Indigenous health: Capabilities and freedom

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Abstract
The life expectancy differential between Indigenous and other Australians is in the order of 11 years and requires far-reaching, complex and multifaceted policy responses. Theories and instruments of international human rights are among those that have helped to shape responsive policy discourses. Developing these often abstract rights into people’s substantive capacities to make meaningful choices about how they will live is difficult, but the article shows how this is possible with reference to a general theory of capabilities as self-determination. Such a theory, proceeds from Sen and Nussbaum’s extension of Aristotle’s concern for ‘human flourishing’ where the political right to self-determination, affirmed at international law, presumes certain essentialist capabilities to secure, people’s political agency. These essentialist capabilities suggest a distribution of authority on the basis of equal opportunities to make choices of personal value, rather than just an egalitarian concern for equality of outcomes.

Keywords
Capabilities approach to development, Indigenous citizenship, differentiated citizenship, Indigenous self-determination, Indigenous politics

Introduction
Aboriginal policy will never prosper if the Leviathan is not restrained in its cage, and self-determining humans seeking a better life are once again free to roam the continent. (Pearson, 2011)

The Indigenous Australian population is distinguished by a life expectancy approximately 11 years less than that of the non-Indigenous population (Australian Bureau of Statistics, 2011). While similar differentials do exist between
Indigenous and non-Indigenous peoples in comparable neo-colonial jurisdictions, they are not as pronounced with, for example, the differential in New Zealand being 7.3 years (Statistics New Zealand, 2013) and between five and six years in Canada (Garner et al., 2010). The complex explanatory variables do not suggest a single policy panacea or theoretical framework for addressing these differentials. However, from Nussbaum’s (2003) extension of Sen’s (1999) capabilities approach to development, there arises an instructive general theory of capabilities as self-determination, to provide ways of thinking about the distribution of opportunities to maximise personal agency.

A general theory of capabilities contributes to a just Indigenous health policy framework by proposing that self-determination depends on universal essentialist human capabilities to provide people with sufficient resources and political opportunities to make choices consistent with lives that they have reason to value. It is against this capacity, not egalitarian distributivism alone, that justice is measured. Political questions then arise about the agency that prevailing political values and arrangements allow and about the translation of abstract political rights into measures of practical substance. Differentiated, or two-tiered, citizenship provides a comprehensive response to some of these questions.

Differentiated citizenship allows Indigenous peoples the full rights and opportunities of membership of the nation-state, including the right to be governed by representative government, and the opportunity to participate in national affairs as Indigenous peoples, rather than as peoples properly assimilated into the normative customs and values of the post-settler society (Maaka and Fleras, 2005; O’Sullivan, 2007; Shaw, 2008). National citizenship of this kind is given complementary substantive influence when set alongside arrangements that enhance Indigenous peoples’ capacity to restore and develop their own forms of citizenship, where citizenship does not simply describe a body of rights; but also a body of opportunities grounded in essentialist universal human capabilities, but located by, and for, Indigenous peoples in their own communities. Under these conditions one is more likely to accept that policy outcomes are just because they arise from Indigenous people’s substantive capacities to choose lifestyles and livelihoods of personal value. In particular, differentiated citizenship creates opportunities for Indigenous civil society to assume significant roles in policy development and implementation.

The article begins by setting out the case for essentialist capabilities, even as some Indigenous scholars question their capacity to address the particular concerns of each and every Indigenous population. It proceeds to show the impact of denying essentialist capabilities which are, in fact, preliminary to substantive self-determination. Human equality is not always the guiding principle in Indigenous public policy and the impact of setting aside equality as a universal presumption is described to show the capabilities approach’s utility as an alternative philosophical paradigm. The argument for a general theory of capabilities as self-determination is strengthened through discussions of the relationships among capabilities, human agency and political freedom. The article concludes with examples of differentiated
citizenship as a political arrangement that enhances human capabilities by giving practical effect to otherwise abstract rights.

The capabilities approach to development

The capabilities approach to development proceeds from Rawls’ primary goods to which all people are entitled (1971). However, as Nussbaum (1987, 1992, 2003) explains, resources alone do not provide ‘a space within which to answer questions about who is better off and who is worse off’ (1992: 284) and do not assist in the translation of abstract human rights into practical political capabilities. The capabilities approach responds by providing intellectual space to consider the distribution of political authority as an essential adjunct to the fair distribution of material resources.

