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DEVELOPMENT AND WOMEN'S RIGHTS AS HUMAN RIGHTS: A POLITICAL AND SOCIAL ECONOMY APPROACH WITHIN A DEEP DEMOCRATIC FRAMEWORK

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I. INTRODUCTION

In Vienna in 1993, the World Conference on Human Rights recognized that women's rights are human rights.[1] However, even today, the foundations of this claim are not always made clear and it is seen as merely political. This, however, is a simplistic position far from the truth. Sen has pointed out that the capabilities

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1. *See* World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, ¶ 18, U.N. Doc. A/CONF.157/23 (July 12, 1993); *see also* MICHELINE R. ISHAY, THE HISTORY OF HUMAN RIGHTS: FROM ANCIENT TIMES TO THE GLOBALIZATION ERA 106–112 (2004) (referencing a fairly comprehensive history of human rights including women's rights and modern pioneers such as Mary Astell (1666–1731), Mary Wollstonecraft (1759–1797), and Olympe de Gouge (1748–1793), who are important precursors of the belated recognition in Vienna).

approach provides at least a partial foundation for human rights.[2] This paper claims that extensions of the capabilities approach can further progress a theoretical foundation of women's rights.

Here I attempt to examine specifically this line of thought in providing some theoretical advances for development and women's rights as human rights, that are highly policy-relevant, by relying on an explicitly dynamic social version of the capabilities approach called "the social capabilities" approach. This version of the social capabilities approach extends important aspects of Sen's characterization of development as freedom.[3] This approach also has the virtue of being grounded in the ontology of difference that respects cultural differences and nuances within a moral realist framework.[4] An alternative set of economic and social policies with an enabling legal-political environment for advancing women's rights and development follow logically from the approach developed here.[5] In this paper by political economy, I mean the classical state and civil society—including their 20th century extensions—and their interactions.[6] By social economy, I mean the underlying social basis of the political economy including the family structure and

2. Amartya Sen, *Human Rights and Capabilities*, 6 J. OF HUMAN DEV. 151, 151-52 (2005) [hereinafter Sen, *Human Rights*]; Amartya Sen, *Elements of a Theory of Human Rights*, 32 PHIL. & PUB. AFF. 315, 332-38 (2004) [hereinafter Sen, *Elements*].

3. See AMARTYA SEN, DEVELOPMENT AS FREEDOM 17-18 (1999) [hereinafter SEN, DEVELOPMENT] for a discussion on how the concept of personal "capabilities" interacts with development and individual freedoms.

4. *See* LILA ABU-LUGHOD, DO MUSLIM WOMEN NEED SAVING? (2013); JOSEPH E. STIGLITZ, THE PRICE OF INEQUALITY: HOW TODAY'S DIVIDED SOCIETY ENDANGERS OUR FUTURE (2013); GLENN C. LOURY, THE ANATOMY OF RACIAL INEQUALITY (2002); Richard N. Boyd, *How to Be a Moral Realist*, *in* ESSAYS ON MORAL REALISM 181 (Geoffrey Sayre-McCord ed., 1988); FÉLIX GUATTARI & SUELY ROLNIK, MICROPOLÍTICA: CARTOGRAFIAS DO DESEJO (1986), *translated in* KAREL CLAPSHOW & BRIAN HOLMES, MOLECULAR REVOLUTION IN BRAZIL (2008); GILLES DELEUZE & FÉLIX GUATTARI, MILLE PLATEAUX (1980), *translated in* BRIAN MASSUMI, A THOUSAND PLATEAUS (1987); JACQUES DERRIDA, POSITIONS (1972), *translated in* ALAN BASS, POSITIONS (1981); GILLES DELEUZE, DIFFÉRENCE ET REPETITION (1968), *translated in* PAUL PATTON, DIFFERENCE AND REPETITION (1994); Cille Kennedy et al., *Mental Health, Disabilities, and Women: A Policy Oriented Data Review*, 8 J. DISABILITY POL'Y STUD. 1, 1-2 (1997); U.N. Centre for Reg'l Dev., *Transitional Economies and Regional Economic Development Strategies: Lessons from Five Low-Income Developing Countries*, 19 U.N. CENTRE FOR REG'L DEV. RESEARCH REPORT (Haider A. Khan & Asfaw Kumssa eds., Sept. 1996) [hereinafter UNCRD].

5. The book by Lila Abu-Lughod in particular, based on her extensive fieldwork among the Bedouins, illustrates powerfully why a dynamic view of difference accepted with humility is so important for both the social scientist and the policymaker. *See* Abu-Lughod, *supra* note 4. This is also important with respect to creating applicable democratic theory for Islamic societies. *See id.* Refer to Nader Hashemi's book on the important issues regarding Islam, secularism, and democracy. NADER HASHEMI, ISLAM, SECULARISM, AND LIBERAL DEMOCRACY: TOWARD A DEMOCRATIC THEORY FOR MUSLIM SOCIETIES (2009). An ontology of difference would suggest an endogenous generative power regarding democracy in Islamic societies that can be creative in its own way that is different from what happened elsewhere historically.

6. See HAIDER A. KHAN, TECHNOLOGY, DEVELOPMENT AND DEMOCRACY: LIMITS OF NATIONAL INNOVATION SYSTEMS IN THE AGE OF POSTMODERNISM, at ch. 7 (1998) [hereinafter KHAN, TECHNOLOGY (1998)] for a discussion on "the classical idea of a polis for a modern polity."

various overlapping communities in which the family and the individuals are embedded.[7]

I begin with the standard approach to human rights and discuss the Universal Human Rights Model ("UHRM") before developing the nuanced social capabilities approach followed throughout the rest of this paper. I present "deep democracy" as a structure in addition to formal democratic apparatus such that the practice of such democratic life can be reproduced with the basic values intact.[8] Change is not precluded. However, all such changes should deepen democracy, not weaken it.[9] "Deep democracy" in this sense is intimately connected with economic and social justice.[10] As will be seen later in this paper, the social capabilities approach, women's rights, and "deep democracy" are related in an intimate way.

II. THE STANDARD CONCEPT OF HUMAN RIGHTS

Human rights, as they are usually and loosely conceived, are the rights that one has because one is human. Before accepting this simple definition, a series of questions must be asked. For example, what does it mean to have a right? How are being human and having rights related? Are there alternatives to the simple and usually minimalist definitions of human rights as the rights that one has because one is human? How do women's rights relate to human rights?

As Donnelly explains:

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7. Here, we need to be mindful of Gayatri Spivak's insightful remarks on "women's rights as human rights" as a slogan only in Kolkata and the ontology of difference combined with actual involved fieldwork and participation in actual women's movements from below. Gayatri Chakravorty Spivak, *Sunil Gangopadhyay Memorial Session—Kolkata Literary Meet 2013*, YOUTUBE (Feb. 13, 2013), http://www.youtube.com/watch?v=bl96CksnjEI. Spivak's remarks on human rights discourse in civil society as a sign of failure of both state and revolution point towards the need for deeper reflection, especially on the politics of the human rights discourse. *See id.* Clearly, one major evasion of mainstream human rights discourse is the suppression of class differences. The differential ontology, based among other things on a radical political and social economy approach of differentiation, brings to light what is buried deep in the political unconscious–to use the term by Jameson–by bourgeois humanism and presents the struggle for human rights of women as a differential struggle on the road to emancipation that cannot ignore the class differential among both men and women. *Id.*; *see also* FREDRIC JAMESON, THE POLITICAL UNCONSCIOUS: NARRATIVE AS A SOCIALLY SYMBOLIC ACT (1981).

8. *See generally* KHAN, TECHNOLOGY (1998), *supra* note 6; Haider A. Khan, *Deepening Democracy During Crisis: Building on an Ontology of Difference*, COSMOPOLIS (2012) [hereinafter Khan, *Deepening Democracy*]; Haider A. Khan, *A Theory of Deep Democracy and Economic Justice in the Age of Postmodernism*, 1 CONTEMP. READINGS IN L. & SOC. JUST. 47-48 (2009) [hereinafter Khan, *Deep Democracy* (2009)], *available at* http://www.ceeol.com/aspx/getdocument.aspx?logid=5&id=3897d9e2-ca3a-4924-96d1-42f5d68a8ce8; Haider A. Khan, *A Theory of Deep Democracy and Economic Justice in the Age of Postmodernism*, CIRJE F-SERIES, NO. CIRJE-F-468, (2007) [hereinafter Khan, *Deep Democracy* (2007)], *available at* http://econpapers.repec.org/paper/tkyfseres/2007cf468.htm.

9. KHAN, TECHNOLOGY (1998), *supra* note 6; Khan, *Deep Democracy* (2007), *supra* note 8, at 14 (providing a list of conditions or changes that must be made for democracy to be deepened).

10. *See generally* KHAN, TECHNOLOGY (1998), *supra* note 6; Khan, *Deep Democracy* (2009), *supra* note 8; Khan, *Deep Democracy* (2007), *supra* note 8.

