

Contemporary Policy Making and the Capability Approach

Which Gender Equality Policies could be seen as an example of Nussbaum's capability approach?



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Abstract

Despite the fact that women and men are equal before the law, and discrimination based on sex, race, ethnic background or sexual orientation is prohibited, economic, political and social inequalities still persist. Increasing employment opportunities and advances in educational achievement have not ended widespread discrimination against women. It is for example still difficult for women to combine paid work with family duties, without limiting their chances of promotion. Women experience a gender pay gap of 16% in the European Union (EU) and are becoming more involved in the informal economy, with its lack of protection and often poor working conditions.¹ Moreover, the trafficking of people for sexual exploitation and sexual and domestic violence disproportionately affects women.

It is important for these problems of inequality to be solved because the EU can only be a viable and (gender) just system, when the ongoing disadvantaged position of women, i.e. lack of equal opportunities, unequal access to remunerative employment and gender based sexual and domestic violence is put to an end. Gender Equality Policies (GEP) are set up to diminish these inequalities in opportunities for women, in all areas of life. Since GEP are not solely focussed on rights but on the correction of actual cases of social, economic and political inequality, the question rises how to normatively evaluate GEP. Nussbaum's capability approach has proved itself of great importance for understanding the human rights discourse accompanied with a focus on human capabilities and functioning. The capability approach provides "a benchmark in thinking about what it is really to secure a right to someone" (Nussbaum, 1997, p. 294), therefore the capability approach is the right end to evaluate GEP in that it argues the importance of policy making that actualizes the human rights discourse.

GEP are rectifications of social, political and economic inequalities, therefore Nussbaum's capability approach, that provides a theoretical framework focussed on gender equality, is the right framework to explore GEP. My thesis will address this question: which GEP could be seen as an example of Nussbaum's capability approach? In addition, empirical applications in policy making could show the relevance of adding philosophical value to political examples, in order to overcome concrete inequalities. GEP will be discussed in the context of Europe, because the EU could be seen as a unique case to study gender equality, but also diversity and social justice in an increasing globalizing world.

¹ On the occasion of the 2014 European Equal Pay Day, DG Justice published a brochure 'Tackling the gender pay gap in the European Union' including updated statistics, European Commission actions, and examples of national good practices.

Introduction

European policymaking is facing the challenge of overcoming discrimination based on gender, ethnicity and sexual orientation that leads to an unequal and unjust society. In my thesis I will focus on the problem of inequality between women and men. Gender equality is a central policy goal by governments and international organisations in the EU, concretized into diverse policy interventions that focus on creating solutions to discrimination and improving the ongoing disadvantaged position of women in all areas of life. GEP are rectifications of social, political and economic inequalities. Therefore, Nussbaum's capability approach, that provides a theoretical framework focussed on gender equality, is the right framework to explore GEP. The central question this thesis addresses is: which GEP could be seen as an example of Nussbaum's capability approach? In addition, empirical applications in policy making could show the relevance of adding philosophical value to political examples, in order to overcome concrete inequalities.

Nussbaum's 'capability approach' provides an analytical framework that argues in what manner gender equality should be established in order to make society gender just. Nussbaum's main argument is that the question of gender justice should be approached by a focus on human capabilities. With this she means that there exists a discrepancy between having rights and the capability to function these rights, in which the unjustness at stake tend to be ignored. Nussbaum's insights are of fundamental importance because it is my contention that, GEP are exemplary, for a capability approach towards human rights and therefore illustrate the importance of combining insights from the philosophical and political doctrine in order to rectify gender inequalities. Nussbaum convincingly shows that the discourse on human rights should be accompanied with a focus on human capabilities and functioning (Nussbaum, 1997). According to Nussbaum, "the rights human beings are granted do not automatically lead to increased capabilities or possibilities of functioning in the liberal democratic society" (Nussbaum, 1997, p. 279). Rights do not automatically lead to increased capabilities and therefore human flourishing, because they are solely focussed on "traditional measures: for example, those based on opulence, utility, or a distribution of resources that satisfies some constraint" (Nussbaum 1997, p.279); within the language of rights it is not possible to measure the living standard nor the quality of life.

In the first chapter I will give a brief outline of the main objectives of Nussbaum's capability approach. I will continue in chapter 2 with an exploration of what GEP entail in the context of the EU. GEP will be discussed in the context of Europe because the EU could be seen as a unique case to study gender equality, since diversity and social justice are themes that

are particularly appropriate in the globalisation or Europeanization era. The Europeanization era, or globalisation era, forms a particular interesting because the increasing globalizing world, forces us to rethink issues of equality and diversity beyond the boundaries of the nation state.

The first section of the third chapter will explore which European GEP could be seen as examples of Nussbaum's philosophical theory. I will examine how the ten elements Nussbaum discussed are met in the GEP and explore how GEP contribute to increasing capabilities for women. Transnational or European politics, faces challenges in their implementation of policies, therefore in the second section, I will discuss "the argument from culture", "the argument from the good of diversity" and "the argument from paternalism" as discussed by Nussbaum. (2001, p. 41). I will explore these challenges because the movement towards unity copes with the intersection of multiple cultural differences, leading to differences in the application of EU policies within the member states. Because of the Europeanization the EU is challenged to approach gender inequality from a more inclusive perspective. Liberal democratic society and the policies it brings forth, bears some of the problems that arise when human action is solely defined in terms of rights instead of possibilities. Are GEP legitimized since they have the right spectrum of the social sphere and try to rectify social inequalities, or are they an example of Champaign socialism in that they do not actually contribute to increasing gender equality? In conclusion, I will examine whether GEP suffer from inherent tensions that could undermine a viable democratic system based on equal opportunities. I will conclude with a recapitulation of the main arguments presented in my thesis.