The capabilities’ approach’s guiding principles are based on ‘a definite list of the most central [human] capabilities (Nussbaum, 2003: 36) from which one can find support for the development of a general theory of capabilities as self-determination to which groups can add, modify and contextualise for their own purposes. Such a theory’s principal characteristic is that it accepts plurality, in what people ‘have reason to value’. It does not admit a heterogeneous measurement of development and, therefore, sets aside pressures for policy to develop only with reference to a dominant group’s conceptions of ‘the good’. The test of the list’s applicability and utility to Indigenous health policy ultimately rests on whether Indigenous people would seriously contest its presumptions about what is good or suppose that any of its capabilities are, in fact, injurious to cultural imperatives.

Nussbaum (2003) suggests that her list is neither exhaustive nor unalterable, should be open to public scrutiny and debate, and be capable of incorporation into national constitutions. Her ‘central human capabilities’ are:

2. Bodily health – good health including reproductive health.
3. Bodily integrity – free movement, protection from violence, including sexual assault.
4. Senses, imagination and thought – a range of issues including creativity, artistic and political expression, and enjoyment of pleasure.
5. Emotions – emotional development and attachment, to love and be loved.
6. Practical reason – to develop a conception of good, and make life plans.
7. Affiliation – to be able to live for and in relation with others, to develop empathy, pursue justice and friendship.
8. Other species – relations with the natural world and animals.
9. Play – to laugh and play and relax.
10. Control over one’s environment – this includes political participation, material control over resources, and employment rights (Nussbaum, 2003: 40–41).
The capabilities approach sets out and operationalises a set of essentialist rights that are preliminary to people exercising personally meaningful choices about how they will live. It is proposed with reference to Aristotle’s argument that the best political arrangement is that conducive to anyone being able to live a flourishing life (Aristotle, 1988). So, just as public policy has diminished personal agency, it might consider its capacity to do the reverse, by improving individual ability ‘to function well if one so chooses’ (Nussbaum, 1987: 20).

The capability view helps to mediate conflicting claims by differentiating ‘achievement’ from the ‘freedom to achieve’ (Ruger, 2006: 288). For example, in health policy, the freedom to consume a nutritious diet is conditioned by the affordability of suitable foods. The freedom to find employment is conditioned by educational preparedness for work and the presence of functioning labour markets. The freedom to follow medical advice is conditioned by treatment’s accessibility and affordability. The freedom to deliberate in public policy formation is conditioned by relative political standing, such that contextual obstacles to freedom originate in historical and socio-political variables distancing Indigenous peoples from major sites of political power. Ill-health is, then, partly attributable to ‘social disadvantage and . . . the particular relationship of Indigenous Australians to mainstream society’ (Marmot, 2011: 512). The responsive general theory of self-determination addresses the nature and terms of Indigenous ‘belonging’ to the political community. It allows people to think about public policy development in ways that consider not only the demands of egalitarian distributive justice, but also the extant rights of indigeneity that contribute to people’s capacity to develop lives that they have reason to value.

Self-determination provides a theoretical context for examining the ‘moral disagreement about the nature of health care as a social good, about what sort of special importance, if any, attaches to it’ and shows that ‘disagreement on this question is tied to other fundamental disagreements about what distributions of social goods are just’ (Daniels, 1982: 52–53). More broadly, rights to self-determination ensue from the overarching Indigenous right to exist as distinct cultures with self-determination over their own affairs and over the ways in which they engage with the post-settler state. For example, the United Nations’ Declaration on the Rights of Indigenous Peoples (2007), which developed existing legal principles to affirm rights that accrue simply by virtue of humanity:

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law. (Article 1)

The Declaration also provides a justification for differentiated citizenship:

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to
participate fully, if they so choose, in the political, economic, social and cultural life of
the State. (Article 5)

If rights are to transcend the abstract and acquire substantive positive influence
in people’s lives, the prevailing Indigenous policy paradigm must be distinguished
by a politics of responsibility that ‘enacts powers (versus rights) of sustainable self-
determination’ and that makes ‘indigenous communities the central [policy] focus’
(Corntassel, 2008: 122), so that, if some people are disadvantaged by prevailing
political arrangements, or the denial of essentialist capabilities, public policy ought
to examine the circumstances of their disadvantage and make arrangements to raise
capabilities because:

all human beings reasonably participate (or try to) in the planning and managing of
their own lives, asking and answering questions about what is good and how one
should live. Moreover, they wish to enact their thought in their lives – to be able to
choose and evaluate and to function accordingly. This general capability has many
concrete forms and is related in complex ways to the other capabilities, emotional,
imaginative, and intellectual. But a being who altogether lacks this would not be likely
to be regarded as fully human in any society. (Nussbaum, 1992: 219)

