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The Aim of a Theory of Justice

Martijn Boot

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Abstract Amartya Sen argues that for the advancement of justice identification of ‘perfect’ justice is neither necessary nor sufficient. He replaces ‘perfect’ justice with comparative justice. Comparative justice limits itself to comparing social states with respect to degrees of justice. Sen’s central thesis is that identifying ‘perfect’ justice and comparing imperfect social states are ‘analytically disjointed’. This essay refutes Sen’s thesis by demonstrating that to be able to make adequate comparisons we need to identify and integrate criteria of comparison. This is precisely the aim of a theory of justice (such as John Rawls’s theory): identifying, integrating and ordering relevant principles of justice. The same integrated criteria that determine ‘perfect’ justice are needed to be able to adequately compare imperfect social states. Sen’s alternative approach, which is based on social choice theory, is incapable of avoiding contrary, indeterminate or incoherent directives where plural principles of justice conflict.

Keywords Theory of justice · Social choice theory · Comparative justice · Incomplete ordering · Impossibility theorem · Ideal theory · John Rawls · Amartya Sen

Suppose we are confronted with the question which of two social states is more just. Amartya Sen argues that, to be able to answer this question, identification of ‘perfect’ justice is neither necessary nor sufficient (Sen 2006: 216–26, 2009: 15–8, 98–105). What moves us in pursuing justice is not ‘that the world fails short of being completely just . . . but that there are clearly remediable injustices around us which we want to eliminate.’ Gandhi, Martin Luther King and all other persons who have dedicated themselves to pursuing a more just society, ‘were not trying to achieve a perfectly just world . . . but they did want to remove clear injustices to the extent they could’ (Sen 2009: vii). Sen does not

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deny the need of any theory, but the need of a theory that identifies a ‘perfectly’ just society. The latter is a society that is completely just – a society in which all possible injustices have been removed. The aim of a theory of ‘perfect’ justice, Sen says, is ‘to offer resolutions of questions about the nature of perfect justice’ (ix). Compliance with the principles formulated by such a theory is supposed to render a society or its basic structure completely just. Sen presents as an alternative ‘a theory of justice in a very broad sense. Its aim is to clarify how we can proceed to address questions of enhancing justice and removing injustice. . .’ (ix). According to Sen, identifying ‘perfectly’ just arrangements and determining whether a particular social change would enhance justice ‘do have motivational links but they are nevertheless analytically disjointed’ (ix). Determining whether a particular social change would enhance justice, is a ‘comparative exercise’: different social states are compared in order to see whether one is more just than the other. Sen believes that it is ‘entirely incorrect’ to assume that ‘this comparative exercise cannot be undertaken without identifying, first, the demands of perfect justice’ (ix). Sen argues that theories of ‘perfect’ justice are not only redundant but also insufficient for realizing justice. Several other theorists have written about the putative shortcomings of ideal theories.¹ One of the differences is that Sen explicitly denies the need of an ideal theory at all, while the other critics argue that such a theory has to be supplemented by ‘non-ideal theory’, which takes into account non-ideal circumstances.

Sen’s argument demonstrates that many injustices can be combated without taking a theory of ‘perfect’ justice as our guideline. Therefore, the (possible) lack of an agreed upon theory of ‘perfect’ justice cannot be an alibi for not trying to enhance justice in many distressing and unambiguous cases of injustice. This is obviously true and worth emphasizing. However, Sen’s view seems to overshoot the mark where he generalizes from particulars. If Sen is right, it implies that theories of justice such as those developed by John Rawls – which Sen calls ‘transcendental’ theories of ‘perfect’ justice² – are largely superfluous. The aim of this paper is to investigate whether this is true. I will argue that the pertinent question is not whether, to be able to advance justice, we need the identification of ‘perfect’ justice. The question is rather whether, to be capable of adequately comparing different social states with respect to degrees of justice, we need to identify and order criteria of justice that can serve as standards of comparison. I will answer this question affirmatively. Determining or constructing ordered and integrated principles of justice is precisely the aim of a theory of ‘perfect’ justice. The same integrated principles that identify ‘perfect’ justice are needed to be able to adequately compare imperfect social states. If so, this refutes Sen’s central thesis that identifying ‘perfect’ justice and comparing imperfect social states

¹ See for instance the contributions to the special issue ‘Social Justice: Ideal Theory, Non-ideal Circumstances’ in *Social Theory and Practice*, 34 (July 2008); guest editors Ingrid Robeyns and Adam Swift.

² The adjective ‘transcendental’ may create confusion because it usually refers to an *a priori* source of knowledge or to ‘transcendentalism’ in the sense of belief in the existence of things that transcend sense-experience and the possibility of transcendent metaphysics (Blackburn 2005: 368; Honderich 1995: 878). With respect to John Rawls’s theory (which is the main target of Sen’s argument) the phrase ‘transcendental justice’ seems less adequate, because Rawls applies the method of ‘epistemic abstinence’ and emphatically denies that his theory has a metaphysical or transcendental foundation (Rawls 1996: 10, 97). Besides, Sen’s designation ‘perfect justice’ may conceal that Rawls’s theory concerns a ‘realistic utopia’ – justice that is realistically achievable within the limits of the permanent conditions of imperfect human nature – rather than an unfeasible idealistic kind of justice. Rawls: ‘Our hope for the future of our society rests on the belief that . . . a reasonably just, though *not perfect*, democratic regime is possible’ (2001: 4; emphasis added). Thus, in this context the terms ‘transcendental’ and ‘perfect’, used by Sen, are less fortunate. That is why I put them between inverted commas.

