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978-0-521-71147-0 - Measuring Justice: Primary Goods and Capabilities

Edited by Harry Brighouse and Ingrid Robeyns

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CHAPTER I

*Introduction: Social primary goods and capabilities as metrics of justice**Ingrid Robeyns and Harry Brighouse*

I THE METRIC OF JUSTICE

Over the last decades, political theorists and philosophers have at length debated the question what the proper metric of justice is. In other words, they have sought to answer the question “what should we look at, when evaluating whether one state of affairs is more or less just than another?” Should we evaluate the distribution of happiness? Or wealth? Or life chances? Or some combination of these and other factors? The Rawlsian social primary goods approach and the capability approach are two prominent answers to this question. The aim of this volume is to present a systematic study of these two approaches to measuring justice.

Building on the work of John Rawls, some theorists use the social primary goods approach. Social primary goods are, according to Rawls, those goods that anyone would want regardless of whatever else they wanted. They are means, or resources (broadly conceived), and this approach says that we should compare holdings of such resources, without looking closely at what individuals, possessed of heterogeneous abilities and preferences, can do with them. Rawls (2001, pp. 58–61) specifies the social primary goods in a list as follows:

- i) The basic liberties (freedom of thought and liberty of conscience, etc.) are the background institutions necessary for the development and exercise of the capacity to decide upon and revise, and rationally to pursue, a conception of the good. Similarly, these liberties allow for the development and exercise of the sense of right and justice under political and social conditions that are free.
- ii) Freedom of movement and free choice of occupation against a background of diverse opportunities are required for the pursuit of final ends as well as to give effect to a decision to revise and change them, if one so desires.
- iii) Powers and prerogatives of offices of responsibility are needed to give scope to various self-governing and social capacities of the self.

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- iv) Income and wealth, understood broadly as they must be, are all-purpose means (having an exchange value) for achieving directly or indirectly a wide range of ends, whatever they happen to be.
- v) The social basis of self-respect are those aspects of basic institutions that are normally essential if citizens are to have a lively sense of their own worth as moral persons and to be able to realise their highest order interests and advance their ends with self confidence.

The other approach, developed most prominently by Amartya Sen, and more recently also by Martha Nussbaum, is known as the capability approach. Instead of looking at people's holdings of, or prospects for holding, external goods, we look at what kinds of functionings they are able to achieve. As Sen puts it, in a good theory of well-being, "account would have to be taken not only of the primary goods the persons respectively hold, but also of the relevant personal characteristics that govern the *conversion* of primary goods into the person's ability to promote her ends. What matters to people is that they are able to achieve actual *functionings*, that is the actual living that people manage to achieve" (Sen 1999, pp. 74). Walking is a functioning, so are eating, reading, mountain climbing, and chatting. The concept of functionings "reflects the various things a person may value doing or being, varying from the basic (being adequately nourished) to the very complex (being able to take part in the life of the community)" (*ibid.*, p. 75). Yet when we make interpersonal comparisons of well-being we should find a measure which incorporates references to functionings, but also reflects the intuition that what matters is not merely achieving the functioning but being free to achieve it. So we should look at "the *freedom* to achieve actual livings that one can have a reason to value" (*ibid.*, p. 73) or, to put it another way, substantive freedoms – the capabilities to choose a life one has reason to value.

The capabilities approach has been operationalized both by the UN and a number of local and national governments, and seems to have been the more prominent of the theories among policymakers and economists.¹ The social primary goods approach has, perhaps, been more widely accepted among philosophers. Both are regarded as among the most important contemporary theories, and are part of the standard curriculum of students in philosophy, politics, economics, and other social sciences. But a systematic comparison of social primary goods and capabilities as the metric of justice has hitherto been missing from the literature. The aim of this volume is to fill that gap by providing a comprehensive study of both approaches, by confronting the views of a range of theorists – some more sympathetic to the primary goods metric, some more sympathetic to the capability approach.

