

## Nonideal Theory: What It Is and What It Needs To Be \*

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People sometimes say, “Ideally, this is what we would do...” Often, someone who says this is making a throwaway remark as a preliminary to getting down to serious problem-solving. Needless to say, none of us wants to wake up some day only to realize that we spent a career elaborating what amounts to a throwaway remark.

What would theorizing have to be like in order to matter? Amartya Sen has an answer. Theorizing about justice would have to be about real problems here and now. It would have to be about real steps that real people can take here and now to make the world a better place.

Sen built his reputation by writing elegantly concise essays that got right to the point, made the point, then stopped. By contrast *The Idea of Justice* is a vast book, sprawling across the major landmarks of a long career.<sup>1</sup> There comes a time for reflecting on where one has been and what one has accomplished. This is Sen’s time.

It is also time, Sen believes, for our theorizing about justice to part ways with Rawlsian ideal theory (xi). Rawls assumes that various idealizing assumptions facilitate progress in theorizing about justice. Rawls also treats justice as concerned more with perfecting institutions than perfecting relationships.<sup>2</sup> In Sen’s parlance, Rawls is thus a *transcendental institutionalist*, as are most political theorists (6, 8, 67). Sen tries to distance himself from this. Although Sen does not radically depart from Rawls, he does provide a glimpse of what a radical departure would be like.

The contrast between ideal and nonideal theory is elusive. It expresses a concern about the point of theorizing, but the concern is actually a constellation of concerns related by family resemblance rather than shared essence. We worry about supposing that every question has an answer, or that every question has the same answer, or that everyone must agree on what that answer is, on pain of being irrational or evil. We worry about trying to discern what to do by asking what would be reasonable under ideal conditions. Critics with one of these concerns tend to have the others, too, but they are distinct.<sup>3</sup>

To Sen, the point of theorizing about justice is to help us characterize and then undo manifest injustice. So, first, for that purpose, theories of perfect justice are not required or even useful (ix, 100, 410). Second, whether a circumstance is manifestly unjust depends on what actually happens, not on thought experiments (15, 68, 410). Third, cogent reasoning about justice need not culminate in complete answers (70, 107, 135). Fourth, cogent reasoning need not converge on similar answers (xviii, 45, 106). Fifth, cogent reasoning need not culminate in final answers (89, 106, 242). Justice is a work in progress. Answers evolve, as do questions. The next five sections elaborate. The final section discusses how a sensitivity to idealization’s pitfalls informs (or should have informed) Sen’s theorizing about democracy and famine.

### I. AGAINST PERFECT ANSWERS

When evaluating the status quo, Sen says, we must compare it to available alternatives. It matters how we respond to manifest injustice, starting from where we start (25-26). We need to distinguish between better and worse, but we do not need a standard of perfection (16).

This claim is no mere platitude. Indeed, John Simmons considers it false. Sen says we need not know how high Everest is if our goal is to compare lesser mountains (101). Simmons responds, “We can hardly claim to know whether we are on the path to the ideal of justice until we can specify in what that ideal consists.”<sup>4</sup> Using the Everest metaphor, Simmons concludes

that, “which of the two smaller peaks of justice is the higher (or more just) is a judgment that matters conclusively only if they are both on equally feasible paths to the highest peak of perfect justice.”<sup>5</sup> On Simmons’s interpretation, Sen is saying that, although justice is the highest peak on a hilly terrain, we need only concern ourselves with local gradient climbing, for so long as we climb, we reach the highest peak sooner or later. Not so, Simmons observes. Blindly groping for local high ground is as likely to lead away from Everest as toward it. If we take the Everest metaphor at face value, there is no question: Simmons is right. Sen is wrong.

The metaphor is Sen’s. If it misleads as astute a critic as Simmons, Sen has only himself to blame. Sen scarcely gestures at an argument here, or even at a clear thesis. However, I think what Sen needs to say is that the terrain’s outstanding landmarks are injustices: pits in an otherwise featureless plane.<sup>6</sup> Why don’t we need to theorize about remote peaks? Answer: Because they don’t exist. Justice has no peak form. For thousands of years we postulated that it did, but we never had any reason, and we were wrong. There is no climbing to be done, no destination to seek, no problem to solve, unless people are in one of those pits. All we need to know about is the pits: what counts as being in, what counts as climbing out.<sup>7</sup> Something needs to be done—we need to be somewhere other than where we are—when, but only when, our situation has features that make for injustice.

To summarize, Sen’s claim that a theory of perfect justice is neither necessary nor sufficient for comparative judgment would be wrong if there were a destination such that arriving there is just, and failing to reach that summit is not. But there is another way of looking at it: justice is not a place we need to get to. Justice is less a property than an absence of properties that make for injustice.<sup>8</sup>

This understanding of injustices as the terrain’s only noteworthy landmarks is not Sen’s, but it is a charitably radical reconstruction of Sen’s organizing intuition that our theorizing should be about comparing alternatives starting from here, not about describing perfection.<sup>9</sup>

## II. AGAINST IMAGINARY ANSWERS

Sen claims that theorizing about justice needs to focus on how social structures are actually working, not on how we imagine them working in thought experiments (22, 67, 86). Because “justice cannot be indifferent to the lives that people can actually live” (18), justice is about what we can do to improve here and now. To illustrate, Tucson’s city government once sought to manage traffic flows by designating inner lanes of major roads as one-way lanes toward city center during the morning rush hour. During the evening rush, these same lanes reversed direction, becoming one-way lanes from city center. Between rush hours, inner lanes continued to function as left-turn lanes. The objective was to allocate traffic lanes according to need by time of day. In a world of ideal drivers, it might have been an ideal solution. In a world of predictably human drivers, it was a recipe for traffic jams, accidents, and road rage.

What went wrong? One way of describing the mistake is to say traffic managers solved an idealized problem rather than a real one. The aim of serious traffic management is a system that actually minimizes collisions, not one that would minimize collisions between ideal drivers.

Here is a second illustration. In 1896, the case of *Plessy vs. Ferguson* upheld “separate but equal” as a way of respecting the “equal protection” clause of the U.S. Constitution’s Fourteenth Amendment. The verdict stands as a monumental injustice. Why? Why do we find the phrase “separate but equal” viscerally repugnant? Is it because, in our thought experiment, egalitarian multiculturalists, committed to preserving separate cultures, didn’t agree to it? No. What burned “separate but equal” into our memory as a paradigm of injustice has nothing to do with hypotheticals, and everything to do with what happened in America in 1896.

