



Sen's Modest Justice¹

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¹ I am grateful to Alan Hamlin, Ben Jackson and Adam Swift for written comments. This paper has already been submitted. Wilfried Hinsch, 'Ideal Justice and Rational Dissent: A Critique of Amartya Sen's *The Idea of Justice*' (2011) 2 *Analyse & Kritik* 371-386 makes some of the points I make here as well as a range of others. I learnt of it too late to reference it throughout my text, which is why I mention it here.

The Idea of Justice criticises a great deal of contemporary research on justice, and in what follows I will attempt to defend it from some of Sen's charges.² But the book is not merely a criticism. It is also an inspiring argument that advances in justice can be intelligently advocated despite persistent global disagreement and while being respectful of much of the disagreement. It is therefore unsurprising that the publication of the book generated great interest beyond academia and professional political theory. However, the book achieves something even more admirable than the ability to engage wide audiences with complex and sophisticated arguments that span a number of disciplines and to suggest how to use them for important ends. It is also a rare book of genuinely global political theory. By that I mean not merely that it advocates, as many other books do, that we pay attention to voices from various continents and cultures, but that it actually does so itself. And it does so not because it is primarily a book about how the ideas associated with the developed world, such as democracy, belong also to the developing world, or because it is a book tracing the influence of ideas from the developing world, say justice, on the developed world, but because Sen's erudition, experience and interests allow him to offer an impressive range of global reference points.

Sen wants to contribute to the discipline of political theory by radically reshaping its focus. He thinks that contemporary theories of justice tend to exhibit two fundamental vices. They are mistaken in what they think they can deliver and, in any case, delivering what they are after would be of no practical use.³ Specifically, contemporary theories of justice attempt to offer an account of the optimally (ideally) just society—the ultimate target of social reform.⁴ Sen refers to such theories as 'transcendental'. In addition, contemporary theories focus solely on outlining the requirements of justice for ideal institutions (patterns of conduct). Sen refers to such theories as 'institutional'. In Sen's words, a theory is transcendental if it focuses on identifying 'perfect justice, rather than on relative comparisons of justice and injustice'; it is institutional if it 'concentrates primarily on getting the institutions right, and it is not focused on the actual societies that would ultimately emerge' (5–6). John Rawls's own theory, according to Sen, is both 'transcendental' and 'institutional' in its focus. The upshot is that theories such as Rawls's end up outlining a distant account of what the ideally just society would look like. What we need instead, according to Sen, are theories that compare the options for reform that are readily available to us; we need a new, 'comparative' approach to justice.

It is the combination of these two features—a transcendental and an institutional focus—that seems to produce the result that is especially problematic according to Sen. Transcendental theories—that is, theories focused on identifying the ideally just society—could in principle identify ideally (optimally) just solutions that are also readily available here and

² Amartya Sen, *The Idea of Justice* (Allen Lane, 2009). All page references in brackets that follow refer to this edition.

³ Sen admits that the question posed by transcendental theories may be of considerable intellectual interest (17).

⁴ As Alan Hamlin and I argued elsewhere, there is a difference between what to expect from theories of ideal social arrangements (ideal theory) and theories of values (theory of ideals). In what follows I assume that transcendental theories are meant to offer an account of the value of justice and the social arrangements that would realise it. See Alan Hamlin and Zofia Stemplowska, 'Theory, Ideal Theory and the Theory of Ideals' (2012) 10 *Political Studies Review* 48.

now.⁵ This is because a theorist could declare that her aim is to identify the optimal solution for a very constrained and non-optimal set of circumstances. For example, she could attempt to search for the optimally just/ideal/best set of arrangements available to very self-interested, manipulative and undisciplined creatures. However, institutional theories, as Sen conceives of them, focus on outlining patterns of conduct (institutions) required by justice (as opposed to paying attention also to un-patterned occurrences) and are concerned with ideal patterns, that is, patterns that could be sustained if people were fully compliant with what justice requires of them.⁶ It seems, then, to be the assumption of full compliance that pushes transcendental institutional theories towards theorising about distant possibilities, namely those that can be sustained with fully compliant conduct. Such optimally just arrangements are without doubt quite different from the world we find ourselves in. In essence, it is institutionalism, in particular its focus on full compliance, together with transcendence that, on Sen's view, leads political theorists astray.

