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On Sen on comparative justice

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Against scepticism from thinkers including John Rawls and Thomas Nagel about the appropriateness of *justice* as the concept through which global ethical concerns should be approached, Amartya Sen argues that the problem lies not with the idea of justice, but with a particular approach to thinking of justice, namely a *transcendental approach*. In its stead Sen is determined to offer an alternative systematic theory of justice, namely a *comparative approach*, as a more promising foundation for a theory of ‘global justice.’ But in the end Sen offers no such thing. He does not develop a theory of justice and this is all to the good; for if values are plural in the way Sen suggests, then justice is not a master idea but one value among many, and it should be neither the first virtue of social institutions, nor the notion that frames all our reflections on ethical and political life.

Keywords: global justice; comparative justice; transcendental; distribution; universalism

Amartya Sen’s *The Idea of Justice* (2009) has appeared in a period in the history of political theory when the idea of justice dominates theoretical reflection about social arrangements. John Rawls famously suggested that justice was the first virtue of social institutions, and those that were not just ought to be reformed, even if they possessed other merits (Rawls 1971, p. 3). Rawls’s friends and critics alike have, for the most part, accepted this claim and the literature of contemporary political theory is substantially a literature about justice. And as political reflection has shuffled off its preoccupation with domestic issues and begun to examine international society and global institutions, so has *global justice* begun to assume central importance as a subject for investigation. At this point, however, sceptical voices have begun to make themselves heard and doubts have been expressed about the appropriateness of ‘justice’ as the concept through which global ethical concerns should be approached. Rawls himself expressed serious reservations about whether his own theory was suitable for extension across nations, and offered a view of international law that

drew less on his view of the demands of justice than on his account of toleration (Rawls 2001).¹ More recently, Thomas Nagel has raised his own objections to the extension of the idea of justice to the evaluation of global institutions (Nagel 2005). Sen's intervention in this literature has been to say that while it is true that theories of justice cannot readily be deployed to scrutinize global institutions and social and political arrangements in different nations, the problem lies not with the very idea of justice but with a particular approach to thinking of justice. His aim is to supply an alternative and, so, to set inquiry into justice in a different, more promising, direction. The question is whether or not he succeeds.

Sen's ambition

At the core of Sen's new theory is the view that *transcendental* theories of justice should be forsaken in favour of *comparative* ones. Transcendental theories, such as those advanced (according to Sen) by Hobbes, Locke, Rousseau, Kant and Rawls, take as their starting point the need to imagine or conceive ideally just social arrangements. There are two problems with this approach. First, it is not feasible to establish any conclusions about ideal social arrangements that might meet with universal, or even widespread, agreement among impartial and open-minded persons. Second, practical reason requires not the establishment of abstract ideal standards but a framework for comparison among feasible alternatives, so transcendental theories are redundant.² While Sen's purpose is plain enough, it needs to be established what precisely he has put in place of transcendental theories. Since he has said that his preferred alternative is a comparative theory, the question is what this amounts to. More particularly, what is *Sen's* comparative theory?

Sen's theory is *not* a theory of the just society, for he thinks it is interesting but not useful to ask what is a just society. A systematic theory of comparative justice does not yield an answer to this question (Sen 2009, p. 105). Yet Sen is interested in 'advancing justice in society' (p. 77) So what is it that his theory of comparative justice has to offer in the pursuit of this end, and how does it do so?

One of Sen's starting points is a conviction that what matters is how people's lives go. His dissatisfaction with transcendental theories stems in part from his unhappiness with their preoccupation with institutions, which may lead to a failure to consider how real people are affected. When people's lives go badly, he implies, injustice may be afoot. Justice means, to a substantial degree, mitigating injustice. If injustice is to be addressed, however, we need to establish not only what is required, but also who has to take responsibility for causing, as well as for repairing, the injustice. Sen's thought here is that such questions have to be settled not by appeal to a transcendental standard, but also by the use of processes that address them when and where particular issues of injustice arise. They must be settled in

the forum of public reason, with an emphasis of the use of democratic mechanisms, and a commitment to the search for impartial judgment rather than partisan or parochial resolution. This means that in Sen's theory justice is the product of democratic processes in which public reasoning is conducted according to norms of open impartiality. The idea of open impartiality is of critical importance, for it means that reasoning will draw not only upon the judgments and values of local participants, but also upon the attitudes and perspectives found elsewhere in the world. Justice will never be a matter of what 'we' think around here, but of what critical reflection, drawing on judgments that could come from anywhere, might reveal through democratic engagement.

