

Amartya Sen

Rights: Formulation and Consequences

Abstract: The symposium included in this issue of *Analyse & Kritik* has provided an excellent occasion to re-examine formal as well as motivational issues underlying the so-called liberal paradox. This rejoinder discusses the significance of the new results and analyses, their bearing on the formulation and implications of rights, and also corrects a misinterpretation. Reflections precipitated by the liberal paradox can influence the acceptability of different principles of social decisions, and also the interpretation of 'preference' and 'unanimity'. They also point to some concerns that are relevant in the formation of individual preferences in a society with interdependent lives.

1. Introduction

I am most grateful to the editors of *Analyse & Kritik* for giving me this opportunity to respond to the extremely interesting papers included here. I have learned a great deal from the symposium. Since I am a hedonist too (despite my commitment to liberty), I also attach importance to the enjoyment of taking part in these discussions, even when—perhaps *especially* when—I have not been able to agree with all the points made. But over and above all that, I am very happy that the symposium has provided the occasion to re-examine some of the issues that had motivated me to present the so-called liberal paradox for discussion and scrutiny.

I had tried to present the motivation in the following way in my critical survey of social choice theory for *The Handbook of Mathematical Economics*:

“... the interest of the ‘impossibility of the Paretian liberal’ and related results lies not so much in their value as paradoxes and brain-teasers, but as grounds for *re-examining* the usual formulations of individual and group rights and principles of decisions usually accepted, including such allegedly non-controversial rules as the Pareto principle.” (Sen 1986, 1139; see also Sen 1970a, 81-6)

Both the ‘formulations of rights’ and the ‘principles of decisions’ have received attention in this symposium.

This has been also true, in general, of the astonishingly large literature that my short note in 1970 was instrumental in generating, and this, in itself, is very pleasing. Dennis Mueller (1996, 114) says, in his contribution here, that “neither Sen nor anyone else probably predicted the quantity of articles and books” this “6 page note” would generate; this is, of course, a severe understatement. Indeed, I was initially very doubtful about publishing the note, even though the presentations of the problem in a rudimentary form in my classes—at the Delhi School of Economics in 1967 and at Harvard in 1968—had generated some engaging reactions and agreeable dissent, and it was only on Kenneth Arrow’s firm advice that the note was sent off for possible publication. Aside from not being sure whether all this was rather trivial, I was also bothered as to whether the ‘brain-teasing’ aspect of the ‘paradox’ may not overshadow the serious issues I was hoping to raise.

However, in the event, most of the reactions that were generated went straight at my motivating concerns, even when my interpretation of the problem was totally rejected. There was much to be pleased about in all this, and issues of formulation and consequences of rights were searchingly scrutinized in the generated literature, beginning right from Hillinger/Lapham (1971), Ng (1971), Batra/Pattanaik (1972), Peacock/Rowley (1972), Fishburn (1973), Nozick (1973; 1974), Gibbard (1974), Bernholz (1974; 1975), Hammond (1974; 1977), Karni (1974; 1978), Blau (1975), Rowley/Peacock (1975), Seidl (1975), Campbell (1976), Farrell (1976), Kelly (1976a; 1976b), Suzumura (1976; 1978), Aldrich (1977a; 1977b), Blau/Deb (1977), Breyer (1977), Miller (1977), Perelli-Minetti (1977), Ferejohn (1978), Stevens/Foster (1978), and others, and continuing forcefully since then.¹ The papers here have extended that literature substantially.

In this response, I shall begin with following my initial two-fold classification of useful issues. I shall discuss the problem of ‘formulation’ of rights in the next four sections, and then go on to the implications of the ‘paradox’ for principles of decisions.

2. Formulation of Rights, Nozick’s Proposal and Game Forms

My primitive quest for “*re-examining* the usual formulations of individual and group rights” was rapidly rewarded by Robert Nozick’s (1973; 1974) far-reaching response, and the line of reasoning initiated there can be seen well reflected here (particularly in the papers by Fleurbaey/Gaertner 1996,

¹ Examination of the main points raised in the literature up to the middle-1980s can be found in Suzumura 1983, Wriglesworth 1985, Riley 1987, and Mueller 1989.

Pattanaik 1996a, and Suzumura 1996). In this context, it is useful to recollect the thrust of Nozick's response to the liberal paradox:

"The trouble stems from treating an individual's right to choose among alternatives as the right to determine the relative ordering of these alternatives with a social ordering. ... A more appropriate view of individual rights is as follows. Individual rights are co-possible; each person may exercise his rights as he chooses. The exercise of these rights fixes some features of the world. Within the constraints of these fixed features, a choice can be made by a social choice mechanism based upon a social ordering, if there are any choices left to make! Rights do not determine a social ordering but instead set the constraints within which a social choice is to be made, by excluding certain alternatives, fixing others, and so on. ... If any patterning is legitimate, it falls *within* the domain of social choice, and hence is constrained by people's rights. *How else can one cope with Sen's result?*" (Nozick 1974, 165-6; emphasis Nozick's. See also Nozick 1973)

Three issues are particularly worth pinpointing here. First, Nozick is suggesting that rights should be formulated differently from the way they were characterized in Sen (1970a), and in particular should involve the permission and power to act on one's own in particular areas. Works that pursued this move, including major contributions by Gärdenfors (1980), Sugden (1981; 1985) and Gaertner, Pattanaik and Suzumura (1992), led to viewing rights as "the admissibility of actions or strategies of the individuals", and seeing social outcomes as "the result of the (simultaneous or sequential) exercise of various n -tuples of permissible strategies, where n is the number of individuals who hold particular rights" (Fleurbaey/Gaertner 1996, 55). And, as Pattanaik (1996a) points out, in contrast to the social choice formulation of rights in Sen (1970a), "the game formulation of individual rights does not refer at all to individual preferences over social alternatives; nor does it refer to the actual outcome of any game" (42). Any examination of the adequacy of the game-form formulation of rights must take into account these features of preference-independence and consequence-independence. Since this is the specific subject matter of the paper by Fleurbaey and Gaertner and *inter alia* that of van Hees as well, I must discuss their reasonings and conclusions. This I shall attempt in the next section.