are ‘analytically disjoined’. Also some other thinkers have questioned Sen’s view that an ideal theory of justice is not needed to advance justice (Robeyns 2008; John Simmons 2010; Stemplowska 2008; Swift 2008). Unlike their criticisms, my approach is to a large extent a conceptual analysis, which mainly concentrates on Sen’s central thesis of the analytical disjunction between ‘perfect’ and comparative justice. The analysis demonstrates that the thesis is fallacious. In addition, I comment on Sen’s alternative approach, which is based on social choice theory. I will try to show that, unlike Rawls’s theory of justice, a social-choice-based approach is incapable of avoiding contrary, incoherent, indeterminate and unstable directives where principles of justice conflict.

1 Standards of Comparison

Although there is large agreement on the importance of justice, there is much disagreement on its requirements. It is not always self-evident which principles are relevant to justice and how they have to be ordered. For instance, some theorists claim that merit and desert are aspects of distributive justice, while others deny this. Further, most theorists think that some kind of ‘equality’ is a central criterion of justice. But, as Sen rightly asks: ‘Equality of what?’ (1995: 12–30). Without an answer to this question, we do not know with respect to which kind of equality we have to compare social states in order to determine their comparative degrees of justice. Some theorists believe that justice requires equal distribution of welfare, others find equal distribution of resources more appropriate. Besides, more than one kind of equality, and principles other than equality, may be relevant to justice. In other words, we have to determine which criteria should be taken into account. If more than one criterion or principle is relevant, we have to find out how they cohere and how they must be ordered. Without answers to these questions we cannot know which social state is more just, *A* or *B*, if *A* is more just with respect to one principle and *B* is more just with respect to another. As David Miller (2003: 78) argues, ‘we need to develop a theory, because there are going to be cases in which our intuitions conflict, or perhaps run out altogether.’

A theory of justice such as John Rawls’s is meant to answer precisely the above questions.³ According to Rawls, a theory of justice should provide the standards and their ordering for a proper assessment of the distributive aspects of the basic structure of society. The social ideal is a complete conception defining principles for all the virtues of the basic structure, together with their respective weights when they conflict. A complete or ideal theory of justice is necessary for resolving the problems resulting from, what Rawls calls, ‘intuitionism’ (1999: 30–40). Rawls understands by intuitionism

the doctrine that there is an irreducible family of first principles which have to be weighed against one another by asking ourselves which balance, in our considered judgment, is the most just. While the complexity of the moral facts requires a number of distinct principles, there is no single standard that accounts for them or assigns them their weights. Intuitionist theories have two features: first, they consist of a plurality of first principles which may conflict to give contrary directives in particular types of cases; and second, they include no explicit method, no priority rules, for weighing these principles against one another: we are simply to strike a balance by intuition (1999: 30).

³ Rawls’s theory of justice orders and integrates competing criteria or principles of justice. It assigns lexical priority to equal basic liberties over equal opportunities and it ranks the latter over the Difference Principle. The Difference Principle, in turn, integrates efficiency of welfare distribution with concern for the worst-off.

Intuitions about the right balance of principles differ between persons, however rational and reasonable they are.⁴ This creates a problem. Rawls:

If men's intuitive priority judgments are similar, it does not matter, practically speaking, that they cannot formulate the principles, which account for these convictions, or even whether such principles, exist. Contrary judgments, however, raise a difficulty, since the basis for adjudicating claims is to that extent obscure (1999: 39).

According to Rawls, decisiveness, consistency, transitivity, stability and non-arbitrariness are important requirements of justice. One of the tasks of a theory of justice is to satisfy these conditions and avoid contrary directives by offering an explicit method to formulate principles and priority rules.

2 Necessity

To support his view that a theory of 'perfect' justice is neither necessary nor sufficient for comparing two less perfect social states, Sen gives examples of comparative judgments outside the domain of justice. Assume that the *Mona Lisa* is the most ideal painting in the world. Knowing this perfect painting does not give us *sufficient* information about how we should compare and rank less perfect paintings. In addition it is not *necessary* to know the most perfect painting to be able to compare and rank less perfect paintings. Similarly, it is not necessary to know the height of the tallest mountain in the world to compare the height of two smaller mountains.

For the moment leaving aside Sen's claim that a theory of 'perfect' justice is not sufficient, let us concentrate on his claim that such a theory is not necessary. Sen notices that '[t]here would be something odd in a general belief that a comparison of any two alternatives cannot sensibly be made without a prior identification of a supreme alternative' (2009: 102). And: '[I]n general the identification of a transcendental alternative does not offer a solution to the problem of comparison between any two non-transcendental alternatives' (2009: 17). Sen suggests that the aim of a 'transcendental' theory of justice is to identify a 'perfectly' just society. This suggestion is not wrong but incomplete and does not reveal how this identification takes place. As said, the aim of a theory of justice such as Rawls's is to specify the criteria of justice, their mutual relationship and their scope. These connected criteria determine which kind of society would be 'perfectly' just. In addition – and this shows the incompleteness of Sen's suggestion – these are the same criteria with respect to which the degrees of justice of different imperfect social states can be compared.⁵ So, if Sen argues that we need no theory of 'perfect' justice to compare social states that are not perfectly just, he suggests that we do not need to know the specific relevant criteria of justice and their interconnectedness to know which social state is less or more just than another. It is true that we often do not need a specific theory of justice, namely, in those cases of flagrant injustice in which all reasonable theories would give the same answer. But, as we will discuss below, in many other cases we cannot get an unambiguous answer to this question without knowing the relevant criteria of comparison and their mutual relation.

