Equality and Human Rights: Key Concepts and Issues
Working Paper 1

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In recent years equalities and human rights have come to occupy a prominent place on the agenda of policy makers, academics, and organisations in the public, private and voluntary sectors. This is partly a result of the trend towards mainstreaming equality and opportunity across various domains of public life. Increasing interest in the relationship between equalities and human rights in the UK context also stems in part from their incorporation within a single Commission for Equalities and Human Rights. The challenging remit of the Commission is to develop a workable definition of equality fitted to the current socio-economic context, devise appropriate policy instruments, and monitor their implementation. This creates an important role for critical academic inquiry into the problems and possibilities this agenda produces for diverse stakeholders. This paper begins by briefly mapping the intellectual terrain, reviewing some of the most important literature on equality and human rights.

Introduction

The demand for equality is an important area of debate in modern politics. It has inspired some of the key political struggles of the past two centuries, which in turn reflect the complex and diverse forms social inequality can take. The bid for equality is present in the calls for 'liberty, equality and fraternity' of the French Revolution; in the move to abolish slavery in the United States; in the demand for universal suffrage; in the emergence of feminism as a social movement; and in struggles against fascism and colonialism. The literature offers competing accounts of the different types or dimensions of equality, which include political, economic, social, legal and cultural domains.

Certain basic forms of equality underpin the mode of collective social, political and economic organisation in contemporary societies. For example, 'equality under the law' is inherent in being a subject of the state, and securing cooperation and reasonable harmony in large-scale societies. The current climate of increasing economic migration (where nation-state citizenship and residency may not always coincide) illustrates how the parameters for equalities can change with time. This is most apparent in relation to economic resources, which came to dominate the politics of equality in capitalist societies over the last century. This was largely stimulated by the significant economic inequalities that arose from the Industrial Revolution, and created strands of socialist thought which exerted much influence over C20[th] politics. Indeed, the liberal egalitarian concern to mitigate the worst effects of economic inequalities in a market economy was an important principle in constructing the post-war welfare state.

Today, securing the conditions for greater equality among citizens remains a central preoccupation of welfare states. In an era of economic and political globalisation, moreover, equalities and human rights is an increasingly complex issue that extends beyond questions of national citizenship rights. Not just governments but also inter-

governmental bodies, NGOs, voluntary organisations, and the private sector share an interest in the developing equalities and human rights agenda.

Across liberal states there is no question that much progress has been made over the last century in both defining equality and securing practical outcomes for individuals and groups. Notable advances include the extension of voting rights, forms of social protection, anti-discrimination legislation, employment rights and the protection of vulnerable groups. Political movements and policy have helped raise awareness of the systematic exclusion and/or exploitation of particular social groups. Nevertheless important areas of inequality and injustice remain untouched. The historical persistence of certain forms of inequality is starkly illustrated in the figures for infant mortality rates in Britain. R. H. Tawney (1964) introduced his seminal text 'Equality' by presenting the infant mortality rates gathered in the 1931 census. The figures were twice as high for the poor 'labouring classes' as the 'independent class' rich. In 2005 this disparity remained unchanged, with the rate for 'routine trades' poor still twice as high as for the 'higher professions' rich. Furthermore, when the figures for different ethnic groups are factored in (not cross-compared in 1931), the infant mortality rate among certain minorities is even higher - twice the level of the population as a whole.

In effect, history moves through different forms of inequality, making progress in some areas, leaving others untouched, and generating new forms and relations of inequality. As Callinicos (2000: 12) put it when contemplating the dawn of a new millennium, 'rich beyond the wildest imaginings of earlier generations, the world enters the 21st century heaving with poverty and inequality'.

The changing historical landscape produces not only new forms of inequality, but new political conditions in which strategies for addressing them must take place. In effect, equality is a perpetually moving target. In the early C20th two thirds of the British population were on moderate or static incomes, or in poverty. The majority of the electorate could thus significantly benefit from (and so supported) taxation-based welfare strategies based on equality through redistribution. In the early C21st the living standards for this majority have increased significantly, and high-tax, inflexible welfare systems are no longer viewed as viable (Taylor-Gooby, 2003). Moreover, for some social groups recognition, not (solely) economic redistribution is the issue (Fraser, 1997; Young, 1990), for example in relation to sexuality or gender. Thus because of economic and sociocultural developments, the goalposts for achieving justice, equality and inclusion have moved.

Policy Context

Key developments throughout history at both national and international levels of governance reflect this perpetually moving target of equality. Alongside the emergence of complex governance relationships and devolved powers in post-industrial societies, an important trend has been the move towards mainstreaming equality policies and principles across all public bodies.

Most recently, in the UK context the decision to coalesce human rights and equalities policies under the auspices of a single commission (the EHRC) reflects the attempt to address the increasing breadth and complexity of issues relating to social justice, equality and inclusion. This move arose partly in response to pressure from human

rights organisations to mitigate the negative 'public image' attached to human rights by incorporating them with equalities. As outlined below, the EHRC has consequently developed an equalities framework, which is significantly influenced by the 'Capabilities' approach to human rights developed by Amartya Sen (Sen, 1985; Nussbaum and Sen, 1993).

The Conceptual Terrain

In discussing equalities and rights in society, it is important to distinguish humanitarian and egalitarian principles. The former might be the desire to eradicate hunger; an example of the latter would be the desire to eliminate domination of one group over another. In arguing that 'nobody should be hungry' the underlying concern is with people being *badly off*, not necessarily with them being *less well off*. The former is thus a demand concerned with a particular state of affairs, the latter with a particular arrangement of social relations. Following White (2007) we might state that in its broadest sense the idea of equality (encompassing also the concept of human rights) involves two distinct kinds of concept. One essentially involves distributive concerns about the relative amounts of certain goods or resources people have or are able to access. The other concerns the sort of relations that hold between people, whether they (inter)relate as equals. This distinction is similar to that drawn by Fraser (1997) between the politics of distribution and the politics of recognition. These conceptual distinctions help clarify the terms of engagement with the very complex and contested ideas associated with equality, although they are clearly not distinct in practice. Indeed, much of Fraser's work is concerned with untangling the overlapping and competing claims of redistribution and recognition.

