

A REVALUATION OF RAWLS' AND SEN'S JUSTICE AND REASON

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“We must start with the assumption that a reasonably just political society is possible, and for it to be possible, human beings must have a moral nature, not of course a perfect such nature, yet one that can understand, act on, and be sufficiently moved by a reasonable political conception of right and justice to support a society guided by its principles and ideals.”

Introduction

The Indian Amartya Sen¹ ‘reformulated’ the relationship between and among human agency, human development, and idea of constitutional democracy. His thoughts on justice are focused on the critique of transcendental institutionalism, employment of comparative broadening vis-à-vis positional objectivity and impartial spectator, and defense of pluralism given capability and functionings. For Sen, the process of fighting injustices and its underlying reasoning must be made public. Instead of focusing on the ideal notion of what a perfectly just society is, Sen concentrated his efforts on addressing situations of extreme injustice that demand direct and immediate response. He declares that we need to ‘remove manifest injustices.’²

The quest for the ideal concept of justice may not facilitate realizing such ideal within short period of time given the fact of multiple pressing social injustices. ‘A theory of justice that can serve as the basis of practical reason must include ways of judging how to reduce injustice and advance justice, rather than aiming only at the characterization of perfectly just societies—an exercise that is such a dominant feature of many theories of justice in political philosophy today.’³ Rather, an account of justice must be transformative; in other words, it must improve human life’s conditions.

This essay intends to evaluate the critiques posed by Amartya Sen to John Rawls as presented in 2009 *The Idea of Justice*. Sen provides us two separate sets of his criticisms to Rawls’ theory of justice: first, the so-called ‘problems that can be addressed effectively’⁴ within the Rawlsian model; and second, what Sen calls ‘difficulties that need fresh investigation’⁵ that suggests a need for an alternative approach or paradigm shift. In the first set, there are two points raised: *first*, the extreme nature of the priority of liberty as conceived by Rawls; and *second*, the fact that Rawls does not provide a way by which primary goods can be converted into good living. Rawls does not show how to convert social primary goods to good life, that is, Rawls has to recognize that the transformation of primary social goods to individual’s desired

¹ Thomas W. Lamont University Professor and at the same time a Professor of Economics and Philosophy at Harvard University, and became the Master of Trinity College, Cambridge. He is a Senior Fellow at the Harvard Society of Fellows. He was a Professor of Economics at Jadavpur University Calcutta, the Delhi School of Economics, and the London School of Economics. He also became a Drummond Professor of Political Economy at Oxford University. He was awarded in 1998 the Nobel Prize in Economics for his work in welfare economics. He is known for his research contributions on welfare economics, social choice theory, and economic and social justice. In late 1960’s, Rawls, Arrow and Sen taught political philosophy in a joint class and they used an earlier draft of Rawls’ *A Theory of Justice*.

² *The Idea of Justice*, 21.

³ *Ibid.*, ix.

⁴ *Ibid.*, 65-66.

⁵ *Ibid.*, 66-72.

ends are varied in terms of desired objectives and people's abilities, and this leads to the idea of assessing 'social realizations' in terms of human 'capabilities' or 'functionings' that people actually have given the 'social choice framework.'

Discussion and Analysis

The first point can be immediately dismissed because for Rawls, the public principles of justice presuppose that basic human needs as a basic minimum requirement in human life must be met first.⁶ Even though in his theory, the liberty principle has absolute lexical priority over all other principles such as the principle of justice over efficiency and welfare,⁷ this does not preclude the fact that in order for individuals to enjoy basic rights and liberties and all other principles of justice, they should have satisfied first their basic human needs. It is difficult to conceive of justice and fight for it if in the very first place minimum basic needs are not satisfied which are necessary for physical well-being. After minimum human needs requirement is fulfilled, we cannot but secure and safeguard basic rights and liberties next. Basic rights and liberties are called as basic because they are the foundation of values citizens must have to exercise their 'moral powers'⁸ and as they deliberate and relate among themselves to arrive at common and public principles of justice. They are considered as the groundwork of human personality because citizens are able to assert themselves in the society through these principles. They are required for social cooperation. Social cooperation starts from a clear perception of how to conceive human persons as rational agents of political conception⁹ and as reasonable citizens trying to adjust themselves with others' rights and liberties. Since these basic rights and liberties are so important in the development of human persons and society in the context of the public political conception of justice, they must be given a special priority. It gains special priority