Second, Nozick saw the impasse reflected in the liberal paradox as a serious issue, which provided motivation for choosing the formulation he suggested, since that would eliminate the impasse ("How else can one cope with Sen's result?"). This raises a second question as to whether the liberal paradox vanishes under the game-form interpretation, and this question is addressed by Pattanaik (1996a) and Suzumura (1996), and briefly, in passing, by Binmore as well. I shall get to this issue in section 4.

Third, Nozick's proposed removal of the impasse reflected in the liberal paradox was not seen by him as a vindication of the compatibility of individual rights and the Pareto principle. The Pareto principle is an example of what Nozick calls "patterning", like the social-choice formulation of rights. Like other claims to patterning, if it is "legitimate", this patterning could be used to lead to a partial social order, but its use must remain "constrained" by the exercise of individual rights. In the Nozickian framework, the Pareto principle does not have any priority over the rights (as it does in 'welfarist' frameworks, including Paretian welfare economics), and the removal of the 'impasse' need not lead to the fulfilment of the Pareto principle. Whether it would or not must, in this characterization, depend on how the individuals exercise their rights, on which nothing much is specified; indeed the modelling of rights is consistent with many different behavioural assumptions (this issue comes up in this symposium in the papers of Pattanaik 1996a and Suzumura 1996). Along with Nozick's demotion of other patternings and other constituents of a putative 'social ordering', the Pareto principle too is moved down in priority vis-a-vis individual rights. This is worth mentioning only because the apparent anti-Paretian implications of the liberal paradox has been seen by some as a ground for seeking a different formulation of rights. This is not Nozick's concern.

3. Game Forms, Consequences and the Typology of Rights

Fleurbaey and Gaertner (1996) provide a reasoned defence of the game-form formulation of rights, and with much of their reasoning I find nothing to disagree. They point out that the presentation of rights in Gaertner/Pattanaik/Suzumura (1992) was "focused on the formal structure of rights", but nevertheless "consequences matter under the game form approach and the individuals, via their preference ordering, care about these". Furthermore, "there are some cases where the outcomes are the primary focus and other cases where the proper and uninhibited exercise of rights, not particular outcomes are what society is primarily interested in" (Fleurbaey/Gaertner 1996, 55). The authors then provide a typology of rights depending on whether the outcome *or* action (or strategy) is the important feature in the respective types of rights.

The social choice formulation of rights, including that presented in Sen (1970a), is much concerned with outcomes. This feature was seen as a 'mistake' in the criticism that motivated Nozick's departure and the literature that followed that lead. The re-assertion of consequence-relevance—in the case at least of one major class of rights—cannot but be seen as a partial

vindication of the social choice approach to rights. Since “the game formulation of individual rights does not refer at all to individual preferences over social alternatives; nor does it refer to the actual outcome of any game” (as Pattanaik 1996a puts it, 42), there is clearly a need to *supplement* the formalities of game-form formulation of rights by more substantive concerns. This applies particularly, in Fleurbaey and Gaertner’s typology, to those rights for which “the outcomes are the primary focus”.

I shall comment on the typology presently, but I have no problem at all in agreeing that: (1) there are types of rights in which the exercising of freedom of action is the central issue, and the game-form formulations are quite adequate in fully characterizing such rights, and (2) for those rights for which outcomes are important, the game-form formulations need substantive supplementation in choosing over alternative assignments of rights (and thus over alternative game forms), in the light of their likely realization (on this see also Hammond 1996, and Suzumura 1996). The contours of this agreed position can be best understood by combining Fleurbaey and Gaertner’s substantive discussion with the classificatory distinctions explored in Kotaro Suzumura’s (1996) paper, separating out three different issues:

- (1) the *formal structure* of rights,
- (2) the *realization* of conferred rights, and
- (3) the *initial conferment* of rights (see also Pattanaik/Suzumura 1994; 1996, Deb 1994).

While I was almost certainly too rude in arguing, in Sen (1992), that we “must not be too impressed by the ‘form’ of the ‘game forms’” (155), the need to go beyond outcome-blind game-form formulations and to analyze *consequences* of alternative ‘initial conferment of rights’ seems to be generally agreed, at this time. If this understanding is correct, I have no reason to grumble. The kind of issues (related to the realization of rights in the outcomes) on which the social choice formulations concentrated, remain relevant in the game-form approach as well, and as Suzumura’s paper in this symposium bring out, the connections can be very close indeed. I should add that consequence-sensitivity is important also for Ken Binmore’s (1996) insightful analysis of rights, which concentrates on “viewing rights and duties as being embodied in the system of rules that we use when coordinating on the equilibrium in the game of life that constitutes our social contract” (79).

Where I may have some disagreement with Fleurbaey and Gaertner is in their claim that the classes of ‘outcome-oriented’ and ‘strategy-oriented’ rights correspond, respectively, to the categories of ‘passive’ and ‘active’ rights in Feinberg’s (1973) well-known distinction. I shall not dispute here the claim that “passive rights are outcome-oriented” (61), but I would question whether it is correct to assume that all active rights “are strategy-oriented, no particular outcome is considered” (62).

