

Choice, responsibility, justice: Work and family in Australia

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Abstract

We all start life needy, dependent on adults for our survival. Many of us will rely on the care of others during the final stages of our lives. Between these two periods we may draw on intensive support to help us cope with illness, disability or tragedy. Our dependence is a core characteristic of our humanity, yet it is ignored or denied by dominant political and economic theories. In Australia, as in every other country, it is mostly women who provide the care of children as well as people who are sick, disabled or aged. Although there are often intrinsic rewards, unpaid care work is time consuming and limits the carer's ability to engage in other types of activities, including paid employment. The majority of employed carers are women, with their work attracting low levels of pay. Characterised by an uneven distribution of both care work and resources, the dynamics of work and family life in Australia raise important questions of justice.

While the Australian work and family literature is rich in detail, it tends to be under theorised. My research helps fill this gap, providing theoretical depth and greater conceptual clarity to an ongoing and often heated public debate. Using philosophical inquiry I examine the nature of the problem of care, the way it is framed and the implications for social policy. Rejecting dominant choice and preference theories and aspects of care ethics, I find that Martha Nussbaum's capabilities approach provides a more promising theory for thinking about care and gender equality. However, I raise a number of questions concerning care, responsibilities, the appropriate political goal and the ontology of capabilities. To address these issues I propose an extended and restructured capabilities list, which I test by evaluating three contentious policy issues: extended parental leave, carer's payment and shared care. I find that my revised capabilities approach provides a stronger support for justice in the way care is provided.

Student Declaration

I, Mary Leahy, declare that the PhD thesis entitled *Choice, responsibility, justice: work and family in Australia* is no more than 100,000 words in length including quotes and exclusive of tables, figures, appendices, bibliography, references and footnotes. This thesis contains no material that has been submitted previously, in whole or in part, for the award of any other academic degree or diploma. Except where otherwise indicated, this thesis is my own work.

Signature

Date 17 April 2012

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Of course, the responsibility for the errors, omissions and inadequacies that remain in this work is mine alone.

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Glossary of abbreviations

ABS	Australian Bureau of Statistics
AIRC	Australian Industrial Relations Commission
AIHW	Australian Institute of Health and Welfare
CCB	Child Care Benefit
CCR	Child Care Rebate
DEEWR	Department of Education, Employment and Workplace Relations
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
DFACS	Department of Family and Community Services
EMTR	Effective marginal tax rate
EOWA	Equal Opportunity for Women in the Workplace Agency
FTB	Family Tax Benefit
FTBA	Family Tax Benefit part A
FTBB	Family Tax Benefit part B
GDP	Gross Domestic Product
GNP	Gross National Product
NES	National Employment Standards
OECECC	Office of Early Childhood Education and Child Care
OECD	Organisation for Economic Co-operation and Development
PI	Participation Income
PPL	Paid Parental Leave
RCT	Rational Choice Theory
TLM	Transitional Labour Market
TFR	Total Fertility Rate
UBI	Universal Basic Income
UNDP	United Nations Development Programme

Chapter 1 The problem of care

1.1 Introduction

In 2004, a Melbourne playwright and novelist Joanna Murray-Smith (2004) raised a question she claimed we are too scared to hear – Is a working mother good for the child? She followed this with another question – How can we challenge the wisdom of pursuing a career without seeming to push women back into traditional roles? Needless to say, Murray-Smith's article provoked a strong response. It was pointed out that she focused on mothers and ignored the role of fathers (Bantick 2004; Conor 2004; Croggon 2004; Donahoo 2004; Porter 2004), failed to understand feminism (Conor 2004; Ross 2004), neglected the effects of class (Porter 2004) and did not challenge conventional ideas about mothering (Croggon 2004; Porter 2004). However, the real problem is that Murray-Smith asked the wrong questions. She focused on the decisions made by individual mothers and failed to scrutinise the social, economic and political conditions under which mothers live. The issue is not the selfishness of educated mothers but the unfair allocation of responsibilities. The injustice is captured in the feminist economist Nancy Folbre's delightful retelling of the Australian artist Norman Lindsay's (1970 (1918)) story for children called *The Magic Pudding*:

According to Norman Lindsay's classic tale, a lovable but rather clueless group of males come into possession of a walking, talking pudding that provides a limitless supply of food. The pudding in question is rather cranky, and occasionally tries to run away. In the end, however, it is fenced into its own little paddock, firmly in the possession of the Society of Puddin' Owners.

Times have changed since the story was published in 1918, though you might not guess this from the recent cartoon film version. We know now that the pudding is not really named Albert. Its real name is Mother. It represents the supply of feminine altruism that has been the major provider of care not just for children, the sick and the elderly, but also for many working-age adults. This supply of altruism remains magical in its ability to meet the needs of its loved ones. But it is not (and never has been) inexhaustible. And there are many signs that it is wearing thin. Furthermore, consider who you would like to be when you grow up: Bunyip Bluegum, a cute little koala free to venture into the world with nothing but a walking stick, or Magic Pudding, a captive in a cookpot available to meet everyone else's needs. (Folbre 2002)¹

1.2 The nature of this study

This thesis is primarily a philosophical inquiry into the problem of care. Women and men in contemporary Australia tend to have different types of responsibilities, opportunities and

¹ The Australian artist Norman Lindsay wrote *The Magic Pudding*, in part, to settle an argument with a friend who claimed that children liked stories about fairies. Lindsay disagreed, stating that children liked to read about food (Norman Lindsay Gallery 2011).

rewards. I argue that a just society is not possible if some members receive inadequate care or if the conditions under which care is provided are exploitative. Care for those who need it is central to social and economic sustainability. It shapes our sense of well-being. The way we organise, support and reward care and other types of work is a moral or ethical matter. It concerns values and beliefs about our entitlements and responsibilities. It is not possible to devise a just model for the social organisation of care without addressing moral questions.

The Australian literature on work and family is extensive and rich in detail. However it tends to be under-theorised. This thesis aims to help fill this gap by offering theoretical depth and greater conceptual clarity to an ongoing, and often heated, public debate. There are four main aspects to the original contribution made by my work. First, I provide a specification of the ethical problem of care, demonstrating that it is a question of justice. Secondly, I provide a critical evaluation of the Australian research, an evaluation grounded in the philosophical literature. Thirdly, I show that we have a responsibility to provide care as well as an entitlement to receive care. This has profound implications for both theory and social policy. Finally, I develop a restructured and extended version of the capabilities approach, which takes account of care, in particular our obligation to provide care and addresses the ontology of the capabilities. This revised capabilities approach provides a stronger foundation for robust and ethical policy. My focus is on Australia. Although this means addressing a particular set of political, economic, social and cultural conditions, many of the specific issues raised are relevant in other developed countries and the philosophical discussion is internationally applicable.

1.3 Framing the problem

The first step is to recognise that care is a problem of justice, but that there is no universal agreement on this. Specialist in legal ethics and gender, Deborah Rhode (1997, chapter 1) describes this as the 'no problem' problem. Three broad types of denial are identified by Rhode. First is the denial that there is any inequality. This may include the view that there was a problem but that it has been solved. Secondly, the injustice of the inequality is denied, usually because any difference in circumstances is attributed to women's own choices, preferences, nature or abilities. The final type involves a denial of responsibility: the view that if I did not cause the problem I have no obligation to rectify it (see also Smith 2002, p. 155).

The care of family members is usually the responsibility of women. They either provide the care themselves or coordinate alternative arrangements and, in addition, do most of the household work. The people employed as carers are also more likely to be women, and the jobs are generally poorly paid. The gendered division of paid and unpaid work is reflected in the income levels, overall wealth and social standing of women compared with men. Australia is not unique. If we look at measures that include life expectancy, wealth and education, it is evident that no country treats women as well as it does men (Nussbaum 2000c, p. 2, drawing on United Nations Development Programme (UNDP) 1997; a situation documented in more recent reports UNDP 2010a, 2010b). In this thesis I will argue that a society cannot consider itself just if its members are unable to receive the care they need. Nor is it just if people are penalised financially and socially for providing the care we all need at some point in our lives.

Feminist philosopher Martha Nussbaum (2002b, p. 34) argues that the way we think about care is important. The dominant economic approach, for example, tends to view care as a matter of efficiency, which obscures considerations of justice and equity. Nussbaum holds that the simple language of efficiency needs to be replaced with the more complex language of human development. Nussbaum sees one task of human development is to raise women's sense of their worth and to increase the opportunities available to them. However, any real or sustained change must be 'accompanied by the task of educating men to see worth and manliness in ways that are not incompatible with doing more care than men typically do' (Nussbaum 2002b, p. 37). This is important, but we need more than the removal of one impediment. We also need both men and women to understand that the allocation of care and housework is a matter of justice.

The ability to formulate and enact a plan of how one should live is a central part of our humanity. However, the ways in which our responsibilities to others are conceptualised, supported by social institutions and become embedded in our sense of what constitutes the good life are also significant. Although there is an important individual component to the problem of care, to focus only on the individual level is to specify the ethical problem incompletely. This is the problem with Murray-Smith's questions, raised in the introduction. Analysis must focus on the constraints and enabling factors inherent in our social and institutional arrangements. This means the most appropriate level of analysis is on the social level, particularly on the structural arrangements that facilitate some options and obstruct others. In this way we avoid blaming individuals for the constraints they face. This point is illustrated by an example involving a very different matter. Australian economist James Doughney (2006b) argues that the important ethical question is not whether individuals should use poker machines but whether companies should make profits and governments collect revenue from the gaming when the vast bulk of the money comes from people who are addicted to the activity.²

Another important issue framing the problem of care is whether we consider children to be primarily an individual or a social responsibility. Neo-liberal political theory and neo-classical economics³ constructs children as equivalent to a consumer good with the cost outweighed by the psychic pleasure derived from being a parent. Another view holds that children benefit not just their parents but their society (Folbre 1994a, 2001). Parents raise children to the advantage of the whole community but bear most of the costs themselves, both financial and in terms of time (Folbre 2001). Both these perspectives focus on the instrumental value of children. If we are concerned with the dignity of each human being (child and adult) then our concern will be with their intrinsic value. From each of these positions flow different social policies and levels of state financial support. Attentiveness to these views helps clarify debates on contentious issues such as payment for care work.

² The importance of different levels is beautifully illustrated in a speech given by former Australian High Court Judge Michael Kirby shortly before his retirement. He identified love as the most important thing in life: love for one another, for our community and for others right across the world. His focus was not limited to love in our personal relationships. Instead Kirby described the significance of The Universal Declaration of Human Rights which makes a claim for freedom based on the idea of the intrinsic value of each human life (Kirby 2008).

³ I use the catch-all term 'neo-classical economics', if technically somewhat loosely, to stand for orthodox economics more generally, including some recent manifestations found in the fields of law and economics.

Many contradictory claims and assertions are made in academic research, reports and submissions, popular books and newspaper articles. Mothers are either being pushed back to work (Hakim 2000; Manne 2005, 2008) or they are being squeezed out of higher level jobs and, in some cases, out of the workplace (Morehead 2005; Summers 2003). Middle class mothers are either opting out of professional jobs to spend more time with the children or they are continuing to embrace paid employment. It is critical that claims are substantiated by strong evidence. Much of the Australian research on work and care is empirical, so there is no dearth of information. However, we must continue to interrogate the findings, our own and the work of others. We must assess the quality of the data, the validity of the assumptions and the plausibility of the analysis.

The issue is not necessarily that the commentators and researchers are expressing opinions that draw on hidden values and beliefs about gender equity, motherhood and well-being. The problem is that the social sciences are plagued by an unnatural split between positive and normative thought. Over the past 200 years the orthodox view has been to expunge values from science and reason from values. This has led to the dominance of the view that values can only be subjective and not objective (Sayer 2003). My plea for attentiveness to the evidence assumes that we can make sense of the world through rigorous scientific inquiry. I also hold that it is possible to argue that one idea, policy or proposal is better than another because, according to the best available evidence, it offers a better life for us as humans. In this way my approach is explicitly normative.

1.4 Overview

In this introductory chapter I have outlined the nature of this study and identified the social provision of care as an ethical or moral problem. In chapter 2, I provide some context for the theoretical discussions that will follow. Drawing on data from the Australia Bureau of Statistics (ABS) and on other research, I describe work patterns and care arrangements in contemporary Australia. I consider the allocation of work and resources, the problem of time and the nature of public financial support for Australian families.

Chapter 3 provides an elaboration of my approach to the problem of care. First, drawing on Nussbaum, I establish the relevance of philosophy to a pressing practical problem. Then, I specify a feminist approach. Following this, I argue that we need a meaningful way of gauging the well-being of women. We also need a theory of justice and that the most appealing is the capabilities approach. I outline the development of the capabilities approach, explaining the difference between Nussbaum's (2000c, 2006, 2011b) and Sen's (1992, 2004, 2009) formulations, stating why I prefer the former. I also consider the main criticisms of the capabilities approach. Finally, while Nussbaum's capabilities approach helps us see how individuals are faring and provides a basis for their claims for justice, it does not explore ontologies explicitly. To answer these questions I draw on critical realism, which also provides guidance in how to proceed with an investigation that is neither inductive nor deductive but an iterative process of considering evidence and theories.

In chapter 4, I outline the 'work and family' literature, either Australian or influential in Australia. In the first part of this chapter, I provide an overview of the extensive 'work and family' literature, identifying the main areas of focus. In the second part, I focus on five models proposed to explain the way a society might organise paid and unpaid work: traditional breadwinner, modified breadwinner, universal breadwinner, caregiver parity model and universal caregiver. In the last part of this chapter, I describe the values and

pressures shaping family and employment policy by briefly discussing Australia's recent taxation review (Henry 2010a, 2010b, 2010c).

Choice and preference theories are used, not always explicitly, to explain individual decision-making about work and care. Catherine Hakim's (2000) preference theory, a variation of rational choice theory, assumes that preferences are for the most part fixed, and the process of making a decision is largely instrumental. In chapter 5, I draw on the growing body of evidence from neuroscience, behavioural economics, philosophy and psychology to challenge this and similar preference theories. I outline some alternative theories of choice and decision-making, including prospect theory and social choice theory. I also discuss the problem of adaptive preference formation, which describes how experiences shape our expectations and preferences.

Finding neo-liberal choice and preference theories to be deeply flawed, I consider a far more promising approach to care, the ethics of care. In the first part of chapter 6, I consider the relationships between ethics of care and maternal feminism. In the next part of the chapter, I consider the development of ethics of care through a discussion of the different versions proposed by Joan Tronto (1993, 1999), Diemut Bubeck (1995), Eva Feder Kittay (1999, 2002b), Virginia Held (2006) and Daniel Engster (2007). After considering some of the criticisms directed at ethics-of-care approaches, I identify the five characteristics of a theory that can adequately account for care.

Chapter 7 focuses intensely on Nussbaum's (2000c, 2006, 2011b) version of the capabilities approach. First, I discuss the most important features of her theory. Following this is a detailed examination of each of the 10 central capabilities proposed by Nussbaum. I consider the nature of each capability on Nussbaum's list. I focus on what it means to not choose functioning and consider what the threshold should look like.

In Chapter 8, I discuss four significant issues raised by my assessment of Nussbaum's ten central capabilities: the absence of care, specification of responsibilities, whether the political goal should be capabilities and the ontology of the capabilities. To address these issues I propose an extended and restructured capabilities list.

In the concluding chapter I test my revised version of the capabilities approach by evaluating three contentious work and family policy issues: extended parental leave, carer's payment and shared care. I consider each issue from a capability perspective (based on Nussbaum's and my revised lists), Catherine Hakim's version of rational choice theory, an ethics-of-care approach and Nancy Fraser's principles of gender equity (which are introduced in chapter 4). I find that my revised capabilities approach provides a stronger support for justice-based arguments on the way actual care is provided.

1.5 Conclusion

In this chapter, I introduced this thesis as a philosophical inquiry into the problem of care. Such an inquiry necessarily involves ethical or moral questions. The way the problem is framed is significant; shaping the types of solutions that may be identified. It is not simply a matter of individuals making decisions in line with their preferences. Social, political and economic conditions shape the allocation of responsibilities and the availability of real opportunities. If the conditions are such that some people are unable to receive the care they need and others are penalised for the care they provide, then the society is not just.

In the last section of this chapter I provided an overview of the remaining chapters. In the next chapter I will outline the Australian situation. This provides the context for the philosophical issues discussed in chapter 3.

Chapter 2 Work and family in contemporary Australia

2.1 Introduction

To present a snapshot of how care and other types of work are organised in Australia today I will now turn to the available empirical research. The picture is complex. Young women today have many more opportunities and far greater control over their lives than did their grandmothers. However, if they wish to become mothers or if they take on the responsibility of caring for other family members they will confront rigidities in the employment relationship and the financial cost of care work.

In this chapter, I will describe the demographic shifts in Australia, explaining what the implications might be. This is important because the changing age composition of the Australian population is often invoked to justify instrumentally specific changes to family, social and employment policies. Following this, I will discuss employment patterns and care arrangements. This leads to sections on the allocation of different types of work and of resources and on the problem of time. In the final part of the chapter, I explain the structure of financial support for Australian families.

2.2 Demographics

At the end of June 2011, the population of Australia was just more than 22 million people, with slightly more females than males.⁴ According to Australian Treasury projections, the Australian population will reach 35 million by the middle of this century (Henry 2010a, p. 1). Immigration is largely responsible for recent growth. If we consider the year up to the end of December 2010, 53 per cent of the population growth was due to net overseas migration, the remaining 47 per cent due to natural population increase (births minus deaths) (Australian Bureau of Statistics (ABS) 2011a).

Australia, like many other developed nations, experienced a decline in the fertility rate (ABS 2010e; McDonald 2000c). Last century Australia's Total Fertility Rate (TFR) peaked at 3.5 in 1961 before fluctuating around 1.8 to 1.9 for most of the 1970s and 1980s.⁵ There was a small steady decline throughout the 1990s, with the TRF falling to 1.73 in 2011 (Department of Family and Community Services (DFACS) 2001). Since then the TFR has increased. In 2008 the total fertility rate was 1.96 babies per woman, the highest rate since 1977 when it was 2.01 (ABS 2010a, 2010e; DFACS 2001). In 2009 there was a slight decline to 1.90 babies per woman. The TFR is still below the replacement rate of 2.1 and significantly below the 1961 rate. Therefore the longstanding fall in Australia's fertility rates has not been reversed (Hugo 2007). More recent data suggests that the birth rate has

⁴ At 30 June 2010, the sex ratio for the total Australia population numbered was 99.2 males for every 100 females (Australian Bureau of Statistics 2010f).

⁵ TFR is the sum of age-specific fertility rates or the sum of the number of live births at each age of mother per female population of that age. It is therefore the average number of children per woman rather than the average number of children per mother (ABS 2010e; Hugo 2007).

peaked, with the rate of women aged 15 to 44 giving birth 0.6 per cent less in 2008 than in 2007 (Laws & Sullivan 2010).⁶

This increase in TFR over the past decade was initially attributed to the larger proportion of women falling into the childbearing age group⁷ (DFACS 2001), but this does not fully account for the change (Hugo 2007). Speaking at the 2010 Fertility Society of Australia Conference, University of Adelaide demographer Graeme Hugo stated that there had been virtually no change to the fertility rates of low-income groups. Almost all the change was witnessed among higher socio-economic groups. Hugo attributed this to their experience of improved economic conditions, more flexibility in the workplace and a greater appreciation among career women of the risks inherent in delaying childbirth (Hugo 2010; Peddie 2010). Despite this last issue, the average age of mothers is still increasing⁸ (ABS 2010e; Laws & Sullivan 2010), and educated women working in more prestigious occupations have higher rates of childlessness (Miranti et al. 2008). Hugo (2010) considers the Baby Bonus (a benefit described later in this chapter) to play only a minor role, as rates were rising prior to its introduction.

The proportion of Australian women who do not have children has changed over time. It is estimated that 20 to 30 per cent of women born at the beginning of last century did not have children. Lifetime childlessness then decreased, reaching a low of 9 per cent for women born in the 1930s. Rates of childlessness have increased consistently for women born after 1943. According to the 2006 census, 14 per cent of women aged 45-49 years had not had any children. This compares with 11 per cent in 1996 and 9 per cent in 1986 (ABS 2010b). It is estimated that 28 per cent of women of childbearing age now will not have any children (ABS 1999, 2008a).

As in many other developed countries the age structure of Australia's population is changing (Kryger 2005). The proportion of the total population aged 65 years or older is projected to increase from 13 per cent in 2010 to 22 per cent in 2050. It is anticipated that the proportion of Australians aged 85 years or older will treble to five per cent over the same period. One significant impact is the change in the ratio of people of working age to people on or older than 65 years. In 2010 there were five people of working age for every person aged 65 or older. By 2050, this will decrease to 2.7 per cent. In 1970 the number was 7.5 per cent (Henry 2010a, p. 1).

Successive reports have warned about the consequences of demographic change. The biggest concern is the pressure on governments due to the increasing cost of providing health and other aged-care services. The solution proposed is to increase productivity and

⁶ We need to be cautious interpreting the data. The TFR tells us the number of registered births per woman of child bearing age. However there are disparities between the number of registered births and the number of births recorded by the National Perinatal Statistics Unit of the Australian Institute of Health and Welfare (AIHW). When people delay or fail to register births there will be discrepancies between ABS and AIHW data. An increase in the number of non- and delayed registration of births significantly affected the TFR in the 1990s and early 2000 (Australian Bureau of Statistics 2006b; Hugo 2007; McDonald 2005a). This problem appears to be declining as various child benefits are now linked to registration of birth (Hugo 2007).

⁷ (McDonald 2005a) explains that the TFR falls when women delay giving birth and rises when more women have children at a younger age.

⁸ The average age of mothers was 27.9 in 1991 and 29.9 in 2008. The average age of first-time mothers has also increased from 25.8 in 1991 to 28.2 in 2008 (Laws & Sullivan 2010).

lift workforce participation rates (Australian Government 2007, 2010). In May 2004, the then Treasurer, Peter Costello, urged families to have 'one child for Mum, one for Dad and one for the country' (Costello & Coleman 2008). The problem may create a unique opportunity. There is a link between declining fertility rates and the difficulty of combining paid employment and family responsibilities (Cannold 2005). Former Australian Sex Discrimination Commissioner Pru Goward (2005a) argues that the pressures arising from an ageing population will force governments and the community to tackle the employment related obstacles facing women, particularly mothers (see also Goward et al. 2005). The problem is not simply a workplace issue. Very low fertility rates are found in countries where there is a high level of gender equality in individual-oriented social institutions but sustained gender inequality in family-oriented social institutions (McDonald 2000a, 2000b).

Not everyone considers Australia's ageing population to pose a threat. James Doughney (2004a) argues that the average age of the Australian workforce has been raised by the increased workforce participation rates of women, especially those aged 35 and older. He holds that this is a more significant factor than the ageing population. Moreover, workforce participation data reveals that the average retirement age is increasing.⁹ Delayed retirement is not only possible for many it is also desirable, particularly if there is an option of a tapered work commitment. Not only are we, on average, living longer but remain healthier until later in life (Doughney 2004a; Gittins 2004; Gould 2004). There is evidence that women's workforce participation rates are rising faster than anticipated by at least some purveyors of gloom (Doughney 2006a). Too often the discussion on ageing population concentrates on the possible impediments to economic growth and forgets that the important thing is quality of life (Doughney 2004a).

2.3 Work patterns

There have been significant changes in patterns of employment over the past 30 years. Between 1979 and 2004, the proportion of women in employment increased in every age group (ABS 2006a; Evans, M. D. R. & Kelley 2004). The proportion of women aged 15 years or over in employment has increased steadily, from 40 per cent in 1979 to 56 per cent in June 2011. This increase is even more significant if we take into account delayed entry into the workforce resulting from rising education levels. On the other hand, the proportion of men in employment has declined from 74 per cent in 1979 to 69 per cent in June 2011. In 2011, 5.2 million women and 6.2 million men were employed (ABS 2006a, 2011c). Changing patterns of male and female employment reflect shifts in the industry composition of the Australian labour market. Since the late 1980s there has been a marked decline in manufacturing and a significant growth in the services sector, which employs a higher proportion of women (ABS 2006a).

There has also been an increase in the workforce participation rates of mothers of young children. On average women are having children later in life, having fewer children and spending less time out of the paid workforce (Campbell & Charlesworth 2004). In 2008, the participation rate of women with children under the age of five years was 53 per cent compared with 47 per cent in 1999 (ABS 2010c). Mothers are more likely to be employed as their children get older. For couple families, 66 per cent of children aged 9 to 12 and 45

⁹ See also ABS (2010d).

per cent of 0 to 2 years old had both parents employed. In the case of single-parent families it is reported that 64 per cent of 9 to 12 year olds and 28 per cent of 0 to 2 year olds had their parent employed (ABS 2010c).¹⁰

Over the past 30 years the increase in participation rates for women aged 45 years or older has been greater than for younger women. Participation rates rose from 47.1 to 78.0 per cent for women aged 45 to 54 years; from 27.8 per cent to 63.4 per cent for women aged 55 to 59 years; and 12.8 per cent to 41.2 per cent for women aged 60 to 64 years. In comparison, participation rates for women aged 25 to 44 years increased from approximately 67 per cent to 73 per cent. While the participation rates of mature-age women have increased there has been little change to their average working hours (Gilfillan & Andrews 2011).

The main growth in women's employment has been in part-time work. In Australia there are high rates of part-time and casual employment, higher than those found in most other Organisation for Economic Co-operation and Development (OECD) countries. Part-time work is considered a way of reconciling employment and family responsibilities (ABS 2006a). The dominant arrangement is the modified breadwinner model, with a full-time male breadwinner and a part-time female worker. The income of the part-time worker is sometimes referred to as supplementary, although, in many cases, their earnings are essential (Masterman-Smith & Pocock 2008). There are strong similarities to the situation in the UK (Himmelweit 2008). However, one survey found that found that approximately one-fifth of Australian couples work equal or close to equal hours (Drago, Tseng & Wooden 2004).

Part-time work for mothers of young children is often promoted as way of reducing stress. However Lyn Craig (2007a) and Michael Bittman and Judy Brown (2005) found that women in modified-breadwinner families reported only marginally lower levels of time pressure than women in full-time employment. On average the total amount of time a modified breadwinner and a dual full-time-worker couple spends on paid and unpaid work is very similar. There are also concerns about the nature of part-time work, with much of it poorly paid and insecure (Campbell, Chalmers & Charlesworth 2005a, 2005b; Chalmers, Campbell & Charlesworth 2005; Chalmers & Hill 2005; Pocock 2003; Pocock, Buchanan & Campbell 2004); In addition, part-time work is not found to be an effective way of maintaining career attachment. It does not provide a pathway into financially rewarding full-time work and reduces wage growth (Chalmers & Hill 2007).¹¹ It can also be difficult to move between part-time and full-time employment (Drago, Black & Wooden 2004).

The growth in part-time and casual employment in Australia increased following the deregulation of the labour market. This process was initiated by the Hawke Labor Government and accelerated with the Howard Coalition's introduction of Work Choices in 2006. The Rudd Labor Government replaced Work Choices with the Fair Work Act in 2009, but many of the troubling features of Howard's industrial relations regime remain in place.

¹⁰ This is potentially misleading as most children in single-parent families do still have two parents, and at least some will reside for part of the week with each parent.

¹¹ Jenny Chalmers (2007) reported that their findings were similar to those emerging from comparable UK studies (Francesconi & Gosling 2005; Myck & Paull 2004; Olsen & Walby 2004). Looking at Canadian longitudinal data, Xuelin Zhang (2010) found that the income losses experienced by women were substantial in the year their child was born and in the year after. However, mothers who returned to work with the same employer found their earnings improved.

The balance has shifted in favour of employers, with low paid workers the most vulnerable (Goward 2005b; Pocock 2005b, 2006a, 2009; Pocock & Masterman-Smith 2005). There are also concerns about the implications of deregulation on women's equality (Strachan & Burgess 2000). For those in employment, working hours are increasing and including more unpaid overtime or 'time theft' (Borland, Gregory & Sheehan 2001; Pocock 2003). In addition there has been an increase in the total number of hours worked for both dual-earner couple households and single-parent households (Jacobs & Gerson 2001).

While there has been a significant shift in the participation of women in paid employment, there has not been a comparable adjustment in the allocation of care and other forms of unpaid work. The allocation of paid and unpaid work is still highly gendered (Bittman & Pixley 1997; Craig 2003, 2007a). Paid employment is also highly gendered, with women concentrated in retail and the services industry. Far fewer women than men are found in senior professional and management positions (Ross-Smith & McGraw 2010).

2.4 Care arrangements

Women's lifetime patterns of work (paid and unpaid) reflect their disproportionate responsibility for the care of children and, to a lesser extent, other family members. The patterns are also shaped by the structure of various social institutions and the nature and level of available support. The critical question is 'who looks after the kids?' (Folbre 2001)

In 2008, 1.5 million Australian children aged 12 years or younger were in some form of regular non-parental care. Around 750,000 children (22 per cent of all children aged 0 to 12 years) were in formal child care. This includes regulated out-of-home care, including long day care, family day care, occasional care, and before/after school care but not school or preschool/kindergarten. Another one-million children (29 per cent) were regularly in some type of informal care, which is non-regulated care and could be either in or outside the child's home. Informal care is provided by relatives, friends, neighbours and babysitters. Around 250,000 children were in both formal and informal care. Around 2 million children were not usually in either formal or informal care (ABS 2010c).

A small proportion of Australian children younger than one year of age are in formal child care; nine per cent in 2008. Use increases with age up to a peak of 50 per cent of all three year olds in some type of formal child care. As more children enter preschool and then school, use of formal child care (which includes outside school care) declines. At age five 20 per cent of children are in formal care, 14 per cent are by age nine and three per cent by age 12. While use of formal care varies with the age of the child, there is far greater consistency in the use of informal care across age groups: 32 per cent of three- year-olds, 27 per cent of five-year-olds and 24 per cent of 12-year-olds (ABS 2010c).

The most common form of formal care is long day care. Of the total number of children in an approved child care service 61 per cent are in long day care, 12 per cent are in family day care or in-home care with a registered carer, 24 per cent are in outside- school-hours care, 16 per cent are in holiday programmes and 1 per cent are in occasional care.

Between 2005 and 2009 the number of family day-care providers has decreased slightly (Office of Early Childhood Education and Child Care (OECECC) 2010).¹²

When child care is the subject of public debates it is usually understood to mean long day care. In 2008 just more than 24 per cent of children aged two years and younger, and 26 per cent of children aged three to five years, were in long day care. This is only slightly more than the proportion of children in the regular care of grandparents: a little more than 24 per cent of children aged two or younger and 21 per cent of three to five year olds. Almost 19 per cent of children aged 12 or younger were in either long day care or before/after school care. The same number of nought to 12 year old children were usually cared for by their grandparents (ABS 2010c). However, the use of formal care is increasing (17 per cent of children in 1999 compared with 22 per cent in 2008), mainly due to more children younger than five attending long day care (ABS 2010c). The average amount of time children spend in long day care has also increased from 19 hours per week in 2004 to 26 hours per week in 2009 (OECECC 2010).¹³ In the future it is likely that fewer grandparents will be available to provide child care because a higher proportion will be still employed. This reflects the deferred retirement and the increasing workforce participation rates of women.

Grandparents state that they welcome the opportunity to build strong relationships with their grandchildren and many express reservations about long day care. The desire to help their children to establish themselves financially is also a factor (Goodfellow 2006; Goodfellow & Lavery 2003; Reschke et al. 2006). While grandparents feel valued some found the work tiring, stressful and at times isolating (Ochiltree 2006). A growing minority of grandparents become primary carers when parental care is no longer possible because of drug and alcohol problems (Hampshire, Brennan & Cass 2007; Ochiltree 2006).

In Australia long day care is provided by a mix of community-based and private operators.¹⁴ Community owned and run child care emerged in the 1970s, a direct result of the women's movement. In 1972 the Whitlam Labor Government started providing operation subsidies to not-for-profit child care centres (Brennan 1998). In the mid 1980s, under the Hawke Labor Government, the structure of the payment was changed and in 1991 fee assistance was extended to users of private not-for-profit child care. Not-for-profit providers continued to receive a small operational subsidy until 1997 when it was removed by the conservative Howard Government. At this time the level of child care assistance was reduced and funding for additional child care places withdrawn.¹⁵ In 2000, the Howard

¹² Family day care is provided by a registered carer in their own home. Each carer may take care of up to four children.

¹³ The number of hours of child care can be misleading. The number of hours is usually counted as hours of care for which the Child Care Benefit is paid, which is a maximum of 50 hours per week. A child in full-time child care (i.e. five days per week) would be considered to attend for 50 hours per week or 10 hours per day. This is the most common measure of child care hours although it is generally more than the average number of hours children actually spend in long day care. Parents tend to prefer shorter days if this is possible given their work schedules and travel time.

¹⁴ Philanthropic organisations provided child care services from the late nineteenth century. Less is known about the history of private for-profit care although it has always been formed a significant part of the child care sector (Brennan 1998, 2007a).

¹⁵ This was a difficult time for the community child care sector but despite dire predictions the sector survived.

government introduced the Child Care Benefit (CCB) as part of a new suite of family payments. The CCB provides a higher level of financial support than the assistance it replaced (Brennan 1998, 2007a).¹⁶

In 2004-5, 71 per cent of all child care service providers were private-for-profit.¹⁷ This increased to 75 per cent in 2008-9. Over the same period the proportion of community based child care centres dropped from 26 per cent to 22 per cent.¹⁸ The proportion of centres run by government (mostly local government) remained stable at about 3 per cent (OECECC 2010; drawing on Steering Committee for the Review of Government Service Provision 2010).¹⁹

The growth in the private for-profit child care sector was fueled by the availability of fee assistance, the increasing demand for child care places and the withdrawal of capital funding for the community sector. Large child care companies emerged. The largest, ABC Learning, was listed on the Australian Stock Exchange in 2001. Other corporate child care operators followed, although within a few years most were taken over by ABC Learning (Brennan 2007a). At its peak, ABC Learning owned more than 1200 child care centres in Australia and New Zealand and almost one-fifth of Australian centres. The company also had substantial holdings in the US and Britain (Brennan 2008; Rush & Downie 2006).

ABC Learning was aggressive in its approach to acquisitions (Birnbauer & Dowling 2004; Brennan 2008) as well as in its attempts to evade and undermine state regulation of the child care sector (Farooque 2006). There was also increasing concern about poor quality care (Birnbauer & Dowling 2004; Farouque 2006; Rush & Downie 2006). After considerable speculation about financial difficulties, ABC Learning was placed into voluntary receivership in November 2008 when the financial crisis crippled the highly geared business. The Australian Federal Government provided \$22 million dollars to keep ABC centres open while the court appointed receivers sold the business. At the time there was a good deal of public reflection on the child care industry and particularly the problem of for-profit care (Bevin 2008; Brennan 2008; Clarke 2009). Commencing in May 2010, viable ABC Learning centres started to be transferred to GoodStart, a not-for-profit consortium established by four leading Australian community sector organisations: Mission Australia, the Benevolent Society, the Brotherhood of St Laurence and Social Ventures Australia

¹⁶ Also, correspondence with Barbara Romeril, Executive Director, Community Child Care, 4/2/2005

¹⁷ This includes for-profit services provided by or managed by a company, private individual or non-government school (Steering Committee for the Review of Government Service Provision 2010). It is not clear why services offered by non-government schools should be included. Although such schools are private they are not-for-profit organisations.

¹⁸ Community based providers are managed by parents, churches or co-operatives (Steering Committee for the Review of Government Service Provision 2010). In Melbourne, community based child care centres are usually housed in buildings owned and at least partially maintained by local government.

¹⁹ The Steering Committee for the Review of Government Service Provision (2010) notes that we need to be careful interpreting the data on the types of child care centres because of differences in data collection across the different states and territories.

(Australian Government 2011; GoodStart 2009; OECECC 2010).²⁰ The replacement of a for-profit with a not-for profit operation has been welcomed (McClure 2011).

Questions are periodically raised about the impact of child care (meaning long day care) on children. The research results are mixed. Taking a snapshot of the Australian research, concerns have been expressed about the lack of meaningful engagement between children and carers (Nyland 2003), the stress some children experience (Sims, Guilfoyle & Parry 2005a, 2005b, 2006, 2008) and a link between hours of care and behavioural problems.²¹ Other researchers found no negative links between hours of care and either behavioural problems or socio-emotional adjustment (Harrison 2008; Harrison & Ungerer 2000; Love et al. 2003). A study on multiple forms of child care found a positive association between hours of care and social development but also more aggressive peer interactions (Bowes et al. 2004; Harrison 2008; Ungerer et al. 2006).

Author Anne Manne (2005) argues that researchers and the journalists reporting their work tend to be in favour of long day care and therefore more likely to highlight positive findings and downplay the negatives. This is a serious charge, but not a view shared by everyone. Eminent Harvard psychologist Jerome Kagan (2006) describes a more complex and shifting relationship between research findings and social context. Inconvenient findings should not be ignored. However, we also need to scrutinise all research rigorously to assess the questions, assumptions and conclusions.

Despite other differences there is broad agreement that the quality of care is a significant issue and that the quality of Australian child care needs to be improved (Edgar & Edgar 2008; Hill, E. 2007; Hill, E, Pocock & Elliot 2007; Nyland 2003). To achieve, this child care should be guided by the desire to improve the well-being of the child not simply to allow parents to pursue paid employment (Hill, Pocock & Elliot 2007).²² With the introduction of the National Quality Agenda for Early Childhood Education and Care, Federal and State Governments have committed to focus on child development, improve staff-to-child ratios, raise the qualifications levels of carers and the introduction of a new National Quality Framework (OECECC 2010, 2011).²³ However, the well-being of children is determined by many other factors, including the overall economic situation, employment conditions, social inequality and level of social support (Pocock 2006a, 2006b; Stanley, Richardson & Prior 2005).

²⁰ Formal ownership of 570 ABC centres was transferred to GoodStart in May 2010. By early 2011, GoodStart had purchased 654 centres. It is anticipated that another seven centres will be transferred during 2011 (Australian Government 2011). The consortium was assisted by the provision of a \$15 million from the Federal Government (Australian Government 2011; GoodStart 2009; OECECC 2010).

²¹ Controversial Australian psychologist and author of parenting books Steve Biddulph (1994) fears that if children under the age of three years are placed in long day care, their long-term emotional stability will be compromised. His concerns are partly based on his experience as a psychologist and partly on his interpretation of the research, particularly the work of Jay Belsky (1986, 2001).

²² See, in particular chapters by Deborah Brennan (2007b), Bettina Cass (2007), Barbara Pocock and Elizabeth Hill (2007), Margaret Sims (2007), Lynne Wannan (2007).

²³ Implementation of this framework started in July 2010 (Department of Education Employment and Workplace Relations 2010).

In all the discussion about child care, insufficient attention has been paid to carers' conditions of employment. Child care workers are employed under the Children's Services Award 2010. This national award specifies a minimum hourly rate of \$15.86 for unqualified workers (\$602.80 for a 38-hour week) up to a minimum rate of \$21.92 (\$832.80 per week) for a level-four worker with a two-year diploma and two years work experience. The minimum hourly pay rate of centre directors ranges from \$25.65 (\$974.60 per week) to \$28.82 (\$1095.20 per week), depending on the size of the centre and number of years experience (Fair Work Australia 2010). A recent report on the early childhood workforce argues that if the Australian Government is to implement reforms under the National Quality Agenda, the sector will need to attract and retain qualified early childhood education and care workers. To address current and projected future skills shortage, wages will need to be increased to match wage relativities for teachers in primary schools (Productivity Commission 2011). Although wages in the child care sector are very low, many parents find the cost of care a major expense, which may deter the parents of pre-schoolers from returning to work or increasing their time at work (Martel 2011).

The vast majority of child care workers are female (97 per cent in 2010) (The Social Research Centre 2011).²⁴ Child care workers face the challenge of being both income poor and time poor. Like others defined as working poor, their income levels do not support a decent standard of living but they are ineligible for many government-provided benefits. This impacts upon child care workers' own physical health and well-being and that of their children, household stability and social inclusion (Masterman-Smith, May & Pocock 2006; Masterman-Smith & Pocock 2008).

It is not only children who need to be cared for. The 2003 ABS Survey of Disability, Ageing and Carers revealed that there were 2.5 million carers aged 15 years or older (16 per cent) providing informal assistance to someone with a disability or older than 60 years of age. The proportion of women who are carers is 17 per cent compared with 14 per cent for men. Around 475,000 of the 2.5 million carers were primary carers. Half of these provided 40 hours or more of care, many experiencing financial difficulties as a result (ABS 2008b). The so called 'sandwich generation' are providing assistance to their parents at the same time as caring for children (Australian Industrial Relations Commission 2005). Goward (2005) argues that men will need to provide more of the care needed by their ageing parents as they will no longer be able to assume that their spouse or sisters will assume the responsibility.

There are also an alarmingly large number of children and young people caring for their ill or disabled parents. In 2003 there were 380,000 people younger than 25 years caring for a family member or friend. Of these 170,600 are younger than 18 years. The proportion of young carers is about the same for females and males (9 per cent). Around 19,000 young people are primary carers (ABS 2008b; Carers Australia 2010). Members of this often hidden group face many disadvantages including a high risk of social isolation and difficulties in securing an education (ABS 2008b; Cass & Smyth 2007; Cass et al. 2009; Hill, T et al. 2009; Smyth, Cass & Hill 2010).

Caring for another person takes time, energy and skill and involves building and maintaining relationships. It is expensive to provide good quality care if the carers receive adequate compensation or a decent level of pay. In the absence of adequate support, the costs of unpaid care work are borne by both unpaid and underpaid carers.

²⁴ See also ABS (2010c).

2.5 Who does the work, who has the money?

Women's total workload (a combination of paid and unpaid work) exceeds that of men (Craig 2007a, 2011).²⁵ The increased participation of women in paid employment has been met with resistance in the workplace, and there has been even more limited accommodation in the home (Morehead 2001, 2004). As numerous studies of time-use have established, housework, child care, the care of sick, elderly and disabled people are not equally shared between women and men. Even in two-job households, women typically do far more domestic work than do their male partners. There has been barely any shift in the allocation of unpaid work as women have entered the paid workforce (Craig 2007a; Russell & Bowman 2000). John Murray (2010) interviewed people at various stages of life²⁶ and found differences in the responses of women and men. In making career decisions, women took into consideration the need to combine child care with employment, while men focused on breadwinning. Once they became fathers, men experienced conflict between trying to maintain their image as dedicated employees and wanting to spend more time at home. When both parents in couple family are at home together, primary responsibility for care usually falls to the mother. This only changes when the mother works non-standard hours (evenings or weekends), leaving the father in charge of the children for longer periods of time. According to Craig (2011) this is the only way to shift traditional gender roles.²⁷ There are inequalities in the allocation of care responsibilities across households: e.g. the distribution of care across the households of separated parents, or across the households of children helping care for their elderly parents.

The decisions women and men make about care work and paid employment have longer-term implications for income and lifetime earnings (Baker 2011; Pixley 2008). Despite their higher overall workloads, Australian women earn less than men. There have been significant changes in women's economic circumstances over the past 25 years. As more women have entered paid employment their share of total gross personal income has risen, although stagnation is evident since 1998. In 2005-06, 25 per cent of women were in the bottom income quintile compared to 15 per cent of men. While only 11 per cent of women were in the top income quintile, for men it was 29 per cent (ABS 2008a). One factor contributing to women's lower earnings is the gender pay gap. In 1969 the Australian Conciliation and Arbitration Commission ruled that women and men should receive equal pay for equal work. In 1972, the Commission extended this to equal pay for work of equal value. Initially the pay situation of women improved. However, the dismantling of the centralised wage-fixing system had a disproportionate effect on women because they tend to have less bargaining power than do men. For the first time in 25 years, following the introduction of WorkChoices, the gender pay gap widened. Comparing

²⁵ Hakim (2010) disputes the view that women work more than men. She argues that they work about the same amount of time and that feminists are wrong to say that men are not pulling their weight. Women's tendency to focus on unpaid work is, according to Hakim, a matter of choice. I will discuss and critique Hakim's work in Chapter 5.

²⁶ The first group were undergraduates, the second had been working for a couple of years and the third group were mothers and fathers who had graduated 10 years earlier (Murray 2010).

²⁷ See also Craig and Powell (2011) and Morehead (2001).

full-time workers, on average women working earn 17 per cent less than men. Women earn on average \$2000 less per annum than their male counterparts do one year after graduation (EOWA 2011) and \$7500 four years later (Abjorensen 2010).

With lower incomes, women will also contribute less to their retirement savings (superannuation fund). Over their lifetime they will own a smaller share of the national wealth. Women are more likely than men to experience poverty, particularly after relationship breakdown (Doughney et al. 2004; Goward et al. 2005; Griffin 2011; Sharam 2011). The inequality is particularly troubling because the overall shift from social to individual responsibility for the funding of education and health is ensuring that opportunities are ever more closely linked to family wealth. It is important to note the polarisation of women's economic circumstances, with some women achieving financial security and others living in poverty (Doughney et al. 2004; Rosewarne 2001). Despite increased national wealth, there is growing evidence that there is not a commensurate increase in well-being. In part this is attributed to increasing inequality (Stanley, Richardson & Prior 2005).

2.6 The problem of time

Many people, particularly those with children, find it difficult to meet their family responsibilities and fulfill the requirements of their job. The problem is a lack of time and energy to meet conflicting demands (Australian Industrial Relations Commission 2005; Bittman 2004; Glezer & Wolcott 1999, 2000; Pocock 2003, 2006b). The difficulties are more pronounced when time pressures intersect with low incomes (Masterman-Smith & Pocock 2008). Based on research with predominately professional women, JaneMaree Maher and Jo Lindsay (2005b) questioned the role-conflict model of working motherhood. They found that women routinely transit across the domains of family and paid work, often drawing on the same set of skills and constructing new models of mothering and employment. However, most of the research is less optimistic, with concerns about the impact on children, relationships, health and well-being (Stanley, Richardson & Prior 2005).

Caring is still largely invisible in our society (Bittman et al. 2004; Craig 2007a). There is still a strong expectation that people will be 'ideal workers', working full-time, committed to the job, available for long hours and free from significant care-giving responsibilities. Although a lot of part-time work is available, it is often designed to give flexibility to the employer (Pocock 2003). Australian researchers have pioneered the development and analysis of time-use data, and this has played a critical role in documenting the time spent working, caring and doing housework. Research has revealed the amount of time required to raise children (Bittman 2004; Bittman, Hill & Thomson 2007; Craig 2007a; Ironmonger 2004). It has also been possible to see gender differences in the availability and nature of leisure time (Bittman & Wajcman 2000; Craig 2007a).

Another important area of research has involved quantifying unpaid care and domestic labour, highlighting the scale and significance of the domestic or household sector. Of particular importance has been the work of economist Duncan Ironmonger (Hoa & Ironmonger 2005; Ironmonger 1996, 2001, 2004; Ironmonger & Soupourmas 2003, 2009).

2.7 Financial support through the tax transfer system

In Australia there is a history of governments providing financial assistance to families. Both major parties accept the need for public financial support, although there are disagreements about the equity, efficiency and justification of individual measures. Financial assistance to Australian families is a combination of transfer payments through the welfare system and rebates.²⁸ Australia has one of the most targeted redistributive transfer systems in the OECD. Assistance is not insurance based, it is not time-limited and does not depend on previous earnings (Cass 2005; Henry 2010c).

Nominally, at least, Australia has a progressive personal income tax system based on individual incomes. The first \$6000 of personal income is tax free, with progressive tax rates applying above this threshold. In a detailed report on the tax treatment of Australian families, Patricia Apps (2004) found that in the early 1980s, individual incomes were taxed at more progressive marginal rates than they are now. She concluded that the current family tax system more closely resembles one based on family income (approximating income-splitting) rather than individual income. Apps found that the effective rate scale is no longer progressive but resembles an inverted 'U' shape, with very high rates applicable to those on below-average incomes. Apps argued that the current system has shifted the tax burden onto low- and middle-wage families with both parents employed. High-income earners are in a stronger position because they have access to tax minimisation schemes.

The main types of income support available for families are: Family Tax Benefit parts A and B, Child Care Benefit, Child Care Rebate, Baby Bonus and the recently introduced Paid Parental Leave scheme. There are also a number of additional payments: the Maternity Immunisation Allowance, Large Family Supplement (for four or more children), Multiple Birth Allowance, Double Orphan Pension, Economic Security Strategy Payment, Jobs, Education and Training Child Care Fee Assistance and Economic Security Strategy Payment. Some families will also have access to Rent Assistance and the Health Care Card which provides a broad range of discounts on essential services (Family Assistance Office 2009). All payments are designed to supplement income from other sources. Single-parent families and some two-parent families on very low incomes may also be eligible for the Parenting Payment, which is considered to be a pension (Centrelink 2010b).

Family Tax Benefit A (FTBA) is promoted as a payment to assist families with the costs of raising children. The amount paid depends on total family income as well as the number and age of children. The payment may be split between parents if the child lives across two households (Family Assistance Office 2009). The maximum amount paid is \$164.64 per fortnight for each child younger than 13 years of age, \$214.06 for each child aged 13 to 15 years and smaller amounts for older children. The maximum payment is made to families with a total annual income of \$46,355 or less. The benefit is reduced by 20 cents for every dollar more than the \$46,355 threshold until reaching the base rate of \$52.64 for each child younger than 18 years. FTBA cuts out once total family income reaches \$100,448 a year for one child under 18 years, \$110,376 for two children and \$121,290 for three. The income limits are slightly higher for children aged 18 to 24 and studying full-time (Centrelink 2011b). By way of comparison, the minimum wage is set at \$1178.76 per

²⁸ Tax rebates reduce taxable income.

fortnight or just more than \$30,000 per year²⁹ (Fair Work Australia 2011a) and average adult full-time ordinary earnings are estimated to be \$2610.80 per fortnight or almost \$68,000 per year (ABS 2011b). The FTBA can be taken in the form of a fortnightly payment or a lump sum paid after parents submit their tax return (Family Assistance Office 2011b).

More contentious is Family Tax Benefit B (FTBB). The Family Assistance Office describes the payment as giving 'extra assistance to sole parent families and to families with one main income where one parent chooses to stay at home or balance some paid work with caring for their children' (Centrelink 2010a). The full rate is \$140.00 per fortnight for each child younger than five years of age, or \$97.58 for each child aged five to 15 years (or 16 to 18 if they are full-time students). Single-parents receive the maximum rate of FTBB if they earn less than \$150,000 per year, and nothing if they earn more than \$150,000 per year. Eligibility for two-parent families depends on the individual incomes of both parents. The more highly paid partner must earn less than \$150,000 annually. If the other parent earns less than \$4891, they will receive the full FTBB payment. The payment is reduced by 20 cents for every dollar the lower-paid partner earns more than \$4891. The income limit for the lower earner is \$24,912 when the youngest child is younger than five years and \$19,382 when the youngest child is aged between five and 15 years (or 16 to 18 if a full-time student) (Centrelink 2011c)

Before the introduction of the \$150,000 income limit FTBB was paid to all single-parent families and eligibility for two-parent families was determined only by the income of the lower-earning partner. A family with a very high total income could receive FTBB if one partner was not working or earned very little. It is for this reason that FTBB was derided as a payment for millionaire wives. A more significant problem is that in the case of two-parent families, the FTBB favours specialisation. For example, a family with a total annual income of \$50,000 will receive no FTBB if each partner earns \$25,000. However, they will receive the full amount if one partner is in paid employment and earns \$50,000 and the other is the unpaid full-time carer (Leahy & Doughney 2006a). As with FTBA, FTBB can be received as a fortnightly payment or a lump sum (Family Assistance Office 2011c).

The Child Care Benefit (CCB) is paid to all families using accredited child care, which includes most child care centres, family day care, and before/after school programmes or other registered carers (which may include nannies, grandparents and others registered with the Family Assistance Office (Family Assistance Office 2011a). The maximum amount is \$37.80 per day per child. Payments are reduced based on total family income. Families with an annual income of less than \$39,785 are eligible for the maximum rate. Families are not eligible for CCB once their total income reaches or exceeds \$138,065 for one child, \$143,095 for two and \$161,581 for three (Centrelink 2011d). The cost of child care in a formal child care centre may vary significantly from \$60 to \$100 a day, depending on the size, location and type of provider.³⁰ The CCB may be taken in the form of fee reduction or paid in a lump sum once tax returns are processed (Family Assistance Office 2011a).

A second form of child care assistance is the Child Care Rebate (CCR), a 50 per cent tax rebate on out-of-pocket child care costs (the gap between the cost of child care and the

²⁹ This assumes a 38 hour week at the minimum hourly rate which is set at \$15.51 (Fair Work Australia 2011a). However, according to the Fair Work Australia website this amounts to \$589.30 per week or \$1178.60 per fortnight. I have used my calculation.

³⁰ Information about child care fees and vacancies can now be found on the Federal Government's My Child website <http://www.mychild.gov.au/>.

CCB payment). The CCR is capped, providing an annual maximum rebate of \$7500 per child.³¹ The CCR is available in quarterly payments or in a lump sum (Centrelink 2011d).³² While the CCB directs financial assistance to the lower paid, the CCR assists higher-income families. Like the CCB, the CCR is only available if children are in approved child care or are with registered carers. According to Apps (2004, p. 6) almost two-thirds of working families do not qualify for benefits because the care they use is informal.

The Baby Bonus is a payment made following the birth or adoption of a child. The primary carer is eligible for the Baby Bonus if they did not receive Parental Leave Pay and if their adjusted taxable income was less than or equal to \$75,000 for the six months after the birth or adoption. The Baby Bonus is paid in 13 equal fortnightly instalments, totally \$5437 (Centrelink 2011d). In 2004 the Howard government introduced the forerunner of the Baby Bonus, the Maternity Payment, which was a universal lump sum payment available following the birth or adoption of a child. The Maternity Payment replaced the Maternity Allowance (a one-off payment of \$842.64 paid to families eligible for the FTBA) and the 'baby bonus,' a refundable tax offset means tested on the pre-birth taxable income of the mother (Leahy & Doughney 2006a; McDonald 2005b).

In January 2011, the Australian government introduced a long-awaited publicly funded scheme providing 18 weeks Paid Parental Leave (PPL).³³ Despite the long campaign and at times heated debates on the issue, there was little press interest in the start of the scheme. Nethery (2011) argues that this is partly because, in the end, it received bipartisan support but also because of its complexity, with parents required to choose between the PPL or a bundle of other payments.

The stated aim of the scheme is to provide one parent with financial security to enable them to spend at least the first few months caring full-time for their child. The PPL must be taken in one continuous 18-week period, but it may be transferred from the mother or the initial primary carer to their partner. This is not a universal scheme. To be eligible under the PPL Scheme the birth mother or primary carer must have been in paid work for at least 10 of the 13 months prior to the expected birth or adoption of their child. They would need to have undertaken at least 330 hours of paid work within the 10 month period. This works out to be an average of one day of paid work per week.³⁴ A person who is employed on a part-time or casual basis, has more than one employer, or has recently changed jobs will be regarded as having worked continuously if they do not have more than an eight-week gap between working days. Working in the family business (including a farm) also counts even if the business is not generating income. There is also an income test. Mothers and primary carers will not be eligible if their adjusted taxable income was more than \$150,000

³¹ When the CCB was first introduced by the Howard Government in 2004 it was a 30 per cent rebate capped at \$4000 per child per year (Leahy & Doughney 2006a).

³² Payment for the last quarter is held until the CCR has been reconciled against income following assessment of parents' tax returns.

³³ In 1979, maternity leave and job protection were extended from the public sector to private sector employees covered by awards (of industrial jurisdictions) concerning salaries and working conditions. Subsequently it has expanded to cover other private sector employees, fathers and adoptive parents. For an overview on the campaign for paid and unpaid parental leave see (Australian Council of Trade Unions 2010; Baird 2009).

³⁴ A day is a working day of the person who had at least one hour of paid work.

in the financial year prior to the birth or adoption of their child (Family Assistance Office 2011d).³⁵

The level of payment is set at the federal minimum wage, which is currently \$589.38 per week, which is based on a week of 38 ordinary working hours or \$15.51 per hour (Fair Work Australia 2011b). PPL is paid through the employer. The national PPL scheme may be supplemented by employer-paid parental or annual leave. Government-funded and employer-funded leave may be taken concurrently or sequentially. Families that are not eligible for the PPL Scheme may claim the Baby Bonus and, if eligible, FBTA and FBTB. This means that funding is available for those women not employed before the birth or adoption of their child, although the level of payment is less, totally a maximum of \$5437 compared with \$10,607.40. Recipients of government funded paid parental leave may also receive FBTA (with the amount paid depending on family income) but not FBTB (Family Assistance Office 2011c).

The level of financial support to families has been increasing since the 1990s. At the same time there have been significant changes to the structure of payments. The Howard Government moved away from transfer payments, making more forms of support available through the taxation system (Cass 2005; Hill, E 2006a; Leahy & Doughney 2006a; McDonald 2005b). The more recent introduction of the PPL has redressed the balance to some extent.

A different picture is revealed if we take a longer-term view and include government support for other services such as health, education and housing. Australian philosopher Alan Tapper (2002, 2004, 2007) argues that, after World War II, the welfare state was designed to benefit the young, whereas in more recent decades it provides greater support to the elderly. The change in priorities has benefitted the generation born between 1920 and 1940, with the generations born after 1950 receiving far less financial support over their lifetimes.

Debate about the current configuration of family benefits focuses on four main (and to some degree interlinked) concerns: its adherence to the breadwinner model, the high effective marginal tax rates faced by so-called secondary earners, the growth of middle class welfare and concerns about burgeoning costs to the public purse.

For most of the time since Australia's federation in 1901, the Australian wage-fixing and tax/transfer systems were firmly based on the breadwinner model (Baldock 1988; Cass 1995, 2005). There was a partial shift away from the model between the mid 1970s and mid 1990s. During this period the assumptions underpinning many payments were moved towards a model conferring social citizenship on the basis of individual rights (Cass 1995; Mitchell 1998). From the late 1990s, the breadwinner model was reaffirmed under the conservative Howard Government. Financial support for single-income couple families was increased (Cass 2005; Charlesworth 2005c; Hill, E 2006a). Initially John Howard (2002) emphasised the traditional breadwinner family. However, by 2003 he focused on the modified breadwinner family, which he characterised as the 'policeman and the part-time sales assistant' (Howard 2003b).³⁶ Under the Rudd and then Gillard Labor governments

³⁵ Adjusted taxable income is the sum of taxable income, adjusted fringe benefits, tax-free pensions or benefits, foreign income, reportable superannuation contributions and total net investment losses minus deductible child maintenance expenditure (Family Assistance Office 2011c, section B3).

³⁶ See also Leahy and Doughney (2006a) and Charlesworth (2005c).

there has been a shift in rhetoric but not substantial changes to the tax/transfer system. The most significant reform was the introduction of the publicly funded PPL scheme.

Women seeking to return to work following the birth of their child face very high effective marginal tax rates (EMTR), the result of income tax and the withdrawal of various benefits (Apps 1999, 2004, 2006, 2010; Dockery, Ong & Wood 2007; Henry 2010b). There are also costs associated with working and, for many, the largest is the cost of child care. In the case of couple families, the cost of child care is often considered to be a cost of the mother's employment. The impact of EMTR depends on income levels. Drawing on Australian Parliamentary Library data produced for the federal Labor Party, journalist and commentator George Megalogenis (2006) found that mothers seeking to return to work could lose almost two-thirds of their income.

The question of 'middle class welfare' is contentious. Henry (2010c) noted with concern the growth in income support for people living on more than the minimum wage. In part, this growth is due to the introduction of payments such as the Baby Bonus and the FTBB.³⁷ In general Australian governments of all stripes have overseen highly targeted welfare systems, which intend to direct financial assistance to those most in need. However, such forms of income support are stigmatised. This in turn undermines support for the whole system. In contrast there is no stigma attached to recipients if payments are universal. Compared with targeted welfare, universal provision is far more expensive. In Australia both major parties have found it expedient to provide financial support to families. The nation's most marginal Parliamentary seats are found in the outer suburbs of major cities on the eastern seaboard, where families with young children and sizeable mortgages are concentrated.³⁸

I have already pointed to the concern, expressed by some, that the cost of Australia's tax/transfer system is unsustainable. Economists, commentators and politicians continue to argue about the appropriate level of taxation. More troubling is the lack of serious debate on the nature of various forms of financial support. Does the government's outlay constitute a judicious investment, fair payment for socially significant work or a benevolent handout designed to minimise poverty? How this question is answered depends on whether care is seen as a social or a private matter; whether it is considered to be a vital task or simply something that happens naturally.

2.8 Conclusion

In this chapter I have provided an overview of employment and care patterns in contemporary Australia. I reported on the demographic shifts that Australia shares with many other modern wealthy nations, including an ageing population and falling fertility rates. I briefly discussed current debates on the likely consequences of these changes. Over the past 30 years there has been a sustained increase in the employment participation rates for women and, in particular, mothers. For men, however, participation rates are

³⁷ The Australian Government's PPL scheme was not in place when the Henry Tax Review report was written.

³⁸ For a discussion on the politics of financial support for families under the Howard government, see Leahy and Doughney (2006a) and Megalogenis (2006).

declining. Despite this trend, inequalities in the distribution of work (paid and unpaid) and of financial rewards remain and in some cases have worsened. The main growth in the employment of women is in part-time work, much of it poorly paid and precarious.

Someone has to look after the kids as well as people who are disabled and/or elderly. In Australia this work usually falls to mothers, grandmothers and paid carers (who are usually women). Focusing on child care, I discussed the development of the child care sector and concerns about quality of care, the impact of non-parental care and the conditions of employment for child care workers. Under current conditions, the cost of care is subsidised by unpaid and poorly paid carers.

The Australian Government continues to provide financial support for families, including a child care benefit and rebate. I explained how the nature and structure of Government assistance has changed. This provides the context for my examination of the theories used to think about the provision of care and participation in employment. However, before this I will provide in Chapter 3 a more detailed account of my philosophical approach.

Chapter 3 Philosophical perspective

3.1 Introduction

In chapter 1, I argued that there is a moral or ethical problem that needs to be addressed. Chapter 2 explained the context, mapping employment and care in contemporary Australia. In this chapter, I explain how I will tackle this problem. The first step is to establish the relevance of philosophy and then to state a feminist approach. Following this, I will argue that we need a meaningful way of gauging the well-being of women and a basis for justice claims, and that the most appealing is the capabilities approach. I will outline the development of the capabilities approach and explain the difference between Martha Nussbaum's and Amartya Sen's formulations of it, stating why I prefer the former. I will also consider the main criticisms. The capabilities approach does not explore ontologies. It also tells us very little about method: i.e. the way we understand the world, what information is relevant and how we make sense of it. Here I draw on critical realism, which also provides guidance on how to proceed with an investigation that is neither inductive nor deductive but an iterative process of considering the evidence and the strength of the best theories we have at our disposal. Critical realism is particularly important for considering the ontology of capabilities.

3.2 The relevance of philosophy

Ensuring that we receive the care we need without neglecting the needs of carers is a difficult and urgent problem. It is a very real practical problem that continues to face women not only in a developed country such as Australia but across the world. While there are men who take seriously their responsibilities for the care of their children, parents and other relatives, it is still women who do most of the physical and emotional work involved in direct care of family members and who coordinate additional care provided by others. The philosophical theories we use to help us think through our obligations, responsibilities and entitlements are therefore extremely important. Nussbaum makes the point that conceptual inquiries have practical consequences (Nussbaum 1998b, 2000b, 2001b, 2011b).³⁹ In the case of care provision, different theories suggest and support very different policy solutions.

Nussbaum acknowledges that some people question the relevance of philosophy, which they consider remote and abstract. She gives two broad reasons why she considers philosophy is able to provide us with real practical guidance. First, abstract normative theory is already in use, a point also made by Andrew Collier (1994, p. 16). Particularly influential on public policy are the normative theories characteristic of utilitarian economics. Economists and non-economists who use economic arguments are often unaware of the philosophical commitments inherent in their approach. There is a tendency to make judgments on normative matters without considering their tacit assumptions and without specifying the core concepts (Nussbaum 2000c, p. 299). Nussbaum argues that the recalcitrance of economists and 'their refusal to admit that their work does make

³⁹ Feminist economist Julie Nelson (2003a) makes a brief argument along similar lines.

substantive philosophical claims that need to be scrutinized' remains one of the main barriers to philosophy's 'effective participation in public life' (Nussbaum 2001b, p. 134). On the other hand there are others who use 'philosophical authority to underwrite their claims'. Nussbaum refers to postmodern relativists and other critics of the capabilities approach who fail to provide careful argument, instead invoking the names of Jacques Derrida or Michel Foucault as if that constitutes an argument (Nussbaum 2001b, p. 128). The problem is not simply the lack of transparency or the avoidance of careful argument, utilitarianism and post-modern relativism are inadequate theories and need to be replaced with ones that are better.

This leads into the second set of reasons concerning intellectual rigour. First, Nussbaum (2001b, p. 128) claims that, in general, philosophers produce more rigorous arguments than social scientists do. The systematic arguments of philosophical theory help us to sort out our confused thoughts and to assess our intuitive ideas to see which ones are worthwhile and which should be discarded. To do this we need conceptual clarity. One of the strengths of philosophy is that it questions its own core concepts as well as those of other disciplines (Nussbaum 2001b). Philosophers scrutinise arguments and they pursue foundational concepts and questions (Nussbaum 2000c, 2001b).⁴⁰ Collier (1994) makes the related point that philosophy is important because it makes explicit knowledge already implicit in the practice under consideration, (see also Bhaskar 1978). This is because philosophy performs two functions. The first, is a critical function which involves exposing 'contradictions in the beliefs implicit in the practice'. This function is well understood. However, there is also a defensive function, which often entails defending a practice against another philosophy. For example, Bhaskar shows that in the social sciences values may be inferred from facts, despite the pervasive Humean view that this is impossible (Bhaskar 1979; Collier 1994, 1998; see also Searle 1967).