In particular, Sen points out that outlining a distant, optimally just society is fraught with difficulties. It is, first of all, difficult for any given theorist to reach confident judgements about her own views of what optimal justice would involve. It is, moreover, hard to imagine that the various theorists would agree on a unique description of what it involves. Thus Sen thinks that the whole enterprise of institutional transcendence—at least when applied to the problem of social justice—is likely bound to fail. Call this the charge of futility. Given this charge, it therefore comes as a consolation of sorts—whether or not Sen offers it in this spirit—that, according to Sen, we don't need to know the shape of the optimally just society in order to advance the cause of justice in our world. To do the latter we need to know how to compare and select from among the readily available courses of action open to us here and now, but a knowledge of the distant, optimally just society would not—without any supporting axioms—issue in a metric for comparing less optimal multi-dimensional options. To see this, consider an example inspired by Sen's own. Suppose that ideal justice requires a global state. Knowing that having a global state is optimally just will not help us decide whether, in our current world of distinct states, it would be more just, for example, to put Brazil or Slovakia on the UN Security Council. Even if we knew (which we likely would not) which of those two candidates would be more likely to work towards the global state, we would still not know which one of them to pick for the Council unless we also knew that reaching the ideal state as quickly as possible must take priority over all else. But this would require us to consider something else beyond the question of what is the optimally just arrangement.⁷

⁵ *Ibid*, 51–52.

⁶ Perhaps the label of 'ideal institutional transcendental theories' might have captured more fully all the dimensions of Sen's criticism given that the 'institutional' focus of theories has the two distinct features mentioned above. In what follows I focus exclusively on the full compliance feature. I find Sen's critique of the focus on patterns of conduct persuasive and I regret that due to limitations of space I have to put it aside.

⁷ While Sen is right that knowledge of the optimally just end state alone would be impotent in guiding comparisons, he is wrong to suggest that Rawls's theory has nothing or next to nothing to say on this issue of transition. Rawls comes up with what he calls priority rules that are meant to guide the order of our readily accessible reforms. For discussion see David Leopold, 'A Cautious Embrace: Reflections on (Left) Liberalism and Utopia' in Ben Jackson and Marc Stears (eds), *Liberalism as Ideology* (Oxford University Press, 2012); AJ Simmons, 'Ideal and Nonideal Theory' (2010) 38 *Philosophy and Public Affairs* 5; Zofia Stemplowska

Sen is certainly right that an account of ideal justice, being a multidimensional problem, does not suffice to guide our selection among less ideal options. It might seem that what we need is a theory of transition, that is, a theory that offers an account both of the optimal point and of the best, or at least permissible, steps for reaching it. But this does not seem to be Sen's requirement. His comparative approach is meant to do without any account of optimal justice. If knowing what optimal justice involves is indeed impossible, this would count in favour of Sen's approach, of course. But Sen seems to be suggesting that even if such knowledge were possible, it would be irrelevant. This is what could be called the charge of redundancy against transcendental institutional theories. In what follows I will first examine this charge of redundancy before revisiting the other charge of futility.

Is the charge of redundancy correct? Sen points out that we need not know what ideal justice involves to know that, say, slavery is unjust and should be eliminated. By analogy offered by Sen, to decide whether a Dalí or a Picasso is more beautiful, we do not need to know that *Mona Lisa* is the most beautiful painting of them all. Or, to drive the point home even more: we do not need to know anything about any of world's most beautiful paintings to confidently rank a Dalí and a Stemplowska vis-à-vis each other.

But the redundancy charge, as others have also pointed out, is overstated. Most strikingly, there is a pragmatic reason why knowing the target might be essential for us here and now. This is so if adopting reforms today might advance or hamper our ability to reach the optimal set of arrangements.⁸ Reforms we undertake are often valuable not just in themselves but also as a step towards somewhere even better. Knowing where that somewhere else lies helps us to judge just how good a step any given reform is. In this respect the choice between Dalí and Picasso is a different type of choice if it is not meant to lead towards an even greater painting.

True, it might be hard, and often impossible, to know if some course of action postpones arriving at the ultimate target, let alone blocks arrival altogether. It would certainly be incorrect to always postpone reforms until we know the target and can judge how our current reforms affect the likelihood of reaching it. The possibility of a mistake should not uniformly block all reforms with uncertain consequences. But it would also be reckless not to consider what the ultimate target might be and how our current efforts towards comparative improvements in justice might affect reaching it. Taking steps that might preclude or greatly postpone optimal solutions—even when the steps themselves do genuinely advance justice—is not a mere hypothetical possibility. Many nations—and great powers—have faced genuine dilemmas of this type. For example, installing an acceptable dictator can make a society more just, but if in the long run a just society must enjoy a robust democratic culture, it may still be a mistake. It would be the case, for example, if it affected the political culture of the society and made the achievement of stable democracy harder or even impossible. Of course, it does not

and Adam Swift, 'Ideal and Nonideal Theory' in David Estlund (ed), *The Oxford Handbook of Political Philosophy* (Oxford University Press, 2012).