This claim could be disputed by questioning Fleurbaey and Gaertner's *non*-distinction between a person's strategy and the corresponding 'private outcome'. Fleurbaey and Gaertner argue that the "private outcome" [of wearing black] is "almost indistinguishable from the strategy to wear black" (60). But it is precisely the gap between (1) the *strategy* of doing something (e.g., trying to practice some religion, deciding to wear some clothing), and (2) *being able* to do it, that had moved John Stuart Mill (1859) to present the analysis he did in *On Liberty*. While all this suggests that consequential analysis, unlike in many restricted characterizations, must include among the consequences the 'actions done' (on which see also Sen 1982b; 1985), this is probably not a point of substantial difference between us, since Fleurbaey and Gaertner do not, I believe, mean to deny this.

The real difference that may exist comes, I think, from cases of active right that involve something more than non-interference by others. Even when the right is one of active exercising of some freedom, the consequences may not be determined just by the strategy choice of the person in question, and may substantially depend on what others do. An example, considered in Sen (1996), illustrates such cases. When John Stuart Mill (1859) discusses the liberty of people of different faith to eat what they like, and in particular the liberty of Muslims not to eat pork, while guaranteeing the liberty of non-Muslims to eat pork (Mill 1859, 152-4), problems can arise because of a person's not knowing what each particular cooked dish consists of. In making sure that the rights of Muslims and non-Muslims are being respectively realized, we have to go beyond simply giving each person the freedom of action. The emergence of the right outcome will be important for the fulfilment of liberty in this case, even though it falls generally in the category of 'active' rights. It is easy to find many other examples of this kind.

Binmore (1996) is right to sympathize with "the criticism that Gaertner *et al.* and Sugden direct at Sen for neglecting to take account of the fact that people should be able to exercise their rights *independently* of each other" (73). Sen too is sympathetic to this criticism of Sen, but surely the reach of this point depends on whether people *can*, in fact, effectively exercise all their rights *independently* of each other (on this see Sen 1982b; 1992). Such independence may simply not be possible even in some cases that fall into the general category of what Feinberg calls 'active rights' (not to mention the cases of 'passive rights', where such independence simply could not be effected).

Aside from such interdependence, problems can arise, even for 'active rights', from what was called "choice inhibition" in Sen (1992). The courage to do something that is frowned upon by powerful people may not be easy to muster even when the game form gives the person the right to do just that. An example considered in Sen (1992, 148-50) is the difficulty in acquiring the

courage to appear in public with uncovered head (in a tradition-bound society where such behaviour is unconventional), even when the right to this action is actually given to a woman by the accepted game form. In Suzumura's illuminating classification, the 'realization of rights' as well as the 'conferment of rights' take us beyond the 'formal structure' of game forms.

Despite these differences in detail, there is I believe much agreement here on general principles. Our agreements lie in the recognition:

- that the categories of *outcome-oriented* and *strategy-oriented* rights are both non-empty and substantial (even though there is ambiguity at the margins);
- that game-form *formulations* can be applied to both;
- but that the 'outcome-oriented' cases call for *substantive supplementation* of game-form formalities by consequential analysis in the realization and conferment of rights.

There is, thus, room for the social choice perspective in understanding rights, even when the game-form formulation is chosen.

In a related context, Martin van Hees (1996) has raised quite a different type of issue, which seems to me to be extremely important (see also van Hees 1994; 1995). The game-form approach can be used in a very piece-meal way, and its formalities can cater to a fragmentary approach. The issues considered by van Hees include the importance of studying 'the whole legal system' of which a particular legal norm would be only a part. Using the legal theory of rights of different types, van Hees not only distinguishes between different types of rights within the game-theoretic framework, but also examines the issue of 'legal validity' (including the determination of whether a certain right 'exists'). This requires the study of complex structures of mutually related game forms, and they cannot be analyzed without reference to the preferences of the individuals involved. The analysis presented by van Hees, thus, supplements the arguments already considered for paying attention to preferences (and their fulfilment), and this brings the game-form systems much closer to the preference-linked social-choice view of rights.

4. Game Forms and the Liberal Paradox

One of the issues that have received much attention is whether the game-form formulation of rights eliminates the liberal paradox. The claim that this would happen was explicitly presented by a number of authors, including Gärdenfors (1980) and Sugden (1981; 1985a). The possibility is questioned by Binmore on the simple—but basic—diagnostic ground that a translation of language and form cannot eliminate a substantive problem that exists: "One ... does

not escape Sen's paradox simply by adopting the language of game theory." (Binmore 1996, 73)

The problem is given extensive treatments by Pattanaik (1996a) and Suzumura (1996). Pattanaik presents two different formulations of the Liberal Paradox in terms of game form. Despite the fact that the paradox holds in each of these cases, Pattanaik notes:

"Under neither of these two interpretations, the paradox can be regarded as *direct* tension between Paretianism and libertarian values. This is because, in both the interpretations, specific behavioural assumptions are used to generate the tension under consideration." (Pattanaik 1996a, 51. See also Levi 1982 on related issues.)

This is indeed so, but the need for behavioural assumptions cannot possibly come as a surprise, since rights in the *formal structure* of game forms only involve the freedom of strategy choice and they do not, on their own, lead to *any outcome whatever* (to contradict—or to fit in with—Pareto optimality), in the absence of some behavioural assumption. The two operate in different spheres, and only with a behavioural assumption can the two be linked. The Pareto principle indicates what is to be chosen, whereas game-form rights, as already discussed, do not—in their formal structure—say anything whatsoever about outcomes or preferences (see also Sugden 1985 on this). This can scarcely be a way of 'resolving' the problem, and Pattanaik does not claim that it does. To consider an analogy, if you have the right to eat a peach (that is, you could if you so chose), this would not in itself be in any conflict with the peach's remaining uneaten, since the conflict would not arise *unless* you actually chose to eat the peach. It is hard to get the sense that the conflict has been, thus, 'eliminated'.²

