

MEASURING JUSTICE

Primary Goods and Capabilities

EDITED BY

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1997. *On Economic Inequality*. Oxford University Press.
 2000. *Development as Freedom*. New York: Anchor Books.
 Temkin, L. S. 1993. *Inequality*. Oxford University Press.
 van Parijs, P. 1995. *Real Freedom for All*. New York: Oxford University Press.
 Wilkinson, R. 1996. *Unhealthy Societies: The Afflictions of Inequality*. London and New York: Routledge.

CHAPTER 3

*Equal opportunity, unequal capability*¹

Erin Kelly

INTRODUCTION

The capabilities approach is characterized by a crucial ambiguity. If the point is that a just distribution of goods must be sensitive to differences in individuals' needs, the debate between a "primary goods" approach and a "capabilities" approach seems overblown. John Rawls prescribes adjustments in the distribution of primary goods for special needs, such as medical problems or learning disabilities (Rawls 1999b, pp. 174–76; 2001, pp. 172–76). In that respect, he is sensitive to capabilities. Furthermore, both a capabilities approach and a primary goods approach can recognize limits to our obligations to respond to special needs.

If the point of the capabilities approach is that just institutions must provide each citizen equally with certain capabilities and maintain them over time, there may be interesting differences with a primary goods approach. That said, I will argue that these differences do not favor the capabilities approach.

I PRIMARY GOODS VERSUS FUNCTIONINGS

There are several advantages to focusing the claims of distributive justice on primary goods – basic rights, liberties, opportunities, and resources – rather than the welfare or "functionings" that individuals achieve by utilizing these goods.² First of all, we may avoid the intractable problem of how to compare welfare levels interpersonally. Some egalitarians argue that persons are entitled to enjoy equal levels of welfare and should not be disadvantaged by factors, such as a tendency to depression or even a proclivity for expensive tastes, for which they are not to blame.³ Just social arrangements would provide all persons with the goods they would need to enjoy equal levels of welfare. This requires reckoning with significant variation across persons in the conversion of resources into welfare.

Ranking welfare levels across persons is especially difficult in view of the many different and perhaps incomparable ends that people pursue. Not only is it difficult to assess the significance for a person's overall welfare of the various ends that person pursues. In addition, one would have to compare the relative value to different people of the pursuit of their very different ends. It is not clear how a common standard of measurement could be constructed. The notion of primary goods, by contrast, provides a public and readily quantifiable measure for interpersonal comparisons. All persons need certain basic rights, liberties, and material resources and have reason to prefer greater shares. The metric of primary goods enables us to avoid comprehensive assessments.

A second and related point is that a primary goods approach focuses on those goods that citizens can agree are important. We need not agree on how to compare and score the satisfaction of different preferences or the realization of various conceptions of the good. Instead, the approach focuses on the goods needed to pursue any among a reasonable range of conceptions of the good. This, unlike the relative importance of those conceptions themselves, more plausibly can be the subject of political agreement. Instead of depending on contested conceptions of the good, the metric of primary goods appeals to shared political values.

Finally, the notion of primary goods marks out certain arenas of functioning that take precedence from the perspective of justice. According to Rawls, justice must underwrite a person's capacities to affiliate rationally with a conception of the good and to be guided by a sense of justice.⁴ Persons are not entitled to claim the resources they need to pursue whatever aims they most prefer, much less the resources they would need to dominate other persons or otherwise to pursue injustice. Instead, they are responsible for revising their ends to fit their fair share of resources and for ensuring that their aspirations are compatible with the reasonable claims of other people. Theories committed to equalizing welfare across persons without these qualifications could be held hostage to the expensive tastes, if not the unjust motivations, of some persons. The metric of primary goods plausibly limits the range of aspirations that give rise to persons' legitimate claims on one another.

Some advocates of a capabilities approach are attracted to the aims of avoiding comprehensive assessments, appealing to shared political values, and limiting the basis of legitimate claims.⁵ Elizabeth Anderson and Martha Nussbaum, for example, share the view that the concerns of justice must be justified by shared political values and will direct us only to certain capabilities, namely, those that are essential to the functioning

of free and equal citizens. They also hold, following Amartya Sen, that retreating from a welfare metric fits better with the value of individual freedom (Sen 1992, pp. 39–42, 49). Focusing on capabilities, rather than functionings, gives persons relevant entitlements. But should some individuals choose not to utilize their capabilities, they are free to do so and hence to forgo the related functionings.

Still, these capability theorists charge that a primary goods approach is too detached from the problem of welfare measurement. They argue that in the relevant domains of capability, Rawls and others neglect important differences between individuals. Persons vary in their capacity to function as citizens. The claims of the disabled, for example, or of women during pregnancy, are not satisfied by an equal share of primary goods. More sensitivity is needed to what individuals can accomplish with a share of primary goods.

Relevant differences in the capabilities of individuals to convert primary goods into functionings may fall inside or outside what we might call, somewhat artificially, the "normal" range. Even with extra resources, some persons may never function well as cooperating members of a political and economic scheme. They may be too impaired, mentally or physically. Other persons may fall below the threshold of normal functioning only temporarily, or may fall below permanently, but with extra resources would be able fully to cooperate with others in a socially productive scheme. Each case raises different issues and so I will discuss them separately.

