The Idea of Justice*

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I. FROM ECONOMICS TO PHILOSOPHY

Although famous as an economist, Amartya Sen is no less distinguished as a philosopher. In this he is far from unique. The same went for the founding father of economics, Adam Smith. But in these days of increased academic specialization the combination of philosopher and economist is rarer than once it was. Moreover the philosophical contributions of contemporary economists, such as they are, tend to be relatively narrow. Some, notably John Harsanyi and Thomas Schelling, are rightly lauded by philosophers for helping to illuminate what Hegel called 'the cunning of reason' – the strange twists, loops, and blind alleys that obstruct or divert us, individually or collectively, in the pursuit of value.[1] When it comes to the identification of the value to be pursued, on the other hand, it is harder to think of recent economists who have done important work. The preference-based theory of value treated as axiomatic by many economists is regarded as comic by many moral philosophers, even those with otherwise consilient utilitarian leanings. To break loose from the preference-based theory of value, while

* Amartya Sen, *The Idea of Justice* (2009). Hereafter '*IoJ*'.

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[1] Strictly speaking, 'the Cunning of Reason' is the other side of the same coin: the curious way in which value is served indirectly in the pursuit of something else, even something quite opposite. Hegel, *Lectures on the Philosophy of World History: Introduction* (trans H B Nisbet 1975), 89.

continuing to carry credibility for pioneering work in economics, takes a person of truly exceptional imagination, discipline, and versatility.

Amartya Sen is surely that person. Alongside his work in social choice theory and development economics, he has made major and enduring contributions to the philosophical literature on equality,[2] rights,[3] freedom,[4] and well-being.[5] His interpretation of freedom as a set of 'capabilities', and (so interpreted) as partly constitutive of human well-being, has done at least as much to invigorate a previously anæmic literature on the philosophical foundations of human rights[6] as it has to explain the ætiology of famine.[7] As this example shows, moreover, there is considerable continuity between Sen's philosophical work and his work as an economist. He is an inspiration to anyone who resists or regrets the corralling of thought into distinct academic disciplines, proof that it is still possible, even if only for a few with rare capabilities, to be a Renaissance polymath or even a classical pansophic.

The Idea of Justice is, if nothing else, testament to the huge breadth and depth of Sen's achievement and to the astonishing integrity of his thought over his long and illustrious career (55 years and still counting). All of the major themes of his previous work are on display here, complete with copious and compelling

[2] eg Sen, 'Equality of What?' in S M McMurrin (ed), *The Tanner Lectures on Human Values: Volume 1* (1980), 195.

[3] eg Sen, 'Rights and Agency', *Philosophy & Public Affairs* 11 (1982), 3.

[4] eg Sen, *Development as Freedom* (1999).

[5] eg Sen, 'Capability and Well-Being' in M. Nussbaum and A. Sen (eds), *The Quality of Life* (1993), 30; 'Well-being, Agency and Freedom', *Journal of Philosophy*, 32 (1985), 169-221.

[6] eg Sen, 'Elements of a Theory of Human Rights', *Philosophy and Public Affairs* 32 (2004), 315.

[7] eg Sen, 'Food, Economics, and Entitlements' in J Drèze, A Sen and A Hussain (eds), *The Political Economy of Hunger: Selected Essays* (1995)

illustrations of their application to concrete human problems, especially but by no means only in the developing world. At the same time, the book marks a departure for Sen. It is an academic book, and a serious one at that. But it is written for and marketed to a wider audience than his earlier work on the same subjects. This is the work of Amartya Sen the public intellectual.