### *Main Questions and Distracting Details*

Some theories idealize in the sense of characterizing an object of aspiration. Thus Rawls says, “Society is a cooperative venture for mutual advantage.” This is not a descriptive claim but a vision of what a society of reciprocators would be like. Must an aspiration be realistically attainable to be a genuine ideal? No. It need not be attainable. It must, however, be worth a try. Many things are *not* worth a try. Thus, if we are on the roof of a tall building and I say, “Ideally, I would fly like Superman” and you reply, “Well, it’s worth a try” you will be saying something false. Not being worth a try makes my vision of Superman a daydream or a throwaway remark, not an ideal.<sup>10</sup> So, where X is not even worth a try, X does not imply reasons for action, and thus is not an object of aspiration; it is instead normatively inert. However, defining an objective that *is* worth a try, even if ultimately unattainable, is not always a mistake, and is not what Sen rejects.

A second way to idealize is to simplify. When Rawls assumes bargainers choose for a closed society, he admits that this “is a considerable abstraction, justified only because it enables us to focus on certain main questions free from distracting details.”<sup>11</sup> As Rawls realizes, idealizing is costly. Still, every theory simplifies, just as every map does, and for the same reason. We cannot draw a map without choosing what to leave out, and an apt abstraction isolates what is most germane to successful navigation. Sen does not reject this type of idealizing either (although he does reject the assumption that society is closed).

Rawls idealized in a third way, however, igniting contemporary debate over ideal versus nonideal theory, when he supposed that, “persons in the original position assume that the principles they acknowledge, whatever they are, will be strictly complied with and followed by everyone. Thus, the principles of justice that result are those defining a perfectly just society, given favorable conditions. With the presumption of strict compliance, we arrive at a certain ideal conception.”<sup>12</sup>

A Newtonian idealization may, for some purposes, profitably ignore wind resistance, but ignoring wind resistance when predicting the behavior of a parachute would be ignoring a “main question” rather than a “distracting detail.” More generally, there can be such a thing as an “ideal solution,” but for S to be an ideal solution to problem P, it must first be a solution to problem P. One thing we cannot set aside as a distracting detail is the actual problem.

If the problem is to identify a framework for mutually advantageous cooperation among real people, then we must avoid anything akin to managing traffic for ideal drivers rather than for real ones. A solution to this problem specifies terms of engagement that actually help people launch mutually advantageous ventures. If a proposed solution doesn’t help, there is no further question about whether we could imagine it helping under ideal circumstances.

In general, setting aside a variable that does not affect the conclusion when reintroduced is probably legitimate. Setting aside a variable that changes everything when reintroduced, thereby demonstrating the variable’s importance, could likewise be legitimate, so long as the variable actually is reintroduced and its centrality acknowledged. Ronald Coase won a Nobel Prize for investigating the efficiency of clear property titles under conditions of zero transaction cost. Coase showed how an imperative to minimize transaction costs drives the evolution of property law—a remarkably illuminating exercise.

It would, however, be misleading to see Coase’s exercise as indicating (by showing what is efficient in a world without transaction cost) what is even approximately efficient in a world like ours. Nothing of the kind follows. Likewise, it would be misleading to see Rawls’s exercise as indicating (by showing what is fair in a world without compliance problems) what is even approximately fair in a world like ours. Nothing of the kind follows.

A crude sort of nonideal theorist may say that however illuminating Rawls's abstraction from compliance problems may be, there comes a time, as Rawls knew it would, to reinsert a compliance variable and get on with determining how to enforce Rawls's principles. To Sen, by contrast, the trouble with ideas about what is fair in worlds without compliance problems is that (in my words) they are ideas about an ideal problem, not a real one. They do not define an approximate target that we "tweak" for worlds of partial compliance (7, 8, 61, 90, 206, 312).

Sen is right. An appropriately radical break with idealized compliance begins by noting that compliance is partial, then goes on to note something more troubling. Namely, real world compliance is contingent. It is not only partial but variable.<sup>13</sup> Even more crucially, compliance is an endogenous variable: the extent of compliance is not externally determined but is instead a function of the principles chosen. When we choose a principle, and any given way of trying to put it into practice, we choose a compliance problem at the same time.<sup>14</sup> We cannot set aside compliance as something to address later, because our task of choosing a principle we can live with is a task of choosing a compliance problem we can live with.

The best we can hope for from setting aside compliance problems is that doing so is idle and nothing turns on it. Anything that does turn on it will be a mistake.

### III. AGAINST COMPLETE ANSWERS

What are we doing when we theorize? What is the difference between theorizing well and theorizing poorly? As a general rule, theorizing is not philosophical analysis. As a general rule, theorizing is not an attempt to formulate necessary and sufficient conditions. Successful theorizing is not a matter of articulating propositions that resist counterexamples.

#### *Theories As Maps*

Why not? An argument can withstand philosophical scrutiny, or not. What other test is there? My answer: theories are not arguments, sound or otherwise. Theories are maps.

My theory that theories are maps is itself a theory. According to my theory, the theory itself should be judged by whether it illuminates its subject matter (namely, the topic of what we are doing when we theorize about justice). Not every reader will find my map-theory illuminating, but some will.<sup>15</sup> That is how it is with even the best of maps.

Like a map, a theory is a functional artifact, a tool created for a specific purpose. Thus, a theory of justice may be incomplete, first, in the sense of being a work in progress, like a map whose author declines to speculate about unexplored shores, never doubting that there is a truth of the matter yet self-consciously leaving parts of the map blank.

Second, a theory may be incomplete in the sense of being a distilled representation of relevant information, designed to help us understand a given terrain. Because theories are maps, all theories abstract from known but inessential details. A map *should* be a simplification for purposes of isolating general features reasonably expected to matter to users in normal cases. It *should* abstract away from details for which the map's users have no anticipated need.

Third, a theory may be incomplete in the sense of leaving out a terrain's ephemeral features. The location of a particular stalled car or closed bridge may decisively affect what a motorist should do next, yet even so, such details do not show up on the map. Such details, despite being crucial in a given case, do not belong. To think otherwise is to misunderstand what sort of tool a map can be. Maps inevitably are dated, incomplete representations of the truth about their terrain. Accordingly, maps can supplement, but cannot begin to make unnecessary, alertness and wisdom regarding changing road conditions. The terrain itself is the truth. A map is not a truth maker but a truth tracker, at best providing useful but fallible

guidance in navigating what is real, namely the terrain.

Sen says, uncontroversially, that the goal of “describing any state of affairs in its entirety is not credible” (215). However, it is not only maps that are incomplete. The terrain being described (that is, justice itself) can be incomplete as well. (See Section V.)