In contrast, Suzumura's (1996) results and interpretations of this issue seem much clearer. His focus is more on the 'realization' and 'conferment' of rights, rather than on the 'formal structure'. Suzumura shows that the Liberal Paradox "recurs not only in the context of realizing game form rights, but also in the context of initial conferment of game form rights" (34). No

² More substantively, Pattanaik also points out that the general behavioural pattern that would guarantee a pervasive conflict may be inadvisable for a person to follow under some situations of uncertainty from strategic interactions. With these strategic concerns, we are considering situations so different from the classic cases of violation of liberty discussed by, say, John Stuart Mill (for whom the uncertainty from strategic interaction was not a central issue in this context) that it is not quite clear how to read the significance of this qualification. The same applies to the possibility, pointed out by Pattanaik, that some 'right structures' may not have any Nash equilibrium in pure strategies, and this will then have the effect of immobilizing the behavioural assumption that would guarantee a conflict with the Pareto principle. I am not sure how much of a comfort there is in all this for the general compatibility of game-form rights and the Pareto principle, and indeed Pattanaik does not argue that there is. The findings are interesting judged as technical results, even if their substantive implications were not particularly grave.

less importantly, Suzumura goes on to discuss the ‘empirical relevance’ of the conflict, and presents a number of telling examples—of great practical interest—where this conflict would arise. He sees the paradox as exemplifying a “conflict between two basic values—the welfarist value of social efficiency, on the one hand, and the non-welfaristic claim of individual rights” (35).

In the process of these demonstrations, Suzumura also addresses an earlier claim, made by Harel and Nitzan (1987), that a contractual arrangement would resolve the Liberal Paradox. That claim has often been made (for example, also by Barry 1986, and Hardin 1988).³ Suzumura demonstrates that this ‘resolution’ has “very little to commend itself to a person with liberal belief in the ordinary sense of the word” (26). I have tried to discuss this question elsewhere (in Sen 1992, 144–6), with a similar conclusion (though less definitely demonstrated than Suzumura’s). Even at the simplest level of commonsense, it seems odd to see the conflict being really ‘resolved’ in, say, the *Lady Chatterley* case, through a contract whereby the Prude accepts to read a book which he hates, just to prevent the Lewd from reading it, while the Lewd decides to forgo reading the book which he would love to read, just to make Prude read a book he hates.⁴ Not an ideal outcome, one would have thought, from the perspective of liberty or of autonomy.

5. An Interpretational Misunderstanding

James Buchanan’s ideas about public decisions—presented elsewhere—are, I shall presently argue, very relevant to assessing the implications of the Liberal Paradox. However, in this paper, his focus is somewhat different. Buchanan (1996) argues that “the assignment of decisiveness to a single person necessarily precludes a similar assignment to any other person in the society” (119). This raises, in its general form, a very interesting question: under what circumstances and over what domain, does the decisiveness of one person in her sphere of personal liberty rule out another person’s being decisive over her own protected domain? The formulation also relates to the contradiction that precipitates Arrow’s ‘impossibility theorem’. That result is proved via a lemma whereby, given Arrow’s condition, one person’s being decisive over any pair makes him decisive over every pair (the dictatorship result follows from this) (on this see Arrow 1963, and Sen 1970b; 1986). In the classes in

³ Related issues are discussed by Rowley and Peacock 1975, and Rowley 1993, and by Buchanan 1996, and de Jasay and Kliemt 1996 in this symposium.

⁴ Aside from the incompatibility of such a ‘resolution’ with liberal values, there are also other serious problems in this line of solution, to wit: its general applicability (especially in a world with more than two persons), its sustainability, and even its consistency. On these issues, see Breyer/Gardner 1980, Breyer/Gigliotti 1980, Gardner 1980, Suzumura 1980; 1991; 1996, Basu 1984, Breyer 1996.

which I have used Buchanan's paper (to which he refers), this problem has been investigated in some detail, and my students and I have tried to explore general characterizations of all such incompatibilities.⁵

However, no such incompatibility arises, contrary to what Buchanan claims here, with the pairwise decisiveness used in the condition of Minimal Liberty ML that forms a part of the Liberal Paradox. Two persons—indeed everyone—can be decisive in the way described in the ML condition. Exactly the same misunderstanding occurs also in the paper by de Jasay and Kliemt (1996), and I am afraid Breyer (1996) is right, in his contribution to this symposium, to describe the interpretation of the Liberal Paradox in both the papers to be a “severe misunderstanding” (149). The reasons are exactly what Breyer says. In particular:

“all that an individual endowed with decisiveness over some pair of states (x, y) can effectively do is to force his preference ordering (assume it is xPy) on society and thereby *prevent* one of the states (here: y) from being the ‘best’ state. Thus it all amounts to the *right to veto one* (of two specified) states. Hence it is clear that, contrary to Buchanan's claim, a similar veto can be given to almost as many people as there are feasible social states.” (Breyer 1996, 150)

In the preference-based form, the ML condition requires that each of two persons must have a personal sphere of at least one pair of alternatives $\{x, y\}$ each such that “if this individual prefers x to y , then society should prefer x to y ; and if this individual prefers y to x , then the society should prefer y to x ” (Sen 1970a, 153). Buchanan is persuaded that this condition “is self-contradictory” (118). But why? If person 1 has a personal sphere in the pair $\{x, y\}$ and 2 in the pair $\{a, b\}$, they can rank them in any way they like, and have them reflected in the social ordering, and as long as they are not the same pair, there is no contradiction between them, no matter what 1 and 2 respectively prefer.