because in a society defined by 'reasonable pluralism,' comprehensive doctrines disagree with one another in their pursuit of their respective conceptions of the good. The divisive conflicts could be resolved if all subscribe to the significance of a set of basic rights and liberties and that all see these rights and liberties as the starting points in the deliberation of pursuing for the good especially in matters of society's concerns. Since we cannot give priority to all conceptions of the good emanating from the reasonable views, a set of basic rights and liberties could set as standard in the decision process. Justice as fairness as a political conception of justice sets the principle that there must be a priority of rights and liberties over the good. This priority must be recognized because this is the only acceptable way of dealing with both the fact of reasonable pluralism and the need for stability for the right reasons. The right sets constraint in the acceptable conceptions of the good life. Rawls has emphasized that there must be a specification of these basic rights, liberties, and opportunities and putting priority to them especially with the claims of the general good and perfectionist values. He even adds that there must be measures assuring all citizens adequate all-purpose means to make effective use of their basic liberties and opportunities. Possible measures could be securing these rights and liberties to the constitutional essentials and matters of basic justice. These basic rights and liberties must be continuously asserted and reiterated constantly in order for reasonable and rational citizens to become fully aware of their rights and liberties and the society as a whole always respects and considers these rights and liberties in the policy formulations and in the adoption of state laws. Once the recognition and appreciation of these rights and liberties are wide that we could say that social structures are structured in such a way that citizens are able to exercise their moral powers and thus able to participate actively in the state affairs. Citizens must be conscious of these rights and liberties and hold them so dearly to attain a well-ordered society based on a fair social cooperation.

⁶ Political Liberalism, 7 & 166.

⁷ Ibid., 294-295.

⁸ Ibid., 19.

⁹ Ibid., 11.

On the second point, Sen questions Rawls' focus on and lexical priority of social primary goods especially the absolute priority of liberty over other basic rights and needs. Such lexical ordering needs qualification especially in cases of poverty. The priority of liberty does not apply where poverty conditions (i.e. hunger and starvation) is normal. An exclusive focus on social primary goods is not sufficient in the real world. Restricted use of primary social goods as measures of well-being for the purposes of justice is critical. Rawls has to recognize that the transformation of primary social goods to individual's desired ends are varied in terms of desired objectives and people's abilities (i.e. personal heterogeneities: age, gender, disability, and illness; environmental diversities: climatic circumstances, presence of disease and pollution; variations in social climate: prevalence of crime and violence, nature of community dynamics, social capital; differences in relational perspectives: variations of norms and customs between and within communities; distribution within the family). Rawls has to establish the relationship between people's resources and what they can do with these resources. Sen believes that Rawls' theory fails to consider the extent to which equal distribution of the means can be realized. For Sen, freedom is an 'inescapably plural idea.'¹⁰ We cannot simply list a set of rights and liberties on a cardinal scale in order to say that we have come up a social policy that guarantees such freedoms given such scale. Sen is correct in saying that we need to consider the various desired objectives and people's abilities as we try to articulate a theory of justice expected to bring a reduction in the experience of social injustice and in effect the idea of justice is improved. But to be fair with the idea of justice as fairness, Rawls operates his theory of justice with the presumption that we need to establish justice in the institutional level given the fact of reasonable pluralism and therefore the need to arrive at public principles of justice for the basic structure in order to create a society of social cooperation of free and equal citizens who are at the same time are rational and reasonable. Such theory of justice does not

deny or in contradiction with social choice framework. Social choice framework can be best used in considering the actual conditions of the people in society. Justice as fairness is a political conception of justice that is geared towards an ideal theory. Social choice framework is the best frame possible for nonideal theory. But that does not prohibit any conception of justice such as justice as fairness to develop a conception for just institutions. As a matter of fact, just institutions are a good stakeholder in building just societies. The distribution of primary social goods definitely brings a sense of social justice because these goods assure citizens their capacity to realize their conceptions of the good life given their moral powers regardless of their ends. As regards to their actual ends that are varied and plural, they will definitely consider their capabilities and functionings. A set of rights and liberties on a cardinal scale will definitely guide us in actual formulation of social policy. Such set of rights and liberties will be our basis for realizing our various capabilities and functionings. Capabilities and primary social goods are not in conflict. Sen's capabilities could specify in actual application Rawls' primary social goods.