### *Justice As Traffic Management*

One point (not the whole point) of specifying what people are due is to manage traffic, and thereby enable people to form, and count on, mutual expectations. The practices and principles of justice are like traffic lights. Traffic lights move traffic not so much by turning green as by turning red. If all lights were green, we would have gridlock. Red lights, by defining when a move is unjust, establish rights of way that enable people to pack together into cities and still end up being vastly more capable—more free, Sen would say—than they would be living alone or in isolated villages. Red lights mobilize societies as mutually advantageous, more or less spontaneously ordered, cooperative ventures.

When there are only a few traffic lights, well placed, they create a liberating set of mutual expectations, and traffic moves smoothly. Place traffic lights every fifty feet, though, and our community will be stifled by the very gridlock we sought to avoid. Practices of justice—red lights that say when the right to use the intersection belongs to someone else—can be frustrating, even bureaucratic, especially as a community becomes crowded, but the game they create is not zero-sum. When the system works, nearly all of us get where we are going more efficiently than we otherwise would. Note that the system stops working—stops regulating traffic in a society of equal citizens—if the light that some people face never turns green.<sup>16</sup> This kind of equality is not a question-begging premise of radical egalitarianism. On the contrary, it is presupposed by any theory that treats justice as having anything at all to do with giving people a chance to live in mutually respectful peace.

Traffic lights don't do everything. To the untutored eye, they do hardly anything. They just sit there, blinking.<sup>17</sup> Above all, it is not their job to choose our destination. They neither express nor imply any opinion about which of us has the more important destination. They are in this way egalitarian, impartial, and fair. To instead suppose justice is about which of us has the better destination—that a fair umpire's role is not to let the players play but to make sure the good guys win—is to suppose that justice is something other than impartial.

Unsurprisingly, then, the theorists I know do not expect theories of justice to tell them what grade to assign, whom to vote for when the hiring committee meets, or whether to cancel class. You may have a mechanical procedure for determining grades, but when a student asks to take the final two months early because she has leukemia and may not be around that long, the answer has to come from you, not from your procedures, not from your theories, and (Sen might stress) not from your institutions. The wisdom and insight that help us see what to do in concrete cases are not simply precipitates of a theory. Yet, Sen observes, incompleteness is not an enemy of content. A theory can say plenty without pretending to say everything (104).

## IV. AGAINST CONVERGING ANSWERS

Likewise, a theory can say plenty without pretending there is one uniquely correct theory. Just as philosophers need to theorize for a world of imperfect compliance—lest they find themselves solving an ideal problem rather than a real one—they need to theorize for a world of imperfect convergence. Even if everyone were motivated by an understanding of justice, they would not be motivated by the same understanding.<sup>18</sup> Even if everyone accepted the same statements word for word, they would have different views of what they were accepting.

No map represents the only reasonable way of seeing the terrain. There is no such thing as the one compellingly correct way to draw the map. We would be astounded if two cartography students, working separately on mapping a terrain, drew identical maps. It would not happen. This is why Sen is right to say that theorizing does not lead to consensus (46, 58).<sup>19</sup>

There is only so much that philosophy can settle. It is a truism in philosophy of science that for any data set, an infinite number of theories will fit the facts. So, even if we agree on particular cases, we still will disagree on how to pull those judgments together to form a theory. Sen says it is not a theory's job to yield unique principles of justice (56, 198). Social contract theory, however, presumes on Sen's view that there are unique principles on which we would converge if only we were reasonable. Thus it "cannot easily accommodate the co-survival of competing principles that do not speak in one voice" (46, 58).<sup>20</sup>

Real world cooperation is about people with different conceptions of justice learning to live together, and learning to make their communities better places to live—better even for people with different conceptions of justice.<sup>21</sup> When we check how things are going, here is what we see: we see how people who don't agree on how to live are getting on with living. What we are checking is whether people are able to live together in such a way that each has reason to stay and to be a part of what makes their community work, disagreements notwithstanding. Liberal justice shapes society into a place where people feel at home without having to buy each other's conception of justice.

So, after all the reasoning is done and we are left with our rival conceptions and unresolvable disagreements, do we get to steamroll those who disagree—those who in one way or another do not want to buy what we are selling? In effect, there are two ways to agree: we agree on what is correct, or on who has jurisdiction—who gets to decide.

Freedom of religion took the latter form; we learned to be liberals in matters of religion. So too with freedom of speech. For these questions, our social contract consisted of our reaching consensus not on what to believe but on who gets to decide. These are among our signature successes in learning how to live together. Liberalism is in part a confidence that the greater the range of beliefs made to feel at home in a society, the more intellectually vibrant, materially prosperous, and morally progressive a society ultimately will be.<sup>22</sup>

In summary, when you start to think that what you call justice authorizes you to pursue your agenda at the expense of people who see things differently, you are crossing a line that should not be crossed.<sup>23</sup> Whatever is on the other side of that line, it is not a cooperative venture for mutual advantage.<sup>24</sup>

### *Being of Two Minds*

When Sen says, "There is no compulsion, as is sometimes assumed, to eliminate every reasoned alternative except exactly one" (xviii), we can read the thought as concerning the realm of the intrapersonal as much as the interpersonal (241). "Complete resolution is neither a requirement of a person's own rationality, nor is it a condition of reasonable rational choice" (392). In other words, even for a single decision maker, the optimal number of maps to have in the glove compartment is not necessarily one, and having more than one map is not enough to convict a motorist of inconsistency.

Conflict shows where decision is not straightforward—where serving the common good, for example, does not neatly line up with respecting the separateness of persons. Admitting that various things matter without always pointing in the same direction is not a mistake. If relevant standards sometimes point in different directions, that is life. Complexity and ambiguity are not theoretical artifacts.

Admittedly, if you have two maps (one says track virtue, another says track welfare),

they could conflict. Possible response: get rid of one. But finding oneself facing a conflict that cannot be resolved without discarding information is itself a kind of information. To know where maps clash is to know where formulaic thinking cannot be trusted. That is how we know when life has dealt us cards that it will be hard to play with clean hands.

#### V. AGAINST FINAL ANSWERS

We noted that a theory can say plenty without saying everything. The point has an interesting temporal dimension: namely, a theory can say plenty without saying all that might some day need saying. Changing circumstances raise questions that had not previously arisen, and thus had not previously needed answering.

