

**Tackling women's rights violations in non ideal  
society:**

**A discussion of top down and bottom up  
initiatives.**

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# **Tackling women's rights violations in non ideal society: a discussion of top down and bottom up initiatives.**

## **Introduction**

We currently live in a time where great progress has been made in terms of the equality of men and women however, there is still much that needs to be done in both developing and developed countries. In this thesis I will be discussing how we should best tackle violations of women's rights in non-ideal societies. I will be arguing that methodologically, the top down, or state led approach to bringing about gender justice should be supplemented by bottom up, agent led initiatives to promote gender justice.

In order to do this, in chapter one I will establish why women's rights are important and furthermore, why they are something that should be protected by the government. I will begin by outlining how women across the world find their rights violated and their potential stifled. I will then look at Nussbaum's insightful work on the capabilities of citizens and the duties that states have towards citizens by virtue of these capabilities. The disparity in capability between men and women is concerning because it is clear that women should be able to do more with their lives. Nussbaum argues that the government should work to solve this disparity.<sup>1</sup>

In chapter two I explain why I will be focusing on non ideal society: this is because we do not live in a just society. An ideal society would be a just one. We live in an unjust society, which is non ideal. I will argue that violations of women's rights and the limitations of their capabilities are examples of the injustice that occurs and that if we want to solve such injustices, then we should look for solutions in the real world, rather than presupposing an ideal society and working from there. For this thesis, I want my conclusion to be practical in the real world.

In chapter three I will primarily address top down approaches to achieving justice and how they have typically been favoured over agent led initiatives to tackling injustices. This can be seen both in human rights law and in moral theory, such as in John Rawls' *A Theory of Justice*.<sup>2</sup> I will also argue that since our political and cultural institutions were created within a patriarchal framework, they help to enforce structural sexism. Therefore, we cannot create an ideal society free from sexism from a purely state led, top down approach, because such an approach will rely on laws, structures and policies that may be biased against women in the first place. Whilst top down approaches can still be beneficial in some regards, if we want to improve the situation of women, we should also look to agent led initiatives.

In chapter four, I will expand upon such agent led, or bottom up initiatives. I will argue that a shift in societal ethos and cultural norms is also highly important if women are to have the same opportunities as men and for that to happen, change from individuals and groups in the

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<sup>1</sup> Nussbaum, Martha. "Women's Capabilities and Social Justice ". *Journal of Human Development* 1, no. 2 (2000): 242.

<sup>2</sup> Rawls, John. *A Theory of Justice*, Cambridge, Massachusetts: Harvard University Press 1999.

community is essential. If there are only changes at the highest levels, and not societally, then the benefits to women are likely to be slim. As well as this, I will argue that the empowerment of women, something which is essential if women are to reach their capabilities to the same extent that men are, is better served by agent led approaches.

I will conclude that in a non-ideal society women are unable to achieve their potential to the same extent as men and that in the interests of justice they should be given the same opportunities as men. However, a purely top down approach to tackling this injustice will be insufficient - it will not lead to the change in ethos necessary for real progress to be made in terms of equality. Both top down and bottom up approaches are valuable, and should be used in conjunction for the maximal benefit.

## Chapter One: Why is gender justice important?

In this chapter I will outline why women's rights should be protected and why justice requires equal capabilities for men and women. In order to do this, to begin, I will briefly depict and explain how women's rights are violated globally, and thus show why there is a gender justice problem. I will then argue that because the government has an obligation to enforce justice and justice requires equal capabilities for men and women, the government therefore has an obligation to help women realise their capabilities equally to men.

### Part I - How are women's rights violated?

*My mother always told me, "hide your face people are looking at you." I would reply, "it does not matter; I am also looking at them."*<sup>3</sup>

Due to their gender, across the globe, women find themselves being treated without the respect they deserve. This is not to argue that men do not also experience problems. Indeed systematic sexism and gender norms also impact men's lives, who may feel pressured into being the principal earner of their family, or be discouraged from showing emotion for fear of seeming weak.<sup>4</sup> However, sexism largely negatively impacts women the most, since they are the ones who find themselves in the position of being at the bottom of the power dynamic. Therefore, in this essay, I will be focusing on the problems of women.

In the vast majority of societies, women have and are currently treated as lesser beings or subservient to men. We see this through gender based violence, which worldwide affects thirty percent of women.<sup>5</sup> We see it in the fact that only half of women are part of the global labour force compared to three quarters of men. We see it in the fact that women do not have an equal voice in political and social realms, and even if they do have a voice, they are often not listened to.<sup>6</sup>

In Saudi Arabia, is it illegal for women get a job or to receive some health care services without the permission of a male guardian.<sup>7</sup> In India, women have no right to marital property, and so if a woman chooses to separate from their husband she is only entitled to maintenance from him, and has no right to assets. The work that may have been done by the woman at home is not

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<sup>3</sup> Yousafzai, Malala. *I Am Malala*. London: Orion Publishing Group, 2013.

<sup>4</sup> Bobrow, Emily. "The Man Trap" *The Economist* 2017.

<sup>5</sup> Office of the High Commissioner of Human Rights. "Women's Human Rights and Gender Equality" <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/WRGSIndex.aspx>.

<sup>6</sup> United Nations Economic and Social Council. "Gender Statistics: Report of the Secretary General", 1-6, 2016.

<sup>7</sup> Alkhalisi, Zahraa. "Saudi Arabia Is Giving Women More Freedom as It Looks Beyond Oil." *CNN*, 2017.

considered to have economic value by the Indian government.<sup>8</sup> In Iran, women are banned from entering stadiums and cannot leave the country without permission from their husbands.<sup>9</sup>

In the west, there is a tendency to perceive that sexism is not a problem and that in our liberal and Christian (or more often increasingly secular) societies the situation is more civilised and women are treated equally. Indeed, in the west there tend to be fewer laws in place restricting the rights of women. However, whilst many women enjoy a good quality of life, the situation certainly remains unequal here in the west. The idea that sexism is only a non-western problem highlights the west's tendency for cultural supremacy: we deem our own culture to be more superior and not afflicted with issues like sexism. It also exposes the difficulties in critically appraising the society we are part of; yet, if we are to make progress in making lives better for women then the west must turn a more scrutinising eye onto itself. We should also acknowledge that sexism will manifest itself in different ways in different cultures. Whilst in many regards women are treated as equal citizens: for instance they have the right to vote, to maternity pay and are legally protected from domestic violence, sexism still exists. In the USA, child marriage rates remain high. In thirty-eight states between 2000-2010, one hundred and sixty-seven thousand young people aged seventeen and under were legally married. More than half of the US states fail to have a strict minimum age for marriage and furthermore, the majority of such child marriages take place between adult men and girls. These marriages sometimes legalise a situation that otherwise would be classified as statutory rape.<sup>10</sup> Across the water, in the Netherlands, a country famous for upholding the rights of women, an EU survey showed that forty-five percent of women have been either physically or sexually assaulted since reaching the age of fifteen.<sup>11</sup> In the UK, women only write one fifth of newspaper articles, are one tenth of engineers and fifty-four thousand women a year lose their job because of maternity discrimination. Three times more men called John lead FTSE 100 companies than women do. As well as this, women of colour find themselves doubly discriminated against through both sexism and racism. For instance, whilst women earn less than men, there is also a wage gap between white women and women of colour, with women of colour earning significantly less than white women.<sup>12</sup>

The persecution of marginalised groups often comes together: for instance bigotry goes hand in hand with sexism. Once it is acceptable to disregard the humanity of one group, it creates a culture where it is easier to disregard the humanity of another group. On the other side of the

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<sup>8</sup> Madhok, Diksha. "Indian Women Will Never Be Equal as Long as These 9 Laws Remain on the Books." *Quartz India*, 2014.

<sup>9</sup> Kaveh Taheri, Laleh Moazen "Iranian Women Still Denied Fundamental Rights" *Huffington Post*.

<sup>10</sup> Kristof, Nicholas. "11 Years Old, a Mom, and Pushed to Marry Her Rapist in Florida." *The New York Times*, 2017.

<sup>11</sup> European Union Agency for Fundamental Rights. "Violence against Women: An Eu-Wide Survey", 133. Luxembourg: Publications Office of the European Union, 2014.

<sup>12</sup> Bates, Laura. "How to Win Every Sexist Argument: An 11-Point Guide" *Stylist* 8 March 2017.

coin, promoting equality for different groups should encourage people to be more respectful of what is different and what is other. Womankind is not separate from other social groups, but bridges many, for instance regarding religion, ethnicity, sexuality or mental ability. There will be different issues for women in each of these groups and the liberation of women from oppression should include women from all demographics - not only wealthy, white women, for instance. The liberation of women also must acknowledge that some women will face discrimination from more angles than others: this is the idea behind intersectional feminism.<sup>13</sup> This paper will focus on sexism due to time constraints, nonetheless it is important to bear in mind that equality is disingenuous if it fails to apply to everyone. We cannot trade one stratosphere of inequality for another using the justification of equality.

To return to sexism, even in our everyday language women are ostracised. Men and man are used for the collective, and women are the other. This can be seen in Rawls' *A Theory of Justice*, where the masculine (i.e., he, his, men) is frequently used for humanity in general.<sup>14</sup> Julia Penelope argues that whilst women pretend that we are part of this collective, we are often not. When women are meant to be included, it will be specified, frequently in an awkward and uncomfortable linguistic manner. For instance, as chairwoman, rather than chairman, or actress rather than actor. The general term and the immediate association remains with the male. It is not the norm that women may be part of the said community but an added extra.<sup>15</sup> As Susan Okin argues, in *A Theory of Justice*, whilst Rawls says that gender is not morally relevant, there are currents where women are not given equal consideration. For instance, the heads of households are strongly suggested to be those who will decide how the just institutions should be, however these will more often than not be men, and therefore the role of women in politics is subtly but notably diminished and undermined.<sup>16</sup>

If we delve into our semantics they also display the result of patriarchal domination. For instance Jackson Katz argues that when we speak of "women's issues" or "battered women" we distance men from the scenario. It becomes unclear who the violence is committed by and thus what power imbalances these crimes are part of. In the case of a "battered woman", she has had her character tainted by the incident - she is no longer just a woman - and yet the perpetrator is removed from the story. Furthermore, such language also infers that violence against women is an abstract phenomenon we cannot control, something that happens naturally to women like menstruation or disease. The issue subtly becomes one for women to deal with, not men. Women should solve what is perceived as "their" problem, and responsibility falls on them rather than the men who largely commit these crimes, or the systematic sexism in society, which encourages and allows such violations of women's rights

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<sup>13</sup> Crenshaw, Kimberle. "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" *Stanford Law Review* 43, no. 6 (1991): 1241-99.

<sup>14</sup> Okin, Susan Moller. "Justice and Gender". *Philosophy & Public Affairs* 16, no. 1 (1987): 45.

<sup>15</sup> Penelope, Julia, "Prescribed Passivity: The Language of Sexism" (1988). *Faculty Publications - Department of English*. 89.

