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Libertarian paternalism and the capability approach. Friends or foes?

Libertariański paternalizm a teoria możliwości. Przyjaciele, czy wrogowie?

Abstract

This paper compares the capability approach (CA) and libertarian paternalism (LP) to see whether they are compatible. The comparison focuses on rationality, wellbeing, and freedom. The main theoretical framework is Sen's 'reason to value' (RtV). The relevance of this to CA, and LP is analysed, and whether the primacy that CA and LP both accord to reason leads to paternalism is examined. Although the principal focus is on Sen's, Sunstein's and Thaler's original ideas, their key concepts are analysed in the context of the contemporary critical literature on the topic. This critical analysis not only makes it possible to assess whether CA and LP are compatible, but also to see how they perceive rationality, wellbeing, and freedom. The critical analysis further differentiates the various interpretations of RtV in the literature and explains how CA and LP function.

Keywords: freedom, paternalism, capability approach (CA), libertarian paternalism, reason to value (RtV).

JEL: B50, D91, H11

Streszczenie

Artykuł porównuje teorię możliwości („capability approach" CA) z libertariańskim paternalizmem (LP) w celu oceny ich kompatybilności. Analiza porównawcza skupia się na racjonalności, dobrostanie i wolności. Główną osią porównania jest Senowska koncepcja „reason to value". W artykule analizuję co ta koncepcja oznacza w CA i LP, i czy poleganie na rozumie doprowadza do paternalizmu w obu podejściach. Pomimo skupienia się na oryginalnych ideach Sena, Sunsteina i Thalera, analizuję również ich najważniejsze koncepcje w kontekście współczesnej krytycznej literatury. Dzięki krytycznej analizie, artykuł nie tylko sprawdza kompatybilność CA z LP, ale również pokazuje jak oba podejścia pojmują racjonalność, dobrostan i wolność. Krytyczna analiza uporządkowuje różne interpretacje „reason to value" w literaturze i wyjaśnia jak CA i LP działają.

Słowa kluczowe: wolność, paternalizm, libertariański paternalizm, powód, by cenić, teoria możliwości.

JEL: B50, D91, H11

1. Introduction

The primary goal of this paper is to compare the capability approach (CA) with libertarian paternalism (LP). It does not, however, include a comprehensive overview of each approach, as many scholars have already fulfilled this task (Anderson, 2001; Alkire, 2005; Qizilbash, 2012; Robeyns, 2017). The comparison contained herein is a critical dialogue between the two approaches with a view to determining whether they are compatible as normative approaches designed to improve quality of life while sustaining freedom. Moreover, this comparison enables a better understanding of LP and CA. It clarifies the key concepts that breadth leads to ambiguities in the literature.

The reader may well wonder why two thoroughly analysed approaches need to be compared at all. The reason is that to the best of the present author's knowledge, they have never been comprehensively compared. Although some authors point out the similarities between CA and LP (Qizilbash, 2012; Osmani, 2019), they do not compare them directly. The present study therefore fills a gap in the literature. It should be noted, however, that the lack of any direct comparison, is not necessarily an oversight. CA and LP are concerned with different issues and were devised for different purposes. CA is a multidimensional approach that assesses wellbeing and freedom. It covers poverty, justice, human development, and methodological issues concerning utility and rationality. LP, by contrast, is a practical guide on how non-coercive state intervention (i.e., nudges) can better the lives of the populace.

This difference in scope suffices to call the whole idea of making a detailed comparison into question. However, it is a fruitful exercise. Despite their differences, CA and LP have reinvigorated discussions on rationality, wellbeing, and freedom. Sen's 'reason to value' (RtV) formulation, which underlies CA, makes such a comparison especially instructive (Byskov, 2020). This is expounded in detail below, but for now, it will suffice to accept it as a normative method for analysing what is beneficial for people. This method resembles the rational approach used in LP (see Qizilbash, 2009). RtV is used here to compare CA and LP and assess their compatibility. Specifically, the relevance of RtV to both CA and LP is examined and whether the focus on improving human lives leads to paternalism is determined. The normativity of RtV can lead to the dismissal of revealed preference theory (RPT), which assumes that people act in their own best interests. The possibility that the assumption of consumer sovereignty is untenable naturally raises the question of what needs to be done to ensure a good life. It opens a pandora's box of paternalism for both CA and LP (Mitchell, 2005; Sugden, 2006, 2008a, 2008b, 2009, 2017, 2018a, 2018b; Qizilbash, 2009; Hausman & Welch, 2010; Grüne-Yanoff, 2012; Carter, 2014; Claassen, 2014; Infante et al., 2016).

This paper focuses on Sen's capability approach. The capabilities approach (Nussbaum, 2000, 2011) and other versions of CA are not considered. The general CA framework, not narrow versions restricted to particular applications, is analysed from the perspective of neoclassical economics and RPT. Political philosophy, justice, human development, and poverty are not discussed. Despite the limited scope, this analysis can be problematic. Sen modified his key CA concepts over the years (1980, 1985a, 1993a, 1999, 2003). Moreover, CA is an open-ended frame-

work that can be interpreted in various ways (Robeyns, 2017). RtV in particular has triggered an ongoing discussion (Khader & Kosko, 2019; Byskov, 2020). Sen's positions on rationality, wellbeing, and freedom are therefore clarified. Interpretation is less problematic with respect to LP. This paper focuses on the book *Nudge* (Thaler & Sunstein, 2008), which concentrates on practical examples. As many scholars are critical of LP's methodological basis, there is an examination of the literature on the topic with a view to clarifying how LP functions and explaining the rationale(s) for its criticism. It has to be stressed that both CA and LP have been improved and expanded over time and that several approaches and interpretations have been proposed. However, no attempt is made to compare these various interpretations with the original versions proposed by Sen, Thaler and Sunstein (for more, see Ostapiuk, 2021).

Finally, an elucidation of the paper's structure is in order. The first section is devoted to the positions that CA and LP hold on rationality and wellbeing in the context of RPT. This enables the meaning of RtV in CA and LP to be clarified. The second section concerns freedom. The perceptions of freedom in LP and CA are analysed, and whether the charge of paternalism can be justified is addressed.

2. Revealed preference theory vs. CA and LP

This section analyses the ways in which LP and CA perceive rationality and wellbeing. This analysis is conducted in the context of RPT, as CA and LP both construe rationality and wellbeing contrariwise to RPT. The analytical framework comprises Sen's three perceptions of rationality in neoclassical economics, viz.: (a) rationality as internal consistency of choice; (b) rationality as a means of maximising self-interest; and (c) rationality as maximization in general (Sen, 2002, p. 19).

2.1. Rationality as internal consistency of choice

Sen is critical of the foundational RPT assumption of transitivity (if $x > y$ and $y > z$, then $x > z$) and argues that the available opportunity set influences people's choices. He demonstrates the problem with consistency using etiquette as an example. Consider a situation where a choice depends on how many apples are left in a basket (opportunity set). A person may prefer to eat an apple but not choose it in the event that there is only one left, so as not to appear greedy. For Sen, the problem is not that there are situations in which people behave inconsistently, but that RPT does not consider the opportunity set. In Sen's example, a person is not inconsistent because she follows etiquette (the person simply does not want to appear greedy). We cannot know if some behavior is inconsistent until we learn about one's reason(s) behind the choice. Sen writes 'We cannot determine whether the person is failing in any way without knowing what he is trying to do, that is, without knowing something external to the choice itself' (Sen, 2002, p. 130). Sen calls this something external 'menu-dependence' (Sen, 1997, p. 752). We would know whether someone was consistent with his/her preferences if we knew his/her motivations.

His/her preferences do not necessarily change because of a new option (i.e., a new apple). Given a new environment (two apples), his/her preferences are simply manifested in a different choice. Menu dependence shows that the choice depends on the available alternatives. RPT's internal consistency condition is inapplicable because it does not consider 'menu dependence'.

Context-dependency is also essential in LP, which denies that people have well-established and consistent preferences. Thaler and Sunstein call this context dependency 'choice architecture'. They give the example of a cafeteria where the food arrangement influences choices (Thaler & Sunstein, 2008, p. 2). When healthy food is placed at the beginning of the counter and less healthy food closer to the cash desk, the former is often chosen. Thaler and Sunstein use behavioural economics to indicate that preferences are context-dependent (Kahneman & Tversky, 1979; Kahneman, 2011).