What are Gender Equality Policies: a brief overview

It is my hypothesis that Gender Equality Policies are an example of Nussbaum's capability approach in practice. In order to discuss the analogy between Gender Equality Policies (GEP) and the capability approach, I shall first explore the priority areas of GEP. In the European Commission report on Strategic Engagement for Gender Equality, 2016-2019, the priority areas of policy making are discussed. The first element is "Increasing female labour-market participation and the equal economic independence of women and men", the second priority area entails "Reducing gender pay, earnings and pension gaps and thus fighting poverty among women". In addition, the European Commission strives towards "Promoting equality in decision-making", "Combating gender-based violence and protecting and supporting victims" and "Promoting gender equality and women's rights across the world".

The forthcoming policies are all focussed on enhancing the position of women, whether this is through raising awareness by means of gender mainstreaming, i.e. the implementation

of gender equality awareness in all policies, or measurements such as the gender quota. In conclusion, GEP aims to cover gender equality in all areas of civil society. Because the meaning of gender equality depends on the situation that it refers to, I will evaluate the GEP with the usage of Nussbaum's theory. Nussbaum's capability approach presents an analytical framework that secures gender equality at all times. In chapter 2, I will go further into the examples of GEP, for now a basic explanation of GEP will be sufficient to understand the analogy I observe between the priority areas of the GEP and its forthcoming policies and Nussbaum's capability approach.

Chapter 1. Human Capabilities and Rights

The capability approach to human rights

In order to critically assess which GEP could be considered effective instantiations of the capability approach, in this chapter, I will give a brief outline of the key characteristics of Nussbaum's capability approach. Nussbaum's capability approach is focussed on the experience of opportunities in doing and being, which not automatically follows from the rights human beings are granted. In addition, GEP could be seen as rectifications of inequalities and social unjustness in the social, political and economic sphere that are diminished by increasing capabilities and opportunities through policymaking. In the context of the EU formal and public laws against discrimination are obeyed, but this does not necessarily make our societies more gender just. In countless aspects of civil society that are not governed by laws against unequal treatment, discrimination persists. For Nussbaum human wellbeing and the flourishing of women and men is what is ultimately at stake when there is not found a correction or solution to these persisting inequalities between women and men (1997).

When political organs discuss political and economic entitlements or directives they regularly use the language of rights (Nussbaum, 1997, p. 273). This language of rights approach leads to theoretical questions such as: do rights of one human being lead to a duty to the other human being? Or: do rights belong to all entities or are for example ethnic and religious groups excluded? Other theoretical questions that Nussbaum addresses examine the relation between human beings and rights, namely: to what do these rights of human beings lead? Does it lead to equality of resources or, for example, equality of opportunity? Because of the vagueness of the language of rights, Nussbaum is arguing for a different approach, namely: that of capabilities and human functioning (1997, p. 275).

Capabilities ought to be seen as, the opportunities, of the citizenry to exercise the rights they are granted by law; what human beings are capable of doing or becoming in society (Nussbaum, 2001). According to Nussbaum (1997, pp. 279-281) an account of human capabilities is of importance because it describes and compares how individuals and nations are doing, without generalization. Nussbaum considers the capability approach to policy making as a "valuable theoretical framework for public policy, especially in the international development context" (Nussbaum, 1997, p. 276) since the international arena "denigrates rights in favour of material well-being" (Nussbaum, 1997, p. 277). Striking is the following allegory:

"And he said, Now this schoolroom is a Nation. And in this nation, there are fifty millions of money. Isn't this a prosperous nation? Girl number twenty, isn't this a prosperous nation, and a'n't you in a thriving state?"

"What did you say?" asked Louisa.

"Miss Louisa, I said I didn't know. I thought I couldn't know whether it was a prosperous nation or not, and whether I was in a thriving state or not, unless I knew who had got the money, and whether any of it was mine. But that had nothing to do with it. It was not in the figures at all," said Sissy, wiping her eyes.

"That was a great mistake of yours," observed Louisa (Nussbaum, 1997, p. 280).

This allegory shows why combining human capabilities with rights are of importance, since measurements that focus on opulence, in this case the GNP, does not show how rights and opportunities are distributed and leaves out inequalities and social unjustness (Nussbaum, 1997, p. 271). In other words, Nussbaum explores the difference between rights human beings have according to the, written, law and the actual outcome of these rights, while maintaining awareness of the differences in circumstances of the individual. This is especially appropriate for my thesis because I am arguing that despite the fact that men and women are equal in the eyes of the law, inequality in possibilities and the ongoing disadvantaged position of women in all areas of life persist. The language of capabilities and human functioning offers reliable measurements and comparison of social well-being (Nussbaum, 1997, pp. 282-283).

Nussbaum developed a list of essential capabilities, agreeable for people from different traditions, with different notions of the good, necessary for pursuing the good life (1997). According to Nussbaum all human lives should share these basic functions: life of length; bodily health; bodily integrity; use of senses, imagination and thought without (political) interference; emotional development; practical reason to form a conception of the good; affiliation; respect of nature and other species; play; and control over one's environment both politically and materially (1997, pp. 287-288). Nussbaum's stresses these essential capabilities in order to achieve a good and humane life. Her notion of the good is based on Aristotle, who wrote: "It is evident that the best *politeia* is that arrangement (*taxis*) according to which anyone whatsoever (*hostisoun*) might do best (*arista prattoi*) and live a flourishing life (*zoie makarios*)", (Nussbaum's translation of Aristotle's Pol. 1324a23-5 in Nussbaum 1988, p. 146). To explicate: Aristotle argues that the best society is a society in which human beings have the opportunity to exercise their capabilities and live a flourishing life. In conclusion: the political

system should create a society in which every human being can live life to the fullest. Nussbaum's capability approach comes close to liberal theories of (distributive) justice, particularly that of John Rawls. Rawls defined a list of "primary goods" that are based on the idea that "Rational individuals, whatever else they want, desire certain things as prerequisites for carrying out their plans of life." (1999, p. 348). The list of "primary goods" is then used to measure the quality of life from the individual, the outcome is used by "the parties who are choosing the principles of justice" (Nussbaum, 1997, p. 284). Rawls principles are based on a combination of liberties, opportunities and power but also resources (Rawls, 1999). Sen criticizes Rawls for this approach because human functioning cannot be measured by looking at resources, since "individuals vary greatly in their need for resources and in their ability to convert resources into valuable functionings", therefore the project of capabilities is of importance since this approach gives insight in the effective capabilities of the human agent (Nussbaum, 1997, p. 284). In addition, Nussbaum discussed the following example:

