

NOTES ON *THE IDEA OF JUSTICE*

by Amartya Sen: Allen Lane, 2009

PART I : ASSESSMENT OF RAWLS' THEORY

(Note that Sen's book is divided into 'Parts' - four 'Parts' - but the three 'Parts' of this paper do not reflect Sen's division. Very roughly his first Part focuses on Rawls, his second Part covers reasoning about justice, his third part covers, and is actually entitled 'The Materials of Justice' and his fourth Part is about justice and democracy and global perspectives.)

Sen is a very cosmopolitan thinker, drawing on Indian philosophy as well as Western philosophy and economics, but he begins with ideas which he traces to the Enlightenment - two distinct approaches to ideas about justice, which he calls *Transcendental Institutionalism* and *Realization Focussed Comparison*.

The former is the attempt to characterise the perfectly just state and usually stems from the hypothetical idea of a social contract - perhaps the main stream approach - starting with Hobbes and culminating in Rawls. But Sen favours the other approach which he says Enlightenment figures such as Mary Woolstonecraft used in actual campaigning - e.g. against slavery and for women's rights. This approach looks at how actual situations with their impact on people's lives can be compared in point of justice. This is the approach Sen favours.

In his Introduction he outlines his arguments against Transcendental Institutionalism.

Arguments against Transcendental Institutionalism

a) Agreement on perfection may not be forthcoming

Sen doubts Rawls' assumption that if reasonable and rational people get together to reason impartially about justice, as is imagined in his 'original position', then they will come to an agreement. E.g. there may be different weightings given by different people to distributive fairness over aggregative gain.

Sen gives an example of Three Children and a Flute. Which of the three children who claim it should in justice have it. The first argues that she should have it because she is the only one of the three who can play a flute. The second argues that, unlike the others, she has no other toys and so in fairness she should have the flute. The third argues that she should have it since she made it.

Sen thinks that some reasonable people might defend any one of the three principles underlying these claims; and that it is not clear that rational discussion and criticism would lead a person who favoured one of the principles to abandon it in favour of one of the others.

Sen thinks that sometimes we will not be able, individually or collectively, to decide which of two systems or situations is the more just, but that that need not hinder our deciding in other cases. E.g. if in the case of the children and the flute

the child without toys also made the flute that would probably be decisive. Or if US reformers can see that the current health care system in the USA is less just than various European systems, they do not have to be paralysed by an inability to agree on which European system is the best.

b) It is anyway not necessary nor even helpful to decide on what a perfect state would be like..

Not necessary as people can often agree that one thing of some kind is better than another without having to agree on what counts as the ideal thing of that kind. E.g. we could agree that one painting was better than another without having to decide which is the best painting of all.

Not helpful in that justice is multidimensional and a model of the ideal does not of itself show how one factor is to be weighted against another in making comparison between imperfect examples.

Sen feels that it is this kind of comparison of imperfections which is of practical use in trying to improve justice in the real world - which is Sen's concern.

c) We need have regard to the actual lives lived in a society not just its formal institutions

Sen rejects the assumption, which he sees in Rawls, that given people have agreed on certain institutions they will always behave in perfect accordance with them. If individuals do not comply then the actual results of the supposedly perfect institutions may be less than perfectly just - other systems which take more account of failings could work better in providing real justice.

We need have regard to real capacities of people and not just their formal freedoms. And we need have regard to the value of the processes and not just their ends. The capacity - e.g. to engage in political debate - and its exercise and the responsibility that goes with that are in themselves things enjoyed, and not just their end products.

i.e. what is important is not just the formal structure of a society, but the actual realization of it in the lives and actual capacities of the people of a society.

A Methodological Objection - to the method of the 'original position'.

This objection is introduced in Chapter 1, 'Reason and Objectivity' and developed in later chapters.

Sen asks what objectivity amounts to in ethics and politics. He rejects the idea that there are 'moral objects' - I guess he means that there are no moral facts 'out there', as it seems natural to think correspond to the truth of *descriptions*. He praises Rawls for noting that a starting place must be public framework of ideas, concepts with certain rules of application which constrain individual judgement (although Sen notes that

reasons can be given, starting from such a public framework, for reforms within it).

Another thread of his argument is that public reasoned discussion requires that my reasons count for the other - thus public reasoning requires impartiality.

Now Rawls tried to incorporate this in his 'original position' by using the 'veil of ignorance', but Sen objects that he limited the discussion to members of the society in question. Sen feels that this leaves room for two omissions.

a) The interests of people outside the group may be ignored.

