

From Human Capital to Human Capabilities

A broader normative foundation
for the social investment
perspective in Europe

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Introduction

The social investment perspective has recently been defined has a new perspective for social policies in Europe. In a communication (2013¹), the European Commission urges the Member States to develop a social investment strategy defined as a third – new – “function” that welfare systems have to fulfil to achieve their objective, the other functions being “social protection” and “stabilization of the economy”.

In this intermediary report, we will first briefly present how the main objectives of the “social investment” perspective were elaborated, as a response to the shortcomings of neo-liberalism, by social policy experts in the beginning of the XXIst century(1). Secondly, we will analyse the attempt made by the European Commission to translate this notion into European public policies (2). We will thirdly show that the European social investments strategy can be summarized by the principle that, as Leibetseder (Leibetseder 2016) puts it: “social policy expenditure should be at least partially channelled towards investment into people’s capacities”. If the social investment perspective is to be the new paradigm for social policy in Europe, it cannot avoid a comprehensive discussion of what a “capacity” is and in what “capacities” European states should invest in.

We will make the proposal that, if European countries aim at developing a normatively robust new model for social policy based on the SI perspective, it could be interesting to re-conceptualise what a capacity is, drawing from the capability approach (CA) of development proposed by Amartya Sen (3). As an important consequence, we might propose a new understanding of *human rights as goals* of the economic and political integration of Europe (4). Finally, this will lead us to discuss the relationship that social policy instruments should entertain with the market. Against a market-driven-only approach to social investment perspective, we will argue that a normatively robust perspective -based upon moral concerns of positive liberty rather than sheer negative freedoms and efficiency- need an all-encompassing view on the kind of institutional arrangement to which social policies measures should be anchored (5).

¹ COM(2013)83 Final, Towards Social Investment for Growth and Cohesion - including implementing the European Social Fund 2014-2020. Brussels: European Commission, 20 February 2013.

1. The Social Investment Strategy in the Expert Discourse

The Social Investment (SI) strategy is the catchword of different expert works in the field of social policy. After the end of Keynesian policies in the seventies, the neoliberalism claimed to replace the public funded social protection by active policies of labour markets and privatization of social insurance. This contradiction between Keynesian policy and neoliberal policy has been overcome by some experts via the idea of a SI policy.

1.1 The three basis of the SI program

The SI perspective proposes a redefinition and a new justification of social policies based on three pillars: a new approach to growth, focused on human capital and innovation (1); a new theory of justice, based upon an idealized view of the active individual, different from the solidarist understanding of social policies in the post-war Welfare State (2); a transformation of the definition of “risk” in post-industrial societies (3).

(1) A new theory of human capital and growth has been promoted in the 1960's. Since the Chicago School works, neoclassical economics embraced the concept of human capital. Human capital is the set of skills and capacities an individual can use in order to maximize her utilities. On the micro-level, Becker tried to demonstrate the connection between the investment in learning and training and the level of future earnings. On the macro-level, the connection has been established between the level of education and care and the level of future growth. This entails a revolution in the notion of investment. The investment (postponed consumption) is no longer conceived in narrow terms of *material* investment, but includes *human*, “software” investment.

In this framework, unemployment is « linked to lack of adequate skills to fill today's jobs and to create the jobs of tomorrow » (Morel, Palier, Palme, 2012 :12). This explanation can be easily distinguished from the Keynesian explanation, which focuses on insufficient demand (cause of slow growth) and from the neoclassical explanation (labour market rigidities). If this is the case, the social policies must « invest » in learning and skills rather than distribute amounts for consumption or introduce flexibility in the labour market.

(2) The normative theory of justice is based upon the view of an *active individual* who wants to flourish with the help of social means and wants to be *included* in the society. This concept of liberty is opposed to passive liberty. It means the possibilities to flourish in a way or another in all social domains. This normative vision of an active liberty entails a redefinition of the notion of equality. Equality in industrial societies was not universally shared. Even if they receive special help, children, women, disabled people are excluded from the labour market. Nevertheless the labour-market is the only way to be included and to participate. The new concept of justice, as framed by Fraser, Dworkin, gender studies, makes the active participation of *all* the condition of a genuine equality in our societies. *Social inclusion* became the key expression of the new ideal of equality.

(3) The SI program claims to be a suitable strategy to cope with the new post-industrial society. In post-industrial society, the level of individual and collective social risks is higher than in the industrial society, as Beck (1986) and Giddens (1998) have argued. In order to survive and face these new social risks, individuals

have to become flexible and adaptative. Social protections schemes have to change in order to assure the long-term employment and career stability that our societies no longer can assure. For instance, Vandenbroucke and Vlemincx (2011) make the distinction between “old social risks” (old age pensions, health care, cash benefits for the active people) and “new social risks” (parental leave, eldercare, active labour policies, general education). As opposed to the Keynesian State, the SI State should be oriented toward the future: the problem of the sustainability of the individual and collective development becomes more and more important in this framework.

These three discourses are interconnected in very loose way. Generally speaking, we can say that each discourse sparks important debates.

- Inside the first discourse: What is really an investment? How to distinguish social investment and consumption? What is the measure of the “return”?
- Inside the second discourse: what is participation? What is flourishing? What do we mean by equality of “participation”? Is the labour-centred paradigm of inclusion the best way to realize participation of all?
- Inside the third discourse : do the “new risks” erase the “old risks”? How can we provide resources to escape the market in order to develop education and care during the life? What is the connection between sustainable individual development and low carbon policies?