'If we wish to bring all citizens of a nation to the same level of educational attainment, we will need to devote more resources to those who encounter obstacles from traditional hierarchy or prejudice. Thus, women's literacy will prove more expensive than men's literacy in many parts of the world. This means that if we operate only with an index of resources, we will frequently reinforce inequalities that are highly relevant to well-being. An approach focusing on resources does not go deep enough to diagnose obstacles that can be present even when resources seem to be adequately spread around, causing individuals to fail to avail themselves of opportunities that they in some sense have, such as free public education, the right to vote, or the right to work.' (Nussbaum, 1997, p. 284).

In other words: an approach focused on resources is not capable of diagnosing the obstacles to human functioning (Nussbaum, 1997, 284). This move away from Rawls' liberal theory of distributive justice is therefore of importance to illustrate the relevance of the focus on capabilities Nussbaum proposes.

In case of persistent discrimination, such as the ongoing disadvantaged position of women, it is important to bear in mind the capability factors, since they entail not only liberty and opportunities but also the social basis of self-respect that is of fundamental value in society. This is the case because society is mostly based upon traditional social hierarchies or prejudice which causes individuals to fail to avail themselves of possibilities or opportunities they have

(Nussbaum, 1997, p. 284).² Persistent stereotypical perceptions of gender roles not only influence the way women are treated but also the way women reflect upon themselves. Well-being is thus inherently related to issues concerning gender normalisation and gender equality. A societal issue to exemplify this connection is the persistent stereotypical perceptions of gender roles in work and family life, which leads to fewer women under employment (European Commission, Report on equality between women and men, 2015). Structural inequality based on stereotypical perceptions of gender roles would be that women ought to stay at home and raise children and that men are the ones in the family structure that provide money to maintain the lives of his family. When women experience these examples of stereotypical perceptions of gender roles they are less likely to develop themselves i.e. gender stereotypical perceptions influence the capabilities of women in that they limit them. Nussbaum argues that it is always one's right to not exercise the capabilities one should be granted (1997, p. 289), but my point here is that women ought to be capable of exercising their capabilities, while capabilities are not always granted because of stereotypical perceptions.

It is important to keep in mind that Nussbaum is not arguing for the language of rights to be replaced by the language of capabilities and human functioning. Nussbaum stresses, the importance of rights for the capability approach by arguing that only the combination of the two, work guiding public policy (1977, p. 277). When policies would be defined by the capability approach this will enlighten what the policy is aimed at, because the capability approach includes differences between individuals and bears inequalities and social unjustness in mind, instead of merely developing policies based on crude measurements of opulence, such as GNP, which is not informative in explaining the individual's quality of life (Nussbaum, 1997). In the second section I will evaluate gender equality policies and how they could lead to a viable and defensible liberal democratic system in which the citizenry can flourish when structures between women and men would improve.

² This problem is also discussed in the European report on Equality between women and men, which I will explore in the following section.

Chapter 2. Gender Equality Policies

An exploration of Gender Equality Policies

The previous chapter set the framework for the general overview of GEP designed by the European Union. This chapter introduces GEP for gender justice within the context of Europe. The first section will be devoted to an exploration of GEP and actual examples of GEP. In the second section I will discuss the underlying mechanisms of GEP i.e. the inherent underlying normative claims about gender equality, in order to illustrate the importance of a universal framework that does “justice to the human variety we find” since “international development projects have often gone wrong through insufficient attunement to cultural variety and particularity” (Nussbaum, 2001, p. 40). Despite the fact that Nussbaum argues this, by discussing western development projects in eastern states, what can be concluded is that, similar to Lombardo et al. and Verloo whom I will discuss in the next chapter, Nussbaum states the importance of understanding the influence of the framework one is in. The EU could be seen as a unique case to study gender equality, since diversity and social justice are themes that are particularly appropriate in the globalisation or Europeanization era. Different structures of society in member states that, while maintaining their ethnic and cultural diversity, are participating on a supranational level, shows that the EU would be the right arena to establish gender equality between women and men.

Already in 1957 in the Treaty of Rome (Ch1, article 119) was stated: “each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied”. Vivian Reding, former Vice-President of the European Commission Justice, Fundamental Rights and Citizenship, argued: “Gender equality is more than just a slogan; it is our social and economic responsibility” (Strategy for equality between women and men’ 2010-2015). In the Charter of Fundamental rights is the equality between women and men described as the following: “on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.” (OJ C 303, Article 23, 27/03/2016.). In addition, Věra Jourová, commissioner for Justice, Consumers and Gender Equality, defined gender equality as: “a travelling concept,” (report on equality between women and men, 2015). What we can conclude from this is that the definition of gender equality by the European Union has changed since the first time it was uttered. In the Treaty of Rome (economic) equal treatment of women and men was the goal and this developed into advancement of women in the political and social

spheres and ultimately lead to gender mainstreaming, i.e. the integration of gender perspectives into policy making.

The European Parliament describes equality between women and men as one of the EU's fundamental values, therefore the European Commission adopts strategies to enable this in its work programmes (report on equality between women and men, 2015). What all gender equality policies have in common is the commitment to gender mainstreaming, meaning that in all EU policies and EU funding programs a gender equality perspective will be integrated (report on equality between women and, 2015). Gender mainstreaming addresses substantive representation, such as the implementation of gender perspectives, for example raising awareness to ongoing stereotypical thinking, in all policies. The concept of gender equality promotes diversity in that it argues for accepting differences and transforming norms. The European Institute for Gender Equality (EIGE) is an autonomous organ of the EU, established to promote gender equality, including gender mainstreaming in all European policies, diminishing discrimination based on gender and raising awareness of gender equality (About EIGE: our Vision and Mission). In other words, the EIGE stresses a notion of gender equality that not only diminishes discrimination but also promotes the integration of equality between women and men in the policymaking process, in order to guarantee women the same opportunities and recognition as men.