⁴ In section 7 ('Intuitionism') of his *A Theory of Justice* Rawls gives insightful examples of interpersonally different intuitive balances between principles.

⁵ Cf. Rawls 1999: 115–6.

The results of comparing the relevant social states will differ to the extent to which conceptions or theories of ideal justice differ – that is, to the extent to which the conceived relevant criteria of justice and their orderings differ. For instance, if advantages are distributed according to equality and concern for the worst-off, or according to liberty and legitimate entitlement, or according to efficiency and utility, the answer to the question which distribution is (more) just, depends on the relevance of these criteria for justice and on their relative weights specified by a conception or theory of justice. It is clear that egalitarian, libertarian and utilitarian conceptions or theories of justice will easily arrive at quite different and often opposing judgments. Similarly, if person P has less resources and person Q less welfare, the answer to the question who is worse-off depends on the specific criteria of distributive justice defined by the theory. If the criterion is ‘equal resources’, P is worse-off; if the criterion is ‘equal welfare’, Q is worse-off. And if both criteria are relevant, the answer depends on their relative weights. So, the task of a theory of (‘perfect’) justice is to specify the criteria of justice, their mutual connectedness and their comparative importance. Consequently, in more complex cases of multi-dimensional justice, such a theory is necessary to know which persons are worse-off and which social states are less just. In addition the theory has to identify the *scope* of justice. For instance, there is much controversy about the question whether the same principles apply to domestic and global justice. The answer to this important question requires a theoretical underpinning.

3 Justice as a Complex Concept

As argued in the previous section an adequate theory of justice gives us information on (1) the relevant criteria of justice, (2) their ranking and integration, (3) their scope. What we ought to do in the name of justice crucially depends on these three factors. A comparison of alternatives cannot be made without criteria of comparison and the result of the comparison depends on the nature of, and mutual relation between, the criteria. Ruth Chang (1997, 2001, 2002) calls the value or criterion with respect to which we want to compare alternatives the ‘covering value’. Most covering values are multifaceted in the sense that they contain several contributory values – values that integrally contribute to the covering value. Without an implicit or explicit covering value it remains unclear with respect to *what* we want to compare the alternatives. For instance, if we compare two paintings, say, a Picasso and a Van Gogh, we need a covering value. The specific covering value needed for comparing these paintings is the same as the one with respect to which we can determine whether a particular painting (say, the *Mona Lisa*) is the most perfect one in the world. Similarly, if we want to compare two mountains, we need to know the criterion with respect to which we want to compare them. In Sen’s example this criterion is ‘height’. It determines not only which mountain is the supreme one in the world (Mount Everest) but also which of two smaller (‘less perfect’) mountains is superior; for instance, with respect to ‘height’ Mont Blanc is superior to Matterhorn. If we take a different criterion of comparison – say, the difficulty to climb the mountains – the results may significantly differ: it may turn out that not Mount Everest but K2 is the ‘supreme’ one in the world and that Matterhorn scores higher than Mont Blanc. Most comparative evaluative judgments are made with respect to covering values that comprise more than one aspect or, in Chang’s terminology, more than one ‘contributory value’. If justice is a multifaceted concept (that is, if justice is not one principle or rule but several, which is recognized by most theorists, including Sen), the same applies to comparative judgments of justice. Therefore, comparing two social states with respect to their degree of justice is more similar to comparing two paintings with

respect to their artistic quality (which is a covering value that comprises more than one contributory value)⁶ than to comparing two mountains with respect to ‘height’ (which is a single and one-dimensional value). Comparing two alternatives with respect to a multifaceted concept like justice means comparing them with respect to a covering value in which the contributory values are integrated according to their relative importance. This is precisely what we want from a theory of justice: that it identifies both the criteria of justice and their ranking, relative weight and mutual connection, so that we can compare different social states with respect to the integral conception of justice explicated by the theory.⁷ Rawls:

The assignment of weights is an essential part of a conception of justice. If we cannot explain how these weights are to be determined by reasonable ethical criteria, the means of rational discussion have come to an end (1999: 37).⁸

. . . a conception of right must impose an ordering on conflicting claims. This requirement springs directly from the role of its principles in adjusting competing demands. . . . It is clearly desirable that a conception of justice be complete, that is, able to order all the claims that can arise . . . (1999: 115–116).

If justice is a multifaceted concept, and if it concerns an integrated goal, ‘there is no reason to suppose that justice in one dimension or domain is independent of justice in other dimensions or domains’ (John Simmons 2010: 22). In that case we need a theory that specifies and integrates the relevant aspects. Without this specification and integration, we cannot determine whether an increase in the realization of one aspect of justice means a small or large increase, or even decrease, of overall justice. That is why John Simmons (2010) emphasizes that the pursuit of justice cannot be done in a piecemeal fashion.

