

Transcendental and Comparative Theories of Justice: A Critique of Sen

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Introduction

In recent years, the utility of ideal theories of justice has been called into question, and it is becoming more widely believed that inquiries into what justice demands should better account for many of the features of the actual, nonideal world in which we must live our lives.² While there is no consensus on how we should distinguish between ‘ideal’ and ‘nonideal’ theory, one way of making this distinction may be found in the work of John Rawls (Rawls, 1999b, 2005; Simmons, 2010). In ideal theory, according to Rawls, one of our aims should be to elucidate the fundamental principles of justice that should govern the basic institutions of society in hypothetical circumstances that assume a willingness on the part of all persons and institutions to comply fully with what justice demands. At the same time, in ideal theory we may also assume that there are no historical, cultural, or empirical obstacles that would prevent this full compliance. By contrast, the focus of nonideal theory should be on how various kinds of noncompliance with the fundamental principles of justice may be dealt with justly and how we may work towards advancing the cause of justice in practice. In Rawls’ view, ideal theory thus conceived has to have a certain priority over nonideal theory: without a conception of the ideal of ‘a just society,’ our practical efforts to work towards justice in nonideal circumstances would lack any fundamental orientation. However, critics of this Rawlsian view wonder how a theory that is meant to apply in admittedly hypothetical circumstances could provide us with much practical guidance in a nonideal world characterized by often brutal forms of injustice and oppression. How useful is a theory that applies to idealized circumstances, when we have little reason to expect that such circumstances will ever become fully actualized and when we have no choice but to act in circumstances that are decidedly nonideal? Critics of ideal theory, then,

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² Cf. Farrelly, 2007; Mills, 2005; Robeyns, 2008; Stemplowska, 2008.

wonder whether ideal theory is a realistic or feasible approach to inquiring into what justice demands of us here and now, in our turbulent nonideal world.

One of most well known critics of ideal theory in recent years (and of Rawls' ideal theory in particular) has been Amartya Sen, who defends a different approach to the theory of justice in *The Idea of Justice* (2009).³ Bringing together his theoretical work on social choice theory and the capabilities approach to welfare economics, Sen argues that ideal theory (which he describes in his own terminology as a 'transcendental' approach to the theory of justice⁴) is neither necessary nor sufficient for advancing the cause of justice in our nonideal circumstances. Ideal theory is *insufficient*, according to Sen, because a theory about what alternatives would be *ideal* cannot determine how we should choose among the nonideal alternatives with which we may be actually faced. Furthermore, it is *unnecessary*, because a properly conceived comparative theory of justice will inform us about how to make the world 'more' just even if (as is likely) 'perfect' justice must continue to elude us. In Sen's view, then, if a comparative theory of justice can inform us about how to make the world 'more' just, ideal theory would be *redundant*. But Sen also argues that ideal theory is unlikely to be *feasible*: for Sen, there are a number of principles of justice that have "serious arguments" (2009: 14) in their favour, but their incommensurability precludes us from being able to arrange them into a 'lexical order' in the way that Rawls believed that the principles of justice that compose 'justice as fairness' could be arranged (Rawls, 1999a). In Sen's view, this sort of incommensurability makes it unlikely that we can identify a 'perfectly just society' or a unique set of 'perfectly just institutions,' even if it does not preclude us in many cases from being able to determine what actions, institutions, or states of affairs would be 'more' just in practice than others. In defending a comparative theory of justice, then, Sen aims to show why the 'transcendental' approach of ideal theory is misconceived and to develop a more constructive alternative.

In this paper, I critically examine a central feature of Sen's comparative theory of justice, and I argue that even if we are precluded from identifying some unique set of 'perfectly just institutions' for the reason Sen believes, the comparative theory that Sen has proposed to take the place of ideal theory is insufficient for informing us about what actions, institutions, or states of affairs would be 'more' just than others. As I discuss below, what we need to know in order to advance the cause of justice in nonideal circumstances is which of the feasible measures that we *could* adopt are *morally permissible*; however, I then proceed to argue that the conception of moral objectivity that informs Sen's comparative theory – a conception that views public reason as being essential for ensuring the objectivity of our moral judgments and principles – cannot provide a sufficient basis for an objective account of what is morally permissible conduct during nonideal circumstances. This is because in the real, nonideal world in which we must act, the political legitimacy of any actual forum for the exercise of public reason may itself be subject to dispute; therefore, what we need is an account of what is morally permissible conduct during those times when public reason fails to provide us with authoritative guidance, but such an account cannot be provided *by* public reason itself. In other words, I argue that the feasibility of a comparative theory like Sen's ultimately depends on there being some other ground for the

³ This work expands upon the views developed in Sen (2006). My focus in this paper will be on the more recent statement of these views in *The Idea of Justice*.