> "Right" in English, like equivalent words in several other languages, has two central moral and political senses: rectitude and entitlement. In the sense of rectitude, we speak of "the right thing to do," of some*thing* being right (or wrong). In the narrower sense of entitlement we typically speak of some*one* having a right.[11]

Rights claims imply both a right-holder and a duty-bearer. There is a strong presumption that the duty-bearer must attend to the right-holder's entitlement.[12]

A Hohfeldian conception of rights defines a field of rule-governed interactions centered on, and under the control of, the right-holder.[13] Thus, Donnelly tells us:

> "A has a right to x (with respect to B)" specifies a right-holder (A), an object of the right (x), and a duty-bearer (B). It also outlines the relationships in which they stand. A is entitled to x (with respect to B), B stands under correlative obligations to A (with respect to x), and, should it be necessary, A may make special claims upon B to discharge those obligations.
>
> Rights are not reducible to the correlative duties of those against whom they are held. If Anne has a right to x with respect to Bob, it is more than simply desirable, good, or even right that Anne enjoy x. She is entitled to it. Should Bob fail to discharge his obligations, besides acting improperly (i.e., violating standards of rectitude) and harming Anne, he violates her rights, making him subject to special remedial claims and sanctions.
>
> Neither is having a right reducible to enjoying a benefit. Anne is not a passive beneficiary of Bob's obligation. She is actively in charge of the relationship, as suggested by the language of "exercising" rights. She may assert her right to x. If he fails to discharge his obligation, Anne may press further claims against Bob, choose not to pursue the matter, or even excuse him, largely at her own discretion. Rights empower, not just benefit, those who hold them.[14]

The social capabilities approach to women's rights that I develop here emphasizes the positive freedom to achieve crucial aspects of socially grounded individuality of the right bearer and, in this sense, provides a social foundation for women's rights. However, first I must discuss the UHRM, which can also be justified from the social capabilities point of view.

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11. JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE 7 (3d ed. 2013); see also RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 188 (1977) explaining, "the word 'right' has different force in different contexts."

12. DONNELLY, *supra* note 11, at 7-8.

13. *See id.* at 7-12; *see also Rights, The Form of Rights: The Hohfeldian Analytical System*, STAN. ENCYCLOPEDIA OF PHIL. (July 2, 2011), http://plato.stanford.edu/entries/rights/#2.1.

14. DONNELLY, *supra* note 11, at 8.

III. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS MODEL

In recognition of the central role of the "Universal Declaration of Human Rights"[15] in establishing the contemporary consensus on internationally recognized human rights, one can justify calling it the Universal Human Rights Model. However, it is not thereby implied that the model is complete. In fact, extensions to women's rights are an example of a good use of the universalizing tendencies in the UHRM. As is well known, the United Nations General Assembly adopted the Universal Declaration of Human Rights on December 10, 1948, by a vote of 48-0 (with eight abstentions).[16] Since then virtually all states have endorsed it regularly and repeatedly.[17] This phenomenon accounts for the wide acceptance of the idea that for the purposes of international action, "human rights" means roughly, what is in the Universal Declaration of Human Rights.[18]

The purpose of presenting the list below from UHRM is to examine the implications for women's rights in the UHRM. This paper examines these implications not just for the sake of understanding the connection between UHRM and women's status, though this is one of the goals of this paper, but for the goal of learning something about the specific policies of the state apparatus in light of its human rights obligations and commitments. As mentioned earlier, this paper bases its approach to human rights on the social capabilities theory, which follows immediately after this section. Therefore, interpret the UHRM presented below in that light.

This list from the UHRM includes all rights that receive explicit mention in both the Universal Declaration and its Covenants or receives a full article in one of these three instruments: the Universal Declaration (U), the International Covenant on Civil and Political Rights (C), or the International Covenant on Economic, Social and Cultural Rights (E). References are to the article by number in the respective instrument.[19]

- Nondiscrimination (U2, E2, C2)
- Life (U3, C6)
- Liberty and security of person (U3, C9)
- Protection against slavery (U4, C8)
- Legal personality (U6, C16)
- Equal protection of the law (U7, C14, C26)

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15. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR].

16. Irving Sarnoff, *U.N. Declaration*, L.A. TIMES (May 14, 2001), http://articles.latimes.com/2001/may/14/local/me-63234; *see generally* UDHR, *supra* note 15; ISHAY, *supra* note 1, at 16-18 (discussing the origins of the Universal Declaration of Human Rights).

17. See generally ISHAY, *supra* note 1, at tbls.A.3 & A.4 for a demonstration of the continuance of various countries convening to create human rights-related documents.

18. *See id.* at 18.

19. UDHR, *supra* note 15; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1966); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1966).

- Legal remedy (U8, C2)
- Protection against arbitrary arrest, detention, or exile (U9, C9)
- Access to independent and impartial tribunal (U10, C14)
- Presumption of innocence (U11, C14)
- Protection against ex post facto laws (U11, C15)
- Privacy (U12, C17)
- Freedom of movement (U13, C12)
- Nationality (U15, C24)
- Marry and found a family (U16, C23)
- Protection and assistance of families (U16, E10, C23)
- Marriage only with free consent of spouses (U16, E10, C23)
- Equal rights of men and women in marriage (U16, C23)
- Freedom of thought, conscience, and religion (U18, C18)
- Freedom of opinion and expression (U19, C19)
- Freedom of assembly (U20, C21)
- Freedom of association (U20, C22)
- Participation in government (U21, C25)
- Social security (U22, E9)
- Work (U23, E6)
- Just and favorable conditions of work (U23, E7)
- Trade Unions (U23, E8, C22)
- Rest and leisure (U24, E7)
- Adequate standard of living (U25, E11)
- Education (U26, E13)
- Participation in cultural life (U27, E15)
- Self-determination (E1, C1)
- Protection of and assistance to children (E10, C24)
- Freedom from hunger (E11)
- Health (E12, U25)
- Asylum (U14)
- Property (U17)
- Compulsory primary education (E14)
- Humane treatment when deprived of liberty (C10)
- Protection against imprisonment for a debt (C11)
- Expulsion of aliens only by law (C13)
- Prohibition of war propaganda and incitement to discrimination (C20)
- Minority culture (C27)

IV. THE SOCIAL CAPABILITIES APPROACH TO WOMEN'S RIGHTS

Various theorists drawing upon the insights of Adam Smith have proposed a theoretically rigorous and elaborate evaluation of well-being.[20] Sen is the originator of this "capability approach" in recent times.[21] The theoretical criticisms of the utilitarian approach by Sen, Nussbaum and others that this approach reduces all qualities into quanta of utilities are serious ones.[22] Nussbaum gives a graphic example of this by quoting the exchange between Mr. Gradgrind, economist and grief-stricken father, and his pupil Bitzer.[23] Bitzer outdoes his mentor by adhering to a strict code of utilitarian rationality that cannot comprehend a father's grief.[24] Khan has pursued a similar line of criticism in a number of recent papers and in the book *Technology, Development and Democracy*.[25] This approach makes the capabilities explicitly social and asks what concatenation of economic (real and financial) and other (e.g., political, social etc.) institutions will allow capabilities to be both increase steadily on the average and tend to equalize them among diverse individuals?[26] In effect, as the following discussion makes clear, we are asking how can we increase and equalize real, positive freedom for individuals in specific social contexts?

In discussing the well-being implications of human rights for women in particular, I wish to take on a version of the social capabilities approach. It is not my intent to present how human rights policies for women affect detailed empirical indicators of well-being. I simply wish to pose clearly the conceptual problem of evaluating the problems of denying women their rights and the possible consequences of human rights based reforms. The institutional reforms and changes proposed later in this paper, and by feminist scholars who suggest

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20. *See* ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS IV (Edwin Cannan ed., Methuen & Co. 1904) (1776); ADAM SMITH, THE THEORY OF MORAL SENTIMENTS Part I (Dover Publications, Inc. 2006) (1759).

21. Sen, *Elements*, *supra* note 2, at 332-38. *See also* AMARTYA SEN, INEQUALITY REEXAMINED, at xi (2012); SEN, DEVELOPMENT *supra* note 3, at 18; Sen, *Human Rights*, *supra* note 2, at 152.

22. *See* MARTHA NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH 11-15 (2000) [hereinafter NUSSBAUM, WOMEN].

23. MARTHA NUSSBAUM, POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE 1, 13, 22, 23 (1995).

24. *Id.* at 23 (describing Bitzer as a "good student" because of his "remarkably flat and abstract description" of a horse that was devoid of emotion).

25. *See* KHAN, TECHNOLOGY (1998), *supra* note 6; UNCRD, *supra* note 8; Haider A. Khan & Hitoshi Sogabe, *Macroeconomic Effects of IMF Adjustment Policies*, *in* ECONOMIC JUSTICE IN AFRICA: ADJUSTMENT AND SUSTAINABLE DEVELOPMENT, at ch. 11 (George W. Shepherd & Karamo N.M. Sonko eds., 1994); Khan, *Deep Democracy* (2007), *supra* note 8, at 1; Haider A. Khan & Mariko Frame, *China's Energy Security: National Security, Ecological Balance and Regional Co-operation*, CIRJE-F-482 (2007), *available at* http://www.cirje.e.u-tokyo.ac.jp/research/dp/2007/2007cf482.pdf; Haider Khan, *Technology, Modernity, and Development: Creating Social Capabilities in a POLIS*, *in* MODERNITY AND TECHNOLOGY 327 (Thomas J. Misa, Philip Brey, & Andrew Feenberg eds., 2003).