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The volume is divided into two parts. The first part consists of essays exploring, at a high level of abstraction, the relative virtues of the two approaches. Thomas Pogge and Erin Kelly defend the primary goods approach, while Elizabeth Anderson and Richard Arneson defend the capability approach. In the second part theorists with special expertise in particular policy areas look at what lessons consideration of problems in their areas of expertise have for the theoretical dispute, as well as what bearing the dispute has on their arenas. The areas studied in this volume are health, education, disability, children, and gender.² The volume closes with an essay by Amartya Sen who reflects on the relationship and differences between social primary goods and capabilities, and responds to some of the criticisms on his views.

2 ORIGINS OF A DEBATE

In his 1979 Tanner lecture entitled “Equality of What?” Sen (1980) presented the capability metric as an alternative for, and improvement on, the social primary goods metric. Sen argued that “the primary goods approach seems to take little note of the diversity of human beings. ... If people were basically very similar, then an index of primary goods might be quite a good way of judging advantage. But, in fact, people seem to have very different needs varying with health, longevity, climatic conditions, location, work conditions, temperament, and even body size. ... So what is involved is not merely ignoring a few hard cases, but overlooking very widespread and real differences” (Sen 1980, pp. 215–16). A person with a disability, however severe, would not have a claim to additional resources grounded in his impairment under Rawls’s two principles of justice. Sen argues that Rawls’s difference principle would not justify any redistribution to the disabled on grounds of disability. Rawls’s strategy has been to postpone the question of our obligations towards the disabled, and exclude them from the scope of his theory. Rawls certainly does not want to deny our moral duties towards the people that fall outside the scope of his theory, but he thinks that we should first work out a robust and convincing theory of justice for the “normal” cases and only then try to extend it to the “more extreme cases” (Rawls 2001, p. 176).

Sen’s critique in his Tanner lecture, however, was not only about the case of the severely disabled. Sen’s more general critique concerned what he saw as the inflexibility of primary goods as a metric of justice. Sen believes that the more general problem with the use of primary goods is that it cannot adequately deal with the pervasive inter-individual differences between people. Primary goods, he argues, cannot adequately

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account for differences among individuals in their abilities to convert these primary goods into what people are able to be and to do in their lives. For Sen, the more general problem with the primary goods metric is that “interpersonal variability in the conversion of primary goods into [capabilities] introduces elements of arbitrariness into the Rawlsian accounting of the respective advantages enjoyed by different persons; this can be a source of unjustified inequality and unfairness” (Sen 1990, p. 112). We should focus directly on people’s beings and doings, that is, on their capabilities to function. Primary goods are among the valuable means to pursue one’s life plan. But the real opportunities or possibilities that a person has to pursue her own life plan, are not only influenced by the primary goods that she has at her disposal, but also by a range of factors that determine to what extent she can use these primary goods to generate valuable states of being and doing. Hence, Sen claims that we should focus on the extent of substantive freedom that a person effectively has, i.e. her capabilities.

Rawls responded to Sen’s criticism in two ways. First, he defended the restricted scope of his theory. Rawls stressed, especially in his later work, that in his theory “everyone has physical needs and psychological capacities within the normal range,” and therefore he excludes people with severe physical or mental disabilities from the scope of justice as fairness (1999a, pp. 83–84; 2001, pp. 170–76). In *A Theory of Justice* this restriction was justified by arguing that a theory of justice should in any case apply for “normal cases” – if the theory is inconsistent or implausible for such cases, then it will certainly not be an attractive theory for the more challenging cases, such as people with severe disabilities. We could postpone the question of how to treat people with disabilities to one of the later (legislative) stages of the design of the basic structure of society (1999a, p. 84), though, of course, even in his earliest discussions of this Rawls thinks that the final theory of justice must deal adequately with the claims of people whose abilities fall outside the normal range, and that any theory that cannot do so should be rejected on those grounds. In later work Rawls (2001, p. 176) no longer argued that the case of justice towards the disabled had to be postponed to the legislative phase, but rather that we had to try to extend justice as fairness to include those cases. Rawls has not pursued this task systematically himself, though he has emphasized the role that his conception of the person possessed of the capacities for a sense of justice and a conception of the good plays in justice, and has argued (2001, pp. 176–78) that this conception enables him to deflect accusations of “fetishism” about the primary goods. Other

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theorists, some inspired by Rawls, have, however, developed this line of enquiry more fully, as Norman Daniels and Lorella Terzi describe in their contributions to this volume.

