

Rawls vs Sen: An Idea of Justice

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The article explores the concept of justice as articulated by Amartya Sen in his lesser-known work *The Idea of Justice*. Political philosophy has been enriched by the ongoing debate about the idea of justice. There is a consensus regarding the desirability of justice but no agreement on what its substance is. A la John Rawls, the notion of justice has become rooted in 'transcendental institutionalism'. This form is concerned with enacting justice impartially with a particular emphasis on the role of institutions. Critiquing the Rawlsian tradition, Sen aims to explore alternate approaches to justice that are not firmly rooted in transcendental institutionalism, concerned as it is with establishing the theory of justice that is common and applies everywhere, at all times. Instead, Sen strives to move beyond such a narrow focus by drawing out the ideas of justice that are not common to the western political paradigm. Drawing inspiration from Sanskrit philosophy, Sen invokes the concepts of '*niti*' and '*nyaya*' which translate as justice but which summarize different notions. The article elaborates on these alternatives and explores how well they contribute to the existing discourse of justice.

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Imagine a flute. Now imagine three children – Anna, Bob, and Carla. Anna claims the flute because she is the only one out of three who knows how to play it. Bob wants the flute because he is the poorest and does not have one of his own. Carla, on the other hand, claims the flute because she is the one who made it. Who can you say 'justly' ought to have the flute? Anna - whose claim would be strong for a utilitarian who theorizes that Anna's pleasure would be the strongest because she is the only one who knows how to play the flute? Or an economic egalitarian would support Bob? Or Carla who would get full support from a libertarian. It's not an easy decision to make, and the answer might vary based on different theories. This leads Amartya Sen to ask in his work *The Idea of Justice*, whether we can determine a single set of principles that correlate to the rules of justice with unique impartiality.

The idea of justice is essential because it is not only an arbitrary idea concerned with ethics and political philosophy. Instead, it is a concept that has shaped the dominant paradigms, including politics, economics, science, etc. It is an idea that has had very real consequences and influences on how society and its institutions are arranged. For a long time, the concept of justice has come to be rooted in contractarian tradition after Thomas Hobbes and followed in

varied ways by thinkers such as John Locke, Jean-Jacques Rousseau, and Emmanuel Kant. As per the contractarian tradition, the conception is not that people have entered into a hypothetical social contract to escape the chaos and establish justice. The idea is to understand justice better by questioning what kind of institutions, arrangements, and practices people would choose if agreed in advance. Amartya Sen terms this approach as 'transcendental institutionalism' (Sen, 2009, 5).

Transcendental institutionalism of Rawls

Transcendental institutionalism features an ambition for 'perfect justice'. This entails not focusing on the relative contrast between justice and injustice but rather on the identification of those features of justice that are not transcended. Thus, there is no comparison between societies because they just might fall short of perfection anyways. The problem with contractarianism rooted as it is in transcendental institutionalism is how to theorize what perfect justice is. Because, if we ask people (in the real world and not in contractual one) what kind of principles they would like to live in, the answers might be radically different.

John Rawls provides us with one answer. Rawls's idea of justice as articulated in his famous work *The Theory of Justice* has had a profound influence on the justice paradigm and over its thinkers. For Rawls, the idea of fairness is foundational and is in some way 'prior' even to the expansion of the idea of justice. He says, "justice as fairness is framed to accord with this idea of society" (Rawls, 1971, 453-54). But what is this fairness that Rawls talks of? Sen elucidates on this:

This foundational idea (fairness) can be given shape in various ways, but central to it must be a demand to avoid bias in our evaluations, taking note of the interests and concerns of others as well, and in particular the need to avoid being influenced by our respective vested interests, or by our personal priorities or eccentricities or prejudices. It can broadly be seen as a demand for impartiality (Sen, 2003, 54).