From this perspective, justice is not concerned with equal or even equitable out-
comes, but with equal inputs on the assumption that what people do with their
endowments reasonably differs across time and culture. Indeed, political philoso-
phers routinely ask ‘whether the equality most relevant to political distribution
should be understood, primarily, as equality of well-being, or equality of resources,
or equality of opportunity, or equality of capabilities’ (Nussbaum, 1992: 274).
The question challenges self-determination’s traditional concern for a ‘particular’
distribution of power and resources by suggesting a broader view of the constitu-
ents of freedom, as ‘the language of rights is not especially informative, despite its
uplifting character, unless its users link their references to rights to a theory that
answers at least some of these questions’ (1992: 275).

Nussbaum’s (2003) essentialist capabilities contribute to the development of a
politically useful liberal theory of self-determination, capable of identifying polit-
cal spaces of opportunity for Indigenous freedom and conceptualising Indigenous
‘belonging’ to the modern state in ways that create possibilities for and of freedom
(Tully, 2000: 37). There is also a ‘deep complementarity’ between social context
and personal agency so that one needs to see ‘individual freedom as a social com-
mitment’ (Sen, 1999: xii), supported by an inescapable connection between self-
determination and the proposition that development:

requires the removal of major sources of unfreedom: poverty as well as tyranny, poor
economic opportunities as well as systemic social deprivation, neglect of public facil-
ities as well as systematic social deprivation, neglect of public facilities as well as
intolerance or overactivity of repressive states. (Sen, 1999: 3)
In other words, personal agency which is, in turn, ‘the “capabilities” of persons to lead the kind of lives they value – and have reason to value’ (Sen, 1999: 18), is important but ‘inescapably qualified and constrained’ by social, political and economic contexts and opportunities (p. xi). It remains preliminary to Indigenous political authority as well as to health and well-being.

Individual freedoms are necessarily linked to group freedoms and, indeed, are often conditional on such freedoms. The capacity for good health is the product of collective capabilities ‘because individual lives and choices are so affected by structures of living together, one cannot assume that their choices, including what they value are independent of these structures’ (Deneulin, 2008: 116). One must accept, as Gasper (1997) points out, the limits of the ‘reduction of all types of feeling to a single currency’ ones ‘own utility’ (p. 285).

The essential policy presumption informing the capabilities approach is that what people value and the aspirations they pursue are matters for themselves, not matters to be decided and imposed by others according to alien values or political objectives:

Man is to be defined neither by his innate capacities alone, as the Enlightenment sought to do, nor by his actual behaviours alone, as much of the contemporary social science seeks to do, but rather by the link between them, by the way in which the first is transformed into the second, his generic potentialities focused into his specific performances. (Geertz, 1973: 52)

**Capabilities: Essential and universal**

The anti-essentialist objection that cultural differences are so strong that universalism is inherently assimilationist and grounded in the normative values of the more powerful groups is one that, effectively, insists that ‘politics must refuse itself a determinate theory of the human being and the human good’ because there cannot be universal agreement of those ‘elements of human life [that] have most importance’ (Nussbaum, 1992: 208). The objection makes it logically inconsistent to draw on universal legal instruments to advance domestic political aspirations when, in fact, Indigenous peoples have otherwise depended heavily on these to give international authority to their claims against the state (Daes, 2008).

The rejection of universal norms means that there is no recourse to the Declaration’s affirmation that ‘Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person’ (Article 7) to challenge the non-essentialist position’s most extreme expression – the judicial acceptance of cultural integrity as a partial defence against the sexual violation of children. In 2005, for example, the Northern Territory Supreme Court’s ruling that cultural precepts partially excused an elder’s non-consensual sexual relationship with a 14-year-old girl was made on grounds that deny some people’s claim to basic human capabilities. The denial of the right to personal self-determination and
inconsistency with Article 7 of the *Declaration on the Rights of Indigenous Peoples* (earlier cited) is especially significant given the contribution that violence makes to Indigenous women’s ill-health and premature deaths (MacRae et al., 2013).