⁴ In *The Idea of Justice*, Sen himself does not discuss the distinction between 'ideal' and 'nonideal' theory, but for the purposes of this paper, I believe that what he characterizes as 'transcendental' theory may be reasonably described as 'ideal' theory. I do not believe that the argument I develop in this paper depends on a more rigorous distinction between the two. Of course, this is not to argue that a more rigorous distinction would not be necessary for other purposes.

objectivity of our judgments of what is morally permissible conduct in nonideal circumstances, but no such ground is provided by Sen himself. I then conclude that philosophy has an indispensable role to play in clarifying how we should understand the ground of moral objectivity and in developing an account of what actions, institutions, and states of affairs are morally permissible, and I argue that these roles for philosophy should be acknowledged by anyone wishing to develop any kind of theory of justice for ideal or nonideal circumstances. Put another way, even if the aim of identifying a ‘perfectly just society’ can be shown to be questionable, critics of ideal theory should not be under the illusion that a turn to nonideal theory will be any *less* philosophically difficult than ideal theory itself.

Sen on Transcendental and Comparative Theories of Justice

Before developing my argument any further, let me begin by providing a fuller account of why Sen believes that we do not need ideal theory in order to advance the cause of justice in our actual, nonideal circumstances. According to Sen, ideal theory chiefly focuses on identifying ‘perfectly just institutions,’ that is, institutions that cannot be improved upon in any way in terms of their justice. An ideal theory “tries only to identify social characteristics that cannot be transcended in terms of justice, and its focus is thus not on comparing feasible societies, all of which may fall short of the ideals of perfection. ... [It] concentrates primarily on getting the institutions right, and it is not directly focused on the actual societies that would ultimately emerge” (2009: 6). In contrast, a comparative theory aims to compare actions, institutions, and states of affairs that actually exist (or could feasibly emerge), in terms of whether some of these might be ‘more’ just than others. Rather than engaging in “transcendental searches for a perfectly just society” (2009: 7), a comparative theory inquires more broadly into how we can make societies ‘more’ rather than ‘perfectly’ just. To this end, a comparative theory relies upon a method for comparing feasible actions, institutions, or states of affairs in terms of their *relative* justice, and then evaluates ways in which the alternatives that are ‘more’ just could become actualized within society. Those who are concerned with developing a comparative theory of justice, therefore, are less concerned with making a society ‘perfectly’ just (a goal that may forever elude us in practice) and more concerned with how we can implement practical measures to make our societies *more* just than they may currently be. For Sen, both of these basic kinds of theory have their roots in the Enlightenment: the social contract theories proposed by Hobbes, Locke, Rousseau, and Kant provide the best known historical examples of ideal theories, while theorists as diverse as Smith, Bentham, Wollstonecraft, and Marx developed different comparative approaches (2009: 6-7). As for contemporary political philosophy, Rawls is easily the most influential ideal theorist, while the comparative theory that Sen defends is presented as an alternative to Rawls’s theory, even if Sen suggests there is still much that we can learn from it (Sen, 2009: 62-65).

Given the differences between the two kinds of theory, on what grounds should we prefer one over the other? In Sen’s view, there are two main problems with ideal theory. First, Sen argues that we may be unable to arrive at an agreement on the nature of the ‘perfectly just society’; in other words, ideal theories may not be *feasible*, despite their popularity within political philosophy. In defending this possibility, Sen argues that we have no reason to believe that persons, “even under strict conditions of impartiality and open-minded scrutiny” (2009: 9), will be able to identify a set of principles of justice that entail that there could be only one unique

set of ‘perfectly just institutions.’ This is because there may be a plurality of impartial principles of justice whose incommensurability precludes us from being able to identify ‘perfectly just institutions’ *simpliciter*. As Sen argues, when it comes to questions of distributive justice in particular, there are a number of competing principles of justice that we cannot easily dismiss: the libertarian who appeals to the principle that we have a right to the fruits of our labour, the egalitarian who appeals to the principle that we have a duty to alleviate the plight of the poor, and the utilitarian who appeals to the principle that we should consider what would bring about the greatest happiness of the greatest number, for example, appeal to principles that all have “serious arguments” (2009: 14) in their defence. However, these principles seem to be incommensurable and not capable of being lexically ordered in the way that Rawls believed his principles of justice could be. And what holds for distributive justice may hold, *mutatis mutandis*, for justice in other social realms as well; therefore, even if it still may be possible to reach agreement in particular cases on what we could do to make our societies ‘more’ just, we should not expect to be able to identify anything like ‘perfectly just institutions.’ A properly conceived comparative theory, therefore, would allow for us to reach these kinds of practical agreements (and thus enable us to make progress towards making our societies *more* just), even if we cannot reach an agreement about the nature of a ‘perfectly just society’ or arrive at a consensus in every case on which of two alternatives would be ‘more’ just. In Sen’s view, then, progress towards justice does not depend on our being able to identify the nature of perfect justice, a task that may ultimately be impossible. A properly conceived comparative theory would allow us to make at least some partial progress towards justice even if perfect justice must continue to elude us.

