

**IT'S AN IDEA, NOT A THEORY:
REVIEW OF AMARTYA SEN'S *THE IDEA OF JUSTICE****

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The conditions of present-day existence are such that those interested in justice must deal with the plurality of societies, with their different and at times incompatible cultures of legalism and various other social practices. This universe of communities provides a sizable sample for testing any theory of justice, which in turn serves as a standard for adjudicating whether a particular community complies with a general conception of a just society. With lowered transaction costs to information, detailed bases for evaluating societies are readily available to anyone interested. In this sense, the evaluation of theories that seek to achieve a universalized understanding of various types of societies has become less difficult. At the same time, the salience of pluralism and the celebration of differences as operational assumptions for many communities have made the notion of a general theory a less attractive academic engagement. Generalized narratives of the ideal are no longer as avidly sought, just as theorizing about truths has moved from the search for absolute standards to the understanding of partial forms of practical knowledge.

In any case, the dominant approach to theorizing just societies has been influenced by such substantive issues as the social structure, normative character of institutions and the nature of individual rights. The fixation with social structure is motivated by ideological debates that took root during the Age of Enlightenment, one of whose greatest achievements being the search for an alternative political model to replace theocracy. The popular terms for global structures—democracy, socialism, communism—are but code words that represent the modern view on how resources should be distributed or regulated in a manner different from how it was done in a theocratic society. Intertwined with the analysis of social structures is the persistent debate over the fundamental status of the individual or the nature of the person, both as a

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legalized commodity and a social artifact. A theory of justice must have something to say about the individual, because any conception of what it is to be human is fundamentally dependent upon the question of how to build a just society. A theory of justice is therefore complete only when an author is able to offer a structural account of how society should operate through a system of permissions and prohibitions manifested through law and identify the host of legal entitlements that make up a person within that realm.

Theory of Justice vs. Idea of Justice

John Rawls's *A Theory of Justice* has become the standard account of the conditions required for a society to be considered just. Rawls's work provides a tight correlation between social structure and individual rights, which he achieved by infusing a concern for the individual in the formulation of the theory of social structure, one that is instrumental to the more important goal of guaranteeing basic individual rights. The political consequence, if not the fundamental aim, of *A Theory of Justice*, is the justification of the liberal welfare state—one that places the highest premium on basic freedoms such as life, liberty, and property while simultaneously obliging the state to maintain a solicitous regard for the plight of the disadvantaged. This places Rawls within the comfort zone for the progressives of the American academy: the left-of-center—those not so radical as to be branded as communists, and not so conservative as to be labeled libertarians. Rawls therefore accepts the tandem of capitalism and democracy, but places a special focus on the unlucky and the downtrodden to temper the effects of the marketplace and address the problem of inherited status.

This short introduction to theorizing justice and Rawls' place within a particular tradition of thought is meant to allow us to see Amartya Sen's attempt in *The Idea of Justice* as a work that is at once similar to and different from Rawls' opus. Sen, like Rawls, accepts the combination of capitalism and democracy as basic political and economic platforms for the operation of norms that are justice-enhancing, although, given the insights in his book, one might think his tacit endorsement is purely instrumental to the more general ideas he presents and which are the subject of this review. Rawls, on the other hand, is committed to both capitalism and democracy precisely because his work is tailor-fit for these platforms. *A Theory of Justice* was meant to show how a democratic capitalist society could be considered just, especially when compared with other societies that operate on a different set of assumptions.

In fact, one could view the book as Rawls's way of showing that a capitalist democracy is the best social platform for achieving a just society because such a model is potentially the best at maximizing the liberty of the freedom-seeker and guaranteeing the welfare of the needy.

Given that Rawls' work is the counterpoint to the most important discussions in Sen's *The Idea of Justice*, I will proceed with this review by following Sen's strategy. My goal is not to distinguish Sen from Rawls, but to point out some difficulties one may encounter with Sen's interesting thoughts about justice.