The defence, in this Northern Territory case, necessarily relied on the presumption that culture is ultimately and properly defined, even when its relevant precepts are sharply contested, by the more powerful in the relationship. The girl’s capability to say ‘no’ was undermined as Chief Justice Martin sentenced the 55-year-old to one month’s imprisonment because, in this ‘extremely difficult case’:

> You [the defendant] believed that traditional law permitted you to strike the child and to have intercourse with her … The Crown accepts that you believed that intercourse with the child was acceptable because she had been promised to you [at the age of four] and had turned 14. The Crown also accepts that, based on your understanding and upbringing in your traditional law, notwithstanding the child’s objections, you believed that the child was consenting to sexual intercourse. (Martin, Chief Justice, 2005)

If culture is what people, themselves, define, one cannot admit contested practices becoming sacrosanct simply because a society’s more powerful members claim their importance. ‘People’s attitudes towards the norm of “cultural integrity” will depend a great deal on whether it does or doesn’t provide a justification for maintaining oppressive traditions’ (Kymlicka, 1999: 292). If cultural practices are contested within the group itself they cannot, logically, be claimed as practices required for the group’s collective good. One can see, then, that women’s agency underlies ‘development as freedom’ (Sen, 1999: 203).

Nanette Rogers, the former Alice Springs Crown Prosecutor, explained the relationship between capabilities and violence in a television interview in 2006 that precipitated the Northern Territory Emergency Response (Intervention):¹

> violence is entrenched in lots of aspects of Aboriginal society … Aboriginal people choose not to take responsibility for their own actions [and] … Aboriginal society is very punitive, so that if a report is made or a statement is made implicating an offender then that potential witness is subject to harassment, intimidation and sometimes physical assault. (Rogers, 2006, in Langton, 2006: 5)

Vesting Indigenous women and children with the capability to resist would constitute an important expression of human dignity and self-determination and respond to injury as the cause of 15 percent of Indigenous deaths (MacRae et al., 2013). The Indigenous academic, Marcia Langton, described the Intervention as ‘a metaphorical dagger, sunk deep into the heart of the powerful, wrong-headed Aboriginal male ideology’ (2011: 3). From this perspective, human rights are universal and incapable of subservience to real or imagined normative cultural practices. Universal human rights are not the imposition of neo-colonial values, but norms accepted by the international community as inherent to
human ‘being’: ‘No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope’ (United Nations, 2010).

Support for the Intervention was significant among Indigenous women concerned at the levels of social dysfunction reflected, not just in the sexual abuse of children, but also in the incidence of drug- and alcohol-related violence. Indeed, as Langton (2011) put it:

To expect that people who reel from one traumatic event to another can enjoy the much-lauded Aboriginal ‘rights to self-determination’ while their own community and the larger society repeatedly fail them is an indulgent fantasy. (Langton, 2011: 15)

Bess Price’s election to the Territory’s Legislative Assembly followed a high-profile public campaign in support of the Intervention. The conservative Country Liberal Party (CLP) Government member set out her broader view of capabilities in a speech to the Assembly in 2012:

I want to keep our women and kids alive, I want our kids educated and confident, I want to keep them out of jail, I want them to work and be paid equally for the work. I want them to be able to choose how they want to live themselves and to be able to tell us what they want in good, educated English as well as in their own languages. I don’t want them to be condemned to poverty, violence and ignorance.

Price’s parliamentary colleague, Alison Anderson, develops the argument with reference to education and capabilities:

education can set us free. It can make us independent for the first time of all the non Indigenous advisers who have tried to control our lives…free of dependence, unemployment, welfare and victimhood. …Once we are independent we will have choices. Most 25-year-olds in Sydney can work anywhere in the world… I want our 25 year olds to have the same choices. (Anderson, 2012)

A contrasting perspective is that the emergency powers that the Intervention granted to the army and other departments of state to protect the vulnerable were developed without reference to Indigenous communities and could proceed only after the suspension of the Racial Discrimination Act 1975. A review of the Intervention, in 2008, upheld objections, on the grounds that it breached human rights (O’Sullivan, 2012), meaning that, while the Intervention claimed to protect human capabilities at one level, it diminished them at another and raised, again, the colonial doubts about human equality that had justified policies as significant as the removal of Indigenous children from their families which occurred systematically across Australia from the early 1900s until the 1970s (Dodson and Wilson, 1997). Like the cultural sanctioning of violence, the removal policy showed that to ‘throw out all appeals to a determinate account of the human being, human
functioning, and human flourishing’ is ‘throwing away too much’ of humanity itself (Nussbaum, 1992: 205).

The removal policy undermined the basic capability of caring for one’s children. For those who were removed, the capability to choose one’s diet or where to live, develop familial relationships, select a marriage partner or pursue an education were restricted. The restrictions on these capabilities were deliberate, systematic and comprehensive (Dodson and Wilson, 1997). The removal of children and its rationale laid the foundation for the passive welfare and general dysfunction that characterises many contemporary Indigenous lives, yet the removal policy could not have enjoyed theoretical acceptance had a universal account of humanity prevailed.