The second problem that Sen believes affects ideal theory is that any identification of an *ideal* alternative does not completely inform us about how we should choose among *nonideal* options. As Sen argues, “an exercise of practical reason that involves an actual choice demands a framework of comparison of justice for choosing among the feasible alternatives and not an identification of a possibly unavailable perfect solution that could not be transcended” (2009: 9). This is to say that even if ideal theory could be shown to be theoretically feasible, it would still be *insufficient* for guiding our practical decisions. The transcendental identification of a perfectly just society cannot determine how we should choose among feasible alternatives that are less than perfect, but this is precisely what we need to know in our nonideal circumstances. In our nonideal world, all we know is that we are at some distance from a perfectly just society (however this may be conceived), but Sen argues that “there are different features involved in identifying distance, related, among other distinctions, to different fields of departure, varying dimensionalities of transgressions, and diverse ways of weighing separate infractions” (2009: 99). Therefore, we need a framework for practical decision making that takes into account the radically different ways in which we might be at some distance from a perfectly just society, and Sen argues that this framework must ultimately be a comparative one. What we need to know, in the actual circumstances with which we are faced, is which of two admittedly imperfect alternatives could be said to be ‘more’ just, because we have no other way of advancing towards justice in the actual world except through making specific practical decisions in nonideal circumstances. What this means, according to Sen, is that ideal theory is likely to be *redundant*. Given that we need a comparative theory to address the practical question about how we should actually *act* to make the world more just, Sen argues that a properly conceived comparative theory is *all* that we need. Ideal theory, according to Sen, is neither necessary nor sufficient for helping us to advance the cause of justice in nonideal circumstances.

In the next section of this paper, I will begin to develop my main argument against Sen's theory. However, I should clarify before proceeding that there are a number of complex (and related) issues that space precludes me from addressing in this paper, but which I believe would need to be considered in any comprehensive evaluation of Sen's position. Among these issues is the question of just how we should understand the terms *perfectly just institutions* and *perfectly just society*. This may seem like an odd or trivial consideration, but I must admit that I am not entirely satisfied with Sen's characterization of ideal or 'transcendental' theory. In describing the aim of ideal theory as the identification of *perfectly* just institutions, Sen might have difficulty properly accounting for the view of someone like G. A. Cohen, who argues that we should not expect to be able to have a theory that *orders* our basic values: our values are 'radically plural,' and, similar to Sen's view, Cohen argues that we should not expect these to be capable of anything like lexical ordering.⁵ I cannot consider here what implications Cohen's view, if true, would have for our ability to at least *conceptualize* something like 'perfectly just institutions,' but since Sen himself seems inclined to count Cohen as a 'transcendental' theorist⁶, perhaps it would be better, all things considered, if we were to develop a characterization of ideal theory that could better account for a position like Cohen's. Perhaps ideal theory might be better characterized as an inquiry into the limits of political possibility, or as an inquiry into how just any society *could* be, assuming the best possible conditions. Of course, this does not mean that this revised aim of ideal theory must be somehow *more* feasible, but I do not consider in this paper whether the nature of the principles that govern the justice (or moral permissibility) of actions, institutions, and states of affairs precludes us from identifying a 'perfectly just society' or even something like 'a society that is as just as any society *could* be.' What these principles are, and whether they are plural and incommensurable (in the way that Sen believes), or whether there is only one ultimate principle (in the way that some utilitarians believe), or whether there is a set of principles that are capable of lexical ordering (in the way that Rawls believed), and whether the best philosophical account of these principles precludes us from even conceiving of

⁵ As Cohen writes (2008: 4), "A *Theory of Justice* set itself against, and offered to replace, what Rawls called an 'intuitionist' conception of moral and political philosophy, but, given his characterization of the conception in question, it would be better to call it 'radical pluralism.' In this conception, one favoured by many Oxford types like me, we determine the principles that we are willing to endorse through an investigation of our individual normative judgments on particular cases, and while we allow that principles that are extensively supported by a wide range of individual judgments can override outlier judgments that contradict those principles, individual judgments retain a certain sovereignty.

In my philosophically conservative view, that is the only way to go. And when we go that way, we refine, and we thereby reach, our deepest normative convictions, which, being our deepest, we find it difficult to defend (except against attack). We expect to find, moreover, as approach the completion of our task, that the normative requirements that we recognize present themselves in competitive array: they cannot all be satisfied all the time, nor do we have a method for systematically combining them. Discursively indefensible trade-offs are our fate. I do not say that such an intellectual predicament is satisfactory. But I do say that it is the predicament we are in. There are many attempts to escape it in the literature, and as many failures to do so." I have a great deal of sympathy for this view, but I cannot consider here what consequences it would have for our ability to conceptualize 'just institutions.'