In the European Commission report on Strategic Engagement for Gender Equality, 2016-2019, the priority areas of policy making are discussed. The first element is "Increasing female labour-market participation and the equal economic independence of women and men". The second priority area entails "Reducing gender pay, earnings and pension gaps and thus fighting poverty among women". In addition, the European Commission strives towards "Promoting equality in decision-making", "Combating gender-based violence and protecting and supporting victims" and "Promoting gender equality and women's rights across the world". The forthcoming policies are all focussed on enhancing the position of women, whether this is through raising awareness, by means of gender mainstreaming, or positive measures such as the gender quota.

An example of the GEP developed to "Increasing female labour-market participation and the equal economic independence of women and men" is "a broad policy framework supporting parent's participation in the labour market and more equal use of leave and flexible work arrangements". In addition, the policies of "supporting Member states in their efforts to increase female labour-market participation", "addressing barriers to the employment and career progression of migrant women" and the removal of "barriers to gender equality"

(strategic engagement for gender equality 2016-2019, p. 10). The second priority area is “Reducing gender pay, earnings and pension gaps and thus fighting poverty among women”. The policies to reach these objectives ,I will discuss, are: “continuing support for Member States’ efforts to ensure equal pay and address the root causes of the gender pay, earnings and pension gaps; use the European Semester (annually)” and “ continuing to mark European Equal Pay Day with Europe-wide information activities to reach out to Member States; raising awareness of the link between pay, earnings and pension entitlements in old age (annually)” (strategic engagement for gender equality 2016-2019, p. 11)

The gender quota is an example of the priority area that is “promoting equality in decision-making” and is implemented in the political and industrial sphere. This policy is framed as “reach the target of 40 % women in the Commission’s senior and middle management by the end of its mandate (ongoing)” (strategic engagement for gender equality 2016-2019, p. 14). The European Commission’s Network (The Quota-instrument: different approaches across Europe written by European Commission’s Network to Promote Women in Decision-making in Politics and the Economy) gave the following definition for quota:

“The quota-instrument is a positive measure that establishes a fixed percentage or number for the representation of a specific category of persons. Quotas can be included in legislation (in electoral, equality, labour, and constitutional law) or applied on a voluntary basis (like voluntary political party quotas, soft targets) (European Commission’s network. n.d).

To explicate: quotas are seen as positive measures to establish a percentage or number within a certain sphere. The gender quota is one of the gender equality policies that is implemented by the EU in order to accomplish gender parity and equal participation of women in the decision-making process. The Commission tabled a proposal for EU level legislation requiring that at least 40 % of listed companies’ non-executive directors should belong to the under- represented gender in 2012 (2015 Report on Equality, p. 28). This ‘Women on the Board Pledge for Europe’, tried to motivate publicly listed companies in the EU to sign a voluntary commitment to reach a level of representation of women of 30 % by 2015, increasing to 40 % by 2020. Equality between women and men has been improving, but generally speaking, women in decision-making positions in European states are still underrepresented. There are differences between the member states but in Autumn 2015, women accounted for 29% of members of the single or lower houses of parliaments in the European states. In business

leadership women filled 22.7% of the board seats of large public companies in the European Union (European Commission, Gender balance in decision-making positions, n.d.).

Moreover, the priority area of “Combating gender-based violence and protecting and supporting victims” is based upon increasing awareness, by improving “the availability, quality and reliability of data on gender-based violence”, “the elimination of female genital mutilation” and to “ensure that the gender dimension of human trafficking is addressed (ongoing)” (Strategic engagement for gender equality 2016-2019, p. 15). The final priority area is “Promoting gender equality and women’s rights across the world” by means of committing to “the promotion, protection and fulfilment of all human rights and to the full and effective implementation of obligations and commitments to women’s rights in all international fora, in particular the Convention on the elimination of all forms of discrimination against women” (strategic engagement for gender equality 2016-2019).

In the next chapter I will evaluate which GEP could be seen as examples of Nussbaum’s capability approach in that they contribute to increasing capabilities for women. I will discuss the effects of GEP by means of their relation to the essential capabilities. In addition, in the second section I will discuss the empirical challenges the EU faces in their implementation of GEP. Because of the (cultural) differences between the member states, the implementation of policies by a supranational organ, such as the EU, could lead to frictions. The movement towards unity faces “respectable arguments that deserve to be seriously answered” (Nussbaum, 2001, p. 41). These arguments, or tensions, can be summarized as follows: “the argument from culture”, “the argument from the good of diversity” and “the argument from paternalism” (Nussbaum, 2001, p. 41). “The argument from culture” discusses how culture and traditions could be integrated in the universal capability framework in order to overcome the tension between transnational and national policy making. In addition, “the argument from the good of diversity” explores which social categories should be preserved in that they contribute to women’s quality of life. Moreover “the argument from paternalism” is of importance because it answers the question of legitimacy of the focus of the EU on GEP.

Chapter 3 Towards a Universal Framework

3.1 Gender Equality Policies and the Capability Approach

I explained the discrepancy between having rights and the lack of capabilities to function these rights, specifically the lack of gender equality in everyday life while in the eyes of the law women and men are to be seen as equal in chapter 1, by exploring Nussbaum's capability approach. I discussed the GEP as implemented by the EU, in chapter 2. This chapter will be devoted to answer the question: which GEP are to be seen as an example of Nussbaum's capability approach? I will evaluate the GEP I discussed in the previous chapter by referring to Nussbaum's essential capabilities and by exploring which GEP actually contribute to women's capabilities in everyday life, in the first section. In the second section I will explore the challenges the EU faces with the implementation of GEP. Europeanization or globalisation forms an interesting stage to evaluate GEP, because the EU is an example of a movement towards unity, while diversity of the member states is maintained. GEP, for example, include multiple social categories such as class, ethnicity, sexual orientation, gender and ability leading to a more inclusive gender equality approach.