Pearson’s (2011) contrast of the Intervention’s welfare sequestering with a Cape York procedure which privileges local, rather than state, authority provides a practical example of a general theory of capabilities as self-determination. While the Intervention sequestered all residents’ welfare payments, Cape York decisions are made only on the grounds of established irresponsibility. These decisions are made by community elders acting as a Family Responsibilities Commission. The underlying difference is one of philosophical attitudes towards the capabilities that people might enjoy: ‘the Cape York scheme encourages community members to take up their responsibilities. If people are being responsible, they are not affected by income management’ (Pearson, 2011). It could be distinguished from the Intervention, which made citizenship conditional on Indigenous people behaving in prescribed ways and highlighted agency’s importance as an expression of political freedom and as preliminary to meaningful human capabilities.

**Capabilities and political arrangements**

Essentialist or universal capabilities are intended to protect human agency, where an agent is ‘someone who acts and brings about change, and whose achievements can be judged in terms of her own values and objectives’ (Sen, 1999: 19). Political freedom is a constituent of broader human agency, and:

> exercising civil and political rights is a crucial part of good lives of individuals as social beings. Political and social participation has intrinsic value for human life and well-being. To be prevented from participation in the political life of the community is a major deprivation. (Sen, 1999: 6–7)

Indeed, policy inattentiveness to Indigenous concerns is an outcome of the difficulties that Indigenous peoples encounter in exercising the agency that is due to them as citizens of the Commonwealth. Effective exclusion matters because democratic arrangements help ‘society to form its values and priorities’ (1999: 7) and allow policies such as the ‘stolen generations’ and the ‘Intervention’ to proceed, just as exclusion allows a particular cultural integrity to be determined by a community’s stronger members, against the wishes of the weaker.
Indigenous peoples’ effective exclusion from parliamentary government, on account of their significant minority population status, is important because ‘the freedom to participate in critical evaluation and in the process of value formation is among the most crucial freedoms of social existence’ (Sen, 1999: 287). Social values and normative practices are constructed through democracy, which means that the exclusion of some people from the democratic process precludes their contribution to the values and institutions by which they are governed.

Democratic institutions ‘cannot be viewed as mechanical devices for development’ (Sen, 1999: 158) because deliberation’s role in the shaping of public opinion ‘can be central to the acknowledgement of injustice’ (p. 287), meaning that ‘one of the strongest arguments in favor of political freedom lies precisely in the opportunity it gives citizens to discuss and debate – and participate in the selection of – values and the choice of priorities’ (p. 31). Political values and context influence individual conceptions of justice and the capabilities that one will prioritise in pursuing the freedom to live a life that one values. The claim to inclusive democratic arrangements does not:

rest on just one particular merit, but at least three: its contribution to freedom, its instrumental contribution to accountable government and its practical contribution to the development of values and collective understanding of the needs and aspirations that political arrangements ought to serve. (Sen, 1999: 31)

Democracy’s contribution to human capabilities, for Indigenous peoples, depends on a differentiated account of citizenship and its ensuing rights. The construction of citizenship matters because the:

unequal distribution of health-damaging experiences is not in any sense a ‘natural’ phenomenon but it is the result of a toxic combination of poor social policies and programs, unfair economic arrangements, and bad politics. (Marmot et al., 2008: 1661)

Differentiated citizenship allows Indigenous peoples to enjoy the full rights and privileges arising from membership of the national polity, but with reference to preferred cultural norms, and in ways that, as far as possible, foster the restoration of Indigenous political authority over their own affairs. Secondly, it admits citizenship of one’s Indigenous nation as preliminary to the enjoyment of land rights for economic and cultural purposes and access to health, educational and other public services in a culturally cognisant fashion. The form that citizenship takes is important because it is not so much peoples’ choices that are morally significant, but the range of realistically available choices, especially those of greatest personal value. The capacity to exercise self-responsibility is the underlying rationale for crafting a liberal account of the ways in which societies might admit Indigenous cultures and aspirations, for people’s enjoyment of lives that they have reason to value. It is on these points that differentiated citizenship provides scope for human
capabilities in ways explicitly denied by the non-essentialist positions set out earlier in this article.

Differentiated citizenship is one of the ways in which Indigenous political voice can be expressed. In health, Indigenous peoples most obviously explore differentiated citizenship’s sub-national possibilities through professional bodies such as the Australian Indigenous Doctors’ Association, Congress of Aboriginal and Torres Strait Islander Nurses, the Indigenous Dentists’ Association and regional bodies such as the Cape York Institute, National Aboriginal Community Controlled Health Organisations and the national representative entity, the National Congress of Australia’s First Peoples, established in 2010.