26. See generally KARL MARX, CAPITAL: VOLUME I, at chs. 1-10 (1867) for a discussion on commodities, exchange, money, the circulation of commodities, the general formula for capital, the buying and selling of labor-power, the labor process, the producing surplus value process, constant and variable capital, the surplus-value rate, and the working day.

alternative non-patriarchal structures, must be proven to be capability-enhancing for women, or at least not to be capability-reducing for them. First, we still need to ask what social capabilities means both abstractly and concretely.

In a number of influential and insightful contributions, Martha Nussbaum has developed an Aristotelian interpretation of capabilities.[27] The connections between capabilities and a distinctly Aristotelian conception of human flourishing are indeed striking. Later in this section, we will discuss a list of general capabilities drawing upon both Sen and Nussbaum. The Aristotelian connections will become quite clear through this exercise in comparison and contrast.

In my article *Technology, Development and Democracy*, I point out some Hegelian connections as well.[28] In particular, the Hegelian conception of freedom as an interactive arrangement in society where concrete institutions of family, civil society, and state all play definite roles seems a specifically modern way of viewing the possibilities and limits of human flourishing in a liberal society based on private property.[29] Hegel's *Philosophy of Right* is a landmark contribution, in this sense, to the elucidation of the problem of freedom in modern societies.[30]

The equally interesting thesis of Gilbert that Marx was an Aristotlean in his critique of alienation illustrates that such a conception of the theory of alienation supports the emphasis on the capabilities as a non-alienated set of qualities that are potentially attainable, but may actually be largely unachievable— particularly for women—under the existing institutional arrangements.[31] Gilbert points out that in some parts of Marx's *Capital* "compared productive activity in general with labor under capitalism in a precisely Aristotelian way."[32] Marx's characterization of Milton's labors on the Paradise Lost as self-motivated, non-alienated labor and his contrast of such labor with that of a hack writer who writes only for the money he receives from the capitalist publisher underlines the good of genuine life-affirming labor.[33] Ironically, in real life under capitalism and in bourgeois political economy Milton's labor is "unproductive"[34] while the hack is a "productive" wage-laborer.[35]

In *Capital*, Marx shows how the accumulated dead labor in the form of capital dominates workers.[36] Workers are mere means of further accumulation.[37] Under the sign of capital, death dominates over life and denies the workers the necessary opportunity to realize their potential to be free, creative beings.[38] In particular,

27. NUSSBAUM, WOMEN *supra* note 22, at 11.

28. KHAN, TECHNOLOGY (1998), *supra* note 6, at 7-8.

29. G.W.F. HEGEL, GRUNDLINIEN DER PHILOSOPHIE DES RECHTS (1821), *translated in* S.W. DYDE, PHILOSOPHY OF RIGHT xlviii-xlix (Dover Publications, Inc. 2005) (1896).

30. *Id.*

31. ALAN GILBERT, DEMOCRATIC INDIVIDUALITY 41, 239-40 (1990).

32. *Id.* at 265.

33. *Id.* at 250, 265.

34. That is, under the strict assumption that no wage payments were made.

35. GILBERT, *supra* note 31, at 265.

36. MARX, *supra* note 26, at 281.

37. *Id.* at 247-48, 289-91.

38. *Id.* at 246-48.

Marx argues that going beyond abstract labor means recognizing the use value/exchange value distinction as emerging in a historically specific, alienated and alienating, mode of production.[39] Going beyond such a distinction ultimately means going beyond the value form itself in the political economic sphere, or rather more broadly, a transvaluation of values[40] in a society of the future that can result from a transformation of capitalist social relations historically.[41] As Gilbert points out, Marx's seemingly non-moral starting point of analyzing commodities ultimately leads to a moral critique of capital as a social relation.[42] Interestingly, a qualitative labor theory of value ("QLTV") that is currently being developed by a Hegelian group of thinkers would seem to imply such a moral critique as well.[43]

Taking the QLTV as the central explanatory framework and connecting it with eudemonism can help illuminate Foucault's important insights about the societies of discipline and control that form a part of his critique of modernity. From this point of view, such developments are consistent with the reproduction of the value form under the domination of capital. Foucault shows how the discipline of the army served as the model for discipline in the factory.[44] In fact, for Foucault, this disciplinary mode of functioning will permeate virtually every institution with a more subtle and manipulative until a system of control can be developed.[45]

Foucault's concept of bio-power[46] is a particularly powerful way of characterizing how the production and reproduction of life itself can become an object of control under capitalism. In *Discipline and Punish*, Foucault analyzes in detail how the human body can be objectified.[47] The fundamental goal of the disciplinary power was to create a "docile body".[48] At the same time, this docile body also needed to be a productive body.[49] Looked at from the perspective of QLTV, this implies nothing less than the total alienation of flesh and spirit.[50] Once again, the problem from the human point of view—in spite of the ironically

39. *See* MARX, *supra* note 26, chs. 1-10.

40. The Nietzschean language is intentional. A radical interpretation of both Marx and Nietzsche can find important similarities in exploring the nature of freedom.

41. *See* MARX, *supra* note 26, chs. 1-10.

42. GILBERT, *supra* note 31, at 268-69.

43. *See, e.g.*, PETER C. DOOLEY, THE LABOUR THEORY OF VALUE 16 (2005).

44. *See generally* MICHEL FOUCAULT, DISCIPLINE & PUNISH: THE BIRTH OF THE PRISON 142 (2d ed. 1977).

45. *Id.*

46. *See* MICHEL FOUCAULT, THE HISTORY OF SEXUALITY (Robert Hurley trans., 1978); Michel Foucault, *The Politics of Health in the Eighteenth Century*, *in* POWER/KNOWLEDGE (Colin Gordon ed., 1980); Michel Foucault, *Naissance de la biopolitique* in DITS ET ECRITS (1994). Foucault's debt to Nietzsche as far as the exploration of biopower among other things, through a genealogical study is concerned, has been acknowledged by Foucault himself.

47. MICHEL FOUCAULT, SURVEILLER ET PUNIR: NAISSANCE DE LA PRISON (1975) *translated in* ALAN SHERIDAN, DISCIPLINE & PUNISH : THE BIRTH OF THE PRISON (2d ed. 1995).

48. *Id.*

49. *Id.*

50. *See id.* ch.1.

avowed "anti-humanism" of early Foucault[51]—then becomes how to overcome this alienation?

We now turn to this problem: If, as I have argued so far, the abolition of alienation requires the abolition of capital as a relation of domination, can QLTV throw any light on how to abolish capital as a social relation? Could capabilities then be reconstrued in a more radically critical way by following this Aristotelian-Hegelian-Marxian connection? In the rest of this paper, I show that this can be done and explore the further implications of this move for development theory and policy. In what follows, I first give a characterization of capabilities following Sen, Nussbaum and others. Then I discuss the fully social and political nature of these capabilities. One can construe capabilities as general powers of human body and mind under specified social, economic, and political structures that can be acquired, maintained, nurtured, and developed.[52] Capabilities can be diminished and even completely lost under circumstances such as malnutrition or severe confinement.[53] I have emphasized elsewhere the irreducibly social (not merely biological) character of these human capabilities. Sen himself emphasizes "a certain sort of possibility or opportunity for functioning" without always carefully specifying the institutional setting.

In order to assess the critical reach of such a fully social capabilities perspective we need to go further and try to describe more concretely what some of the basic capabilities may be. David Crocker has given an admirable summary of both Nussbaum's and Sen's approach to capabilities in a recent essay.[54] Mainly relying on Nussbaum but also on other sources (shown below), he has compiled a list that is worth reproducing here:

Basic Human "Social"[55] Capabilities

(N and S stand for "Nussbaum" and "Sen," respectively; the quoted items come from Nussbaum unless otherwise noted)

1. Virtues in Relation to Mortality
   - 1.1. N and S: "Being able to live to the end of a complete human life, so far as is possible
   - 1.2. N: Being able to be courageous
2. Bodily Virtues

51. KHAN, TECHNOLOGY (1998), *supra* note 6, at 88-89.

52. *Id.* at 95.

53. *Id.*; *see* David A. Crocker, *Functioning and Capability: The Foundations of Sen's and Nussbaum's Development Ethic, Part 2*, *in* WOMEN, CULTURE, AND DEVELOPMENT: A STUDY OF HUMAN CAPABILITIES 153, 157-60 (Martha C. Nussbaum & Johnathan Glover eds., 1995) [hereinafter Crocker, *Functioning and Capability*]; David A. Crocker, *Toward Development Ethics*, 19 WORLD DEV. 457, 465-66 (1991) [hereinafter Crocker, *Development Ethics*].

54. *See* Crocker, *Functioning and Capability*, *supra* note 53, at 157-64.

55. Our usage of social is akin to Gilbert's use of "social" in social theory. Important political features are also included in the category of "social." GILBERT, *supra* note 31, at 16-18. However, as above, I will use "social and political" also to underline the salience of both political ideas and practices.