Another aspect of philosophical rigour is the provision of concepts that allow us to identify injustices Nussbaum (2001b, p. 125). Consider, for example, the experience of women sexually harassed in their workplace before this form of abuse was clearly named and made illegal. Thomas Pogge takes the role of the philosopher further. He considers it to involve identifying the issues that matter and thinking about potential solutions to problems. This necessarily entails bringing both the issues and the possible solutions to the attention of the public. Pogge argues that philosophers should do more than propose principles. They should also be involved in the development of concrete reforms.⁴¹ He argues that this is important because politicians and business leaders are not necessarily motivated by the goal of a just society.⁴²

The relationship between theories and human lives is important, but Nussbaum (2001b) acknowledges that most philosophers know little about the lives of the very poor and would benefit greatly from direct exposure to people living in situations very different from

⁴⁰ In an interview Nussbaum explained that philosophy differs from the other humanities in the focus on argument. By argument she does not mean deduction but being alert to relations between consistencies and coherences in the different things she says, and trying to track the deeper underlying principles. She's also interested in what she calls concrete intuitions (Elliot 2005).

⁴¹ For example, Pogge's (2011) involvement in the Health Impact Fund, an initiative designed to improve the access to medicines for people in developing countries.

⁴² Thomas Pogge (2010b) in conversation with Alan Saunders on the ABC Radio National programme, The Philosopher's Zone.

their own. Nussbaum argues that it is not possible to develop good moral and political theories without detailed knowledge of peoples' lives. However, she questions an idea found in some feminist work, the idea that we should start from women's experiences:

We won't learn much from what we see if we do not bring to our field work such theories of justice and human good as we have managed to work out until then; and one thing good theory tells us is the extent to which deprivation, ignorance, and intimidation corrupt experience itself, making it a very incomplete guide to what ought to be done (see also Nussbaum 2000c, p. 300; 2001b, p. 135).

My initial survey of the academic literature on care and paid employment raised questions about which social arrangements constitute a fair allocation of rewards and burdens. This question leads to others: what sort of life is a life worth living? How important is the freedom to develop our own sense of a good life? To what extent are we social creatures and how important is individuality? It seems to me impossible to think about care and employment without addressing these questions. Yet, research and writing on care and work often bypasses these and other foundational questions, paying little attention to the embedded assumptions or the implications of positions held. At times this lead to confusion, with utilitarian views uncomfortably melded with positions far more concerned about individual well-being.⁴³ Nor is it uncommon to find a rejection of liberalism alongside demands for gender equality, an issue I will return to in chapter 6.

3.3 A feminist approach

Our experiences in the workplace and in the home are shaped by whether we are female or male. The differences in experience are not reducible to differences between male and female bodies but are strongly influenced by social expectations of the two sexes. In Australia work (paid and unpaid) is highly gendered. The inequalities in the distribution of different types of work and of financial resources have long been a major concern within feminism. For these reasons my inquiry is informed by feminist thinking. There are, however, many forms of feminism, and while the questions raised by feminists are central to this inquiry, I also draw on other ideas and strands of thought.

While there are many feminisms, all are concerned with the injustices experienced by women. This involves both the recognition that women are disadvantaged and the view that sex-based inequality is morally wrong. A commitment to equality is a central part of feminism, although there are disputes about how this commitment should be understood. Activism is the other defining feature of feminism. Feminists are not simply concerned with identifying the problems faced by women. They are involved in addressing them. There are, however, different perspectives on the details of the injustices experienced by women and over which groups of women have the most pressing needs (Fineman & Dougherty 2005b; Haslanger & Tuana 2004).

Feminists disagree about the primary cause of women's oppression. As Sally Haslanger and Nancy Tuana (2004) explain, the primary cause of oppression has been understood as women's role in the family (Engels 1972 (1845); Okin 1989), women's part in reproduction

⁴³ A particularly stark example can be seen in the work of Anne Manne (2005, 2008) who embraces a type of choice theory which is central to the neo-liberalism she rejects.

(Firestone 1970), male sexual violence (Brownmiller 1975; MacKinnon 1987) or women's place in the labour market (Bergmann 2002). Others challenge the idea that it is possible to establish a primary cause. Pluralist accounts consider the range of economic, political, legal and cultural factors specific to a given situation. This may, although need not, entail a rejection of any form of structural explanation.

Feminists have focused on issues such as care (Ruddick 1989), dependency (Fraser & Gordon 2002; Kittay 1999) and the invisibility of women's work (Folbre 1994b, 2001; Waring 1999), issues that have been traditionally ignored within political philosophy as well as the other mainstream disciplines. While some feminists advocate using modified versions of standard philosophical theories of justice, others argue that distinctly feminist theories are required (Baier 1994; Benhabib 1992; Hampton 1993; Haslanger & Tuana 2004; Held 1993; Hoagland 1989; Kittay 1999; Moody-Adams 1997; Okin 1979, 1989; Robinson 1999; Walker 1998).

The discrimination faced by women is not simply a matter of their sex or gender. The distinction between sex and gender has been an important one for many feminists. The term 'sex' is understood as the biological category (female or male) and 'gender' as a socially constructed category (woman or man). While sex is given, gender is not, and ideas about femininity and masculinity are contestable and the distinction between the two enabled feminists to counter the idea that biology is destiny. More recently the sex/gender distinction has been challenged (Mikkola 2008; Nussbaum 1999a; Scott 2010), mainly on the grounds that gender realism is untenable for one of three reasons. First, gender is not uniform. Secondly, gender is not constructed independently from other factors such as race and class (Spelman 1988). Thirdly, it is not possible to define all humans neatly into two groups, one male and another female (Mikkola 2008).⁴⁴

Challenges to the sex/gender division undermine the viability of the category 'women', leaving no basis for feminist claims. This is recognised as a problem by many feminists (Alcoff 2006; Benhabib 1992; Frye 1996; Haslanger 2000; Heyes 2000; Martin 1994; Mikkola 2007; Stoljar 1995; Stone 2004; Tanesini 1996; Young 1997; Zack 2005). As Mari Mikkola (2008) explains, there have been a number of attempts to rethink gender in ways which avoid the concerns about the sex/gender divide without leaving feminism paralysed. These include Linda Martín Alcoff's (2006) account of gender as positionality, Sally Haslanger's (2000, 2003a, 2003b, 2005, 2006) definition of the category women in terms of subordination, Natalie Stoljar's (1995, 2000) resemblance nominalism and Iris Marion Young's (1997) view that women make up a series or a social collective. Others are happy to retain the sex/gender distinction without demanding qualifications (Anderson 2009). I am not convinced by the arguments rejecting the distinction between the social and the biological, although I recognise that it may not be as sharp as it was initially held to be. For example, it is not always clear whether discrimination is based on biological or social factors. I suspect it often involves elements of both.

⁴⁴ Judith Butler (1993) argues that the distinction between sex and gender is unintelligible because both are socially constructed, a view shared by others (Antony 1998; Gatens 1995; Grosz 1994; see also Hewitson 2003; Prokhovnik 1999 cited in Mikkola 2008). For example, Butler states that the doctor who calls the new born baby a boy or a girl is not making a descriptive claim but is effectively making the child a boy or a girl (Butler 1993; Salih, 2002 cited in Mikkola 2008). While there have been a number of cases where doctors have identified babies of indeterminate sex as either male or female, it is difficult to imagine that a baby girl with female sex organs and XX chromosomes could be made a boy by simply calling her one.

Sexism intersects with other forms of oppression such as discrimination based on race, ethnicity, class (Bilge 2010; Crenshaw 1991; hooks 1984). Given this, it is questionable whether the disadvantage experienced by women can be addressed without also eradicating other forms of oppression, an insight from Marxist feminism. Awareness of the differences between women and the complex nature of inequality and injustice is vital, but it is also important that we do not lose a focus on sex-based discrimination. One criticism of so called diversity based approaches is that the focus on sex, ethnicity and race is sometimes lost. Within Australia the policy shift to diversity was part of a shift away from a rights-based approach to a utilitarian assessment of the costs of discrimination. Proponents documented the costs to business and the community if discrimination were left unchecked. Discrimination became something that was too expensive rather than morally wrong. Abandoning the moral dimension leaves the possibility of tacit endorsement of discrimination if the benefits to the entity in question can be conceived to outweigh the cost born by a smaller number of people, a risk not explored in the literature.

3.3.1 Waves

Feminism is sometimes described in terms of 'waves'. The waves model is criticised because it concentrates on periods of more visible activism among predominantly white middle class Western feminists, obscuring a much longer, more broadly based resistance to sexism and sex-based inequality (Haslanger & Tuana 2004; McRobbie 2009). Angela McRobbie (2009) also claims that the focus on waves results in a linear progress narrative that stifles the writing of a complex historical genealogy of feminism. Chandra Talpade Mohanty (1991) and bell hooks (1984), among others, criticise white middle class Western feminist for seeking to universalise their own concerns. For example, Betty Friedan's (1963) demand that women escape domestic drudgery by entering the paid workforce failed to recognise that paid employment was already a reality for many working class women, especially women of colour (Haslanger & Tuana 2004; hooks 1984). Dividing feminisms into waves also shifts the focus away from continuities within different types of feminism, e.g. maternal feminism and Marxist feminism. In a recent Australian book, Monica Dux and Zora Simic (2008) argue that we should not be diverted by disputes between the different strands and eras of feminism but instead renew our focus on the real problems contemporary women face.⁴⁵ The only difficulty is that the ideas we bring to our examination of women's lives, influences our thinking about the nature and urgency of these problems. What is important is that we view different strands and eras of feminism within the context of their time and place. Feminism is a political project. The critical issues and the opportunities to address them are different in rural Afghanistan and the inner suburbs of a major Australian city. Over time there have also been shifts in the issues identified as the most pressing. To some extent these shifts reflect the opportunities to achieve social change.

Despite sharing some of these reservations, I will outline the 'waves' because they describe the forms of feminism with the greatest influence on public debates and policy development in countries such as Australia. In particular describing the different waves of feminism helps explain shifting perceptions on care and domestic work.

⁴⁵ The various blogs and websites dedicated to feminism provide a fascinating window into the views of some women (e.g. concerns expressed on an emerging website <http://contemporaryfeminism.com/>).

First-wave feminism is generally considered to have started in the mid 1800s and lasted until the 1920s. It focused on achieving legal and political rights as well as seeking economic improvements in the lives of women. First-wave feminism is often characterised as maternalist, and it has been criticised as 'essentialist' because it assumed that all women are actual or potential mothers (Okin 1997) and also portrayed them as vulnerable (Grace 2002). However, it is important to acknowledge the revolutionary nature of early feminism and the gains that were made. In Australia this included the introduction of the Maternity Allowance (Centrelink 2001). However, considerable opposition and negligible changes to social power relations meant that the gains were always fragile. It also became apparent that the state and society were far more responsive to claims based on the needs of children and than those based on the needs of mothers (Lake 1999).

Emerging in the western world in the 1960s, second-wave feminisms are generally associated with a focus on achieving gender equity through increased participation in paid employment and in public life rather than through the recognition of domestic work (Everingham 1994; Lake 1999).⁴⁶ However, there were many important concerns including: violence against women, pornography, reproductive rights and child care. Unfortunately, one response to second-wave feminism was the popular perception (still current) that feminism is intrinsically opposed to mothers.⁴⁷ This ignores the second-wave feminist work focused on mothering, the ideologies that inform social norms and expectations and the material conditions of mothers.⁴⁸ As explained in the previous chapter, women's increased participation in paid employment was not accompanied by a commensurate reduction in their unpaid workload. Women were free to take up paid employment as long as it did not significantly change the gendered division of labour in the home (Bittman & Pixley 1997; Craig 2007a).

Third-wave feminists criticised the second-wave for failing to take into account the differences between women due to race, ethnicity, class, geography and religion (Haslanger & Tuana 2004; Zack 2005). Third-wave feminism moved from the second-wave focus on gender equality to a concern with oppression more broadly defined (Mack-Canty & Wright 2004).⁴⁹ The starting point is said to be the situated experience of different women rather than a foundational and often abstract theory (Mack-Canty 2004). This suggests the clear influence of post-colonialism and post-modernism, with a focus on agency (Yeatman 1994) and criticism of 'essentialist' categories of men and women. Third-wave feminism also reflects the cultural turn which has been evident in the humanities since the 1980s.

In contrast, McRobbie (2009) sees third-wave feminism as neo-liberal and disputes its association with post-structuralism and with the work of Judith Butler (1990, 1993, 1997,

⁴⁶ The three main types of second-wave feminism (liberal, socialist and radical) started with different assumptions and goals (Bulbeck 1998).

⁴⁷ There is still present in the media and some public debates a caricature of feminism. This feminist type rejects everything to do with maternal care and domestic labour, fails to see anything of value in the family, and focuses exclusively on success in paid employment. She is out of touch with the majority of women who simply want to care for their children.

⁴⁸ For instance, Adrienne Rich's (1986) book *Of Woman Born*, which has been taken up by contemporary maternal feminists, particularly Andrea O'Reilly (2004a, 2004b).

⁴⁹ The emergence of third-wave feminism has been identified by Barbara Arneil (1999); Lynne Segal (1997), Deborah Siegel (1997) and Val Plumwood (1996).

2004). McRobbie (2009) sees leftist radicalism in Butler's work and seems indignant that this should be claimed by neo-liberal third-wave feminists. I find complicity with capitalism in both third-wave and Butlerian feminisms. Third-wave claims of irony and re-signification are ineffectual in the face of exploitation. Butler's (1993, 1997, 2004) view that the only possible form of action is a parodic performance of gender denies the possibility structural change (Nussbaum 1999b).

It is sometimes claimed that with self-assurance about the place of women in the world, third-wave feminists are confidently able to explore issues of sexuality (Johnson 2002). Stéphanie Gnez (2006) uses the political idea of a Third Way, seeing women operating in a highly sexualised, consumer-oriented capitalist economy as empowered. It may be that they are also in a stronger position to embrace the maternal and domestic in a way that is empowering. However, there are also concerns that third-wave feminism lacks the necessary critical capacity. Rather than gaining strength, young women have succumbed to male-focused raunch culture and rampant consumerism (Levy 2005). At the same time questions of identity and representation have displaced economic issues at a time when the distribution of resources is becoming increasing inequitable (Fraser 2000; Klein 2001). This avoidance of the hard issues plays into the hands of capitalist ideology (McRobbie 2009).

More recently there have been reports of a fourth wave (Featherstone 2005)⁵⁰, although a relatively recent collection of essays on mothering in the third-wave suggests otherwise (Kinser 2008). However it is labeled, there is a tendency to see contemporary feminism, and particularly the types of feminism embraced by younger women, as marked more by diversity than by a common perspective (e.g. Harris 2004; Harris 2007). The issues that dominate concern identity with a significant focus on the politics of difference and the stability of sexed identity, and concepts of power and feminist epistemology. While many are concerned that young women reject the feminist label (Dux & Simic 2008; McRobbie 2009) there are also reports of a resurgence of feminist activism (e.g. Redfern & Aune 2010).

3.3.2 Equality

A major schism, which only partially corresponds to the waves, is between egalitarian and difference feminists. The first group argues that men and women should be treated as equal. The second holds that treatment should take into account fundamental differences in nature and/or preferences. Difference feminists have shown that the equality approach tends to presuppose a standard based on the typical male experience and that this disadvantages women. For example, a career path based on continuous employment does not take into account the fact of childbirth.⁵¹ However, as egalitarian feminists point out, difference feminists tend to draw on 'essentialist' notions of femininity and masculinity, which reinforces existing gender stereotypes and entrenches inequality (Fraser 1997, p. 44).

There have been a number of responses to this stalemate. Some reinterpret either difference or equality into a more defensible form. Others avoid both, seeking a third

⁵⁰ See, for example, the fourth-wave feminism blog <http://fourthwavefeminism.blogspot.com/>.

⁵¹ For examples, see the Human Rights and Equal Opportunity Commission's 1999 report on pregnancy related discrimination in the workplace (Halliday et al. 1999).

normative principle. Yet others have 'retreated altogether from normative theorizing – into cultural positivism, piecemeal reformism, or postmodern antinomianism' (Fraser 1997, p. 45). According to Nancy Fraser, none of these strategies is satisfactory. Instead she proposes conceptualising gender equity 'as a complex notion comprising a plurality of distinct normative principles' (Fraser 1997, p. 45). The idea that there should be a number of distinct norms and that all must be realised simultaneously in order to achieve gender equality would seem compatible with Nussbaum's capabilities approach, which I outline in the next section. Interestingly Fraser has rejected Nussbaum's approach as too abstract, although she does not make clear the basis for this assessment.

Paula England (2003) concedes that there is a tension between equality and difference feminisms. However, she argues that the two positions are not necessarily incompatible. It should be possible to ensure different types of work are open to both women and men while also insisting that the value and rewards of traditionally female and male work be equalised. Fraser's approach has the advantage of disrupting the public/private divide, a dichotomy that has distorted thinking about gender in Western societies at least since the industrial revolution (Boyd 1997; Fineman & Dougherty 2005b).

While Fraser's proposal and England's argument both have merit it is important to be clear on what we mean by equality. Both the proponents and critics of equality feminism often understand equality as sameness. This is a problem because the idea of equality depends on an element of difference. If there is no difference between A and B then we are talking about identity not equality. In contrast, if B and C are equal then the relationship between them is one of correspondence. It is not, however, sufficient simply to state that B and C are equal. We need to specify the factors that determine equivalence. For example we may find that there are biological differences between women and men but claim that they have the same moral value. In other words B and C are equal with respect to the factor C (or factors C, D, E...) (Gosepath 2007).

Despite the variations in the many different feminisms, each responding to different problems in specific contexts, a concern with the inequality remains a consistent thread. However to be able to comment on the extent and nature of disadvantage experienced by women we need some way of assessing their well-being. We also need an account of why the inequitable distribution of rewards and burdens, of opportunities and outcomes is wrong and to provide guidance in devising policies to redress the injustice. On both counts the capabilities approach looks promising. In the following section I will outline the development of the human capabilities approach, discuss differences between its two main versions and consider the main criticisms and concerns.

3.4 The capabilities approach

The capabilities approach asks what sort of life is commensurate with human dignity. It provides a focus on what people can be and can do in their lives. To be able to pursue their ends, people need access to particular areas of human functioning (or outcomes), even if their life choices involve exercising some capabilities more than others (Nussbaum 2001b,

2011b)⁵². The capabilities approach therefore examines the extent to which an individual has the real opportunity to achieve the things that she or he 'has reason to value' (Sen 2009). While both Sen and Nussbaum use capabilities to provide a measure of a person's quality of life, Nussbaum takes her approach further, developing it as a political theory designed to specify a basic level of capability that a political authority would deliver to its citizens as a necessary condition of justice.⁵³

Sen pioneered the capabilities approach against the emphasis on economic growth as an indicator of quality of life. Nussbaum's version⁵⁴ was initiated independently, flowing from her interest in Aristotelian ideas on human functioning and how Aristotle's thinking influenced Marx (Nussbaum 2000c, p. 70).⁵⁵ Nussbaum notes that her capabilities approach has 'historical antecedents in Aristotle and Marx', and also relatives in Mill's Aristotelian view of human flourishing, the writings of the Yugoslav humanist Marxists and various forms of modern Thomism (Nussbaum 2000c, p. xiii; see also Nussbaum 2011b). Her capabilities approach was further developed during a period of collaboration with Sen at the World Institute for Development Economic Research (Nussbaum 2000c). Both proposals should be viewed in the context of the three main alternative quality-of-life measures, which Nussbaum (2000c) and Sen (1993) reject.⁵⁶

The first measure is Gross National Product (GNP) or Gross Domestic Product (GDP) per capita. Although still widely used, these measures tell us nothing about the distribution of wealth and income within a nation or region, let alone within a household. It fails to tell us directly about important goods that do not directly correlate with wealth and income: goods such as life expectancy, employment opportunities and political liberties. Furthermore, GDP does not take into account the value of non-market care and domestic work (Nussbaum 2000c, 2001b, 2011b). A woman may be as wealthy as her husband but may have fewer opportunities (Nussbaum 2003a; Williams 2000). Sen notes that early quantitative income estimates were motivated by an interest in the richness of human lives and the knowledge that wealth was not an end in itself but a potential means to a better life. Both Sen and Nussbaum are informed by the Aristotelian view that income and primary goods are not valuable in themselves but are the means to living in a human way

⁵² Although *Women and Human Development* focuses on the lives of women in developing countries, Nussbaum (2000, p. xiii) makes it clear that her theory may also be applied to developed countries (e.g. Nussbaum 2010, 2002b).

⁵³ Ingrid Robeyns (2011) reformulates the capability approach into 'capabilitarianism', which is specified at the meta-ethical level. This allows for direct comparison with utilitarianism. This is an interesting proposal, but, for this project I need to establish which type of capability theory does useful work.

⁵⁴ Nussbaum's fullest account of her capabilities approach is in the books *Women and Human Development* (2000c); *Frontiers of Justice* (2006) and *Creating Capabilities* (2011b). The philosophical foundations are discussed in a chapter 'Non-Relative Virtues: An Aristotelian Approach' (1993). See also her journal article 'Women's Bodies: Violence, Security, Capabilities' (2005).

⁵⁵ See Sen (1973, 1997 expanded version, 1980, 1982b, 1984, 1985, 1986, 1992, 1993, 1995a, 2000, 2004, 2009) and Drèze and Sen (1989).

⁵⁶ Also, see Anderson's (2010) defence of the capabilities approach, explaining its superiority to subjective and resourcist theories. In addition, Nussbaum (2011a) and Sen (1993) distinguishes between capabilities approaches and libertarian rights-based rules of non-interference.

(Aristotle 1976; Sen 2009). However, this understanding has been lost in the contemporary use of GNP (Sen 2009).

Second is the more straightforwardly utilitarian approach of calculating the total or average utility of a population. Like GNP or GDP, total or average utility is an aggregate figure which tells us nothing about the life satisfactions of the poorest or most disadvantaged. Not only does it aggregate across distinct lives, it also aggregates across distinct elements of lives. This encourages trade-offs between aspects of life that are independent and important.⁵⁷ The other main problem is that, although it is important to know how people feel about their lives, reported satisfaction does not necessarily tell us much about what people are actually able to be and to do. An individual's responses in part reflects her expectations about the type of life appropriate for a person of her sex, class, race, regionality and so on (Nussbaum 2000c, 2001b, 2011b).⁵⁸ If, in developing policy, we fail to take into account the way that experiences shape preferences and reported satisfaction, the result of our work is likely to reinforce the status quo (Nussbaum 2003a, 2011b).⁵⁹

The third prevailing approach to assessing quality of life considers the fair social allocation of a group of basic resources (Nussbaum 2000c, 2011b). The most famous is John Rawls's list of primary goods, a list of goods that all rational individuals would want regardless of the type of life they wish to live.

Rawls's list is heterogeneous, including 'liberties, opportunities and powers, which are capacities of citizens in their social environment' (Nussbaum 2000c, p. 66).⁶⁰ Nussbaum considers Rawls approach to be sensitive to concerns about pluralism and paternalism. It recognises the importance of basic liberties and opportunities and the need for an adequate material base in order to allow individuals to make meaningful choices about their lives (Nussbaum 2000c, pp. 66-67).

However, Nussbaum also identifies a number of difficulties. The first problem is that Rawls locates his concept of the person and his list of primary goods within a particular Western philosophical tradition. Nussbaum considers this restriction unnecessary and that the ideas he wishes to capture are not unique to the Western tradition. Secondly, by failing to acknowledge the animality of humans Rawls fails to appreciate that all humans are needy and dependent on others for most of their lives (see also Nussbaum 2002b; Nussbaum 2006, p. 87). A more serious issue concerns the limitations of relying on resources in order

⁵⁷ An influential variant on the utilitarian approach is Becker's (1991) model of the family.

⁵⁸ I will return to this issue in chapter 5 when I discuss the problem of adaptive preference formation.

⁵⁹ Nussbaum (2011b) refers to Robert Nozick's (1974) experience machine that gives one the illusion of participating in various activities as well as an illusion of the satisfaction such activities generate (reminiscent of Aldous Huxley's (2006 (1932)) brave new world). Nozick argues that most people would reject the experience machine, preferring to make choices and act even though the outcomes are inevitably uncertain.

⁶⁰ Rawls describes five types of primary goods: a. basic rights and liberties; b. freedom of movement and free choice of occupation against a background of diverse opportunities; c. powers and prerogatives of offices and positions of responsibility in the political and economic institutions of the basic structure; d. income and wealth; and finally e. the social bases of self-respect. (Rawls 1996, p. 181)

to establish who is better and worse off. This is flawed because individuals' needs for resources vary, as does their capacity to convert resources into valuable functionings. So, for example, we find that a woman who is pregnant or breastfeeding requires more nutrients than does a woman who is not. A person who is paralysed needs more resources to be mobile than a person who has the full use of their legs. In many parts of the world, it will cost more to ensure women's literacy compared to men's because of the need to overcome obstacles stemming from traditional restrictions and prejudices. As Nussbaum explains:

The resource based approach doesn't go deep enough to diagnose obstacles that can be present even when resources seem to be adequately spread around, causing individuals to neglect to avail themselves of opportunities that they in some sense have (such as free public education, or the vote, or the right to work) (Nussbaum 2000c, pp. 68-69).

If we focus on resources and fail to recognise the barriers facing many individuals we are likely to reinforce inequalities (Nussbaum 2011b). The Rawlsian approach does not pay sufficient attention to the individual in her or his struggle for flourishing (Nussbaum 2000c, p. 69; Sen 2009, p. 254).⁶¹

Sen identifies the four most important sources of variation in the ability to convert resources. First are personal characteristics, including age, gender and health; second, is the physical environment, which includes vulnerability to flooding and climatic change; third is social climate, including public health care, public education and the prevalence of crime; and fourth are established patterns of behaviour in our community, which includes the resources required in order to appear in public without shame (Sen 2009, p. 255).

By examining capabilities we see the intensity of poverty in a way often not revealed by income levels. For example, people who are older or unwell are often unable to earn as much money as does someone young and healthy. However they also have the additional problem of generally requiring more resources to achieve the same level of functioning as their younger, healthier neighbour. In other words, they face both an earning handicap and a conversion handicap.⁶² Capabilities approaches are also more sensitive to the deprivation of women and girls. Inequitable distribution of resources within a family is hidden by aggregated household or family income. Assessing factors such as morbidity, undernourishment, education levels will provide a clearer picture (Sen 2009).⁶³

⁶¹ For the same reasons Sen objected to the 'basic needs' approach initiated by Dharam Ghai and the International Labour Organization (ILO) and developed by Frances Stewart, Gus Ranis, John Fei and Norman Hicks. Sen considered the idea of basic needs to be ill-conceived because it focused on means rather than ends. Proponents of basic needs were critical of Sen's capabilities approach because it was not an operational policy programme (Toye 2009).

⁶² The connection between income poverty and other difficulties is discussed by Tony Atkinson (1969) and Jonathon Wolff and Avner de-Shalit (2007).

⁶³ In Australia, just over a decade ago, there was a heated debate about the most meaningful way of measuring poverty. The two main protagonists are both called Peter Saunders, with the progressive Saunders (Director of the Social Policy Research Centre (SPRC), University of NSW from 1987 to 2007) proposing a relative measure of poverty (Saunders 2005) and the conservative Saunders (Director of Social Policy, Centre of Independent Studies (CIS) 2002 to 2008) advocating an absolute measure of poverty (Saunders & Tsumori 2002). The questions raised by the debate lead Saunders (SPRC) to draw on the capabilities approach and examine the material and non-material items

3.4.1 Differences between Sen's and Nussbaum's Approaches

There is now a substantial body of work on capabilities, yet the literature is still dominated by two main approaches, those of Sen and Nussbaum. Before outlining differences, it is interesting to consider the dynamics of the debate between Sen and Nussbaum. While Nussbaum (2000c, 2011a) discusses Sen's version of the capabilities approach in some detail, Sen has made little direct comment on Nussbaum's approach. He has acknowledged the importance of her work, particularly in establishing the Aristotelian foundations of the capabilities approach (Sen 2009, p. 232). Sen has made it clear that he rejects the type of capabilities list proposed by Nussbaum, although he rarely directly refers to Nussbaum's list. In his most explicit statement, (Sen 1993) argues that Nussbaum's list is fine as one of many potential lists, each developed to achieve different aims.

Purpose and definitions

As stated above, the main difference between Nussbaum and Sen's approaches is one of purpose. Sen's primary use of capabilities is to provide a space to make comparisons of quality of life, whereas Nussbaum proposes a partial theory of justice (Nussbaum 2000c, 2006, 2011b; Sen 2009, p. 232). At times Sen (1993) accepts Nussbaum's approach as one of many possible uses of capabilities.

The differences in Sen and Nussbaum's aims are reflected in slight variations in use of the terms 'capabilities' and 'functioning'. Sen defines capabilities as the set of all people's potential functionings. This means that there are an almost infinite number of capabilities. Functionings he takes to mean the actual 'beings and doings' (Robeyns 2003c, p. 63). Nussbaum's approach starts in the opposite direction. She develops a list of the ten central human capabilities arguing that, as a minimum, all individuals need the opportunity to achieve each of these capabilities in order to live in a human way. Functioning involves actually realising these capabilities. However, Nussbaum's list does not include all possible capabilities or corresponding functionings. Both Sen and Nussbaum distinguish between capabilities and functioning to allow the space for individuals to make their own decisions about how they wish to live. However, Sen seems to consider all capabilities as valuable in promoting freedom, whereas Nussbaum is more discerning. Some capabilities are perhaps trivial freedoms (e.g. the freedom not to wear a bicycle helmet) and others are bad because they enable the powerful to inflict harm (e.g. freedom to inflict violence or sexual harassment) (Nussbaum 2011b).

List of capabilities

The most obvious and most discussed point of divergence between Sen's and Nussbaum's work concerns the development of a list of capabilities. Nussbaum identifies 10 central human capabilities: life; bodily health; bodily integrity; senses, imagination and health; emotions; practical reason; affiliation; other species; play; and control over one's environment.⁶⁴ These, she argues, are sufficiently abstract to be universally relevant. Nussbaum is critical of Sen's failure to endorse such a list and sees a risk to justice in his

people require to live socially engaged lives (Saunders 2010; Saunders, Naidoo & Griffiths 2007; Saunders & Zhu 2009).

⁶⁴ Different versions of the complete list may be found in Appendices A, B and C. Nussbaum's capabilities are discussed in more detail in chapter 7.

tendency to identify freedom as 'a general all-purpose good' (Nussbaum 2003b, p. 417; 2011b). She argues that capabilities will have to be specified if they are to be used to advance a concept of social justice. 'Either a society has a conception of basic justice or it does not' (Nussbaum 2003a, p. 46).

Sen, on the other hand, is critical of what he calls 'a fixed and final list'. His objections are threefold. First, he argues that a list of capabilities cannot be independent from the purpose for which it was developed, for example measuring development, evaluating poverty, assessing human rights and so on. Secondly, the social conditions and priorities may change. Sen points out that the poverty of India at the time of independence meant that the most pressing issues were education and health not the development of effective national communication systems. As social conditions change we might seek to adjust our assessment of the relative importance of different capabilities. Finally, he holds that public discussion and reasoning are important to understanding particular capabilities, their role, application and significance (Sen 2004). He also argues that fixed lists foreclose other options that remain feasible under his general capabilities framework (Sen 1993).

What I am against is the fixing of a cemented list of capabilities, which is absolutely complete (nothing could be added to it) and totally fixed (it could not respond to public reasoning and to the formation of social values). I am a great believer in theory. The theory of evaluation and assessment does, I believe, have the exacting task of pointing to the relevance of what we are free to do and free to be (the capabilities in general), as opposed to the material goods we have and the commodities we can command. But pure theory cannot "freeze" a list of capabilities for all societies for all time to come, irrespective of what the citizens come to understand and value. That would be not only a denial of the reach of democracy, but also a misunderstanding of what pure theory can do, completely divorced from the particular social reality that any particular society faces. (Sen 2004, p. 78)

These concerns cannot easily be directed at Nussbaum's capabilities list. She clearly articulates the purpose behind her capabilities approach and has consistently stated that her proposed list is not immutable. It has been modified and will continue to evolve (Nussbaum 2003a, 2011b). She also insists that the list of capabilities should be developed in a 'somewhat abstract and general way' to leave room for 'the activities of specifying and deliberating by citizens and their legislatures and courts that all democratic nations contain' (Nussbaum 2003a, p. 41). Nussbaum leaves to the national level the task of determining how the capabilities are to be specified in more detail as well as the way that they are to be implemented. The history and circumstances of a country is likely to result in some differences in the way the capabilities are realised. Within her account there is scope for not only ongoing discussion on the capabilities themselves but also on priorities, the precise thresholds and distribution above those thresholds.⁶⁵

Nussbaum notes a tension in Sen's work. Although he refuses to specify any account of central capabilities, he sometimes seems to suggest that some capabilities are central and non-negotiable (see also Gasper 2008; Stewart & Deneulin 2002). Others share

⁶⁵ This also responds to Julie MacKenzie's (2009) claim that Nussbaum shifts between the idea of the capabilities approach as contestable and one which holds that the capabilities are derived from her intuitions and are beyond dispute. Nussbaum does not derive capabilities from her intuitions as is evident from her book chapter 'Non-Relative Virtues: An Aristotelian Approach' (1993).

Nussbaum's frustration with Sen's lack of specificity. For example, Francis Stewart questioned whether Sen's appeal to a democratic consensus was able to deal with inequalities in power, particularly given that there is rarely social consensus on political matters (Stewart & Deneulin 2002; Toye 2009). Séverine Deneulin (2005) asks whether there is any point in having a capability approach if it simply endorses the results of a formal democratic process, particularly as it is doubtful that the voices of the marginalised will be heard. She notes that Sen does not draw clear distinctions between democracy, public debate and participation (Deneulin 2006). Sen does not consider the situation where a democratic process may result in the rejection of freedom (Gasper 2008) or other types of injustice (Nussbaum 2011b). On the other hand, Ingrid Robeyns (2003c, p. 62) considers the underspecified character of Sen's approach to be a distinct advantage. The openness of Sen's general framework, particularly as interpreted by Robeyns, makes it easier to combine it with different philosophical and social theories. Practitioners and academics working on development projects strongly favour Sen's approach because they consider it provides more scope for self-determination, an important issue given the history of colonialism in most developing countries and power differences between donors and recipients.⁶⁶

It is easier to reject the idea of Nussbaum's list of capabilities than it is to argue against the individual items she proposes. Physical safety, adequate nutrition and the opportunity to form relationships all seem highly desirable. It is difficult to imagine a time and a place where these should be rejected. Yet for Sen the process of deriving the capabilities relevant in a particular situation is important in itself (see Robeyns 2003c). It is not clear from either Sen's or Robeyns's work what might be the appropriate scope for a capability list: a continent, culture, nation or community. The main problem with leaving the specification of capabilities to be decided at the local level, however defined, is that we are likely to be blinkered to some extent by the traditions and practices of our own society. There are times when we fail to see the extent or seriousness of injustices within our own communities. Sen (2009) is well aware of the dangers of parochialism, stating that it has to be avoided to achieve justice. He refers to a thought experiment proposed by Adam Smith. The question asked by Smith is – what would a given practice look like to an outsider or impartial spectator? Smith considers the example of the once common practice of infanticide in the ancient Greek states, a practice that was well accepted and endorsed by philosophers such as Aristotle and Plato. According to Sen, Smith's distant perspective is motivated by the need to scrutinise not only vested interests but also the power of entrenched traditions and customs. This raises an important question. If we wish to avoid reproducing social inequalities how can we assess whether the status quo is unjust? I do not think this is possible without an appeal to substantive theories on justice.

Justice

Given that Sen has made quite explicit his commitment to normative thinking about justice and consistently supports gender equality, Nussbaum is puzzled by his refusal to

⁶⁶ The importance of these issues was apparent from discussions at the 2010 and 2011 conferences of the Human Development and Capabilities Association.

endorse a specific conception of justice in the form of an account of fundamental entitlements.⁶⁷

Such leaving-up-for-grabs is all the more dangerous when we are confronting women's issues. For obviously enough, many traditional conceptions of social justice and fundamental entitlements have made women second-class citizens, if citizens at all. Women's liberties, opportunities, property rights, and political rights have been construed as unequal to men, and this has been taken to be a just state of affairs. Nor have traditional accounts of justice attended at all to issues that are particularly urgent for women, such as issues of bodily integrity, sexual harassment.... the issue of public support for care to children, the disabled, and the elderly. (Nussbaum 2003a, p. 47)

In his most recent book, *The Idea of Justice*, Sen presents his thinking on justice.⁶⁸ Sen proposes a comparative rather than transcendental approach to justice. He argues that we should focus on what is actually happening, identifying alternatives that are more just (comparatively) instead of trying to identify perfectly just (transcendental) social arrangements and institutions (Sen 2009, p. 410). Sen's approach is influenced by social choice theory (see my description in chapter 5, section 5.4.2). Sen also notes similarities with the work of Adam Smith, Jeremy Bentham, John Stuart Mill and Karl Marx. Furthermore, he finds congruence with the Indian concept of justice as *nyaya*, which focuses on outcomes, as opposed to *niti*, which is concerned with arrangements and institutions (Sen 2009, pp. 410-11).

Sen describes the transcendental approach as involving 'the discipline of reasoning about justice in terms of the idea of a social contract' (Sen 2009, p. 411). The contractarian tradition can be traced back at least to the work of Thomas Hobbes, with other major contributors including Locke, Rousseau, Kant, Rawls, Nozick, Gauthier and Dworkin. Sen concedes that social contract theories have provided us with some important insights but also significant limitations that ultimately form 'a barrier to practical reason on justice' (Sen 2009, p. 411).

As Sen explains, he is more interested in improving people's lives by considering whether a given situation is more just than another rather than establishing the structures of a perfectly just society. He gives the example of the US, considering whether it is more just with or without universal health coverage. He argues that the introduction of universal health care will make America a better place even though it will not address many other forms of injustice, some of which contribute to the poor health of the most disadvantaged. Furthermore, Sen contends that to make this judgment in favour of the US with health care we do not need an image of completely just society. Robeyns (2010) holds that Sen focuses on extreme cases when it is obvious what we should do without referring to principles. Her concern is that it is not possible to generalise this position to all cases of injustice, particularly gender injustice, the existence of which is still disputed.

Reflecting on the current US debate on health-care reform, I cannot share either Sen's or Robeyns's confidence. While most if not all progressives support some sort of universal

⁶⁷ Nussbaum (2003a, p. 34) pointed out that Sen failed to present a fully formulated account of social justice, leaving the reader to extrapolate one from the 'suggestive materials' he has provided.

⁶⁸ Sen's earlier works on justice include the book chapter 'Social Commitment and Democracy' (1996) and the journal article 'The Idea of Justice' (2008).

health care system, there are many Americans who remain vehemently opposed. Some consider that the current system works well for them and fear that any change will increase their health costs. Others argue that universal health care constitutes a direct attack on individual liberty and is another socialist measure introduced by a socialist president. There is no shared position on what might appear a simple comparison between two potential social orders – the US as it is or the US with a comprehensive health care system. A public discussion on the value of universal health care is not possible without considering opposing views on freedom, the role of society, our obligations to others and our entitlements as members of a community and of humanity. It is not possible to discuss these issues in any meaningful way without drawing on ideas about what constitutes a just society.

Another problem with Sen's idea of justice concerns the issue of path dependence. As philosopher Pablo Gilabert (2010) explains, a comparative approach to justice may lead to the choice of outcome A over B. However, if B leads to C, which is a more just outcome than either A or B, the initial choice of A is not ideal.

Although Sen's book on justice (2009) contains a section on capabilities, it is not clear how Sen links his version of the capabilities approach to his thinking on justice. In the introduction, Sen indicates that he will develop further the capabilities approach. This was not achieved. Although he addressed some minor criticisms of his approach, he ignored more substantial critiques of his work, particularly by Nussbaum. Sen does show how capabilities compete with Rawls's primary goods, offering a better judgment of people's overall advantage, but he also acknowledges that the capabilities approach does not do the work of other parts of Rawls's theory of justice. Judging his earlier work, Nussbaum (2000c, p. 13) notes that Sen has not grounded the capabilities approach 'in the Marxian/Aristotelian idea of truly human functioning', an idea that is central to her own account. Nussbaum considers that Sen appears sympathetic to such grounding, but he does not make it a central feature of his work.⁶⁹

Capabilities and Human Rights

There are close links between the capabilities and human-rights approaches (Burchardt & Vizard 2011; Drydyk 2011; Fukuda-Parr 2011; Nussbaum 2011a, 2011b; Sen 2006a; Vizard, Fukuda-Parr & Elson 2011). Nussbaum identifies her theory as a species of human-rights approach. Common to both capabilities and human-rights theories is 'the idea that all people have some core entitlements just by virtue of their humanity, and that it is a basic duty of society to respect and support these entitlements' (Nussbaum 2011a; 2011b, p. 62). Nussbaum argues that the capabilities approach supplements standard human-rights approaches by focusing explicit attention on, and providing philosophical clarity about foundational concepts. This includes grounding claims on our basic humanity, bare birth and minimal agency rather than rationality. In this way the capabilities approach takes better account of the needs of people with cognitive disabilities. According to Nussbaum, the capabilities approach is also stronger because it takes into consideration the rights of other species and specifies the relationship between rights and duties (Nussbaum 2011a; 2011b, p. 62).⁷⁰ There is potential for the capabilities approach to help address other

⁶⁹ David Crocker (1992) considers that Sen owes much to Aristotle and Marx. The influence is clearly acknowledged by Sen (2000, pp. 24, 289).

⁷⁰ I will return to the issue of rights and duties in chapter 8.

contentious issues raised in ethical debates about human rights (Vizard, Fukuda-Parr & Elson 2011, p. 2).

The capabilities approach supports a broader conception of human rights that includes economic and social rights as well as civil and political rights (Vizard, Fukuda-Parr & Elson 2011, p. 2). Furthermore, it challenges the libertarian idea that rights create a barrier protecting the individual from government interference. Nussbaum (2011a; 2011b, p. 68) is clear that the language of human rights remains important because 'it reminds us that people have justified and urgent claims to certain types of treatment'. However, these claims are strengthened when human rights are informed by the capabilities approach. The capabilities approach can also provide an applied framework for the evaluation of the human rights positions of both individuals and groups (Vizard, Fukuda-Parr & Elson 2011, p. 1).

There is substantial overlap between Nussbaum's list of 10 central human capabilities and the human rights specified in the Universal Declaration of Human Rights (United Nations 1948). Nussbaum's list covers both first-generation (political and civil) rights and second-generation (economic and social) rights. It also challenges the distinction embodied in the idea of these two groups of rights, a distinction suggesting that political and civil rights do not have roots in economic and social conditions.

Sen or Nussbaum?

Sen's insights on capabilities are seminal, but the underdetermined nature of his capabilities framework is a problem given the urgency of so many social issues. Both Sen's and Nussbaum's capabilities approaches offer a way of assessing how well individuals – women, men and children – are doing. However, as Nussbaum (2000c) points out, the comparative use of capabilities will not tell us much without normative concepts to help us make sense of what we find. Her approach can show why differences in the experiences of women and men are unjust. As a partial theory of justice, it offers stronger grounds for demands that the work and the resources we each need to live should be distributed in a fairer way.

In chapter 7 I will discuss a number of important features of Nussbaum's capabilities approach and then consider how her account might help us think about care. Now however, I will consider some of the main criticisms of the capabilities approach.

3.4.2 Criticisms of capabilities approaches

It is no surprise that the capabilities approaches are rejected by defenders of both welfarist and resourcist theories. The British economist Richard Layard (2005) argues that happiness is the thing that matters most, more than wealth, liberty, equality and fraternity. He states that it is self-evident that happiness is the ultimate goal (in much the same way that the American declaration of independence claims that our inalienable rights are self-evident). Fear of paternalism motivates his rejection of the capabilities approach. Richard Arneson (1989) favours opportunities for welfare over Sen's capabilities approach. Unlike Layard, Arneson is aware that preferences are pliable, and so he defines welfare in terms of considered preferences. Despite this, Arneson does not adequately consider the distorting effect of persistent discrimination.

There are also a number of proponents of resource-based approaches. For example, Pogge (2010a) defends a Rawlsian theory of justice, arguing that it is stronger than the

capabilities approach.⁷¹ According to Sen (2009, pp. 264-68), Ronald Dworkin (2000, 2002) has two arguments against the capabilities approach. First, equality of capabilities is really the same as equality of welfare, with both providing flawed views of equity. Secondly, Dworkin states that the capabilities approach does no additional work than his own equality-of-resources approach. Other essays in Harry Brighouse and Ingrid Robeyns's (2010) book argue that both capabilities and Rawlsian approaches are incomplete but complementary (Sen 2009, p. 256).

The capabilities approach – Nussbaum's version more than Sen's – is also criticised by simplistic forms of cultural relativism on the grounds that it constitutes a form of 'imperialist domination', a criticism also directed at utilitarian and resource based approaches. Such criticisms hold that practices within traditional cultures cannot be coherently criticised from outside that culture. This view is countered by Nussbaum. For example, she explains why female genital mutilation is harmful and should not be tolerated even if the practice is condoned within some communities (Nussbaum 2001b). The cultural relativists mounting this criticism tend to ignore the heterogeneity within cultures as well as internal conflict, critique and dissent (drawing on Comaroff & Comaroff 1991, 1997; Kniss 1997; see also Narayan 2000; Nussbaum 2001b).

In her examination of women in the Indian informal sector, Elizabeth Hill (2010) found that Sen's capability approach could not adequately account for the complexities of economic development. Instead she found Axel Honneth's work on recognition and respect and his theory of moral injury to be more insightful. On the other hand Robeyns (2003b) defends capabilities against the criticism that they do not adequately account for recognition. Phillip Pettit (2001) also defends Sen's capabilities approach but argues that it should be extended. Pettit's concern is that people may have the capability to do certain things, but their actual freedom to do those things is dependent on others in the form of assistance or tolerance. He considers that capabilities that are favour-dependent do not count as real freedoms. This insight draws on what is called the republican view of liberty, and is, according to Pettit, a natural extension of Sen's capability approach. Sen argues that while the republican approach provides some useful insights it has significant failings. For example, it does not allow us to distinguish between the situation where a disabled person has no assistance, and therefore no ability to leave the house, and the situation where the same person is assisted by others (volunteers and paid carers) and is therefore mobile (Sen 2009 pp. 304-08).

Hartley Dean (2009) fears that the capabilities approach cannot challenge capitalism (see also Gasper 2008). He concedes that the capabilities approach has a number of advantages, considering it an advance on Rawls's theory of justice, which permits social inequalities. Dean also welcomes the way the capabilities approach transcends the distinction between absolute and relative needs. However, he argues that the concept of capabilities distracts attention from three important issues: human interdependency; the 'hegemonic liberal conception of the public realm'; and the exploitative nature of capitalism (Dean 2009, p. 262). For Dean, the capabilities approach is essentially a post-Enlightenment liberal concept. He considers that it obstructs attempts to identify and pursue claims based on our human needs. Curiously, Dean's solution is an unspecified rights-based approach, even though he recognises its limitations. It is not clear why Dean

⁷¹ See Anderson's (2010) defence of capabilities against Pogge's critique.

does not condemn a rights-based approach for its liberal roots or dismiss it because it is not underpinned by resources.

Andrew Sayer identifies a potential problem with the capabilities approach, particularly if it is considered in isolation. He argues that the capabilities approach is:

... no more than a set of normative criteria that helps us assess the extent to which the various basic constituents of well-being are met within a certain population. *It says nothing about the causes of their being met or not met* (Sayer 2011, p.238).

According to Sayer, to establish the causes of well-being and ill-being we need to draw on a type of critical social science that examines objective states of being rather than norms and preferences. He favours drawing on the complementary strengths of the capabilities approach and critical social science (Sayer 2011, p.238).

Many critics of the capabilities approach are alarmed by its liberal foundations and in particular, its assumed focus on individuals, and, in the case of Nussbaum's work, its universalism. These concerns are particularly prominent in feminist work and so warrant more detailed attention. Following this, I will consider issues arising over different uses of the terms capability and functioning.

Individualism

Both Sen and Nussbaum focus on the capability of the individual, concerned about what each individual can do and can be. Critics fear this detracts attention from our connectedness. While Sabina Alkire (2007b) considers that the individual is the appropriate unit for evaluative purposes, a consideration of collective processes is essential for proscriptive purposes. Pinar Uyan-Semerci (2007) stresses the importance of conceptualising capabilities in relational terms. In contrast Matthew Smith and Carolina Seward (2009) argue that a relational ontology underpins Sen's capabilities. Some critics identify the capabilities approach with methodological individualism, an association Sen (2009) considers to be mistaken. Robeyns (2003c) distinguishes between what she calls ethical individualism (which holds that the unit of normative judgment is the individual not the group) and ontological individualism (atomism), rejecting the latter. An important question concerns the nature of our obligations to others (Ballet, Dubois & Mahieu 2007), a matter I will discuss in more detail in chapter 8.

Nussbaum (2000c) defends a type of liberal individualism. She argues that we need to know how well each person is faring, considering each as a separate life. To consider the aggregate tells us nothing about the lives of the most marginalised. Many feminists have rejected liberal individualism, fearing that it entails a bias towards Western style self-sufficiency and competition and a neglect of care and community. For example, Virginia Held (2005) opposes Nussbaum's view that the flourishing of the individual human being is prior, analytically and normatively, to the flourishing of the group. There are very good reasons to discard the fiction of rational economic man. However, a wholesale rejection of a focus on individual capability is also dangerous, raising the prospect of the interests of some being sacrificed for the well-being of others. This is particularly pertinent to women whose needs and interests have been suppressed for the good of the children, the family and the community. Instead Nussbaum proposes a different type of individualism, one that:

... arises naturally from the recognition that each person has just one life to live, not more than one; that the food on A's plate does not magically nourish the stomach of B; that the pleasure felt in C's body does not make the pain experienced by D less painful; that the income generated by E's economic activity does not help to feed and shelter F; in general, that one person's exceeding happiness and liberty does not magically make another person happy or free (Nussbaum 2000c, p. 56).

This approach considers the opportunities open to each individual, seeing each individual as an end in themselves and not the means to the ends of others (Nussbaum 2000c). In contrast, Gary Becker's (1991) model of the family, the unit of analysis of which is the household, leaves open the risk that one member's interests will be disregarded or traded to secure those of another.⁷² Nussbaum (2000c, pp. 56-57, 58-59) makes it clear that there is no incompatibility between the view of the individual as an end and the idea that some people will choose to make sacrifices for others. However, to treat each individual as an end, with dignity and as a source of agency, involves taking a stand against discriminatory ways of treating members of marginalised groups. Sen (2006b; 2009, p. 246-47) makes the additional point that to identify and treat an individual only in terms of their group membership is to ignore or downplay other aspects of their identity.

Universalism

The charge of universalism is usually directed at Nussbaum's approach because she proposes a list of universally applicable capabilities. A deep skepticism about universalism is evident in the work of many contemporary feminists. In some cases anti-universalism is an article of faith, and is used as a self-evident criticism. Concern about 'individualism' and 'universalism' are part of an overarching concern with Nussbaum's liberalism. In addition to kneejerk responses, however, there are also many careful and considered critiques. Charusheela (2006), in particular, points out that Nussbaum rejects a crude Western universalism, arguing that such a defect is not characteristic of all forms of universalism.

In order to test Nussbaum's claims, Charusheela (2006) focuses on the capability of literacy, which Nussbaum links to three central human capabilities: the ability to form social relations, political activity and employment. According to Charusheela, Nussbaum's social analysis assumes the existence of a layer of institutions that organise the production of knowledge and culture and also that literacy is needed to engage with those institutions. These assumptions deny the possibility that literacy has been used to entrench the power of the education elites and to exclude those already marginalised. Charusheela argues that an unproblematic privileging of literacy assumes that the critical problem is that some people are excluded from institutions and not that it is the institutions themselves create and sustain inequality. The policy response is to teach people to read rather than to challenge the institutions themselves.

Why it is not possible to teach people to read *as well as* reconfigure social institutions is not made clear. Nor does Charusheela consider the social and political impact of increasing literacy among the poor and the marginalised. Instead, drawing on the work of Nkiru Nzegwu (1995), Charusheela challenges the idea that literacy is in itself a good thing. Nzegwu rejects literacy as necessary for flourishing, for developing the senses and the

⁷² In his later work, Becker (1995) conceded that he had placed too much faith in altruism within the family (Nussbaum 1997b).

imagination, for demonstrating practical reason and supporting equality or raising women's consciousness. Looking at the Igbo women, Nzegwu argues that literacy does not improve their productivity in agricultural work and that educated women have lower rather than higher levels of consciousness. She does acknowledge a positive link between literacy and employment but states that this is because governments, employers and NGOs have institutionalised literacy as a filter. Charusheela contends that Nussbaum has failed to understand Nzegwu's structural critique. Nussbaum's modernist political liberalism leads her to normalise political and social institutions. People's problems with these institutions are understood in terms of access not in terms of a fundamentally flawed institutional structure. Charusheela argues that the idea that poverty is caused by a lack of education implies that the privileges enjoyed by the elite are appropriate. She holds that Nussbaum's framework, like other modernist accounts, not only fails to comprehend structural power relations but misreads structural critique as either an uncritical celebration of tradition or as particularism.

Charusheela fails to appreciate that the idea each person should have the opportunity to flourish is a radical one. The implications are profound even when we only seek a minimum threshold level for the central human capabilities. Education and literacy are not merely instrumental to the achievement of other goods such as employment; they are goods in their own right. For these opportunities to be truly available, there will need to be significant structural change. A poor woman in a violent relationship needs the sorts of options created by laws that are enforced to protect her, opportunities to secure an income and the understanding that violence is not something to be endured. Nussbaum neither demonises nor glorifies the family and traditional culture. Instead she argues that we need to assess both in terms of whether or not they are good for people. Charusheela disagrees with Nussbaum's view that, without some form of universalism, we are left with moral relativism, although the shape of Charusheela's non-universalist, non-relativist alternative is not entirely clear.

Judith Butler considers Nussbaum's universalism as a failure or reluctance to consider diversity fully. Claiming not to reject universalism completely, Butler instead proposes the idea of many conditional contestable universalisms which must be scrutinised through political discussion (Butler 2000; cited in MacKenzie 2009). A significant difficulty with this argument is that the universal value of respect for diversity is assumed at the same time as universalism in general is vehemently rejected.

Nussbaum (2000c, pp. 41-59) identifies and challenges three arguments against universalism. First is the argument from culture, which questions our ability to judge practices that stem from cultures very different from our own. According to this view Western feminists should not be too quick to judge critically the traditional female virtues of modesty, deference, obedience and self-sacrifice that continue to shape the lives of many women. We should not assume that these virtues are incompatible with a good life. In response, Nussbaum points out that women have long challenged the limited options available to them. She states that the argument from culture oversimplifies tradition and ignores counter-traditions of defiance. Even in situations where women do seem to be happy with traditional arrangements we need to probe more deeply to establish their alternative options.

Second is the argument from diversity, which confuses cultural relativism with respect for diversity. Nussbaum (2000c) argues that we should provide space for people to live in different ways in accordance with their sense of the good. However, some cultural and social practices are harmful and some, such as severe punishment of lesbians and

homosexuals, undermine respect for diversity itself. Furthermore, it is also important to see cultures as dynamic and heterogeneous rather than static and homogeneous, as is sometimes assumed by cultural relativists.⁷³ Therefore, while the explicit acknowledgment of human diversity is a major strength of the human capabilities approach (e.g. Robeyns 2003c), we need a set of criteria to judge which practices are worth preserving and which ought to be rejected.

This leads to the third challenge, an argument from paternalism. If we develop or uphold a set of universal norms do we show too little respect for people from different cultures or communities? Do we undermine their freedom as agents and democratic citizens? Nussbaum (2000c) identifies this as a particularly important concern, but she contends that it does not preclude the endorsement of universal values. Concern about paternalism involves at least one universal value, the option of thinking for oneself. Ideas about freedom and choice are universal ideas and they need a universalist account if they are to be endorsed and protected. People should be free to pursue their own conception of the good within the limits set by an equal regard for the liberties of others. John Stuart Mill was strongly opposed to paternalism involving choices that do not harm others, but in cases where others were harmed – e.g. by sex inequality – he supported state intervention. The recognition that there are ‘basic aspirations to human flourishing’ evident in men and women from different countries and different classes will be tempered by the understanding that we need to consider the various ways that social circumstances shape the aspirations individuals hold and the choices they make (see also Charlesworth, H 2000; Nussbaum 2000c, p. 31).

Nussbaum argues that it is possible to describe a framework that is:

...strongly universalist, committed to cross-cultural norms of justice, equality, and rights, and at the same time sensitive to local particularity, and to the many ways in which circumstances shape not only options but also beliefs and preferences difference (Nussbaum 2000c, p. 7).

She recognises that skepticism of universalism stems from the obtuse way of thinking characteristic of colonialism, with the coloniser assuming their own culture to be more enlightened and that of the colonised to be primitive, a type of assessment that survives the overthrow of direct colonial rule. Nussbaum also identifies another troubling yet influential form of obtuse universalism in mainstream economics, which is based on the idea that people, whatever the circumstances of their lives, are rational, utility-maximising agents. However, rejecting these obtuse universalisms does not require us to reject all forms of universalism. Universal values such as equality form the basis of a strong critique of the colonialism. The dignity of each person leads to a rejection of utilitarian approaches that inform the dominant forms of economics. Pluralism is a universal value, and Nussbaum argues that a universalism based on human need provides the best framework to think about difference.

⁷³ See also Narayan (2000).

Terminology

There is some confusion with the term 'capabilities'. In part this is because it conveys different meanings in other contexts.⁷⁴ This issue is compounded by inconsistencies in the way term is used within the human capabilities literature. Jonathon Wolff and Avner de-Shalit (2007, p. 37, drawing on Robeyns 2003a) find that it is used sometimes in the sense of 'freedom for functionings' and on other occasions it is used to refer to 'potential combinations of functionings not yet achieved'. This difficulty is a feature of Sen's rather than Nussbaum's account.

Gerald Cohen (1993) is also troubled by a confusion that he traces back to Sen's early work on the capabilities approach. Sen, in his 1979 Tanner lecture 'Equality of what?' (Sen 1980) used 'capability' in two different ways. First to express the distinction between opportunity and outcome and, secondly, to reject assessing individual outcomes in terms of the resources they can command or their (mental) utility state. Cohen considers both these aspects important to egalitarian thought, but he argues that only the first is adequately captured by the term 'capability'. He finds the idea that goods have a greater effect on people than just to alter their mental state to be important and insightful but states that the significance is lost because of Sen's terminology.

A second concern raised by Wolff and de-Shalit (2007, p. 37, drawing on Alkire 2002, p. 19) is that the term capabilities 'does not immediately conjure the image of intrinsically valuable human ends; it seems to be engaged in observing possibilities rather than looking forward to valuable actualizations of functionings'. Wolff and de-Shalit argue that what is important is to allow people to live lives worth living. It is not a matter of creating opportunities simply for the sake of it. Finding the term 'capabilities' too vague they prefer the terminology 'genuine opportunities for secure functionings' (Wolff & de-Shalit 2007, p. 37).

Nussbaum's capabilities approach provides an account of what we need in order to live with dignity. It provides a means for assessing disadvantage. It is particularly effective in helping document the injustices experienced by women. However, her version of the capabilities approach goes further. As an essential part of a theory of justice, it articulates why women must be treated as intrinsically valuable and the basis on which women's claims are made. Yet, the capabilities approach deliberately does not extend to offering a comprehensive account of what counts as the reality we are attempting to change, the way we understand the world, what information is relevant and how we make sense of it (Sayer 2011). Like Rawls's (1971, 1999) theory of justice, the capabilities approach seeks to be what we might call methodologically free-standing. That is it seeks assent from people who hold different substantive methodological positions (e.g. pragmatism, realism, empiricism). In part this explains Sen's reluctance to specify a capabilities list. While Nussbaum does specify such a list, the absence of a secure methodological foundation can create problems. That is why I draw on critical realism to help answer questions about the world and how we are able to make substantive claims about it

⁷⁴ For example, human resource managers use 'capability' to refer to the capacity of individuals and organisations.

3.5 Knowledge, values and reality

Nussbaum's capabilities approach provides a framework for assessing how well each individual is doing but has little to say about how to make that assessment. Her work includes some suggestions such as endorsing a realist approach and unequivocally rejecting ethical relativism (Nussbaum 2000c). However she does not provide a complete account of what constitutes evidence, what sort of data is relevant and how it should be interpreted. This raises questions about the nature of reality, truth, objectivity and knowledge. In considering approaches to research, feminist scholarship places a much greater emphasis on epistemology (theories of knowledge) than ontology (theories of being). As Sandra Harding (1999) explains, this is because many feminists have found epistemological strategies more useful:

When dominant groups refuse to 'see' what appears obvious to marginalized groups, changing the topic to how standards are set for what should count as knowledge, good method, objectivity, or rationality can appear to offer the marginalized a likelier chance of success (Harding 1999, p. 130).

Harding's comments were made a response to heterodox economist Tony Lawson's (1999) suggestion that feminist arguments would be strengthened by a more explicitly ontological approach.⁷⁵ Lawson fears that feminist rejection of *a priori* universalising can too often slide into ethical relativism. Once the basis for treating a position as universally legitimate has been successfully challenged, it is often difficult to avoid the conclusion that all positions are equally valid, and this undermines claims for equality. Moreover, appreciation that the experience of gender is mediated by factors such as class, race and culture fragmented the category. In this context Lawson argues that attention to the structure of reality assists, even redeems, feminism. He concedes that feminists have good reason to reject naïve realism, namely an empiricist or positivist account of what constitutes reality. Unfortunately, however, naïve realism has been wrongly assumed to stand for all types of realism despite the existence of substantial differences between them. Lawson promotes critical realism. He explains the relevance and strength of this type of realism by showing how it reveals the limitations of formulaic modeling, accommodates situated knowledge and supports the emancipatory aims of feminism. At the centre of Lawson's work is the insistence that the selection of methodology must proceed from an understanding of the characteristics of the domain of inquiry. This contrasts with the view held by many mainstream economists that methodologies from the natural sciences are uncritically transferred to the study of the social world (Fullbrook 2009a).

The main attraction of critical realism is its structured ontology, which ensures that we do not see the world solely in terms of our experiences. Other important features include a commitment to reason, the belief that science can provide real insight into the nature of things and the understanding that reason and science can contribute to human emancipation. Taking historical and social context into account, critical realism avoids the foundationalism of many of the offshoots of Enlightenment thinking. It also rejects equating of objectivity with value neutrality (Collier 1994). In the next section I will outline

⁷⁵ The debate included responses and replies from Sandra Harding (1999), Drucilla Barker (2003), Fabienne Peter (2003), Julie Nelson (2003a), Irene van Staveren (2008) and Sayer (2004), as well as two further articles from Lawson (2003a, 2003c).

the basic tenets of critical realism, some criticism and finally its implications for my research.

3.5.1 Critical realism

Critical realism developed out of Roy Bhaskar's (1975) response to specific questions about scientific knowledge.⁷⁶ He developed a philosophy of science described as 'transcendental realism' and a philosophy of the human sciences called 'critical naturalism'. These two terms were combined into 'critical realism'.⁷⁷ Bhaskar's approach advocates critical, rational scientific inquiry motivated by the desire for social change. Critical realism challenges both positivism and postmodernism. One important aspect is the delineation between epistemological and ontological questions. Bhaskar's writing is often dense and at times turgid. There are many more accessible and coherent accounts of critical realism, notably by Andrew Collier (1994), Andrew Sayer (2000), Tony Lawson (1997) and Edward Fullbrook (2009b). Although there are differences in the way each of these writers defines critical realism there is broad agreement on the central concepts.

The most important idea is that objects of study are thought-independent, which means that they exist independently of our knowledge of them. Not only are these objects independent of theory, model, concept, description and language, they are not reducible to these or other dimensions of thought. This means that an object is real whether or not it is known (Collier 1994). Bhaskar (1975) distinguishes between the intransitive and transitive dimensions of knowledge. The things we study such as physical or social phenomena or processes (the objects of science) lie in the intransitive dimension of science. Our theories about these phenomena and processes form the transitive dimension. Theories are part of the social world and therefore may be the object of study, although they will be the transitive object. The ultimate aim is to deepen knowledge of the intransitive object (Collier 1994; Sayer 2000).

A change in theory (a change in the transitive dimension) does not necessarily change the object of study (in the intransitive dimension). For example, abandoning the idea that the world is flat in favour of a round-earth theory does not change the shape of the earth. Things are more complicated when the object of study is in the social world, because the social world includes knowledge. However, the idea that the distinction between the subject and object is lost, with theories confronting theories or reflections of themselves in a hall of mirrors, is deeply flawed. Conflating the object and subject is a problem for three reasons. First, it overstates the influence of researchers. Secondly, it disregards the gap between the theories and concepts used by the researcher and the theories and concepts influencing the object of research. Finally, it fails to appreciate the time it takes for ideas to influence social practice (Sayer 2000). Social objects may be influenced by inquiry but they exist intransitively at the time social scientific analysis commences (Lawson 1997). Acknowledgement of influence is quite different from the subjectivist view that the social world does not exist outside our theories about it. For the subjectivist, a different theory refers to a different social world. If true, it would be impossible to compare different theories to establish which has the best explanatory power.