It is too early to assess the Congress’ political efficacy, however, its reconfiguration of the ways in which people think about representation is potentially transformative. Its capabilities enhancing potential for Indigenous women are evident in their successful lobbying to have the Congress constituted with the intention of achieving ‘substantive equality’ in the representation of men and women (National Congress of Australia’s First Peoples, 2010: 12) for the ‘protection of liberties and freedoms’ (Sen, 1999: 6). The presumption that restoring capabilities requires genuinely and substantively inclusive democratic arrangements is clear as the structure was intended to challenge deeply harmful, social values and practices. Congress’ representative model transcends the equation of democracy with simple majority rule and, like Indigenous professional and community entities, it contributes to indigenous civil society’s efforts to ‘de-centre the state from discussions of Indigenous political, social, economic and cultural mobilisation’ (Corntassel, 2008: 124). The point is to assert Indigenous political voice because as Sherwood and Edwards’ (2006) article title asserts: ‘Decolonisation: A critical step for improving Aboriginal health’. Sherwood and Edwards’ purpose is to advance ‘the decolonising of Aboriginal health so that the experts in Aboriginal health, namely Aboriginal people, can voice and action’ policy measures responsive to self-identified needs and expectations (p. 178), while for National Congress (2010): ‘A philosophy of partnership, shared ownership and Aboriginal and Torres Strait Islander leadership needs to operate at levels of health planning and delivery’ (2013: 4). These arguments reflect a consistent Indigenous view that removing the obstacles to lives of value means that people must be able to claim substantive political space to work out what it is, exactly, that they want from the political system as ‘our opportunities and prospects depend crucially on what institutions exist and how they function’ (Sen, 1999: 142). In particular, political empowerment, inclusion and voice are important determinants of health (Marmot et al., 2008).

**Capabilities, markets and Pearson’s ‘health enabling framework’**

As well as democratic institutional arrangements Pearson (2011) stresses the importance of Indigenous access to the ‘real economy’ as an essential precursor to human capabilities.
Sen (1999) places markets among the institutions that are preliminary to freedom. Poor social policies and programs and unfair economic arrangements create the passive welfare that undermines capabilities, which are undermined by the absence, or by limited access, to free and functioning markets for labour and health services, especially. Entrance to the ‘real economy’ is similarly compromised by factors such as discrimination, poor education and welfare dependence grounded in Indigenous peoples’ conscious historic exclusion from education for the primary labour market (Attwood, 2005).

Inadequate access to labour markets limits Indigenous peoples’ exploring of what Sen (1999) describes as a relationship between markets and liberty. ‘The loss of freedom [to participate in the labour market] and the absence of employment choice and the tyrannical form of work can itself be a major deprivation’ (p. 113). Constraints on the freedom to access traditional natural resources also stifle market functioning, not just in the conventional economic sense, but also in compromising the development of the alternative markets that Altman (2001) proposes to ‘include the customary economy’ (p. v).

Market failure in the distribution of nutritious foods also compromises good health (Browne et al., 2009). For example, in the three Northern Territory communities that Brimblecombe et al. (2013) studied, food consumption was distinguished by ‘very poor dietary quality’ to reflect no improvement from the earliest studies of the topic almost 30 years earlier. Policy proposals such as requiring food stores to provide for nutritional requirements or sequestering welfare payments to control what people can purchase does not address the obstacles of cost. Indeed, relationships between food insecurity and income are significant determinants of capability as a typical high-income household needs to spend around 10% of its income on food to ensure nutritious purchases, whereas a typical low income household must spend in the order of 30% (Ward et al., 2012).

Fair and functioning markets are essential to differentiated citizenship’s normative utility. They are preliminary to the Cape York Institute’s basic philosophy that people ought to have greater agency than governments, where agency requires an understanding of ‘how progress works in a more or less liberal capitalist world’ (Pearson, 2011). Agency means that: ‘You can’t contract leadership out to external NGOs and government employees. There must be ownership and responsibility in Aboriginal hands’ (Pearson, 2011:), in ways that non-essentialist accounts of human capabilities have traditionally denied.