Rawls makes his society isolated so that this problem doesn't arise, but Sen feels this fails to address the real situation we face with global interdependences.

b) The different perspectives of different groups and cultures may be ignored.

Sen feels that any restricted group may have certain unquestioned beliefs and values which will not be examined if discussion is confined within such a group.

Overall Sen thinks that the objectivity of which judgements about justice are capable is that they should be able to withstand wide public scrutiny.

[This is a little like the view of truth of C. S. Peirce, the American pragmatist. He said that truth was objective in that it was independent of what any individual thought, but that it was in a way thought dependent in that it would be agreed upon after enquiry in the long run. Sen doesn't mention Peirce, but he does mention J. S. Mill who argued in *On Liberty* that the only test of truth was its ability to withstand criticism. Hence free speech is such an essential liberty.]

Sen on Rawls' Strengths and Weaknesses

In Chapter 2: 'Rawls and Beyond', Sen gives his appraisal of Rawls. He thinks there are many positive points, but that overall Rawls theory is unsatisfactory.

Strengths - things we can learn from Rawls.

1. Seeing the relevance of fairness to justice. This goes beyond previous positions - e.g. the Utilitarianism of Bentham [with its 'each to count for one'].

2. His stress on objectivity in practical reason. E.g. - quoting from Rawls:-

The first essential is that a conception of objectivity must establish a public framework of thought sufficient for the concept of judgement to apply and for conclusions to be reached on the basis of reasons and evidence after discussion and due reflection.

3. He points to peoples' 'moral powers', 'capacity for a sense of justice' and 'a conception of the good'. - a far cry from the assumption of exclusive self interest of 'rational choice theory'.

4. The priority he gives to liberty. "Rawls draws attention to a distinction - between liberty and other helpful facilities - that is really important to note and pursue." p. 64 He sees that liberty is not only a 'primary good', it is more than that - e.g. a presupposition of the kind of public rational debate that underlies his whole approach.

5. He takes note of *procedural fairness* - under the first part of his second principle - which is often overlooked in sociological concerns with disparities in *status* or in economic *outcomes*.

6. Sen sees in Rawls' notion of 'primary goods' a concern with *real* as opposed to just *formal* opportunities - although he says others may disagree with his reading here

Weaknesses and Objections

1. *The 'original position' does not, contra Rawls, force a unique or unanimous decision about the principles of justice.*

E.g. Principles of distributive justice different from Rawls' Difference Principle could be rationally defended - Sen cites the example of the children and the flute again.

Or the way that Difference Principle allows for the use of incentives could be questioned. It could be argued that given their agreement to the broad structure of society people with talent should contribute out of a sense of duty.

2. *The Priority of Liberty.*

Sen thinks that liberty should be weighted in a way that doesn't make it outstrip all other considerations. For Rawls a minor gain in liberty would outweigh major losses of welfare.

3. *Primary Goods v. Capacity to Use them.*

The just distribution of primary goods does not take into account the actual ability of individuals to make use of such goods - e.g. a disabled person may not be able to make the same use as an able bodied person. Sen thinks that what is important is not primary goods but actual, realizable freedoms and capabilities. (That is Sen's 'capability approach')

Sen thinks that Rawls' scheme could perhaps accommodate the above three objections, but not the following.

4. *The Inescapable Relevance of Actual Behaviour*

Social contract theories like Rawls' focus on just *institutions*, but a just society will also need to rely on the actual behaviour of its members - and this will not necessarily follow from the just institutions.

Even if all did agree on some 'political conception' of justice, as Rawls thinks they would from the original position, this is still not to say that all *behaviour* will

conform to that standard.

In practice we see that the development of justice depends on gradual formation of appropriate behaviour patterns. Where reforms are proposed in an existing society what will work will depend upon the behaviour that can be expected.

A just society is a matter of institutions *and* behaviour - and the second does not just follow from the first as Rawls hopes.

5. *Alternatives to the Social Contract Approach*

Sen thinks that his kind of Realization Focussed Comparison, conducted in the context of open public scrutiny, would be better able than Rawls to deal with matters such as the following. (and below I quote from Sen p. 70)

1. dealing with comparative assessment and not merely identifying a transcendental solution;
2. taking note of social realizations and not only the demands of institutions and rules;
- (3) allowing incompleteness in social assessment, but still providing guidance in important problems of social justice, including the urgency of removing manifest cases of injustice; and
- (4) taking note of voices beyond the membership of the contractarian group, either to take note of their interests, or to avoid our being trapped in local parochialism.

