

Unlocatable Justice

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For Amartya Sen, a consensus around rejecting injustice is preferable to a general theory of justice. Although his critique of the Rawlsian approach may be useful, his arguments for a comparative approach to justice are not completely persuasive.

Reviewed: Amartya Sen, *The Idea of Justice*, Harvard University Press, 2009. (The edition reviewed is the French translation, *L'idée de justice*, translated by Paul Chemla, Flammarion, 2010, 558 p., 25 €.)

Since it was first published in 1971, John Rawls' *Theory of Justice* has been an essential reference for anyone interested in justice or ethics. Amartya Sen's *Idea of Justice*, which has just appeared in French translation, takes a clear position in the debate initiated by Rawls. Sen limits himself, however, to what he calls "a theory of justice in the broad sense", the purpose of which is not to "achieve a perfectly just world" but rather "to remove clear injustices" (p. xiii; Fr. p. 13). The work actually rehearses a number of arguments that Sen has developed over the past thirty years. Some of these, and most notably the critiques of Rawls' theory, are much more fully developed here than in his previous writings, however.

According to Sen, there are two distinct ways of approaching the question of justice: one, which he calls *transcendental institutionalism* and associates with the names of Kant, Rousseau, Locke, and Rawls, "concentrates its attention on what it identifies as perfect justice" by focusing "primarily on getting the institutions right" (p. 6; Fr. p. 20). The other method — said to be that of Smith, Condorcet, Bentham, and John Stuart Mill — seeks to link justice to comparisons of

different ways of life, concrete behaviors, and human interactions in a variety of institutional contexts. Sen, a critic of transcendental institutionalism, prefers this second or “comparative” approach.

Criticizing Rawls

Sen acknowledges that Rawls drew attention to the intrinsic importance of liberty (in itself and not as a means to an end). In his view, however, although “it is indeed possible to accept that liberty must have some kind of priority, but total unrestrained priority is almost certainly an overkill” (p. 65; Fr. p. 96). This critique was previously presented in *Inequality Reexamined* (1992) and *Development as Freedom* (1999).

In *The Idea of Justice*, however, Sen distances himself even more from Rawls’ theory by challenging the very ground of the principles of justice. For instance, he doubts that individuals placed in what Rawls called “the original position”, in which they do not know their future place in society, can in fact agree on a set of principles to govern just institutions, on which a fully just society must rest (p. 57; Fr. p. 87). There is in fact no reason for individuals to choose, as Rawls does, “the most extensive system of liberty” as the first principle of justice.

One must therefore confront “Arrow’s impossibility theorem”, which states that there is no rule for deducing a consistent collective preference regarding a set of options from individual preferences with respect to those same options. Indeed, because individual interests are at least in part contradictory, individual members of a society may not agree on the priority ordering of the various problems the society faces. Hence there is no one option superior to all others. For Sen, however, the search for such a superior option is at the heart of the transcendental individualist approach. The problem of choosing an ethical criterion, or hierarchical principles of justice capable of guiding choice among alternative actions and institutions, remains. Sen proposes a different solution, however.

Rejecting an Explicit Definition of Justice

For Sen, there is no need to define precisely what justice is in order to decide what is just or not just. He “sees no reason at all why”, in order to judge that option X is better than option Y,

one needs to invoke a completely different option Z that would supposedly be “the best of all”. “The possibility of having an identifiably perfect alternative does not indicate that it is necessary, or indeed useful, to refer to it in judging the relative merits of two other alternatives. [...] There would be something deeply odd in a general belief that a comparison of any two alternatives cannot be sensibly made without a prior identification of a supreme alternative. There is no analytical connection there at all” (p. 102; Fr. pp. 137-8). Sen explains this by saying that the knowledge that Everest is the highest mountain in the world is of no use in comparing the heights of Kilimanjaro and McKinley. A possible response to this is that, in comparing two mountains, the standard of measurement is simple and well-known (height), so that it is sufficient to specify what one is looking for (the taller mountain or the less tall one). In justice, specifying the standard of measurement (liberty, or collective happiness) is itself part of the problem in deciding whether one situation, rule, or action is better than another. As John Stuart Mill forcefully showed in *Utilitarianism*, it is precisely the existence of a criterion, a standard, that makes it possible to compare alternatives (see Mill, 1861, p. 158).

Criteria of Classification

Sen denies that it is necessary to know “the best option” in order to compare two other options. This may well be true. But he does not propose a unique criterion for making the comparison. For him, it is sufficient to have “a theory of practical reason to accommodate a framework for reasoning with the body of a capacious theory — that, at any rate, is the approach to the theory of justice that this work pursues” (p. 89; Fr. p. 123). But a “reasoned debate” does not necessarily lead to consensus — in this case, to a decision as to what is just and what is not.