The decision to speak *inter alia* to a *New York Review of Books* readership brings with it some problems. There is an excess of signposting (the preface digests the introduction which digests the book) and some cringeworthy banality (Wittgenstein, in case you didn't know, is 'one of the great philosophers of our time'[8]). The book is too long, too discursive, and too loaded with literary, cultural, and historical references and digressions that do little to advance the argument. The regular references to classical Indian sources, in particular, are intrinsically interesting but do hardly any useful philosophical work. A tougher editor could have cut 100 pages without weakening the book, and perhaps even strengthening it. He or she could also usefully have tackled the surfeit of gushing *homages* to living people. No doubt these are sincere and generous attempts to recognise and celebrate friends and colleagues. Perhaps they are also intended (along with the constant references to Indian ideas) to give the book a vaguely autobiographical flavour. Alas, in a grievous misrepresentation of Sen's personality, they come across as cliquish and even smug. Some of them are beyond parody. The words 'one of the most original, most powerful, and most humane philosophers of our time, my friend Thomas Nagel, from whose work I have learned so much' appear in the argument, not in the acknowledgements.[9] Likewise, 'having taught a class jointly with Ronald Dworkin for ten years at

[8] *IoJ*, 20.
[9] *IoJ*, 25

Oxford and knowing the astonishing reach of his mind, I could not, of course, have expected anything less.'[10]

Perhaps Sen has earned the right to indulge in some of this 'Oscar Night' name-checking in what he may reasonably regard as his crowning work. Probably, by the same token, he has earned the right to identify a master-theme that supposedly runs through his apparently diverse *oeuvre*, so that he qualifies late in life as a thinker in the 'Big Ideas' category. That is not in my view the finest category to compete in, but it is apparently what brings the highest audience share in his chosen demographic. Sure enough, in *The Idea of Justice*, Sen portrays himself as a participant in an epic Hollywood struggle, some of it shot on location at the heart of the European Enlightenment. Ranged on one side, Hobbes, Rousseau, Locke, and Kant, a grand alliance of so-called 'transcendental institutionalists' whose campaign, says Sen, is brilliantly revived in the late twentieth century by John Rawls (to whose memory Sen dedicates the book).[11] On the other side, Smith, Condorcet, Bentham, Wollstonecraft, Marx and Mill, a ragtag but plucky brigade of 'realization-focused comparativists', for whom Sen casts himself as a latter-day partisan.[12] Although the dramatic effect of this framing device is undeniable, the differences between the two sides seem more temperamental than strictly philosophical. At any rate, Sen does not draw the battle lines with total consistency, and the loyalties the listed protagonists are debatable, depending on where one takes the main issue between the two sides to lie. Bentham and Marx, in particular, often look like potential double agents.

[10] *IoJ*, 254. In case you are starting to suspect Sen of sycophancy, I should stress that these words are followed by some stern rebukes to Dworkin. Sen is 'at a loss in deciding where to begin in analysing what is wrong' with Dworkin's critique: *IoJ*, 265. So clearly Sen's words are not sycophantic.
[11] *IoJ*, 6.
[12] IoJ, 9.

Sometimes the main bone of contention between the transcendentalists and the comparativists seems to be what Nagel once called 'the fragmentation of value'.[13] The transcendentalists, on this interpretation, are value-monists who believe in the possibility of a uniquely optimal set of social arrangements. The comparativists, by contrast, think that the incommensurability of competing desiderata leave us with many eligible but imperfect sets of social arrangements, or (to put it another way) various imaginable compromises, none superior overall to any other.

Sometimes, however, the main bone of contention seems to be about the relationship between comparatives and superlatives. The transcendentalists, on this interpretation, are those who think we need to work out what is for the best (whether uniquely best or otherwise) in order to work out what is for the better. They begin by working out their ideals and understand improvements derivatively, as steps towards those ideals. The comparativists, by contrast, know an improvement when they see one without needing to envisage any 'good as can be' world (unique or not) towards which the improvement is a step.