⁷⁶ Bhaskar's work may be divided into three distinct phases: development of critical realism, the dialectic turn and finally the spiritual turn. I am most interested in the first phase.

⁷⁷ The term 'critical realism' was accepted by Bhaskar, although it is questioned and used with misgivings by the philosopher Andrew Collier (1994).

More contentious is the idea of epistemological relativism. Lawson’s (1999) describes critical realism as combining a realist ontology and a relativist epistemology. In this, Lawson appears to draw on Bhaskar’s idea of ‘epistemic relativism’, which involves relativism about the transitive but not the intransitive object (Collier 1994). In a similar vein, Sayer (2000) refers to critical realism’s permissive stance towards epistemology, (see also Outhwaite 1987). It seems that the intention is to express the idea that knowledge is fallible. However, given the influence of postmodernism in the social sciences, the expression of the idea is curious. There is a danger that epistemological relativism will morph into moral and other relativisms, a problem that can be averted by speaking directly about fallibilism.

Because the world is independent of our thoughts about it, we may find that we get things wrong. We find that some theories offer better explanations of things, events or structures than others do. Over time we may develop stronger theories. For this reason, critical realism is a fallibilist philosophy. If there was no such thing as objective truth and our world was nothing more than the sum of our theories about it, then we could not be wrong. In this way critical realism is very different from naïve objectivism which claims an unmediated access to truth (Collier 1994; Sayer 2000).

Another consequence of the distinction between the transitive and intransitive domains of science is that the world is not equivalent to our experience of it. Critical realism holds that reality is structured into three levels or domains: the empirical, the actual and the real (Bhaskar 1975; 2008, pp. 46-47). As set out in the figure 1, the domain of the empirical includes experiences only; the actual includes events and experiences; and the real includes mechanisms, events and experiences.

Figure 1: Structure of reality (Bhaskar 2008, p. 47)

	Domain of the Real	Domain of Actual	Domain of Empirical
Mechanisms	X		
Events	X	X	
Experiences	X	X	X

The real is whatever exists, including natural or social objects. Something is real irrespective of whether it is an object of study or whether it is understood. Objects have structures, which give them the capacity to behave in certain ways. Objects also have causal powers or the ability to effect change. This is the case whether the objects are physical, like the table in front of me, or social, such as bureaucracies. The actual refers to what happens if the powers of objects are activated. Sayer (2000) gives the example of labour power or the capacity to work, which lies in the domain of the real, and labour or actual working, which lies in the domain of the actual. The empirical is the domain of experience. It might involve our experience of something in the domain of the real or the actual. However, it is important to note that our experience is not contingent on our knowledge of the real or the actual. Existence is not dependent on observability. Sayer (2000, p. 12) points to the example of generative grammar, which can be inferred from the

ability of people to make novel but grammatically correct sentences. Bhaskar's structured ontology contrasts with flat ontologies that contain either the actual or the empirical or the two merged together. So for empirical realists the world is our experience of it, for 'actualists' the world is nothing more than the events that take place. Both exclude the underlying mechanisms in the domain of the real and the exercise of their causal powers to deliver actual events and our experiences of them.

Therefore knowledge is not just about appearances. It is important to examine the underlying structures.⁷⁸ This idea of going beyond appearances (or transphenomenality) marks a major difference between empirical realism or empiricism and critical realism (Collier 1994; Sayer 2000). In particular, appearances may be misleading, termed counter-phenomenality, making appearances an unreliable source of knowledge. There is also a contrast between critical realism (or depth realism) and actualism, which asserts the reality of things, events and states of affairs but not of underlying mechanisms (Collier 1994). The point of scientific inquiry is to examine the effects generated by underlying causal mechanisms (Bhaskar 1975; Collier 1994; Doughney 1998; Sayer 2000). Some mechanisms, for example gravity and society, cannot be directly observed but we can observe their effects. Another important aspect of the critical-realist structured ontology is the understanding that things can change. While the nature of real objects at any given time may constrain or enable what can actually happen it will not determine what might happen (Sayer 2000).

Various types of entities, whether they be tables, dogs or societies have powers. Collier (1994) explains that the noun 'power' is linked to the verb 'to be able'. There is nothing mysterious about powers, they indicate capacity or potential. The inner structure of an object will determine its powers. Understanding the object's structure gives insight into the nature of its powers. At any given point in time these powers may be unexercised. It means that, just because an object can do something, does not mean that it actually does that thing. For example, a person may have the capacity to work (the education, skills and dedication) but for one reason or another may not be employed. The existence of unexercised powers is denied by actualists. Powers may also be exercised but unrealised. Extending my previous example, a person may have a job but one that does not draw on their abilities. Further, powers may also be realised but unperceived. An example of this is a person working at something s/he values but receiving no recognition or remuneration.

As stated earlier, mechanisms cause events, and we may learn about mechanisms by conducting scientific experiments. These involve the isolation of one mechanism from many others to assess its effects (Collier 1994). This is only possible in a closed system, where Humean causality is evident, i.e. a given event A is, in our experiences, constant in conjunction with or followed by event B. Closed systems are defined by two conditions. The first is the intrinsic condition whereby the object being investigated is stable. The second is the extrinsic condition which specifies that the external conditions in which the object is situated are stable (drawing on Bhaskar 1975; Sayer 2000). However, these conditions do not occur spontaneously in the social world and are rare in the natural world, although they can be produced artificially in experiments. Open systems, where observed events are not consistently preceded or followed by another specific event,

⁷⁸ In contrast Hume considered knowledge to come from experience and sense-impression alone (Lawson 1997).

dominate. The types of consistent regularities sought by empiricists are only likely to be found in closed systems (Collier 1994; Sayer 2000).

The point of conducting an experiment is to isolate a particular mechanism and examine it in a closed system. It is sometimes possible to use this information to predict what will happen in open systems where the mechanisms under investigation operate simultaneously and in combination with other mechanisms. In open systems the conditions are influential. Depending on the conditions, the same causal powers can produce different results or different causal powers can produce the same results. Again all this points to an open rather than a determined future. Also:

There is more to the world, then, than patterns of events. It has ontological depth: events arise from the workings of mechanisms which derive from the structures of objects, and they take place within geo-historical contexts. This contrasts with approaches which treat the world as if it were no more than patterns of events, to be registered by recording punctiform data regarding 'variables' and looking for regularities among them. (Sayer 2000, p. 15)

Social scientists examine open social systems with many interacting structures and mechanisms. There is a risk of incorrectly identifying one mechanism as the cause of a particular effect when in fact it might be another or, more likely still, a combination of a number of mechanisms. Open systems mean that things are usually complex and messy, which rules out the use of tight predictive tests (Doughney 1998). This is why we should not invest too much confidence in the results of statistical inference, however sophisticated the process may be.

In open systems multiple mechanisms jointly produce events. These mechanisms are ordered into layers or strata. For example, the laws of physics are more basic than the laws of chemistry, which in turn are more basic than the laws of biology. However, the study of biology cannot be reduced to the laws of chemistry or physics. This idea is not confined to the natural world. Different strata may include the following four different sets of mechanisms: natural- physical, human-biological, social and individual consciousness. Higher levels are based on but cannot be reduced to lower levels. For example human thought has some roots in but cannot be reduced to social mechanisms. Similarly, social mechanisms are in part emergent from biological mechanisms, but it is not possible to explain social mechanisms solely in terms of biological ones. The higher level is not reducible to the lower level from which it partly emerged (Doughney 1998). Sayer (2000) defines emergence in a slightly different way. He describes it as the conjunction of two or more aspects leading to a new phenomenon, which is not reducible to its constituents. For example the properties of water are different from the combined properties of hydrogen and oxygen. Searle (1983, p. 266) likewise refers to liquidity as the emergent property of H₂O at certain temperatures that cannot be reduced to either H₂O or its atomic constituents.

This makes critical realism an emergence theory not a reductive materialist theory. It is important to note that it is mechanisms rather than things or events that are stratified. Predicates such as 'natural', 'social', 'physical', 'biological' and 'economic' do not describe things or events but mechanisms (Bhaskar 1975, 1978; Collier 1994). Collier explains:

There is a common tendency both in everyday discourse and in theory, to commit what has been called the fallacy of misplaced concreteness: to treat as if it were a kind of concrete thing or event or activity or institution what is in fact a kind of

mechanism. Thus it is commonly thought that only certain kinds of substances are 'chemicals,' and that there aren't any in natural foodstuffs; that certain human needs are 'biological' while others are 'social'; that certain social institutions are 'economic', others 'political' and others 'ideological'. If these last terms, for instance, are treated instead as applying to mechanisms all of which may govern a particular institution and codetermine its activities, a lot of mistakes can be avoided. (Collier 1994, p. 47)

Therefore there are horizontal explanations which explain events in terms of events and antecedent events. These are distinguishable from vertical explanations which involve the explanation of one mechanism by another more basic one (Collier 1994, p. 48). Both can operate simultaneously, making the explanatory task more complex than that contemplated by inferential statistics, but, by virtue of this very complexity, vastly more accurate.

3.5.2 Objections and qualifications

Earlier I referred to a debate following Lawson's (1999) call for feminists to adopt an ontological approach. A number of the respondents shared a concern that that Lawson's critical realism, imbued with a strong universalism, manifested itself in essentialist claims about the nature of humans (Barker 2003; Harding 1999, 2003; Peter 2003; van Staveren 2008). According to van Staveren, the debate centred on an opposition between essentialism and relativism. Addressing these concerns, Lawson (2003c) defends a form of humanism that van Staveren (2008) concedes to be close to Nussbaum's capabilities approach.

The questions raised by Julie Nelson (2003a, p. 112) are the most relevant to my work. Nelson sees some overlap between critical realism and feminist theories. She states that the notion of 'an open, holistic, ethically rich universe' featured in critical realist literature constitutes the core of an ontology feminists could use. Despite this, she is not convinced that critical realism provides the most complete justification for this ontology nor provides the most effective way of promoting it. Nelson's (2003a, p. 110) particular concern is that both standard and critical realist approaches to ontology neglect feeling as an aspect of reality. She finds that critical realism privileges 'reason, abstraction and precision over emotion, particularity and what is vaguely known'. The undervaluing of care is not only a matter of social and economic power. If emotion and value are not at the centre of our theories and beliefs about the world then care will continue to be considered peripheral and low-status. Nelson sees more promise in mathematician Alfred North Whitehead's (1966 (1929), 1968 (1938)) process-based approach to thinking about reality.⁷⁹ She finds that it places emancipation and care activities at the centre of reality.

Writing in the 1920s and 1930s, Whitehead broke with Humean thinking and proposed an ontology that Nelson describes as intrinsically open and ethically rich and which resonates with contemporary feminist thinking. Whitehead identified most modern theories as substance-and-attribute ontologies with substances considered to be fundamentally distinct and the knower separate from the known. Instead of considering the actual entity to be 'stuff', Whitehead views it as a process. Reality is deeply interconnected. In a substance-and-attribute ontology a person is considered to exist first and then experience

⁷⁹ See also Sherburne (1966 (1929)).

relationships. In contrast, Whitehead's organicist approach holds that people are constituted within and by relationships and experiences. His emphasis is on energy and interconnection rather than matter and mechanics. Whitehead accepts Hume's view that knowledge is derived from experiences but defines experiences more broadly, seeking to include causality (Nelson 2003a; Whitehead 1966 (1929)).⁸⁰

Certainly, much of critical realist literature has paid little attention to the emotions or to care.⁸¹ Nelson (2003a) points to Rajani Kanth's (1999) comment that we need ideas that are warm rather than just bright. However, there is a danger with Whitehead's process approach that important distinctions are lost. While humans are constituted within a web of relationships, we are also distinct beings who suffer and experience joy as individuals. Nelson also seems to hold emotions and reasons to be quite distinct, a common view challenged by Nussbaum (2001c) with her development of a cognitive theory of the emotions.

As a theory that aims to explain social reality and provide insight into ways of effecting change, critical realism can provide some insight into the problem of care. There is scope to extend critical realism to make it more attentive to process and emotion. Such an extension may parallel Mary Mellor's work on (critical) immanent realism which extends critical realism to recognise the agency and reality of the natural world (Mellor 1997a, 1997b; Perkins et al. 2005). I have not pursued this extension because I do not see critical realism as providing a complete theory able to explain current arrangements of care and other types of work. Nor do I think that critical realism alone can provide the basis of a just solution. It does, however, provide very important insights into the nature of social systems and, in particular, causal mechanisms.

3.5.3 Implications for method

The understanding that social systems are open and structured, the importance of causal mechanisms and the necessity of realism and fallibilism are important ideas that inform my work. Further, not only does critical realism establish the possibility of social change, it can also reveal the strategies most likely to achieve a given outcome. By paying heed to structures and the complex interacting forces shaping social systems, it makes it possible to assess whether specific policies or actions will exacerbate rather than alleviate a problem. Also significant is that the ideas of stratification and emergence provide a way of escaping the agency/structure dichotomy. Finally the critical realism provides guidance on theory development. It is these last two points that I wish to discuss in more detail.

A long-running disagreement plaguing the social sciences concerns whether particular social outcomes are the result of structural factors such as class or the product of individual actions or agency (Sayer 2000). Margaret Archer's (2003) careful examination of the structure/agency questions reveals the problem of conflation. One proposed solution to the problem of structure and agency is to conceive structure to be the sum of individual actions. Archer describes this as upward conflation, evident in the work of methodological individualists and rational choice theorists (e.g. Max Weber, Karl Popper and Raymond Boudon). The other extreme is downward conflation, which considers individual actions to

⁸⁰ Whitehead's work has influenced the development of realist process-oriented feminism (e.g. Kanth 1999; Spretnak 1999).

⁸¹ An exception is Sayer (2011).

be determined by social structure. This is evident in the work of culturalists and structuralists such as Emile Durkheim, Talcott Parsons and Louis Althusser. The final type of conflation is exemplified by the work of Anthony Giddens and Pierre Bourdieu. Archer argues that they see structure and agency as dialectically implicated and mutually constitutive of each other, thereby losing the differences between them. This she terms the error of 'central conflation'.

Archer (2003 p. 2) holds that structure and agency constitute distinct strata of reality. Possessing different properties and powers, structure and agency are linked by a causal mechanism but each is irreducible to the other. This means we need to address the interplay between them. There is an important temporal aspect. The opportunities and constraints shaping (but not determining) individual action are structural in nature. However the actions taken by the individual can alter or reinforce the social institutions within which s/he is situated. This shifts the structural forces that influence subsequent acts (see also Vandenberghe 2005).

If social systems are open and structured then explanations of social phenomena must be based on more than just events and the way these events appear empirically. Understanding must be based on an examination of the underlying mechanisms (Bhaskar 1978, 1989). Because the social mechanisms at each level cannot be isolated from other levels it is not possible to obtain pure access to them. Therefore it is necessary to analyse casual laws as tendencies. In developing a theory or model it is also important to account for the dimensions of time (history) and space (geography) and allow for change (Doughney 1998).

The openness of social systems means that it is not possible to use tight predictive tests (Doughney 1998, p. 5; Lawson 2003a, 1999, 2003b). It also makes untenable a hypothetical-deductive process of theory development of the type proposed by Popper (1960, pp. 130-43). Following Hume, Popper argued that inductive generalisations are invalid, it being possible to refute all general statements by a single counter instance. However, Popper went further, arguing that there is no role for induction. Instead he proposed a totally deductive method. He starts with a hypothesis, holding that hypothesis cannot be verified, but it can be subject to the test of refutation. Popper also held that observations are theory-impregnated so the best we can achieve regarding knowledge of the empirical world is to agree by convention (Doughney 1998).

Drawing on Doughney (1998), Collier (1994; 1998) and Sayer (2000) I propose to use an iterative process of theory development, one that seeks to move beyond a simple explanation of appearances to a deeper investigation of underlying mechanisms. This approach is neither purely inductive nor deductive. The iterative process I use in this project involves the following steps:

1. The first step is to identify and specify the problem. I start with a concern that it is still too difficult to provide care for family members and take on meaningful employment. I examine the primary data, analyse existing accounts (secondary data) and considered existing explanations of the situation (theories).
2. Next I consider the most common approaches to the problem of care: gender equity, preference theory and the ethics of care, establishing the underpinning philosophical commitments inherent in each. This leads to a very basic question: What do we need in order to live well?

3. I identify Nussbaum's capabilities approach as providing a sound basis to think about care as a problem of justice. However, I also find that there are some limitations, including the absence of care in her capabilities list.
4. In order to address the limitations I propose a restructured and extended version of Nussbaum's capabilities list to provide guidance at the policy level.
5. Finally, I test this revised list through an examination of three contentious issues: parental leave, the idea that care work should be paid and shared care. I assess my version of the capabilities list in terms of its plausibility, coherence and explanatory power. I also sought comment by presenting my work at a number of conferences.⁸² Issues emerged which led to another revision of my proposed approach.

The process of testing theory against the reality it seeks to explain is an ongoing process, which could be repeated indefinitely, although this project clearly has a finite life.

3.6 Conclusion

In chapters 1 and 2, I established that care is a problem of justice. In this chapter I argued that the ideas we bring to bear on such a problem are very important, which is why it is helpful to draw on philosophy. I then outlined a feminist approach. All strands of feminism are concerned with inequality. However we also need an additional theory to assess well-being and justify equality in the distribution of rewards and burdens. I turned to the capabilities approach, finding that Nussbaum's version, which is a theory of justice, can provide the basis for thinking about care. I then drew on critical realism to provide guidance on how best to assess evidence and on the process of theory development. In the next chapter I will provide an overview of the work and family literature focusing on the Australian context. In the chapter after I will return to the capabilities approach, considering, in more depth, how it can help us to think about care and the opportunities to engage in other meaningful activities.

⁸² A near final draft of my proposed capability list was presented to the IAFPE 19th Annual Conference: Global Economic Crises and Feminist Rethinking of the Development Discourse, Facultad de Ciencias Económicas de la Universidad de Buenos Aires, Argentina, 22-4 July, 2010 and to 2010 Human Development and Capability Association's Conference: Human Rights and Human Development, The University of Jordan, Amman, Jordan, 21-3 September.

Chapter 4 Work and family in Australia – literature and policy

4.1 Introduction

In the previous chapter, I outlined my philosophical approach and set out a process for theory development. In this chapter I discuss and assess the work and family literature, either Australian in origin or influential in the Australian context. The first part of this chapter provides an overview of the extensive work and family literature, identifying the main areas of focus. The second part covers the different models used to explain actual or ideal ways of combining care with other types of work. I consider the values implicit in each and the extent of influence in the Australian context. In the final section, I identify policy trends through a brief discussion of the recent Henry Review of the Australian taxation system. However, before I start discussing the literature, I will make some comments on terminology.

‘Work and family’ is the term most commonly used to describe the literature on the issues relevant to the problem of care. It is also a label applied to policies concerned with financial support for families, parental leave, part-time work and flexibility in work hours and scheduling. Although commonly used, ‘work and family’ is a strange term combining two things that are different in kind but not completely distinct. ‘Work’ refers to an activity whereas ‘family’ describes a group of people linked by a common bond. The description ‘work and family’ tends to set the two in opposition with ‘work’ understood in the narrow sense as ‘paid employment’. The significant amount of work that is unpaid is generally seen as a component of ‘family’. A further complication is that the work of caring is sometimes paid, although usually the wages are low.

More serious is the concern that ‘work and family’ has displaced the goal of women’s equality (Charlesworth 2004, 2007b). British researcher Angela McRobbie (2009) holds that the focus on work-life balance simply reinforces the gender norms prevalent in heterosexual households. Jean Edelstein (2007) argues that younger feminists have been distracted by issues such as work-life balance and the gender-pay gap, therefore failing to attend to the most critical issues of sexual violence. However, it is impossible to talk about violence against women without considering the real material disadvantages experienced by so many women, disadvantages shaped by conditions of paid employment and the distribution of care and domestic work, as well as resources. Although I did not use the term ‘work and family’ when I defined the problem I am seeking to address, when it comes to the literature it is unavoidable.

4.2 An overview of the literature

Focusing on the literature concerning children and parenting, Lyn Craig (2007a, pp. 1-2) makes the important observation that there are many different disciplinary contributions, each with its own focus and blind spots. Psychology focuses on the type of parent-child relationship needed for healthy child development but does not consider the necessary social conditions. Sociology looks at the family but not the factors influencing decisions about becoming a parent and how many children to have. Economics considers fertility in terms of the cost of having children but does not consider how these costs vary for

mothers and fathers. Economists also tend to ignore power inequalities within the family and how the interests of women and children may be intertwined.⁸³ These last two points are acknowledged by feminists. They see that 'women's and children's interests can be both entangled and opposed, but a formulation whereby the needs of both could be fully met has yet to be articulated' (Craig 2007a, pp. 1-2). Added to this is the multi-disciplinary literature on the care for people who are elderly, sick or have disabilities. Issues concerning the relationship between the provider and recipient of care, dependency, dignity and the risk of poverty are relevant for all types of recipients.

Most of the Australian literature in the area of work and family is empirical. It provides a rich picture of the current situation and observes the extent to which arrangements and attitudes have changed, particularly over the past 40 years. However, the theories underpinning different approaches to care and other types of work have received far less attention. The under-theorised nature of the Australian literature is a problem for two reasons. First, there is a risk of inconsistent and confused reasoning behind research findings and policy proposals. This particularly affects thinking about what is assumed to be fixed and what may potentially change. Also at stake are the aims or objectives assumed in research or presented as the goal of possible interventions. Secondly, it makes it more difficult to counter manifestly bad proposals. Although Hakim's preference theory has been rejected by many Australian commentators, most have not provided a sufficiently robust critique. I will return to Hakim's work in chapter 5.

It is inevitable that specific research projects focus on one or two aspects of the problem of care. Such work may provide a detailed account of a particular issue, bringing depth to our understanding. However, the risk is that we lose sight of the interconnections obscuring the way different factors are mutually reinforcing, a point made by Iain Campbell and Sara Charlesworth (2004).

Australian research and policy are influenced by the contexts within which they emerge. Focusing on the American literature on working mothers, Adele and Allen Gottfried (2008, cited in Tan 2008) identified three phases of research, each with a different focus: first, the negative effects of maternal employment on child development; secondly, the factors that mediate maternal employment and child development; and thirdly, the positive impacts of maternal employment. Reflecting on the child-development research, particularly in the US, Jerome Kagan (2006) points to the connection between broader social and political trends and the reception and promotion of particular ideas. In Australia the political climate has shaped policy. This could be seen most clearly during the term of the Howard Government, when the goal of gender equality was dropped. At times the Australian research responds to the policy setting (e.g. Pocock 2005b). Research also helps to shape policy, particularly commissioned work (e.g. Charlesworth, Campbell & Fridell 2007) as well as submissions to various public inquiries (e.g. Barron 1999; Grace, Leahy & Doughney 2005).

Looking at the overall body of Australian research, the main trend is an increasing recognition of the value of unpaid work, paralleled with growing concern about the quality of employment. Some accounts see us primarily as workers dealing with the logistical challenges of managing employment and everything else. However, many theorists assume

⁸³ Anne Manne (2010) goes further, arguing that work and family debates often ignore the needs and interests of children, a neglect that would be considered reprehensible if directed against any other marginalised group.

a fuller, richer account of our humanity, attentive to the nature and quality of our relationships. There is increasing recognition that people's experiences are shaped not only by gender but race, ethnicity and class. For instance, it is widely accepted now that there is a two tier employment market with high-status, well-paid jobs entailing long hours at the top and poorly paid, precarious and often part-time jobs at the bottom.⁸⁴

4.3 Employment

In the 1970s and 1980s, feminists focused on improved access to paid employment. This entailed dismantling blatantly discriminatory policies such as the marriage bar, which forced women working in the public service to resign as soon as they married. Pay equity, opportunities for promotion, access to professional development and training and parental leave were (and remain) critical issues. It is therefore no surprise that an important area of research has and continues to concentrate on workplace dynamics, the nature of different types of jobs and the structure of rewards. Although the research is often interdisciplinary, the area of labour economics makes a particularly strong contribution.

A major focus has been on the male and female patterns of employment looking at trends over the past 30 years (Baxter 2006b; Campbell & Charlesworth 2004). As outlined in chapter 2, women's employment rates are increasing, while men's are falling slightly. Looking over the lifespan, there is a reduction in employment rates during the child-rearing years with participation rates increasing with the age of the youngest child (Campbell & Charlesworth 2004; Grace 2007; Pocock 2003). The data does not reveal the full extent of unemployment, with a significant proportion of the hidden unemployed found to be women (Coleman 2009; Richardson 2009).

The highly gendered nature of the Australian labour market has been revealed (Preston & Whitehouse 2004). As stated in chapter 2, women tend to be concentrated in lower paid, more insecure jobs in the services sector. Australian women's rates of part-time employment are high compared with both Australian men and women in other OECD countries. The growth in part-time employment has been higher for single compared to couple mothers (Clausen et al. 2003). Women are still under-represented in senior management positions in the corporate sector (Lord 2010; Lord & Preston 2009) and there are very few women sitting on the boards of Australia's major listed companies. In one study on women leaders in the corporate sector Doughney (2007) found that the most significant factor was that promotion practices favour men. Opportunities seem to be better in the public sector, with more women reaching senior positions in the public service, education and health than in the private sector. However, barriers remain, as revealed by research into the experiences of academic women (Probert 2004; Pyke 2009; Thornton 2004, 2008).

The nature of so called family-friendly measures has also been examined. Family-friendly measures may include flexible working hours, working from home and additional paid parental leave. Consideration has been given to the nature of family-friendly policies, the number and type of employers offering such conditions and the extent to which take-up is encouraged or discouraged (Campbell & Charlesworth 2004).

⁸⁴ The term 'contingent employee' has been used to describe people in part-time, casual and contract employment (Lieberwitz 2005).

Research and advocacy has long focused on paid maternity and parental leave (Baird 2008, 2009; Baird, Frino & Williamson 2009; Charlesworth 2007a; Whitehouse et al. 2007; Whitehouse, Hosking & Baird 2007). In the future we can expect evaluations of the Australian publicly-funded paid parental leave scheme, introduced at the start of 2011.

For many Australian women, part-time employment has been the solution to tension between the demands of employment and family responsibilities. Researchers have examined the trends in, as well as the implications of, this strategy. Although it is a way of reducing pressure on time-poor families, part-time work is also seen as reinforcing traditional gendered roles, thereby entrenching inequality. Part of the problem is the feminisation of part-time employment. The other issue is the nature of the part-time positions, which are often precarious, low paid and provide limited career prospects (Campbell, Chalmers & Charlesworth 2005a, 2005b; Chalmers, Campbell & Charlesworth 2005; Chalmers & Hill 2005, 2007; Charlesworth & Whittenbury 2007).

There has been considerable interest in women's attachment to the workforce (e.g. Chalmers & Hill 2007) and how it is influenced by government policy (e.g. Whitehouse 2005). Related to this is the issue of women's transition back into employment following the birth of a child (Baxter 2000; Baxter 2008a, 2008b; Baxter, Jennifer et al. 2008).

The financial implications of different employment patterns have been explored, with assessments of the differences in female and male lifetime earnings and overall wealth (Bittman, Hill & Thomson 2007; Doughney et al. 2004), including superannuation savings (Goward et al. 2005; Jefferson & Preston 2007; Vu & Doughney 2005) and the existence of a wage penalty following employment breaks (Baker 2011). There is also research on the persistent problem of the gender pay gap (Preston 2001; Preston & Jefferson 2007; Whitehouse 2006, 2009a, 2009b).

The barriers women face can be attributed to sex-based discrimination. The nature of sex-based discrimination and the effectiveness of anti-discrimination law have been examined (Charlesworth 2004). However, there is increasing recognition that this discrimination is strongly linked to caring responsibilities (Charlesworth 2005a, 2005b; Hill, T et al. 2008; van Gellecum, Baxter & Western 2008). Employment is arranged to suit the 'ideal worker', someone who has minimal or no responsibility for family members, is available for long-hours work and is in a position to give priority to work over other commitments (Pocock 2003, 2006b). There is therefore a disjuncture between tacit (and sometimes explicit assumptions) and reality, with an increasing proportion of the workforce shouldering caring responsibilities (Campbell & Charlesworth 2004). James Doughney (2007) and Jo Vu and Doughney (2007) point to direct discrimination in selection and promotion practices. Based on in-depth interview data with women academics, Joanne Pyke (2009) found that women settle for lower-level positions in the face of discrimination and the double-burden of employment and care responsibilities.

The industrial relations system is an important institution shaping women's access to and experience of employment. Research has examined the shifts since the 1907 Harvester ruling, which entrenched the idea of the family wage, an income sufficient for a man to support his wife and three children in frugal comfort. A major area of interest is the adverse effect of labor market deregulation, particularly the effect on women and the low paid (Jefferson & Preston 2010b; van Gellecum, Baxter & Western 2008). This includes assessment of the impact of Work Choices, the Howard coalition government's harsh industrial relations policy (Baird et al. 2008; Jefferson & Preston 2007; Jefferson et al. 2007;

Whitehouse 2006) and of Fair Work Australia, with which it was replaced (Jefferson & Preston 2010a).

In the chapter 2, I outlined the types of financial support the federal government provides to families. There has been some research on the tax/transfer system (Hill, E 2006a, 2006b; Leahy & Doughney 2006a) including ongoing evaluation of the taxation system (Apps 1999, 2004, 2006, 2009; Apps & Rees 2007, 2008) and assessment of the Henry tax review (Apps 2010; Stewart 2009, 2010). For example, under the current tax/transfer system two-income households bear a higher tax burden than a one-income household with the same total income (Apps & Rees 2004). Looking more broadly, Elizabeth Hill (2006b) and Anne Summers (2003) have considered the values behind government policy, particularly the policies of the conservative Howard Government. There is recognition that the financial and social disadvantages experienced by women are linked to the neo-classical economics and neo-liberal political theory (Pocock 2003, 2006b; Western et al. 2007). However, there is insufficient attention to the way global capitalism is both nourished by and perpetuates various forms of inequality, including inequality based on gender.

Attitudes to work and care responsibilities have been examined, although the findings vary. Research from more than a decade ago suggested that, over time, support for working mothers would increase because it was viewed more favourably by young people compared with older people (VandenHeuvel 1991). However, Marcel van Egmond et al. (2010) found that Australian views on a number of important gender issues have become more conservative since the 1990s, with respondents more likely to state that the family is better off if the woman has the main responsibility for the home and the children.

Many Australians, particularly mothers, experience a poor fit between the hours they work and the hours they would like to work. Most people experiencing this poor fit between actual and preferred hours would like to work less, particularly those on higher incomes. People on lower incomes are more likely to want more work hours (Pocock, Skinner & Ichii 2009). Other research found that most women who work part-time are happy with the number of hours they work but fathers, who tend to work full-time, would like to work less (Lunn, S 2008). M. D. R. Evans and Jonathon Kelley (2001) reported that a majority of Australian mothers prefer to forgo employment in order to spend more time with their children, particularly when their children are young. However, Belinda Probert and John Murphy (2001) show that these findings were based on flawed analysis of one poorly worded survey question. Ciara Smyth, Margot Rawsthorne and Peter Siminski (2006) found that woman's stated preferences for employment were strongly influenced by their situation. Research on preferences raises many issues that I will consider in the next chapter.

Feminist activists have made important gains but, as Craig (2007a) argues, we have only experienced half of a sex revolution. Most workplaces no longer tolerate blatant forms of sex-based discrimination, and there are now legal penalties for those that do.⁸⁵ Women's career aspirations are far more likely to be taken seriously now than they were in the early 1970s. Australia currently has a female Prime Minister. There have also been a number of female State Premiers (currently one in Queensland), although there is a pattern of handing the leadership to a woman when a government is in serious trouble. The gender pay gap remains, and women are still outnumbered in senior management, on boards and

⁸⁵ In 2010, the Chief Executive of retailer David Jones was forced to resign following accusations of sexual harassment from an employee.

in Parliaments. Further, it has been found that increasing the number of women in employment has not significantly shifted the division of labour within the home (Baxter 1993, 2000; Baxter, Hewitt & Haynes 2008; Bittman & Pixley 1997; Craig 2007a).

4.4 Valuing care

The dilemma of how to provide care and engage in other meaningful activities, including paid employment, has long concerned many feminist writers and activists e.g. Mary Wollstonecraft (1975 (1792)). However, the various proposed solutions express different perceptions of the value of care. Anne Crittenden (2001) describes a 1909 public debate, sponsored by two American women's organisations. On one side, the author Charlotte Perkins Gilmore argued that women's emancipation could only be achieved by breaking the family as an economic unit and collectivising domestic work. She denied that there was any value in women's traditional work. Against this Anna Howard Shaw, President of the National American Woman Suffrage Association argued that a mother's work was intrinsically valuable and economically important and therefore should be properly compensated. It was reported that the audience overwhelmingly supported Shaw's position. Although Gilmore lost this debate, it was her perspective that prevailed:

For the rest of the twentieth century, the women's movement followed the first path, and it led to innumerable great victories. But in choosing that path, many women's advocates accepted the continued devaluation of motherhood, thereby guaranteeing that feminism would not resonate with millions of wives and mothers. (Crittenden 2001, p. 63)

There is a convergence between the priorities of Gilmore's type of feminism and the demands of a capitalist economy. Economic growth has been fueled by the expansion of the workforce and the development of markets to replace the production of goods and services in the home. Also, as traditional rural sources of labour were exhausted in Western nations during the 20th Century, women's paid labour became essential. Although the economic aspect of women's exploitation is identified by Marxist and socialist feminists, it is neglected by feminists primarily concerned with issues of recognition.⁸⁶ The sidelining of care work has been evident in some forms of liberal feminism, particularly from America. For example, feminist economist Barbara Bergmann (2000) argues against supporting women to care for their own children on the grounds that it will reduce their attachment to employment and therefore undermine gender equality. Her solution to the problem of conflicting demands is for women to contract out a good part of the care and domestic work. Traces of this view are evident in the Australian literature (Baird 2009; Baxter, Hewitt & Western 2009; Charlesworth 2004; Whitehouse, Hosking & Baird 2007).⁸⁷ Over the past two decades feminist scholarship has paid more attention to the importance

⁸⁶ Nancy Fraser (2007) argues that a progressive agenda needs to consider issues of redistribution as well as recognition. Naomi Klein (2001) explains how a focus on identity politics has coincided with increased economic inequality.

⁸⁷ Janeen Baxter, Belinda Hewitt and Mark Western's (2009) discussion of the use of domestic labour does not address the problems inherent in the low-paid jobs. As Manne (2010) asks: who cleans for the cleaner?

of care and domestic work. The strongest voices have come from outside Australia and it has taken time for their work to filter through and inform Australian debates.

Marilyn Waring (1988, 1989), a New Zealand feminist, activist, academic and former-politician, drew attention to the failure of mainstream economics to acknowledge women's unpaid work. The American feminist economist Nancy Folbre has also written about the invisibility of care and domestic work, explaining how it allows employers, men and people without caring responsibilities to free-ride on the unpaid or underpaid work of women (Folbre 1991, 1994a, 1994b, 1995, 2001, 2006a, 2006b, 2008). She reveals the serious flaws in the thinking of neo-classical economists, who assume that children are private consumption items. Parents, like the owners of pets, are expected to pay the full cost of looking after their children. Folbre's work is fairly well known and has become more influential in Australia. In part this is due to her strong connection with Australian time-use researchers.⁸⁸ Australian political and social theorist Chris Beasley (1994) is also concerned with the issue of visibility. She demonstrated that conventional economic thinking cannot properly take account of care and domestic work and proposed an alternative feminist political economy. American feminist economist Julie Nelson (2006) argues that the machine metaphor used to describe the economy impoverishes our thinking by denying there is a place for values and human relationships in economic thinking. This blinds us to the human qualities that ensure we work and care for each other.

Ethics-of-care approaches, which I will examine in chapter 6, also challenge the narrow economic view of care. An important voice is that of American philosopher Eva Feder Kittay (1999, 2002b, 2005)⁸⁹, who focuses on care of the disabled, highlights the vulnerability of carers and examines the concept of dependency.⁹⁰ In a book co-edited by Kittay, Fraser and Linda Gordon (2002) provide a useful genealogy of 'dependency', showing how it became a pejorative term. Other significant proponents of the ethics of care include Joan Tronto (1993), Diemut Bubeck (1995) and Virginia Held (2006).

Sociologist Arlie Hochschild's (1989) work has been influential, particularly her description of the second shift undertaken by American women in the home after a full day in the workplace. She also considers American's shifting orientation from the home to the workplace (Hochschild 1997), an idea picked up by Manne (2005, 2008, 2010). Hochschild's (1983) idea of emotional labour was used by Alison Morehead (2001, 2004) to highlight the additional work done by women, work not necessarily captured in conventional accounts of unpaid work. Hochschild (2004) also examines the globalisation of care work, with the pool of the poor who provide care for members of wealthier families spilling over national borders. Barbara Pocock (2006a) explores this issue in an Australian context, describing it as the cascade of care.

There has been some discussion on what care is and how it should be defined (Beasley 1994; Folbre 2006a). Sociologist Paula England (2005) identifies five theoretical frameworks for conceptualising care work (both paid and unpaid). The first is the

⁸⁸ See, for example, the edited collection *Family Time: The Social Organisation of Care* (Folbre & Bittman 2004). Folbre was also one of the keynote speakers at the Australian Social Policy Conference: Looking Back, Looking Forward – A Quarter Century of Social Change, University of New South Wales, Sydney, 20-22 July 2005.

⁸⁹ See also Kittay and Ellen K. Feder (2002) and Kittay, Bruce Jennings and Angela Wasunna (2005).

⁹⁰ I will discuss her work in more detail in chapter 6.

devaluation perspective, which considers that care work is underpaid and undervalued because most of it is done by women and because of the close association with mothering, which is also lacks recognition (Cancian & Olicker 2000; England 1992; England, Budwig & Folbre 2002; England & Folbre 1999; Kilbourne et al. 1994; Sorensen 1994).

Second is the public good framework. According to this view, the benefits of care work extend beyond the direct recipient, and so care produces public goods. This applies to both paid (England, Budwig & Folbre 2002) and unpaid work (Folbre 1994a, 2001). When it comes to the provision of public goods, markets tend to fail. The result is both inadequate provision of care and low pay for carers. Researchers have found evidence of a 'mother penalty', a wage penalty experienced by working mothers, in the US (Budwig & England 2001; Lundberg & Rose 2000; Neumark & Korenman 1994; Waldfogel 1997, 1998a, 1998b) and in the UK (England, Budwig & Folbre 2002; Harkness & Waldfogel 1999; Joshi & Newell 1989). A similar penalty is found in Australia (Chalmers & Hill 2007; Whitehouse 2002, 2009a). However, under this framework, the low pay care work attracts is not explicitly linked to gender but would exist even if men did most of the care work.

The third framework is the prisoner of love. This shows how the intrinsic rewards of providing care, and the altruism that so often motivates care work, makes carers vulnerable to exploitation. According to this view, carers are more likely to accept low pay because the work is meaningful and rewarding. They are also often reluctant to withdraw their labour to improve pay and conditions because they do not wish to jeopardise the well-being of the people in their care. In this situation markets fail and state intervention is required (England & Folbre 2003; Folbre 2001; Himmelweit 1999; Kittay 1999).

Fourth is the commodification of emotion framework, which is concerned with the experience of care work. According to this perspective people who do service work for pay alienate themselves from their emotions. Further, care work is more alienating than other types of service work (Hochschild 1983). This framework also highlights the care gap between the rich and poor (Hochschild 2002, 2003).

The fifth framework, love and money, rejects the views that care work is inherently more alienating (as argued by the commodification of emotion perspective) and that low pay is a result of the altruism motivating the work (as expressed by the prisoner of love framework). This framework challenges the love/money dichotomy with its association of genuine care with the family and not-for-profit sector and selfishness with the market (Nelson 1999).

In reviewing the logic of and empirical support for each of these frameworks, England (2005) finds that that they sometimes offer different answers to the same questions but may also seek to answer different questions. Each of England's five frameworks sets out to explain why carers and care work are marginalised. They reveal the often implicit assumptions behind each analysis and its associated policy prescription, particularly regarding the opposing views on 'love and money'. However, it is difficult to make sense of the current situation drawing on one framework only. For example, it is possible to draw on both the public good and prisoner of love frameworks (Folbre 1994b, 2001) and both the devaluation and commodification of emotion frameworks (Manne 2005, 2008). There are links between the devaluing of care, its marginalisation as a female activity, the failure of market-based societies to support care as a public good and the potential to exploit caring relationships.

The love/money issue is a challenging one. There is evidence that the quality of care is not reduced when the pay rates of paid carers are increased (Folbre & Nelson 2000). It is also clear that it is very difficult to care for others if you live in poverty. Altruism alone will not put bread on the table, and the stress of financial insecurity often corrodes close family relationships. On the other hand, there are strong arguments against the trading of some goods and services in a market. An example is the donation of blood or vital organs, although the main objection concerns the risk of involuntary and illegal harvesting of body parts. There are also legitimate concerns that for-profit care providers have a strong incentive to offer poor-quality care, particularly if recipients are too young or too sick to object (Folbre 2001). At the heart of the love/money issue is a question about justice. We need to consider which situations or sets of conditions are exploitative and which encourage a fair allocation of responsibilities and rewards.

Although an increasing number of Australian researchers and commentators acknowledge the importance of care work (particularly Beasley 1994; Bittman et al. 2004; Bittman & Pixley 1997; Cox, E 2008; Craig 2007a; Edgar 2005; Grace 2001, 2002; Pocock 2003, 2006b) others seem more ambivalent (Baird 2009; Baxter, Hewitt & Western 2009; Charlesworth 2004; Whitehouse, Hosking & Baird 2007). There are good reasons for the concern that measures to recognise and reward women's traditional work will undermine women's equality. As shown in chapter 2, women are likely to earn less over their lifetime. They also have more limited opportunities for employment and promotion. We are nowhere near achieving equal numbers of women in senior professional and leadership positions. Prominent Australian proponents of a care-based approach, such as Anne Manne and Stephen Biddulph, are perceived to be conservative and hostile to employed mothers. While Manne's and Biddulph's positions on maternal employment are more complex, both tend to focus on individuals and the decisions that they make. Locating the problem at the individual level shifts attention away from the structures that restrict the options available for women. However, there is also a risk that in the sometimes heated debates, arguments are categorised as conservative or progressive without careful attention to the ideas and issues being raised.

The most important Australian work supporting recognition of care work is based on analysis of time-use data. For the past 25 years the Australian Bureau of Statistics (ABS) has conducted detailed time-use surveys, providing data to support an extensive body of research.⁹¹ The significance of this research is revealed by Craig's (2007a) carefully argued book, which reveals the hidden cost of parenthood through a detailed analysis of the impact of children on adult time.⁹² She starts by asking why becoming a parent, something so central to human life, has become so fraught. Craig finds that parents' total workload is greater than those who do not have dependent children. By the same measure, mothers work longer hours than do fathers. She deepens the analysis by including secondary as well as primary activity. Child care is further divided into four categories of varying intensity: interactive care, physical care, travel/communication and passive care (Craig 2007a, pp. 22-3). Craig argues that only by looking at this greater level of detail is it possible to gauge

⁹¹ Australia has been a world leader in time-use research. Important international work includes Folbre (2004, 2006a, 2006b), Folbre, Yoon, Finoff and Fuligni (2006), Bryson (2007) and Budlender (2008, 2010).

⁹² Most of the book is based on Craig's (2007a) analysis of data from the Australian Bureau of Statistics Time-Use Survey (1997). To make international comparisons she draws on the Multinational Time Use Study World 5.5.

the extent of the gap between parents and non-parents as well as the gap between mothers and fathers. It also allows us to see how single-parents compensate for the absence of another parent in the household, primarily by doing more things at the same time.

Craig finds that increased maternal employment has not led to a significant reduction in the time parents spend in activities with their children. Compared with employment mothers, mothers who are not in paid work do spend more total time with their preschool age children. However, there is a much smaller difference in the amount of time employed and not-employed mothers spend in direct interaction with their pre-school age children. It is this engaged care, Craig argues, that is most important to the development of the child. Mothers not only spend more time with children than fathers, but women are more likely to be alone with children.⁹³ Importantly, Craig also considers the inadequacy of current social policy in Australia. The time impact of children on mothers is greater in Australia than in Norway, Germany and Italy. In contrast, Australian men experienced the least time impact.⁹⁴ Although more Australian women are following male work patterns the vast majority has not adopted male patterns of care and there has been little evidence of moves by men to take on female patterns of care (Craig 2007a).⁹⁵

Craig's work is part of a large body of work looking at how families spend their time (e.g. ABS 2007; Baxter, Gray & Hayes 2007). This includes examination of the relationship between jobs and the time parents have with their children (Baxter 2009b, 2010), breastfeeding (Baxter & Smith 2009) and children's time-use (Baxter 2006a; Gager, Sanchez & Demaris 2009). There are also studies of the time spent doing housework, the distribution of the work within a household and perceptions of fairness (Baxter 2000), with unequal contributions found to start with the birth of the first child (Baxter, Hewitt & Haynes 2008). Other research includes assessment of the time pressure and stress stemming from conflicting demands (Baxter 2009a; Baxter & Alexander 2007; Brown et al. 2003; Glezer & Wolcott 1999), the availability of discretionary time (Goodin, RE 2010; Goodin, RE et al. 2005; Goodin, RE et al. 2008; Rice, Goodin & Parop 2006), the gendered nature of measures of time (Hill, T 2010), and the implications of time-use on gender-equity (Apps 2003; Bittman & Wajcman 2000). JaneMaree Maher, Jo Lindsay and Suzanne Franzaway (2008) propose a new framework, the family-time economy, to examine the complex relationship between care time and paid work time. While there is research on time-use in single-parent families (e.g. Baxter & Alexander 2007), there has been little attention on the division of labour between separated parents. Bruce Heady and Diana Warren's (2008) evaluation of contact between parents and their non-resident children is one exception.

Looking at the time-use patterns of mothers with new babies Julie Smith and Mark Ellwood (2006) find that the demands involved with being 'on call' or overseeing their children is underestimated (see also Baxter & Smith 2009; Smith, J & Craig 2007). The nature of the care needed by children is sometimes disputed. Reflecting on the research Manne (2006)

⁹³ Jennifer Baxter (2010) also examined the nature and extent of parent-child time.

⁹⁴ Limitations with the data meant Craig (2007a) could only draw tentative conclusions based on the international comparisons.

⁹⁵ Other publications contribution to the literature also include Craig (2003, 2004, 2005, 2006a, 2006b, 2007b) and Craig, Killian Mullan and Megan Blaxland (2010), Craig and Michael Bittman (2008).

challenges the view that employment does not significantly reduce the amount of time mothers spend with their children because simply being present is just as important as one-on-one interaction. Debates rage between proponents of intensive mothering and critics concerned about the impact of 'helicopter parenting'. Meanwhile there is a growing body of solid research establishing the relationships *and* social conditions required for healthy child development (e.g. Stanley, Richardson & Prior 2005).

By revealing the amount of time involved in caring for others, the time-use research has made care work visible. The research also makes clear that women do most of the unpaid care and domestic work. As stated in the chapter 1, another important part of making unpaid work visible involves calculating its economic contribution. Various methods have been proposed and debated (Hill, 2005, 2009; Ironmonger 1989, 1996, 2001; Ironmonger & Soupourmas 2009).

Methodological issues are also the subject of ongoing debate (e.g. Budlender 2008; Budlender 2010; Klevmarken 1999). The literature includes discussion on the problem of measuring care time (Fisher, K et al. 2005). Considering the implications of time-use on well-being, Trish Hill (2010) argues for a focus on the qualitative aspects of time and not just duration. Craig (2007a) states that we need to be careful not to overstate findings, always remaining aware of data limitations. She points out that, although the quality of the Australia time-use study data is comparatively high, women and men tend to describe and justify their arrangements in ways that attempt to bridge the gap between their values and the reality of their lives. She acknowledges this as a problem but does not identify the extent of the issue or the impact on her conclusions (Leahy 2008a).

4.5 Care/work regimes

A number of models have been proposed to explain the way a society organises paid and unpaid work. In some cases these models are used for descriptive purposes, attempting to make sense of current or past situations and to allow comparisons between the norms of different communities. Alternatives are also offered, some in hope, others as a warning. Pocock (2005a) uses the term 'work/care regime', which she describes as the interplay between three forces: particular sets of institutions (families, workplaces, schools etc.), culture (proper roles of mother, father and worker) and behaviours. These and other forces shape, but do not determine, the options available to individual women and men. While individual and household practice is, in part, the product of dominant institutions and values, over time actual practices also shape those institutions and values.

The most evocative description of different care/work regimes is found in Folbre's (2001, pp. 22-25) parable of care. A powerful goddess offered the prize of health and prosperity to the nation that could run the greatest distance in a set time, although the competitors were not told how long the race would take. The first nation encouraged every member to run as fast as they could. However, it was not long before the young children and the elderly fell behind. The faster runners did not stop to help because they did not want to slow down. Initially the first nation appeared to be making progress. Over time, some of the fast runners were injured or became exhausted. There was no one to help them and no one to replace them.

The second nation took a different approach. The leaders decided that the young men would focus on the race and the women would come behind carrying the children, the sick

and the elderly. They would also look after any runners who tired or were injured. The leaders argued that this arrangement was natural and efficient and that the benefits would flow to everyone. They also promised men authority over women as reward for running fast. Initially this approach appeared to work. However, women objected, arguing that they could run just as fast as the men if they did not have the extra responsibilities. They went on strike and chaos ensued.

The third nation made slow but persistent progress. Both men and women were required to run and to share in the work of caring for those unable to run.

Jogging with a heavy load, these citizens became strong as well as fast. Their freedom and equality fostered their solidarity. Of course they won the race. What did you expect? It was a race that goddesses designed. (Folbre 2001, p. 23)

In this parable, Folbre describes three work/care models or regimes, there are others. Each describes a set of social arrangements supporting a particular way of organising paid and unpaid work. This includes the way work is allocated between institutions (i.e. between family, the market, civil society and the state). Also relevant is the basis for individual entitlement to provision: need, desert, or citizenship. Provision on the basis of need is the most redistributive, but it tends to stigmatise the recipients. Desert-based provision is honourable for recipients but it is not egalitarian. For example, earnings-linked social insurance schemes disadvantage women who have career breaks and lower incomes. Citizen-based schemes are universal, in the sense of being available to all members of the community. Although, in theory, there is no stigma attached to recipients, hostility may be fueled by the fear of free-riding, which is far more likely to be directed towards single mothers than towards fathers who depend on their partner's unpaid work. In general there is greater hostility to welfare in more unequal societies.⁹⁶ The hostility arises when a lack of resources is interpreted as a lack of effort, concern or responsibility and advantages are not acknowledged. For example:

... in liberal, highly unequal societies with little commitment to equality, middle class parents can hide their maintenance of their privileges and power for their children behind their concerns as caring parents; they are simply doing the best for their children, 'as anyone would'. (Sayer 2011, p. 84)

Folbre (2001), Fraser (1997) and Pocock (2003) each examine the way different work/care models are structured by dominant attitudes towards women. This level of attention to women's equality is not evident in all work on social systems. For instance Sylvia Walby (2007, p. 453) is highly critical of Esping-Anderson's (1990, 1999) model of three welfare-state forms (liberal, social democratic and conservative corporatist).⁹⁷ She argues that Esping-Anderson's account of the welfare state focuses on class and underestimates 'the significance of the gender dimension in both the creation and the impact of welfare provision' (Walby 1997, p. 210). According to Walby (2007, p. 453), Esping-Anderson cannot account for multiple axes of inequality in each institutional domain. Instead he confines class to the economy and state and gender to the family.

⁹⁶ Welfare is resented by many taxpayers in the US because recipients are seen as lacking autonomy and therefore dignity (Gilens 1999; Sayer 2011). In contrast, in the Nordic countries there is broad support for far more generous social welfare systems (Nygård 2006).

⁹⁷ I thank Andrew Sayer, one of my examiners, for pointing out the relevance of Esping-Anderson's work on welfare regimes and criticism of it by Walby.

It is important to note that work/family models or regimes do not necessarily determine the way each individual, household or family arranges their lives. However, social institutions, public policies, dominant social and cultural expectations of mothers, fathers and employees make some options more achievable and others more difficult. In reflecting on different care/work approaches I will consider the extent to which the model promotes or hinders women's equality.

The equality implications of each model may be assessed in a number of ways. Fraser (1997) proposes 7 normative principles, which express gender equity in a complex way. She uses them to evaluate three feminist care/work models.⁹⁸ These principles are:

1. *Anti-poverty*. The antipoverty principle insists that, at the very least, every one's basic needs should be met.
2. *Anti-exploitation*. Fraser identifies three kinds of exploitable dependencies that should be avoided: 'exploitable dependence on individual family members, such as a husband or an adult child; exploitable dependence on employers and supervisors; and exploitable dependence on the personal whims of state officials' (Fraser 1997, p. 46).
3. *Income equality*. This principle rules out unequal pay for the same work and the undervaluing of women's work and skills, although it does not insist that all incomes should be exactly the same.
4. *Leisure-time equality*. A principle is designed to address the problem of women's experience of time poverty.
5. *Equality of respect*. This opposes social arrangements involving the objectification of women.
6. *Anti-marginalisation*. The demand here is that women have the opportunity to participate fully in all areas of social life (employment, politics and civil society) on an equal basis with men. For example, this principle would be violated if women were financially supported and well rested but confined to the domestic sphere.
7. *Anti-androcentric*. This principle rejects anything that sets men's current life patterns as the norm and requires women to assimilate to such a masculinist norm.

This set of principles confronts the main different types of sex-based discrimination and therefore forms a useful checklist. It is also broadly compatible with the partial theory of justice provided by Nussbaum's capabilities approach.

4.5.1 Traditional-breadwinner

The traditional-breadwinner model is characterised by Folbre's (2001) description of the second nation in her parable. Fraser (1997) describes it as the gender order supporting

⁹⁸ Fraser (1997) uses the term gender order rather than model or regime. This draws attention to the assumptions about gender that underpin different welfare states. I use 'model' and 'regime' interchangeably as terms that cover both assumptions about women and the institutional arrangements. In this I am drawing on Pocock's concept of the work/care regime.

industrial capitalism. Under this model men work full-time and receive a 'family wage', which is a wage sufficient to support a wife and children. Women care for the children and sick or elderly relatives and are responsible for running the household. Under this model the ideal family is single-income, nuclear, male headed and heterosexual (Fraser 1997; Pocock 2003).

In Australia, this model was entrenched with 1907 Harvester judgment, delivered in the Commonwealth Court of Conciliation and Arbitration. Henry Bournes Higgins, the presiding judge, argued that the company at the centre of the particular case, Sunshine Harvester Works, was required to pay employees enough to allow a life of reasonable and frugal comfort for a male worker, his wife and three children. Although this ruling was appealed and overturned, it entrenched the idea of the basic living wage in the Australian industrial relations system (Bryan 2008; Macarthy 1969; Murphy 2006; Robbins & Harriss 2007).

Although the traditional-breadwinner model held sway in Australia (and elsewhere) for much of the previous century, there have always been employed mothers (Swain 2005; Warne 2005), even in the 1950s when a return to domesticity was celebrated so strongly (Murphy & Probert 2005). Women worked for a range of reasons. Financial necessity led many working class women to take in washing and sewing or work as domestic helpers. Death or separation may have removed the male breadwinner from the household. In some cases the man's income was not enough to support his family. Some women defied social expectations and worked in the family business, often with their husband, while other women had independent careers and enjoyed the financial and other advantages of employment.

Always embedded with serious contradictions, the traditional-breadwinner model is no longer tenable. For many Australians, one wage is not enough to support a family to the level of comfort expected in contemporary society. The aspirations and working patterns of women, particularly mothers, mean that they can no longer take full responsibility for care and domestic work. There is also much greater diversity in family composition. While not arguing for it, Folbre (Folbre 1994b) states that, at least, under the traditional-breadwinner model children, the sick and the elderly receive the care they need. While this may have been the case for the majority, it was not the case for those who found themselves outside the ideal breadwinner family. However, even if this model can ensure that care is provided, there is a fundamental issue of justice. Women and men do not have access to the same opportunities for employment, political and civic engagement, nor do they have the same opportunities to develop and sustain close family relationships. The traditional-breadwinner model is organised around the idea of the family wage and based on the segregation of women and men into separate private and public spheres. This runs counter to any idea of equality between women and men.

Some conservatives seek to reinstate the male breadwinner/female homemaker separation (Fraser 1997). This is particularly evident in the US where there is a strong and very vocal right-wing Christian fundamentalist movement. Even in the US, however, contradictions are apparent. Sarah Palin, former Governor of Alaska and the Republican Party's 2008 Vice-Presidential candidate, presents herself as a 'hockey mom' drawing on ideas of maternal integrity and determination. Australian writer and commentator Guy Rundle (2008, pp. 208-09) argues that Palin's life 'is both the triumph of the second wave feminist revolution and the finish of it' undermining the assumption that women's equality, choice and progressive social values come together in a package.

4.5.2 Modified breadwinner

In Australia, the traditional male breadwinner/female homemaker family is in the minority. In 2003, only 32 per cent of couple families with children were in this category, with the father in the labour force and the mother in the home. However, both partners were employed in 62 per cent of couple families with children (Pocock 2005a). A majority of these dual-income couple families have one-and-a-half incomes. In most cases, the male is employed full time and the female part time. This is a common arrangement in Australia, with our high rates of part-time and casual employment.

Under this model mothers retain their connection with the workplace, earn an income and may add to their superannuation savings. Their longer-term financial position is likely to be stronger than that of a mother from a breadwinner family. However, as discussed in chapter 2, most part-time work is poorly paid, marginalised and insecure. Further, on average, women employed part-time do not reduce their total workload. The risk is that the modified-breadwinner model reinforces gender inequality, casting women as the primary carers and men as the primary earners. The situation would be different if men and women were equally likely to work in part-time jobs. For this to become even a remote possibility, the quality of part-time work would need to improve significantly. There have been some initiatives to try to improve the quality and status of part-time work (e.g. the previous Victorian Government developed a set of guidelines for quality part-time work). However, until rewarding jobs with opportunities for training, progression and decent levels of pay are available, it is unlikely that many men will scale down their employment and take on more responsibility for running the household.

The modified-breadwinner model underpinned the thinking of the Howard Government. Since the 1970s Labor Governments have tended to be more supportive of women's employment aspirations than their conservative counterparts. Nonetheless there is more continuity than change between the conservative former Howard Government, the former Rudd Labor Government and the current Gillard Labor Government.

4.5.3 Universal breadwinner

The universal-breadwinner model, sometimes referred to as the adult-worker model (Lewis, J & Giullari 2005), is described by Fraser (1997) as one of two feminist visions of a just post-industrial society. Under this model citizenship is linked to paid employment (Craig 2008, pp. 45-46; Lewis, J & Giullari 2005). To achieve gender equity women need to increase their participation in employment, adopting a traditional male work pattern. According to Fraser (1997), this vision is implicit in the political practices of most US feminists (e.g. Bergmann, BR 2000). Jane Lewis and Susan Giullari (2005) argue that this model also informs policy makers in Western European nations (Lewis, J & Giullari 2005), although there are considerable differences between countries (Haas & Hartel 2010). This model has been less influential in Australia.

The first nation in Folbre's parable of care adopted the universal-breadwinner model. The story of their progress in the race highlights the most serious problem with the model. If everyone is focused on full-time employment, then who will look after the children, elderly and sick? The first nation let them fall by the wayside. Not only is this inhumane, it is not sustainable. A successful society depends on unpaid care and domestic work as well as on paid work. Even if the universal-breadwinner model is able to improve gender equity, it risks doing so at the cost of reducing the availability of care (Craig 2008, p. 45; England 2005). Proponents of the universal-breadwinner approach usually argue that households

should contract out their care and domestic work. As Fraser (1997) explains, the bulk of the work would be carried out by paid employees working for either private businesses or state-based service providers. However, in the US, Australia and other comparable countries employed carers, who are overwhelming women, are poorly paid. As explained earlier in this chapter, access to high-quality care is restricted to those who have the capacity to pay. If the universal-breadwinner model is to be fully implemented then all women (and men) capable of holding a job would need to have access to proper breadwinner jobs. At the very least, the status and remuneration attached to paid care work would have to be raised. Proponents of the universal-breadwinner model often fail to address the low status of care work, the cascade of care and the double shift experienced by many women (Craig 2008; England 2005).

There is a more general issue about the quality of employment. Government employment and social policy is based on the assumption that it is better to have any job than no job. Fitzpatrick et al. (2011, p. 29) explains that this view draws on the idea 'that obtaining any job reduces the risk of scarring and the human capital deterioration that follows prolonged periods of being out of work'. While there is some truth in this, there is also a risk that a bad job can lock an individual into 'a vicious cycle of low quality employment' (Fitzpatrick et al. 2011, p. 29). Overall, people in employment have better mental health than people who are unemployed. However, the extent to which the mental health of people who were unemployed improves after they commence employment, depends on the quality of the job. Butterworth et al. (2011) found a decline in the mental health of people who moved from unemployment into poor quality jobs.

There is also the problem of time poverty, which a UK report found to be significant. Drawing on 2000 UK Time Use Survey and two rounds of semi-structured interviews with parents dealing with income and time pressures, Tania Burchardt (2008) found that between 2.4 and 3.0 per cent of working-age adults experienced both time and income poverty.⁹⁹

Single-parent families were found to experience the greatest pressure, with 42 to 56 per cent facing time- and income-poverty. Between 10 and 14 per cent of children were found to be living in time- and income poor-households. Parents in these homes are caught. If they obtain additional employment to escape income poverty, they have less time to spend with their children. Reducing hours of employment reduces already meager family income (Burchardt 2008, pp. 80-84). Successive governments attempt to address income poverty by seeking to increase parents' labour-market participation rates. However, in doing this they fail to acknowledge that children need time as well as money. Instead, the report argues, governments should ensure that parents are able to spend a minimum amount of time with their children. Burchardt (2008) proposed a number of strategies to

⁹⁹ The variation reflects the definition of poverty, with 2.4 per cent experiencing absolute and 3.0 per cent relative time and income poverty. Absolute time poverty is understood as having no free time after commitments are met, a similar idea to Robert Goodin's (2008) concept of discretionary time. There are also parallels with the definition of absolute income poverty as an income equal to or less than the minimum required to meet a set of basic consumption requirements. Burchardt (2008) defines the relative threshold for income poverty as 60 per cent of median income and for time poverty as 60 per cent of median free time. She prefers the absolute definitions because of the degree of circularity built into the relative definition of time poverty. However, that there are limitations with absolute definitions, particularly because judgments of minimum standards can be arbitrary.

address income and time poverty, including the provision of education and training. Although such a measure will improve the employment prospects of some individuals it does not change the nature of low-wage work. Without other changes, there will still be jobs that do not pay enough to support a decent standard of living.

Time poverty has been exacerbated by work intensification and the growth in long-hours work. These two factors make it increasingly difficult to work full time and still have the time and energy for family and community (Edgar & Edgar 2008; Pocock 2003, 2006b). While some experience time poverty because of the demands of a full-time job, others struggle financially because they cannot get enough hours of work. Some people may cobble together a number of part-time and casual jobs, but this may not be enough for them to escape income poverty and is likely to lead to time poverty. It is also difficult for people on low incomes to access education and training that will improve their longer term employment prospects (Pocock et al. 2011).

Assessing the universal-breadwinner model against her seven principles, Fraser (1997) found that if all jobs were decent and well paid, the model was good at keeping women out of poverty and free from exploitation. However, recognising the divide between secure breadwinner and other types of jobs, Fraser finds that this model is only fair at achieving income equality. It is also fair at achieving equality of respect and anti-marginalisation but poor on leisure-time equality and anti-androcentrism.

4.5.4 Caregiver parity

The second feminist vision of a just society is to achieve gender equity through supporting the care and domestic work traditionally performed by women. Instead of insisting that women become like men, this model recognises a female path distinct from that of the traditional male breadwinner. The intention is to minimise the costs associated with the female path, usually through some form of payment for care work. Fraser (1997) argues this approach informs current political practice of most Western European feminists and social democrats. Writing more recently, Lewis's and Giullari (2005) argue that the universal-breadwinner model is becoming increasingly influential in Western Europe. In a comparative study of The Netherlands, Sweden and Austria, Barbara Haas and Margit Hartel (2010) identify Austria as an example of the caregiver-parity model.

This model has some advocates in Australia, notably Manne (2005) and Biddulph (1994). Former Prime Minister John Howard was vocal about the need to provide financial support to single-income families and extended the level of financial support available through the tax/transfer system. However, it was motivated by political expediency and never took the form of a carer's wage. Instead the Howard Government provided a supplementary income for the modified breadwinner family.

There are different views about how parity might be achieved. Manne (2005) and Biddulph (1994) argue for a carer's wage. There is the potential for such a wage to be provided by a Universal Basic Income (UBI), a payment supporting a modest standard of living and made to all citizens (McKay 2007; Pateman 2004). However, the UBI does not specifically support care work. Recognising the potential for free-riding, Tony Atkinson (2007) proposes a Participation Income (PI) that, as the name suggests, is conditional on the recipient contributing to the community in some way. This could include care provision. While the UBI and the PI both can ensure that carers have some sort of income and so reduce their vulnerability, there are still problems with the incentives they provide. A person who has an income from a job, in addition to a guaranteed income, would be in a stronger financial

position than someone trying to live on the UB or PI while providing care for a family member (Craig 2008). As Crittenden (2001) argues, a 'housewife wage' or equivalent form of benefit is not sufficient:

What is needed is across-the-board recognition – in the workplace, in the family, in the law, and in social policy – that someone has to do the necessary work of raising children and sustaining families, and that the reward of such vital work should not be professional marginalization, a loss of status, and an increased risk of poverty (Crittenden 2001, p. 10).

