

Developments

Book Review – Amartya Sen’s The Idea of Justice (2009)

By Michael Da Silva^{*}

[AMARTYA SEN, *THE IDEA OF JUSTICE* (HARVARD UNIVERSITY PRESS, 2009); ISBN: 9780674060470; 496 pp; \$22.95; Paperback]

A. Introduction

John Rawls is often described as the father of contemporary political philosophy. Common introductory history of philosophy marks the 1971 publication of *A Theory of Justice* as the reinvigoration of debate in what had previously been a dormant field of philosophical reflection. In *A Theory of Justice*, Rawls argued for a liberal political philosophy. He famously articulated a thought experiment in which citizens (or, more accurately, their theoretical proxies) were encouraged to reach common consensus on how to govern society. An ideal running of the thought experiment, when subject to necessary constraints, was supposed to lead to the adoption of liberal democracy.

Since then, Rawls’s colleagues, students and public interlocutors have produced many reflections and criticisms of his work. They are concerned with a wide variety of issues, including the ideal structure of public institutions, how to distribute goods, how public debate should take place and how to accommodate diversity in public society. Broadly sympathetic thinkers, like his student Martha Nussbaum, sought to refine the work. Nussbaum, for instance, pointed out that it falters on the extremes and attempted to articulate how to deal with these extremes. More seriously damning attacks came from a variety of philosophical perspectives. Libertarians like Robert Nozick questioned Rawls’s conception of distributive justice while communitarians like Charles Taylor and Michael Sandel argued that it was insufficiently sensitive to the social context of political life and decision-making. Regardless of their differences, it can be argued that common to most major political philosophy in a post-*A Theory of Justice* world is an engagement with Rawls’s work.

If it is true that all contemporary political philosophy exists in the shadow of Rawls and must engage with Rawls’s work, then contemporary political philosophy must deal, at least in part, with Rawls’s central theme: justice. It is thus unsurprising that many of the preeminent works in contemporary political philosophy, including works from Rawls’s

^{*} JD Candidate, University of Toronto Faculty of Law. Email: Mike.dasilva@utoronto.ca

critics, carry titles like *Frontiers of Justice* (Nussbaum)¹ or, simply, *Justice* (Sandel).² With *The Idea of Justice*, Amartya Sen, winner of the Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel and a former colleague of Rawls at Harvard, offers his own statement on justice.³ It is a welcome contribution to the literature on the subject and a first-rate work of political philosophy. Published in 2009, it is already recognized as an important work and was the subject of a symposium at Rutgers School of Law in April 2011.

The Idea of Justice is an interdisciplinary work which Sen states is intended to have a *direct bearing* on political and moral philosophy, while also engaging economics, politics and law in the hopes of influencing practical policy.⁴ Sen's credentials in these fields are impeccable. His Nobel Prize for his *welfare economics* scholarship clearly indicates his prowess in economics. Sen co-taught classes with Robert Nozick, Rawls, Sandel and other leading philosophers.⁵ He knew many of the major twentieth century legal theorists and presented parts of *The Idea of Justice* at several major law schools.⁶ In *The Idea of Justice*, Sen deftly melds insights from the fields of politics, economics, and law into a work that will resonate wherever political theory is relevant.

This essay provides a brief synopsis of *The Idea of Justice* followed by a critique of the book focusing primarily on its theoretical engagement with Rawls' work.

B. The Idea of Justice – A Brief Synopsis

The Idea of Justice is a four-part work. The first section, *The Demands of Justice*, is primarily intellectual history. Sen first provides a definition of and justification for reason based in large part on the demands of objectivity. Sen says that we rely on reason to be as objective as possible in both politics and ethics.⁷ Following Adam Smith, John Rawls and Jürgen

¹ MARTHA NUSSBAUM, *FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP* (2007).

² MICHAEL J. SANDEL, *JUSTICE: WHAT'S THE RIGHT THING TO DO?* (2009).

³ Sen formally commented on *A Theory of Justice* for Harvard University Press before its publication and wrote his *Collective Choice and Social Welfare* at the same time as Rawls's famous text; see AMARTYA SEN, *THE IDEA OF JUSTICE* 52-53 (2009).