Both interpretations of the rivalry leave the 'comparativist' focusing more than the 'transcendentalist' on what 'can be realized'.[14] On the first interpretation that expression means something like 'what could conceivably be realized, given the eternal human predicament of value-conflict' whereas on the second it means something like 'what might actually be realized by our efforts, given where we are now and all that stands in our path.' I will discuss the two interpretations in turn, with a view to showing that neither of them makes for the grand rivalry, the epic Hollywood struggle, that Sen advertises. In the process I hope to reveal a few, but by no means all, of the main ideas that Sen develops and defends in *The Idea of Justice*, especially in part

[13] 'The Fragmentation of Value', in Nagel, *Mortal Questions* (1979), 128.
[14] *IoJ*, 17

III of the book ('The Materials of Justice'). This is where the portrayed battle between 'transcendentalists' and 'comparativists' intensifies, and where Sen embarks on some demanding hand-to-hand combat, especially with Rawls and Dworkin.

II. VALUE-PLURALISM

Sen's value-pluralism is amply and admirably defended in *The Idea of Justice*, using memorable and illuminating examples (notably that of the 'three children and a flute' which he uses to prime the reader for what follows).[15] The deeper foundations of his outlook come out later, in his treatment of consequentialism (itself enveloped in an intriguing but prolix discussion of the *Bhagavadgita* dialogue in the *Mahabharata*). Here Sen rejects the proposal that 'the accounting of consequences be confined to culmination outcomes only, ignoring the relevance of agencies, processes, or relations, capturable in the picture of a comprehensive outcome.'[16] Once the category of 'consequences' is drawn so widely, to include not only the further consequences of actions but also the actions themselves, and to include such things conceived not only agent-neutrally but also agent-relatively, consequentialism becomes anodyne, harmless, just another name for the fullest sensitivity to value. It also becomes inevitably pluralistic. No longer can we hope for a uniquely optimal arrangement (social or personal) in which all of these aspects of value are optimized together. It is a defining feature of the human condition – our tragedy, if you like – that sometimes we can optimize one good only by suboptimizing another.

Out of this thought emerges a further, severable claim by Sen: what we can best hope to provide through social and political arrangements are the capabilities that will enable people

[15] *IoJ*, 12ff.
[16] *IoJ*, 218.

to realize various aspects of value (in their own lives and the lives of those around them) according to their reasonable preferences, where the very diversity of value is what opens up the space for those preferences to vary within the limits of the reasonable. Hence the deceptive but enduring appeal of 'contractarian' theories (epitomizing the 'transcendental' instinct). They attempt to conjure up a uniquely ideal social and political arrangement in which the diversity of reasonable preference is accommodated by relegation of value-pluralism to the personal domain, to the domain of 'conceptions of the good', as Rawls calls it.[17] That is not the way to go, argues Sen. It involves the wrong kind of accommodation. Social and political theorists must engage with value-compromise, not attempt to rise above it. Social and political actors, likewise, cannot properly abdicate responsibility for the pursuit of value in all of its messy diversity.

But if the case for pursuing valuable capabilities through public action is simply the case for pursuing values through public action, why stop at capabilities? Why not simultaneously pursue the valuable deployment of those capabilities (which Sen calls 'achieved functionings' or simply 'achievements')?[18] To put it another way, why assume that our policy interest in 'culmination outcomes' must decline once we adjust to the wider idea of a 'comprehensive outcome'? Sen's treatment of this question is surprisingly cursory. He gives most of his attention to a quite different question, namely the question of why we do not focus our political energies '*only* on achieved functionings' (i.e. *only* on culmination outcomes).[19] In answer to this question, he plausibly argues that our well-being lies not only in the further value that we create with (some of) our valuable capabilities, but also in our having (other) valuable capabilities that we do not

[17] Rawls, *A Theory of Justice* (1971), 128.
[18] *IoJ*, 236.
[19] *IoJ*, 236, emphasis added. As he asks the question himself, 'Why go beyond achievement to opportunity?': *IoJ*, 235.

develop, and in particular that we choose not to develop in order to develop others. 'The central issue,' as he puts the point himself, 'is the freedom to *choose* how to live.'[20]