Another option is the basic needs approach (e.g. Stewart 1985). This assumes that each person should be able to live a dignified life and that this requires financial underpinnings broader than just a guaranteed income. Despite some appeal, it does not address the problem that individuals have differing abilities to convert resources into valued ways of living (the conversion problem identified by Sen). In this respect the capabilities approach offers more promise. While the capabilities approach could support a carers' wage, it is not clear that the parity approach is the best way to achieve gender equality. Fraser (1997) identifies a number of issues. Although she considers that the caregiver parity model is good at combating poverty and the exploitation of women, it is poor when it comes to income equality and anti-marginalisation. Further, it is only fair at encouraging equality of respect and access to leisure time and at combating andro-centrism.

4.5.5 Universal caregiver

Nancy Chodorow (1978) argued that more equal parenting relationships are the key to a more caring society. Finding that both the universal-breadwinner and caregiver-parity models have limitations, Fraser (1997, pp. 59-62) proposes a third approach, which she calls the universal caregiver. Her aim is to combine the best and jettison the worst features of the universal-breadwinner and caregiver-parity models. The idea is to get men to behave more like women do now by taking responsibility for care work. Fraser argues that this third approach will 'integrate redistribution and recognition by deconstructing gender and changing men' (Fraser 1997, p. 6). For this to be possible, all jobs will be designed for people who are carers as well as workers. Conditions would include shorter working hours than currently typical of full-time employment. The intention is to dismantle the opposition between bread-winning and care-giving. Support for working carers would be partly achieved by integrating care work and paid work into a single social-insurance system. This is not just a matter of mothers and fathers sharing the care of their children but would entail a fairer distribution of different types of work across the community. Relatives, friends and other members of the community would contribute. Services would be state funded but organised locally, an approach consistent with Nobel economics laureate Elinor Ostrom's policy proscription for increasing reciprocity and reducing free-loading (e.g. Ostrom 2005; Schwab & Elinor 2008).

Susan Himmelweit (2008) adopts Fraser's model but argues that it is more properly called the universal caregiver/worker. Bubeck (1995) also proposes a version of the universal-caregiver model built on a universal obligation to provide care (see chapter 6). The universal-caregiver model is the type of approach followed by Folbre's third nation, who not only won the race but built a society based on co-operation and mutual respect.

Among Australian academics and commentators there is strong support for some form of shared care (Craig 2007a; Pocock 2003, p. 39; Squire & Tilly 2007). During the Hawke and Keating Labor Governments (1983 to 1996) there was a publicly funded campaign

promoting the idea that men and women should share the load (Charlesworth 2004). The universal-caregiver model ensures that people receive the care they need but also protects the interests of the caregivers. It raises the status of care by insisting on a shared social responsibility. To realise this model in Australia would require a significant shift in social attitudes, changes to the nature of work, a restructured tax/transfer system and more comprehensive system of high-quality care services for children as well as elderly and disabled people. There would also need to be a drastic improvement in the status, remuneration and conditions of employment for paid carers. This raises questions about our individual and social responsibilities, which I will discuss in chapter 8. I will return to the subject of shared care in chapter 9.

4.6 Australian policy on care and employment

Debates on different types of work/care regimes have responded to and at times influenced policy development in Australia. Governments have an important role setting at least some of the parameters determining the extent to which society takes responsibility for the provision of care and shaping the options available to individuals. A broad range of policies are relevant. In a major project looking at decisions about the number and timing of children, Maher (2005b) found that the industrial relations framework was at least as important as social policy. Also relevant are the nature of the tax/transfer system, the availability of high quality affordable child care, access to decent education and training, health care options, the local built environment and prospects for environmental sustainability. Unfortunately, in many cases, policies are designed to adjust families to fit work not work to fit families.

A particularly contentious issue, raised in chapter 2, is the high effective marginal tax rate (EMTR) faced by recipients of transfer payments when they enter employment or increase their hours of paid work. This has a big impact on women seeking to return to work after the birth of a child. The concern is that some will be dissuaded from seeking paid employment, to the detriment of the individual and the community. EMTR was identified as a major issue by the review panel responsible for the recent enquiry into the Australian taxation system known as the Henry Review (Henry 2010a, 2010c). The final report's treatment of EMTR and women's workforce participation rates reveal many of the values and pressures shaping policy in Australia today.

This 'root and branch' review of the Australian tax system was announced by the Australian Government in the 2008-2009 budget. The review panel, chaired by the then Treasury Secretary Ken Henry¹⁰⁰, was also asked to consider the relationship between taxation and social-support payments or the tax/transfer system. The panel held that there is a strong case for reform. Factors such as increasing economic globalisation, environmental degradation, the ageing of the Australia population and a changing labour market mean that the current tax and transfer system is unsustainable. In its final report, the review panel recommended the basic architecture of what it considered to be an efficient, equitable and sustainable replacement system (Henry 2010a, p. 2).

¹⁰⁰ Ken Henry's retirement was announced in December 2011. In March 2011 he was replaced by Martin Parkinson.

In setting the direction for reform, the panel identified five principles: equity, efficiency, simplicity and transparency, financial, social and environmental sustainability, and policy consistency. In addition to these principles, the panel stated the view that the primary focus of the tax/transfer system is to raise revenue and provide for those in need and that this should not be compromised by other policy objectives (Henry 2010a, box 2.1, pp. 2, 4). This view is tempered by an acknowledgement that the Government may legitimately use narrow taxes in order to reduce damaging behaviour, e.g. taxes on alcohol, cigarettes, gambling or pollution. The panel identified four broad taxation bases: personal income (which should continue to provide the biggest source of revenue); business income; private consumption and economic rents from natural resources.

The panel considered whether the tax and transfer systems should be integrated but concluded that the separation should be maintained because the two systems have different purposes. The taxation system raises revenue based on individual capacity to pay while the transfer system provides financial support on the basis of household need¹⁰¹ (Henry 2010a, chapter 3, p. 1). This means that the interaction between the tax and transfer systems remains a significant issue.

Australia's high EMTRs are the result of a transfer system that is targeted rather than universal. The panel noted the uniqueness of Australia's transfer system, which is based on Government-funded means-tested assistance payments, supplemented by private superannuation¹⁰². Most other rich countries combine a social-insurance scheme providing income maintenance with a more limited publicly financed safety-net. The panel concluded that Australia has the most progressive and least expensive transfer system of any OECD country. For these reasons the panel strongly supported the retention of means-tested transfer payments even though it makes high EMTRs inevitable. However, the panel argues that there are ways of reducing the effect of EMTRs. In this vein the Final Report contains a number of recommendations designed to improve the means test, including a more uniform treatment of assets and adjustments to the withdrawal rates and thresholds to encourage increased workforce participation (Henry 2010c).

For the Review Panel, the goal of increasing workforce participation is not simply a matter of reducing the total cost of the transfer system. Paid employment is seen as the best way of escaping poverty. Increasing the workforce participation of single-parents is identified as a policy priority because a significant proportion of all jobless households are headed by single-parents (Henry 2010c, section F1-3). However, whether employment helps the employee and their family depends on the nature of the work and its impact on care responsibilities. The welfare-to-work policy in the US has not improved the lives of single mothers whose only options are low-wage jobs and poor quality child-care (Ehrenreich 2001).

In order to increase workforce participation rates, Henry (2010a, 2010b, 2010c) recommended restructuring different types of income-support payments into three

¹⁰¹ Henry states that transfer payments are made on the basis of household need. While it is true that many transfer payments are made on the basis of household need, there are others allocated primarily on the basis of individual need, such as the Disability Support Pension.

¹⁰² The superannuation scheme provides retirement income. Employers contribute at least 9 per cent of an employee's income into a superannuation fund. Individuals may supplement this with additional contributions. A full or partial pension is available for people who reach old age with little no superannuation savings.

categories based on employment potential: pension, participation and student. The pension category covers payments for people who cannot be expected to support themselves through paid employment. Most recipients of pensions are either elderly or disabled. This group also includes carers, namely the recipients of the carer's payment rather than the parents of young children, who are considered part of the second group. Participation payments are designed to support people of working age who are able to work now or sometime in the near future, such as unemployed people and single-parents. The student category covers income support for young people in education programmes.

The final report proposed different levels of payment. The panel recommended setting pensions at the highest rate because recipients are likely to rely on them for a long period of time. Participation payments should be lower than pensions to maintain the incentive to find paid employment. Supplementary benefits should continue to be paid to recipients caring for children. Student payments should be the lowest, because it is intended that they will be supplemented by part-time or holiday work or by savings. Different withdrawal rates are also recommended. Those unable to work part-time now or in the near future should have steeper means-test withdrawal rates. On the other hand, those who are more likely to work part-time (e.g. pensioners and students) should be presented with gentler withdrawal rates.

The panel stressed both the importance of time spent looking after young children and the benefits of paid employment. It stated that studies confirm the benefits to both mother and child if the mother is able to take care of the child in the period immediately after childbirth. However, it also finds extended absences from the workforce damage an individual's employment prospects. In making this argument, the panel and the Australian Treasury were strongly influenced by Sen's capabilities approach. Henry (2009a, p. 4) states 'that society should aspire to provide all individuals with the capabilities necessary to be able to choose to lead a life of value'. Therefore poverty is not simply a matter of low income but must be understood in terms of limited opportunities to engage in work and other social activities.

It is remarkable that the Australian Treasury, long known as the bastion of neo-classical economics, embraced the language of capabilities. This change was driven by Ken Henry, who strongly promoted Sen's version of the capability approach. Within Treasury, this resulted in the recognition that GDP is an inadequate measure of well-being because it masks inequalities and fails to capture the value of unpaid work. In response, Treasury officials developed a 'wellbeing framework' with the following five dimensions: 'the level of freedom and opportunity that people enjoy; the aggregate level of consumption possibilities; the distribution of consumption possibilities (both in spatial, temporal and inter-temporal terms); the level of risk people are required to bear; and the level of complexity people are required to deal with' (Henry 2009a, p. 4).¹⁰³ Interestingly Henry's speech to the 2009 Australian Research Alliance for Children and Youth (ACRACY)

¹⁰³ This is one example of the influence of the capabilities approach on government. The Department of Prime Minister and Cabinet has shown interest in using the capabilities approach to assess well-being. The work of the South Australian Social Inclusion Board is compatible with the capabilities approach (Cappo 2009). In France the Sarkozy Commission has drawn on the capabilities approach to develop quality-of-life measures (Nussbaum 2011b; Stiglitz, Sen & Fitoussi 2009a, 2009b).

conference includes both the language of capabilities and the utilitarian language more commonly spoken by Treasury officials. After briefly explaining Treasury's deployment of the capabilities approach, Henry discusses the shift from concept to practical policy. Earlier concerns with the problems of aggregation gave way to the more familiar notions of cost-benefit analysis and trade-offs (e.g. the trade-off between providing some assistance to all families and targeting assistance to the most disadvantaged). This ambivalence is also found in the final report of the taxation review.

Significantly, the review panel argued that the tax and transfer system should not encourage individuals to make short-term decisions that compromise their long-term well-being. Rules that make additional work, study or retraining unattractive or even unviable will trap people in poverty (Henry 2010a, p. 3). Instead of enforcing an expectation that both parents work full-time when their children are young (universal breadwinner), current policy is explicitly aimed at keeping primary carers in touch with the labour market, usually through some form of part-time work (modified breadwinner). The panel broadly supported this approach, although it stated that in the future, parents on income support should seek employment when their children are younger than is currently required. As a first step it recommended an alignment between the age of the youngest child when single-parents should start looking for a job and the age when income support is reduced. This should also be consistent with the age triggering a reduction in payments to partnered primary carers. In the short term, the age of the youngest child should be six years. In the longer term, this age should be reduced, subject to the availability of affordable high-quality child care and supportive employment conditions. The panel also recommended combining the Child Care Benefit and the Child Care Rebate into a single payment based on a percentage of out-of-pocket costs. It proposed a base rate of assistance that would be available to all parents, with higher levels of entitlement subject to a means test (Henry 2010c, section F1-3).

The Australian Government has shied away from implementing the full set of recommendations from the Henry Review. Its appetite for reform in this area seems to have been further dulled by the disastrous attempt to introduce a resources rent tax, the only significant proposal from the review that it embraced with any enthusiasm. Despite this, policy directions proposed by the Henry Review reveal the thinking, values and pressures shaping social, political and economic institutions in this country. In particular it illustrates the continued political dominance of the modified- breadwinner model for the social organisation of care. The Henry Review also marked the first cautious and tentative steps of the capabilities approach towards acceptance at the level of national government in an advanced Western nation.

4.7 Conclusion

It is difficult to do justice to the vast literature on work and family. I started with an overview of the Australian body of work, noting shifting thinking on the nature of employment and the importance of care. I argue that it is impossible to achieve equality for women if care work is rendered invisible, dismissed as unimportant or considered a natural female responsibility. I outlined the various care/work regimes which some theorists use to describe the current situation, highlight the risks of other potential scenarios and propose more equitable alternatives. In the final section I focused on the recent review of the Australian taxation and transfer systems to illustrate the forces

shaping policy in this country. Choice is an issue that emerges throughout this chapter. There are questions about the extent to which individuals have real choice, which leads to further questions about the nature of social choice. A central concern is the extent to which individual liberties may be restricted in order to advance particular social goods. Ideas about choice and preference thread through the work and family literature and have particular salience in political debates. This is the subject of the next chapter.

Chapter 5 Choice and preferences theories

5.1 Introduction

One idea raised in various newspaper and magazine articles as well as in fiction is that an increasing number of highly educated women in Australia, the US and UK happily set aside their lucrative careers in order to raise their children, (e.g. 'Women Choose Kids Over Career' 2009; Crittenden 2003; Story 2005a, 2005b).¹⁰⁴ Often, this is presented as a matter of choice and a feminist victory. Contemporary women have won the right to a fulfilling career and so, unlike their grandmothers, they are free to take on the more traditional path of the 'stay-at-home' mother.¹⁰⁵ Linda Hirshman (2006); Miriam Peskowitz (2005) and Judith Stadtman Tucker (2008) see this type of celebration of traditional femininity and maternalism as a failure to distinguish between freedom of choice and freedom from oppression. The dominant narrative is about choice, but there is little or no attention to the nature of the options available and the extent to which choices are constrained.

The idea that women are more interested in raising their children than engaging in paid employment is not new. Some variants insist that traditional gender roles reflect human biology and represent the best way to provide care.¹⁰⁶ The most vocal recent proponent of the view that most mothers do not want paid employment is the British sociologist Catherine Hakim (2000, 2002b, 2004, 2011b). Her preference theory assumes that preferences are for the most part fixed, and the process of making a decision is largely instrumental. This understanding of preferences, choice and decision-making is evident in neo-liberalism political theory and neo-classical economics, both profoundly influential in Australia and elsewhere. The result is a narrowing of the concepts of 'choice' and 'preference'. In this chapter I draw on the growing body of evidence from neuroscience, behavioural economics, philosophy and psychology to challenge Hakim's and other similar preference theories. I also outline alternative theories of choice and decision-making.

5.2 A matter of choice - Hakim's preference theory

Hakim (2000) argues that in the late 20th century five historic social and labour-market changes have introduced new options and opportunities for women. These five changes are: the contraceptive revolution; the equal-opportunity revolution; the expansion of white-collar jobs, which are more attractive to women than traditional blue-collar jobs; the creation of jobs for secondary earners (people who do not wish to give priority to paid

¹⁰⁴ See also the 2009 newspaper article 'Women Choose Kids Over Career', *The Sunday Mail*, 10 October and Douglas and Michael's (2005) description of the 'new momism'.

¹⁰⁵ Similarly, arguments hold that women are now free to be sexy and feminine. Commenting on a collection of aprons, Niccole Warren, one of the presenters of the Australian Broadcasting Corporation (ABC) television programme *The Collectors*, noted that after feminism women have a choice and so are able to celebrate something so firmly associated with domesticity and traditional female work (ABC Television, item first broadcast on 31 August 2007).

¹⁰⁶ See Cordelia Fine's (2010) excellent rebuttal of popular books and scientific articles that trace immutable differences between men and women to differences between male and female brains.

work at the expense of other interests); and the increasing importance of attitudes, values and personal preferences in lifestyle choices. According to Hakim, these five separate changes do not necessarily occur at once, but all are necessary for 'the new scenario' that offers women free choice between family work and market work. She claims that this new scenario has been reached in most modern affluent societies.

Contrary to the view held by most feminists, Hakim argues, women situated in this new scenario are not homogeneous. They have different preferences and priorities and, in a situation of free choice, this will result in different patterns of market employment. She states that, once genuine choices are open to them, women will choose one of three different lifestyles: home-centred, work-centred or adaptive. She sets out these three preference groups as sociological ideal-types, arguing that the relative size of the three groups is stable and these different lifestyle preferences are evident across all social classes, income groups and at all levels of education. In this way Hakim holds that women can be divided into three dispositional types with well-ordered preferences. Men, on the other hand, are relatively homogeneous, all seeking work-centred lives (Hakim 2000, 2001, 2002a, 2002b). Although Hakim (2000) considers it possible that sometime in the future men may demand the same options that she considers currently available to women, at the moment they do not.

Not only do women from the three different groups have different lifestyle preferences, they have conflicting interests. According to Hakim policies that assist work-centred women do nothing or may even be detrimental to the interests of home-centred women. For example, she explicitly rejects a shared responsibilities approach, arguing that this reflects the interests of some women (the ones she describes as 'adaptive' women) but not others. Hakim argues that predictions and policies concerning fertility and employment would be more successful if they were based on her preference theory and knowledge of the proportions of work-centred, home-centred and adaptive women in a given society. She also notes that the division between different types of women gives men, with their homogeneous shared set of interests, a considerable advantage. For Hakim, this explains why patriarchy has been so resilient.

Hakim (2000) considers that, while it is appropriate for women and men to have the same opportunities in paid employment, most women reject a work-centred life. She states that, because women tend to take breaks in their paid employment, they cannot possibly achieve at the same level as do men and women who have a history of continuous full-time employment. In her view family-friendly policies cannot remove the conflict between two time-consuming and demanding activities. Finding the equal opportunity policies adopted by the UK government to have been successful, she states that any further efforts would be a waste of resources (Hakim 2011a, 2011b). For Hakim, women and men have different work experiences because they make different choices. The reason women earn less over a lifetime is because they prefer to spend time caring for children rather than pursuing a career. She also challenges feminist calls for men to do their fair share in the home. Hakim dismisses the 'double shift' as a myth. Finding that men and women do about the same number of hours of productive work, she argues that men are already doing their fair share (Hakim 2010). So, for Hakim, the differences in experiences and outcomes for women and men in western developed countries are not the result of entrenched gender inequality but are the result of different preferences. Hakim is highly critical of feminists, whom she considers to be disrespectful and paternalistic. Feminists, she argues, ignore the diversity of women's interests and preferences, assuming that all women are (or should) be work-centred. In doing so they are particularly dismissive of home-centered women.

Although her name is no longer regularly invoked in public debates, Hakim's preference theory has been and remains influential in Australia. In particular it has informed the work of two well-known Australian social commentators, Anne Manne and Bettina Arndt.

Writing about motherhood, Manne (2005, 2008) draws on Hakim's work to argue that women living in a democracy should be free to choose how they live. She writes about her own experiences as a highly educated woman who chose to concentrate on raising her two daughters rather than establishing a career. She challenges the idea that paid employment is necessarily meaningful or stimulating and states that many women, herself included, find the experience of raising children to be more deeply rewarding. Identifying herself as a feminist, she aligns herself with forms of maternal feminism that hold men and women to be fundamentally different and rejects what she calls 'equality feminism' (Manne 2003). Like Hakim she expressed alarm at the paternalism of many leading feminists, claiming that they seek to enforce their own preferences on other women. However, there are contradictory strands in Manne's work. She clearly delights in Nancy Folbre's parable of care, which strongly promotes shared responsibility, a stark contrast with Hakim's endorsement of highly gendered care arrangements (Leahy 2008b).

Writer and sex-therapist Bettina Arndt provides a blunter, less nuanced attack on 'work focused feminists', one that is more closely based on Hakim's preference theory. She became known as a champion of men who were maligned for not pulling their weight at home, cheated out of their children following divorce and even prevented from spending time with their mates in the pub (Arndt 2003). As well as writing feature articles for Australian newspapers and magazines, Arndt was appointed by the Howard Government to a number of advisory committees on child care, ageing and family law. Arndt's views were influential, and Hakim's ideas informed the family policies of the conservative Howard Government. Many of these policies, such as Family Tax Benefit part B, are still in place.

Around 2002 and 2003, the then Australian Prime Minister Howard directly cited Hakim's work to support his Government's family policy (e.g. Howard 2002; Howard 2003a). Later he stopped mentioning Hakim's name but continued to frame his Government's commitment to Australian families using the same rhetoric of choice:

It has always been part of the Liberal tradition to expand the horizons of choice for Australians – in health and education, at work and at home. Liberals instinctively believe that the task of modern government is to enable individuals and families to exercise maximum choice, not to tell them how to structure their lives.

This Government has been especially keen to give families with children greater freedom to choose how they balance work and family responsibilities, including through additional support for those families who desire to have one parent – usually the mother – at home full time with children in their early years. (Howard 2006)

Howard argued that his government gave parents greater choice through changes to the level and structure of financial assistance for families and the provision of more flexible working arrangements. Choice underpinned the Howard Government's framing of the tax/transfer system, channeling financial assistance to Australian families. The idea was that women should be in a position to choose not to work while their children are young. This was often spoken of as an individual matter, sometimes as a decision to be made by a family.

Hakim's preference theory may reassure employers that they have done all that they can to dismantle discrimination in the workplace. Studies of gender bias in the US legal profession report different perceptions depending on whether respondents were male or female. One-quarter to one-third of men stated they had observed gender bias whereas two-thirds to three-quarters of women reported personal experience of gender bias. The men who did observe gender bias tended to downplay its significance. The most common response of male attorneys is that barriers have been broken, women are progressing into the more senior positions and a situation of full equality is not far away. Deborah Rhode and Carol Sanger (2005) note that:

This myth of meritocracy rests on two dominant assumptions: (1) that female lawyers are already achieving close to proportionate representation in almost all professional contexts; and (2) that any lingering disparities are attributable to women's own different choices and capabilities (Rhode 1996, p. 586).

Australian studies reveal similar barriers and misconceptions. In a study examining a major financial services provider, Doughney (2007) found that the most persistent factor explaining the different employment paths of women and men was outright discrimination in employment and promotion not breaks in employment. He also found evidence of women responding to the discrimination by 'opting out' of senior and professional careers and sometimes out of paid employment. A decision to opt out of a situation where discrimination is pervasive is not the same as the acting on pure individual preferences as described by Hakim. Individual preferences are shaped by experience, a phenomenon described by adaptive preference formation, discussed in more detail later in this chapter. In the US there is a strong tendency to reduce complex issues to a matter of individual choice (Ehrenreich 2009). However this type of thinking is also prevalent in Australia (Byrne 2006), where neo-liberal political theory has captivated both major political parties for the past 30 years.

5.2.1 Criticisms of Hakim's preference theory

Intuitively women do want choices. We want our preferences to be respected, but the choices offered by Hakim are very narrow. There have been a number of critiques of Hakim's preference theory. First, there has been research which questions or completely discounts the effect of preference types on women's participation in paid employment. Melissa Johnstone, Jayne Lucke and Christina Lee (2011) found that young women adjust their aspirations in line with the constraints they face. Maja Debacker (2008) argued that the role of preferences is more subtle than as indicated by Hakim. Rather than constituting the most crucial factor, the impact of preferences lies within the boundaries of the structure of constraints. She found that preferences play a bigger role in the decisions made by highly skilled women. Low-skilled women, on the other hand faced greater constraints. Joy Pixley (2008) identified five clusters of career hierarchy patterns evident among couples. She found these to provide more accurate predictions for women's career gains than other measure such as self-reported career priority or revealed preferences.

The second type of critique concerns Hakim's analysis of the modern condition. She ignores the obstacles and overstates the opportunities available to women in developed Western states. In arguing that the equal opportunity revolution has been achieved, Hakim fails to account for the constraints facing women and men making decisions about employment and care (Crompton 2006; Doughney 2007; Morehead 2005; Pocock 2003; Probert & Murphy 2001). Rhode (1997), for example, rejects the Hakim-type argument that women choose lower pay and less prestige as a trade-off for pleasanter working

conditions and more convenient hours, with their marginalisation in the market a result of their own preferences. Instead she highlights women's circumstances and the opportunities available to them. These reflect assumptions about the nature of work, including the expectation of long-hours work and the division of different types of work (see also Crompton 2006; Pocock 2003). Rhode points out that women are often forced to choose between work and family, a dilemma not usually faced by men (see also Crompton 2006; Smith 2002). The significance of constraints was recognised by John Stuart Mill (2006 (1869)) well before Hakim developed her preference theory. Given women's low levels of education, limited employment prospects and low wages, Mill argued that their choice to marry was a Hobson's choice, that or nothing (see also Mill, Jacobs & Payne 1998).

A third significant problem is that Hakim fails to recognise changes over the lifespan. An individual's situation and preferences are not fixed but shift over time (Pocock 2003). Attachment to work varies (Maher 2005b), a fact recognised by the transitional labour market theorists (Schmid 1998, 2002). A woman may work full-time when she is in her 20s, may take a year of leave following the birth of each child, work part-time until the children are in school and then return to full-time work. There are many variations reflecting different sets of circumstances. To take a snapshot and identify her as essentially work-focused, home-focused or adaptive is highly misleading.

The impact of constraints on decision-making and changes to preferences over the lifespan concern the nature of preferences themselves. There has also been criticism of Hakim's work based on an explicit discussion of preference formation (Doughney 2004b; Leahy 2007; Leahy & Doughney 2006b). This approach is important because it exposes the flawed thinking underpinning Hakim's preference theory. Hakim heralds her preference theory as ground-breaking, but curiously she pays no attention to the extensive literature on choice, preference formation and decision-making. The only work she acknowledges or cites is that of Nobel economics laureate Gary Becker. Hakim concedes that her preference theory is a variation on Becker's choice theory, the main difference being that she identifies three types of women, while Becker posits just one.

The key to understanding both Hakim and Becker is that they see preferences as relatively stable mental dispositions embedded in our natures (Becker 1991; Hakim 2000, 2001, 2002a, 2002b). Hakim's home-centred 'type' would make choices about things such as marriage, employment and family size in order to achieve her desired home-centred lifestyle. Her work-centred type would do the opposite. In one breath, (Hakim 2000, p. 190) argues that adaptive-type women do not have stable tastes instead modifying their outlook and behaviour to take advantage of the opportunities and work within any constraints. In another, she groups adaptive and home-centred women together (e.g. Hakim 2001) identifying both groups as having a family rather than work orientation.

Preferences can only really be the ground for stable 'types' if they can be ordered (ranked) and if they remain relatively stable themselves. Hakim's preference theory also assumes that choice is restricted to means but not ends (Doughney 2007; Leahy 2007; Leahy & Doughney 2006b). Before discussing choice and preference formation in more detail, I will touch on two other criticisms of Hakim's work.

Hakim considers that gendered patterns of employment are not the result of discrimination or gender inequality. Instead, they arise from most women having different preferences to those of men. Women may choose to structure their lives around family responsibilities or they may opt to live like men and focus on their paid employment. Presented in this way, care is optional, a lifestyle choice rather than a central human

activity for which we all have responsibility. Hakim fails to appreciate fully the social value of care. A rigid division between the private and public worlds is assumed (Doughney 2007; Leahy 2007; Leahy & Doughney 2006b). In this way Hakim ignores the critical questions about care: who does it, under what conditions and how are the costs shared?

Another problem with Hakim's preference theory and the various ways it is deployed is the implicit denial of a complex multifaceted subjectivity. Women are identified as either primarily mothers (home-focused or adaptive) or as workers, rather than as mothers, workers and many other things as well. Men, on the other hand, are primarily workers. Their identity as fathers, sons, friends or engaged members of a community are downplayed or denied. These characterisations are crude. The problem of narrowing identity to one supposedly overriding aspect has been discussed extensively by Amartya Sen in his work on ethnic and religious violence. While the focus is different, the mechanism is the same. Sen argues that each of us belongs to many groups. While the importance of one aspect of our identity may come to the fore in particular social contexts, it is wrong to assume that one category of identity is naturally pre-eminent. Women should not be defined exclusively in terms of mothering, positioned as either mothers, potential mothers or childless. JaneMaree Maher (2005a) goes further. She challenges the idea of defining women in terms of their role as mothers, arguing that mothering is an activity rather than an identity.

5.3 Rational choice theories

Hakim's preference theory and Becker's choice theory are both types of rational choice theory (RCT). All versions of RCT assume that individuals seek to maximise a particular end, but there are different views on what that end might be. According to utilitarian versions of RCT, people make rational choices when they intelligently pursue and maximise their own self-interest. According to this kind of RCT, a person who considers factors other than their own self-interest would not be considered to be acting rationally (Sen 2009, pp. 179, 190). Another type of RCT is rational choice Marxism (e.g. Carling 1990; Elster 1985; Przeworski 1986; Roemer 1986a, 1986b). My focus here is on utilitarian RCT (from here referred to as RCT) as it is the dominant form of the theory, embedded in both mainstream or neo-classical economics and neo-liberal political thinking. It is also the form that has influenced debates on care and paid employment, particularly through the work of Becker and Hakim.

5.3.1 Homo economicus

Underlying RCT is a specific view of human nature. Becker, who was one of the early exponents of RCT, considers all human behaviour to involve individuals who maximise their utility, have a stable set of preferences and accumulate an optimal amount of information about their options (Becker 1976; Sen 2009). In neo-classical economics, this type of person is called a 'rational actor'. Instead of 'rational actor', the terms 'economic man' and *homo economicus* are also used (Ferber & Nelson 1993, 2003; Fineman & Dougherty

2005a; Nelson 2006).¹⁰⁷ Richard Posner (2003) takes this actor out of an economic setting, creating a fully developed political and legal subject (Dougherty 2005). Critics reject the term 'rational actor' because it assumes a very limited view of rationality (Gintis 2000a), defining it in terms of individual self-interest (Sen 2009) and outcome-orientation and time-consistency (Gintis 1998, 2000b). The economist Herbert Simon (1955, 1979) proposed 'bounded rationality', arguing that people's inability to collect or assess the information they need sometimes leads them to make irrational decisions (see also Sen 2009; Simon 1984; Simon 1997). At a very basic level there is no reason to suppose that it is more rational for a person to act in their self-interest than to do something for the benefit of another (Gintis 2000b). For this reason, Sen (2009) distinguishes between rationality of choice and Rational Choice Theory.

The self-interest displayed by *homo economicus* is understood as self-regard, with agents evaluating their options in terms of the impact on themselves (Gintis 2000b). It is not difficult to find examples of altruism that would appear to debunk the idea that all human behaviour is motivated by self-interest. However, some theorists consider altruistic behaviour to be essentially self-interested, either providing tangible benefits or a warm inner glow. As Gintis explains, many economists see co-operation as enlightened self-interest played out over a longer period of time. Self-interest is also sometime extended to include the interest of kin. There are two problems with the long-run self-interest view. The first is that long run-self interest requires future-oriented agents. However, people become present-oriented when social systems are under threat. So if societies were based on long-run self-interest they would eventually collapse. Donald Green and Ian Shapiro (1996), for example, found RCT to have very limited value in the field of political science. Second, there is clear evidence that humans are more pro-social than the long-run self-interest model predicts (Gintis 2000a).

In his later work, people Becker (1996) broadened his concept of self-interest to include concern for others. Sen takes up this point in his paper 'Rational Fools'¹⁰⁸ in which he discusses the distinction between sympathy and commitment. According to Sen, sympathy concerns the impact others have on the welfare of a person, for example a person who is upset by the deprivation others experience (see also Smith, A 1976 (1759-90)). Commitment, on the other hand, is 'concerned with breaking the tight link between individual welfare (with or without sympathy) and choice of action' (Sen 1982a, pp. 7-8; 2009, p. 189). Commitment involves an individual taking action when their well-being is not affected and is therefore a departure from self-interest. Becker's broadened definition can account for sympathy but not commitment. Moreover, on Smith's account:

Sympathy, however, cannot, in any sense, be regarded as a selfish principle...When I condole with you for the loss of your only son, in order to enter into your grief I do not consider what I, a person of such a character and profession, should suffer,

¹⁰⁷ According to Joseph Persky (1995), the term 'economic man' was first used by John Kells Ingram (1967 (1888)), a late 19th century critic of John Stuart Mill. The Latin version, *homo economicus*, appears in Vilfredo Pareto's (1971 (1906)) *Manual of Political Economy*. Deirdre McCloskey (1993) argues that Latin for 'economic man' is *vir economicus* with *homo economicus* meaning 'economic human'.

¹⁰⁸ Sen first presented the paper 'Rational Fools: A Critique of the Behavioural Foundations of Economic Theory' as the Herbert Spencer Lecture in Oxford in October 1976. It was published in the journal *Philosophy and Public Affairs* (1977) and then reprinted in Sen's (1982a) book *Choice Welfare and Measurement*. I refer to the 1982 version.

if I had a son, and if that son was unfortunately to die: but I consider what I should suffer if I was really you... My grief, therefore, is entirely upon your account, and not in the least upon my own. It is not, therefore in the least selfish... The whole account of human nature, however, which deduces all sentiments and affections from self-love, which has made so much noise in the world, but which, so far as I know, has never yet been fully and distinctly explained, seems to me to have arisen from some confused misapprehension of the system of sympathy (Smith, A 1976 (1759-90), p. 317).

In contrast, for RCT, whether self-interest is understood in a narrow or slightly broader sense, decisions are understood to involve weighing up the costs and the benefits of any given course of action. Under this model, ethical or moral considerations would be deemed relevant only if they can be related to self-interest in an instrumental way. This is a particularly serious problem because it limits the scope for critical evaluation of decisions and the ideas, values and preferences informing them.

Becker (1991) does not dismiss altruism altogether, but instead he confines it to the home. In the neo-classical tradition people are understood to act in a way that is self-regarding in the market but other-regarding within the family. Paula England (2003) criticised this split between the separable and soluble selves,¹⁰⁹ which ignores both co-operation in the market (e.g. Zak 2008) and conflicting interests among family members. Instead of seeing humans as limited caricatures, there are various proposals to see ourselves as embedded individuals, e.g. 'individuals-in-relation' (Nelson 2003b), and as having relational autonomy (MacKenzie, C & Stoljer 2000). Feminists are highly critical of other aspects of *homo economicus* (e.g. Fineman & Dougherty 2005a; Folbre 1994b). The model is stripped of emotion unless it involves some instrumental motivation to satisfy some hard-wired desire such as hunger for food, and the notion of rationality embedded in it is asocial and context-free.

Herbert Gintis (2000a) states that the *homo economicus* model may have some value in predicting behaviour in very particular circumstances, specifically in anonymous market-like conditions involving interactions with strangers. However, the model is seriously misleading in most real social and economic situations where established relationships, trust, reciprocity and altruism are important (Folbre 2001; Grapard 1995; Green & Shapiro 1996; Zak 2008).¹¹⁰ If *homo economicus* did exist, he would be a sociopath (Gintis 2000b) or suffer from an acquired brain injury (van Staveren 2001). Economists have tended to dismiss everyday observations of motivations other than that of self-interest as the result of 'reputation effects, asymmetrical information, reputation and unusual preferences' (Gintis 2000a, p. 312). However, experiments presenting players with various options in relatively controlled situations reveal that human decision-making is more complex than assumed by the *homo economicus* model. Leading in this field is the work of psychologists Daniel Kahneman and Amos Tversky on decision-making (Kahneman 2003; Kahneman, Knetsch & Thaler 1986a, 1986b, 1991; Kahneman, Slovic & Tversky 1982; Kahneman & Tversky 1979, 2000b; see also Lichtenstein & Slovic 2006a; Lunn 2008a; Shafir 2004a; Tversky & Kahneman 1974, 1981). In response to this research, the new field of behavioural economics has emerged.

¹⁰⁹ The dichotomy between separable and soluble selves was identified by theologian Catherine Keller (1986).

¹¹⁰ Consider, for example, results of the ultimatum game (Gintis 2000b, p. 242).

A related area of research seeks to model behaviour in situations of uncertainty (known as strategic situations) using game theory.¹¹¹ In its early and some contemporary formulations, game theory, or classical game theory, assumes that people are self-interested rational actors with an unlimited ability to process information (Gintis 1998). Experimental work found this assumption to be false. Further, the application of game theory to animal behaviour (Maynard Smith 1982; Maynard Smith, John & Price 1973) and the development of evolutionary game theory made it clear that narrow interpretations of rationality were not required for the analysis of strategic behaviour (Boyd & Richerson 1985; Cavalli-Sforza & Feldman 1981; Gintis 2000b). In strategic situations people are found to have a strong propensity to co-operate. This includes responding to co-operative behaviour in a way that maintains or increases the level of co-operation. It is also found that people punish free-riders even if it entails a personal cost (Camerer 1995; Gintis 2000a, 2000b; Güth & Tietz 1990; Roth 1995). This is not to suggest that self-interest plays no part, simply that it does not provide the overriding motivation.

Although widely challenged, the view that human behaviour is motivated by self-interest is still evident in economic, political and social thinking. There is also a methodological problem with the dual way maximising behaviour of *homo economicus* is understood, particularly in the field of economics. It is used to both ascertain what is likely to happen (as a predictive device) and to determine the norms that must be followed if choice is to be judged rational (Sen 2009).

Taking account of the empirical evidence necessitates the adoption of new, more complex models of human behaviour. This can be difficult to accept. According to Ignacio Sánchez-Cuenca (2008, p. 361), methodological reasons drive theorists' 'preference for selfish preferences'. However, alternative models of human behaviour, based on a broader and more realistic set of assumptions, are found to hold much greater explanatory power than *homo economicus*. More promising are *homo reciprocans* (which assumes co-operation and the punishment of unfair behaviour) and *homo equalis* (which models our aversion to inequality) (Gintis 2000b, p. 238).¹¹² Moreover, behavioural economics (e.g. prospect theory) provides a more realistic and robust theory of decision-making than does RCT. However, before considering the alternative, I turn to a second troubling aspect of RCT, a particular understanding of preferences that underlies the idea of the self-interested agent. Preference formation is now considered to be so central to decision-making that almost all contemporary decision theories really may be regarded as types of preference theories (Lichtenstein & Slovic 2006b).

¹¹¹ Christopher Trepel, Craig Fox and Russell Poldrack (2005, p. 35) explain the difference between risk and uncertainty: 'Decisions under risk entail options that have well-specified or transparent outcome probabilities, such as a bet on a coin toss or a lottery with a known number of tickets. Decisions under uncertainty, by contrast, entail options whose outcomes depend on natural events such as a victory by the home team or a rise in interest rates, so that probabilities must be estimated by the decision maker with some degree of vagueness or imprecision.'

¹¹² A further model, *homo parochius*, assumes agents behave in a pro-social way towards insiders but are hostile towards outsiders (Gintis 2000b).

5.3.2 Preference formation

The idea of self-interest translates to self-regarding preferences or preferences motivated by individual gain (Gintis 2009, p.46).¹¹³ Economists found it difficult to conceptualise coherently and/or to measure utility (Doughney 2002, chapters 6-8) and so turned to preferences, identifying it as a primitive behavioural concept. RCT is based on the assumption that a person's preferences for goods, services and lifestyle will reflect the contribution each makes to an individual's sense of their own well-being (Gintis 1998). While RCT can be traced back to the work of Hume, Hume had a more sophisticated view of preferences, appreciating the influence of custom and habit (Hume 1748-40).

The nature of preferences is expressed in the form of axioms of choice. Two key axioms are completeness and transitivity. The axiom of completeness holds that all actions may be ranked in order of preference. If you ask a person whether they prefer x to y , they will be able to say that they prefer x to y , or y to x , or that they are indifferent. They will not, however, be uncertain or undecided (Hausman 2010).¹¹⁴ Transitivity holds that if a person prefers x to y and y to z , then they will prefer x to z (Hausman 2010; Sen 1982a). Indifference is also held to be transitive (Hausman 2010) although this idea is more controversial than is the transitivity of preferences (Schumm 1987). If preferences are complete and transitive then they will be consistent. This includes price consistency. For example, the price we are prepared to pay to acquire an object is equivalent to the price we would seek in order to part with it (Lunn 2008a, 2008b).

The internal consistency of preferences is determined by a number of formal conditions, with context independence being the most important. This condition states that if I prefer x to y , my preference is not going to change if someone offers me z as well. So if I prefer x to y in the binary choice, this will not be reversed if the set is larger (Hausman 2010). A second aspect of context independence is that preferences are assumed to be largely unaffected by institutions and policies. For this reason, they are described as exogenous (Gintis 1998). Preferences that are consistent, transitive and context-independent are stable, an understanding central to mainstream economics and to Hakim's theory.

Another key aspect of RCT is a particular relationship between preference and choice. Preferences are equated to choice, with preferences considered to be hypothetical choice (i.e. a person will choose x over y if and only if they prefer x to y) and choice to be revealed preferences (Hansson & Grüne-Yanoff 2009; Hausman 2010; Sen 1982a). Initially proposed by Paul Samuelson (1948), the concept of revealed preferences is important in contemporary economics, replacing the concept of utility in traditional demand theory. According to Sen (1982a, p. 1), revealed preference is 'the binary relation underlying consistent choice'. The weak axiom of revealed preferences holds that if x is chosen when y is available then x is revealed to be preferred to y and y will not be preferred to x . The strong axiom of revealed preferences extends this axiom to insist on transitivity (Samuelson, PA 1938; Sen 1982a, chapters 1-3; 1995b, p. 20).

¹¹³ Gintis argues that the term self-regarding is more accurate than self-interested. Self-regarding actors are concerned with their own gain. In contrast, self-interested actors may derive utility from the pleasure of others and therefore be both self-interested and other-regarding (Gintis 2009, p. 46).

¹¹⁴ See also Hausman (2011) and Hausman's (2012) forthcoming book on preferences (due to be published by Cambridge University Press in January 2012).

The existence of revealed preferences solves an empirical problem. While it is difficult to establish an individual's preferences from observation, it is relatively easy to gather data on their actual behaviour (Hausman 2010). If we can assume that people act on the basis of their preferences, another RCT assumption, and that these preferences are consistent, then it is possible to infer their preferences from the choices they make (Sen 1982a). This direct relationship between preferences and choice is only possible if preferences are independent of their context.

The concept of revealed preferences is one aspect of RCT that Hakim does not support. She argues that a person may face obstacles preventing them from acting on their real preferences. It is therefore not possible to infer preferences from actions. The only way to establish a person's real preferences, is to ask them what it is they want (i.e. stated preferences). While Hakim accepts that constraints may hinder an individual from realising their preferences, she holds that their preferences are relatively stable. Individuals with stable preferences need only work out how best to realise their preferences through the decisions they make. In reality, of course, our lives are somewhat messier. While this may be evident from a simple reflection on the way we make decisions in our own lives, the challenge is sustained by the empirical evidence from social psychology and behavioural economics. As Sarah Lichtenstein and Paul Slovic (2006b) explain, it has been found that often we do not have a set of stable preferences to guide us but must construct our preferences in line with our situation. The concept of stable preferences is built on various axioms and conditions that are found to be false.

The axiom of completeness does not hold because it is not always possible to rank a set of options. There are situations where we are undecided or where there is no satisfactory option. For example, a mother may wish to spend time caring for her children and also take on paid employment but find it difficult to do both, given the structure of many jobs. The dilemma she faces is not necessarily solved by more information, whether it is about retirement savings, her longer term career options, child development or the determinants of adult and child well-being. It is not a matter of indifference between the options. The problem is with the set of options itself, options that do not adequately account for our human needs for both meaningful activity and relationships.

Incompleteness also relates to the difficulty of translating our preferences into numbers. For example, we might struggle in deciding how much we are willing to pay for one thing compared to another (Lichtenstein & Slovic 2006b). There is also evidence that the economic idea of congruence between preferences and price does not hold. Just because we prefer x to y does not necessarily mean that we are willing to pay more for x (Grether & Plott 2006 (1979)).

Moreover preferences are not necessarily transitive (Lichtenstein & Slovic 1971; Lichtenstein & Slovic 2006b; Sunstein et al. 2002; Tversky 2004). We may prefer x to y and then, in seemingly equivalent circumstances, prefer y to x. Tversky (2004) showed how a series of pair-wise choices could yield intransitive patterns of preference. He created a set of options with subtle differences between adjacent alternatives. These differences accumulated over a number of sets leading to a preference reversal between the first and last options. Preference reversals have also been found in experiments involving gambles with specified amounts to win and lose and probabilities of winning and losing (Lichtenstein & Slovic 2006 (1968); Lichtenstein & Slovic 2006 (1971), 2006 (1973); Slovic & Lichtenstein 1968), as well as experiments based on auctions (Cox, JC & Grether 1996). According to Tversky and Thaler (1990), 'a major cause of preference reversal is a differential weighting of probability and payoffs in choice versus pricing' (Shafir 2004b, pp. 408-09).

As Lichtenstein and Slovic (2006b) explain, economists responded to findings of preference reversal by questioning the validity of experiments (Grether & Plott 2006 (1979)). There have also been attempts to modify utility theory (Fishburn 1985; Loomes & Sugden 1983) and vary the experiments (Holt 1986; Karni & Safra 1987; Segal, U 1988), however these were not successful in dismissing preference reversals (Hausman 1991; Tversky, Slovic & Kahneman 1990). Insights from critical realism suggest that part of the problem is the expectation that social systems are closed.

There are also problems with the idea of internal consistency. Sen argues that, while there are pragmatic reasons for invoking conditions of internal consistency, it is not possible to do so without an external reference (Sen 1995b). The internal conditions of consistency may be violated in situations where more than one alternative is judged to be optimal. In such cases, it is plausible for a person to select *x* but not *y* from one set and then *y* but not *x* from another set. Another challenge is when the person choosing is indifferent between two or more options or when one option is not worse, but not at least as good, as others (Sen 1995b, p. 23).

The idea that preferences are context-independent is challenged by the finding that the decisions we make are influenced by the way options are framed (Camerer 2000; Johnson, et al. 1993; Kahneman & Tversky 1984, 2000a; Tversky & Kahneman 1981). We respond differently to the same option presented in different ways. For example, we are far more likely to agree to a medical procedure if we are told that 90 per cent of those who undergo it are alive after five years than if we are told that 10 per cent will be dead after five years (Sunstein 2006; Tversky & Koehler 2004). Sometimes, we mentally transform our options, usually to simplify them, a process known as editing (Trepel, Fox & Poldrack 2005).

Our preferences are also influenced by the actual and relative size of our options. Faced with a set of options we are more likely to choose the intermediate or middle rather than extreme case (the phenomenon of compromise). An option will be considered more desirable if it is presented in a set of similar but slightly inferior options (the phenomenon of contrast) (Kelman, Rottenstreich & Tversky 2004). Anchors or starting points are also important. In one experiment, minimum willingness to pay for insurance was influenced by the initial monetary amount shown to participants (Jones-Lee & Loomes 2001; Sunstein & Thaler 2003). Objectively unrelated factors may be influential. Students were asked to write down the last two digits of their social security number before being asked to indicate how much they would be prepared to bid on a specific item. The bigger the last part of their social security number the more they were prepared to spend (Ariely 2008).

Decision-making experiments reveal that people tend to favour their current position or the status quo (Kahneman, Knetsch & Thaler 1991; Samuelson, W & Zeckhauser 1988). This can be seen in the discrepancies in the price people are willing to pay to acquire an object and the price they seek in order to give it up. We tend to be loss-averse and risk-taking over losses while risk-averse over gains. This is apparent in the difference in outcome between opt-in and opt-out plans (Choi et al. 2002; Madrian & Shea 2001; Sunstein & Thaler 2003). For example, people were slow to sign up for a highly favorable savings plan even though it included employer contributions, no significant short-term costs and considerable long-term benefits. An equivalent scheme offered by other employers on an opt-out basis resulted in a substantially higher participation rate (Choi et al. 2002; Madrian & Shea 2001; Sunstein & Thaler 2003).

Time is also significant. According to RCT, we are time consistent. This means that utility is additive and independent across time periods, with future utilities discounted to the

present at a fixed rate (Gintis 2000b). According to RCT, people who smoke or eat unhealthy food do so because the utility derived from immediate pleasure outweighs the longer term misery due to illness. However, we do not make such calculations. Rather the evidence indicates that we place higher value on the present than we do on the future (Frederick, Loewenstein & O'Donoghue 2002). We tend to favour short-term gains even if they entail long-term losses. In other words, we 'tend to have higher discount rates over payoffs in the near future than in the distant future', known as hyperbolic discounting. Neurological research suggests that we are pre-disposed towards being systematically present-oriented (Gintis 2000b, pp. 245-46). This tendency is reflected in our failure to address the problem of climate change adequately.

Our sensitivity to framing, suggestion, default options and the immediate future reveals something about the way humans make decisions. According to Madeleine Bunting (2009, p.19), research into decision-making reveals that '(w)e are lazy, imitative, over-optimistic, myopic, and much of our decision-making is made by unconscious habits of the mind that are largely socially primed'. We have a tendency to make systematic mistakes in judging the probability of desirable or adverse outcomes. We often rely on judgment heuristics to simplify our assessment of risk and calculation of potential windfalls or losses. While this enables us to make quick judgments, dangers include the tendency to overstate the probability of an outcome that is either familiar or more easily recalled (Bell, Raiffa & Tversky 1988; Kahneman & Frederick 2002; Shafir 2004a, 2004b; Tversky & Kahneman 1973, 1974) or more feared. After 9/11, many Americans avoided aeroplanes choosing instead to drive their cars, which resulted in a noticeable increase in the number of road accidents (Bond 2008; see also Watson 2009). Even in situations where the stakes are high, people have been found to exhibit preference reversals, be influenced by framing effects, use heuristics that are misleading and suffer from problems of self control (Camerer & Hogarth 1999; De Bondt & Thaler 1990; Gintis 2000b, p. 245; Shiller 2000, pp. 135-47; Sunstein & Thaler 2006).

Most RCT models assume that an individual has perfect information about their options or, at least, that most individuals do or act as if they do. This involves having the time, capacity and inclination to weigh up the alternatives or to operate in ways that, most of the time, mimic weighing up the alternatives. Some economists have defended RCT against the experimental findings from behavioural economics, arguing that the real problem is misinformation. However, care has been taken, particularly with the design of more recent experiments, to address this criticism (Gintis 2000b; Lichtenstein & Slovic 2006a).

Crucially, RCT assumes that decision-making is an instrumental process of establishing how best to realise existing preferences. The idea that we deliberate only about how to enact our preferences goes back at least to the 18th century Scottish philosopher David Hume. According to Hume, we are motivated by social customs and habits that change very slowly. Although it is not possible to reason over the fundamentals based on social customs and habits, we could at least deliberate over the means (Hume 1748-40; Leahy & Doughney 2006b). However, it is clear that we in fact deliberate over ends as well as means (Searle 2001; Wiggins 1980).

Lichtenstein and Slovic (2006b, p. 1) argue that preferences are formed in a number of different ways. Some preferences we are born with, for instance, 'a fondness of sweets, avoidance of pain, and perhaps, a fear of snakes'. Other preferences are learned, being built on our experiences. We draw on these established preferences to help us make decisions. However, there are many situations where these preferences are of little or no help. This is particularly the case when we face new situations, when there is a conflict

between our known preferences or when we struggle to put a value on our known preferences. In these situations our preferences are not the starting point but the result of a process of deliberation. We weigh up our options and discuss them with friends and family. The decision may not be clear and we may want two things that seem to be incompatible. Researchers have found that we use a variety of strategies to construct preferences, influenced by memory, knowledge, feeling and aspects of our environment. The philosopher John Searle (2001, p. 30) argues that the reality 'is that most practical reasoning is typically about adjudicating between conflicting, inconsistent desires and other sorts of reasons'. In fact 'the task of rationality, the task of practical reason, is to try to find some way to adjudicate between these various inconsistent aims'. In this way a well-ordered set of preferences is usually the result of successful deliberation. Not only do we deliberate but we do so in response to the circumstances in which we find ourselves (Leahy 2007; Leahy & Doughney 2006b).

Nussbaum (2003b, p. 415) argues that the problem with common cost-benefit models of public choice is that they assume the possibility of complete ordering of preferences and therefore fail to take account of tragic choices. They also fail to distinguish between two important questions. The first Nussbaum calls the obvious question: 'what is the best thing I can do now, all things considered?' The second question is: 'are any of the alternatives available in this situation free from serious ethical wrongdoing'. Even in the most difficult situations it is usually possible to answer the first question. However, the answer to the second question is often 'no'.

It is important to recognise that some situations are tragic. If we understand that there are no alternatives that are free from ethical wrongdoing, we will be determined to avoid similar situations in the future (Nussbaum 2003b; Walsh 2003). However, there is a further implication of even greater significance. As Hegel noted, tragic choices should prompt questions about why people should be in such a position and what institutional and political change is required in order to ensure they do not face it again (Nussbaum 2003b). Very often people face tragic choices because the society in which they lived is structured in a particular way:

The fact that women used to have to choose, tragically, between family and career resulted not from nature but from the absence of male good will and of intelligent planning from both the state and private employers (Nussbaum 2003b, p. 416).

Nussbaum (2003b, p. 416) uses the past tense, but many women still face such tragic choices. Even in countries such as Australia, women make compromises that very few men are required to make. The main point is the importance of focusing on the factors that generate the tragic choices. Nussbaum argues that the existence of tragedy should lead to constructive political thinking aimed to identify a core of basic entitlements. There should then be the will to ensure these entitlements are available to everyone.

5.4 So how do we make decisions?

Utilitarian RCT is unable to explain the way humans make decisions, however there are a number of alternatives.

5.4.1 Prospect theory

One of the most prominent is prospect theory, developed by Kahneman and Tversky (1979, 2000b) as an alternative to expected utility theory, a version of RCT. Expected utility theory represents preferences between uncertain outcomes as a function of the payout, the probability of occurrence and the utility of the outcome given the person's state of wealth.¹¹⁵

The problems I have identified with utilitarian rational choice theory also apply to expected utility theory, with preference reversals providing the strongest challenge. Expected utility theory relies on the 'sure-thing principle' (or strong independence assumption, which holds that if a person is indifferent to a choice between outcomes x_1 and x_2 , then they will also be indifferent to a probability mix of x_1 and y compared to x_2 and y). This principle is overturned by the Allais Paradox, which reveals that people will generally prefer a sure outcome over the possibility of receiving nothing. They will choose the option of a \$1 million for sure rather than the option of receiving 10 percent chance of receiving \$5 million, an 89% chance of receiving \$1 million and a 1% chance of receiving nothing. However, if the probabilities for each option are much the same, people will choose a larger over a smaller amount. They will select a 10 per cent chance of receiving \$5 million over an 11 per cent chance of receiving \$1 million (Trepel, Fox & Poldrack 2005).

Prospect theory provides a much more realistic account of how people actually make decisions when an element of risk is involved. In this sense, it describes how we tend to behave rather than comment on how we should behave. It takes account of the Allais Paradox as well as phenomena such as loss-aversion, risk-aversion, framing and editing. Instead of providing a utility function over states of wealth, prospect theory offers a value function over losses and gains relative to a reference point, which is usually the status quo. The value function includes a weighting to take into account the impact of probability on the valuation of the option (Trepel, Fox & Poldrack 2005, p. 37). Although very different from utilitarian RCT, prospect theory still lies within a rational choice framework (Kahneman & Tversky 2000b).

While prospect theory provides useful insights and an important challenge to the type of decision theories favoured by mainstream economists, it does not take into account the full range of factors influencing the decisions individuals make about care and employment. Nor does it account for the decisions made at the social level. Recent research reveals that we have underestimated the social nature of the brain. We are social creatures, and our brains are primed to recognise, interpret and respond to other people. We show a strong tendency to feel empathy and to seek fairness but also to conform to the norms of the group (Bunting 2009).

5.4.2 Social choice

Social choice theory proposes a way of making decisions at the social level. It provides the means to make comparative assessments of social alternatives based on the values and priorities of members of the relevant community. In this sense, it provides a bottom-up

¹¹⁵ Speaking on a radio programme 'Let's Get Metaphysical', Mark Colyvan describes Blaise Pascal's argument for belief in God as an application of expected utility theory. Pascal pointed out that if you believe you lose nothing if God is found not to exist and gain everything if so. Even if the probability of God existing is very low, belief trumps all probabilities (Colyvan 2007).

approach aggregating from the individual to the social. Although social choice theory is technical and highly mathematical, Sen argues that the underlying reasoning is close to a commonsense understanding of social decision-making (Sen 2009).

The French mathematician Marquis de Condorcet developed an early version of social choice theory in the late 18th century. In the 1950s, Kenneth Arrow revived interest in it, providing a structural and analytic form with explicit axioms and conditions. He developed what is generally known as Arrow's Impossibility Theorem, which contends that it is impossible to have a procedure for making social decisions that is simultaneously sensitive to what members of the society want as well as being rational and democratic. However, Sen argues that this sort of impasse may be resolved by making decision procedures more sensitive to information about relative advantages and interpersonal comparisons of well-being (Sen 1999, 2009).

Social choice theory, Sen (2009, p. 95) explains, involves 'ranking different states of affairs from a "social point of view", in the light of the assessments of the people involved'. The exercise is comparative rather than a matter of identifying a perfectly just ideal solution. This distinction is important to Sen in his rejection of transcendental, in favour of comparative, approaches to justice. The significant issue for Sen is the nature of the democratic processes that underpin social choice procedures. This would include, for example, the process by which specific communities develop a capabilities list that reflects their priorities and values. Sen is somewhat vague about what form such a democratic process might take, although he has identified the importance of deliberation and practical reason. Other theorists have taken on the task of elaboration and specification (e.g. Crocker 2006).

5.4.3 Structure of constraints

Nancy Folbre brings together aspects of the individual and social in the concept of 'structure of constraints'. She points out that the decisions made by individuals are shaped by a range of factors including societal rules, social norms, economic situation and group membership as well as individual preferences. Folbre draws on Marxist ideas of structural influence but strips out the tendency towards determinism. She acknowledges individual agency but rejects the flawed understanding of free choice central to RCT. In countries like the US, the current structure of constraints results in the under-valuing of care and inadequate support for its provision. Instead, Folbre argues, we need a structure of constraints based on equal opportunity and designed to support social co-operation (Folbre 1994b). A just structure of constraints would also address the damaging effects of class on equality of opportunity (e.g. Wilkinson & Pickett 2009, chapter 12).

Folbre's structure of constraints is useful because it draws attention to the social and institutional forces that limit the opportunities available to women and, in different ways, limit the opportunities available to men. However, constraints are not simply barriers preventing individuals from realising what they want to do or how they wish to live. It is within the space where our desires, beliefs, hopes, needs and wants confront social and institutional realities, that our preferences are formed.

5.4.4 Adaptive preference formation

As Nussbaum (2000c) and Sen (2000) explain, our preferences adapt to the ways of life we know and the options that that we consider open to us. People adapt not only to 'what they think they can achieve' but 'also to what society tells them is a suitable achievement

for someone like them'. The upshot, for women and other groups, whose preferences form 'under unjust background conditions', is that choices 'typically validate the status quo' (Nussbaum 2006, p. 73). They adjust their preferences to fit the low level of functioning they are able to achieve, a phenomenon known as adaptive preference formation (Nussbaum 1997a; Sen 2009):

... human preferences are highly malleable; they are particularly likely to adapt to expectations and possibilities. People often learn not to want things that convention and political reality have placed out of their reach ... we observe it particularly often in women's aspirations, which adjust to time-sanctioned depictions of a woman's proper role, a woman's bodily weakness, and so forth. Even at the level of basic health and strength, women may come to be content with a bad state of affairs, if no better one is available. In this way, preference-based approaches frequently end up supporting an unjust status quo and opposing real change. (Nussbaum 2006, p. 283)

Utilitarian calculations based on either happiness or desire-fulfillment are not only deeply unfair to people who face persistent deprivation, they will hide the severity of the disadvantage (Sen 2009). Referring to the Aesop's fable about the fox and the sour grapes, Jon Elster (1983) points out that, from a utilitarian perspective, there is nothing troubling about the fox being excluded from eating grapes because he thought them sour. However, this view fails to appreciate that the fox judged the grapes to be sour because he was convinced he could not gain access to them (Elster 1982; 1983, p. 109).¹¹⁶

Adaptive preference formation affects the decisions women in countries such as Australia make about employment and family commitments. In general, women and men have different experiences in the labour market (as discussed in chapters 2 and 4). The challenges become greater for women who become mothers. It is difficult to match the commitment of the 'ideal worker' and have the time and energy to spend with children. The challenge is the double shift of paid employment and care/domestic work (Grimshaw, Murphy & Probert 2005; Hochschild 1989). While some mothers have understanding workplaces that value their contribution and make ongoing employment sustainable and rewarding, many find the competing demands too difficult to manage and pull back. Some opt for part-time work. Some seek to work at a lower level, where the demands are less intense. Others shift to new more flexible areas of work or establish home-based businesses. Compared with mothers, the small numbers of fathers who seek to reduce their work commitments in order to spend more time with their families often face even greater resistance from employers. A reduced commitment to employment challenges the idea of the male breadwinner (e.g. Pocock 2003; Rhode 1996). Fathers and mothers will make the most of their circumstances and the opportunities available to them, and, in Australia, the most common pattern is the modified breadwinner.

¹¹⁶ Interestingly, in discussing adaptive preference formation, Nussbaum (1997a) mentions the work of Gary Becker. She points to his argument that the belief held by at least some teachers and employers that people from minority groups are less productive may be self-fulfilling. The effect of this prejudice may lead to members of the minority groups under-investing in education and training, which would make them less productive (e.g. Becker 1995). Although Becker is recognising the influence of constraints, he describes them as being rational calculations rather than preference adaptation.

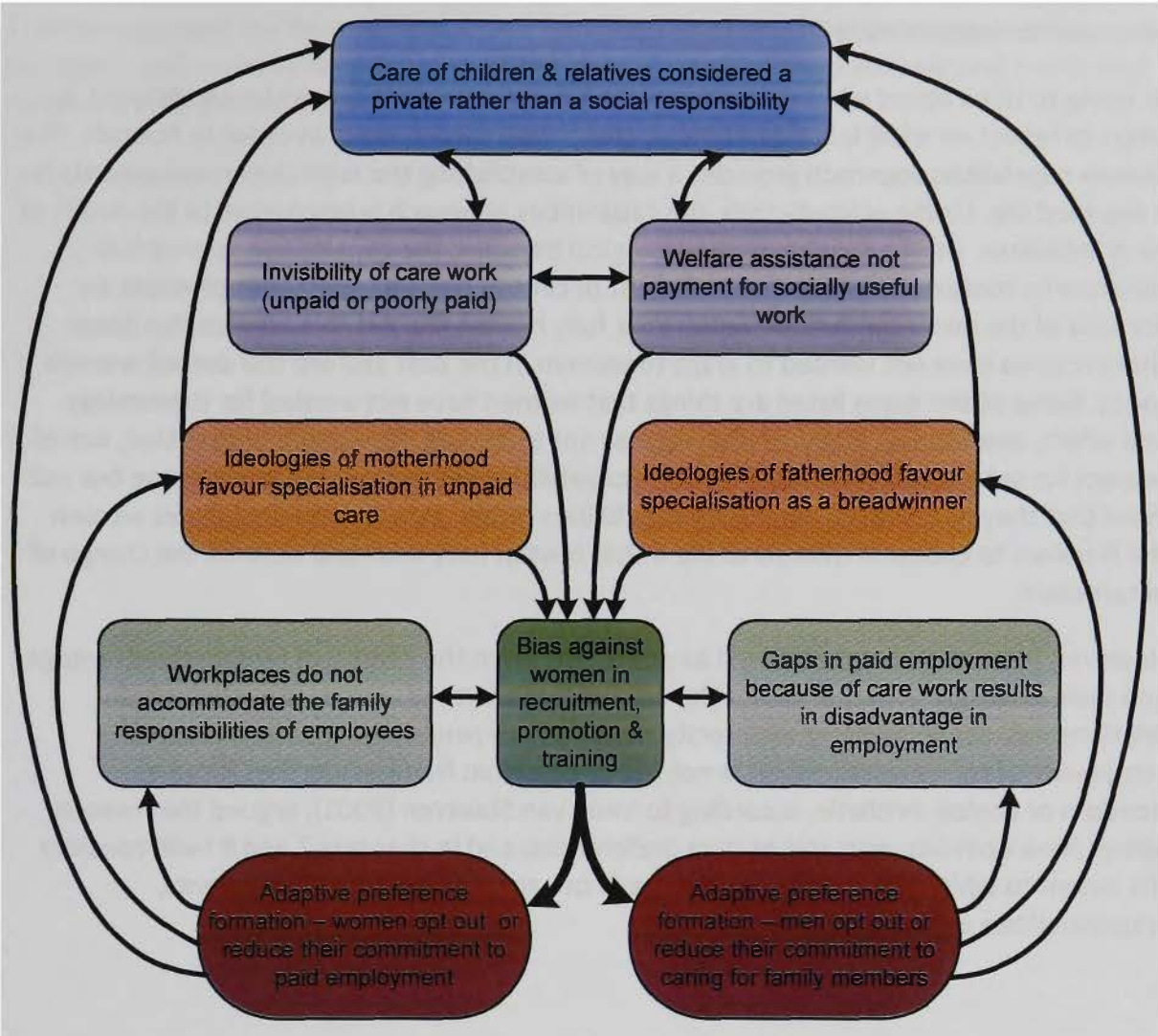
Some mothers will indicate that they are perfectly happy with the modified breadwinner model. There will be other mothers who enjoy the stimulation of full-time employment, particularly if they have an interesting and rewarding professional position. They may accept the long hours at work, contract out housework and make the most of the time they get to spend with their children. As the former Australian Sex Discrimination Commissioner Pru Goward (2002) explains, women make 'life choices around the fact that today they continue to receive less pay, less opportunity, and less financial support in the workplace because they bear children'. Their decisions are influenced by the nature of available jobs, employer expectations, alternative care options, and ideas about the proper roles of women and men. In turn, these types of opportunities and constraints vary with social class, race and ethnicity (Crompton 2006; Peel 2005).