2 CAPABILITY AND DISABILITY

Developing and deploying the notion of primary goods requires an idealizing assumption that models persons as motivated and able to advance their own aims in cooperation with others. Primary goods represent the all-purpose means persons need to accomplish this. The criteria of full participation need not be stringent. We may assume that they are satisfied by anyone who endorses a set of values to live by and respects fair terms of social cooperation. They are satisfied even by someone whose capacities to uphold justice and rationally to pursue her professed aims are limited. Variations in the capacities of persons for rationality and fair dealings do not threaten the equal standing of persons. Rawls writes that "while individuals presumably have varying capacities for a sense of justice, this fact is not a reason for depriving those with a lesser capacity of the full protection of justice. ... [P]rovided the minimum for moral personality is satisfied, a person is owed all the guarantees of justice" (1999b, p. 443).

Nevertheless, there are some persons who are incapable of developing, even minimally, a sense of justice or a rational life plan. Idealizing to normal cases threatens to ignore their plight. This may seem to generate difficulties for a primary goods approach. In fact, it does complicate the approach. Persons who fall below the normal range of functioning are not cooperating members of society. Their claims, therefore, fall outside the domain of principles of justice, which regulate institutional schemes of social cooperation. This conception of justice as a virtue of institutions that regulate the distribution of goods among persons who cooperate to produce those goods might seem overly narrow. However, the domain of justice need not represent the limits of our obligations to other persons. The moral standing of persons who are unable to engage productively with others in society can be addressed by a different source of ethical obligation, namely, our duties of assistance to persons outside of the cooperative scheme. In *A Theory of Justice*, Rawls acknowledges a set of “natural duties” that hold irrespective of institutional relationships, although he defers the question of how to work out their content (1999b, pp. 98–101, 297–99, 446). In *The Law of Peoples*, he briefly discusses the nature of such duties. There he claims that duties of assistance stem from a basic humanitarian obligation to uphold a decent minimum for all persons, an obligation that applies across borders and outside of cooperative relations (1999a, p. 106). Similar claims are made by other philosophers who seek to clarify and to promote the notion of human rights.⁶

The basic obligations generated by human rights are plausibly thought to be urgent from a moral perspective, placing moral constraints on how institutions may distribute the goods produced through social cooperation.⁷ These constraints, however, are likely to be compelling only when the threshold of their satisfaction is lower than some requirements of justice. For example, the claims of the disabled would not be regulated by the difference principle. Otherwise, there would be no room for obligations of reciprocity to arise. Persons could not acquire reciprocal obligations by virtue of mutually participating in a cooperative scheme, since they would already be strongly obligated to one another qua human beings. Yet obligations that arise via cooperative activity are significant. They represent the value persons place on each other’s contributions, and they constitute a source of self-esteem, mutual respect, and motivation to contribute.

Capabilities theorists might reject proposals to segregate the claims of the severely disabled. Consequently, these theorists would need to rethink the subject of justice. Instead of understanding justice as a virtue

of cooperative enterprises, they might understand justice as a matter of maximizing the welfare of those who are least well off, or of minimizing suffering, or of bringing those who are least well off up to a sufficient minimum. Justice would involve allocating goods in order to reach a particular result or pattern rather than being conceived as a virtue of relations that persons stand in when they cooperate with one another. Justice in a relational or “procedural” sense requires that background institutions conform to public rules that persons can rely on to understand the gains they could legitimately expect were they to choose to engage in the cooperative scheme in one way or another. The distribution of goods, then, depends on what, how much, and by what means persons decide to produce (Rawls 1999b, pp. 73–78). This differs sharply from allocative justice, which does not assign fundamental significance to the cooperative social scheme by which goods are produced (Rawls 2001, pp. 50–52). An allocative conception of justice provides no basis for maintaining that persons acquire claims – legitimate expectations – to a share of goods through their (mutually regulated) productive activity. Instead, persons’ claims derive from an overall distributive pattern. Principles defining such patterns are what Robert Nozick calls “non-historical” or “end-result” principles (1974, pp. 153–60).

An allocative conception of justice might well be defended, but it would have to be argued for without relying on the values of reciprocity and mutuality that are central to a Rawlsian procedural conception of justice. Indeed, it would have to counter the ethical appeal of the claims apparently generated by participation in cooperative relations. The value of reciprocity helps to show why persons who contribute to a cooperative scheme should be compensated for their contribution. The contributions persons make to a scheme of mutual advantage put them in a position to demand that the cooperative scheme be organized for reciprocal benefit. This is a powerful idea with broad appeal. Fair terms apply apart from a sense of common cultural, national, religious, or ethnic identity, and they do not presuppose strong altruistic tendencies.⁸

Allocative theories, by contrast, would seem to draw upon a notion of impartiality according to which participation is not a condition for equitable claims to the benefits of social cooperation, claims that may extend well beyond a robust minimum. Such theories require of persons a strong commitment to promoting the welfare of other people. This requirement makes these theories difficult to justify. Strongly impartial principles threaten to fail the test of stability: whether a just scheme will be able to gain the allegiance of those bound by it.⁹ It is highly demanding

to require persons to share the fruits of their cooperative efforts equally with those who do not participate.¹⁰ Even with serious social pressure, it might not be psychologically realistic to expect people to accept this conception of morality. Indeed, we might wonder how to understand the source of this strongly impartial demand, particularly when the demand reaches beyond achieving a highly satisfactory threshold of a decent life for everybody.

