

## **From Primary Goods to Capabilities to Well-Being**

**Richard J. Arneson 7988**

**(not quite the final printed version)**

Amartya Sen's book *The Idea of Justice* provides a magisterial and accessible survey of many of the themes he has explored and the insights he has developed since his first contributions to moral philosophy and the theory of justice in the 1960s. In this area of thought (just one of several fields to which he has been a major contributor) his career has been impressive, so not surprisingly his summary here is impressive. The main new idea in Sen's recent writings grows from his elaboration of the differences between transcendental and comparative approaches in theories of justice. In this review essay I look at this new idea and suggest there is maybe less here than meets the eye. I then turn to an overview assessment of Sen's distinctive approach to the theory of justice.

### **1. Transcendental and comparative**

In recent writings Amartya Sen usefully contrasts what he calls a "transcendental" and a "comparative approach" to the theory of justice and champions the latter approach. This contrast bears some examination. Led by Sen, the examination takes us deep into the question, what should we seek in a theory of justice.

A transcendental account of justice is one that identifies a perfectly or fully just state of affairs, one whose social arrangements or regulative rules are perfect from the standpoint of justice, and so cannot be transcended by a more just alternative. Sen identifies the dominant recent tradition of work in political philosophy to be seeking a transcendental account in this sense. He cites John Rawls and Robert Nozick and Ronald Dworkin (Rawls 1999, Nozick 1974, Dworkin 2000) as estimable exemplars of the transcendental approach. One could add that a theory of morally required action could also be focused on developing a transcendental account, an account that aims to provide a standard that identifies the perfectly just or morally required action in any decision problem an individual might face. The contrast here would presumably be with nontranscendental accounts that do not strive to identify the transcendently perfect from the standpoint of justice.

Sen contrasts transcendental approaches with comparative approaches. A comparative account of justice provides a theoretical standard that evaluates alternative feasible choices, ranking some as better or superior to others, and perhaps identifying a best alternative. Sen notes that a comparative approach could also be transcendental; to this extent the alternatives are not opposed.

Sen nonetheless questions the utility of the transcendental approach. A transcendental account is neither necessary nor sufficient for providing reasoned, theoretical guidance in all the real-world policy choices that anyone faces or is likely ever to face. The perfectly just set of arrangements might be unreachable, ever, or in our present and likely future circumstances. Merely identifying a transcendental preferred state does not necessarily provide any guidance at all between less than perfect alternatives. Actual feasible alternatives may deviate from the ideal in many ways, variously, along various dimensions of assessment, and nothing in the identification of the perfect state begins to tell us how to trade off different degrees of superiority along various dimensions of assessment when we are able to choose among various alternatives, when none dominates along all the relevant dimensions of choice. Also, a comparative account may enable us decisively to rank some choices in some decision

problems as better than others, and sometimes to select one best candidate for choice among feasible alternatives, even when we have no conception of what would be perfect from the standpoint of justice. As he says, we may have sufficient grounds to judge that a particular Van Gogh painting is definitely superior to a particular Monet painting without having any conception at all as to what would constitute the perfect or ideal painting, and the same goes for social justice assessments. These claims strike me as true and important.

Sen couples his championing of the comparative over the transcendental with another theoretical preference, namely, for accounts that focus on the “actual realizations in the societies involved” rather than “solely on institutions and rules.” Actual realizations here are realizations in the actual lives of individual persons. Different realization-focused theories might assess candidate principles of justice in terms of different things that are realized in individual lives—rights fulfillment, resources, freedoms, options, liberties, utility, welfare, perfectionist well-being, capabilities, or some further alternative.

A third contrast is important in shaping Sen’s account and his assessment of varying approaches to social justice theory that might be taken. A normative theory that assesses actions and policies and institutions might be complete or incomplete. Let us say that a complete theory is a set of principles that specifies what empirical facts are relevant to moral assessment and that given a complete specification of the empirical facts that the theory specifies to be relevant, will determine what morally ought to be done (what policy or institutions ought to be chosen) in any possible set of circumstances.

Sen points out that the proponent of a transcendental account need have no interest in comparative assessment. I suppose this is a logically possible position, but I doubt anybody has ever occupied it. Sen cites Robert Nozick as an example of the transcendental theorist who asserts “the folly of going into the comparative sidetrack.” Nozick “is content to demand that all libertarian rights be fulfilled (this is *his* transcendental picture), but dismisses the issue of trade-offs between failures in the fulfillment of different types of rights (he has little use for what he calls ‘utilitarianism of rights’)” (Sen, 96).