⁶ As Sen writes (2009: 62), "Cohen may well be right that a society that can be seen as perfectly just should not have the impediment of incentive-based inequality, but that is one more reason for not concentrating so much on transcendental justice in developing a theory of justice. Rawls's halfway house may not be quite transcendental enough for Cohen, but there are other problems of transcendental concentration (for reasons already discussed) that Rawls has to face, even in the absence of taking a leaf from Cohen's book. In a world of comparative justice, Cohen's just world may stand above the one that Rawls outlines in justice as fairness, but the main use of the theory of comparative justice would be in making comparisons between feasible possibilities less exalted – in terms of justice – than both Cohen's and Rawls's 'just' worlds."

a ‘perfectly just society’ or a ‘society that is as just as possible,’ are important questions in political philosophy, but I cannot consider them here. What I aim to do instead, beginning in the next section of this paper, is to consider whether the theory that Sen defends can guide our practical efforts to make the world more just. I believe that it cannot, for reasons that I aim to make clear below.

Morally Permissible Alternatives and Nonideal Circumstances

Given that Sen believes that we should develop a comparative theory of justice that will allow us to advance the cause of justice in our actual, nonideal world, how are we to compare feasible actions, institutions or state of affairs in terms of their *relative* justice? Sen argues that any comparative theory would be greatly aided by the theoretical insights of both social choice theory and the capabilities approach to welfare economics. In Sen’s view, social choice theory provides the best means for aggregating decisions made by individuals and translating these into optimal social decisions about the relative justice of social alternatives, while the capabilities approach provides us with the best account of how we should understand the notion of societal disadvantage, an account that we should prefer over a Rawlsian focus on the distribution of primary goods within society or a Dworkinian concentration on the distribution of resources. In this paper, however, my concern is not to evaluate Sen’s views on these questions. Instead, my aim will be first to make a case for why a comparative theory of justice needs to be informed by an account of what actions, institutions or states of affairs are *morally permissible* in nonideal circumstances, and then to argue that the conception of objectivity that Sen defends cannot provide a sufficient basis for an objective account of these alternatives.

How should we understand the notion of *moral permissibility* and why do we need an account of which actions, institutions, and states of affairs *may* be just in nonideal circumstances? The notion of moral permissibility and its relation to nonideal circumstances was touched upon by Rawls, who believed that actions, institutions, and states of affairs that are justifiable in nonideal circumstances must at the very least be “morally permissible” (1999b: 89), but, as Simmons observes in his valuable exegesis of how Rawls distinguishes between ideal and nonideal theory, “Rawls does not expand on the simple claim that policies in nonideal conditions must be morally permissible, so we are left to guess about his meaning” (2010: 20). But while Rawls himself may not provide an account of how we should understand the notion of moral permissibility, I believe that it is not terribly complex and that insight into it is best gained through consideration of the correlative notion of the morally *impermissible*. In my view, the best way of getting a grip on the notion of moral permissibility is through reflection on what, if any, feasible alternatives could be said to be simply *impermissible in any circumstances*.⁷

⁷ In *The Myth of Morality* (2001), Richard Joyce defends an error theory of morality on the grounds that there is no sense to be made of the notion that an action, institution, or state of affairs could be ‘impermissible’ in this sense. Moral discourse is “fundamentally flawed” (2001: ix), because it presupposes that there are some things that ‘ought to be done’ regardless of whether they ultimately serve any actual person’s desires or furthers his interests. In Joyce’s view, careful philosophical investigation of the matter reveals that there is no sense to be made of this presupposition. I take it that if an error theory of morality provides us with the best metaethical account of how we should understand the nature of moral values, there can be no non-arbitrary way of distinguishing between ‘permissible’ and ‘impermissible’ actions, institutions, and states of affairs in any actual circumstances. However, I am not convinced that an error theory provides us with the best metaethical account of the nature of moral values, although I cannot justify this view here.

Furthermore, I would argue that without some insight into what, if any, feasible alternatives are simply *impermissible in any circumstances*, we can be in no position to judge which feasible alternatives *are* ‘more’ just than others.

As an illustration of this conceptual point, we might consider a question that Sen himself raises in *The Idea of Justice*: whether we should “repudiate the permissibility of torture” (2009: xii). I take it that to repudiate the permissibility of torture would be to render a judgment that torture is impermissible in any circumstances, and this judgment would be based on a view that the principles that govern our conduct in nonideal circumstances do not allow for any justification for the use of torture. If torture is impermissible in any circumstances, any use of torture would be unjust: a possible world in which there are instances of torture will necessarily contain instances of injustice. Meanwhile, if torture is morally permissible in *some* circumstances, then not every instance of torture will be an instance of injustice. To illustrate, we can imagine a possible world in which two non-overlapping groups of persons use torture: members of group A use torture because they derive pleasure from inflicting pain on persons who are not members of group A, while members of group B use torture only as a way of ultimately defeating organized campaigns of malevolent aggression by members of group A. If torture is simply impermissible in any circumstances, then the use of torture by members of both groups would be unjust; however, if torture is permissible in some circumstances, then it may be the case that members of group B are acting justly when they use torture: it depends on the substantive question of whether the principles that govern our conduct during nonideal circumstances permit the use of it. The larger point here, then, is that a feasible theory of justice depends on our ability to distinguish between morally permissible and morally impermissible actions, institutions, and states of affairs. If we are philosophically precluded from making non-arbitrary distinctions here, then, in my view, there can be no objective theory of justice, whether ‘ideal’ or ‘nonideal,’ ‘transcendental’ or ‘comparative.’