<sup>16</sup> Okin, "Justice and Gender," 49-50.

to take place. This is problematic because it undermines the idea that crimes committed by men against women are a societal problem that we need to address.<sup>17</sup> This encourages initiatives to address “women’s issues”, like shelters for victims of domestic violence, to be seen as less of a priority in the governmental and public eye. For instance the UK funding cuts have disproportionately affected women - since 2010, eighty-five percent of welfare cuts have been burdened by women.<sup>18</sup>

It is evident that men hold the majority of economic, political and social power. Sexism is systemic in society. Even if individuals do not intend to be misogynistic, society is such that for individuals to avoid prejudice or acting through it requires significant conscious effort and reflection. Many women are unable to live their lives without fear of being assaulted or flourish and achieve to the extent that men do. From a young age, many girls find ourselves being categorised as a group who live for others, not for themselves. Women are often socialised to not be as loud or take up as much space.<sup>19</sup> The female form is frequently simultaneously objectified, sexualised and demonised, leading to many women feeling uncomfortable in their own bodies. The message often given to women is that they should strive to look attractive and always be aware of how others perceive them.<sup>20</sup> In the west it is commonly accepted that it is “normal” for men to watch pornography that is violent and degrading towards women.

To expand upon all the ways that women face discrimination would take too long, however I hope to have provided sufficient evidence of how sexism may manifest itself in the world today. In the next part of this chapter I will use Nussbaum’s capabilities approach to show why women should expect so much more.<sup>21</sup>

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<sup>17</sup> Katz, Jackson. "The Language of Gender Violence." Timothy Harveda 2017.

<sup>18</sup> Sodha, Sonia. "Austerity Effect Hits Women 'Twice as Hard as It Does Men'." *The Guardian* 19 November 2016.

<sup>19</sup> Young, Iris Marion. "Throwing Like a Girl: A Phenomenology of Feminine Body Comportment Motility and Spatiality". *Human Studies* 3, no. 2 (1980): 137-56.

<sup>20</sup> Bartky, Sandra Lee. "Foucault, Femininity, and the Modernization of Patriarchal Power". *Feminism and Foucault: Reflections on Resistance* (1988): 25-31.

<sup>21</sup> Dyzenhaus, David. "John Stuart Mill and the Harm of Pornography". *Ethics* 102, no. 2 (1992): 534-51.

## **Part II - The capabilities approach to tackling these violations: why governments have the duty to help**

*“women in much of the world lack support for fundamental functions of a human life [...] they are not treated as ends in their own right [...] instead, they are treated as mere instruments of the ends of others”<sup>22</sup>*

By beginning at capabilities, Nussbaum is pulling at a history of thought which includes Aristotle, Karl Marx and Amartya Sen. The essence of human dignity comes from us being able to act and function in uniquely human ways. From this we find that the key question should be what are people really able to do. Are people able to carry out their human capabilities, or are they forced to live more like animals? Some functionings and capabilities are central to human life, and people should be able to live out these functionings in a way that is in line with their humanity.<sup>23</sup> Sen was a pioneering writer of the Capability Approach in the 1980's and since then it has become well known. The approach is used widely in human development and has been adopted by the United Nations. The Capability Approach is useful for a richer concept of development, or lack thereof, because it goes further than purely economic parameters. The Capability Approach helps elucidate the other various ways that individual's lives can be limited. It leads to development encompassing a whole range of attributes of what an individual can actually do, as opposed to just their income.<sup>24</sup> According to Sen, through development we remove barriers to the ability of people to act freely.<sup>25</sup> Nussbaum was one of the many academics who further expanded on the Capability Approach, and I will be closely looking at her capability theory of justice, which uses human dignity as the starting point for what capabilities we should have as humans.<sup>26</sup>

Governments have a duty to deliver justice to their people, however there can be no justice if women do not have the same capabilities as men. An unequal society, where women are unable to do what men are able to do and are discriminated against on the basis of their sex is not a just society. If we want to achieve equality between men and women, then we need to create a society where women are able to make informed choices and access the same opportunities as men. As it stands, women often find themselves in the position whereby they must overcome many barriers if they try to live their lives with an equal level of freedom and opportunity as men. These may be social, cultural, economic or physical obstacles.<sup>27</sup> Furthermore, it can often be difficult for them to legally challenge these barriers to their

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<sup>22</sup> Nussbaum, "Women's Capabilities," 219-20.

<sup>23</sup> Nussbaum, "Women's Capabilities," 230.

<sup>24</sup> Wells, Thomas. "Sen's Capability Approach" In *Internet Encyclopedia of Philosophy*.

<sup>25</sup> Malhotra, Anju; Schuler, Sidney Ruth and Boender, Carol "Measuring Women's Empowerment as a Variable in International Development." 8: World Bank 2002.

<sup>26</sup> Wells, "Sen's Capability Approach."

<sup>27</sup> Nussbaum, "Women's Capabilities," 219-20.



development. This may be because the law does not treat men and women as equals, or more subtly, that the obstacles are not explicit or obvious enough to bring a law case against. For instance, whilst statistics show that many more men are hired in senior roles in institutions, for example as professors in universities, it would be difficult to prove that a woman was not chosen purely because she was a woman. In the case of hiring, there are many other variables and so whilst discrimination against women may be obvious as a trend, on an individual basis it can be impossible to prove that a decision was influenced by sexism unless an explicitly sexist reason was known to be given. If we are to achieve gender equality, we must break down these barriers. We need to tackle both explicit sexism, for example ensuring women have the right to vote and go to school, but we also need to tackle sexism that is more implicit, such as women being considerably less likely to be hired in senior positions.

If we want to tackle implicit sexism, we need to understand why women find themselves unable to flourish like men are able to. We need to ask why women are unable to progress past a certain point. The capabilities approach acknowledges that humans have basic needs to survive and these must be met: for instance, food, shelter and medical care if needed. However the approach also argues that individuals will not be able to develop their uniquely human capabilities i.e., the capabilities that differentiate them from other animals, if only their basic needs are met. Furthermore, if people have to focus their energy on meeting their basic needs, then they will lack time and energy to be able to flourish and develop these human qualities and abilities. These capabilities provide the baseline of human dignity. Every individual deserves to be able to flourish as a human, and should not have to sacrifice their human capabilities for the sake of another. For instance, women as mothers should not have to live their lives in servitude to others: cleaning, caring, cooking and going to work, to the extent that they have no time left to focus on and develop themselves. The capabilities approach also provides us with a threshold - a minimum level that all humans should reach in order to be able to live meaningfully human lives.<sup>28</sup>

Like Sen, Nussbaum believes that placing the emphasis on human norms, such as forming meaningful relationships with one another, and using the ability to fulfil these norms as a measure of equality, is more effective and helpful than resources. This is because resource distribution can often be unclear - for instance a family may receive one hundred euros, but only the male head of the household may have control of the money. As well as this, different individuals require different levels of resources to reach the same level of functioning. This is particularly the case in overcoming gender norms. If a girl's education has been neglected in primary school, in secondary school she will require more resources to reach the same level of academic attainment as a boy whose earlier education was not neglected. Not only that, but Nussbaum notes that our social background will shape our preferences of how we should use our resources. Men may tend to use resources to aid their own personal development, for instance doing a course so that they can get a better job, whereas women may tend to use their resources to help those around them - for example to buy their children school clothes. Our preferences will often echo and reinforce the power dynamics in which individuals have been brought up, rather than work against them. Those in power will have a preference to keep

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<sup>28</sup> Nussbaum, "Women's Capabilities," 222-23.

their privilege and those who are subordinated can find themselves under social pressure to say that they are satisfied with their lot, or indeed they may not have even considered that they deserve more. However, if preferences do not seek to subvert unjust power dynamics, then they are not the most effective means of achieving equality. The capabilities approach avoids these problems by giving individuals the ability to achieve on an equal level, not asking them if they want to. Individuals may choose not to take advantage of the opportunities available to them, but it is right and fair that they have a real concrete choice in the matter. If they were only ever offered what they would prefer, they may not realise what opportunities are available for accessible for them to choose from.<sup>29</sup>

Nussbaum also differentiates between a human capability and a human functioning. Functioning is how a person behaves, whereas capability is their potential to behave. Nussbaum argues that capability should be prioritised over functioning because people should have the right to choose what is valuable for themselves - ergo the capability of practical reason. It would be wrong for the government, or for people, to impose a vision of the good life onto people. I agree with this, it is important that people are able to freely choose what is good for them and for that they need options. A woman may choose to quit her job if she has a child, but it is not a meaningful choice unless she could have kept her job in the first place. The capability approach sets a high bar of standards that should be achieved and opens doors of possibility for those who may be oppressed - it demands that the environment is one which welcomes opportunity.<sup>30</sup>

Nussbaum provides a list of ten central human functional capabilities that she hopes will span cultures and generations. These capabilities are: *Life; Bodily Health; Bodily Integrity; Senses, Imagination and Thought; Emotions; Practical Reason; Affiliation; Other Species; Play and Control over one's Environment*. Whilst the list is interrelated and many points depend on one another, each individual capability also stands on its own and is important in its own right. One capability should not be made to be chosen in favour of another. I would like to go into further detail on *Practical Reason, Affiliation, Bodily Integrity and Control Over One's Environment*. Their expanded definitions as given by Nussbaum can be found here:<sup>31</sup>

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<sup>29</sup> Nussbaum, "Women's Capabilities," 228-29.

<sup>30</sup> Nussbaum, "Women's Capabilities," 235-36.

<sup>31</sup> Nussbaum, "Women's Capabilities," 231-233.

(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.*

(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 protections against discrimination on the basis of race, sex, sexual orientation, religion, caste, ethnicity, or national origin.*

(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, protections of free speech and association.*

(B) *Material. Being able to hold property (both land and movable goods); 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.*

*For the full explanations of all ten capabilities, see Nussbaum, "Women's Capabilities," 231-33.*

Nussbaum argues that practical reason and affiliation are especially important due to how they help shape our other capabilities in an essentially human way. Nussbaum argues that *Practical Reason* is central because if we enact our other capabilities but without some sort of reasoning, intention or idea parallel to it then it is like we are not behaving as humans.<sup>32</sup> Further to this, I believe it is true that if women are steered and pressured by society into narrow constraints of how they should behave, they will not be able to exercise their *Practical Reason*. Nussbaum argues that *Affiliation* is important because we should be able to form relationships within which we are respected and treated as ends in ourselves. I believe Nussbaum is correct here: it is essentially human to be able to make decisions for ourselves and freely interact and form meaningful relationships with others. There is a capacity in humanity to do this to a level that other beings cannot.<sup>33</sup> It is also the case that if women are kept in the house and prevented from socialising, then their sphere for social interaction will be severely limited. In addition, women should expect not to receive degrading or humiliating treatment, but should be understood to be multi-faceted, complex human beings.

I also chose the functional capability *Bodily Integrity* because women's bodies are frequently a political and cultural minefield. Women's bodies may be viewed as a means to bring life into the world, or source of sexual temptation or pleasure - for men. It is frequently the case that women's bodies are primarily for others rather than for themselves.<sup>34</sup> It is an embodiment of the disrespect shown to women that they are often not granted autonomy over their phenomenal being. Promoting the importance of and ensuring women can have bodily integrity is vital to the equality of the sexes.