There is a mistake here. Two different issues are being run together. Let us say a deontological theorist is one who affirms that fundamental morality is constituted by principles that provide for constraints and options. There are moral constraints on what one is permitted to do, and within those constraints, individuals have options, complete liberty to choose any option they like that violates no constraint. Regarding such a moral framework, one question is whether one takes the constraints or rights specified to be exceptionless, absolute moral rules, or to be overrideable in some circumstances. Suppose one affirms a set moral constraints or moral rights as exceptionless and absolute. A completely different question is how one’s deontological theory assesses the degree of moral wrongness of different rights violations. Nozick’s disinterest in the first question (when may rights be overridden) does not bespeak any indifference to the second issue—indeed any deontology will surely need to address these questions of comparative assessment. It is one thing to say that no right should ever be overridden, not even your right not to be kicked in the shins or my right that nobody steal my extra shirt button. It is another thing entirely to say there is no moral difference between such minor infractions of rights and perpetrating genocide or slavery. Moreover, if situations arise in

which one cannot avoid violating one absolute side constraint, one needs an elaboration of the side constraint account that tells us which is the less stringent right in the situation, the one that ought to be violated. (Although Nozick does not pursue this issue, other theorists of rights-based moralities do. Judith Thomson (1990, esp. chapters 5 & 6) suggests a general framework for considering these issues. Generalizing and altering her approach, I suggest that the stringency of a right depends on a comparison of how bad it would be for rightholders if the right is not upheld and how bad it would be for nonrightholders if the right is upheld. This approach does not collapse deontology into consequentialism, because harms and benefits to rightholders count for more than harms and benefits to nonrightholders, and in computing stringency we also are to give more weight to doing than allowing. To fill out this approach one needs to know how to assign a specific weight to rights and one needs an account of the goodness and badness of outcomes for affected people and one needs an account of how to aggregate different welfare consequences for different numbers of people who would be affected by the agent's respecting or failing to respect the right in question.)

More broadly, Sen's terminology does not seem to facilitate an appreciation of the degree to which a given moral theory enables us to know what agents ought to do in the various decision problems they might face. He describes the Nozickian Lockean libertarian approach as thoroughly transcendental and uninterested in comparative questions. But the Lockean natural rights position gives lots of decisive advice in myriad situations. Nozick indicates what rights people have (actually he gives a sketch that needs to be filled out) and urges that each agent has an exceptionless agent-relative duty to avoid acting in ways that violate anyone's rights. Whenever one faces a decision problem in which some alternatives involve violating Nozick rights and some do not, the theory gives determinate advice: Do not choose any of the alternatives that violate rights, and one is free (so far as liability to coercion is concerned) to choose any of the alternative courses of action that are available just as one likes. The same goes for choice of public policy or of legal constraints. Lockean natural rights views may attract a host of reasonable objections, but the complaint that the theory fails to give determinate advice for choice does not stick.

Sen's critique of transcendentalism is more successful in so far as it is directed against John Rawls's theory of justice. Rawls is famous for proposing that justice for the basic structure of a society is to be identified with fulfillment of three principles. The first principle proclaims that each person has an equal right to certain basic liberties including freedom of speech and thought, freedom of association, the rule of law, and the right to right to a democratic say. What Rawls calls "Fair Equality of Opportunity" requires that any inequalities in distributive shares of people should come through positions of advantage that are open to all in the sense that anyone may apply, applications are judged on their merits, and any individuals with the same native talent and the same ambition to succeed will have exactly the same prospects for success in these competitions for unequal reward. The third principle, the difference principle, interacts with the second. The difference principle requires that society be arranged so that the inequalities in people's distributive shares (holdings of general-purpose resources) work to make the holdings of those who have the least as great as possible. The three principles are linked by strict priority relations: the first principle has absolute priority over the others, and the second has absolute priority over the third. Rawls

identifies a just society as one in which the three principles are fulfilled and all citizens are conscientiously disposed to support just arrangements and correctly see that these arrangements are as Rawls characterizes them.

On its face, the Rawlsian norms simply identify a perfectly just set of institutional arrangements and say nothing about how to make comparative assessments in real-world decisions. So this looks to be transcendentalism with a vengeance. This judgment must be tempered, however. For one thing, Rawls aims to provide a realistic utopia, one that can be attained by actual societies under modern conditions (these are conditions of industrial development, adequate wealth, and mass literacy—conditions met in actual societies today). So there is a practical imperative associated with his vision of justice: we should bring about social justice, which we can do. If our situation is one of injustice, we should work with others as may be effective to bring about just institutions, respecting whatever the basic moral rights that individuals in the process. Second, suppose it is a given that in our actual circumstances Rawlsian justice will not be achieved. The three principles will not be fulfilled. What then? Rawls's principles can still give guidance. Since the three principles are nested in strict priority relations, we should prefer bringing about a stable outcome in which a higher priority principle is better fulfilled, even by a tiny amount, than any alternative course of action that leads to the stable outcome in which a higher priority principle is less fulfilled but instead some lesser-priority principle is fulfilled to a greater extent.