⁴ *Id.* at xi.

⁵ *Id.* at xi & xxii.

⁶ He presented parts of *The Idea of Justice* at Harvard, Yale, Northwestern, Cardozo and Washington Law Schools and has been an interlocutor of the likes of H.L.A. Hart, Tony Honore, Joseph Raz and Jeremy Waldron. He co-taught a class at Oxford with Ronald Dworkin; *id.* at 264.

⁷ *Id.* at 40-41.

Habermas, Sen takes “reasoned scrutiny from different perspectives to be an essential part of the demands of objectivity for ethics and political convictions.”⁸ He then proceeds with his chapter on Rawls, noting that any summary is an “act of barbarism,” but nevertheless recognizing the importance of outlining some key points prior to establishing one’s own theory of justice.⁹ He identifies three difficulties with Rawls’s theory that need fresh investigation: (1) the inescapable relevance of actual behavior,¹⁰ (2) alternatives to the contractarian approach¹¹ and (3) the relevance of global perspectives.¹² The third chapter reiterates Sen’s argument that institutions must be seen as instruments for promoting justice rather than manifestations of justice.¹³ The fourth chapter provides a brief history of social choice theory, which Sen argues is, contrary to common belief, closer to the world of practice than contractarian theories.¹⁴ The fifth chapter focuses on impartiality, accepting that it must include universality of inclusion¹⁵ and introducing a distinction between Smithian open impartiality and Rawlsian/Kantian closed impartiality that forms the basis of the final chapter of the section.¹⁶

The second section of *The Idea of Justice, Forms of Reasoning*, is the beginning of the constructive part of the text. Sen argues for the importance of *positionality*— the fact that where one is situated has an impact on their observation and decision-making processes— in a theory of justice. He says it “may be particularly crucial in interpreting systematic and persistent illusions that can significantly influence – and distort – social understanding and the assessment of public affairs.”¹⁷ The deliberate use of open impartiality can help overcome positional limitations, but one cannot proceed “smoothly from positional views

⁸ *Id.* at 45.

⁹ *Id.* at 53.

¹⁰ *Id.* at 68. (“[I]f the justice of what happens to a society depends on a combination of institutional features and actual behavioral characteristics . . . then is it possible to identify ‘just’ institutions for a society without making them contingent on actual behavior . . .”)

¹¹ He advocates Adam Smith’s impartial spectator approach as preferable to the contractarian approach of Kant and Rawls.

¹² SEN, *supra* note 3, at 71.

¹³ *Id.* at 82.

¹⁴ *Id.* at 95.

¹⁵ *Id.* at 117.

¹⁶ Although Kantian impartiality is more widely accepted, Sen states that it faces fundamental limitations and problems for international justice. He seeks to overcome these problems using Smith’s open impartiality, which has been partially realized in the involvement of NGOs, trade unions, *et. al.* in global affairs; *id.* at 151.

¹⁷ *Id.* at 168.

to an ultimate 'view from nowhere'.¹⁸ Sen then provides a history of critique of rational choice theory¹⁹ and its gradual creep into our legal understanding (*Chapter 8*).²⁰ Sen argues that "there is nothing particularly unusual, or especially contrary to reason, for a person to choose to pursue a goal that is not exclusively confined to his or her own self-interest" and that Smith recognized this fact.²¹ Sen emphasizes the importance of a plurality of reasons to move beyond self-interest.²² The basic point of the following chapter is the recognition of "the existence of different approaches to the pursuit of reasonable behavior, not all of which need be parasitic on the advantage-based reasoning of mutually beneficial cooperation."²³ In the final chapter of the section, Sen examines realizations, consequences and agency. In the course of his examination, he distinguishes his work from that of the standard consequentialists.²⁴

In part three, *The Materials of Justice*, Sen first argues for the "centrality of human lives in reasoned assessments of the world in which we live"²⁵ as part of a larger argument for a capability approach as the "informational focus" of his theory (*Chapter 11*).²⁶ The capability approach focuses "not just on what a person actually ends up doing, but also on what she is in fact able to do, whether or not she chooses to make use of that opportunity."²⁷ This approach is posited in opposition to standard conceptions of justice, including the Rawlsian approach.²⁸ Indeed, a substantial portion of the chapters elaborating the capabilities approach is a critique of Rawls's emphasis on primary goods.²⁹ Sen's theory is an ends-

¹⁸ *Id.* at 169.