To conclude, both CA and LP stress the importance of the context of choice. From this perspective, 'choice architecture' can be identified with 'menu dependence'. Moreover, both approaches are critical of RPT's conflation of preferences with choices. Finally, both propose to discover preferences by uncovering motivations, values, and long-term goals. The main difference between the two is that LP claims that inconsistency is *ipso facto* irrational whereas CA does not. According to CA, inconsistency usually disappears once values and motivations are taken into consideration. LP, by contrast, treats it as incontrovertible proof of irrationality (the arrangement of unhealthy snacks is seen as a case in point).

2.2. Rationality as self-interest maximization

RPT is predicated on the tautological assumption that people choose what is best for them. Therefore, choice by definition maximizes utility. RPT is based on preference fulfilment theory, where preference satisfaction is synonymous with personal wellbeing, and wellbeing is connected with rationality. It is argued that since people are rational, their choices are intended to improve their wellbeing. The present study analyses wellbeing in CA and LP within the framework of Parfit's three theories of well-being (hedonism, desire fulfilment, and objective list):

> On Hedonistic Theories, what would be best for someone is what would make his life happiest. On Desire-Fulfilment Theories, what would be best for someone is what, throughout his life, would best fulfil his desires. On Objective List Theories, certain things are good or bad for us, whether or not we want to have the good things, or to avoid the bad things (Parfit, 1984, p. 493).

Sen is critical of desire fulfilment theory and the hedonistic approach. This criticism can be extended to RPT by substituting preferences for desires, as welfare depends on utility, which can be understood either in a hedonistic or a desire-satisfaction sense. Sen is dismissive of the very idea of preference satisfaction. He argues that satisfying preferences does not guarantee a good life. Sen focuses his criticism on economic welfare, as it prioritises utility to the exclusion of other values. He writes,

'Welfarism is an exacting demand, ruling out essential use of any non-utility information' (Sen, 1979, p. 478). Sen identifies two major problems with the desire fulfilment theory and hedonistic (happiness) approaches. Firstly, desires and happiness are malleable. Secondly, people have other goals than self-interested welfare (Sen, 1985a).

As for the malleability of preferences, Sen is critical of RPT's axiomatic assumption that people act in their own best interests because of the adaptation problem. Adaptive preferences can be analysed on two levels. First, there is the individual level. The literature on hedonic adaptation shows that people adjust to external shocks that diminish happiness, e.g., over time, people who have been involved in a car accident report the same level of happiness as lottery winners (Brickman et al., 1978). Sen uses hedonic adaptation to explain how people adjust to terrible circumstances. People are happy because they 'take pleasure in small mercies' (Sen, 1985b, p. 14). Second, there is the social level. Sen has analysed developing countries throughout his career. He has observed that many people who live in dire conditions are nevertheless happy because of the social conditioning of e.g., religion or culture. He writes, 'Consider a very deprived person who is poor, exploited, overworked and ill, but who has been made satisfied with his lot by social conditioning (through, say, religion, political propaganda, or cultural pressure). Can we possibly believe that he is doing well just because he is happy and satisfied?' (Sen, 1985c, p. 12). Sen uses adaptive preferences to criticise hedonistic and desire/preference fulfilment theory. Being happy or fulfilling one's preferences does not imply a good life because happiness and preferences are too malleable.

Sen's second criticism of preferences is that it cannot be assumed that choices are necessarily determined by welfare considerations (Sen, 1977). According to RPT, people maximize their self-interest utility. However, neoclassical economists perceive utility and self-interest very broadly, which leads to many misunderstandings. Sen distinguishes three different interpretations of self-interest:

> Self-centered welfare: A person's welfare depends only on her own consumption…
> Self-welfare goal: A person's only goal is to maximize her own welfare.
> Self-goal choice: A person's choices must be based entirely on the pursuit of her own goals. (Sen, 2002, pp. 33–34).

Neoclassical economics is often criticized for perceiving homo economicus as a selfish being. Therefore, the critics indirectly refer to 'self-centered welfare'. However, economists have a broader perception of self-interest. Sen is aware that while economists see utility maximization as axiomatic, they do not conclude from this that people think only about themselves (self-centered welfare). Economists can fill utility with other considerations (altruism, love, etc.). This is best illustrated by Becker, who incorporated altruism in his utility calculus, and consequently abandoned 'self-centred welfare'. He still worked within the self-interest framework, albeit with a focus on a 'self-welfare goal' and a 'self-goal choice'. For example, when a wife refrains from reading in bed so as not to disturb her husband, she is obviously not self-interested in the context of 'self-centered welfare' (Becker, 1974). She

is self-interested, but on the level of 'self-welfare goal' and 'self-goal choice' (a happy husband increases her utility). To conclude, RPT assumes that people always focus on their welfare no matter how broadly self-interest is perceived. Sen distinguishes between 'sympathy' and 'commitment' to show the conceptual possibility of going beyond maximising self-interest:

> The former corresponds to the case in which the concern for others directly affects one's own welfare. If the knowledge of torture of others makes you sick, it is a case of sympathy; if it does not make you feel personally worse off, but you think it is wrong and you are ready to do something to stop it, it is a case of commitment (Sen, 1977, p. 326).

Sympathy describes the behaviour of the wife. While it goes beyond 'self-centred welfare', it can definitely be incorporated into the self-interested framework. Conversely, commitment cannot be incorporated within this framework because it transcends individuals' welfare with 'self-welfare goal' and 'self-goal choice.' Other people are considered, regardless of the effect on our welfare or goals (Sen, 2002, pp. 35, 214).

This methodological discussion is not relevant to LP. Thaler and Sunstein focus on the descriptive implications of RPT. They rely on behavioural economics and enumerate various cognitive biases and heuristics in order to dismiss the assumption that people maximize their utility (Thaler & Sunstein, 2008). However, they adhere to an adjusted preference fulfilment theory – adjusted in the sense that purified preferences are sought to be fulfilled. RPT is not perceived as a descriptive, but as a normative, model. In LP, it is assumed that rationality, perceived as self-interest maximization, leads to well-being. We look for purified preferences and ask what people would choose if it were not for cognitive biases (Thaler & Sunstein, 2008). Thaler and Sunstein are aware of adaptive preferences that challenge preference fulfilment theory. They refer to Sen and Elster (Sunstein & Thaler, 2003). However, adaptive preferences do not play a significant role in LP. Purified preferences eliminate malleability because they exclude irrational preferences detrimental to wellbeing.

To summarise, both CA and LP dismiss the assumption that choices reveal preferences whose satisfaction is identified with wellbeing. However, CA dismisses preference satisfaction theory and focuses its criticism on methodological issues, such as identifying rational behaviour with maximising self-interest. LP dismisses RPT's descriptive assumption that choice is equated with utility maximization. However, LP adheres to preference satisfaction theory as a prescriptive model, albeit one in which only purified preferences maximize utility. The significant difference between CA and LP is their attitude towards the RPT framework. Sen criticizes economists for focusing on utility to the exclusion of all else. He argues that people have other goals in addition to welfare and that these cannot be incorporated into a utility framework built on self-interest. In contrast, LP relies on RPT's utilitarian framework where welfare is equated with self-interested maximization. This framework is a black box that contains both altruism and egoism.

2.3. Reason to value: Rationality as maximization

The last analyzed understanding of rationality, as maximization in general, is based on the utility maximization framework and RPT. For Sen, utility maximization involves more than self-interest. Maximization entails following preferences and pursuing goals – whatever they are. The most important RPT assumption analysed here is that preferences are given. For this reason, neoclassical economics does not assess them. For Sen, there is more to rationality than maximization. Rationality demands that choices be subjected to 'reasoned scrutiny' (Sen, 2002, p. 4). The given preferences assumed in RPT are therefore insufficient. Preferences need to be evaluated and Sen proposed reason as the benchmark. As stressed in the introduction, RtV is a framework that makes LP and CA similar. Moreover, the comparison between CA and LP in this paper is based on RtV. This is done because LP and CA dismiss RPT with given preferences. The crucial feature of both LP and CA is they assess preferences against the criterion of reason, although they construe reason differently. This section analyses the way(s) in which CA and LP assess preferences and construe rationality/reason. This analysis is only an introduction, as RtV has many interpretations. The next section selects the 'correct' interpretation. The analysis is conducted in the context of freedom because dismissing RPT leaves LP and CA open to charges of paternalism.

