

Mathias Thaler

**Comment on Wilfried Hinsch.
Ideal Justice and Rational Dissent:
A Critique of Amartya Sen's *The Idea of Justice***

1. Introduction

Wilfried Hinsch's perceptive and thought-provoking critique of Amartya Sen's book *The Idea of Justice* finds itself in good company. More than two years after its publication, a swift survey reveals a somewhat ambiguous reception for *The Idea of Justice*. Of course, the majority of commentators readily acknowledged its outstanding quality; however, many professional philosophers have taken to look with slightly raised eyebrows at the over-all merits of the project (Brown 2010; Celikates 2010; Freeman 2010; Halbertal 2009; Khilnani 2009; O'Neill 2010). *The Idea of Justice* has received a great deal of critical attention, not only because it expresses, with characteristic and inimitable erudition, the Noble laureate's most elaborate account of what the pursuit of justice might look like, but also because it intervenes in a debate that has lately been haunting political philosophy of the Anglo-American variety. This debate turns around the relationship between ideal and non-ideal theory.¹

While some authors have taken important steps to clarify what the distinction is all about (Valentini 2009; Simmons 2010), the debate around the respective advantages of ideal vs. non-ideal theory, as well as the relationship between them, has become a focal point for larger methodological controversies within political philosophy. Unsurprisingly, various authors use different vocabularies to characterize the distinction between ideal and non-ideal theory: To name but a few, Sen himself consistently speaks of transcendental vs. comparative theory, Raymond Geuss contrasts what he calls the 'ethics first'-approach with a realist account of political philosophy, and Joseph Carens posits abstract against contextual styles of doing theory. Although these notions do not always map neatly on each other, I take it that all these authors talk about the same problem and partake in the same conversation. The primary purpose of this short comment

¹ The immediate origins of this debate can be traced back to John Rawls's *The Theory of Justice*; however, it might be assumed that there are deeper issues at stake here that ultimately relate to the collapse of the fact/value-dichotomy (Putnam 2002).

is not to assess whether Hirsch remains faithful to the original book and charitable in his interpretation, although I consider both questions crucial for the purpose of writing a critique. Since I am acutely aware of my limitations as an interpreter of *The Idea of Justice*, I will rather attempt to pursue two trains of thought that are linked to the broader issues described above. I shall make two small points to (1) show that, *pace* Hirsch, a more productive way to grapple with the ideal/non-ideal distinction is to re-describe it in terms of a division of labor, and to (2) delineate a possible rejoinder to Hirsch's sketch of minimalism and proceduralism, rooted in a more realist understanding of political theory. I will argue that Hirsch makes a pertinent and convincing observation, namely that Sen's contraposition of transcendental and comparative approaches is rather "overstated" (372); where my perspective differs from Hirsch's is in the implications of this observation.

Before I advance, it should be noted that, despite Hirsch's skeptical stance, great areas of agreement unite Sen and Hirsch, especially concerning the transformative role of reasoning in overcoming divisive conflicts within society. Hirsch, however, is critical of the way in which Sen wants to put reasoning to use. The main claim in his paper is that Sen's proposal for a comparativist approach to justice fails to demonstrate that ideal theory is redundant and/or infeasible. Thus, Hirsch submits, Sen's comparativist proposal is actually in dire need of some kind of ideal: you cannot have the one without the other—comparisons without a yardstick will not work; an idea of justice is pointless unless we also appeal to an ideal of justice.

2. Locating Hirsch's Critique: Three Departures from Rawlsian Liberalism

To better understand Hirsch's response to Sen, I begin by outlining the context within which it is situated. *The Idea of Justice* marks one among several departures from the Rawlsian system of thought. If we solely concentrate on the distinction between ideal and non-ideal theory, we can observe that Rawls has recently come under attack from at least three different directions that share some family resemblances, yet are in many respects very different from, and even hostile towards, each other.² The first departure can be found in G. A. Cohen's work (Cohen 2008). Cohen attempts to 'rescue justice and equality' from the constructivist view proposed by Rawls. On this analytical Marxist account, Rawls fatally compromised the fundamental principles of justice by letting social rules of regulations sneak through the back door into his normative theory. Factoring in practical considerations about the motivations of social actors distorts our moral compass, Cohen insists. With regard to the difference principle, he argues that unequalizing incentives for the better off might be mandated by policy considerations to induce the more productive to contribute; but

² This is, of course, not to say that the three departures presented here are the only critical objections to Rawlsian liberalism. I am focusing here on Cohen, Geuss and Sen for pragmatic reasons, in order to sketch the main fault-lines in the contemporary discussion.

such incentives cannot be called just, for they clearly increase inequality within society. This very demanding account of justice as equality, sometimes dubbed as ‘luck egalitarianism’, is premised on a fact-insensitive notion of morality. For Cohen, feasibility has nothing to do with desirability: whether a principle can in fact be turned into a reality must not be relevant for assessing its justice. In Sen’s terminology, it would be appropriate to call Cohen’s approach hyper-transcendentalist, although Sen himself seems to prefer the polite word “exalted” (Sen 2009, 62) to classify it.