Finally *Control Over One's Environment* lays evident the role of power in the subordination of women. To achieve equality, women must have the functional capability to take part in political choices that govern their lives, for instance they should have the overriding say in laws which affect their reproductive rights, such as access to contraception or abortions. Women should be able to speak freely without fear of harassment or intimidation. They should also have the ability to have possessions of their own and hold on to them regardless of their marital status. They should be able to have the same opportunities in their career as men, have their work acknowledged, and be taken as seriously in the workforce as their male counterparts.

Nussbaum believes that there is a moral imperative that our capabilities be developed. To treat a human like an animal, and render them unable to develop and flourish in a human way, would be a waste of potential and an injustice. Further to this, people should be treated as ends in their own right, not as means, or else their dignity is being compromised and their potential wasted. To coerce certain groups in society to live for others at the expense of themselves is not the answer. For instance, if equality between men and women is only achieved in western countries because women from poorer countries are being paid extremely low wages and

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<sup>32</sup> Nussbaum, "Women's Capabilities," 233.

<sup>33</sup> Ibid.

<sup>34</sup> Berger, John. "Ways of Seeing". Chap. 3, 45-64. London: Penguin Group, 1972.

being exploited for domestic labour then this is not an acceptable solution.<sup>35</sup> I wholeheartedly agree with Nussbaum. If you believe that you should be respected and treated with dignity, and can acknowledge that others are like you, then it follows that others should be treated with respect and dignity. If you accept that there is no fundamental moral difference between men and women, then you should also accept that it is unfair for women to be treated as lesser moral beings, or as beings of lesser worth than men. Moreover, I believe that not only is there a moral imperative for women's capabilities to be supported, it is a matter of justice that women are able to have equal capabilities as men: it is profoundly unfair that women are prevented from realising their capabilities due to their gender. The government, which seeks to enforce justice, has an obligation to help women realise these capabilities.

Nussbaum splits capabilities into three groups. Basic capabilities, internal capabilities and combined capabilities. Basic capabilities are those which provide individuals with the tools to form the groundwork upon which other capabilities may flourish and grow. Internal capabilities are the "states of the person" which enable different functionings to be utilised. For example, a person with normal hearing would be able to enjoy music if it were played to them. Or as Nussbaum says, a woman who has not been the victim of female genital mutilation will have a capability to experience sexual pleasure.<sup>36</sup> Combined capabilities are internal capabilities in working within an enabling environment for them to be exercised. Even if a person could hear, if they were never allowed to listen to music they would not be able to enjoy it. Similarly even if a woman were not mutilated, she may be unable to experience sexual pleasure if she never marries and her community forbids her from having sex outside of marriage. Nussbaum touches on a vital point here: that the social and cultural environment plays a crucial role in allowing or hampering the ability of people to develop their human functionings. If we are to remove sexism, we have to not only make sure women have the internal capabilities to flourish but also that they live in an environment which is responsive to their human needs and conducive to their flourishing.<sup>37</sup> I will further discuss this idea in chapter four.

For Nussbaum "the capabilities approach [...] sees human beings from the first as animal beings whose lives are characterised by profound neediness as well as by dignity".<sup>38</sup> The capabilities approach touches on a key area often missed in liberal theory and in Rawls' *A Theory of Justice* - namely that human beings are not wholly independent. This can be seen in a variety of the key capabilities Nussbaum lists, such as emotions and affiliation. Nussbaum's approach strikes the balance between granting humans respect and autonomy, but also acknowledging that they will need help and rely on others in our day to day activities - for instance working for money, getting food, forming interpersonal relationships. Further to this, some individuals will require more help and support than others, like the very young, the

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<sup>35</sup> Nussbaum, "Women's Capabilities," 233-34.

<sup>36</sup> Nussbaum, "Women's Capabilities," 234.

<sup>37</sup> Ibid.

<sup>38</sup> Nussbaum, "Women's Capabilities," 236.

elderly, the disabled or the sick. Throughout our lives, how dependent we are on others will fluctuate, we may become more or less independent.<sup>39</sup>

### *Human Rights*

Nussbaum argues that her capabilities are closely linked to human rights in that they provide a basis for political, civil, economic and social liberties and rights.<sup>40</sup> Nussbaum's approach follows much of human rights and philosophical discourse in arguing that it links human rights to our dignity and what we should be able to do.

According to the United Nations, human rights are something all humans possess, no matter their status, for instance of wealth, nationality, sex or race. In this way they are universal: all people are equally entitled to human rights. These rights are often laid down as laws, for instance in treaties or customary international law. Through international law, states have duties and obligations to individuals. They must protect people from abuses of their human rights and they should also fulfil human rights - to constructively act to ensure people are able to benefit from their human rights.<sup>41</sup>

The capabilities approach provides a nuance of consideration to the web of requirements that are needed for gender equality. Women do not only need equal rights to men. Rights only cover some aspects of equality and human existence. The goal should not be that someone abstractly is 'permitted' to vote, to go to school, to exercise their religion, but that there should be the real possibility that they can achieve these ends. For instance, giving a woman the right to vote means nothing if her husband will not let her leave the house to vote, or intimidates her into voting for what he wants. Young girls may have the right to go to school, however if they are not able to access sanitary towels, tampons, or other means of staying hygienic during their menstruation, and therefore they do not feel comfortable going to school, and miss weeks of school every year, then this 'right' is being impeded. Women may be free to travel anywhere they want by themselves but in reality they may feel too scared or threatened to do so, for example in certain parts of a city, or on empty public transport, and this may limit their behaviour. In all these ways, capabilities frame and colour rights into something more meaningful and concrete when looking to see how we may use them in the mission towards a more equal society.<sup>42</sup>

As Nussbaum argues, further to this, not only does the capabilities approach work well with human rights, it most importantly provides meaningful and achievable goals in terms of women's development. Capabilities work to open up the world to women, whilst still giving them the ultimate choice. It places women in the front seat of their development, no matter

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<sup>39</sup> Nussbaum, "Women's Capabilities," 236-37.

<sup>40</sup> Nussbaum, "Women's Capabilities," 237.

<sup>41</sup> Office of the High Commissioner of Human Rights. "What Are Human Rights?" 2017.

<sup>42</sup> Nussbaum, "Women's Capabilities," 237-40.

what culture they are from, and does not impose a vision of how any woman should live her life, moreover it allows women greater space for their own vision.<sup>43</sup>

Governments have a duty to protect the rights and uphold the dignity of their citizens. Therefore, they should support the flourishing and realisation of the capabilities and rights of women. If women are not able to live in a uniquely human way, then their dignity is being compromised and this is something that should not be tolerated.

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<sup>43</sup> Nussbaum, "Women's Capabilities," 241-42.

## Chapter Two: The ideal and non-ideal distinction

In this chapter I will argue that ideal theory and non-ideal theory should be used in conjunction. I will argue that non-ideal theory is important for two reasons. Firstly, context and situation are essential to understand systemic oppression, such as occurs to women. To presume you can isolate systemic oppression from the system that created and perpetuates it is to misunderstand the nature of the discrimination. Secondly, if we are looking to solve the injustices that are occurring, we will want to look for the path to justice in the real world, where sexism happens, rather than the ideal world, where it does not. I will also look at the ways in which ideal theory retains value in ethical theory: for instance by giving us a goal of a just society to work towards. I will conclude that ideal theory is useful, but leaves gaps, which should be complimented by non-ideal theory.

In ideal theory there is strict compliance with the unerringly just framework of society, and as part of this individuals have duties and responsibilities towards one another and themselves. According to Rawls, in a society where the rules and regulations are just, the propensity of citizens to act in an unjust way will be either removed or severely limited.<sup>44</sup> In non-ideal theory, there is no such compliance, no just basic structure, and individuals should be presumed to act however they are compelled to in the given moment. This can be difficult to predict, hence the importance of looking to the real world to see how this plays out.

Rawls argues that a non-ideal society is an unjust one. It should be noted that injustice may also occur in nearly just societies, and so do not exclusively occur in non-ideal or unjust societies. Injustices are those inequalities that occur that are not to the advantage of everyone.<sup>45</sup> As I have already discussed, sexism against women and violations of women's rights are an injustice: women deserve to be treated equally to men. Furthermore, such sexism occurs in developed countries such as the United Kingdom and The Netherlands. The society in which we live: where sexism pervades, women find themselves unable to realise their potential, are consistently paid less, penned into gender stereotypes and have their autonomy disregarded is not an ideal society. For Rawls, non-ideal theory is what we use to find the "principles for meeting injustice". By this he means the normative rules which tackle injustice and attempt to move us towards justice.

Ideal and non-ideal theory work holistically, however non-ideal theory has often been neglected in literature, and in this chapter I would like to emphasise its importance. Ideal theory is not irrelevant to society, but it does need to be applied in a more useful way. One must assess the normative elements of the theory and gauge how to put them into place in a world where not all individuals comply with the moral code, not all individuals are equal and we cannot be certain of the consequences of the application of the rules. Thus applying the theory to the real world is a challenge in itself, and there will be disagreements about the "best" way to do so.

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<sup>44</sup> Rawls, *Theory of Justice*, 216.

<sup>45</sup> Rawls, *Theory of Justice*, 54.



*Context and situation and are needed to understand the oppression of women*

In this section I will address my first reason for using non-ideal theory: in order to grasp the subordination of women we must also be aware of the situation in which subordination takes place. We should be aware that because discrimination against women in society is systemic, it is not the exception that injustices will happen to women but the rule. We must look carefully at the injustices occurring, and not presume them to be random but part of an overarching system of discrimination.<sup>46</sup> The context and history of sexism are vital if we are to better understand the phenomenon of gender injustice. Deep seated prejudices stem from a wider patriarchal culture that is both overtly and covertly reinforced in a myriad of ways i.e., through the objectification of women in the media. Understanding the condition of women requires information regarding their economic, historical, cultural and social situation because all these areas play a role in sexism.<sup>47</sup> If we lack the knowledge of what sexism is and how it arises, then it will be extremely difficult to tackle the causes. For this reason we cannot come to conclusions as to how to overcome sexism “a-contextually”.<sup>48</sup>

Nevertheless, we may be tempted to look for solutions to gender injustice by starting at a tabula rasa. Theoretically a blank starting point should allow us to perceive what things would be like if there was no gender injustice, and men and women were treated equally. However, in practice this approach is problematic. The overwhelming majority of societies are patriarchal. Having grown up in these societies, we do not know what gender justice looks like because we have never seen it. When we presume equality, it is likely that sexist or misogynistic biases will be ingrained in our presumptions. Our perception of what we think is equal is likely to be tainted by our internalised misogyny. To refer to Gadamerian philosophy, we can never free ourselves from our prejudices, or preconceived notions of the world.<sup>49</sup> Thus to completely pick apart what is sexist and what is not is almost impossible.