In addition to defending his theory against Sen's criticism, Rawls criticized the capability approach. Two Rawlsian critiques of the capability approach are particularly important in the present context.

Firstly, Rawls criticized the capability approach for endorsing a particular comprehensive moral view. In his later work, Rawls greatly stresses the distinction between a political conception of justice and a comprehensive moral doctrine. "The idea [of a political conception of justice] is that in a constitutional democracy the public conception of justice should be, so far as possible, independent of controversial philosophical and religious doctrines" (Rawls 1985, p. 223). According to Sen (1990, p. 112), Rawls has argued that the capability approach presupposes the acceptance of a comprehensive doctrine, and therefore goes against political liberalism. Sen has replied that Rawls's claim that the capability approach would endorse one unique view of the good, is mistaken (Sen 1992, pp. 82–83). He maintains that the capability approach holds that the relevant focus is on "the actual freedom of choice a person has over alternative lives that he or she can lead" (Sen 1990, p. 114).

The second main Rawlsian objection to the capability approach concerns the publicity criterion. Since Rawls wants to analyze how people with very different comprehensive moral views on the good life can come to a reasonable agreement on the principles of political justice, he stresses that the conception of justice must be public and the necessary information to make a claim of injustice must be verifiable to all, and easily accessible. A theory of justice needs a public standard of interpersonal comparisons, as otherwise the obtained principles of justice between citizens with diverse views on the good life will not prove stable (Rawls 1982, pp. 169–70). The suggestion is that as capabilities are very hard to measure or assess in such a public fashion, and as they would require very large amounts and difficult sorts of information, the capability approach is unworkable as a theory of justice. Rawls acknowledged that capabilities are important "to explain the propriety of the use of primary goods," but maintained that the capability approach amounts to an unworkable idea (Rawls 1999b, p. 13).

The controversy between scholars defending Rawls and those defending the capability approach continues into the present. Martha Nussbaum's (2006) recent work on her version of the capability approach is a case in point. Nussbaum forcefully argues that her capabilities approach is in

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many ways an improvement over justice as fairness, and responds directly to the criticism that the approach presumes a comprehensive conception of the good by explicitly developing a “political” justification of a set of basic capabilities. Her work, in turn, has provoked elaborate critiques by Rawlsians (e.g., Freeman 2006; Richardson 2006). A lively debate about whether social primary goods and capabilities are plausible metrics continues to rage among philosophers, economists, and other social theorists.

Within this debate, three main strategies can be distinguished. One response has been to defend on abstract grounds of theory-construction either the capability approach or the social primary goods approach (and justice as fairness). For example, arguments regarding the appropriate scope of a theory of justice, or of the appropriate underlying fundamental moral principles, have led scholars to defend either of these approaches. A second strategy, primarily pursued by Rawlsian scholars, has been to analyze how justice as fairness could be extended so as to counter the capability critique on the social primary goods metric. A third strategy, employed primarily by capability scholars, has been to use case-studies to show that certain inequalities, which they argue to be cases of injustice, cannot properly be accounted for by the Rawlsian framework. As will be shown below, some authors have relied on several of these strategies simultaneously. In what follows, we will discuss these three strategies, and highlight how the contributors to this volume have used them to contribute to the debate on the metric of justice.

Before we move to our analysis of the contemporary debate between defenders of social primary goods and defenders of the capability approach, we would like to acknowledge that capabilities and primary goods are not the only metrics for justice that have been developed by political philosophers. Ronald Dworkin (1981) offers an account of justice which he calls “equality of resources”. Like the capability and primary goods approaches this standard attempts to be sensitive to both external and internal variations, but eschews any appeal at all to controversial claims about the good in assessing the value of particular holdings and capacities. Instead, Dworkin favors a procedural solution which appeals to the level of protection against misfortune that individuals themselves would purchase if situated in a fair insurance market. Richard Arneson (1989) develops the idea of “opportunities for welfare” as a metric. (For other variants of welfarism see Cohen (1989) and Otsuka (2003).) Some contributions to this volume refer to these alternatives, and all the contributors are aware of them, but we have aimed to focus on what we consider the most influential two proposals at present.

