Vizard, Polly. "Towards a New Model of Public Services: The Capability Approach and Rights-Based Approaches." *Public Services: A New Reform Agenda*. Ed. Henry Kippin, Gerry Stoker and Simon Griffiths. London: Bloomsbury, 2013. 53–70. *Bloomsbury Collections*. Web. 26 Apr. 2023. <<http://dx.doi.org/10.5040/9781472544872.ch-004>>.

Downloaded from Bloomsbury Collections, www.bloomsburycollections.com, 26 April 2023, 05:23 UTC.

Copyright © Simon Griffiths, Henry Kippin and Gerry Stoker 2013. You may share this work for non-commercial purposes only, provided you give attribution to the copyright holder and the publisher, and provide a link to the Creative Commons licence.

Towards a New Model of Public Services: The Capability Approach and Rights-Based Approaches

Polly Vizard¹

The cross-party Commission on 2020 Public Services highlighted the need for new public services model – a new paradigm and approach that can supersede Beveridge’s vision of the welfare state and provide a prototype based on twenty-first-century needs and conditions. The Commission further suggested that the new public services model should, *inter alia*, provide a ‘narrative’ on the fundamental purposes of public services; distinguish between ‘ends’ and ‘means’; capture the importance of empowerment and accountability; and maintain an emphasis on fairness and social responsibility.

This chapter examines how the capability approach and rights-based approaches can contribute to a new public services model of this type. It has three main sections. In the first section, drawing on the work of the Nobel Prize winning economist Amartya Sen, I explore how the idea of capability can provide conceptual underpinnings for the new public services model. In the second

¹ The current paper is an abridged and revised version of a background paper written for the 2020 Public Services Trust. Financial support for the paper was provided by the ESRC Knowledge Transfer Programme. The author would like to thank the following for comments on the original draft: Ben Lucas, Jeff Masters, Lauren Cumming, Paul Buddery and others at the 2020 Public Services Trust, Amanda Ariss and participants at a 2020 Round Table Discussion, Tony Atkinson and Sanchita Hosali. A useful discussion on the emergence of rights-based approaches in economics, including in relation to principal-agent theory, was had with Tim Besley prior to writing the original paper. Tania Burchardt provided useful comments and input on the revised draft and the author is also grateful to Henry Kippin, Gerry Stoker and Simon Griffiths for their comments and suggestions on the revised paper. The first half of this Chapter builds on Amartya Sen’s treatment of the capability approach (on which, see, for example, Sen 1985ab, 1999, 2002, 2005). The Equality Measurement Framework, on which the first half of this chapter also draws heavily, has been developed with Tania Burchardt over many years in partnership with the Equality and Human Rights Commission (EHRC). Further details are provided in Burchardt and Vizard (2011), a briefing paper (EHRC, 2008) and a series of research reports for EHRC: Burchardt and Vizard (2007a, 2007b); Alkire *et al.* (2009); Burchardt *et al.* (2009); Burchardt and Vizard (2009); and Holder *et al.* (2011). Errors of fact or interpretation remain with the author.

section, I set out how the capability approach might be operationalized in practice (building on the Equality Measurement Framework discussed in Burchardt and Vizard, 2011). Finally, in the third section, I consider how the capability approach can be usefully combined with new thinking about individual rights.

Expanding capabilities: The focus of a new public services model

In this section, building on Sen's capability approach, I argue that the central focus of the new public services model should be the expansion of capability. A person's capability is the substantive (or 'real') freedom and opportunity they have to live a life that they value and would choose (and have reasons to value and choose). Capabilities can be thought of as the central and valuable things in life that people can actually do and be. For example, the freedom and opportunity a person has to live a full life (avoiding homicide and premature mortality); to enjoy a good state of health (avoiding sickness, disease, injury, mental health problems, longstanding limiting conditions, etc.); to live in physical security (avoiding violence, including domestic violence and sexual violence); to enjoy an adequate standard of living (with adequate income, housing and care); and to participate in critical decision-making processes affecting their life (including elections)².