Partialist moral theories, on the other hand, would make our moral obligations contingent on a sense of solidarity, which is something persons might fail to feel for one another even when they do participate mutually in a cooperative scheme. Some participants might be treated as outsiders because of their race, religion, ethnicity, or other features of their identity. The value of reciprocity helps to show why this would be unjust. I submit that the considerable appeal of a reciprocity-centered approach shifts the burden of proof onto the impartialist and the partialist alternatives to it.

If those who are drawn to a capabilities approach do not reject a reciprocity-centered account of social justice, but are instead concerned to articulate a basic threshold of capabilities to which all persons are entitled, it is hard to see how our obligation to bring all persons to this threshold differs from a duty of assistance.

3 VARIATIONS IN "NORMAL" ABILITY

A capabilities approach poses the following challenge. How do the variables that affect what persons are able to do with a given share of primary goods bear on the question whether principles of justice are satisfied by an institutional scheme? Specifically, how do we determine when persons' equal entitlements to rights, liberties, and opportunities have been satisfied, given the range of needs and abilities across persons that should be counted as normal?

Persons who are in wheelchairs or who have chronic diseases, for example, may be capable of participating fully in a social scheme of cooperation, provided that they are given additional resources. This gives us reasons to classify the moderately disabled among the normal. But how far do the claims of the disabled reach? Considerably more resources might be required to enable persons with significant impairments to take advantage of the same range of opportunities as those who lack these impairments, if this is even possible. At the same time, some people are capable of achieving more than the average person with fewer resources. Perhaps they have smaller bodies and need less food, or they learn faster with less

instruction, or they seldom if ever need treatment by a doctor. We need to know how finely an individual's share of resources should be calibrated to that individual's ability to translate those resources into functionings. And in particular we need to know whether the distribution of resources should be calibrated individually with the aim of achieving *equal capabilities* across persons.

A primary goods approach is not in tension with a commitment to ensuring that all persons attain certain capabilities. As we have seen, Rawls focuses on the importance of our capacities to develop a sense of justice and a rational life plan. The question is how to work out the relevant threshold of adequacy. Rawls argues that adequate development of these capacities requires the basic rights and liberties and, hence, that it would not be rational to relinquish any of these rights and liberties in order to achieve greater wealth or status. The original position – Rawls's favored description of a fair situation for choosing principles of justice – places the parties to the social contract symmetrically behind a veil of ignorance. They must guarantee that once the veil of ignorance is lifted, they are assured of the rights and liberties they would need, whatever conception of the good they turn out to hold. Hence the parties would opt for principles guaranteeing equal basic rights and liberties for all.

Equal entitlements to basic rights and liberties, however, do not entail equal capabilities for their meaningful exercise. How much the exercise of a given liberty or opportunity enables a person to do will depend on that person's interests, ambitions, skills, and values. It also depends on a person's access to material resources. For Rawls, the distribution of wealth and income, including the rewards society attaches to various talents and pursuits, is regulated by the difference principle. The difference principle permits inequalities only when they are to the greatest benefit of the least advantaged members of society. Thus the worth of the basic liberties is regulated by the difference principle, rather than by a commitment to equal capabilities. Rawls writes, "Taking the two principles together, the basic structure is to be arranged to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all. This defines the end of social justice" (1999b, p. 179).

Keeping this end in mind, an important task at the "legislative stage" – once more is known about the aims and circumstances of the parties – is to determine the bearing that various policies would have on the worth to persons of the rights, liberties, and opportunities to which they are entitled (Rawls 1999b, pp. 171–76). Health care and disability policies would be designed so that persons whose health or disability issues lead them to

require greater resources in order to take advantage of their rights, liberties, and opportunities, would get greater shares. The point is that permissible inequalities in capabilities – as these are influenced by social arrangements – must be acceptable to those who are least well off. Inequality in itself is not objectionable and there is no pressure to “level down.”

The difference principle is, of course, demanding and controversial, and there are serious objections to it. Still, its domain is an important one for theories of justice to cover. A plausible theory of justice needs an account of how the worth of liberties and opportunities should be regulated. Considerations in favor of the difference principle put pressure on the notion of equal capabilities to show why equality is superior to other distributive principles, especially from the perspective of those persons who are least well off. An equal capabilities approach threatens to fetishize equality. Even a capabilities approach aimed at a threshold will need a compelling rationale for the chosen threshold – a rationale that does not fail to answer questions about the fair regulation of inequalities above the threshold.

Prospects for achieving equal capabilities are threatened by the plurality of basic rights and liberties distributed by just institutions. These rights and liberties are bound to come into conflict with one another. For example, attaining equal capabilities in the domain of the political liberties may be in tension with liberty of conscience. Religious practices and traditions might restrict the worth of the political liberties to female practitioners of a religion by discouraging them from exercising those liberties. Although such women, as citizens, formally retain their full political and civil rights, the worth of those rights is decreased by the nature of their (voluntary) religious membership. Should the state interfere, however, with the aim of reforming the religious doctrines or practices, this would threaten liberty of conscience. Of course, some moral constraints on religious practices are necessary. Religious authorities cannot forcibly prevent women from voting or appropriate their property. Nevertheless, when moral constraints on religious practice threaten some religious practices more than others, persons whose religious practices are restricted may feel that the worth to them of freedom of conscience has been compromised.