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3 THE DEVELOPMENT OF THE DEBATE BETWEEN
RAWLSIANS AND CAPABILITY THEORISTS

One way in which political theorists and philosophers have responded to the debate between Rawls and Sen is by defending the social primary goods or the capability approach on grounds of their theoretical properties. This is also the strategy followed by some contributors to this volume. One prominent defender of Rawls has been Thomas Pogge (2002), who has developed an elaborate defense of the social primary goods approach against the capability approach. A shortened version of that essay is reproduced in this volume. Pogge develops several lines of criticism against the capability approach. While conceding that capabilities theorists have identified lacunae in the primary goods approach, he shows that many of those lacunae can be filled; a central strategy he uses appeals to the fact that much disability is socially constructed, and that the primary goods approach has very straightforward ways of dealing with such cases. He argues forcefully that the capabilities approach cannot meet the publicity requirement on all plausible theories of justice, and, in addition, that by identifying some capability sets as more valuable than others it stigmatizes those with the less valued capabilities.

In her contribution, Elizabeth Anderson sets herself the task of defending the capability approach, in particular her own version of the approach (Anderson 1999), against Pogge's criticism. She argues that 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. She argues that 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. She also responds to Pogge's argument that the capabilities approach stigmatizes those with fewer, or less valued, capabilities.

Erin Kelly targets the capabilities approach for its perfectionism. In order for it to be regarded as genuinely distinct from a resourcist approach, the capabilities approach must make appeals to sectarian value commitments, and therefore comes 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. On the other hand, she says, when a capabilities approach appeals to shared political values and avoids comprehensive conceptions of the good, it does not differ much from a

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primary goods approach. She defends a primary goods approach by arguing that it can adjust what counts as a fair share of goods in response to the disabilities or health needs of some people, but still allows talent and motivation to influence outcomes.

Richard Arneson's contribution is a direct contrast to Kelly's. He focuses on the capabilities approach itself, and whereas Kelly argues that a distinctive capabilities approach must be too perfectionistic, he argues that it is not perfectionistic enough. He argues for half-hearted enthusiasm for the capabilities approach. Enthusiasm, because its focus on the real or effective freedom that a person has rather than on the resources or goods she possesses is an improvement over the primary goods approach. Half-hearted, because while Sen's critique of the resource-oriented approach to interpersonal comparisons for the theory of justice implicitly relies on the idea that we have (some) objective knowledge of what constitutes a good human life, a life good for the person who lives it, sufficient for (some) comparative judgments of who is better off and who worse off, Sen avoids making any such controversial commitment. The capabilities approach, as offered by Sen, that is, fails to make the leap to the full-blooded perfectionism that gives its critique of the primary goods approach such power.

A second response to the dispute between Rawls and Sen has been to extend or reinterpret the social primary goods approach to meet the objections by capability theorists. One recurrent critique by Sen and other capability scholars, is the exclusion of certain groups, such as the disabled or non-human animals, from the social primary goods approach. Yet Rawlsians have argued that rather than simply rejecting the Rawlsian framework, one first ought to examine to what extent the social primary goods approach can be further developed to deal with those cases that are not considered by Rawls himself. This is a strategy that has especially been pursued for the cases of disability and health. In earlier work, Daniels (1981, 1985) extended the Rawlsian theory beyond the simplifying assumption about normal functioning. In his contribution to this volume, Daniels argues that the resulting fair equality of opportunity account of justice and health is very similar to Sen's capability approach. The differences are mainly terminological rather than substantive. Daniels's extension of Rawls's theory not only provides a response to the capability critique as far as the case of health is concerned, but also reveals some interesting similarities between a particular interpretation of the social primary goods metric, and the capability metric.