GEP are aimed at rectifying gender inequality and social unjustness, by not solely discussing rights human beings have before law, but by taking capabilities and opportunities into account. The GEP I will explore are set out in the European Commission report on Strategic Engagement for Gender Equality, 2016-2019. The priority areas are: "Increasing female labour-market participation and the equal economic independence of women and men", "Reducing gender pay, earnings and pension gaps and thus fighting poverty among women", "Promoting equality in decision-making", "Combating gender-based violence and protecting and supporting victims" and "Promoting gender equality and women's rights across the world". In order to determine to what extent GEP could be considered adequate applications of Nussbaum's capability approach I will discuss these priority areas and the forthcoming policies one by one and examine how they relate to the ten essential capabilities Nussbaum argues for. Moreover, I will examine which GEP actually contribute to increasing women's capabilities in everyday life.

“Increasing female labour-market participation and the equal economic independence of women and men”

This priority area is focussed on achieving the EU’s target of 75% of men and women in employment in 2020, by “making it easier to balance caring and professional responsibilities” and “a more equal sharing of time spent on care and household responsibilities” (strategic engagement for gender equality 2016-2019, p. 10). These objectives ought to be achieved by, for example, setting out “a broad policy framework supporting parent’s participation in the labour market and more equal use of leave and flexible work arrangements” and “supporting Member states in their efforts to increase female labour-market participation” (strategic engagement for gender equality 2016-2019, p. 10). In addition, in the Barcelona targets the EU integrated “Provision of childcare for 33 % of children under 3 and 90% of children between 3 and mandatory school age” (strategic engagement for gender equality 2016-2019). This provision increases the capabilities for women to participate in the labour-market and at the same time strives towards equal economic independence of women and men, since it gives women the freedom to do strive for their own career goals.

In so far, this strategy relates to Nussbaum’s essential capabilities in that it takes into account that human beings should be “able to be treated as a dignified being whose worth is equal to that of others” (1997, p. 288). This GEP stresses that women should participate equally in labour-market without being hold back by stereotypical or traditional perceptions that women only should spent time on care and household responsibilities. Moreover, this strategy focus’ on “addressing barriers to the employment and career progression of migrant women” and the removal of “barriers to gender equality” (strategic engagement for gender equality 2016-2019, p. 10). In conclusion: this priority area and the forthcoming policies relate to Nussbaum’s philosophical framework in that they take into account that despite the fact that women have the right to work before law, the capabilities or opportunities to act accordingly, do not automatically follow. This asks for an implementation of GEP that focus on increasing women capabilities and removing barriers to gender equality. Moreover, the GEP focussed on “Increasing female labour-market participation and the equal economic independence of women and men” sufficiently increase the capabilities of women in that they offer women the freedom to develop themselves by dissolving barriers to the employment and career progression of (migrant) women by, for example, childcare systems and diminishing gender stereotyping perspectives.

“Reducing gender pay, earnings and pension gaps and thus fighting poverty among women”.

The aim is to reduce “inequality in access to financial resources throughout life” by policies that are focussed on “continuing support for Member States’ efforts to ensure equal pay and address the root causes of the gender pay, earnings and pension gaps; use the European Semester (annually)” and “continuing to mark European Equal Pay Day with Europe-wide information activities to reach out to Member States; raising awareness of the link between pay, earnings and pension entitlements in old age (annually)” (strategic engagement for gender equality 2016-2019, p. 12). Moreover, the EU argues “The aim of reducing the persisting gender pay, earnings and pension gaps, and thereby inequality in access to financial resources throughout life is reconfirmed.” (strategic engagement for gender equality 2016-2019, p. 12).

On the one hand these policies are an example of Nussbaum’s capability approach in that they raise awareness of pension gaps between women and men because “this an obstacle to the economic independence of women in old age, when they face a higher risk of poverty than men” (strategic engagement for gender equality 2016-2019, p. 11). Similar to Nussbaum who argues that all human beings should be “adequately nourished; to have adequate shelter” (1997, p. 287) which is something the EU wants to safeguard by addressing the pension pay gap, in order to anticipate to the higher risk of poverty for women in old age. On the other hand, I do not think this is entirely what Nussbaum had in mind when she developed the humble essential capabilities, because it is questionable whether the gender pay and earnings gap are preventing women to live a humane and flourishing life. The part of the policy focussed on closing the pension gap, is expressed in the essential capabilities in that it is targeted at decreasing the risk of poverty of women in old age, to guarantee that they are “adequately nourished; to have adequate shelter” (Nussbaum, 1997, p. 287). Nevertheless, Nussbaum stresses that (financial) resources do not give adequate insights in the quality of life and capabilities human beings have.³ It is still possible that women in old age live a more flourishing life than other women because they experience more capabilities, not based on resources.

“Promoting equality in decision-making”

The EU aims at a “better gender balance in economic leadership positions” (strategic engagement for gender equality 2016-2019, p. 14). The forthcoming policy is framed as “reach the target of 40 % women in the Commission’s senior and middle management by the end of its mandate (ongoing).”and the European administrations will lead by example (strategic

³ Recall the striking allegories I discussed in the first chapter, page 10 and the example of page 11 that illustrates why an approach focussing on resources is incapable of diagnosing the obstacles to equality.

engagement for gender equality 2016-2019, p. 14). This strategy and its policies are also to be found in Nussbaum's essential capabilities, when she states that human beings should be "able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association". Therefore, the strategy focussed on "promoting equality in decision-making" is an example of Nussbaum's capability approach in that it takes into account the essential capability for all human beings in their right to participate effectively in political choices. The quota supports women in their choice to participate in the decision-making process in the political and industrial sphere i.e. to increase their capability to participate. By granting women the capability to participate effectively in political choices, women gain the scope to secure their interests. Similar to Nussbaum, Judith Squires stresses the importance for empowerment of women in the political arena.