- 2.1. N and S: "Being able to have good health"
- 2.2. N and S: "Being able to be adequately nourished"
- 2.3. N and S: "Being able to have adequate shelter"
- 2.4. N: "Being able to have opportunities for sexual satisfaction"
- 2.5. N and S: "Being able to move about from place to place"

3. Virtue of Pleasure
   - 3.1. N and S: Being able to avoid unnecessary and non-useful pain and to have pleasurable experiences
4. Cognitive Virtues
   - 4.1. N: "Being able to use the five senses"
   - 4.2. N: "Being able to imagine"
   - 4.3. N: "Being able to think and reason"
   - 4.4. N and S: Being "acceptably well-informed"
5. Virtues of Affiliation I (Compassion)
   - 5.1. N: "Being able to have attachments to things and persons outside ourselves"
   - 5.2. N: "Being able to love, grieve, to feel longing and gratitude"
6. Virtue of Practical Reason (Agency)
   - 6.1. N: "Being able to form a conception of the good"

     S: "Capability to choose," "ability to form goals, commitments, values"
   - 6.2. N and S:" Being able to engage in critical reflection about the planning of one's own life"
7. Affiliation II (Friendship and Justice)
   - 7.1. N: "Being able to live for and to others, to recognize and show concern for other human beings, to engage in various forms of familial and social interaction"
     - 7.1.1. N: Being capable of friendship

       S: Being able to visit and entertain friends
     - 7.1.2. S: Being able to participate in the community
     - 7.1.3. N: Being able to participate politically and being capable of justice
8. Ecological Virtue
   - 8.1. N: "Being able to live with concern for and in relation to animals, plants and the world of nature"
9. Leisure Virtues
   - 9.1. N: "Being able to laugh, to play, to enjoy recreational activities"
10. Virtues of Separateness

10.1. N: "Being able to live one's own life and nobody else's'"

10.2. N: "Being able to live in one's very own surroundings and context"

11. Virtue of Self-respect

11.1. S: "Capability to have self-respect"

11.2. S: "Capability of appearing in public without shame"

12. Virtue of Human Flourishing

12.1. N: "Capability to live a rich and fully human life, up to the limit permitted by natural possibilities"

12.2. S: "Ability to achieve valuable functionings"[56]

As Crocker correctly points out, we can facilitate this ordering by requiring that "it might be better for practical rationality and affiliation to 'infuse' but not 'organize' the other virtues."[57] Crocker contrasts Nussbaum's approach with Sen's:[58]

> Sen's and Nussbaum's lists differ at a few points. For Sen, the bodily capabilities and functionings are intrinsically good and not, as they are in some dualistic theories of the good life, merely instrumental means to other (higher) goods. In interpreting Aristotle, Nussbaum distinguishes between bodily functionings that are chosen and intentional, for instance, "chosen self-nutritive and reproductive activities that form part of a reason-guided life" and those that are non-intentional, such as digestion and other "functioning of the bodily system in sleep."[59]

Furthermore, Nussbaum has included items such as "being able to have attachments to things and persons outside ourselves" and "being able to live with concern for and in relation to animals, plants and the world of nature,"[60] for which Sen has no counterparts. These items are welcome features. Item 8, "ecological virtue," is an especially important addition to Nussbaum's outlook.[61] Crocker points out that:

> In a period when many are exploring ways of effecting a convergence between environmental ethics and development ethics, it is important that an essentially anthropocentric ethic "make room" for respect for other species and for ecological systems. Worth considering is whether Nussbaum's "ecological virtue" is strong enough. Perhaps it should be formulated to read: "Being able to live with concern for and in relation to animals, plants, and nature as intrinsically valuable." Item 9 injects

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56. WOMEN, CULTURE, AND DEVELOPMENT: A STUDY OF HUMAN CAPABILITIES (Martha C. Nussbaum & Johnathan Glover eds., 1995); Crocker, *Functioning and Capability*, *supra* note 53, at 174-76 (footnotes and citations omitted).

57. Crocker, *Functioning and Capability*, *supra* note 53, at 176.

58. *Id.* at 176-77.

59. *Id.*

60. *Id.* at 155, 175.

61. *Id.* at 175.

> some appealing playfulness in a list otherwise marked by the "spirit of seriousness." What explains the presence of these items on Nussbaum's list, their absence on Sen's list, and, more generally, the more concrete texture often displayed in Nussbaum's descriptions? One hypothesis is that the differences are due to Nussbaum's greater attention . . . to the limits, vulnerabilities, and needs of human existence. Further, it may be that Nussbaum's richer conception of human beings derives from making use "of the story-telling imagination far more than the scientific intellect." On the other hand, Sen helpfully includes the good of self-respect, a virtue that enables him to find common ground with Rawls and to establish links with the Kantian ethical tradition, in which moral agents have the obligation to respect all persons, including themselves, as ends-in-themselves.[62]

Both Sen and Nussbaum agree, however, that these capabilities are distinct and of central importance.[63] One cannot easily trade off one dimension of capability against another. At most, one can do so in a very limited way. One cannot reduce capabilities to a common measure such as utility. As Crocker points out, "capability ethic" has implications for freedom, rights, and justice going far beyond simple distribution of income considerations.[64] If one accepts the capability approach as a serious foundation for human development, then it follows that going beyond distributive justice is necessary for a complete evaluation of the impact of economic policies.

In evaluating any policy regime—for instance international financial regimes and national economic policies under globalization—from this perspective not only do I wish to pose the question of efficiency, but also the whole set of questions regarding human freedom, in particular, the positive human freedom to be or to do certain things. Thus, creation of markets and efficient production by itself would mean very little if it led to a lopsided distribution of benefits. Worse yet, if markets and other institutions led to phenomena such as reduced life expectancy, increased unemployment, reduced consumption levels for many, and deprivation for certain groups such as women and minorities then they will not even be weakly equitable global economic structure. On the contrary, under such circumstances, the global markets and other financial institutions will be strongly inequitable from the capability perspective.

It is because of this perspective that the existing positive analysis of the problems of political economy such as those of global financial markets and institutions from the perspective of Social Capabilities Approach to Women's Rights need to be put in a completely transparent "social capabilities" framework. Such a framework is openly normative and makes a strong ethical case for helping the disadvantaged increase their capabilities towards achieving equality of capabilities. Thus, for instance, poorer nations and poor people in the global

62. *Id.* at 177.
63. *Id.*
64. *Id.* at 153.

economy deserve a special ethical attention within any proposed global financial architecture.[65] As I showed in my keynote paper delivered at conference on Financial Crisis, in Bali, Indonesia, in the context of adopting innovation structures leading to increased productivities, ultimately the aim of any increase in productivity needs to be the increase of freedom.[66] Such freedom, as Sen points out has both an instrumental value and an ultimate value.[67] Instrumentally, freedom as social capabilities can lead to a further increase in productivity.[68] Thus, even a hard-nosed, efficiency driven analysis must address this aspect as an empirical issue. Therefore, an Aristotelian interpretation of Sen-Nussbaum conceptualization of capabilities can go a long way towards a social democratic regime of development as freedom, and this is much to be applauded.

However, pushing the concept of social capabilities in the Hegel-Marx direction of overcoming alienation by achieving freedom as a concrete universal right requires a very radical form of global social democracy. An added strength of such an approach will be to go some distance towards bridging the gap between the process aspect of human and women's rights and the capabilities approach. I now turn to a demonstration of this thesis.

V. FROM UTILITARIAN WELFARE ECONOMICS TO A SOCIAL CAPABILITIES BASED ETHICS FOR WOMEN'S RIGHTS

The utilitarian tradition in economics, as Sen correctly reminds us, is based on three distinct components.[69] One of these components is consequentialism:[70] all choices of actions, rules, institutions etc. must be judged by the consequences of the particular choice made. In this sense, consequentialism is merely results oriented. However, it does rule out purely or exclusively rights-based or deontological decision rules. A second constituting element of utilitarianism is what Sen has termed "welfarism."[71] According to Sen welfarism "restricts the judgments of state of affairs to the utilities in the respective states. . . ."[72] Combining welfarism with consequentialism, one can derive the proposition that "every choice must be judged by the respective utilities it generates."[73]

Finally, the third element of utilitarianism, namely, sum-ranking of utilities, imposes an aggregation scheme whereby utilities of different people can simply be summed together without bothering about their distribution over the entire

65. Haider A. Khan, Global Financial Governance: Towards a New Global Financial Architecture for Averting Deep Financial Crisis 32, Keynote paper delivered at conference on Financial Crisis, in Bali, Indonesia (Sept. 24-26, 2013), *available at* http://mpra.ub.uni-muenchen.de/49275/1/MPRA_paper_49275.pdf [hereinafter Khan, Global Financial Governance].

66. KHAN, TECHNOLOGY (1998), *supra* note 6, at 97.

67. SEN, DEVELOPMENT, *supra* note 3, at 157-58.

68. *Id.* at 5.

69. *Id.* at 58.

70. *Id.*

71. *Id.* at 59.

72. *Id.*

73. *Id.*

population.[74] This neatly sidesteps who gets what; but it is clearly the greatest good under the three conditions when utility is the only good to consider. Notice that Robbins attacked the classical utilitarian idea of interpersonal comparability and, by implication, the sum-ranking of utilities in the 1930s.[75] However, the alternative, radically subjective view of personal utility also sidesteps the issue of distribution. No two Pareto optimal states are, strictly speaking, comparable. In general, equilibrium theory, the second theorem of welfare economics, merely states that under a suitable redistribution of initial endowments, one can achieve every Pareto optimal state as a competitive equilibrium. However, there is no bias towards—or, for that matter, against—an egalitarian distribution.