⁸ See Simmons (n 6); Zofia Stemplowska, 'What's Ideal About Ideal Theory?' (2008) 34 *Social Theory and Practice* 319–40.

follow that we must always be held hostage in our choices to some distant ideal of justice that may never materialise, but it does follow that we should bear its possibility in mind when evaluating, advocating and choosing among suboptimal options.

But suppose we know that we will never reach the distant ideal because it is too distant or because the costs of reaching it are too high. To know this we would, of course, still need to know what the ideal involves, but imagine that we are reliably informed that it cannot be reached. Even then we might have a reason to consider what the ideal involves—ie pursue transcendental institutional theory. This is because our comparative judgements may be enriched by our knowledge of ideal justice even if we were not to strive towards it as our target.

Sen may well be right that some comparisons can be made without knowledge about optimal arrangements (requirements).⁹ But there are three ways in which such knowledge may be important.

To see the first way, suppose that you want to make an institution more democratic. Clearly, you will need to understand what democracy involves. And even if you know that a secret ballot will never be possible and that informational campaigns will always create bias, it will still be easier to put these difficulties aside when learning initially about democracy. This is not to say that you will then be able to apply whatever you gauge from such a simplified model to the more complex reality (Sen is right that you cannot do that). It is rather to suggest that the simplified account offers the easier way of initially approaching a complex multidimensional problem. This is not an invitation never to move beyond the simple model (and much criticism of contemporary political philosophy concerns the fact that the simple models are perceived as the end point of analysis).¹⁰ It is, however, a defence of the simple model as a useful, and perhaps necessary, analytical tool in theorising about justice.

Second, finding out what optimal justice requires can add a new perspective even on our current, suboptimal situation. Drawing on Adam Smith, Sen defends the importance of multiple perspectives on the problem of justice (124–52). He argues, for instance, that the global perspective is a necessity and suggests ways in which it might matter (328). But learning about ideal justice is also a way of gaining a new perspective. This is what might be thought to motivate Rawls in his search for ideal justice: the realisation that even ideal justice involves reasonable pluralism helps us see pluralism as welcome. That is, it is precisely because we can be reasonably certain that we are inquiring about justice—rather than simply about what our political system can currently deliver—that, if we accept Rawls’s argument, we will see that justice

⁹ But see David Estlund, ‘The Best and the Rest: Optimizing and Comparing in Theories of Justice’, working paper (on file with author).

¹⁰ Onora O’Neill, ‘Abstraction, Idealization and Ideology in Ethics’ in JDG Evans (ed), *Moral Philosophy and Contemporary Problems*, RIP Series (Cambridge University Press, 1988) 55–69; Onora O’Neill, *Towards Justice and Virtue* (Cambridge University Press, 1996) esp 38–44; Carole Pateman and Charles Mills, *Contract and Domination* (Polity Press, 2007). Ingrid Robyens, ‘Ideal Theory in Theory and Practice’ (2008) 34 *Social Theory and Practice* 341–362.

does not require, for instance, that we aim to eliminate disagreement over conceptions of the good.¹¹ Of course, that pluralism or something else would constitute an attractive feature of the ideally just society does not mean that it is valuable for us already, here and now, in radically different circumstances. But knowing that there is a context in which some phenomenon is of value should make us pause when we judge the phenomenon in our context. Not only might we want to reconsider whether we want to eliminate it (since even if it is not welcome now, it may be one day; this takes us back to the pragmatic reason for transcendental institutional accounts of justice), we may also reconsider how we view it. For example, if even an ideal novel needs clichéd sentences to bring off the other ones, it may make us see the use of clichéd sentences in an inferior novel as less disturbing.

Third, (what we take to be) knowledge of ideal justice may support our hunches regarding comparative assessments of suboptimal choices. For example, suppose that you must choose whether to admit additional men or women into a male dominated physics lab. If you admit women, you will bring the 9/1 men-to-women gender ratio down to 8/2. Should you do it if this is the only change at stake? Knowing that ideal justice requires gender equality would, under certain other straightforward assumptions, give you a reason to admit more women. But imagine that, as Sen fears, we disagree with each other on whether what is ideally required is gender equality or what we might call ‘gender sufficiency’ (having a sufficient number of women in key positions so that there is no discrimination in future selections). Both ideals point towards the same immediate choice (to admit more women) and therefore Sen is right that there is a sense in which we do not need to settle the disagreement between them to know what to do next. And yet, in this instance, it is the knowledge of the ideals that gives support to our current choice, both because knowing the ideals, we know that they all support the same immediate action, and because the ideal we favour allows us to make sense of our intuitive reactions to the choice we face. It therefore remains practically useful to offer accounts of ideal justice.