Moreover, a distinction can be drawn between 'equality' and 'human rights' in relation to both political philosophy and forms of social intervention. The two concepts have evolved over centuries of political philosophy and social theory. Roughly speaking, equality is concerned with sameness and difference between individuals and groups. Human rights are concerned with fundamental properties (or minimum standards of treatment) of all individuals. Sufficiency, rather than equality is the key principle here, and entitlement is unconditional, based not on need or desert, but on one's humanity (Burchardt, 2006). However, it is important to observe that these two concepts overlap in important ways. Indeed, the idea of human rights is itself premised on an essential form of *equality* between human beings. This egalitarian principle is made explicit in the claim in the Universal Declaration of Human Rights that 'All human beings are born free and equal in dignity and rights' (Article 1; cited in Baker et al., 2004). In many respects the equality principles espoused by egalitarian thinkers are more ambitious and far-reaching than anything in the Universal Declaration or European Convention on human rights. The complexity of the idea of equality is reflected in the great diversity of theoretical perspectives (some competing, some complementary) presented in the literature.

The following sections give a brief overview of some of the key conceptual issues at stake in discussing equalities and rights, their significance for particular social groups, and their implications for future policy and research. Having outlined the main ideas involved in two currently influential theories on equalities and rights (the 'capability approach and 'equality of condition'), the paper concludes by examining the attempt

to bring together equalities and human rights in the UK policy context in the Equalities Review (HMSO, 2007).

Human Rights

The concept of human rights extends as far back as the ideas of natural justice expounded by Aristotle and the Stoics (Cicero, Seneca) and Christian theologians. The later development of the concept of human rights stemmed importantly from the philosophical developments associated with scientific rationalism during the Enlightenment in Europe. It also has important connections with the idea of 'natural law' developed by John Locke, in which individuals are seen to possess natural rights (for example, life, liberty and property) independently of the political recognition granted them by the state. The theoretical basis and philosophical justification for today's notion of human rights also developed out of Immanuel Kant's ideas about the equality and moral autonomy of rational human beings.

These philosophical developments provided the conceptual means with which to a) justify, and b) codify human rights. It also became a vehicle for effecting political change. These ideas (moral autonomy, human dignity, natural rights, equality) were the philosophical basis for the most significant social and political revolutions of the 18th and 19th centuries (the US Independence, the French Declaration of the Rights of Man, and Wollstencraft's *Vindication of the Rights of Women*). The C20th Universal Declaration of Human Rights was eventually formulated in response to terrible violations of human rights – most notably in the Holocaust.

Equality

The idea of equality is more complex than that of human rights. In order to impose some conceptual clarity, the literature typically begins by posing a set of fundamental questions – what Baker (2004) terms the 'family of equality questions' - which any theory of equality must answer. Broadly speaking, these questions ask *what* kind of equality do we want, between *whom* should it exist, and *how* can it be achieved? However, the most important starting point – and perhaps most challenging question is *why* should we expect equality in the first place? In advanced liberal societies, the idea of equality as a desirable goal has become so naturalised it seems unnecessary to defend it. Yet there are well-known libertarian arguments that claim social inequality is a necessary price to pay for individual freedom, and that any governmental intervention to regulate inequalities is immoral (Hayek, 1944; 1982).

Why Demand Equality?

Matthew Arnold observed that equality is like the Holy Grail: 'To find it we have to search for it. And to search for it we have to believe in it.' (Hattersley, 2006: 11) Typically this belief is rooted in a rejection of inequality. There are many reasons for wishing to eliminate inequality: humanitarianism and the desire to alleviate suffering, segregation or discrimination; levelling excesses of power; or communitarianism and the belief in the collective good to be gained from respecting individual needs. The question of why equality in society is a desirable thing is the theme underlying centuries of political and philosophical debate. Although not always explicitly

represented as such, fundamentally this is a question of morality and the dilemma of social difference.

Developing mechanisms for achieving greater equality in societies is fraught with difficulties. In order to achieve effective change, formal systems must be developed based upon clear principles in relation to desirable forms of equalities and human rights. However, the demand for equality is not a demand for a thing but for many things, and people frequently disagree about the relative worth of these things. Thus, the question of whether and how societies should be equal may be debated in relation to feasibility, efficiency, tensions with economic growth, between individual and collective goods and freedoms, and so on. Libertarian thinkers like Hayek and Nozick, for example, argue against equality policies based on the redistribution of wealth on the grounds that they are economically inefficient and morally wrong, curtailing both economic growth and individual liberties.

Despite such concerns over the threat to personal liberties posed by government interventions to achieve greater equality, most societies recognise the importance of at least basic equalities like the right to life and freedom from physical abuse (although even this is clearly suspended in cases of systematic oppression of particular social groups). In fact, this brings us to two central questions underpinning the issue of equalities and human rights: equality for whom and equality of what?

Sen (1980; 1992) observes that equality is a profoundly complex question because of the fact of humanity's infinite diversity, which requires us to weigh competing claims, values and needs. In other words, the systematic *distribution* of resources, opportunities or other forms of value is a normative process, and one that has consequences: 'the answer we give to equality of what, will not only endorse equality in that chosen space, but will have far-reaching consequences on the distributional patterns in other spaces' (Sen, 1992: 21). There are two important implications in this: any normative exercise like deciding questions of justice and equality necessarily means making collective decisions about a) what is valuable, and b) who should get it. It follows from this that there can be no single overarching definition of equality. Indeed, we could argue that continued progress towards a 'society of equals' (Baker, 1987) would not be possible if there were a single definition, because it would be incapable of responding to humanity's infinite diversity.