Sen's radical critique of utilitarianism and his replacement of utility with capabilities have changed the paradigmatic terms of discourse.[76] It is no longer necessary to debate the various meanings of utility and how best to distribute the utilities. Positive, concrete freedoms, such as the Sen-Nussbaum list of capabilities above demonstrates, have replaced the talk about utilities.[77]

A new set of questions arise with this radical shift of the terrain of discourse. What are the social, political, and economic conditions under which capabilities are best promoted for all the people in an equalizing direction? Both the levels and distribution of capabilities are important. Perhaps responding in an indirect way to earlier criticisms, Sen has outlined the "perspective of freedom" more definitely.[78] Freedom is important both for *evaluative* and for *effectiveness* reasons.[79] Evaluation of societies by the actual amount of substantive freedoms enjoyed by people is radically different from using utility, procedural liberty, real income etc.[80] *Effectiveness reason* rests on Sen's claim that freedom enhances the "agency" of the individual leading to greater individual initiative and social effective social participation.[81] Thus, freedom can be viewed as both the primary end and the principal means for development. Sen also gives a five-fold classification of instrumental freedoms as consisting of political freedoms, economic facilities, social opportunities, transparency guarantees, and protective security.[82]

In the rest of this section, I argue that a perspective of global "deep democracy" consistent with Sen's characterization of freedom[83] leads us to a consistent critique of the existing political and socioeconomic arrangements

74. *Id.*

75. LIONEL ROBBINS, AN ESSAY ON THE NATURE AND SIGNIFICANCE OF ECONOMIC SCIENCE, at vii, 136-139 (3d ed. 1932).

76. *See generally* SEN, DEVELOPMENT, *supra* note 3.

77. *Id.*

78. *Compare* SEN, DEVELOPMENT, *supra* note 3, at 62-63, *with* Crocker, *Functioning and Capability*, *supra* note 53, at 174-76.

79. SEN, DEVELOPMENT, *supra* note 3, at 18.

80. *Id.* at 19.

81. *Id.* at 18.

82. *Id.* at xii.

83. *Id.* at 3-4 (alleging that freedoms are not limited to narrow views of development, but also include social and economic arrangements and political and civil rights).

globally and furthermore it can be a pointed critique of the unjust treatment of women in developing world in particular at present. Following the enlightenment project as formulated by Kant,[84] and the critique of Kantian understanding by Hegel,[85] and finally, the "this-sided" worldly critique of Hegel by Feuerbach[86] and the dialectical critique of Feuerbach's one-sided materialism by Marx[87] takes us to a questioning of the existing institutions when these fail to promote and equalize social capabilities. My piece *Deepening Democracy During Crisis: Building on an Ontology of Difference* captures many of these concerns.[88]

Building on the contributions of classical thinkers from Rousseau to modern theories of participatory and strong democracy advanced by scholars such as Barber,[89] "deep democracy" advances the thesis of equalization of capabilities as a central concern of global economic justice. Most important from this perspective is the work by scholars such as Alan Gilbert on radical democracy that is internationalist and welcomes mass activism.[90]

Extending the important earlier work of Gilbert, in a number of my essays and books I establish the claim of equalizing social capabilities along with global justice as central elements of a sufficiently rich conception of democracy that respects the rights of citizens underlying the core concept of democracy.[91] Conceiving rights following Sen as "goal rights" is one way to defend the centrality of capabilities. Another way is to view these rights—most importantly, the right to self-determination—as self-sustaining is if and only if movement towards a global sustainability of equalization of capabilities occurs. Extending Gilbert's cluster conditions for democracy,[92] I establish that three clusters are of particular significance: political, economic, and cultural.[93]

The political cluster begins with formal democratic principles of universal suffrage and elections, but does not stop there. Although this "formal democracy" must be defended vigorously, it is seen as one aspect of a deeper form of democracy that various polities are moving towards. In order to gain insight into this deeper form, we need to ask what conditions can sustain freedom—

84. IMMANUEL KANT, AN ANSWER TO THE QUESTION: "WHAT IS ENLIGHTENMENT?" 1-3 (1784), *available at* https://web.cn.edu/kwheeler/documents/What_is_Enlightenment.pdf.

85. GEORG HEGEL, HEGEL'S PHILOSOPHY OF RIGHT 213-14 (T. M. Knox trans., 1969).

86. FREDERICK ENGELS, LUDWIG FEUERBACH UND DER AUSGANG DER KLASSISCHEN DEUTSCHEN PHILOSOPHIE (1886), *translated in* LUDWIG FEUERBACH AND THE END OF CLASSICAL GERMAN PHILOSOPHY (Progress Publishers 1946), *available at* http://www.marxists.org/archive/marx/works/1886/ludwig-feuerbach/.

87. KARL MARX, CRITIQUE OF HEGEL'S PHILOSOPHY OF RIGHT, *in* EARLY WRITINGS (T. B. Bottomore trans., 1964).

88. KHAN, TECHNOLOGY (1998), *supra* note 6, at 123; Khan, *Deep Democracy* (2009), *supra* note 8; Khan, *Deep Democracy* (2007), *supra* note 8, at 1-2; Khan, *Deepening Democracy*, *supra* note 8.

89. BENJAMIN R. BARBER, STRONG DEMOCRACY 117 (1984).

90. GILBERT, *supra* note 31.

91. KHAN, TECHNOLOGY (1998), *supra* note 8, at 95-99.

92. GILBERT, *supra* note 31; *see also* George Kateb, *Democratic Individuality and Claims of Politics*, 12 POLITICAL THEORY 331 (1984).

93. KHAN, TECHNOLOGY (1998), *supra* note 8, at 92.

particularly for women in developing countries—which underlies the core idea of democracy. The answer is that as soon as freedom is conceived positively, and not just as mere absence of coercions, capabilities come to the fore.

However, probing deeply into the project of enhancing and equalizing the capabilities of citizens even in rough, practical sense, economic and cultural conditions come to be seen as crucial. For example, education, including critical ethical and political education, is recognized as of utmost importance. In so far as democratic movements for a just society—women's rights movements being an important part of these movements—have been schools for political education. Schools of political education starting with at least the political movements from 17th century onwards including major movements in the 20th century and the new social movements of this century are not just disruptive moments, but are complex struggles where much political learning about freedom takes place. Thus, "deep democracy" will necessarily involve a continuous engagement with the past, present, and future of the democratic movements in a pluralistic context. Periodic individual and mass, nonviolent civil disobedience movements will be a necessary part of a "deep democratic" agenda.

Economically, the provision of leisure time for both personal private interest and the exercise of citizenship responsibilities will be necessary. Workplace democracy is also a salient condition, since production is socially necessary and will occupy a certain amount of time for all able bodied and mentally competent adults. The capabilities literature has not always been clear on this point.[94] However, it is logical to think that a person's capabilities will suffer deprivation if working conditions do not allow discussion, participation, and "ownership" of work conditions. The literature on flat organizations in knowledge economy generally makes a case that organizations should treat the newer, "intellectual" labor in this way.[95] Alternatively, the social capabilities approach leads to the conclusion that organizations large and small should treat all workers this way so that organizations can overcome workplace alienation without necessarily using labor saving capital-intensive technologies.

Overcoming alienation also requires a vibrant non-patriarchal culture where artistic and other forms of individual and collective expressive activities are as open as possible. Capabilities in this dimension are vital for the protection of democratic values and practices, since these also involve internalization of mutual respect, integrity, tolerance, and creativity. One can see that using the advances in cognitive, social psychology and some schools of psychoanalysis capabilities can be further advanced through a therapeutic approach to social problems. A "postmodern" insight is also the need to recognize the limits to certain types of

94. *See, e.g.*, KHAN, TECHNOLOGY (1998), *supra* note 6, at 95-99; Khan, *Deep Democracy* (2009), *supra* note 8; Khan, *Deep Democracy* (2007), *supra* note 8, at 4-5; Crocker, *Functioning and Capability*, *supra* note 53; Khan, Global Financial Governance, *supra* note 73.

95. *See, e.g.*, KHAN, TECHNOLOGY (1998), *supra* note 6 at 95-99; Khan, *Deep Democracy* (2009), *supra* note 8; Khan, *Deep Democracy* (2007), *supra* note 8; Crocker, *Functioning and Capability*, *supra* note 53; Khan, Global Financial Governance, *supra* note 73.

economic growth. As Daly and others have pointed out, the scale of production counts in a globalized, interdependent planet in a significant way.[96] Ecological issues will often require a just, global democratic procedure for deliberation and policymaking. In short, all of the cluster conditions—political, economic, and cultural—require a theory of global justice as an underpinning and justification.