The second set, the difficulties that cannot be solved within the Rawlsian framework, Sen's highlighted critique to Rawls' theory of justice, consists of three main points. These are: *first*, the inescapable relevance of actual behaviour, specifically, the problem of approach, that is, Sen is against (Rawls') transcendental institutionalism (focused on just institutions) and favours realization-focused comparison based on actual human behaviour (centered on creating just societies) in reducing injustice and advancing justice vis-à-vis the real and actual multiple social injustices in the world against the ideal notion of perfectly just society; *second*, the contractarian (better yet contractualist) approach as (too) limiting, that is, Rawls' contractarian (contractualist) line of reasoning is limited in such a way that it does not allow for some possibilities in addressing the issue of fairness unlike the device of 'impartial spectator;' and *third*, the relevance of global perspectives. But Sen does recognize some

¹⁰ The Idea of Justice., 305.

positive lessons from the Rawlsian approach¹¹: *first*, the idea that fairness is central to justice; *second*, the thesis about the objectivity of practical reason; *third*, the distinction between the ‘reasonable’ and the ‘rational’, and more generally, the reconstruction of the moral powers of persons as related to their capacity for a ‘sense of justice’ and a ‘conception of the good’; *fourth*, the separate and over-riding concern for liberty (as compared with other primary goods); *fifth*, the insistence on a ‘fair equality of opportunities’ as an enrichment of the literature on inequality; *sixth*, the need for according special attention to the worst-off people; and *seventh*, the way in which primary goods are conceived, which gives people the opportunity to do what they would like with their own lives.

The paper aims to, *establish* that Sen misunderstood Rawls’ project as transcendental institutionalism and that Rawls’ justice as fairness did not address injustice in the actual world (I); *demonstrate* that the idea of original position as a social contract is simply an analytical device in order to articulate justice and fairness and that the method of reflective equilibrium is a means to explore some possibilities in addressing issues of justice (II); and *show* that primary social goods are not incompatible with human capabilities and functionings (III).

I. The Problem of Approach

Sen is against transcendental institutionalism (particularly Rawls’ ideal theory approach); ‘transcendental’ in a sense that it focuses on defining a perfectly just society and on what it should do to realize it, and ‘institutional’ because justice concentrates on structures and just institutions would mean just distribution of goods. There are two distinct features of transcendental institutionalism¹²; *first*, ‘it concentrates its attention on what it identifies as perfect justice, rather than on relative comparisons of justice and injustice;’ and *second*, ‘in searching for perfection, it concentrates primarily on getting the institutions right, and it is not directly focused

on the actual societies that would ultimately emerge.’ This would mean that such approach neglects the important problems and relevant issues we need to confront such as the actual context of being worse-off of individuals and how to actually move toward societies that are (should be) less unjust. Rawls’ political liberalism excludes and neglects actual and contingent issues and concerns and certain important features which actually should be the focus of social justice given the contemporary context of real world politics.

For Sen, a theory of justice must respond to real world problems. Rawls’ theory of justice as fairness failed on this point for it neglected the true person’s real condition and positionality in the world and his real possibilities given his situatedness. Rawls does not give credit to the relevance of actual behaviour. Rawls’ theory of justice is detached from reality for it is mainly an effort to articulate what a perfectly just society is. ‘There may not indeed exist any identifiable perfectly just social arrangement on which impartial agreement would emerge.’ In other words, Rawls’ proposal is not sufficient to solve real human conditions, some actual and concrete problems especially on political justice issues, and social conflicts. Sen claims that there is a need for Rawls to have a wider informational base in order to go beyond his foundationalist conception of justice. His emphasis is on building ‘just institutions’ rather than on creating a ‘just society.’¹³ For Sen, ‘the question that we have to ask here is: what international reforms do we need to make the world a bit less unjust?’¹⁴ According to him, Rawls upholds social contract that does not allow for comparative assessments, in effect, all other ‘voices’ (outside the original position) are not heard. Sen favours realization-focused comparativism that focuses on reducing injustice and advancing justice (i.e. removal of manifest injustice); comparative approaches concerned with social realizations resulting from actual institutions, actual behaviour, and other actual influences. ‘It would be hard to dismiss the perspective of social realizations on the grounds that it is