These results leave mountains of possible decisions, concerning which Rawls's account as so far described gives no guidance. In many situations the choice that confronts us may be between achieving different components of one of Rawls's principles to different degrees. There are measurement problems galore lurking in the statement of Rawls's principles. When one of his principles such as the top-priority basic liberty principle includes several components, and our choices would yield more of some components and less of others, how do we decide? Rawls gives us no help with such questions. Moreover, this is not merely an omission that can be easily remedied. It is not easy to see how, using the resources of Rawls's theory, it would make sense to approach these measurement issues, which need a solution if practical guidance is to be gleaned from the theory in most real-world decisions and policy choices we face. Rawls gives one hint: We should ask how people who give top priority to fulfilling their Kantian interests in exercising and developing their capacities for a sense of justice and for a conception of the good would rate different outcomes our choices might bring about. But this proposal contains within itself the same unsolved problems about measurement that it might be invoked to resolve.

A. John Simmons (2010) suggests that there is a natural and defensible priority rule for decisions when the outcomes would lead in the short run to differential fulfillment of various components of Rawls's theory. His proposal is that we ought to do whatever would lead most effectively and quickly to complete fulfillment of all three of Rawls's principles without violating anyone's basic rights in the process. Or at least, in so far as we have (nonmaximal) duties to promote social justice, this is what we ought to do.

This suggestion, if found acceptable, still would leave mountains of decisions concerning which the Rawlsian will have no practical advice as to what to do. More important, the suggestion is implausible and should not be embraced. For one thing, time

is ignored. As stated, Simmons's proposal would tell us to pursue policy A, which would yield extremely poor fulfillment of Rawls's principles for a thousand years followed by complete fulfillment of them, rather than policy B, which would lead to nearly complete fulfillment of Rawls's principles immediately and for another thousand years, with uncertain results after that. The proposal also allows no tradeoffs at all between complete fulfillment of Rawls's principles and achievement of any other values. Suppose the cost of complete fulfillment of Rawls's principles is that the Earth explodes and sentient life ceases for all time shortly after we attain the realistic utopia of fulfillment of Rawls's principles. No matter. Forward to the realistic utopia we should go. The stipulation that we should not be willing to violate anyone's basic rights, however small, in order to attain the good outcome of greater justice for all, no matter what the justice gains thereby achieved, is way too strict, and again, forbids sensible tradeoffs and steers us away from reasonable thinking about tradeoffs.

So, I agree with Sen that Rawls's theory is defective at giving practical normative advice, at answering the question, what is the best place we can get to, at acceptable overall cost, from where we now are? But as already hinted above, Rawls's transcendentalism is not at the heart of the problems with his view. The problem is not that Rawls has his head in the clouds but that his practical advice about what justice demands of us here and now is wrong-headed. The issues here are complex, but the basic problem is the horrendous over-rigidity of the absolute priority relations Rawls embeds in his theory. It is simply not true that the slightest deviation from his basic liberty principle, however slight, morally outweighs any possible gains by way of benefits to the least advantaged members of society we could achieve. Nor is it true that what he calls fair equality of opportunity should rule the roost, when it conflicts with his difference principle. And for that matter his difference principle itself incorporates a wrongheaded priority: it is false that any loss, however small, to worst off people, however few, morally outweighs any loss of benefits however great to any number of other people. (Rawls actually says the difference principle is not meant to apply except when its fulfillment would lead to intuitively acceptable results, but what are they? We are almost back at square one then, and lack guidance.)

Consider now act consequentialism in the light of Sen's division of the transcendental and the comparative. Act consequentialism says that morally one always ought to do an act among the alternatives available for choice that would bring about an outcome no worse than the outcome of anything else one might instead have done. Taken literally, this doctrine only gives a recipe, in situations of choice, for singling out the absolutely best act (or rather the set of acts, of which the outcome of each is (1) better than the outcomes that any of the acts outside of the set would have produced, and (2) inferior to the outcomes of none of the other acts in the set), and says this is what one ought to do, which says nothing about the comparative badness of the various nonbest things one might do. The division so far is just between the absolutely best and an undifferentiated pile of all other alternatives. This feature of act consequentialism might seem to exhibit the bad spirit of disinterest in comparisons among the nonbest that Sen is warning us against.