Nothing that I say above should be taken to suggest that we do not need Sen’s comparative approach or that we cannot get on with the comparative approach without first settling disputes concerning distant, optimally just solutions. We can, and should, pursue the comparative approach even in the absence of a fully worked out account of ideal justice. All I wish to emphasise is that such an account can itself be of use as we make our immediate comparisons.

Sen might respond, however, by revisiting the second charge against transcendental institutional theories of justice: their likely futility. Sen’s comparative approach, by contrast, is meant to refocus our efforts on where we can expect to make useful progress. The search for transcendental institutional theories is misconceived, according to Sen, because there is no reason to suppose that there is a unique optimally just set of requirements (or, more weakly, that we’d be able to discover it). Not only is it hard enough for an individual to conclude what ideal justice involves, it is harder still to combine the

¹¹ John Rawls, *Political Liberalism* (Columbia University Press, 1993) xvi–xvii. This sentence in the main text draws on my ‘What’s Ideal About Ideal Theory?’ (n 7) 337–8. I am grateful to Jonathan Quong for discussion of this issue.

diverse individual evaluations. Sen offers a memorable example of this problem (12–15). Suppose that there is one flute and three children who are eager to get it. One child claims the flute because she made it, one because she is best able to play it, and one because he needs it the most as he lacks any other toys. Who should get it? As Sen points out, impartial, non-arbitrary reasons can favour giving the flute to any of the three children. Given this, it would be hard enough for a single person to decide who should get the flute, so it is even harder to combine what would inevitably be divergent conclusions into a collective decision. Often, we will simply be unable to reconcile the different views. We should therefore not expect from a transcendental institutional theory an answer to the question of what is the unique, ideally just set of requirements.

So the likely futility of the institutional transcendental search for ideal justice lies in the fact that such a search must be attentive to plurality of impartial viewpoints that support divergent answers. It must be so attentive because, according to Sen, justice requires ‘public reasoning’ and is ‘inescapably discursive’ (337). As he memorably points out, “[d]iscussionless justice” can be an ‘incarcerating idea’ (337). He adds that ‘[i]f the demands of justice can be assessed only with the help of public reasoning ... then there is an intimate connection between justice and democracy’ (326). This attentiveness to the views of others—which Sen rightly expects from a theory of justice—raises the standard question of political theory: whose views must and whose views need not be taken into account? Sen seems prepared to discount partial/biased views, but he appears to suggest that a theory of justice cannot just dismiss impartial views even when they conflict with one another (196, 386, *passim*).¹² Which views are impartial and cannot be dismissed is a tricky issue. But one thing we can know for sure is that, given Sen’s criticism of Rawls’s theory as not inclusive enough of different viewpoints, Sen thinks a theory of justice should make room for more views than Rawls allows, even if even this reduces its ability to come up with decisive answers in a broad range of cases.

There is good reason, of course, why we might want a theory of justice to respect disagreement by withholding decisive answers on issues where the disagreement persists.¹³ And although I think that even Sen sometimes succumbs to the temptation to stipulate decisive answers despite disagreement among impartial judges,¹⁴ his reticence about making his theory of justice a vehicle for his own substantive but controversial views is certainly apparent and even striking in the context of so many other accounts that have no such qualms. For example, Sen thinks a theory of justice must leave room for ‘serious debate’ on how to rate different human rights against each other, and should even leave room for debate on which freedoms count as human rights (386). At one stage he considers merely speculatively that ‘it may well turn out

¹² Of course the importance of impartiality to justice is itself subject to dispute; Sen draws on Adam Smith to make his case for ‘open impartiality’ (124–52).

¹³ Gerald Gaus, *The Order of Public Reason* (Cambridge University Press, 2011).