¹¹ *ibid.*, 62-65.

¹² *ibid.*, 5-6.

¹³ *ibid.*, 67.

¹⁴ *ibid.*, 25.

narrowly consequentialist and ignores the reasoning underlying deontological concerns.¹⁵ ‘The question to ask in this context is whether the analysis of justice must be so confined to getting the basic institutions and general rules right? Should we not also have to examine what emerges in the society, including the kind of lives that people can actually lead, given institutions and rules, but also other influences, including actual behaviour, that would inescapably affect human lives?’¹⁶ A lot of points of argumentation are raised in first major critique. There are five immediate points of clarification: *one*, Rawls’ theory of justice is not transcendental and institutional as Sen would define it in a sense that Rawls’ theory is designed as truly ideal but genuinely realizable and therefore not absolute and uprooted in historical and social circumstances, and in addition, justice as fairness is designed for the basic structure to secure constitutional essentials and matters of basic justice and not to directly offer solutions to reduce injustice; *two*, Rawls’ theory of justice is intended to address real condition or the given modern context (i.e. the fact of reasonable pluralism) through articulating some principles of justice that are taken as correct principles for the basic structure in the ideal sense possible but within given evaluation standards and criteria as seen in the idea of original position as a (heuristic) device (of representation) and not the actual human condition such as poverty; *three*, since the (philosophical) project of Rawls is to establish and implement principles of justice in the society of fair terms of social cooperation of citizens who are rational and reasonable and at the same time free and equal, (substantive) justice is defined in terms of the distribution of primary social goods in the framework of ideal conception of justice and not the relevance issue of actual human behaviour, which leads to the point that the focus of Rawls is not on human contingencies relative to justice but that does not mean that it actually neglects because the effort is in response to form ideal yet realizable conception of justice (Sen can actually be questioned for interpreting Rawls’ ‘ideal’

conception of justice as ‘perfect’ for Rawls only conceives it as ideal but realizable, i.e. liberal socialism and property-owning democracy, and not perfect in the sense that it is absolute and already closed in itself); *four*, the original position is designed together with the veil of ignorance and reflective equilibrium to ensure that there is primordial equality among the rational autonomous parties who are representatives of the fully autonomous citizens and therefore should not have in any form of prejudice and informational bias that would give or allow anyone to have some advantages over all others as we construct a just institution (again, Rawlsian approach is actually different from Sen’s methodology because Rawls’ goal is to create ‘just institutions’ whereas Sen’s aim is ‘just societies’ but this does not directly imply that ‘just institutions’ are in conflict with ‘just societies;’ it is even possible to have them as complementary of each other or a presupposition of the other); and *five*, it is correct to pose that comparative approaches concerned with social realizations resulting from actual institutions, actual behaviour, and other actual influences facilitate reducing injustice and enhancing justice, and this of course cannot be seen in the ‘ideal theory’ but in the ‘nonideal theory’ where actual contexts are presented but evaluated against the standards and criteria already established in the ‘ideal theory’ making ‘nonideal theory’ necessary and relevant. Sen’s realization-focused comparativism as nonideal theory is weak without normative goal of formulating ideal yet realizable view. According to Sen, we should go beyond our parochial conception of justice and we should recognize that there are many reasons for us to act in a particular way. We need ‘comparative broadening’ and a ‘plurality of sustainable reasons.’ We need to go beyond our ‘positional perspectives.’ Sen’s model is only to provide ‘informational focus in judging and comparing overall individual advantages’¹⁷ without specifying how such information may be used. Sen after all should not only focus on his *nyaya* approach but consider *niti* approach as these two approaches approximate justice; his realization-focused comparativism has to work with normative

¹⁵ *Ibid.*, 24.