However, from the act consequentialist standard, a scalar account is ready to hand. This scalar approach is already perhaps present in J. S. Mill's canonical statement of the utilitarian principle. According to Mill, "actions are right in proportion as they tend

to promote happiness; wrong as they tend to produce the reverse of happiness” (Mill, p. 7). This is unclear, but seems to suggest that an act is more wrong, the greater the shortfall between the value of its consequences and the value of the consequences of the act that would have produced the greatest value (for Mill consequences are rated in terms of utility). With this standard in hand, the act consequentialist is ready to give comparative advice in response to any set of acts, however nondescript or even vile, among which an agent will be deliberating and selecting one for choice. For the consequentialist, half a loaf is better than no bread, and a crumb is better than nothing (and the wanton destruction of five million loaves of bread is better than the wanton destruction of one loaf less than that). The act consequentialist gives a nod to the transcendental approach but delivers all of the comparative assessment anyone could sensibly request.

However, the act consequentialist standard yields determinate advice for choice provided that we have a standard for assessing and rank-ordering outcomes. The application of the standard is enormously informationally demanding, but allied to it is a more practical guide: the agent should select the act whose outcome would be best, relative to the information available to the agent at the time of choice. Further relaxation of the standard is appropriate when the outcome of choice is not known with certainty. Suppose the standard only yields partial commensurability, in the sense that some outcomes will end up ranked neither better, worse, nor exactly as good as others. Act consequentialism as just characterized says that whenever an outcome of one act is not worse than the outcome of another, either act is equally morally acceptable for choice. So providing that the theory makes provision for sequences of choices and avoids money-pumping and inconsistency over sequences of choices one might face, partial commensurability does not stand in the way of a theory’s being able to offer determinate advice for choice among alternatives.

Sen is skeptical about the advisability of pursuing a transcendental account, in part, because he is skeptical that we can discern a complete theory of justice (or fundamental moral theory). Let us informally say that a complete theory is a set of principles that, combined with knowledge of the relevant empirical facts (the relevant facts being those singled out as such by the principles), determines what one ought morally to do in any decision problem that one might face. A complete theory might embrace plural values, or a mix of values and constraints, provided that the relative weight or priority attaching to various degrees of fulfillment of the values and constraints is specified. (This allows for partial commensurability; perhaps there is a range within which breaking a promise is neither better than, worse than, nor exactly as good as telling the truth.) Many of Sen’s seminal contributions to the theory of justice consist in pointing out that there are more values that cannot be discounted, more distinctions that cannot be ignored, than we might have thought.

Morality might be very complex, and a correct morality might need to accommodate many diverse considerations, yet a complete theory might await discovery. Moral thinking might be difficult. Affirming a morality of natural moral rights, John Locke supposes the rules that specify the natural rights are easy for any adult human to discern if she conscientiously seeks to understand what her duty is. (Locke, 1980 [1690]). Jean-Jacques Rousseau, Immanuel Kant, and others also tend to assume that knowledge of fundamental moral principles is easily available to anyone. Stable moral disagreement

across different cultures and societies at different times then seem to challenge the claim that there is an objective moral truth to be discerned. But moral truth might be hard to discern, even for moral experts, and formulating correct moral principles might require the development of appropriate concepts, which might be a long-term collective task of humanity. The same goes if morality should take a consequentialist rather than deontological (or any other) shape.

The search for a complete moral theory might be a useful enterprise even if Sen is right. If incompleteness is a metaphysical moral truth, we would only learn this only by pursuing a complete theory and coming up empty pockets despite our best efforts. By the same token, I doubt there is a good argument against the claim that morality cannot be formulated as a complete theory except producing one. In this enterprise Sen's cautionary warnings against over-simplification are salutary, and may help guide the enterprise to success, if there is to be success. Sen may eventually be regarded as a hero of completeness in moral theory.

Summing up, I would submit that the distinction between the transcendental and the comparative as Sen draws it misfires as a criticism of Nozick-type views and is only moderately successful against Rawls. Act consequentialism is both transcendental and comparative, by virtue of claiming completeness. Sen doubts we shall find a complete theory; that is for now an open question.