Of course, different conceptions or theories of justice may share basic requirements, and divergent arguments may lead to the same conclusion of injustice, so that we do not need a specific theory to determine whether one social state is better than another with respect to these minimal and basic requirements (Sen 2009: 2–3). As said already, some flagrant injustices are injustices according to all possible theories and all possible reasonable criteria of justice. This does not mean that we do not need a theory of justice, but only that, in this case, all reasonable theories arrive at the same conclusion with respect to some basic requirements. The fact that in those cases a specific theory is not necessary (because of the overlap between widely different conceptions or theories of justice), does obviously not mean that a specific theory is not necessary in the many equivocal cases in which it is not evident what justice requires and in which individual and intuitive conceptions of the relevant covering value do not overlap.

⁶ For instance, the multiple criteria or contributory values relevant to comparing two paintings may consist of creative quality, expressiveness, innovative character, authenticity, historical and contemporary significance, etcetera. Together these contributory values constitute an integral covering value with respect to which the paintings can be compared.

⁷ This does not mean that the problem for Sen applies only to complex (multidimensional) conceptions of justice and not to simple ones. There is a possible problem in all cases in which we do not have a determinate and unambiguous standard of comparison, irrespective of whether this standard is simple or complex. Indeed, how is it possible to compare two social states if we do not know the relevant and right standard of comparison, even if we suppose that the standard is simple, say ‘utility’ or ‘legitimate entitlement’. It makes a lot of difference if we compare the degrees of justice of two social states with respect to the former or the latter standard of justice.

⁸ See also Rawls 1999: 33, 56, 65.

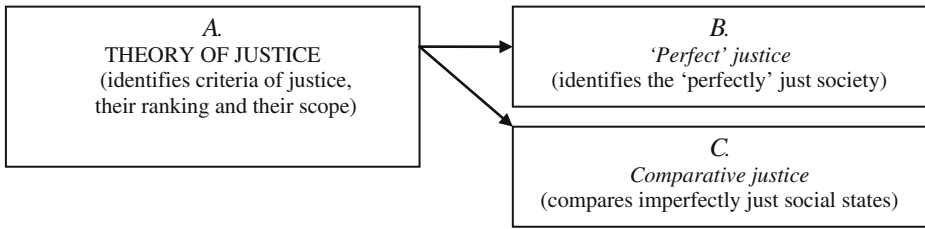


Fig. 1 A theory of justice determines both ‘perfect’ and comparative justice

4 Interrelation Between ‘Perfect’ and Comparative Justice

As indicated in Fig. 1, a theory of justice (*A*), which identifies the relevant criteria of comparison, their ordering and scope, determines not only ‘perfect’ justice (*B*) but also ‘comparative’ justice (*C*). The criteria of comparison originating from the theory determine both ‘perfect’ justice (‘the supreme alternative’) and comparative justice of imperfect social states. Sen thinks that if *B* does not determine *C*, *A* does not determine *C* either. This does not follow. Sen overlooks the fact that, although *C* is not determined by *B*, both are determined by *A* (Fig. 2). Comparative justice (*C*) is not deduced from, or determined by, but strongly associated with, ‘perfect’ justice (*B*), because the same criteria of comparison that are generated by the theory (*A*), determine both ‘perfect’ justice (*B*) and the degrees of justice of less perfect social states (*C*). Remember that Sen’s central thesis is that ‘perfect’ justice and comparative justice are ‘analytically disjointed’. The above analysis demonstrates that the thesis is mistaken.

5 Sufficiency

According to Sen a theory of ‘perfect’ justice is not only not necessary but also not sufficient for comparing two social states with respect to their degree of justice, just as knowing the most perfect picture in the world (say, the *Mona Lisa*) is not sufficient for being able to compare a Picasso and a Van Gogh. Sen argues (2009: 98–101) that ‘the right’, ‘the perfect’ or ‘the best’ ‘does not tell us much about the comparative merits’ of ‘non-best societal arrangements’. However, like the question of necessity, the question of sufficiency does not concern knowledge of an ideal or supreme alternative but knowledge of the relevant and integrated criteria of comparison. The latter knowledge may suffice to

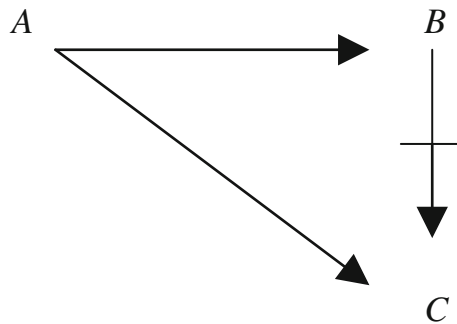


Fig. 2 If *B* does not determine *C*, it does not follow that *A* does not determine *C* either. *C* is determined by *A* rather than by *B*