For Pearson (2011), the capabilities approach supposes a transition ‘from welfare state to opportunity society’ where ‘guaranteed social opportunity from the government plus personal responsibility from the individual equals solutions to poverty’. Too much government service delivery, especially services developed without reference to their impact on capabilities, can be decidedly harmful as policy makers fail to ask ‘whether they displace responsibilities that should be properly undertaken by individuals, families or communities’ (Pearson, 2011).
Pearson’s Sir Robert Menzies Lecture in 2011 showed unequivocally the Institute’s understanding of the capabilities approach through its title: ‘There is nothing the government can do for you that you are unwilling to do for yourself’. The question for self-determination then becomes one of which capabilities are important to the realisation of particular rights? Which of the rights that Indigenous peoples have established at international law are to be prioritised and which political, collective, familial and personal capabilities are required for them to develop from the abstract to the tangible?

Pearson’s (2007) response includes the proposition that health policy’s particular aims should include ‘promoting individual responsibility through better health norms’ – an overarching objective that ought to be incorporated into a public health model containing many of self-determination’s attributes:

- Make space for public health campaigns targeting high-risk behaviours and absent health norms in any given community.
- Establish services that help re-establish health norms in the family and extended family through:
  - Fostering of good doctor–client relations,
  - Providing family based counselling and support.
- Can establish links with schools, shops community organisations and reform projects to help develop appropriate expectations.
- Set up regular trip mechanisms around environmental health standards, good dietary and nutrition behaviours and occupational health and safety concerns.

These goals are complemented by a health enabling framework to recognise the relationship between capabilities and improved health outcomes. These ‘enabling structures’ would aim to:

- Improve recruitment and retention of health professionals including Aboriginal and Torres Strait Islander people.
- Provide incentives to attract appropriate full time permanent personnel who can gain community trust.
- Ensure increased community presence and responsiveness of primary health care services in town and outstations, as a hook for individuals to be more proactive about their health.
- Enable progressively sophisticated information transfer for families and individuals through individual and group consultations and training sessions (e.g. nutrition tours through local shop to pick healthy foods).
- Engage in ongoing training and up-skilling of community leaders; initiating youth health leaders’ program.
- Engage in policy advocacy as structural barriers to improved health behaviours are prohibitive (e.g. insufficient funding for primary care or inadequate water or power infrastructure).
- Develop programmes such as grog strategies with community involvement.
The Cape York Institute’s ‘enabling structures’ also support the policy approaches that Al-Yaman and Higgins’ (2011) have found effective in their study of ‘what works in Indigenous health’.

- Community involvement and engagement. For example, key success factors in Indigenous community-based alcohol and substance-abuse programs were strong leadership, strong community-member engagement, appropriate infrastructure and use of a paid workforce to ensure long-term sustainability.
- Adequate resourcing and planned and comprehensive interventions. For example, a systematic approach with appropriate funding arrests the escalating epidemic of end-stage kidney failure, reduces suffering for Indigenous people and saves resources. A strong sense of community ownership and control is a key element in overcoming Indigenous disadvantage.
- Respect for language and culture. For example, capacity building of Indigenous families and respect for culture and different learning style were considered to be important for engaging Indigenous families in school-readiness programs.
- Working together through partnerships, networks and shared leadership. For example, an Aboriginal-driven program increased knowledge about nutrition, exercise, obesity and chronic diseases, including diabetes. The educational component, participation of local Indigenous people in the program and committed partnerships with the organisations involved were important to the program’s success.
- Development of social capital. For example the Communities for Children initiative, under the Australian Government’s former strategy (The Stronger Families and Communities Strategy 2004–2009) highlighted the importance of a collaborative approach to maternal and child health, child-friendly communities, early learning and care, supporting families and parents, and working together in partnership.
- Recognising underlying social determinants. For example, data from the Longitudinal Study of Australian Children demonstrated that financial disadvantage was one factor among other variables that may affect school readiness and progress for young children.
- Commitment to doing projects with, not for, Indigenous people. For example, the evaluation of the NSW Count Me In Too Indigenous numeracy program found that contextual learning was successful and critical, professional development for teachers was essential, effective relationships were vital and Aboriginal community buy-in was also essential for ongoing success.
- Creative collaboration that builds bridges between public agencies and the community and coordination between communities, non-government and government to prevent duplication of effort. For example, a collaborative project between health and education workers at a primary public school in South Australia (The Wadu Wellness project), in which a number of children were screened, has resulted in follow-up and support for children for hearing problems and dental treatment, and social and emotional support.
Understanding that issues are complex and contextual. For example, frequent house moves, neighbourhood conflict, functionality of housing amenities and high rental costs were found to have an impact on children’s schooling (Al-Yaman and Higgins, 2011: 2).