A philosopher whose aim was to defend the methodological priority of ideal theory over nonideal theory might wish to argue at this point that our knowledge of the principles that govern morally permissible conduct in nonideal circumstances can only be derived from *ideal* theory; therefore, the possibility of nonideal theory depends entirely on whether *ideal* theory can provide a compelling account of these principles⁸. In my view, however, the soundness of this argument depends on how we are to answer the *substantive* question of how we should understand the nature of those principles. If the best answer to the *substantive* question is a Rawlsian one, then it seems to me that ideal theory would indeed be methodologically prior to nonideal theory. However, if our answer to the substantive question precludes us from identifying a unique set of ‘perfectly just institutions’ or even a set of ‘institutions that are as just as they *could* be, given the best possible conditions,’ then it becomes less clear whether ideal theory as such can claim methodological priority. As mentioned above, I cannot consider the substantive question here, but what I hope I have accomplished to this point is to provide some reason for thinking that we need some prior account of what actions, institutions and states of affairs *may* be just in order to be in a position to judge which alternatives *are* just in the circumstances with which we are faced. And the comparative or nonideal theorist needs such an account regardless of whether ideal theory (however this is to be conceived) is feasible.

On this point, I believe that Sen would agree with me, and it is clear that his comparative approach to the theory of justice intends to allow us to make the kinds of non-arbitrary distinctions between morally permissible and impermissible alternatives that we need to make in

⁸ This is the view that Simmons defends in his (2010).

order to have a compelling theory of justice. In Sen's view, we "are engaged in making comparisons in terms of the advancement of justice whether we fight oppression (like slavery, or the subjugation of women), or protest against systematic medical neglect ... or repudiate the permissibility of torture" (2009: xi-xii); therefore, one of our tasks as would-be comparative theorists is "finding some criteria for an alternative being 'less unjust' than another" (2009: 6). But how are we to 'find criteria' that will enable us to make objective relative comparisons? Given that there is no consensus among ideal theorists (or among members of the general public for that matter) about *which* 'criteria' ought to be recognized, how is it that a comparative theory of justice could be better positioned to shed more light on this question than an ideal theory? In the next section of this paper, I provide an account of Sen's answer to this question, and I argue that it is unsatisfactory.

Conceptions of Objectivity and the Feasibility of Comparative Theory

In *Political Liberalism*, Rawls relied upon a distinction between the *concept* of objectivity and a *conception* of objectivity in order to make the case that we could develop a liberal theory of justice that was 'political, not metaphysical' (Rawls, 2005: 110-116). Provided that we could develop an account of public reason that met the essential requirements of what the *concept* of objectivity demands, Rawls believed that a 'political' theory of justice need not take any stand on the substantive philosophical questions of whether any other *conception* of objectivity (like rational intuitionism, for example) is true, or whether any other *comprehensive* philosophical, moral, or religious doctrine is true. In the later Rawls, the *reasonableness* of a theory of justice is argued to be the appropriate *public* justification for why that theory should have any influence on the basic political institutions of a modern democratic society, given the (presumed) facts of reasonable pluralism and the burdens of judgment; and the *reasonableness* of a theory of justice, according to Rawls, is a function of its being a possible object of an overlapping consensus among people who hold different reasonable *comprehensive* doctrines. The principles of justice that compose 'justice as fairness,' according to Rawls, might be able to serve as an object of such an overlapping consensus, but Sen would dispute this Rawlsian view. As I discussed above, Sen believes that 'justice as fairness' is *structurally* flawed, and that principles of justice are better thought of as not being capable of lexical ordering. However, Sen accepts the basic view of the later Rawls that public reason, properly conceived, can supply us with a feasible *conception* of objectivity for addressing questions about what justice demands. It is Sen's *conception* of objectivity that I aim to challenge here, on the grounds that I do not believe it can support a feasible comparative theory of justice.

Although Sen accepts Rawls' basic view that public reason can supply us with a feasible *conception* of objectivity, Sen's own account of public reason differs from Rawls' in two important respects. First, Sen explicitly endorses Hilary Putnam's view that the objectivity of moral propositions does not depend on their having any ontological ground 'outside' or 'beyond' themselves: it is possible for us to have 'ethics without ontology,' according to Putnam, and Sen suggests that his own account of public reason owes as much to Putnam's views on moral objectivity as it does to Rawls' (Sen, 2009: 42).⁹ Second, Sen argues that when it comes to ensuring the *impartiality* of the views debated in public reason, we would do best to employ

⁹ Putnam's views are presented in his *The Collapse of the Fact/Value Dichotomy* (2002) and *Ethics without Ontology* (2004).