answer the question of comparative justice. Of course, a theory of ‘perfect’ justice need not be sufficient with respect to the question what has to be done *all things considered* if justice is not the only value or interest to take into account and has to be weighed against other values or interests. Similarly, a theory need not be sufficient with respect to the question whether ‘perfect’ justice, defined by the theory, is feasible in nonideal situations of non-compliance or unfavourable conditions. But these are different questions. What we are considering is Sen’s claim that ‘perfect’ and comparative justice are ‘analytically disjoint’ and that a theory of ‘perfect’ justice does not suffice to show which of two imperfect social states contains the largest degree of justice. If we want to compare mountains, it is sufficient to know the criterion, say ‘height’, with respect to which we want to compare them: it suffices to determine both whether the Mont Blanc is superior to the Matterhorn and whether the Mount Everest is the supreme mountain in the world. Similarly, if there would be a single one-dimensional criterion of justice and we would know this criterion (say, ‘utility’, which according to John Stuart Mill is the right criterion of justice), specified by the theory, this would be sufficient, at least in principle, to determine which of two social states is more just. If justice is a multi-dimensional rather than one-dimensional concept, it becomes more complicated. In that case it is not sufficient to know the relevant criteria. We need to know their interrelationship or ranking as well. Returning to Sen’s example, the quality of a painting is multifaceted concept as well, which implies that multiple criteria play a role in determining this quality. If we know the relevant criteria and we can integrate them, we have the tools to evaluate the quality of paintings, irrespective of whether they are perfect or not. The integrated criteria that enable a person to identify the *Mona Lisa* as the best picture in the world are the same that enable her to rank imperfect paintings. In other words, and in contrast to what Sen claims, there is an analytical connection between the identification of ‘the best’ on the one side and the identification of ‘the better’ of two non-best alternatives on the other. Sen puts the following question (2009: 98):

[I]s the specification of an entirely just society sufficient to give us rankings of departures from justness in terms of comparative distances from perfection, so that a transcendental identification might *inter alia* entail comparative gradings as well?

Sen agrees that ‘the distance-comparison approach’ ‘has some apparent plausibility’, but ‘does not actually work’:

The difficulty lies in the fact that there are different features involved in identifying distance related . . . to different fields of departure, varying dimensionalities of transgression, and diverse ways of weighing separate infractions.

Sen concludes that a ‘transcendental’ theory of perfect justice ‘*does not yield any means of addressing these problems*’. ‘The characterization of spotless justice . . . would *not entail any delineation* whatever of how diverse departures from spotlessness would be compared and ranked’ (p. 99, emphasis added). But this conclusion is not correct. As we already emphasized more than once, a ‘transcendental’ theory not only formulates but also integrates principles of justice and tries ‘to order all the claims that can arise (or that are likely to in practice)’ (Rawls 1999: 115). To the extent that the attempt is successful, the theory suffices to determinately compare two imperfect social states. For instance, if one social state conforms more to one principle, while the other social state conforms more to another, an adequate theory gives a determinate answer to the question which of the two imperfect social states is superior with respect to these integrated principles. For instance, if freedom of speech is an important principle of a transcendental theory of justice (as in Rawls’s theory) and if there is less freedom of speech in imperfect social state *A* than in

imperfect social state *B*, then, other things being equal, the transcendental theory is able to determine that imperfect social state *B* is more just than imperfect social state *A*. Suppose further that another principle of a transcendental theory of justice is ‘concern for the worst-off’ in the sense that interpersonal inequality of welfare is only allowed if it is to the benefit of the worst-off (the ‘difference principle’ in Rawls’s theory). In that case the transcendental theory is again able to determine that imperfect social state *C* is more just than imperfect social state *D*, if, other things being equal, *C* has more concern for the worst-off in line with the difference principle while *D* has more total welfare at the cost of concern for the worst-off. To further illustrate this, let us scrutinize one of Sen’s examples of the putative impotence of a transcendental theory:

We have to consider . . . departures in procedural equality (such as infringements of fair equality of public opportunities or facilities) which figure within the domain of Rawlsian demands of justice . . . To weigh these procedural departures *against* infelicities of emergent patterns of interpersonal distribution (for example, distribution of primary goods), which also figure in the Rawlsian system, would require distinct specification . . . of relative importance . . . But *these valuations . . . lie beyond the specific exercise of the identification of transcendence* and are indeed the basic ingredients of a ‘comparative’ rather than a ‘transcendental’ approach to justice (2009: 99; emphasis added).

However, Rawls’s theory is largely devoted to weighing and ranking competing demands of justice (1999: 115–116). In Sen’s example Rawls’s theory gives an answer to the question of relative importance. If imperfect social state *A* is better with respect to fair equality of opportunity (for instance, fair educational opportunities) while imperfect social state *B* is better with respect to equal distribution of goods, Rawls’s theory makes it possible to determine which social state is ‘all things considered’ more just. The answer depends on the kind of the relevant goods to which the ‘infelicities of emergent patterns of interpersonal distribution’ applies. If it concerns the distribution of basic liberties, then social state *B* is more just than social state *A* because, in Rawls’s theory, the distribution of equal basic liberties is the first principle of justice, which has lexical priority to fair equality of opportunity. If, by contrast, it concerns primary goods other than basic liberties, such as income or wealth, then social state *A* is more just than social state *B* because *A* is in line with the fair equality of opportunity principle, and ‘fair opportunity is prior to the difference principle’ (Rawls 1999: 266). In other words, the better of two imperfect social states is the one that is more in line with the integrated principles of justice of the relevant theory (in this case, in line with the lexical ordering of Rawls’s principles of justice). The above illustration shows the importance of justice as an integrated goal and the danger of trying to improve one aspect of justice in isolation, that is, detached from justice as an integrated goal.