Equality Between Whom?

Individuals versus Groups
For Young (2001) the first question about equality is 'equality between whom?'. At the most fundamental level this depends upon whether we adopt an individualistic or communitarian view of equality. That is, are we concerned with equality between individuals or whole groups (societies/nations)? In the case of human rights principles the social subject is clearly the individual. However, the situation is more complex in relation to equalities. In this respect Young (2001) contends that group categories are the best means of capturing the social structures and circumstances that help sustain and reproduce (in)equalities. Indeed, given the relational nature of (in)equalities they can only be fully understood by carefully examining the individual circumstances and wider social structures and institutions that helped produce them.

The Use of Social Categories
In terms of social groupings, certain key dimensions of (in)equality have come to be identified as the most significant: class, gender, race (ethnicity), (dis)ability, sexual orientation, age, religion/beliefs. While other forms of (in)equality can and do exist, these are identified as the most recurrent and widespread. The latter six constitute the equality strands adopted as the parameters for the Equalities Review. These strands help devise, implement and monitor a theoretically informed system for overcoming inequalities in the UK national context. While the unit of analysis remains the individual, comparisons can thus be made on the basis of these core characteristics. In other words the goal is equality between *individuals* in relation to their identification with one or more of these strands.

There is a clear rationale behind using these strands as the basis for identifying (in)equalities. Each characteristic has historically been the source of significant discrimination and each is seen to be beyond the individual's control (Burchardt, 2006). In this latter respect we can say that the six strands reflect the historical development of prevalent social attitudes and values (it is unlikely that sexuality or age would have been included in a similar list compiled even twenty years ago). These rationales are theoretically and pragmatically necessary. They help impose intellectual and moral clarity and consistency, thereby providing a clear basis upon which to critically evaluate what is an intrinsically normative framework for policy decisions.

Implications of Equality Strands
There are a number of important issues in relation to the selection of these equality strands. Firstly, an individual may identify with more than one characteristic. The implication is therefore that methods for gathering data must be capable of supporting cross-comparison and multivariate analyses. Secondly, in using comparisons based on social groups there is a danger of reinforcing homogenous stereotypes about particular groups, their characteristics and their needs (Byrne, 2006). It follows therefore that analyses must also be sensitive to group-internal differences. A third problem that arises when addressing (in)equalities through social groups is known as the 'dilemma of difference' (Dyson, 2001; Norwich, 1993; 1994; Terzi, 2005). This is a particular problem in the area of disability and educational provision. For example, identifying the needs of individual children according to (dis)ability requires the use of contentious categorisations. By labelling individuals in this way do we discriminate against them? Terzi (2005) argues that the capabilities approach can overcome this dilemma by emphasising the interrelation of individual, social and circumstantial factors that may impede an individual's capabilities.

Redistribution or Recognition?

An important debate in the literature concerns the dilemma of competing demands that arise from different forms of inequality, and the possible strategies for meeting them. One significant line of tension has arisen in relation to a general shift in emphasis from preoccupations with patterns of socio-economic distribution towards more cultural dimensions of inequality. Phillips (1997; 1999) characterises this as the tension between the competing claims for redistribution and recognition. In the late C20th there has been increasing political and theoretical attention to the injustices and inequalities arising from group-based discrimination. This is sometimes referred to as

the 'politics of difference' or 'identity politics' and involves not only the demand for redistribution (of resources or opportunities) but also recognition. The dilemmas involved in meeting these sometimes conflicting demands are an important theme in the literature on equality and difference (for example, Fraser, 1997; 1999; Phillips, 1999; Taylor, 1992; and Young, 1980). More generally the extensive body of theoretical work on the politics of group-based difference has helped shape a more sophisticated understanding of democratic citizenship. Its influence is apparent in the scope of recent equalities policy, in particular the commitment to mainstreaming the promotion of equality for specific groups across the public domain.

What About Class?
Socio(economic) class has long been identified as an important source of inequality. It has been the central preoccupation of much socialist and egalitarian thought. This is also a matter of distinct social groups positioned in an unequal relationship. Unlike the other social groups or 'collectivities' identified in the six equality strands, however, this group's existence is rooted in the political economy. In other words, distinct social classes exist because of the capitalist economic system. Other groups like gender or disability exist irrespective of this. The most influential theories of class and inequality were formulated in the late C19th by Marx and Engels, and have since exerted much influence on the theory and politics of distributive justice. The various forms of social protection in place in welfare states constitute an attempt to address such economic inequalities. The category of class is not included in the six equality strands of the Equalities Review. This is despite the fact that it meets both the selection criteria for the list of characteristics used to measure and evaluate equality: it has long been the source of considerable inequality and it is largely beyond individual control. Burchardt (2006) explains that its omission is theoretically consistent with the analytical approach known as 'ethical individualism'. This approach takes individuals rather than groups as the unit of analysis in order that the interests of the individual should not be overridden by group interests in instances where the two conflict. In order to resolve this dilemma class is removed from the equation in cross-cutting policy strategies to address inequality (the Equalities Review). However, a significant strand of current theory points to the danger of neglecting class and class-mobility, and identifying discrimination as the sole source of inequality (Blanden et al, 2004; Calhoun, 2003; Sayer, 2005a, 2005b). In relation to the current policy context on equalities, rights and social inclusion, an important issue for critical inquiry arises from this: how will the continuing centrality of class, income and wealth in determining life chances be addressed? To what extent will economic inequalities be seen as the responsibility of individuals, not social structures and economic mechanisms? In what ways does class intersect with the six strands? As will be discussed earlier, the Equalities Review fails to give serious attention to the issue of social class. The extent to which this threatens its effectiveness as an Equality Strategy for the UK is a question that clearly warrants further critical inquiry.