Thus, justice is seen as a demand for impartiality which is based on Rawls idea of 'original position' which is a hypothetical situation of primordial equality where the parties involved have no idea about their own identities or interests (Rawls, 1971, 17). They have to choose their preferences under a 'veil of ignorance' or an imagined state of ignorance. It is under the state of imagined ignorance where the principles of justice can be chosen unanimously and impartially. Of course, as an experiment 'veil of ignorance' is particularly powerful because in the real-world our opinion of justice and injustice is contingent on our experiences (race, class, gender, etc.). Under a veil of thought, we get to shed these identities, thereby technically resulting in a just society.

The principles further define the structure of primary institutions that should govern society. According to Rawlsian characterization, a well-ordered society based on original position doesn't mean perfectly just in the sense of the prevalence of unjust laws or perfect abatement of laws. What is ideally just is:

that its primary social institutions are reasonably just, including the political constitution, laws of property and its transfer, the system of markets and other institutions necessary to economic production, trade, and distribution; and...that all society's ("reasonable and rational") members accept the public conception of justice regulating these institutions and all have an effective sense of justice and willingness to comply with its demands, and they normally do so (Freeman, 2011, 173).

Thus, it is not hard to understand why notions of justice and just institutions are intrinsically tied to the way societies are organized, the policies we adopt and the choices that we make. However, Sen contends that "if theory of justice is to guide reasoned choices of policies, strategies, and institutions, the identification of fully just social arrangements is neither necessary nor sufficient" (Sen, 2009, 15). His one contention is that Rawlsian notion of justice grounded in principles of fairness and impartiality through the approach of the social contract gear towards the identification of:

Only the 'just institutions', through arriving at 'an agreement on the principles that are to regulate the institutions of the basic structure itself from the present into the future'. In the Rawlsian system of justice as fairness, direct attention is bestowed almost exclusively on 'just institutions', rather than focusing on 'just societies' that may try to rely on both effective institutions and on actual behavioural features. (Sen, 2009, 67).

In other words, Sen takes contention to the fact that the focus is on arriving at just institutions and not just societies. Sen, further contends that even if we focus on arriving at just institutions through a unanimous agreement that yields in the identification of some just behavior or conduct, then how would these institutions work in the real world where people's behavior might not conform to some transcendental idea? Sen says, "the unanimous choice of the principles of justice is ground enough, Rawls argues, for their forming a 'political conception' of justice that all accept, but that acceptance may still be a far cry from the actual patterns of behavior that emerge in any actual society with those institutions." (Sen, 2009, 68).

Sen's Idea of Justice

Despite being critical of the Rawlsian theory of justice, Sen does find it useful. According to Sen, Rawls's theory articulates concepts such as liberty, rationality, impartiality, etc., that are essential to any theory of justice. What Sen contends to is that in a society, justice is grounded in an amalgamation of institutional characters as well as other behavioral characteristics and influences that determine social realizations. Therefore, it becomes necessary for any theory of justice to acknowledge that there is a need for plural grounding, i.e. of using different lines of inquiry, instead of focusing on single sets of principles of justice. For Sen, "plurality of unbiased principles can...reflect the fact that impartiality can take many different forms and have quite distinct manifestations" (Sen, 2009, 57). The example of the flute is a perfect example of this wherein the primary right of each child over a flute corresponds to a theory of general treatment of people based on theory's postulation of just.

Staying with his appraisal of ideal theory, Sen uses an analogy which can perfectly illustrate why an ideal theory is not an appropriate yardstick for measuring just or unjust societies: while making a choice between Van Gogh and Picasso, it is irrelevant to know that Mona Lisa is the best painting of all time (Sen, 2009, 101). The point is that we do not need some transcendental ideas to arrive at the concept of justice. Instead, there is a need for a comparative route that corresponds to the actual behavior and actual institutes rather than confining our analysis to perfectly just institutions and societies. Thus, our departure point should be from the start. The questions we need to ask are not related to what kind of institution would be perfectly just, but rather how is it that justice can be advanced.