Of course one may disagree with the specific principles formulated in a particular theory or with the specific ordering or relative importance attached to these principles. But this is a different question. The question under consideration is whether a ‘transcendental’ theory is incapable of comparing imperfect social states, rather than whether we agree with the theory. Also a different question is whether a theory always *succeeds* in completely ordering all relevant principles. I think Sen is right that there is a plurality of impartial reasons and competing principles of justice and that some competing demands cannot unambiguously ranked or integrated because neither seems definitely stronger than the other (2009: 106, 194–201). However, the question whether a ‘transcendental’ theory is a panacea for the resolution of all conflicts between competing

demands of justice is again not the question under consideration. The claim that a ‘transcendental’ theory of justice is not *sufficient* for comparing two imperfectly just social states differs from the claim that a theory may not always, or not entirely, succeed in arriving at an ordering or integration of all possible conflicting claims. The truth of the latter does not automatically imply the truth of the former: to the extent that a theory of justice succeeds in ordering conflicting claims or principles the theory suffices to determinately compare imperfect social states with respect to these claims or principles. And where a theory fails to completely order the relevant claims, this need not be related to the ‘transcendental’ nature of the theory, but, rather, to the very impossibility of a complete integration or ordering of all relevant demands of justice due to their equal strength. In that case, not only ‘transcendental’ justice but also comparative justice fails to give a determinate and agreed upon answer. Besides, if a transcendental theory does not always succeed in constructing an ordering of demands, this does not mean that it seldom does. Below we will further elaborate on the difference between necessity and sufficiency of a theory on the one hand and its success or failure on the other.

6 Second Best

Sometimes the implementation of the transcendental theory’s rules of justice is not feasible or not desirable in non-ideal situations. Then we have to look for a ‘second best’ solution. Sometimes it is suggested that, in that case, the theory ceases to give (sufficient) guidance (Goodin 1995). Goodin gives the following example of a second-best solution. ‘One person, one vote’ may be regarded as a ‘golden rule’. In less-than-ideal circumstances this may lead to the tyranny of the majority and to restriction of basic liberties of minorities. This may be reason to change the ‘one person, one vote’ procedure. However, this does not show that ideal theory does not give guidance about the question what justice requires in these circumstances. In *A Theory of Justice* Rawls argues that if political inequality (in our case, departure from the ‘one person, one vote’ procedure) is considered, then this inequality must be ‘to the benefit of those with the lesser liberty’ (1999: 204), as Rawls’s theory prescribes. In other words, the ideal theory gives (indirect) guidance in these cases of non-ideal circumstances. As Rawls writes (1999: 205) departures from the rule ‘one person, one vote’ (for instance John Stuart Mill’s ‘plural voting’) ‘may be perfectly just’. Another example of second-best choices given by Goodin in the context of Rawls’s theory is about ‘the ordinary rights and liberties which we expect to see enforced in rich, developed societies’ (1995: 54). These rights and liberties ‘might have to be forgone in developing societies as a spur to economic growth.’ As discussed above, a theory of perfect justice may not be sufficient with respect to the question what has to be done ‘all things considered’, that is, taking into account vital interests different from justice. But this is again a different issue. What we are considering is Sen’s claim that a theory of perfect justice does not suffice to show which of two or more imperfect social states contains the largest degree of justice, and does not suffice to answer the question of what is the best thing to do *with respect to justice*.

7 Social Choice

Sen grounds comparative justice on social choice theory: ‘[S]ocial choice theory as discipline is concerned with arriving at overall judgments for social choice based on a

diversity of perspectives and priorities' (Sen 2009: 109). And: 'The outcomes of the social choice procedure take the form of ranking different states of affair from a 'social point of view', in the light of the assessments of the people involved' (2009: 95). Sen writes that 'this is very different' from a search for a 'perfectly' just society. 'Transcendental' theories cannot, on their own, address questions about advancing justice and compare alternative proposals for having a more just society, at least not in a way that differs from the utopian proposal of taking an imagined jump to a 'perfectly' just world. The answers that those theories give 'are quite distinct from the type of concerns that engage people in discussions on justice and injustice in the world,' Sen concludes (2009: 96). Sen recognizes that there is an 'inescapable plurality' of reasons and competing principles of justice, 'each of which survives critical scrutiny, but yields divergent conclusions' (Sen 2009: x, 106). Individuals may find it difficult or impossible to completely rank and integrate the principles (= 'personal incompleteness'). In addition, *if* they are able to make a complete ordering for themselves, the orderings may easily differ inter-individually. Individually differing rankings of reasons and principles are often difficult or impossible to combine in a single, coherent and complete ordering (= 'collective incompleteness'). Sen argues that even collective incompleteness would not prevent making comparative judgments about a great many cases' (2009: 104–105). Indeed, collective incompleteness does not exclude, what Sen calls, dominance-partial and intersection-partial orderings. 'Dominance' means that one option is better or worse with respect to all relevant criteria. If all criteria lead to 'the same diagnosis of a huge mistake or injustice, then that specific conclusion need not await the determination of the relative priorities to be attached to these criteria' (2009: 3–4). 'Intersection' means that, although neither of two options or states is better or worse than the other with respect to all relevant criteria, and although different parties attach different weights to these criteria, one and the same option or state may be better or worse than the other according to all parties. Thus, with respect to the question of justice, 'dominance' entails that the relevant social state is more just with respect to all aspects of justice, and 'intersection' implies that there is an overlap between interpersonally different orderings of principles of justice, leading to an overlapping consensus with respect to the particular point under consideration.⁹ Of course, in those cases we do not need a theory that determines the relative priorities to be attached to the relevant criteria. Then we do not need rational deliberation and social choice either, because there is no disagreement to be resolved. However, these unproblematic cases do, of course, not make the frequent cases to which dominance- and intersection-partial ordering do not apply less problematic. In a pluralistic society dominance and intersection are often lacking, due to the plurality of competing moral outlooks and conceptions of the good, resulting in a collectively incompletely ordered plurality of divergent principles. In those cases we have to determine the priorities to be attached to relevant principles before we can make adequate comparative judgments. Here social choice is impotent because it reflects rather than resolves collectively incomplete rankings of principles, as will be shown in the next section.¹⁰