Equality of What?

Key Dilemmas
For Sen (1980; 1992) 'equality of what?' is the single most important question in debating equality. Any theory or policy strategy that engages with the issue of equalities – and thus necessarily with the question 'equality of what?' – will inevitably encounter a number of profound ethical and practical dilemmas that cut

across all approaches to equality. Baker et al (2004) summarise the most important of these. First, assuming that the overall goal is equality of well-being among all members of society, how do we reconcile the vast diversity of understandings about what constitutes the good life? Second, individual responsibility and agency must be factored in; how do we respect people's choices? In order to take into account this fundamental question of individual agency, Baker et al (2004) observe that most contemporary theories of equality (which they characterise as broadly 'liberal egalitarian' approaches) tend to stress the importance of securing the conditions to enable people to pursue their own aims.

Basic Equality
Basic equality underpins all egalitarian thinking: it is the belief that at some fundamental level all human beings are of equal worth and importance, and so should receive equal concern and respect. This idea can be identified in a number of the articles of the European Convention and International Declaration of human rights, for example, those protecting people's right to life, and asserting their equal entitlement to dignity and respect. Basic equality in fact relates to some of the most important and fundamental aspects of people's lives, and remains a powerful challenge to some of the gross injustices and persistent inequalities that still exist in the world. However, as Baker et al (2006: 4) observe, 'it does not challenge widespread inequalities in people's living conditions or even in their civil rights or educational and economic opportunities. It calls on us to prevent inhumanity, it does not necessarily couch its message in terms of justice as distinct from charity.'

Beyond Basic Equality
A common theme in the literature is the need for clarity in identifying what type(s) of equality are under consideration (for example, Baker et al., 2004; Callinicos, 2000; Le Grand, 1982; Phillips, 1999; Sen, 1980; 1992; and White, 2006). Nevertheless, the lack of consensus over the core dimensions of equality is apparent in the confusing array of binary oppositions and definitional murkiness in the literature.

Types of Equality
One way of approaching this complexity is to distinguish between different types or forms of (in)equality. In response to the second key dilemma of enabling individual agency, this is a means of *identifying* the conditions that affect people's well-being. White (2007) identifies five key categories of equality, all of which enter into the demand for equality in modern politics, and which therefore serve as a useful reference point for inquiry in this area:

1) **Legal Equality**. Some of the most fundamental or basic forms of equality are formalised under legal protections. The parameters of citizenship are formally inscribed in equality of fair treatment, punishment, and protection.

2) **Political Equality**. This essentially concerns equality in the process of making the law. It has certain practical limits, like a minimum level of intellectual development. This has implications for certain groups like children and the severely learning disabled, whose participation in processes governing their equality can only be by proxy.

3) **Social Equality**. In the most general sense this requires the absence of domination in everyday social relations. This relates to arguments for a 'society of equals' (Baker, 1987; Scheffler, 2003), where people have a high degree of protection from domination.

4) **Economic Equality**. This issue has dominated C20th theory on equality. It includes a variety of perspectives ranging from meritocracy to communism.

5) **Moral Equality**. This type of equality is distinct from the preceding four, all of which are concerned with shaping the design of major social institutions (like education) in order to compensate for or alter inequalities. On the other hand moral equality encompasses 'recognition' perspectives that emphasise the equal worth of each person's interests. For example, Dworkin's 'respect egalitarianism' states that there is a duty for institutions and laws to express equal concern and respect, although this does not exclude economic inequalities. An important contribution made by Dworkin (2000) is to link this type of respect politics, premised on the principle of moral equality, with the legitimacy of state authority. A state is legitimate only so long as it maintains a system that is premised on this principle. An important question arises from this: how far does the political community extend? Are there some people who lie outside this (and if so, how should they be treated?), or do we live in a global state?

Dimensions of Equality
In a review of the diverse perspectives on equality conducted for the Equalities Review, Burchardt (2006) approaches the question of 'equality of what' from a broad conceptual stance. She identifies three broad headings under which different approaches to this question can be grouped (although in some cases the distinction between them can be blurred). The three headings are: equality of process, equality of outcome and equality of opportunity.

1) Equality of Process
At the most basic level we might call this the principle of fairness, concerned with treating people the same. This requires a selective focus upon processural equalities, the relations and interactions between people, rather than on inequalities of outcome. Although an exclusive focus on process ignores the important question of outcome, it nevertheless underpins some important forms of equality. For example, it is the principle behind basic legal equalities like the right to a fair trial (included in article 6 of the European Convention on human rights), as well as in forms of discrimination that involve disrespect or cultural 'misrecognition' (Fraser, 1997). Moreover, in one sense equality in treatment is a central tenet of egalitarianism in its strict sense (Blakemore, 2003).

2) Equality of outcome
We can also detect the principle of fairness in this approach, but here the focus is on the result. As Burchardt (2006) puts it, this is about everyone getting 'equal shares of the cake'. The concern is with achieving the same or similar outcomes for all individuals and groups. This may mean treating them differently. The most obvious application of this perspective is in the distribution of income across individuals. Clearly, this is much easier to measure than questions of process, although there are a number of serious problems with this perspective. Firstly, giving everyone the same

risks ignoring differences in need, for example a disabled person may require more resources to achieve the same standard of living. It also ignores individual differences in preference or value (the communist society of the former Soviet bloc provided a striking illustration of this homogenising effect). A further problem with this approach is that it overrides individual responsibility and agency.