## **2. Primary Goods, capabilities, well-being**

John Rawls's theory of justice is the major advance in Anglo-American political philosophy in the twentieth century. His work attracted notable critics, including Brian Barry and Thomas Nagel, but Amartya Sen's criticism of Rawls on primary goods is as close to a knockout refutation as we see in philosophical argument. A core idea of Rawls is that justice is a fair distribution of general-purpose resources or primary social goods. These are liberties and resources distributable by society that a rational person will want whatever else she wants (in a later formulation, what a rational person who is committed above all else to developing and exercising her two moral powers will want whatever else she wants). Sen points out that primary social goods are of variable use to persons, because they vary in their possession of traits that interact with resources to enable them to do things and get things. If one person is legless and another has two good legs, an equal allotment of cash income to the two persons enables the second to achieve her life aims to a far greater degree than the first, who must devote most of her income to wheelchairs and prosthetic devices.

To compare people's condition for purposes of assessment by the theory of distributive justice, we ought according to Sen to focus on real freedom—what each person is actually enabled to be and do with the ensemble of primary goods and other resources she has, given her personal traits and talents, in the context of her actual circumstances. To focus on primary goods is to focus on a means of uncertain significance; this is to focus on what does not really ultimately matter. Instead the measure of people's condition for purposes of assessing how well off they are in the ways relevant to social justice should be the capabilities each has to do and be various things.

The problem with capabilities so understood is that there are too many of them. Many are trivial. In virtue of lacking legs, a person will have an infinite number of capabilities that a person with legs lacks. The former person but not the latter has the capability to poke her finger in the space where her kneecap would be if she had one, and

in the space just adjacent to that, and so on. So comparing capability sets of different people will always yield the result that no one's set dominates anyone else's and none is superior or inferior to any other. So here is a friendly amendment to Sen on capabilities (proposed by Martha Nussbaum (2006) among others): the measure of a person's condition for purposes of comparison and assessment for determination of what we owe one another should be the degree to which she has capabilities to do and be what is genuinely valuable—objectively valuable in the sense that the doing and being constitute the person's life going better for her. The theory of justice needs an objective theory of human good that enables us to distinguish trivial and worthless capabilities from the important and worthy ones.

There are Rawlsian responses that can be made to the Sen-Nussbaum capabilities approach to social justice, but they fall flat. One objection is that this approach requires that public institutions pronounce official judgments of the value and worth of individual persons' personal traits, in order to determine who needs more resources and who needs fewer in order to have access to a fair share of capabilities. The objection is that it would be demeaning and unfair to persons for them to be the objects of such official assessments of the merits of their personal qualities. One response to this objection is that cleverly designed institutions might avoid the grading of persons by offering boosts to capabilities to persons generally in forms that will only be attractive to persons with substandard traits. (Society might simply bring it about that philanthropic or state agencies are known to provide free prosthetic devices that enable personal mobility to anyone who wants one—only the legless will apply.) Second, and more important, a decent society, concerned to advance the well-being of its citizens so good lives are fairly distributed, will take care to avoid establishing institutions and practices that gratuitously inflict insult on those persons to whom the society supposes itself obliged to offer special help. Insofar as it really is necessary to make assessments of the quality of personal traits and base the treatment of individual persons on such assessments in order to give all individuals a fair share of opportunities of good, so be it. I may be upset to get a letter from the state offering me alcoholism rehabilitation services at reduced rates, but if the policy that generates this state action is established in ways that appropriately reflect correct information and a morally sensitive cost-benefit analysis, my upset is not wrongful harm.

A more generic objection is that the proposal that is being advanced in Sen's name places state power in the service of some controversial conceptions of human good. But just as the just state remains neutral, does not promote one religious doctrine over any other, so also the just state should remain neutral, and not seek to advance any controversial conception of human good over any other. A reply to this appeal to neutrality is that as stated it just begs the question against the proposal of marrying the capabilities approach and an Objective List account of human good. Of course this account is nonneutral, that is the point. Beyond that, the objection dissolves once one parses the notion of a controversial conception of human good. "Controversial" can be a purely descriptive term. If something is controverted, it is controversial. There are flat earthers, so the idea that the earth is a round globe is controversial. In an evaluative sense, what is controversial is what is appropriately contested, genuinely of uncertain epistemic status. The advocate of the Nussbaum-Sen capabilities approach will maintain that some contested issues are not genuinely controversial in the evaluative sense, so

there is no bar to the state promoting what is contested but not genuinely controversial, be it the scientific consensus on empirical matters or the evaluative claim that scientific achievement is per se worthwhile. Among some matters about which there is genuine controversy, there is still at the end of the day a knowable truth or at least a balance of considerations that rightly measured indicates that one view rather than rivals is more plausible. Again, the Nussbaum-Sen position should say that in principle claims of this sort are a morally sound basis for public policy. Even though it is a controversial and uncertain claim that on the whole and on the average, people tend to fare better if they maintain long-term stable committed relationships with a sexual partner or partners, this claim might be decisively plausible on balance, and so form a morally acceptable base for a state policy that (for example) promotes equal marriage rights for heterosexuals and nonheterosexuals rather than give no legal privileges to those (heterosexual or nonheterosexual) who seek to sustain long-term marital relationships.