⁹ Sen 1995: 46–9, especially figure 3.1. See also Sen 2006: 225; and 2009: 2–3: 'A number of distinct and divergent arguments can still lead to the same conclusion.' Cf. Sunstein's 'incompletely theorized agreements', discussed in Sunstein 1996; and Rawls's (1999) 'overlapping consensus'.

¹⁰ Of course, the aggregation problem only applies to multiple (more than two) relevant factors that may be ordered differently. As most theorists, including Sen, recognize, this applies to justice as a multifaceted concept.

8 Arrow's Impossibility Theorem

Condorcet's voting paradox and, more generally, Arrow's impossibility theorem (Arrow 1963) demonstrate the fundamental impossibility of combining the minimal requirements of a rational social choice. The theorem states that there is no satisfactory rational way of *collectively* choosing between rival rankings of values or preferences.¹¹ Below we will discuss a concrete example to show the problem. Sen has devoted seminal articles to collective choice and is, of course, fully aware of this problem. Still, it is useful to discuss the example in more detail for the following reasons. The example reveals that social choice reflects rather than resolves the problem of collective incompleteness. Besides, it demonstrates the relevance of Rawls's emphasis on the importance of a theory of a complete and transitive conception of justice (1999: 115–116). Further, the example illustrates how Rawls's theory completely and determinately orders relevant principles of justice, where Sen's social-choice-based approach remains incomplete and indeterminate. A final reason to discuss social choice in more detail is that Sen thinks that the impasses 'can be, in most cases, largely resolved by making the social decision procedures more informationally sensitive' and by interpersonal rational deliberation, instead of merely aggregating isolated individual choices (2009: 93ff).

To start with the latter, although adequate exchange of information and collective rational deliberation are obviously important requirements for rational social choice, it is not to be expected that they, in most cases, lead to a determinate ordering of conflicting principles of justice. Incomplete rankings of justice are usually not the result of insufficient information and insufficient deliberation, but instead, as Sen recognizes (2009: x, 106), the result of the plurality of reasoned principles and multiple reasoned rankings of these principles. Equally rational people rank principles in different ways, especially if they have different backgrounds and rival moral outlooks. As Rawls emphasizes, the differences in intuitive weight assignment to the relevant principles 'are not by any means trivial variations but often correspond to profoundly opposed political convictions.' According to Rawls, the task of an ideal theory of justice is precisely to 'set forth ethical criteria that account for the weights which, in our considered judgments, we think appropriate to give to the plurality of principles' (Rawls 1999: 35). Sen's social choice approach is inadequate because it is incapable of giving a determinate and unambiguous answer to the question how to avoid, resolve or transcend the different intuitive rankings people make. The impotence of the social choice approach can be shown by the following concrete example of collective choice with respect to the ranking of principles of justice.

Suppose three parties A , B and C take part in a deliberation about how to organize the basic structure of society in a just and collectively acceptable way. Let us assume that collective deliberation results in agreement between the parties that the following aspects should be taken into account with respect to the distribution of welfare: need (priority to the worst-off), utility and liberty.¹² Suppose the parties have to assess three different imperfect social states P , Q and R with respect to their overall degree of justice. In social state P more attention is paid to need, in Q to utility and in R to liberty. How to rank these social states with respect to their overall degree of justice by social-choice-based 'comparative justice'? The ranking depends on the weights assigned to the values need,

¹¹ For a proof see Allingham 2002: 99–101. A clear and concise summary and explanation of the problematic issue of rationality and coherence of democratic decisions in general and with respect to distributive justice in particular are given in *chapter 6*, 'Democracy and dictatorship': 106–110.

¹² Compare a similar example given by Sen 2009: 12–15, also discussed in Sen 2006: 224–5.

utility and liberty. As said, the problem is that assignment of weights is an intuitive procedure, largely determined by one's conception of the good and comprehensive moral or philosophical belief. Obviously, in a pluralistic society the considerably different backgrounds, beliefs and moral outlooks easily lead to interpersonally conflicting conclusions.¹³ Suppose that the parties differ in assigning weights to the values or principles as follows. Party *A* ranks need over utility, and utility over liberty. *B* makes the following ranking: first liberty, second need and third utility. *C* chooses the remaining alternative ranking (Table 1).