But even more difficult is the question of the epistemological coherence of these three fields of discussion. Obviously, any social policy program must be relevant in all three fields. But the relevant options inside each of them can be incompatible with the two others. The evaluation of a SI program must meet the challenge of this coherence. This is, as we will see later, one of our reasons to defend a Capability Approach to social investment.

1.2 The Capability Approach and the expert debate

Is the Capability Approach really a participant at the academic debate on social investment? It is true that Sen’s approach is often quoted as a vague reference in this framework (for instance, Nicole-Drancourt, 2015). Obviously, his work participates at the development of a new participative understanding of equality and a redefinition of the link between individual freedom and justice. Nevertheless, Sen’s perspective is quite inconsistent with Becker’s theory. His work leads to a fierce critique not of human capital as such, but of the reduction of capabilities to human capital. The concept of responsibility in Sen’s work is quite different from the concept of Anthony Giddens. The centrality of work as a way of inclusion has, as far as we know, never been defended in Sen’s thought, even if work is obviously one way to develop the capabilities. If we want to introduce the Capability Approach in the field of social investment, we should select in economics a theory of development and in sociology a description/explanation of new post-industrial risks compatible with basic insights of this approach.

We might even wonder if, in the academic debate on social investment, the second discourse - theories of justice (CA or not) - has been as important as some authors claim. The two other discourses (on economic growth and new social risks) have been much more important, without dealing with normative questions very seriously. Actually, the underdevelopment of the normative foundation of the SI perspective appears to be a rising concern in the literature. Criticizing the “narrow economic” framing of the SI perspective, Nolan (2013) strongly calls upon a more normatively grounded debate about the evolution of social spending. As he put it:

“(…) framing debate in terms of a narrow economic argument runs the risk of obscuring normative choices and the broader case for social spending. This discussion is intended to contribute to clarification and debate about the notion of social investment and the most useful way to employ it, at a time of economic crisis when austerity and retrenchment threaten social spending and yet the need for it is more evident than ever.” (Nolan 2013: 467)

Morel and Palm (2016) make the same observation and suggest that the mobilisation of the CA approach could be very valuable when defining the moral and normative foundation of the social investment perspective. This a good *academic* reason to reopen the discussion. We will show, in the following point, that this conclusion is even truer when looking at the translation of some scientific insights into European policies.

2. The European Public Policy Translation of the Social Investment Strategy

As Nicole-Drancourt (2015: 173) demonstrated, the SI perspective has not only been a research topic in the universities, it also emerged as a part of a new framing which impregnated public discussions about the development of our society². Nicole-Drancourt dates the introduction of this perspective in policy discussion back as early as in the UN Rio de Janeiro Earth Summit of 1992 where the idea of sustainable development was popularized. Closer to us, the discussion between social policies experts were clearly received by the European Commission looking for new models of social policy.

2.1 The European SI strategy

We must surely make the distinction, as Nolan (2013) and Leibetseder (2016) urge us to do, between the *academic* debate on social investment and the *political* advocacy of this program, even if sometimes experts are very committed in the public forum. But inside the political use, we can make the difference between mere advocacy and public policy documents. As a political authority, the Commission decided in 2013 to turn the SI package into an official paradigm. This is more than debates and arguments. This is a selective translation of discourses into a policy with its constraints and opportunities, addressed to public audiences and authorities at a very high level. This translation was, at the same time, a redefinition of the SI strategy according to the political context and the policy competences of the Union.

Published in 2010, the EU 2020 strategy was intended to revise and complete the Lisbon strategy (Lundvall & Lorenz, 2012: 333-351). The Lisbon strategy was criticized for three failures: (1) a failure of *coherence* : too many objectives were pursued at the same time; (2) a failure of *procedure* : a naive understanding of so-called “benchmarking” of best practices in Europe; (3) a failure of *efficiency* : the European economy remains weaker than the American economy. In order to address these problems, the EU2020 strategy intends (1) to focus on the economic growth rather than the social cohesion, even if social cohesion is the second objective of the strategy; (2) to leave aside the open coordination mechanism and promote the creation of a different market-oriented basis of information; (3) to redefine the measure of efficiency according to neo-classical tools of economic success. The Social Investment Strategy was designed in the context of the liberal orientation of the Commission under Barroso.

The result of this “translation” of non-liberal-contents into a liberal context has been, as suggested by Leibetseder (2016), a kind of “practical compromise”: “The inherent ambivalence hinders any assessment of these policies as neo-liberal, but they cannot be categorised as in opposition to it either”. The undecided academic discussion about the coherence of the three dimensions has been overcome by a neoliberal mainstreaming.

² Chantal Nicole-Drancourt considers the SI perspective as a “new social imaginary”. It is surely true that a new imaginary in social policy has emerged in the late 1990’s in Europe. Nevertheless, we believe it is misleading to label this new imaginary “Social Investment perspective” because the SI program is only a part of it. There are other, very conflicting, approaches inside this imaginary: the Capability Approach, the Transitional market approach, ecological economics etc. It seems better to avoid the metonymic use of SI in order to define a new “imaginary”.