Other issues about human good are controversial in the deeper sense that from our present vantage point, we do not have decisive reason to favor one side or the other. Even if there is a metaphysical moral fact of the matter, we are in no position to see what it is. Here neutrality is reasonable policy. Also, there may be incommensurability in some matters: rival goods may be such that for many comparisons of quantities of X and Y, X is neither better nor worse than Y nor worse nor exactly as good as Y. Where there is limited commensurability, the theory of good will of course not propose that just state policies should favor the promotion of one good over another.

I should mention that there is in a way something quaintly anachronistic about my discussion. Sen himself never seems to have been tempted to combine the capabilities approach with an Objective List account of good of the kind I am suggesting would shore up his position. Martha Nussbaum embraced it for a time and then retreated from it in her more recent writings to something much closer to the Rawlsian political liberalism doctrine just described. My view is that the retreat was unwarranted and hence that what I am calling the Nussbaum-Sen view is still very much worth discussing. Though abandoned by those who built it, this fort may still be defensible.

Another objection to the Sen-Nussbaum capabilities approach is that implementing it would violate a fundamental justice norm of liberal legitimacy: The state ought not to act coercively toward its citizens except according to principles that all reasonable persons accept. Reasonable persons differ in their allegiance to ways of life and conceptions of the good, and the principles that reasonable persons accept will not arbitrarily privilege some controversial doctrines over others but will be acceptable, perhaps on different grounds, to all reasonable perspectives that persons may embrace. A reasonable person will consider and appropriately register the fact that in modern society people stably fan out into allegiance to different conceptions of the right and the good, and will seek to locate a principled basis for social cooperation and for the deployment of state power that all persons can share regardless of their particular not unreasonable but conflicting commitments on the right and the good.

The reply to the liberal legitimacy or political liberalism objection proceeds along the same lines as the response to the liberal neutrality criticism. The issue turns on the understanding of the crucial term “reasonable.” Suppose it is proposed to provide mental health treatment such as medications and talk therapy in a package of health care services that is provided to citizens as part of providing a fair share of capabilities for all. Some

persons are conscientious and dedicated adherents of religions that hold that mental health is to be understood in terms of sin and salvation. They will say that intervention by individual or society to promote someone's mental health that is based on the assumption that we can assess mental health on some nonspiritual metric is either an unhelpful distraction or deeply counterproductive. For the advocate of the liberal legitimacy norm, this objection cannot be dismissed on the ground that the religious doctrine that warrants it is not well supported by evidence and argument. For the liberal legitimacy argument, a "reasonable" doctrine is one that is "reasonable enough." A reasonable person is committed to cooperating with others on fair terms, and to seeking common ground with others so motivated, in determining what are fair terms, what principles are available as suitable for dictating what we owe one another as a matter of fundamental morality. In this enterprise we are to seek common ground not only with those, if any, who reason perfectly about the good and the right, but with those who follow a tradition of thought that is at least somewhat responsive to changing circumstances and arguments and objections. This allows that a reasonable person, in the sense of "reasonable" relevant for drawing the boundaries of legitimate grounds for authoritative state policies, may be making mistakes of practical reason and still qualify as reasonable, and a reasonable person may adhere to a doctrine that is defective from the standpoint of practical reason without forfeiting her status as "reasonable."

The reply to the liberal legitimacy norm advocate is that coercing people or restricting their freedom according to principles that practical reason embraces but that "reasonable" persons may reject may well be morally appropriate, fair, even morally required. If we relax the standard of reasonableness as just described, it is no longer compelling to propose that it is wrong to impose on people except in the name of principles they could not reasonably reject. If we tighten up the standard of reasonableness to allow that reasonable people may make mistakes but insist that a fully reasonable person, employing practical reason correctly, sets the relevant normative standard, then it is no longer a violation of the tightened liberal legitimacy norm to impose on people in the name of principles they actually reject but would not if they were fully reasonable. One does not fail to show respect for my status as a rational agent if you coerce me or impose on me in the name of principles I actually reject but would not reject if I were being fully reasonable and rational.