Other theorists have proposed sympathetic interpretations or extensions of the social primary goods approach which, in their opinion, can

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meet the capability critique. For example, in a response to Nussbaum's (2006) critique that Justice as Fairness cannot be extended to the severely disabled, Henry Richardson (2006) has shown how the Rawlsian theory can be developed to include the disabled. Interestingly, his analysis not only provides a response to some capability critiques to Rawls, but also shows how the social primary goods metric and the capability approach can be combined into a coherent framework. Similarly, Samuel Freeman (2006) believes that a more careful reading of Rawls's work can answer Nussbaum's objections that justice as fairness cannot adequately deal with justice for the disabled or international justice.

Yet not all theorists who are sympathetic to the capability approach will necessarily be convinced by these extensions and defenses of the social primary goods approach. Lorella Terzi maintains that while the social model of disability can render the primary goods approach more accommodating of the legitimate interests of the disabled, it has sharp limits, and will fail to capture some of the deficits the disabled experience. Furthermore, she argues, it is only by attending to capabilities that the primary goods approach gets close to the right results.

A third strand in the literature that followed the Rawls-Sen debate deployed an argumentative strategy very similar to what Sen called the case-implication critique. This kind of critique grounds a criticism of a certain moral theory or principle by checking the implications of that principle or theory "by taking up particular cases in which the results of employing that principle can be seen in a rather stark way, and then to examine these implications against our intuition" (Sen 1980, p. 197). This was precisely Sen's strategy in his Tanner lecture when he asked how the disabled would fare under the difference principle which judges people's position in terms of social primary goods. In this volume, several contributors take this strategy further, not only by asking how a particular case or policy area fares under the social primary goods approach and the capability approach, but also by asking what more general and theoretical lessons can be learnt from such a case analysis for the approaches.

Colin Macleod engages with the place of children in theories of justice. He maintains that neither approach provides a satisfactory framework for addressing children's interests, and argues that this is due to the implicit assumption in both approaches that justice is concerned with mature agents who can take responsibility for their actions. While the agency assumption runs less deep in the capability approach than in the social primary goods approach, neither approach captures what Macleod calls "the intrinsic goods of childhood." Analyzing both metrics from the

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perspective of their relevance for the lives of children not only highlights how important the agency assumptions are in both approaches, but also shows that both approaches need to be rethought if they want to have full relevance for answering the question what justice for children entails.

Harry Brighouse and Elaine Unterhalter explore how the approaches fare against one another when we ask for guidance in shaping the content of educational opportunities for a just society. They find that both approaches, considered alone, seem incomplete. The primary goods approach has two problems; its resourcism makes it insensitive to the fact that children need very different kinds of treatment to do equally well, and its underspecificness gives us very little guidance concerning the content of opportunities. The capabilities approach looks more promising, but it, too, is under-specific, in so far as the indexing problem remains unsolved. They argue, consistently with a suggestion Pogge makes in his contribution, that the capabilities approach would give fuller guidance in education if an index of capabilities were developed by looking at Rawls's two moral powers (the capacities for a sense of justice and for a conception of the good).

Ingrid Robeyns asks to what extent both approaches can deal with issues of gender. She argues that the ideal-theoretical nature of justice as fairness makes the social primary goods approach in principle unsuitable to study gender injustice. Even when taken into a non-ideal context the social primary goods approach cannot account for important causes of gender injustice since the approach is not suited to deal with injustices generated by social norms, including gender norms. While the capability approach can account for social norms, it does not tell us which gender inequalities count as injustice. The case of gender provides more support for the capability approach than the social primary goods approach, and highlights the more general point that any political and ideal-theoretical theory of justice will have a hard time accounting for inequalities generated by unjust social norms.

The volume closes with an essay in which Amartya Sen reflects on the influence of John Rawls on his own thinking, and on the contributions in the first part of the volume.

These essays clearly illustrate the absence of a consensus among political theorists and philosophers about whether either the social primary goods approach or the capability approach is to be preferred as a metric of justice. Yet while several contributors to this volume remain convinced that either of the two approaches is to be preferred as the basic framework for a theory of justice, or justice applied to a particular area, we