¹⁹ *Id.* at 174.

²⁰ *Id.* at 179.

²¹ *Id.* at 191.

²² *Id.* at 183. ("The possibility of plurality of sustainable reasons is not only important in giving rationality its due, it also distances the idea of rational choice from its putative role as a simple predicator of actual choice, as it has widely been used in mainstream economics. Even if every actual choice happens to be invariably rational in the sense of being sustainable by critical scrutiny, the plurality of rational choice makes it hard to obtain a unique prediction about a person's actual choice from the idea of rationality alone.")

²³ *Id.* at 206.

²⁴ *Id.* at 208-217.

²⁵ *Id.* at 225.

²⁶ *Id.* at 231; Martha Nussbaum also uses a capability approach (NUSSBAUM, *supra* note 1, at 232).

²⁷ SEN, *supra* note 3, at 235.

²⁸ *Id.* at 253. Cohen has critiqued the capabilities approach and Sen deals with Cohen's criticisms in the text (SEN, *supra* note 3, at 235).

²⁹ *Id.* at 260-263. To read about primary goods, see JOHN RAWLS, JUSTICE AS FAIRNESS: A RESTATEMENT 57-61 (2001) or JOHN RAWLS, A THEORY OF JUSTICE: REVISED EDITION 78-81 (1999).

based conception of distributive justice rather than a means-based one.³⁰ While both Rawls and Sen are concerned with ensuring people pursue their conception of good, Sen thinks Rawls would give citizens the theoretical means to do so without properly attending to whether they could actually pursue them given their capabilities. He is not willing to base distribution on achievement,³¹ but thinks that the provision of primary goods to equal proxies is an insufficient framework for distributive justice.

Sen explores the implications of his approach for resource allocation in *Chapter 12*, suggesting it will lead to radical changes to evaluation in economics and the social sciences.³² He also begins to outline the key policy concerns of a capability approach, including the prevention and alleviation of disability, which would ensure that people are capable of pursuing their conceptions of the good.³³ In the following chapter, Sen underscores his commitment to pluralism by once again debunking the idea that any one value, in this case happiness, can be the only thing to value or the metric for judging other values.³⁴

Sen underscores the importance of equality, admitting that it is closely related to his argument for the importance of impartiality.³⁵ According to Sen, equality of capability is not essential and capability does not trump other important considerations.³⁶ Sen prioritizes freedom.³⁷ Sen's refusal to make capability a trump card is admirable and consistent with his emphasis on plurality and comparison. It is somewhat odd, however, that he still gives priority to one good: freedom. If plurality and comparison are to be emphasized, any particular value taking primacy may be problematic since it could be viewed as antithetical to a broad plurality. One could argue that freedom is both fundamental and prior to recognition of plurality as a good or contradicts the more fundamental plurality. For Sen, freedom is primary and necessitates plurality. He eventually notes that liberty too must be plural, suggesting room for freedom to exist as fundamental *and* plural.³⁸

³⁰ SEN, *supra* note 3, at 234.

³¹ *Id.* at 235.

³² *Id.* at 253.

³³ *Id.* at 259.

³⁴ *Id.* at 276.

³⁵ *Id.* at 293.

³⁶ *Id.* at 295.

³⁷ *Id.* at 299.

³⁸ *Id.* at 317.

In the final section of the book, *Public Reasoning and Democracy*, Sen argues for a conception of democracy as public reason, rather than procedures like balloting (*Chapter 15*) and provides an important history of democracy in order to stress its continued relevance. According to Sen, democracy is not a merely a Western construct. While institutional democracy, a relatively new concept, is primarily Western in origin, public reason and participatory living have been important throughout the world's history.³⁹ In making his argument, Sen brings to the forefront something that is implicit in his frequent references to Eastern (mainly Indian) sources throughout the text:⁴⁰ Western and Eastern thought have largely developed parallel to one another with many shared features helping to create a global heritage,⁴¹ contrary to arguments for cultural incommensurability motivating opposition to the export of democracy.⁴² Even the Middle East is not an exception and has a strong history of participatory living.⁴³ *The Practice of Democracy*, an explicitly empirical chapter,⁴⁴ follows and bridges his theoretical project to an elaboration of his previous economic works, such as *Poverty and Famines: An Essay on Entitlement and Deprivation*.