It is neither unreasonable nor contradictory for women to wish to pursue a career fully and the desire to have children. No one considers it strange when men seek both. A woman may wish for both a career and children, but after considering the restrictive ways both are commonly available, she may decide that achieving both is not possible. She may not have children, have fewer children or adjust her career ambitions, setting her sights a little lower. She may seek to focus on her career now and children later. Any number of factors may disrupt carefully laid plans: a fantastic job opportunity, retrenchment, relationship breakdown, illness, infertility, the death of a parent or the birth of a child.¹¹⁷ Some women will adjust their preferences to align with what they see as the options available to them. Yet there will be others who make what they consider is the best of their situation but rail against the inflexibility of job design and workplace culture and wish the world were different. The important thing is to recognise the constraints and distinguish actual decision-making from women's deliberative thinking, desires and preferences.

It is important to understand how the various factors influencing the decisions made by women and men feed into each other. Figure 2 represents the vicious cycle generated by self-reinforcing casual mechanisms. It is possible to start at any point within the cycle. For instance, a woman will take some sort of break in order to give birth, recover, breastfeed, learn to care for a baby and establish a bond. In some workplaces this alone may be sufficient to place her on a secondary track. It is also difficult for two parents to have demanding long-hours jobs and time to spend with their children. This is the case whether they are in a couple or separated, although there are usually considerably more financial and time pressures on separated parents. Given the gender-pay gap, it may well make sense financially for a father to focus on paid work and the mother to reduce her commitment to paid work in order to care for the children. If decisions like these are not understood as responses to the constraints and opportunities, they will reinforce the stereotypes of proper social roles. This can influence employers, their expectations and the jobs they will offer, which in turn can deepen the cycle of retreat (Doughney & Leahy 2007; Leahy & Doughney 2006b). Similarly, government policy on employment conditions and financial support can feed on and then reinforce particular expectations.

¹¹⁷ These types of major life events may also influence an individual's gender ideology (Vespa 2009).

Figure 2: A vicious cycle: barriers to participating in paid employment and to taking responsibility for the care of family members¹¹⁸



Given that the decisions women and men make about employment and family are influenced by various mutually reinforcing constraints, how should we understand their choices? Nussbaum (2000c, chapter 2) argues that we should respect the plurality of women’s actual desires and preferences. However, this respect should not blind us to the forces shaping those preferences and desires. Nor should a respectful approach to women’s choices today blind us to the institutional changes required if women’s choices are to be more open in the future. Women’s options will not change without a corresponding shift in prevailing attitudes about men’s responsibilities for providing care.

At this point Hakim, Manne and others would object. They would argue that I am presenting shared care arrangements as the ideal for everyone and, in doing so, I am trampling on the desires and preferences of the majority of women and men. While I have addressed the problem of relying on stated preferences as a guide for what should be done, two key questions remain. First, if we cannot rely on stated or revealed preference, on what basis can we design social, political and economic institutions to support a good

¹¹⁸ An earlier version of figure 2 appeared in Leahy and Doughney (2006b) and Doughney (2007).

life and what should that good life look like? Secondly, is it possible simultaneously to expand the options available to women and respect the preferences of those women who adopt a traditional gender division of responsibilities in their own lives? Even more challenging, is it possible to expand choices for women and respect the preferences of men who wish to follow a more traditional path?

In trying to think about what sort of institutional arrangements should be established, it helps to reflect on what it is that humans, given their nature, need in order to flourish. The human capabilities approach provides a way of establishing the minimum requirements for a dignified life. Unlike utilitarianism, the capabilities approach is responsive to the needs of each individual. Unlike Kantian or deontological theories, the capabilities approach is sensitive to context. Nussbaum's (2000c) list of central human capabilities provides an account of the minimum requirements for a fully human life. Yet this list includes items that societies have not wanted to grant to women in the past and are still denied women today. Some of the items listed are things that women have not wanted for themselves and which, even today, many women appear not to pursue. Nussbaum argues that, out of respect for individuals, we should insist on capabilities being available to everyone but not insist that they be realised. Aiming for capabilities rather than functioning allows women the freedom to choose a traditional life if that is what they wish and deflects the charge of paternalism.

However, it is not clear that this will be sufficient, given the history of female disadvantage and male privilege. Whether or not the work is remunerated, care is provided within relationships, some involving reciprocity but others dependency. The richness and complexity of caring relationships is not captured within frameworks that focus on freedom or choice. Aristotle, according to Irene van Staveren (2001), argued that human beings have commitments rather than preferences, and in chapters 7 and 8 I will consider the extent to which the capabilities approach can account for our commitments, responsibilities and obligations.

5.5 Conclusion

In this chapter, I considered the choice and preference theories often used to explain the decisions individuals make about care and employment. I focused on Hakim's preference theory, a type of rational choice theory that has been influential in Australia. Drawing on research from behavioural economics and psychology, I have shown how these types of theories are based on a flawed conception of human nature and a misunderstanding of the way preferences are formed. I then considered a number of alternative theories about decision-making at the individual and social level. Prospect theory provides a more realistic explanation of the way individuals make decisions under risk, although it does not address the social level. Sen's social-choice theory points to the importance of public deliberation, although it tends to be underspecified. Folbre's structure of constraints brings together the social and individual, structures and agency both to explain current conditions and form the basis of a fairer set of arrangements. However, it does not fully account for the impact of constraints on the individual. Adaptive preference formation explains how circumstances not only create obstacles preventing people from getting what they want but also shape their individual preferences.

Revealed preferences and stated preferences are found to provide unreliable guides to selecting the institutional arrangements needed to support human flourishing. The human

capabilities approach provides far greater promise, although a number of questions remain. It is not clear how the capabilities approach accounts for responsibilities and commitments and whether aiming for capabilities will be enough to counter entrenched disadvantage. I will return to these questions in chapters 7 and 8. However, there is another approach for thinking about care provision, one that directly challenges the invisibility and undervaluing of care work evident in mainstream economic and neo-liberal political thinking. This is the subject of the next chapter.

Chapter 6 Ethics of Care

6.1 Introduction

Narrow neo-liberal choice and preference theories are still used to explain current and past care arrangements and, in many countries, they form the basis of social and economic policy. However, as argued in the previous chapter, these theories are based on flawed thinking about the nature of preference formation and the way we make decisions. These choice and preference theories have a pernicious effect on public deliberation about care and other types of meaningful work. They lend support to the status quo, sustaining a traditional gender division of labour and rewards.

In this chapter, I will consider an explicitly feminist response to the question of how we should provide care. The ethics of care or care ethics¹¹⁹, a direct legacy of feminist challenges to mainstream thought in psychology, philosophy and political science, places our responsibilities to others at the centre of our deliberations. Compared with neo-liberal choice-based approaches, care ethics is much less prominent in public debate, although it now features in many collections on feminism, ethics and feminist philosophy (e.g. Friedman & Bolte 2007, p. 83; Held 2005; Maihofer 1998; Sevenhuijsen). It has influenced scholars and commentators who have sought to defend the interests of those who need care. Most versions of care ethics, particularly more recent ones, also strongly defend the interests of care providers, seeking to ensure that their interests are not sacrificed for the sake of those in need of care.

There are some care and maternal theories that hold that men and women are intrinsically different. From this perspective, women are considered more suited to providing care. The role of mothers is held to be particularly important, and maternal care is considered to be, by far, the best option for all children. By most accounts these are not forms of care ethics. Certainly, they have no interest in gender equality, and I will not include them in this chapter.

The various forms of care ethics challenge the ideas about justice and independence usually associated with liberalism, and in particular, neo-liberalism. They draw on feminist criticism that liberalism universalises a male perspective and ignores the female experience. In different ways Carol Gilligan (1982), Joan Tronto (1993), Eva Feder Kittay (1999, 2002b) and Virginia Held (2006) describe and propose an ethics of care to complement or replace a narrow ethics of justice. The difficulty is that, while liberal political theory has marginalised care, it also articulates concepts that support the emancipation of women. As a consequence, a major part of debates within care ethics focuses on the conflicted relationship with liberalism. This attempt to grapple with the mixed legacy of liberalism is something that distinguishes ethics of care from many forms of maternalism, the latter tending to advocate an outright rejection of liberalism and a failing to recognise the contradictions involved.

In the first part of this chapter, I consider the relationships between ethics of care and maternal feminism and why I choose to focus on the former. In the next part of the

¹¹⁹ I use the terms interchangeably.

chapter, I consider the development of ethics of care through a discussion of work by Joan Tronto (1993, 1999), Diemut Bubeck (1995), Eva Feder Kittay (1999, 2002b), Virginia Held (2006) and Daniel Engster (2007). I then discuss the types of criticisms directed at ethics-of-care approaches. Finally, I identify the features of what I consider to constitute the strongest and most appealing version of care ethics.

6.2 Care ethics or maternal feminism?

Care ethics is not the only feminist approach to contest traditional gendered care arrangements. Feminism has long been interested in care because most care work, whether it is paid or unpaid, has been and continues to be done by women. There have been a range of feminist responses to the challenge of providing care in ways that do not systematically exploit those who are less privileged by gender, class or race. The problem is not new. The questions raised by Mary Wollstonecraft (1752 (1792)) in the late 18th century still resonate today. The strand of feminism focused most strongly on the importance of care is maternal feminism.

There is a degree of overlap and, at times, some blurring between maternal feminism and ethics of care. Both identify care as a central human concern, and most forms of each highlight the exploitative nature of current social arrangements. As a consequence, both favour better support for mothers and other carers. There are, however, differences in emphasis and approach.

Maternal feminism covers a broad range of work concerning the role and status of mothers and their families, emerging from many different disciplines, including: gender studies, literary studies, psychology, sociology, feminist economics and history. It involves activism as well as scholarly work, as is evident in the growing mothers' movement.¹²⁰ Writing and activism are intertwined, with both informed by the lived experience of mothering. The conceptual thinking and the practice of mothering come together most strongly in the work on feminist mothering (e.g. O'Reilly 2004b, 2007, 2008).¹²¹

The maternal feminist mantle is claimed by disparate groups and individuals. The stronger feminists are clear about the importance of women's equality. There is the explicitly political and avowedly feminist strand that aims to identify, develop and support empowered mothering. An example is the work published by the Motherhood Initiative for Research and Community Involvement (formerly the Association for Research on Mothering). Others describing themselves as maternal feminists are more maternalist than feminist. The new maternalist focus on the individual experience of mothering, seeing care as an essentially privatised activity. The political, economic and social dimensions of mothering are downplayed or considered relevant only to the extent that financial

¹²⁰ See Judith Stadtman Tucker (2006, 2008) for description and analysis of the mothers' movement in the United States.

¹²¹ How mothers make use of their experience of mothering in their writing and other work raises some important ethical issues. Amanda Lohrey (2009) distinguishes between telling the story of the mother and appropriating the story of the child. Unfortunately Andrea O'Reilly (2007) did not discuss these ethical questions in her chapter on feminist mothering, a chapter that includes stories about her children's experiences.

assistance is sought to support care provided largely in the home. Little or no attention is paid to the way the current distribution of work and resources systematically disadvantages women. This is evident in the work of Ann Manne (2005, 2008).

Maternal feminism has played a major role in highlighting the importance of care and the costs borne by carers. Yet much of the maternal feminist literature is not sufficiently attentive to the concepts and ideas it uses. For example, there is a tendency to dismiss unfashionable concepts such as essentialism, universalism and liberalism without considering either what is meant or how it is that these same ideas underpin feminist demands for equality. Judith Stadtman Tucker (2008) raises related concerns in her discussion of the American mother's movement. She argues that the mothers' movement has failed to develop a convincing ideological basis to support its demands. Recognising the unpopularity of feminism, proponents of the movement tend to draw on an incompatible mixture of liberal feminism and maternalism combined with traces of care ethics. Identifying the limitations of both liberal feminism and maternalism, which in different ways fail fully to challenge traditional gender relations, Stadtman Tucker considers ethics of care to form a more promising conceptual basis.

Care-ethics approaches tend to involve more detailed discussion of the concepts of care, justice, equality and dependence, and in this way ethics-of-care approaches can, and sometimes do, provide the foundational concepts for maternal feminism.

6.3 In the beginning – Gilligan and Noddings

Ethics of care is generally traced back to the early 1980s and the work of the feminist psychologist Carol Gilligan.¹²² In her influential book, *In a Difference Voice*, Gilligan (1982) argued that the moral development of women differed from that of men. Gilligan's initial investigation was provoked by her discomfort with Lawrence Kohlberg's model of staged moral development, which held that men typically reached higher levels of moral development than did women. Based on interviews with men and women, Gilligan found that women were not in some way deficient but that their moral development followed a different logic.

Gilligan argued that the moral development of men and women is linked to their very different experiences. For men, the experience of separation and individuation shapes their understanding of humans as independent beings with subjective rights. From this perspective society is conceived as the assembly of previously independent individuals and regulated by rules that apply equally to all. Moral dilemmas are understood as conflicts between competing demands and rights. Moral decisions involve the application of abstract principles to concrete situations. Gilligan described this as an ethic of justice (Friedman & Bolte 2007, pp. 81-82; Gilligan 1982; see also Maihofer 1998, p. 384).

Women, on the other hand, consider that the individual exists within a web of social relations. The critical experiences of solidarity and identification form a view that other people are enabling rather than limiting. Society is understood to involve relationships not

¹²² Held (2005, p.558) goes back further, locating the early beginnings of care ethics in Sara Ruddick's (1980) essay 'Maternal Thinking'. Ruddick showed that the experience of mothering could give rise to a distinctive moral outlook, displaying values relevant to other aspects of life.

isolated individuals. Moral dilemmas involve competing responsibilities within a web of social relationships. With the ethic-of-care perspective, the concrete context of the moral problem is important. Women, Gilligan (1982) argues, tend to use a different type of moral reasoning and are more likely to respond to particular people in specific situations. The key moral imperative for this approach involves caring for others and avoiding selfishness (Friedman & Bolte 2007, p. 82).

Gilligan argues that the ethics of care and the ethics of justice are not exclusively linked to each sex, nor do they correspond to the public and private spheres. She states that we need to move between an ethic of care and an ethic of justice, assessing problems from each moral perspective. She uses the Gestalt image of the ambiguous figure that can be a duck or a rabbit as an illustration of the movement between the two perspectives (Gilligan 1982). According to Diemut Bubeck (1995, p. 193), Gilligan did not consider justice and care to be 'incompatible or fundamentally opposed'.

In 1984, the feminist educationalist and philosopher Nel Noddings (1984) presented similar ideas in her book *Caring*, although her work has not been as influential as Gilligan's work (Friedman & Bolte 2007, p. 95). Noddings considers the ethics of care and of justice to be fundamentally incompatible. She develops a feminine relational ethics, which sees care as superior to justice. Care is seen as an attitude, requiring close attention to the needs and feelings of the recipient. Understanding the needs of the person being cared for is more a matter of feeling than of rational cognition (see also Bubeck 1995, p. 11; Held 2005; Noddings 1984). Noddings's failure to appreciate the cognitive aspects of care is strongly criticised by Martha Nussbaum (1999c, pp.74-7).

Gilligan's work had a significant impact in stimulating developments in feminist ethics and introducing care and responsibility as important ethical concerns. In the emerging new approaches to ethics, abstract moral rules and principles were avoided (e.g. Benhabib 1986). Instead moral judgments were based on the specific contextual details of the situation under consideration. There was also heightened interest in the emotions, particularly empathy and compassion (Friedman & Bolte 2007, pp. 81-82; Maihofer 1998). Gilligan's moral-development theory also helped shape ideas about gender difference. Enlightenment thinkers such as Mary Wollstonecraft and John Stuart Mill had supported their arguments for women's emancipation on the basis of gender equality, countering the view of many of their contemporaries that women were inferior and incapable of rational thought. In contrast, Gilligan argued that there are differences between men and women. This supported a broader rejection of many of the central ideas in Western philosophy such as universalism and rational thought, concepts seen to reflect the lives of a small group of privileged men and to marginalise the experiences of women (Alcoff & Kittay 2007; hooks 1984; Mohanty 1991). As a result of these challenges, ideas about difference have profoundly influenced feminist debates.

Yet there have been concerns with Gilligan's research method. Initially she interviewed only girls, although this was rectified in later studies. Michele Moody-Adams (1991) points out that Gilligan ignored issues of race and class, failing adequately to consider the differences between women (Friedman & Bolte 2007, p. 82). Some attempts to replicate Gilligan's findings have discovered not only differences within each gender but a far greater degree of overlap in patterns of moral reasoning by women and men (Friedman &

Bolte 2007, p. 82).¹²³ There is also evidence that cultural differences are influential (Harding 1987; Held 2005, p. 560; Walker, L 1984).

Gilligan's idea of a gender difference in morality is not new. The idea that men and women have different moral capacities has appeared throughout the history of Western thought, although the contours of the argument have varied over time (Tronto 1993). Nevertheless the most significant and lasting legacy of Gilligan's work is the understanding that there is an ethic of care that differs from the ethic of rights and justice discussed by most modern philosophers and psychologists (Bubeck 1995) and embedded in the dominant moral theories of utilitarian and deontological ethics.

6.4 The development of a new moral theory

Gilligan's work generated a large body of work in psychology, philosophy and gender studies (e.g. Bubeck 1995; Card 1991; Hanen & Nielsen 1987; Held 1995; Hirschmann 1992; Kittay 2002b, 2002c; Kittay & Meyers 1987; Larrabee 1993; Tronto 1991, 1993, 1996). Since its first formulation, the ethics of care has developed as a moral theory. Some consider that it provides a complete moral theory that can and should replace the dominant moral theories of Kantian ethics, utilitarianism or Aristotelian virtue ethics (e.g. Friedman & Bolte 2007). Others understand ethics of care as a form of virtue ethics (e.g. Slote 2001). One major area of dispute is the relationship between an ethic of care and an ethic of justice. While Noddings (1984) considered care and justice to be incompatible ethics, others such as Bubeck (1995) seek to integrate the two, arguing that an acceptable ethics of care must include principles of justice. Bubeck (1995) states that most feminists interested in care have favoured the revision of an ethics of justice or the integration of the ethics of justice and care. I will now consider the most significant versions of care ethics by examining the models proposed by Tronto, Bubeck, Kittay, Held and Engster.

6.4.1 Tronto – The dangers of privatised care

The political theorist Joan Tronto (1993, 1996, 2001, 2002a, 2002b, 2004, 2005) considers how we approach the question of care and the exploitative nature of current care arrangements. Importantly, she explicitly locates care within a moral and political context. Her aim is to shift our vision so that we see care in a different way. In common with other care theorists, Tronto seeks greater recognition of the work of care and, in this, her focus is two-fold. She draws attention to care as an essential part of human life and also as work, requiring skill, time and energy.

Tronto's most significant work is the book *Moral Boundaries*, which introduces the ideas she later builds on in thinking about the work of nannies in the United States and the globalisation of care work. She focuses on moral boundaries for two reasons. First, when we examine boundaries we become attentive to what they include and exclude. Secondly, it encourages us to think about an alternative vision to inform our account of moral life. The vision she proposes is one that provides 'us with a way to respect and deal justly with

¹²³ Sara Jaffee and Janet Shibley Hyde (2000) found only a weak correlation between the mode of moral-thinking and sex (Engster 2007, p. 13).

others. In order to do so, we must honor what most people spend their lives doing: caring for themselves and for the world' (Tronto 1993, p. x).

Tronto is responding to common philosophical and political accounts that obscure or erase the significance and the practice of care. She is also responding to approaches that promote the value of women's traditional work, but do so in ways that continue to confine women within a marginalised space. This second collection of work, described as 'women's morality', is broad but loosely linked by the view that women are more moral than are men in that they value the virtues of care, nurturance, a mother's love and relationships (Tronto 1993).

There is an established tradition of drawing on the idea of women's morality. However Tronto (1993) points out that it has not been particularly successful, as evidenced by inequality across the world. It has also incurred high costs. Historically in the US, women's morality was linked to motherhood and infused with ideas about class and ethnicity. The moral woman was white, middle class, financially comfortable and safely heterosexual. This is comparable to the 19th century idea that European women provided a civilising presence in Asian and African colonies (Chatterjee 1993; Stoler 2002). In both cases the image of the 'moral woman' excluded many women on the basis of their class, race or sexuality.

The role of the mother can be politically powerful, although there are usually limitations. The mothers of the Plaza de Mayo (*Asociación Madres de Plaza de Mayo*) in Argentina drew attention to the plight of their children who had been tortured and killed by the successive military regimes between 1976 and 1983. Protesting as mothers gave them some protection during the period of harsh repression. Their moral stance as grieving mothers also highlighted the cruelty of the regime. However, Tronto explains, this stance also precluded them from involvement in the political discussion following the fall of the junta.¹²⁴ Tronto concedes that the 'women's morality' approach has some appeal because it draws attention to care, nurturance and relationships. She proposes an ethic or care that includes many of these values traditionally identified with women but that avoids the pitfalls of exclusion and containment.

The ethic of care described by Tronto (1993) is set within a moral and political context. To do this Tronto challenges three moral boundaries established in contemporary Western political thought. The first is the boundary between morality and politics, where morality is considered to relate to how we should conduct life and politics is deemed the realm where resources are allocated and disputes are resolved. Aristotle (1948, 1963) viewed morality and politics as closely related. However most contemporary political thinkers regard the two as separate aspects of life, linked in one of two ways, with either politics a means to achieve moral ends or morality a means to achieve political ends (Tronto 1993, p. 7). Against this contemporary approach, Tronto defines care as serving as 'both a moral value and a basis for the political achievement of a good society' (Tronto 1993, p. 9).

¹²⁴ Another example is the Indonesian NGO Voice of Concerned Mothers (Suara Ibu Peduli), formed during the 1997-8 Asian Economic Crisis when many Indonesians lost their jobs and food prices skyrocketed. Suara Ibu Peduli focused on milk, which was unaffordable for many families (Robinson & Bessell 2002). Although a more formally structured group than the Mothers of the Plaza de Mayo, similar questions were raised about the longer-term political effectiveness of using the role of the mother. There is also the Tiananmen Mothers, a group of mothers and other relatives of those killed when the 1989 Tiananmen Square protests were brutally quashed (Kuhn 2009).

The second boundary identified by Tronto holds that moral judgments can only be made from a disinterested and disengaged position. This is derived, among other things, from Kant's view that moral theory should be based on reason rather than on the particular concrete social circumstances. A number of consequences follow from this view. One is that morality is separated from emotions and feelings. It is understood as universal, with any local variations relegated to a lower order of moral thought. Finally, moral philosophers focus on the nature of moral thought and pay scant attention to how to ensure that people act morally. As a result, Tronto argues, women's morality is relegated to a lower order.

Long the target of feminist scholars and activities, the third boundary lies between public and private life, with women consigned to the private sphere. Tronto does not call for the abolition of these three boundaries, but rather she demands that we consider how they operate to exclude women and maintain existing inequalities.

Tronto (1993) defines her ethic of care as a practice rather than a set of rules or principles. The practice of care involves both particular acts of caring as well as caring approach. Fisher and Tronto (1990) identified four elements of care:

... caring about, noticing the need to care in the first place; taking care of, assuming responsibility for care; care-giving, the actual work of care that needs to be done; and care-receiving, the response of that which is cared for to the care. From these four elements of care arise four ethical elements of care: attentiveness, responsibility, competence, and responsiveness. (Tronto 1993, p. 127)

Tronto states that for a person to be moral they must strive to meet the caring needs of others. For a society to be considered morally admirable, it must provide adequate care for its members and its territory. As with other care-ethics theorists, Tronto (1993) argues for the recognition of care as crucial to our survival as individuals and as a society. There are a number of aspects of Tronto's ethics of care that are distinct.

First, because she locates care within a moral and political context, she is very clear about the way care regimes can sustain privilege. Devaluing care has this effect because members of more privileged groups (by gender, class, race and ethnicity) are less likely to do the care work themselves. Upper-middle class women are able to reap the benefits of increased employment opportunities by contracting out some of their care and domestic work. Their paid nannies and cleaners in many respects function as traditional housewives (Tronto 2002a). She shows that the way we think about care 'is deeply implicated in existing structures of power and inequality. As we currently formulate it, care functions ideologically to maintain privilege but this function is disguised' (Tronto 1993, p. 67).

The second important feature of Tronto's (1993) work is related to the first. It concerns her rejection of individualised and privatised solutions to care because they exacerbate social and economic inequalities. Instead she advocates a shift in thinking so that care becomes a public matter. This view is widely shared (e.g. Bittman & Pixley 1997; Bubeck 1995; Craig 2007a; Folbre 2001; Grace 2002; Harrington 1999; Held 2005; Kittay 1999). Tronto considers this important to ensure that people get the care they need rather than the care they can afford. Public or socialised care also offers better protection for those who provide care, whether they are paid or not. Rethinking the provision of care also requires a reworking of the concept of citizenship. This is necessary because care providers have long been denied full political membership, a problem exacerbated by the advent of globalised care work (Tronto 2005).

Thirdly, Tronto presents an ethic of care that avoids slipping into maternalism. She makes the important point that if care is conceptualised as natural, either because it is instinctive or deeply cultural behaviour, then it is 'not part of the realm of moral choice' (Tronto 1993, p. 125). Finally, although Tronto argues for the centrality of care, she is not presenting it as a complete moral theory. She makes it clear that care is not the only important moral precept, but rather that an account of morality is incomplete if the central role of caring in human life is ignored. Nonetheless the consequences of recognising the centrality of care are profound, requiring nothing less than a total rethinking of moral and political life (Tronto 1993).

6.4.2 Bubeck - Exploitation and the limits of a care ethic

The philosopher Diemut Bubeck's (1995) book *Care, Gender and Justice* was published two years after Tronto's book *Moral Boundaries* and expresses a similar concern with women's inequality.¹²⁵ Bubeck's analysis focuses on carers' vulnerability to exploitation. In approaching the question of care, Bubeck draws on materialism (Marxism) as well as feminism. The materialist approach draws attention to work and material activity, examining the systematic reproduction within society of uneven distribution of both the burden of work and the benefits gained from it. Work is a burden in the sense that it takes time and energy. It may also be a burden in other ways. For example, it may be boring or dangerous. In contrast with classical economists, Marx did not conceive of work as necessarily irksome. He understood that meaningful work is central to our humanity, but work under capitalism is alienating (Marx 1844; Spencer 2008). Despite its alienating conditions we may derive some pleasure from our work, a pleasure that is not directly linked to the material rewards. However, the emotional rewards should not distract us from the reality of exploitation. Those who do more of the work but receive less of the material rewards are exploited, while the exploiters derive greater benefits and carry less of the burden (Bubeck 1995, p. 6). Despite this insight into the nature of exploitation, Bubeck (1995) argues that the materialist tradition has neglected the inequalities in the distribution of care work (see also Jefferson & King 2001). Not only has materialism been gender blind but has blocked insight into this central aspect of human life.

Bubeck (1995) defines care as an activity or practice aimed at meeting the needs of others. An important qualification concerns Bubeck's distinction between care and service. Preparing a meal for a child who cannot prepare it for themselves is considered care. Preparing a meal for a spouse who is well and truly capable of cooking for him is deemed a service.¹²⁶ A second qualification is that the care must involve face-to-face interaction. Providing care takes time and energy, which makes it like other types of work 'however, it is very unlike any of the work that is usually discussed, and it involves very different virtues and values for those engaged in such care, as well as a particular urgency and motivation in those receptive to the demands of need' (Bubeck 1995, p. 9). Care is essential if humans are to exist and to flourish. Unlike the types of necessary labour considered by Marx, it does not lend itself to mechanisation or automation. Nor can the time involved be continually reduced through increased productivity. While there are different views about the sort of care we need at different stages of our life, our nature as human beings is such that, at an absolute minimum, we require nutritious food and clean water, a safe place to

¹²⁵ Diemut Elisabeth Bubeck has also published under the name Diemut Grace Bubeck.

¹²⁶ Whether someone is willing to cook, or displays learned or feigned helplessness is another matter.

live and that we are dependent on others to meet our most basic needs when we are very young, old, or ill (Bubeck 1995). In order to flourish we need connections with others, to love and be loved.

Bubeck (2002, p. 167) makes the point that care usually involves an 'asymmetrical transaction of material benefits'. This is true in cases where care is unpaid, it also holds true in many cases when it is paid (given the low levels of remuneration). There are power differences between the person who receives care, the carer and the people who commission and fund the care. Both of these factors mean that care is very different from the type of exchanges or contracts assumed in liberal social and political theory.

Materialist accounts of care have been criticised for reducing a complex relationship to a simple transaction marked out in terms of burdens (usually thought of as costs) and benefits. Bubeck is attentive to the rich emotional side of care relationships. While clear about the significant material costs, she also describes caring as often one of the most rewarding activities that we may undertake. She states that the experience of providing care can be transformative, and it can also be extremely empowering. Care work is also less alienating than many of the paid jobs currently available. However, it can be difficult, draining and leave carers feeling trapped and overwhelmed (Bubeck 1995). We need to view care in its complexity as potentially emotionally rewarding, difficult and exploitative. Crude accounts that consider only one facet, whether it be the financial costs, the psychological gains or the drudgery are grossly inadequate.

According to Bubeck vulnerability to exploitation is unavoidable since carers:

...will always give considerations of care more weight than considerations of justice if the two conflict and this, in turn, implies that they will continue to care even in situations which are clearly exploitative. It is this vulnerability, then, which lies at the heart of women's exploitation as carers as long as the sexual division of labour persists which assigns most or all of the unpaid care to women. (1995, p. 13)

Bubeck (1995, p. 181) argues that there is a circle of care, 'an interlocking set of constraints and practices that channels women into doing the bulk of the care work'. Factors include gender identity, means to self-realisation, experience of caring, social expectations and the gender wage gap. These mutually reinforcing factors form a nexus of material practice and corresponding psychology and ideology which has proved hard for women to escape and for men to enter. At any one time not all women are being exploited, but carers are vulnerable to exploitation because of the compelling demands of care and the uneven distribution of both care and care work. There are limits to the ethics of care. As Bubeck explains, carers are vulnerable because their caring perspective does not contain the moral resources to allow them to identify and respond to their exploitation. The problem of exploitation might be overcome if the carer's own needs are given equal consideration by the carer. However, this is unlikely given a long tradition of carers treating their own needs as being less important or less urgent.

According to Bubeck, the ethics of care cannot provide an answer to the dilemma of exploitation. Instead we need to draw on the principles of justice. Motivated by similar concerns Jean Hampton (1993) also seeks a moral limit on care to ensure that it occurs within the context of justice (see also Baehr 2002; Engster 2001; Nussbaum 2000c; Williams 2000). There are many models of care that may be assessed in terms of the degree to which they sustain or eradicate both exploitation of carers and the gendered division of care work. Bubeck (1995) considers three. First is a society in which everybody

provides care. While this would be far more humane than current arrangements, it would not remove the risk of exploitation. It would merely spread the risk across all members of a society. Nor would this model prevent uneven responses to care needs, nor uneven distributions of the care burden. This is because some of us are surrounded by more people with extensive needs, thereby increasing the care burden and potentially jeopardising the extent and quality of care we can provide.

A second approach would be to ensure that carers have systematic access to other carers who can provide respite or share the work. Bubeck shares Tronto's (1993) concern about market provision of care because of the way it exacerbates inequalities.¹²⁷ The introduction of care support would need to be accompanied by a change in attitude, with all of us understanding the potentially exploitative nature of care work. The main drawback identified by Bubeck is the high cost of social provision of care, which she considers likely to be prohibitive.

Bubeck favours a third approach, in which care is considered a universal obligation. During our lifetime we would all be required to provide a minimum caring service. This might involve providing the care of our own family members or it might be a matter of stepping in to assist carers in need of either regular or temporary support. This would ensure that the back-up care described in the second model would be available but not in a prohibitively expensive form. The advantage of this model is that it makes cares visible, ensuring that everyone has the experience of providing care and so develops the necessary skills. It also removes the gendered nature of the work.

Another issue is the extent to which particular moral concerns and commitments can be considered in moral theories with a universal and impartial basis. The particularist bias has focused attention on the formal meta-ethical aspects rather than the content of care ethics. Instead, Bubeck seeks to direct attention to the content of the two ethics. Her interest is the way considerations of care and justice emerge from the practice of care. Bubeck identifies two principles of justice evident in the practice of care. The first is harm minimisation; the second is the principle of equality. Although justice emerges from within the practice of care, Bubeck argues that not all aspects of justice can be accommodated within an ethic of care. Carers are vulnerable to exploitation and, because of the sexual division of labour, care involves the exploitation of women. This leads Bubeck to a difficult conclusion: 'The very ethic, then, that has been hailed as 'women's moral voice' is thus not only in Noddings's, but in any conceivable version, a crucial factor in women's continued exploitation' (Bubeck 1995, pp. 248-49). We should not abandon an ethic of care, because it is a more desirable motivation than obligation. However, we need to explore particular models carefully, identifying their limitations and advantages. At a practical level, measures are required to protect carers from exploitation (Bubeck 1995).

There are grounds for feminist suspicion of general claims, rules and principles, as they have often excluded women's lives and experiences. However, Bubeck (1995, p. 216) argues that feminists should not be concerned with 'abstraction or generalisation as such, but false generalisation and unwarranted abstraction'. This distinction is important because abstraction and generalisation are necessary tools for feminist theory and argument. Ironically, rejecting all general or abstract claims involves failure to examine specific cases and is an example of making a generalisation. Instead Bubeck (1995, p. 211)

¹²⁷ Their reasoning is very similar. Under market conditions the extent of care is dependent on capacity to pay rather than need, and carers' wages are kept low.

favours an Aristotelian approach of using principles as 'rules-of-thumb' rather than absolute guides.

Bubeck's work is significant for three interlinked reasons. First she carefully documents carers' vulnerability to exploitation, demonstrating that this risk is inherent in care work. Secondly, she highlights the limitations of any version of an ethics of care, particularly forms that do not involve principles of justice. Finally, she highlights the contradictions and dangers of particularist accounts of care, showing how they sustain gender and other inequalities.

6.4.3 Kittay – Dependency work and the *Doulia* principle

Eva Feder Kittay's (1999) book *Love's Labor* is a powerful combination of philosophical reflection on care and a personal account of caring for Sessa, her profoundly disabled daughter (see also Kittay 2002b). A major concern of Kittay's work is the care of people with significant long-term needs. These are people who have little or no capacity for the sort of reciprocity assumed by some approaches. Kittay demands that we pay attention to those who provide care as well as the recipients. Rejecting many of the assumptions underpinning Rawls's theory of justice and critical of liberalism, Kittay recognises that both support gender equality. Kittay's careful and thoughtful work produces one of the more insightful accounts of care ethics.

A major focus of Kittay's work is on dependency. Like Tronto and Bubeck, Kittay criticises the central assumption embedded in social-contract theories that humans are independent and competent for most of their lives. In reality, we enter the world helpless and remain dependent throughout our childhood. During our adult years many of us will experience times of illness or distress when we will require the assistance and care of family and friends. Most of us will also require significant support towards the end of our lives. The fiction of independence and competence makes our neediness unusual and shameful. It also obscures the work of caring for children, the elderly and those who are sick or disabled. In the case of Rawls's theory of justice, people requiring care are considered after the basic rules of the society are determined, their needs being a matter of welfare. This is an inadequate response. Instead, we need a theory of justice that takes into account our dependency (Kittay 1999, 2002a).

There are times when our need for care is so extensive that the people looking after us are unable simultaneously to meet their own needs. The result is a second tier of dependency, experienced by the people providing care or, to use Kittay's term, dependency workers. A dependency worker needs the support of others to ensure that she, and it usually is a she, has the resources necessary to provide for herself and the person in her care (Kittay 1999, pp.29-42; 2001, p. 527). Echoing Bubeck's description of care as exploitation, Kittay explains that dependency workers currently:

... receive fewer benefits than those who either are unencumbered by such demands or can delegate these responsibilities to others. In other words in the social division of burdens and benefits, dependency workers carry the burden for more than one and receive the benefits of less than one. (Kittay 2001, p. 529)

Traditionally, dependency work has been carried out within the family. Kittay argues that the vulnerability experienced by women has intensified in complex industrial societies, in which access to resources and social citizenship are usually tied to income generation (Kittay 1999, pp. 29-42; 2001, p. 528). The status of the people who care for others varies.

A doctor has higher status than a child care worker or a mother caring for her profoundly disabled adult child. What is significant is the value we attach to the labour.

Communitarians Amitair Etzioni (1998) and David Popenoe (1996), for example, have argued for a child-centred society, but Kittay (2001, p. 533) is clear this will not raise the status of those of us who care for children if the work of care is still demeaned.

Kittay makes the important point that we need to be attentive to the level of dependency, as not all forms of dependency are total.

The more complete the dependency, the more the provider and those in the circles of nested dependency that radiate outward to the society at large need to reciprocate the obligation that the dependency worker fulfills towards her charge. The less absolute the dependency, the more the charge enters into the reciprocity usually assumed among those equally situated and equally empowered. (Kittay 2001, p. 536)

Kittay (2001, p. 539) notes that none of us in complex industrial societies is self-supporting. This includes those presumed to have full citizenship as wage-earners. The insistence on self-sufficiency perpetuates a fiction that hides the role of dependency work as well as the many dependencies that families, businesses, and corporations all have on each other, on economic factors, on government and on global forces. The rhetoric of self-sufficiency works to diminish social support for dependency work. In stark contrast to social-contract theories, Kittay derives our obligation to each other from our neediness, with each of us at some point in our lives dependent on others for our survival. She acknowledges that it is possible to derive our obligation to care for others on the basis of Kantian, utilitarianism or theological grounds, however basing it on our dependency ensures stronger protection for people with cognitive disabilities (Kittay 1999, pp. 23-26; 2001, p. 535). We share the potential either to need significant care or to be responsible for someone dependent on us (Kittay 2001, p. 527).

Rejecting an instrumentalist approach to care, Kittay (2001) states that our obligation to care is not solely a matter of reciprocating the care we have received, nor should it be given to generate a care debt to be cashed in when we are older. Instead, she argues for an obligation to each other based on our essential humanity, expressed in the idea that we are each some mother's child and seen as worthy of the care we receive. If we are each worthy of care then our carer, when needy, is also worthy of care. Kittay makes it clear that 'some mother's child' is not to be taken as meaning that we should all be treated as a mother to a child (nor, I presume, as a child). She states that it is an analogy which does two things. First it establishes our equality through the connection each of us has as 'some mother's child'. Secondly, this connection provides the basis of our dignity and, hence, our expectation of how we should be treated (Kittay 1999; 2001, p. 536).

While this image of some mother's child has some attractive features, I find it troubling. There is something very powerful about the overwhelming love most mothers feel for their children. Kittay uses the idea that we are all some mother's child to stress our individual worth, and she does it in a way that draws out the importance of fairness, reciprocity and the infinite spiral of relationships that extends from the past to the future.¹²⁸ The idea that we are all 'some mother's child' derives our dignity from the mother-child relationship. The

¹²⁸ Kittay (2001, p. 536) notes that Anita Silvers made this point in a commentary on Kittay's book *Love's Labor* at the Wake Forest Law School, Law, Culture and Humanities Working Group in 1998.

nature of the actual mother-child relationship is dependent on many factors, including the mental, physical and emotional health of the mother, the economics and social circumstances in which she lives, the respect accorded to the mother by other members of her family and by her community, the extent to which she has freedom to do and to be, and the health of the child. Of course, a strong nurturing relationship can evolve in the most difficult circumstances. Nonetheless poverty, exclusion, exploitation and denigration are corrosive, and their damage can extend to the mother-child relationship. Given that relationships are susceptible to many pressures, it seems important to consider what makes them healthy. This would suggest that we should approach this question from the opposite direction. Instead of deriving our equality and dignity from the ideal mother-child relationship, we should identify what is required to create and support the type of relationships that enable each of us to flourish. The starting point would include an objective account of our human needs. This would base our obligation to care directly on the idea of our intrinsic humanity.

Nussbaum rejects the image of 'some mother's child', although for different reasons. She considers that 'some mother's child' offers an inadequate description of the citizen in a just society. Nussbaum states that 'we need a lot more: liberty and opportunity, the chance to form a plan of life, the chance to learn and imagine on one's own' (Nussbaum 2001a). However, it is not clear that the idea of 'some mother's child' must necessarily convey the restrictive, almost stultifying type of care that Nussbaum seems to suggest.

There are times when Kittay does invoke our essential humanity. She argues that any decent society must care for people who are fully dependent regardless of their productive potential. This, she contends, is a categorical not a hypothetical imperative,¹²⁹ a moral imperative mandated by the 'dignity of people as ends-in-themselves' and derived by universalising our understanding that we would want the care for ourselves should we be or become totally dependent (Kittay 2001, p. 535).

Importantly, when Kittay does deploy the image of the mother and child, she does not use it to promote a privatised approach to care. Instead she advocates a public ethic of care that acknowledges our social responsibility to provide care for those who need it, including a responsibility to care for the caregiver. The point is to spread the costs and burdens of dependency more fairly across all members of a society. This also provides a form of insurance to all of us who are potentially dependent or who will take on the responsibility of caring for others at some time in our lives (Kittay 1999, 2001).

To express this public ethic of care Kittay uses the term *doulia*, derived from the doula, the name for the women who support a mother during and after she gives birth. The doula cares for the mother so that the mother can care for the baby (Kittay 1999, pp. 132-34; 2001 p. 532). The *doulia* principle demands the support of dependency relations. There are two aspects of this. First, it recognises the special status of the relationship between a dependent and a dependency worker. Secondly, it recognises that caring for dependents is work and that it must be compensated as such. The work must be shared not only between women and men but more broadly. The full responsibility for care must not fall on the dependency worker alone, nor can it be left entirely to the family. Other sections of

¹²⁹ Both Kantian concepts, a categorical imperative specifies the action required in all circumstances, whereas a hypothetical imperative compels action in specific circumstances.

society, the state, local communities and employers all have a role supporting those who provide care (Kittay 2001, pp. 542-42).

Kittay argues that a minimal requirement is a paid-family-leave policy covering all workers. The costs should not be the sole responsibility of the employer, otherwise there could be a disincentive to employ people with current or potential care responsibilities. However, Kittay's proposal goes much further than this. She argues that care work must be:

... included within a system of social cooperation wherein it is adequately compensated and given the same status and social standing as any legitimate employment. Familial dependency workers must be permitted to devote themselves to caring for dependents, if that is their preference, without becoming impoverished and without irrevocably damaging their opportunities to engage in other labor if and when the period of intense dependency ends. (Kittay 2001, p. 544)

Kittay insists that familial dependency workers should be treated like other workers, receiving pay, the equivalent of paid holidays, sick leave and workers' compensation in the case of injury. They should have opportunities for retraining at the end of the period of intense dependency. She advocates generous payments in the form of compensation. The very poorest carers require payments to bring them above the poverty line. For the wealthiest, the compensation would take the form of tax deductions. The extent of compensation should also reflect the extent of dependency of those needing care. People need to have the discretion to provide the hands-on care themselves and/or to employ someone else to assist. The compensation should be available in one form or another to everyone providing care. Universal benefits are less susceptible to funding cuts and erosion in value through a refusal to increase payments and are less stigmatised than are means tested benefits (Kittay 1999, 2001).

As long as dependency work (paid or unpaid) is done predominately by women, and done at the expense of the dependency worker or the dependent, women cannot achieve equality with men. Nor will the inequalities between women be removed. Therefore Kittay proposes measures to encourage men to take up responsibility for care work. In the first instance, changes in employment and education are needed to allow men and women to provide care without sacrificing their employment prospects. This will remove some of the barriers, particularly for men. She also advocates a 'care corps' along the lines of the peace corps. Not only would this provide a community resource but would help develop among participants individual skills, values and experience in caring (Kittay 2001).

Kittay's work is compelling because it is grounded in her experience of raising a severely disabled child. This draws attention to the love, the inherent challenges and the inadequate level of societal support. Kittay's focus on the nature of dependency and dependency work is very important, as is her insistence on *doulia* or a public ethic of care. Also significant is her insistence that care should be provided on the basis of our intrinsic not our instrumental value. However, it is Sessa's story that makes it clear why our philosophical approach to care matters so much.

6.4.4 Held – Partiality and a circumscribed liberalism

Virginia Held provides clear accounts of the development of the ethics of care, distinguishing between different versions or models (e.g. Held 2005). She sees the radical potential of ethics of care, arguing that it can transform society away from a preoccupation

with economic gain to a recognition that human flourishing should be the prime goal. Held is critical of liberalism, regarding liberal individualism and universalistic approaches as antithetical and hostile to the provision of care. Yet she does not advocate a complete rejection of liberalism, conceding that it may have limited application in certain narrow areas such as the law. She continually returns to the subject of liberalism, qualifying and building on earlier statements. Yet her response ultimately is unsatisfactory. Before I explore this further, I will outline Held's understanding of care and her version of care ethics.

Care is defined by Held as both a practice and a value (Held 2004, 2006). The practice involves responding to material, psychological and cultural needs. Importantly, as the practice of care develops, it should be subject to standards and expected to improve continually. The outcomes are important but, so too, are the motives and attitudes expressed in the care we provide. Care as a value is seen in our individual dispositions towards caring (Held 2005). It is important to note that care currently takes place within conditions of inequality and injustice. While care is a form of work, consuming time and energy, Held considers it to be more than work. While everyday work is purposeful, she states that it need not incorporate any values.¹³⁰ For this reason Held considers care to be a practice that involves the work of care-giving. Importantly for Held, care is relational, with the carer and the care recipient sharing an interest in their mutual benefit.

As Held (2006) defines care broadly she does not just confine it to mothering or the immediate family. She considers that care is also provided by extended family, teachers, people working in hospitals and other health services. The ethics of care is relevant at both the personal and social level. It should involve our concern for the people close to us as well as support caring relations with distant others. The importance of care should be recognised, and the work shared between men and women. She identifies five features common to all ethics-of-care approaches, and this provides a good way of introducing her own account. The first feature is uncontroversial, concerning the centrality of care to our lives.¹³¹

The second feature is that different versions of care ethics value, rather than reject, the relevance of emotions to the process of determining what is morally the best thing to do or the best way to be. This is not an endorsement of using raw emotions as a guide to morality. Held argues that we need to reflect on our feelings and educate them. Rather, it is a recognition of the limits of rational deduction and a view that ethical deliberation based on reason alone is deficient (Held 2005, p. 539).¹³²

Thirdly, Held argues that ethics-of-care approaches question the universalistic abstract approaches common to utilitarian and Kantian moral theories. Instead of regarding parental care as a consequence of individual preference or the application of a universal rule stating our moral obligation, ethics of care respects the claims of particular others.

¹³⁰ I disagree that other forms of work need not incorporate value (e.g. the values of excellence, vocation and creativity). However, this is not the place to discuss this further.

¹³¹ To some extent this view is undermined by a strange passage in her book *The Ethics of Care*, in which Held (2006, p. 50) suggests that elderly people will not expect their daughters to visit too often and the children will not mind being in child care so their mothers can work.

¹³² For a more comprehensive exploration of the relationship between reason and the emotions, see Nussbaum's (2001c) cognitive theory of the emotions.

This allows actual relations to take priority over the requirements of impartiality, even when this would result in a judgment that cannot be made universal. According to Held (2005), Margaret Walker (1989) advocates a highly contextualised feminist moral understanding, arguing that the adequacy of this moral understanding decreases as you move from the particular to the general. Held raises two important issues. The first concerns our partiality for those close to us, and the second concerns particularism, which favours consideration of the specifics of each situation over the application of universal moral principles.¹³³ I will return to these later in this section.

Fourthly, ethics of care, drawing on its feminist roots, is critical of the public/private divide. Feminists have demonstrated the fallacy of this separation, showing how the private sphere has been structured in ways that leave women and children vulnerable. Held argues that the dominant moral theories confine morality to the public sphere, failing to recognise its salience to family and friendships. Moral issues are seen as arising between two equal, independent individuals. Within the family, however, there are ties and obligations that are not chosen and relationships that are not equal. On the other hand, ethics of care addresses the moral questions that concern relations between people who are unequal and dependent, relations that are invariably involuntary and are infused with deep emotions. Ethics of care also appreciates that these kinds of relationships are not just found in the home but are also characteristic of relations in the wider society (Held 2005).

The fifth feature also raises important questions. Held states that all versions of care ethics start with the idea that people are relational. In Held's view this contrasts with the idea that we are independent and self-sufficient, as is assumed by utilitarian and deontological moral theories.¹³⁴ This separate individual is considered to act purely out of self-interest or to act in ways that may be generalised as universal laws that other rational, autonomous individuals would uphold. Liberal individualism holds that 'what separates us is in some important sense prior to what connects us – epistemologically prior as well as morally prior. We are distinct individuals and *then* we form relationships' (Sandel 1982, p. 133). In contrast, ethics-of-care approaches 'characteristically see persons as relational and interdependent, morally and epistemologically' (Held 2005, p. 542).

These five features distinguish ethics of care from the dominant moral theories: Kantian theories, utilitarianism, and to a lesser extent virtue ethics.¹³⁵ Held also finds serious disagreements between ethics of care and most forms of communitarianism. She presents ethics of care as a complete moral theory, which may be extended from personal and

¹³³ For a brief discussion of moral particularism see Jonathan Dancy (2009).

¹³⁴ It is not clear that independence and self-sufficiency are assumed by all utilitarian and Kantian theorists. Consider, for example, the work of Peter Singer (2009).

¹³⁵ Some theorists consider care ethics to be a form of virtue ethics. While Held agrees that there are similarities, and virtue theorists such as 'Aristotle, Hume and the moral sentimentalists' have contributed to the development of care ethics, she argues that the two ethics are distinct. The most significant difference is that virtue ethics is concerned with the dispositions of individuals whereas care ethics places primary value on caring relationships. (Held 2005, p. 551; 2006, pp. 3-4). On the other hand, Margaret McLaren argues that there is an alliance between the two, but virtue ethics provides a stronger basis for women to achieve equality (Friedman & Bolte 2007, p. 83; McLaren 2001).

family matters to provide guidance on political, social and global issues.¹³⁶ In providing a basis of her ethics of care, Held draws on the universal experience of care. If we had not received care, then we would not have survived infancy. She argues that the universal experience of care provides a sounder foundation than divisive religious beliefs or the 'dubious universal norms of reason' (Held 2006, p. 3). For Held, the ethics of care takes seriously the lives and experiences of women, whereas the other major moral theories start with the experiences of privileged men.

An attractive part of Held's ethics of care is that it locates care firmly within the realm of moral deliberation. The practice of care has a moral dimension that has not been recognised by the dominant moral theories.¹³⁷ She explicitly rejects the view that care is a naturalised concept or ethics that does not involve moral choice. This is particularly important given the pervasive gender inequalities that continue to permeate care provision. Held is clear that ethics of care must have the intellectual resources to deal adequately with power and violence. It cannot be built on an idealised view of the happy family. Instead moral theorising needs both to understand and reform the practices of care (Held 2006).

Held (2006) considers that one of the advantages of ethics of care is that it provides solid grounds for prioritising those in our care or close to us. Held cites Marilyn Friedman's (1993) claim that not all relationships have the same moral value, but when a relationship does have moral worth, for example the relationship between a parent and child, then the issue of partiality can arise. For Held this has implications for the basis of our regard for others. She contends that her ethics-of-care approach insists that the people we love are valued for themselves and not because they exemplify something universal. Held contrasts this position with Stephen Darwell's (1998, p. 227) view that Kantian respect for another is grounded in features we share with all others (Held 2006, p. 93).

There are, Held concedes, limits to this partiality. If we are only motivated to look after our own there is no justification for essential resource redistribution. This sustains existing privileges and inequalities (Friedman 1993; Held 2006) through a privatised ethic of care, of the type explicitly rejected by Tronto (1993). The dominant moral theories were developed in part to respond to the challenge of an expanding community when questions about our obligation to distant others become more urgent. Held recognises this but considers that moves to try to overcome the tendency to favour one's own have unfairly compromised our valid concerns in the domain of family and friendships.

Held (2006) does not accept the claim that liberal principles are needed to establish our obligations to distant others. She argues that, unless we care about other human beings, we will not be motivated to regard their rights as important, particularly if they are weak and vulnerable to exploitation. The worst injustices, however, are often perpetrated in situations where the victims are regarded as inferior to the rest of us. However, it is unlikely that a caring approach can make any difference unless it is underpinned by an understanding of our shared humanity. This view is not shared by Held. She gives priority

¹³⁶ For example, a feminist ethics of care supports limits to market activity, particularly in the areas of education, health and other forms of care provision (Held 2002; 2006, chapter 7).

¹³⁷ Sometimes the exclusion of care is a matter of theoretical description rather than reality. For example, a market involves relationships between individuals and organisations. People make decisions based on loyalty, concern and not simply self-interest (Held 2006, p. 40).

to relationships of care or fellow-feeling. Then she argues that within these relationships, we might develop agreed rules that require us to treat others with 'equal concern and respect in those ways and for those kinds of issues where impartial rules will be appropriate, recognizing that much that has moral value in both personal relations and political life is "beyond justice"' (Held 2006, p. 101). We may reject some relationships because they do not accord with the principles of justice. However, in situations where relationships have moral value, Held states that we may need to decide whether the relationship should be subordinated to the principles of justice (Held 2006, pp. 95-96). How we decide which relationships should be governed by principles of justice is not made clear.

Although Held considers why we value others, her framing of the question is somewhat strained. She uses the example of a child, asking: do you value a child because of something common to all children or because of their particularity based on a relationship with them? However, I contend that it is important to take into account the child's particularity *and* their dignity as a distinct human being with their own aspirations and perspectives. Held struggles when discussing instances where the demands of universal principles conflict with our particular loyalties, e.g. the father who must choose between spending more time with his own child or more time working as a teacher where he can help many more children (Held 2006, pp. 97-100). It is not clear that the utilitarian and Kantian solutions to this dilemma would necessarily involve dedication to his profession over care for his child. Some utilitarians would not accept that the gain in utility for the other children would exceed the loss of utility for his own child.¹³⁸ Nor is it clear why the relevant Kantian principle would involve professional and not parental responsibility. It is possible to universalise without dismissing the idea that parents should place a priority on their own children's needs.¹³⁹ I am not convinced that Held's ethics of care would provide good moral guidance in situations where a parent's special responsibility to their child has negative consequences for other people. Our partiality should not be dismissed, but we need to reflect on it, considering the implications of building it into our moral judgments.

Held's approach is to argue that an ethics of care may limit the applicability of universal rules to specific domains in which they have greater relevance, such as the law.

Conversely, universal rules are less pertinent to family and friendships. Held contends that universal rules should not be applied without consideration of the context. Yet she also makes some important universalistic claims, arguing that more developed versions of care ethics advocate the radical transformation of society, demanding equality for women as

¹³⁸ The philosopher Peter Singer (2009), a utilitarian, considers our obligation to our own children and to the children of others, particularly children who are distant and we are never likely to meet. Singer argues that it is reasonable for parents to love their children more than children who are strangers and therefore to meet the basic needs of their offspring before the needs of others. However, he states that there is no justification for providing our own children with luxuries instead of meeting the basic needs of others.

¹³⁹ A tragic example of the dilemma between principle and partiality is given in the writer Anna Funder's (2009, p.14-6) essay on courage. A young East German mother with a seriously ill baby undergoing treatment in a West German hospital was arrested and given a terrible choice. If she wanted to see her child again she had to assist police by arranging a meeting with the West German student who was helping her to try to escape. She could not agree because she knew it would mean the student would be kidnapped. So she was imprisoned, and for six years her child was raised in a hospital ward.

well as recognition of the moral significance of caring. This provides a key to Held's thinking. She rejects liberalism and liberal formulations of justice, sometimes for good reasons. However, in seeking to retain some of their positive aspects, she concedes their applicability to a limited domain.¹⁴⁰ This is most apparent in her discussion of the tension between justice and care and on liberal individualism, which I will now consider.

Held (2006, p. 15) states that there would be few who would argue that justice has no place in care. Recent debates in feminist moral theory have moved away from pitting care against justice. While feminist critics of justice-based approaches consider that justice alone is inadequate, they seek to retain the aspects supporting women's emancipation (Held 2006 p. 66). It is not a matter of choosing between care and justice but of working out how to link them without marginalising or downgrading care (Held 2006, p. 95). The issue for Held is which values have priority:

In the dominant moral theories of the ethics of justice, the values of equality, impartiality, fair distribution, and non-interference have priority; in practices of justice, individual rights are protected, impartial judgments are arrived at, punishments are deserved and equal treatment is sought. In contrast, in the ethics of care, the values of trust, solidarity, mutual concern, and empathetic responsiveness have priority; in practices of care, relationships are cultivated, needs are responded to, and sensitivity is demonstrated. (Held 2006, p. 16)

The conceptual distinction between an ethics of care and an ethics of justice is retained by Held (2006) in order to ensure that the distinct contribution of each is recognised. She is clear that, to be adequate and comprehensive, a moral theory will need to draw on the insights of both. Held seeks to do this in two ways: first by locating justice within a care framework and, secondly, by giving the values of care and the values of justice priority in different domains.

The first part of Held's approach is to position care as the deeper fundamental value.¹⁴¹ She argues that care must provide the wider and deeper ethics or the wider moral framework because, without care, there cannot be justice. Without care not only would we fail to reproduce ourselves, but rights would be meaningless.¹⁴² It is possible, on the other hand, to have care without justice, as is evidenced in social and personal care arrangements the world over. While Held considers care to be the more fundamental value, she recognises that it does not always provide the resources necessary to achieve just outcomes. For example, it is possible to value care without recognising the inequitable distribution of care work. In these situations it is necessary to draw on the ethics of justice. This leads us to the second part of her approach, the distinction between different domains.

¹⁴⁰ Sen's position is a little clearer, although not substantially different from Held's. He argues that moral and political philosophy, including a theory of justice, should accommodate personal connections, relationships and responsibilities. However, there will be some contexts in which such considerations would be rightfully excluded (Sen 2009, pp.160-1; see also Williams 1973, 1981).

¹⁴¹ Held (2006, p.62) rejects Gilligan's approach of considering moral problems from both the perspectives of care and justice because it leaves us with no clear guidance in situations when the dictates of each conflict.

¹⁴² Conceding that human rights have benefitted women, Held (2006, p. 102) argues that rights are only meaningful if they are grounded in care or in relationships.

Her proposal to give care and justice priority in different domains presents Held with a problem. It veers towards the traditional assignment of care to the private and justice to the public realms, an assignment she has explicitly rejected. Held's response is to argue that the priority of one set of values in a given domain does not preclude the relevance of the other set of values:

In the realm of law, for instance, justice and the assurance of rights should have priority, though human consideration of care should not be absent. In the realm of family and among friends, priority should be given to expansive care, though the basic requirement of justice surely should also be met. (Held 2005, p. 548, see also Held 2006, p.16)

What Held seeks to resist is the tendency to expand the scope of justice theories to the point where they are assumed to offer a comprehensive morality providing guidance for all moral problems. Instead she contends that justice is relevant to some types of moral questions. Preventing her domains from collapsing into the private and public spheres requires some careful manoeuvring. It begs the question whether there is a better way to bring together the insights from justice and care.

Held's consideration of liberal individualism is similar to her approach to liberal formulations of justice. She is critical of liberal individualism but considers that we might deploy it in specific circumstances. For instance, we might treat people as independent individuals in order to construct political, legal and other institutions.¹⁴³ However, this should not blind us to the deeper reality of our interdependence. In her view, ethics-of-care approaches conceptualise people as relational and interdependent, morally and epistemologically. Held (2006) rejects Nussbaum's (1999c) claim that the flourishing of the individual human beings is prior, analytically and normatively, to the flourishing of the group. According to Held (2006, p. 14), the liberal individualist notion of the person is problematic for two reasons. First, it provides an impoverished description of the way society is now and, secondly, it offers an impoverished ideal of how we should behave. She argues that people motivated by the ethics of care would aim to form better caring relations.¹⁴⁴ Held's criticisms of Nussbaum's work underestimate the sophistication of the capabilities approach, which is underpinned by the idea that we are inherently social beings. Interestingly, Held does not refer to Nussbaum's main work on care.¹⁴⁵

Held's recognition of our interdependence does not lead to a rejection of autonomy. She contends that we can still be free moral agents, able to reject or reshape the social ties within which we live. She points to various alternative accounts of autonomy designed to replace the liberal individualistic version (Clement 1996; see also Kittay 2006a, 2006b;

¹⁴³ Held (2006, p. 82) notes that some liberal theorists only intended a limited use of concepts such as individualism. For example, she points to Rawls's argument that the contract model applied only to the political and not to personal sphere.

¹⁴⁴ Held (2006, p. 14) argues that, even if the liberal individual is a device to inform of us what would be rational in an ideal model, it has negative effects. She points to evidence that economics students exposed to models based on self-interest are found to be less co-operative and more likely to free-ride (Frank, Gilovich & Regan 1993; Marwell & Ames 1981).

¹⁴⁵ *Women and Human Development* (2000), her appendix to the report *Long-Term Care and Social Justice* (2002) or her Tanner Lectures 'Beyond the Social Contract: Toward Global Justice' (2002, available online and then later published as the book *Frontiers of Justice* (2006).

MacKenzie, C & Stoljer 2000; e.g. Meyers 1989, 1997; Oshana 1998). In a more recent book, Andrew Sayer (2011, p. 128) argues that autonomy is not a matter of complete independence but should be understood as 'self-command and capacity for agency within the context of relationships and responsibilities that afford us some support'. Held (2006, p. 83) considers that care involves promoting the autonomy of the care recipient.

Although Held is highly critical of liberalism, she seeks to retain some of its features, a strategy that is difficult to sustain. Possibly seeking to make sense of her conflicted position, Held suggests that the anti-liberalism of ethics of care and some feminisms should be understood as providing a necessary correction to the dominance of liberal political thought. While there is probably some truth to this, it does not excuse us from the task of making sense of the mixed legacy of liberalism. Unfortunately Held does not pay careful attention to the different accounts of liberalism. Nor does she consider the strongest or most appealing version in making her final assessment. In the end, Held's struggle with liberalism seems like a failure of imagination, an inability to consider alternative approaches that avoid the dangers of liberalism while retaining the features that have supported improvements in gender equality.

On the other hand, Held's main contribution is her detailed description of different accounts of care ethics. She defines care as the subject of moral deliberation and appreciates the radical and transformative potential of ethics of care, although neither of these features is unique to her work.

6.4.5 Engster – Care based theory of justice

Daniel Engster (2007) develops a theory of justice based on the practice of caring by integrating the insights of care theorists with the work of justice theorists. He describes his project as one of turning ethics of care into a theory of justice. There are two reasons why Engster considers we need this type of care theory.¹⁴⁶ First:

... it describes a basic morality that we are all obligated to follow by virtue of our dependency on others, but that other justice theories have generally neglected. Because we all claim care from others at one time or another during our lives, we owe care to others when we can provide it to them. (Engster 2007, p. 14)

Secondly, there are pressing social issues that other justice theories cannot adequately handle. There is a care crisis, with many people struggling to 'engage in the productive work necessary to support themselves and their dependents and at the same time actually provide adequate personal care to themselves and their dependents' (Engster 2007, pp. 14-15, drawing on Kittay 1999). The individual and social consequences of this care crisis are significant, and Engster argues that his theory provides a framework to address our new social reality. He is motivated by the gaps in preceding care theories as well as the shortcomings in existing justice theories. I have already discussed the ways most justice theories ignore or marginalise care, so will focus on the problems he finds with existing care theories.

¹⁴⁶ Engster states that his aim is to develop a care based theory of justice but throughout the book refers to his theory as a theory of care. In this section I have followed Engster's use of terminology as much as possible.