We have analysed in another paper, with qualitative discourse analysis tools, the content of European documents on Social Investment³. We can just give here a sample of this analysis. In the *COM(2013)83 Final*, we find the following quasi-definition of what social investment is:

“Social investment involves strengthening people’s current and future capacities. In other words, as well as having immediate effects, social policies also have lasting impacts by offering economic and social returns over time, notably in terms of employment prospects or labour incomes. In particular, social investment helps to 'prepare' people to confront life's risks, rather than simply 'repairing' the consequences. Modernisation of social policies requires systematic introduction of ex-ante result orientation in financing decisions and a systematic approach of the role social policies play in the different stages in life: from education via work/unemployment to sickness and old-age.” (COM(2013)83 : p3)

In this short quotation, we can identify four main characteristics that social investments policies should have for the EC:

- The first aim of SI is to strengthen people’s current and future capacities
- SI should have a lasting impact and returns over time. They require ex-ante result orientation. They have to strengthen future capacities of the people. In other terms: SI policies are policies directed toward the future or at least for which consequence – “return” – are expected in the future and will or could be measured in the future.
- In consequence, SI policies are risk oriented policies: they should “prepare people to confront life’s risk”, they are based on prevision of what could be the future (the future of individuals belonging to “at risk” groups) that could be hit by a social risk, the future of the structure of the society, and the future social problems society will face).
- SI “returns” should be measured in terms of: “employment prospects or labour incomes”.

If we examine the first characteristic, we can understand the meaning of what a capacity is for the EC. The following excerpt of the Communication gives us a precise indication:

“Faced with structural long-term challenges, Member States need to adapt to ensure the adequacy and sustainability of their social systems and their contribution to stabilising the economy. If a person can temporarily not find work, the focus should be on improving their capabilities with a view to them returning to the labour market. This needs to be done through a targeted approach focused on the individual needs and delivered in the most cost-effective way.” (COM (2013)83: 8)

We see here, and this is a pattern that we can find in several parts of the 2013 Communication, that most often the idea of strengthening capacities (or here capabilities) is connected to capacities that allow individuals to participate in the “labour market”. They are labour market oriented capacities.

This connectedness can also be asserted if we look at the indicators mainly used in the document to evaluate the “challenges” that a European SI perspective should allow to tackle (second paragraph of the Communication). For instance, one of these challenges is the “gender dimension” i.e.: “The particular challenges posed by continued gender disadvantage” (European Commission 2013: 7). If the Communication recognises that the problem is that “overall 12 million more women than men in the EU are living in poverty”, the assessment of this disadvantage mobilises only labour market indicators such as activity rate, part time working rate, or the gender pay gap. The mobilisation of these indicators leads to the conclusion that:

“As gender inequality runs through an individual's entire life and its negative effects cumulate over time, this results in for instance lower GDP, lower social security contributions and higher poverty

³ In the WP 4 of the Re-invest project, a methodological analysis of the discursive contents has been implemented by Grégoire Lits and Francesco Laruffa. See the forthcoming paper *Comprehensive qualitative discourse analysis of the Social Investment Package*.

among older women, with 18% of women of 65 years and over being at risk of poverty, compared with 13% of men.” (European Commission 2013: 8).

We see clearly here that social problems that SI should allow to tackle (e.g. gender inequality in EU or the higher risk of poverty for women) intermingle poverty risk descriptions with employment market indicators (it is very evocative here that the first invoked consequences of gender inequality are: a lower GDP and lower social security contribution).

This intermingling of targeting population at risk of poverty and employment market way of assessing social problems can also be captured in the seemingly equivalence made by the EC in investing in people capacity and the “need to invest in human capital thought life and ensure adequate livelihoods” (European Commission 2013: 6). For the EC SI are mainly investments in human capital. Investing in human capital is deemed important as: “Future economic growth and competitiveness require investing in human capital, which lays the foundation for productivity and innovation” (European Commission 2013: 2).

The meanings associated with the word “capacities” in the EC proposal are connected to the ability to participate to the employment market. Social investments are primarily investments in human capital which are seen important to foster the growth and the competitiveness of the European economy. As stated in the Communication of 2013: “This is [the SIP] in line with the AGS⁴ encouragement towards Member States to “invest in job-rich and inclusive growth”” (European Commission 2013: 3). The main normative justification for the modernisation of social policies in Europe is the need to create future economic growth and competitiveness. The individual capacities that SI policies should invest in are in consequence capacities that will enhance the productivity of the (future) European citizen/workers and foster their ability to participate to the labour market.

2.2 The debate on the SI program

This social policy program sparks a very important debate. In this debate, we face a permanent confusion: is the “labour-market translation” of SI perspective only the effect of the political implementation in the political context of the Commission, or is it more deeply the result of some hidden normative orientations already (in)active in the academic debate?

In order to tackle with these problems, we should take seriously all the critiques of the SI program. A comprehensive analysis of the Social Investment scientific literature has been provided by Wiktorska-Świecka et al. (2016). This is surely the project of the next two years of the Re-invest project.

We must take into account that the social and political sciences literature on the Social investment perspective has been impregnated by one critique: the social investment perspective as firstly defined by Giddens (1998) too strongly focuses on “active” employment policies and in investments that aim (only) at building a better and stronger labour market, leaving other important social issue, such as fighting inequalities or organising a society of care, unaddressed. The main rationalities underpinning social investments strategies would be to create social cohesion through work, emphasizing investments in social capital and enhancing individual responsibility. It means that the “public policy translation” is not the only factor of ambivalence in the SI perspective. The normative question must be dealt with even in another political climate.