Buchanan may be considering the choice interpretation of the ML condition. But that would only require that if person 1, with decisiveness over $\{x, y\}$, prefers x to y , then “ y is not socially chosen when x is available” (Sen 1982a, 322; see also Sen 1976; 1983). If we are considering choice over this pair only, then this requirement cannot be in any conflict with person 2's exercise of his rights over another pair $\{a, b\}$. If, on the other hand, we consider a larger set S which contains the pair $\{x, y\}$, then all the alternatives remain open to choosing other than y , when person 1 prefers x to y . As Breyer says,

⁵ While I shall presently argue that Buchanan's particular claim is mistaken (based as it is on a misinterpretation of the condition of Minimal Liberty ML), the general issue of compatibility was an interesting one to raise. It also relates to the very important point about “governance by discussion” which Buchanan had raised elsewhere, and which will be invoked here later on in this paper.

this is just a right to ‘veto’ one of the two alternatives from this pair (in this case, he vetoes y). If the set also contains the pair assigned to 2, let us say $\{a, b\}$, then 2’s preference over $\{a, b\}$ would knock out the dispreferred alternative in that pair. That is, if 2 prefers a to b , then b would not be chosen, since a is available in the set. But there is no contradiction here, since in the larger set S all alternatives other than y and b are still available for choice (such as x or a , or any alternative other than these four). Even though each alternative x, y , etc. is “a complete description of society including every individual’s position in it”, Buchanan is mistaken to conclude (as he does): “Hence, the assignment of decisiveness to a single person necessarily precludes a similar assignment to any other person in the society.” (119)⁶

The same mistake is made also by de Jasay and Kliemt (1996) when they argue that ML entails, in their example, that “Lady 1 has acquired the *right* to choose a *social state* (from a *set of social states*)” (130). In fact, Lady 1 has only acquired the right to *exclude* one alternative from the pair assigned to her. When de Jasay and Kliemt point out that “individuals, in exercising merely their *liberties*, can *never* bring about a collective result single-handedly”, they are of course right; but nobody has presumed that they can. If the choice over the pair $\{x, y\}$ is placed in person 1’s own sphere, all it entails is that if she prefers x to y , then y will not be chosen if x is available in the set for choice.

I fear this mistake recurs persistently through the paper of de Jasay and Kliemt, and it is thus no wonder that the authors allow themselves the diagnostic speculation: “If the alleged liberal paradox should rest on such an obvious confusion as we claim, it must be explained how it could emerge and be taken seriously at all.” (127) Happily, we do not have to look for an explanation of this putative riddle.

⁶ Buchanan’s example on pages 119–20 confounds this issue—instead of eliminating two out of the four alternatives from being chosen, he somehow assumes that all four have been eliminated. On a more minor issue, the example given by Buchanan is also motivationally somewhat perplexing in that the pair assigned to person 2, viz. $\{z, w\}$, varies in the condition of person 1 (whether 1 is bearded or clean-shaven—person 2 is taken to be bearded in each case); so that in Buchanan’s characterization, person 2 is—rather illiberally—given a choice over the retention of 1’s beard (no matter what 1 wants). It would not be worth going into this question, but for the fact that Buchanan’s marries the discussion of this case with a quotation from me, where the alternatives are *not* these, and the juxtaposition may give the false impression that I was discussing this case. The major problem in Buchanan’s line of reasoning lies, of course, elsewhere, to wit, not seeing that the right over a pair gives a person only the power to veto one alternative of the two.

6. Principles of Decisions

The motivation that led to a result or to a discussion is not necessarily the best way of seeing the result or discussion. But nevertheless it is perhaps worth recalling what the motivations, in fact, were in this case. One underlying objective was to introduce the concept of rights into social choice theory, which had a strongly welfarist character. This introduction has certainly happened and been met with extensive response and further explorations. The related object, already mentioned in the introductory section, of examining the formulation of rights has also received much attention in the literature that has followed, including that of game-form formulations. A further object, also mentioned in section 1, was to provide some scrutiny of principles of decision. The main principles that received such scrutiny were Pareto optimality and some characterizations of rights.⁷

The Pareto ranking can be interpreted in different ways, and some questions can be raised about the allegedly non-controversial nature of the principle under each of these interpretations. One contrast concerns the distinction between unanimous ranking according to individual *pleasures* or utilities in the classical sense. Another interpretation is unanimity in felt *desires*. Still another is unanimity in *choice behaviour*.

That there can be a real conflict even in the choice interpretation of unanimity has been beautifully discussed by Jonathan Barnes (1980), and the fact that this can lead to a cycle of choice is itself a matter of some concern. However, if it came to dropping—or weakening—one condition or another, it is hard to see that we can really dispense with respecting what everyone unanimously wants and would choose. This raises particularly the question that Dennis Mueller presents:

“Would rational, self-interested individuals establish liberal rights, if they produce Pareto inefficiencies? . . . If a constitution is of a form of contract among the citizens defining the institutions of the polity, and this contract is agreed to by all, then constitutional rights must, if citizens are rational and self-interested, be Pareto efficient.” (1996, 96–7)

⁷ In the literature that followed, whereas some argued for weakening the Pareto principle (see for example Farrell 1976, Suzumura 1978; 1983, Hammond 1981; 1982, Austen-Smith 1982; 1991, Rawls 1982, Riley 1985; 1986; 1987, Wriglesworth 1985, Coughlin 1986), others proposed various weakenings of the requirements of liberty (see for example Ng 1971, Gibbard 1974, Bernholz 1974, Blau 1975, Campbell 1976, Seidl 1975, Kelly 1976a; 1976b; 1978, Aldrich 1977a; 1977b, Ferejohn 1978, Karni 1978, Mueller 1979; 1989, Austen-Smith 1980, Breyer/Gardner 1980, Gardner 1980, Suzumura 1980; 1983, Baigent 1981, Gaertner/Kruger 1981; 1983, Levi 1982, Wriglesworth 1985). Other issues that call for attention include the compatibility of rights and demands of equity, on which see Kelly 1976a, Weale 1980, Suzumura 1983.