Al-Yaman and Higgins’ (2011) found that clinical interventions consistent with these principles contributed to:

- small but measurable reductions in modifiable risk factors for chronic disease, such as weight and blood pressure, among Indigenous people;
- systematic treatment of Indigenous people with chronic disease was found to reduce death rates;
- a Northern Territory programme to reduce kidney disease risk factors was found to be cost effective;
- a community-based antenatal programme was found to increase the number of women’s antenatal visits and reduce the number of pre-term births and perinatal mortality schooling (p. 21).

Health policy is not simply concerned with the delivery of services to passively receptive patients, but with empowering people with the capabilities to care for themselves and make unconstrained choices commensurate with good health (Pearson, 2007). The health-enabling framework is important because health is an essential constituent of human freedom. Health policy is not, then, simply a matter of attending to the clinical requirements for the treatment of illness because overall population health is a measure of ‘fairness’ (Marmot et al., 2010), which makes health and capabilities important considerations in moral philosophy, as well as in practical politics.

Impairments of normal species functioning reduce the range of opportunity opened to the individual in which he may construct his ‘plan of life’ or conception of the good. Life plans for which we are otherwise suited are rendered unreasonable by impairments of normal functioning. Consequently, if persons have a fundamental interest in preserving the opportunity to revise their conceptions of the good through time, then they will have a pressing interest in maintaining normal species functioning by establishing institutions, such as health-care systems that do just that. (Daniels, 1990: 280–281)

Meeting these conditions of justice does not occur simply by providing all citizens with access to a health system; especially one based on the normative values and preferences of another cultural group. The health system is an input into human well-being, but its efficacy for all not just some of those who use it is the output that determines its contribution to human capabilities. It is also the output that determines the health system’s strength as an instrument of self-determination and reconciliation. It is reasonable, then, for public policy’s moral values and supporting
administrative arrangements to ensure that Indigenous aspirations are included in: ‘The normal opportunity range for a given society [which] is the array of life plans reasonable persons in it are likely to construct for themselves’. The proposition that ‘[i]f an individual’s fair share of the normal range is the array of life plans he may reasonably choose, given his talents and skills, then disease and disability shrinks his share from what is fair (Daniels, 1990: 281), gives Indigenous health policy and its determinants a particular moral urgency.

Conclusion

A general theory of capabilities as self-determination is preliminary to a just Indigenous health policy framework. The theory is that the political right to self-determination, affirmed at international law, requires certain essentialist capabilities to be operationalised, so that people have political agency based on a distribution of resources and authority concerned with equal opportunities to make choices, rather than just an egalitarian concern for equality of outcomes. The presumption is that outcomes will be just if they are the result of people being able, in practical terms, to make choices to live lives that they have reason to value. The political question then becomes one of what opportunities for agency the state provides, not simply one of what material resources it owes Indigenous peoples. Such a theory proceeds from the view that human rights alone provide an insufficient political basis for Indigenous peoples to claim the capacity to make decisions consistent with improved health.

Political opportunities are significant determinants of health (Marmot et al., 2008) which means that one must evaluate political arrangements for their contributions to freedom (Sen, 1999) and, perhaps, imagine a differentiated or two-tiered exercise of citizenship as an essential structural arrangement for the maximisation of Indigenous capabilities and to secure the Aristotelian ‘human flourishing’ from which Nussbaum’s contribution to the capabilities approach proceeds.

The capabilities approach proposes an essentialist and determinate account of humanity as among self-determination’s preliminary conditions. An essentialist account of the human person does not preclude cultural differences because the capabilities approach to development necessarily requires that it is persons who decide for themselves what it is that they have reason to value. Capabilities are also concerned with political agency and the sub-national political opportunities that differentiated citizenship provides, as a way of countering the poor public policy and unfair economic arrangements that diminish self-determining opportunities for Indigenous peoples, whose genuine freedoms require release from passive welfare and access to fair and functioning markets, especially labour markets, markets for health services and for the purchase of nutritious foods, all of which are preliminary to people’s capabilities to make choices consistent with good health. It is for these reasons that Pearson (2007) develops Nussbaum’s capabilities into a policy framework based on ‘enabling’ systems, structures and people to work to enhance and exercise certain capabilities as fundamental marks of human being.
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Note
1. The Northern Territory Emergency Response, or ‘Intervention’, was introduced by the Commonwealth in 2007. It used emergency powers to address widespread child sexual abuse in the Territory’s Indigenous communities, after the Territory Government had failed to respond efficaciously to the problem.

References


Price B (2012) Address to the Northern Territory Legislative Assembly, 23 October 2012. Available at: http://anthroyogini.wordpress.com/2013/05/