According to these critiques, the social investment perspective, by its shortcomings [focusing too strongly, or exclusively, on jobs creation], “may hamper social progress for all” (Cantillon and Van Lancker 2013: 553). These authors highlight the facts 1/ that social inclusion through work cannot tackle the problem of dependant people and the care they need, that 2/ the notion of individual responsibility entails the danger

⁴ Annual Growth Survey

of reinforcing existing inequalities, and that 3/ human capital investment will only benefit those who are already advantaged (critique known as the “Matthew effect”).

In the same line, Van Kersbergen and Hemerijk (2012) focus on the question whether the SI perspective “has been established at the expense of social policies that mitigate poverty and inequality”. For them the goal of the SI perspective is: “ensuring that the returns to social expenditures are maximised, in form of active employment and social participation - especially in the labour market - social cohesion and stability” (Van Kersbergen and Hemerijk 2012: 476) and thus are not effective tools to mitigate inequalities and reduce poverty. In a nutshell, recent debate concentrate on the question whether the SI perspective does focus enough on the problem of reducing inequality. In the same line, but more precisely, other scholars have pointed out the fact that the SI perspective main frameworks also fail to tackle the question of gender inequality (Jenson, 2009, Nicole-Drancourt 2015, Saraceno 2015).

Investing in people capacities will enhance the quality of the human capital necessitated to sustain the development of the society in the knowledge-based economy that characterise our current productive system (Morel, Pallier and Palme 2012: 1). In line with the critique made by Saraceno (Saraceno 2015) about the social investment perspective in general, we can argue that the EC proposal too strongly conceive human development as oriented toward the production of autonomous productive individuals able to participate to the employment market. Following different claims made by Morel, Pallier and Palme (2012) or Vandenbroucke and Vleminckx (2011) we will argue that if the concept of social investment is to be at the core of the modernization of European social policies, this employment market orientation is not sufficient to promote a more sustainable European development. As stated by Leibetseder: “Social investment could have the potential to reconstruct people, the state and society, in which human beings are not perceived as intrinsically valuable, but are judged on their rate of return.” (Leibetseder 2016: 16). Against this view, following Morel and Palm (2016), we will argue that a richer conception could be developed by mobilising the “capability approach (CA) to a human development” proposed by Amartya Sen. This normative foundation would take as a departure point the fact that economic development should not be the goal of human development, but rather considered as a mean toward the achievement of other greater values.

This mobilisation of Sen’s work will allow us to discuss three important aspects of the social investment perspective as developed in the European Social Investment Package (SIP) of 2013 and more generally by social policy scholars. We will first discuss, as social investment are primarily investment in human capacities, how capacities should be defined and evaluated. This will lead us to distinguish between a human capital based and a human capability based investment strategy and to connect the debate about SI with the question of the centrality of human rights as a goal for social policies. Secondly we will argue that (labour) market oriented indicators are not suitable to assess the value or the ‘return’ that social investments can yield. This discussion will allow us to question the validity of a market driven social investment strategy. We will finally address the question of how a human-capability based social investment perspective could better address the problem of inequalities than the human-capital perspective proposed by the EC. This last discussion seems particularly important as several scholars have highlighted the deficit of the European social investment perspective in this regard (Cantillon 2011).

3. From a Human Capital to a Human Capability Investment Strategy

At the core of Amartya Sen's work is a redefinition of what the development of a society is. Rather than focusing only on GNP growth, or other economic measurement of welfare, the development process of a society should be seen "as a process of expanding the real freedom that people enjoy" (Sen 1999: 3). The measurement of the development process should not only be done according to economic stability or to the per capita GNP growth, but, rather, according to the enhancement of the *substantive freedom* of individuals. Substantive freedom depends on "other determinants, such as social and economic arrangements (for example, facilities for education and health care) as well as political and civil rights (for example the liberty to participate in public discussion and scrutiny)" (Sen 1999: 3). In other words, as Atkinson put it, Sen's main critique against traditional welfare policies is that: "its informational base is insufficiently rich: the same distributions of individual welfares may coexist with very different scores on other dimensions that are important to social evaluation" (Atkinson 1998: 177).

If economic growth cannot be considered as the primarily goal, how can we evaluate the outcomes of social policies directed toward the enhancement of human freedom? By evaluating the different "functionings" that people can achieve in their life. "A functioning is an achievement of a person: what he or she manages to do or to be, and any such functioning reflects, as it were, a part of the state of that person." (Sen 2003a: 44). The capability of a person derived from this notion of functioning: "It reflects the various combinations of functionings (doings and beings) he or she can achieve" (Sen 2003a: 44)

In consequence, the valuational process on which the designing process of social policies relies should be based on the evaluation of the functionings that an individual can achieve in a society:

"If life is seen as a set of "doings and beings" that are valuable, the exercise of assessing the quality of life takes the form of evaluating these functionings and the capability to function. This valuational exercise cannot be done by focusing simply on commodities or incomes that help those doings and beings, as in commodity-based accounting of the quality of life (involving a confusion of means and ends)." (Sen 2003: 44)

This conception of what human development is disagree with a standardised utilitarian view of what welfare is, as, we have shown, it is mainly the case with the EC proposal. Sen's approach strongly disagree with the evaluation of welfare choice in terms of utilitarian values or economic assessment only.