At the other end of the spectrum from hyper-transcendentalism, the second departure from Rawls can be found in Raymond Geuss’s work (Geuss 2008). Geuss defends the idea that political philosophy must become more realist (i.e., less ideal).³ His plea for realism in political philosophy is multifaceted, and bears little similarity with the hard-nosed classical realism in International Relations. Geuss sees in Rawls the main exemplar of what he calls the ‘ethics first’-approach to politics. What is, on Geuss’s account, problematic about this view is that it fundamentally misconstrues how the political world is organized. The ‘ethics first’-approach in fact commits an epistemic error when it claims precedence over other, more realist, approaches, for it treats political problems as if they were moral in nature. This misunderstanding of politics is premised on idealization: the ‘ethics first’-approach strips the political world of both history and culture so as to formulate principles of justice that are neither historically nor culturally grounded. The third departure from Rawls can be found in Sen’s work. His comparativism positions itself between Cohen’s rescue mission for strict egalitarianism and Geuss’s plea for more realism.⁴ Sen rejects both hyper-transcendentalism and hyper-realism in favor of a theory that can “guide reasoned choice of policies, strategies or institutions”. Within this web of dissenting voices, Hinsch tries to save Rawls from Sen’s attack, but his arguments would also apply to Geuss’s and Cohen’s proposals. As becomes clear in his detailed exposition of the primacy of institutions for justice, Hinsch largely subscribes to, and wishes to redeem, the Rawlsian system of thought.

Hinsch is certainly right in claiming that too sharp a contrast between ideal and non-ideal theory is problematic. But I think that the lesson to draw from this observation is not to continue defending ideal theorizing against the attack of those who deem it less than perfect for the study of politics. Rather, I would suggest that the best way to conceive of the relationship between ideal and non-ideal theory is in terms of a division of labor (Carens 2004; Gilibert 2011). What does this mean in concrete terms? While I cannot spell out in detail what such a division of labor would entail, this much can perhaps be alleged: In the face of extreme injustices in the real world, it might sometimes be necessary to draw on ideal theory. Global social and economic inequality might, for instance, be deemed so pervasive and gross that a highly idealizing plea for completely open

³ For a similar critique of ideal theory, see Mills 2005. David Owen points out that the opposite of realism in political philosophy can properly be described as “wishful thinking” (Owen 2011).

⁴ For highly illuminating comparisons between Cohen and Sen, see Horton 2011; Schmidt 2011.

borders suddenly sounds plausible (Carens 1987). Other occasions, however, will shift the balance and convince us to make use of the tools of deep contextualism. These tools are warranted, Carens submits, when general principles, due to the distance from reality, lose their power to practically guide action:

“[W]e do not really understand what general principles and theoretical formulations mean until we see them interpreted and applied in a variety of specific contexts. We may assume we agree on some theoretical point because we have different examples in the back of our minds, different understandings of how the idea would be interpreted and applied. When these come to light, we often find we actually disagree. Or we may be inclined to generalize a claim that really makes sense only in relation to a limited set of cases.” (Carens 2000, 3)

Given the current dominance of ideal theory in political philosophy (which I take for granted), we might express hope for a re-calibration so as to give more weight to non-ideal accounts. Such a re-calibration makes only sense if it is based on a holistic understanding of the complementary tasks that idealizing and realist approaches in political philosophy can achieve. Here, much can be learnt from Sen’s idea of comparative justice. If we follow Hinsch in deflating the overly sharp dichotomy between ideal and non-ideal theories of justice, we can still benefit from many of Sen’s arguments. Instead of engaging in a rearguard defence of Rawlsian liberalism, I think it would be more fruitful to search for, and actively create, contact zones between defenders and detractors of ideal theory. This would oblige us to pragmatically ‘re-describe’ the inimical way in which the relation between ideal and non-ideal theory is often perceived. The next paragraphs will quickly touch on the question how such a re-description might work.