Furthermore, once we presume this blank starting point, this ideal society where sexism does not exist, and use this to create normative rules to influence our society where sexism is endemic, it is inevitable that our eyes are likely to be less critical to those subtle prejudices at play which are also sexist. As Charles Mills rightly points out, when we focus on ideal society, prejudices and inequalities at play can be hidden. The central perspective given is the one that dominates philosophy: the wealthy, white male, and therefore fails to be a reflection of society

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<sup>46</sup> Robeyns, Ingrid. "Ideal Theory in Theory and Practice." *Social Theory and Practice* 34, no. 3 (2008): 350.

<sup>47</sup> de Beauvoir, S. *The Second Sex*. New York: Vintage Books, 1974 in Young, "Throwing Like a Girl," 138-39.

<sup>48</sup> Valentini, Laura. "On the Apparent Paradox of Ideal Theory ". *The Journal of Political Philosophy* 17, no. 3 (2009): 346.

<sup>49</sup> Grondin, J. (2006) "Gadamer's Basic Understanding of Understanding", in Dostal, R. J. (ed.) *The Cambridge Companion to Gadamer*. Cambridge: Cambridge University Press, pp. 36-51.

as a whole.<sup>50</sup> It is not obvious where power lies within the society because it is not acknowledged. This is an issue because if we are not aware of power imbalances then it is very difficult to overcome them. For example we might not question why girls “throw like a girl” and fail to see context behind it - that is that women are often taught to make their bodies smaller and take up less space, rather than utilise their full body and put a greater force and direction behind their throws like boys are.<sup>51</sup> Ideal theory obscures the context, however in structural discrimination, it is in the context: the history, the culture, the ideas and the situation in which many, what are perceived to be harmless, incidents occur, and can be understood as part of a wider problem of patriarchal hegemony which we should work to dismantle if we want to reach gender equality.

The insightful work of feminist scholars on the ethics of care have highlighted how many of our normative ethical frameworks are male-centric, using male experience as the norm and the female experience as separate to this. This can be seen in the liberal conception of a moral and political being given in Rawls’ *A Theory of Justice*. The conception is too individualistic and often fails to show adequate acknowledgement of relations of care and dependence that are needed for a moral and just person to develop. Our interpersonal connections and relationships of care are often categorised as more feminine concerns, and sidelined for ideals such as abstract rules.<sup>52</sup> However, as women we are more often more acutely aware that we are dependent on others and others are dependent on us. If we fail to acknowledge this insight, as Rawls did, we suppose an ideal world in which humans are not dependent upon one another, or require care and support, then our theorising will fail to take into account injustices like the unequal distribution of care, which sees women, people of colour and immigrants taking up a high proportion of the burden.<sup>53</sup>

Robeyns classifies such theorising of the ideal world as “bad idealisations”. Bad idealisations are idealisations created for ideal theory which fail to acknowledge the presence of injustice as opposed to finding a way to combat the injustice through theorising. These idealisations are problematic because they contribute to continued harm to those oppressed by the injustice. If we focus too heavily on ideal theory, rather than having a clear vision of what society would be like if there were no gender injustice, we are in danger of creating bad idealisations and even if not, failing to acknowledge certain aspects of oppression which need to be tackled.<sup>54</sup> Rather than stretching ideal theory beyond its capabilities, non-ideal theory should be utilised. Non-ideal theory is more suitable for dealing with the specific structural and cultural mechanisms that contribute to sexism.

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<sup>50</sup> Mills, Charles W. “‘Ideal Theory’ as Ideology,” *Hypatia* 20 (2005) in Robeyns, “Ideal Theory,” 341-42.

<sup>51</sup> Young, “Throwing Like a Girl,” 137-56.

<sup>52</sup> Moore, Margaret. “The Ethics of Care and Justice.” *Women & Politics* 20, no. 2 (1999): 1-16.

<sup>53</sup> Robeyns, Ingrid. “Ideal Theory in Theory and Practice.” *Social Theory and Practice* 34, no. 3 (2008): 358-359.

<sup>54</sup> Robeyns, “Ideal Theory,” 360.

Much of Rawls's principles of justice may be useful in reaching gender equality and justice, but for that to be the case they also need to be applied the right way in non-ideal theory.<sup>55</sup> Whilst we may theorise of an ideal society where sexism does not occur and use this to create social policies and rules as to how to dismantle discrimination against women, practically this will not work. Since we want our conclusions to be normatively useful in the real world, we need to turn to non-ideal theory.

*The path to justice is through non-ideal theory*

As outlined in the introduction of this chapter, I will now argue in this section the second reason why non-ideal theory is needed: that is that if we want to see how to address issues in the real world, we need more real world restrictions and to deal more heavily with real world interpretations. This will allow us to create principles to deal with the specific problems at hand and help to solve the problem of bad idealisations, or ignoring aspects of discrimination that should be discussed posed by ideal theory.

Valentini classifies Rawls as providing a fact-sensitive theory of justice, that is, the principles of justice they suppose should give guidance for how political power should be exercised and why this is justified.<sup>56</sup> If we take ideal and non-ideal theory together, then this is true. Rawls suggests we can assess the justice, or injustice, of our current establishments using ideal theory. When the establishment fails to be similar to what the establishment should be like in ideal theory, and does so without good reason, this is wrong. In non-ideal society, our duty requires us to attempt to remove the "more urgent" injustices first - as it requires of us in ideal society. Rawls admits that this application to non ideal society is rough and largely based on intuition. However, he also says such an application will be "guided" by the lexical order decided under ideal theory, therefore, because liberty is a central aspect of justice, it should have priority over other aspects of justice. Hence the principles made in ideal society will also largely apply in non-ideal society.<sup>57</sup>

We will need to use varying aspects of ideal and non-ideal theory according to our political goals. In order to see how far our society is falling short of the ideal society we would like it to be, we will require minimal factual assumptions. In contrast, we want to use the theory for advice as to how society should be structured and what policies will be effective given how humans are disposed to act, then we will need more constraints from the real world.<sup>58</sup>

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<sup>55</sup> Valentini, "Paradox of Ideal Theory," 344.

<sup>56</sup> Valentini, "Paradox of Ideal Theory," 335.

<sup>57</sup> Rawls, *Theory of Justice*, 216.

<sup>58</sup> Carens, Joseph. 1996. "Realistic and Idealistic Approaches to the Ethics of Migration". *International Migration Review*, 30 (1): 156-70 in Valentini, Laura. "Ideal vs. Non-Ideal Theory: A Conceptual Map." *Philosophy Compass* 7, no. 9 (2012): 660.

Sen argues that it is the case that we do not need to know what a perfectly just world would look like to know that a world where women are discriminated against on the basis of their gender is more unjust than one where they are not. Following on from this, we also do not need to know what a fully just world would be like to come to conclusions as to how to make the current world more just.<sup>59</sup> I agree with him in these aspects, yet even so, ideal theory is helpful in providing us with an idea of what the just society we would like to create and live in would be like, so that we may choose the best course by which to move towards it.

That withstanding, as I have already argued, to prioritise ideal theory before non-ideal theory when looking for action-guiding principles is to risk missing key elements of how we should tackle gender injustice. For Rawls, the principles of justice are created behind the veil of ignorance, however it is not possible for the application of these principles to a concrete society to take place behind the veil. There is a disjunction between the creations of these principles and their use. This is why we must look to non-ideal society. Rawls himself acknowledges that rules decided in a just society have the potential to be harmful in an unjust society. For example, telling the truth in a world full of liars, or trusting men when they are statistically likely to harm you.<sup>60</sup>

We cannot immediately apply our principles of justice from the ideal world to the non-ideal world - ideal theory is limited in this area.<sup>61</sup> Robeyns gives the example of a ship sailing towards an island as a metaphor of us working towards an ideal society - we may have a map for perfect conditions, but both natural and man made obstructions will mean that sailing straight towards the island, or towards social justice, using our ideal theories to make strict guidelines as to how we should act and ethical policies, could run us aground. Other factors need to be taken into consideration.<sup>62</sup>

For instance Robeyns rightly argues that the world we live in is always changing and this can also alter what moral or ethical policies we need. For instance, before the recent development of effective contraceptives, abstinence was often necessary to avoid pregnancy in heterosexual relationships. In the future, what country a person is a citizen is of may no longer place constraints of their behaviour, as it does now.<sup>63</sup>

In non-ideal theory, unintentional consequences also have more sway in influencing policies and consequences but they should still be important when choosing policies and structures we want to work by. If our policies do not lead us towards our “ideals”, this should be a point of

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<sup>59</sup> Valentini, "Ideal vs. Non-Ideal Theory," 660-61.

<sup>60</sup> Valentini, "Paradox of Ideal Theory," 342-43.

<sup>61</sup> Robeyns, "Ideal Theory," 347-48.

<sup>62</sup> Robeyns, "Ideal Theory," 354.

<sup>63</sup> Robeyns, "Ideal Theory," 350.

discussion so that we can discover why and remedy the policies if possible.<sup>64</sup> We may instil a policy whereby we have women-only sections on the tube to prevent sexual harassment on public transport. However, whilst the policy may lead to women being less harassed on the women-only sections, it may worsen the problem elsewhere because it places the onus on women to avoid being harassed rather than on the men to not harass them. Trial and error will often be needed in the real world to discover what method works best.

As well as this, in the making of a more just society, we must consider constraints. For instance there may be moral constraints, if a fairer world can be achieved faster with a civil war which led to great suffering and pain, or slower without such suffering and pain, the faster route may not be one we morally wish to choose.<sup>65</sup> Non-ideal theory is more open to conceptualising these constraints.

Ideal theory is but one aspect of applying ethics in the real world: there are many other steps that are important and I agree with Robeyns that Rawls failed to go into as much depth as he could have done in *A Theory of Justice*. Things that may seem wrong in the short term may be necessary in the long term and vice versa. Ideal theory is limited in certain aspects, and without adequate focus on non-ideal theory, policies drawn may be damaging rather than helpful. Ideal theory is also conceptually different from non-ideal theory. Non-ideal theory is trying to create a just world here and now: as such it has normative value in itself and is needed to help guide our actions and policies in moving towards justice.<sup>66</sup>

To summarise, the injustice of sexism indicates a non-ideal situation and this non-ideal state of affairs includes the violation of women's rights and the limitation of women's capabilities. In order to come to an answer as to what methods work best in solving these issues, either through top down, bottom up, or both, it is important that the conclusion works in the real, non-ideal world where these issues occur. To come to such answers, we need to go through the non-ideal world, so that the recommendations we may come to may work in the world we live in.

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<sup>64</sup> Ibid.

<sup>65</sup> Valentini, "Ideal vs. Non-Ideal Theory," 661-62.

<sup>66</sup> Robeyns, "Ideal Theory," 350-360.

### Chapter Three: The classic top down approach to justice

In chapter one I showed how women's rights are being violated and why it is important for them to be protected. I argued that for justice to be achieved we need to ensure women have the same capabilities and opportunities as men do. Then in chapter two I explained why I will be focusing on non-ideal society: in order to come up with solutions to our unjust world we should look to that unjust world itself. Now, in this chapter, I will show that there are two approaches to achieving justice: top down and bottom up. I will explain why top down processes are useful and why classically they have been favoured over bottom up processes.