This has a consequence on how a 'human capacity' is conceived. As we will see in the following excerpt, the conception of development as freedom rely on a broad definition of what a capacity is. This richer conception of what a capacity is should be used as the basis for a richer and more normatively grounded perspective on social investment.

"I must also briefly discuss another relation which invites a comment, to wit, the relation between the literature on 'human capital' and the focus in this work on 'human capability' as an expression of freedom. In contemporary economic analysis the emphasis has, to a considerable extent, shifted from seeing capital accumulation in primarily physical terms to viewing it as a process in which the productive quality of human beings is integrally involved. For example, through education, learning, and skill formation, people can become much more productive over time, and this

contributes greatly to the process of economic expansion. In recent studies on economic growth (...), there is a much greater emphasis on 'human capital' than used to be the case not long ago.

How does this shift relate to the view of development – development as freedom – presented in this book? More particularly, what, we may ask, is the connection between 'human capital' orientation and the emphasis on 'human capability' with which this study has been much concerned? Both seem to place humanity at the centre of attention, but do they have differences as well as some congruence? At the risk of oversimplification, it can be said that the literature on human capital tend to concentrate on the agency of human beings in augmenting production possibilities. The perspective of human capability focuses, on the other hand, on the ability – the substantive freedom – of people to lead the lives they have reason to value and to enhance the real choice they have. The two perspectives cannot but be related, since both are concerned with the role of human beings, and in particular with the actual abilities that they achieve and acquire. But yardstick of assessment concentrates on different achievements.” (Sen 1999: 292-293).

Following this perspective, social investments should not only aim at integrating people in the labour market (or augmenting their production possibilities), but rather focus on enhancing the “substantive freedom” – the ability for every individual to “lead the lives they have reason to value and to enhance the real choice they have”. Sen’s argument is that “the loss of freedom in the absence of employment choice” (Sen 199: 113) is of fundamental importance, but is not the only concern, the only functioning, that social policies should focus on. In this perspective, enhancing people productive capacities is important but should not be the ultimate goal of social policies. This does not mean that ‘human capital’ approach and the ‘capability’ approach are antonymic. Conversely Sen sees them as “closely related but distinct” (294). The way there are connected could be seen is the following example:

“Consider an example. If education makes a person more efficient in commodity production, then this is clearly an enhancement of human capital. This can add to the value of production in the economy and also to the income of the person who has been educated. But even with the same level of income, a person may benefit from education – in reading, communicating, arguing, in being able to choose in a more informed way, in being taken more seriously by others and so on. The benefit of education, thus exceed its role as human capital in commodity production. The broader human-capability perspective would note – and value – these additional role as well.” (dvlp and freedom: 294)

This example is of particular interest in the debate about social investment as it precisely discusses the normative added value of an investment in education. The main difference between the two approach lies thus in the valuational process on which the design process of social policies should be done but also on the value on basis on which the outcomes of these policies should be assessed.

4. Social Investment and Human Rights

This leads us to ask a question: how can we connect the social investment strategy with the discourse on human rights, which is a very important basis and valuational basis for public action in the European Union today? To answer this question, we must face a dilemma. If we follow the reduction of capacities to labour-market oriented human capital, it seems difficult to avoid a utilitarian understanding of human rights: human rights are not good in themselves, they are only good in order to promote growth. But this utilitarian reduction of human rights seems quite contradictory to a common sense (and even judicial, Court-oriented) understanding of human rights: human rights are deontological goals. They must be implemented regardless their economic cost. The European Union must solve this contradiction if it wants to defend its claims of promoting a “human rights” policy. Without this solution, the charge of mere “rhetoric” of human rights is impossible to address.

Sen’s understanding of human rights (2005) can be helpful to go beyond this dilemma. He constructed his “goal rights system” in order to escape two unsatisfactory treatments of human rights. The first of these transforms human rights into sacred norms that must be enforced absolutely, creating external constraints that weigh on the actions of individuals. The contents of these norms varies depending on their authors. For some (Hayek, Nozick), these human rights are purely negative: they can ultimately be summed up as the absence of obstruction by others or by the state. Other authors expand the content of these principles but do not abandon their deontological aspect. This is the case with Rawls, who includes positive liberties in his principles of justice. In Dworkin’s texts too, rights are much more inclusive in substance, but they continue to weigh externally on the action of individuals, being hermeneutically founded in the discourse of shared legal interpretations.

The problem with this deontological definition lies in its indifference to the consequences of the implementation of these “absolute” rights. The authors mentioned above argue for a procedural version of rights unconcerned with the real states produced by the processes of their operation. But such states *matter* in an evaluation of justice. To take just one example, it is possible for the application of property rights to generate massively inequitable situations that pervert the application of all justice procedures. This is why it is extremely difficult to defend a purely Nozickian version of freedom or to support, as does Dworkin, that judgment concerning rights must not take its political effects into consideration. “Taking rights seriously” is not simply a question of recognizing their inherent value – it is also a matter of considering the consequences of these rights in social situations that are deeply affected by the interdependence of actors. We recognize in this argument, advanced by Sen, one of the reasons to be wary of sheer normative discourse on human rights.

It is important, however, not to overcompensate and topple into a consequentialism that holds human rights to be devoid of intrinsic value. In economics, utilitarianism developed this kind of approach; while it admits that human rights can benefit well-being and growth, and it defends political freedom, the freedom of expression and movement, and property rights, its ultimate aims are not the rights themselves but rather the establishment of efficient markets and the maximization of growth rates. These goals are evaluated by utility maximization standards, which typically take the form of monetary units.