Even without such a standard or criterion, Sen believes that one can nevertheless agree about certain aspects of injustice: “For the emergence of a shared and useful understanding of many substantive issues of rights and duties (and also of rights and wrongs), there is no need to insist that we must have agreed complete orderings or universally accepted full partitions of the just, strictly separated from the unjust; for example, a common resolve to fight for the abolition of famines, or genocide, or terrorism, or slavery, or untouchability, or illiteracy, or epidemics, etc., does not require that there be a similarly extensive agreement on the appropriate formulae for inheritance rights, or income tax schedules, or levels of minimum wages, or copyrights laws”

(pp. 144-145; Fr. p. 187). Yet if there is no reason why a group of diverse individuals should converge on Rawls's principles of justice, it is not clear why there should be any consensus about ridding the world of famines, untouchability, epidemics, etc. Indeed, as Sen himself concedes: "Even when all the parties involved have their own complete orderings of justice that are not congruent, the 'intersection' between the rankings — that is, the *shared* beliefs of the different parties — will yield a partial ranking with different extents of articulation (depending on the extent of similarity among the orderings)" (pp. 104-105; Fr. p. 141). In other words, agreement will be only as extensive as the degree of commonality among the individual classifications. Extrapolating, one can even say that if the individuals share the same concept of justice, the ranking will be complete. But if their views partially diverge, there is no guarantee that they will agree any more about famine, genocide, or epidemics than they do about income tax schedules. More than that, even if they do agree about the injustice of such scourges, they may not agree about the means of combating them. Does the "capability approach" that Sen stresses in the final part of the book offer an answer to these objections?

Capability

For Sen, "the idea of capability ... gives a central role to a person's actual ability to do the different things that she values doing. ... A person's advantage in terms of opportunities is judged to be lower than that of another if she has less capability — less real opportunity — to achieve those things that she has reason to value" (p. 253, p. 231; p. 284, 279). Sen here refrains from stating any explicit criterion of well-being or justice. Indeed, he insists on the absence of such a criterion and points to "the absurdity of the argument that is sometimes presented, which claims that the capability approach would be usable — and "operational" — only if it [came] with a set of "given" weights on the distinct functionings in some fixed list of relevant capabilities. The search for given, pre-determined weights is not only conceptually ungrounded, but it also overlooks the fact that the valuations and weights to be used may reasonably be influenced by our own continued scrutiny and by the reach of public discussion" (p. 242; Fr. p. 296-297). Thus the decision is left to individual scrutiny and public debate — but that is all we learn about the content that Sen ascribes to the notion of justice.

When Sen seeks to refine this concept, he writes that “the capability approach points to an *informational focus* in judging and comparing overall individual advantages, and does not, on its own, propose any specific formula about how that information may be used. [...] The capability perspective does point to the central relevance of the inequality of capabilities in the assessment of social disparities, but it does not, on its own, propose any specific formula for policy decisions” (p. 232; Fr. p. 285). This may prove disappointing to the reader who expects to find in Sen’s work what the introduction promises, namely, a reflection intended to show what should be done to promote justice and eliminate injustice.

Sen’s use of technical terminology from social choice theory makes reading *The Idea of Justice* somewhat heavy-going (and the difficulty is compounded for the French reader by the rather heavy hand of the translator). Perhaps this is the price to be paid for understanding such a subtle and complex thinker. Although the work suggests new ways of thinking about various ethical doctrines and raises a number of critical questions, and although it does touch on many issues essential to any reflection on the nature of justice (such as the criteria by which one situation is judged to be better than another), Sen does not place himself on the same terrain as the philosophers whose work he challenges. Unlike Rawls (1971) and Bentham (1823), he does not seek to present a complete and fully developed theory of justice to which one might subscribe after examining its arguments. In fact, he limits itself to stating that only “reasoned examination” and “public debate” can establish what is just and what is not.

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Further reading

-BENTHAM Jeremy (1823), *An Introduction to the Principles of Morals and Legislation*, Burns, J. H. & Hart, H. L. A. (eds.), Oxford, Clarendon Press, 1996.

- MILL John Stuart (1861), “*Utilitarianism*”, *On Liberty and Other Essays*, Oxford, Oxford University Press, 1991, pp. 129-201/ French translation, *L'utilitarisme, Essai sur Bentham*, Paris, PUF, 1998.
- RAWLS John (1971), *A Theory of Justice*, Oxford, Oxford University Press, 1973 / French translation, *Théorie de la Justice*, Paris, Seuil, 1997.
- SEN Amartya K. (1992), *Inequality reexamined*, Oxford, Clarendon Press / French translation, *Repenser l'Inégalité*, Paris, Seuil, 2000.
- SEN Amartya K. (1999), *Development as Freedom*, New York, Anchor Books, 2000/ French translation, *Un nouveau modèle économique : développement, justice, liberté*, Paris, Odile Jacob, 2003.