The penultimate of the book, *Human Rights and Global Imperatives*, is the one most closely related to the purview of this journal and thus demands special consideration. After addressing the historical debate over human rights (with particular emphasis on Jeremy Bentham's criticism of the French Revolution),⁴⁵ Sen argues that we should understand human rights as ethical proclamations, not legal rights.⁴⁶ For Sen, 'human rights' is a maximization theory of ethics positing that one good—human rights—should be maximized.⁴⁷ As H.L.A. Hart rightly points out, human rights do motivate legislation.⁴⁸ There are also other avenues beyond the legislature for maximizing rights, including civil society groups like NGOs.⁴⁹

³⁹ *Id.* at 322.

⁴⁰ *I.e.* Mughal emperor Akbar, Buddha and the Sanskrit epic *Mahabharata*; *Id.* at 37, 205, 208.

⁴¹ SEN, *supra* note 3, at xiii.

⁴² *Id.* at 322, 328.

⁴³ *Id.* at 333.

⁴⁴ *Id.* at 338.

⁴⁵ *Id.* at 355-358. He later problematizes Bentham's views; *id.* at 362-364.

⁴⁶ *Id.* at 360, 258.

⁴⁷ *Id.* at 362.

⁴⁸ *Id.* at 363.

⁴⁹ *Id.* at 365.

The story of human rights ethics having numerous ways to enter the legal and political domain is likely not new for any activists reading this piece. The human rights ethos has both rhetorical and aspirational value in political practice, to the extent that human rights can become as important as the freedoms they promote. Where human rights are primarily an ethical framework, what role they should play in political deliberation is nonetheless contested. Whether one can treat them as purely ethical is worth considering, and indeed some theorists link the theoretical question of what human rights are with the political question of what one is to do with them.⁵⁰ This raises the issue of whether an articulation of human rights as ethics should only define them as things can be politically fostered. Sen does not endorse this approach, but rather posits that rights and freedoms must survive critical scrutiny in the context of open impartiality in order to maintain proper force.⁵¹

In an effort to achieve his desire of creating a work that will influence practical policy, Sen devotes the final chapter of the book, *Justice and the World*, to the concept of *open impartiality*. He believes his discussion of this topic “has direct relevance to some of the contemporary debates in the Supreme Court of the United States.”⁵² In that chapter, Sen neglects to explicitly make the link between theory and practice (*Human Rights and Global Policy* is a more clearly practical chapter), though one can easily apply the theory on one’s own. Ultimately, the chapter is primarily a summary with explanations of previously addressed issues like public reason⁵³ and the plurality of reasons⁵⁴ serving as the key foci.

C. The Idea of Justice – Analysis

The Idea of Justice is offered as “an attempt to investigate realization-based comparisons that focus on the advancement or retreat of justice.”⁵⁵ Sen says his theory differs from contemporary mainstream treatments of justice in three ways: (1) it is comparative, rather

⁵⁰ BERNARD WILLIAMS, IN THE BEGINNING WAS THE DEED: REALISM AND MORAL ARGUMENT IN POLITICAL ARGUMENT 72 (2007) (“Whether it is a matter of philosophical good sense to treat a certain practice as a violation of human rights, and whether it is politically good sense, cannot ultimately constitute two separate questions”).

⁵¹ SEN, *supra* note 3, at 385-387.

⁵² *Id.* at xi.

⁵³ *Id.* at 392.

⁵⁴ *Id.* at 294.