¹⁶ *Ibid.*, 10.

¹⁷ *Ibid.*, 232.

grounds such as the ideal theory suggesting that he should devise his own project of a conception of justice compatible with such comparativism methodology.

II. The Problem of the Social Contract

Rawls' justice as fairness is plausible because of the idea of original position. Original position is a heuristic device, a thought experiment, to situate equality of persons in articulating public principles of liberal political constructivist conception of justice as fairness. With such principles created and established not allowing anyone to take advantage in any form over others while assuring everyone given the moral powers to realize conceptions of the good life, the basic structure will be able to guarantee political justice. This is workable because of the veil of ignorance and wide reflective equilibrium in the original position. The original position does not allow for social backgrounds, psychological propensities, and physical characteristics to interfere in the rational and reasonable deliberation of the parties because of the thick veil of ignorance making the discussion focused on the thin theory of the good. This is all possible because the entire process of the original position is in itself subject to wide reflective equilibrium. The parties go back and forth over general principles and considered judgments of justice in consideration of history and culture to attain balance taken as a whole. In principle, through the parties, the citizens are faced to critically study, constantly confront challenges, revise some judgments, and arrive at some fixed points. Part of this process is to consider some possibilities of conception and principles of justice and decisively evaluate them until we arrive at some principles of justice, which for Rawls would be liberty principle and the justice principle over efficiency and welfare. This categorically shows that the process within the original position through the thick veil of ignorance and the wide reflective equilibrium as an analytical device presents itself as flexible, dynamic, and open. The idea of original position then substantiates our idea of the social contract. The process involved in the original position is contractualist in reasoning. The idea of original position as a

social contract guarantees and secures fairness. When we enter into a social contract, it must be strongly objective. The original position exemplifies political constructivism. The standards and criteria of evaluation for all conceptions and principles presented in the original position passes through and are observed in reflective equilibrium. The idea of original position as a social contract is strongly objective in this regard. Hence, the principles of justice as articulated in the original position by the rationally autonomous parties are indeed the desired principles of the fully autonomous citizens and are therefore ready for the basic structure. This is only at the level of the first stage. The idea of the social contract pushes itself more when, taken as a frame of mind, we conceive of ourselves as members in the constitutional convention to articulate principles in the constitution consistent with the principles of justice (the second stage), as lawmaking members in the legislature where we pass laws consistent with the constitution and principles of justice (the third stage), and as officials of the executive and members of the judiciary in which we implement and interpret the laws consistent with the laws themselves, with the constitution itself, and with the principles of justice. As the veil of ignorance is relaxed and relaxed more in the later stages, the citizens have the informational base that serves as basis and baseline as we deal with the actual human conditions individually and collectively. This proves how vast the sense of dynamism and flexibility of the contractualist approach. As such, the critique of Sen that contractarian reasoning delimits considering possibilities for justice and fairness is generally and fundamentally misplaced.

The device of the impartial spectator projecting itself as inclusive allowing therefore pluralist realities and information from the people themselves do not discount the force and rigor of the original position. The impartial spectator would actually encounter serious problems and crucial challenges as the vast array of information and social realizations would come in given the fact that it does not have the mechanism how to process such information and realizations especially when they are already compared from one

another and as a totality. When capabilities and functionings need to be weighed comparatively and summatively, we need to have some ways to measure them and decide over them. Sen relies on argumentation, debate, and dialogue to process things using the social choice framework. Some difficulties arise: how do we resolve different assessments of capability against what standards and evaluation criteria? How do we settle things and arrive at good (or better) judgments in cases of disagreement on the level of capability and different levels of capability as reflected in different factual circumstances and actual human conditions individually and collectively? How do we resolve the situation where incomplete rankings of alternatives (or agreed partial rankings) cannot be attained? The impartial spectator may indeed (1) deal with comparative assessments instead of transcendental solutions, (2) emphasize social realizations, (3) accept incompleteness in social assessments, and (4) consider voices beyond the contractualist group, but with the lack of normative groundwork to base judgments for justice and fairness vis-à-vis procedural mechanisms, the realization-focused comparativism is difficult to ascertain and realize. In effect, it is good simply as a pragmatic attempt to reduce injustice. Sen does not provide us with a substantial account how to resolve our different evaluations of justice.