Ethical underpinnings of a new public services model

The idea of capability can make a major contribution by providing ethical underpinnings for the new public services model. Table 4.1 sets out some of the alternative paradigms and approaches (such as income and wealth, negative liberty, 'actual attainments,' Rawlsian 'primary goods' and utility) that are widely discussed in the academic literature as a basis for thinking about equality, inequality and justice. A focus on capabilities (or the central and valuable things in life that people can actually do and be) has important advantages in concentrating directly on intrinsically valuable 'ends' (in the form of central and valuable capabilities) rather than instrumental 'means' (such as income and wealth) and for capturing the multidimensional nature of equality and inequality (spanning areas such as longevity, physical security, health and education).

² For references to Sen's treatment of the capability approach, see footnote 1.

Table 4.1 The capability approach as an informational base for evaluating the position of individuals and groups

Perspective	Focal variable
Capability approach	Substantive freedoms (central and valuable things in life that people can actually <i>do</i> and <i>be</i>)
Resourcism	Income, wealth and resources more broadly conceived
Rawlsian justice	Primary goods
Negative liberty	Freedom from interference/formal opportunity
'Achieved functionings'	Realized attainments (what people are actually <i>doing</i> and <i>being</i> – without taking account of the value of individual freedom)
Subjective well-being	Utility/happiness/'revealed preference'/life satisfaction

The 'value added' of the capability approach as an ethical framework is particularly apparent when it comes to thinking about the systematic inequalities that can arise from differences in the needs and situations of individuals and groups. For example, a disabled person may need different or additional resources to an able bodied person (such as personal care and support, a hearing aid, a wheelchair and/or accessible transport) in order to achieve substantive equality in 'capability space'. Adjustments can be made to the metrics of income and wealth in order to address the additional 'costs' associated with disability – for example, through the introduction of equivalence scales. More sophisticated, multiple dimensioned versions of resourcism (such as Rawlsian 'primary goods') also take the analysis of inequality forward (Atkinson, 2011). However, the direct focus of the capability approach on intrinsically valuable 'ends' (central and valuable things in life that people can actually do and be) rather than instrumentally important 'means' (income, wealth, resources, 'primary goods', etc.) can help to put inequalities of this type at the top of the public policy agenda.

The capability approach has been developed as alternative to standard evaluative frameworks for comparing the position of individuals and groups in welfare economics and across the social sciences. Sen has elucidated a far-reaching critique of the utility metric (and related approaches such as revealed preferences) as an 'information base' for evaluating equality, inequality and justice. He has argued that an exclusively subjective information base of this type can result in systematic biases because of the phenomenon of adaptive expectations, behaviour and choices. Examples include the 'discouragement effects' that can be associated with long-term unemployment; the low expectations that can be associated with entrenched disadvantage and discrimination; and the adaptive

behaviour that can be associated with being a victim of domestic violence or sexual abuse.

As I will discuss later, the phenomenon of adaption is of particular importance when it comes to measuring progress and performance in public services. Consider a woman who self-reports being 'happy' and satisfied with both life and the local police – notwithstanding being the victim of repeat episodes of domestic violence. Or the failure of older people to complain in the context of poor treatment during hospital stays. The capability approach has 'value added' over the subjective well-being approach in recognizing that while subjective indicators have an important role they should not be applied as an *exclusive* information base for evaluating the quality of public services and/or the position of individuals and groups.

Capability, equality and British political debates

The capability concept can contribute to the new public services model by helping to transcend old-style debates about 'equality of opportunity' and 'opportunity of outcome'. The old-style 'equality of opportunity' concept focused on people's formal freedom (or 'negative liberty'). This resulted in a narrow view of opportunities that didn't account of the things that people can actually do and be in practice; and that was insensitive to underlying expectations, barriers and constraints. In contrast, the capability concept provides underpinnings for a public service model that recognizes the role of public services in expanding the substantive opportunities of individuals and groups – for example, public policy interventions that remove barriers to employment by addressing the need for training and skills or for childcare.