In the previous chapter I discussed how GEP involved a focus on what Squires refers to as "presence", "voice" and "process" (2007, p. 2). "Presence" can be translated in the secured increased numbers of women in for example large public companies. Squires refers to increased "voice" of women in the decision making process in order to raise awareness to women specific concerns such as childcare systems. In addition, Squires stresses the importance of "process" in which "more systematic consideration is given to gender equality issues across the policy-making agenda" i.e. gender mainstreaming (Squires, 2007, p. 2). Squires argues that these strategies are intertwined, for example: the women quota is treated as partner measures for the empowerment of women through politics, which promotes women to ranks of policy makers (2007, p. 17).

According to Squires, some conceptions of equality have an inherent privilege while they are obscuring others (2007). In order to safeguard the groups that experience discrimination, these groups need to be present in the political arena. When discriminated groups are present in the political arena, they get a voice so their insights can be taken into account in the decision making process (Squires, 2007). Since the meaning of gender equality remains contested it is vital that discriminated groups are able to take part in the formulation of these equality concepts, rather than merely being the object of gender equality policy making (Squires, 2007, p. 17). Squires emphasizes the importance of involvement of women in the decision making process in the political arena, but in my opinion the involvement of women in the decision making process is of similar importance in the industrial arena because women on boards of companies can emphasize women related issues i.e. childcare systems at work and maternity leave policies.

In conclusion, this example of GEP increases the capability for women directly because women get greater opportunities to for example, promoting to board seats. However, In my

opinion the capability approach of Nussbaum is expressed in this GEP more indirectly because increasing number of women in board seats have the opportunity to share their insights, and thereby increase attention to women related issues, such as childcare systems that help to support women to develop themselves and creates more capabilities.

“Combating gender-based violence and protecting and supporting victims”.

The EU formed policies to achieve this strategy, varying from “improve the availability, quality and reliability of data on gender-based violence” to “the elimination of female genital mutilation” and “ensure that the gender dimension of human trafficking is addressed (ongoing)” (Strategic engagement for gender equality 2016-2019, p. 15). The first essential capability Nussbaum discussed, entails that human life should be of normal length and human beings should be able to have good health, including reproductive health (1997, p. 287). Additionally, bodily integrity is of importance; “one should be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction” (Nussbaum, 1997). Women related issues such as female genital mutilation and gender based violence are included in Nussbaum’s list and in GEP.

In addition, similar to Nussbaum, GEP argue for security and safety against sexual assault and domestic violence through the implementation of GEP. The policies towards “Combating gender-based violence and protecting and supporting victims” (strategic engagement for gender equality 2016-2019, p. 15) is an example of the capability approach because this policy is focussed on increasing, or guaranteeing, the capabilities for women to “having opportunities for sexual satisfaction” and to be “secured against sexual assault and domestic violence” (Nussbaum, 1997, p. 287). With the implementation of this policy the EU adequately increases women’s capabilities to move freely, secured from violence, while having the capability to sexual satisfaction.

“Promoting gender equality and women’s rights across the world”

This strategy covers the essential capabilities as argued for by Nussbaum in that they are “fully committed to the promotion, protection and fulfilment of all human rights and to the full and effective implementation of obligations and commitments to women’s rights in all international fora, in particular the Convention on the elimination of all forms of discrimination against women (strategic engagement for gender equality 2016-2019). Nussbaum stresses how women in developing nations are important to the unify project, or Europeanization, in two ways, namely: “as people who suffer pervasively from acute capability failure, and also as

people whose situation provide an interesting test of this and other approaches, showing us the problems they solve or fail to solve” (Nussbaum, 2001, p. 6).

However the EU states that they are “strongly committed to playing a lead role in this respect”, while Nussbaum argued that it is important to stay humble since, “We need to ask, then, whether, it is appropriate to use a universal framework at all, rather than we also need to ask whether the framework we propose, if a single universal one, is sufficiently flexible to enable us to do justice to the human variety we find” i.e. there should be sufficient attunement to cultural variety and particularity (Nussbaum, 2001, p. 40). It is important to bear in mind the policy makers act upon their framework and might overlook cultural variety and particularity (Nussbaum, 2001, p. 40).

This strategy and the forthcoming policies are the most adequate examples of Nussbaum’s capability approach in that they develop their GEP by researching the quality of human life and compare states, with use of the capability framework. The EU addresses how “Women’s and girls’ rights, gender equality and the empowerment of women and girls are at the core of the UN’s 2030 Agenda for Sustainable Development” (strategic engagement for equality 2016-2019, pp. 16-17). Similar to Nussbaum who argued that the “*Human Development Reports* of the United Nations Development Programme (“UNDP”) have assessed the quality of life in the nations of the world using the concept of people's capabilities, or their abilities to do and to be certain things deemed valuable.”

In conclusion, the GEP on “Increasing female labour-market participation and the equal economic independence of women and men”, “Promoting equality in decision-making “, “Combating gender-based violence and protecting and supporting victims” could be considered adequate applications of Nussbaum’s capability approach. All GEP I discussed cover “provisions of non-discrimination on the basis of race, sex, ethnicity, caste, religion, and national origin” (Nussbaum, 1997). Moreover, GEP change along with social, political and economic circumstances that is dealt with at a certain period of time, for example the immigration the EU is currently dealing with, led to policies directly focussed at capabilities of migrant women. In addition, all GEP are based on increasing capabilities of women and tackling inequality between women and men, in order to create “a fairer society” (strategic engagement for gender equality 2016-2019, p. 7). This substantive approach, which is focussed on the essential capabilities, will lead to an account of a good and human life.

Nevertheless, challenges, or even conflicts, arise when different cultural norms and values of member states encounter. Therefore, I will discuss the argument of culture, diversity and paternalism, as summarized by Nussbaum, in order to illustrate the empirical and

theoretical challenges that come along with transnational policy making, in the following section.