Amen to that. In words that Sen did not but could have used, we should cultivate personal autonomy through public action, on the ground that personal autonomy is a constituent, and not merely an instrument, of human well-being. It is still a long way, however, from here to the conclusion that we should not cultivate, through public action, any value *other than* that of personal autonomy. Why not cultivate personal autonomy alongside its wise use by those who have it? Why not pursue *both* capability *and* achievement, without systematic privileging of one over the other, through governmental and other public agencies? Here is the only answer I could find in the book:

> In considering the respective advantages of responsible adults, it may be appropriate to think that the claims of individuals on the society may be best seen in terms of freedom to achieve (given by the set of real opportunities) rather than actual achievements. For example, the importance of having some kind of a guarantee of basic healthcare is primarily concerned with giving people the capability to enhance their state of health. If a person has the opportunity for socially supported healthcare but still decides, with full knowledge, not to make use of that opportunity, then it could be argued that the deprivation is not as much of a burning social concern as would be the failure to provide the person with the opportunity for healthcare.[21]

It 'could be argued' no doubt. But where is the argument? It is clearly not enough to roll out the importance of freedom. That people should be free to choose in Sen's sense (and I agree that they should) does not entail, nor even suggest, that we should be less interested in sorting out their plight when they make the wrong choice. Contrary to popular myth, the value of choice,

[20] *IoJ*, 238.
[21] *IoJ*, 238.

taken on its own, has few implications for personal responsibility. It certainly does not imply the vulgar and juvenile 'your choice, your problem' doctrine. An argument is needed to show why, once you are enjoying full-blooded choice, we should be less interested in rescuing you from the consequences of the bad choices you will sometimes inevitably make. Some good economistic arguments exist (based on 'moral hazard'), although their force is routinely exaggerated. However, I have yet to meet a good moral argument for the same conclusion.[22]

Dworkin has argued that Sen's doctrine of 'equality of capability', if it is not a version of what Dworkin calls 'equality of resources', must instead be a version of what Dworkin calls 'equality of welfare'.[23] Sen expresses bewilderment at the suggestion.[24] But we can now see what Dworkin might have meant. Under equality of resources, people have an equal share of wherewithal to put to whatever uses (within reason) they prefer to put it to. Sen denies that capabilities, as they matter to him, are to be understood on the model of wherewithal. He challenges Dworkin: '[W]hy thrill merely at the instrumental achievement ("all have the same resources – hurrah!"), rather than about what really matters (all have the same substantive freedom or capability)?'[25] But Dworkin might equally challenge Sen in return: 'Why prioritize the achievement of one constituent of what really matters ("all have the same capabilities – hurrah!"), over the whole of what really matters (all have the

[22] It would be different if we were merely refusing to rescue people from the unwelcome *constituents* of the options they chose. Then it could be argued that one is not being given the choice of that option if one is promptly rescued from its negative aspects. The challenge is to come up with a moral argument against rescuing people from the unwelcome *consequences* of the options they chose, i.e. those negative outcomes that are not part of the option.

[23] Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (2000), 65ff.

[24] *IoJ*, 265.

[25] *IoJ*, 266.

same well-being)?' If the long passage quoted above is Sen's only answer then Sen does not yet have an answer. The point is not that Sen endorses 'equality of welfare' (or equality of well-being) but that he does not adequately explain why he does not.

This broadly Dworkinian way of engaging with Sen would not be my natural way of engaing with him. I find the preoccupation with equality distracting. I would put the same challenge differently. The principle that public policy should be concerned only with wherewithal is sometimes known as the 'anti-perfectionist' principle; politics should remain aloof from the uses to which people put their wherewithal. Those who oppose this principle are sometimes called 'perfectionists'. Perfectionists may be value-pluralists, i.e. they may agree with Sen that there is no uniquely optimal set of social arrangements, any more than there is a uniquely optimal way of life for a human being. One dimension in which perfectionists may be value-pluralists is this: they may think that there is value in having the capability (as Sen explains 'capability') to do valuable things that one never actually does, as well as value in putting one's capabilities to good use. In that case they are liberal perfectionists, perfectionists who believe that one constituent of the good life is personal autonomy.[26] Much of what Sen says, distancing himself from Rawls and Dworkin, casts him as a liberal perfectionist. Yet he still shows anti-perfectionist leanings in his wish to keep public policy (relatively) aloof from the question of how one's capabilities are to be used, focusing it instead on the acquisition of the capabilities. This aloofness needs to be explained. Sen does not adequately explain it.