Maximalist and Minimalist Approaches to Justice. Sen's most important contribution is found in the Preface of *The Idea of Justice*, although it is barely stated and articulated in the rest of the book. He states that "[w]hat moves us, reasonably enough, is not the realization that the world falls short of being completely just—which few of us expect—but that there are clearly remediable injustices around us which we want to eliminate."¹ The goal is therefore not to achieve "a perfectly just world [but] to remove clear injustices to the extent [one] could."² The distinction between the search for the perfectly just world and the "identification of redressable injustice" is highlighted by tapping into what Sen considers the basic divide between the contractarian and the comparativist approaches to a theory of justice.³ The contractarian approach is the search for basic rules—the terms of contract—that could furnish the standards for determining whether a society is just, whereas the comparativist approach focuses on comparing actual conditions across different environments to get a sense of whether existing conditions may be considered just. This shift in focus—from the maximization of freedoms to the minimization of grave injustice—provides Sen with an interesting field of view that is potentially full of transformative insights.

¹ AMARTYA SEN, *THE IDEA OF JUSTICE* vii (2009).

² *Id.* "It is fair to assume that the Parisians would not have stormed Bastille, Gandhi would not have challenged the empire on which the sun used not to set, Martin Luther King would not have fought white supremacy in 'the land of the free and the home of the brave', without their sense of manifest injustices that could be overcome. They were not trying to achieve a perfectly just world (even if there were any agreement on what that would be like), but they did want to remove clear injustices to the extent they could."

³ See SEN at 5-8 for a basic discussion on the difference of the two approaches to a theory of justice.

Sen puts a wonderful twist to the tradition of theorizing by highlighting a particular difference between the two approaches. He emphasizes what one may call the distinction between a maximalist and a minimalist approach to justice. Contractarians, given their theoretical commitment, are bound to address the question of justice in terms of compliance (or non-compliance) with the terms of the social contract. A citizen, for example, may ask: how do I maximize my rights under this arrangement? From this standpoint, a society can be considered just when the contract provides for an optimum calibration of societal rules that maximizes the ability of community members to exercise their rights. Sen's comparativism, on the other hand, grounds his analysis on the more practical concern of using reason both to identify and address those situations in particular societies that are clearly remediable given the existing distribution of entitlements. This focus directs his approach not to the question of maximizing rights to achieve a condition of ideal justice but to improving situations identified as grave instances of injustice in order to achieve a less unjust set of circumstances. Sen is therefore not interested in searching for heaven on earth; he is interested in the more practical task of getting people out of the hell in which they currently are.

Interestingly enough, Sen refuses to provide his general idea with any practical bite, retreating instead to the position that "[w]hat is presented here is a theory of justice in a very broad sense."⁴ This is understandable considering that *first*, what qualifies as grave and redressable injustice requires knowledge of specific facts about a particular society, and *second*, what qualifies as a reasonable solution to that injustice imposes upon us an understanding of how any response must interact with a context that is always pregnant with complications. At the same time, this important feature of Sen's theory consigns him purely to description and incapacitates him from the crucial task of prescription. This puts him in the ironic position of endorsing practical reasoning all throughout his book, but unable to provide just that because his insights require for their application those textured facts that can only be appreciated under the intense pressure of an actual problem.

Form vs. Substance. Another important aspect of *The Idea of Justice* stems from Sen's being unplugged from institution-fixation and his persistent interest in the "advancement or retreat of justice." He makes the controversial and uncharacteristically arrogant claim that "[i]f a theory of justice is to guide

⁴ SEN at ix.

reasoned choice of policies, strategies or institutions, then the identification of fully just social arrangements is neither necessary nor sufficient.”⁵ Whereas Sen heaps praises on Rawls and is careful about his critique of his colleague’s work, here we get a sense of how fundamentally dismissive Sen is of Rawls’s work.