3) Equality of opportunity

Here the concern is with fair chances for all individuals and groups. The aim is usually to meet the prior needs of an under-represented/disadvantaged social group in order to create a level playing field. There is a wide range of variables that affect a person's opportunity to do something (resources, ability, effort, institutional context, and so on). Different approaches to the equal opportunities principle vary in which of these variables they consider legitimate obstacles to opportunity. In the most general sense equality of opportunity has received a high degree of support in policy strategies, although these can range on a scale from more to less radical (for example anti discrimination versus positive action). In practice, policy strategies often incorporate a combination of approaches. To illustrate different approaches that fall under the principle of equality of opportunity Blakemore (2003) distinguishes 'minimalist' and 'maximalist' approaches. The principles underlying them can be summarised thus:

'Minimalist' Approach	'Maximalist' Approach
- Goal: Fair treatment - Address needs of groups to create level playing field - Negative discrimination banned - All should be treated the same; all discrimination unacceptable - No use of quotas	- Goal: Equal outcomes - Re-evaluate 'needs' of disadvantaged groups - Positive action is also required - Positive discrimination acceptable - Quotas or targets may be used to achieve more equal proportions

Similarly, Burchardt distinguishes three main 'varieties of equal opportunity' from 'narrow' to 'wide'.

3.1 Meritocracy

The aim of this perspective is to equalise only resources. Opportunity should depend only upon the talents and effort an individual makes – inequalities due to gender, class, disability or other factors are seen to be unjust. With its emphasis on 'desert' this approach has an intuitive appeal, since it is tempting to believe that those who fail the test of merit have only themselves to blame. A key policy example in the UK political context of the meritocratic approach was Butler's 1944 Education Act. It aimed to provide, through a tripartite system of selective education, 'an escape from deprivation' for a certain proportion of talented, but disadvantaged (working class) children. The problems with the meritocratic approach are apparent when one considers some of its logical conclusions. What if a person is born without any characteristics considered to be meritorious (for example intelligence, talent, skill, beauty)? In effect, meritocracy is a system of perpetually shifting inequalities. It does not strive for an equal society, where the conditions necessitating an 'escape to prosperity and success' have been eliminated.

3.2 Responsibility Egalitarianism

This approach aims to equalise resources and talents. Whereas meritocracy is concerned with the distribution of access to privileged social positions and the goods they yield, this approach is concerned with the distribution of access to advantage more generally (Mason, 2001). Here, all circumstances beyond an individual's control that affect their opportunity to thrive should be eliminated (Dworkin, 2000). This is a more robust version of equal opportunity that aims to compensate for all inequalities of outcome except for those that arise from differences in effort or free choice. However, in practice these are difficult to measure. Furthermore, this approach tends to focus on the individual, ignoring the role of social institutions and structures in determining opportunities.

3.3 Capability Approach
In her discussion of approaches to measuring equality, Burchardt (2006) identifies the capability approach as offering the most robust form of egalitarianism, as well as the one that addresses the relationship to equality of both individuals and social structures. This approach significantly influences current thinking in the work of the EHRC and the Equalities Review.

The 'capability approach' is a theoretical framework for evaluating states' development in terms of their capacity to foster the 'substantive freedoms' of all human beings. It has been developed by Amartya Sen and Martha Nussbaum (Sen, 1992; Nussbaum and Sen, 1993). The key idea of this approach is that social arrangements should help expand people's capabilities. These are their freedoms to achieve valuable activities and states of being. An expression of states' progress and development, therefore, is whether people attain greater freedoms. There are two essential types of freedom: elemental (for example, the ability to enjoy health, longevity, safety) and complex (for example, self-respect, economic, political and cultural participation, self-expression). This approach goes beyond the issue of access to resources by emphasising freedom of choice to act and be in certain ways.
This approach also focuses on the great variety of social conditions that produce obstacles for individuals in achieving greater freedoms. Termed 'capability deprivation', this can take many forms: ignorance, poverty, false consciousness, government oppression, violence, or discrimination.

The capability approach is widely used in contemporary development studies and in recent human rights policies. This broadly liberal approach is in many ways conceptually compatible with the multiplex handling of choice examined in consumer theory. As such, its emphasis on complexity and choice makes it well suited to late capitalist societies.

Among the advantages of this approach is the fact that it is sensitive to variations in individual circumstances, including ability, need, choice, conceptions of value and so on. This approach also recognises that policy instruments are incapable of making commonsense adjustments for such variations. It compensates for this by focussing on the idea of freedoms as a better way of building systems to support what people really value. Moreover, the capabilities approach acknowledges the accumulation of (dis)advantage over a lifetime.

The idea of capabilities has been incorporated in a range of recent policy instruments, including the UN (Human) Development Programme, and the German government's

national action plan on poverty and social inclusion (Burchardt, 2006). Most recently, as discussed below, it has been incorporated in the UK Commission on Equalities and Human Rights' first Equality Review and underpins its future policy strategy.

Equality of Condition

The capability approach does much to emphasise the importance of fostering individual development and the enabling role this implies for public institutions. However, Byrne (2006) argues that the 'equality of condition' approach is particularly well suited to the investigation of underlying power relations and social practices associated with the inequalities faced by specific social groups (for example, disability).

Equality of condition is an approach that claims to offer a more ambitious form of egalitarianism than the liberal egalitarianism that heavily informs current thinking and many areas of social policy (for example education). Developed by Baker et al (2004), it posits five dimensions of equality. Arguing that existing (liberal egalitarian) approaches to inequality do not go far enough, they apply this framework to the analysis of different social groups (for example, gender and disability). Importantly, their analysis also includes the dimension of class.

1) **Respect and Recognition**. This comprises a range of goals collectively aimed at achieving 'equality of condition'. The first is universal citizenship, thus addressing the questions stimulated by Ronald Dworkin's work concerning how 'global' our conception of equality should be. Second is the toleration of differences in the form of a 'critical interculturalism' capable of accepting diversity by engaging in a critical dialogue over cultural differences. Finally, there should be a redefinition of the public/private sphere distinction. The private sphere tends to be largely untouched in liberal egalitarian thinking in the name of respecting personal freedoms.