[26] The best-known defence of liberal perfectionism so understood is J Raz, *The Morality of Freedom* (1986).

III. COMPARATIVES AND SUPERLATIVES

Let value-pluralism be true, so that there is no uniquely optimal set of social arrangements. Does it follow, and anyway is it true, that we can do without ideals in social and political thought, that we can pursue the better without asking about the best, even the best compromises? I doubt it. Sen occasionally gives his anti-idealist views a false boost by making it sound as if his opponents are letting the best be the enemy of the good. Consider this:

> Dworkin's focus, in common with other transcendental institutionalist approaches, is on getting to perfectly just institutions (in one step). But in dealing with the task of advancing justice through the removal of radical cases of injustice, even when there is no hope of achieving perfectly just institutions (or even any agreement on what they would be like), we can have much use for what has been dismissively called 'merely a partial order ranking.'[27]

Sen is right, of course, that there are many uses for 'a partial order ranking.' But where does he get the idea that Dworkin and Rawls are interested in getting to perfectly just institutions only 'in one step'? And why does he think that that it matters, for their work, whether there is any 'hope' of achieving such 'perfectly just institutions'? I am not aware of anywhere in their work where either Rawls or Dworkin take the sensationally daft view that if we can't have perfect justice, we shouldn't want any justice at all. The Rawls-Dworkin claim is clearly not that, where justice is concerned, there is no point in doing part of the job unless one does the whole of it; their (implicit) claim is only that we need to *have a sense of what would count as* doing the whole of the job in order to set about doing part of it, even the part that interests Sen. To know the difference between a more 'radical case of injustice' and a less radical case, after all, one needs

[27] *IoJ*, 266-7.

to know the difference between a big departure a small departure from some standard of justice, which is not possible if one refuses to explain what the standard is, from which departures are being measured.[28] How does Sen propose to make this measurement?

There is also a second sleight of hand concealed in the above passage, but revealed more clearly in others. Consider:

> A no-nonsense transcendental theory can serve ... as something like the grand revolutionary's 'one-shot handbook'. But that marvelously radical handbook would not be much invoked in the actual debates on justice in which we are ever engaged. Questions on how to reduce the manifold injustices that characterize the world tend to define the domain of application of the analysis of justice; the jump to transcendental perfection does not belong there.[29]

Like Hayek before him,[30] Sen often relies on there being a distinction between doing justice and avoiding injustice. But an injustice is none other than a breach of a duty of justice. To identify injustices we begin by identifying duties of justice. What are Rawls and Dworkin doing, we may wonder, beyond that? What further 'jump' do they make? It is true, as Rawls makes clear, that he is interested in envisaging a world of 'strict compliance', i.e. one in which all duties of justice have been performed.[31] In this world there are no injustices. But Rawls' interest in envisaging such a world is simply an interest in working out the content of our duties of justice. Only then, he rightly thinks, can we know what counts as an injustice. How does Sen propose to work out what counts as an injustice

[28] It is a pity that Dorothy Emmet's book *The Role of the Unrealisable* (1994) which is exactly about this 'regulative' role for ideals, doesn't get a look in with Sen. Emmet is particularly good on Kant and Rousseau.
[29] *IoJ*, 100.
[30] Hayek, *Law, Legislation, and Liberty Volume 2: The Mirage of Social Justice* (1973), eg at 43.
[31] Rawls, *A Theory of Justice*, above note 17, 8.

without enumerating anyone's duties of justice? And how does he propose to enumerate anyone's duties of justice without saying what it takes to comply (strictly) with them? And once he does that much, how does his ambition differ from Rawls'? How is it any less 'transcendental', making less of a 'jump'?