To distinguish *The Idea of Justice* from *A Theory of Justice*, Sen creates an opposition between transcendental institutionalism and what he calls a realization-focused comparison, which in another part of his presentation is highlighted as the “dichotomy between an *arrangement-focused* view of justice, and a *realization-focused* understanding of justice.”⁶ What he is relaying here is a general complaint about the direction of theorizing justice—that it has become an abstract search for just institutions rather than an honest-to-goodness attempt at understanding whether or not any policy solution results in progress from a situation of injustice to a situation of either justice or less injustice. At bottom, the critique of the modern tradition of theorizing justice is that it has gotten addicted with the form, and has lost sight of the substance of justice. Theorists have falsely assumed that a correct calibration of institutions will necessarily result in a just society. Against this backdrop, Sen argues that all ink and pen that have been devoted to the goal of getting the institutions right have been all but wasted because it is at once infeasible and redundant. It is enough, he thinks, to focus on realization and comparison, guided by reason.

To understand what Sen means, it is important to spot the word he tries to avoid, but which places in an ideological context the apparently-objective claims that he makes: *instrumentalism*. The discipline to which Sen belongs—economics—has historically suffered from the view that its technical tools are nothing but a formal proxy for the radical pragmatism of the instrumentalists. We can even go so far as to say that the current fashion that favors structures and rights are an implicit rejection of instrumentalism as a mode of achieving societal goals: the endorsement of freedom-centric arrangements avoids the creation of totalitarian structures even if the ostensible ultimate aim is freedom for all; on the other hand, the insistence on or belief in constitutional or human rights is an almost irrational commitment to a formal equality in the face of the worrisome idea that society can and should sacrifice some for the benefit of the many.

⁵ SEN at 15.

⁶ SEN at 10.

To be sure, the dominance of rhetoric over formal institutional structures and individual rights in theories of justice is motivated by the avoidance of possible pitfalls to which instrumentalists may bring society. In truth, the case for instrumentalism has always been strong. The focus on what works, the fixation with results, and the courage to trailblaze and dispense with settled ways to get from point A to point B—these are important ingredients for successful policies defined in terms of concrete achievements. There is, however, a high penalty for instrumentalism one which the world witnessed with terror over and over again in the 20th century. This is the danger that, in the wrong hands, instrumentalism can become a frightful beast that has the absolute capacity to rationalize and justify both means and ends and respects nothing but power itself. Given this experience with instrumentalism, Sen must therefore find a way to distinguish his realization-focused notion of justice with an instrumentalist approach to doing things the right way.

Furthermore, assuming that the so-called “realization-focused” approach to justice can be conceptually separated from instrumentalism, modern efforts at building political structures and justifying a status for individuals that are more or less immune from the powers of state administrators need not be dispensed with. This is because both the features of political institutions and the idealized protections to individuals furnish that all-important universalized standard with which to compare existing societies and assess whether any policy change would result in greater or lesser societal justice. In this sense, the idealized standards of Rawls that aim for structural justice and maximized liberal and welfare rights are akin to ultimate goals that travel at the speed of light: these are objectives that are constantly being approximated by progressive liberal societies, but are never quite reached given the constant reinvention and recurrence of social problems engendered by changing material conditions such as technological transformations, as well as the birth and death of generations of human beings.

Process v. Structure. Another controversial aspect of *The Idea of Justice* is its approach to the more fundamental question of whether the idea of a standardized conception of justice matters at all. Sen declares: “[a] systematic theory of comparative justice does not need, nor does it necessarily yield, an answer to the question ‘what is a just society?’”⁷ This notion can be divided into several distinctions between what he is trying to say and the subject of his entire critique: whereas Rawls sought to establish foundations for a just society,

⁷ SEN at 105.