This is the case in Rawls' *A Theory of Justice*, in which individuals are assumed to comply fully with the rules. However, full compliance with the structures and rules of justice i.e., top down, does not mean that justice will be reached. Furthermore, as I have already explicated, because we are not looking at ideal society, we cannot expect to come to effective solutions to real world problems whilst assuming compliance because in the real world people do not comply and will behave differently.

Culture and the law are reflexive in that they both influence each other. Furthermore, the law is usually a reflection of the dominant culture since that is the culture that has the most leverage. Even with the best intentions, laws favour those with power. In western society, the dominant race is white people, the dominant class is the rich and the dominant gender is male. This has been the case for hundreds of years. Male as the dominant gender remains the theme across the majority of the globe. This is important because it means that our laws, specifically criminal law, which conveys moral censure over certain acts and sets the legitimate punishment the state may mete out for such acts, are highly influenced by this dominant culture. The laws have been shaped to that culture's perspectives and needs. Thus the justice system is not always geared to help the common man but the relatively politically powerful, such as the white, bourgeois man.

In the case of women, the justice system is not inherently neutral but biased.<sup>67</sup> When deciding what is a punishable offence, the social context and culture of that society will play an important role because they will help dictate what is valued. In a patriarchal society the laws and regulations are created within a patriarchal framework: the laws tend to benefit those in power whilst harming those who are not. For instance, in Ireland, abortion is still illegal. The foetus is granted the same right to life as the pregnant woman and therefore abortions are only granted if the woman's life is in serious danger. Furthermore, women can be imprisoned for up to fourteen years for getting an abortion.<sup>68</sup> Whilst religious arguments may be cited, the lack of support for funding contraception availability and family planning information in Ireland (services which would control the need for abortions in the first place) seems more likely to be

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<sup>67</sup> Chiu, Elaine M. "Culture in Our Midst ". *University of Florida Journal of Law & Public Policy* 17 (2005): 231-62.

<sup>68</sup> "Irish Abortion Law: Tens of Thousands March for Change." *BBC News* 30 September 2017.

a reflection of the patriarchal society's desire to control and punish women's behaviour and bodies rather than a desire to protect the sanctity of life.<sup>69</sup>

Women's reproductive rights are but one aspect of how laws and regulations created within a male-oriented system will be tainted by bias (either implicit or explicit) and therefore will help to enforce structural sexism. Whilst top down approaches are useful, when used alone they will be incomplete. Following on from this, in my final chapter I will argue that we will need a change in societal ethos and norms if we are to achieve gender justice.

In this thesis, top down processes of justice can be defined as the structural measures that are in place to achieve order and fairness in society. These are centralised initiatives and may be laws from the state, for instance. Bottom up processes of justice are ones which come from individuals or groups of individuals from the community. They are grass root initiatives: such as community run shelters for victims of domestic violence. The difference can also be understood as state versus agent. As I have said, this chapter will focus on state led initiatives, or top down processes of justice.

#### *Top down processes of justice*

As I have already argued in chapter one, states have a duty to deliver justice, both in terms of protecting the human rights of individuals and ensuring they have space for their capabilities to flourish.

Classically, top down processes of justice have been favoured over bottom up processes. This can be seen in international human rights law where it is a central idea that states are the primary responsible agents for the protection and promotion of human rights. Hence human rights law dictates that human rights should primarily be protected in a top down manner. States may promote human rights within themselves in a variety of ways. For instance through incorporating them into their own laws, placing constraints on the power of the system of government, teaching them as part of their education system, or advertising them through propaganda.<sup>70</sup> If states have signed treaties in which they said they would protect certain rights, and later violate them, then other co-signatories of the state can impose sanctions on the offending state.

Similarly, in much of political philosophy, the primary subject of justice is the basic structure of society. Rather than the individual actions or attitudes of citizens being at the forefront of justice, it is the base layer of how the society that they live in is formed. In Rawls' *A Theory of*

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<sup>69</sup> Williams, Cayla. "An Overview of Contraception in Ireland: The Past, the Present and the Papal Influence." *The Circular* 2017.

<sup>70</sup> Nickel, James. "Human Rights " In *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta Metaphysics Research Lab, Stanford University, 2017 <https://plato.stanford.edu/archives/spr2017/entries/rights-human/>.

*Justice*, the basic structure of society is at the forefront of how we implement justice.<sup>71</sup> For Rawls, an ideal, just society would be one in which individuals complied with the laws and structures of society that kept justice in place. Individuals would not have to rely on their own ideals of justice - society would be such that if one complied with the structure then perfect justice would be reached. Therefore, come what may, justice will be served, because if a person deviates, it will be remedied by the penal sector.<sup>72</sup>

The point made by Rawls is valid, however it seems too easy. In the society we live in, there is not full compliance with laws and regulations. For instance, whilst it is illegal, women often find themselves raped, assaulted and sexually harassed, sometimes even at the hands of the police force. Laws are in place to promote gender justice but the situation remains unequal - therefore if we are to protect the rights of and enable women to flourish, we need to do more. We may need more legal protection, and new laws, to better protect women. In addition, we need to take steps to ensure that these laws are enforced and that women are taken seriously. In combination with the top down approach of laws promoting equality, we need a cultural change. We need more citizens, including members of the law enforcement and justice system to respect and take women seriously. Even if we did have enough laws to protect women, they would mean nothing if other citizens did not comply with them. Gaining full compliance is impossible: individuals will never act in the "perfectly just" way we may want them to. Even if they are acting in a "just" way, their version of justice may be different to the state version, and human free will means that they may not even try to act in a perfectly just way. We may be able to reach a high level of compliance, however. In chapter four this is something I will go into more detail in, when I will argue that if we want people to comply with the state without coercion, then we will need a culture that encourages them to comply with the state.

International human rights law has been criticised for remaining centred on the male norm and not progressing to a more gender inclusive perspective: for instance through upholding old stereotypes of honour when addressing gender based violence, which continue to play into a perception of women that fails to support their liberation. In this way whilst the top down structure is attempting to address gender injustice, it is doing so in a manner which perpetuates limiting and harmful stereotypes of women. In this case of honour, the connotations of chastity and the need to protect female modesty are damaging because they fall into the archaic ideals of what is valuable about women. Helen Durham and Katie O'Byrne cite the wording of the Geneva Convention IV, Article 27, where it is written that "women shall be especially protected against any attack on their honour..." Durham and Byrne acknowledge that such articles show evidence of old prejudices, and that more recent laws will be more gender neutral, however it still shows that such prejudices remain within the legal system.

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<sup>71</sup> Tan, Kok-Chor. Chap. 2 In *Justice, Institutions, and Luck*, 19-20. Oxford: Oxford University Press, 2012.

<sup>72</sup> Rawls, *Theory of Justice*, 211-20.



Furthermore, Durham argues that international human rights law continues to fail to show adequate attention and analysis to women's issues.<sup>73</sup>

As well as this, if we are striving for women to have equal capabilities to men, then this an area that will not only be confined to laws. In a similar way, the structures of society are greatly influenced by the dominant male culture. This can be seen in the typically extremely low wages paid to workers in the field of care, a classically female role and burden.

Societal structures, cultures and our own very consciousnesses all play a role in patriarchal domination.<sup>74</sup> Indeed, Sandra Lee Bartky argues that whilst our behaviour nowadays may not be so greatly limited by the church, our family members or our fathers, women still subconsciously "check" themselves to ensure they are behaving and displaying themselves in the correct, feminine manner. This may be through watching what they eat to maintain a delicate figure, undergoing cosmetic surgery in order to appear more youthful, or smiling more in order to appear less threatening and more amenable and appealing to men.<sup>75</sup>

Discrimination against women permeates society. The violations of women's rights and minimisations of their capabilities occur as part of the wider context of sexism. Sexism is not something that only occurs on a personal level, but is often both cultural and structural. As I have previously argued, since our political and cultural institutions were created within a patriarchal framework, they help to enforce structural sexism. When I say this I mean that due to the precedence of the patriarchy in the majority of society, rules and norms were set out according to men because it tended to be men who made these rules and had the power. Therefore it was their concerns and priorities that were focused upon and dealt with - simply because women did not have the power to have a say. The female perspective is lacking in the traditional view of how society should be run and how people should behave.

Even if there were full compliance with our laws and structures, we would not reach gender equality and women would not be able to reach their capabilities to the same extent that men are. For instance only thirty-two percent of MPs in British Parliament are women with structural biases playing a role, such as women being held to higher standard than men and there being fewer female political role models.<sup>76</sup> In her first speech in the House of Commons in the UK, the working class, female MP Laura Pidcock said that as a place it is intentionally "intimidating and reeks of power" in order to make her sex and class feel unwelcome. She argued that the

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<sup>73</sup> Durham, Helen and O'Byrne, Katie. "The Dialogue of Difference: Gender Perspectives on International Humanitarian Law." *International Review of the Red Cross* 92, no. 877 (2010): 34-6.

<sup>74</sup> Sally Haslanger, Nancy Tuana and Peg O'Connor. "Topics in Feminism." In *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta: Metaphysics Research Lab, Stanford University, 2017.

<sup>75</sup> Bartky, "Modernization of Patriarchal Power," 25-45.

<sup>76</sup> Khomami, Nadia. "Record Number of Female MPs Win Seats in 2017 General Election." *The Guardian* 9 June 2017.

complicated language used, the formal clothing worn and the fixation on hierarchies all contributed to a system of control and domination, and was reflection of the larger system of power in the UK within which women and the poor remain subjugated.<sup>77</sup>

Practically, we cannot create an ideal society free from sexism through a purely top down approach because such an approach will rely on laws, structures and policies that may be biased against women in the first place. However, ridding our states and institutions of implicit bias against women is difficult because it is so pervasive. To begin, the systemic sexism leads to fewer women being in positions of power. Not only is the fact that those in power and making the rules predominantly being men symptomatic of gender injustice, it also further perpetuates such injustice. However, when these institutions are largely run by men, such as the UK Parliament, then the institutions will lack a feminine perspective. If those in power are the privileged and not the oppressed, then we cannot expect the system to easily turn to fully emancipate the oppressed. The oppressor may not be as aware of what is limiting to women or may misunderstand the oppression - there is an epistemic and experiential gap. They may not even consider that certain actions can harm the liberation of women. For instance, economic sanctions are often placed on states as a way of pressuring them to change their behaviour. These sanctions will usually be for a noble cause, for instance as a deterrent to the building of nuclear weapons, as is the case with sanctions on Iran from the United Nations. However these sanctions often have a devastating impact on women, who, due to their vulnerable status, are often the hardest hit.<sup>78</sup> Alternatively those in authority may realise that certain procedures hinder the capabilities of women but may not care or want to give up their position of power. If we only focus on state led, top down initiatives to further the capabilities of women, the trickle down change is likely to be slow.

We should note that this is a practical critique of the top down approach. Rawls wants to develop principles of justice that when realised will realise justice. These ideals might work, if it were not for the fact that in practice there is bias. This is precisely why I believe it is important to look to non-ideal society and to the real world: in practice achieving equality is extremely difficult. Rawls's theory is useful, but we need to adapt it.