It seems to me that Sen is trading on some alien (un-Rawlsian) overtones in the expression 'perfect justice' when he uses it in connection with Rawls' enterprise. Rawls takes a narrowly deontic view of justice according to which being concerned with justice is only being concerned with (a certain set of) duties. On this view there is no difference between a theory of justice and a theory of injustice. Every departure from ('perfect') justice is an injustice and the degree of the departure determines the gravity of the injustice. It is possible, of course, to take a less deontic view of justice, such that there are reasons of justice that are not duties. On such a view a gap opens up between a theory of justice and a theory of injustice; not every departure from ('perfect') justice is now an injustice. Since Sen apparently thinks that there is such a gap, he must, I suppose, take such a relatively undeontic view of the scope of justice. He then quite reasonably insists that, before we advocate political action, we should do some *triage* within justice, so understood. We should begin with injustices, meaning breaches of duties of justice. But that merely brings him back to the same place as Rawls, who assumed that there is no *triage* to be done, because there are no departures from justice that are not injustices.

IV AN IDEA OF JUSTICE?

These remarks reveal one oddity of *The Idea of Justice* which is also an oddity of Rawls' *A Theory of Justice*. Neither book gives over many words to explaining the very idea of justice, i.e. what marks a question out as one of justice as opposed to one of diligence, decency, humanity, toleration, public-spiritedness, etc. Maybe Rawls' 'difference principle' is a terrific principle for

social design, but what makes it a principle of *justice*? Maybe, likewise, Sen's aim of improving the capabilities of those with reduced capabilities is a sound aim for politics and social activism, but why under the heading of *justice*? And is it meant to be an assumption or a contention – an axiom or a thesis – that the first priorities of politics and social activism lie in the dimension of justice and injustice, rather than (say) in that of decency and indecency, or humanity and inhumanity?

Rawls has nothing much to say on these points and neither does Sen. I tend to think that his decision to follow Rawls in recasting the major problems of our age as problems of justice and injustice lies at the root of several of the difficulties he has in drawing a consistent set of battle-lines between his own 'comparativism' and Rawls' so-called 'transcendentalism'. It is notable that none of the great thinkers with whom he allies himself – Smith, Condorcet, Bentham, Wollstonecraft, Marx and Mill – cast the problems with which they were concerned primarily as problems of justice. They thought that it was enough to present the problems that concerned them, by and large, as problems of human progress. That is probably why their work comes across to Sen as more concerned with better than with best. They are happy to advocate improvements without deciding which particular moral heading the improvements fall under (justice or otherwise) and hence without having to explain how the relevant heading gets its focus and its unity. It is a pity that Sen did not follow their lead. One consequence of dressing up his humane, sensitive, and (for the most part[32]) progressive ideas in the uniform of justice is that quite often this forces his thinking too far into alignment with that of the grand visionary alliance - Hobbes, Rousseau, Locke, Kant, Rawls, and Dworkin – against whom he purports to be defending us.

[32] I say 'for the most part' because I found his endorsement of 'your choice, your problem'(at *IoJ*, 238) half-hearted though it is, disturbingly reactionary.

I have focused attention on the framing device that Sen has come up with in an effort to lend unity to his views for the purpose of his 'Big Idea' book. I have illustrated the difficulties that this device brings mainly to one part of the book, which is the part about freedom and capability. I have said nothing about Sen's treatment of democracy and its relationship to human rights. Nor have I engaged with his wider views on rationality and its relationship to preference and choice. Each of these parts of the book could be the subject of a critical notice in its own right. *The Idea of Justice*, to repeat, covers a lot of ground. It has numerous brilliant ideas in it. The title, alas, is not one of them. Not only does Sen fail to say much about the very idea of justice, i.e. what distinguishes it from the rest of morality. He also loses much, in his campaign for a more pluralistic and meliorist way of thinking about political and social action, by endorsing or at least giving yet more succour to the misguided modern notion that *injustice* – as distinct from inhumanity, greed, intolerance, and so on - should be our first collective preoccupation.

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