Mueller goes on to discuss the constitutional basis of rights, the possibilities of legal trade offs, and most illuminatingly, “the relationship between the kinds of rights one might expect rational, self-interested people to put into a constitution and different conceptions of liberalism” (97). This analysis, along with the game-theoretic and legal-theoretic discussions by Binmore (1996) and van Hees (1996) respectively have helped to clarify the foundations of rights in society, and this is one of the major achievements of this symposium.

The status of the Pareto principle in its everything-considered ‘choice’ interpretation remains an issue of interest. While I have certainly been critical of Paretian welfare economics (in Sen 1970b; 1979), taking a utilitarian interpretation of preferences (as can be found in, say, in Hicks 1939, and Samuelson 1947), it is not obvious that such criticism can be extended to the everything-considered preference. If preference or utility stands for how much a person enjoys something or suffers from it (like the Prude suffering *even more* from the Lewd’s reading *Lady Chatterley’s Lover* than from his own reading it, even though he hates the latter too), these pleasures and sufferings can be placed against *other* claims (such as their respect for each other’s autonomy and liberty). But if we now look at their preferences, taking *everything* into account (*including* their respect for each other’s autonomy and liberty), it is not easy to see how a further argument would be constructed to go against what everybody, on balance, would choose to have.

This last issue links with a theme that has recurred in the literature, viz. domain restriction as a solution of the Liberal Paradox (see Blau 1975, Seidl 1975, Breyer 1977, Breyer/Gigliotti 1980, Austen-Smith 1981). If the proposed domain restriction is interpreted as reducing the applicability of the principles in question, this simply rules out our dealing with some possibilities that can arise. But an alternative interpretation is to ask whether individual preferences would respond to the conflicts involved in the Liberal Paradox, and more generally to the conflict between simple joys and sufferings, on the one hand, and the ethical claims of others’ autonomy and liberty, on the other. The point can be made that ultimately the guarantee against conflicts of the kind that the Liberal Paradox identifies has to lie in the evolution of preferences that respect each others’ freedom to lead the kind of life each respectively has reason to value (on this see also Fine 1975, and Breyer 1977).

The evolution of such preferences can result from natural selection over time, but they can be helped also by conscious reflection on the nature of the problem that the Liberal Paradox tried to identify, combined with public discussion of these issues. While social choice theory has suffered a little from making no room for preference revision, James Buchanan in particular has been very emphatic in his reasoned claim that “individual values can and do change in the process of decision-making” (Buchanan 1954, 120). His

exploration of democracy as “government by discussion” is very central to resolving the conflicts of civic life involved in the paradox.⁸

In this context, I have tried to use the idea of a ‘metapreference’ (as a ranking of rankings)—an idea which I have also used for other purposes (Sen 1977). This was one of the first reactions I considered after presenting the problem, and I had put the argument in the form of a reasoning with oneself, in a paper called “Choice, Ordering and Morality”, presented at the 1972 Bristol conference on “Practical reason”, published two years later (Sen 1974). The imagined reflection is that of the Lewd in the *Lady Chatterley* example:

“I do prefer that prude . . . reads it; it will do him a lot of good. But he does not want to. And I am liberal enough to believe that if he does not want to then he should not. So given his preference, I should not really prefer that he should read the book. I must rank my preferences, and my preference that he reads it is of a lower moral order than what my preference would be if I took his views into account.” (Sen 1974; reprinted in Sen 1982a, 82)

The force of the Pareto principle would depend not only on its interpretation (whether based on ‘classical utility’ or ‘everything considered preference’), and the extent of reasoning used (whether immediate or reflective), but also on the positioning of one’s actual preferences in one’s own critical metaranking.

Since we have, ultimately, no one but ourselves to rely on to clear up the mess we make, these exercises are of critical importance. Perhaps I can end on this rather ambitious note, along with reiterating my debt to this wonderfully engaging symposium.

Bibliography

- Aldrich, J. H. (1977a), Dilemma of a Paretian Liberal: Consequences of Sen’s Theorem, in: *Public Choice* 30, 1–22
- (1977b), Liberal Games: Further Comments on Social Choice and Game Theory, in: *Public Choice* 30, 29–34
- Arrow, K. J. (1951), *Social Choice and Individual Values*, New York, 2nd edition 1963
- (ed.) (1991), *Markets and Welfare*, London
- /M. Intriligator (eds.) (1986), *Handbook of Mathematical Economics*, Amsterdam
- /A. K. Sen/K. Suzumura (eds.) (1996), *Social Choice Re-examined*, to be published in London

⁸ See also Knight 1947. The importance of public discussion supplements the need for personal reflection on the kind of life one wishes to lead; the latter exercise—and the discipline of an ‘examined life’—has been examined by Nozick 1989, invoking Socratic concerns, in a more general context.