The capability approach also provides an important departure from old-style thinking about 'equality of outcome' which concentrated on 'actual attainments' (or 'achieved functionings') without taking adequate account of processes and the value of individual freedom and choice. This is advantageous when it comes to thinking about the key role that public services can play in promoting autonomy and expanding the range of options that are available to individuals and groups.

Consider an example highlighted in EHRC (2008). Ethel and Marie are both residents in private care institutions A and B. In institution A, residents are able to choose their leisure activities from a range of good options and Ethel chooses to play bingo. In institution B, residents are not given a choice of leisure activities and all residents including Marie are taken to play bingo (with no choice). Focusing on an old-style 'equality of outcome' (attainments – or 'achieved functionings') without valuing individual freedom of choice would result in an

equal ranking of the positions of Ethel and Marie (since both play bingo) and an equal ranking of the performance of the social care services that Ethel and Marie receive. In contrast, the informational base of capabilities captures an inequality in the central and valuable things in life that Ethel and Marie can do and be – with the social care received by Ethel ranked as ‘superior’ to that received by Marie.

Another way in which the capability concept departs from old-style ‘equality of outcome’ is by making analytical space for the notion of responsibility. Like personal choice, the question of individual responsibility is a concern that has moved rapidly up the political agenda in recent years. Sen has highlighted the links between individual freedom, personal choice and responsibility and this issue is currently receiving increasing attention in the context of British public policy debates (e.g. Reeves, 2010). However, Sen also retains an emphasis on the ‘social realization’ perspective and contends that there are many circumstances in which inequalities in ‘achieved functionings’ remain critical for public policy purposes. In the broader literature, Fleurbaey (2006: 307) defends the notion of ‘second chances’ while Anderson (2010) highlights how inequalities in ‘achieved functionings’ that meet a threshold of ‘democratic import’ fall within the ambit of legitimate public concern. De-Shalit and Wolff (2007: 78–9) raise the need for democratic process in order to elucidate and agree principles of ‘reasonable behaviour’.

Capabilities, economic growth and public action

Internationally, the capability approach is increasingly influential as a new freedom-focused framework for economics and public policy that concentrates on the expansion of capabilities rather than other ‘focal variables’ (income and wealth, productivity, resources, utility, etc.). Proposals for taking this central and overarching idea forward have challenged both market-focused and state-focused traditions and resulted in the emergence of new paradigms and approaches that concentrate on the expansion of central and valuable capabilities and their fair distribution and equitable advancement in overall processes of growth.

The capability concept provides a powerful paradigm for distinguishing between the ‘ends’ and ‘means’ of economic growth. Sen’s research agenda has highlighted the key distinction between intrinsically valuable ‘ends’ (in the form of central and valuable capabilities) and instrumentally important ‘means’ (income, wealth, resources, institutions, delivery mechanisms, etc.). This distinction provides underpinnings for a public policy model that rejects the need for an *a priori* justification for particular social and economic arrangements and delivery mechanisms (public, private, third sector, etc.) and which treats the

question of the ‘means’ by which capabilities are best protected and promoted by governments as a matter for ongoing empirical investigation (Table 4.2).

Critically for the British public services debate though, this distinction between ‘ends’ and ‘means’ is made within an overall framework of social responsibility. A key theme in Sen’s work is that the expansion of capabilities should be viewed as a social commitment with public action playing a key role.

The empirical literature on the capability approach is helpful in consensus-building around the role of public action in protecting and promoting the capabilities of individuals and groups. Sen (1999) and Drèze and Sen (1989, 2002) map out the broad contours of public action and the range of different strategies that can be instrumentally important in overall processes of capability expansion including public action to improve the operation of private markets by making them fairer and more efficient, growth-mediated strategies and strategies of direct state provision. Their analysis puts emphasis on the wide range of policy tools and levers that are available to governments concerned with capability expansion in addition to public services that are directly provided by the state.