According to Engster (2007) four gaps or ambiguities have limited the development of care theory as a moral and political theory. His first concern is that definitions of care are too vague. While the following comments were directed at earlier versions of care ethics, they remain germane:

We have been told nothing about [care ethics] until we are told what features of situations context-sensitive people pick out as morally salient, what weightings they put on these different features, and so on... We simply need to know more, in a detailed way ... about exactly what it is they care about. (Flanagan & Adler 1983, cited in Engster 2007, pp. 2-3)

Secondly, Engster (2007, pp.3-4) argues that we need a better account of why we should care for each other, claiming that other theorists have only produced partial accounts. He proposes a rational theory of obligation which explains why we should expand our sympathy beyond close family and friends. It also provides guidance on which natural sentiments we should cultivate, for example sympathy and compassion rather than aggression and prejudice. This guidance is based on what can be considered consistent with 'what we can rationally show to be our moral obligations'. The third gap he identifies is the lack of a 'general account of the basic institutions and policies of a caring society'. Engster states that, while a number of theorists have discussed social and political policies (e.g. Fineman 2004; Folbre 2001; Harrington 1999; Kittay 1999; Noddings 2002; Robinson, F 1999; Tronto 1993), none have provided a comprehensive account. The final point is that care theorists have failed to address cultural differences. He argues that this must be rectified if care theory is to have relevance as a political and moral theory. Engster proposes a moral and political theory of caring that directly addresses these four shortcomings, one that:

... makes four distinctive contributions. (a) It outlines and defends a definition of caring that can more satisfactorily guide the development of a moral and political theory. (b) It develops a theory of obligation for caring that explains why we ought to care for others. (c) It extends existing accounts of care theory to identify the basic institutions and policies of a caring society across the domains of politics, economics, international relations, and cultures. (d) It places care ethics in dialogue with diverse cultural and religious traditions and uses it to address the challenges of multicultural justice, cultural relativism, and international human rights. (Engster 2007, p. 4)

Before discussing some of these aspects of his care theory I will consider Engster's definition of care. Initially, Engster argued for a broad understanding of care that entailed fostering the full range of human capabilities as described by Nussbaum (2000c) and John Finnis (1980) in their work respectively on capabilities and natural law theory (Engster 2004, 2007). He now considers that specifying the full range of human capabilities privileges a particular liberal vision of the good life, a view shared by Susan Moller Okin (2003). For example, if caring is to involve fostering all specified capabilities, then a parent who did not encourage aesthetic appreciation or religious capabilities would have to be considered uncaring. He contends that it would be unfair to pass such a judgment on this parent because, by their own conception of the good life, they might be raising their child in a very caring way. Concerned about paternalism, Engster proposes a more basic understanding of care. He considers that care involves developing and sustaining an individual's basic or innate capabilities, which include 'the abilities for sensation, movement, emotion, imagination, reason, speech, affiliation, and in most societies today, the ability to read, write and perform basic math' (Engster 2007, p. 27).

Nussbaum (2000c) thinks that these basic capabilities form the foundation for developing more advanced capabilities and the grounds for developing moral concern. Engster's list is more basic than Rawls's list of primary goods, the latter also including rights and liberties, opportunities and powers, income and wealth and self-respect (Rawls 1996, p. 181). However, Engster considers that the basic capabilities are like Rawls's primary goods in the sense that we can assume they describe things that all individuals have good reason to want. We can assume this because Nussbaum's basic capabilities and Rawls's primary goods are necessary for the social functioning that underlies the pursuit of any conception of the good life. According to Engster the development of complex capabilities involves selecting particular conceptions of the good.

Nussbaum also takes the problem of paternalism seriously, but her solution is to insist that the political goal should be capability rather than functioning, a strategy Engster does not appear to endorse. There are two problems with Engster's strong aversion to specifying an account of the good life. First, even his most basic list involves a restrictive understanding of the good. There are people who live without freedom of association or with limited opportunities to express their emotions or use reason. In the face of different forms of oppression we need to argue the case for these most basic capabilities and the idea of the good they entail. If some concept of the good is expressed in almost any list of capabilities the pertinent question is: where should we draw the line? The second concern is more immediate and more serious. Refusing to specify one account of the good, Engster develops a theory of care that struggles to insist on women's equality. This is a major failing.

An important starting point with Engster's theory is his definition of care. He understands that care or caring involves:

... everything we do directly to help individuals to meet their vital biological needs, develop or maintain their basic capabilities, and avoid or alleviate unnecessary or unwanted pain and suffering, so that they can survive, develop, and function in society (Engster 2007, p. 28-29).

To determine whether an activity is care or not, we need to consider whether it meets these three aims, not whether it is remunerated. It must also involve acting according to the core virtues of caring, which are being responsive, attentive and respectful. By focusing on the aims and virtues of caring rather than the way caring is done, Engster allows for different practices.¹⁴⁷ Engster also identifies three distinct ways to care for others: meeting the needs of people who require care; providing caregivers with resources and support so that they can provide care; and collectively by supporting institutions and policies that support people so that their care needs can be met (Engster 2007).

It is as individuals that we make our claim for care, and we form groups because we are needy, dependent individuals. Group values and goals should ensure that members are able to receive the care that they need, otherwise our obligation to provide care must take precedence over those group values or goals. Engster argues for inter-dependency rather than collectivism. He considers collectivism to be dangerous because it subordinates the needs of the individual to those of the group. There is some ambiguity on the question of

¹⁴⁷ Studies of caring practices across cultures have found more similarities than differences, which is not surprising given that care is a response to common human biological and developmental needs (Engster 2007, p. 33, citing Levine 1977; Lewis, M & Ban 1997).

the relationship between groups and individuals. Engster notes that there will be times when an adult individual will put the group ahead of themselves. He also states that his theory is neutral on the question of group rights. However, the more important point that Engster (2007, p. 65) seeks to make is that our obligation to provide care is derived from 'our common human nature as dependent social creatures'.

Considering that care and justice are both important, Engster states that the principles of care theory must be central to any adequate theory of justice. Without the caring practices required to sustain human life and to develop compassionate human beings, there would be no such thing as individual liberty, equality or community. Therefore, Engster argues that

... the aims and virtues of caring may be said to precede and underlie all other theories of justice. No theory of justice can be said to be consistent or complete without integrating the institutional and policy commitments of care theory. Care theory nonetheless does not completely subsume all other theories of justice. (Engster 2007, p.5)

However, because Engster's theory of care is not built around and/or aligned to a specific understanding of the good life, it offers only a minimal and incomplete theory of justice. His theory ensures that our biological and developmental needs are met but other matters are left up to the individual. For example, it cannot provide guidance on policy matters such as the place of religion in public life or the appropriate scope of free speech. For this it is necessary to combine Engster's care theory with another theory of justice, such as liberalism, libertarianism, communitarianism, natural law theory or other comprehensive schemes of religious or cultural values. He argues that 'while other political theories focus on the ends or goals of society, care theory defines the heart of justice' (Engster 2007, p. 5). Curiously, Engster does not distinguish between the justice theories that might be combined with his care theory. He does not indicate whether one might be preferable or indeed more supportive of caring practices than is another. This seems strange, given that these justice theories offer very different conceptions of care. Libertarianism, for example, would tend to support highly personalised approaches to care, obscuring or even naturalising the exploitation inherent in traditional family arrangements. This undermines important features of Engster's care theory.

The limitations of Engster's minimalist theory become stark when we consider gender equality. Engster is clear that men and women are both able to provide care and have a moral obligation to do so. He seeks more support and accommodation for care work and advocates cultural reforms to encourage men and women, but especially men, to 'be more open to caring'. For these reasons he considers that his 'theory supports a more egalitarian distribution of care work between men and women'. It presents care as a basic human rather than uniquely feminine activity (Engster 2007, p. 13). Nonetheless, he pulls back from a feminist account of justice:

My account of care theory nonetheless departs from most feminist theories in one crucial way. If feminism is defined, as it often is, as a commitment to women's equality and rights, then my account of care theory represents something less than a full feminist theory of justice. Care theory supports the adequate care of all individuals, but not necessarily a fully free and egalitarian society (at least in the liberal sense of the term). This is not to deny the importance of women's equality and feminist ideals, but merely to recognise the limits of care theory in supporting them. As Diemut Bubeck argues, if care theory is to remain a cogent perspective, it

cannot be treated as a repository for all feminist or other social justice concerns (Bubeck 1995, p. 250). Its theoretical limits have to be acknowledged. Feminists, liberals, and others who support full equality for women might supplement care theory by drawing on values outside of it that support autonomy and equality for all individuals, but care theory itself does not possess the theoretical resources to support this goal. Care theory nevertheless does go a long way towards supporting more social equality for women, since women's inequality is closely tied to their traditional roles as caregivers and the low valuation that caring practices have been accorded by most theories of justice and most societies. As such, care theory (as I develop it) may at least be identified as a *minimal* feminist theory. (Engster 2007, pp. 13-14)

Engster does identify social practices that oppress women as uncaring, even if they are justified by appealing to the care needs of children and other family members. He does not accept that we should sacrifice the needs of some individuals to provide for others. However, his call for the removal of oppressive practices only extends as far required in order to ensure adequate care for all. According to Engster this falls short of full social or political equality, a liberal value that may 'supplement care theory but does not find support within it' (Engster 2007, p. 100). This marks one of the differences between Engster's care theory and standard liberal theories. Moreover, Engster seeks to address cultural difference by distinguishing between meeting basic biological and developmental needs, which are considered to be universal, and different conceptions of the good, which are built into particular caring practices.

The care theory proposed by Engster does assign 'government a central role in supporting and accommodating personal caring activities so that all individuals can survive, develop, and function in society at least at adequate levels' (Engster 2007, p. 15). He notes that many governments, particularly in Scandinavian countries, already support care. However, the philosophical justification for caring welfare states is under-developed (Engster 2007; Rothstein 1998). At best, liberalism provides partial support for caring policies. However some liberal theories can also provide grounds to challenge care support because meeting the costs necessarily infringes on individual freedoms.¹⁴⁸ Engster also notes that socialist theories have not traditionally provided adequate support for care (Engster 2007, p. 15; Folbre 1996, 2001). In contrast, Engster claims that his care theory 'provides not only a philosophical justification for caring policies but also a framework for examining, critiquing, and extending these policies in order to make them more consistently supportive and accommodating of personal and social caring' (Engster 2007, p. 16).

The most important aspect of Engster's work is his attempt to bring together care and justice through the development of a care-based theory of justice. In doing so he provides a clear definition of care, which is much needed. Another important aspect of his theory is the justification of an obligation to provide care, which includes government action to support the practice of care. More troubling, however, is the minimal nature of his theory. Partial theories are not unique. Nussbaum draws on Rawls's idea of overlapping consensus to develop a partial political theory designed to be acceptable to people with very different comprehensive moral, religious and philosophical perspectives. In this way, she insists on the minimum conditions for human life while respecting the individual's right to live a life

¹⁴⁸ For instance, this type of criticism of care policies typically values 'freedom' from taxation more highly than freedom from poverty, exhaustion or exploitation.

they have reason to value. In comparison, Engster's account is skeletal, insisting only on the capabilities needed to guarantee life. Engster recognises that care arrangements can be exploitative. His theory demands that everyone should have access to adequate care, which he sees as providing a safeguard against oppression. However, given a history of conceptualising care as a natural activity for women but not for men, and a history of female disadvantage, it is not clear that 'care for all' will be strong enough to support a more just set of social arrangements. Engster argues that these problems can be addressed by combining his care theory with a moral theory, but he fails to recognise the contradictions and potential conflict in some of the possible couplings.

6.5 Criticisms

In the previous section I addressed some of the concerns raised about specific accounts of care ethics. Now I will briefly discuss the main criticisms directed at the general ethics-of-care approach.

The most persistent criticism is the failure to adequately address women's inequality. The strongest concerns are directed at the earliest accounts by Gilligan and Noddings, although it is also an issue with Engster's care theory. Tronto, Bubeck, Kittay and Held have stressed the importance of women's equality and drawn attention to the risk of exploitative care arrangements. Pointing to the history of care ethics and the theories' feminist roots, Held (2006) argues that ethics-of-care approaches are by definition feminist and cannot be fully realised under conditions of patriarchy. Nevertheless responses to Gilligan's and Noddings's work have shaped perceptions of these more recent accounts. As a result there are concerns that the focus on care inherent in all ethics-of-care approaches might naturalise traditional gender roles and therefore reinforce sex-based disadvantage.

The overall effect of Gilligan's work has been to fix the link between women, care and the private sphere on the one hand, and between men, justice and public life on the other. At times Gilligan has opposed such a conclusion and, in some of her work, she describes the most advanced form of moral reasoning as one combining care and justice (Friedman & Bolte 2007, p. 82). Yet there is sufficient ambiguity in her work to permit a conclusion that each gender is necessarily identified with a specific ethic. This not only reinforces traditional gendered roles, but gives them a new legitimacy (Friedman & Bolte 2007, p. 82; Tong & Williams 2006). It is for this reason that Gilligan's work has also been described as offering a feminine but not a feminist ethics (Friedman & Bolte 2007, p. 82).

Noddings's work is even more open to the charge of constituting a feminine rather than a feminist ethics. In Noddings's version of care ethics, women are not only vulnerable to exploitation as carers but they are 'also rendered incapable of addressing themselves to the problem' (Bubeck 1995, p. 127). Bubeck identifies three 'myopias' in Noddings's work. The first is that its strong contextualisation means that the care response is not simply determined by need but the situation of the person needing care, for example whether a family member or friend is available to be the carer. This leads to extremely uneven care provision. The second myopia concerns the failure to recognise the uneven distribution of care work. Noddings's carers have no way of objecting to the people who free-ride on their care work. Her ethic of care does not provide a perspective that can identify and seek to redress the exploitation evident in traditional care arrangements. The third myopia underpins and explains the first two. The radical contextuality of Noddings's ethic of care involves a rejection of abstract and universal principles of justice. For Noddings,

considerations of justice may not take precedence over considerations of care. Her ethic of care prevents carers from identifying and addressing issues of distributive justice involving care. Further, her ethics of care can operate to legitimise traditional gender roles and sustain other forms of inequality. Bubeck (1995) considers Noddings's particularism to be the most damaging aspect of her version of care ethics.

Sandra Lee Bartky (1990), Sheila Mullet (1988) and Rosemarie Tong and Nancy Williams (2006) argue that under conditions of gender inequality, care-giving is ultimately disempowering for women. An additional fear is that care ethics will deflect attention from the structures within which care work is currently practised (e.g. Card 1995; Held 2005, p. 550; Houston 1987; Jagger 1989). Claudia Card (1996) argues that the moral limitations attached to the traditional female role, need to be reduced through an appeal to justice and the enforcement of rights (see also Friedman & Bolte 2007, p. 82; McLaren 2001). According to Held (2006), many of the criticisms directed at ethics-of-care approaches are only possible if feminist ethics of care is conflated with non- or even anti-feminist care theories.

The problem is not only one of sex-based inequality. As has been established by Tronto (1993) and Bubeck (1995), more powerful people can delegate the actual work of care to others. The people who are most likely to provide care are usually marginalised by class, race and ethnicity as well as gender (see also Pocock 2006a).

Responding to Jody Heymann's (2002) concerns about the limits of care approaches, Tronto (2002b) states that it is difficult to fit care into the current liberal framework of justice and equality. According to Tronto (2002b), a significant part of the problem is that we think of care in its intimate and personal aspects rather than at the social level. Tronto (2002b) argues that the only way to remedy this situation is to recognise that care is a universal need and that it is a public rather than private good.

The feminist philosopher Sarah Lucia Hoagland (1990, 1991), questions one of the most important ideas informing most ethics-of-care accounts. Pointing out that care relationships are inherently unequal, she argues that unequal relationships are difficult ethically and provide a poor model for an ethical theory. This criticism challenges the whole idea of starting with our human neediness. However, given that neediness and dependence are inherent to the human condition, the real problem lies with ethical theories that assume that people have equal capacities and levels of power.

The care ethics literature is not linked by a common understanding of the relationship between the carer and the recipient of care. Of the theorists I have discussed, Kittay is the most attentive to the nature of the care relationship. She recognises that it is a very special relationship, using the image of the mother-child relationship to express our intrinsic value as human beings. Implicit in her work is the understanding that a strong, loving, nurturing and respectful relationship is an essential characteristic of good care. Although the depth of emotional engagement may vary, care cannot be provided by just anyone.

The most compelling criticism of ethics of care is made by Nussbaum (2002b). In a thoughtful essay on Kittay's work, Nussbaum argues that her own capabilities approach is stronger than care-based approaches because it does more to promote the importance of our relationships, the centrality of care and the interests of women and members of other marginalised groups. She also holds that the concrete measures that Kittay proposes, such as a direct payment to those who care for dependent family members, are compatible with the type of liberalism found in the capabilities approach. She states that we cannot start

thinking about either the care humans need or the support we require when we are carers, without first thinking about what it is we each need to live in a fully human way. Without this sort of attentiveness it is easy to slip into a form of utilitarianism where the well-being of some is compromised for the benefit of the rest, and the results are justified as the result of individual choice or efficient use of the allegedly different natural talents of women and men.

As explained in chapter 3, Nussbaum is very clear that the primary focus of the capabilities approach is on the individual not the family or, for that matter, the group or state. Each of these collective entities may promote human capabilities and, when they do, they deserve support. However, the support is because of their instrumental rather than intrinsic value. In most societies care is provided within the family, arranged by a family member or a combination of both. Nussbaum states that it is her hunch that children need stable care from a small number of adults who are devoted to them and know them well and who provide an emotionally stable and materially secure environment. One of the functions of the family is to provide this type of intimate love and care. In thinking about the role families play in supporting human flourishing, we can start to identify which family forms are more enabling.¹⁴⁹ For example, John Stuart Mill and Susan Moller Okin both observed that one of the functions of the family is to develop the moral character of children. They also point out that we are unlikely to raise just democratic citizens in families where the females are not considered equal to males (Nussbaum 1995a). This approach to the family distinguishes Nussbaum's capabilities approach from the work of conservative, so-called, new natural law theorists such as Finnis (1980).¹⁵⁰

Part of the challenge offered by many ethics-of-care approaches is a critique of liberalism. As indicated in chapter 3, it is the liberal foundations of Nussbaum's capabilities approach that troubles some feminists (e.g. Charusheela 2006; Held 2006). Over the past three decades many feminists have come to define feminism in opposition to liberalism. For example, Alison Jagger argues that 'the liberal conception of human nature and of political philosophy cannot constitute the philosophical foundation for an adequate theory of women's liberation' (Jagger, 1983, pp.47-8, cited in Nussbaum 1999c, p. 56). Despite this hostility, feminists often state their claims for justice in terms drawn from the liberal enlightenment. For instance, they have used the concepts of rights, personhood and autonomy to critique society.¹⁵¹

¹⁴⁹ As Nussbaum points out that there is considerable variation in the types of families in which people have lived and continue to live. The Western nuclear family is a relatively recent invention, and across the world it is still not common.

¹⁵⁰ Sabina Alkire and Rufus Black (1997, p. 264) argue that Finnis's conservative conclusions on homosexuality and contraception are not an inevitable consequence of his theory.

¹⁵¹ In the 1970s and 1980s feminists valued the idea of autonomy because it offered the prospect of women's liberation, (e.g. Hill, SB 1975, Grimshaw 1988). However, in the 1980s the ideal of autonomy was challenged on a number of grounds (e.g. Benhabib 1992; Friedman & Bolte 2007, p. 89; Hoagland, S 1989; Keller, EF 1985; Nedelsky 1989). A major concern is that autonomy is conceptualised within the norms of masculinity (Friedman & Bolte 2007, p. 87).

The problem is that many of the feminist critiques ignore the differences between the various strands of liberalism. In many cases the critiques are actually critiques of economic utilitarianism. When Nussbaum speaks of liberalism she has in mind Kantian liberalism, best represented by the work of John Rawls, and also the classical utilitarian liberal tradition, in particular the work of John Stuart Mill. She assesses feminist critiques of liberalism against these, the finest examples of liberal political thought. Central to both Kantian liberalism and the classical utilitarian liberalism are three common commitments. The first is the view that all people, because they are human, are of equal dignity and worth. The second is that the main source of this worth is 'a power of moral choice within them, a power that consists in the ability to plan a life in accordance with one's own evaluation of ends' (Nussbaum 1999c, p. 57). Third is that the moral equality of all humans gives rise to 'fair claim to certain types of treatment at the hands of society and politics' (Nussbaum 1999c, p. 57). The nature of this treatment will need to be determined through public deliberation, but it must 'respect and promote the liberty of choice, and it must respect and promote the equal worth of persons as choosers' (Nussbaum 1999c, p. 57).

Liberalism rejects naturalised hierarchies, opposes corporatist or organic forms of political organisation that place the interests of the group above those of individuals and refuses to impose one particular conception of the good on all citizens. Therefore, Nussbaum argues, liberalism is opposed to 'Marxism, theocratic social orders, and many forms of authoritarian or tradition based conservatism' (Nussbaum 1999c, p. 58). She concedes that 'the repeated experience of male irrationality' may lead feminists to conclude that a liberal politics is not sufficiently radical, but, in the long run, alternative strategies are unlikely to achieve liberal ends. Whether this is enough is not clear. We are often blind to our own privileges (Burnside 2009; Sayer 2011; Tannsjo 2006), seeing our good fortune as the legitimate result of talent and hard work rather than the result of our occupying positions of privilege in the world characterised by systemic inequalities. This can make those of us who are more privileged resistant to measures designed to promote more equitable outcomes.

Nussbaum (1999c) states that feminists have made three salient charges against the liberal tradition. The first is that the liberal tradition is too individualistic. In response, Nussbaum argues that liberal individualism entails neither egoism nor normative self-sufficiency but simply takes the individual as the basic unit for political thought and ethical commitment (as discussed in chapter 3).

The second charge is that liberalism's ideal of equality is too abstract and insufficiently immersed in concrete social reality. Nussbaum (1999c) concedes that the first part of this charge is a legitimate attack on liberalism but one that holds no great power. According to liberalism, all people share the core of rational and moral personhood, although it will be shaped differently by their circumstances. People may choose to identify with their gender, race and/or ethnicity, and they may make that identification central to their lives. Difference is not ignored. Our differing situations shape our core, and differences must be taken into account if we are to develop just social policy. However, individuals are not considered to be determined by their traditions. Liberal feminism is not identity politics. 'It is part of a systematic and justifiable program that addresses hierarchy across the board in the name of human dignity' (Nussbaum 1999c, p. 71).

This leads to the second part of this charge, the concern that liberalism severs individuals from their history and social context, a criticism Nussbaum believes can be addressed within liberalism. According to Nussbaum, feminists such as Catherine MacKinnon and Alison Jagger claim that liberalism disregards the differences between people caused by

their history and social setting. This leads to the adoption of a formal concept of equality that cannot treat individuals as equals given their different social positions. Nussbaum notes that this is an internal criticism given the critics' aim of treating people with equal respect despite the differences between them. She agrees that some liberal thinkers have refused to acknowledge that we do not all start with the same advantages and that asymmetric relations of power are embodied in the status quo. This has been a particular problem in some legal cases, and MacKinnon's criticism has been important. However, Nussbaum argues that most liberal thinkers have consistently rejected a purely formal notion of equality, understanding that genuine equality of opportunity has material prerequisites. Individuals will need different levels of support depending on their circumstances. According to Nussbaum, the best form of liberalism aims to achieve equality of capabilities.

The third charge is that liberalism's focus on reason downplays the significance of emotion and care in moral and political life. Liberalism traditionally holds that human beings are above all reasoning beings and that the dignity of reason is the primary source of human equality. The type of reason relevant is 'practical reason, the capacity for understanding moral distinctions, evaluating options, selecting means to ends, and planning a life' (Nussbaum 1999c, p. 71). Modern feminists have acknowledged that this move has had some value, e.g. Mary Astell and Mary Wollstonecraft's appeal for political and moral equality based on women's rational capacity. However, some feminists consider that by holding reason as a mark of humanity, liberalism highlights a trait traditionally associated with men and denigrates emotion and imagination, traits traditionally associated with women.

Nussbaum concedes that some philosophers, including Hume and Kant, do consider emotions as distinct from reason. However, even Hume and Kant, despite the problems with their conceptions of the emotions, do value the contribution of the emotions to our moral choices. Further, the idea that the emotions involve both thought and imagination is important within the liberal tradition. However, within the liberal tradition it is considered important that emotions should be subjected to critical scrutiny. 'Emotions are only as reliable as the evaluations they contain ... [and] like other forms of thought and imagination, should be valued as elements in a life governed by critical reasoning' (Nussbaum 1999c, p. 74; see also Nussbaum 2001c).

In setting up a maternal paradigm of care against a preferred liberal concept of reflective-caring Noddings (1984) privileges emotional responses untainted by thought. Challenging this view Nussbaum argues that in a world full of dangers and delights a mother needs to think critically and to teach her children to do the same. She needs to ask 'whether the norms and traditions embodied in the emotions of fear and shame and honour in her society – and in her own emotions as well – are reasonable or unreasonable norms' (Nussbaum 1999c, p. 76). Placing friendship and love at the centre of a life plan is not inconsistent with liberalism.

Nussbaum describes liberalism as providing a 'vision of a beautiful, rich, and difficult world, in which a community of persons regard one another as free and equal but also as finite and needy – and therefore strive to arrange their relations on terms of justice and liberty' (Nussbaum 1999c, p. 80). According to Nussbaum, this type of liberalism can be defended against the charges feminists have made. Not only does it have theoretical and practical value, but it provides a radical vision that can and should lead to social revolution. However, liberalism needs to integrate feminist insights. This will change liberalism, at the very least ensuring that particular strands are selected and others rejected, and the

changes will make it more consistent with its foundational ideas. Nussbaum concedes that some kinds of feminism cannot be incorporated into a reformulated liberalism but that these should be rejected precisely because they cannot support women's claims for justice.

6.6 Insights from ethics of care

By specifying what it is we need in order to live in a fully human way, Nussbaum's capabilities approach provides the basis of women's claim for justice. However, although Nussbaum (2000c, 2001c, 2002a, 2002b) discusses care extensively, she does not specifically address care in her list of 10 central human capabilities. The ethics-of-care approaches can provide guidance here. Drawing on the insights from the five major ethics-of-care versions and Fraser's seven normative principles (see chapter 4, section 4.5), I find that, if a theory is to account adequately for care, it must, as a minimum, accommodate the following five insights:

1. *Care is a central feature of human life.* A strong theory must start with the understanding that we are born helpless and in need of care and that our lives are characterised by our dependence on others.
2. *Care is a shared responsibility.* A focus on care can exacerbate inequality if care is regarded as a private activity. This results in uneven provision of care, with people receiving the care they can afford rather than the care they need. It also results in uneven caring burdens.
3. *Care is a problem of justice.* Under current arrangements care work is exploitative, with the burdens and rewards unfairly distributed. In addition, vulnerability to exploitation is inherent to care work. The principles of justice are essential to ensure that the needs of carers are not sacrificed for the good of care recipients and to the benefit of 'free-riders'. Justice demands attention not only to gender but also other types of inequality.
4. *Care includes important relational, emotional and cognitive aspects.* A strong, loving, nurturing and respectful relationship is an essential characteristic of good care.
5. *Care is a form of socially-useful work.* The provision of care takes time, energy and requires skill and sensitivity.

6.7 Conclusion

At the start of this chapter, I examined the differences between material feminism and ethics of care, finding ethics of care to be more rigorous. I then discussed the development of ethics of care, starting with the work of Gilligan and Noddings. This was followed by a more detailed discussion of the work of Tronto, Bubeck, Kittay, Held and Engster. Then I considered the major criticisms of ethics of care approaches. I found the most compelling to be Nussbaum's argument that her capabilities approach is stronger because it does more to promote the importance of our relationships, the centrality of care and the

interests of women. However, although Nussbaum discusses care in various books and articles, it is not explicitly addressed in her list of 10 capabilities. Drawing on the features of the strongest and most appealing version of care ethics and Nancy Fraser's seven normative principles, I identified the five characteristics of a theory that can address care. In the next chapter, I will assess Nussbaum's capabilities approach and then in chapter 8, I will consider whether Nussbaum's theory explicitly embodies these five ideas.

Chapter 7 Care and the capabilities approach

7.1 Introduction

The capabilities approach shows great potential as a way of thinking about the problem of care. It starts with the idea that humans are both needy and capable. Unlike utilitarian choice and preference theories, the capabilities approach focuses on the minimum requirements for each person to live in a fully human way. It can therefore account for both our need for care and the needs of those of us who provide care. The strongest versions of the ethics of care provide important insights into the problem of care. They place care at the centre of our deliberations, highlight the risk of exploitation which is inherent to care work and draw on principles of justice. Engster attempts to extend the ethics of care by developing a care-based theory of justice. Although he offers a more systematic account than earlier writers, his partial theory of justice is very thin. I consider Martha Nussbaum's theory to be stronger and more systematic than any of the ethics-of-care approaches. However, ethics of care also provides a challenge to the capabilities approach. The list of 10 central human capabilities does not make the centrality of care explicit.

In this chapter I will look more closely at Nussbaum's capabilities approach. I discuss a number of its important aspects, focusing particularly on the distinction between capabilities and functioning and the idea of the threshold. Following this, I examine each of the capabilities on Nussbaum's list of 10 central human capabilities, considering the nature of each capability and what a decision not to function might entail. I also offer some thoughts on the appropriate threshold for each capability. I will offer critical comments, if necessary, throughout the chapter rather than in a separate section. In the following chapter, I will present a comprehensive position by extending and restructuring Nussbaum's capabilities list, which directly addresses care.

7.2 Nussbaum's capability approach

Nussbaum (2003a, p. 40) starts with the idea of the 'dignity of a human being and a life that is worthy of that dignity'. She describes this as human functioning, a concept she takes from Karl Marx (1844). There are two aspects of this intuitive idea. First, there are functions central to human life, without which we cannot physically survive. The second aspect concerns how we live. According to Marx (1844), we can function in a truly human way or in a merely animal way, an idea developed from his reading of Aristotle. For example, a starving person is intent on survival and is unlikely to be able to enjoy the social aspects of food. A solitary person who is not cultivated by education, will be limited in conceiving of opportunities for leisure, play and self-expression and will have limited capacity to form valued associations with educated others. In terms of their potential, they are more likely to be operating more at the level of human animality. The same is true of someone pushed around or passively shaped. In contrast, a truly human life is lived in co-operation and reciprocity with others, shaped by the human powers of practical reason and sociability. The idea of human dignity, Nussbaum stresses, has cross-cultural resonance. This is evident in the way that we respond to tragic situations in other parts of the world and to tragedy in artworks produced by other cultures. We may not understand

the specific circumstances that led to a tragic situation but we can still sympathise with someone's predicament and feel their pain. We are only able to see a situation as tragic if we feel empathy for the people involved. To do this we must see them as fully human (Nussbaum 2000c, 2006; see also Nussbaum 2011b).

Nussbaum argues that the important threshold is 'the level at which a person's capability becomes what Marx called 'truly human', that is *worthy* of a human being' (Nussbaum 2000c, p.73). Marx, influenced by Aristotle, stressed the importance of material support for the development of our human powers. Marx is also influenced by Kant's concern with the 'inviolability and dignity of the person'. According to this approach every person is 'a bearer of value, and an end'. For Marx and 'his bourgeois forebears, it is profoundly wrong to subordinate the ends of some individuals to those of others. That is the core of what exploitation is, to treat a person as a mere object for the use of others (Nussbaum 2000c, p.73).

The principle that each person is an end may be rephrased as the principle of each person's capability. The aim of the capability approach is a society where each person is treated as worthy of regard and in which each person is in a position in which they can live in a fully human way. Nussbaum's list of capabilities provides a statement of the minimum level of opportunity that should be afforded to each person. No matter how wealthy, if a society does not provide this minimum level, it is not just (Nussbaum 2003a). Inter-country comparisons are also relevant. Citizens of one state may be equally (desperately) poor, a situation which is not just when other states are comparatively wealthy (Nussbaum 2006, p. 316-17. Nussbaum, like Amartya Sen, considers capabilities to be irreducibly diverse and non-commensurable. Most significantly, dimensions of value should not be reduced to a simple monetary value (Sen 2009, p. 241).

7.2.1 A partial theory of justice

While Nussbaum's capabilities list outlines the threshold above which we can say that a person is able to live in a human way, it does not comment on distribution above the threshold. Insisting that each person should have opportunities to flourish, Nussbaum's capabilities approach rejects discrimination on the basis of class, race, ethnicity, sex etc. Stressing the importance of the material conditions that allow people to develop their capabilities, it supports a far more egalitarian distribution of resources than is currently evident. However, the approach does not specify whether the goal should be complete equality of capability or nothing more than lifting all people to the minimum threshold (which in itself would be a major achievement and require considerable re-distribution of income and wealth). As we have some way to go before all people are above the 'minimum of truly human functioning', Nussbaum considers it reasonable to leave for now questions about further redistribution.¹⁵² According to Nussbaum, this makes her capabilities approach a partial theory of justice, one that might be linked with different views on equality, entitlement and responsibility (Nussbaum 2000c, p. 86).

¹⁵² Sen (1993, p. 31) notes that there is more likely to be agreement on the functionings needed by those facing extreme poverty. However, once people's most basic needs have been met there is likely to be a longer more diverse list of functionings and less agreement on their relative importance.

7.2.2 A political theory

Nussbaum explains that the basic intuition informing the capabilities approach is that 'certain human abilities exert a moral claim that they should be developed' (Nussbaum 2000c, p. 83). The aim is to establish for political purposes a consensus about the moral claim of human abilities – that human beings are such, that given the right educational and material support, they have the capability to achieve specified human functionings. Further, it is tragic waste when humans are not able to achieve the basic capabilities and therefore are unable to convert these into high level capabilities.

The capabilities list is presented as the result of a type of 'overlapping consensus', an idea derived from Rawls's theory of justice. The idea is that people may embrace the capabilities approach or Rawls's theory of justice without signing up to a particular comprehensive ethical or religious view or even to a particular view of human nature. Nussbaum explains that the capabilities list 'can be endorsed for political purposes, as the moral basis of central constitutional guarantees, by people who otherwise have very different views of what a complete good life for a human being would be' (Nussbaum 2000c, p.74). According to Nussbaum, her single list of capabilities does not present only one way of human flourishing. Instead it provides a 'single set of fundamental constitutional entitlements' that underpin many different ways of flourishing (Nussbaum 2006, p. 181). Also, her approach insists on capabilities or opportunities for functioning instead of the functions themselves. This allows people the space to pursue other outcomes that they value (Nussbaum 2000c).

According to Lukes, Nussbaum's strategy of adopting the Rawlsian concept of overlapping consensus is the only way to avoid the difficulty in sustaining the argument that we may observe central elements of human functioning that command cross-cultural consensus and therefore provide a partial account of what is worthwhile in life. Lukes considers that this inverts the argument of moral relativists who observe a diversity of morals and therefore conclude that there are no grounds to privilege one moral perspective over all others (Lukes 2008, p. 133). However, there are limits to the 'freestanding nature' of the capabilities approach, which is incompatible with some ethical doctrines.

Nussbaum (2006) considers it conceivable that an individual might support a capability even if they did not wish to avail themselves of the opportunities for functioning that it offers. For example, a member of the Amish community, which considers political participation to be wrong, may still support the right to vote. An atheist who detests religion may still be able to support religious freedom. They may support the list of central capabilities rather than another list that more closely reflects their own values because of the desire for all to be treated as equal citizens. The alternative of devising different capability lists for different groups would result in the unwieldy result of individuals having different sets of entitlements. Nussbaum concedes that it unlikely we will ever have complete agreement, but the central capabilities provide the political principles underlying a national constitution based on an 'overlapping consensus'. The practical implementation would then have to be negotiated through the democratic political process (Nussbaum 2000c).

7.2.3 Capabilities and functioning

The aim Nussbaum articulates is to provide every person with the real opportunity to realise their full human capabilities but not to insist that everyone *must* exercise all human capabilities.¹⁵³ This ensures that people have the freedom to live the lives that they have reason to value. In this way, Nussbaum argues, the risk of paternalism is avoided.¹⁵⁴ Consider Nussbaum's example of policies concerning women, employment and care work:

... a policy aimed at urging all women to seek employment outside the home will be very different from a policy that aims at giving all women the choice to work outside the home or not to do so. Both policies will need to protect women from discrimination in employment and from intimidation and harassment in the employment process. But the latter, unlike the former, will also need to attend to the social meaning of domestic labor, promoting a sense that a traditional domestic life is worthwhile and consistent with human dignity; it will also need to make such choices economically feasible for women, and not unduly risky, by attending to the economic value of domestic labor when calculating settlement after divorce. (Nussbaum 2001b, p. 131)

For Nussbaum (2000c, 2011b), aiming for capability is a matter of respect for people and the choices they make. Even in situations where we feel sure of what constitutes a flourishing life, we do not respect people if we order them to function in specific ways. Instead we should present our arguments in support of our conception of the good and then leave the choice up to the individual. Nussbaum argues that many people would be willing to support a particular capability as a fundamental entitlement but would feel violated if the associated functioning were to be made mandatory (Nussbaum 2006). For adult citizens, the appropriate goal is capability not functioning. This is because of the importance the approach attaches to practical reason as a good in itself and as a good that 'suffuses all other functions, making them human rather than animal' (Nussbaum 2000c, p. 87).

It is perfectly true that functionings, not simply capabilities, are what renders a life fully human, in the sense that if there was no functioning of any kind in a life, we could hardly applaud it, no matter what opportunities it contained. Nonetheless, for political purposes it is appropriate that we shoot for capabilities, and those alone. Citizens must be left free to determine their own course after that. (Nussbaum 2000c, p. 87)

It is, in part, for this reason that Nussbaum (2000c, pp. 76-77) states that her list is not exhaustive. It should not be taken as a complete specification of what is required for a worthwhile life but instead provides a partial conception of the good. This is not the case with some other decedents of Aristotle's thinking on functioning. According to Nussbaum,

¹⁵³ This distinction draws of Aristotle's notions of human capability or potentiality/power (*dunamis*) and functioning or act/actuality (*energia*), which he used by to explain the goals of good political organisation (Nussbaum 1997a, p. 275).

¹⁵⁴ Similarly, Sen favours the broader focus on capabilities rather than a narrower focus on actual achievements because of the importance he places on freedom. He argues that the capability approach draws attention to the ability of people to choose different lives and not simply on the result of that choice (Sen 2009, pp. 236-38).

Marxist Aristotelianism and some forms of natural law theory (e.g. Finnis 1980; George 1993) consider that people who neglect one of the items on the Aristotelian list or devote themselves to something not on that list do not live fully complete lives. However, her view does not preclude critical evaluation of the choices people make. Like John Stuart Mill (2006 (1859 and 1869)), she argues that some lives are better than others while at the same time she preserves the right for people to choose a lesser alternative.

If people are to have any real opportunity to choose functioning, they require a supportive material and institutional environment. It is not enough to simply refrain from interfering (Nussbaum 2003a).¹⁵⁵ A society should aim to provide the social basis of natural goods. The capabilities approach speaks out against genital mutilation because it deprives women of the opportunity to enjoy sexual pleasure. A person who has the opportunity to play may choose a workaholic lifestyle, although they may have little or no choice not to be a workaholic if there is inadequate regulation of working hours and pay. There are also many mothers with no option other than long hours of work because of the 'double shift' (Nussbaum 2000c).

Nussbaum provides a secondary argument in support of setting the goal as capability, stating that if people are not able to choose, what they actually do may not have the same value and may constitute a different set of functionings. As Nussbaum explains, 'play is not play if it is enforced, love is not love if it is commanded' (Nussbaum 2000c, p. 88). The primary argument is based on respect, but this secondary argument may help persuade perfectionist critics that we should value choice.

The capabilities/functioning distinction allows individuals a degree of freedom in choosing a meaningful life. However, the problem is that capabilities and functionings are sometimes intertwined. Lack of opportunities and the experience of discrimination often stunt our expectations and lower our sights. There are times when we need to achieve functioning in some areas in order to guarantee capability in others. For example, without a basic level of education it is often difficult to find the sort of employment that enables bodily integrity.

A common critique of the capabilities approach from an egalitarian perspective concerns whether the goal should be set as capability or functioning. This dispute continues a much longer discussion on whether egalitarians should aim for equality of opportunity or equality of outcome. Sen points out that it is important to consider the outcome- or achievement-based critique of the capabilities approach because it is a critique that resonates with many people (Sen 2009). Critics include Gerald Cohen (1993), who questions whether individuals have real choice. Therefore, he argues, the focus must be on outcomes rather than opportunities. While Ingrid Robeyns (2003c, p. 86) upholds the goal of capability, she is also concerned about the extent to which we are restricted and shaped by coercive social practices. Marc Fleurbaey (2002, p. 74) considers that it is both unnecessary and dangerous to prioritise capability and that a concern with freedom is not incompatible with a focus on functioning. Although Jonathon Wolff and Avner de-Shalit (2007) do not favour setting functioning as the sole measure of well-being, they question whether the distinction between capabilities and functioning is very clear. They hold that

¹⁵⁵ According to Nussbaum (2011b, p. 65): 'The very idea of "negative liberty," often heard in this connection, is an incoherent idea: all liberties are positive, meaning liberties *to do* and *to be* something; and all require the inhibition of interference by others.' This point is particularly relevant to politics in the United States.

the distinction between the individual who lacks an opportunity and the individual who has the opportunity and does not make use of it to be politically more significant than the distinction between capability and functioning (Wolff & de-Shalit 2007, p. 76). Richard Arneson (1989, 2000), Paul Streeten (1981) and Frances Stewart (1985) also express their reservations about setting capability as the goal of capability, each, in different ways, seeking a focus on outcomes.

It is important to note that, while Nussbaum states that in general we should aim for capability, she makes a number of qualifications. First, we may need to require some types of functioning in children in order to produce adults who have all the capabilities, a point also made by Nancy Folbre (2008, p. 1; 2010, p. 95). In order to develop the capabilities of adults, Nussbaum (2000c, 2006) supports compulsory education and compulsory health care. However, this sort of coercive treatment of children needs to be justified in terms of the goal of developing a full set of capabilities (Nussbaum 1997a).

Questioning the sharpness of the distinction between equality of opportunity and equality of outcome, Folbre (2008, p. 41) makes an additional point arguing that 'equality of outcome for one generation shapes equality of opportunity for the next'. Children's ability and motivation to develop their capabilities is stunted by both types of inequality. Richard Wilkinson and Kate Pickett (2009, especially chapter 12) found that the more unequal the society, the more likely it is that poverty will be reproduced across the generations. By way of contrast, the accumulation of advantage across generations is something that Friedrich Hayek (1972 (1960)) accepted on consequentialist grounds, arguing that it often takes several generations to build capacity, and the presence of highly skilled individuals in our society will ultimately benefit all of us, regardless of the inequality. However, the evidence indicates that the supposed benefits of inequality are illusory, with inequality harming the well-being of all members of a society, even the more privileged (Wilkinson & Pickett 2009). It is also unjust.

This leads to Nussbaum's second qualification. Even with adults, there are some cases in which we might promote functioning rather than capability, most particularly in the case of self-respect and dignity but also in the areas of health and safety. Nussbaum argues that we may also be justified in insisting that all citizens show 'some forms of functioning that manifest care for others' (Nussbaum 2000c, p. 92). She gives the examples of paying one's taxes and obeying the law. There are other instances where people are unable to make choices about important aspects of their lives. People with mental impairments may not be able to assess the risk of a job, consent to sexual relations or make choices about their health care. In these cases functioning rather than capability is the appropriate goal (Nussbaum 2006). However, our obligations are more extensive and should also include providing or arranging direct care for close family members, looking out for neighbours and other members of our community and, where possible, distant strangers.¹⁵⁶

Finally, Nussbaum qualifies setting capability rather than functioning as the political goal insofar as it is sometimes evident that the absence of function indicates that the capability is not really available. This is particularly when there has been a history of persistent and entrenched discrimination (Nussbaum 2000c, pp. 93-95; see also Phillips 2004; Robeyns 2003c, p. 76; Sen 2009, p. 236). Feminists have long focused on outcomes, partly in response to the commonly expressed view that the two sexes are equal but different,

¹⁵⁶ The sort of responsibilities I have in mind are justified by, for example, Peter Singer (2009, chapter 2) and Adam Smith (1976 (1759-90), pp. 135-38).

which explains and justifies the differences in men's and women's lives. Many feminists agree that equality of opportunity is a chimera if it is unable to generate equality of outcome in important aspects of life (Phillips 2004). The difficulty of assessing capabilities is reflected in the data (e.g. on sex-based inequality), which mostly concerns functioning (Robeyns 2003c, p. 76). Both Anne Phillips (2004) and Robeyns (2003c, p. 76) argue that the key measure of equality of opportunity is equality of outcome. When we find that the outcomes for different social groups are different, the most likely explanation is that their opportunities were different. Phillips concedes that when we compare individuals it is more difficult to define equality as equality of outcome. However, justified inequalities resulting from individual choices are far less significant than is commonly assumed. Phillips (2004, p. 6) also offers the stronger argument that, in some cases, equality of outcome is in itself an intrinsic good.

I agree with Nussbaum that it would be too restrictive to specify functioning as the political goal for all aspects of life, but some capabilities are so central to flourishing that it is difficult to imagine that they should be available but not actualised. Nussbaum (1997a) argues that, although capability should be the political goal, governments should pay close attention to the levels of achieved functioning. We need to pay careful attention to the lives individuals are actually able to live and critically examine the factors that result in different outcomes.

Another problem with choice-based approaches is that people who have benefitted from discrimination may find it difficult to make choices that involve a reduction in power and privilege. They may find it difficult to understand why they should act to affirm equality and may see requests that they do so as an infringement of their liberties. Nussbaum makes the important point that women's equality is not possible without limiting men's freedoms. While Nussbaum considers freedom to be important she does not consider that all freedoms are socially desirable:

Some freedoms involve basic social entitlements, and others do not. Some lie at the heart of a view of political justice, and others do not. Among the ones that do not lie at the core, some are simply less important, but others may be positively bad. (Nussbaum 2003a, p. 44)

Sen prioritises choice over addressing inequality (Walby 2009). According to Nussbaum (2003b, p. 417), Sen has a tendency to identify 'freedom as a general all-purpose human good, and of capabilities as all instances of this general good of freedom'. Nussbaum, (2000c) argues that where barriers have been created by persistent inequality the use of special measures to encourage functioning may be justified, such as creating special jobs or programmes for women or people from ethnic or class backgrounds that have been traditionally under-represented in a given area of employment (see also Sen 2009, p. 236). However, Nussbaum does not endorse enforcing equal divisions of labour in the home, although she does support projects to reshape the capabilities of men. She considers rethinking the division of work to be critical if we are to ensure that women have full equality as citizens (Nussbaum 2000c, pp. 281, 283). The extent to which we shift from the goal of functioning should be the subject of debate within the democratic process. While Nussbaum states that the capabilities approach is designed to appeal to people with different metaphysical and religious beliefs, it makes a number of strong normative claims, including support for the view that women are suited to a broad range of social, political and economic roles. This is something Nussbaum says that Rawls would not accept because it promotes a particular concept of the good (Nussbaum 2000c, pp. 282-83).

Phillips (2006), however, questions whether it is possible to stretch equality of opportunity to overcome entrenched injustice. Measures to counter the effects of social inequality transform equality of opportunity into something very close to equality of outcome. The danger is that, in order to compensate for adaptive preference formation, we risk failing to acknowledge individual agency. Phillips argues that egalitarians must therefore either embrace a minimal conception of equal opportunity, one that most will find unsatisfactory, or abandon the goal of equality of opportunity altogether. Although Phillips does not make a clear alternative proposal, she advocates breaking with equality of opportunity for three reasons. First, equality of opportunity is mean-minded, setting up a race that most people will lose. Secondly, while there is broad support for formal equality, no government will advocate measures to neutralise social inequality fully.¹⁵⁷ Finally, even if it were possible to deliver equality of opportunity, this would not necessarily remove unjust differences in the status and financial rewards associated with different types of activities.

Concerns about the sharpness of the capability/functioning distinction and the strategy of setting capability as the political goal present a challenge for the capability approach, one that remains unresolved. However, in order to assess whether an individual really has the opportunity to function it is helpful to consider the three types of capabilities described by Nussbaum.

7.2.4 Types of capabilities

Nussbaum distinguishes between different types of capabilities. First, there are the basic capabilities that describe the innate abilities of human beings such as seeing and hearing. They also include the capacities that are developed as the child grows, for example speech, love and practical reason. Basic capabilities provide the foundations for developing more advanced capabilities. Second are internal capabilities, or the states of the person that allow them to function. A woman raised to consider herself inferior to men is likely to lack the internal capability for education. Finally, there are combined capabilities, which integrate the internal state with the external circumstances (Nussbaum 2000c, 2001b, 2011b). To use Nussbaum's example, a woman who has some education but is threatened with violence should she leave the home and seek employment, has the internal but not the combined capabilities for employment.

The distinction between internal and combined capabilities is not sharp. To develop an internal capability we usually need a supportive external environment, and often we need to practise the actual function. However, Nussbaum (2000c, p. 85) argues that the distinction is important because 'even a highly trained capability can be thwarted. An abrupt change in social environment or in an individual's marital status can introduce new restrictions. Distinguishing between internal and combined capabilities also helps us to assess the merits of different social policies. As Nussbaum, explains, a policy designed to enable people to achieve the internal state to function (internal capabilities) is different from one that also aims to improve the external circumstances:

A policy aimed at women's internal capability for employment outside the home would need to focus only on education and skills training; policy aimed at the

¹⁵⁷ For example, no government would seek to neutralise the effects of social background by banning educated parents from reading to their children (Phillips 2006, p.23; drawing on Swift 2003). However, governments may provide additional resources to support the education of children who have little or no contact with books outside their school.

combined capability would need to focus, as well, on non-discrimination in hiring, on sexual harassment, and on protecting women from threat and intimidation from members of their own family (Nussbaum 2001b, p. 132).

Yet, a social environment hostile to the aspirations of women makes it difficult for many women to obtain a decent level of education and training. Nussbaum recognises that, in situations of lifelong deprivation, it is not so easy to distinguish between internal and combined capabilities because persistent deprivation so often strips people of their internal capacity to function (Nussbaum 2000c, p. 85).

Nussbaum establishes the political goal as combined capabilities, and her list is a list of combined capabilities. This stresses the importance of the material and social conditions required for internal capabilities to be developed and, once developed, to be expressed. This also emphasises that the liberties and opportunities expressed in the capabilities list are not to be understood in a purely formal way (Nussbaum 1997c, 2000c, 2001b, 2011b).¹⁵⁸

7.2.5 Threshold

Another important feature of Nussbaum's capability approach is the idea that, for each capability, there is a threshold of capability (not functioning) which defines the level below which a person cannot be thought to be living a fully human life. Her philosophical account specifies the threshold only in a general way. This is because the threshold may be set at a different level in different societies to reflect their particular histories and circumstances. Nussbaum gives the example of free speech, which may be understood differently in the US and Germany, the latter having good reason for strict prohibition of anti-Semitic speech. However, she considers that the differences would be at the margins. The number of years of free schooling may vary with the type of economy and employment conditions, but they should not vary as much as they do within and across nations (Nussbaum 2006, 2011a).

The social goal is to get every person above the capability threshold. There is a failure of justice if a person falls below the threshold on one of the capabilities, even if they are very high on other capabilities. Nussbaum makes it clear that all capabilities are important and that it is not possible to argue that some should be settled before others. However, like Rawls, Nussbaum holds that 'some entitlements must be distributed on the basis of strict equality, whereas for others (more narrowly economic in nature) adequacy is what we are after' (Nussbaum 2006, p. 179). She argues that there are some areas where we would not tolerate inequality: self respect and non-humiliation as well as civil, political and religious liberties. These can only be adequately secured if equally secured. However, Nussbaum holds that it is different with capabilities associated with property and instrumental goods, capabilities which do not have the same intrinsic relationship to dignity. In these cases, enough rather than equality is appropriate. For example, people need adequate shelter but we do not need to insist on strict equality in the types of homes each person has.

On the other hand, Nussbaum argues that we should not tolerate material inequalities in education and health. For example, she considers that we require something close to

¹⁵⁸ According to Nussbaum (2001b, p. 131) this corresponds to Rawls's focus on 'the equal worth of liberty' and 'truly fair equality of opportunity', and not the thinner notions of 'formal equal liberty' and 'formal equality of opportunity'.

equality for primary and secondary education or, at least, a very high minimum with the possibility for variations in areas not firmly connected to basic opportunities and political participation. However, societies need to determine whether they should accept inequalities in higher education and non-essential health care. What constitutes essential health care is not always straightforward. Basic dental work, particularly addressing decay would clearly be essential. Some orthodontic work is cosmetic and so may not be classified as essential, and yet the condition of an individual's teeth can influence how that person is perceived. Australia has a small, stretched public dental health programme, and teeth thereby become an indicator of wealth and social class. We should also be concerned about inequalities in higher education, given shrinking opportunities for secure employment available to people without some sort of tertiary level qualification.¹⁵⁹

Nussbaum's point is that provision above an absolute minimum needs to be determined through public deliberation. While some nations and individuals will prefer equality for all capabilities, Nussbaum considers that we are more likely to achieve overlapping consensus if we do not insist on equality in all of the central capabilities, particularly given the transfers of wealth required (Nussbaum 2006, p. 295). When thinking about the minimum requirements for a dignified life, the question of cost is also often raised. It can be expensive to provide the level of support necessary for people with severe impairments to come up to a high level of functioning. It may also be expensive to start reversing the damage caused by a history of discrimination. Nussbaum argues against setting different thresholds (or different capability lists) for people with impairments because it provides the state with an easy way out of meeting its obligations. That is, although we should not set the threshold at unrealistically high levels, nor should we set the threshold too low (Nussbaum 2006).

7.3 Nussbaum's list of 10 central human capabilities

At the centre of Nussbaum's approach is her list of central human capabilities. In this next section I will consider each of these capabilities, focusing on three things. First is the nature of the capability, second is what it might mean not to choose functioning and, finally, what the threshold might look like.¹⁶⁰ In doing so, I raise a number of problems to address. Nussbaum's list has evolved, although the differences between more recent iterations are minor. I refer to the capabilities list taken from *Frontiers of Justice* (2006) because it elaborates a number of points in a way I consider helpful.¹⁶¹

¹⁵⁹ There is concern about the development of a two tier system in higher education e.g. (e.g. Marginson 2006) with manifest inequalities and resource distribution between Australian Universities (Bowden & Doughney forthcoming).

¹⁶⁰ In assessing the nature of each capability, I consider whether elements form part of another capability whether the capabilities are intrinsically or instrumentally valuable (see Alkire & Black 1997, p. 269). I find that all 10 capabilities have both intrinsic and instrumental value, but that it is more helpful to express this in terms of the relationships between the capabilities.

¹⁶¹ See Appendices A to C.

7.3.1 Life

Life. Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living (Nussbaum 2006, p. 76).

This is a most basic capability, one that underpins and at the same time is underpinned by many other capabilities. In order to live a life of normal length we need access to essential goods such as food and shelter and the absence of the sorts of harms that cause poor health and premature death. We need, at the very least, a healthy environment with clean air, water and soil; access to good health care that prevents illness if possible, and, if illness is not preventable, timely and effective treatment; a safe community in which we are free from the risk of violent attacks or preventable accidents; and dignified work that provides the resources needed to sustain a human life.

There are circumstances in which people do not have the ability to live a life of normal length. For example, some children are born with medical conditions that mean they will never reach adulthood. Although a life of a normal length is not an option, these children and others in a similar position must be treated with dignity. They should receive the care they need to ensure that they remain as healthy as possible and do not suffer unnecessary pain, elements of the capability of bodily health. Some conditions are the result of exposure to toxic chemicals, pollution or medicines, and this raises the question of our social responsibility to prevent contamination of the environment.

How is it possible to distinguish between capability and functioning when it comes to life? A person who is terminally ill may seek to die rather than to continue to suffer, but this is another matter altogether. Suicide is often linked to an underlying mental illness or trauma, as in the case of the Italian Jewish chemist and writer, Primo Levi. In many cases treatment is possible. In others it is not, as is evident from Anne Deveson's (1998, 2003) account of her son Jonathon's experience of schizophrenia. There is, however, hope that the way such illness can be managed will improve and with it the life-capability of the person affected. No one who chooses to live rationally could rationally choose a level of functioning lower than that available to them. In other words, no one would exercise their life-capability in such a way as rationally to choose more suffering over less suffering. (The word rational is to leave aside harmful addictive behaviours, for example.) Life-capability and life-functioning are, for most intents, coextensive. Choosing not to live is choosing not to have the life-capability at all (i.e. to forgo it). This is what makes suicide so different from, for example, not exercising one's capability for religious freedom.

The threshold for the life-capability would need to specify basic conditions of employment, good universal health care, and a just society that provides every citizen with real opportunities for flourishing. It certainly goes much further than preventing murder and assault and providing minimal health care, education and access to resources.

7.3.2 Bodily health

Bodily Health. Being able to have good health, including reproductive health; to be adequately nourished, to have adequate shelter (Nussbaum 2006, 2006, p. 76).

The second capability is closely linked with the first. As with life, the capability of bodily health also involves both entitlements to goods and services – primarily the availability of good food, clean water, universal health care (preventative and treatment-orientated) and

appropriate shelter – as well as freedom from harms caused by environmental degradation, dangerous work, high levels of violence and extreme poverty.

The importance of bodily health is reflected in debates on the extent to which societies can and should determine the health of their citizens. One extreme view, already mentioned, is that universal health care – funded through taxation – is an infringement of the individual's right to choose. In addition, the state may mandate certain behaviour in order to promote the health of its citizens, such as the wearing of seat belts in cars and helmets on bicycles and motor cycles. In other cases, the emphasis is on health programmes designed to encourage a healthy lifestyle. This includes the promotion of exercise, healthy eating and social engagement and as education about the dangers of smoking and excessive alcohol intake. Preventative health programmes such as these are generally well supported, although libertarians will deride them as evidence of the 'nanny state' (e.g. Roskam 2008; Wilson 2009). Cass Sunstein and Richard Thaler (2008; 2003) argue that it is possible to 'nudge' people towards decisions and behaviours that are in their longer-term interests and still protect freedom, mainly through the opportunity to opt out.

Richard Arneson (2000) takes a much stronger position, arguing that societies should promote actual health as the social goal and not just the capability for living a healthy life. Nussbaum disagrees. She does not support banning unhealthy activities such as 'boxing, unsafe sex, football and smoking', although she supports education campaigns that highlight the risks involved. She does agree with restrictions on activities that inflict harm on others, such as failing to disclose HIV status to a sexual partner. Nussbaum argues that people should be given the opportunity to lead healthy lives, but they should not be penalised for making unhealthy choices (Nussbaum 2000a; 2006, pp. 8, 172). However it is not so easy to find examples where harm is confined to the individual. Take the example of smoking tobacco. Non-smokers suffer the effects of passive smoking, and the cost of treating conditions caused by smoking (passive and active) are in part shared by the community. To further complicate the matter, in wealthy countries such as Australia, unhealthy activities such as smoking are more common among the relatively poor and disadvantaged. On the other hand, prohibition can increase the dangers and, in some cases, the allure associated with banned activities.

Sen (2001) raises an interesting question about the extent to which we need to compensate for differences in functioning. In countries like the UK, life expectancy at birth is higher for women than it is for men. Sen argues that it would be morally unacceptable to reduce the level of health care available to women in order to redress the imbalance. Robeyns suggests that we might introduce measures to combat social causes of men's lower life expectancy, such as higher rates of suicide and high risk behaviour. She also states that it could be argued that intrinsic differences between men and women should be regarded as ethically irrelevant (Robeyns 2003c, p. 77). A major difference between men and women is the capacity to bear children. At one level this should be ethically irrelevant in that this capacity should not affect the moral value of the individual. At another level, women, often including those who do not have children themselves, will be disadvantaged if no account is taken of pregnancy, birth and breast-feeding.

Consideration of the appropriate threshold also raises difficult questions. For example, Nussbaum (2006, p. 293) argues that equal dignity requires that everyone has an adequate house or shelter but does not require equality in housing. She concedes that the case is not clear, referring to Adam Smith's observation that what is compatible with human dignity

may be specific to a particular society.¹⁶² The impact of differences in the size, quality and grandeur of houses may in part be due to feelings of envy and competition, and a just society may decide not to honor valuations that place a heavy emphasis on material goods. However, inequality is damaging (Wilkinson & Pickett 2009). Nussbaum leaves this as something that individual societies need to resolve through public deliberation, undoubtedly true but somewhat unsatisfying.

7.3.3 Bodily integrity

Bodily Integrity. Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction (Nussbaum 2006, 2006, p. 76).

Like the first two capabilities, the capability of bodily integrity concerns our most basic needs. This third capability involves both freedom (in the areas of movement, sexual satisfaction and reproduction) as well the absence of harm (from violence and sexual assault). This capability is of particular importance to women, with so many still denied the opportunities entailed. It makes it clear that each individual is an end and not a plaything or punching bag for others.

It is difficult to imagine how an individual could not seek to realise important aspects of this capability. A nun or monk may choose a cloistered life and commit to a life of celibacy, but is it conceivable that a person of sound mind would freely choose not to be secure against violence or sexual assault? Choice in matters of reproduction is a different matter. There will be some who, for religious reasons, will not make use of options such as contraception and abortion, although questions of their internal capacity to choose freely may arise.

The threshold would involve laws against violence and sexual assault. However, if the capability is to be available, the individual would need to live in a culture in which violence and sexual assault were identified and understood to be harmful and wrong. Victims of crime would be treated with respect by police and the judiciary. They would have the real opportunity to report the crime, to know that it would be investigated with a reasonable chance of successful conviction. For example, a woman reporting a rape should not need to fear ostracism or conviction of the crime of adultery. There is the risk that some communities will insist on formal rights without any of the measures that make those rights meaningful, thereby setting the threshold too low.

I have stated that the first three capabilities concern our most basic needs, an idea that warrants further consideration. Nussbaum stresses that all the capabilities are equally important. Having one capability at a very high threshold does not compensate for the absence of another. However, Nussbaum also acknowledges important differences between groups of capabilities. For example, as already discussed, she distinguishes between capabilities for which strict equality is essential and others for which she argues that enough is sufficient. Nussbaum identifies two capabilities, practical reason and affiliation, as being particularly important because 'they both organize and suffuse all the others, making their pursuit truly human' (Nussbaum 2000c, p. 82). Len Doyal and Ian

¹⁶² Both Nussbaum (2006, p. 293) and Sen (1984, p. 335) use Smith's (1937 (1776), p. 517) example of the importance of a linen shirt to a man living in 18th century Europe.

Gough (1991, p. 49) identified physical health and personal autonomy as the most basic human needs, as we have to be both healthy enough to survive and able to make decisions about our lives (see also Dean 2009, p. 264).

If capabilities are ranked there is a risk that trade-offs will be made, such as trading the natural environment or political freedoms for short-term material wealth. There is some intuitive sense to the idea that some needs are more fundamental than are others, but this does not account for the complexity of our requirements nor for the interconnection between different types of needs. For example, the Indonesian writer Pramoedya Ananta Toer experienced terrible physical deprivation while imprisoned by the Suharto government, yet, as his prison writings reveal, this did not stop him from railing against injustice, longing for contact with his family and reflecting on the value of his work as a writer (Toer 2000). When taking action it makes sense first to ensure that food and shelter is available and a person can feel safe from violence, but the pressing nature of other needs should not be forgotten.

The capabilities of life, bodily health and bodily integrity refer to our most basic needs. However, they are not of the same order. The capability of life depends to a large degree on the capabilities of bodily health and bodily integrity. Without the latter, the former would not be available. In other words, to have life is to have the emergent properties of bodily health and bodily integrity.

7.3.4 Senses, imagination and thought

Senses, Imagination, and Thought. Being able to use the senses, to imagine, think, and reason – and to do these things in a ‘truly human’ way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing self-expressive works and events of one’s own choice, religious, literary, musical, and so forth. Being able to use one’s mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to search for the ultimate meaning of life in one’s own way. Being able to have pleasurable experiences, and to avoid nonbeneficial pain. (Nussbaum 2006, p. 76)

The fourth capability, ‘senses, imagination and thought’, involves both individual capacity and freedom from various forms of coercion. Our ability to use our senses, imagine, think and reason requires support, first by cultivation through education but also by having the time and energy as well as the opportunity to engage in meaningful activities. This capability includes freedom of expression, protected by guarantees of political and religious freedom and the ability for each of us to determine the meaning of our lives. There are limits to freedoms of expression. An individual should not have the freedom to incite hatred against a particular ethnic group nor to advocate that homosexual relationships are evil. Although legislation can be introduced to make it illegal to act on prejudices, it is often more difficult to eradicate the views themselves. Education and opportunities to meet people who are different can help. Limits to our freedoms can be established by thinking about what impinges on the freedoms of others.

Being able to have pleasurable experiences requires favourable conditions so that the freedoms are actually available. However, individual capacity, in the sense of understanding that pleasurable experiences are not inappropriate or even immoral, is also

required. Consider, for example, the view expressed by the adage 'a woman's work is never done'.

People might choose not to imagine, think and reason at a level consistent with a fully human life. Yet, if this is the case, will they be able to sustain the internal capacity necessary for the capability to exist? It is not a matter of an on/off switch. Our ability to think, reason and use our imagination is shaped by the experience of these forms of engagement. It is not clear that these aspects of this capability exist if there is no evidence of functioning.

An important part of the threshold would be the requirement that every individual has access to a reasonable level of education. What that level might be is likely to be controversial. We might argue that a person should have the option of achieving the level of education required in order to function as a member of their society. In many ways this makes sense given that the opportunities and the availability of resources are different in different societies. However, the danger is that the threshold will be very different in India than in France. Given increasing global mobility this is very difficult to justify. The nature and content of education is also a matter of ongoing debate. However, the capabilities approach points to a broad education that develops critical thinking and empathy and not a narrow instrumentalist programme of study (Nussbaum 2010).

7.3.5 Emotions

Emotions. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by overwhelming fear and anxiety, or by traumatic events of abuse or neglect. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development). (Nussbaum 2006, pp. 76-77)

This capability mostly involves individual capacity, in this case both our ability to form relationships as well as our ability to experience and understand our emotions. In order to develop this capacity we need to experience loving relationships and have the opportunity for healthy emotional development. There is also an aspect of freedom, specifically the freedom to form and maintain important relationships. 'Emotions' seems too narrow a term to capture all the ideas intended by Nussbaum in this capability, which also covers emotional health and stresses the importance of our connectedness. It is through nurturing relationships that we develop our capacity to experience the full range of healthy emotions, and a rich emotional life involves our connections to others. While relationships can be nurturing, they can also be destructive. For this reason they need to be seen as enabling rather than as ends in themselves.