Justice is a work in progress. As H.L.A. Hart famously noted, law has an open texture, and its openness is not a defect.<sup>25</sup> A legal system's point is to solve coordination problems now and in the foreseeable future. It is not the place of a legal system to be solving problems of possible worlds. Judges settle disputes as they go: real disputes as brought before their bench by real litigants. In the process, evolving legal systems change what citizens have reason to see as their due, thus changing the face of justice, not only the face of positive law. Systems evolve. We cannot anticipate every novel conflict that some day will require further elaboration, discovery, or invention. To Sen, "it is not defeatist for an approach to allow incompleteness of judgments, and also to accept the absence of once-and-for-all finality" (89).

As Sen adds, theories and values must be revisable (106, 242). Incompleteness can amount to a lack of answers to questions whose time has not yet come. The test of a community's system of law is not whether it answers every question in advance but whether it settles what citizens should expect from each other as questions arise. Common law judges grope toward completeness as the need arises. Further, a judge's way of resolving conflict tends to be nothing like deciding who has the better destination. By settling who has the right of way, not who has the better destination, judges settle disputes without requiring either litigant to accept a verdict of "less important."

A theory of justice may give us parameters, some of which may be more or less timeless. Even so, details of evolving practices are in the hands of communities, not theories (15).<sup>26</sup> Part of living in a community is tolerating certain levels and kinds of inconvenience and irritation as the reasonable price of living and working in close proximity. We live together because it's worth it. But communities, not theories, decide what people should tolerate. We don't decide as theorists whether the speed limit is fifteen miles per hour, or whether it is okay to dispose of garbage by burning it. We decide as communities.<sup>27</sup> We decide not by theorizing so much as by negotiating, consulting, imploring, and voting. Sen says there is no such thing as "discussionless justice" (89). He is probably wrong about that at a sufficiently abstract level, but he is (perhaps uncontroversially) right when it comes to what he cares about, namely forming and legitimating mutual expectations on the ground. Thus, when Sen asserts that judgments of justice cannot be an entirely private affair (134), we can read this not as question begging, but rather as something for which there is a transcendental argument. If a society aims to specify terms of engagement that enable people to coordinate well enough to cooperate, drivers will not be able to coordinate unless they know they share an understanding of who has the right of way. Even when drivers are not literally "discussing," their knowing how to coordinate presupposes that something in their understanding is essentially public.

#### *Justice Evolves*

In *Hinman vs. Pacific Air Transport* (1936), a landowner sued, asserting a right to stop

airlines from trespassing, that is, flying over his property. Ninth Circuit Judge Haney was in a predicament: on one hand, a right to say no is the backbone of a system of property that in turn is the backbone of cooperation among self-owners. Therefore, repudiating Hinman's right to block trespassers was out of the question. The right to say no is an institutional structure that facilitates community by facilitating commerce in the broadest sense. A right to say no secures a right to come to the market and contribute to the community, thus promoting trade, thus promoting progress. When people have a right to say no, and to withdraw, then they can afford *not* to withdraw. They can afford to trust each other. That is, they can afford to live in close proximity and to produce, trade, and prosper, without fear.

Yet, the right to say no cannot be a weapon of mass destruction. The right to say no is supposed to facilitate community, not enable people to hold a community for ransom. It is meant to be a right to decline to participate in a transaction, not a right to forbid others to transact. But as Judge Haney saw, Hinman's interpretation of his right to say no implied a right to gridlock air traffic, not merely a right to decline to participate. The cost of airlines negotiating permits with every landowner would bring air traffic to a halt. It would have been like giving every homeowner in town the right to erect a red light and charge a toll for turning it green. The edges of the right to say no had to be clarified.

The case illustrates that property's purpose as a means of production has to condition the contours of justice. In *Hinman*, whether justice underwrites a right to say no that extends to heaven depended on whether such extension was a viable way of managing the rapidly evolving commercial traffic of a peaceful and productive community of sovereign, individual equals.<sup>28</sup> Judge Haney ruled that the right to say no does not extend to heaven but only so high as a landowner's actual use. In the aftermath of his ruling, navigation easements were treated as allowing governments to allocate airspace corridors for transportation purposes.

Common law judges need to formulate simple rules that put litigants in a position to get on with their lives, with the tools to avoid or minimize future conflict. In *Hinman*, a system of property rights had come to be inadequately specified relative to newly emerging forms of commercial traffic. Judge Haney was trying to take rights seriously. He succeeded. His verdict was in accordance with a conception of justice that we can *afford* to take seriously.

### *Hypotheses, Not Principles*

Like Sen, G. A. Cohen departs from Rawls, but in the direction of more rather than less idealized theory.<sup>29</sup> To Cohen, if bargainers were as committed to justice as Rawls stipulates, they would forget about incentives and execute the radically egalitarian leveling that (to Cohen) justice intuitively requires. Sen disagrees. Bargainers behind Rawls's veil pick a basic structure not only for themselves but for whole, real communities—for all citizens, not only those whose compliance is a given. We can stipulate what we like about an imaginary bargainer's psychology, but that does not change a bargainer's task, which is to choose a basic structure in light of whatever incentives, opportunities, attitudes, and beliefs (whether exogenous or endogenously generated by the chosen structure) will be features of real communities when the veil is lifted and life goes on. Thus, contra Cohen, our Rawlsian bargainer is not hypocritically catering to *her own* propensity to follow the money. Rather, she chooses for everyone, and therefore chooses for fellow citizens who populate her world (our world) here and now: humans who are exactly what they are. Nothing can here be stipulated about people other than what is actually true of them. When Rawls stipulates that moral motivation is a scarce resource (which, if used well, will benefit all, including the least advantaged), Cohen treats the stipulation as if it were an unreasonable demand. But it is not a demand, reasonable or otherwise. It is a statement of fact. Perhaps it is incorrect. Rawls might be wrong to suppose that people respond to

incentives. He might be wrong to suppose that how people respond will impact the least advantaged. But when he supposes that these things matter, he is not being hypocritical.

None of this precludes forming aspirations—visions of how good a human being can be. (One thing that can be true of people here and now is how good they can be.) But what kind of theorizing follows from taking aspiration seriously? Serious aspiration leads to theorizing about how to get there from here, not to fantasizing about traffic management schemes that could handle ideal drivers but not real ones.

In one key way, Sen and Cohen stand together in opposing Rawls. Namely, like Cohen, Sen sees justice as about individual obligations, not only institutionally mediated obligations (as per his response to Barbara Herman, at 413n). To Sen and Cohen, the idea that basic structures are where the action is encourages a kind of hypocrisy, implying that moral agents can discharge their duties with cheap talk about how society ought to be. But Rawls realizes that justice applies to individual choice; he simply is more concerned about a basic feature of a liberal order, namely that it treats individual flourishing as morally permissible. There must at some point be some answer to “how much should I sacrifice?” other than simply “more.”