As we established, Sen is critical of RPT. He argues that adaptive preferences and metarankings prove that choices do not always reveal preferences. Sen indicates two methods to discover what people value. Both are based on reason. The first requires that preferences be subjected to public reasoning. Only preferences that survive this process are deemed reasonable. The second method involves metarankings. Sen (1977) refers to metarankings when individuals assess their preferences. For example, an individual might prefer to smoke, but would rather prefer not to, because of health considerations. Metapreferences can be connected with values other than welfare, e.g., an individual might prefer to eat meat but would rather prefer not to, because of moral considerations (commitments). LP is also very critical of the claim that choices reveal preferences. Thaler and Sunstein adduce many examples from behavioural economics to prove this point. LP therefore uses a rational approach in which purified preferences are sought. As does CA, LP relies on metapreferences, but identifies them with an 'inner agent' devoid of cognitive biases (Infante et al., 2016; Ostapiuk, 2022).

While both CA and LP use metapreferences, they construe them differently. This results from their different conceptions of rationality. The best way to understand these different conceptions is to analyse CA's and LP's respective usages of commitment and weakness of will. As stated above, CA does not identify rationality with welfare. Commitment transcends rationality as utility maximization because it considers values other than self-interest. It is not enough to enjoy consumption. Goals need to be scrutinised in order to determine whether there is any reason to value them (Sen, 2002, p. 36). In LP, commitment is examined using the 'New Year's resolution test'. This is when long-term goals are declared (Thaler & Sunstein, 2008, p. 73). The test can uncover the purified preferences that maximise utility. In the case

of weakness of will, Sen refers to people who fail to stick to their moral convictions (e.g., failing to remain vegetarian). In LP, weakness of will is examined in terms of failing to maximize welfare (e.g., quitting smoking). These differing usages of commitment and weakness of will reflect the differing conceptions of rationality underpinning them. In LP it is identified with self-interested maximization; in CA rationality means something more.

The framework of old and new behavioural economics is used to help understand the different conceptions of rationality in CA and LP. CA can be loosely identified with old behavioural economics, whereas LP is identified with new behavioural economics. Over recent years, behavioural economists have unveiled many cognitive errors and heuristics, showing that people are not fully rational. However, scholars identified with old behavioural economics (Simon, 1947) and ecological rationality (Gigerenzer et al., 2011) do not perceive heuristics as irrational mistakes in need of correction. Sen's position is similar (see Osmani, 2019). He is against setting some objective goals that everyone should strive for. Sen criticizes the notion of rationality as maximization and as something that can be objectively defined. This notion leads to two problems. Firstly, rationality in new behavioural economics is perceived as a Newtonian binary system. A person is rational if he/she behaves as would homo economicus and irrational otherwise. For Sen, rationality entails more than maximization. Secondly, rationality as maximization does not take society into consideration. Sen argues that there is no objective rationality independent of society (Sen, 2006). Whereas CA does not define rationality, LP sees rationality as an objective concept. Similarly to new behavioural economics, cognitive biases are deemed flaws that must be corrected. LP perceives rationality instrumentally. Its goal is to help people achieve uncontroversial goals. Therefore, LP relies on means paternalism. Thanks to their stated declarations, we know that people want to pay less for energy and have better health. These goals are deemed uncontroversial, as they would be chosen in the absence of cognitive biases.

This section presented how rationality is construed by CA and LP. However, the most important issue from the perspective of this paper is the charge of paternalism charge levelled at both CA and LP. This is discussed in the next section. The charge is made because RtV implies that individual choices are insufficient. Examining the way(s) in which CA and LP answer the charge of paternalism will lead to a better understanding of how rationality is perceived in the context of wellbeing and freedom.

3. Freedom

As stated above, CA and LP dismiss RPT, which assumes that what people choose is best. Instead, they use some variant of a rational approach where reason indicates what is good for people. This reliance on reason is criticised on the grounds that it can lead to paternalism. CA and LP respond to this criticism differently. LP embraces paternalism (Thaler & Sunstein, 2008), whereas CA dismisses it (Sen, 2006, 2009). Analysing these different responses reveals how they perceive freedom and

rationality. This paper uses four themes to enable a comparison: (i) functionings/capabilities; (ii) Berlin's positive/negative freedom; (iii) Mills' freedom; and (iv) three interpretations of RtV. The comparison presented here obviously does not exhaust all the angles from which CA and LP can be analysed. However, as stated at the outset, a comprehensive analysis of the two approach is not the aim of this paper. Space limitations necessitate a focus on those issues that make a comparison most instructive.

First, an explanation as to why CA and LP are accused of paternalism is in order. The criticism varies, but Sugden vocalises some fundamental objections. CA and LP both argue that RPT does not always indicate what is good for people. Instead, they propose normative frameworks based on reason. For Sugden, this raises the problem of who gets to decide which desires are rational. He worries that some experts, philosophers, or state administrators will decide what is good for everyone instead of letting individuals decide for themselves. This in turn will inevitably lead to the restriction of liberty (Sugden, 2006). Sugden is cited here because he echoes libertarian criticism. This is based on a negative conception of freedom, i.e., one that repudiates coercion. Being free means having options. It is crucial to understand why libertarians perceive freedom in this negative sense and treat any interference with choices as paternalism. Two arguments carry special weight. The first is deontological. If the assumption that people are rational holds, then they are autonomous. People should be free because they are subjects of their own will. Moreover, they are responsible for their actions. The deontological argument is connected with human dignity where people are ends in themselves. The second argument is utilitarian. If people are rational, then they are the best judges of what is most likely to improve their wellbeing. This section focuses on the deontological argument because it is the most prevalent in the literature.

3.1. Capability approach

The present analysis begins with functionings and capabilities. Only the basic ideas necessary to understand how Sen perceives RtV are presented (for more, see Robeyns, 2017). Functionings can be perceived in opposition to neoclassical economics. CA does not focus on resources, but analyses what people can do with them. Sen uses the example of a bike to explain functioning (Sen, 1985c). A bike can be used as a means of transport, or it can be sold. A bike is a physical means of achieving something. It can be the ability to get around but also going out with friends. The functioning of the bike is whatever is achieved by using it. Functionings can be divided into 'beings', e.g., being educated or being illiterate, and 'doings,' e.g., taking drugs, travelling, and playing with children. So, a bike enables the function of mobility. Thanks to a bike we can move faster than by walking. The essential issue is that people have different abilities to turn a bike into functioning which is described by 'conversion factors' (Robeyns, 2017, p. 45).

The second conception of 'capability' is a potential functioning (achievement). Capability refers to 'what one could do or be', and it is different from functioning, which refers to 'what one does and is'. For example, the functioning 'to have friends'

is translated into a capability 'to be able to make friends if one wishes to' (Breton & Sherlaw, 2011, p. 151). Sometimes capabilities are realised, in which case, they become functionings. However, capabilities are generally perceived as the set of alternatives that a person has. Moreover, these options are real opportunities (Sen, 1985b). If you willingly go without food as a religious obligation (i.e., you fast), it is capability. Going without food because of insufficient means to purchase it is not capability, as there is no available alternative. Sen identifies freedom with capability, and sees it as an end in itself. We should not treat capabilities as means to achieve functionings. A proper understanding of what a capability is requires an analysis of Sen's understanding of freedom.

This paper analyses functionings and capabilities in the context of Berlin's normative/positive freedom. Sen's two connected frameworks are used to explain what is meant by 'freedom'. Sen claims that freedom has an 'opportunity aspect' and a 'process aspect' (Sen, 1993b, p. 5). The opportunity aspect can be understood as positive freedom and the process aspect as negative freedom. Moreover, Sen distinguishes three additional elements: (i) opportunity to achieve; (ii) autonomy of decisions; and (iii) immunity from encroachment (Sen, 1993b, p. 8). The first is connected with the opportunity aspect (positive freedom) and the others with the process aspect (negative freedom).

1. Opportunity to achieve is best understood in opposition to formal freedom (freedom of choice). Formal freedom is used by free-market proponents, who argue that by increasing the number of services and commodities, the market increases freedom (Friedman & Friedman, 1980). For Sen, more options do not necessarily mean more freedom. Capabilities are freedoms which are real opportunities (Sen, 1985b, p. 3). They do not exist as formal options, but must be effectively available. Recall the example of fasting. Eating is functioning. The real opportunity to eat is a capability. A person who does not eat may not be able to eat. The idea of a capability seeks to capture whether the person could eat if he/she wished. If you deprive yourself of food because you are unable to purchase it, then you are not free. Therefore, Sen identifies an 'opportunity to achieve' with a capability.