6. *The Relevance of Global Perspectives*

There are problems in extending Rawls' method to the global scene, and yet it is clear that issues of justice extend beyond the bounds of a given state - into its relations with other states and their peoples - fair trade, the justice of foreign wars etc. An adequate account of justice must be able to deal with such issues.

In a final section to this chapter Sen notes that in Rawls justice and fairness are different notions: fairness applying to people and justice to institutions.

PART II : JUSTICE & OBJECTIVITY; REASON & PUBLIC SCRUTINY

1. There are no Ethical Objects [Facts]

Sen, like Rawls, believes that there are no ethical facts or things 'out there' for our ethical judgements to correspond to - as factual statements, when they are true, correspond to the facts, to the way things are.

So how can judgements about justice be objective? Sen argues that the objectively 'valid' or correct judgement about justice - or any other ethical or political matter - will be that which will withstand rational public scrutiny in the long run.

His argument for this - which is a thread running through much of the book but especially in Part II: Forms of Reasoning - is, roughly, as follows.

2. We can reason about matters of ethics and politics and justice.

We can and do give reasons for our conclusions about matters of value - about what we should think and feel and do.

a) There is a tradition in economic theory - Rational Choice Theory - which assumes that all reasoning about what to do or choose is based on self interest; i.e. that rational action is self-interested. Sen rejects this.

i) Prima facie, the RCT assumption is obviously false: we do often choose to do things because they benefit someone else.

ii) But one version of RCT counters this by saying that such acts are done out of sympathy. I.e. we act in another's interests because we have sympathy for them. Acting in their interests makes us feel good - so in fact we are acting in our own interests.

Against this Sen distinguishes between *sympathy* and *commitment*. One may be committed to e.g. reducing world poverty even though that poverty does not negatively effect one in any way, nor does its reduction make you feel better.

[Another way of looking at this, which Sen acknowledges elsewhere, is to ask this: When I get satisfaction from helping another, do I help the other *in order* to get that satisfaction, or is that satisfaction something I tend to get when I achieve something else which I regard as important? If the latter then I must regard helping the other person as important in itself - and that helping is my objective, my reason for acting, and not the satisfaction incidentally obtained.]

(Sen remarks that accepting the RCT idea of rationality reduces any kind of social choice to some kind of voting procedure. Sen does not go into detail about the problems here - presumably because he take them as well known to his target readers. But this is an example of the kind of thing he has in mind:-

Suppose a cake is to be divided between three people - people who will think as per RCT. The cake could be given to one person and the other two go without. Two people would always vote against this. The cake could be divided in half and only one person go without. This would always be voted for by the two people who would get the cake. Or the cake could be divided in three and each get a third. But this option would always come third in everyone's preferences: each would prefer to get all the cake, or if not then half the cake. So voting will result in the cake being divided in half and one person going without. (And see the 'Appendix' below.)

By the way - Rawls' 'veil of ignorance' can be seen as a way of avoiding this kind of result. If the voters didn't know whether they would receive all, a half or a third, then they would vote for the equal distribution - wouldn't they? But RCT would say, not necessarily. In this scenario the voters would be presented with three gambles: Either a

1/3 chance of all the cake, or a 2/3 chance of half the cake, or a certainty - a 1 chance - of 1/3 of the cake. The 'expected pay off' (the probability of winning times the value of the prize) is the same in each case, namely 1/3, and so according to RCT there would be no reason to choose one gamble rather than another - not unless one were 'risk averse' or 'risk loving'. Depending on how risk averse one was, would incline one to go for the second or third choice, and depending on how risk loving one was, one would be inclined to go for first or second choices. In fact the way in which Rawls presents the argument from the 'veil of ignorance' suggests that he was aware of this reasoning as well and trying to circumvent it.)

3. But although rational action does not *exclude* other regarding reasons, neither does it *require* them.

Rational action involves reflecting on ones reasons, questioning them, weighing them against other considerations, checking ones facts, questioning ones feelings and so on. It is possible to do all that and yet be completely self serving, counting nothing as a reason that does serve ones self-interest.

However Sen argues that this is not so with *public discussion* because in public discussion - i.e. any discussion involving other people - one has to give reasons which *count as reasons for the others*.

Hence public rational scrutiny will necessarily involve consideration of other regarding reasons.

[Perhaps this reflects the idea that the question for ethics, as for politics, is not so much, What should I do?, but rather, What should we do?.]

4. But even so, there is the question of what counts as a right answer to questions in justice, in ethics and politics. In what sense could something be objectively the right answer?

