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CAPABILITIES AND SOCIAL JUSTICE

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Honourable Rector and other friends:

I feel very deeply privileged to be here today: both for the honour that this great university is bestowing on me, and also for my being in such distinguished company of fellow recipients of honorary degrees. I am also immensely grateful for the University's generous statement on my work, and for the kind attention that Professor Hans Alma and Professor Henk Manschot have given to my writings. I would like to begin by expressing my deep appreciation of this wonderful educational institution, and also congratulating the University of Humanistic Studies for its wonderful work over the last 25 years – a productive period in which the University has advanced the pursuit of critically important paths of new social research and teaching. I take the liberty of speaking on behalf of all of us who are being honoured here today - we are indeed most grateful.

I have been asked to speak about the new directions of research in the use of the capability perspective in the epistemology of human flourishing and the ethics of public policy making. In a recent book, The Idea of Justice, published in 2009, I have tried to argue that our understanding of the idea of justice and of its conceptual as well as practical implications demands some fairly radical departures from the mainstream theories of human prosperity and of social justice that are dominant at the present time.

Alternative Traditions in European Enlightenment

The on-going philosophy of justice is too strongly dependent on a particular way of thinking that was largely initiated by Thomas Hobbes in the seventeenth century, and which concentrates on identifying perfectly just social arrangements, and take the characterization of "just institutions" to be the principal - and often the only identified - task of the theory of justice. This way of seeing justice is woven in different ways around the idea of a hypothetical "social contract" - a hypothetical contract that the population of a sovereign state are supposed to be a party to. Major contributions were made in this line of thinking by Thomas Hobbes in the seventeenth century, and later by John Locke, Jean-Jacques Rousseau and Immanuel Kant, among others. The contractarian approach has become the dominant influence in contemporary political philosophy, led by the most prominent - and I believe the finest - political philosopher of our time, John Rawls, whose classic book, A Theory of Justice published in 1971, presents a definitive statement on the social contract approach to justice. The Hobbesian roots of Rawlsian theory are not difficult to detect.

In contrast, a number of other Enlightenment theorists (Adam Smith, the Marquis de Condorcet, Mary Wollstonecraft, Karl Marx, John Stuart Mill, for example) took a variety of approaches that differed in many ways from each other, but shared a common interest in making comparisons between different ways in which people's lives may go, jointly influenced by the working of institutions, people's actual behaviour, their social interactions, and other factors that significantly impact on what actually happens. The analytical - and rather mathematical - discipline of "social choice theory", which had its origin in the works of French mathematicians in the eighteenth century (in particular Condorcet but also others like

Borda). I must confess that I have been very involved in the development and use of social choice theory, including the exploration of the constructive possibilities that the approach opens up.

In my book, The Idea of Justice, I have discussed how the approach of social choice theory, in contrast with the social contract approach, can help the pursuit of public reasoning aimed at the removal of injustice in the actual world in which we live. The task of the theory of justice, in this approach, is not that of speculating - and dreaming about - a perfectly just world, or even about perfectly just institutions, but using public scrutiny to arrive at agreed diagnoses of manifest injustices on the elimination of which a reasoned agreement could emerge.

Evaluative Issues in Human Flourishing

In focusing on the evaluation of the actual lives that people are able to lead, the question that immediately arises is how to understand the richness and poverty in our respective lives. The capability approach focuses on the freedoms that people actually enjoy. It is useful to begin by discussing in what way this approach is distinctive.

The focus on freedoms and capabilities differs sharply from many other approaches to assessing the demands of justice, for example, looking for the fulfilment of certain formal rights that people should have (on which institutional libertarians focus), whether or not these rights can be actually exercised. Many of these rights can, of course, have an instrumental rule in advancing more free social lives, but the pursuit of justice cannot stop there. It is, for example, nice and reassuring to know that the state or anyone else would not prevent a destitute from having a good holiday in Monaco or Acapulco. But the society may have to go a bit

beyond securing the individuals' right to do what they can do on their own, and consider what it can reasonably do to facilitate the freedom of the people to achieve what they have reason to value.

It is important not to be restricted by confining the understanding of freedom within the narrow limits of institutional libertarianism, but there are other pitfalls to avoid. The need to go beyond the mental metrics of utilities in the form of pleasures or desire-fulfilments is surely another important issue. The evaluative exercise of taking note of people's actual freedoms cannot be avoided by concentrating instead only on some features of mental reactions, such as pleasures, happiness, or desire-fulfilment, as utilitarians, from Jeremy Bentham onwards, have proposed. John Stuart Mill was the exception to this in the utilitarian tradition, mainly because he was much more than a utilitarian (I learn from Richard Reeves' excellent biography of Mill that Mill was tempted by the narrowly utilitarian view when he was fifteen - and 15 does seem like a good age to be a dedicated utilitarian). Even if chronically deprived persons, for example the hopelessly poor, or the chronically unemployed, or subjugated housewives, learn to come to terms with and accept cheerfully their deprived life styles (underprivileged people without hope of liberation often try to do just that to cope with the inescapability of the deprivation involved), that cultivated cheerfulness will not eliminate the real deprivation from which they will continue to suffer.