2. Autonomy of decision is understood as negative freedom. Others cannot decide for people. Sen underlines the importance of autonomy and argues that achievements (functionings) are not enough - people actively need to achieve them. For Sen, agency and active choice are essential to freedom. They do not have to be defined in purely negative terms but as a power to achieve (agency as process freedom, see Crocker, 2008). Sen stresses that an agent is 'someone who acts and brings about change' (Sen, 1999, p. 19). Pettit (2001) gives the example of a benevolent dictator to show the importance of active choice. Imagine a society governed by an oil-rich potentate, who uses his income to raise the level of functionings among his subjects. He provides food supplies and excellent teachers. The citizenry would enjoy functioning, but they would 'not enjoy the capability of functioning, only good functioning fortune' (Petit, 2001, p. 9). For Sen, people need to actively participate in achieving functionings. Passive achievements are not enough. This is not to say, however, that the beneficiaries have to be directly involved. Sen (1983, p. 19) gives the example of an unconscious patient whose preferences regarding medical treat-

ment are respected, even if the doctor believes that the odds of a successful recovery are thereby reduced. Sen believes that liberty is preserved in this case. He favours a broader conception of freedom where decisive preferences, not choices, are vital.

3. Immunity from encroachment. Sen refers to libertarian freedom, which is negative. From this perspective, free-markets secure freedom, whereas government interference limits it. However, a government's provision of certain goods expands positive freedom. CA goes beyond these dichotomies (negative vs. positive, state vs. free market). A lack of resources in a free market can limit capabilities. The same can be said about a government which uses legal rules that prohibit people from exercising freedom, e.g., voting. Conversely, the prosperity generated by capitalism can enhance freedom. The government also can enhance freedom, e.g., by providing health care, education, and mandatory vaccinations. The complicated nature of 'immunity of encroachment', where positive and negative freedoms are entangled, will be understandable once RtV has been discussed.

Now, the concept of capabilities is examined in the context of Berlin's writings. Sen initially described capabilities as positive freedoms and cited Berlin (Sen, 1984, p. 315), but subsequently noticed the confusion that could arise from identifying capabilities with positive freedom. He therefore distinguished the two:

> I have found it more useful to see 'positive freedom' as the person's ability to do the things in question taking everything into account (including external restraints as well as internal limitations). In this interpretation, a violation of negative freedom must also be a violation of positive freedom, but not vice versa. This way of seeing positive freedom is not the one preferred by Isaiah Berlin (Sen, 2002, p. 586).

Sen has eventually come to perceive freedom as a multilayered concept with interwoven positive and negative strands. In addition to the 'opportunity aspect' (positive) and the 'process aspect' (negative), he distinguishes three facets of freedom. 'Opportunity to achieve' is positive freedom, whereas 'autonomy of decision' and 'immunity from encroachment' are negative freedoms. However, 'autonomy of decision' and 'immunity from encroachment' also contain some elements of positive freedom. As positive and normative freedom are interconnected, Berlin's dichotomy does not suit Sen. Therefore, he proposes functionings and capabilities which include positive and negative aspects. Understanding why freedom has an inherent value for Sen requires an analysis of J. S. Mill's position.

Even if Sen does not always agree with Mill, he acknowledges his influence (Sen, 2006). Sen uses Mill's framework of 'basic' and 'non basic' judgments to emphasise the independent value of freedom (Sen, 1967, p. 2006). A judgement is basic 'if no conceivable revision of factual assumptions can make him revise the judgement', whereas non-basic judgements 'depend – usually implicitly – on *factual presumptions*' (emphasis in original) (Sen, 2006, pp. 83–84). The former refers to the intrinsic value of some judgement, whereas the latter is based on empirical data and can be refuted. Sen uses this framework to analyse Mill's position on freedom. Many view Mill as nothing more than an unapologetic supporter of freedom, but he was also a utilitarian. Mill's position can be defined as hybrid utilitarianism, as he argues

that freedom increases long-term utility (Mill, 2009). The importance of freedom is based predominately on an empirical statement, not its intrinsic, value. Sen writes, 'Mill's utilitarianism is best regarded as non-basic' (Sen, 1967, p. 58). Sen is critical of Mill's instrumental treatment of freedom, i.e., as a formula leading to happiness. For Sen, this empirical foundation is not strong enough to protect freedom.

Sen's criticism focuses on Mill's capability of being happy. For Sen, Mill's focus on capabilities is contingent: '(1) it concentrates on the fact that the capability to be happy is directly with happiness (ultimately, the only object of value), and (2) it takes note of the fact that other capabilities can also be useful in generating utility indirectly' (Sen, 2006, p. 85). For Sen, 'This, I fear, is not an adequate basis for valuing capability in terms of the foundational importance of freedom itself' (Sen, 2006, p. 84). Sen wants to independently value the capability to secure freedom. He is closer to Aristotle, Smith, and Marx, who perceive capabilities as 'basic' than to capabilities 'in contingent form – with fragile empirical underpinnings – within a basically utilitarian world' (Sen, 2006, p. 85). Sen argues that freedom should have a value that is independent of utility (basic judgment). However, freedom is not the only value in CA. The second is wellbeing which is visible in 'wellbeing freedom' (Sen, 1985a, 1993a). Whether Sen distinguishes himself from Mill will be known once RtV has been analysed.

After introducing capabilities, functionings and different aspects of freedom, we are in a position to determine which interpretation of RtV is correct. Khader and Kosko (2019) present three interpretations of RtV: (i) procedural autonomy: it is up to the individual to decide what he/she values; (ii) process interpretation: this involves a search for values that would be held following individual reflection or public deliberation, as individuals do not always value what they have reason to value; And (iii) perfectionist interpretation: what people have reason to value is what is objectively valuable.

Determining which interpretation is correct will help understand how CA perceives freedom and whether it is paternalistic. The best way to clarify what Sen means by RtV is to analyse what his opponents say about it. The main criticism of CA concerns perfectionism. It is argued that this will lead to paternalism as people will inevitably be forced into objective functionings. Sen does not want CA to be perceived as a perfectionist approach and has argued for a 'procedural autonomy' interpretation in which capabilities are essential. This paper analyses Sen's arguments for procedural autonomy and assesses whether his defence against paternalism and perfectionism is tenable.

The main criticism levelled against CA was presented at the beginning of this section. Sugden (2006) argues that CA can be illiberal because society gets to decide what is best for individuals. The general criticism of CA in the literature involves two interconnected charges: (i) perfectionism – CA favours a list of objective functionings; and (ii) paternalism – people can be forced into good functionings. Sen answers Sugden directly (Sen, 2006; see Qizilbash, 2011) as follows. First, as Sen has not offered any definite list of functionings, the charge of perfectionism is inapplicable. Second, Sen focuses on capabilities. People are not forced to adopt any specific idea of a good life and are free to choose their own path (Robeyns, 2017, p. 107). In

general, Sen refutes any charges of paternalism and perfectionism, and supports a 'procedural autonomy' interpretation. To this end, he stresses the importance of the 'process aspect' of freedom, along with 'decisional autonomy' and 'immunity from encroachment', which in combination, secure negative freedom and autonomy.

However, the critics also focus on the 'opportunity aspect' of CA. They argue that focusing on functionings (wellbeing) can lead to paternalism because people will be forced into good functionings. There are grounds for this concern as wellbeing is essential to CA. However, Sen does not focus exclusively on wellbeing. He writes, 'I was trying to relate the idea of capability not with well-being, but with freedoms of various kinds, and particularly with what I called "well-being freedom"' (Sen, 2006, p. 91). This paper clarifies the connection between freedom and wellbeing by using Sen's distinction between: (i) 'well-being achievement'; (ii) 'well-being freedom'; (iii) 'agency achievement'; and (iv) 'agency freedom' (Sen, 1985a). Although Sen unarguably emphasises the importance of wellbeing and achievements (i, ii), he also stresses that of agency (iii, iv). Agency freedom is defined as 'what a person is free to do and achieve in pursuit of whatever goals and values he or she regards as important' (Sen, 1985a, p. 203). It need not be connected with personal welfare, which is also emphasised in agency achievement (Sen, 1985a). Sen's focus on agency justifies a 'procedural autonomy' interpretation in which capabilities (freedoms) are essential. People exercise their agency and choose for themselves. For example, even if a doctor knows that a comma patient's preferred treatment will decrease her welfare, he/she cannot act contrary to that patient's wishes (Sen, 1983, p. 19). To conclude, Sen is not forcing an objective list of functionings onto people.