Adam Smith's device of the 'ideal spectator' rather than Rawls's device of the 'original position' (Sen, 2009: ch. 6). The former device, in Sen's view, will allow us to achieve an 'open impartiality' that better mitigates the effects of moral 'parochialism' than the 'closed impartiality' of Rawls' original position. Whereas deliberations within a Rawlsian original position would be restricted to the representatives of members of a 'closed' society (a society that is assumed to have no interactions with any other society), the device of the ideal spectator, in Sen's view, enables us to adopt a perspective that is 'open' and truly global in scope, and thus better realize our aim of ensuring the impartiality of debates about what justice demands. Properly conceived, then, public reasoning "is clearly an essential feature of objectivity in political and ethical beliefs" according to Sen (2009: 44).

Although Rawls turns to public reason as a way of constructing a *political* and not *comprehensive* theory of justice, one of the ambiguities within *The Idea of Justice* is whether Sen is aiming to develop a *political* or a *comprehensive* theory. If Sen is aiming only to construct a *political* theory of justice, then it would perhaps suffice to make a case that the *conception* of moral objectivity that informs his comparative theory is more *reasonable* than Rawls', given the (presumed) facts of reasonable pluralism and the burdens of judgment. However, if he is aiming to develop a *comprehensive* theory, then Sen would be required to defend the *truth* and not merely the *reasonableness* of the conception of objectivity that informs his theory. But while Sen himself does not explicitly state whether he is developing a *political* or a *comprehensive* theory of justice, the *conception* of objectivity that we find in *The Idea of Justice* seems to be something more ambitious than a *political* conception. Sen has explicitly aligned himself with Putnam's views on moral objectivity, but these views do not aim at as much neutrality as possible on the fundamental metaphysical disputes that continue to divide us: Putnam's view is not simply that we *can* do 'ethics without ontology,' but that we *should* do so, because the view that ontology is a feasible 'science' of being *qua* being cannot be sustained, and such a 'science' is unnecessary for any kind of theoretical or practical inquiry. Meanwhile, Sen himself does not indicate that he is aiming to develop a theory that is as neutral as possible on such questions. So given that Sen's comparative theory of justice incorporates philosophical insights that would seem to be *comprehensive* in reach¹⁰, Sen would have to provide some reason for thinking that we should regard them as *true*. But there is no argument in *The Idea of Justice* that would convince a rational intuitionist that his *conception* of objectivity is unsound. Beyond stating his allegiance to Putnam and presenting the basic features of his own account of public reason, Sen does not go into any depth about why we should regard this conception of objectivity as *true*. And it is far from obvious that this conception *is* true, although I do not have the space here to consider the deep philosophical problems with it.¹¹

¹⁰ As Sen writes (2009: 41), "Does the pursuit of ethical objectivity take the form of the search for some ethical objects? While a good deal of complex discussion on the objectivity of ethics has tended to proceed in terms of ontology (in particular, the metaphysics of 'what ethical objects exist'), it is difficult to understand what these ethical objects might be like. Instead, I would go along with Hilary Putnam's argument that this line of investigation is largely unhelpful and misguided." I take Sen to be providing us with a substantive judgment on the value of certain theories about how we should understand the nature of moral objectivity, which is why I read him as aiming at something more ambitious than a *political* theory of justice.

¹¹ I would endorse the view that E. J. Lowe defends in *The Possibility of Metaphysics* (1998) and "The Rationality of Metaphysics" (2009) that any rational inquiry that aims to reveal to us truths about *actuality* must depend upon a prior ontological framework that establishes the bounds of (metaphysical) *possibility*. Furthermore, I would also endorse his view that modal truths are ultimately grounded in the *essences* of things, and that a properly conceived *essentialism* is a necessary condition for the possibility of objectivity in any rational inquiry (Lowe, 2008). I

The comparative theory of justice that Sen defends, then, appears to be something more philosophically ambitious than a *political* theory of justice, something that could be a possible object of an overlapping consensus among people who hold different reasonable *comprehensive* doctrines. Moreover, the comparative theory that Sen defends is hardly *less* philosophically contentious than any *ideal* theory, and it is therefore unclear what political legitimacy it could really lay claim to in nonideal circumstances. In nonideal circumstances such as ours, persons disagree about the truth of various comprehensive doctrines – so why should philosophical insights gleaned from Sen and Putnam be any more *politically* authoritative than insights gleaned from Plato, Locke, Comte, Marx, the early Rawls, or L. Ron Hubbard? Why should the relative comparisons made by one person on the basis of insights from Sen and Putnam be more *politically* authoritative than relative comparisons made on the basis of any other moral theory with comprehensive pretensions? If Sen were aiming to defend a full-fledged *comprehensive* theory of justice, he might wish to argue at this point that the theories defended by these other figures are *false*, and his alone is *true* – and so if the world were just (or at least ‘more just’), his views would reign supreme. But I am not convinced that the *truth* of Sen’s comparative theory can be sustained¹²; at the very least, he would need to do much more to convince me that it could function as a feasible *comprehensive* theory.