It can also be argued that top down approaches to justice are beneficial because they allow space for individuals to pursue other areas that are important to them. Even if egalitarianism is important to an individual, they can rest assured it is being taken care of by the state. Individuals need not worry that it is their personal responsibility to constantly create justice in society because it is already being implemented through the basic structure. This gives such individuals the opportunity to pursue other ends that they value, such as personal development

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<sup>77</sup> Pidcock, Laura. "'This Building Is Intimidating. It Reeks of the Establishment and of Power' - Labour's Newly Elected Laura Pidcock Mp Gives Her First Speech in the House of Commons." news release, 30 June 2017 <https://www.facebook.com/BBCPolitics/videos/1848429415173908/>.

<sup>78</sup> Drury, A. Cooper and Peksen, Dursun. "Women and Economic Statecraft: The Negative Impact International Economic Sanctions Visit on Women." *European Journal of International Relations* 20, no. 2 (2014): 463-90.

in academia.<sup>79</sup> If we think of Nussbaum's capabilities approach, this is important because there are a variety of human functionings that there should be space to attend to, not only political control over the environment through implementing justice.<sup>80</sup>

However, if we apply this idea to gender inequality, the top down system is implicitly biased against women. The systemic discrimination hinders the ability of women to fulfil their functionings in a human manner and their opportunity to choose their own vision of the good life and follow it. Whilst allowing individuals to choose what is valuable to them is important, this should not be done at the expense of limiting the capabilities of other individuals, in this case women. As Nussbaum argued, women cannot ethically be used as a means to an end. Therefore I would say that as agents we should still aim to address the injustice of the oppression of women. This is not to say that individuals should spend all their time attempting to overcome this problem, but it cannot be left only to the state.

If justice can be made through the basic structure of society, this is beneficial because the pervasive influence of the basic structure means it is able to have an impact on the lives of all citizens which are part of that society. For this reason justice can be more evenly spread across the population.<sup>81</sup> If we could make the basic structure less biased against women then this would help to broadly spread gender equality. Indeed, reaching gender equality, especially in the form of enabling women to have the same capabilities of men, without the structure of society being conducive to such equality would be almost impossible. We need to improve the system, not disband it altogether. This is where I will argue that innovations from bottom up initiatives are crucial.

In conclusion, top down approaches can still be beneficial, for example affirmative action policies or penalties for companies who fail to pay women and men equally for the same work. However, we should not solely rely on them to achieve gender equality since they are imperfect and tainted by bias against women. If we are to move further towards equality for women then the system needs to be changed, and this requires action from outside the system. We will require both the non-ideal approach and bottom up initiatives of justice to make the basic structure of society more equal: they are in tandem. In my final chapter, I will further delve into the idea that we need bottom up approaches to intervene in order to offset the implicit bias of the state against women.

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<sup>79</sup> Tan, *Justice*, 29-31.

<sup>80</sup> Nussbaum, "Women's Capabilities," 231-233.

<sup>81</sup> Tan, *Justice*, 34-36.

## Chapter Four: Bottom up initiatives

In this chapter I will begin by arguing that a shift in societal ethos and cultural norms is highly important if women are to have the same opportunities as men, and for that to happen change from individuals and groups in the community is essential. In order to do this, I will argue that if there are only changes at the highest levels, and not societally, then the benefits to women are likely to be slim. I will then argue that empowerment, and a fairer power distribution, is key to women achieving equal capabilities to men, and that such empowerment is better served through bottom up initiatives.

### *A change in societal ethos*

To begin, as I have previously written, we live in a society where (through a myriad of ways) men are socialised to be active, strong, stoic, in control, providers; whilst women are expected to be passive, weak, vulnerable, carers. Speaking for modern, western, liberal democracy, these norms certainly seem to hold less sway. However, they are still noticeably present. As such, when men and women are artificially expected and encouraged to conform to these norms, their capability to act in ways outside of these norms is severely limited. We may consider how men may have their emotional capabilities limited through a lifetime of being encouraged to suppress emotions others than anger, and how women may have their capability to act with autonomy and for themselves rather than for others limited. In a fair and equal society, people may choose to focus on certain elements of their character, but those elements should not be determined by their gender or be to the detriment of that person's personal development.

Whilst I do not wish to go deep into the messy free will debate, it is worth bearing in mind the amount of choice individuals may or may not have in acting according to norms that they have been socialised to conform to. It is important to hold all members of the moral community responsible for their actions, and to encourage social responsibility and respect amongst citizens if we are to exist in a smoothly functioning society. For this I believe it is more helpful to focus on what we can do to remedy these inequalities, rather than assigning moral blame to women or men as a whole.

If sexist norms remain, we will achieve no full equality of access of opportunities.<sup>82</sup> Under Andrew Mason's depiction of equal access equality, people should not be advantaged or disadvantaged due to their circumstances. To the degree that a person's capacities may be conceived as part of that person's circumstances, the government should work to create a society structured in such a way to minimise these advantages or disadvantages. Inequality is only justifiable if it is the result of outcomes which individuals can legitimately be held responsible for.<sup>83</sup> We can transfer this idea to Nussbaum's equality of capabilities, in that sexist

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<sup>82</sup> Mason, Andrew. "Equality, Personal Responsibility, and Gender Socialisation". *Proceedings of the Aristotelian Society* 100 (2000): 227-46.

<sup>83</sup> Mason, "Gender Socialisation," 229-30.

norms can prevent women from accessing equal capabilities to men. It may seem superfluous to state, but as long as a cultural ethos of subordinating women pervades, there will be barriers to women achieving equal capabilities to men.

For instance, there is a trend that what women deem enjoyable is ridiculed or not deemed valuable. Embroidery and textiles, as “women’s work”, have often been classified as merely craft, and thus not taken as seriously artistically as work such as oil painting.<sup>84</sup> More generally, I would like to bring to mind how makeup artistry, fashion, pop culture, and television series such as *Keeping up with the Kardashians* are perceived.<sup>85</sup> There is certainly a strong argument that the belittling of such activities indicates misogyny: typically male activities, such as playing video games, or watching programmes such as *South Park* do not receive nearly as much criticism or disdain. We may wonder if women’s activities are mocked because they are of lower value, or if they are deemed of lower value because they are enjoyed by women. On the one hand, perhaps it is because for many typically female oriented activities, there is a sense of transparency to them in that it is very evident how inane the activities we encourage women to engage in and enjoy are - we may think of looking attractive or gossiping. However, even if that is the case, it is harsh to criticise women for taking part in activities that we as a society have encouraged them to do. As well as this, there are many activities that cannot be said to fit into that category that still do not get the support that men’s activities do. We may think of women’s sports: the last England women’s World Cup team earned substantially less than the men’s, even though the women’s team did far better than the men’s and reached the World Cup semi-finals in both 2015 and 2017. The women’s captain, Steph Houghton, earns around sixty-five thousand pounds a year. In comparison, Wayne Rooney of the men’s team apparently earns around two-hundred and fifty thousand pounds a week.<sup>86</sup>

We cannot expect women to have the same capabilities and opportunities as men if society has such low expectations of what women can achieve and how they are to be treated. If the activities that women take part in are ridiculed and fail to receive the same funding as activities for men, then they will not have the same potential for excelling in them as men do in their own, and thus their capabilities in these areas may be reduced compared to men’s. Bottom up initiatives in tackling problems like this could include women grouping together to give each other advice and support in their activities: for example groups of women makeup artists or footballers. Whilst top down initiatives (such as laws imposing rules on equal pay can be helpful, or the government providing more funding to women’s teams) can encourage women’s work to be seen of the same value as men’s, they are not always viable. For instance, there may be limited government funds and therefore not enough money to give to all women’s teams, or due to how the pay is allocated by different organisations, for example in sports, it

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<sup>84</sup> Hatt, Michael and Klonk, Charlotte. *Art History: A Critical Introduction to Its Methods*. Manchester: Manchester University Press, 2006, 147.

<sup>85</sup> Schopen, Fay. "Yes, I Love Keeping up with the Kardashians. Don't Dare Try to Shame Me." *The Guardian* 13 October 2017.

<sup>86</sup> Moss, Rachel. "More Women's Sport Is Set to Air on Tv Than Ever before, but Will 2017 Really Be a Game-Changer?" *Huffington Post* 23 March 2017.

may practically be very difficult to enforce these rules on equal pay. Bottom up initiatives can help to fill these gaps and encourage excellence in these areas.

We see interesting tensions currently as feminists seek to protect the dignity and rights of women, whilst at the same time the concept of what it means to have dignity as a woman and how we expect women to behave changes. For instance, the sexuality of women has been owned by men and used as a tool against women for so long, that it is difficult for women to have the same capability to be sexual beings in the same way that men are. It is a welcome move that “revenge porn”, where individuals leak nudes or pornographic videos of another, without their consent is now being treated as a criminal offence.<sup>87</sup> However, in a society where women were equally respected, women should not be slut-shamed (which is when a woman is stigmatised for engaging in behaviour deemed to be sexually provocative or promiscuous) or degraded for engaging in sexual acts.<sup>88</sup> “Revenge porn” should not be so interesting or have such a great impact on their lives. Individuals should not want to view material leaked without the consent of a participant, and not judge the individual for partaking in it. It should not influence a woman’s chance of being able to get a job, and “sexual immorality” should not be used as a measure of a woman’s professionalism and moral code. Women should be recognised as multifaceted moral beings, capable of the full range of desires and appetites as men. It is frustrating that so many aspects of women’s existence have been historically objectified and degraded by men and are thus tainted. However, for women to have to unnecessarily limit their behaviour (for example by having to dress and behave in a virginal and modest manner) is another form of stifling them. If women are constantly having to organise their lives around how men will perceive and react to them, then the power remains with men, and women will be unable to reach their capabilities in the way that men are.

The injustice behind the societal norms which influence the behaviour of women gives weight to the idea that it is not fair that women should have to bear the full costs of decisions they make. Women may choose not to travel by public transport at night and instead get a taxi because they feel safer being dropped outside of their door. A society where women are too scared to catch public transport and have to pay high taxi fares to get home is not a fair one. To use another example, if women act in ways that are in line with the norm, for instance choosing to be the parent that takes more time out of work to take care of their children, the injustice of the norm, means that women should not be penalised by these choices, and if there is a chance to make these circumstances more equal, for instance through granting maternity leave, and giving support to women who have taken time off to get back into work, these should be taken up.<sup>89</sup>

There will not be full equality of access and therefore equal capabilities until we change the dominant sexist ideas and norms which shape the behaviour and socialisation of both men and

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<sup>87</sup> Shaw, Danny. "Revenge Porn: More Than 200 Prosecuted under New Law." *BBC News*, 6 September 2016.

<sup>88</sup> *English Oxford Living Dictionary*.