Here Sen suggests that the objectively valid answer (he does not use 'right' or 'true' here) is that which will withstand public scrutiny in the long run. (This idea is rather similar to that of J. S. Mill (whom Sen mentions) and C. S. Peirce (whom he doesn't)).

E.g. in *On Liberty*, 'Of Thought and Discussion', Mill writes -

The beliefs which we have most warrant for have no safeguard to rest on, but a standing invitation to the whole world to prove them unfounded. If the challenge is not accepted, or is accepted and the attempt fails, we are far enough from certainty still; but we have done the best that the existing state of human reason admits of; we have neglected nothing that could give the truth a chance of reaching us: if the lists are kept open, we may hope that if there be a better truth, it will be found when the human mind is capable of receiving it; and in the meantime we may rely on having attained such approach to truth as is possible in our own day. This is the amount of certainty attainable by a fallible being, and this the sole way of attaining it.

And Mill particularly relates this approach to ethics, politics and religion.

The theory of the American pragmatist, C. S. Peirce is perhaps more precise. In his essay, 'How to make our ideas clear' he states:-

Thus we may define the real as that whose characters are independent of what anybody may think them to be.

The opinion which is fated to be ultimately agreed by all who investigate is what we mean by the truth and the objects represented in this opinion is the real.

Some philosophers (e.g. Putnam) have objected to Peirce that some statements will be true or false although it may be that no amount of investigation will settle the matter. E.g. either the following statement or its negation will be true: "Julius Caesar ate eggs on his 19th birthday." but we may never know. However this possibility that something will be true and yet beyond the reach of enquiry seems to depend on the things described being independent of thought, an objection which does not seem to apply in case of ethics or politics. (Peirce does not mention public debate, which of course Sen would argue is necessary to ethics and politics.)]

Sen's idea - that what is objectively valid in the case of judgements about justice is what will eventually be agreed given open public discussion - is similar to these ideas.

5. Impartiality and Openness

But impartiality and openness are also necessary if public discussion is to arrive at a valid judgement of justice.

a) Impartiality is an essential aspect of justice. [It is implicit in the meaning of justice.]

b) Public discussion - where reasons must count for the other - achieves a degree of impartiality itself.

c) But there are two obstacles to the impartiality of public discussion - and thus to its reaching the right answer - if it is confined to a limited group (as it is in Rawls).

i) The outcome could be partial to group members, ignoring the *interests* of people outside the group.

ii) The group members could all share some erroneous perception which would therefore go unchallenged. A problem which Sen calls, 'parochialism'.

Positionally Objective Judgements: Sen notes that between objective truth (independent of any particular point of view) and subjective judgements (relative to a particular mind) there are *positionally objective* judgements - which anyone would make, and be wrong or abnormal not to make - from the position in question. E.g. prior to more sophisticated astronomical theory, anyone on Earth with normal vision would judge that the Sun and Moon are of the same size, since that is how they look to anyone *from Earth*.

There are many such positionally objective judgements, which are objectively false - *positional illusions* - some of which are relevant to justice - and many of which can be supported by a kind of positive feedback. E.g. Some societies believe in the inferiority of women: Because there women are believed to be inferior they are denied the opportunity to do the things that would prove otherwise and so the belief is confirmed. Or prevalent ill-health can lead to a lowering of the perception of normality such that people from such a community underestimate the rate of ill-health or early mortality amongst themselves.

Hence if public scrutiny is to lead to a valid judgement of justice it must be as wide and open as possible in order to counteract such illusions.

6. The Materials of Justice

Sen has a detailed discussion of what he calls 'the materials of justice' - the title of Part III of his book. I will summarise separately - but, very briefly, they are issues of individual advantage or disadvantage, equality and freedom. Sen thinks that there are various different concepts or 'dimensions' of all of these.

7. Not all disagreements will be resolvable - but some will.

Sen thinks that because of these different aspects of the materials of justice that not all differences are resolvable - not even in principle, or in the long run,

The Three Children and the Flute: Sen gives an example to which he often returns of three children who each want a certain flute. The first argues that they should have it since they are the only one of the three who can play the flute. The second argues that they should have it since, unlike the other two, they have no other toys. The third argues that they should have it since they made it.

Sen thinks that the three differing principles underlying each of these arguments could be defensible in the long run - in which case there would be no objectively valid answer to the question of which resolution was just or most just.

Sen often notes that he accepts that his approach will only yield a *partial ordering* - meaning that it will not be able to decide which is the more just of every pair of actions or situations. (In this he is evidently taking note of a criticism which has been levelled against him.) He argues that a partial ordering based on the right ideas is better than a complete one based on the wrong ideas, and that in any case a partial ordering is often practically sufficient.