I have proposed such a theory in the context of a postmodern world by building on elements of Rawls and Sen, using the ontology of difference to take it beyond a simple Eurocentric framework.[97] In brief, the structural forces in the global economy push towards integrating markets and regions. However, many markets are embedded in national economies; there are also non-market aspects of social and cultural lives of people that are threatened.[98] As a result, we find the contradictory phenomena of McWorld and Jihad.[99] The creation of a genuine global society, which many see as the ultimate outcome of globalization, then necessitates meeting the requirements of global justice. I mention at least five areas, where the norms of global justice must evolve (among others):[100]

1. *International trade and monetary regimes:* The current asymmetric system of payments that penalizes the deficit countries by forcing only them to bear the costs of adjustment needs to evolve into a global burden sharing institution. The World Trade Organization similarly needs to acknowledge the historical imbalances in the world trading system. For example, specialization according to static comparative advantage may lock the developing countries in a relatively backward situation in the emerging global division of labor.[101]
2. *International capital flows*: From the perspective of many people in the developed economies, capital flight to least developed countries ("LDCs") (with or without free trade agreements) may constitute a barrier to well-being, at least in the short-run.[102] At the same time foreign direct investment in LDCs may create only low-wage, marginal jobs.[103] A just approach to foreign direct investment must consider the effects on both the north and south in terms of self-determination. A controlled capital flow accompanied by improvements of wages and working conditions in the south may be the most desirable solution.[104]
3. *International ecological considerations*: Global interdependence has been increasingly recognized in this area. However, it is not clear what justice

96. *See* HERMAN E. DALY, ECOLOGICAL ECONOMICS AND SUSTAINABLE DEVELOPMENT, SELECTED ESSAYS OF HERMAN DALY (2007).

97. KHAN, TECHNOLOGY (1998), *supra* note 6, at 124-25.

98. *Id.*

99. BENJAMIN BARBER, JIHAD VS. MCWORLD: TERRORISM'S CHALLENGE TO DEMOCRACY (1995).

100. KHAN, TECHNOLOGY (1998), *supra* note 6, at 128-29.

101. *Id.* at 131-32.

102. *Id.* at 131.

103. Adrian Wood, *How Trade Hurt Unskilled Workers*, 9 J. ECON. PERSPECTIVES 57, 61 (1995).

104. KHAN, TECHNOLOGY (1998), *supra* note 6.

demands in terms of the relationship between the north and south. All other things being equal, the enforcement of strict environmental standards would seem to be just. However, some argue that such standards may destroy the livelihood of some people in the south. A global tax and transfer scheme would seem to be the precondition for applying a global set of environmental standards. The transfer of ecologically sound technology systems from rich to the poor countries is a precondition for justice in this sphere.[105]

4. *Asset redistribution and human development:* Much of the foregoing discussion pinpoints the need for giving people the economic wherewithal in order for them to develop their social capabilities. Most studies have discovered that non-redistribution of assets to the poor hampers poverty alleviation strategies.[106] Redistributing assets and developing their human capital so that the poor can have access to markets becomes a major necessity in our normative framework. In most parts of the world, this will require structural reforms rather than marginal policy interventions.
5. *Gender justice:* The impact of globalization on women will have to be assessed carefully. The well-documented facts regarding gender inequalities, that so far have affected women's capabilities negatively, demand unequivocally that policymakers pay careful attention to enhancing (or at least not decreasing) women's capabilities.[107] Will globalization help women to overcome social limitations such as lack of nutrition and limits on participation in social, economic, and political life? Unfortunately, the answer is unclear. As far as many developing country women do not possess skills for the global market place, globalization is already hurting them.

These five examples are illustrative and by no means do they exhaust all the pertinent issues in moving towards a just economy globally. (For example, we could add or highlight the growing rural/urban disparities with globalization and its implications for justice). Nevertheless, they do illustrate both the problems and prospects for justice in the age of globalization. One of the major political problems we have not discussed so far is the weakening of national sovereignty that the call for global economic justice entails. Agreeing to a global mode of production and distribution constrained by the principles of justice does mean surrendering considerable authority to international agreements, conventions, and ultimately, perhaps to new international organizations. It should be observed, however, that even without the constraining role of justice, the globalization process weakens national sovereignty, even for advanced industrialized countries

105. *Id.*

106. *See, e.g.*, IRMA ADELMAN & SHERMAN ROBINSON, INCOME DISTRIBUTION POLICY IN DEVELOPING COUNTRIES: A CASE STUDY OF KOREA (1978); Jeffrey James & Haider A. Khan, *The Employment Effects of an Income Redistribution in Developing Countries*, 21 WORLD DEV. 817 (1993).

107. *See Human Development Reports (2000-2012)*, U.N. DEV. PROGRAM. http://hdr.undp.org/en/global-reports (last visited July 20, 2014).

(e.g., NAFTA). Thus, the call for a just economy must confront this (as well as other issues, such as weakening of traditional cultural modes of living) head on in the light of reasonable principles. The fundamental message is that among these principles, freedom as rational autonomy of the individual must be the principal one. This is one rational approach (perhaps the only one) if we are to avoid both the Scylla of Jihad and the Charybdis of McWorld.

The McWorld aspect of globalization is a result of a fractured but real economic, financial and technological integration.[108] Following the collapse of the Bretton Woods Agreement in the early 1970s, the financial market (including interest rates and exchange rates) was deregulated, thereby enhancing the flow of capital between nations.[109] Until then the Bretton Woods agreement of 1945 governed the world financial system, which provided for fixed exchange rate that expressed currency values in terms of dollars and gold.[110] The Nixon administration laid the foundation for a global market when it abolished the Bretton Woods system in 1971 and replaced it with a floating exchange rate.[111] This was reinforced by the resurgence of a neoliberal free-market ideology of liberalization, privatization, and deregulation that became the "only game in town" following the ascendance of political conservatives—Reagan in the U.S. and Thatcher in Great Britain.[112] The collapse of the former socialist countries and the emergence of the neoliberal thinking as a dominant and unchallenged school of thought further reinforced the global market foundation. All these factors created an environment conducive for the free movement of goods, including capital goods, and services as well as finance, thereby seemingly creating an integrated global economy. In various articles, I have discussed the main causes of this contradictory, but nonetheless integrating, moment in the world economy.[113] However, an alternative set of policies that can address the problems of slow growth and external payments while promoting the equalization and enhancement of social capabilities is also possible, as the discussion in Section 5 below will show.

Before discussing these, however, I discuss the links between "social" capabilities and process aspects of women's rights. Sen points out correctly that while his version of capabilities approach is superior to others—e.g., the Rawlsian primary goods framework—in terms of opportunities and positive freedom aspects, it is weak concerning the procedural aspects of freedom and justice.[114] Indeed,

108. KHAN, TECHNOLOGY (1998), *supra* note 6.

109. Khan, Global Financial Governance, *supra* note 73, at 57.

110. *Id.*

111. *Id.*

112. *Id.*

113. Haider A. Khan, *Using Macroeconomic Computable General Equilibrium Models to Assess the Poverty Reduction Impact of Structural Adjustment Policies*, (ADBI, Tokyo: Japan, Discussion Paper No. 12, 2004) [hereinafter Khan, *Equilibrium Models*], *available at* http://www.adbi.org/files/2004.07.dp12.macroeconomic.equilibrium.models.poverty.pdf.

114. *See* Sen, *Human Rights and Capabilities*, *supra* note 2; Sen, *Elements*, *supra* note 2.

Rawls's "first principle" of justice centers on the priority of liberty.[115] The first part of his "second principle" involves procedural fairness. In particular, it demands "positions and offices [be] open to all."[116]

If we take Rawls seriously, we must properly emphasize the process aspect of liberty in any foundational theory of human rights that claims to have some degree of comprehensiveness. Here the attraction of the "social" and political interpretation of capabilities is that to some extent the social rules that respect this emphasis on process can be included. A full articulation of this position is beyond the scope of this paper. The intuition behind this claim, however, is that a Hegelian approach that explicitly recognizes the importance of social and political institutions in defining freedom and social individuality in incorporating the process aspect within the ethical community (sittlichkeit).[117]

VI. THE ROLE OF A NETWORK OF INSTITUTIONS IN CREATING SOCIAL CAPABILITIES FOR WOMEN: FREEDOM AS THE DYNAMICS OF SOCIAL CAPABILITIES EMBEDDED IN INSTITUTIONS

From our normative analysis so far it would appear that a nuanced, broad consequentialism of the sort Sen advocates—"a goal rights system with consequence based reasoning"—is superior to a narrow deontological view of rights and freedom such as Nozick's.[118] However, the modern Hegel-Marx connections push us further in the direction of a critical assessment of institutions and the need for radical institutional change if necessary. The necessity for such changes is obvious in predatory regimes such as the Pol Pot regime in Cambodia, or Saudi Arabia under corrupt princes. A wide range of institutional changes is necessary even in formally democratic regimes such as India, or Bangladesh.[119]

The central point about deepening democracy is that it is an evolving, dynamic network of institutions, and not just an agenda for piecemeal reforms. Although individual reforms are welcome and should be supported vigorously, a movement for "deep democracy" must advocate deeper, systemic changes along with the specific reforms that people are fighting for at any given moment. Therefore, the role of the new social movements for gender justice is, from this perspective, positive and encouraging; but in order to be fully effective, these movements must have a deep democratic agenda and fight for it openly.

The network of social, political, and economic institutions necessary for promoting such wellbeing freedoms and agency freedoms as are necessary for the full self-determination of women can be both historically and culturally specific, thus respecting the ontology of difference. However, in keeping with a moral

115. JOHN RAWLS, A THEORY OF JUSTICE 53 (1971).

116. *Id.*

117. *Id.*

118. Sen, *Rights and Capabilities*, *supra* note 2, at 152-153; ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA 5-6 (1974).