2) **Resources**. This goes beyond the liberal egalitarian 'anti-poverty' approach, even the most ambitious of the distributive justice perspectives; Rawls' (1971; 1993) 'difference principle' (which aims to make social and economic inequalities work to produce the most benefit for the least well off members of society). Equality of condition goes further by aiming to satisfy what are in fact diverse needs. It does so by defining resources more broadly, to include not just economic resources, but also time, cultural and social capital, physical environment and leisure time.

3) **Love, care and solidarity**. This is a dimension largely neglected in liberal egalitarian views, in which it is seen as being a private matter. The equality of condition perspective however, places importance on securing ample prospects for such relations. The value added by this perspective is apparent when one considers the example of disabled or elderly people living in residential institutions, who can be deprived of such relations, whether through abuse or by discouraging them to form loving relations with one another. Given that an increasing number of residential care facilities are privately owned and maintained, this is an area of particular concern in relation to mainstreaming.

4) **Power Relations**. This perspective argues for traditional liberal democratic rights, but more group-related rights, more participatory politics, and an extension of democracy to other areas of life.

5) **Working and Learning**. The goal is to move beyond traditional equal opportunity perspectives in order to provide educational and occupational opportunities that give everyone the prospect of self-development and satisfying work.

Not all social groups will experience inequalities across all these dimensions (disability is a notable exception). However, the approach is attractive in a number of ways: it offers a clear framework for exploring inequality across a range of social groups, incorporates both issues of recognition and redistribution, and does not overlook social class.

Dialogue and Participation

Both the equality of condition and capability approach emphasise the importance of democratic participation in equality strategies. Each emphasises personal freedoms and the infinite diversity of human beings in respect of their needs, choices and values. It follows from this that policy strategies must be sensitive to this diversity. Habermas' discourse ethics argues that justice and morality in postmodern societies require we engage in 'communicative action', in which we are required to give justifications for the validity of our claims. Even widely accepted normative views on social 'rights' and 'justice' are based on assumptions about the universal validity of particular claims. By contrast, Habermas places communication, not assumption, at the heart of democratic processes. The implication of this is that social equality and human rights *requires* equal participation in the deliberative process: all voices should be heard. To put it in Sen's terms, from among humans' 'substantive freedoms', Habermas places particular importance on their freedom to participate in collective deliberations over agreed norms and rights. This is clearly acknowledged in the Equalities Review, which emphasises the importance of participation by all stakeholders. An important area for further inquiry will therefore be the *extent and quality* of this participation. Put simply, who has a voice and is it really heard?

Policy Instruments and Mainstreaming

There are two main approaches to developing legislative and policy instruments to protect human rights and achieve equality. One approach is reactive or 'negative', banning specific forms of discrimination or infringements of rights. The other approach can be characterised as 'positive', where the focus is not on preventing certain actions but in promoting greater equality (of opportunity). Both have played a role in equality and human rights instruments nationally and internationally. The international human rights instruments developed in the late C20th prohibiting discrimination played a role in putting these issues on the policy agenda in different national contexts. Equalities and human rights are thus protected by both national and international instruments.

However, there are some important limitations. Equality policy has traditionally tended to fit into the status quo rather than to challenge it. Moreover, as Byrne (2006) observes, a distinctive feature of UK policy is that it allows for 'reasonable' or

justifiable discrimination on the grounds of 'limited resources'. For example, in recent legislation pertaining to provisions made for disabled people in public sector organisations, they are required to make 'reasonable adjustments' rather than 'all necessary adjustments'. Baker et al (2004) argue that equality instruments, in their *individualised* commitment to non-discrimination, exemplify the liberal egalitarian philosophy underpinning dominant approaches to equality. This obfuscates complex forms of discrimination, and the diverse social conditions that produce them. Similarly, Clements (2005) maintains that indirect discrimination is largely overlooked in human rights legislation.

Towards Positive Equality Duties
More recently there has be a general move towards more positive equality duties, promoting equality of opportunity, running alongside existing anti-discrimination legislation. At the heart of these duties is the idea of more participative forms of governance. The EC's strategy on equality has provided considerable leadership in this area. McLaughlin and Byrne (2006) characterise it as the 'European Single Equality Approach', identifying four key aspects in which it develops equality policy. Firstly, it includes anti-discrimination instruments that are sensitive to more than one type of inequality. Secondly, its remit extends beyond employment policy to cover other activities of public organisations like the provision of goods and services. Thirdly, it creates enforcement authorities. Finally, the approach develops positive equality duties to be mainstreamed throughout public policy making.

UK and Devolved Governance
In the UK devolved governance creates a unique context for the development of equality instruments. Thus the different parliaments can develop instruments sensitive to the particular socio-economic and cultural setting. For example, equalities policy in Northern Ireland is a particularly sensitive issue because (in)equalities are historically bound up with ethnic and religious divisions. Byrne (2006) observes that Northern Ireland has led the way in the UK's development of positive equality duties. In Wales, particular policy priority may be given to forms of discrimination relating to age, since this country has by far the most rapidly ageing population in the UK.

Mainstreaming
Since the mid 1980s an approach known as 'mainstreaming' has attracted increasing attention in the academic and policy-making arenas. Its overall aim is to achieve an 'equality culture'. It is generally defined as 'the incorporation of equal opportunities issues into all actions, programmes and policies from the outset.' (Rees, 1998: 3-4). An important feature of positive equality duties is that they incorporate the principle of mainstreaming. There are different types of mainstreaming in different national contexts, ranging from a 'light touch' approach focussing on enabling mechanisms, to systems involving more monitoring and enforcement of duties. Section 75 of the Northern Ireland act pertaining to disability is an example of this more regulatory type of approach (Byrne, 2006). Chaney and Rees (2004: 2) identify three overarching principles that underpin mainstreaming: 1) treating the individual as a whole person, 2) democracy, and 3) equity and justice. It can be achieved by drawing on a range of resources and methods, including awareness raising, expertise, appropriate institutional arrangements, training, incentives, commitment from the top, and securing the necessary resources.