E.g. it may be that there is no clear answer as to which of the various EU health care systems is the most just, but nonetheless it is clear that any of them is more just than the current US system. Thus reform of the US system should not be prevented because it is not clear which alternative system is best.

8. Social Structures: Democracy - Form and Spirit

Sen rejects as impractical that approach to the philosophy of justice which tries to define the perfectly just state. As already noted he thinks this is both unnecessary and in practical terms unhelpful, and that there is unlikely to be agreement about it whereas agreement can often be achieved in relation to comparative justice in a particular case.

Nonetheless he does defend democracy - on the grounds that it facilitates the kind of public debate which he considers leads to objectively valid judgements about justice.

He values voting and elections since they lead to that insecurity of power which makes governments listen to the public debate. But he stresses that the formal notion of democracy in terms of just voting and elections is not enough; the informal elements of democracy - the spirit of democracy - free speech, a free press, open public discussion and the free dissemination of information - are also necessary (indeed sometimes - as in the global context - are helpful even without the formal elements).

[I feel that a problem here is with what I might call the sophistry of wealth and its ability to buy advocacy to bend public debate in its favour, but nonetheless I suppose public debate is the only way to try to counter that - even if the attempt is not always effective.]

Sen also defends democracy against those who argue that it is not necessary to economic development: he argues that they overlook the intrinsic advantages of democracy - e.g. how nice it is to be able to 'put the world to rights' in the pub without having to worry that the secret police or their informers may be listening.

9. The lack of a rule for comparative justice in Sen.

Since Sen sets out saying that he thinks that comparative justice is what is practically important - as against 'transcendental institutionalism' - I expected him to work towards a rule whereby different situations should be compared for relative justice. But Sen doesn't do that.

The reasons are, I guess, as follows:-

Firstly - all the above *is the rule*. Sen's idea is that way to move toward justice is to encourage rational public debate. He does not feel that it is for him to anticipate the outcome of that debate by laying down rules for justice in advance.

Secondly - Sen rejects the idea that there is some one good to which all others can be reduced. Utilitarians are an example of those who do believe there is such a fundamental good, i.e. happiness. If you can measure happiness then the relative good of two situations or actions can be compared by just *counting* the number of units of happiness each involves. Sen thinks that there are several various goods - like freedom, fellowship, welfare - which cannot be thus reduced to some one good and so measured in the same units. He does not see this as leading to the problem of so called 'incommensurability', he thinks that we are not only capable of *counting* but of making *judgements* of the relative importance of such things in given case - and that we actually do as an everyday matter.

Now Sen does not spell out this next idea as explicitly as I would like, but he seems to

think that although we can make these judgements comparing differing goods on a case by case basis that it is not possible to spell out rules for making such judgements, because, for example, how we weight freedom against fellowship will vary from case to case - as will what we are free or not to do, or the quality of the fellowship in question. Hence Sen thinks (so I understand him) that justice has to be decided on a case by case basis and that no general rule will cover all cases in advance.

However although Sen gives us no general rules - apart from fostering rational public discussion - in his section on "The Materials of Justice" - Part III of his book - he does identify and discuss the factors which should feature in a debate about justice. And his approach to the comparison of relative advantage - his 'capabilities approach' - is new and substantive, and has been influential.

PART III : THE MATERIALS OF JUSTICE

Here I will outline Sen's discussion of the factors relevant to a comparison in terms of justice: consequences, equality, freedom and individual advantage. On the latter he explains and defends his 'capability approach' - a novel and influential approach to comparing individual advantage which he had proposed in previous writings.

CONSEQUENCES - Sen includes this under his Part 2: 'Forms of Reasoning' not in Part 3: 'Materials of Justice'

Sen argues, against a purely duty based ethics, that being morally responsible must involve consideration of the consequences of one's actions. But he distinguishes between the *culmination outcome* - which just includes the eventual results of one's action - and the *comprehensive outcome* - which also includes the actions and processes whereby the final result is brought about - arguing that it is the *comprehensive outcome* that must be considered.

Sen illustrates this difference with an account in the *Bhagavadgita* of a debate between the warrior general, Arjuna and Krishna before the battle at Kurukshetra over the succession. Arjuna makes three points against fighting: 1. the enormous loss of life and suffering that will result, 2. that he will personally be responsible for killing many people and 3, that some of these people have been friends or relatives of his. These are negative aspects of the *process* of achieving a victory, the effects of which would be *culmination outcome*.