The term 'emotions' does not denote the same type of thing as 'life', 'bodily health' or 'bodily integrity'. In this sense it is more similar to 'senses, imagination, and thought' and 'practical reason'. 'Emotional health' would describe something similar to the first three capabilities, and it would also point to our attachments. The other problem with this capability is what it leaves out. It includes being able to love those who care for us but neglects the ability to care for others, particularly those whom we love. This idea is partially but incompletely present in the capability 'affiliation'. Nevertheless, it needs to be made explicit because healthy emotional development depends on us both receiving good

care and being able and willing to care for others. In turn, care involves many emotions, primarily compassion and empathy and usually a type of love.

Nuno Martins (2007b, pp. 266-68) draws on neurologist Antonio Damásio's (1994) distinction between primary and secondary emotions. According to Damásio, primary emotions include fear, anger, happiness, sadness, surprise and disgust. They occur in the specific parts of the brain such as the amygdala or the cingulate cortex and are universal to all humans without neurobiological damage. Secondary emotions, on the other hand, include sympathy, compassion, embarrassment, shame, guilt, pride, jealousy, envy and gratitude. These draw on primary emotions but also use the parts of the brain involved in social categorisation and so are much more dependent on social environment and previous experiences. According to Martins, we can make universal claims only at the level influenced by neuropsychology and not at the level of social functionings that vary over time and across place. Martins holds that this means that we need to consider underlying biological and social structures in order to establish which emotions form part of a central human capability. Linking capabilities to underlying structures is helpful to understand the nature of the capability and, therefore, how it can be made available. It also helps to distinguish between the universal and the particular, although many aspects of life involve elements of both. Our need to form attachments with others is comprehensible across time and place, but the form of those relationships may vary significantly.

As with the previous capability, it is difficult to imagine that a person has the capability if they do not choose at least some aspects of functioning. We learn through forming attachments and experiencing a range of emotions. Nussbaum concedes that there are conceptual difficulties with thinking about capability and functioning in the areas of emotional health and practical reason. However, she states:

I believe that in principle the right to promote the opportunity to plan a life for oneself, and to achieve emotional health, but not to preclude choices citizens may make to lead lives that inspire fear or involve deference to authority (Nussbaum 2006, p. 172).

The threshold for this capability is difficult to determine, although it would include measures to prevent abuse and neglect; support for parents, carers and teachers to help them raise emotionally healthy children; and the availability of decent employment that supports a dignified life and allows individuals to sustain significant relationships. It is also important to support people who have been abused or whose emotional health has been compromised.

7.3.6 Practical reason

Practical reason. Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance) (Nussbaum 2006, p. 77).

Nussbaum considers two capabilities, practical reason and affiliation, to be particularly important, although this does not mean that all other capabilities can be reduced to them. Practical reason and affiliation are important because:

... they both organize and suffuse all the others, making their pursuit truly human. To use one's senses in a way not infused by the characteristically human use of

thought and planning is to use them in an incompletely human manner (Nussbaum 2000c, p. 82).

Political liberty or freedom Nussbaum also considers to be important, and should not be compromised in order to meet economic needs. However, she argues that she does not give liberty the same priority as Sen does. As already mentioned, Nussbaum considers that some male freedoms will need to be abolished to achieve justice for women (Nussbaum 2000c, p. 12).

The main focus of the capability of practical reason is an individual's internal capacity, although this capacity is protected by freedom of conscience as well as by political and religious freedoms. The ability to engage in critical reflection about the planning of one's life or about anything else that requires cultivation. However, is it enough to be able to form a conception of the good and to think about planning one's life? Is it not also important to be able to enact that plan and live in accordance with one's concept of the good? It is not clear that the ability to live the life an individual has reason to value is described by this capability, nor is it adequately captured by the other nine.

As with the previous two capabilities, it is hard to imagine that the capability of 'practical reason' exists, even in the more narrow form of planning and reflecting, if it is not practised. As mentioned earlier, Nussbaum (2006) recognises that there are difficulties in thinking about capability and functioning in this area, despite her maintaining that the distinction is still important.

What is the threshold below which a person cannot be considered to live a meaningful life? The ability to think critically, developed through education, is essential. Barbara Ehrenreich's (2009) examination of positive-thinking in the United States reveals some of the disastrous consequences if rational thought is undermined or neglected. The capacity to form a plan is not sufficient: individuals also need to appreciate that they are entitled to do so. It is only possible to develop this self-conception in a society based on respect. Taking the example of work, Nussbaum (2000c, p. 82) argues it must be structured so that people can operate as thinking beings not robots. Further, it must involve the mutual recognition of people's humanity. Nussbaum notes that, under current conditions, women's work is less likely to have these characteristics than does men's work. Promoting this capability also entails protecting civil, political and religious freedoms.

7.3.7 Affiliation

Affiliation.

A. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another and to have compassion for that situation; to have the capability for both justice and friendship. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)

B. Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails, at a minimum, protection against discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin. (Nussbaum 2006, p. 77)

The first part of this capability is about our sociability. It primarily involves the capacity to form relationships based on the important emotions of compassion and empathy, although it is also supported by political freedoms. Our ability to form and sustain different types of relationships depends on our emotional development. Nussbaum stresses the importance of institutions that support affiliation. This includes social arrangements that have the potential to sustain rather than erode our connectedness. An extreme example of a situation corrosive to family and community relationships was the homelands system in apartheid South Africa. Important to our development as fully human adults is the care we receive as babies and children, care provided by our parents, other carers, teachers, friends and family members. As I stated in my discussion of the capability of emotion, this capability list does not adequately stress the importance of caring relationships, in particular the ability to provide respectful care as well as to receive the care each of us needs at different points in our lives.

While some people are more sociable than are others, spending more time in the company of others, immersed in more extensive networks of friends and family, it is not really possible to choose not to function against this element of the capability. It is only through forming and sustaining relationships that we develop the capability of sociability. Even if it were possible to withdraw totally from the people around us, this action would harm others. A simple example is that of Geoff Dixon, the former chief executive of Australian airline Qantas, who made it very clear he did not wish to engage with cabin crew when he flew with the airline, a behaviour that badly effected staff (Cadzow 2010). A more difficult question is whether we can expect people with various conditions in the autism spectrum to develop this capability fully. It is clear that many people with such conditions do engage with others at some level, and various programmes have been successful in improving their social skills. It is not unreasonable to expect that people will form and sustain relationships and should be supported in doing so. However, we must also recognise that this will be very challenging for some individuals.

The second part of the capability concerns the conditions required for a person to be able to live with dignity. This primarily involves social supports rather than individual capacity, although the two are interlinked. Our sense of self-worth and confidence inevitably is shaped by the messages we receive from our society. Individuals are not treated as dignified beings of equal worth if they experience discrimination on the basis of sex, race, ethnicity, class or sexuality.

What does it mean to choose not to actualise this capability? Nussbaum bases the capabilities approach on the natural law idea of the dignity and sociability of human beings. How then is it possible to choose not to develop one's capacity to live with others, to feel empathy and show compassion or decide not to treat yourself or others with dignity? This is not like Sen's (1993, p. 45) example of the rich person fasting, an individual decision with little impact on the lives of others (beyond family members, friends and colleagues needing to deal with some hunger related crankiness). However, if people choose not to be empathetic or feel compassion or decide that they do not wish to be treated as dignified beings of equal value (although I am not sure that it is possible to choose this freely), then this is not simply a matter of the impact on these individuals. There are profound consequences for others. While some people have a limited ability to form and sustain relationships because they have autism spectrum disorders or have suffered abuse, these are examples of impeded capability rather than the decision not to function.

For such reasons, there is one area where Nussbaum argues that the aim of public policy should be actual functioning: self respect and dignity. She states that our political principles should offer respect to all citizens and that there should be no opportunity for individuals to choose anything other than respect (Nussbaum 2006, pp. 172).

The more obvious and tangible part of the threshold involves the provision of protection against discrimination. This might involve legislation deeming discrimination illegal combined with education campaigns to promote understanding and build empathy. Just as important, however, are the social conditions supporting the development of compassionate and empathetic individuals who have the capacity to love, form friendships, care for family members and friends and feel real concern for more distant strangers. These social conditions entail a just society in which each individual is considered to have intrinsic rather than instrumental value. The implications of this are significant, including justice within the family, education that develops different types of students and the availability of dignified non-exploitative work.

7.3.8 Other species

Other Species. Being able to live with concern for and in relation to animals, plants, and the world of nature (Nussbaum 2006, p. 77).

This capability involves an individual capacity that is supported and developed by the laws and policies on our treatment of animals and the environment in general. The capability involves developing the ability to feel compassion towards animals, understanding that they have value and should not be made to or allowed to suffer. It also entails an appreciation of the wider environment: not only the importance of its health for our survival but also as having intrinsic value.

What does it mean not to live with such a concern? The impact is clear if we consider current debates on climate change. Climate skeptics question the science arguing either that climate change does not exist or that changes in weather patterns are natural and not the result of human activity. There are others who concede that human-induced climate change is real but that our response must be designed to minimise the immediate economic costs, a position that ignores the long-term economic impact. Both these positions involve different degrees of disregard for the environment. Political and business leaders holding these views make decisions that adversely impact on us all. Many of us, although we have less power, choose levels and types of consumption that determine our carbon footprint. In countries like Australia we also vote for our political leaders. So the individual's decision not to actualise this capability has profound consequences for all of us. Furthermore we have a responsibility to protect the environment for the sake of further generations.

What might the threshold look like? It would include prohibiting cruelty against animals, protecting endangered species against hunting and the destruction of habitat, regulating industrial waste, car emissions and other forms of pollution and mandating efficient use of energy, water and other important resources. While various forms of regulation have had a positive effect they do little to change the character of an economic system that is geared around the exploitation of natural resources and that fails to factor in the long-term costs of this exploitation.

7.3.9 Play

Play. Being able to laugh, play, to enjoy recreational activities (Nussbaum 2006, p. 77).

This capability also depends on individual capacity, a capacity that requires both cultivation and various types of social support. It is often more difficult to laugh if you are living in particularly harsh or dangerous circumstances (although black humour seems to be a human trait). You need time and energy to be able to play. A woman working 14 hours a day in a factory in Shenzhen, China, has little opportunity to engage in other activities, nor does an executive working the same or longer hours in the finance sector in Sydney, Australia. There is, however, a difference between being forced to work long hours because wages are low and there is inadequate regulation of working hours and the option of a well-remunerated and powerful position. The case of the hard-working high-powered professional is interesting. The Sydney-based finance executive may work from 7am to 8pm on a good day, longer hours when a big deal is being negotiated. His job – and I say ‘his’ because at the senior levels, the industry is still dominated by men – may involve regular interstate and international travel. This level of engagement will have its rewards, wealth, high status and perhaps the pleasure of working at a high level. However, if the executive has children it is unlikely that he will be spending much time with them. The work of feeding them, taking them to school, helping them with homework, taking them to the doctor and so on is likely to be done by someone else, either the children’s mother, other relatives, friends or carers. The opportunity to focus exclusively on one aspect of life requires support from others. The demanding job of the father may limit the employment opportunities of the mother of his children or the father’s career may be supported by the work of lower-paid carers. This raises important ethical questions.

It is not just a matter of the impact on those who support and sustain the person who focuses most of their time and energy on one aspect of their life. There is also the question of whether the person, who pursues a particular goal, thereby neglecting other important aspects of human life, is in some way incomplete or even damaged. In thinking about this we need to consider shifts in commitments and responsibilities over the lifespan, not simply at a given point in time. Taking this into account, is it possible to neglect some central aspects of life and still live in a fully human way? Does the finance executive I described above live in a fully human way? Or is it sufficient to ensure that individuals have capabilities required for human flourishing, leaving whether or not they choose to actualise these capabilities up to the individual? If their actions do not harm others then should it be left up to them to decide whether they do things that may be considered to harm themselves?

Marx’s theory of alienation sheds some light. Marx conceived of alienation as the separation of things that naturally belong together. His main concern was that work or labour under capitalism alienates people from important aspects of their human nature. For Marx, our capacity for conscious labour and our sociability are central to our humanity. In order to survive, humans, like any other animal, must work on nature. In contrast to other animals, humans are distinguished by consciousness, giving us the capacity for transformation, development and change (Fischer 1996). However, when our labour is controlled by others, we lose control over our work and its products, as well as over our true selves, and we experience alienation.

In his early work, Marx (1844) describes four types of alienation. First, workers are alienated from the product of their labour because that product is owned by someone

else. Second, workers are alienated from the process of production, with little or no say over the conditions of work and how that work is organised. This entails a loss of control over how that work affects the worker physically and emotionally. Under these conditions, work is no longer a creative activity, but instead it is hostile to the worker. The fragmentation of work into discrete activities results in deskilling of the worker while at the same time increases management's latitude to control production. Third, workers suffer alienation from their human nature or what Marx called our 'species being'. There are two aspects, first we are estranged from nature and second we are estranged from our function or vital activity. This leads to the fourth aspect, which is our alienation from other people. We no longer see each other as individuals but in terms of instrumental value (Marx 1844). The concept of alienation became mixed with idealist theories. As a result the idea is often associated with a psychological state, losing the emphasis on material conditions and social organisation (Cox, J 1998). The problem of alienation described by Marx remains relevant to the nature of work under global capitalism today.

The ability to enjoy recreational activities is influenced by the availability of spaces and facilities. Even in a wealthy city like Melbourne there are big differences in the numbers of parks and swimming pools across the suburbs. Not surprisingly, people living in more affluent areas generally have more access to a greater variety of facilities. The distribution of such resources can have a whole-of-life-effect. There is increasing evidence that people who continue to learn new things and are active physically are more likely to maintain brain function into old age, including a reduced incidence of dementia (Lunde 2008; Petersen 2011; Verghese et al. 2003). Activities that are physical, involve new skills and are social, such as a non-dancer learning salsa, are found to provide the greatest benefit, both instrumentally and in themselves.

Nussbaum is very clear that the goal should be the capability of play. It is conceivable that a person could freely choose not to laugh, play or enjoy recreational activities. A person may dedicate themselves to their job, to political activism or artistic practice and in doing so forgo other activities and forms of engagement that are valuable. This type of singular focus has led to many significant achievements in science, the arts and in the reduction of injustice. However, to take this view is to see people in terms of their instrumental rather than their intrinsic value. In some ways the distinction between capability and functioning in this instance makes intuitive sense, but again it is difficult to establish the extent to which the individual has the freedom to choose given factors such as structure of work and the restrictions of poverty. There are also questions about the impact of a singular focus on the individual and the people around them.

What might the threshold look like? There are some obvious opportunities for governments to support this capability through regulating working hours and ensuring that minimum pay levels are sufficient to support a decent life. They can also ensure that recreational facilities such as parks, sports grounds, swimming pools are available and accessible to people living in all communities. Some societies may choose to go further, encouraging their members to live richer, less materialistic lives.

7.3.10 Control over one's environment

Control over One's Environment.

A. Political. Being able to participate effectively in political choices that govern one's life; having the right of political participation, protection of free speech and associations.

B. Material. Being able to hold property (both land and movable goods), not just formally but in terms of real opportunity; and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers. (Nussbaum 2006, pp. 77-78)

Political freedom, including freedom of expression, is the primary focus of the first part of this capability. The USA is ostensibly a free democratic society, holding regular elections at the local, state and federal level. Yet voter turnout tends to be low,¹⁶³ and private wealth or the ability to attract significant funding is critical for potential candidates to have any chance of being elected. This makes it clear that we need more than the formal right to vote. It is important that the democratic processes encourage confidence that voting matters and that people have real opportunities to cast their vote. The choice is meaningless unless there are a range of decent political candidates.

The material aspect of this capability is very important. It includes the right to hold property and the opportunity to obtain dignified work. Also included is freedom from unwarranted search and seizure. Although clearly important, this does not really belong under the heading 'material'. It is more properly a part of the political aspect of control over one's environment or should form a third sub-group. Defined as it is, this part of the capability involves freedoms more than it does individual capacities.

The property aspect of this capability is challenged by Martins (2007b). He argues that while property may be important within a market based economy, it may not be relevant in other types of socio-economic systems, such as a system built on reciprocity. However, Nussbaum (2006, p. 77) stresses the importance of 'having property rights on an equal basis with others' rather than specifying the precise nature of those property rights.¹⁶⁴

It is possible to imagine that someone might not wish to participate in the political process or hold property or to take up the opportunity of employment. However, if a person does seek to work, it seems inconceivable that they would freely choose work that is not consistent with human dignity. There are plenty of jobs that are dehumanising, but people take them because they have few options and limited bargaining power. The pay, conditions and nature of employment have a profound impact on the well-being of the person employed and also their family and their community. For this aspect of the capability we should seek functioning.

The threshold for the political part of this capability would need to include the right to vote for political leaders in a real contest. Also important are laws protecting free speech and freedom of association. Rightly there may be some limits, for example prohibitions on speech inciting racial hatred.

The material aspect would include laws that allow both sexes and people from different ethnic groups to own property. Divorce laws need to ensure that property is split fairly.

¹⁶³ Voting takes place on a Tuesday. It is often more difficult for people in low-paid jobs with less flexibility and control over their work to participate.

¹⁶⁴ According to Simone Weil (1952, pp. 34-36) ownership of private property, including a home and collectively owned possessions, is 'a vital need of the soul.'

This may include recognition of the contribution women have made to families in ways other than through their earnings. At a minimum, the threshold should insist that discrimination in employment is illegal. Equal access to employment also depends on equal opportunities for education. It also requires equal access to opportunities within the workplace, including opportunities for promotion and training. Fair judicial process and a decent police service are needed to prevent unwarranted search and seizure.

Setting an appropriate threshold for dignified work is very important. Work should be meaningful and useful. There are many jobs that may be considered unpleasant but are important, such as fixing sewerage pipes or removing a severely injured diver from a car involved in a serious road accident. The value of other jobs is more questionable. More importantly people should not be treated as another commodity ripe for exploitation (Marx 1844).

7.4 Conclusion

This chapter provided a detailed account of Martha Nussbaum's capability approach, explaining that it is a partial theory of justice and a political rather than a comprehensive moral theory. I also discussed the capabilities-functioning distinction, the types of capabilities and the importance of setting a threshold. I examined each of the 10 capabilities on Nussbaum's list, focusing on the nature of each, the implications of not functioning and what the threshold might look like. This raises a number of issues: the absence of care, the lack of attention to our responsibilities, the problem of insisting on capability rather than functioning, the different ontological order of the capabilities, and the grouping of some elements. In the next chapter I will discuss problems with Nussbaum's capabilities list before proposing an extended, restructured alternative.

Chapter 8 An extended and restructured list

8.1 Introduction

By specifying the minimum requirements for human flourishing, Martha Nussbaum's capabilities approach can potentially support care as well as women's equality. However, as my examination of the list reveals there are a number of problems. First, the importance of care is not made explicit. Secondly, the list focuses on our rights and pays insufficient attention to our responsibilities or obligations. Thirdly, for at least some elements of the list, it is difficult to sustain the argument that the focus should be on capability rather than on functioning. Fourthly, Nussbaum's 10 capabilities describe different kinds of entity, things that are not of the same ontological order. Finally, some of the capabilities group elements that do not sit well together. I will discuss the first four concerns before proposing a revised list that also addresses the fifth.

In considering these issues I will draw on alternative lists. A number have been developed either as capabilities lists or similar lists of quality-of-life indicators. Some, following Sen's approach, are designed for a specific purpose (e.g. Comim, Qizilbash & Alkire 2007; Robeyns 2003c). Other writers extend or modify Nussbaum's list (e.g. Claassen 2011; Wolff & de-Shalit 2007). Polly Vizard (2006, 2007, 2010) proposes a human-rights-based capabilities list. Ingrid Robeyns (2003c, p. 76) also refers to the Swedish approach to quality-of-life measures developed by Erikson (1992) and Erikson and Åberg (1987). Although the various lists have been designed to achieve different purposes and created by people from diverse disciplinary backgrounds, considerable overlap is evident (Robeyns 2003c, p. 76), and according to Mozaffer Qizilbash (2002), many are reconcilable.¹⁶⁵

8.2 Making up for the absence of care

In the chapter 6, I argued that, for a theory to account adequately for care, it must accommodate five ideas. First, it must start with the understanding that humans are needy and dependent. Secondly, the theory must recognise that we have a shared responsibility for the provision of care. Thirdly, care must be understood as a problem of justice. Fourthly, care is not simply about meeting basic physical needs but has important emotional and relational aspects. Finally, care is a type of work, taking time, skill and energy. These concepts are evident in Nussbaum's writing on the subject of care. As Jonathon Wolff and Avner de-Shalit (2007) assert, Nussbaum's philosophy is sympathetic to the ethic of care. Particularly important is her identification of care as a problem of justice and her recognition of our neediness (Nussbaum 2000c; 2002b, p. 34; 2006).

¹⁶⁵ There are many other equivalent types of lists. Drawing on critical realism, Alison Assiter and Jeff Noonan argue for a conception of human needs in the form of objective life requirements. There are some common features shared by the capabilities approach and the list of basic goods developed by the new natural law thinkers, Germain Grisez, Joseph Boyle and John Finnis (1987). Another capability-type list was proposed by Simone Weil (1952, pp. 1-39).

Despite this, Nussbaum's list does not specifically mention care or make its centrality to our lives explicit. It does, however, contain elements that are important aspects of care provision, including the formation of attachments, development of social relations, feelings of compassion and empathy and support for the institutions that foster the healthy development of each individual.

Jane Lewis and Susanna Giullari (2005) are also troubled by the lack of a care capability. They see the capabilities approach as providing promising grounds for thinking about care. It provides a way out of the equality/diversity quagmire; has the potential to combine recognition of the importance of care with a commitment to women's equality; focuses on what an individual can do and be; understands preferences as socially embedded; and recognises our differing abilities to convert resources and opportunities into functioning. The omission of a care capability, Lewis and Giullari hold, is a consequence of a developing a universally applicable core list. Although Amartya Sen has not written about care, they argue that his approach of leaving the construction of the capability list open may in the end be more useful. They do not say why Nussbaum's list cannot be modified to strengthen the emphasis on care. Nor is it obvious that democratic processes will necessarily achieve the desired result. The evidence to date is not particularly encouraging.

A stronger emphasis on care could be achieved by strengthening the reference to care in the existing capabilities list or by the addition of a separate care capability. Because care is so central to our lives, and because current care arrangements are a significant cause of inequality, I favour the addition of a care capability. Three attempts to capture the importance of care are found in: Robeyns's (2003c, p. 71) list, developed to address women's inequality in 'post-industrialized Western societies'¹⁶⁶, the modified version of Nussbaum's list proposed by Jonathon Wolff and Avner de-Shalit (2007, pp.190-91) and in Rutger Claassen's (2011) care theory.

Robeyns (2003c) rejects Nussbaum's universal list of capabilities, but is concerned by the underspecified character of Sen's approach. She argues that, if the capabilities approach is too open, the types of assessments made using it will depend on the social theories with which it is combined. This leaves the approach vulnerable to androcentric assumptions. To overcome this problem, Robeyns proposes a feminist capability perspective for matters concerning women's inequality. Her list contains 14 capabilities, including: life and physical health; mental well-being; bodily integrity and safety; education and knowledge; shelter and environment; mobility; respect; and religion (see Appendix D for the full list). Robeyns also includes four capabilities that directly affect care and the opportunities available to women. The first two explicitly address care and employment:

7. *Domestic work and non-market care*: being able to raise children and to take care of others.

8. *Paid work and other projects*: being able to work in the labor market or to undertake projects, including artistic ones. (Robeyns 2003c, p. 72)

Both care and employment are currently highly gendered, with women more likely to have responsibility for unpaid work and men for paid work. Care and domestic work are critically important for the recipients, and specifying them in this capability list reaffirms their value.

¹⁶⁶ Lourdes Benería (2008) draws on Robeyns's list in her work on the crisis of care in Latin American countries.

However, as Robeyns points out, the impact on the caregiver is mixed. If there is a degree of choice, time to do the work and limits on the amount of time that will need to be dedicated to it, then the work is more likely to be viewed as valuable and enjoyable. Robeyns (2003c) contrasts cooking a meal on a relaxing Sunday, with cooking every week-night in a mad rush after a full day at work. While in some senses this distinction is meaningful, there are many situations where it is difficult to talk about choice, for example if child falls seriously ill.

One of the advantages of Robeyns's list is its clear statement that individuals should have genuine opportunities to provide care and to take on paid employment or engage in other meaningful projects. This is also partially supported by her fifth capability:

5. *Political empowerment*: being able to participate in and have a fair share of influence on political decision-making (Robeyns 2003c, p. 72).

However, there is no emphasis on our obligations to provide care for others. While many men continue to choose not to function in this area, despite their capacity to do so, women will continue to do the work and face constraints in what else they are able to do. An element of our obligation to one another is suggested in Robeyns's fourth capability:

4. *Social relations*: being able to be part of social networks and to give and receive social support (Robeyns 2003c, p. 72).

Although important, this capability is unable to provide the protection or the support for unpaid care and domestic work.

My other concern is that the capability 'domestic work and non-market care' lacks important details. It should have three facets: that each individual is able to receive the care he or she needs; that we are all able to provide care to family members; and that there is a fair distribution of the burdens and rewards of both market- and non-market care work. This last facet includes the organisation of care and domestic work carried out by others as well as the sharing of the emotional work that most often falls to women.

Two other capabilities are designed to address inequalities linked to the unequal distribution of market and unpaid work:

11. *Leisure activities*: being able to engage in leisure activities.

12. *Time-autonomy*: being able to exercise autonomy in allocating one's time. (Robeyns 2003c, p. 72)

The leisure capability responds to the significant differences in women's and men's experience of leisure time, with women more likely to combine leisure activities with child care or other unpaid work (Bittman & Wajcman 2000; Craig 2007a; Robeyns 2003c). The 'time autonomy' capability is concerned with differences in freedoms available to women and men rather than promoting a libertarian view of an individual freedom to do whatever he or she wants.

The following care capability is one of the three additional items added to Nussbaum's list by Wolff and de-Shalit (2007, pp. 46-48, 191) for their investigation into disadvantage in the UK and Israel (see Appendix E for the full list):

12. Doing good to others: Being able to care for others as part of expressing your humanity. Being able to show gratitude (Wolff & de-Shalit 2007, pp. 46-48, 191).

The point Wolff and de-Shalit make is that, as humans, we need to be able to express ourselves and our connections with others. One example is the importance of being able to show gratitude, an Aristotelian idea drawn from *Nicomachean Ethics*, which includes the ability to return a favour, pay one's respects and delight in another person's joy.¹⁶⁷ A poor person from Ghana observed that being poor is when 'you know "good" but you cannot do good' because you do not have the means (Narayan et al. 2000, p. 39; Wolff & de-Shalit 2007, p. 46). One of the people interviewed for the UK-Israel project on disadvantage said that 'Doing good to others allows one self-esteem. Being human means not only to receive; one wants to give' (Wolff & de-Shalit 2007, pp. 46-47). With this view confirmed by many other interviewees, the authors concluded

... that engaging in such expressive activities as *doing good for others*, and *being able to show gratitude*, and even *being able to follow elementary norms of etiquette*, are important functionings, and that those who cannot afford to do good to others, who cannot show gratitude, and so on, because they lack the (financial or physical) means or the time to do so, are disadvantaged. (Wolff & de-Shalit 2007, pp. 46-47)

The points Wolff and de-Shalit's raise are extremely important, but their capability deals with only one aspect of giving care, the ability to care for others. Like Robeyns's care capabilities, it does not express our obligation to provide care for others.

Rutger Claassen (2011, pp. 46-49) addresses both care-receiving and care-giving in a capability theory he develops to evaluate different types of care provision (market and non-market).¹⁶⁸ As children we need care in order to develop our capacity for agency. Therefore, Claassen contends, being able to receive care is a morally required capability. However, he considers the capability for caring to involve a different kind of normative claim. Claassen (2011, p. 47) states that 'a capability to care is not a constituent part of being an agent; one can be a person without practicing intensive and long-lasting care activities', as is illustrated by the role of the traditional breadwinner. For Claassen, the fixed positions of breadwinner and caregiver should caution us against allocating a need for care-giving to any group of people. According to Claassen, starting from the specification of care capabilities frees us from the allocation of care work on the basis of the supposed natural talents and inclinations of women and men. It also frees those who give care and those who receive it from being 'condemned to each other' (Claassen 2011, p. 47). A person in need of care may refuse some potential care-givers and potential care-givers are under no obligation to provide care. This means that the obligation must fall 'upon society at large to create an institutional setting in which enough people will voluntarily choose to care for those in need' (Claassen 2011, p. 48).

Institutional settings are extremely important, but without a fairer allocation of different types of work and the rewards they attract, it is not possible to address entrenched disadvantage. It is difficult to see what will change to ensure that men more responsibility for care and domestic work, as they must if there is to be a fairer set of arrangements (Anderson 1999; Folbre 2001; Fraser 1997; Fudge 2010; Held 2006). It is for this reason

¹⁶⁷ For instance, the Poverty and Social Exclusion in Britain survey found that 92 per cent of the people surveyed identified 'visiting friends and family at hospital' as a necessity (Wolff & de-Shalit 2007, p. 199).

¹⁶⁸ Claassen does not provide a full list of his autonomy-developing capabilities, although more details, including the philosophical justification, are documented in an earlier paper (Claassen 2009).

that I go beyond the proposal of a care-giving capability to the more controversial notion that this capability should be actualised. Care-functioning as an obligation essential to our humanity is the question to which I will now turn.

8.3 Rights, responsibilities and obligations

I will start by considering the difference between the terms ‘responsibility’ and ‘obligation’. There is an overlap between the two, with the words ‘responsible’ and ‘responsibility’ partly defined in terms of obligations.¹⁶⁹ However, there are also subtle but important differences. ‘Responsibility’ conveys the idea that individuals recognise and accept what is the right thing to do whereas ‘obligation’ is often explained in terms of a binding duty, conveying a sense of compulsion. In this way the idea of responsibility seems more compatible with respect and recognition of agency. Faced with the type of free-riding characteristic of care provision, however, means that it may not be enough to identify responsibilities. It may be necessary to specify and enforce obligations. I will use both terms, drawing on the gradation in meaning.

Philosophers use the term ‘responsibility’ in particular ways. They distinguish between ‘moral responsibility’ and ‘responsibility’, with the former understood in terms of duties or obligations (as in the judge is responsible for sentencing) and the latter as a causal connection (the spring rain is responsible for the long grass) (Eshleman 2009). A strong emphasis on whether someone deserves praise or blame for their actions or character (e.g. Glover 1970; Honderich 2005) is evident in the idea of moral responsibility as attributability, one of two concepts of responsibility found in Aristotle’s work. Responsibility as attributability describes situations in which an action can be attributed to a person and that they are subject to moral criticism for their actions (Alexander 2008, p. 110; Scanlon 2000, pp. 280, 290-93). According to John Alexander (2008), Aristotle also uses responsibility in the sense of whether a person should bear the consequences of their actions. For example, someone may be subject to criticism for failing to engage in any physical activity, but this would not lead to their exclusion from the public health system. Sayer (2011, p. 164) explains that ‘(s)ocial life depends on people being able to hold one another responsible for doing particular things; for this to work, individuals have also to hold themselves responsible for what they do’.

Alexander (2008) finds that the capability approach is more likely to invoke individual responsibility in cases of bad-option luck than in situations of brute luck.¹⁷⁰ The capabilities approach, however, refuses to make access to entitlements conditional on moral deserts. This is particularly the case for entitlements linked to crucial functionings such as nutrition, shelter, health and employment prospects.

The question of desert is an important part of the conservative view that liberal social welfare programmes and approaches to criminal justice undermine individual

¹⁶⁹ See, for example, the *Macquarie Concise Dictionary* (Macquarie Concise Dictionary 2006, p. 834). Macquarie dictionaries provide the standard reference on Australian English.

¹⁷⁰ Brute luck describes the circumstances that affect a person’s standing but are beyond their control (e.g. education, health and childhood environment). Option luck concerns the result of an individual’s choices.

responsibility (Scheffler 1992, pp.301-2). The term 'individual responsibility' is often invoked by conservative politicians and commentators to blame the most disadvantaged for their situation. For instance, Tony Abbott, leader of the conservative Australian Liberal-National Coalition, once denied the existence of the working poor, stating that wages would be sufficient if people did not drink, smoke or gamble (McDonnell 2001). Views like this are the product of a highly individualistic understanding of society (Sayer 2011, p. 55). There is a tendency to blame the poor for their situation, even when much of their misfortune can be attributed to structural factors, and to credit the rich for their achievements, ignoring or discounting the advantages conferred by social and economic privilege (Sayer 2011, p. 165).

This raises questions about the appropriate level of analysis. In order to understand responsibility and blame 'we need to assess individual and social responsibility, while acknowledging their interdependence' (Sayer 2011, p. 165). Locating prime responsibility with individuals deflects attention from the conditions under which they work and live and the constraints that they face. It also ignores our responsibilities as a society to ensure that each person has access to real opportunities to decent employment and a dignified life. The individual level is also important. The real opportunities available to women are constrained by the choices made by men. Governments can and should take action to ensure that employment conditions, divorce law and the tax/transfer system enable rather than constrain more equitable outcomes. However, individuals need to understand that care is a necessary and valuable activity requiring time, energy and skill and that we have a shared responsibility to ensure that care is provided without exploitation. If we fail to specify our responsibilities at both the individual and the social levels, the freedoms of some groups of individuals will continue to be compromised.

Returning to the substantive issues, an important question is whether responsibilities are already implicit in the capabilities approach. Nussbaum (2011b, p. 63) points to a conceptual link 'between the idea of Central Capabilities as fundamental entitlements and the idea of duties'. Duties are embedded in entitlements. Once this is understood, it is possible to assign responsibility. In the first instance duties are assigned to the nation's 'political structure, which is responsible for distributing to all citizens an adequate threshold amount of entitlements'. Rich nations have an additional responsibility to assist poor nations.¹⁷¹ Other entities also have responsibilities to promote human capabilities. This includes corporations, international agencies and individuals.

Nussbaum (1995b, p. 88) argues that in the political arena 'human capabilities exert a moral claim that they should be developed'. This means that not only should individuals have the opportunities and resources required in order for them to achieve important functionings, but that this exerts a moral claim on others, particularly governments.

According to Nussbaum, the idea that a set of political duties is embodied in a set of entitlements is part of the Western philosophical tradition. This was certainly the view of philosopher Jacques Maritain, one of the main drafters of the University Declaration of Human Rights. He argued that the notions of rights and moral obligations are correlative. Grounding rights in natural law theory, Maritain (1944) reasoned that individuals have the right to fulfill their destiny to live fully human lives and therefore the right to the things

¹⁷¹ Nussbaum describes this as a moral obligation that justice demands, given the vast inequalities found across the world. An additional and more controversial reason is remediation for colonial exploitation (Nussbaum 2011b, pp. 115-17).

needed to make this possible. This second layer of rights generates obligations or duties to ensure that the resources and opportunities are available. Arguing against Maritain's view that responsibilities are embedded in rights, Simone Weil held that responsibilities must be emphasised (Weil 1977). Similarly, Onora O'Neill stated that real rights must correspond exactly with precisely formulated duties. According to O'Neill, this correspondence exists only when a right is institutionalised (O'Neill 1986; 1996, p. 131-32; 2000; see also Sen 2009, p. 282).

Sen (2009), shares Nussbaum's perspective, considering responsibilities to be intrinsic to the capabilities approach. He talks about responsibility in two different ways, as accountability and as duty:

Freedom to choose gives us the opportunity to decide what we should do, but with that opportunity comes the responsibility for what we do – to the extent that they are chosen actions. Since a capability is the power to do something, the accountability that emanates from that ability – that power – is a part of the capability perspective, and this can make room for the demands of duty – what can be broadly called deontological demands. (Sen 2009, p. 19)

This view of responsibility, Sen argues, is radically different from the utilitarian view of linking responsibility to individual happiness and the social contract approach of justifying obligations in terms of mutual advantage. Instead our responsibilities to others are a feature of our power. Having the power to make a change that will reduce injustice in the world is a compelling and sufficient justification for action. Sen also draws on Gautama Buddha's teaching that our responsibility to children and other species stems from the fact that we are more powerful. According to Sen, an equivalent understanding of our obligations can be traced back to early work on rights by Tom Paine and Mary Wollstonecraft, as well as Adam Smith's analysis of moral thought. Societies and individuals have responsibilities and obligations to ensure that every individual has the capabilities deemed important within that society (Sen 2009).

The question Sen (2009) considers concerns our obligations to defend and promote the freedoms of others. He argues that the shift from having a reason to act in order to help someone to having a duty to act is complex. There is no simple formula establishing when action should be taken, but rather it is a matter of practical reasoning. The issue of sympathy is relevant and must be part of any human-rights approach but it is not necessary to feel sympathy in order to have reason to help a person who is suffering. Adam Smith (176 (1759-90)) distinguishes between helping people on the grounds of sympathy and helping them out of generosity or on the basis of public spirit (Sen 2009, p. 372). According to Sen we have a basic obligation to consider seriously what we might do to help another person to realise their freedom. This would involve taking into account the importance of the matter, our level of influence, our likely effectiveness and our own circumstances. A degree of ambiguity and disagreement about what should be done is inevitable, but we should not confuse a loosely specified obligation with no obligation (Sen 2009, p. 374).

Considering the assault and murder of Kitty Genovese in Queens, New York in 1964, Sen argues that three terrible things happened. The primary issue is that she should not have been assaulted and murdered. Secondly, her murderer breached his 'perfect obligation' not to hurt and kill her. Thirdly, the by-standers failed to provide reasonable help. They did not attempt to scare off the attacker, nor did they call the police until long after the assault. Sen considers this a breach of an 'imperfect obligation'. These three breaches are

interrelated 'and bring out a complex pattern of correspondence of rights and duties in a structured ethics, which can contribute to explicating the evaluative framework of human rights' (Sen 2009, pp. 374-75). Although he does not make the distinction between agent-specific and agent-neutral moral evaluations, Sen considers that his approach provides scope for position-specific assessments.

Writing before the publication of Sen's book *The Idea of Justice*, Alexander (2008) argues that neither Sen nor Nussbaum addresses the question of individual responsibility in a substantial way. He derives their position from their work, finding that the 'capabilities approach espouses what can be called a reciprocal view of responsibility' (Alexander 2008, pp. 106). According to this view, individual responsibility is neither completely separate nor opposed to social responsibility. Instead it is 'embedded and nurtured in the context of social responsibility' (Alexander 2008, pp. 106). Our individual choices are made in the context of conditions and institutions which may expand or restrict our options. The scope of individual responsibility is maintained by setting the goal as capabilities rather than functioning. Alexander proposes to strengthen the capabilities approach by aligning it to the republican political tradition's idea of freedom as non-domination. This idea of freedom does not oppose interference and therefore provides greater scope for insisting on particular outcomes (Alexander 2008, pp.161-9).

Taking a phenomenological approach Jérôme Ballet, Jean-Luc Dubois and François-Régis Mahieu (2007) also find the capabilities approach to be limited. In their view the capabilities approach is unable to account for either personal responsibility or collective capability. This they attribute partly to a narrow view of the subject taken by the capabilities approach, one that lacks richness and fails to correspond with real life, a result of foundations in analytical philosophy (see also Dummert 1988). They contrast the idea of the individual, defined by a set of freedoms and capabilities (capabilities approach) with the person embedded in a network of social relations that generate a set of rights and obligations (phenomenological approach).¹⁷² According to Ballet, Dubois and Mahieu (2007, p. 189), the analytic conception of the individual assumes that responsibilities are derived from freedom, whereas in the phenomenological tradition, freedoms are derived from responsibilities. In the phenomenological tradition, responsibility is not an unwelcome constraint but part of the richness of the person.

In order to satisfy their obligations to other people, individuals may need to exercise self-restraint. Ballet, Dubois and Mahieu (2007) find that Nussbaum is closer to this view than is Sen. Nussbaum (2006, p. 158) states that the 'good of others is not just a constraint on this person's pursuit of her own good; it is part of her good'. However, Ballet, Dubois and Mahieu (2007) argue that Nussbaum does not go far enough, finding her position to be compatible with a theory of generalised altruism, a utilitarian economic theory. In their view, Nussbaum fails to grasp the idea 'that a person can impute a specific responsibility to himself/herself as a result of voluntary constraint based on internalized norms' (Ballet, Dubois & Mahieu 2007, p. 189). As discussed earlier, Nussbaum is highly critical of utilitarianism and justifiably wary of trusting internalised norms.

Ballet, Dubois and Mahieu (2007) also draw on the work of the French philosopher, Emmanuel Levinas (1983, 1989) who prioritises our responsibility to the other to such an

¹⁷² Similarly, Ronald Dworkin (1997) distinguishes between an approach based on rights (obligations justified and derived from rights) and another based on obligations and duties (obligations justify freedoms) (see Ballet, Dubois & Mahieu 2007, p. 189).

extent that he breaks from the phenomenological tradition. For Levinas, ethics can be understood only through responsibility, which is what connects the subject to the face of the Other (Ballet, Dubois & Mahieu 2007; Critchley & Bernasconi 2002; Hand 2009). For Levinas, the Other is the source of the self, and responsibility to the Other is primordial, existing prior to other social and moral obligations and discourse itself (Eagleton 2009). Levinas conceives of our responsibility as both permanent and inescapable, but he does not see it as a source of distress for the subject (Ballet, Dubois & Mahieu 2007). Levinas does not present a staged logical argument but presents often unsubstantiated claims in a prophetic or messianic way, a strategy designed to break free from the process of providing philosophical evidence. Also troubling is his feminisation of the Other (Hand 2009).¹⁷³

Although Ballet, Dubois and Mahieu (2007) appear ambivalent about the absolute nature of responsibility in Levinas's work, they consider that responsibility is an essential part of the richness of person. They argue that 'the person is above all a responsible subject' (Ballet, Dubois & Mahieu 2007, p. 192). They consider that any decision-making process and any moral evaluation must take into account both freedom and responsibility. Introducing personal responsibility as a 'constitutive characteristic' of the person changes the capabilities approach and also the understanding of agency. Ballet, Dubois and Mahieu (2007, p. 185) distinguish between 'strong agency', which includes personal responsibility, and 'weak agency', which refers to a person's capabilities.

Andrew Sayer (2011, p. 128), on the other hand, locates agency within the context of both relationships and responsibilities. He argues that it is absurd to resolve the 'relational character of social life with the ideal of freedom' by holding that relationships are a matter of choice. We all depend on engagement and commitment of other people in order to receive the care that we need at various points in our lives (see also Kittay 1999; Scheman 1983). However, determining what we can expect from one another is difficult and often contentious. There are two aspects: a question of what is feasible, given the constraints and availability of resources and a question of what should happen. The distinction between the positive and normative aspects, Sayer (2011, p.165) argues, is very fuzzy. Over time, the individual and social aspects of behaviour become increasingly intertwined, particularly as social structures impact on the character of individuals.

The philosopher Genevieve Lloyd's (2008) work on providence provides additional insights, although it does not specifically address the capabilities approach. Lloyd argues for a better understanding of contemporary thinking about freedom, necessity and responsibility through an examination of the largely neglected history of 'providence'. The literal meaning of providence is being looked out for. In this sense it is closely connected to the idea of a divine being who takes care of humans. However, Lloyd argues that it is not just a religious idea. It is also a central concept in Western philosophy. In its original context providence meant necessity. The loss of providence leaves us with ideas about free will and responsibility that are not only conceptually difficult to sustain but also emotionally unbearable. We have retained Descartes's thinking about free will but not the idea of providence within which it was framed. For Descartes, many aspects of human life were

¹⁷³ Some of the problems and contradictions in Levinas's book *Totality and Infinity* are also discussed by Jacques Derrida (1981) in an essay 'Violence and Metaphysics: An Essay on the Thought of Emmanuel Levinas'.

beyond human control. The loss of providence eliminates the distinction between matters that lie within human control and matters that do not. The result is limitless responsibility. The focus on intention reinstates some limits on our responsibility, but it does so by putting the full weight of responsibility on the will. This results in a preoccupation with 'the conditions under which we can be *held* responsible – often at the expense of attention to the conditions in which it is appropriate for us to *take* responsibility' (Lloyd 2008, p. 317). Instead, Lloyd seeks to draw attention to the work of Spinoza who rejected free will as an illusion and instead considered freedom in the context of and interconnected to the idea of necessity.

Various theorists highlight the importance of responsibilities and obligations. Alexander (2008), Sayer (2011, p.165) and Ballet, Dubois and Mahieu (2007) identify limitations with Sen's and Nussbaum's capabilities approaches. However, with the exception of Sayer, there is a tendency to discuss responsibilities or obligations in very abstract ways. If there is no attempt to specify what our responsibilities should be as well as how they should be derived, agreed upon and enforced, it is difficult to disrupt unjust allocations of work and rewards. First, however, the grounds for a care obligation must be specified more precisely.

8.3.1 The nature of a care obligation

A number of theorists have argued that we have a responsibility or obligation to provide care (e.g. Bubeck 1995; Engster 2007; Folbre 2001, 2002; Kittay 1999; Tronto 1993), but the nature of that obligation is not often discussed. I find that there are six potential justifications for a care obligation.

The first is based on the idea of reciprocity. We care for others because we have been cared for and will need care in the future. This is often expressed in the view that investing time and resources in the care of young children is worthwhile because those children will grow up to be productive adults who contribute to society through their work and the taxes they pay (Goward 2005a). The difficulty is that this assumes that everyone has the capacity to reciprocate. This does not guarantee care for those who suffer from chronic illness or who have mental and physical disabilities (Kittay 1999, 2002a; Nussbaum 2006).

A second type of argument is based on our desire to care for others. As discussed earlier, Wolff and de Shalit (2007, pp.46-7) identify that care-giving as something that people want to be able to do. As humans, we need to be able to express ourselves and our connections with others. While our need to provide care for others is compelling, this desire, without other supports, cannot ensure that care needs are met and that care work is allocated equitably.

A third perspective is that we choose to provide care. For example, we choose to have children because we weigh up the costs and benefits, concluding that the psychic benefits outweigh the financial costs. Individuals should therefore bear the costs of raising their children and should not expect public financial support, a view described but not shared by Nancy Folbre (2001). There are a number of problems with this view. As discussed in chapter 5, a substantial body of research challenges the assumption that we make decisions as rational agents in accordance with rational choice theory (Gintis 1998, 2000a, 2000b; Hausman 2005a, 2005b, 2011). Secondly, very often care is not a matter of choice (Craig 2007a). We may decide to have children but not anticipate illness, disability or the emotional challenges that they may face. We do not choose to have parents, siblings and

other relatives who made need differing levels of care and support during their lives. Further, we are rarely able to choose the social conditions under which we provide care.

A fourth set of interrelated arguments are linked to the idea that we cannot be happy if other people are suffering. There is evidence that we register in the same part of the brain the pain we see another person experience and our own experience of that type of pain (Singer & Fehr 2005). Most people seek to avoid harming others. However, as John Stuart Mill (1947 (1859)) argued, harm includes acts of omission as well as acts of commission. There are two types of harm. The first is harm as negative well-being, which refers to injury or loss. The second is harm as a moral wrong, which entails a breach of justice (Doughney 2002, chapter 3). The principle of not harming others is expressed in a positive way in the golden rule: treat others as you would wish to be treated yourself (Pfaff 2007).

People are harmed if they do not receive the care they need. They are also harmed if significant care responsibilities leave them financially and socially disadvantaged. There is harm, in the sense of moral injury, if institutional arrangements do not ensure that care needs are met and care providers are not exploited. Concerns about harm and suffering should motivate the search for a fairer set of social arrangements for the provision of care. However, these concerns alone can not establish that each of us has an obligation to provide care.

A fifth type of argument holds that if we do not provide care we are not fully developed as humans. This idea is captured in a dream relayed by writer and journalist Ann Crittenden (2001, p. 274). In the dream, a female German politician tells a young man she has just interviewed that he has outstanding credentials but he has not yet spent time looking after children. She is looking for a well-rounded person and suggests that he come back when he has broader life experiences.

If we do not provide care for others our personality and our perceptions are distorted. An obligation understood in this way would need to take into account capacity. A person with some types of mental or physical disabilities may only be able to provide care in a particular set of situations or may require the support of other people. However, this would not excuse those people who believe that care is beneath them or not the sort of work that someone like them should do. A care obligation based on the grounds that we are not fully developed if we do not provide care is defined negatively.

This leads to a sixth approach, based on the idea that the provision of care is a fundamental part of being human. We are social beings, capable, needy and dependent on one another. The centrality of care provision is evident in the value humans place on virtues such as concern, friendship, love (*agape* rather than *eros*), generosity and altruism, although each may take a different form in different social and cultural contexts. This locates both our need for care and our obligation to provide care as a part of what Marx (1969) called our species being or human nature (Geras 1983).

Sayer (2011, chapter 4) explains that in order to think about the things people value we need an account of human nature or human social being. Feminists have objected to the term 'human nature' because it has been deployed to justify differences in the types of opportunities available to women and men and in the outcomes they are able to achieve. However, the problem is with the way human nature has been understood and with the tendency to assume that social arrangements are natural and immutable, not the idea of human nature itself.

I argue that our obligation to provide care is a fundamental aspect of our humanity. If the conditions are not exploitative, the act of caring for another person builds empathy and social connectedness. Our desire to provide care, to alleviate suffering and prevent harm are all relevant as secondary or supporting arguments.

The specific nature of our obligations, change over our lives. Sometimes we are more needy and sometimes more giving. They are not rule-driven in the Kantian sense, because such rules cannot take into account the complexity of different situations, and, in particular, the difficulty of moral dilemmas, situations where there is no unambiguously clear way forward. Instead, it is a matter of cultivating our powers or capabilities, which are understood to entail responsibilities as well as entitlements. As I will discuss shortly, the difficulty of building responsibilities into the capabilities approach can be addressed by restructuring the list in a way that is attentive to the very nature of the various items on the list.

8.4 Capability and functioning

Various problems with the capability-functioning distinction were raised in chapter 7 (section 7.2.3). The most significant were that aiming for capability can result in a lack of attention to outcomes; that absence of functioning may well indicate that capabilities are not truly available; and that it is difficult to assess the extent to which capabilities are available because often we can only see evidence of functioning. My discussion of Nussbaum's list (section 7.3) revealed the problem of insisting that the goal should always be capability. In some cases – e.g. life or the basis of self respect – the capability in question is so important that it is hard to imagine a situation where a well person would choose not to function. There are other capabilities that do not exist unless they are actualised, such as our capacity to form and sustain relationships.

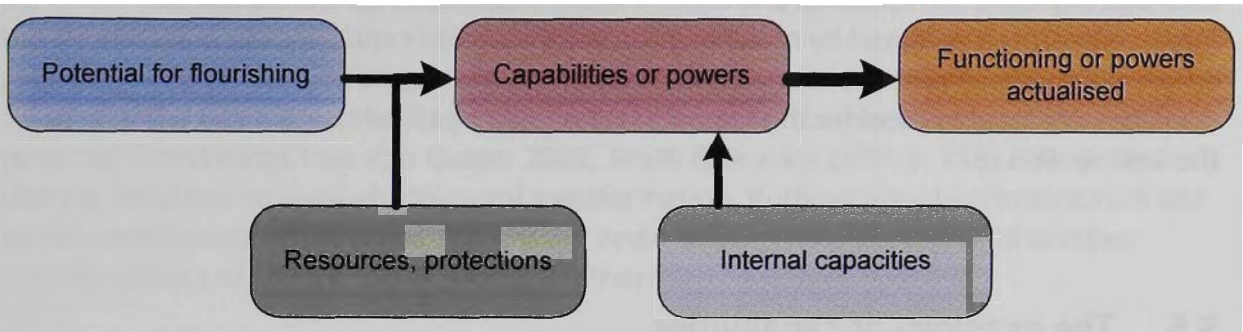
In order to think about these issues we first need to consider more deeply the relationship between capabilities and functioning. The potential of a human describes the possibility for flourishing or functioning. However, while each individual has the potential for functioning they do not necessarily have the power or the capability to actualise this potential. There are a whole range of impediments that prevent humans from flourishing, including both internal and external factors. For someone to have the capability to flourish involves ensuring that their potential is not denied. If, for example, a person is unable to obtain good food and a decent education, their physical, emotional and intellectual growth will be stunted and their potential for flourishing will be diminished. They will not have the power or capability to realise their potential.

We can identify certain fundamental things that underpin our powers or capabilities, including: access to healthy food, clean water, safe shelter, the bases of self-respect and decent education. It is important to distinguish between the basic resources and protections we each need in order to have any chance of flourishing from other types of properly underpinned opportunities which we might reasonably choose to take up or not.¹⁷⁴ Without these resources and protections capability does not exist. So if the

¹⁷⁴ Note that functioning against Nussbaum's 10 capabilities would constitute the minimum for a human life rather than flourishing in the fullest sense.

potential is not denied, it is realised in capabilities. If capabilities are not diminished or thwarted, then functioning can be chosen. This relationship is represented in the figure 3.

Figure 3: The relationship between capabilities and flourishing



In developing a life plan, an individual may choose to emphasise some elements of life more than others. For example, if a person decides to take a less demanding job with fewer prospects for promotion in order to live in a small coastal town and surf most days, then this would be a matter of choice in functioning. This is very different from the situation of a young person who has drifted since leaving school at a young age and has very poor employment prospects. Similarly, there is a difference between focusing on playing tennis rather than a career as a florist and taking up boxing when there are few other opportunities available.¹⁷⁵ The important distinction is between choice between different functionings, on the one hand, and being thwarted and therefore unable to make a meaningful choice, on the other. People may make decisions that are objectively unwise, but if they are in accordance with their conception of the good and do not harm others, then these choices are compatible with a human life. In contrast, those who are thwarted – e.g. if they are unable to secure a job because of discrimination, homelessness and/or poor literacy – do not have the opportunity to live a flourishing life, one that is in accordance with dignity of human beings. People who live one-dimensional lives, for example working all the time with little time left over to spend with family or engage with their community alienate a part of their potential. They are not living a rounded life. Complete separation is not possible, but people who withdraw to a significant extent are unable to meet their responsibilities to others.

Setting capability as the political goal does leave the individual free to make choices others may consider to be foolish or dangerous, but this should not be construed as an endorsement of all possible outcomes or the view that all outcomes have equal value. We may well judge some outcomes as highly undesirable and advocate that other choices should be made. Nussbaum’s approach is strongly normative with the 10 central human capabilities identified because functioning in these areas is deemed essential for a human life. As discussed earlier in chapter 7 (section 7.2.4), Nussbaum makes a number of qualifications to her demand that we aim for capability. Another important qualification she makes is that a person cannot claim an entitlement if to do so results in the harm of others. Moreover, we have very good reason to be concerned if there is no evidence of

¹⁷⁵ Consider, for example, Noby Clay, a young Aboriginal woman from Palm Island (Hooper 2009).

functioning for at least some of Nussbaum's 10 central capabilities, particularly concerning human dignity.

There is, however, a danger that this type of assessment will introduce a hierarchy of capabilities, which may encourage trade-offs. Against this, I argue that there is only a danger of trade-offs if the capabilities are seen as discrete items. I propose to introduce responsibilities into the capabilities approach and to identify some capabilities as ontologically more fundamental and that for these capabilities we should aim for functioning. This is achieved by reworking Nussbaum's list of capabilities to make the structures and connections between different items more apparent. Before that is possible it will be necessary to consider the nature of Nussbaum's capabilities, which I will turn to in the next section.

8.5 The ontology of capabilities

The striking thing about the capabilities on Nussbaum's list is that they are different types of entities, including individual capacity, material, financial and educational resources, as well as the removal of obstacles. At first glance this may not seem remarkable. Her 10 capabilities are designed to provide a pluralistic account of human flourishing. Nussbaum (1997a) points out that Rawls's list of primary goods is also heterogeneous. However, the heterogeneity of the list does matter because the list is weakened by inconsistencies in both its structure and in the nature of individual capabilities. Some capabilities are complementary. The capabilities of life and bodily health are closely linked, with each supporting the other. There is also commonality between the capabilities of emotions and affiliation (part a), with both expressing the importance of our relationships with others. However, there is potentially tension between aspects of some capabilities.¹⁷⁶ Planning a life must take into account important relationships but, at times, desires and responsibilities may pull in different directions. For these reasons, we need a more carefully structured list to express the minimum requirements for human flourishing.

Questions about the nature of capabilities or other entities (including objects and their concepts, such as well-being, equality) are ontological. Although Nussbaum clearly states that she is a realist, she does not specify the ontology of her approach. Despite a vast literature on the capabilities approach, little attention has been paid to the ontological underpinnings of the theory. One exception is the work of Nuno Martins's (2006, 2007a, 2007b).¹⁷⁷ While Martins's main focus is on Sen's theory, he includes some discussion of Nussbaum's approach (see Martins 2007b). Martins argues that Sen's capabilities approach is primarily, although not explicitly, an ontological exercise and that his work can be usefully complemented by Tony Lawson's (1999, 2003b) structured ontology. In this way,

¹⁷⁶ I thank Andrew Sayer, one of my examiners, for drawing my attention to complementarities and potential tensions between the different capabilities.

¹⁷⁷ Sharon Tao (2011) has developed a framework to locate the capabilities approach within a critical realist theory of causation. Using this framework to examine teacher quality in Tanzania, she demonstrates the causal links between teachers' constrained well-being and their behaviours. This advances the debate, which has tended to cast teachers either as the main cause of poor quality education or as the victims of low pay and poor employment conditions. Tao's framework provides a model for decision-making that takes into account structure and agency.

Martins draws on the resources of critical realism to clarify and deepen the capabilities approach.

Using the conceptual framework of critical realism, Martins argues that capabilities are like causal powers. They are potentials that may or may not be exercised and may or may not be actualised. As causal powers, capabilities are emergent from underlying physical, biological, psychological or social structures. These structures may facilitate or constrain a particular achievement of functioning but the capabilities themselves cannot be reduced to the structures underlying them (Martins 2006). The set of functionings achieved by a person is the actualisation of the power or potential. We need to understand the structures and associated mechanisms in order to broaden both human capabilities and potential functionings (see also Gasper 2002; Smith & Seward 2009, p. 218). This is most likely to be achieved through structural transformation. Without attention to structure and to the understanding that social systems are open, it is not possible to assess whether specific policies or actions will exacerbate rather than alleviate a problem.

Martins welcomes Nussbaum's grounding of capabilities in an Aristotelian understanding of flourishing, her realism, rejection of utilitarian and 'resourcist' approaches to well-being and her defence of universal values. However, he does not accept her list of central human capabilities. The reasons for this rejection are not always clear. His comment that defining the list is not an easy task (Martins 2007b, p. 258) is, by itself, hardly compelling. A stronger concern is Nussbaum's failure to link capabilities explicitly to underlying structures (Martins 2007b, p. 265). While some capabilities, particularly life, bodily health and bodily integrity are uncontroversial because they relate to our shared biological structure, others draw on social and economic structures, which are particular rather than universal. For example, Nussbaum identifies the importance of private property, which Martins considers to assume a specific rather than a universal economic structure. Our common human nature is historically and socially mediated. We can move from evidence of human diversity to the identification of universal statements by understanding that empirical diversity and structures exist at different ontological levels (Lawson 2003b; Martins 2007b).

According to Martins, making the structured ontology of Sen's capabilities approach explicit, means it is possible to assess human advantage and inequality without resorting to a list of universal capabilities. The idea that the capabilities approach needs an explicit structured ontology is important, yet Martins's claim that such an ontology is already implicit in Sen's work is difficult to sustain. While Sen does explore the nature of concepts such as well-being, equality, capability and functioning there are also inconsistencies in his use of terms. It is more accurate to say that Sen's capabilities approach is potentially compatible with, and would benefit from, a structured ontology. In his book *The Idea of Justice*, published after Martins's remarks, Sen (2009, pp. 41-42) explicitly rejects an ontology in ethics. Instead, he endorses pragmatist philosophy Hilary Putnam's (2005) 'ethics without ontology'. Given the strongly normative nature of the capabilities approach, this rejection of an ontological commitment is significant.

Martins argues that giving the capabilities approach a structured ontology removes the need to create a universal list. However, I contend that Nussbaum's capabilities approach, including her list, will be strengthened if the structured ontology is made explicit. This will do more than clarify differences between the particular and the universal. It will also show how the capabilities are linked with each other. For a person to have access to the capability of practical reason, which entails the ability to plan one's life, that person will need to have realised other capabilities such as respect, health and material resources.

Revealing these connections makes it clear why it is not possible to trade away one capability for more of another. It also helps to clarify the relationship between capabilities and functioning.

Parallel to this is the need for consistency in the language used to name and describe capabilities. The names of Nussbaum's capabilities are nouns or verbal-noun phrases for concepts or ideas referring to states, entities and powers. Some describe a desired outcome, as in the case of life, bodily integrity, bodily health and control over one's environment. The names of other capabilities refer to the domain of interest, for example: emotions; senses, imagination and thought; other species; and play. The capabilities of practical reason and affiliation fall somewhere in between. There is greater consistency in the descriptions, which all commence with the phrase 'being able to'. In each case if 'x' is a capability (power) then 'x' is the capability to do 'y'.

Neither Nussbaum nor Sen explicitly state the metaphysical view behind their respective capabilities approaches, although in her most recent book, Nussbaum (2011b) explains the philosophical influences.¹⁷⁸ Both argue that their versions are compatible with different metaphysical positions. Yet there are limits. The capabilities approach rests on specific claims about human nature, the importance of reason and nature of truth, claims that are not consistent with all philosophical positions. Nussbaum's view is clearly realist in that it entails a rejection of post-modernism as being both hostile to the pursuit of justice and incoherent. Moreover, she is concerned with human flourishing, basing moral judgements on what is good for humans. Both features are evidence of an Aristotelian heritage. Another important influence is the Kantian categorical imperative that each person should be treated as an end and not as a means to the ends of others (Nussbaum 1993, 2000c, 2006). This categorical imperative is supported by some, but not all, metaphysical traditions.

Interestingly, Nussbaum also locates her capabilities approach within the natural-law tradition of Hugo Grotius and to a lesser extent the work of Samuel Pufendorf (Nussbaum 2006, pp. 20, 36).¹⁷⁹ Grotius derives his natural-law approach from the Greek and Roman Stoics, particularly Seneca and Cicero. Nussbaum (2011b, p. 132) explains that natural law is a 'natural marriage' between 'Stoic ideas of the equal worth of all human beings and Aristotelian ideas about human vulnerability'. Grotius was primarily concerned with international relations. However, Nussbaum considers his work relevant to domestic matters. According to Grotius, our entitlements are grounded in our human dignity, which is deeply natural, a constituent characteristic of our human nature (Nussbaum 2006, pp. 36-38).

Nussbaum sees the basic structure of Grotius's view to be similar to the capabilities approach. However, there are features of his work that she rejects. His political conception of the person is strongly rationalistic, relying as it does 'on a very strong distinction between humans and animals' (Nussbaum 2006, p. 38). Nussbaum notes that for Grotius, the important type of equality is moral equality, 'which entails equality of respect and entitlement'. A person with different physical powers is treated in the same way as is any

¹⁷⁸ Nussbaum (2000c, p. xiii) states that her earlier book, *Women and Human Development*, is written for an interdisciplinary audience and therefore does not contain a detailed discussion of all the relevant philosophical issues.

¹⁷⁹ One of Nussbaum's (2006, p. 12) concerns with Rawls's work is he does not assume that 'humans beings have any natural rights in the state of nature'.

other person (Nussbaum 2006, p. 38), although this does not take account of our differing abilities to convert resources and opportunities into functionings.

Nussbaum (2006, pp. 39-45) notes that modern social contract theories 'attempt to dispense with all ideas of natural rights or natural law' because the norms and entitlements entailed are thought to be insecure. This is a departure from the classical contract doctrines of Hobbes, Locke and Kant, which do contain some natural-law elements, including 'binding moral norms and morally justified entitlements of persons'.

Nussbaum (2006 p. 277) traces her account of entitlement to Marx's early work on truly human functioning, as well as to the work of Aristotle and the Stoics. However, she does not discuss the work of Aquinas, arguably the most systematic of the pre-Enlightenment natural-law thinkers.¹⁸⁰ Aquinas's work forces one to confront ontology. This pattern of influence may reflect concern about some conservative thinkers in contemporary Catholic natural-law tradition, such as John Finnis, with whom she has clashed over the question of homosexual rights (Nussbaum 1999c, chapter 12). However, there are other natural-law theorists whose work is rigorous but not conservative, particularly that of Alisdair MacIntyre (2006, chapters 4 and 5).¹⁸¹

8.6 Combining the elements

Some of the 10 central capabilities contain elements that do not sit well together. This becomes more apparent when thinking about the ontology of the list. My proposed list restructures and expands Nussbaum's list. I start with the idea, that to live in a fully human way, we need to have the capacity to form and enact a plan of how we wish to live our lives in accordance with the things we value, with the proviso that we do not harm others. Closely linked to this is the capability of respect. Without these two capabilities, flourishing is not possible. The capabilities of practical reason and respect emerge from, but are not reducible to the other 14 capabilities on my list.