An important qualification should be noted. We should distinguish (1) fundamental moral principles, the theoretical determiners of what one morally ought to do and of what policies we should embrace, and (2) practical decision making guides, intended to be followed in the actual deliberation that leads to action. This distinction is familiar in the consequentialist tradition but actually applies to any fundamental moral principles, be they consequentialist or nonconsequentialist. The practical guides to decision making operate at different levels of thought and include laws, social norms, political constitutions, and public morality regarded as a set of rules to be followed by agents in making decisions. My discussion so far defends the Sen-Nussbaum capabilities approach at the level of fundamental moral principle. A further discussion would be needed to determine what proxies for this norm would be appropriate for inclusion as practical decision making guides at any or all of the levels of moral thinking just distinguished. My own hunch is that the capabilities approach would be appropriate

not just as theoretical standard but also as practical decision making guide to a significant degree, but this is a large issue, not to be explored on this occasion.

Having defended the Sen-Nussbaum approach against various criticisms, I must report it succumbs to a further criticism. This criticism holds that orienting to capabilities as morally fundamental objects of concern is fetishistic in much the way that the use of a primary social goods standard for social justice comparisons of the condition of individuals would be fetishistic. Attention is deflected in each case from what really matters to what does not really matter. If the distribution of capabilities were morally valuable per se (intrinsically and noninstrumentally), if our ultimate justice concern should be the shape of the distribution of capabilities, then what people actually do and be with their capability shares is a matter of indifference for the theory of social justice. This seems wrong. For simplicity, just suppose a fair distribution is an equal distribution. Suppose we can make the distribution of capabilities across persons substantially more equal by transferring resources to people who now have little. Suppose the transfer of resources will be an efficient transfer in the sense that few or no resources will be lost or dissipated in the process of transfer itself. According to the capabilities approach, we should then transfer the resources to bring about a fair distribution of capabilities. The obligation to aid the people with poor capability shares is not diminished if we add the further fact that these capabilities are certain to be wasted or ignored by the people to whom they are provided, so the increase in capabilities brings about no increase at all in the well-being of the people who are affected. The degree to which these people over the course of their lives gain items on the list of objectively valuable goods is not increased at all. Knowing all this, what should we say--is our moral obligation to provide the resources to the individuals in question, augmenting their lifetime capability shares? For the capabilities approach advocate, the fact that people will gain nothing from the resources allotted to them is a "don't care" from the standpoint of social justice, which demands a fair distribution of capabilities as the ultimate justice requirement. This is wrong. The opposite is what is right to say. Our moral obligation to provide capabilities for people entirely disappears if the capabilities augmentation will not result in any increase in the actual quality of their lives, the valuable achievements they actually gain and attain. In a slogan, provision of pointless opportunities is pointless.

Acceptance of this point moves us from a capabilities to a functionings standard of social justice. In a different terminology, what we ultimately owe to one another is a fair distribution of good quality of life across persons. Capabilities may be important is the application of a sound theory of justice as a proxy or means for bringing about a fair distribution of human good across persons. They are not morally important per se.

Sen may not disagree. He affirms the capabilities approach, which in his view involves thing capabilities as an informational focus. So far, no commitment to norms or principles is involved. His claim is, this is information that is relevant to choice. My target is then a possible naïve disciple of Sen who affirms that at the level of fundamental moral principle the measure of people's condition is the capabilities they have. In an alternative terminology, my view is that what we fundamentally owe one another is to bring about fairly distributed gains in people's functionings (well-being) not capabilities.

There are further possibilities of talking past each other in this domain. An appropriately fine-grained specification of items on the objective list of goods will allow that freedom can be a necessary condition for a kind of achievement or an enhancer of its

value. Freely choosing to do physics and doing it well constitute a greater contribution to a person's well-being than being forced at gunpoint to do physics and doing it well, even if the physics creativity and problem-solving achieved are identical in the two cases. Sen correctly notes that fasting differs from simply lacking food and starving to death even if the functioning of being well-nourished is the same in the two cases, and he proposes that the difference that is germane for valuation shows up at the level of capability: only in the fasting example does the person have the capability of being well-nourished.

The example does not pose a difficulty for a sensible functionings standard. Fasting is an achievement, a prolonged and steady exercise of will power to resist eating available food in order to achieve some valued further goal. Merely starving is not an achievement. Moreover, if one thinks about it, the achievement in fasting does not require that one actually have the capability to be well-nourished, but that one reasonably believes this is the case. Suppose that the nobly fasting prisoner is actually refusing fake food that the manipulative jailors are coaxing her to eat. Provided the prisoner is not at fault for failing to recognize that she has no available food, this does not detract from the value of her fasting achievement.