<sup>89</sup> Mason, "Gender Socialisation," 243-44.

women. These ideas and norms feed into the societal ethos, and therefore the societal ethos needs to change - for example the ethos should not hold that it is the norm that women are the primary care givers (to both children and other dependents).<sup>90</sup> If we fail to have a change in ethos, there will not be a fair distribution of the benefits and costs of certain activities. We can try to make a change retrospectively, for instance in the case of mothers who have sacrificed their careers for their children, there should be funding available through taxes to help them gain education and training to help them gain skills to move back into the workforce. However, it will only be remedial.<sup>91</sup>

I would also like to address the idea that if implicit bias is problematic in top down initiatives, then it will also be an issue in bottom up initiatives. It follows that those most likely to be successful in their agent led initiatives will be those who already have the most opportunity to be successful, and these are likely to be white, wealthy men. If we specifically look at startups, a report by Digital Undivided showed that the venture capital lent to white men, even if their startup failed, was on average one million dollars. In contrast, the total average given to black women even if their startup was a success was a mere thirty-six thousand dollars. This disparity is shocking and severe. It is those with privilege who have the power and funds to push initiatives through: particularly in terms of gaining investment, since investors also tend to be wealthy white men and are more inclined to give funding to those like themselves.<sup>92</sup> It will be easier for the privileged to achieve what they wish to - this is a sad reflection of the inequality of society. However, as gender and racial inequality are lessened, such disparities should hopefully reduce. As a society we need to do more to support the marginalised, and ensure that what we support is the best ideas, not just those with the most privilege. Black women should have equal opportunities to white men to succeed in their endeavours.

In addition, the difference with agent led initiatives is that whilst they are influenced by bias, it will be less systematic and consistent than the bias present in state led initiatives. This will particularly be the case in countries where the state holds a strong position against women. Simply because there are more women in the community than there are in positions of power in the state means that there will be a more gender balanced perspective of society - such balance can be highly beneficial for women. They have more of a voice - which is important to the political community not only in principle but in the epistemic value of their own judgements of how best to improve their lives. Overall, the agents will be more flexible and have a broader range of perspectives and views. What is crucial is that these bottom up initiatives, particularly from marginalised groups, are given support. The bias we see both inside and outside institutions should serve as motivation to work to remove the equality. It should be noted that we are not only discussing businesses, but charities, community groups - such as women's only shelters, or Muslim women associations. What the startup statistics show are that the top down system of power is so pervasive that it is hard to escape. Those with the most influence

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<sup>90</sup> Mason, "Gender Socialisation," 245.

<sup>91</sup> Ibid.

<sup>92</sup> <https://www.digitalundivided.com/about/> in Williams, Lauren C. "This Is What It's Like to Raise Venture Capital as a Black Woman." *Think Progress*, 11 February 2016.

are able to exercise it over a plethora of societal spheres. Those initiatives which require greater support from the overall top down structure are liable to be more affected by the prejudice resident within the structures.

Overall, without a change in ethos in the community, women will still find that their potential is drastically limited. They are unable to reach their capabilities to the same extent as men, since they will be surrounded by a community that continues to stifle their potential and continues to impose hindering gender norms onto them. We need there to be a change in both individual behaviour and in cultural norms because top down changes, including ones of policy, can only do so much. For real change, we need to influence people's way of thinking and ethos. Norms which continue to hold women back and hinder them also need to be changed.<sup>93</sup> Whilst structural changes can help influence the culture of a community, if the community is not willing to accept the change then it is equally true that such initiatives will not work. This was seen in Senegal when the law was changed to make female genital mutilation illegal. The community did not understand why the ban was important and did not support it. Only two people were arrested and the outcry from the public against their arrest was so great that they were not prosecuted. Many people in Senegal did not perceive female genital mutilation to be a danger medically to young girls, and thought it was an important cultural practice. The ban put young girls in even more danger, as the procedures were done in a more secretive way, resulting in poorer safe guards and lower quality instruments being used; some girls even lost their life as a result.<sup>94</sup> Without a change in societal ethos, the top down change in law will be difficult to enforce, and its effect will be limited. If the only change is at the highest levels, and not societally, then the benefits to women are likely to be slim.

This is not to say that the state cannot bring about a change in ethos. Not only can states make unwanted behaviour illegal, they can also influence a cultural shift through more positive methods. For instance, the state may encourage a cultural shift towards safer sex through compulsory and comprehensive sex education in schools, reducing tax on condoms, making birth control available for free on the health service, advertising different contraceptive methods and opening more sexual health clinics. In Uganda, the government is attempting to tackle the HIV/Aids epidemic there by adopting the UNAids 90-90-90 strategy. This states that by 2030, over ninety percent of Ugandans should know their HIV status, ninety percent of those identified as HIV positive should be on antiretroviral therapy and ninety percent of patients who are being treated should maintain complete virological suppression. This is to be achieved by door-to-door counselling, better follow up treatments and increased funding for staff and hospitals.<sup>95</sup>

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<sup>93</sup> Mason, "Gender Socialisation," 227-46.

<sup>94</sup> Bettina Shell-Duncan, Ylva Hernlund, Katherine Wander and Amadou Moreau "Legislating Change? Responses to Criminalizing Female Genital Cutting in Senegal." *Law and Society Review* 47, no. 4 (2013): 803-35.

<sup>95</sup> Luck-Baker, Andrew. "Can Uganda End Its Aids Epidemic?" *BBC News*, 28 May 2015.



However, a more effective way of bringing about a change in culture will also incorporate agent driven initiatives. Recently Harvey Weinstein was exposed after over forty women in Hollywood have claimed he had sexually assaulted them and abused his power in order to coerce or manipulate them.<sup>96</sup> This led to a public debate and discussion around sexual harassment and assault in general. The “*Me Too*” campaign, which encourages those who have been the victim of sexual harassment and violence to speak up, was reignited on social media so that everyone, but particularly men, may get a sense of how big of a problem it is. At the same time, the movement encourages survivors of sexual harassment and assault to find community in one another by saying “*Me Too*” and encourages empowerment through empathy leading to healing in individuals. Sexual harassment and violence is largely against the law in western liberal democracies. However, the culture is such that those who are subject to it are often too ashamed to speak out, or not listened to or taken seriously if they do. Tarana Burke is the original creator of “*Me Too*”, and whilst the most recent revival of “*Me Too*” has been on social media, the original movement is a grassroots initiative to support on a personal level those who have been sexually assaulted, particularly focusing on women of colour and those living in deprived areas. Burke wanted to start a conversation about assault and how the trajectory of gender based violence runs from harassment to murder. “*Me Too*” has garnered much attention and arguably become a cultural phenomenon, bringing to light the sexual harassment and abuse that is prevalent in society but often goes unreported or taken seriously. There has been a societal shift in the West and there has been discussions in a range of sectors, from the entertainment industry to British Parliament, about what it means to respect women, what is acceptable and what is not. Without the “*Me Too*” initiative and the action of individual agents being encouraged and supporting one another in speaking up, this cultural movement would not have happened.

As such, I would argue it is a bottom up initiative that has helped to encourage a cultural shift in ethos: namely in empowering those who have been harassed or assaulted to speak out and not be ashamed, encouraging others to believe those who speak out and encourage everyone to be more vigilant in noticing and tackling harassment and assault.<sup>97</sup> In this way, agent led initiatives are important because they can lead to a change in societal ethos that goes against the status quo.

### *Empowering women*

As well as a change in ethos, we must empower women. The empowerment of women is crucial to the development of countries and reducing poverty, according to the World Bank, and not only from the perspective of justice and fairness for women.<sup>98</sup> Indeed, activists of feminism frequently impress the need to support the empowerment of women and women’s

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<sup>96</sup> Gonzalez, Sandra. "More Than 40 Women Have Accused Harvey Weinstein of Sexual Harassment or Assault." *CNN*, 19 October 2017.

<sup>97</sup> Mic. "The #MeToo Campaign Is Actually 10 Years Old — and This Is the Woman Who Started It.", 2017.

<sup>98</sup> Malhotra, Schuler and Boender, "Measuring Women’s Empowerment," 3.

organisations. There are a variety of different ways to define empowerment. The social inclusion of marginalised groups such as women so that they are able to participate in a united society is essential - empowerment should include increasing the standing of a group in the community. Such social inclusion requires the tearing down of institutional barriers to equality as well as the promotion of incentives to include oppressed groups and give them access to opportunities and goods. In terms of Nussbaum's capabilities approach, it requires enabling them to have and utilise goods so that they may have equal capabilities. This includes equal capabilities to exert influence over the establishments which in turn have an impact on their lives.<sup>99</sup> Empowerment plays out through bottom up mechanisms - through the individuals and groups themselves. It requires their personal engagement, and cannot be done for them.<sup>100</sup> However, if empowerment is to persist, then it requires social inclusion, which occurs through a top down change in the system.<sup>101</sup>

When promoting the equality of women and the flourishing of their capabilities, this is something that cannot only apply to public society. It is vitally important that in women's personal lives, such as in the home, they are given the opportunity to expand upon their abilities. Discrimination against women also takes place in private. For instance, it is the home where women frequently find themselves trapped doing the bidding of others, rather than following and developing their own individual pursuits.<sup>102</sup> Agent led routes to justice will be more beneficial than state led ones when making changes to women's personal lives. This is because the state has very little control over personal lives, and the intervention of the state with the personal is often seen as intrusive and invasive. If persuasion is to be done by the state it must be done in a tactile and sensitive manner.

We frequently associate empowerment with concepts such as choice, control and power: for empowerment women need real options. They need to have the power to make these decisions and be able to impact and have control over their own lives.<sup>103</sup> Self-efficacy is also crucial.<sup>104</sup> Women often lack the confidence that they have the capacity to achieve the projects and goals they set themselves. This is hardly surprising given that women are consistently given both explicit and implicit messages that they lack the skills to succeed. Encouraging women's belief in themselves is vital if they are to expand their capabilities to an equal level to men. This can be done through both state led and agent led initiatives. State led initiatives may include regulating media and advertisements which are demeaning to women and harm their self esteem. For instance, in the UK, new measures have been introduced by the Advertising

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<sup>99</sup> Bennett, Lynn. "Using Empowerment and Social Inclusion for Pro-Poor Growth: A Theory of Social Change." . Washington DC: World Bank 2002. in Malhotra, Schuler and Boender, "Measuring Women's Empowerment," 4.

<sup>100</sup> Malhotra, Schuler and Boender, "Measuring Women's Empowerment," 5.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Malhotra, Schuler and Boender, "Measuring Women's Empowerment," 6.

<sup>104</sup> Ibid.

Standards Authority which will make it easier to ban sexist advertisements which perpetuate harmful gender stereotypes and discourage individuals for living outside of strict gender norms.<sup>105</sup> Agent led initiatives may include volunteer led woman's shelters offering services such as free English classes, to help support women who may not speak English as their first language become more involved in society.<sup>106</sup> Bottom up initiatives can benefit individuals even if the individuals themselves had nothing to do with setting up the initiative, however if carried out by the individuals themselves, this element of agency can be extremely empowering. Both state led and agent led initiatives can help to change the culture which tells women they do not have the skills in life to succeed. Equality demands that women should no longer be subordinate to men: they must possess meaningful control of their lives and be able to make purposeful life choices.<sup>107</sup> In an equal society women would have the capacity to be the main players in their lives.