Byrne (2006) observes that mainstreaming has the potential to radically change existing institutional arrangements and cultures, although its success relies heavily on the attitudes of all concerned. Moreover, given that this approach is premised on the ethos of participative governance, the extent and quality of this participation will be a key factor in its success.

EHRC and the Equalities Review 2007

A fuller discussion of important developments in public policy and legislation is presented in the Policy Review. However, it is timely to end this review of the academic literature with a brief word on important research-led developments in the recent UK policy context. Under the auspices of the EHRC (fully operational from October 2007), an extended and independent Equalities Review has been carried out in collaboration with the research community. A final report was published on 28th February 2007. The report sets out an overarching strategy for achieving greater equality across the six key dimensions of race, disability, gender, sex, age, and religion/belief. It proposes ten steps to greater equality, including a broader legislative framework, guidance for public sector bodies, instruments for measuring progress, and targeted action on known areas of persistent inequality. The report attempts to address some of the shortcomings of traditional approaches to equality (based on equality of outcome, opportunity, process and respect) by drawing on a new working definition of equality. This is based on the 'capabilities' approach to human rights that stresses the importance of respecting individuals' substantive freedoms. This approach attempts to go beyond questions income and wealth (although not ignoring them), stressing the importance of other factors like family, social life, education, safety, quality of life, and freedom of belief. The underlying importance of human rights concepts in this Review is apparent in the following characterisation of social equality: 'An equal society seeks equality in the freedoms that people have to lead a fulfilling life' (EHRC Equalities Review, HMSO 2007).

In keeping with its attempt to operationalise this new definition of equality, the report stresses not only the equal worth and rights of individuals, but also the role of institutions in removing barriers and creating opportunities for individuals to live a full and rewarding life. This latter point emphasising not only individual but *institutional* responsibilities is of crucial importance if an equality strategy based on *individual* freedoms is to avoid appropriation by a neoliberal policy agenda that displaces welfare responsibilities from the state to the individual. The report goes on to propose ten key dimensions that may be used to measure inequality, collectively referred to as the 'Equality Scorecard'. These comprise particular freedoms and activities that should be respected and promoted in order to achieve a more equal society. They are derived from international human rights principles, as well as various consultations with the public and disadvantaged groups. These dimensions are as follows:

Longevity, including avoiding premature mortality.

Physical security, including freedom from violence and physical and sexual abuse.

Health, including both well-being and access to high quality healthcare.

Education, including both being able to be creative, to acquire skills and qualifications and having access to training and life-long learning.

Standard of living, including being able to live with independence and security; and covering nutrition, clothing, housing, warmth, utilities, social services and transport.

Productive and valued activities, such as access to employment, a positive experience in the workplace, work/life balance, and being able to care for others.

Individual, family and social life, including self-development, having independence and equality in relationships and marriage.

Participation, influence and voice, including participation in decision-making and democratic life.

Identity, expression and self-respect, including freedom of belief and religion.

Legal security, including equality and non-discrimination before the law and equal treatment within the criminal justice system.'

(HMSO, 2007: 18)

The report challenges the concerns voiced among certain liberal perspectives (most notably Nozick and Hayek) about the disincentive effect of interventions to overcome social inequalities. It argues that a more equal society 'does not need to drag down those at the top, discourage people's desire to excel or hold back those who exercise more effort. But it does need to focus on those at the bottom and make sure that their achievements improve at a faster rate than those at the top.' (ibid.: 6). Implicit in this latter assertion is a recognition of the need to monitor progress in overcoming inequalities. This requires a set of instruments capable of *measuring* (in)equality.

The report identifies certain milestones in progress towards greater equality over the past 100 years, including achievements in both process and outcome (e.g.: legislation; policy; campaigns). It goes on to highlight persistent inequalities in the early years, education, health, employment and retirement, crime and criminal justice. It discusses some of the important causes of persistent inequalities, including prejudice, inadequate understandings of the nature and extent of equality (including how it relates to the operations of organisations, how lines of responsibility are currently drawn, and entrenched negative attitudes towards the issue of equalities and rights); lack of clarity over responsibilities and limited accountability; and inadequate instruments for achieving equality (legislation, guidance, practice and monitoring of outcomes). Despite the breadth of issues encompassed, it remains a question for further scrutiny whether the tendency for policy to elide the dimension of social class can be truly effective in overcoming the most persistent forms of inequality in Britain.

Having set out the parameters for improvement, the report proposes ten steps to greater equality, comprising 'a systemic overall framework for creating a more equal British society'. These steps begin with the primary goal of defining equality, then progress through stages to generate consensus, develop instruments to implement and measure equality (chief among which is the 'equality scorecard' which identifies the

ten measurable dimensions of equality), and ensure greater compliance and accountability across all sectors. The report concludes with a vision for the future, outlining how success in each of these areas will be measured in five years' time.

The Equalities Review represents a considerably more ambitious, complex and broad-ranging approach to inequality. It includes a strong emphasis on targeted interventions to tackle areas of persistent inequality that are particular to contemporary British society, while at the same time recognising the shifting socio-economic and cultural context in which present and future policy must operate. A stated aim of the review is to go beyond traditional definitions of equality, based on crude measures and a narrow focus on income and wealth, in order to address the complex nature of inequality. To this end it identifies areas for improvement, points to key institutional responsibilities, and proposes a ten-dimensional 'Equality Scorecard' for measuring progress.