⁵⁵ *Id.* at 8.

than ideal,⁵⁶ (2) it is valuationally pluralist,⁵⁷ and (3) it is concerned with human lives and behaviors, rather than institutions.⁵⁸ While transcendental institutionalists, like Kant and Rawls, desire a perfect society and focus on getting institutions right,⁵⁹ Sen positions himself within a competing Enlightenment project, exemplified by figures as diverse as Cordorcet, Wollstonecraft, Bentham, Marx and Mill,⁶⁰ “interested primarily in the removal of manifest injustice from the world they saw.”⁶¹ He does this partly due to key fundamental problems with transcendentalism: the infeasibility of finding an agreed transcendental solution and the redundancy of the search for a transcendental solution.⁶²

Despite Sen's focus on the way people live their lives, comparisons between individual lives (or the national circumstances in which people live) are not the primary foci of his book. Throughout much of the book, Sen instead makes a theoretical argument for why these comparisons are needed. Methodologically, Sen admits that this ultimately amounts to a tendency to “concentrate on distinctions and highlight contrasts.”⁶³ Theories are what are most frequently compared in *The Idea of Justice*.

Perhaps the most intriguing comparison is the one between Sen's framework and that of the individual, namely Rawls, whom he appears to most frequently cite, to the extent that *The Idea of Justice* argues from within Rawls's shadow. Rawls's name is the first in the acknowledgments section and *The Idea of Justice* is dedicated to the memory of Rawls, who inspired Sen to work on justice and with whom Sen co-taught courses at Harvard.⁶⁴ Sen explicitly notes that he will make use of insights from transcendental idealists like

⁵⁶ *Id.* at ix (“[A] theory of justice that can serve as the basis of practical reasoning must include ways of judging how to reduce injustice and advance justice, rather than aiming only at the characterization of perfectly just societies”).

⁵⁷ *Id.* at 4 (“Arbitrary reduction of multiple and potentially conflicting principles to one solitary survivor, guillotining all the other evaluative criteria is not, in fact, a perquisite for getting useful and robust conclusions on what should be done. This applies as much to the theory of justice as it does to any other part of the discipline of practical reason”).

⁵⁸ *Id.* at x (“[T]he presence of remedial injustice may well be connected with behavioral transgressions rather than institutional shortcomings Justice is ultimately connected with the way people's lives go, and not merely with the nature of the institutions surrounding them”).

⁵⁹ *Id.* at 5-6.

⁶⁰ *Id.* at xvi.

⁶¹ *Id.* at 7.

⁶² *Id.* at 5-6.

⁶³ *Id.* at 413.

⁶⁴ *Id.* at xxi.

Rawls,⁶⁵ then proceeds to focus almost exclusively on Rawls's work in the second chapter of the book, *Rawls and Beyond*.

Despite his deep admiration for Rawls, Sen calls for an end to the Rawlsian project. According to Sen, political philosophers "have to benefit from the richness of the ideas we have got from Rawls – and then move on, rather than taking a 'vacation'."⁶⁶ The beneficial ideas that Sen chooses to hold on to include "the idea that fairness is central to justice" and Rawlsian objectivity.⁶⁷ He also thinks positive lessons can be learned from Rawls's emphasis on capacity for a sense of justice, the distinction between rationality and reasonableness, the prioritization of liberty, the importance of procedural fairness, the importance of equity and social arrangements and "the importance of freedom in giving people real . . . opportunity to do what they would like with their own lives."⁶⁸ Sen's critiques of the original position and Rawls's institutionalism are nonetheless strong and lead him to suggest we should move on from the Rawlsian project.

Sen's pluralism puts him at odds with Rawls's principles of justice: "Mutual benefit, based on symmetry and reciprocity, is not the only foundation for thinking about reasonable behavior towards others."⁶⁹ Sen appears, however, to prefer *A Theory of Justice* to the work of the later Rawls, who allows his principled theory to co-exist with other comprehensive frameworks. Sen argues that once the uniqueness of the Rawlsian principles of justice is dropped, his institutionalism project (which "goes some distance towards a purely institutional view of justice")⁷⁰ seems indeterminate and loses its key feature. One almost wonders if Sen would have preferred Rawls to have held on to his principles for the sake of consistency, but Sen instead suggests that Rawls could have overcome the obstacle by adopting his own approach. He sees elements of a Sen-like anti-institutionalism in Rawls's later works, but is unable to definitively state that Rawls was in fact considering "abandoning the transcendental institutionalism of his earlier work."⁷¹ Even in his later work, Rawls is clearly concerned with ideal theory.⁷² Contrary to Sen's

⁶⁵ *Id.* at xvi.