In his final book, G. A. Cohen imagines friends on a camping trip and envisions them choosing to treat their gear as communal property versus charging rent when anyone wants to borrow something. Cohen says we would hate to be on the latter kind of trip.<sup>30</sup>

Maybe so, but Cohen’s thought experiment, imagining friends on camping trips, is Cohen’s way of modeling justice within a close-knit group. If we aim instead to model justice in a community whose members may or may not know each other and may or may not have a common mission, what we need to imagine is not friends on a camping trip but a campground where strangers come and go. In that larger community, there may be resources, like the campground’s water pump, that can feasibly and desirably be managed communally. When would it work to manage a water supply as an open-access communal resource? Answer: when water is not scarce. Introducing scarcity into the model introduces a compelling reason for restricting access so as to limit the tragic overuse that is characteristic of an unrestricted commons.<sup>31</sup> Indeed, in large-scale, real communes, everyone watches scarce communal resources like hawks. Nothing is simply there for the taking. Nothing is freely given.<sup>32</sup>

Cohen says he imagines a desirable (if not yet feasible) world where “I treat everyone with whom I have any exchange or other form of contact as someone toward whom I have the reciprocating attitude that is characteristic of friendship.”<sup>33</sup> The trusting, reciprocating friendship that Cohen imagines is possible, even common, but not in the institutional setting to which Cohen is committed. Feasibility is not the issue. Large-scale communal systems are feasible, but desirable communes are not imposed by an iron fist. Communes in free societies emerge continuously and spontaneously among people with shared causes. Suppose Cohen is right that we would hate the kind of camping trip where the gear we want is rented, not freely shared. If Cohen is right, that would explain why such camping trips are imaginary in free societies: no one volunteers for them. The thing is, no one volunteers to be sent to the kind of camps we find in communist countries, either, but they by contrast are all too real.<sup>34</sup>

Sen would agree that when we reject radical equality because of what historically happens to people when we try to enforce it on a large scale, what we are rejecting for humanitarian reasons is not justice, but rather a disconfirmed hypothesis about justice. Learning that implementing X would have appalling consequences tells us something—not to give up on justice but to give up the hypothesis that X is a principle of justice.<sup>35</sup>

This suggests an interpretation of Rawls’s project that can withstand (and profit from) much of Sen’s criticism. That is, Rawls’s thought experiment does not yield principles, but hypotheses about principles. We construct hypotheses by seeing how things play out in our

imagination, but our hypotheses are not tested, and thus are neither confirmed nor disconfirmed as hypotheses about justice, until we see how they actually work. Rawls's many idealizing assumptions thus become plausible procedures for generating hypotheses about principles rather than question-begging procedures for generating principles themselves.<sup>36</sup>

## VI. KEYS TO A FAMINE-PROOF SOCIETY

In 1958-61, China's "Great Leap Forward" caused recorded history's largest famine. By Sen's estimate, thirty million died (342). The runner-up in the 20<sup>th</sup> century is Stalin's genocidal collectivization of the Ukraine, which caused perhaps seven to ten million deaths from starvation in 1932-33, as a world looked on without protest. We could ask whether communists (and progressives everywhere who closed ranks and pretended, ignoring the screams of thirty million Kitty Genoveses) had their hearts in the right place, but Sen's answer is that having one's heart in the right place entails caring about what works.

So, what works? Sen's thesis is that of the many famines in the twentieth century, not one occurred in a democracy. In truth, there were famines in nominally democratic Niger and Zimbabwe, so Sen more precisely says there were no famines in a *functioning* democracy. He adds, "functioning is the key word here" (343n). That is, democracy is not the key word. Sen implicitly admits this when he says the famine-eradicating West is not particularly democratic, "especially when the history of democracy is seen in terms of public reasoning" (335).

Although the "practice and reach of democracy can be quite imperfect" (349), part of democracy's secret is that, when it is working, it limits the reach of top-down rulers, thereby making space for decisions to be made in decentralized fashion by farmers, truckers, and grocers on the ground, where mistakes are made, and paid for by the individuals who make them rather than on a scale that guts whole communities. This, I would guess, is why democracy correlates strongly with the end of famine. "The history of famines has, in fact, had a peculiarly close connection with authoritarian rule" (342).

In any case, whatever the West's secret, that secret is missing in places like Niger and Zimbabwe, which have the trappings of democracy. Conversely, factors that eradicated famine in the West are also present in places like Singapore and Hong Kong, which accomplish what free countries accomplish without the trappings of democracy.<sup>37</sup>

### *Ideally, No Corruption*

Part of what Sen means by functional democracy is a society where there is a free press. In an ideal theory, it is hard to explain the point of a free press. It sounds like a liberal affectation. In a nonideal world, though, a free press is an imperfect but crucial check on problems of limited knowledge, limited power, and limited decency.

As Sen says, a functional democracy consists in part of an attitude of ordinary citizens, manifested in discussion, transparency, and "unrestrained and healthy media" (82, 335). As that unrestrained attitude decays, and society slides into tyranny, we see a transformation: we see public intellectuals scorning a news network not when it fawns over a ruler but when it doesn't; we see investigative journalists exposing CEOs not for colluding with government but for standing against it.

Sen finds it crucial that leaders be made to listen. A complementary key, Sen should have mentioned, is that citizens *don't* need to listen to those who presume to lead. A core part of a liberal rule of law is not being subject to a tyrant's arbitrary will. Farmers must be free to ignore orders to cease growing food, to vacate their land to make room for worker cooperatives or multinational exporters, or to abstain from bringing food to market and competing with a

politically anointed cartel. A leader's duty to listen, and a citizen's right to ignore, are crucial limits to creeping tyranny, but the right to ignore is the more definitive characteristic of non-authoritarian society, and probably also the more consistently functional property.

As Sen knows, few politicians are far-sighted (340). Often, their close-up vision is not so good either. Isolated from local circumstances, they cannot see what they are doing or what needs doing. There was nothing unique about India's governance in 1943, and Sen (showing admirable restraint) does not single it out for condemnation. Colonial authorities were *exporting* food from Bengal (338). Worse, "New Delhi had suspended the trade in rice and food grains between the Indian provinces, so that food could not move through legitimate channels of private trade despite the much higher price of food in Bengal" (339).

Sen warns against idealizing rulers—against assuming principles will be implemented by philosopher kings. If those who successfully compete for power tend to be misinformed or dishonest, should this affect how much power we want them to hold? Does anyone need to be told that the answer to this question is yes?<sup>38</sup> In any case, we learn the answer by thinking about those who rule countries like the United States, or Libya. Let us assume what is historically true: any power we create will be held by people like that. Accordingly, an ideal theory that matters will answer the question, "Ideally, how much power would be wielded by people like that?" and not "Ideally, how much power would be wielded by ideal rulers?"

