

1. Plurality and Non-Commensurability.

A wise regulatory policy will understand that the goals pursued by such a policy are plural and diverse, including such heterogeneous elements as people's health, their control over property, their freedom of speech, their freedom of choice about how to lead their lives, their desire for an unpolluted environment, their need for political equality and non-hierarchy, and still others. (I have tried to capture some of the most important of these in my list of the Ten Central Capabilities, attached.)

Each of these elements is important in its own right, and the aim of wise policy should be to give everyone an adequate level of all of the ones deemed important. To adopt some common coin of value, pretending that health and freedom of speech, for example, are just different sources of a single thing, "utility," is profoundly irrational. It distorts the question we are asking and the answer we give. Think of constitutional guarantees: if the Supreme Court should treat religious liberty as something that could be delivered by simply giving people a very large amount of some other good thing, say, the right to vote, without focusing on religious liberty as a distinctive value in itself, we would all protest that the spirit of the Constitution was being violated. The same approach (recognizing diverse entitlements) should govern regulatory policy.

2. A role for specification.

Because the goods are plural and diverse, we need to figure out how a coherent policy can be forged that gives everyone a reasonable amount of each, and this means that we need to think about how to further specify each of them. We need to ask, for example, what we mean by a reasonable health provision, what we mean by access to a non-polluted environment. When we ask such questions, we naturally think about how we can fit all the pieces together, delivering them all to people without always courting painful conflicts. However, we should also note that some of the conflicts we currently face are due to unwise policy choices in the past, so our specifications should be aspirational. In short: practical reason is not just about means to ends that are delivered fully specified on a platter. One of the things wise policy makers do is to specify ends.

3. Capability not functioning: a focus on freedom

The aim of a wise policy should in general be to empower people, not to dragoon them into leading a particular lifestyle. So the aim should be to put people in a position to choose. If Jane has access to adequate health care, she can always refuse it, whether for reasons of conscience or because she prefers to lead an unhealthy life. If John has access to nature and recreational facilities, he can always decide to stay indoors all day. The aim on the whole should be to give people choices, though a wise policy can reasonably "nudge" people into certain choices by crafting their default options.

4. The importance of the "tragic question."

When two good things appear to conflict, we need to ask what choice is the better one on balance. That can be called the "obvious question." But we also need to ask whether any of the

choices currently available is ethically and politically satisfactory. Sometimes bad choice-making in the past has saddled us with bad options, and right now, any choice we make will deprive some people of something they ought to have. We should flag and prominently recognize such situations, not push them under the rug, for only that recognition of a tragic aspect to our decision-making will give us sufficient incentive to work for a future in which all the things people deserve can be chosen, without those ugly conflicts.

The Central Human Capabilities

- 1. Life.** Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.
- 2. Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.
- 3. Bodily Integrity.** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
- 4. Senses, Imagination, and Thought.** Being able to use the senses, to imagine, think, and reason -- and to do these things in a "truly human" way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid non-beneficial pain.
- 5. Emotions.** Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)
- 6. Practical Reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)
- 7. Affiliation.**
 - A.** Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)
 - B.** Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of non-discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.
- 8. Other Species.** Being able to live with concern for and in relation to animals, plants, and the world of nature.
- 9. Play.** Being able to laugh, to play, to enjoy recreational activities.
- 10. Control over one's Environment.**

A. Political. Being able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association.

B. Material. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.