Sen is trying to steer a very particular course. He does not want to provide another ideal theory of justice, and rejects the approach of thinkers like G. A. Cohen, for whom establishing a transcendental conception of justice is vitally important. He also rejects constructivist thinkers like Rawls, who is also too absorbed by the transcendental aspiration. Yet he also rejects those theorists who might be satisfied with appeals to tradition and to local tradition in particular. Somewhere between abstract universalism and concrete localism lies the Sen theory of comparative justice. Its aspiration is to bring abstraction back down to earth, but to make particular individuals and societies look beyond their own narrow confines to try to enlarge their own perspectives so that they might see when their current practices might be unjust, and to recognize when the lives of distant others might be as much a part of their own sphere of responsibility as the lives of their more immediate neighbours.

The idea of a theory of comparative justice

While Sen has aspired to give us a theory of comparative justice, it has to be asked whether he has succeeded. It is not yet clear that he has given us a theory that is superior to the transcendental theories he criticizes, or indeed that he has given us a theory at all. He has presented us with a book full of interesting puzzles, arguments, and insights; but it is not clear that he has supplied a theory. To be sure, he does say in the Preface that 'What is presented here is a theory of justice *in a very broad sense*' (Sen 2009, p. ix, added emphasis). And he makes abundantly clear that he is not offering a theory of justice in the sense of a doctrine or philosophy that resolves questions about the nature of perfect justice (p. ix). Yet if so, in what sense is what is on offer a theory, unless by theory one means little more than a collection of ideas related by having a common theme?³ The possibility I wish to consider is that Sen does not have a theory of comparative justice for no such thing is possible. He has offered an important critique of transcendental institutionalism as an approach to justice; and he uncovered some significant weaknesses in the parochial attitude to morality

more generally and to justice in particular. But there is no middle way between these extremes. Or at least, to the extent that there is, that middle ground cannot be occupied by a theory of justice.

To see why a theory of comparative justice may not be possible it would be best to start by looking more closely at what Sen says he is aiming to do in attempting to develop an alternative to the transcendental approach. Sen is looking to craft a theory of justice that ‘concentrates on the practical reason behind what is to be chosen and which decisions should be taken, rather than speculating on what a perfectly just society [...] would look like’ (Sen 2009, p. 106). While transcendental theories are not without interest, what we need instead, he thinks ‘is an agreement, based on public reasonings, on rankings of alternatives that can be realized’ (p. 17). He thinks that ‘A theory of justice must have something to say about the choices that are actually on offer’ (p. 106). It must take into account the plurality of reasons and possible conflicts of non-eliminable principles (p. 106). It must leave room for the possibility of reassessment (p. 107). A theory of justice must make room for an incomplete ranking of alternatives, because of operational difficulties deriving from the limits of knowledge or simply because some alternatives simply cannot be ranked (pp. 107–108). It must recognize the possibility of diversity in interpretation or approach when decisions have to be taken (p. 108).

A theory of comparative justice, unlike transcendental theories, would focus less on an imagined perfectly just world and more on the sorts of concern that engage people in discussions on justice and injustice in the world as we know it. The concern with injustice is particularly important for Sen. Examples of injustice he identifies include ‘iniquities of hunger’, poverty, illiteracy, torture, racism, female subjugation, arbitrary incarceration, and medical exclusion. These are all social conditions that need remedying (p. 96).

It is especially important to emphasize that, given the great diversity of conditions, the range of issues, and the variety of reasons people find compelling, the pursuit of comparative justice cannot be the search for a final or complete ordering of alternatives. This is not to say that differences in judgment must always lead to an impasse; but it is important to recognize nonetheless that ‘a complete theory of justice may well yield an incomplete ordering of alternative courses of decision, and that an agreed partial ranking will speak unambiguously in some cases and hold its silence in others’ (p. 398). Thus when Smith and Condorcet argued that a world without slavery was more just than a world with slavery, they were not claiming that all possible states of the world could be rank-ordered; only that a world in which slavery had been abolished was superior to one in which it had not.

It is also important to see that conclusions about justice must be the outcome of public reasoning about the ranking of the alternatives under consideration. The most critical point here, for Sen, is that public reasoning

about justice not be confined within the scope of the state, region or local community. If we are parochial we deprive ourselves of sources of criticism and insight that might bring us to better conclusions than we would reach if our values and presuppositions were under-scrutinized (p. 402). Justice requires impartiality, but an open rather than a closed impartiality, for the bounds of reason should not be limited by geographical boundaries.