However, as Burchardt (2006: 5) observes, 'the choice of measurement tool depends on the underlying concept of equality, which, ultimately, is a normative decision'. For this reason, the potential future impact of the Equality Review on British society will largely depend upon the 'normative decision' it has reached and the adequacy of the instruments used to achieve that goal. In its own words, the vision for Britain is an equal society defined as follows:

'An equal society protects and promotes equal, real freedom and substantive opportunity to live in the ways people value and would choose, so that everyone can flourish. An equal society recognises people's different needs, situations and goals and removes the barriers that limit what people can do and can be.' (HMSO, 2007: 16)

References

Baker, J. (1987) *Arguing for Equality*, London: Verso

Baker, J. (2004) *Equality: What, Who, Where?* Working Paper 2, Belfast: Equality and Social Inclusion Project

Baker, J.; Lynch, K.; Cantillon, S.; and Walsh, J. (2004) *Equality: from Theory to Action* London: Palgrave

Blakemore, K (2003) *Social Policy: an introduction* 2nd Ed., Buckingham: Open University Press

Blanden, J., Goodman, A., Gregg, P., Machin, S. (2004) 'Changes in Intergenerational Mobility in Britain', in Miles Corak (ed.) *Generational Income Mobility in North America and Britain* Cambridge: C.U.P

Burchardt, T (2004) 'Capabilities and disability: the capabilities framework and the social model of disability', In *Disability and Society* 19 (7) 735-751

Burchardt, T (2006) *Foundations for Measuring Equality: a discussion paper for the Equalities Review* ESRC Research Centre for Analysis of Social Exclusion: London School of Economics

Byrne, B (2006) *From Ability To (Dis)Ability: A Bourdieuian Analysis And Case Study Of The Experiences Of Young Adults In Utilising Post-16 Educational Provision In Northern Ireland*, Unpublished Phd thesis, University of Belfast

Calhoun, C (2003) 'An Apology for Moral Shame', *The Journal of Political Philosophy* 11 (2) 1-20

Dworkin, R (2000) *Sovereign Virtue: The Theory and Practice of Equality* Cambridge, MA: Harvard University Press

Dyson, A (2001) 'Special needs in the Twenty-First Century: where we've been and where we're going', *British Journal of Special Education* 28 (1) 24-29

Fraser, N (1997) *Justice Interruptus: critical reflections on the postsocialist condition* London, Routledge

Fraser, N (1999) 'Social Justice in the Age of Identity Politics: Redistribution, Recogntion and Participation', In L.J. Ray and A. Sayer (eds) *Culture and Economy after the Cultural Turn* London: Sage

Habermas, J. *Moral Consciousness and Communicative Action*

Hattersley, R. (2006) 'Is Equality Outdated?', In *The Political Quarterly*, 77 (1) 3 – 11. Blackwell Publishing

Hayek, F.A. (1982) *Law, Legislation and Liberty*, Vol 2. London: Routledge and Kegan Paul

Hayek, F.A. (1944) *The Road to Serfdom*, London: Routledge and Sons.

HMSO (2007) *Fairness and Freedom: the final report of the equalities review*, Report by the Commission for Equalities and Human Rights, Crown Copyright

Marshall, T.H. (1963) *Sociology at the Crossroads*, London: Heinemann

Mason, A (2001) Equality of Opportunity, Old and New, In *Ethics,* 111: 760-781

McLaughlin, E (2005) 'Skeletons in the Human Rights Cupboard: A critical theoretical critique of equality of opportunity and human rights', Paper presented at the *Equality and Pluralism* Conference, Helsinki, May 2005

Norwich, B (1993) Has 'Special Educational Needs' Outlived its Usefulness?, In Visser, J. and Upton, G. (eds) *Special Education in Britain After Warnock* (London: Fulton)

Norwich, B (1996) *Special Needs Education, Inclusive Education or Just Education for All?* London: Institute of Education

Nozick, R (1974) *Anarchy, State and Utopia*, Oxford: Blackwell

Nussbaum, Martha C. and Amartya Sen, eds. (1993). *The Quality of Life* Oxford: Clarendon Press

Phillips, A (1999) *Which Equalities Matter?* Cambridge: Polity

Rawls, J (1972) *A Theory of Justice*, Oxford: O.U.P.

Rees, T (1998) *Mainstreaming Equality in the European Union: Education, Training and Labour Market Policies* London: Routledge

Sayer, A. (2005a) 'Class, Moral Worth and Recognition', In *Sociology* 39 (5) 947-963

Sayer, A. (2005b) *The Moral Significance Of Class* Cambridge: C.U.P.

Scheffler, S (2003) 'What is Egalitarianism?', In *Philosophy and Public Affairs* 31 (1) 5-39

Sen, Amartya (1980) 'Equality of What?' In S McMurrin (Ed.) *The Tanner Lectures on Human Values* Cambridge: C.U.P

Sen, Amartya (1985) *Commodities and Capabilities,* Oxford: O.U.P.

Sen, Amartya (1992) *Inequality Reexamined*, Oxford: Sage

Tawney, R.H. (1964) *Equality*, 4th Edn., London: Allen and Unwin

Taylor, C (1992) 'The Politics of Recognition', in Amy Gutmann (Ed.) *Multiculturalism and the 'Politics of Recognition'* Princeton: P.U.P.

Taylor-Gooby, P (2003) Equality, Rights and Social Justice, In Alcock, P; Angus Erstine, and Margaret May (Eds.) *The Student's Companion to Social Policy* 2nd Edn., Oxford: Blackwell

Terzi, L (2005) 'Beyond the Dilemma of Difference: the capability approach on disability and special educational needs', In *Journal of Philosophy of Education*, 39 (3) 443 - 459

White, S (2007) *Equality* Cambridge: Polity

Worsthorne, P (1971) *The Socialist Myth,* London: Cassell

Young, I. M. (1990) *Justice and the Politics of Difference* Princeton: P.U.P