Despite Sen's insistence on the inherent value of capabilities, functionings play a crucial role. The entanglement between freedom (capabilities) and wellbeing (functionings) is a common theme in the CA literature. Sen concedes that the 'process aspect' (negative freedom) overlaps with the 'opportunity aspect' (positive freedom) (Sen, 2002, p. 585). However, in contrast to Mill, he ascribes intrinsic value to freedom. Sen's refutation of the charge of paternalism is that functionings must be chosen freely. The best example is not eating. This can either be voluntary or involuntary (fasting and starving), but only the former is connected with freedom (capability). Carter concludes, 'The freedom to choose whether or not to eat is therefore a constitutive part of the practice of fasting' (Carter, 2014, p. 86). Even if capabilities (freedom) and functionings (wellbeing) are part of a good life, CA does not focus on functionings per se, but rather on the freedom to achieve functionings. By stressing that functionings must be freely chosen, Sen intends to secure freedom as an intrinsic value. It is an argument against paternalism because it is impossible to force people into functioning (Carter, 2014). Sen's arguments against a 'perfectionist' and in favour of a 'procedural autonomy' interpretation (presented above) constitute a 'thin view' because functionings and capabilities are not evaluated. To recapitulate, Sen's refutation has two moves: (i) anti-perfectionist – Sen did not propose objective lists of functionings; and (ii) anti-paternalistic – people are free to choose functionings and these need not be connected with welfare (agency achievements). These moves are connected with a shift from functionings to capabilities (Sen, 1993a), and are defined as the 'standard move' (Claassen, 2014). Whether

this shift is effective, and 'procedural autonomy' is the correct interpretation, as Sen argues, will now be analysed in more detail.

There are two responses to the 'standard move'. First, Sen's defence is accepted. However, it is possible to argue that the 'thin view' is untenable because some capabilities are not neutral, but value-laden. Therefore, the perfectionist charge retains its validity. Second, it is possible to reject the 'standard move' and argue that CA promotes certain functionings despite its intention not to. Therefore, the paternalism charge retains its validity. This part first analyses the perfectionism charge (fuller account in Byskov, 2020) and then the paternalism charge.

Sen is disinclined to assess functionings and treats capabilities as a neutral framework in which functionings are chosen by individuals. However, functionings face an adaptation problem. They can be distorted by emotions or social influences (Nussbaum, 2011). This adaptation problem has induced Sen to dismiss RPT, as it contends that choices are identified with welfare. He proposes RtV to discover what is good for people. Sen may well be disinclined to evaluate functionings, but he nevertheless writes about 'valuable functionings' (e.g., Sen, 1993a). Harmful functionings, such as being raped or murdered are excluded (Robeyns, 2017, p. 42). On the other hand, some functionings are good (being in good health). In the end, we evaluate which functionings are valuable. For Sen, valuable functionings are the result of reasoning. As stated above, 'RtV' is similar to the rational approach. Therefore, CA can be perceived as a quasi-objective list (Qizilbash, 2013). It is only quasi-objective because Sen merely outlines a method for finding valuable functionings; he refuses to propose any objective list. A perfectionistic interpretation can be loosely consistent with CA, but it is controversial (see Claassen, 2018).

Now to the paternalism charge. In analysing Sen's arguments for a 'procedural autonomy' interpretation, this paper focuses on the 'process aspect', where agency should suffice to secure against paternalism. However, Sen also distinguishes the 'opportunity aspect' of freedom. Sen's critics argue that his focus on positive freedom can lead to paternalism. Whether this criticism is justified is discussed below. For Sen, opportunity implies an ability to achieve. He writes, 'The libertarian line of reasoning is independent of outcomes, but the persuasive power of that reasoning cannot really be independent of results. The issue becomes particularly important when the consequences resulting from the exercise of libertarian rights and market allocation are especially poor in terms of individual well-being, or in terms of individual freedom judged in the perspective of 'opportunity to achieve' (Sen, 1993b, p. 9). To illustrate the insufficiency of negative freedom, Sen gives the example of large-scale famines which 'occur without violating anyone's libertarian rights' (Sen, 1993b, p. 526). Because the 'process aspect' is insufficient, 'the opportunity aspect of freedom must be quite central to social evaluation' (Sen, 1993b, p. 527). The focus on opportunity opens the door to for paternalism. People need to be provided with some basic capabilities to have real opportunities, where a basic capability is 'the ability to satisfy certain elementary and crucially important functionings up to certain levels' (Sen, 1992, p. 45, fn 19). People need to have access to certain functionings, e.g., minimal nutrition or education, in order to have freedom (opportunity). Therefore, a capability is not only identified with opportunities, but

also with the ability to achieve, e.g., the ability to achieve minimal nutrition. Sen argues that both understandings are possible (Sen, 2009, p. 233). Some paternalism in CA is unavoidable because capability requires basic functionings: beggars cannot be choosers.

From the foregoing, the 'opportunity aspect' seems to clash with the 'process aspect', because people are provided with some functionings by the state. Sen's response to Cohen's criticism is comprehensively analysed in this paper in order to properly understand his position. Cohen (1993, 1994) argues that CA is excessively focused on capabilities (freedoms) and ignores passive achievements (functionings). Consequently, CA proposes an excessively 'athletic' account of wellbeing. Cohen uses malaria as an example of where the state should help people achieve freedom from something. Sen counters that 'athleticism was never intended' (Sen, 1993a, p. 43). CA acknowledges the importance of passive achievements because of the 'opportunity aspect' (positive freedom). CA justifies the removal of obstacles that deny people real opportunities. It is impossible to ensure the capability for good health in an environment in which malaria thrives (see Begon, 2016). The same is true of basic capabilities. People do not have real opportunities if they are starving. Sen concedes that the state can help people achieve valuable functionings: 'A person's ability to achieve various valuable functionings may be greatly enhanced by public action and policy.' (Sen, 1993a, p. 44). Sen also agrees that institutions can enhance capabilities. This, however, raises the question: if CA accepts the passive achievements provided by society (e.g., public education), then where does that leave autonomy and active choice?

Sen deploys two main strategies to defend passive achievements. First, he contends that freedom does not necessarily imply choices, but rather respect for decisive preferences. As in the example of the comma patient, indirect control can be justified. Sen focuses on decisive preferences which do not always assume active control (Sen, 1983). However, his focus on decisive preferences can lead to paternalism. For example, given the choice, most people would choose to work in a smoke-free environment. Therefore, it can be argued that a government program to prohibit smoking in the workplace boosts freedom. This is the case whether or not anyone is asked. In the absence of this program, people would not have the freedom to work in a smoke-free environment. Although the number of alternatives decreases (the freedom to smoke is lost), overall freedom is enhanced (Alkire, 2005). This reasoning demonstrates that CA can justify paternalism.

The second defence for passive achievements has also been touched on. Sen was well aware that functionings and capabilities overlap. He argues that functioning must be chosen freely if freedom is to be preserved. Does this strategy protect CA from paternalism? For Carter (2014), it actually opens the door to paternalism, because the goal is to achieve functionings, even if they are chosen freely. There are two different perspectives on functionings. First, people are provided with functionings to improve their capabilities, e.g., we force children to attend school. This kind of paternalism seems justified because it aims to increase autonomy (see Qizilbash, 2009). The second approach is more controversial. Capabilities are limited to help people achieve functionings, e.g., restrictions on unhealthy snacks to promote the

functioning of being in good health. This strategy seems inconsistent with CA because it restricts a person's freedom, which is an integral part of functioning. However, it can be defended because restriction of liberty can increase autonomy. Carter writes, 'the introduction of disincentives, the prohibition of various personal vices, or even the use of direct force, might still be justified as the most efficient way of promoting voluntary valuable functioning in the long run' (2014, p. 88). Carter concludes that freedom in CA does not have intrinsic, but rather a contributory (extrinsic) value. Freedom is always context-dependent. The content depends on valuable functionings. Therefore, not all capabilities matter. To find which capabilities matter, a list of valuable functionings is required. This can lead to paternalism because we limit capabilities to achieve some valuable functionings. The result is that Sen's freedom does not differ from Mill's. It is contingent and can be perceived as a 'non basic' value.