⁶⁶ *Id.* at 74.

⁶⁷ *Id.* at 62.

⁶⁸ *Id.* at 62-65.

⁶⁹ *Id.* at 207.

⁷⁰ *Id.* at 85.

⁷¹ *Id.* at 12.

⁷² JOHN RAWLS, JUSTICE AS FAIRNESS: A RESTATEMENT 13 (2001); his society only needs to be reasonably just as opposed to ideal, 4.

inclinations, even this later work relied on institutions to provide the background justice necessary for an ideally just world.⁷³

Sen's critique of Rawls is sensitive and sympathetic, but may miss some of the nuances of the Rawlsian institutionalism and idealism Sen so abhors. While Rawls is undoubtedly institutional in his focus, this focus is not monolithic. There is room for non-institutional actors in the creation and promotion of justice. Institutions merely provide the background conditions for justice while individual actors must achieve it. Part of Sen's problem with institutionalism is that different voices need to be heard in public discourse, not just formal institutions; this is a key to open impartiality. While Rawls certainly emphasizes the importance of institutions, he is also very open to other actors in public discourse. It is not only the case that Rawlsian institutions are created in a thought experiment in which *individuals* are represented by proxies and individual liberty is to be promoted. Rawls also thinks that individuals have a significant role to play in the real-world creation not only of just institutions, but a just society. His commitments to public reason and deliberative democracy, shared with individuals from the Marxist comparative strain, like Iris Marion Young, open him to individual actors and real human lives.⁷⁴ Sen may be right in suggesting that institutions should not be prioritized to the extent that Rawls prioritizes them, but I worry that Sen overemphasizes that priority. Rawls actually advocates for a public role for non-institutional bodies in the decision-making process in his defense of deliberative democracy.

Likewise, greater discussion of the role of overlapping consensus and the status of comprehensive doctrines is needed from Sen in order to fully establish Rawls' idealism. Rawls's later work is meant to be merely political, not metaphysical. It maintains a commitment to his principles, but also allows for other comprehensive doctrines to exist, which are then to be compared on the basis of their reasonability. If reasonable, they are to play a role in politics, but comparison is still needed for an ideal to be met. The ideal is Rawls's primary concern and this may be problematic, but even Sen admits that both Kant and Rawls offer some "clues" for comparative issues. Indeed, Rawls is described as more comparative than any other transcendental idealist.⁷⁵

⁷³ *Id.* at 10.

⁷⁴ For Rawls's major statement on public reason, see JOHN RAWLS, *POLITICAL LIBERALISM: EXPANDED EDITION* 212-254, 440-490 (2005). The former lecture appeared in the original 1993 edition of the book and the latter revisits the original concepts therein. The former was included as a "Major Statement" on the idea of deliberative democracy in JAMES BOHMAN & WILLIAM REHG (EDS.), *DELIBERATIVE DEMOCRACY: ESSAYS ON REASON AND POLITICS* 92 (1997). Iris Marion Young's work was also included in that volume at 383. For a robust understanding of Young's deliberative democracy see Iris Marion Young, *INCLUSION AND DEMOCRACY* (2002).

⁷⁵ SEN, *supra* note 3, at 97.

Despite my immense respect for Sen's accomplishments in a wide variety of fields, part of my worry is rooted in how Sen moves from one to another. Despite its forays into other disciplines, *The Idea of Justice* reads best as a work of political theory. At times, however, Sen appears to merge ethics and politics, even calling his work a "substantive theory of ethics and political philosophy."⁷⁶ More explicit detail both on how Sen views the relationship between politics and ethics, and on how he reads Rawls's views on this topic is needed to flesh out his own theory and his criticism of Rawls. Sen's treatment of human rights is one of the best chapters of the book thanks largely to its focus on this relationship—how human rights as ethics interact with open impartiality—is an important contribution to the literature.