Table 4.2 Distinguishing between ‘ends’ and ‘means’

‘ENDS’

Substantive freedoms and opportunities (i.e. the central and valuable things in life that people can actually do and be, such as the freedom and opportunity to enjoy longevity, physical security, education and learning, good health, an adequate standard of living, participation and self-respect)

RECOGNITION OF THE EXPANSION OF CAPABILITIES AS A SOCIAL GOAL

PUBLIC ACTION TO SUPPORT THE EXPANSION OF CENTRAL AND VALUABLE CAPABILITIES

‘MEANS’

Direction provision of public services/regulation and inspection/complaints handling and redress/underlying legal environment/specification of the ‘rules of the game’/rights and responsibilities/national minimum standards/financing and commissioning public services provided by the private and independent sectors/promoting competition/ensuring equal access to private markets/incentivizing private and independent providers

In the current context, these insights are relevant in making the transition from uni-dimensional thinking about the role of the state as a direct provider of public services to broader thinking about multi-faceted forms of public action. In addition to direct state provision a wide range of policy tools and levers are relevant. For example: public action that aims to improve the operation of private markets by challenging monopoly power, promoting equal access to private markets or by incentivizing private or independent suppliers; public action involving the commissioning and financing of public services that are provided by the private and independent sectors; public action to specify a framework of public service standards and the enforcement of such standards through inspection, regulation, complaints-handling and redress mechanisms; public action that alters the underlying legal environment and the specification of legal rights and responsibilities (such as a smoking ban); and public action that aims to influence attitudes, behaviour and choices.³

The Equality Measurement Framework – a prototype for moving forward?

Internationally, there have been a number of attempts to ‘operationalize’ the capability approach as a basis for measuring individual well-being and social progress (as reflected in initiatives ranging from the UNDP’s human development index to the recent Commission on the Measurement of Economic Performance and Social Progress (Stiglitz *et al.*, 2009). In the British context, the ‘Equality Measurement Framework’ (subsequently EMF) developed by Burchardt and Vizard in partnership with the Equality and Human Rights Commission (EHRC) is a new capability-based system for evaluating progress towards equality (and in eliminating inequality) in England, Scotland and Wales.⁴ In this section I map out how the EMF takes forward thinking about measuring progress and performance in public services by focusing attention on ten critical domains (or capabilities) and three ‘critical aspects’ of the position of individuals and groups.

³ The example of a ban on smoking is discussed in Sen (2002: 428–30).

⁴ Further details of the EMF are provided in Burchardt and Vizard (2011), a briefing paper (EHRC, 2008) and a series of research reports for EHRC: Burchardt and Vizard (2007a, 2007b), Alkire *et al.* (2009), Burchardt *et al.* (2009), Burchardt and Vizard (2009) and Holder *et al.* (2011).

EMF capability list can be used to ‘operationalize’ this proposal with the ultimate purposes (or ‘ends’) of public action and an updated set of public service goals being specified in terms of the expansion of ten central and valuable capabilities, covering life, physical security, health, education and learning, and so on (Table 4.3).

Outcomes, treatment and autonomy

In ‘operationalizing’ the capability concept, the EMF evaluates outcomes in and across the ten critical domains specified above in terms of outcomes (or ‘achieved functionings’ – what people are actually doing and being, such as their health status, or whether they are employed or not, or whether they are experiencing physical abuse); treatment (for example, whether a person is experiencing discrimination or degrading treatment, and whether they are treated with dignity and respect) and autonomy (empowerment, choice and control) (Figure 4.1). For example, using the Framework to evaluate the position of older people in the health domain entails evaluating the functionings of older people (prevalence of cancer and cardiovascular conditions, mental health status, etc.); treatment (whether older people experience degrading treatment or discrimination in health care, and whether they are treated with dignity and respect, etc.) and autonomy (whether older people are empowered to influence critical decisions about their health care, and whether they experience choice and control in their lives) Burchardt and Vizard (2011: 96–7). This distinction can be further developed and applied as a basis for evaluating the different types of impact that public services can have on the lives of individuals and groups in each of the ten domains specified in the EMF capability list.

Figure 4.1 Evaluating public service outcomes: what should we be measuring?