Sen seeks *incremental advances towards a less unjust society*. Whereas Rawls's theory of justice may be considered static (given that, from his perspective, the goal of a society that wants to become just is to follow what the theory has already laid down), Sen's idea of justice is dynamic (given that any policy response is not made to depend on a general theory, but on an actual assessment of whether such policy, applied in the real world, could be a step towards less injustice). Whereas Rawls's theory may be classified as structural (believing that a just structure would lead to a just society), Sen's may be classified as situational (believing that advance or retreat of justice requires an understanding of actual events on the grassroots level). These distinctions probably also provide us with an insight as to why the titles of Rawls' and Sen's work are subtly distinct. Whereas Rawls openly spoke of a "theory" of justice, Sen writes about an "idea" of justice. The former saw his work as providing a blueprint for a just society, whereas the latter saw no need for such a master plan, emphasizing instead the importance of justice-enhancing tools. Determining what these tools are is probably where the problem lies.

So far as one can gather, the tools that help Sen build an idea of justice are: *first*, reason, which is painstakingly elaborated on for most of the book; and *second*, social choice theory, which is barely discussed in one chapter. With these tools, Sen would destroy all Rawlsian or Rawlsian-esque theories of justice. How he intends to do this is not explicitly shown, but one can read between the lines to understand where Sen's grand idea is supposed to lead us. We can highlight the importance of these tools by distinguishing Sen's approach from that of Rawls as one that is process-oriented rather than structure-oriented.

This, in essence, is Sen's idea of justice: we should not be engrossed with thinking about what the fundamental structure of a just society should be, and thus avoid abstracting away both the initial conditions and ultimate goals of such a society. We should also not be fixated with human rights. Instead of just structures leading to good lives, we should think of processes that are fair and credible, that lead to decisions that in turn lead to a more just or less unjust situation. Finally, the best processes are those that deploy universal reason (the type of rationality that, in Sen's words, is "positionally-unbiased" and characterized by "open impartiality"⁸) that has "plural grounding" and is

⁸ See SEN at 124-126, 155-161. "What may be needed in this exercise is a 'positionally unbiased' approach...The search for some kind of position-independent understanding of the world is central to the ethical illumination that may be sought in a non-relational

empirically backed up by social choice theory. Sen does not have any idea, and adamantly refuses to provide any in this 400-page work, of what the features of a just society should be, but instead asks us to stake our all—the future of our civilization—on reason. Thus, so long as decision-making processes are powered by reason qualified by all the fancy language to ensure that it is not just pure self-interest, we can rest assured that societies all over the world can move towards more justice or less injustice. This explains why, despite Sen's insistence on practical solutions independent of abstract theories, one cannot find in *The Idea of Justice* any such practical solutions to current problems: it is precisely because every social problem is so complex that the search for a solution must involve a detailed, if not empirical, approach to find not the best solution given the demands of an abstract theory, but the appropriate policy response that has multiple foundations that can convince the open-minded.

Reason and Ideology: the Case of the Ideological Children

It is very difficult to be dismissive of Sen's work in *The Idea of Justice* considering his breadth of knowledge, genuine attempt at infusing reason with compassion, and well-articulated sense that there is something fundamentally amiss with modern academic efforts at theorizing justice. The author wonders, however, what it can contribute to the debates on justice other than the non-controversial endorsement of reason in an increasingly unreasonable 21st century by a renowned intellectual and the emphasis on utilitarianism by an economist, which should not be controversial among the followers of that discipline, but should be so among most philosophers and legal theorists.

Sen devotes almost all the pages of his book to hammering out the details of the kind of reason he espouses—open not closed, universal not parochial, compassionate not selfish, plurally grounded not one-track. But this is not particularly difficult to sell. Academics and non-academics will buy the idea that there is a place for reason in this world and that we need more of it to combat prejudice, ignorance, and corruption. Others might even say that the ability to deploy reason is the quality that determines the character of a person or the level of civilization a society has achieved. But beyond this, Sen's effort will at once frustrate and disappoint.

approach." (*Id.* at 161). However, take note that this neutral position may be good for judges, but not necessarily for policy makers.