Sen thinks Arjuna is quite right to consider these things (although Krishna urges Arjuna to do his duty and fight and Krishna prevails in the end) and insists that it is hard to see that personal responsibility can be understood without regard to a sensitivity to the consequences (comprehensive outcomes) of the different choices open to one.

He notes that, because comprehensive outcomes include the personal roles and social relationships of the agents, different agents with the same basic values may differ in their judgements regarding the same situation. This he regards as unavoidable.

EQUALITY

Sen notes that almost all political philosophers value equality - but disagree about equality of what: equality in terms of one thing (e.g. of income) is often rejected on the basis that it infringes equality in terms of another thing (e.g. of rights to the results of one's own labour).

Sen remarks that this has deep roots which would be too complex to explore.

[One possible idea is that it derives from the fact that the question for ethics is, "What shall *we* do?" - rather than "What should *I* do?" - and from the associated *public* debate with its requirement that reasons count for others and hence a pressure towards impartiality:]

Sen does not resolve what it is that should be equal - but notes that he does *not* hold that it should be equality of capability - his measure of advantage - because issues of procedural fairness also count. For example: because men have a shorter life

expectancy than women, equality of capability would suggest that men should have increased access to health care. But he rejects that as counter to fair access.

LIBERTY - FREEDOM

1. Freedom is more than just another good.

Sen agrees with Rawls on this. Firstly, freedom is the freedom to attain whatever we think is of value or importance - a kind of precondition of other goods. Secondly, it is necessary to the kind of public debate which Sen argues is necessary for obtaining any objective judgement of what is just.

However he disagrees with Rawls giving freedom an absolute priority over other goods. Sen does not think that any small increase in liberty should outweigh any gain or loss of other goods no matter how great.

2. There are many different conceptions of freedom.

Freedom, like equality, has what Sen calls the 'plurality', and he introduces an number of distinctions; some his own, some from the literature.

i). Opportunity vs. Process Freedom:

E.g. if someone threatens to kill you if you leave your house tonight, then, if you want to stay in anyway, you retain the *opportunity* freedom to *do* what you want, but lack the *process* freedom to *choose* what to do.

ii) Freedom which depends on the actions of other versus that which doesn't.

E.g. The freedom of a wheelchair bound person to go out whenever they want due to the help of a supportive daughter, as against the freedom of an able bodied to go out whenever they wish with no help from anyone.

iii) Freedom which (causally) depends on one's preferences vs. that which does not.

E.g. a person may be free to practice their religion in a given state, but only because they are Christians and only Christianity is permitted. [But this seems very like the opportunity versus process freedom distinction.]

iv) 'Republican' freedom

To have this degree of freedom, which some defend (e.g. Pettit) it is necessary that one's freedom is independent of anyone else's choice of action. Thus where we can, but only because others, who could stop us, in fact do not do so, we lack freedom in this sense.

Sen regards this as making a genuine distinction, but it would imply that no-one could be helped to be freer - e.g. social care help for a physically handicapped person would not increase their freedom - which Sen regards as absurd.

Incidentally, in another part of his book, Sen defends human rights as important freedoms which we recognize by calling them 'rights'. Such freedoms would have to meet threshold conditions, not only of a generally recognized importance, but also of being susceptible to social influence (usually but not always suitable for legislation).

THE CAPABILITY APPROACH

Sen's 'capability approach' is his approach to issues of distributional. There are two questions here: -

- i) What counts as a fair distribution?
- ii) What is that we should think of as being distributed?

Capability is Sen's answer to the second question.

Usually when people think of distributional justice they are thinking of things like money, income or wealth. But do you think a millionaire with MS is *better off* or more advantaged than say a third division soccer player with a reasonably good income? How would you decide? What would you be comparing? Isn't it something to do with how far the two people are able to actually do what they want to do, achieve what they want to achieve? That, anyway, is the answer of Sen's capability approach.

He rejects the idea that we can compare the relative advantages of two people by just looking at their income or wealth, or even their Rawlsian 'primary goods', because people will vary in their capacity to use such goods to achieve what they see as the good life. A person's capacity to turn such resources into desirable outcomes will vary with their physical or mental health, the climate in which they live, even the sort of society in which they live - e.g. the amount of money needed to be able to dress so as to go in public without shame will vary, or your being a member of a group discriminated against within your society will hinder your using resources to get what or where you want.