Plurality of Concerns

In pursuing the perspective of freedom, there are of course many difficulties to be addressed and problems to be resolved. Freedom has many aspects - many faces - and it is necessary both to distinguish between them and to choose the focus of

analysis depending on the nature of the problem that is being addressed. For example, in dealing with the issue of torture and its unacceptability as a means to other - allegedly more important - ends (pursued in the contemporary world by many powers and super-powers, including some leaders of the global establishment), what would be particularly important is to see the relevance here of the classical libertarian aspects of freedom, arguing for the immunity of every human being from forcible infliction of pain and humiliation by others, including the state. This too can be partly fitted into the capability perspective, but it greatly predates the modern development of the capability approach, and its concern goes well beyond checking who has which capability, into the causal influences that leads to capability deprivation in each particular case, giving some special importance to the tyranny of others. The need for - and the possibility of - integrating liberties in this sense with other social priorities have received a good deal of analytical attention in contemporary social choice theory as well, pointing to feasibilities as well as barriers that have to be overcome.

There is greater relevance of other aspects of freedom when the focus is, instead, on issues of economic and social advantage and in general on the inequality of the lives that different people are able - or not able - to lead in any society. These aspects of freedom can be captured better by a fuller use of the general capability approach, which concentrates on the actual opportunities a person has to do this or be that - things that he or she may value doing or being. Obviously, the things we actually value most are particularly important for us to be able to achieve. But the idea of freedom also respects our being free to determine what we could – and perhaps should - want, and the freedom to have reasoned reflection on ours valuations as well as what we choose – and have reason to choose.

Beyond the Focus on Opulence

It is easily checked that means such as incomes and other resources, while valuable in the pursuit of capabilities, are not themselves indicators of the capabilities and freedoms that people actually have. The ability of a person to convert resources into capabilities depends on a variety of contingent circumstances, for example on the person's biological, physical and mental characteristics, his or her proneness to illness, the physical, social and epidemiological environment in which the person lives, and so on. The real opportunities that different persons enjoy are very substantially influenced by variations of individual circumstances (e.g., age, disability, proneness to illness, special talents, gender, maternity) and also by disparities in the natural and the social environment (e.g., epidemiological conditions, extent of pollution, prevalence of local crime). Under these circumstances, an exclusive concentration on inequalities in income distribution cannot be adequate for an understanding of economic inequality.

Valuing human freedom differs, thus, from focusing on income or wealth, which, Aristotle had noted (in his book, Nicomachean Ethics, book I, section 5), is "evidently not the good we are seeking; for it is merely useful and for the sake of something else." If we focus on freedoms, we would, of course, be interested in income and wealth that the persons respectively have, and in other such means captured within the broad category of what John Rawls calls "primary goods," but ultimately we have to go beyond that and examine the freedoms that people actually enjoy.

Nyaya and Niti

I end my brief presentation by referring to a classic distinction between two concepts of justice, emphasized in ancient Indian jurisprudence, which contrasts the Sanskrit words niti and nyaya. Among the principal uses of the term niti are organizational propriety, behavioural correctness, and legalistic justification. In contrast with niti, the term nyaya stands for a comprehensive concept of realized justice. In that line of vision, the roles of institutions, rules and organization, important as they are, have to be assessed in the broader and more inclusive perspective of nyaya, which is inescapably linked with the world that actually emerges, not just the institutions or rules we happen to have.

Let me consider an example to clarify the important distinction between niti and nyaya. Ferdinand I, the Holy Roman emperor, famously claimed in the sixteenth century: "Fiat justitia, et pereat mundus," which can be translated as: "Let justice be done, though the world perish." This severe maxim could figure as a niti - a very austere niti - that is advocated by some (indeed Emperor Ferdinand did just that), but it would be hard to accommodate a total catastrophe as an example of a just world, when we understand justice in the broader form of nyaya. If indeed the world does perish, there would be nothing much to celebrate in that accomplishment, even though the stern and severe niti leading to this extreme result could conceivably be defended with very sophisticated arguments of different kinds.

The central recognition that is important is that the realization of justice in the sense of nyaya is not just a matter of judging institutions and rules, but of judging the societies themselves. And central to that judgment is the assessment of human lives and freedoms in the societies involved. That is exactly where the capability approach has something to offer.

I end by thanking our hosts for the honour that they are bestowing on us. We do feel extremely privileged to be here today.