3.2 The Achilles Heels of Gender Equality Policies

I discussed which GEP could be considered adequate applications of Nussbaum's capability approach, in that they increase capabilities of women, in the first section. The movement towards unity, as in Europeanization or globalisation, copes with the intersection of cultural differences of its member states. Therefore, in this section, I will discuss the challenges that arise for the EU by implementing GEP. Moreover, I will explore to what extent GEP might be served by Nussbaum's insights, since this could show the fruitfulness of adding philosophical insights to policy making. The proposal of unity and a universal framework to "assess women's quality of life", faces "respectable arguments that deserve to be seriously answered" (Nussbaum, 2001, p. 41).

These challenges, or arguments, can be summarized as follows: "the argument from culture", "the argument from the good of diversity" and "the argument from paternalism" (Nussbaum, 2001, p. 41). "The argument from culture" discusses how culture and traditions could be integrated in the universal capability framework in order to overcome the tension between transnational and national policy making. In addition, "the argument from the good of diversity" explores which social categories should be preserved in that they contribute to women's quality of life. Moreover "the argument from paternalism" is of importance because it answers the question of legitimacy of the focus of the EU on GEP i.e. "Any viable cross-cultural proposal should bear firmly in mind" that "people's freedom as agents" should be respected (Nussbaum, 2001, p. 51).

The argument from culture

Nussbaum describes the argument from culture in order to illustrate how culture and traditions could be integrated in the universal capability framework. In this section I will discuss the tension between supranational and national politics since it is contested whether Europeanization and the European identity would be capable of diminishing institutionalized discrimination and racism on a supra-national level, because of the national differences in culture and policy. Dani Rodrik, for example, argues that supra-national policy making cannot be combined with national politics policy making (2001). Since my focus is on the mechanisms

of GEP, in order to evaluate how they relate to the ‘capability approach’, this tension is of importance for my thesis. Anna van der Vleuten and her theory on the influence of tradition in attaining public support to policies are also important to explore, since the EU experiences the challenge of realising gender equality while coping with cultural differences within the member states.

Could the differences in support between the member states be an example of tension between supra-national and national policy making? In the United Kingdom, mediating institutions such as the Equal Opportunities Commission were founded in order to facilitate structural change, while in France similar facilitating institutions remain absent (Caporaso & Jupille, 2001, p.42). This leads to the following question: does the lack of mediating institutions that translate the European GEP into a national policy, mean that not all member states support the cause of gender equality or does it mean that the importance of gender equality is not in all member states on the priority list?

According to van der Vleuten there is more to this question. She argues (Van Der Vleuten, 2005, p. 464) that the consequences of not reaching the gender quota, or other gender equality policies by the different member states, depends on tradition, public support and consequences for the economic, political and ideological sphere. In addition, van der Vleuten argues: “Member states will value the saliency of an issue and the costs of a supranational policy proposal differently according to their identity.” (Van der Vleuten, 2013, p. 12). In other words: at state level there exist possibilities for the nation to determine how GEP are to be implemented, since the EU not only promotes cultural diversity in GEP themselves but also in the way they are implemented to its member states.

In addition, the GEP and gender mainstreaming the EU is aiming for, lack the ability to pressure member states, because the procedure in which the EU implements the strategy is depending on how the nation state will change its social structures (Van Der Vleuten, 2013, p. 172). The liberal democratic system supports liberalization of markets in goods, services, capital and labour, while on the other hand the gender quota and other gender equality policies seem to go against the general tendency because the gender equality policies are demanding new regulation (Vleuten, 2013, p.2-3). The question how government interference and freedom are balancing each other out, as key features of liberal democratic society, remains unanswered. This can additionally be problematic because it lays bare the tension inherently in liberal democratic system between rights and capabilities, which influences all areas of life, including policy making. Nussbaum argued “Why should we follow the local ideas, rather than the best ideas we can find?” (2001, p. 49), by raising this question she makes clear that the tension

between, for example, supranational policy making and national policymaking could be solved when member states strive towards a common or universal norm. In addition, Nussbaum rejects the argument from culture as a possible tension to attain a universal norm or framework, because a “coherent notion” of culture does not exist and “cultures are dynamic”. According to Nussbaum “People are resourceful borrowers of ideas.” (2001, p. 46), therefore cultures are not secluded ideas but based upon values and norms from other cultures that are changing over time.

The argument from the good of diversity

In addition, in “the argument from the good of diversity” Nussbaum argues that diversity in culture and traditions should only be preserved when they engage with a general universal framework within certain benchmarks i.e. assessed to “the contribution they make against the harm they do” (2001, p. 51). In the first chapter I discussed traditional social hierarchies or prejudices, such as stereotypical gender perceptions, that causes individuals to fail to avail themselves of possibilities or opportunities they have (Nussbaum, 1997, p. 284). The social hierarchies or prejudices that causes individuals to fail to avail themselves of possibilities are not contributing to the universal capability framework and therefore fall outside the benchmarks.

The development in policy making that is taking place at the moment is that the concept of equality has been widened to promote anti-discrimination. The international institutions not only promote gender equality but also widened their scope to also diminish discrimination based on age, ethnicity and sexual orientation (Squires, 2007). Because of the integration of not only gender equality as such but also equality in ethnicity, sexual preferences gender equality turned into a wider framework that covers all gender related issues, since there are various possible indicators of inequality (Verloo, 2007, p. 23).

Even though European GEP already encompassed a wider reality of inequality that lead to the definition of gender equality as the mainstreaming of gender, the problem of intersectionality remains. In all EU policies and EU funding programs a gender equality perspective will be integrated in order to overcome discrimination based on sex, race, ethnicity and so on (EU, 2016). The absence of intersectionality takes, for example, place in the formulation of the gender quota. The gender quota is focussed on increasing the percentage of women in board functions, i.e. the highly educated women, there is no sensitivity for the under representation of for instance working class or migrant women (Lombardo et al, 2009, p. 77). Another example that illustrates the problem of intersectionality is to be found in family

policies. When poor economic circumstances in the family sphere are discussed, gender equality as a goal disappears (Lombardo et al, 2009, p. 77).