- Austen-Smith, D. (1982), Restricted Pareto and Rights, in: *Journal of Economic Theory* 26, 89–99
- Baigent, N. (1981), Decompositions of Minimal Liberalism, in: *Economics Letters* 7, 29–32
- Barnes, J. (1980), Freedom, Rationality and Paradox, in: *Canadian Journal of Philosophy* 10, 545–565
- Barry, B. (1989), Lady Chatterley's Lover and Doctor Fischer's Bomb Party: Liberalism, Pareto-Optimality and the Problem of Objectionable Preferences, in: Elster/Hylland (eds.), 11–43
- Basu, K. (1984), The Right to Give up Rights, in: *Economica* 51, 413–422
- Batra, R./P. K. Pattanaik (1972), On Some Suggestions for Having Non-Binary Social Choice Functions, in: *Theory and Decision* 3, 1–11
- Bernholz, P. (1974), Is a Paretian Liberal Really Impossible?, in: *Public Choice* 20, 99–108
- (1975), Is a Paretian Liberal Really Impossible? A Rejoinder, in: *Public Choice* 23, 69–73
- (1980), A General Social Dilemma: Profitable Exchange and Intransitive Group Preferences, in: *Zeitschrift für Nationalökonomie* 40, 1–23
- Binmore, K. (1994), *Playing Fair: Game Theory and the Social Contract. Vol. I*, Cambridge/MA
- (1996), Right or Seemly? in: *Analyse & Kritik*, this number
- Blau, J. H. (1975), Liberal Values and Independence, in: *Review of Economic Studies* 42, 395–403
- /R. Deb (1977), Social Decision Functions and Veto, in: *Econometrica* 45, 871–879
- Breyer, F. (1977), The Liberal Paradox, Decisiveness Over Issues and Domain Restrictions, in: *Zeitschrift für Nationalökonomie* 37, 45–60
- (1996), Comment on the Papers by J. M. Buchanan and by A. de Jasay and H. Kliemt, in: *Analyse & Kritik*, this number
- /R. Gardner (1980), Liberal Paradox, Game Equilibrium and Gibbard Optimum, in: *Public Choice* 35, 469–481
- /G. A. Gigliotti (1980), Empathy and Respect for the Rights of Others, in: *Zeitschrift für Nationalökonomie* 40, 59–64
- Buchanan, J. M. (1954), Social Choice, Democracy and Free Markets, in: *Journal of Political Economy* 62, 114–123
- (1996), An Ambiguity in Sen's Alleged Proof of the Impossibility of a Paretian Libertarian, in: *Analyse & Kritik*, this number
- Campbell, D. E. (1976), Democratic Preference Functions, in: *Journal of Economic Theory* 12, 259–272
- Cohen, J. et al. (eds.) (1981), *Logic, Methodology and Philosophy of Science*, Amsterdam
- Coughlin, P. J. (1986), Rights and the Private Pareto Principle, in: *Economica* 53, 303–320
- Deb, R. (1994), Waiver, Effectivity and Rights as Game Forms, in: *Economica* 61, 167–178

- Elster, J./A. Hylland (eds.) (1986), *Foundations of Social Choice Theory*, Cambridge
- Farrell, M. J. (1976), Liberalism in the Theory of Social Choice, in: *Review of Economic Studies* 43, 3–10
- Feinberg, J. (1973), *Social Philosophy*, Englewood Cliffs
- Ferejohn, J. A. (1978), The Distribution of Rights in Society, in: Gottinger/Leinfellner (eds.), 119–131
- Fishburn, P. C. (1973), *The Theory of Social Choice*, Princeton
- Fleurbaey, M./W. Gaertner (1996), Admissibility and Feasibility in Game Forms, in: *Analyse & Kritik*, this number
- Gaertner, W./L. Kruger (1981), Self-Supporting Preferences and Individual Rights: The Possibility of a Paretian Liberal, in: *Economica* 48, 17–28
- /L. Kruger (1983), Alternative Libertarian Claims and Sen's Paradox, in: *Theory and Decision* 15, 211–30
- /P. K. Pattanaik/K. Suzumura (1992), Individual Rights Revisited, in: *Economica* 59, 61–178
- Gärdenfors, P. (1981), Rights, Games and Social Choice, in: *Noûs* 15, 341–356
- Gardner, R. (1980), The Strategic Inconsistency of Paretian Liberalism, in: *Public Choice* 35, 241–252
- Gibbard, A. F. (1974), A Pareto Consistent Libertarian Claim, in: *Journal of Economic Theory* 7, 388–410
- Gottinger, H. W./W. Leinfellner (eds.) (1978), *Decision Theory and Social Ethics. Issues in Social Choice*, Dordrecht
- Hammond, P. J. (1974), *On Dynamic Liberalism*, mimeographed, University of Essex
- (1977), Dynamic Restrictions on Metastatic Choice, in: *Economica* 44, 337–380
- (1981), Liberalism, Independent Rights and the Pareto Principle, in: Cohen et al. (eds.), 607–620
- (1982), Utilitarianism, Uncertainty and Information, in: Sen/Williams (eds.), 85–102
- (1996), Game Forms versus Social Choice Rules as Models of Rights, in: Arrow/Sen/Suzumura (eds.)
- Hardin, R. (1988), *Morality within the Limits of Reason*, Chicago
- Harel, A./S. Nitzan (1987), The Libertarian Resolution of the Paretian Liberal Paradox, in: *Zeitschrift für Nationalökonomie* 47, 337–352
- Hicks, J. R. (1939), *Value and Capital*, Oxford
- Jasay, A. de/H. Kliemt (1996), The Paretian Liberal, His Liberties and His Contracts, in: *Analyse & Kritik*, this number
- Karni, E. (1976), *Individual Liberty, the Pareto Principle and the Possibility of Social Choice Function*, Working Paper No. 2, Foerder Institute for Economic Research, Tel-Aviv University
- (1978), Collective Rationality, Unanimity and Liberal Ethics, in: *Review of Economic Studies* 45, 571–574
- Kelly, J. S. (1976a), The Impossibility of a Just Liberal, in: *Economica* 43, 67–75
- (1976b), Rights Exercising and a Pareto-Consistent Libertarian Claim, in: *Journal of Economic Theory* 13, 138–153