Similarly, while Rawls treats global justice as a separate area of study from political justice, Sen's criticism of the two appear to merge at times, leaving one to wonder if he is aware of how Rawls wishes to keep them analytically distinct.⁷⁷ *The Idea of Justice* is not a work on Rawls's scholarship so we cannot expect Sen to deal with every issue in Rawls's work. It is thus acceptable that Sen's discussion of the necessity of sustainable development does not deal with intergenerational justice, a key topic of debate in contemporary, post-Rawlsian political philosophy.⁷⁸ Focus on the issues in this and the preceding paragraph would, however, improve Sen's text as a whole, not merely his criticism of Rawls.

Furthermore, even if one grants that Rawls is a standard transcendentalist, it is not clear that he must be silent on comparisons. According to Sen, transcendental theories of justice are neither necessary nor sufficient for making comparative claims. The search for transcendental justice is unnecessary because one can make comparisons in the absence of a transcendental ideal. It is insufficient because it ultimately "does not tell us much about the comparative merits of different societal arrangements."⁷⁹ While the argument for necessity has strong force, a rhetorical question Sen offers in opposition to transcendental idealism may have multiple answers. He asks, "does not a transcendental identification in itself tell us something about comparative issues, even when those issues are not explicitly confronted? Are there not some *analytical* connections here?"⁸⁰ He then denies the connection. Contrary to Sen's contention, however, transcendental institutionalism provides evaluative criteria for making comparisons and the fact that Rawls is able to make so many comparisons is a testament to this fact; the lack of connection between the theories is not merely not obvious, but likely refutable.

⁷⁶ *Id.* at 231.

⁷⁷ RAWLS, *supra* note 73, at 11-12.

⁷⁸ The capability approach demands consideration of responsibility towards the future of other species that are threatened with destruction, but Sen does not focus on future generations; SEN, *supra* note 3, at 251.

⁷⁹ *Id.* at 101.

⁸⁰ *Id.* at 97.

Sen's emphasis on comparison may be part of a larger trend in political philosophy. T.M. Scanlon, who reviewed *The Idea of Justice* before its publication⁸¹ and is one of Sen's main interlocutors, is also currently working on a comparative political philosophy project, suggesting that genuinely egalitarian arguments (for equality, not justice) are comparative in nature.⁸² Sen takes a different approach to the fact of reasonable pluralism than Rawls. Rather than looking for what reasonable people can agree to, he expects a plurality of reasonable positions to survive, each of which can simultaneously support a given end. He believes that the reason for acting in a way, though important, is less pressing than ensuring certain action. It is thus unclear to me why one pluralist vision cannot be the Rawlsian vision. After all, Rawls himself suggests that it is not a comprehensive framework, only a political one, and is intended to coexist alongside religious and other viewpoints. Even if one accepts that the Rawlsian position is transcendental, it is difficult to accept that it is redundant.

D. Conclusion

Ultimately, Sen is right to point out that "no matter where our theories take us, we all have reasons to be grateful for the recent intellectual animation around them, which has been, to a great extent, initiated and inspired by John Rawls."⁸³ In *The Idea of Justice*, Amartya Sen offers an alternative to the Rawlsian conception of justice and makes several strong criticisms of the Rawlsian project. His comparative conception of justice uses the capabilities of individuals as the measure of just distribution, in contrast to the Rawlsian transcendental idealist conception of justice relying on institutions for the background conditions of justice and using primary goods as a distributive measure. Despite my reservations about some of Sen's views on Rawls, I am certainly grateful for his contribution to the literature. He makes a powerful argument for the importance of comparison. While my own commitment to pluralism would have the ideal project coexisting alongside the comparative project, Sen makes a compelling argument for the importance and priority of the latter.

The project is not merely a reaction to Rawls, but also provides keen insights into the nature of human rights. Sen's discussion of human rights as justice is commendable and bridges the theoretical and practical elements of his text in a manner not found in other sections. While primarily valuable as a piece of political philosophy, *The Idea of Justice* also

⁸¹ *Id.* at xxvii.

⁸² Tim Scanlon, *When Does Equality Matter?*, presented at a legal theory workshop at the University of Toronto on 22 October 2010.

⁸³ SEN, *supra* note 3, at 413.

has a great deal to offer to human rights activists and scholars. I look forward to reading his explicit, empirical comparisons of different political orders.