III. The Problem of Global Perspectives

Sen argued that Rawlsian theory of justice is not open to global perspectives. Rawls' idea of public reason is only confined, and therefore delimited, to liberal democratic framework and therefore cannot allow for (more) open public reasoning relative to articulating principles of justice on the global sphere. Rawls' parochial thinking of justice prohibits realizing his egalitarian distributive principles on a global scale.

For Rawls, we are able to arrive at justice as fairness in a liberal democratic constitutional framework because the relevant relations that exist among the citizens are geared towards such view of realizing political justice through justice as fairness. This is possible because of

the public political culture where there is a substantial support of justice as fairness given the fact of reasonable pluralism by citizens who are free and equal, reasonable and rational in a society of fair terms of social cooperation. In other words, a political conception of justice is an idea of justice that only applies given the presence of social relations as shaped up in the (democratic) institutions. Such characteristics and principles for a political conception do not exist (yet) in the global level. What we can do only for global justice for now is to engage in the toleration and compatibility of some social and political principles between the liberal and 'nonliberal peoples.' What we need to work out more is to establish the moral equality of persons globally. We need to have a global political culture conducive for global justice. Sen's suggestion of a more open public reasoning in the global level leads us to the difficulty in setting the boundaries of such global public reason. It is open to unreason and unreasonableness. One good value in the Rawlsian system is the idea or virtue of the reasonable. Not all reasons are reasonable and acceptable. To gauge the reasonableness and acceptability of reasons depends on the standards and evaluation criteria which can only be formulated in a public deliberation; every public deliberation depends on the fundamental moral equality of persons. Unless these safety nets are guaranteed, global justice is difficult to ascertain for now. Societies and peoples may agree on some notions of injustice (i.e. global poverty, international terrorism) but not necessarily on the idea of justice.

Conclusion

Rawls and Sen have given us two perspectives in approaching justice and reason. Rawls designed his architectonic of political justice to articulate ideal yet realizable theory of liberal public political constructivist conception of justice as fairness that anchors on three ideas: the basic structure, overlapping consensus, and public reason. In effect, it is created towards a normative political groundwork of 'just institutions' through the so-called liberty principle and principle of

justice over efficiency and welfare. Sen built up his critique of Rawls through his conception of comparative broadening of the idea of justice through a conception of normative functionings and human capabilities. In fact, it is drafted for reducing poverty and injustice and in establishing 'just societies.' The goal of the two political theorists is then different from each other. Both would be able to settle their differences through the idea of public reason. Public reason provides us, through (wide) reflective equilibrium, concepts and principles a democratic society is able to harness given its own tradition and progressive development of its own public political culture. Such public reason builds up and develops a framework, paradigm, and culture of justice through time in a democratic society. The informational base necessary for the concrete and actual (re-)appropriation of principles of justice (in the ideal theory) may now be the metric in considering the concrete and actual less just if not unjust situations (in relation to the nonideal theory). When the fundamentals necessary for justice are already harnessed from one democratic society to another democratic society, a transnational democratic justice can be developed. This may lead to a 'political' conception of 'global justice.' But first, we need to enrich public reason locally and globally.

Though we have noted their marked differences, in essence there is actually no major conflict between their ideas. Rawls goes, in general, for the 'ideal theory' and Sen, in particular, focuses for the 'nonideal theory.' One may be taken as corollary and major support for the other. Once principles of justice are already stipulated, Rawls would not stop in social primary goods; he would go even further and recognize the merits of various functionings and capabilities. Once the 'ideal theory' is finally crafted, it has to consider seriously the 'nonideal theory.' Once societies are geared towards the reduction of injustice such as poverty, then we are indeed able to approximate the idea of justice. Once human capabilities are taken in the equation, these capabilities would guarantee the social primary goods. We can say therefore that the ideas of Rawls and Sen are complementary.

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