To avoid both deontologism and consequentialism, Sen proposes a system of “goal rights” that recognizes the two-fold value of human rights. First, they are acknowledged as having intrinsic value: human rights express fundamental aspects of freedom in the sense of “the freedom to choose and to effectively lead the

life that one has reasons to prefer”. They constitute, therefore, goals of human association. Second, human rights also have an instrumental value insofar as their application engenders consequences that could benefit freedom. In this case, however, their operationalization takes place through a complex set of social processes, and the results are not guaranteed. Only an empirical and contextualized investigation can disentangle the complexities and measure the impact of human rights – legally ratified or not – from the perspective of freedom.

This conceptualization consequently appeals to “reasonable” reason rather than to “rational” reason. It is necessary to seek out a balance between values and results. As Jeremy Waldron (1993: 221) says, “what is wrong with utilitarianism is not that it contemplates trade-offs but that it combines the idea of trade-offs with a doctrine of the quantitative commensurability of all values”. The evaluation of capabilities based on human right as goal escapes the utilitarian trap.

This balanced understanding of human rights as main set of values can generate new tools of evaluation of social policies in Europe. Everybody knows the debate on the limits and shortcomings of the GNP indicators. We could wait from the European Commission committed to a connection between SI and HR a new range of indicators of success or failure of social policies. This cognitive approach to social policies could be very progressive and avoid the contradiction, embedded in national economic policies, between social protection schemes and standardized measures of economic growth.

5. Capability-Based Social Investments and the Market

After having discussed the nature of the “capacities” European states should invest in and the set of values (the HR framework) that could be used to evaluate what capacities are worth investing in, we can interrogate the institutional arrangement needed for implementing a social investment strategies aiming at developing the real freedom of all European citizens.

This question is important because, as Sen put it, “individuals live and operate in a world of institutions. Our opportunities and prospects depend crucially on what institutions exist and how they function. Not only do institutions contribute to our freedoms, their roles can be sensibly evaluated in the light of their contributions to our freedom. To see development as freedom provides a perspective in which institutional assessment can systematically occur” (Sen 1999: 142). Putting positive freedom and human rights at the core of the design of social policies urges us to interrogate the role of the main tools and organisations used to implement social policies.

Following the comprehensive analysis of the SIP made by Leibetseder (Leibetseder 2016), we can assert that marketization is a clear orientation of the different measures proposed in the EC social investment strategies. Market seems to be the key institution of the European social investment strategies. Leibetseder sums up the way in which the SIP proposal is mainly market-oriented:

“Conversely, benefits that uphold redistribution are recommended to be targeted and stressed to work first; therefore, SIP is strongly privatising and commodifying. While few market mechanisms are introduced on the micro-level, administrations and member states are required to undergo a strict transformation under the new public management policies, which may restrict democratic governance structures.” (Leibetseder 2016: 15-16)

The SIP favours redistribution mechanisms that have positive consequence on the labour market, reinforcing privatisation and commodification of different goods and services (such as health care or training).

5.1 The inability of markets to evaluate and pursue opportunity-freedom

Sen’s definition of a market is very encompassing. It is “a basic arrangement through which people can interact with each other and undertake mutually advantageous activities” (Sen 1999: 142). A human-capability based social investment strategy will have a balanced attitude toward market driven instruments. The setting up of a human capability approach to social investment should acknowledge the complementarity that exists between market and non-market instruments in the design of social policy. The “many-sided approach to development” (Sen 1999: 126) that Sen calls upon argues in favour of the “need for balancing the role of the government - and other political and social institution- with functioning of markets” (ibid.). In other words: “Combining extensive use of markets with the development of social opportunities must be seen as a part of a still broader comprehensive approach that also emphasizes freedoms of other kinds (democratic rights, security guarantees, opportunities of cooperation and so on).” (127). According to this perspective, market-driven instrument are not seen as having negative outcomes *per se*, the main problem is that: “the successes and failures of competitive markets are judged entirely by

achievements of individual welfare (for example, in terms of utility-based Pareto optimality), rather than by accomplishments in promoting individual freedom.” (Sen 2003b: 501-502). The problem lies in the utilitarian - “welfarist”- informational basis according to which market-driven collective choices are mainly justified and assessed.

When discussing the role market can plays in developing people capabilities, Sen distinguishes three facets of freedom that have to be developed:

1. opportunity to achieve
2. autonomy of decisions
3. immunity from encroachment (Sen 2003b: 510).

Free individuals should be able to make their own decisions, their autonomy of choice should be guaranteed against the invasion of “interpersonal interference” and, individuals should be able to express their preferences (defined as: “choice based on value” Sen 2003b: 515) between a set of desirable opportunities (and in consequence individuals should have real desirable opportunities).

Markets are very good in safeguarding and providing autonomy of decision and immunity from encroachment, but are not clearly efficient with regard to the criteria of “opportunity to achieve”. As said by Sen: “in fact market mechanism has a role in protecting ‘autonomy of decision’ as well as ‘immunity from encroachment’ (...). Thus decisional autonomy as well as encroachment immunity are constitutive of the competitive market mechanism without externalities” (Sen 2003: 512). When building a capability-based social investment strategy, it is in consequence important to create an institutional arrangement that can also be efficient in terms of “opportunity-freedom”. This institutional arrangement should aim at developing the set of opportunities available to every distinctive individual according to their possible variant ability to transform commodities, or resources, into functionings.