A Rawlsian response to potential conflicts among the basic liberties is to define a central range of application for each liberty and to guarantee reasonable access to capabilities defined by this central range (Rawls 1999b, p. 178).¹¹ The central range of application is specified by what is needed adequately to develop the basic capabilities of persons as free, equal, and

cooperating members of society, as I have discussed. Reasonable access is determined by balancing the scope of a liberty against the importance of other liberties for persons so understood. Unequal capabilities are an inevitable product of this balancing act.¹²

According to Rawls, special restrictions on the source of unequal capabilities are called for when it comes to the political liberties (1993, pp. 324–31, 356–63). The value of speech depends importantly on a person's access to resources, including the media and the Internet, for promoting her ideas. A similar point holds with respect to the rights of democratic participation. Persons with unequal access to material resources and unequal levels of education may have significantly different capabilities to influence public opinion, to run a political campaign, and to gain the support of voters. The worth of the political liberties is especially vulnerable to the influence of wealth. This matters because the outcome of competition for political influence determines who has control over the distribution of goods, opportunities, and entitlements that affect the basic needs and interests of all members. So there are strong reasons carefully to restrict permissible sources of unequal capabilities when it comes to the political liberties. Still, the fair value of the political liberties is compatible with unequal capabilities. Rawls defines the fair value of the political liberties as follows: “The fair value of the political liberties ensures that citizens similarly gifted and motivated have roughly an equal chance of influencing the government's policy and of attaining positions of authority irrespective of their economic and social class” (2001, p. 46). Persons who are more talented and motivated will have greater capabilities to influence politics. Minimizing the influence of social class does not produce equal capabilities.

4 MOTIVATION AND TALENT: EQUAL CAPABILITIES?

A principle protecting the fair value of the political liberties and, more broadly, a principle ensuring fair equality of opportunity face the following problem.¹³ It may be difficult, even impossible, to appraise a person's abilities apart from the influence of social position and class. There may be no viable notion of “native endowments.” Rawls himself writes that, “the internal life and culture of the family influence, perhaps as much as anything else, a child's motivation and his capacity to gain from education ...” (1999b, p. 265). The family, in turn, is influenced by the dynamics of social stratification. Thus it may be difficult or impossible to judge whether fair equality of opportunity has been achieved.

An equal capabilities approach would not face this difficulty. Nussbaum makes strong egalitarian claims regarding capabilities for political speech and the other political liberties. She writes, "It appears that all the political, religious, and civil liberties can be *adequately* secured only if they are *equally* secured" (2006, pp. 292–93, also 179). Equal security means equal capability. Motivation and talent are socially conditioned and these conditions must be understood and addressed. But from an ethical perspective there is no real pressure to distinguish between social influences and natural abilities. Persons who are naturally disadvantaged may also be entitled to greater resources.

There are two major problems with the equal capabilities line here. First, when we do have grounds for judging that some individuals are naturally more or less gifted, a capabilities approach might suggest that we should opt for a kind of luck egalitarian view regarding those capabilities that Nussbaum classifies as "central capabilities." Luck egalitarians hold that "we should compensate for disadvantage beyond a person's control" (Cohen 1989, p. 922). Those who are less talented (even if they are not "disabled") would thus be entitled to more resources for exercising their political liberties. Their duller political sensibilities, their inability to empathize with people's political concerns, their poor communication skills, may give them claims to additional education, advising, or coaching.¹⁴ And it would seem that measures should be taken to restrict the political influence of those who have natural gifts for public speaking, good judgment, a drive to promote justice, and so on. Needless to say, this would hardly seem to lead to desirable outcomes, and I assume Nussbaum would not endorse them. The political process would not be designed to highlight any basis for choosing among candidates for political office.

The other problem stems from the difficulties involved in grappling with the social conditions that affect the development of talent and motivation. These conditions include the influence of religion. Nussbaum affirms this. She connects religion with certain central capabilities: "religion is one of the ways in which people use thought and imagination in pursuit of an understanding of what is most important in life; it is also among the ways in which people pursue community and affiliation" (2000, p. 206). Nussbaum is especially interested in the bearing of religion on people's capabilities for practical reason and affiliation, and she maintains that these capabilities importantly influence the worth of the political and civil liberties. Accordingly, she is sensitive to any factors that might inhibit the development of equal capabilities in these arenas.