- (1978), *Arrow Impossibility Theorems*, New York
- Knight, F. (1947), *Freedom and Reform: Essays in Economic and Social Philosophy*, New York
- Körner, S. (ed.) (1974), *Practical Reason*, Oxford
- Levi, I. (1982), Liberty and Welfare, in: Sen/Williams (eds.), 239–249
- Mill, J. S. (1859), *On Liberty*, London; republished Harmondsworth 1974 (page references relate to this edition)
- Miller, N. R. (1977), 'Social Preference' and Game Theory: A Comment on 'The Dilemma of a Paretian Liberal', in: *Public Choice* 30, 23–28
- Mueller, D. C. (1979), *Public Choice*, Cambridge
- (1989), *Public Choice II*, New York
- (1996), Constitutional and Liberal Rights, in: *Analyse & Kritik*, this number
- Ng, Y.-K. (1971), The Possibility of a Paretian Liberal: Impossibility Theorems and Cardinal Utility, in: *Journal of Political Economy* 79, 1397–1402
- Nozick, R. (1973), Distributive Justice, in: *Philosophy & Public Affairs* 3, 45–126
- (1974), *Anarchy, State and Utopia*, New York
- (1989), *The Examined Life*, New York
- Pattanaik, P. K. (1996a), The Liberal Paradox: Some Interpretations When Rights Are Represented as Game Forms, in: *Analyse & Kritik*, this number
- (1996b), On Modelling Individual Rights: Some Conceptual Issues, in: Arrow/Sen/Suzumura (eds.)
- /K. Suzumura (1994), Rights, Welfarism and Social Choice, in: *American Economic Review. Papers and Proceedings* 84, 435–439
- / — (1996), *Individual Rights and Social Evaluation: A Conceptual Framework*, Oxford Economic Papers, forthcoming
- Peacock, A. T./C. K. Rowley (1972), Pareto Optimality and the Political Economy of Liberalism, in: *Journal of Political Economy* 80, 476–490
- Perelli-Minetti, C. R. (1977), Nozick on Sen: A Misunderstanding, in: *Theory and Decision* 8, 387–393
- Rawls, J. (1982), Social Unity and Primary Goods, in: Sen/Williams (eds.), 159–185
- Riley, J. M. (1985), On the Possibility of Liberal Democracy, in: *American Political Science Review* 79, 1135–1151
- (1986), Generalized Social Welfare Functionals: Welfarism, Morality and Liberty, in: *Social Choice and Welfare* 3, 233–254
- (1987), *Liberal Utilitarianism*, Cambridge
- Rowley, C. K. (1993), *Liberty and the State*, Aldershot
- /A. T. Peacock (1975), *Welfare Economics: A Liberal Restatement*, London
- Samuelson, P. A. (1947), *Foundations of Economic Analysis*, Cambridge/MA
- Seidl, C. (1975), On Liberal Values, in: *Zeitschrift für Nationalökonomie* 35, 257–292
- (1996), Foundations and Implications of Rights, in: Arrow/Sen/Suzumura (eds.)
- Sen, A. K. (1970a), The Impossibility of a Paretian Liberal, in: *Journal of Political Economy* 72, 152–7; reprinted in Sen (1982a)
- (1970b), *Collective Choice and Social Welfare*, San Francisco; republished Amsterdam 1979

- (1974), Choice, Ordering and Morality, in: Körner (ed.), 54–67; reprinted in Sen (1982a)
- (1976), Liberty, Unanimity and Rights, in: *Economica* 43, 217–245; reprinted in Sen (1982a)
- (1977), Rational Fools: A Critique of the Behavioural Foundations of Economic Theory, in: *Philosophy & Public Affairs* 6, 317–344; reprinted in Sen (1982a)
- (1979), Personal Utilities and Public Judgements: or What's Wrong with Welfare Economics? in: *Economic Journal* 89; reprinted in Sen (1982a)
- (1982a), *Choice, Welfare and Measurement*, Oxford and Cambridge/MA
- (1982b), Rights and Agency, in: *Philosophy & Public Affairs* 11, 3–39
- (1983), Liberty and Social Choice, in: *Journal of Philosophy* 80, 5–28
- (1985), Well-being, Agency and Freedom: The Dewey Lectures 1984, in: *Journal of Philosophy* 82, 169–221
- (1986), Social Choice Theory, in: Arrow/Intriligator (eds.), 1073–1181
- (1992), Minimal Liberty, in: *Economica* 59, 139–159
- (1996), Individual Preferences as the Basis of Social Choice, in: Arrow/Sen/Suzumura (eds.)
- /B. Williams (eds.) (1982), *Utilitarianism and Beyond*, Cambridge
- Stevens, D. N./J. E. Foster (1978), The Possibility of Democratic Pluralism, in: *Economica* 45, 401–6
- Sugden, R. (1981), *The Political Economy of Public Choice*, Oxford
- (1985), Liberty, Preference and Choice, in: *Economics and Philosophy* 1, 213–229.
- (1993), Welfare, Resources, and Capabilities: A Review of Inequality Reexamined by Amartya Sen, in: *Journal of Economic Literature* 31, 1947–1962
- Suzumura, K. (1976), Remarks on the Theory of Collective Choice, in: *Economica* 43, 381–390
- (1978), On the Consistency of Libertarian Claims, in: *Review of Economic Studies* 45, 329–342
- (1980), Liberal Paradox and the Voluntary Exchange of Rights Exercising, in: *Journal of Economic Theory* 22, 407–422
- (1983), *Rational Choice, Collective Decisions and Social Welfare*, Cambridge
- (1991), Alternative Approaches to Libertarian Rights in the Theory of Social Choice, in: Arrow (ed.), 215–24
- (1996), Welfare, Rights, and Social Choice Procedures, in: *Analyse & Kritik*, this number
- Van Hees, M. (1994), *Rights, Liberalism and Social Choice*, dissertation at the Catholic University of Nijmegen
- (1995), *Rights and Decisions: Formal Models of Law and Liberalism*, Dordrecht
- (1996), Individual Rights and Legal Validity, in: *Analyse & Kritik*, this number
- Weale, A. (1980), The Impossibility of Liberal Egalitarianism, in: *Analysis* 40, 13–19
- Wriglesworth, J. (1985), *Libertarian Conflicts in Social Choice*, Cambridge