¹⁴ Consider, for example, his claim that there is a ‘basic general obligation ... to consider seriously what one can reasonably do to help the realization of another person’s freedom, taking note of its importance and influenceability, and of one’s own circumstances and likely effectiveness’ (373). In the end we need more of the Rawlsian, non-comparative and controversial projects than Sen explicitly allows for. But I also think that, in any case, there is less of a difference between the views of Sen (and Smith) on the one hand and those he criticises, on the other, such as Rawls and Dworkin.

that the introduction of social policies that eliminate widespread hunger, or remove rampant illiteracy, can be endorsed by a reasoned agreement that it would be an advancement of justice' (400–1). The phrasing suggests that Sen is aware that there are no guarantees regarding agreement even on such issues. Should the agreement prove elusive because of principled objections—for example from right libertarians—then it would appear that on Sen's view of justice, justice does not require state-sponsored elimination of widespread hunger and removal of rampant illiteracy.

This raises a key question that Sen himself memorably posed as the title of the article-length precursor to the book: what do we want from a theory of justice? Should such theories limit themselves to delineating and, where possible, combining the more or less pre-existing views of those who are to be subject to the requirements of justice,¹⁵ or should the theories aspire to lead some people to reject and revise their views? Sen seems to favour the former. At one point he warns us that theories of justice which postulate requirements that ask more of people than they already accept (accept in the very tangible sense of willingly follow) will not help us advance justice: 'Demanding more from behaviour today than could be expected to be fulfilled would not be a good way of advancing the cause of justice' (81). This may be a reason to calibrate our demands in certain contexts so that they do not go beyond what people already accept, but surely people's unwillingness to accept (and act on) a principle does not disqualify that principle as one of justice.¹⁶ People might after all make a mistake. True, the rejection of a given requirement, at least when informed and done in good faith, may give us a reason not to postulate its coercive enforcement—hence the need for a good account of legitimacy—but we will need theories that attempt to persuade people to some positions that they do not already hold and on which there is not yet an agreement. We need theories, in other words, that are stakeholders in the debate on what we should all agree on rather than only theories that postulate what it is that we already agree on. We need theories that lead rather than only follow and organise.

Some might insist that theories that seek to lead must make their appeals in the name of something other than justice; perhaps they need to present themselves as theories of goodness. But, if so, it would mean that justice is limited to the discovery of what people already, in some sense, believe. And it would mean that we could make no mistakes about justice just as long as we disagreed—in some appropriate way—on what justice requires. We may fear that this is too good to be true.

¹⁵ I say 'more or less' since some views may pre-exist as entailments of other views without yet being recognised but will be accepted when suggested (I am not thereby suggesting that people will always accept all views that logically follow from the other views that they know they hold).

¹⁶ And perhaps Sen would agree since he adds that 'this basic realization [that demanding more from people than could be expected to be fulfilled would not be a good way of advancing the cause of justice] must play [only?] a part in the way we think about justice' (81). For discussion of demanding more, see David Estlund, 'Utopophobia: Concession and Aspiration in Democratic Theory' in his *Democratic Authority: A Philosophical Framework* (Princeton University Press, 2007) 258–75; Stemplowska (n 7) 331–4; Laura Valentini, 'On the Apparent Paradox of Ideal Theory' (2009) 17 *Journal of Political Philosophy* 332.

Ultimately, Sen is right that even incomplete theories can give us quite a lot already. He is also right to object to '[a] theory of justice that rules out the possibility that our best efforts could still leave us locked into some mistake or other, however hidden it might be' (89). He is right to be suspicious of theories that take us 'straight away to some fairly detailed formula for social justice and to firm identification, with no indeterminacy, of the nature of just social institutions' (89).¹⁷ He is right that '[w]e go as far as we reasonably can'. But provided we don't offer them as blueprints for coercion, we also need accounts that attempt to convince us that some currently controversial solution is correct, even if its correctness cannot be conclusively established and is bound to remain controversial among impartial judges.

But suppose we go ahead with Sen's recommendations and focus exclusively on comparative judgements and eschew transcendental institutional projects. We can hopefully expect success with a number of comparisons. Sen, rightly, mentions genocide and slavery as likely candidates for the successful comparative judgement that leads us to opt for reforms that eliminate them. But what to do when comparisons are harder? What would justice recommend, say, in the flute allocation case? One answer Sen gives appeals to considerations that will not be present in every flute dispute: one child needs the flute for a decent life and, given this, we should all agree on the right solution (397). But what to do when the case is less clear and the child's situation less dramatic? If we cannot rule out any impartial viewpoints, including consequentialism, right libertarianism, left libertarianism, etc, then we are condemned to persistent inconclusiveness over the countless comparisons that we need to make. We can, following Sen, I think, opt for adopting an appropriate democratic procedure to take us out of the impasse. But ultimately Sen will need to write a sequel to tell us more about how to compare options and how to decide which ones to follow.

¹⁷ It is less clear that Rawls is the appropriate target of this criticism.