### *Ideally, No History*

Another key idealization simplifies questions of just distribution by assuming we arrive simultaneously at a bargaining table to divide a pie to which no one has any prior claim. In our world, though, any justice we can afford asks how we give people their due in the face of this momentously relevant fact: whatever pie is sitting on the bargaining table, it did not get there by itself. Sen focuses on capabilities, but his focus seems limited to the subtopic of how to *develop* capability. He says little about how to *respect* capability. This may be an oversight, for it cannot be a topic about which Sen does not care. He has to care whether societies that revere manifest capacity are also societies where people develop latent capacity. He has to care because it bears on where famines occur. Do famines occur where being highly productive is highly rewarding, or where it isn't?

To idealize away the pie's history is to idealize away human capabilities without which there would be no pie to divide. What we would be resolving to ignore is not a distracting detail but is instead as "main" as main questions can get. Treating the dividing of the pie as if it were up to us amounts to treating how much respect the pie's bakers command as if it were up to us, which is very close to assuming they command no respect at all.

In our world, people do not begin life by dividing a pie that somehow, on its own, made its way to the bargaining table. We start with goods some people have helped to produce and others have not, already possessed and in use by some people as others arrive.<sup>39</sup> In our world, when any bargainer arrives on the scene, much of the world already is possessed by others by virtue of lifetimes of work, and workers do not find it "arbitrary" that they are the ones who did the work.<sup>40</sup> In their eyes, before we start slicing pie, we need to explain what we did to make the pie ours to distribute.

Productivity, like compliance, is an endogenous variable. Society's basic structure affects how productive people can be, and how productive they aspire to be. To choose a basic structure is to choose a pattern of productivity. Respecting what people do (treating them as persons rather than as accidental confluences of two key factors of production: ingenuity and heart) is the way to promote a prosperous future. A democracy that does this is doing what it must do to be a place where famines do not occur.

### *Ideally, Good Neighbors Without Good Fences*

A typical departure for Rawlsians who want to be (to a non-Rawlsian) ever so slightly rebellious is to say the difference principle should be applied globally. Indeed, we must acknowledge that the world's poor are not so different from us; neither are their needs so different. Like us, they don't need huge wealth transfers. They certainly don't need us to enrich the dictators who oppress them. Like us, though, they do need to avoid commons tragedies.

To Sen, Rawls's stipulation that bargainers choose principles for a closed society is parochial. To be parochial is to have an insufficiently comprehensive perspective and thereby fail to see the big picture (403). Regarding "reasoning that stops at the border," Sen says, "the ethical basis for giving such a hugely disharmonious priority to thinking only about our neighbors is itself in need of some justification" (171). Stunningly, Sen never acknowledges that only a parody of impartiality would say justice requires us to maneuver ourselves into a commons tragedy on a scale vast enough to take down the whole planet. It is a mystery why Sen ignores this pivotal consideration, given that he won a Nobel Prize for documenting that 20<sup>th</sup> century famines never were caused by a lack of food, but always by imploding distribution mechanisms. Famine is caused not by eroding soil but by eroding rights. Sen notes that a human rights ethic might be better at securing a food supply than would a utilitarian ethic (362). In particular, farmers have to be able to count on their crop not being confiscated. Where farmers cannot count on that, they don't plant crops, and famine results.

Sen also says, "A pronouncement of human rights, as interpreted here, is an assertion of the importance of the freedoms that are identified and acclaimed" (376). Not so. Given Sen's view that we are to look at what happens, the question is not whether a freedom is important but whether rights rhetoric fosters it. Sometimes it won't (364). For example, in the desert, it is obvious both that water is vitally important and that a guaranteed right to free water is the opposite of what ensures that desert dwellers who need water will have it. What secures access to good water is raising the price until consumers start conserving.<sup>41</sup>

### *A Better Destination*

Suppose we agree with Sen that articulating a standard of perfect justice is a chimerical theoretical goal. Suppose we treat justice as a solution to a practical problem of articulating terms of engagement for a society of free and equal citizens who, if they dislike the terms, have a right to walk away, taking with them (at a minimum) the rudiments of their personhood, including their talents. Perhaps we fed them and educated them, but nothing can make them our property. If we want them to stay freely, we must offer terms that make them want to stay.

Suppose we agree that robust disagreement is part of the landscape. There will never be consensus on who has the better destination, and the fact that people disagree with us affects what we should choose and for whom we should presume to choose. Western liberalism defines boundaries that settle who gets to make the call, which underlies liberalism's relative success. Suppose these boundaries, when drawn well enough, define spaces within which we mind our own business in a way that results in our having customers: that is, people who freely seek us out because they are better off with us than without us. In that case, there will be peace. There will be industry. And there will not be famine.

Notice that this will be because we got the institutions right. Sen rejects transcendental institutionalism. Yet, at this most practical level, where we ask how to avoid starving, problem solving is about capability-fostering institutional design. At this juncture, however, Sen becomes the idealist, offering cosmopolitan discussion and pious reminders about the moral insignificance of borders as keys to consensus on global justice.<sup>42</sup> But how much consensus do

we want to be in a position of needing, given Sen's account of "incurable" and "devastating" obstacles to such consensus (58)? Should red and green lights settle jurisdictions without dictating destinations? Or should we aim to be like friends on a camping trip: stopping at every intersection, getting out of our cars, and not proceeding until we agree on a destination, or until colonial governors or distant bureaucrats decide for us? But the latter cannot be. We can't agree, and we don't need to. Sen knows from his Bengal experience that what people need is to be free to decide for themselves how to feed their families. People survive droughts, floods, and fires, but what kills them by the millions is making it illegal to produce for purposes of their own.<sup>43</sup>

The West eliminated famine. The question is how. Sen seems to think the secret has to do with the West securing a right to be fed. Feeding people undoubtedly has saved many lives in dire emergencies, but when it comes to explaining why so many countries no longer suffer from chronic, large-scale famines, it is hard not to notice that the real secret has more to do with securing the right to produce than the right to be fed.

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<sup>1</sup> Citations in the text are to Amartya Sen, *The Idea of Justice* (Cambridge: Harvard University Press, 2009).

<sup>2</sup> As Onora O'Neill puts it, "Sen's central charge is that Rawls, followed by many other liberal theorists of justice, concentrated on the institutions and structures that justice requires, but said too little about lives led within those structures." See O'Neill's review of Sen in *Journal of Philosophy* 107 (2010) 384-88, at 384.