Measuring progress and performance in public services

The EMF takes forward broader efforts to develop 'outcome orientated' frameworks for measuring progress and performance in public services. Under Labour, recognition of role of outcome-orientated indicators in processes of public services reform was given through the system of Public Service Agreements and the need to strengthen outcome-oriented systems of performance management was recognized (Cabinet Office, 2008: 37). The Darzi Review recommended an information base for monitoring health services that captures a broad range of outcomes covering clinical results both also elements of treatment (such as dignity and respect) and autonomy (such as patient involvement) as an alternative to a top-down, target-driven approach to performance management. Under the Coalition Government, these proposals have been followed up with new 'health outcomes' and 'adult social care outcomes' frameworks.⁵

The EMF is 'populated' by an indicator set that draws on a broad range of social survey and administrative sources. The indicator set was developed through a specialist consultation process and therefore, like the agreement of the capability list, has a strong focus on participation. It moves away from a composite index and 'population averages' approach, towards the use of a range (or 'dashboard') of indicators with systematic disaggregation by key characteristics (such as ethnicity, disability, age and social class). It also emphasizes the importance of identifying and separately reporting the position of vulnerable and 'at risk' groups such as individuals resident or detained in public and/or private institutions, refugee and asylum seekers, Gypsies and Travellers, 'children in need' and 'looked after children'.

The EMF indicator set encapsulates the principle that a balance of objective and subjective indicators is necessary for policy evaluation purposes. The importance of subjective indicators in evaluating public policy outcomes has received increased recognition in recent years. Labour flagged up its intention to introduce new outcomes-based monitoring systems relating to police performance with the Policing Green Paper stating that top-down targets would be dropped and replaced by a new outcome-orientated target relating to overall public confidence (Home Office, 2008). The development of new public confidence indicators of this type has been taken forward under the Coalition

⁵ The Coalition has also extended the application of 'payments by results' (used in health under Labour) to areas such as immigration, employment services and probation/re-offending. For the NHS outcomes framework, see Department of Health (2010) and for adult social care outcomes framework, see Department of Health (2011).

Government. In addition, since the 2010 General Election, a new wave of public policy statements and media reports together have focused attention on the role that subjective well-being and happiness can play in evaluating well-being and social progress. These proposals have recently been underpinned by a recent ONS consultation on well-being, new survey instruments for measuring life satisfaction and academic proposals for using indicators of subjective well-being for evaluating public policy outcomes (Dolan *et al.*, 2011).

The EMF reserves an important role for indicators of subjective and ‘voice’-based indicators such as confidence in the police, perceptions of organizational discrimination by the police and criminal justice system and health and educational services, self-reported treatment with dignity and respect, and so forth. However, it departs from a subjective well-being approach in that a balance of subjective and objective measures are included within the indicator ‘dashboard’ for each domain. For example, the physical security domain includes indicators of confidence in the police and fear of crime (subjective indicators) alongside more objective indicators of the prevalence of violence (including the prevalence of domestic violence and sexual violence). This allows for the possibility of adaptation and for cross-checking of the reliability and validity of subjective well-being indicators – a process that is arguably critical for public policy purposes (Atkinson, 2011).⁶

A model for policy intervention

Figure 4.2 illustrates how the EMF can be developed and applied as an analytical model that can be used as a basis for public policy purposes. ‘Valuable ends’ in the form of ten central and valuable capabilities are modelled as being critically dependent on personal characteristics such as gender, age, ethnicity, disability and social class; resources (income, wealth, public service entitlements, etc.); and contextual variables (such as the underlying legal system, the specification of rights and responsibilities, social norms, public attitudes). The model highlights the importance of interpersonal variations in needs and situations; the role of individual agency (choices, behaviour, etc.) in transforming a

⁶ The Final Report of the 2020 Public Services Commission pointed to the role that the EMF might play in the development and application of a new framework for evaluating progress and performance in public services. ‘By focusing on three important dimensions of an individual’s experience of public services – outcomes, treatment and autonomy – the [F]ramework provides a flexible and powerful model for developing and evaluating future policy and practice. It avoids prescription, values diversity, and makes sure that no one is left behind’ (2020 Public Services Trust, 2010: 39). Recent proposals building on this idea have been developed by the 2020 Public Services hub. See Snaith (2011).

person's capability set (the capabilities that are within their reach *ex ante* – prior to choice and behaviour) into 'achieved functionings' (their actual attainments in practice); and the broad range of 'means' that can be instrumental in processes of capability expansion.