These, then, are the most important desiderata of a theory of comparative justice. Does Sen have a theory of justice that would satisfy these demands? Does he have a theory of justice at all?

Is a theory of comparative justice possible?

Although he seems determined to offer a systematic theory of comparative justice, Sen really offers no such thing. Indeed he does not develop a theory of justice at all. As we shall see, this is all to the good. To understand why he has no theory, however, we need to begin by considering what a theory of justice could be.

Such is the force of the word 'justice' that it is widely used to describe a great range of actions, arrangements or circumstances. Where there is poverty, or racial discrimination, or female subjugation, we say that justice is absent or wanting. We commonly describe torture, wrongful imprisonment, and the taking of property without consent or compensation (whether by private persons or the state) as unjust. And justice is not done when even relatively minor wrongs are committed: when a customer is denied a refund for a defective purchase, or a lesser benefit is offered to someone too timid to stand up for his rights. Injustices can be committed by presidents, judges, and hairdressers alike. Justice and injustice are words readily invoked whenever something is deemed to have gone seriously wrong. Could the movie *Brokeback Mountain* failing to win 'Best Picture' be anything less than an injustice?

But a theory of justice will not typically attempt to present an account of the term that systematizes all of its possible, or even most common, uses. Within political philosophy, the variety of contexts within which justice is invoked has meant that theories of justice have been theories of particular kinds of justice: theories of distributive justice, or retributive justice, or restorative justice, or justice in war, for example. The theories of justice Sen's book has criticized and, by implication, looked to supplant, are theories of distributive justice. They are, like Rawls's theory, for example, normative theories – theories intended to be action guiding. They are intended not merely to elucidate the meaning of the *concept* of justice but to elaborate particular *conceptions* of justice. Rawls famously elaborated a theory he dubbed 'justice as fairness', according to which justice was served to the extent that society conformed to or honoured two basic principles of fairness. Other theorists who have tackled the problem of coming up with a

conception of justice have, to the extent that they have disagreed with Rawls, come up with different principles. The landscape of contemporary political theory is littered with banners advertising a variety of conceptions, including libertarian (left- and right-), prioritarian, sufficientarian, utilitarian, and egalitarian theories of all sorts.

Normative theories of justice purport to be action guiding by supplying principles by which we might judge whether a particular action is just or whether a set of outcomes is just or whether an institutional structure is just. They might do so by elaborating a particular ideal against which to judge outcomes or institutions, though this is not necessary. An egalitarian may be happy enough to judge the justice of an outcome by asking whether or not it is more or less equal than the alternative possibilities. A libertarian might similarly be happy to judge an action just if no rights-violation takes place, and an outcome as just because it is the result of actions that involved no rights-violations – without having recourse to appeal to any ideal construction of a just society. But normative theories of distributive justice do advance and defend principles of distribution.⁴ Sen, however, does no such thing. This is not because he is indifferent to distributional questions. His extensive work in defence of human ‘capabilities’ as the preferred metric for the measurement and assessment of equality and inequality suggests quite the reverse. But he does not offer a set of principles of justice by which to assess actions or outcomes or institutions. He has suggested that actions and outcomes, and perhaps even institutional arrangements, can be examined – questioned, challenged, criticized – to see whether they are just, and argued that one way of assessing them is to consider them in relation to other alternative courses of actions or possible outcomes, or structural arrangements. But there is no master principle or combination of principles that he invokes or appeals to in order to make judgments of justice.

Now Sen himself has suggested, to the contrary, that he does have a systematic theory of justice. Out of the various comparative judgments, he indicates, a theory can be identified and expounded. He only insists that out of comparison will not arise any kind of transcendence. ‘Could it be the case that the comparative rankings of the different alternatives must *inter alia* also be able to identify the transcendentally just social arrangement? Would the transcendental invariably follow from the full use of the comparative?’ (Sen 2009, p. 102). His answer to these questions is simply, no. A sequence of pairwise comparisons will *not* lead us invariably to any conclusions about the very best. What Sen does not explain, however, is how a sequence of pairwise comparisons (or any combination of comparative judgments, for that matter) gives us a ‘systematic theory of comparative justice’.