<sup>3</sup> I thank Chad van Schoelandt for a pivotal discussion of the topic.

<sup>4</sup> A. John Simmons, "Ideal and Nonideal Theory," *Philosophy and Public Affairs* 38 (2010): 5-36, at 34.

<sup>5</sup> Simmons, 35.

<sup>6</sup> There are passages suggesting otherwise, but I would not try to account for everything Sen says. I extrapolate from remarks such as, "the demands of reasoned practice can, in one way or another, live with a good deal of incompleteness or unresolved conflicts" so long as the practice is "at least not manifestly unjust" (135).

<sup>7</sup> I thank Danny Shahar and Will Braynen for observing that alternative B might be far better than alternative A without entailing that moving from A to B will be an arduous uphill climb. A revolution might involve a civil war, but a sufficiently graceful Nelson Mandela might find a way to make the move in relative peace.

<sup>8</sup> We are free to ignore this difference, saying one topographer's pit is another topographer's peak. My point is not that one must acknowledge a difference on pain of being irrational, but only that there is a difference. The bottoms of pits, my reconstructed Sen would say, are places where we see by looking that we can and must do better. Sen sometimes seems to imply that solutions would be as obvious as problems, if only we would stop being parochial, but in a world of motivated disinformation and of people who look at cooperative possibilities and see only zero sum games, this is not so. The point of theory and of historical knowledge is to go beyond dangerously superficial thinking about what actually gets people out of pits.

<sup>9</sup> Sen rejects transcendental institutionalism not only for lacking realism but for overemphasizing institutions. A basic structure is a playing field and a referee. Institutionalism checks whether the field is level and the referee impartial, but to Sen, that cannot be where the questions end. There is no such thing as basic structures doing all that needs doing, leaving nothing for neighbors to do but to be mere spectators watching events unfold. The basic structure's job is to get normal cases right. Without denying this—without denying that "hard cases make bad law"—Sen sees a different kind of justice, *nyaya*, as responsive to all cases, not only normal cases (258, 261).

<sup>10</sup> Imagine me saying, "I want my children to have everything." If I have reason to believe that showering my children with unearned wealth would corrupt them, then straightforwardly "giving them everything" is not even worth a try. I may still want to help, but if I truly care about them, I need to take a hard look at what really helps. By comparison, suppose I want the least advantaged to have everything, or at any rate so much that trying to give them more would leave them with less, but suppose also that I believe that treating them as entitled to that much would ruin them just as surely as it would ruin my children. If I care about them, then this too is an issue that requires me to take a hard look at what really works, and to leave behind my philosophical comfort zone. For example, I may need to ask which circumstances have a history of actually encouraging people to aspire, to take responsibility, and ultimately to flourish, so that along dimensions that matter (such as life expectancy) they or

- their children may some day bear no resemblance to the “least advantaged” class of bygone generations. But see “Utopophobia” In David Estlund, *Democratic Authority* (Princeton: Princeton University Press, 2007).
- <sup>11</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996) 12.
- <sup>12</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard Press, 1971) 351.
- <sup>13</sup> David Schmitz, *Rational Choice and Moral Agency* (Princeton: Princeton University Press, 1995) 183. See also Chapter 7 of John Tomasi’s *Free Market Fairness* (Princeton: Princeton University Press, forthcoming).
- <sup>14</sup> I thank Guido Pincione for helpful discussion.
- <sup>15</sup> See David Schmitz, *Elements of Justice* (New York: Cambridge University Press, 2006) 6.
- <sup>16</sup> I thank Sarah Smallhouse for helpful discussion.
- <sup>17</sup> The image is Jason Brennan’s, from *A Brief History of Liberty*, 134.
- <sup>18</sup> One way of interpreting Rawls’s later worries is to say compliance would be a withering problem *even if* compliance could be taken as given. Why? Because agents whose compliance is a given would be committed to their own principles, not to each other’s. Their very compliance could make them feel morally bound not to take each other’s principles seriously. I thank Jerry Gaus and Chad Van Schoelandt for helpful discussion.
- <sup>19</sup> When discussing value, too, Sen notes that if two people play different roles in bringing about a state of affairs (suppose one person is a team’s star player while another is the equipment manager), then “it would be rather absurd to make the odd demand that the two must value the state of affairs in exactly the same way” (220).
- <sup>20</sup> Gerald Gaus (“Social Contract and Social Choice,” *Rutgers Law Journal*, forthcoming in 2010, manuscript p.11) convincingly argues that contractualism is not committed to converging on optimal justice.
- <sup>21</sup> See especially Gerald Gaus, *The Order of Public Reason* (New York: Cambridge University Press, 2011).
- <sup>22</sup> See the chapter on freedom of religion in David Schmitz and Jason Brennan, *A Brief History of Liberty* (Oxford: Wiley-Blackwell Publishers, 2010).
- <sup>23</sup> Is *democracy* on the other side of that line? It is a good question. (I thank a reviewer for asking.) I would say yes, in the case of indefensible forms of majoritarian tyranny. Constitutional democracy, however, has the potential to stay within the bounds of mutually advantageous cooperation. See Jason Brennan, *The Ethics of Voting*, Princeton: Princeton University Press (2011).
- <sup>24</sup> If you find yourself wanting to say, “But action X would not make the person worse off relative to that person’s legitimate baseline as defined by my theory,” then intuitively you know that action X would cross the line.
- <sup>25</sup> H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961) 128.
- <sup>26</sup> Are evolving practices applications of timeless principles, or do principles themselves evolve? Sen’s discussion does not penetrate to that level, but he seems to assume that if practices are evolving applications of principles, the principles themselves are evolving too. This does not follow, but the difference is not pivotal.
- <sup>27</sup> For especially important recent work on where theorizing ends and the evolution of convention takes over, see Cristina Bicchieri, *The Grammar of Society: the Nature and Dynamics of Social Norms* (Cambridge: Cambridge University Press, 2006), and also Gerald Gaus, *Order of Public Reason*.
- <sup>28</sup> A reviewer correctly observes that we could regard this as a timeless criterion for judging evolving practices.
- <sup>29</sup> See G. A. Cohen, *Rescuing Justice and Equality* (Cambridge: Harvard University Press, 2008).
- <sup>30</sup> G. A. Cohen, *Why Not Socialism?* (Princeton: Princeton University Press, 2009).
- <sup>31</sup> Commons tragedies are cases where unregulated access results in a resource being over-used or under-produced. (In the case of food crops, no one bothers to plant if they will not control the harvest.) The payoff for unsustainable overuse is positive for the individual user and negative for the group, but although everyone might wish that everyone would exercise collective restraint, no one has an effective right to regulate access.
- <sup>32</sup> Nobel laureate Elinor Ostrom spent a career documenting the characteristics of non-tragic commons. They are small enough that everyone knows everyone. They are run by local custom, not distant bureaucracy. They reserve a right to exclude nonmembers. And their communism covers only such resources as need to be communal to solve a specific land management problem. See Elinor Ostrom, *Governing the Commons* (Cambridge: Cambridge Press, 1990). See also David Schmitz, *Person, Polis, Planet* (New York: Oxford University Press, 2008) for studies of experiments in communism that have a history of working.
- <sup>33</sup> Cohen, *Why Not Socialism?* 52.
- <sup>34</sup> Cohen finds it “absurd” that facts about stability could be relevant to principles of justice (*Rescuing Justice*, 327). Sameer Bajaj (“Facts, Principles, and the Structure of Normative Justification,” 2011 manuscript) replies that facts about stability have built-in relevance to the question of what to count as fair terms of engagement for a society of free and equal citizens, because proposed terms that are not an enduring answer are no answer at all. Cohen thinks that if justice is stipulated to be stable, then we cannot coherently express a hope that, “we don’t want our society to be just only for the time being: we want its justice to last” (*Rescuing Justice*, 328). I can see Cohen’s point, but I tend to side with Bajaj. If  $t_1$  and  $t_2$  are arbitrary points on a time line, I don’t see how a good