Figure 4.2 can be used to model a range of current public policy concerns. At the most simple model the model highlights how an anti-deprivation strategy should not exclusively focus on income and wealth when a wide range of multi-dimensional interventions might be influential – capturing the importance of cutting across traditional public policy silos and of modelling 'holistic' public policy initiatives such as 'needs-based holism' and 'Total Place'. Further capabilities in one domain (for example, education and learning, and health) may be critically important (or 'instrumental') for achievements in other domains (such as the adequate standard of living). Indeed, recent literature puts a particular emphasis on the search for 'magic bullets' and whether it is possible to identify key instrumental capabilities (including self-esteem and emotional intelligence) that can trigger a 'virtuous cycle' of capability expansion (e.g. Bartley 2006) and/or 'decluster disadvantage' by distinguishing between 'fertile functionings' (which are important in securing other functionings) and 'corrosive disadvantages' (that lead to further disadvantages) (De-Shalit and Wolff, 2007: 6373, 119–32).

Figure 4.2 Model of capability 'production'

Source: Burchardt and Vizard (2007a)

Figure 4.2 provides an entry-point for modelling the role of co-production, with the interaction of individual entitlements with individual agency, behaviour and choice made explicit. Finally, the model encourages a multidimensional approach to thinking intergenerational cycles of ‘poor’ capability inheritance, highlighting intergenerational cycles of domestic violence and child abuse in the physical security domain, alongside intergenerational cycles of poor achievement in relation to education, learning and employment prospects. The Framework accords in this sense with recent public policy recommendations on life-chances and social mobility (e.g. Field, 2010; Allen, 2011). Since children and young people are at a formative stage of capability formation – with implications across the lifecycle and for society more generally – social investment in the capabilities of children and young people also emerges from Figure 4.2 as a key public policy concern.

Bringing new thinking about individual rights into the analysis

In this section I explore how a focus on capabilities can be combined with new thinking about individual rights. The work of the 2020 Commission highlighted the need for new thinking about individual rights that moves beyond the characterization of individual rights simply in terms of an individual entitlement to resources and/or services that are directly provided by the state (Alldritt *et al.*, 2009: 54–5). Sen’s (1985a: 217, 1985b) concept of a capability-right may be helpful here and suggests a broader formulation of an individual right in terms of the protection and promotion of a capability (such as good physical and mental health, or physical security, or education and learning).

New thinking about individual rights is also taken forward by emerging paradigms and approaches that characterize individual rights in terms of their potential equity and efficiency effects. Whereas in the past there was a widespread perception of a conflict between individual rights and economic growth, it is increasingly recognized that extensions of individual rights and democratic practice can play a key role in contemporary democracies – for example, by specifying minimum standards and the ‘rules of the game’, creating a level playing field, incentivizing providers, providing mechanisms for ‘informational feedback’, introducing new sources of ‘bottom-up pressure’ and levers of ‘democratic control’. More generally, individual rights and extensions of democratic practice are characterized as empowering individuals, enhancing

‘responsiveness’ and ensuring that critical accountability and redress mechanisms are in place.

In the development context, Sen and Drèze establish that democratic forms of government and individual rights can be instrumentally important in protecting and promoting capabilities. For example: by disseminating information, facilitating public scrutiny and debate, building up political opposition, increasing pressure on governments, proving for the correction of ‘errors’, and helping to precipitate a more effective public policy response (e.g. Sen, 1999b: 178–86; Drèze and Sen, 1989, 2002; Drèze, 2004: 1727).⁷ Besley and Burgess (2002) developed a formal framework for evaluating the responsiveness of governments to citizens’ needs in electoral democracies. Their analysis has implications for understanding the role of individual rights in preventing public policy in preventing ‘capture’ by elites and dominant social groups by increasing ‘voice’ and strengthening the influence of subordinate groups in collective decision-making.