This leads Nussbaum to discuss the question of sex discrimination in religion at some length. She considers whether a capabilities approach requires only that a basic minimum threshold of these capabilities be ensured for all persons or whether equality in the central capabilities is mandated. "In other words," she asks, "does sex discrimination with respect to the central capabilities trigger a claim of compelling state interest, or only discrimination that pushes women into a situation of destitution or extreme capability failure?" (2000, p. 205). Her answer is that discriminatory practices must be rooted out, even when they affect the central capabilities only above a robust threshold. When religious practices prescribe gender roles, she argues, they are unacceptable. She writes, "The very singling out of women for differential treatment in a central area of human functioning is itself unacceptable, and gives rise to a compelling state interest in eradicating that discrimination, even if women are not by this means pushed into a basement level of functioning ..." (2000, pp. 205–06). Nussbaum criticizes gendered inheritance laws and gendered property laws. She maintains that gender inequalities in these spheres are objectionable, regardless of how well off the women involved are: "even in cases where an individual's control of property would in any case be above the threshold, discrimination on the basis of sex with respect to a basic capability is itself a case of capability failure" (2000, p. 219).

Nussbaum's deep aversion to gendered religious practices stems from the connection she sees between the central capabilities these practices threaten and the notion of human dignity. She argues that human dignity is intimately connected with the human powers of practical reason and sociability. Explaining her capabilities approach to social justice, she writes, "The core idea is that of the human being as a dignified free being who shapes his or her own life in cooperation and reciprocity with others" (2000, p. 72). This means, she claims, that the capabilities for practical reason and affiliation have special status vis-à-vis human dignity (2000, p. 82). Because gender inequality threatens these capabilities, it undermines the social bases of self-respect. It also affects the worth of the political and civil liberties, which depend on and help to develop people's capabilities for practical reason and affiliation.

There is some ambiguity in Nussbaum's writing about whether human dignity is acquired through exercising the capabilities for practical reason and affiliation with other persons, or whether it is intrinsic and inviolable – something in virtue of which persons are entitled to respectful treatment, including the provision of these capabilities. If the latter, provision

for an adequate threshold might suffice. Nussbaum's objections to status inequalities suggest otherwise. She argues that unequal treatment hindering the development of equal capabilities for practical reason and affiliation should be prohibited because it is incompatible with equal human dignity. A theory of justice must aim to secure equal human dignity. She writes, "[E]quality is important at the very base of the theory; for it is not just human dignity that must be respected, it is equal human dignity ... Some capabilities must be secured to citizens on a basis of equality, or equal dignity has not been respected. Others, however, do not seem to have this intrinsic relationship; with these, the capabilities approach supplies a threshold of adequacy" (2006, p. 295). Nussbaum maintains that when it comes to practical reason and affiliation, equal human dignity is undermined by unequal capability.

It is odd to think that persons who are less engaged in civil society, or persons whose capabilities for practical reasoning are less developed, are thereby less dignified. Rawls's difference principle is designed to make the point that the distribution of talent and ability could be organized for collective benefit, consistent with a commitment to the moral equality of all persons. Overcoming discrimination and unfair treatment does not require ensuring equal capabilities. As we have seen, it requires only that inequalities be acceptable to those who are least well off, in this case women who are committed to the values of free association, liberty of conscience, the free exercise of religion, and so on.

History shows that persons may resist humiliation and discrimination with great dignity. When oppressed persons face their oppressors and declare their own worth, this stance can be a tool for social change. It may bring shame upon those who act unjustly, mobilize others who suffer, and highlight virtues such as courage and a sense of justice. These virtues and the human dignity they express may persist and gather strength under conditions of injustice and mistreatment. While Nussbaum would not dispute this, the connection she draws between human dignity and equal capabilities prevents her from affirming it.

Many of the examples Nussbaum explores involve gender bias in the law.¹⁵ Of course, eradicating legally sanctioned gender bias would not ensure equal capabilities. If equal capabilities are the goal, then religious practices that affect the worth of property rights, or inheritance claims, would be unacceptable when they threaten women's equal capabilities for practical reason and affiliation. For Nussbaum, religious practices that affect the value of the political liberties would always be objectionable, since they necessarily inhibit central capabilities for practical reason and

affiliation. These objections to religious practices would hold even when religious groups do not support gender discrimination in the law.

Requiring of religions that they guarantee sex equality where central capabilities are concerned would be to demand radical change. Every major religion is organized around differentiated gender roles and expectations. Aiming to reform such a central aspect of religious life would certainly meet with serious resistance. Moreover, enforcing the requirement of sex equality would seem to open the door to intrusive social policies that would be incompatible with the values of privacy, freedom of association, and liberty of conscience. Strong egalitarian claims regarding people's capabilities for practical reason and affiliation seem to require not only a radical reform of gendered religion but also a hierarchical organization of the basic liberties.¹⁶ It seems clear that maintaining a more balanced set of basic rights and liberties requires withdrawing aspirations to equal basic capabilities.

5 EVALUATING STATUS INEQUALITIES

I now turn to Anderson's work. Anderson rejects the goal of attaining equal capabilities in favor of a kind of threshold or "sufficientarian" view, even for political and civil liberties. She writes, "[D]emocratic equality guarantees not effective access to equal levels of functioning but effective access to levels of functioning sufficient to stand as an equal in society ... [and] for standing as an equal over the course of an entire life" (1999, pp. 318–19). What is it to stand as an equal? It is, Anderson argues, to be free from domination, oppression, stigmas, and demeaning treatment. She offers little analysis of what exactly count as relations of domination or oppression. This leaves some difficult questions unanswered. If women are "encouraged" by a religious practice to adopt a traditional gender role, are they thereby stigmatized and humiliated? If women "choose" not to exercise their political and civil rights, is this because they are oppressed? When exactly does status inequality count as domination?