This concern is important as, at the core of the capability-based perspective is the idea that: “ if we really do attach importance to the actual opportunity that each person has, subject to feasibility, to lead the life that he or she would choose, the opportunity aspect of freedom must be quite central to social evaluation” (Sen 2003b: 513). It leads Sen to raise two questions: 1/ In terms of what criteria do we evaluate such a set of achievements of opportunities? and 2/ In what ‘space’ are achievements considered, that is: achievement of what?

In current welfare social policies, the state of welfare of a society or a social group is evaluated mainly according to an utilitarian framework where the amount of commodities produced -or the growth of the economy- serve as a proxy for the evaluation of social welfare (Sen calls this perspective the ‘welfarist’ evaluative framework). Assessing the opportunity-freedom, or the opportunities that people can really achieve, cannot be based on such utilitarian informational basis as the ability to convert commodities or wealth into *functionings* is not equally distributed among individuals. Sen gives us an alternative answer:

“opportunity-freedom cannot be sensibly judged merely in terms of possession of commodities, but must take note of the opportunity of doing things and achieving results one has reason to value. The freedom in question must include the freedom to live the way one would like, rather than judging freedom simply by commodity holdings.

The distinction can be very important in dealing with interpersonal comparisons. For example, two persons with identical commodity holdings may have very unequal freedoms to lead the lives they value, because one person may be disabled, or prone to disease, while the other is not similarly disadvantaged. A disabled person with the same commodity bundle may be just as rich as another, but still lacks the capability to move about freely and achieve other functionings that are affected by that disability. If freedom is judged by our capability to live the way we would choose, then the commodity space is the wrong space for evaluation of freedom. (...) Opportunity-freedom is

more sensibly judged in terms of capability to achieve valued results than simply by commodity holdings.” (Sen 2003b: 519)

According to the CA framework evaluation of welfare and preference should move from what Sen calls the “commodity space” to the “capability space”. Evaluation should be evaluation of “actual functionings and capabilities” (Sen 2003b: 522). As there is interpersonal variations of the relationship between commodity holdings and the actual functionings and capabilities these commodities allow to achieve, comparison of opportunity-freedom should not be done in the space of commodities. The main reason of this shift is that “this deficiency is particularly serious for the assessment of inequality and for a theory of justice” (Sen 2003b: 523).

As a consequence, social policies should implement non-market institutional arrangement that would complement the market oriented organization when pursuing the goal of extending the opportunity-freedom. One concrete way of evaluating what capacities investing in, when pursuing the goal of extending the opportunity-freedom, could be to target the “capability deprivation”.

“I have argued that capability deprivation is more important as a criterion of disadvantage than is the lowness of income, since income is only instrumentally important and its derivative value is contingent on many social and economic circumstances. That argument can now be supplemented by the suggestion that focusing on capability deprivation has some advantage in preventing incentive distortions compared with working with lowness of income as a criterion for transfer and subsidy” (Sen 1999: 131).

Social policies results should be evaluated in terms of capability enhancement, i.e. in terms of real opportunity that people (which are unequal in terms of conversion possibilities) can have and real functionings (that is beings and doings) they can achieve.

5.2 Education and health as public or semi-public good

A second critique Sen addresses is that “market mechanisms may sometimes be less effective [than other institutional arrangement to solve an economic problem], particularly in the presence of what are called ‘public goods’” (Sen 1999: 128). The main reason for this is that: “One of the assumptions standardly made to show the efficiency of the market mechanism is that every commodity -and more generally everything on which our welfare depend- can be bought and sold in the market (...). In fact however some of the most important contributors to human capability may be hard to sell exclusively to one person at a time. This is especially so when we consider the so-called public goods, which people consume *together* rather than separately” (Sen 1999: 128).

Example a public good given by Sen are a malaria-free environment, military defense, or environmental protection which are ‘goods’ that cannot be buy by only one person. The last example he gives will be of special interest here as he considers that education and especially basic-education and thus early childhood care (which are at the core of social investment strategies), are to be considered as public good. Education can be bought by one person alone, but one person alone cannot benefit of living in a globally well-educated society, neither can one buy the fact that the raising of the general educational level will “enhance economic progress from which others too benefit” (Sen 1999: 129). This has an important consequence: “The effective reach of these services may require cooperative activities and provisioning by the state or local authorities” (ibid.)

This second critique that Sen call the “public goods” argument, states that it is necessary to go beyond the market mechanism when doing social investments (or “social provisioning” as Sen put it) that “arise from the need of basic capabilities, such as elementary health care and basic educational opportunities” (Ibid.). This argument points out that, in this case, going beyond the market is not only justified because it fosters

equity in supporting public assistance, but also because of efficiency consideration (market could not be very efficient for creating a malaria-free environment or to enhance the global level of education in a region).

5.3 Externalities and complementary institutions

A third critique that we can draw from the CA framework is based on the understanding that the functioning of the market depends on other institutional, non-market, functionings.