reason to deem X just at  $t_1$  could have nothing to do with where X will leave people at  $t_2$ . Imagine that, in some way, if we were to achieve perfect equality, the power vacuum would quickly be filled by a Stalin. If it were known that perfecting a time slice would be thus unstable, wouldn't perfecting a time slice be unjust?

<sup>35</sup> Whatever justice is, it has to be such that, if we heard that our loved ones will grow up in a just society, we would not feel dread. I would never treat justice as reducible to utility, but I also would never say we need to choose between living in a just society and living in a good one. The connection is a matter of epistemology, not utilitarian ontology: if we have no reason to see X as specifying terms of engagement that enable people to live well together in specified circumstances, then we have no reason to see X as just in those circumstances. See *Rational Choice and Moral Agency* for a discussion of why rules of recognition do not reduce to rules of practice, and a discussion of what it takes to have an argument for a foundational principle.

<sup>36</sup> I thank Chad Van Schoelandt for alerting me to how Elizabeth Anderson puts it: non-ideal theory “constructs ideals as hypothesized solutions to the problems identified. Like any hypothesis, ideals may be tested in practice, found to generate new, unanticipated problems when adopted, and thereby require revision. Thus, rather than establishing standards outside of practice, by which practice can be assessed, as in ideal theory, ideals are themselves subject to testing in practice.” See Anderson, “Toward a Non-Ideal, Relational Methodology for Political Philosophy: Comments on Schwartzman’s *Challenging Liberalism*,” *Hypatia* 24 (2009) 130-45, at 135.

<sup>37</sup> To complicate matters, Hong Kong was a child of a prolonged, intrusive, colonial nation building—the kind of program the West lacks a moral mandate to launch today. I thank Elijah Millgram for the point.

<sup>38</sup> I thank a reviewer for the question.

<sup>39</sup> Note that tangled causation is more a problem in philosophical theory than in real economies. In a real economy, you solve the problem by approaching people whose help you want and negotiating terms of engagement. Sen’s claim that there is no such thing as discussionless justice has some bite here. We find out how much credit people are (and will be) due partly by talking it over.

<sup>40</sup> Rawls speaks of mitigating arbitrary effects of luck in the natural lottery (*Theory*, 74-75). Is there a difference between a lottery Jane wins by luck of the draw, and a lottery rigged to make sure Jane wins? Rawls says, “Once we decide to look for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance . . . we are led to these principles. They express the result of leaving aside those aspects of the social world that seem arbitrary” (*Theory*, 15). Arbitrary? The word has two meanings. Natural distributions can be arbitrary, meaning *random*. Or choices can be arbitrary, meaning *capricious*. In fair lotteries, winners are chosen at random. A *rigged* lottery is unfair because it *fails* to be arbitrary in the benign sense. It is by *failing* to be arbitrary in the benign sense that it *counts* as arbitrary in the bad sense. What of the natural lottery, then? The natural lottery is arbitrary in the benign sense, but how does that connect to being unfair in the way capricious choice is unfair? It doesn’t. Rawls says, “Intuitively, the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view” (*Theory*, p. 72). However, when ‘arbitrary’ means random, as in this passage, there is no connection between ‘arbitrary’ and ‘improper.’ Capricious choice wears impropriety on its sleeve; the natural lottery does not. Put it this way: Life is about playing the hand you are dealt. Being dealt a bad hand is not the same as facing a stacked deck. A deck is stacked only if a dealer deliberately stacks it, declining to leave the matter to chance. See “Two Kinds of Arbitrary” in *Elements of Justice*.

<sup>41</sup> Fair access is not the same as guaranteed access. If we ask which basic structure is best for the least advantaged, it may or may not turn out to be the one guaranteeing the highest minimum wage. Alternatively, the best system may, without guaranteeing much of anything, offer people the best chance to upgrade their skills and thereby earn more than they would in a system with higher minimum wages but less upward mobility. Whether more extensive guarantees serve the cause of fairness in Rawls’s sense is settled more by experience than by theorizing. What theorizing settles, Rawls and Sen might agree, is that actually making the disadvantaged better off is the result to look for. See chapter 2 of Tomasi, *Free Market Fairness*, or see David Schmidtz and Robert Goodin, *Social Welfare and Individual Responsibility* (New York: Cambridge University Press, 1998) 9.

<sup>42</sup> Sen asks, how important can it be whether a person is in our neighborhood (129)? On Sen’s own view, though, the question is not the rhetorical question that he wants it to be. In fact, we learn how important it is whether a person is in our neighborhood by checking how neighborhoods work. We ask what makes a neighborhood break down, and what happens to people when their neighborhoods stop working.

<sup>43</sup> So there is an ideal here, namely that no one have the power to turn a community into a command economy. In practice, limiting power may be a problem that has no solution. However, there are ways of at least slowing a country’s slide into tyranny. There should be a constitution known to be the foundation of legitimate rule. It should specify a separation of powers and a right to exit, along with freedom of the press. We need better answers regarding how to limit the growth and abuse of power. But these are elements of the best answer we have today.