3. The Tragedy of Disagreement

The final section of Hinsch’s paper contains a systematic discussion of two possible alternatives to Sen’s account. In scrutinizing the qualities of both minimalism and proceduralism, Hinsch argues that contemporary political philosophy already has an argumentative arsenal at its disposal to deal with what he calls ‘rational dissent’. Sen’s comparative approach is, thus, made redundant, or at least incomplete. What makes Hinsch’s discussion particularly useful is its awareness of the inherent limitations of minimalism as well as of proceduralism. The case of public deliberations over abortion reveals, in Hinsch’s eyes, that sometimes disagreement can neither be resolved by referring to a minimal morality nor by applying sound procedures: people will simply continue to fiercely, sometimes even violently, contest one another’s narratives of whether abortion is legitimate. With this depiction most commentators would probably

concur.⁵ But Hinsch's explanation for the persistence of this kind of disagreement is telling of his vision of politics:

“There is, it seems, no way to resolve the remaining conflict by means of moral philosophy or any other kind of argument or institutional device. This, however, has nothing to do with the distinction between ideal and non-ideal justice or between ‘transcendental’ and ‘comparative’ theories, and we must by no means take it as an argument in support of the latter. It is simply the consequence of the always-limited capacity of rational arguments and procedures to give unambiguously correct or just answers to all questions about what is good and right.” (385)⁶

A consequence of this argument is evidently that, even if our capacity to develop the right kind of morality is ‘always-limited’, rational arguments and procedures will normally generate the most promising response to disagreement. We need more of them, even if we can never have enough. In this assessment, Hinsch is actually very close to Sen's own standpoint regarding the role of reasoning in the pursuit of justice. Sen too endorses the rationalist creed that more reasoning will lead to a better world (Sen 2009, 32). However, this is of course not the only way to envisage disagreement, and the response to it. An alternative, more ‘agonistic’ (Honig 1993; Mouffe 2005) reading would start from the thought, hinted at in Hinsch's text (378), that Sen's flute example indeed opens up the possibility for a much more radical interpretation of disagreement; an interpretation with which Sen himself would not concur. Could it be the case that some kinds of conflict are in fact irreconcilable to begin with? Could it be the case that public controversies like the one around abortion are not peripheral, but rather central to the study of politics? Hinsch is not ready to draw this conclusion. However, I would like to maintain that such a radical interpretation of disagreement is precisely what we need if the goal is to divide the labor between ideal and non-ideal theory. This is the case because ideal theory can assist us in excavating the dilemmas that are created by the clash of irreconcilable values, whereas non-ideal theory helps us to practically guide action when societal compromises can in fact be reached.

One implication of this view would be that political theory ought to come to terms with the tragic dimension of politics (Brown 2007). By ‘tragic dimension’ I mean the fact that in certain moments no matter what an agent decides to do will involve some kind of wrongdoing. The most readily available examples for such situations in which the tragic dimension of politics shines through are related to the justification of violence across borders. John Gray, in his review of *The Idea of Justice*, refers to the historical example of the Allied bombings of German cities during World War II in order to uncover the limits of how

⁵ Even Rawls modified his initially very superficial account of abortion in a later text on public reason. See Rawls 1997, 798–780.

⁶ In Rawlsian terms, we might say that Hinsch locates the sources of rational dissent in the “burdens of judgment” (Rawls 2005, 54–58).

much reasoning can achieve (Gray 2009). That these bombings have caused incredible, unjustifiable suffering among civilians is beyond dispute; however, and this is the terrifying crux of the paradox, the survival of the moral universe as we know it seems to have depended on them. Thus, some philosophers have controversially submitted that in moments of ‘supreme emergency’, politicians must be able and willing to commit immoral acts that are, under normal conditions of warfare, prohibited (Walzer 2005; 2006; Bellamy 2010). Facing such situations, politicians unfortunately cannot make better choices by appealing to the force of reason alone. ‘Unambiguously correct or just answers’ simply do not present themselves at all times; and it is implausible to assume that rational arguments and procedures alone can assure us when taking a stance towards the Allied bombings. Rather, what is called for in such situations is ‘oriented’ (i.e., non-arbitrary) political judgment, the cultivation of which is distinct from the exchange of rational arguments and procedures (Ferrara 1999; 2008).