Capability is a kind of freedom. To have a capability to do something - to eat adequately, to keep warm, to become a doctor - is to have the real freedom to do this if one chooses. Here is how Sen puts it -

The focus here is on the freedom that a person actually has to do this or be that - things that he or she may value doing or being. Obviously, the things we value most are particularly important for us to be able to achieve. But the idea of freedom also respects our being free to determine what we want, what we value and ultimately what we decide to choose. The concept of capability is thus linked closely with the opportunity aspect of freedom, seen in terms of 'comprehensive' opportunities, and not just focusing on what happens at 'culmination'. pp. 231 - 2

Sen stresses that the capability approach is only an 'informational focus' - i.e. it is what we should look at when comparing relative advantage. He notes that he is *not* saying that justice is equality of capability - since questions of fair process are independent considerations. (E.g. should men, who have a shorter life expectancy, have greater access to health care to give them an equal capacity for longevity? Or should ability be

discriminated against so as to give everyone an equal capacity to become a doctor?) And he does not think that the capability approach decides between aggregative and distributive elements of justice - i.e. it does not tell us whether we should allow some increase in disparities of capability in order gain some to increase the capabilities of everyone.

Why not consider Happiness - like the Utilitarians?

i) Because happiness is hard to measure and compare. (In this respect the capability approach is a response to those economists who have argued that it makes no sense to compare one individuals happiness with another's.)

ii) Using happiness as measure of advantage is unfair to those who are able to make the best of a bad situation. Deprived people who are, or who have learnt, to get happiness from the few pleasures available to them and from say personal relationships, are deprived nonetheless. They lack the capacity to achieve many things which are open to others.

Why not then consider Achievement itself, rather than capacity to achieve?

Because achievement, given capability, is a matter of choice. A person with the capacity to eat well may choose to fast - or just not eat well because they are so wrapped up in the novel they are writing. Or a person with capacity to access good health care may, for various reasons, neglect their health.

What matters from a political point of view is that people have the capacity to meet such basic needs - along with needs like those for education or meaningful work.

How far does Capability reflect Welfare?

Sen is content that it doesn't altogether.

He makes *two distinctions* -

i) Welfare freedom versus Agency freedom.

Welfare freedom is the freedom or capacity to achieve ones own welfare. Agency freedom is the freedom or capacity to do what one wants. These will often coincide, but some people may have ambitions beyond or instead of their own welfare. Sen cites Ghandi, but remarks that you don't have to be a Ghandi to have projects that go beyond ones own welfare.

ii) Freedom versus Achievement

This has already been mentioned - given what one can do, what one will do is a matter of ones choice.

Sen then notes that this yields four distinct concepts of advantage: -

- i) Well being achievement - achieving ones own well-being
- ii) Agency achievement - achieving what one wants to achieve
- iii) Well-being freedom - freedom to achieve ones own well-being
- iv) Agency freedom - freedom to achieve what one wants

Of these iii) and iv) are forms of capability - so that capability, as well as freedom and equality, is multidimensional.

Generally authorities and policy makers will, or should, concern themselves with welfare freedom, but individuals will value agency freedom more highly.

By way of showing the practical application of the capabilities approach, I note Sen's sub-section on 'Disabilities, Resources and Capability' - p.258. There he cites study in the UK which showed that 17.9% of individuals lived in families with an income below the poverty, but that this rose to 23.1% in case of disabled individuals - and rose again to 47.4% if account is taken of the extra income needed to ameliorate the effects of disability. Sen notes that disability can be ameliorated and much of it prevented world wide - e.g. that due to disease, malnutrition, land-mines etc. Sen remarks, "Given what can be achieved through intelligent and humane intervention, it is amazing how inactive and smug most societies are about the prevalence of the unshared burden of disability." And "The 600 million handicapped people in the world are not plagued just by low income. Their freedom to lead a good life is blighted in many different ways, which act individually and together, to place these people in jeopardy."

APPENDIX: Sen's 'Liberal Paradox'

I add a note on this since, along with the capability approach, it seems to be something for which Sen is famous - in the relevant circles.

1. The place of the Paradox in Sen's philosophy of justice.

Sen believes that Freedom, Equality and relative Individual Advantage represent what he calls 'the materials of justice' - the factors relevant to it. But he thinks that all of them have multiple aspects so that there can be conflicts within and between these factors - which makes it impossible to lay down any simple rule for deciding questions of justice.

E.g. his three children and the flute example.

Or the opportunity versus the process aspects of freedom - e.g. a person told they will be shot if they leave their house, but who wants to stay in anyway, and thus has opportunity freedom, but not process freedom.

Or the agreement about equality, but disagreement about equality of what: wealth, opportunity, rights etc.