The two different interpretations of CA found in the literature were analysed above. They both exist because functionings and capabilities overlap, as do the 'opportunity' and 'process' aspects of freedom. As CA is open-ended, it can be interpreted in various ways. When the focus is on capabilities and the 'process aspect', the 'procedural autonomy' interpretation is more plausible. When the focus is on functionings and the 'opportunity aspect', the 'perfectionist' interpretation is possible. As argued above, Sen has unsuccessfully attempted to preserve the inherent value of freedom. The 'opportunity aspect', which focuses on functionings, leads to the assessment of capabilities. Thus, not everything that people choose is good for them (as in procedural autonomy). However, Sen does not want CA to be identified with a perfectionist interpretation, which can lead to paternalism. He therefore stresses the importance of the 'process aspect'. After analysing CA, it can be seen that Sen wants to have the best of both worlds. He tries to assess what people have reason to value (RtV) without being paternalistic. To achieve that, he proposes public reasoning, which he labels 'process interpretation'. This paper analyses its mechanisms and determines whether it functions as Sen intends.

RtV and public reasoning were added to CA later (Sen, 1999, 2005, 2009) in response to criticism of the 'thin view,' where a lack of evaluation of functionings and capabilities poses a problem due to adaptation (people do not always choose what is good for them). RtV and public reason represent the 'thick view' because functionings and capabilities are evaluated. As demonstrated above, evaluation can lead to a charge of paternalism because CA assumes 'valuable functionings' chosen by reasoned judgments. Public reasoning is a way to avoid charges of paternalism and perfectionism charges, as the evaluation is open-ended. Sen connects public discussion with the democratic process. It is a defence against paternalism and perfectionism because nobody is forced to adopt any objectively specified values. First, public discussion encourages a plurality of values. It acknowledges voices from other cultures. Second, Sen refers to Rawls' 'overlapping consensus' (Sen, 2009). Anyone can participate in a public discussion and all voices count as equal. A public discussion enables people to exercise their agency. Third, a public discussion is open-ended. Its role is not to find objective functionings but to enhance capabilities (people hear different opinions from which they can choose). In general, the 'process' interpretation connects the 'procedural autonomy' and 'perfectionist' interpretations. It is open to values from

different people and cultures. However, there is an evaluative component. After a public discussion, we come to a reasonable agreement about functionings. Can CA escape from being relativistic (procedural autonomy) and paternalistic? Is it possible to have your cake and eat it too? It does not seem that public discussion is capable of this. First, it does not resolve the adaptation problem. Democratic societies can be xenophobic and racist. Second, public discussion cannot prevent the tyranny of the majority. The third criticism comes from communitarianism. Sen is criticized for perceiving reason as a value-neutral process of finding preferences. Even if reason is perceived as a process, communitarians argue, it is not value-free. Its understanding originated in the Western perception of reason as rationality (Gasper, 2009).

Public discussion is criticised because it is not an ironclad method of precluding tyranny. However, Sen adamantly stresses the importance of freedom (procedural autonomy). It is easy to imagine a society that bans smoking after a public discussion, even if some members want to smoke. However, this does not mean that CA necessarily leads to a restriction on freedom. Although some societies do not promote smoking, they can promote liberty to do so (Qizilbash, 2011). To conclude, public discussion mitigates the risk of paternalism by opening us up to different voices. However, public discussion is not an ironclad method against paternalism. Sen's understanding of reason as a neutral procedure does not work because procedure and reason are not defined. Because reason assumes some form of rational approach, CA remains open to the charges of paternalism and perfectionism.

Analysing three different interpretations of RtV compels two conclusions, the first being that each conclusion can be justified to a certain extent, depending on which aspect of CA is focused on. The second conclusion is that RtV can lead to paternalism even though Sen not only does not intend it to do so, but has even gone so far as to provide CA with protective measures, e.g., process freedom. The perspective on CA adopted by this paper is analogical to a kitchen knife that can be used to stab people or to cut bread. The goal is not to denounce Sen because RtV is sometimes used to justify paternalism, but merely to show that RtV opens the door to paternalism. How CA is used, as with a knife, depends on the user.

3.2. Libertarian paternalism

Contrary to Sen, Thaler and Sunstein embrace paternalism. They directly state that their goal is to improve people's welfare. Nudges are justified because they 'make choosers better off, as judged by themselves' (Thaler & Sunstein, 2008, pp. 5, 10, 12, 80). People need nudging because 'in many cases, individuals make pretty bad decisions – decisions they would not have made if they had paid full attention and possessed complete information, unlimited cognitive abilities, and complete self-control' (Thaler & Sunstein, 2008, p.5). As stated above, LP is similar to the rational approach (Sugden, 2008b; Qizilbash, 2012). LP wants to transform the individual into homo economicus. From this perspective, freedom is identified with rationality and purified preferences. People are not free because of bounded rationality.

To understand better why LP embraces paternalism, this paper analyses 'libertarian paternalism' in the context of Berlin's writings. Thaler and Sunstein focus on

negative freedom. Although LP embraces paternalism which seems contrary to the libertarian part, paternalism is justified because it is inevitable. Sunstein and Thaler argue for libertarian paternalism in contrast to 'the dogmatic anti-paternalism of numerous analysts of law, including many economists and economically oriented lawyers' (Sunstein & Thaler, 2003, p. 1162). They claim that dogmatic anti-paternalism is based on one false assumption and two misconceptions. The false assumption asserts that 'Almost all people, almost all of the time, make choices that are in their best interest or at the very least are better, by their own lights, than the choices that would be made by third parties' (2003, p. 1163). Nowadays, this position is not shared by many, as it has largely been discredited by behavioural economics. This paper therefore focuses on the two misconceptions.

Sunstein and Thaler write, 'The first misconception is that there are viable alternatives to paternalism' (2003, p. 1164). They argue that paternalism is inevitable and that any opposition to paternalism is a 'literal nonstarter' (Thaler & Sunstein, 2008, p. 11). Moreover, they argue that revealed preferences should not always be respected because preferences are context-dependent. For every decision, there is a choice architecture that nudges in some direction. Thaler and Sunstein ask whether there are any reasonable alternatives to the choice architects who nudge people towards welfare-increasing choices (Thaler & Sunstein, 2008). In the cafeteria example, the only sensible option is to arrange the food in a way that improves the wellbeing of the consumers (from fruits to cakes). Thaler and Sunstein argue that a deliberate arrangement is better than random choice or profit maximization. This is paternalistic. However, it is not a problem because there are no alternatives to paternalism (choice is always influenced). Therefore, the anti-paternalist position does not make sense, and the only task for libertarians is to provide freedom of choice (Sunstein & Thaler, 2003).

'The second misconception is that paternalism always involves coercion' (Sunstein & Thaler, 2003, p. 1165). As was demonstrated in the cafeteria example, paternalism is inevitable. However, Thaler and Sunstein added the word 'libertarian' because interference with an individual's preferences is only justified when it does not limit freedom to choose. They argue that their conception remains paternalistic even though it does not limit choice. The idea that paternalism implies coercion is a 'misconception'. For Thaler and Sunstein, paternalism implies that we increase wellbeing by helping people to make better choices. In the cafeteria example, the arrangement of products to make people better off is what makes it paternalistic. However, libertarians should not object because there is no restriction of freedom. Choice architects, by providing a default option (the arrangement of food), nudge people toward welfare-improving choices, which is paternalistic. In order to leave people freedom 'opt-out clauses' are introduced. In the present example, people are free to choose unhealthy snacks if they want to. Thaler and Sunstein stress that people must have a possibility not to follow nudges. They must be 'easy and cheap to avoid' (Thaler & Sunstein, 2008, p. 6).

LP, as proposed by Thaler and Sunstein, provoked a great deal of discussion. This paper focuses on the problems that become apparent when LP is compared with CA. First, the paternalism charge is analysed, and then the perfectionism charge.