The example shows that a unanimous result is not possible. Does social choice or the majority rule resolve this problem? Assuming that a combination of two parties represents a majority, a majority (*A* and *B*) ranks need over utility *and* a majority (*A* and *C*) ranks utility over liberty *and* a majority (*B* and *C*) ranks liberty over need. This creates two problems: (1) the social choice fails to produce consistent and transitive results; (2) it fails to produce any result at all. To start with the second problem, the majority rule does not produce an answer to the question which criterion or value must be ranked first: a majority ranks need over utility so that we cannot give priority to utility; a majority ranks utility over liberty so that we cannot give priority to liberty; and a majority ranks liberty over need so that we cannot give priority to need. This voters' paradox means that we cannot give priority to any of these values. In other words, social choice is susceptible to yielding vacuous results (Allingham 2002: 94).¹⁴ With respect to the first problem, it is clear that if need is ranked higher than utility and utility higher than liberty, then liberty cannot consistently be ranked over need. Still this is what happens. This creates problems for a consistent and complete conception of justice, the importance of which Rawls stresses in his *A Theory of Justice* (1999: 115–116). The requirements of rationally determined weights and transitive orderings of values and principles, as pointed out by Rawls, are not satisfied in the above example. Social choice reflects rather than resolves the problem of collective incompleteness (Allingham 2002: 105–106).¹⁵ This shows why we need – and what we want from – a theory of justice. In Rawls's words, we need a complete ordering of conflicting claims, such as those based on need, liberty, equality and utility as indicated in Table 1 above. This is precisely what Rawls has tried to achieve with his theory of justice, in which the device of the 'original position' and the 'veil of ignorance' play a central part. One of the aims of these devices is to make the theory independent of contingent, changing and inconsistent outcomes of social choice amongst disagreeing citizens who have different backgrounds, beliefs and interests. Rawls's theory tries to construct an unambiguous, impartial and stable ordering of principles agreed upon by all reasonable and rational people. The theory tries to integrate the plurality of principles in a coherent system, making use of a scheme of lexical priorities and the Difference Principle. For instance, equal basic liberties receive lexical priority to need and utility, and the tension between need and utility is resolved by the Difference Principle. In this way the predicament resulting from social choice as illustrated in Table 1 is avoided or

¹³ This is one of the reasons why Rawls applies the devices of the original position and the 'veil of ignorance', in which the agents are detached from their conceptions of the good and comprehensive beliefs, expecting that it promotes an (overlapping) consensus on the ranking of principles. The various individual perspectives are replaced by the perspective of an 'impartial spectator', see below.

¹⁴ See also the concise and illuminating discussion of this problem by Wolf 1998: 58–67 ('Appendix: The Irrationality of Majority Rule').

¹⁵ See also Shaun Hargreaves Heap et al. 1992: 212–214; Hurley 1989: 228; D'Agostino 2003: 6–20, 28; Kornhauser 1998: 1599–1637. Decisions of multi-judge courts are confronted with similar problems (Kornhauser and Sager 2004).

Table 1 Rival rankings of principles

| Principles ↓ | Parties | | |
|-----------------|----------|----------|----------|
| | <i>A</i> | <i>B</i> | <i>C</i> |
| Need | 1st | 2nd | 3rd |
| Utility | 2nd | 3rd | 1st |
| Liberty | 3rd | 1st | 2nd |

resolved. This shows that Rawls's theory offers solutions where Sen's approach remains indeterminate. For instance, when need clashes with utility or efficiency, Rawls's theory shows that a social state in which the neediest citizens get priority is more just than a social state with a more utilitarian or efficient distribution of welfare at the cost of concern for the worst-off. To give another example, above a minimum level of welfare a society with more extensive basic liberties at the cost of economic growth, is shown to be more just than a society with more economic growth at the cost of one or more basic liberties.

Sen denies that Rawls's theory has succeeded in yielding complete rankings of principles. As we said already, the question whether a theory is (entirely) successful differs from the question whether a theory is needed, which is the issue under consideration. Even if a complete ordering of all possible claims is unattainable, a partially successful theory may give directives where social choice gives ambiguous, indeterminate and inconsistent results.

A final point is that Sen's approach does not answer the question Rawls asks: How can we resolve disagreement, intellectually rather than socially? Indeed, even if social choice can generate a social ordering of our conflicting individual rankings, we still haven't answered the question Rawls was asking, namely why the particular ranking is right and how we can justify this ranking. To answer this question is precisely what a theory of justice is for. Sen's recourse to aggregation methods and social choice theory doesn't answer this question.¹⁶

9 Conclusions

We can draw three main conclusions:

1. The aim of a theory of justice is to determine principles of justice, their ordering and scope. Integration is necessary to avoid or resolve conflicts between rival principles. Therefore, priority rules are an essential part of a theory of justice as developed by Rawls.
2. Sen's central thesis that 'perfect' justice and comparable justice are 'analytically disjointed' is mistaken. Integrated principles of justice are needed not only to be able to identify 'perfect' justice, but also to be able to adequately compare imperfect social states.

¹⁶ I owe this point to an anonymous referee.

3. Sen's social-choice-based approach fails because the results of collective choices reflect rather than resolve incomplete rankings of principles. That is why this approach cannot avoid indeterminate, inconsistent and unstable directives where principles of justice conflict.

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