The Problem of Policy Commitment. One cannot simply say, as a formula for bringing humanity closer to a just society (or, given Sen's refusal to embrace a singular concept of justice, a less unjust one: "embrace reason, add a flavor of compassion, and do what needs to be done." Given the formidable and more determinate structural theories he seeks to undermine, *The Idea of Justice* would find few adherents with this type of a program, if it even amounts to that. The wide expanse of Sen's ideas is not only a virtue but is also a vice—his lack of adherence to any institutional set-up, disavowal of ideology and apparent embrace of universalism, uneasiness about the theoretical credibility of the idea of human rights, and view that happiness is not necessarily the ultimate goal of human beings all indicate that he has unplugged himself from the operative assumptions of mainstream theories. Simultaneously, this philosophy of non-commitment to the standard features of most theoretical accounts of justice consigns him to a policy of refusal to endorse any specific formula on how to solve any of society's current problems. This position, though understandable, is fundamentally debilitating. The lack of political commitment to any initial conditions or organizational scheme of society and the similar refusal to provide any idea of what an actual just society might be, even for purposes of comparison, allow Sen to avoid almost all criticisms that can be leveled against the traditional theories he himself criticizes. But it also makes his book useless for those in search of concrete answers. In this sense, the title of his book provides an honest, if not literal, endorsement of what Sen is really saying: unlike Rawls and others who tried to provide a *theory* of justice by articulating a program as to how a just society should be structured and its intricate workings explained, Sen is simply giving us an *idea* of justice.

The Problem of Perspective. The most unrealistic assumption Sen makes in this book is not that the idea of open impartiality with plural grounding is unacceptable to most; it is that those engaged in policy will find his type of reason useful for purposes of actually promoting justice. To be sure, it would be difficult to find people who would be dismissive or even opposed to the notion that in the assessment of policies that result in greater or less injustice in the world, we should use the kind of reason that is endorsed in *The Idea of Justice*. But the problem lies in *first*, finding or establishing social platforms that are reason-friendly, and *second*, creating a culture of using reason for promoting justice among policy-makers.

Sen makes the problematic assumption that any social structure can accommodate his type of reason. This is not true, or is naïve at best. While it

is true that every social structure will find ways to rationalize its existence in relation to the goal of pursuing justice, a wide divide usually exists between rhetorical justification and actual operation. Theocratic, communist, socialist, and democratic societies all have their canonical lines of justification for why they should exist and why their existence promotes some conception of justice. But a social platform that aggressively seeks to empower citizens (and not simply create disempowered majorities that can be manipulated into consenting) and strike a rational balance between majorities and minorities (or, in many cases empowered and disempowered minorities that constitute publics, and not just a public) has so far eluded humankind. Where to get the political capital and the will to impose compassionate reason to promote justice in a world of scarce resources and incompatible interests cannot easily be solved by arguing that this rationality must be open and plurally grounded. A theory of justice cannot avoid a discourse on political structure.

Even assuming that the political platform is theoretically capable of engaging in decision-making that is justice-oriented of the type that Sen adheres to, there is still no guarantee that policymakers will necessarily have an interest in actually engaging in that enterprise. Let us take democracy, the political platform that many might concede as a good business model for promoting justice, as an example.

In theory, representatives of government are agents of citizens within a particular jurisdiction, whether of a province, city, or district. However, this theory does not always hold true because of problems in elections (e.g. cheating, violence, lack of choice, massive poverty, and political entrenchment). Certain social problems also exist that impair the principal-agent relationship between the ruler and the ruled, making it difficult for citizens to be in the minds of their representatives in the latter's decision-making processes over scarce government resources. Thus, representatives of the people can act against the interests of their constituents and even end up oppressing them because the need to align public action with public welfare does not exist in many instances of formal democracy. Even when representatives of the people are actually interested in fulfilling the wishes of the people they represent, such a rare occasion is no guarantee that public action will be motivated by reason and justice-promotion, since, ultimately, what the people want will not necessarily be reasonable or just. Majorities can err, and the history of the last century is a horrific testament to the fact that it can do so gravely. It is therefore important that political organs simultaneously represent the people in order to give them what they want (which is usually a

good measure of justice) and, at the same time, rule the people even to the point of overriding them in the name of larger principles. This is, of course, what Sen would most likely endorse. It is how to get to this political culture that is entirely missing from his account.