The first problem is connected with freedom and autonomy. Thaler and Sunstein argue that libertarians have no reason to object to LP because choice architects do not restrict choice. However, 'freedom of choice' is not a universally accepted definition of freedom. Some argue that freedom comes with responsibility for our actions, even if they are harmful to us. Moreover, autonomy is identified with control. Libertarians do not allow the state to interfere with individual preferences, even if the goal is to improve wellbeing. Griffin writes, 'one element of agency is deciding for oneself. Even if I constantly made a mess of my life, even if you could do better if you took charge, I would not let you do it. Autonomy has a value of its own' (Griffin, 1986, p. 67). This is the core of the libertarian's argument. Liberty has an intrinsic value. Even if someone is miserable, nobody has the right to take charge of his/her decisions. By nudging, the state takes charge of people's lives (Mitchell, 2005; Sugden, 2008b; Grüne-Yanoff, 2012; Rebonato, 2012; White, 2013). Moreover, libertarians do not like the perception of human in LP who is depicted as Homer Simpson. LP infantilises people by having choice architects decide for them. And active choice is what gives people dignity (see Mitchell, 2005; Grüne-Yanoff, 2012; Rebonato, 2012).

Many scholars have analysed the impact of nudges on autonomy (Bovens, 2009; Hausman & Welch, 2010; Rebonato, 2012; Hansen & Jespersen, 2013; White, 2013; Schubert, 2015). The crucial criticism is that nudges influence behaviour by harnessing cognitive biases. This is an infringement on autonomy as it consigns people to the role of passive bystanders. In this light, autonomy is identified with reasoning capacity. Bovens (2009) claims that an agent acts autonomously when his/her actions are responsive to reason. Many nudges do not refer to reason, e.g., a willingness to donate organs depends on information about those who have already donated. If nudges use non-rational factors, they compromise autonomy. There is also a manipulation problem, as people are not always consciously aware that they are being nudged (Wilkinson, 2013).

The next problem has to do with perfectionism. As stated above, the goal of the choice architect is to help people satisfy their purified preferences. The crucial problem with purified preferences lies in identifying them. This is known as the 'knowledge problem' There is a vast body of literature showing that finding purified preferences may be unachievable (Sugden, 2009, 2015, 2017, 2018a, 2018b; Grüne-Yanoff, 2012, 2016; Rebonato, 2012; Whitman and Rizzo, 2015; Gigerenzer, 2015, 2018; Grüne-Yanoff and Hertwig, 2016; Infante et al., 2016; Hands, 2020).

As discussed, the brunt of the criticism concerns nudges that trigger cognitive heuristics. These are thought to restrict autonomy, as they exploit cognitive shortcuts. This criticism focuses on type 1 nudges. Over time, Sunstein specified the differences between type 1 and type 2 nudges. Before analysing type 2 nudges, Sunstein and Thaler's contention that even nudges that trigger heuristics enhance autonomy needs to be examined. They draw on Kahneman's distinction between system 1 (automatic) and system 2 (reflective) (Kahneman, 2011). A type 1 nudge is connected with system 1, which is a subject of cognitive errors. Thaler and Sunstein (2008) present many examples of how nudges exploit cognitive biases. Type 1 nudges trigger heuristics to improve welfare, e.g., the 401k plan uses inertia to help

people save more (Benartzi & Thaler, 2007). Because type 1 nudges use heuristics, they are criticized for being manipulative and threatening autonomy. Thaler and Sunstein argue that type 1 nudges respect autonomy because only an inner agent is autonomous. Cognitive biases are perceived as alien influences that make people unfree. For Thaler and Sunstein, type 1 nudges enhance autonomy because they help agents realize their true selves identified with purified preferences.

Many scholars remain unconvinced by this line of reasoning, and counter that type 1 nudges are manipulative and infringe on autonomy. Sunstein (2015) address this concern by explaining that nudges do not need to trigger heuristics to exploit cognitive biases. First, some nudges block or counteract the adverse use of heuristics (see Mills, 2015). For example, mandatory cool-off periods after a purchase counteract present bias. Second, some nudges need not be connected with heuristics at all. Disclosure of information is helpful even if there is no bias, e.g., GPS (Sunstein, 2015). By specifying the variety of nudges, Sunstein responded to the criticism concerning type 1 nudges. He argues that we need to analyze particular nudges because some of them are not all manipulative. This paper analyses type 2 nudges to see whether they leave autonomy intact.

'Type 2 nudge' is an umbrella term that subsumes such concepts as 'educative nudge' (Sunstein, 2016) and 'boost' (Grüne-Yanoff & Hertwig, 2016). Sunstein (2016) argues that educative nudges strengthen System 2. This can be accomplished by disclosing information (e.g., nutrition labels). Their intended purpose is to increase people's capacity to exercise their agency. 'Boosts' are similar to type 2 nudges. The aim is to preserve and exercise agency (Grüne-Yanoff & Hertwig, 2016). They improve people's capacity to make choices. This is done by improving competencies, e.g., by giving people the ability to understand statistical health information. A boost should be explicit, visible, and transparent. Sunstein writes approvingly that 'some of the best nudges are boosts' (Sunstein, 2016, p.10). The question that naturally arises is which of these nudges embodies LP's goals of sustaining freedom. Type 2 nudges influence behaviour attached in reflective thinking (system 2). This is not achieved through manipulation. Hansen and Jespersen (2013) argue that type 2 nudges facilitate freedom of choice and can be perceived as a libertarian nudge. They allow individuals to be nudged while leaving them free to choose. Conversely, type 1 nudges do not allow individuals to avoid their effects, as they influence automatic behaviour (system 1). Therefore, type 1 nudges are not libertarian.

Mill's 'basic' and 'non basic' values are invoked here to better understand LP's conception of freedom. LP seems to be in two minds when it comes to freedom. It is often perceived as a non-basic value. In contrast to libertarianism, freedom in LP does not have intrinsic value; it can be restricted for the sake of wellbeing. The conclusions from the first section are now used to explain why freedom does not have intrinsic value. It was stated there that LP uses a framework where utility is a black box that contains everything. Therefore, freedom can be compared with wellbeing. This attitude is apparent in Sunstein's responses to objections concerning autonomy. Sunstein (2014) argues that trade-offs between autonomy and other values are necessary, and these are not always in favour of freedom. There are many examples where excessive freedom is detrimental to wellbeing, e.g., choosing a pen-

sion plan in Sweden and President Bush's drug reimbursement program (Thaler & Sunstein, 2008, pp. 149, 159). However, LP also treats freedom as a basic value. It is protected by opt-out clauses. People can make choices that are detrimental to their wellbeing. Moreover, nudges are designed to help people sustain freedom, which is interpreted from a rational perspective. Thaler and Sunstein argue that freedom is sustained because choice architects steer people toward purified preferences identified with autonomy. In the end, there is no single interpretation of freedom in LP. However, despite providing opt-out clauses, Thaler and Sunstein perceive freedom more as a non-basic and instrumental value. Thus, paternalism is justified in LP in situations where freedom does not lead to happiness (Thaler & Sunstein, 2008).

Now to the final stage of the LP analysis. The three interpretations employed in CA (procedural autonomy, process, and perfectionism) are employed here. This framework is used because RtV resembles the rational approach of LP insofar as reason is paramount. As before, procedural autonomy can be equated with capabilities and perfectionist interpretation with functionings. LP does not use the terms 'functionings' and 'capabilities'. Therefore, functionings are interpreted as achievements and capabilities as freedoms.

LP lends itself to the perfectionism interpretation for several reasons. First, it relies on a list of objective goals (e.g., better health). Thaler and Sunstein argue that our inner agent wants them even if we choose differently. LP eschews revealed preferences because of cognitive biases. Instead, it relies on purified preferences. Although choice architects respect people's preferences concerning taste (e.g., Cola vs. Pepsi), LP establishes some uncontroversial goals like better health and more retirement savings. This attitude can be interpreted as an objective list which is based on purified preferences. Second, LP focuses on functionings and ignores decisional autonomy as unimportant. Choice architects are not interested in the process of achieving functionings. It does not matter if someone personally chooses the best pension plan. The example of GPS amply illustrates this. The goal is to get to the desired place as soon as possible. There is no consideration for the satisfaction that people derive from choosing their own route. LP's reliance on functionings is also apparent in the example of the benevolent dictator. The standard of living and quality of life that the dictator provides are what matters, not the decisional autonomy of individual citizens. A choice architect can be thought of as a benevolent dictator, as people rely on nudges and do not always choose actively.

This focus on functionings relegates capabilities to the background. Negative freedom is not defended because choice architects interfere with people's choices by means of nudges. Although Thaler and Sunstein argue that this is unavoidable, choice architects are encouraged to influence people. The goal is not to be neutral but to actively steer people toward wellbeing. The intentional component changes the perception of nudges (see Schubert, 2015). LP's reliance on functionings is apparent when they conflict with capabilities. Thaler and Sunstein present many examples where freedom (capabilities) is detrimental to wellbeing (functionings), e.g., unhealthy snacks in a cafeteria, or when choice demands expertise, e.g., choosing between pension plans. Therefore, capabilities are not always good and can be limited to achieve functionings.