In other words, the policies that are created to solve the problem of these economic vulnerable groups are focussed on tempering class inequalities and not on creating an account of awareness to gender inequality and stereotypical hierarchies in the family sphere, even though these are important factors that are of great influence to economic vulnerable groups. In order to accommodate the different equality struggles in a relatively inclusive way, it is important to understand that inequalities are interdependent and relating to other inequalities therefore it is impossible to reach gender equality when other inequalities are maintained (Lombardo et al, 2009, p. 68). The capability framework creates the awareness of individual situations that could experience multiple axes of discrimination, which could help to overcome the challenge of intersectionality in European GEP.

The argument from paternalism

Moreover, Nussbaum explored “the argument from paternalism”, since the movement towards a universal framework in order to guarantee a gender just society, is sometimes explained as paternalistic. To overcome the argument from paternalism the capability approach should be seen as an end to diminish the ongoing disadvantaged position of women and their lack of possibilities. The citizenry can determine its own functioning or course in life after they are granted the capabilities (Nussbaum, 1997, p. 289). Nussbaum states the difference between choice and constraints. This distinction between means and ends helps to overcome the critique that all human beings prefer a different life or have a different notion of the good. When GEP are focussed on capabilities as ends, in terms of being and doing, the freedom to extract oneself from exercising their capabilities remains. In other words: “The person with plenty of food may always choose to fast, but there is a great difference between fasting and starving, and it is this difference what we wish to capture.” (Nussbaum, 1997, p. 289).

The capability approach looks at people one by one (Nussbaum, 1997, p. 285), therefore empowerment will be located in my life and in your life, not as society as a whole. Moreover, the capability approach is focussed on what is actually going on in the lives of the human beings the policies are created for, therefore this approach can be the necessary link between written laws and rights, and the capability to do and be (Nussbaum, 1997, p. 285). In addition, capabilities as ends leave room for individual preferences. The capabilities human beings are given, i.e. the opportunity to exercise the rights that are given by law, leaves room for individual

differences and preferences to determine how to act upon them. This approach is particularly helpful in the context of the EU, since the EU is an example of forming unity while diversity is maintained. The account of individual differences broadens and includes the reach of policies.

Therefore, maintaining individual differences and preferences while implementing GEP helps to overcome the argument of culture and diversity. When GEP are focussed on creating capabilities effectively to the human agent and social unjustness, there will be more attention to the efficacy and relevance of policies to the actual world. Because of the fact that individual diversity remains, capabilities stay away from a paternalistic account that leaves no room for deciding what ones' idea of the good life entails. Nevertheless, some account of paternalism is unavoidable or even desired (Nussbaum, 2000, pp. 51-56), since it is generally hold that political institutions have the moral obligation to promote and protect the good life.

In conclusion, a new theoretical framework is required to come to terms with gender equality and social justice beyond the borders of the nation state, in a globalising world. Especially in the Europeanization era it is important for the EU to create policies that could be supported by all member states. The essential capabilities could function as a universal guideline to create a new theoretical framework based on globalization and strived towards a human and (gender) just society. Nussbaum developed an account of human capabilities that could be the right ends to GEP, because these capabilities are focussed on founding a human and just life while maintaining the possibility to individual preferences and diversity. Nussbaum's capability approach could be the right framework to overcome the challenges the EU faces on theoretical and empirical level, i.e. the argument from diversity, culture and paternalism. According to Nussbaum all human lives should share these basic functions: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment (1997, pp. 287-288). When GEP would be focused on these ends that are "held to have value in themselves" will lead to "a life fully human" (Nussbaum, 1997, p. 286) as a standard to the European cosmopolitan project founded on the framework of capabilities.

Conclusion

In my master thesis I answered the question, which Gender Equality Policies could be seen as an example of Nussbaum's capability approach. I first explored how the capability approach could be the remedy to overcome the discrepancy between rights and the opportunities to exercise these rights. Despite the fact that women and men are equal in the eyes of the law, inequality persists in for example: less women present in board seats in large public companies, gender based violence and stereotypical thinking and social hierarchy that create few opportunities for women. In different ways GEP could be seen as the policies created by the EU in order to guarantee women the same capabilities as men i.e. as a rectification of social injustices. I discussed the importance of a new theoretical framework to come to terms with gender equality and social justice that goes beyond the borders of the nation state, in the era of Europeanization.

In addition, I explored the argument of culture, diversity and paternalism as discussed by Nussbaum, because these challenged the EU faces with the implementation of a universal framework. The political, economic and social sphere in the nation state are still seemingly difficult to combine with policies implemented on a transnational level. In addition, because of the persistent stereotypical thinking and behaviour, women are less likely to have the opportunity or capability to develop themselves in the social, political and economic spheres. Even though the EU is trying to diminish discrimination and gender inequality by implementing GEP, the problem of intersectionality remains. In GEP there exists to little attention for women who experience multiple forms of discrimination and inequality, for example those who suffer discrimination based on age, race and gender are even less likely to exercise their rights by means of capabilities in opportunities.

It is my contention that through the implementation of GEP within the European member states, the EU is taking the capability approach into account to increase women's capabilities and opportunities. Despite the development towards increasing capabilities and opportunities, argued for by Nussbaum, expressed within GEP, problems tend to arise. GEP are focussed on creating gender equality, but lack the theoretical framework in order to overcome the problem of inequality. GEP could solely be seen as a case study of the 'capability approach' when the theoretical normative framework of the capability approach is inherited completely. This new philosophical foundation of GEP, which goes beyond differences while maintaining diversity, will eventually lead to a viable cosmopolitan account of human rights and social justice focussed on the capability to do and to become.

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