Alternatively, Sen might wish to restate his comparative theory and defend it explicitly as a *political* theory of justice. This, after all, is what the later Rawls urged political philosophers to do. Given that there is a plurality of reasonable *comprehensive* doctrines, our aim should be to construct a *political* conception of justice, a conception of justice that aims to be as neutral as possible on disputes about *comprehensive* philosophical doctrines and conceptions of objectivity. Rawlsian public reason is therefore defended on ‘political, not metaphysical’ grounds, and perhaps Sen might ultimately want to follow Rawls down this path.

However, I do not think that this path leads in a very promising direction, because there are two interrelated problems with it. The first problem is that the political legitimacy of any *actual* forum for the exercise of public reason may *itself* be subject to dispute in nonideal circumstances. In nonideal circumstances, what may be in dispute in many cases is the *nature* of the public realm itself and how we are to distinguish between ‘the public’ and ‘the private’ realms. Not every comprehensive moral doctrine recognizes a distinction between ‘the public’ and ‘the private,’ but in the actual, nonideal world in which we live, we still need to know how we *may* act towards those who do not accept this distinction. At the same time, a consensus about what we are to do is not necessarily the outcome of any public deliberation, as Sen himself recognizes. Therefore, in those cases in which the political legitimacy of any actual exercise of public reason is *itself* contested, what *may* we do? How may we treat those who refuse to comply with the deliberations of public reason? When may we justifiably refuse to be bound by such deliberations ourselves? When may we justifiably exclude persons from forums for the exercise of public reason, and when is it justifiable to resort to non-deliberative means for advancing the cause of justice? In nonideal circumstances, these are questions that need to be addressed in a principled way, but they cannot be sufficiently addressed *through* public reason, because they are questions about the limits *of* public reason. But how are we to understand the basis of objectivity for our judgments in *these* circumstances? It is difficult to see, then, how public reason could

therefore cannot accept the Sen/Putnam view on how we should understand objectivity, but, in this paper, I cannot provide any substantive defence for the alternative that I would endorse.

¹² For reasons mentioned above in footnote 11.

serve as a sufficient conception of objectivity in nonideal circumstances, given that it may leave many of our most pressing practical questions unanswered.

But the political legitimacy of public reason may be subject to dispute in an even more fundamental way. Given that in nonideal circumstances persons may actually wish to go to war over the *truth* about comprehensive moral and philosophical doctrines, it is difficult to see why these persons must be persuaded based on appeals to the Rawlsian criterion of *reasonableness* to seek peace. The argument that such persons are acting *unreasonably* is not likely to carry much weight with *them*, because the *political* relevance of this criterion is precisely what they might wish to contest: in their own minds they have the *truth* on their side, and why should they not go to war to uphold or promulgate the *truth*? In nonideal circumstances, then, the persons most in need of the Rawlsian reasonableness therapy may be those least likely to recognize their own need for it, and so political appeals to the criterion of *reasonableness* may be impotent in practice. Meanwhile, those who take the ‘political, not metaphysical’ path would not wish to defend the *truth* of their theories of justice, so why should the opponents of those theories accept them? So aside from providing us with insufficient practical guidance in nonideal circumstances, public reason may also lack political legitimacy in a more radical way, because conceptions of objectivity may *themselves* be subject to dispute. In nonideal circumstances, those who are actually willing to go to war over the *truth* of their comprehensive doctrines would demonstrate by their actions that they do not accept public reason as the relevant *conception* of objectivity. And why should they, given that they may believe it has philosophical flaws of its own?

We have returned to the question of how we are to set about “finding some criteria for an alternative being ‘less unjust’ than another” (Sen, 2009: 6), when the nature and existence of such criteria may themselves be subject to dispute in nonideal circumstances, and when the politically relevant *conception* of objectivity may *also* be subject to dispute. As I have been arguing, public reason cannot provide us with sufficient practical guidance in nonideal circumstances, because the legitimacy and feasibility of public reason itself may be disputed. As a conception of objectivity that is meant to serve as the basis for authoritative political guidance in our nonideal world, public reason, however this is conceived, would seem to be of questionable utility. Some other ground for the objectivity of our comparative judgments of justice would then be necessary in nonideal circumstances, but Sen himself does not provide us with insight into what this ground would be. In my view, this means that Sen’s comparative theory of justice cannot serve as a feasible alternative to ideal theory, regardless of whether ideal theory itself is feasible.

