful in alleviating genetic conditions. It follows, therefore, that considerations about the provision for higher educational functionings are not only important, but necessary, too. Our interest in equality requires an analysis of this provision.

Sen clearly states that the capability approach does not constitute a theory of justice, but a normative framework for the assessment of inequalities. The approach, therefore, does not specify the principles upon which to establish a just distribution of resources and these have to be drawn on other theories. In particular, Rawls's seminal work on justice as fairness outlines fundamental principles that can guide the just distribution of resources, whilst also providing valuable insights for permissible inequalities.

Rawls's theory of justice stipulates two fundamental principles. According to the first, the Liberty Principle, each person has the same claim to a fully adequate scheme of equal basic liberties, which include freedom of thought and speech, as well as freedom of conscience. The Second Principle consists instead of two parts. It states, first, that social and economic inequalities are to be attached to offices and positions open to all under fair equality of opportunity. Second, that these inequalities have to be to the benefit of the least advantaged members of society (Rawls, 2001, pp. 42–3), understood as all those with the lowest shares of income and wealth. This second part is known as the 'difference principle' and regulates what inequalities are permissible under conditions of justice. Rawls further specifies the First Principle as prior to the Second, and fair equality of opportunity as prior to the difference principle. Hence, inequalities are permissible only against a background where the prior principles are satisfied, and thus against a background where people have equal basic liberties and are provided with fair chances of attaining rewarding positions. While constituting a strictly distributive norm (p. 61), Rawls inscribes the difference principle within a conception of social cooperation and specifies it essentially as a principle of reciprocity. He maintains that however great the inequalities in income and wealth may be, and however consistent the differences among people in exerting effort and earning a greater share of output, inequalities must contribute to the benefit of the least advantaged individuals. Furthermore, this contribution must be effective, and, hence, it requires that to each improvement in the legitimate expectations of the more advantaged, must correspond an equal improvement in those of the least advantaged (p. 64). Considerations of efficiency are therefore central to the difference principle. Finally, according to Rawls, 'This condition brings out that even if it uses the idea of maximising the expectations of the least advantaged, the difference principle is essentially a principle of reciprocity' (*ibid.*). In this sense, the difference principle requires that inequalities are to benefit others, as well as ourselves (*ibid.*).

How can Rawls's principles of justice help in determining the norms for regulating the distribution of opportunities and access to higher levels of educational functionings? The difference principle appears particularly relevant in the context of determining this distribution, since it limits permissible inequalities within considerations of justice and efficiency. Applied to education, these considerations lead to the distribution of resources and opportunities for higher functionings in ways that allow for inequalities to be used by those with a greater capacity in relation to the

design of the educational arrangements. At the same time, it requires these inequalities to serve the interests of the least well off. In other words, it seems plausible to argue that beyond the threshold level of fundamental capabilities guaranteed to everyone, those who can obtain the highest functionings in education should receive resources to that aim, providing that the benefits they gain from their education correspond to an equal long term prospective improvement and benefits for those least successful. In this sense, for instance, higher levels of functionings achieved by some, may provide the rest of us with more advantages than we would have otherwise had and, therefore, improve our long term well-being in considerable ways. Similarly, severely disabled children or children with profound and multiple impairments might benefit from the higher educational functionings achieved by others, and this ultimately justifies applying considerations of efficiency to the distribution of resources for higher educational functionings.

I can now, therefore, attempt to provide a (provisional and tentative) conception of the principled framework for a just distribution of opportunities and effective access to educational functionings for children with disability and special educational needs. This framework consists of two parts. The first stipulates that equal opportunities for fundamental educational functionings be provided at levels necessary to individuals for an effective participation in society. It sets a threshold level of capabilities and states that all should have effective equal opportunities to the achievement of those fundamental educational functionings. From the conception of disabilities and special educational needs as functionings and capabilities limitations, it follows that necessary and legitimate additional resources have to be devoted to children designated as having disabilities and special educational needs. The second part of the framework applies considerations of efficiency to the distribution of opportunities and resources for the effective access and achievement of higher levels of functionings. It states that beyond the threshold level of fundamental functionings, resources should be devoted in ways that allow the higher achievements of some to benefit the lower achievement of others. While this framework does not provide a theory of educational equality, it nevertheless helps in providing a possible answer to the debated question of what constitutes educational equality for children with disabilities and special educational needs.⁸

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NOTES

1. The use of the expression 'students with disabilities and special educational needs' reflects the contentions at the centre of the debate on inclusive and special education. While disabled people's movements, particularly in the UK, suggest the use of the term 'disabled students' and reject the

concept and categories of special educational needs, the latter are nevertheless widely adopted in the literature, as well as being still in use in policy and legislation in England. While the chosen expression may seem redundant to the reader, its use is primarily aimed at acknowledging the debate on these issues.

2. For an extensive discussion of education in the capability approach, see, for instance, Robeyns, 2006; Saito, 2003; Walker and Unterhalter, 2007; and Walker, 2006. The capability approach in education is a growing and evolving area of study, and numerous theoretical and empirical researches are in process. An overview of the topics and the studies produced is available on the website of the Human Development and Capability Association, at: www.hdca.org.
3. I have extensively analysed the understanding of being educated as a basic capability in Terzi, 2007. Some sections of this discussion draw on that contribution.
4. Sen (1984, 1992, 1999) distinguishes between well-being freedom and agency freedom, and maintains that both aspects are important for egalitarian considerations, since they both provide important information about a person's quality of life. To illustrate the distinction between well-being and agency, Sen reminds us of the case of a person who happens to be present at the scene of a crime that she would ideally like to prevent. While the well-being of this person might indeed decrease in taking some forms of actions to stop the crime, since she could be harmed, her agency may instead increase considerably by taking some forms of action on the strength of her beliefs. However, this distinction does not detract from the emphasis on well-being freedom (capabilities for well-being) as the dimension constitutive of the person's capability set.
5. This view, which will be outlined in more detail later on, draws on Elizabeth Anderson's influential article 'What is the Point of Equality?' (Anderson, 1999). Anderson develops the idea that what matters is securing the ability of all to participate effectively in a democratic society. My position applies this idea in relation to the role and aims of education, and draws also on Amy Gutmann's (1987) idea of democratic education.
6. The problem of infinite demand in relation to educational provision for students with cognitive impairments is discussed in depth in Veatch, 1986.
7. For an interesting and well-argued critique of establishing threshold levels in relation to disability, and the related possible discrimination and oppression, see for instance Silvers and Francis, 2005 and Wasserman, 2006.
8. Harry Brighouse and the late Terence McLaughlin provided me with invaluable insights and sustained support while I was working on the project from which this paper is drawn. An initial version was presented at the workshop on Normative and Quantitative Analysis of Educational Inequalities at the Catholic University of Louvain, Belgium, in June 2005. Further versions were discussed at the Fifth International Conference on the Capability Approach: Knowledge and Public Action, held at UNESCO, Paris, in September 2005; the Annual Conference of the Association of Legal and Social Philosophy, Dublin, July 2006; and the Gregynog Philosophy of Education Conference, in Wales, in June 2007. I am very grateful to the participants for their useful comments and questions. The paper was finalised during a research fellowship at the Centre for Public Policy Research at King's College, London, where colleagues provided robust and most helpful suggestions. I am grateful to Roehampton University and to King's College, London, for this invaluable opportunity. All shortcomings remain, of course, entirely my own. The article is part of a chapter in my forthcoming monograph, *Justice and Equality in Education: A Capability Perspective on Disability and Special Educational Needs* (Continuum, 2008).

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