The social investment strategy developed by the EC considers the relation between market and other institutions. The EC mainly see the development of social investment as an opportunity for the for-profit private actors to reinforce their position and create new-market in domain that are generally handled by public actors or non-profit organisations, as it is very clear in the following paragraph:

“Resources for social policies are not limited to those from the public sector. A non-negligible part comes from people and families. In addition, non-profit organisations provide social services on a substantial scale. These range from homeless shelters, support for the elderly, people with disabilities, to advice centres on social benefits in general. Social enterprises can complement public sector efforts, and be pioneers in developing new markets, but they need more support than they are receiving now. The for-profit parts of the private sector would need to be further encouraged to use the potential of social investment through, for instance, a healthy and secure social and working environment. This is not limited to Corporate Social Responsibility alone and includes for example on the job training, in-house child care facilities, health promotion and accessible and family-friendly workplaces.

In the social area, Member States still make insufficient use of more innovative approaches to financing, including by using participation of the private sector and financial engineering through instruments such as micro-finance, policy based guarantees and Social Investment Bonds which should strive for budgetary savings” (European commission, 2013, p.5-6).

Conversely, a CA centred social investment perspective should acknowledge that other institutional arrangements provide a plurality of rationalities and economic logics that would allow a more ethical and normatively grounded European social policy.

The family is obviously such an important alternative institution, and the State another one. If we follow Karl Polanyi, we can identify three main normative principles for economic transaction that these institutional arrangement allow to follow: the reciprocity principle (as in the family), the commodification principle (provided by the market) and the distribution principle (organized by associations and by the State). One of the problems of current understanding of the social investment strategy is the reduction of the economic exchange to the market exchange. Following this critique we can ask the following questions: what can be a social investment strategy implemented by the third sector? What is a state investment strategy beyond the market paradigm? These questions should be taken seriously by the Commission in the coming years. These questions should also allow to discuss the definition of what a “social enterprise” and a “social innovation” is in a way to connect it with the recent debate on the role of the “third sector” in social policy, see for example (Moulaert et al. 2013) and (Laville et al. 2016) for insightful analysis on this question.

Conclusion

In this intermediary report, we have stressed the importance of the *Capability Approach* for the assessment of the Social Investment Strategy designed in 2013 as a European public policy orientation. We firstly investigated the relationship between the *academic debate* and the *public policy schemes*. For both dimensions, we asserted that the *Capability Approach* can be introduced as a critical stance against which the Social Investment Perspective could be evaluated.

Regarding the academic debate, the main concern lies in the inconsistency between the economic theory of development (including growth), the sociological theory of new social risks and *a theory of justice* enabling the construction of relevant normative and analytical landmarks. Regarding the public policy debate, the main issue, in order to open up a more broader debate on the contribution of the European level to the extension (instead of destruction) of social freedoms in member states, is to overcome the market emphasis in social policies. The capability can be, if well designed, a heuristic tool for progressive politics in our times.

We have made suggestions concerning two areas of the European policy: the human rights policies and the the market policy. Our goal was to show that the Capability Approach can be used to reframe the meaning of these two important concepts of any European policy.

On the one hand, in the area of human rights, the *Capability Approach* version can enhance a subtle, responsive and demanding concept of human rights. As Robert Salais demonstrated in the WP 7 of the Re-invest project⁵, this understanding of human rights goes beyond the reduction of the human rights concepts one could deduce from the problematic phrasing of human rights in the European Charter.

On the other hand, we can follow the pragmatic relativisation of the market policies promoted by the *Capability Approach*. Without denying the connection between freedoms and market, we can identify limits of the market with the critical concepts of positive liberty: opportunity options cannot be commodified; common goods are relevant and beyond any market regulation; externalities and other exchange institutions must be taken into account in European policies.

Obviously, the heuristic power of the *Capability Approach* is not exhausted by these two points. Further work is needed in the next two years of the project, in order to explore two other key concepts: the concept of investment and the concept of political participation.

On the one hand, the concept of “investment” can be critically explored via the problems of the new legal framing of international investments by the international trade agreements. In 2016, the ILO published an interesting document on « the assessment of labour provisions in trade and investment agreements »⁶ showing the « politisation » of such agreements in the area of global governance. We should see these very new developments as a relevant field of inquiry for our project. The issue of the promotion of « positive freedom » (beyond negative freedoms of exchange) at the global scale is one of the most important issue of our times.

⁵ See the working paper of February 2017 by Robert Salais “Social investment: from European conception towards human rights – capabilities approach”.

⁶ http://www.ilo.org/global/publications/books/WCMS_498944/lang-en/index.htm

On the other hand, we should explore the problems of the new « participation » schemes necessary to overcome the neo-corporatist arrangements of the industrial society. In the *Capability Approach*, the public debate and the « capability for voice » are very important concerns. Nevertheless, the institutional designs of such a participation is quite difficult to define in the current situation, especially for popular classes and poor people. How to allow the NGOs and association to be associated in social policy and economic forums?

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RE-InVEST - Rebuilding an Inclusive, Value-based Europe of Solidarity and Trust through Social Investments

In 2013, as a response to rising inequalities, poverty and distrust in the EU, the Commission launched a major endeavour to rebalance economic and social policies with the Social Investment Package (SIP). RE-InVEST aims to strengthen the philosophical, institutional and empirical underpinnings of the SIP, based on social investment in human rights and capabilities. Our consortium is embedded in the 'Alliances to Fight Poverty'. We will actively involve European citizens severely affected by the crisis in the co-construction of a more powerful and effective social investment agenda with policy recommendations.

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