Rawls addresses these questions by focusing attention on whether status inequalities are acceptable to those who are least well off, perhaps because of the great value they place on their religious beliefs and practices, as well as freedom of association. He submits that such inequalities could be permissible. Each of the basic liberties has great value for those persons who exercise them, and all of the basic liberties are crucial to maintaining a reasonable range of comprehensive conceptions of the good for persons to choose between. The range of options would not be

reasonable if it excluded religious conceptions or severely restricted the admissible range of religious conceptions. Reasonable pluralism must be protected, and this counts in favor of granting priority to the first principle of justice. No trade-offs are permitted between the basic liberties protected by the first principle, on the one hand, and opportunities or resources in education and the marketplace, on the other. And provided the fair value of the political liberties is maintained, no restrictions on liberty of conscience, freedom of association, or the free exercise of religion could be defended in order to move toward greater equality in the domain of political participation and influence. Thus status inequalities influenced by religious and cultural practices might result from the content and priority of the first principle and these status inequalities might affect the worth of the political liberties or the worth of opportunities in education and the marketplace.

Now it might be thought that counting religious conceptions of the good as "reasonable" is unfair to women, and that the preferences of some women to maintain religious options as lifestyle choices are unreliable since these preferences could reflect psychological adjustments women have made to an unjustly restricted range of options. This is the problem of "adaptive preferences." How this problem should be addressed is a question Rawls would have us consider from the vantage point of the parties to the original position, situated as they are behind a veil of ignorance. This forces us to consider the value of religious liberties for persons of faith and to reckon with the consequences for the religious liberties of corrective measures. The question is whether behind a veil of ignorance we would opt for restrictions on our basic liberties in order to increase our capabilities for political and economic power. Rawls argues that we would not. In fact, he stresses that to deny religious liberty would be oppressive. He writes, "Political liberalism assumes the fact of reasonable pluralism as a pluralism of comprehensive doctrines, including both religious and nonreligious doctrines. This pluralism is not seen as a disaster but rather as the natural outcome of the activities of human reason under enduring free institutions" (1993, p. xxvi). Citing the brutal and bloody history of religious wars as evidence, he argues that this pluralism can be overcome only by the oppressive use of state power (2001, pp. 34, 84, 187–88, 197). So pivotal is this concern to Rawls's project in *Political Liberalism* (1993) that he defines his central question as follows: "How is it possible for those affirming a religious doctrine that is based on religious authority, for example, the Church or the Bible, also to hold a reasonable political conception that supports a just democratic regime?" (1996, pp. xxxix).

If it is not possible, Rawls argues, political liberalism fails and the prospects for a peaceful and stable democratic society are dim. This is a serious point. Attempts to coerce people to relinquish their faith are certain to meet with resistance. Religious intolerance in domestic political life or international relations risks our basic security and important rights.

In short, increasing the threshold of our capabilities for economic and political power is impermissible when it threatens liberty of conscience, freedom of expression, or freedom of association. These rights and liberties function as restrictions on acceptable means for improving people's capabilities. As we have seen, this means that status inequalities influenced by religious and cultural practices could carry over into the political and economic realms. Material benefits that accrue to positions of social influence and status are, for Rawls, restricted by the difference principle. This is enough, he thinks, to show that no one is exploited. Those who are least well off have adequate resources, and alternative scenarios in which they would have more would involve objectionable restrictions to the basic liberties. All the basic liberties are crucial to defining the reasonable range of comprehensive doctrines that political liberalism aims to protect.¹⁷ Pushing for a higher threshold of capabilities would seem to be incompatible with political liberalism.

Anderson seems uncomfortable with this Rawlsian position. Sometimes she suggests that the most promising strategy for evaluating status inequalities would be to adopt a form of comprehensive liberalism. Inequalities would be objectionable when they do not square with certain liberal values such as: individual autonomy and self-cultivation; personal independence from the moralizing scrutiny of other people; the intrinsic value of developing human talents; rejecting all forms of gender hierarchy; anti-materialism; and solidarity across differences in religion, culture, and sexual orientation (1999, pp. 316–26, esp. 320; 2007a, esp. pp. 596–98; 2007b, sec. VII and VIII). These values could help to explain what is wrong with status inequalities that result from religious values.

Anderson herself acknowledges problems with affirming comprehensive liberalism. She is committed to the idea that democratic equality requires mutual consultation and justification on the basis of mutually acceptable principles (1999, p. 313). This means, she claims, that a liberal conception of justice must accommodate value pluralism and refrain from resting upon partisan values (1999, p. 330). Assume that we reject comprehensive liberalism. Then unless a capabilities approach takes the strong position that equal access to functioning must be guaranteed, it would appear not to differ from a primary goods approach, which allows motivation and

talent to influence outcomes – even when differences in motivation and talent themselves are influenced by cultural or religious practices.