Indeed, the rational and compassionate policymaker in Sen's account is a rare commodity in today's world. If at all, the decision-maker that is described in *The Idea of Justice* is akin to a judge, rather than a politician. True impartiality is a decision-making characteristic that is indispensable for the proper functioning of the judiciary. When judges decide, it is assumed that their actions are motivated by a genuine desire to get all the relevant facts and make binding pronouncements on the basis of the merits of the case. The institutional set-up of many judiciaries ensures that judges have an incentive to act rationally (by requiring them to write down and justify their decisions) and impartially (by giving them life tenure and fiscal autonomy, among other benefits). The institutional configuration of political departments, however, is entirely different. Officeholders have a remarkably distinct set of incentives. Members of parliaments, for example, make decisions by voting without the need to justify or even articulate the bases of their actions. In addition, as representatives, they are not expected to be impartial, the way judges are. Public agents are generally expected to reflect the wishes of their constituents (who may or may not be reasonable, and are almost always self-interested and only occasionally other-regarding). Their accountability mandates that they be partial to certain interests. In other words, the organizational characteristics of overtly political organizations like the executive and legislative departments make it impossible for policymakers in these places to act like Sen's decision-maker: positionally-unbiased, rational, and open-minded.

The Problem of Ideology. In the introduction Sen gives us the short narrative of three children (Anne, Bob and Carla) vying for control over a flute. Anne wants the flute because she is the only one among them who can play it; Bob claims it because of poverty; and Carla feels entitled to it because she made it. With the addition of some justifying context, Sen states that "it is not easy to brush aside as foundationless any of the claims based respectively on the pursuit of human fulfillment, or removal of poverty, or entitlement to enjoy the products of one's own labour."⁹ Utilitarians would favor Anne, economic egalitarians would support Bob, and libertarians as well as leftists would side with Carla. Considering that all children and their supporters draw

⁹ SEN at 14.

their arguments from “a different type of impartial and non-arbitrary reason,” it is possible that “[t]here may not indeed exist any identifiable perfectly just social arrangement on which impartial agreement would emerge.”¹⁰ The implication here is that various types of decisions grounded on differing philosophical positions about social objectives may be rationally justified. The author agrees, except that this is quite beside the point.

The implication of Sen’s argument is that any given social organization will have an answer to the problem of who should be entitled to the flute, and more importantly, that any such answer will not pose questions of justice, so long as the justification for any answer is made with all the honesty of an academic searching for a proper way to cite a footnote. The flaw in this argument is the assumption that the susceptibility of any social problem to a good-intentioned and rational solution necessarily dissolves all opposition and disempowers the losing parties from complaining. This is far from true. Following Sen’s example, if Anne gets the flute, both Bob and Carla will complain, because they will see the distribution as a form of injustice. Bob will say that equality is more important than either utility or liberty, while Carla will argue that liberty should take precedence over either utility or equality. Their arguments will not only be theoretical, but practical, as they will see questions of justice from the perspective of their favored ideology. Therefore, anyone who disagrees philosophically with the resulting distribution will argue that the policy decision made is unjust.

This problem applies with greater force when we consider that policy issues with ideological implications occur at every level of decision-making and is most pervasive when we talk about both the political structure and the legal architecture that supports it. While reason helps a lot in the elimination of ignorance and prejudice, it might not be as successful in eliminating ideological bias, which, in most cases, will be well-argued and rationally grounded. The disappointing absence of any treatment whatsoever of this problem in Sen’s work on justice substantially impairs his effort in highlighting the role of reason in humanity’s question for greater justice and lesser injustice.

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¹⁰ *Id.* at 15.