Indeed if we take seriously the considerations Sen sets out as vitally important for anyone seeking to develop a comparative theory to appreci-

ate, it becomes doubtful that a theory of comparative justice is at all possible. Recall that Sen emphasizes the importance of taking into account the plurality of reasons people invoke, and the existence of conflicts of non-eliminable principles; the importance of leaving room for the possibility of reassessment of judgments and allowing for incomplete ranking of alternatives; and the possibility of diversity in interpretation or approach when decisions have to be taken. In what sense can a sequence of pairwise comparisons of alternatives yield a systematic theory of comparative justice when these cautionary reminders suggest the outcome of a series of thoughtful deliberations and reflections among diverse people is more likely to lead to highly indeterminate conclusions rather than anything so systematic as a body of principles – or even a set of rules of thumb?

One possible objection to this analysis is that the difficulties with Sen's position do not tell against the possibility of a theory of comparative justice, only against the success of Sen's particular attempt to supply one. Whatever its deficiencies, utilitarianism seems to be precisely such a theory, since it offers a theory of justice according to which we compare societies and rank them in accordance with their propensity to maximize utility – the most just society being the one in which aggregate or average utility is highest.⁵ But the problem is not merely that Sen has failed to provide a theory. The problem is that he has in effect shown why such a theory is not possible. The point, according to Sen, is not simply to come up with a theory that puts forward some metric according to which all societies might be measured and then compared. That would be easy enough to do: all one needs is to determine the relevant measure – utility, liberty, capability, income – and then try to assess which society best meets the proposed standard. Yet this will not give us a comparative theory in the sense that Sen means. Theories that ask us to assess (and compare) societies according to a single formula, even though they almost surely will yield rankings of societies, are not comparative theories in the relevant way. In Sen's view, the fact that reasons are plural, and principles conflict, means that it will not do simply to invoke some abstract standard, like utility or liberty, and then propose to compare arrangements according to these ideals. Comparative assessments must take place within contexts within which they can intelligibly be made. Thus we can compare a society or a world with slavery with one without, and say perfectly intelligently that a world that has been rid of slavery is an improvement. Similarly, a world without hunger is better than a world in which many people starve. But whether a world without slavery is better than a world without hunger is a different question altogether; and no comparison can readily be made here – if indeed any comparison can be made at all. Of course a utilitarian could come along and offer to make the comparison by invoking utility as the measure of all things. Or a Philippe van Parijs might equally suggest that we judge by the standard of freedom that ought to be maximized. But it is this 'transcendental' move that is precisely

what Sen objects to. His search is for a comparative theory which is the product of a careful assessment of the range of internally coherent comparisons, and which also satisfies the other desiderata upon which he insists. That is the aspiration. The problem is that this will not yield a theory of justice in anything but the broadest sense of the word theory.

The Idea of Justice

The question is, what then are we to make of Sen's contribution in *The Idea of Justice*? Leaving aside the many individual arguments and insights scattered across the work, there are two elements that stand out for their especial significance, though Sen himself may, in the end, be reluctant to endorse the reading of his work to which my analysis leads.

The first element is the critique of transcendental theories of justice. Sen is, to my mind at least, convincing in his argument that transcendentalism is neither necessary nor sufficient if we seek to establish a normative standard by which to make judgments of justice

The second element is the more positive aspect of his work. *The Idea of Justice* identifies a number of things that are important for us to consider when reflecting on the questions of justice, and morality more generally. The conclusions we reach should be the outcome of a process of public reasoning; that process of reasoning should in turn recognize the plurality of values and the possibility of an ineradicable conflict of principles; that principles themselves cannot generate final answers for everything is subject to revision; that judgments cannot always readily be aggregated or ranked; that outcomes of any decision procedure may be indeterminate; and that there is good reason to strive in our efforts to do what is just to cast our net wide and consider the views and experiences of those who reside beyond the confines of our own locality or our own traditions.

If we take these recommendations seriously, however, we might do better to conclude that the way to defend the kind of humane and pluralistic social order Sen has in mind is not by trying to develop a better account of justice. If values are plural in the way Sen suggests, justice is not a master idea that subsumes all else but one value among many. Justice should certainly be pursued; and in many cases, vigorously. But it is not the first virtue of social institutions. Nor is it the notion that should frame all our reflections on ethical and political life.

Notes

1. See also the discussion of the toleration of the intolerant in Sen (2009, sections 34–35).
2. For a summary of Sen's view, see Sen (2009, pp. 8–10).

3. Sen (2009, p. 105) writes: ‘A systematic theory of comparative justice does not need, nor does it necessarily yield, an answer to the question “what is a just society”.’ I take this to suggest that he *is* in search of a systematic theory.
4. Aside from Rawls, some prominent examples include Steiner (1994), Dworkin (2010) and Barry (2005).
5. This was put to me by Laura Valentini.

Note on contributor

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