Stiglitz (1999, 2002) examines how individual rights to information (e.g. in the form of Freedom of Information Acts) can enhance economic efficiency and resource allocation by increasing the availability and quality of information. Informational asymmetries can result in capture by special interests and in corruption by government officials, with strongly adverse consequences for investment and economic growth. Strengthening individual rights to information (e.g. in the form of Freedom of Information Acts) and rights to legal redress can reduce the magnitude and consequences of these agency problems, with greater access to information and resulting in better, more efficient, resource allocation (Stiglitz, 1999) by strengthening accountability and ensuring that appropriate ‘democratic control mechanisms’ are in place. Stiglitz (2002) characterizes participatory processes as a ‘public good’ – with an active civil society functioning as a check on abuses of power and influence and a source of countervailing power. This analysis results in a key public policy recommendation – that extensions of democratic practice and individual rights are required to help to ensure that concentrations of power in one domain are checked and restrained by counter-veiling sources of power in another domain.

⁷ Examples range from the Indian Famine of 1947 to contemporary food shortages in Rajasthan. The instrumental role that human rights, including economic and social rights, can play in strengthening public accountability and efficiency by increasing ‘voice’ and providing an additional source of ‘counter-veiling power’ is another important theme. The ‘Right to Information Movement’ and the ‘Right to Food’ campaign in India provide examples (Drèze and Sen, 2002; Drèze, 2004: 1726).

McKay and Vizard (2005) set out a theoretical and empirical entry-point for capturing the role of rights-based approaches in terms of the equity and efficiency objectives reflected in standard welfare economics. Individual rights can have equity effects, for example, by determining the allocation of fundamental entitlements in an economy, by broadening social opportunity (for example, by ensuring equal access to private markets and to public goods), by strengthening voice, empowerment and accountability and/or by focusing public policy attention on the needs of the poor and vulnerable. Individual rights can also have important efficiency effects. For example, individual rights can provide mechanisms for responding to monopoly power and to a range of market failure situations discussed in welfare economics.

Table 4.4 How do rights-based interventions help to address the concerns of welfare economics?

Problem	How rights-based extensions provide a solution (or partial solution)
Monopoly power	Extension of rights addressing price discrimination and cream-skimming
Public goods	Creation of public service entitlements that supplement private market provision
Externalities	Reallocation of property rights/rights imposing constraints on behaviour and activities to deal with complex interdependences and internalize costs of externalities
Incomplete, imperfect and asymmetric information	Rights-based extensions to increase the quality of information available and knowledge about options (e.g. freedom of information act, information about choices and quality in context of public services)
Adverse selection and moral hazard	Rights-based mechanisms to create level playing field, e.g. regarding use of screening mechanisms and to prevent cream-skimming
Principal agent problems	Rights-based extensions both to address asymmetric information and to strengthen the threshold position of beneficiaries, e.g. voice, choice, empowerment/accountability/responsiveness, mechanisms of 'democratic control'

Table 4.4 builds on this thinking. It illustrates how extensions of democratic practice and individual rights can be characterized as being important on the grounds of efficiency as well as equity, and as playing a key role in addressing key sources of economic inefficiency such as monopoly power, cream-skimming, under-provision of public goods, externalities, incomplete, imperfect and asymmetric information, principal agent problems, adverse selection and moral hazard – for example: by preventing discrimination, empowering beneficiaries, ensuring access to adequate information, strengthening accountability and responsiveness, and providing new levers of ‘democratic control’ (see Table 4.4).

What role for individual rights to equality and human rights?

What role should individual rights to equality and human rights play in the development of the new public services model?

Using the analytical framework set out above, individual rights to equality and human rights can be characterized as having a range of potential equity and efficiency effects in contemporary democracies. Like other individual rights, they can be viewed as playing an important role in specifying minimum standards and the ‘rules of the game’, creating a level playing field, incentivizing providers, introducing new sources of ‘bottom-up’ and counter-veiling pressure, strengthening accountability and responsiveness, providing new levers of ‘democratic control’ and so forth (see Table 4.4).