To develop a comparative framework, Sen draws from classical Indian philosophy. He brings up two terms, '*niti*' and '*nyaya*' both of which stand for justice (Sen, 2009, 20). While the former stands for the structural and organizational property as well as behavioral correctness, the latter is concerned with the actual lives that people lead. In that sense, "the roles of institutions, rules, and organization, vital as they are, have to be assessed in the broader and more inclusive perspective of *nyaya*, which inescapably links with the world that emerges, not just the institutions or rules we happen to have (Sen, 2009, 20). To understand their application, classical legal theorists in India talked of *matsyanyaya* or justice in the world of fish (Sen, 2009, 20). In *matsyanyaya*, a big fish eats the small fish. In this context, justice is the avoidance of such a situation, and the aim of institutions should be that 'justice of fish' does not prevail in the world of humans. For Sen, "the central recognition here is that the realization of justice in the sense of *nyaya* is not just a matter of judging institutions and rules, but of judging the societies themselves" (Sen, 2009, 20).

To put it differently, Sen wants justice to correlate to a recognition focused perspective rather a social arrangement based perspective (concerned with transcendental institutionalism). Recognition based view attempts to assess the suitability of particular social realizations rather than concentrating on certain transcendental principles. As the notion of *matsyanyaya* helps us understand, the idea is not to arrive at a specific just arrangement but rather to prevent injustice or justice of fish. For instance, in the fight against colonialism, the idea was not that a society without colonial rulers would be entirely just but rather the society with the colonial rule is unjust. It was the realization that colonial rule is unjust that made the anti-colonial struggle a priority and not the fact we need a consensus on what a perfectly just society looks like.

Now Sen finds himself in the same position where contractarians were when they had to answer how to achieve at a unanimous 'just arrangement'. For a worthwhile theory of justice, Sen needs to explain how to make justice through a realization-based theory. Sen does so by linking his account of justice with Adam Smith's idea of the impartial spectator (Sen, 2009, 44). Whereas the Rawlsian approach forms an elaborate fiction of original position through which universal principles are derived, Smith talks about the impartial spectator. Smith insists that we need to broaden our sphere of social values to include the arguments from all cultures. There is a need to make reasoned scrutiny from different perceptions which are essential to demands of objectivity for ethical and political convictions (Sen, 2009, 44). Thus, the impartial spectator becomes an estranging device, encouraging the use of reason in making a comparative

analysis. This, according to Sen, can provide us with a firmer grounding in 'just-ness' or at least help us in the understanding manifestation of unjustness or certain social realizations.

Conclusion

For a long time, the idea of justice has followed the trajectory of transcendental institutionalism with its focus on just societies. However, Sen's philosophy comes with an understanding that justice cannot and should not ascend from a blueprint that has a one-stop-solution for all. Instead, justice needs to be a process and a dialogue with social realizations, making use of faculties such as public reasoning in which plural potentialities are considered in terms of policies and institutions. Moreover, Sen presents us with the idea that justice need not be considered singularly from the prospect of *niti* but may need an inclusive perspective of *nyaya*. In the latter, we do not have to relegate justice to *niti* of social arrangement. To question and critically analyze has to be a constant process of justice, which itself has to be analyzed in a comparative framework. This becomes even more important in contemporary societies where questions such as race, class, gender, etc., dominate. This is significant because the issue of justice is intrinsically tied with questions of arrangement. If so, do we put our understanding in some transcendental idea of justice that does not take into consideration social realizations or we take a more comparative approach in our quest for justice?

References

- Freeman, Samuel. "Ideal theory and the justice of institutions vs. comprehensive outcomes." *Rutgers LJ* 43 (2011): 169.
- John, Rawls. *A theory of justice*. Cambridge, MA: p, University, 1971.
- Sen, Amartya. *The idea of justice*. Harvard University Press, 2009.