There are also different aspects in which women can be empowered - women may be empowered in one area but not in others. For equal capabilities women require empowerment in all aspects. The World Bank lists areas such as economic, legal and interpersonal. It is not enough for women only to be empowered in certain areas, because this still engenders a culture of inequality and subordination.<sup>108</sup>

Alongside women improving their position themselves, states and other international organisations with an interest in human progress also have a duty to help women to improve their position, as I argued in chapters one and two. This can be achieved through a variety of ways, like political reform. The state, as well as multilateral organisations such as the UN, have a strong influence in terms of social inclusion, because they have the ability to fundamentally alter the structure of society so that it is more welcoming to women, and women have more chances. However, as Malhotra, Sidney Schuler and Carol Boender argue, such structural changes from the state, or the provision of greater resources to women, do not always promote the empowerment of women generally or their agency. Women may have political power, but fail to promote equality for women. Equally, women may have resources, such as schooling, but fail to utilise them, for instance through not trying at school because they believe there is no point if they will just get married anyway. Resources alone do not lead to empowerment, though they are important to it.<sup>109</sup>

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<sup>105</sup> Sweney, Mark. "Standards Body Unveils Plan to Crack Down on Sexist Advertisements." *The Guardian* 18 July 2017.

<sup>106</sup> Centre, Sutton Women's. "ESOL." [http://www.suttonwomen.co.uk/?page\\_id=340](http://www.suttonwomen.co.uk/?page_id=340).

<sup>107</sup> Malhotra, Schuler and Boender, "Measuring Women's Empowerment," 6.

<sup>108</sup> Malhotra, Schuler and Boender, "Measuring Women's Empowerment," 13.

<sup>109</sup> Malhotra, Schuler and Boender, "Measuring Women's Empowerment," 9.

Power is at the root of the subordination of women. In this essay I define power as the ability to do something or act in a certain way, it is the capability to influence other people and events.<sup>110</sup> When we consider this definition of power, it becomes clear that in modern day society, and particularly in the west, it is rich, able bodied, white men who hold the most power. They exercise the most influence and have the greatest freedom to act how they wish. If we are to move towards a fairer society then we need more opportunities to be given to other groups, such as women, people of colour and the poor. The power dynamics need to be subverted. This is why empowering women is so crucial. As I previously discussed in chapter three, in our institutions, due to institutional sexism, power remains within that same select privileged group. If we only focus on state-led routes to equality, as emphasised in human rights law and political philosophy like Rawls's *A Theory of Justice*, we are in danger of continuing to keep this power in the hands of the few, and not giving individuals "power" over their own lives. Agent centred directives, particularly when they come from marginalised groups, change the power dynamics. They see individuals taking matters into their own hands, and acting to change the situation for themselves and for others.

This was the case with the Women's Court for former Yugoslavia. There have been other Women's Courts: they are typically organised by women's groups, and are an attempt to expand on the notion of justice and specifically address women's issues. The court took place in Sarajevo and was organised by women's organisations and activists. It was a four day event during which thirty-six women from all sides were able voice their experiences of both during and after the war to a group of five hundred people. Not only did they speak of the crimes committed against them, but also of their resistance to the violence - in this way emphasising the autonomy and agency of women. Witnesses were given support before testifying and workshops took place in towns so that all members of the community were able to understand what the Women's Court was trying to achieve. The facts of what had occurred were analysed, but women were also given time and a platform to narrate their experiences and thoughts.

Like other Women's Courts, the one in Sarajevo also incorporated art in a variety of forms such as poetry, theatre and dancing. This was a reflection of the idea that the court was a place to acknowledge the suffering that had taken place, but also to celebrate the strength of those who had been harmed, and to promote unity amongst all those involved. As well as this, there were testimonies and juries. Testimonies were given by survivors themselves as well as by expert witnesses: who were able to provide cultural, historical and political context. The jury was composed of esteemed legal experts and women's rights activists. Whilst the court only offered recommendations, it served as an example of how justice can be radically different.<sup>111</sup>

The Women's Court was a truth-telling initiative, designed with a feminist perspective to achieve more gender justice in addressing what had occurred in the conflict, and increased equality for women when the societies were attempting to be rebuilt. The court gave women

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<sup>110</sup> Allen, Amy. "Feminist Perspectives on Power " In *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta: Metaphysics Research Lab, Stanford University, 2016.

<sup>111</sup> O'Reilly, "Peace and Justice," 426-27.

the space to be both victims and survivors, showing recognition for the specific suffering they had endured due to their gender during the conflict. This was particularly important given how wildly violence against women, which is often used as a tactic in warfare, was used. Women were perceived to be symbols of honour and guardians of the people and as a reflection of this, gender based and sexual violence against women was a common tool of war. All sides used it as a tactic, however the majority of victims were found to be Bosnian Muslims. The Serbian troops used systematic rape as a way to “ethnically cleanse” the Bosnian Muslims.<sup>112</sup>

The injustice committed against the women denied them power and agency. Culturally, the women are not treated as individuals in their own right, but property belonging to men, and a tool to be used against men. Economically, after the fighting, many women were left vulnerable to poverty and exploitation after losing male relatives and potentially their main breadwinner through the fighting. In terms of participating in the justice system in the aftermath, women who have found themselves as the subjects of violence may have found it extremely difficult to take part in the justice process: facing barriers such as being perceived to have a compromised value and so not being listened to, or the processes may not be sensitive enough to the specific requirements of those who have been harmed.<sup>113</sup>

In line with what I have argued about gender justice requiring the empowerment of women, Nancy Fraser states that for victims of injustice, recognition of their situation, redistribution of power and resources and representation - both in terms of being heard and having their opinion being taken into consideration are essential.<sup>114</sup> Further to this, despite how common gender based and sexual violence was in the conflict, the proportion of those who ended up being prosecuted was relatively small. It has been claimed that inadequate protection was given to those testifying, and that sentences were too short in relation to the crimes committed. Many women were not given the support necessary to be able to testify, and if they did have the strength to testify, were forced to do so under the official rules and procedures of court. This inhibited them from speaking in their own words. Overall, the official legal proceedings were criticised for reinforcing the gender power imbalance that was at the crux of the issue in the first place. Once again, women were depicted as helpless victims, defined by the crimes that had been committed against them, rather than moral agents in their own right and equal members of the moral community.<sup>115</sup>

Indeed even the labelling of those who are subjected to sexual and gender based violence as “survivors” and “victims” can carry with it the cultural significance of defining the individual by their attack, rather than as a moral agent in their own right. The truth-telling initiative sought to give women a space to have their experiences listened to, allowed them to be seen as agents in their own rights who deserve to have their rights and bodily autonomy respected - not simply

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<sup>112</sup> O'Reilly, "Peace and Justice," 424.

<sup>113</sup> O'Reilly, "Peace and Justice," 423.

<sup>114</sup> O'Reilly, "Peace and Justice," 426-27.

<sup>115</sup> O'Reilly, "Peace and Justice," 425.

the property of a nation. It let them be represented in the justice process and affirmed their status as equal members of the moral community. In these ways it was empowering.<sup>116</sup> In cases such as this, bottom up processes of justice are able to subvert the status quo. Rather than power remaining in the hands of the rich, able bodied and powerful men, there is more room for allowing different methods to be used which work better for different groups of people. In this way, bottom up initiatives have the ability to change the classic power dynamics - not only do they allow the power to be shared amongst those who usually would not have it, but because women led bottom up approaches start with the average woman herself, they have more potential to be empowering because they allow women to help themselves, rather than being a victim who has to be helped by an external body or force.<sup>117</sup> Moreover they also empower the local community as well as the women themselves, who have more responsibility when they are able to make changes. By re-shaking the structure of how things are done it is less likely that tired and worn out prejudices will continue to be repeated because there is more flexibility in the process. There are fewer regulations and expectations of how things should be done, which allows a move away from tradition, old bias and prejudice.

In addition, such agent led initiatives have the benefit of avoiding paternalism. This may be from not taking direction from the largely patriarchal power structures in the society itself. They avoid paternalism and what can be perceived as moral imperialism or colonial layover from other countries, who may wish to impose their own cultural norms on countries. When the initiatives come from the people themselves and they are empowered to do them, as long as it is not at the expense of others, then it is beneficial in terms of the equality of power. Since these initiatives are not dependent on existing power structures they are therefore a way of resisting unjust regimes - and help to bypassing corruption. Furthermore, those making choices in the top down approach may not be informed of experiences of others in society - there is an epistemological gap that requires a broad range of individuals from the community to fill it.

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<sup>116</sup> O'Reilly, "Peace and Justice," 423.

<sup>117</sup> Van Rooij, Benjamin. "Bringing Justice to the Poor: Bottom-up Legal Development Cooperation." World Bank and Wiggins, David. "Neo-Aristotelian Reflections on Justice." *Mind* 113, no. 451 (2004): 477-512.

## Conclusion

One of the things that I have found fascinating, yet sobering whilst writing this thesis has been the expanding amount of relevant and current case studies to incorporate into it. We live in a society where women's rights are violated in a myriad of ways, and in some instances these violations are overlooked, or not even perceived as a problem until years later. Most recently we have heard of numerous allegations of sexual misconduct against MPs in the British Parliament at Westminster.<sup>118</sup> Positive attitude changes are taking place, albeit slowly.

Whilst top down initiatives of implementing justice are important, and can be extremely helpful, it is also crucial to acknowledge the importance of agent led initiatives in the furthering of the development of women. State led methods of preventing sexual harassment and violence, for example advertisements highlighting the importance of consent, or legal protection from gender based violence, will work better when coupled with a change in societal ethos. The community needs to see the disrespecting of individuals as a problem if we are to help prevent the violations or crimes from being committed in the first place.

Indeed, there are even certain issues that are better addressed through bottom up rather than top down initiatives. For example, in instances which may normalise the violation of women's rights, such as has happened with sexual harassment and coercion, bottom up initiatives like "*Me Too*" can be helpful to trigger meaningful change.

Following on from this, in issues of equality, particularly in gender equality, where the issue is an imbalance of power, it is better for all individuals to be encouraged to take care of and have responsibility for both themselves and for other people. Leaving power focused in the hands of a few - who will usually be a certain demographic - will mean power stays isolated in that group and this is not conducive to equality and progression.

In this essay, I have argued that compared to men, women are stifled in reaching their potential in society. The state should invest in the equality and flourishing of its citizens. It should work to improve the women's potential in fulfilling their capabilities, thus narrowing the gap between what men can achieve and what women can achieve. Sexism is an injustice, and an indicator of a non-ideal society. We should look to our non-ideal society to decide how to best overcome gender inequalities rather than only to ideal society. Furthermore, there has classically been a focus on state led initiatives to remedying sexism, and whilst this is important, it is also essential not to neglect the need for agent led initiatives towards equality. Top down initiatives have a tendency to reinforce the power dynamics that keep women subjugated, and therefore must be tempered by agent led initiatives. Additionally, such bottom up approaches encourage a change in societal ethos, so that women may have a better cultural position, and ultimately become more empowered.

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