Consider the work of a health commissioning body that is formally accountable to all individuals within a local geographic unit. Public duties to eliminate discrimination and promote equality (such as the duties incorporated into recent equality legislation) have a potentially important role to play in ensuring complete coverage of the relevant population as well as in ensuring minority interests are adequately considered in decision-making and that the system is ‘responsive’ to the needs of all individuals and groups. For example: in combating the possibility of discriminatory practices in relation to GP registration and/or the failure to give sufficient weight to the needs of minority subgroups such as disabled people, older people and/or people from ethnic minorities.

Section 6 of the Human Rights Act (1998) establishes a duty on public authorities to comply with many of the individual rights guaranteed in the European Convention on Human Rights. The Act provides national minimum floor standards that are of direct relevance in the public services context such as the protection of life, as well as the prohibition of degrading and inhuman

treatment and of non-discrimination. The Act is binding on public authorities including providers of public services such as the police, NHS and primary care trusts and local authority-run housing, education, social services and care homes as well as on private and voluntary providers exercising 'functions of a public nature' (for example, private and voluntary providers of health and social care services funded through public expenditure).⁸ These standards can also be understood in terms of the analytical framework developed above.

The new era of decentralization and localism in public services puts a particular spotlight on the need for national minimum floor standards to underpin public service provision. The Coalition Government has stated that top-down targets and centralized management systems will be discontinued, with organizational decentralization and more reliance on 'bottom-up pressure' such as new forms of empowerment and accountability as drivers of quality in public services. The ultimate aim is described in the Open Public Services White Paper as the creation of a 'self-improving dynamic' (Cabinet Office, 2011: 21).

However, there is also recognition that decentralization and localism in the absence of national minimum standards is likely to result in an unacceptable *laissez-faire*. The 'self-improving dynamic' will require a framework of minimum standards, as the Open Public Services White Paper acknowledges. Yet there is currently little agreement about where the new body of minimum standards that will be necessary to underpin decentralized and localized public services will come from. Rights to equality and human rights have an important role to play here – and should be regarded as an important input into the new public services model.

Conclusion

This chapter has examined the role that the capability approach and rights-based approaches can play in developing a new public services model. I began by arguing the central focus of a new public services model should be the expansion of capability. I suggested that the idea of capability can make a major contribution to a new public services model as an ethical framework for thinking about equality, inequality and justice; as a practical framework for repositioning and reframing British political debates; and as a new paradigm

⁸ The position in relation to private and voluntary providers of health and social care was clarified in the Health and Social Care Act (2008).

for thinking about the ‘ends’ and ‘means’ of economic growth and the role of public action.

I then moved on to examine how the capability approach can contribute to ongoing efforts to develop ‘outcome-orientated’ frameworks for measuring progress and performance in public services. The Equality Measurement Framework (EMF) is a new capability-based framework for evaluating progress towards equality (and the elimination of inequality) in England, Scotland and Wales. I mapped out how the EMF takes forward thinking about measuring outcomes in public services by focusing attention on ten critical domains (or capabilities) and three ‘critical aspects’ of the position of individuals and groups (outcomes, autonomy and treatment).

Next, I addressed how the capability approach can be usefully combined with new thinking about individual rights. I explored a range of potential equity and efficiency effects that individual rights can play in contemporary democracies beyond the specification of individual entitlements to resources and/or services that are directly provided by the state – for example, by incentivizing providers, specifying the ‘rules of the game’, creating a level playing field, providing sources of bottom-up pressure, strengthening empowerment, accountability and responsiveness, and ensuring that appropriate ‘democratic control’ and redress mechanisms are in place.

Finally, I suggested that individual rights to equality and human rights can also be understood in terms of potential equity and efficiency effects of this type, and have an important role to play in the ‘new era’ of decentralization and localism in public services.

The underlying aim of the chapter has been to contribute to the development of a new public services model. The capability approach and rights-based approaches provide rich foundations on which to build.