Although LP is suited to a perfectionist interpretation, some elements support a procedural autonomy interpretation. First, people have autonomy. They can avoid a nudge and choose differently. People can eat unhealthy snacks, even if it is detrimental to their health and despite warnings to that effect. In this light, freedom (capability) is more important than wellbeing (functioning). Second, people are protected from coercion (negative freedom). They can choose for themselves. Choice architects do not force people. A nudge must be 'easy and cheap to avoid' (Thaler & Sunstein, 2008, p. 6). Moreover, nudges are only applicable to specific choices where objective goals can be established. People can generally follow their tastes (Cola vs. Pepsi) and choice architects do not interfere with them. The strongest support for a procedural autonomy interpretation is type 2 nudges. By supporting active choice, they enhance autonomy, and by disclosing information, they enhance the capacity to choose.

Having analysed procedural autonomy and perfectionist interpretation, we move to process interpretation, which underscores the procedure by which RtV is discovered. LP requires that we determine what an inner agent with no cognitive biases would choose. Uncovering purified preferences involves looking at declarations. LP additionally draws on behavioural economics to discover cognitive biases. Thaler and Sunstein are not interested in a public discussion to find RtV. Purified preferences can be found with the aid of behavioural economics and declarations. However, the procedure LP uses to find RtV is questionable. The 'knowledge problem' shows that finding purified preferences may be unachievable and that the reliability of declarations is questionable (Sugden, 2018b). Moreover, the standard of rationality corresponding to RTC has been criticized as not being objective (Gigerenzer, 2015, 2018). The second criticism concerns paternalism. LP relies on an individualistic perspective, where the government acts on its knowledge of purified preferences. This renders public discussion redundant. Admittedly Rawl's 'publicity principle' is added (Thaler & Sunstein, 2008, p. 244). However, this does not make the critics any less uneasy about potential abuse of power, because choice architects are perceived as experts who know what is best for people.

The foregoing analysis shows that LP is best suited to a perfectionist interpretation because it focuses on functionings (wellbeing). First, capabilities are limited to achieve functionings. Second, Thaler and Sunstein argue that we can establish uncontroversial goals (purified preferences) and nudge people toward them. This leaves LP open to the charge of paternalism. However, LP also has elements that lend themselves to a procedural autonomy interpretation. People are at liberty to ignore nudges and choose for themselves. These differing interpretations are possible once the differences between type 1 and type 2 nudges are taken into consideration. The former is suited to a perfectionist interpretation and the latter to a procedural autonomy interpretation. However, LP is more suited to a perfectionist interpretation once the responses to it are examined and the most popular nudges analysed. Moreover, when we consider the controversiality of the procedure for finding purified preferences, and the ease with which capabilities can be limited to achieve functionings – and that choice architects are encouraged to do just that – the paternalism charge seems justified.

3.3. Freedom. CA vs. LP

Now that freedom in LP and CA has been analysed, these two approaches can be compared. There are two crucial similarities. First, reason is paramount. Reason not only serves as a method of finding people's true preferences; it is also identified with freedom. Sen argues that being free means being able to reason about one's preferences. LP also identifies reason with freedom. Cognitive biases are perceived as obstacles to freedom because only our inner agent is truly free. Second, CA and LP perceive freedom as a non-basic value. Although Sen wanted to preserve freedom as a basic value, he was unable to do so. In the end, wellbeing overlaps with freedom in both approaches.

This understanding leads to CA and LP being criticized on the grounds of perfectionism and paternalism. The first problem that arises concerns the identification of reason with freedom. In CA, not all freedoms are good. They are assessed by reason. Therefore, a perfectionist interpretation is possible. Although Sen encourages public discussion, it is not an iron-clad method against paternalism. The criticism concerning LP is stronger because it proposes an objective list based on purified preferences and gives power to experts. The second problem is the contingency of freedom, which overlaps with wellbeing. For Sen, more choices do not imply greater freedom. They should be connected with the 'opportunity to achieve' and with 'valuable functionings'. Some restriction of freedom is necessary to achieve valuable functionings. The smoke-free environment example shows that CA can licence paternalism. By contrast, LP is built on consequentialist grounds. Therefore, choice architects will limit freedom if it decreases wellbeing.

CA and LP respond to these criticisms by securing negative freedom. Sen presented the 'process part' with 'autonomy of decision' and 'immunity from encroachment'. Consonant with this, the prior choices of a coma patient will be respected, even if detrimental to his/her wellbeing. Decisiveness of preferences is also respected in LP. People can choose for themselves and are not obliged to follow nudges. CA and LP are also found to share similarities when type 2 nudges are analysed. Sen has no cause for objection, because they treat people as autonomous beings. Even forcing people to choose actively is only done to increase autonomy. This is similar to Sen's mandatory basic capabilities. Moreover, type 2 nudges disclose information, which Sen favours because information improves people's capacity to choose.

Despite these similarities, there are also substantial differences. First, there is Berlin's dichotomy. LP relies on it. Thaler and Sunstein argue that LP is libertarian because nudges do not coerce people and negative freedom is safeguarded. Sen, however, goes beyond Berlin's dichotomy. He uses functionings and capabilities where positive and negative freedoms are intertwined. The second difference concerns the salience of functionings and capabilities. LP focuses on achievements and is not concerned whether people achieve functionings themselves or get them. CA regards passive achievements as insufficient because people need to make their own decisions. Sen refuses to cede autonomy to a benevolent dictator, even if allowances are made for exceptions such as basic capabilities. The most significant difference between CA and LP lies in how they perceive people. LP is similar to behavioural

economics, which focuses on people's irrationalities, and attempts to explain why people do not behave as homines economici. By contrast, Sen perceives people as autonomous beings with the capacity for reason. Thus, no objective list is necessary in CA, whereas in LP, people are nudged toward objective goals (e.g., better health). The final difference lies in their respective attitudes to paternalism. LP embraces paternalism because it is deemed unavoidable. Sen dismisses paternalism because the process aspect of freedom is deemed essential, as are capabilities. The present article demonstrates that, despite Sen's intention, CA can lead to paternalism. However, it has to be borne in mind that paternalism is the exception in CA, but the rule in LP.

4. Conclusion

The first section of this paper demonstrated that both CA and LP can be broadly perceived as rational approaches. CA perceives rationality broadly. For Sen, rationality is not an objective ideal. It is purposefully left undefined and placed in a social context. Moreover, rationality is not identified with self-interested welfare and contains other values (commitments). In contrast, LP perceives rationality within a neoclassical economics framework. It searches for purified preferences identified with homo economicus. Every departure from this ideal is treated as an error in need of correction. Moreover, LP identifies rationality with self-interested welfare. Sen's understanding is therefore closer to old behavioural economics and ecological rationality, whereas libertarian paternalism's understanding is closer to the new behavioural economics.

The second section shows that Sen has tried to repudiate these charges of perfectionism and paternalism. As he does not specify any objective list of functionings, the perfectionist interpretation of RtV is not accurate. However, procedural autonomy interpretation is not fully accurate either because freedom does not have an intrinsic value. The contingency of freedom opens the door to paternalism, e.g., a smoke-free environment. By contrast, LP embraces paternalism. LP is best suited to a perfectionist interpretation because people are nudged toward objective goals that an inner agent would choose. However, LP leaves people free to ignore nudges. Although they are meant to preserve autonomy and draw LP closer to a procedural autonomy interpretation, nudges limit people's capabilities to choose for themselves. This is because most of them exploit cognitive biases by triggering heuristics. In short, LP does not have a sure-fire strategy to ensure that autonomy is respected and paternalism avoided. The final difference between LP and CA concerns process interpretation. Sen sees public reasoning as a safeguard against paternalism and perfectionism, whereas in LP power is given to experts and public discussion is not seriously considered.

Despite their differences, CA and LP are more friends than foes. Sen would almost certainly reject this conclusion because he has argued against paternalism and objective lists. However, RtV has opened the door to practical approaches like LP. Both CA and LP rely on reason and aim to help people achieve a good life while sustaining autonomy. Although these terms are perceived differently, the two ap-

proaches are not necessarily at odds once practical issues, such as improvement of health and increasing wealth, are taken into consideration.

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