6 CAPABILITIES OVER TIME

The final issue I will address concerns a guarantee of capabilities over time. The question is whether persons are entitled to the goods needed to maintain certain capabilities over time, despite choices they make that threaten those capabilities by, for example, willfully damaging their health, neglecting their talents, or wasting opportunities and resources. Bad choices may affect a person's capability for healthy functioning, political influence, or economic productivity. This affects a person's freedom, as Anderson understands it: there is less a person is able to do with the liberties, opportunities, or resources he or she possesses. The question is how this bears on Anderson's claim that democratic equality "offers equality in the space of capabilities, which is to say opportunities or freedoms" (1999, p. 328).

Let us return to the distinction between a duty of assistance and the basis of just distributive claims. I claimed that a primary goods approach maintains that non-cooperating members do not have equal claims to distributive shares, even though they may be entitled to assistance. Rawls would agree with Anderson that persons with life-threatening illnesses should receive treatment (with reasonable limits on expenditures), and those who are starving should receive food, whatever the causes of their predicament. Duties of assistance are unconditional, if limited. They also have an allocative structure.

This is not true of all obligations of justice. Anderson and Rawls agree that a decent income is conditional on employment. As Anderson puts it, "Individuals still have to exercise responsible agency to achieve most of the functionings effective access to which society guarantees. In the typical case of an able-bodied adult, for instance, access to a decent income would be conditioned on responsible performance of one's duties in one's job, assuming a job was available" (1999, p. 328). Anderson relies here on the distinction between functionings and capabilities. She makes the achievement of certain functionings that belong to citizenship conditional on participating in the productive system: "citizens do not owe one another the real freedom to function as beach bums" (1999, p. 321). Nevertheless, she maintains that all citizens are equally entitled to a threshold of basic capabilities. Beach bums may decide to enter the productive scheme at any time on equal terms, as might persons who have

dropped out of school or gambled away their income. Anderson claims, "Democratic equality guarantees effective access to the social conditions of freedom to all citizens, regardless of how imprudently they conduct their lives" (1999, pp. 326–27). Principles of justice must guarantee that all citizens have effective access to certain goods over the course of their whole lives (Anderson 1999, p. 314).

One might wonder whether entitlement to income, thus understood, is so different in character from what we owe to persons as a matter of assistance. Those who are willing to work, no matter how uninspired or untalented, are entitled to a decent income. In support of the idea that income is owed as a matter of reciprocity, Anderson challenges the idea that we can differentiate the social value of different productive roles. She writes, "[T]he productivity of a worker in a specific role depends not only on her own efforts, but on other people performing their roles in the division of labor. Michael Jordan could not make so many baskets if no one kept the basketball court swept clean" (1999, p. 322). This is a good point that helps to ground the notion that gains from a cooperative scheme should be reciprocally shared. But it is not obvious that a capabilities approach can enable us to understand how the distribution of these gains should be structured.

It makes sense for some capabilities to be conditional, not just on willingness to participate in the productive scheme, but also on such things as developing one's talents, strength of will, preservation of health, and intelligent decisions. These would include capabilities for political influence, greater earning power in the marketplace, and achievement in higher education. As we have seen, for Rawls, the difference principle regulates inequalities in this space: it defines entitlements within a productive scheme relative to the social value of the role a person assumes. This should not be confused with a meritocratic scheme. The difference principle rewards achievement not as a matter of desert but, rather, because certain incentive structures are in everyone's interest, including the interests of those who are least well off. Weaker versions of a principle regulating inequalities may also fit with a primary goods approach. Common to the approach, as we have seen, is its emphasis on the contribution persons make to the cooperative scheme. The difference principle maintains that what persons are entitled to depends on what they do with their fair share of primary goods, namely, basic liberties, opportunities, and resources.

It is hard to see how a capabilities approach, in comparison, is poised to offer principles to regulate gains produced by unequal contributions. A primary goods approach is better equipped to regulate inequalities

above a threshold of basic capabilities to which everyone is entitled. A capabilities approach could instead retreat to the task of defining the basic threshold which, for Anderson, is only marginally dependent on productivity. But this would leave the central questions of distributive justice untouched. Defining a threshold below which persons are entitled to assistance hardly seems to settle matters of distributive justice, which must reckon with the fair regulation of gains produced by persons with unequal capabilities.

7 CONCLUSION

A capabilities approach might differ from a primary goods approach in two ways. It might represent the strong position that certain capabilities must be guaranteed equally, or it might maintain a higher threshold for certain capabilities. Both positions come at the cost of restricting some basic liberties and would appear to fit better with comprehensive forms of liberalism than they do with political liberalism. Subordinating the religious liberties, privacy rights, and freedom of association to the civil and political liberties cannot be justified on the basis of shared political values. On the other hand, when a capabilities approach appeals to shared political values and avoids comprehensive conceptions of the good, it would appear not to differ much from a primary goods approach. A primary goods approach requires adjustments in what counts as a fair share of goods in response to the disabilities or health needs of some people, but allows talent and motivation to influence outcomes. Relevant outcomes include the unequal development of central capabilities over time, above levels that all members of society are entitled to achieve.

NOTES

1. I am grateful to Lionel McPherson, Harry Brighouse, and Ingrid Robeyns for detailed comments and to Joshua Cohen and Samuel Freeman for conversations that shaped this paper.
2. Functionings should not be identified with capabilities. A person might refrain from utilizing a capability she possesses, but it would be true of her that she could achieve the related functioning.
3. See Cohen (1989, pp. 922–24). See also Arneson (1997, pp. 230–31).
4. Rawls refers to these capacities as the two “moral powers.” See Rawls (2001, pp. 18–19).
5. These aims highlight features of political liberalism and, in particular, what Rawls refers to as a “political conception of justice.” See Rawls (1993, pp. 11–15).