The Indispensability of Philosophy in Nonideal Circumstances¹³

In this paper, I have been concerned to show that the feasibility of the comparative theory of justice that Sen has developed as an alternative to ideal theorizing depends on our ability to arrive at an understanding of what actions, institutions, and states of affairs are morally permissible in nonideal circumstances and of what conception of objectivity suffices for assuring the objectivity of our judgments of what is ‘more just’ in such circumstances. I have argued that Sen’s account of public reason cannot serve as a sufficient conception of objectivity and that his comparative theory of justice therefore cannot provide us with a feasible approach for considering how we may advance the cause of justice. However, I have not taken any stance on

¹³ The title of this section owes much to Swift (2008).

the *substantive* question of how we should understand the nature of fundamental principles of justice and whether their nature precludes us from identifying ‘perfectly just institutions.’ I have also not developed any firm view on how we should understand the main aim of ideal theory, although I have suggested that it may be better characterized as an inquiry into the limits of political possibility, an inquiry into how just any society *could* be, assuming the best possible conditions. On this conception, ideal theory would be concerned with inquiring into what actions, institutions, and states of affairs are *possible* and which of the *possible* alternatives would be both morally permissible and the most just in idealized circumstances.

Thus characterized, the aim of ideal theory is surely not any *less* philosophically problematic than a characterization of it as an inquiry into ‘perfectly just institutions’ – but it is important to note that *any* turn away from ideal theory towards nonideal theory cannot be any less philosophically problematic either. In order to be able to provide us with normative guidance in nonideal circumstances, the nonideal theorist needs some account of which actions, institutions, and states of affairs are, at the very least, morally permissible, and some conception of objectivity that can serve to ground these judgments. But conceptions of objectivity cannot be supplied by any of the empirical sciences, and so defending such a conception is a task that must be left to philosophy. Meanwhile, although the knowledge provided by empirical social science is certainly necessary for any inquiry into what may be politically possible in our *actual* circumstances, this knowledge is insufficient for helping us to determine which of the possible alternatives are morally permissible: we know that the use of torture is *possible*, and we know that it *actually* has been used in some circumstances, but whether any of these uses of torture were morally permissible or justifiable is a question that has to be left to moral philosophy. Fundamental philosophical inquiry into the nature of the principles that govern the justice and moral permissibility of actions, institutions, and states of affairs is thus indispensable in nonideal circumstances, although, for many of the reasons that Sen himself suggests (2009: 98-99), we should not regard this kind of inquiry as *sufficient* for advancing the cause of justice.

On this view of the matter, the first task of political philosophy is to increase our understanding of what *may* be just. And it is important to note that we may be able to increase our understanding of what justice *may* demand without being able to advance the cause of justice in practice. The two aims of increasing our understanding of what justice may demand and of advancing the cause of justice in practice are not identical, but, in my view, the second necessarily depends on the first. Analogously, we may be able to understand what would be necessary for us to travel to Alpha Centauri but be precluded from doing so for any number of contingent reasons. But we do not have to be capable of advancing the cause of justice in practice in order to justify devoting scarce resources to philosophical inquiries into the nature of the principles that govern the justice and moral permissibility of actions, institutions, and state of affairs. Again, this kind of inquiry is indispensable for advancing the cause of justice in practice.

References

- Cohen, G. A. 2008. *Rescuing Justice and Equality*. Cambridge, MA: Harvard University Press.
- Farrelly, Colin. 2007. "Justice in Ideal Theory: A Refutation." *Political Studies* 55: 844-864.
- Joyce, Richard. 2001. *The Myth of Morality*. New York: Cambridge University Press.
- Lowe, E. J. 1998. *The Possibility of Metaphysics*. Oxford: Clarendon Press.
- Lowe, E. J. 2008. "Two Notions of Being: Entity and Essence." *Philosophy* 83: 23-48.
- Lowe, E. J. 2009. "The Rationality of Metaphysics." *Synthese*.
<http://www.springerlink.com/content/103001/> (Published online: April 29, 2009. Last accessed: May 14, 2010.)
- Mills, Charles W. "'Ideal Theory' as Ideology." *Hypatia* 20(3): 165-184.
- Putnam, Hilary. 2002. *The Collapse of the Fact/Value Dichotomy: And Other Essays*. Cambridge, MA: Harvard University Press.
- Putnam, Hilary. 2004. *Ethics without Ontology*. Cambridge, MA: Harvard University Press.
- Rawls, John. 1999a. *A Theory of Justice*. Revised Edition. Cambridge, MA: Harvard University Press.
- Rawls, John. 1999b. *The Law of Peoples*. Cambridge, MA: Harvard University Press.
- Rawls, John. 2005. *Political Liberalism*. Expanded Edition. New York: Columbia University Press.
- Robeyns, Ingrid. 2008. "Ideal Theory in Theory and Practice." *Social Theory and Practice* 34: 341-362.
- Sen, Amartya. 2006. "What Do We Want From A Theory of Justice?" *The Journal of Philosophy* 103: 215-238.
- Sen, Amartya. 2009. *The Idea of Justice*. Cambridge, MA: Harvard University Press.
- Simmons, A. John. 2010. "Ideal and Nonideal Theory." *Philosophy and Public Affairs* 38: 5-36.
- Stemplowska, Zofia. 2008. "What's Ideal about Ideal Theory?" *Social Theory and Practice* 34: 319-340.
- Swift, Adam. 2008. "The Value of Philosophy in Nonideal Circumstances." *Social Theory and Practice* 34: 363-387.