There is an obvious danger of misinterpreting my argument for political judgment. An acknowledgment of the tragic dimension inherent in many politically salient situations does not undercut the importance of crafting a tentative consensus on what should be done. Many theorists who endorse a rationalist framework assume that the faculty of judgment is too weak to build such a consensus. But a sober look at real politics reveals that neither the clash of irreconcilable values, nor the use of political judgment, can easily be discarded. Accepting these ‘circumstances of politics’ as constitutive for the meaningful study of politics would provide the participants in the debate on ideal vs. non-ideal theory with a sound basis for a productive dialogue.

Bibliography

- Bellamy, R. (2010), Dirty Hands and Clean Gloves: Liberal Ideals and Real Politics, in: *European Journal of Political Theory* 9(4), 412–430
- Brown, C. (2007), Tragedy, ‘Tragic Choices’ and Contemporary International Political Theory, in: *International Relations* 21(1), 5–13
- (2010), On Amartya Sen and the Idea of Justice, in: *Ethics & International Affairs* 24(3), 309–318
- Carens, J. H. (1987), Aliens and Citizens: The Case for Open Borders, in: *The Review of Politics* 49(2), 251–273
- (2004), A Contextual Approach to Political Theory, in: *Ethical Theory and Moral Practice* 7(2), 117–132
- (2000), *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness*, Oxford
- Celikates, R. (2010), Eine Idee, aber keine Theorie, in: *Frankfurter Rundschau*, URL: <http://www.fr-online.de/kultur/literatur/eine-idee-aber-keine-theorie/-/1472266/4718578/-/index.html> [July 29, 2011]
- Cohen, G. A. (2008), *Rescuing Justice and Equality*, Cambridge/MA
- Ferrara, A. (1999), *Justice and Judgment: The Rise and the Prospect of the Judgment Model in Contemporary Political Philosophy*, London
- (2008), *The Force of the Example: Explorations in the Paradigm of Judgment*, New York

- Freeman, S. (2010), A New Theory of Justice, in: *New York Review of Books* 57(15), 58–60
- Geuss, R. (2008), *Philosophy and Real Politics*, Princeton
- Gilbert, P. (2011), Comparative Assessments of Justice, Political Feasibility, and Ideal Theory, in: *Ethical Theory and Moral Practice* (forthcoming)
- Gray, J. (2009), Is a Smarter World a Better World?, in: *Literary Review*, URL: http://www.literaryreview.co.uk/gray_08_09.html [August 14, 2011]
- Halbertal, M. (2009), The Ideal and The Real, in: *The New Republic* 240(22), 41–44
- Hinsch, W. (2011), Ideal Justice and Rational Dissent: A Critique of Amartya Sen's *The Idea of Justice*, in: *Analyse & Kritik* 33(2), 371–386
- Honig, B. (1993), *Political Theory and the Displacement of Politics*, Ithaca
- Horton, J. (2011), Review Article: The Smartest Guys in the Room: Cohen and Sen on Justice, in: *European Journal of Political Theory* 10(3), 430–437
- Khilnani, S. (2009), Book Review: The Idea of Justice, in: *Financial Times*, URL: <http://www.ft.com/cms/s/2/abc1ea8-77e2-11de-9713-00144feabdc0.html#axzz1TUFMdShc> [July 29, 2011]
- Mills, C. W. (2005), 'Ideal Theory' as Ideology, in: *Hypatia* 20(3), 165–183
- Mouffe, C. (2005), *On the Political*, London
- O'Neill, O. (2010), The Idea of Justice, in: *The Journal of Philosophy* 107(7), 384–388
- Owen, D. (2011), Reality Lost. Reality Regained.' Ethics, Politics and Wishful Thinking in the Imagination of Raymond Geuss (unpublished manuscript)
- Putnam, H. (2002), *The Collapse of the Fact/Value Dichotomy and Other Essays*, Cambridge/MA
- Rawls, J. (1997), The Idea of Public Reason Revisited, in: *The University of Chicago Law Review* 64(3), 765–807
- (1999), *A Theory of Justice*, revised edition, Cambridge/MA
- (2005), *Political Liberalism*, expanded edition, New York
- Schmidtz, D. (2011), Nonideal Theory: What It Is and What It Needs to Be, in: *Ethics* 121(4), 772–796
- Sen, A. (2009), *The Idea of Justice*, Cambridge/MA
- Simmons, A. J. (2010), Ideal and Nonideal Theory, in: *Philosophy & Public Affairs* 38(1), 5–36
- Valentini, L. (2009), On the Apparent Paradox of Ideal Theory, in: *Journal of Political Philosophy* 17(3), 332–355
- Walzer, M. (2005), *Arguing about War*, New Haven
- (2006), *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th ed., New York