Some might think this fetishism charge does not stick, because capability is significantly valuable for its own sake. I suggest there is a halo effect at work here. A trusted tool can come to be loved for itself, and it can be hard to see that something pervasively valuable as a means and as a component in valuable functionings is not in and of itself intrinsically and noninstrumentally valuable.

Consider examples in which more capability generates lesser functioning. With a higher salary, I have far greater real freedom to do things that I have reason to value. These are all genuine valuable capabilities, things I really can do. If capability is the measure of my condition, I am so far as society is concerned better off with more capabilities. But it may nonetheless be the case, and predictably so, that with a higher salary I use cocaine excessively and live less well and with a lower salary I would choose better among a more limited array of choice sets and live better. Having the cocaine option does not detract from my capability to choose well, it just turns out predictably that I do not make good use of the enhanced capability I have. In this scenario, insofar as society—all of us regarded collectively—has the duty to improve the quality of my life, that duty requires fundamentally facilitating the enhancement of my functionings not my capabilities. Capability is of supreme importance, but as a means not as an end.

In the course of making a somewhat different point, Sen introduces an example that could serve as a counterexample to the position that what we owe one another reduces in the end to acting so as effectively to bring about the well-being of individual persons. The example might be taken to suggest that we owe one another more and other than that.

Sen describes someone sitting in an airplane enjoying the view from a window seat. The person sitting next to her requests that she pull down the window shade so he can watch on an overhead screen what the woman judges is an inane movie. She may have good reason to defer to the seat mate without thinking she is thereby enhancing his well-being.

This is an example of an everyday practice of accommodating others in somewhat conventional ways. The practice has great utility. It is very plausible to think that the woman's conforming to the accommodation norm on this occasion fosters amiable

relations in the immediate situation and fosters allegiance to the useful accommodation norm. Hence, there is a well-being case for being accommodating on this occasion. If the situation were different, and substantial benefit would flow from resisting the request, the decision should go the other way. (If the woman is on the verge of solving a mathematical problem and needs the inspiration of looking out the window, she can explain to her seat mate that she really cannot accommodate his request and apologize for the inconvenience. I do not see a threat in the example to the idea that what we owe one another always involves seeking well-being enhancement.

Sen urges that a proper regard for others involves concern for their well-being but also for their non-prudentially oriented agency and a concern for their freedom to pursue either agency goals or well-being as well as a concern for accomplishment of both types. On this view, well-being is one of several dimensions of what we owe one another.

In a sense, this is right. A reasonable set of duties to one's fellow human beings will surely include duties to facilitate their acting ways that are not beneficial to their welfare but admirably forsaking their welfare in order to follow their conscience. We may sometimes be duty-bound to facilitate someone who is, for example, seeking to save the whales. But we do this for the sake of the whales, not as a part of what we owe to the conscientious agent. Someone acting for a good cause or to benefit others may have a mixed motive. A parent wants her child to flourish, in part, as a result of the parent's agency. We may owe the parent, not just effective action to help the child, but action that facilitates the parent's agency on behalf of the child (even if the child is less well served). Here the well-being of the parent and the well-being of the child are both in play. The suggestion I am making is that the claim that what we owe one another entirely reduces to concern for well-being can accommodate the concern for facilitating non-prudentially oriented agency that Sen rightly says is a proper concern that social justice ought to register.

Much the same is true of freedom and capability. They are of supreme importance, but they do not provide reasons for action and policy that stand independent of well-being concerns. Capabilities are crucial means to well-being and some aspects of freedom and capability are partly constitutive of important components of well-being. That gives capability its due.

#### References

- Dworkin, Ronald. 2000. *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, Mass.: Harvard University Press, 2000).
- Locke, John. 1980. *Second Treatise on Government*, ed. by C. B. Macpherson (Indianapolis: Hackett Publishing). Originally published 1690.
- Mill, John Stuart. 2001. *Utilitarianism*, ed. by George Sher (Indianapolis: Hackett Publishing.) Originally published 1861.
- Nozick, Robert. 1974. *Anarchy, State, and Utopia* (New York: Basic Books).
- Nussbaum, Martha. 2006. *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, Mass.: Harvard University Press).
- Sen, Amartya. 2009. *The Idea of Justice* (Cambridge, Mass.: Harvard University Press).
- Rawls, John. 1999. *A Theory of Justice*, Second Edition (Cambridge, Mass.: Harvard University Press). Originally published 1971.

Simmons, A. John. 2010. "Ideal and Nonideal Theory," in *Philosophy and Public Affairs* (38), pp. 5-36.

Thomson, Judith. 1990. *The Realm of Rights* (Cambridge, Mass.: Harvard University Press).