119. *See* Haider A. Khan, *Democracy in Bangladesh: From Crisis to Sustainability*, 9 J. BANGL. STUDS. 13, 21 (2007) [hereinafter Khan, *Democracy in Bangladesh*].

realist theory of moral progress, they must involve the actual provisioning of adequate amounts of resources and safeguards for women's rights all around development. Along with the constitutionally liberal guarantees of physical safety and freedom from arbitrary coercion, there must be positive guarantees of being able to pursue a political life of citizenship that gives social and political opportunities to all. In the age of globalization, this implies, ultimately, that nothing short of a global charter of rights for all humans with implementing institutions at international, national, and local levels are called for.

This may seem hopelessly utopian to many. Therefore, let me observe that the strategic positioning of fighting for a global citizenship does not negate the many small, local struggles for extending well-being and agency freedoms, but rather the strategy is predicated upon active participation in whatever capacity it is possible, across the national boundaries in these myriads of ongoing struggles. The more farsighted people in the anti-globalization movements around the globe are already moving in this direction. The positive policy changes from above for promotion of the capabilities of the disadvantaged in particular—by the International Financial Institutions, developed country governments, and developing country governments—are always welcome developments. However, the partial and limited nature of these policy initiatives needs to be recognized. It is also doubtful that without mass democratic movements from below even limited reforms from the above will be forthcoming.

The economic struggles for better wages and working conditions in both domestic and transnational firms are of great significance in the age of globalization. The social capabilities of women will remain greatly stunted even under conditions of full employment if low wages and dangerous, unhealthy working conditions are the norm. A more radical step, which is consistent with the logic of development as freedom, is the overcoming of domination in the workplace. Such struggles for the overcoming of domination in the workplace can then be connected with the broader democratic movements around the world.

The important point that emerges from this perspective is that freedom is positive, concrete, and dynamic. It is positive in the sense of alerting us to the need for promoting social capabilities. It is concrete in two senses. One is the concreteness in the identification of specific functionings and capabilities that the "development as freedom" approach calls for explicitly. The second concrete aspect—here freedom is finally, a "concrete universal" in Hegel's terminology[120]—is the absolute necessity to embody social freedom in concrete, interrelated, historically specific social, political, and economic institutions. It is dynamic in the sense that such institutions, and to some extent, the idea of freedom itself, may undergo further changes in the direction of promoting further capabilities as the future unfolds. In the next section, I attempt a concrete illustration of this idea by looking at the problems of women's capabilities.

120. HEGEL, *supra* note 29, at 152.

VII. WOMEN'S CAPABILITIES PROMOTION AS A SPECIAL POLICY IMPERATIVE: PRESENT TASKS AND A MOVEMENT TOWARDS THE FUTURE

Within this project of promoting global "deep democracy" through the progressive equalization and enhancement of social capabilities defended above, certain items such as ecological justice, sharing of wealth across borders, and gender justice have proved to have both logical and normative salience. Here, I develop one theme—namely, the problem of developing women's capabilities as an important aspect of global justice—as an example to illustrate the practical relevance of the capabilities approach.

Here, too, the two important modern pioneers are Sen and Nussbaum. Sen's *Inequality Reexamined* has an important chapter on Gender and Capabilities.[121] Sen has contributed to a rigorous examination of the connections between gender and capabilities both conceptually and through empirical work in collaboration with others. *Women, Culture and Development*—Nussbaum's edited volume with Jonathan Glover as the coeditor—is another landmark contribution to the field of gender and development.[122] Nussbaum's *Women and Human Development: The Capabilities Approach* is also a most illuminating contribution, but here I will focus on her pioneering contribution, *Human Capabilities, Female Human Beings,* in *Women Culture, and Development* for the most part.[123]

Incidentally, Nussbaum also takes issue with certain relativist postmodern criticisms of "essentialism" and defends an Aristotelian "essentialist" conception of capabilities in *Human Capabilities, Female Human Beings* as well.[124] My approach here dispenses with "essentialism" in favor of ontological difference but defends the human flourishing for women cogently by conceptualizing capabilities as fully social within a history of struggles for moral progress that accord with the theory of moral realism of Richard Boyd in particular.[125]

The Nussbaum-Glover book begins with a concrete case study of a woman's right to employment in India and Bangladesh based on her fieldwork by Martha Chen.[126] Apart from the editors, the book presents a number of different perspectives on methodology and foundations of conceptualizing women's equality.[127] For example, Onora O'Neill presents a vigorous case against using

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121. SEN, INEQUALITY REEXAMINED, *supra* note 21, at 117-128.

122. WOMEN, CULTURE, AND DEVELOPMENT: A STUDY OF HUMAN CAPABILITIES (Martha C. Nussbaum & Jonathan Glover eds., 1995).

123. Martha C. Nussbaum, *Human Capabilities, Female Human Beings*, *in* WOMEN, CULTURE, AND DEVELOPMENT: A STUDY OF HUMAN CAPABILITIES 61 (Martha C. Nussbaum & Jonathan Glover eds., 1995) [hereinafter Nussbaum, *Female Human Beings*]; NUSSBAUM, WOMEN, *supra* note 22.

124. Nussbaum, *Female Human Beings*, *supra* note 123, at 62-64.

125. *See* Richard Boyd, *On the Current Status of Scientific Realism*, *in* THE PHILOSOPHY OF SCIENCE 195, 207-10 (Richard Boyd et al. eds., 1991).

126. Martha Chen, *A Matter of Survival: Women's Right to Employment in India and Bangladesh*, *in* WOMEN, CULTURE, AND DEVELOPMENT: A STUDY OF HUMAN CAPABILITIES 37 (Martha C. Nussbaum & Jonathan Glover eds., 1995).

127. *See* WOMEN, CULTURE, AND DEVELOPMENT: A STUDY OF HUMAN CAPABILITIES, *supra* note 123.

preference satisfaction as the normative criterion in economics.[128] She couples this with an equally vigorous defense of the capabilities approach.[129] She is, however, a Kantian and weaves skillfully the capabilities approach with a form of the Kantian principle that we not act on principles that we cannot act upon by all and argues that such a Kantian principle can serve as a valuable test for viable social policies. Her arguments result in showing that victimization, "by violence, by coercion, by intimidation . . ."[130] is simply unacceptable. Inter alia, this is also a powerful condemnation of the victimization of women.

I have already mentioned David Crocker's meticulous essay on the concept of capabilities.[131] Hilary Putnam also defends a pragmatic approach close to John Dewey's position that there could be a rational basis for articulating and holding onto an ethical position.[132] Although, as Linda Alcoff points out in her comments, some feminists have followed philosophers such as Nietzsche and Foucault in order to criticize the kind of "rationalistic" approach Putnam defends, the point that democratic processes are necessary in Putnam's argument seems to be intact.[133] In my defense of a deeper form of democracy, I have emphasized the need for respecting differences, as well as the role of power and desire, without making the last two items either epiphenomena or overwhelmingly arbitrary. Indeed, the recognition of the Dionysian aspects of human nature leads to the need for a structure and procedures for democracy that will both protect individuals from tyranny and promote their social capabilities in an interactive, causally reciprocal, and efficacious manner.

Respecting differences among cultures does not preclude a consideration of cross-cultural standards of justice. This is an important conclusion drawn by Seyla Benhabib in the Nussbaum-Glover volume.[134] There are internal debates within each culture about justice, as Sen and others have also pointed out.[135] There may be sufficient common ground among seemingly different cultures in their critical and reflective discourses on ethics and justice. This points to the possibility of discussing women's capabilities from a global and objective perspective. There are a number of other essays—conceptual and empirical—including the highly

128. Onora O'Neill, *Justice, Capabilities, and Vulnerabilities*, *in* WOMEN, CULTURE, AND DEVELOPMENT: A STUDY OF HUMAN CAPABILITIES 140, 141-44 (Martha C. Nussbaum & Jonathan Glover eds., 1995).

129. *Id.* at 143-45.

130. *Id. at* 147.

131. *See* Crocker, *supra* note 53.

132. *See* HILARY PUTNAM, REALISM WITH A HUMAN FACE 21-26 (James Conant ed., 1990).

133. *See* Linda Alcoff, *Democracy and Rationality: A Dialogue with Hilary Putnam*, *in* WOMEN, CULTURE, AND DEVELOPMENT: A STUDY OF HUMAN CAPABILITIES 226, 231-32 (Martha C. Nussbaum & Jonathan Glover eds., 1995).

134. Seyla Benhabid, *Cultural Complexity, Moral Interdependence, and the Global Dialogical Community*, *in* WOMEN, CULTURE, AND DEVELOPMENT: A STUDY OF HUMAN CAPABILITIES 235, 249-52 (Martha C. Nussbaum & Jonathan Glover eds., 1995).