Sen's liberal paradox shows that there is such a conflict between happiness/utility - on one interpretation of that idea - and a minimal personal liberty to choose what to do.

2. The background in Utilitarian and Economic thinking.

First, a warning! This 'background' does not come from Sen - who assumes his readers know about such things! - and my grasp of these things is tenuous at best. I give my understanding of it without any qualifications, apart from this one.

Welfare economists - those who argue about how things should be rather than just describe how things work - first took Utilitarianism as a basis. But in the 1920s economists (taking a lead perhaps from logical positivist philosophers who argued, roughly, that we could not know what was in another's mind) objected that it was hard, in fact impossible, to compare one person's happiness or utility with another's - the best one could do was to rank each person's preferences.

And so welfare economists backed off into seeing what could be made of just using each person's rankings of different options. Along these lines Vilfredo Pareto (1848 - 1923) developed the idea of what has come to be known as 'Pareto Optimality'.

The idea is that an arrangement or distribution or combination of individual choices, *B*, is an improvement on another, *A*, -is a 'Pareto improvement' - if changing from *A* to *B* means that at least one person counts themselves as better off under *B* and nobody counts themselves as worse off. Amongst a limited set of options the Pareto Optimum is that arrangement from which there are no Pareto improvements. From a limited set of options it is the choice for which there is no alternative that doesn't involve *somebody* losing out (i.e. having to settle for something they prefer less than they get in the Pareto optimal situation).

This seems a plausible way of 'operationalising' the idea of maximizing utility when you

rule out the idea that you can compare one persons degree of personal happiness with that of another, and it apparently came to be regarded *the* guiding principle of welfare economics. But Sen's paradox shows that it conflicts with minimal personal liberty.
 3. *The Paradox*

This is a mathematical theorem in social choice theory - and Sen advocates social choice theory for its clarity as a framework for considering issues of justice. But in *The Idea of Social Justice* he avoids any formal proofs or technical argument - not even using the diagram that I use below. He stresses that the account he gives in *The Idea* does not amount to a proof - just an illustration.

His example concerns two people, Lewd and Prude and *Lady Chatterley's Lover* - and example he used just after that book was first published. Lewd would like to read it, but would even more like Prude to read it. Prude would prefer not to read it, but would even more like Lewd not to read it. (Don't focus on the details of the example: its just a way of getting a relevant set of preferences.)

Hence the preferences of each of them, in decreasing order from 3 to 0 are as follows:-

	3	2	1	
0				
Lewd :	Both read	Prude read	Lewd read	Neither read
Prude:	Neither read	Prude read	Lewd read	Both read

In diagram form -

Here the left side number of each of the pair of numbers in the diagram represents Lewd's order of preference for that option and the right side number represents Prude's preference.

	Prude	Reads	Doesn't read
Lewd			
Reads		3 \ 0	1 \ 1
Doesn't read		2 \ 2	0 \ 3

Now the Pareto optimal option is that which is such that a move to another option would mean someone losing out. In this situation 2\2 looks intuitively the best compromise and it is the Pareto optimum because moving to any other option will mean at least one of other of Prude or Lewd being worse off - i.e. forced to accept a less preferred option. Clearly 1\1 is lower on both their set of preferences than 2\2. A move from 1\1 to 2\2 would be called a 'Pareto improvement' since someone gains and nobody loses, whereas a move from either 3\0 or 0\3 to 2\2 (or vice versa) would not be a Pareto improvement since *someone* would lose out. The Pareto optimum is the option from which no move is a Pareto improvement - in this case it is 2\2.

But Prude's freedom not to read it means that this will not be the outcome. Given that each has the freedom to read or not to read, clearly the outcome will be that Lewd will read it and Prude will not - even though this is lower on both their sets of preferences (1,1) than the option where Prude alone reads (2\2), which is the Pareto optimum. And so giving individuals choice over

their own actions - liberalism - is incompatible with (i.e. will sometimes conflict with) achieving Pareto Optimality.

4. The Implications

Now the importance of this is that achieving Pareto Optimality had apparently come to be regarded as sacrosanct in much welfare economics and Sen's argument shows that making this the ideal is incompatible with even a modicum of individual liberty.

Thus Sen's paradox muddies the water of welfare economics. Sen's own favoured resolution is that Pareto optimality cannot be considered as an overriding desideratum. .

Hence another neat rule for deciding what is best has to be given up - and the drift of Sen's argument is that there are no neat rules for deciding what is just or more just, but that valid decisions can, often but not always, be made in given cases via open rational well informed public debate.