I have added four new capabilities to Nussbaum's list: care, living with others, equality and sustainability. As discussed earlier in this chapter (section 8.2), Claassen (2011, pp. 46-49) proposes two care capabilities: care-giving and care-receiving. The distinction between these two care capabilities is necessary in Claassen's care theory because he accepts that we each have an entitlement to receive care but rejects the idea that we have an obligation to provide care. In contrast, I argue that we each have a care-entitlement and a care-obligation. Therefore I have combined both aspects of care into one care capability.¹⁸²

Wolff and de-Shalit argue that sustainability, meaning the freedom to sustain functioning, is not included in Nussbaum's list and has been neglected by the capability theorists more

¹⁸⁰ Aquinas does make an appearance in Nussbaum's book *Upheavals of Thought* (2001c, chapter 12) but only as a participant in Dante's *Divine Comedy*.

¹⁸¹ MacIntyre (2006, pp. 152, 190) is emphatic in insisting on Thomistic (and Aristotelian realism) against, for example, the pragmatism of Hilary Putnam.

¹⁸² I thank Rutger Claassen for drawing my attention to this issue in the discussion following the presentation of my paper (Leahy 2011) to the Human Development and Capabilities Association conference, September 2011.

generally. Sustainability is connected to risk. Many people who are extremely poor take big risks in order to provide food for themselves and their families. These people are forced to take risks in the sense that there is no reasonable alternative, because other options entail even greater risk (Wolff & de-Shalit 2007, p. 65). There are a number of aspects of this risk. The first is the danger of negative outcome. The second is the stress involved even if the negative outcome does not eventuate. The third is the cost involved in attempting to reduce either the risk itself or the costs incurred should the worst happen. Finally, there are the difficulties people, who consider themselves subject to risk, have in planning their lives (Wolff & de-Shalit 2007). Nussbaum (2011b) welcomes Wolff and de-Shalit's focus on sustaining functioning. However, some others argue that sustainability is implicit in the capabilities approach.¹⁸³

I have separated the two parts of Nussbaum's capability of affiliation into the capabilities of respect and of sociability/connectedness. Similarly I have created two capabilities out of the two parts of Nussbaum's capability of control over one's environment: the capabilities of political participation and of a material basis for a dignified life. Minor changes involve moving elements from one capability to another. 'Pleasurable experiences and avoidance of non-beneficial pain' has been moved from the capability of senses, imagination and thought to that of bodily integrity. 'Freedom from unwarranted search and seizure' has been moved from the capability of control over one's environment part B to the capability of political participation. I have extended the capability of practical reason to include the ability to enact as well as formulate a life plan. The idea that we have obligations to others has been added to the capability of sociability/connectedness. Reference to environmental sustainability is now contained within the capability concerning other species. I have also made minor changes to the names of some items.

The 16 capabilities are grouped according to the structures to which they relate (see figures 4 and 5).

¹⁸³ This point was made by Jean-Luc Dubois in a discussion following the presentation of my paper (Leahy 2010a) to the 2010 Human Development and Capabilities Association conference, September 2010.

Figure 4: The relationship between individual capabilities on my proposed list

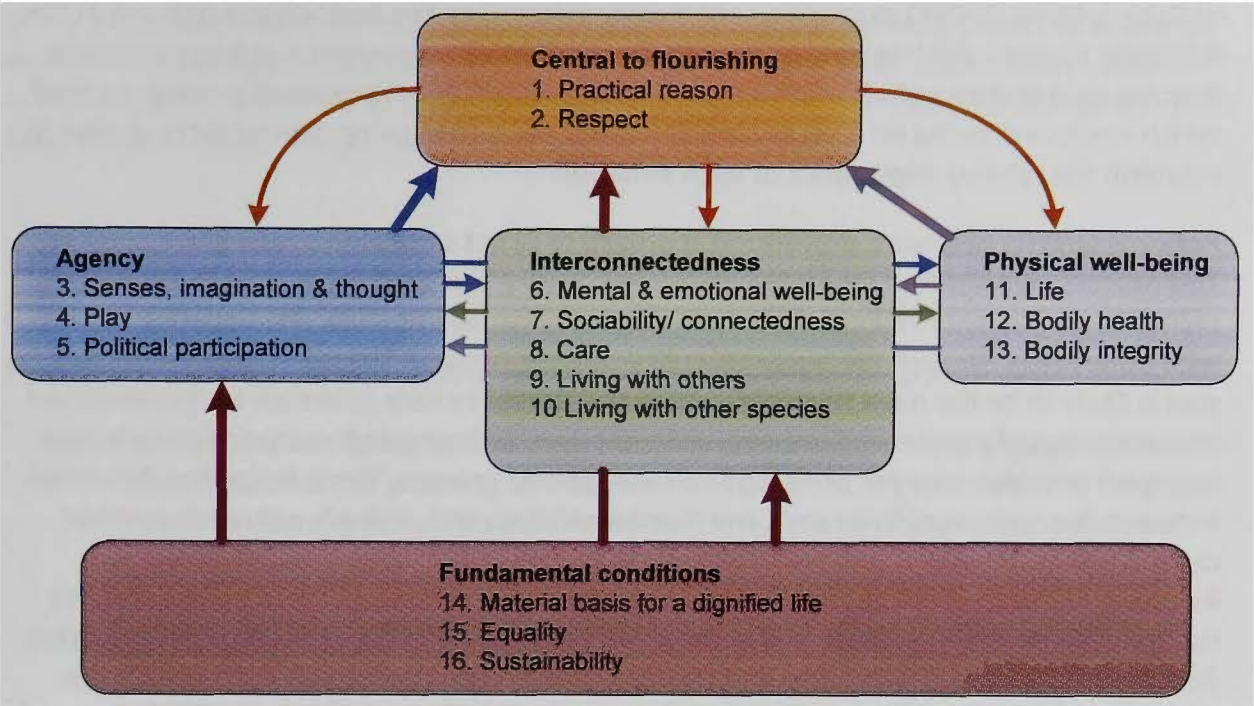
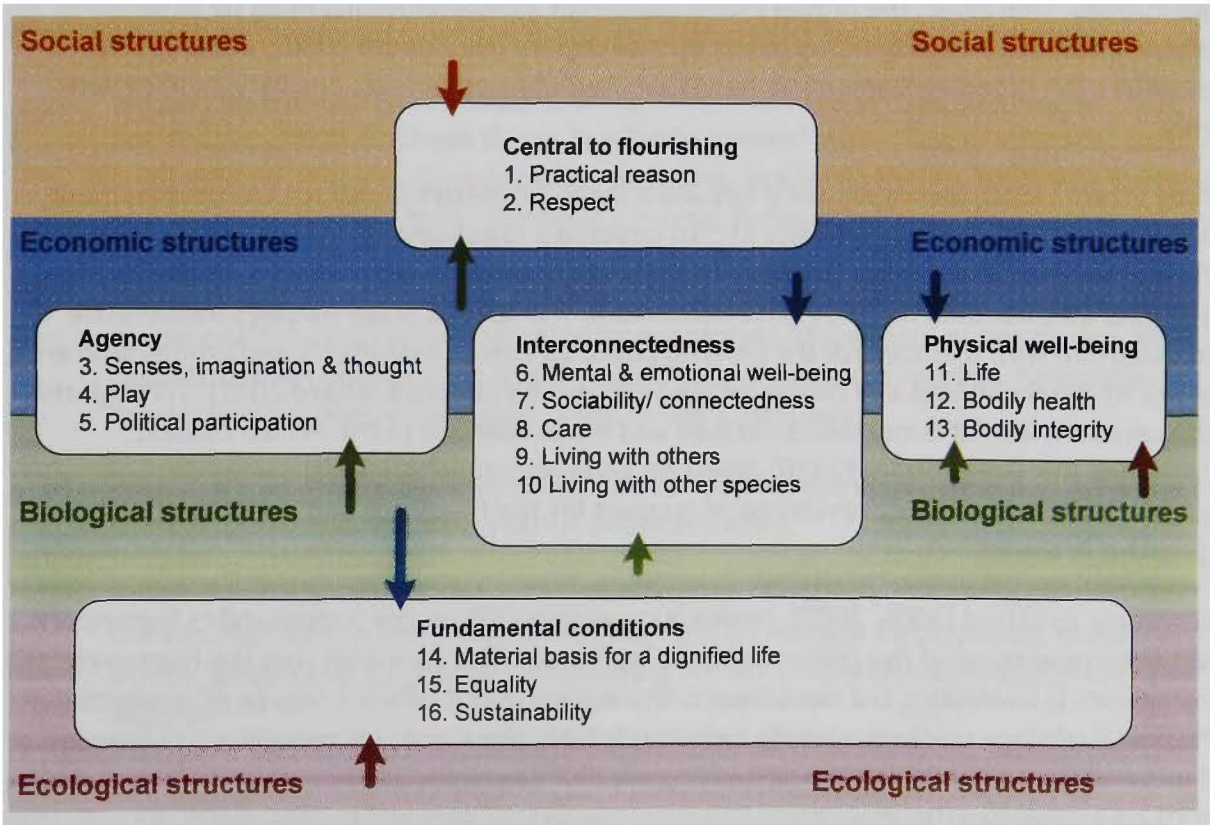


Figure 5: The links between groups of capabilities and underlying structures



8.7 Justifying a modified list

The process of developing capabilities lists is the subject of considerable debate. According to Sabina Alkire (2007a) capabilities are usually selected on the basis of one or more of the following sources: existing data or convention, normative assumptions, public consensus, ongoing deliberative participation and empirical analysis. Alkire proposes a mixed method which involves drawing on a set of core dimensions and then using participatory studies to establish the relative importance of each dimension.

Robeyns (2003c) defends a procedural approach to select capabilities for a given context. This process involves four steps: brainstorming; testing the draft list against the academic, political and grassroots literature; considering other capabilities lists and debating the list with others (e.g. through the publication of academic papers). She notes that the second step is likely to be the most time-consuming and should include attention to the views and circumstances of people who live very different lives. Robeyns argues that her procedural approach provides a way of realising Sen's democratic process. There is significant overlap between the content of Robeyns's and Nussbaum's lists and, indeed, with various other capability lists. However, Robeyns contends that, even if the items on a list developed following her procedural approach end up being much the same as those on Nussbaum's list, they are different because of the scope of application and the process of development. Despite this claim, it is difficult to find significant differences in the way the two lists are developed. Nussbaum (1998a, 2000c) defends a philosophical approach aimed at developing a normative philosophical theory, but this entails much the same type of testing and debate as described by Robeyns.

For Sen (2009) and his followers, public reason is central to the development of the capabilities approach. Nussbaum also stresses the importance of reason and democratic processes. However, she is aware that majorities sometimes support unjust laws and institutions. Therefore, the primary justification for a capabilities list must be in terms of ethical intuitions and judgments about human dignity (Nussbaum 2000c, 2011b). She considers the broad agreement on her capability list to provide an ancillary justification only.

Polly Vizard (2010) favours moving beyond a legalistic methodology for the development of a human-rights-based capability list. To develop a capability list for the British context, Vizard proposes a two-stage process. The first stage involves deriving a list of capabilities from the international human-rights framework. The second stage involves deliberative consultation with members of the general public as well as individuals and groups who are at risk of discrimination and disadvantage (see also Burchardt & Vizard 2011). Through this consultation, the list is expanded, refined and made relevant to the British context. Extending this work, Vizard (2010) draws on general population social survey data on values to provide empirical evidence of support for the freedoms and opportunities specified in the list.

According to Vizard (2006, 2007), basing a capabilities list on the human-rights framework can overcome some of the concerns about legitimacy. She concedes that the human-rights framework is contested, but nonetheless she argues that it offers a degree of consensus. This methodology involves working inductively from the standards recognised in human-rights treaties to determine the underlying capabilities or states of beings and doings. This method establishes the conceptual link between capabilities and human rights.

My overall approach or method has been iterative rather than staged, as described in section 3.5.3. This extends to the development of my proposed list, which involved brainstorming, reviewing the literature and assessing other lists. I tested different versions of my list by applying them to specific policy issues, through presenting papers to academic conferences (Leahy 2010a, 2010b, 2011), and through debate and discussion with others. In this list, as in figures 4 and 5, I have endeavoured to integrate ontological and other insights from critical realism (see sections 3.5 and 8.5 to 8.6).

8.8 A proposed new list of central human capabilities

Flourishing depends on the capabilities of practical reason and respect.

1. **Practical reason.** Being able to form a conception of the good, to engage in critical reflection about the planning of one's life and to live the life one values as long as it does not harm others. This entails protection for the liberty of conscience and religious observance.
2. **Respect.** Being able to live as a dignified being whose worth is equal to that of others. Having the social bases of self-respect and non-humiliation. This entails, at a minimum, protection against discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin and care responsibilities.

The capabilities of practical reason and respect emerge from, but are not reducible to, the following 14 capabilities (organised according to the groups of structures to which they relate).

Agency (emergent from, but not reducible to, a shared biological structure and social structures that, although not universally shared, have many features in common).

3. **Senses, imagination and thought.** Being able to use the senses; to imagine, think, and reason and to do these things in a "truly human" way – a way informed and cultivated by an adequate education, including, but by no means limited to literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing self-expressive works and events of one's own choice – religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech and freedom of religion. Being able to search for the ultimate meaning of life in one's own way.
4. **Play.** Being able to laugh, play and to enjoy recreational activities and to have the same opportunities as others do for these activities.
5. **Political participation.** Being able to participate effectively in making political choices that govern one's life; having the right of political participation, protection of free speech and association; and having freedom from unwarranted search and seizure.

Interconnectedness, including responsibilities to others (emergent from, but not reducible to, a shared biological structure and to social and economic structures that, although not universally shared have many features in common).

6. **Mental and emotional well-being.** Being able to have attachments to people and things outside ourselves; to love and care for those who love and care for us; to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by overwhelming fear and anxiety or by traumatic events of abuse or neglect. Supporting this capability means supporting forms of human association that can be shown to be crucial in its development.
7. **Sociability/connectedness.** Being able to live with and toward others, recognise and show concern for other human beings and to engage in various forms of social interaction; to be able to imagine the situations of others and to have compassion for them; and to have the capability for both justice and friendship. It is not enough merely to feel concern and compassion. It is also necessary to act on our obligations to other humans in order that that they have the opportunity to flourish. Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, including protecting the freedom of assembly.
8. **Care.** Being able to receive the care needed during periods of dependency, particularly infancy, old age, periods of illness or disability and being able to take responsibility for the care of others. This includes our obligations to provide or arrange the care of close family members as well as a shared social responsibility for the care of members of the same community and of distant strangers. Social responsibility includes taxes to fund decent support services and transfer payments, as well as laws that guarantee a living wage and proper working conditions, fair trade and environmental sustainability.
9. **Living with others.** Being able to live with others in relationships that are neither exploitative nor oppressive. For many, this will centre on shared domestic arrangements (including, but not limited to, different sorts of families) but may also include relationships across households such as separated parents, extended families and women's collectives.
10. **Living with other species.** Being able to live with concern for and in relation to non-human animals, plants, and the world of nature. This entails living in an environmentally sustainable way.

Physical well-being (emergent from, but not reducible to, shared ecological and biological structures and to economic and social structures that, although not universally shared, have many features in common).

11. **Life.** Being able to live to the end of a human life of normal length; not dying prematurely or before one's life is so reduced as to be not worth living.
12. **Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished and have adequate shelter.
13. **Bodily Integrity.** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction. Being able to have pleasurable experiences and to avoid non-beneficial pain.

Fundamental conditions for flourishing (emergent from, but not reducible to, ecological structures that may have some regional variation and to economic and social structures that, although not universally shared, have many features in common).

- 14. **Material basis for a dignified life.** Being able to have access to the resources and opportunities needed to sustain a dignified life. This includes access to basic material needs such as food and shelter as well as the opportunity to earn income through meaningful work. In most cases the real opportunity to use land and movable goods is secured through ownership. Meaningful work involves being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers. It includes care and domestic work.
- 15. **Equality.** Being able to have access to the basic resources and opportunities needed for a dignified life on an equal basis with others. This entails no significant differences in basic material circumstances of each individual.
- 16. **Sustainability.** Being able to sustain functioning by having access to adequate material resources, the possession of internal capacities to develop a life plan and freedom from coercion, which makes enactment of that plan a possibility.

8.9 Conclusion

In this chapter I have discussed five issues raised during my examination of Nussbaum’s list of central human capabilities: the absence of care, the challenge of specifying responsibilities, whether capabilities should be the political goal, the ontology of capabilities and the placement of some elements of Nussbaum’s 10 capabilities. I then considered how other theorists develop and justify capabilities lists. My approach is iterative, involving: brainstorming, literature review, assessment of other lists and repeated testing of my list. After following this process, I developed an extended and restructured version of Nussbaum’s list, which I presented in this chapter.

The idea of a new list raises a number of questions. First, does my proposed list do additional work that could not be done by Nussbaum’s version?¹⁸⁴ Does my list make a reasonable demand on society and on the individual or is it unduly onerous? Have I introduced into the list a level of detail that should be determined during implementation? Do I follow Nussbaum in conceptualising my list as part of an overlapping consensus, or do I adhere to a particular metaphysical approach, seeking to support freedom in other ways? I will address these questions in the next chapter when I test my version of the capabilities approach by using it to address three contentious policy issues: employment breaks, payment for care work and shared care.

¹⁸⁴ In response to the paper I presented to the Human Development and Capabilities Association conference in 2010, one participant said that there was no need to change Nussbaum’s list because the issues I raised have already been resolved. He was also concerned that making changes disrupted the integrity of Nussbaum’s list and threatened its underpinning rationale. I disagreed. The problem of care has not been resolved and Nussbaum’s list is not fixed (see Nussbaum 2011b).

Chapter 9 Care and justice

9.1 Introduction

Is it possible to promote equality between women and men and value the care and love that currently is provided mainly by women? Many feminists have grappled with the question. There is a persistent concern that acknowledging the value of care work risks undermining the fragile gains made by women over the past four decades. This fear is fuelled by the recognition that, in countries like Australia, paid employment still confers far greater status than does unpaid care work. As discussed in chapter 2, the workforce participation rates for women and, in particular, mothers have increased over the past 40 years. While attitudes to working mothers have changed, there has not been a commensurate shift in male patterns of paid and unpaid work. Martha Nussbaum argues that it is possible to both promote equality and value care by using her capabilities approach.

In the previous chapter I revised, restructured and extended Nussbaum's list of central human capabilities to provide a stronger emphasis on care. In this chapter I will test my revised list by using it to examine three contentious policy issues: employment breaks, payment for care work and a shared care model. As explained in chapters 1 (section 1.3) and 3 (section 3.2), the way a problem is framed shapes the solutions that emerge from a process of deliberation. I will discuss each of the three issues in turn. Then I will consider them from a capability perspective (based on Nussbaum's and my revised lists), Catherine Hakim's version of rational choice theory, an ethics-of-care approach and Nancy Fraser's principles of gender equity.¹⁸⁵ On the basis of the investigation below I will re-assess my proposed list, considering whether it is sufficient to address the problem of care. However, first I will briefly touch on mechanisms for social change.

9.2 Social and structural change: mechanisms and constraints

In chapter 3, I outlined the universal-caregiver model, which promotes shared care arrangements, noting that significant social and structural changes are required for it to be realised in Australia. This raises an important question: under what conditions is change possible? Consider, for instance, Susan Himmelweit and Maria Sigala's (2004) examination of the factors inhibiting maternal employment. Himmelweit and Sigala identify three types of constraints on mothers' employment: finances, child care and working time, finding that each has internal and external elements. They argue that policies designed to lift an external constraint will fail if there is a strong internal constraint, although these internal constraints are not fixed. Policies that result in short-term behavioural change may have a longer-term multiplier effect by shifting perceptions of what is possible and what is normal (see also Grace 2002).

¹⁸⁵ I discussed Nussbaum's capabilities approach in chapter 3 (section 3.4) her list of 10 capabilities in chapter 7. My capabilities list was proposed in chapter 8. Hakim's preference theory was described and criticised in chapter 5. Consideration of ethics-of-care approaches constituted chapter 6. Fraser's principles of gender equity were introduced in chapter 4 (section 4.5).

Himmelweit and Sigala identify two types of policies: enabling and coercive. 'Enabling' policies lift external constraints and expand options. One example is a child care subsidy to assist women whose income is not high enough to pay the full cost of child care. Himmelweit and Sigala (2004, pp. 471-72) state that the introduction of an enabling policy will immediately expand the options of women whose identities favour the behaviour being supported. It must be stressed that the identities described by Himmelweit and Sigala are not fixed as is the case with Hakim 'types'. Himmelweit and Sigala (2004, p. 471) argue that identities and behaviours 'adapt to each other in a process of positive feedback, both at an individual and at a social level'. Enabling policies provide positive feedback at the individual level by encouraging maternal employment. At the social level there will be a multiplier effect. An increased number of mothers in employment will shift perceptions about what is appropriate.

Coercive policies, on the other hand, often have a greater direct effect, shifting behaviour in spite of internal constraints. Raising participation rates by withdrawing benefits from single mothers will force women back into the workplace whether or not they were seeking employment and whether or not they are able to find decent jobs.¹⁸⁶ According to Himmelweit and Sigala (2004, pp. 471-73) a coercive policy has a much smaller feedback effect than an enabling policy. The reason for entry into employment is external, so mothers are less likely to take ownership of their decision to seek work and to adjust their identity to align with their behaviour. According to Himmelweit and Sigala (2004, p. 472), there is also a limited effect at the social level, as the increased employment of single mothers will not be interpreted as evidence of a shift in social attitudes (Himmelweit & Sigala 2004, p. 472). While this may be true, we should not discount the effect that increasing the participation rate has on attitudes.¹⁸⁷ There may be some women who find employment rewarding, even if it were not something they would have chosen. A far bigger concern is the nature of the work available. Women with limited employment prospects risk moving from a situation of financial poverty to one characterised by both financial and time poverty (Burchardt 2008). Another problem is the differential treatment of single mothers. In Australia, single mothers are encouraged by government policy to engage in market work, while for couple mothers a choice between domestic and market labour is deemed appropriate.

In many cases it will be possible to establish the effect of policies by considering how they support particular functionings. In their empirical work Jonathon Wolff and Avner de-Shalit (2007) found situations in which disadvantage in one area of functioning generated disadvantage in others. They called this 'corrosive disadvantage'. They also found evidence of 'fertile functionings', in which doing well in one area of functioning leads to other improvements or a multiplier effect. Drawing on Wolff and de-Shalit's work, Nussbaum argues that politicians should spend scarce resources securing fertile capabilities (a term

¹⁸⁶ The consequences of welfare-to-work policies in the US are discussed by Barbara Ehrenreich (2001).

¹⁸⁷ My daughter's primary school class, in an inner-northern suburb of Melbourne, was presented with a number of brain teasers, including the following: *A man and his son were in a serious car accident. The man died, the son was rushed to the operating theatre. The surgeon took one look at the patient and said 'I cannot operate, this is my son.' How can that be?* The group of 10 and 11 year olds replied immediately: 'The surgeon is the boy's mother'. They thought it was very straightforward and not much of a brain teaser. The teacher explained that, in the past, people responded very differently to this puzzle.

she prefers to fertile functionings) and focus their energy of removing corrosive disadvantage. However, it is difficult to establish the correlations between different types of disadvantage. Wolff and de-Shalit (2007, p. 137) caution us to ‘guard against the possibility that an apparent causal connection is merely an artifact of the conceptual framework within which the problem is approached’.

These insights from Himmelweit and Sigala (2004) and Wolff and de-Shalit (2007) can be extended by drawing on critical realism, which provides a systematic way to think about the nature of and opportunities for social change. As explained in chapter 3 (section 3.5), social systems are understood to be open and therefore they are not characterised by consistent regularities. Reality is structured, with experiences, events and mechanisms found in different domains. To comprehend a situation and see the potential for real change we need to appreciate the underlying structures and causal mechanisms.

Returning to Himmelweit’s example, dominant patterns of employment are shaped by, but not reducible to, various structures. Most significant are the social structures that express ideas about the proper roles of mothers and fathers and the political and economic structures that ignore care work and link financial rewards to market work. These structures may be changed. However, there are aspects of our humanity that are more or less fixed. We have certain basic requirements such as food, water and shelter in order to sustain life. Mere subsistence, though, is not sufficient. We are social beings who seek engagement with others as well as opportunities for meaningful work (broadly defined). Although our need for care at some point in our lives is rooted in our very humanity, the structures established to ensure that care is provided can, and do, change.

The coercive welfare-to-work policy described by Himmelweit simply removes financial support. It does not address the nature and conditions of employment, leaving some people in alienating jobs that do not provide a living wage, and it fails to accommodate family responsibilities. In contrast, the enabling policy supports a fertile functioning by addressing an aspect of the political and economic structures that has the potential to trigger changes in the social structure. It is only by understanding the complex interaction between structures and casual mechanisms that we determine the effectiveness (or otherwise) of different policies.

9.3 Sharing the benefits and the burdens - three issues

In public debates on care and employment there are three controversial issues that highlight the underlying assumptions and sometimes conflicting concerns held by different commentators. I will briefly outline these three issues and then consider each from different theoretical perspective.

9.3.1 Employment breaks

There is an ongoing debate about the optimal amount of leave a mother should take following the birth of her child. Marion Baird (2009) argues that a period of nine months is ideal, allowing the mother time to recover from the birth, establish a bond with the child and maintain a strong connection with the workplace. Others support the option of longer breaks of two, three, even five years (e.g. Grace 2002; Manne 2005). In the debates, two dominant concerns emerge: workforce attachment and the needs of the child. The needs

of the mother, if discussed at all, are usually narrowed to financial independence. Financial security is of critical significance; however, it is not the only determinant of well-being.

Workforce attachment is deemed important because increasing women's workforce participation is seen as the key mechanism for promoting gender equality in the workplace and the home (Baird 2009; Kamerman 2000; Whitehouse 2005). Increasing workforce participation is also promoted as a way of meeting the costs associated with an ageing Australia (e.g. Henry 2010a). David Gruen and Matthew Garbutt (2004) reported that the positive economic effect of increasing work force participation rates is greater than that of improving productivity. Policies designed specifically to increase the ratio of employed to non-employed people may not lead to improved outcomes for women and may potentially further marginalise women who have significant caring responsibilities. It is clear that the increasing proportion of women, particularly mothers, in paid employment has brought about social change, but little change to the gendered division of work, particularly in the home (e.g. Craig 2007a).

A period of 12 months unpaid maternity leave has been available to a large number of Australian employees since 1979. Recent changes mean that each parent has the right to request an additional 12 months unpaid parental leave, potentially resulting in up to two years leave (see chapter 2, section 2.7). This entitlement is included in the National Employment Standards (NES), 10 minimum conditions specified in the federal Fair Work Act (Australian Government 2009). The NES also provides parents with the right to request part-time employment until their child starts school or, if the child has a disability, until s/he reaches the age of 18. The employer may refuse these requests only on 'reasonable grounds', although what constitutes reasonable grounds is not made explicit (Australian Government 2009, sections 65, 76).¹⁸⁸

While there has been strong public support for extended parental leave, some commentators have been more circumspect. Feminist progressives such as industrial relations academics Marion Baird (2009) and Sara Charlesworth (2004, 2005c) are concerned that, while both measures may give parents more flexibility, they are likely to exacerbate gender inequality by reducing women's attachment to the workforce. Their main concern is that extended periods of unpaid parental leave are unlikely to be used equally by men and women. On average, fathers only take short periods of leave following the birth of their child, and they usually take only paid leave. Mothers, on the other hand, take longer periods of leave, much of it unpaid. In most cases, mothers who take extended periods of leave or work part-time are less likely to be promoted to more senior positions. They experience a 'part-time penalty', with a long-term negative impact on wage rates, evident even after a return to full-time employment (Chalmers & Hill 2007). Added to this is the gender wage gap. As a result women tend to retire with less superannuation and other wealth than do men. With lower income, lower lifetime earnings and barriers in the workplace, many women in couple households become secondary earners, using any flexibility in their employment to meet family responsibilities and protect their partners' jobs. Single mothers are in a more difficult position, with less discretion about how they divide their time between paid and unpaid work (Craig 2007a; Goodin, B 2010) and often facing significant material hardship.

¹⁸⁸ If the employer refuses a request for additional unpaid leave or part-time work, it must notify the employee in writing stating the reasons for their decision (Australian Industrial Relations Commission 2005; Australian Government 2009, section 65; section 76).

Behind the demand to achieve women's equality by increasing women's workforce participation rates, is a sense that the nature of work, the structures of rewards and the allocation of responsibilities are so firmly entrenched that the only way forward is for women to work in the manner of the traditional male breadwinner (see universal breadwinner model described in section 4.5.3). This is a stark, perhaps even exaggerated, way of expressing the equity-though-employment position. However, when such a position is stripped to its essentials, this is what is involved. To break out of the vicious cycle of the mutually reinforcing factors that limit women's real long-term opportunities and sustain gender inequality, we need to consider more than merely workforce participation (recall figure 2 in section 5.4.4). Moreover, the equity-though-employment position provides a flawed way of conceptualising the problem of care.

9.3.2 Payment for care work

Unpaid parental leave recognises the importance of enabling parents to spend time with their young children and to maintain a connection to the workplace. It provides time but not money. The parent taking time out of the workplace to care for their child would draw financial support from other sources, such as paid parental leave, savings, a partner's income or the Parenting Payment (see chapter 2, section 2.7). There is evidence to suggest that paid parental leave does more to promote individual well-being than unpaid leave, extended or otherwise (Baird 2009; Charlesworth 2004, 2005c). At the very least, payment reduces the impact of employment breaks on women's lifetime earnings, but there are also less tangible benefits in the recognition inherent in paid leave.

As explained in chapter 2 (section 2.7), the Australian Government provides various forms of financial support for families. Most benefits and rebates are supplementary payments intended to assist with the costs of raising children (e.g. Family Tax Benefit and the Child Care Rebate). The Paid Parental Leave and the Parenting Payment are designed to provide a main source of financial support for a fixed period of time, although each is set at a low level.

The new publicly funded paid-parental-leave will match or even exceed the income of low-paid women, although for many women it will fall short. The gap is exacerbated by the lack of superannuation contributions for the period of Government-funded paid leave.¹⁸⁹ Without wage replacement or superannuation, the scheme is unlikely to be attractive to fathers, thereby further reinforcing the role of the mother as the primary carer and secondary earner (Baird 2009). Fears that the new paid parental leave scheme (and the option of extended unpaid leave) will reduce women's attachment to the workforce are exacerbated by the shift in government policy and public debate from a focus on women's equality to one on workplace flexibility and family friendly measures. This has been evident over the past 15 years, particularly during the years of the conservative Howard Government (March 1996 – November 2007). Without attention to women's equality, attempts to acknowledge the importance of care work or measures to ease the pressures on individual women may well simply reinforce traditional roles (Baird 2009; Charlesworth 2004, 2005c).

The Government's Paid Parental Leave scheme does not provide wage replacement, in part, because it is politically difficult to justify using public funds to pay a high-income

¹⁸⁹ The Australian Greens introduced an amendment to rectify this however it was rejected by the Labor Government.

mother \$2,500 per week and a low-income mother just more than \$540 for the same period. As explained in chapter 2, Australian governments tend to target most forms of financial support in order to reduce the overall cost and ensure that funds reach those with the greatest need. This line of thinking casts paid maternity leave as akin to a form of welfare. If we consider paid parental to be similar in nature to paid annual or long-service leave, the question of differing amounts is generally considered less troubling.¹⁹⁰ The attraction of a publicly-funded scheme is that it ensures that the costs of paid-parental leave are shared, thereby reducing the risk of discrimination against women of child-bearing age.

An additional issue is that the Government's paid-parental-leave scheme is not included in the National Employment Standards (NES) (Baird 2009). The governing legislation is the *Paid Parental Leave Bill 2010*, administered by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). Industrial-relations legislation is the responsibility of the Department of Education, Employment and Workplace Relations (DEEWR). This means that the right to return to the same or an equivalent position following a period of parental leave is specified in one piece of legislation, the paid-parental scheme in another (Australian Government 2009, section 84).

There is an interesting difference in the stated rationale behind the Australian and many European paid-parental-leave schemes. The Australian scheme is designed to allow parents (in reality, mothers) to spend at least the first few months caring full-time for their child (Family Assistance Office 2011d). In contrast, paid parental leave in most European countries is considered to provide compensation for foregone income. Working parents in these countries are also supported by strong child care systems (Nethery 2011).¹⁹¹

The Australian Parenting Payment is also designed to assist with the costs of raising children (Centrelink 2011e). It is available to single-parents caring for a child under the age of eight and to some low-income partnered parents caring for a child under the age of six. The means test applies to both single and partnered parents. The maximum payment is \$641.50 per fortnight (Centrelink 2011e), which is well below the minimum weekly wage of \$589.30 (Fair Work Australia 2011c).

While both the Paid Parental Leave scheme and the Parenting Payment provide important, if basic levels of financial assistance to families, they are conceptually different from a specific carer's wage of the type proposed by Eva Feder Kittay (see chapter 6, section 6.4.4). Scandinavian type schemes that provide full (or close to full) wage replacement are closer to the idea of a carer's wage. There is generally a difference in the rationale, with Scandinavian schemes designed to compensate parents for foregone income and to support children. The idea behind a carer's payment is that care is socially useful work that takes time and energy and so should be remunerated like other types of work. As discussed in chapter 4 (section 4.5), there are a number of possible models.

In Australia there is a Carer Payment, designed to support a person caring for someone who has a severe disability, medical condition or is frail aged. It applies to situations where the carer is unable to support themselves by paid employment because of the intensity of the needs of the person for whom they care. The current maximum payment rates are

¹⁹⁰ This, however, should not blunt concern about the big disparities in income levels nor blind us to the difficulty of living on the minimum wage.

¹⁹¹ Nethery draws on, but does not directly cite, the work of Italian sociologist Chiara Saraceno.

\$689.00 per fortnight for a single person or \$519.40 for each member of a couple. Income and assets tests apply to both the person providing and the person receiving care (Centrelink 2011a). The low level of pay and tight eligibility criteria mean this is not really a carer's wage, although it does recognise that, in at least some situations, caring responsibilities prevent people from entering or remaining in the workforce.

While there is broad support for fixed periods of paid parental leave tied to employment, the idea of a carer's payment is far more controversial. There are fears that if women have the option of a carer's wage they will be far less likely to seek employment, thereby further entrenching women's inequality (e.g. Bergmann 2000). While a carer's wage will give women a measure of financial independence in the short term, their longer-term financial security will be compromised. It is financially risky to spend long periods of time out of employment in a world in which paid employment is the main source of social status and financial independence. Given the dominant system of rewards, some mothers will also find the experience of significant employment breaks undermines their confidence and feelings of self-worth. Under these conditions a carer's wage may well alleviate poverty and provide some recognition of care work but only as a secondary, less highly valued activity that marginalises recipients. If the structures and nature of paid employment, and the behaviour of men are considered to be unchangeable, women's equality can only be achieved if women behave more like men. Higher workplace participation rates would be accommodated by an increasing reliance on paid carers. This raises the problem of the cascade of care and the potential for exploitation (see chapters 4 and 6).

Another more pressing concern is that, depending on how it is designed, a carer's wage may encourage a view that care is a private responsibility. Care provision may be uneven, based not so much on need but the availability of a relative or friend to be the carer. These problems can be addressed if the carer's wage is paid from a scheme built on the idea of a shared social responsibility for care. There would also need to be high quality options for people who do not have a friend or family member with the capacity and desire to take on the role of carer, or who do not want family or friends to take on such a role.

As discussed in chapter 4, there are other ways of conceptualising the problem. Jobs could be redesigned to accommodate caring responsibilities. This would require a fundamental reappraisal of the nature of work and its place in our lives. Social expectations could shift to the universal caregiver model which demands that everyone take responsibility for the direct provision and support of care. A carer's payment in this type of scenario would have a different effect. Potentially it could provide both recognition and financial support without consigning women to a second tier of existence.

9.3.3 Shared care

Many feminists argue that the only fair way to proceed is for men and women to share care, domestic work and employment (e.g. Craig 2007a; Folbre 2002) along the lines of the universal-caregiver model (Fraser 1997; Himmelweit 2008), as described in chapter 4 (section 4.5.5). Yet the Scandinavian experience makes it clear that there are substantial barriers to the achievement of a fairer set of arrangements. There have been two prominent Australian shared-care proposals, one from the Human Rights and Equal

Opportunity Commission (HREOC) (Squire & Tilly 2007) and the other from Barbara Pocock (2003). The two illustrate some of the issues raised by the concept of shared care.¹⁹²

A 2007 HREOC report proposed 'sharing the work of caring between families, communities and public institutions', thereby improving access to market work (Squire & Tilly 2007, p. xii).¹⁹³ To achieve this, the report argued that governments need to take a major role to spread the costs of care, ensure the provision of high-quality care services and improve the conditions of paid care work. This report presents a strong case in favour of valuing care, but it is far more hesitant in its defence of the concept of shared work (Leahy 2007). In the report there is considerable emphasis on the economic cost of the current division of care and market work, but only a limited appeal to fairness. The report states that the 'the goal of gender equality in both paid and unpaid work should be considered as a necessary precondition of a well functioning society' (Squire & Tilly 2007, p. 33). While this is an important statement, the report does not justify the call for a new set of arrangements in terms of either women's equality or a broader concept of justice. Instead, considerable emphasis is placed on preferences. The report argues that most Australians *want* a shared work-valued care approach. This conclusion is based on the opinions expressed through the consultation (stated preferences) as well as inferred from the decisions people actually make (revealed preferences). We are told that Australians are voting with their feet, with the majority not adopting the traditional breadwinner model for their families (Squire & Tilly 2007, pp. xiv, 39). This claim is undermined, however, by the recognition that sexism is entrenched and education is needed to bring about cultural change (e.g. Squire & Tilly 2007, p.xiv). In relying on stated and inferred preferences, the authors fail to take into account the way people actually form preferences and made decisions (see chapter 5, especially sections 5.3 and 5.4). Overall there seems to be a reluctance to take a strong stand and argue for a shared approach explicitly on the grounds of fairness, the importance of human flourishing, the need to recognise and eradicate exploitation, and/or women's equality. This is a failure to see care as a moral problem and as a problem of justice (see sections 1.3 and 2.5).

Another proposal is Pocock's Shared Work/Care regime, which is based on Eileen Applebaum's (2001) vision of shared work and valued care. Women and men share access to good jobs as well as the work of care. In this they are assisted by the community, public

¹⁹² In Australia the term 'shared care' often refers to the presumption that parents who separate should share the care of their children post separation. Following legislative changes introduced by the Howard Government, courts were required to start with the assumption that children would spend half their time with each parent. These measures were not introduced with the aim of achieving women's equality but in response to pressure from fathers' groups. A report commissioned by the Australian Attorney General recommended an overhaul of the system to ensure that children would receive stronger protection from violence (Bagshaw et al. 2010; Horin 2010). However, I use the term 'shared care' to mean arrangements to share care, domestic work and employment between parents (together or separated). This is also the intent behind the HREOC report (Squire & Tilly 2007) and Pocock's (2003) proposal.

¹⁹³ The final report followed extensive debate on the issues raised in a 2005 discussion paper *Striking the Balance: Women, Men, Work and Family* (Goward et al. 2005). There were 44 consultations and focus groups, with participants including employers, employer groups, unions, men's and women's community groups, parents, carers and children. HREOC also received 180 submissions from groups and individuals (Squire & Tilly 2007, p. xi). During the period of consultation the then Sex Discrimination Commissioner, Pru Goward, ensured that the issues raised were in the forefront of public debate.

institutions and the social norms structuring the behaviour and expectations of employers and the aspirations of women and men as parents and employees (Applebaum et al. 2001; Pocock 2003, p. 39). According to Pocock:

This model holds at its core the promise of genuine choice and the realisation of diverse patterns of work and care, that properly recognise and value the productive work of care, and equally reward various forms of labour and its organisation rather than marginalize the 'non-standard' (Pocock 2003, p.39).

The way this model is presented points to a dilemma, which is at the core of many shared-cared proposals. Pocock (2003) brings together two ideas that are potentially in conflict. The model sets up the institutional supports for shared work and care but, at the same time, Pocock seeks to offer choice and a situation where people will not be judged on the basis of their selected arrangements. While the realisation of this model will undoubtedly influence the ideas men and women have about how they wish to live their lives, strong cultural values about the appropriate roles of women and men will not change overnight. It is likely that, at least some, families will follow a traditional pattern that has the father specialising in paid work and the mother in caring. Given entrenched gender inequalities this may not be a free choice.

Within Australia there is considerable support for the adoption of Scandinavian-type policies (e.g. Grace 2002; Henry 2009b; Manne 2005), which share some characteristics of the shared care/employment system.¹⁹⁴ While some policies have been adopted, Henry (2010c) considers full implementation of a Scandinavian model to be prohibitively expensive in the short term. There are variations across individual northern European states, but common features include financial and institutional supports that allow parents to take employment breaks to care for their young children without severing connections to the workplace. This includes paid parental leave and the right of return. High-quality child care and early childhood programmes are available for the babies and children of employed parents. Parents are expected to re-enter the workforce once their child is two or three years of age, but have the option of working reduced hours. While entitlements are available to both mothers and fathers, it is overwhelmingly mothers who take time off work or reduce their hours. Norway and Sweden have quarantined a period of parental leave for fathers. While this has increased the amount of parental leave taken by fathers, the workforce remains highly gendered (Kershaw 2006). Despite these problems, the Scandinavian approach provides far greater support for families than typically found in English-speaking countries.

Better known in Europe than Australia, the Transitional Labour Market (TLM) approach may provide another way of achieving a fairer distribution of paid and unpaid work.¹⁹⁵ Developed in response to the problem of long-term unemployment among men,

¹⁹⁴ Because there is an expectation that parents will eventually work, the Scandinavian approach is sometimes considered to be a variation of the universal-breadwinner model (e.g. Haas & Hartel 2010). On the other hand, the provision of extended paid parental and support for care giving may also suggest an affinity with the caregiver parity approach. Given that both care and employment are supported, I think it is reasonable to categorise them as types of shared-care/shared employment arrangement.

¹⁹⁵ In 2005 the annual conference arranged by the Centre for Public Policy, University of Melbourne discussed the TLM approach with Günther Schmid one of the keynote speakers (see background paper by Ziguras et al. 2004).

particularly men who were employed in traditional male semi-skilled and skilled jobs, TLM challenges the idea of the traditional male work pattern. Fewer people are following a linear path of education, followed by employment in the one trade or profession and then retirement. Instead, many are experiencing a number of transitions between education, work and periods of unemployment or non-employment. People are most vulnerable during times of transition. This is when they need financial and other types of support, including income during periods when there is no paid employment. TLM is based on a social-insurance model with the expectation that everyone will work for an average of 30 hours a week over a lifetime. Later iterations recognised the importance of time spent caring for family members or doing socially-useful volunteer work (Schmid1995, 1998, 2002; Schmid, Günther & Schömann 2003). However, JaneMaree Maher and Jo Lindsay (2005a; see also Lindsay, J 2005) argue that the TLM approach is based on the idea of distinct blocks of employment or other activities, replicating male, rather than female life patterns. Mothers do take time out of paid work to care for children but the care does not stop when they resume employment. Instead, Maher and Lindsay conceptualise women as being in permanent transition between work and care.¹⁹⁶

Despite its limitations, the TLM approach is important because it challenges the concept and the reality of the ideal-worker pattern of employment. It may also offer recognition of care and other unpaid activities and proposes a way of providing financial support to people not in paid work. However, it does not fully address the unfair allocation of benefits and burdens characteristic of current care arrangements nor does it address the differing abilities of individuals to convert resources into valued functionings. Nevertheless, TLM offers insights into how a shared-care model could be implemented.

The most important problem with Pocock's proposed Shared Work/Care regime is the impossibility of offering everyone free choice *and* ensuring there is a just set of arrangements that guarantees that care is available and care work is supported. As raised in chapter 5 (section 5.4.4), one criticism of shared-care models is that they entrench one particular conception of the good (e.g. Hakim 2000; Hakim 2001; Manne 2005, 2008). For instance, Hakim (2000) argues that work-centred mothers promote market/care work arrangements that accommodate their preferences but trample on the desires of other types of women. As explained in chapter 5 (section 5.4), stated and revealed preferences do not provide reliable guides for the development of policies that seek to expand options rather than sustain existing inequalities. Instead, we need an objective account of what it is that humans need in order to flourish. This includes the conditions necessary for an individual to have the capability of practical reason, which entails forming a conception of the good and planning a life. There is also a question of whose free choice is seen as a matter of concern. The choices available to women will not be expanded unless men accept far greater responsibility for care and domestic work (see sections 5.4.4 and 7.3.2).

Compared with other versions of a shared approach, Paul Kershaw's (2005) concept of 'carefair' makes stronger demands on men and is unequivocal about what constitutes a just situation. He seeks to deter men from free-riding on female care by focusing on their responsibilities. This is achieved by making care-giving an essential requirement for full citizenship. He supports this by appropriating two arguments used to defend 'workfare' or

¹⁹⁶ On the transitional labour market experiences of women see also Ciara Smyth, Margot Rawsthorne and Peter Siminski (2006). Eva Cox (2008) argues that we should rethink standard working patterns along the lines of the TLM.

the social obligations on citizens either to work or, if in receipt of benefits, to meet some sort of work test. The first is the moral hazard argument, which holds that unemployment benefits may undermine the incentive to stay employed. This view is held by neo-liberals and advocates of the Third Way (e.g. Giddens 1998). The second is the new paternalist competence argument (e.g. Mead 1986, 1997). According to this perspective, passive welfare undermines individuals by focusing on their weaknesses rather than on their competence. Kershaw concedes that this is a more controversial argument, one favoured by neo-liberals. In drawing on these types of arguments, Kershaw shows how liberal democracies already accept restrictions on individual choice to engineer particular social outcomes. It is therefore no great leap to insist that men have an obligation to provide care and should face sanctions if they fail to meet their responsibilities (Kershaw 2005).

Lyn Craig (2008, pp. 50-53) sees merit in focusing on social obligations rather than in simply seeking to provide financial recompense for care work. However, she argues that, while engaging fathers in child care is desirable, it does not go far enough. Kershaw's carefair will shift the load between mothers and fathers but will not address the broader problem that society as a whole free-rides on carers (both unpaid and paid). Instead Craig proposes that governments would give a tax concession on retirement income only to people who had met a minimum lifetime requirement of care provision. The expectation may be the equivalent of five years of care over a lifetime. Notwithstanding practical questions about how the care commitment would be measured and recorded, Craig's policy has considerable merit. It could be strengthened if grounded in the capabilities approach, which would provide both the ethical foundations and rationale for such an intervention.

9.4 Different theories, different responses

Nussbaum's capability approach starts with the understanding that humans are capable, needy, dependent and worthy of dignity. Nussbaum identifies care as a problem of justice, with inequalities in the distribution of care work a significant contribution to the disadvantages experienced by women (see chapter 7, section 7.2). Although her capabilities approach can support just care arrangements, Nussbaum's list of central human capabilities does not explicitly mention care nor does it specify our responsibilities to ensure it is provided (see chapter 7, sections 7.3).

Considering extended parental leave from the perspective of Nussbaum's capability approach draws attention to important issues. First, women should have access to the same sort of opportunities as are available to men. For these opportunities to be meaningful, work has to be seen as more than simply market work and cannot continue to be conceptualised on the basis of the typical male experience. Support for jobs that take into account the lifecycle can be inferred. This could include employment breaks. However, Nussbaum's list also makes it clear that capabilities must be underpinned by resources. A set of arrangements that leaves many women financially disadvantaged and compromises their longer-term employment opportunities is not consistent with her approach. Nussbaum endorses the version of the categorical imperative that states that each individual should be an end and not the means to the ends of another. This is particularly relevant to the situation of women, who traditionally have been expected to prioritise the needs of the family.

One way of ensuring that women are not penalised for looking after children or other family members is to provide financial support, whether it be in the form of paid parental

leave or a carer's wage. Nussbaum appears agnostic about Kittay's proposed carer's payment, but states that it is not inconsistent with her approach (Nussbaum 2002b, p. 61). An insistence that the structure and conditions of payment must not entrench inequality can be inferred from the requirement that each individual must have access to the 10 central human capabilities. Some form of shared care approach can be supported by Nussbaum's theory. In many ways it is the only model that allows each individual to have access to all 10 central capabilities. Current inequitable arrangements restrict women's employment options and curtail the time they have for play. They also limit men's opportunities to build strong relationships with their children and other family members.

As my revised capabilities approach builds on Nussbaum's list, it provides a similar perspective. However, it places much more emphasis on the centrality of care to our lives. The care capability includes a statement of our individual and social obligations to care for others. There is also an explicit requirement that caring relationships must be non-exploitative. With the specification of responsibilities as well as entitlements, this revised approach provides stronger support for shared care arrangements than does Nussbaum's approach. It can also provide an important rationale to justify shared care on the grounds that it expands the capabilities available to members of groups that have experienced a history of disadvantage. Employment breaks and payment for caring can also be supported, but only if they are structured in ways that do not entrench inequalities.

The various ethics-of-care approaches make care a central concern. Some versions focus exclusively on the needs of the person requiring care. If there are no limits to the demands on carers, there is a high risk of exploitation. Some accounts also fail to address the importance of resources, running the risk of sentimentalising care. The stronger accounts, particularly those developed by Virginia Held (2006), Joan Tronto (1993) and Diemut Bubeck (1995) are sensitive to the needs of carers and stress the importance of social responsibilities.

Payment for care work, including a carer's wage is, or could be, supported by the main ethics-of-care theories. Most of the accounts discussed in chapter 6, insist on women's equality and therefore the conditions necessary to prevent the exploitation and marginalisation of care givers (Bubeck 1995; Held 1995; Kittay 1999; Tronto 1993). Ethics-of-care approaches can support the option of extended leave, but do not necessarily address the nature and quality of paid jobs. The earlier, more maternalist theories would tend to favour the caregiver-parity model (e.g. Noddings 1984). However, more recent accounts either explicitly support shared-care arrangements or are such that support might be inferred (Bubeck 1995; Held 1995; Kittay 1999; Tronto 1993).

According to Hakim's preference theory, in contrast, care is considered to be an individual rather than a social concern (see chapter 5, especially section 5.2). Constraints, such as the nature of work and social and cultural expectations of the proper roles of men and women, are ignored. Hakim focuses on stated preferences without regard to the way preferences are shaped by experience. Her view is static. She fails to see women making different types of decisions over the lifecycle, instead conceptualising women as ideal types.

Hakim's preference theory could support extended leave but provides no incentive to address the problem of marginalisation. Most rational-choice theories would not support payment for a carer's wage because the decision to have children is understood to be an individual matter made after weighing up the financial costs and psychic benefits. Hakim's preference theory might support some form of carer's wage if it provided an alternative to subsidies and rebates for working women. Rational-choice theories, including Hakim's

preference theory, could support employer-funded paid parental leave as a condition of employment. This would be justified on the basis that employers are free to accommodate family responsibilities if they consider it to be in their interests. If the introduction of extended leave or some form of payment ended up reinforcing women's inequality, this would be interpreted as a reflection of individual preferences and the recognition that most women prioritise family over employment. As I have already indicated, Hakim does not support the promotion of shared-care arrangements because she considers them hostile to the preferences of most women.

Fraser's principles (outlined in section 4.5) provide strong protections for carers but pay little attention to the needs of those requiring care. She focuses on women's inequality but not other types of inequalities, including those that intersect with gender. This is in contrast to the capabilities approaches that can specify what each individual needs in order to live a fully human or flourishing life. The risks of poverty and exclusion associated with extended leave under current conditions are highlighted by Fraser's principles. Her approach can also support paid-leave and a carer's wage. Importantly, her principles demand scrutiny of the nature of the payment and the conditions under which it is introduced. Fraser is very supportive of shared-care arrangements. She is also highly critical of contemporary capitalism. This provides scope for developing different types of employment options that are more compatible with caring responsibilities than are many existing jobs.

The advantage of my revised capabilities list is that it is attentive to both our need for care and the needs of carers. It also draws attention to the nature of employment, including the quality of jobs. The strength of many of the various capabilities approaches, mine included, is the emphasis on the opportunities and resources people need in order to flourish. For these reasons, my revised list does provide the theoretical tools required to address complex policy issues. Based on Nussbaum's list (chapter 8, section 8.6), and informed by both ethics of care (chapter 8, section 8.2) and Fraser's principles (chapter 4, section 4.5), it draws on the strengths of the three alternatives.

At the end of the previous chapter I raised a number of questions about my revised capabilities approach. The first is whether the list I propose does additional work that cannot be done by Nussbaum's version. The main advantage of my list, as explained above, is that it highlights the importance of care and specifies a care obligation.

The second question I need to consider is whether my revised list serves the same purpose as does Nussbaum's list. Does my list form the basis of the guarantees that a society should provide to each individual? While my list is clearly more onerous on the state or society than is Nussbaum's, its demands, nevertheless are reasonable. In chapters 2 and 4 I described the different opportunities available to women and men. Without clear specification of our social and individual obligations, particularly in relation to care provision, women as well as other members of disadvantaged groups will not have access to the 10 capabilities on Nussbaum's list.

Translating a care capability, which includes a care obligation, into meaningful action is complex. Currently, many jobs are structured in ways that make it difficult for individuals to meet other types of responsibilities. Opportunities for career progression and even secure employment may be limited by periods of extended leave, part-time employment and an inability to start work early or stay back late. A change in the allocation of care responsibilities depends on changes to the nature and organisation of employment. Governments are not the only players, but they do have the power to influence attitudes

and decisions by providing incentives that encourage rather than discourage individuals to accept and meet their care obligation. In Australia, the most obvious opportunity to encourage social change is through the design of the tax/transfer system that provides financial support to families, the industrial relations framework, and anti-discrimination legislation.

A related question concerns whether I introduce into the list a level of detail that should be determined during implementation. This will certainly be the view of anyone who finds Nussbaum's list too prescriptive. However, given that inequality and disadvantage blights the lives of women across the world, causing real physical and emotional damage, the additional items are necessary. Otherwise the capabilities approach will not specify the minimum requirements for a just society.

My list provides a more comprehensive theory of justice than does Nussbaum's theory. It makes definitive claims on what is required for people to live in a dignified way, stating what is necessary for human flourishing. In chapter 8 (section 8.5), I questioned the idea of overlapping consensus, arguing that there are limits to the types of moral theories that can be successfully combined with Nussbaum's capabilities approach. My list reduces the scope of, but does not eliminate, freedom of choice. Indeed, the options available to many women will be expanded. I hold that the restrictions entailed in insisting on a care obligation are necessary if we are to achieve justice.

Fraser (1997) questions whether it is possible to introduce a just work/care regime under conditions of capitalism. It is difficult to see how capitalism can generate the social, political and economic conditions necessary to provide each individual with access to the central human capabilities on either list. John Stuart Mill complained that 'it is the great error of reformers and philanthropists in our time, to nibble at the consequences of unjust power, instead of redressing the injustice itself' (Mill, JS 1848, bk 5, chap 11, sec.9). This remains a challenge.

9.5 Conclusion

A society is not just if some members receive inadequate care or if the conditions under which care is provided are exploitative. Care is central to our sense of well-being. It also underpins social and economic sustainability. Despite its importance, care is, in many ways, a marginalised activity. Australian patterns of employment and care show that women and men live different lives. As discussed in chapter 2, there are disparities in the income they earn and the wealth they accumulate. More troubling, there are differences in the range and the type of opportunities available to women and men. In this thesis, I identified care as a problem of justice, which raises important ethical and moral issues.

The philosophical ideas we use to consider any issue are very important, shaping the way the problem is conceptualised and the types of solutions that are suggested. Public debates on care, employment and the proper roles of women and men, are often heated and sometimes confused. In chapter 3, I argued that, in order to develop a more just set of arrangements, we need clarity about the theories we bring to bear on the subject and a deeper understanding of how social change can be achieved.

I drew on Nussbaum's capabilities approach because it provides an objective account of the minimum requirements for a dignified human life. Nussbaum proposes a partial

political theory, designed to gain support from people with very different metaphysical positions. Unconvinced by this Rawlsian strategy, I turned to critical realism to make the realist foundations of the capabilities approach explicit. Critical realism provides insights into scientific inquiry, a theory of causation and understanding of the relationship between structure and agency. It draws attention to the casual mechanisms that encourage or inhibit social change.

In chapter 4, I examined the literature on women, care and employment, focusing on work that is either Australian in origin or focus or has been influential in this country. After identifying the main areas of focus, I discussed the different models used to explain actual or ideal ways of combining care with other types of work. To give a sense of trends in Australian policy, I discussed the recent Henry Review of the Australian taxation system.

In Australia and elsewhere, Hakim's preference theory has been used to justify differences in the outcomes achieved by men and women. As I discussed in chapter 5, there are problems with Hakim's assessment of the current situation. She downplays the obstacles facing women and overstates the opportunities available. Moreover, Hakim fails to take account of the vast literature on choice, preference formation and the process of decision-making. In particular, she ignores the phenomenon of adaptive preference formation, or the way preferences and expectations are shaped by experience. I argued that Hakim's flawed theory reinforces existing inequalities between women and men.

Ethics-of-care approaches provide a more promising way of thinking about care. They place care at the centre of deliberations and draw attention to the importance of care needs. The strongest accounts also take into account the needs of care givers. In chapter 6, I outlined the most important versions of the ethics of care, identifying the five features of a theory that addresses care adequately. However, in chapter 7, I argued that Nussbaum's capabilities approach provides stronger protections for women than even the best ethics-of-care approach. Nevertheless, Nussbaum's theory can be strengthened by building into it the attention to care that is the defining characteristic of all ethics-of-care theories.

In chapter 7, I also examined each of the 10 capabilities on Nussbaum's list, considering their nature, structure and the implications of them not being actualised. I find a number of problems with Nussbaum's list. Not only does it fail to address care explicitly, it does not specify our responsibilities. Another problem is that it is not always clear that we should aim for capability (power) rather than flourishing (power actualised). There are also problems with the structure of the list.

I responded to these issues in chapter 8. In particular, I focused on the issue of responsibilities or obligations and how they might be built into the capabilities approach. I also examined the ontology of capabilities. I then proposed an extended and restructured list of capabilities. At the beginning of this chapter, I tested my revised list by considering three contentious policy issues: extended leave, payment for care work and the idea of shared care. I found that my revised capabilities list can provide better protection for care givers and care recipients than can Nussbaum's list.

Across the world women, compared with men, have access to fewer resources and more limited opportunities. A significant cause of women's disadvantage is the unequal distribution of care work. Nussbaum's capabilities approach provides the basis for women's claims for justice. However, the capabilities approach can only insist on a fairer allocation of care work if it specifies an obligation to provide care. Otherwise the freedoms of some groups of individuals will continue to be compromised.

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Appendices

Appendix A – Nussbaum's list of central human capabilities (2006 version)

1. **Life.** Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.
2. **Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished, to have adequate shelter.
3. **Bodily Integrity.** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. **Senses, Imagination, and Thought.** Being able to use the senses, to imagine, think, and reason – and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing self-expressive works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to search for the ultimate meaning of life in one's own way. Being able to have pleasurable experiences, and to avoid nonbeneficial pain.
5. **Emotions.** Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by overwhelming fear and anxiety, or by traumatic events of abuse or neglect. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development).
6. **Practical reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)
7. **Affiliation. A.** Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another and to have compassion for that situation; to have the capability for both justice and friendship. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.) **B.** Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails, at a minimum, protection against discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.
8. **Other Species.** Being able to live with concern for and in relation to animals, plants, and the world of nature.

9. **Play.** Being able to laugh, play, to enjoy recreational activities.

10. **Control over One's Environment.**

A. Political. Being able to participate effectively in political choices that govern one's life; having the right of political participation, protection of free speech and associations.

B. Material. Being able to hold property (both land and movable goods), not just formally but in terms of real opportunity; and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers (Nussbaum 2006, pp. 76-8).

Appendix B – Nussbaum’s list of central human capabilities (2011 version)

1. **Life.** Being able to live to the end of a human life of normal length; not dying prematurely, or before one’s life is so reduced as to be not worth living.
2. **Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished, to have adequate shelter.
3. **Bodily Integrity.** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. **Senses, Imagination, and Thought.** Being able to use the senses, to imagine, think, and reason – and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing self-expressive works and events of one’s own choice, religious, literary, musical, and so forth. Being able to use one’s mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences, and to avoid nonbeneficial pain.
5. **Emotions.** Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one’s emotional development blighted by overwhelming fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development).
6. **Practical reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one’s life. (This entails protection for the liberty of conscience and religious observance.)
7. **Affiliation. A.** Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.) **B.** Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of nondiscrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.
8. **Other Species.** Being able to live with concern for and in relation to animals, plants, and the world of nature.
9. **Play.** Being able to laugh, play, to enjoy recreational activities.

10. **Control over One's Environment.**

A. Political. Being able to participate effectively in political choices that govern one's life; having the right of political participation, protection of free speech and associations.

B. Material. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers (Nussbaum 2011b, pp. 33-34).

Appendix C– Nussbaum’s list of central human capabilities (2000 version)

1. **Life.** Being able to live to the end of a human life of normal length; not dying prematurely, or before one’s life is so reduced as to be not worth living.
2. **Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished, to have adequate shelter.
3. **Bodily Integrity.** Being able to move freely from place to place; having one’s bodily boundaries treated as sovereign, i.e. being able to be secure against assault, including sexual assault, child sexual abuse, and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. **Senses, Imagination, and Thought.** Being able to use the senses, to imagine, think, and reason – and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing self-expressive works and events of one’s own choice, religious, literary, musical, and so forth. Being able to use one’s mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to search for the ultimate meaning of life in one’s own way. Being able to have pleasurable experiences, and to avoid non-necessary pain.
5. **Emotions.** Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one’s emotional development blighted by overwhelming fear and anxiety, or by traumatic events of abuse or neglect. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development).
6. **Practical reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one’s life. (This entails protection for the liberty of conscience.)
7. **Affiliation.** **A.** being able to live with and toward others, to recognise and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another and to have compassion for that situation; to have the capability for both justice and friendship. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)

B. Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails, at a minimum, protection against discrimination on the basis of race, sex, sexual orientation, religion, caste, ethnicity, or national origin. In work, being able to work as a human being, exercising practical reason and enter in into meaningful relationships of mutual recognition with other workers.

8. **Other Species.** Being able to live with concern for and in relation to animals, plants, and the world of nature.

9. **Play.** Being able to laugh, play, to enjoy recreational activities.

10. **Control over One's Environment.**

A. Political. Being able to participate effectively in political choices that govern one's life; having the right of political participation, protection of free speech and associations.

B. Material. Being able to hold property (both land and movable goods), not just formally but in terms of real opportunity; and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure (Nussbaum 2000c, pp.78-80).

Appendix D – Robeyns’s list of capabilities for conceptualising gender inequality in post-industrialized Western societies

1. *Life and physical health*: being able to be physically healthy and enjoy a life of normal length.
2. *Mental well-being*: being able to be mentally healthy.
3. *Bodily integrity and safety*: being able to be protected from violence of any sort.
4. *Social relations*: being able to be part of social networks and to give and receive social support.
5. *Political empowerment*: being able to participate in and have a fair share of influence on political decision-making.
6. *Education and knowledge*: being able to be educated and to use and produce knowledge.
7. *Domestic work and non-market care*: being able to raise children and to take care of others.
8. *Paid work and other projects*: being able to work in the labor market or to undertake projects, including artistic ones.
9. *Shelter and environment*: being able to be sheltered and to live in a safe and pleasant environment.
10. *Mobility*: being able to be mobile.
11. *Leisure activities*: being able to engage in leisure activities.
12. *Time-autonomy*: being able to exercise autonomy in allocating one’s time.
13. *Respect*: being able to be respected and treated with dignity.
14. *Religion*: being able to choose to live or not to live according to a religion (Robeyns 2003c, pp. 71-72)

Appendix E – Wolff and de-Shalit’s list of capabilities

1. **Life:** Being able to live to the end of a human life or normal length.
2. **Bodily health:** Being able to have good health, including reproductive health; to be adequately nourished, to have adequate shelter.
3. **Bodily integrity:** Being able to move freely from place to place; being able to be secure against assault, including sexual assault, child sexual abuse, and domestic violence, having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. **Senses, imagination, and thought:** being able to imagine, think, and reason – and to do these things in a way informed and cultivated by an adequate education. Freedom of expression, speech, and religion.
5. **Emotions:** Being able to have attachments to things and people outside ourselves; to love those who love and care for us.
6. **Practical Reason:** Being able to engage in critical reflection about the planning of one’s life.
7. **Affiliation:** Being able to love with and towards others, to recognize and show concern for other human beings, to engage in various forms of social interaction. Having the social bases of self-respect and non-humiliation. Not being discriminated against on the basis of gender, religion, race, ethnicity, and the like.
8. **Other species:** Being able to live with concern for and in relation to animals, plants, and the world of nature.
9. **Play:** being able to laugh, to play, to enjoy recreational activities.
10. **Control over one’s environment:** Being able to participate effectively in political choices that govern one’s life. Being able to have real opportunity to hold property. Having the right to seek employment on an equal basis with others.
11. **Complete independence:** Being able to do exactly as you wish without relying on the help of others.¹⁹⁷
12. **Doing good to others:** Being able to care for others as part of expressing your humanity. Being able to show gratitude.
13. **Living in a law-abiding fashion:** The possibility of being able to live within the law; not being forced to break the law, cheat, or to deceive other people or institutions.
14. **Understanding the law:** Having a general comprehension of the law, its demands, and the opportunities it offers to individuals. Not standing perplexed facing the legal system (Wolff & de-Shalit 2007, pp. 190-01).

¹⁹⁷ This is a dummy capability expressing a radical libertarian view. It was added to make sure that interviewees were not simply nodding their way through the list to make sure research participants were not simply nodding through the list.