135. *See* DONNELLY, *supra* note 12; ISHAY, *supra* note 1, at 47, 60, 126-27; KHAN, TECHNOLOGY (1998), *supra* note 8, at 123-33; Khan, *Deep Democracy* (2009), *supra* note 8, at 54-58; Khan, *Deep Democracy* (2007), *supra* note 8, at 2-5, 10; Khan, *Democracy in Bangladesh*, *supra* note 119, at 15-16.

relevant and important essays in Part IV, which give regional perspectives on women's equality from China, Mexico, India, and Africa. From matters of basic functionings, such as health and survival, to issues related to political voice—in short, the whole spectrum of functionings related to self-determination—there is by now compelling recorded evidence of discrimination against women almost everywhere in the world. In developing countries, along with general discrimination, there are also important regional variations. For example, even with great poverty, Sub-Saharan Africa shows less gender discrimination in basic health matters than the wealthy Indian state of the Punjab. This also allows us to illustrate the severity of such discrimination in some Asian countries in particular.

The female-male ratio in Sub-Saharan Africa is 102.2 to 100.[136] The same ratio for many Asian, Latin American, and North African countries is much lower—in fact, the female percentage is less than male percentage.[137] In order to dramatize the issue, Sen has expressed this gap as the absolute number of "missing women."[138] Following this approach, in the 1990s, the number of missing women in Southeast Asia was 2.4 million; in Latin America it was 4.4 million; in North Africa, 2.4 million; in Iran, 1.4 million; in China 44 million; in India 36.7 million; in West Asia, 4.3 million.[139] According to Dreze and Sen, in India there are more girls dying than boys; i.e. mortality rates are higher for the girls.[140] Additionally, the mortality rates are higher for women than men in all age groups until the late thirty.[141] As Chen, Nussbaum, and others have pointed out, income poverty alone cannot explain this tragic fact.[142] Social and political arrangements, including what commonly goes under the names of customs and culture, are also implicated.[143] The limits of cultural relativism become apparent in such a defining case as women's mortality. Increasingly, the women and the poor themselves are speaking out and asking for solutions.[144]

Does this imply that "enlightened" policy makers and foreign aid workers, including the NGOs, have the moral right to impose their policies on the women in poor communities? Far from it. What we really need are new institutions inclusive of women, led by them locally and working cooperatively with the other democratic institutions. In other words, promotion of "deep democracy" at the local level with active participation and leadership from local women is a necessary condition.

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136. Martha C. Nussbaum, *Introduction*, *in* WOMEN, CULTURE, AND DEVELOPMENT: A STUDY OF HUMAN CAPABILITIES 1, 3 (Martha C. Nussbaum & Jonathan Glover eds., 1995) [hereinafter Nussbaum, *Introduction*].

137. *See* SEN, DEVELOPMENT AS FREEDOM, *supra* note 3, at 104-05 (1999).

138. *Id.* at 104.

139. Nussbaum, *Introduction*, *supra* note 136, at 3.

140. Amartya Sen, *Women's Survival as a Development Problem*, 43 BULLETIN OF THE AMER. ACAD. ARTS & SCIS., 14, 16 (1989).

141. *Id.* at 16.

142. *See* Chen, *supra* note 126, at 52-53; Nussbaum, *Introduction*, *supra* note 136, at 3.

143. Nussbaum, *Introduction*, *supra* note 136, at 3-4.

144. DEEPA NARAYAN ET. AL., CAN ANYONE HEAR US? 273-83 (2000).

It is also an implication of this type of policy and institutional approach that a serious attempt must be made to collect and interpret the relevant information regarding the functionings and capabilities of women. Indicators such as life expectancy, females as a percentage of total population, and other demographic data are, needless to say, as relevant as ever. Social indicators for education and rights to participate in social life are also crucial. Additionally, political indicators of democratic rights and democratic participation are of great importance. Only when women have rights and are actually participating at all levels of political organization, and indeed leading many of them, is it possible to claim that positive political freedoms for women are an actuality.

VIII. CONCLUSIONS: THE FUTURE OF SOCIAL CAPABILITIES APPROACH AS AN EVALUATIVE FRAMEWORK FOR WOMEN'S RIGHTS

In the end, we must recognize both the ontological basis in differential social history of women for a social capabilities approach to women's human rights as freedom and its normative and practical policy implications. This is why I try to defend the concept of social capabilities in the book *Technology, Development and Democracy* in a non-foundational and presuppositionless way while drawing out the policy lessons.[145] Furthermore, as the pioneering work of Sen and Nussbaum, among others, have shown elegantly, there are many philosophical defenses of the basic capabilities approach. The ontology of difference can do this by focusing on women both as human beings and as a particular type of human beings with full claims to individuality in the John Duns Scotus' sense of haecceity.[146]

The more important real world issue now is to make the many policy implications of this approach subject of debate and discussion. This is already happening to some extent. We have mentioned the human development index and its various refinements.[147] There are also periodic conferences at various universities around the world to discuss theoretical advances and applications of the capabilities approach. The World Institute for Development Economics Research ("WIDER") has an ongoing research agenda that corresponds quite closely to the social capabilities approach.[148] One hope that emerges out of all these activities is that policy makers in the International Financial Institutions and the various regional and national organizations will attempt seriously to implement a social capabilities-based approach. Two most important areas are poverty reduction and overcoming women's particular deprivations. Needless to say, these are related areas where policy approach must engage in active dialogues with women and formulate policies with their full democratic participation.

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145. KHAN, TECHNOLOGY (1998), *supra* note 8, at 95-99.

146. JOHN DUNS SCOTUS, EARLY OXFORD LECTURE OF INDIVIDUATION 82, ¶ 170 (2005).

147. *See* WORLD HEALTH ORG., THE WORLD HEALTH REPORT 2001 MENTAL HEALTH: NEW UNDERSTANDING, NEW HOPE (2001), *available at* http://www.who.int/whr/2001/en/whr01_en.pdf?ua=1.

148. *See Research Programme*, UNITED NATIONS UNIV.—WORLD INST. FOR DEV. ECON. RESEARCH, http://www.wider.unu.edu/research/ (last visited Mar. 27, 2014).

These do not cover all of the applicable areas, but are paradigmatic in the sense that the clear and present relevance of the approach logically leads to an agenda for action ranging from income transfers, public and private employment creation to political freedom and activism.

One broad area of practical application, as even the International Financial Institutions move away from the so-called Washington Consensus is the design and implementation of alternative structural adjustment policies ("ASAPs"). Basically, the conventional structural adjustments policies ("SAPs") focus on short to medium run results regarding inflation and balance-of- payments equilibrium.[149] In the case of many impoverished economies, privatization itself may have become a goal for structural reform. Likewise, market-making can also become a goal in itself.[150] Not enough recognition has been accorded to the economic side effects such as unemployment or (at least a temporary) lowering of output. Social dimensions of adjustment came to be recognized even later. The status of vulnerable groups such as women, children, and the poor do not often figure explicitly in these programs. From the arguments presented in this paper, it seems that in order to design a capability-enhancing ASAP the following elements must figure prominently:

1. A clear recognition of the status of the different socio-economic groups in developing countries in terms of their economic and overall level of well-being.
2. A list of priorities in terms of economic and social goals must be prepared. In the case of incompatibilities of some of these goals, the question of trade-offs must be raised and resolved explicitly rather than implicitly through the logic of the market.
3. In particular, issues of fair inter-regional allocation of resources or opportunities must be addressed explicitly.
4. Human development indicators based on the capability framework must become an integral part of ASAPs.
5. As our discussion in the previous section shows, the record of developing countries concerning gender disparities is not flattering. Therefore, gender-justice must become a central part of ASAPs—not a peripheral issue to be ignored or to be resolved later after enough growth has taken place.
6. As alluded to in the brief discussion of ecology, environment, and sustainable development, with ecological effects of adjustment included, must become the conceptual center of thinking about ASAPs in these economies.

149. In Khan & Sogabe, *supra* note 71, we have attempted a statistical evaluation of the impacts of the IMF programs for a large number of LDCs.

150. Market-making here refers to the idea that creation of markets for anything, i.e. commodifying everything, is the solution. This has led to the privatization of water and protests against it among other privatization and market-making moves.

7. It follows then that an ASAP must explicitly address ecological and distributional issues related to women in particular. This implies that there will be a need for careful inter-disciplinary studies on probable impacts of a policy package before its implementation. It also implies the need for follow-up studies in order to assess the after-effects of an ASAP. The crucial aspect here from the perspective of development as freedom is to ascertain which substantive freedoms are enhanced or diminished and then to assess their overall significance.

Looking further beyond the current economic problems with SAP, we might ask if the freedom-centered perspective of women's rights and development will survive. For not only is the world divided between the rich and the poor, there are also dark and destructive political and cultural forces ranging from arms race to global terrorism. Indeed, it will be naïve to pretend that recognition of what is good will automatically lead to that good. Here again, the argument cannot stop at simply establishing the validity of the women's rights as demands for enhancing the social capabilities as freedom approach, but it must furnish grounds for thinking that there is a fighting chance of getting there.

The emphasis here on both achieving constitutional guarantees of freedom and on the need for an ever vigilant politically aware and active mass democratic movement will, I hope, focus attention on the crucial political and cultural aspects of equalizing capabilities for women. Without a vigorous, self-aware, and self-critical democratic movement that genuinely respects social individuality and its all around development, the approach discussed here can only be just another academic discourse. The substantive approach to social capabilities underlined in this paper gives me hope that combining a critical theory with all around social practice and movement from below will make women's rights as human rights an achievable project in our lifetime.