6. See, for example, Singer (2002, ch. 5).
7. See Kelly (2004).
8. Rawls claims that “the idea of reciprocity lies between the idea of impartiality, which is altruistic ... and the idea of mutual advantage understood as everyone’s being advantaged with respect to each person’s present or expected future situation as things are” (1993, pp. 16–17).
9. On the notion of stability, see Rawls (1993, pp. 140–44).
10. On the idea that justice as fairness avoids strong assumptions about our commitment to promoting the interests of other people, see Rawls (1999b, pp. 111–12, also 160–68). For Rawls’s discussion of how the notion of reciprocity figures into why the more advantaged group would accept the difference principle, see Rawls (2001, pp. 125–26).
11. See also Rawls (2001, pp. 111–15).
12. Nussbaum (2000, ch. 3) also discusses the need for this kind of balancing.
13. Rawls defines fair equality of opportunity this way: “supposing that there is a distribution of native endowments, those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin” (2001, p. 44).
14. See similar criticism by Samuel Freeman (2006, p. 420).
15. Nussbaum’s (2000, ch. 3) discussion of religion is structured around three cases involving disputes about the law.
16. Susan Moller Okin might accept this, but it is pretty clear that Nussbaum would not. See Okin (1989).
17. See note 5 (of this paper).

REFERENCES

- Anderson, E. 1999. “What is the Point of Equality?” *Ethics* 109: 287–337.
- 2007a. “Fair Opportunity in Education: A Democratic Equality Perspective,” *Ethics* 117: 595–622.
- 2007b. “How Should Egalitarians Cope with Market Risks?” *Theoretical Inquiries in Law* 9: 239–70.
- Arneson, R. J. 1997. “Equality and Equality of Opportunity for Welfare,” in L. Pojman and R. Westmoreland (eds.), *Equality: Selected Readings*. New York: Oxford University Press, pp. 229–41.
- Cohen, G. A. 1989. “On the Currency of Egalitarian Justice,” *Ethics* 99: 906–44.
- Freeman, S. 2006. “Book Review – Frontiers of Justice: The Capabilities Approach versus Contractarianism,” *Texas Law Review* 85, 2: 385–430.
- Kelly, E. I. 2004. “Human Rights as Foreign Policy Imperatives,” in D. K. Chatterjee (ed.), *The Ethics of Assistance*. Cambridge University Press, pp. 177–92.
- Nozick, R. 1974. *Anarchy, State, and Utopia*. New York: Basic Books.
- Nussbaum, M. 2000. *Women and Human Development: The Capabilities Approach*. Cambridge University Press.

2006. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: Harvard University Press.
- Okin, S. M. 1989. *Justice, Gender, and the Family*. New York: Basic Books.
- Rawls, J. 1993. *Political Liberalism*. New York: Columbia University Press.
1996. *Political Liberalism* (Second Edition). New York: Columbia University Press.
- 1999a. *The Law of Peoples*. Cambridge, MA: Harvard University Press.
- 1999b. *A Theory of Justice* (Revised Edition). Cambridge, MA: Harvard University Press.
2001. *Justice as Fairness: A Restatement*. Cambridge, MA: Harvard University Press.
- Sen, A. 1992. *Inequality Reexamined*. Cambridge, MA: Harvard University Press.
- Singer, P. 2002. *One World: The Ethics of Globalization*. New Haven: Yale University Press.

CHAPTER 4

*Justifying the capabilities approach to justice**Elizabeth Anderson*

Thomas Pogge (2002a) has recently criticized the capabilities approach to justice, questioning its ability to specify a plausible criterion of distributive justice that avoids stigmatizing the naturally less well-endowed. In this essay, I defend the capabilities approach against Pogge's critique, and explain why it is superior to its main rivals, subjective and resource approaches. A capability metric is superior to any subjective metric because only an objective metric, such as capability, can satisfy the demand for a public criterion of justice for the basic structure of society. It is superior to a resource metric because it focuses on ends rather than means, can better handle discrimination against the disabled, is properly sensitive to individual variations in functioning that have democratic import, and is well-suited to guide the just delivery of public services, especially in health and education.

I SPECIFYING A THEORY OF JUSTICE:
DO CAPABILITY THEORIES DO THE JOB?

Theories of distributive justice must specify two things: a metric and a rule. The metric characterizes the type of good subject to demands of distributive justice. The rule specifies how that good should be distributed.

Metrics may be either subjective or objective. Subjective metrics include goods such as happiness and preference satisfaction. Objective metrics divide broadly into resources and functionings. Resources are goods external to the person, such as income and wealth, job opportunities, and legal rights.¹ Functionings are states of the person, such as literacy, health, mobility, and the ability to appear in public without shame.

Rules divide broadly into unconstrained procedural rules, constrained procedural rules, and distributive patterns. Robert Nozick (1974) offers the leading example of an unconstrained procedural rule, which establishes procedures for the just initial acquisition and transfer of property in